

# **Switzerland Terms and Conditions**

**Convera Switzerland, LLC, Zurich Branch**

Issue Date: July 11, 2022

<b>1. Definitions</b>	<b>3</b>
<b>2. Intent</b>	<b>5</b>
<b>3. Conducting Business with Convera</b>	<b>5</b>
<b>4. License Agreement and Terms of Use</b>	<b>6</b>
<b>5. GlobalPay Security</b>	<b>6</b>
<b>6. Standing Order Instructions</b>	<b>7</b>
<b>7. Foreign Currency Forward Contracts, Future Payments Transactions and NDFs</b>	<b>7</b>
<b>8. Options Contracts</b>	<b>9</b>
<b>9. Representations, Undertakings, Notifications and Acknowledgments</b>	<b>10</b>
<b>10. Short-term Holding Balances</b>	<b>12</b>
<b>11. Settlement Terms</b>	<b>12</b>
<b>12. Data Rights; Confidentiality</b>	<b>13</b>
<b>13. Indemnification; Limitation of Liability; Exclusion of Warranties</b>	<b>14</b>
<b>14. Legal Compliance</b>	<b>14</b>
<b>15. General Terms &amp; Conditions</b>	<b>14</b>
<b>Schedule A</b>	<b>16</b>
<b>Schedule B</b>	<b>17</b>
<b>1. Scope of this Schedule</b>	<b>17</b>
<b>2. Classification under the FMIA</b>	<b>17</b>
<b>3. Portfolio Reconciliation</b>	<b>17</b>
<b>4. Agreement on Dispute Resolution</b>	<b>18</b>
<b>5. Exchange of Confirmations</b>	<b>18</b>
<b>6. Miscellaneous</b>	<b>18</b>
<b>7. Applicable law and Jurisdiction</b>	<b>18</b>
<b>8. Definitions</b>	<b>18</b>
<b>Annex to Schedule B</b>	<b>20</b>

## 1. Definitions

**Administrator:** The individual designated by Client to access and administer the security of Client's usage of GlobalPay, such as granting or rescinding user privileges and maintaining Client's password(s).

**Advance Payment:** An amount paid by Client to Convera as an advance payment in connection with a Forward Contract.

**Authorised User:** The meaning given in Section 5(B) of these Terms and Conditions.

**Buyer:** The party specified as such in an Option Confirmation with respect to an Option Contract.

**Call Option:** A transaction which gives the Buyer the right to buy from the Seller the Call Currency Amount at the Strike Rate.

**Call Currency Amount:** The amount of the call currency to be bought on exercise of an Option Contract as set out in the related Option Confirmation.

**Cash Settlement Amount:** The amount payable by either the Client or Convera on the Value Date, as determined by Convera.

**CFTC:** The Commodity Futures Trading Commission of the USA.

**CFTC Regulations:** Regulations promulgated by the CFTC.

**Client:** You, the person or entity entering into this Contract with Convera.

**Client's Access Methods:** The meaning given in Section 5(A) of these Terms and Conditions.

**Commodity Pool:** A "commodity pool" as defined in Section 1a(10) of the Commodity Exchange Act of the USA and in CFTC Regulations promulgated thereunder.

**Confidential Client Information:** The meaning given in Section 12(C) of these Terms and Conditions.

**Contract Date:** The date on which Client instructs Convera to enter into a Future Payments Transaction or a Forward Contract.

**Contract Funds:** In relation to a Future Payments Transaction or a Forward Contract, the type of currency and amount Client agrees to purchase/sell.

**Contract Rate:** The agreed exchange rate which will be used to calculate the Cash Settlement Amount.

**Convera:** means Convera Switzerland, LLC Zurich Branch

**Convera Reporting Entities:** The meaning given in Section 9(D) of these Terms and Conditions.

**Delivery Date:** In relation to a Future Payments Transaction or a Forward Contract, the date on which Contract Funds (provided Convera has received full Settlement from Client) will be made available in a Short-term Holding Balance pending Client's Instruction for distribution. The Delivery Date must be a business day in all jurisdictions involved in a Forward Contract, including both countries of the currencies involved in the transaction.

**Delivery Window:** In relation to a Forward Contract, the time period during which Client may elect to take delivery of Contract Funds. Settlement in full must be paid to Convera on or before the close of the Delivery Window.

**Eligible Contract Participant:** An "eligible contract participant" as defined in the Commodity Exchange Act and in CFTC Regulations promulgated thereunder that satisfies one of the criteria in Schedule A to these Terms and Conditions.

**European Option:** An Option Contract that can only be exercised at the Expiry Date. Convera only offers European Options.

**Exercise Date:** The date on which an Option Contract is exercised.

**Expiry Date:** The last day on which an Option Contract may be exercised.

**Expiry Time:** The latest time at which Convera will permit an Option Contract to be exercised, which shall be 10:00 a.m. (local Convera office time) on the Expiry Date, unless otherwise stated in the applicable Option Confirmation.

**Facilities Letter:** The meaning given in Section 8(I) of these Terms and Conditions.

**Financial Entity:** A "financial entity" as defined in Section 2(h)(7)(C) of the Commodity Exchange Act and in CFTC Regulations promulgated thereunder.

**Fixing Date:** The date the Fixing Rate is determined and the Cash Settlement Amount is calculated.

**Fixing Rate:** The rate displayed on an independent market rate source at the agreed time on the Fixing Date. The Fixing Rate is used to calculate the Cash Settlement Amount.

**FMIA:** The Swiss Financial Market Infrastructure Act of 19 June 2015, as amended.

**Forward Contract:** A binding agreement in which Client agrees to purchase a specific amount of funds in one currency from Convera and to sell a specific amount of funds in another currency to Convera on a particular future date.

**Future Payments Services:** The provision by Convera of Future Payments Transactions.

**Future Payments Transaction:** A legally binding agreement between Client and Convera in which: (i) Client agrees to purchase a specific amount of funds in one currency and to settle in a specific amount of funds in another currency at an agreed fixed exchange rate. Client agrees to settle on an agreed future date not to exceed the Maximum Release Date as defined in Client's terms of account; and (ii) Convera agrees to transfer the purchased funds to a designated beneficiary or Client for an agreed service fee if applicable.

**GlobalPay:** Convera's proprietary online system for making global payments.

**Insolvency Event:** Client becomes insolvent, or a receiver or administrator is appointed with respect to some or all of its assets or it enters into liquidation (or any similar event occurs).

**Instruction:** A request by Client for Convera to provide Services, including any request for Services made by mail, electronic mail, facsimile, telephone, GlobalPay or other means.

**International Swap:** A Swap required by US law and the law of another jurisdiction to be reported both to a CFTC-regulated Swap Data Repository and to a different trade repository registered with the other jurisdiction.

**Investment Fund:** An investment vehicle that is in the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise that engages in investment activities for speculative purposes.

**LEI (Legal Entity Identifier):** A global legal identifier code identifying an entity issued by an accredited LEI issuer (Local Operating Unit).

**Life Cycle Event:** A "life cycle event" as defined in CFTC Regulations Section 45.1.

**Margin:** The meaning given in Section 8(I) of these Terms and Conditions.

**Mark to Market:** The daily revaluation of an Option Contract to reflect its current market value rather than its original contract value.

**MSP:** A "major swap participant" as defined in Section 1a(33) of the Commodity Exchange Act and in CFTC Regulations promulgated thereunder.

**NDF:** A non-deliverable forward, being a cash-settled foreign exchange product between the Client and Convera in which the Client agrees to purchase from (or sell to) Convera a specific amount of funds in one currency and to pay (or receive), on an agreed future date, a cash amount representing that amount of funds at an agreed fixed exchange rate. For the avoidance of doubt, such term shall be included in the definition of "Swap" below.

**Notice of Exercise:** A notice given by Client of its intention to exercise an Option Contract in accordance with these Terms and Conditions.

**Notification:** A communication other than an Instruction made by mail, electronic mail, facsimile, telephone, GlobalPay or other means.

**Option Confirmation:** A document sent by Convera to Client confirming the details of an Option Contract entered into between Client and Convera.

**Option Contract:** The meaning given in Section 8(A) of these Terms and Conditions; and, for the avoidance of doubt, such term shall be included in the definition of "Swap," as defined below.

**Option Settlement Date:** In relation to an Option Contract, the date for settlement of the payment rights and obligations under the Option Contract following the exercise of the Option Contract under Section 8(D) or 8(E) of these Terms and Conditions, as specified to Client in the relevant Option Confirmation. The Option Settlement Date of a European Option is typically the second business day after the Expiry Date.

**Option Trade Date:** The date on which an Option Contract is entered into between Client and Convera.

**Out of the Money:** The value of the original contracted Option Contract rate is negative compared to the current Mark to Market value.

**Parties:** Client and Convera.

**Posted Margin:** The meaning given in Section 8(I) of these Terms and Conditions.

**Premium:** The amount that is payable by Client to Convera on the Premium Payment Date for an Option Contract.

**Premium Payment Date:** The date on which the Premium is required to be paid in respect of an Option Contract, in accordance with Section 8(B) of these Terms and Conditions.

**Put Option:** A transaction which gives the Buyer the right to sell to the Seller the Put Currency Amount at the Strike Rate.

**Put Currency Amount:** The amount of the put currency to be sold on exercise of an Option Contract as set out in the relevant Option Confirmation.

**Release Date:** The date on which a Future Payments Transaction becomes due for release and settlement. The Release Date must not exceed the Maximum Release Date as defined in Client's terms of account unless Convera in its sole discretion

varies the Maximum Release Date. The Release Date must be a business day in all jurisdictions involved in the Future Payments Transaction, including both countries of the currencies involved in the transaction.

**Seller:** The party specified as such in an Option Confirmation with respect to an Option Contract.

**Services:** Whether in the singular or the plural, the buying or selling of foreign currency, the making of payments by wire or draft, entering into Forward Contracts, entering into NDFs, entering into Future Payments Transactions, entering into Option Contracts and other global payment solutions provided by Convera in accordance with Client's Instruction.

**Settlement:** The total amount, including the cost of currency acquisition as well as any fees and charges, Client agrees to pay Convera for the Services.

**Settlement Currency:** The currency nominated as the settlement currency. This is the currency that the Cash Settlement Amount must be paid in.

**Shell Company:** The meaning given in Schedule A to these Terms and Conditions.

**Short-term Holding Balances:** Client funds held for a maximum of sixty (60) days for the convenience of Client pending receipt from Client of information required for the performance of a transaction.

**Special Entity:** A "special entity" as defined in the Commodity Exchange Act and in CFTC Regulations promulgated thereunder.

**Standing Order Effective Period:** The time within which Client has instructed Convera to purchase or sell Contract Funds at the Target Rate, which shall not exceed two weeks.

**Standing Order Instruction:** Client's Instruction, which may be made by Client by mail, electronic mail, facsimile or telephone, to purchase/sell for Client's account Contract Funds at the Target Rate within the Standing Order Effective Period, without prior oral approval. The Standing Order Instruction must also set forth the currency, the amount, and delivery instructions (if any).

**Strike Rate:** The meaning given in Section 8(C) of these Terms and Conditions.

**Sustainable and Purchasable:** In regard to foreign exchange market rates, the rate at which a Standing Order will be executed. The rate must be traded in the market with volume sufficient to sustain that rate level for a commercially reasonable timeframe.

**Swap:** A "swap" as defined in the Commodity Exchange Act and in CFTC Regulations promulgated thereunder. Solely for purposes of these Terms and Conditions, "Swap" shall also include "foreign exchange forwards" and "foreign exchange swaps" that may be excluded from the 'swap' definition by the Secretary of the Treasury pursuant to authority granted by Section 1a(47) (E) of the Commodity Exchange Act, solely for purposes of CFTC Regulations with respect to reporting for swaps. For the avoidance of doubt and solely for purposes of these Terms and Conditions, the term "**Swap**" shall include Forward Contracts, NDFs, Future Payments Transactions and Option Contracts.

**Swap Data Repository:** A "swap data repository" as defined by Section 1a(48) of the Commodity Exchange Act, registered or provisionally registered as such with the CFTC.

**Swap Dealer:** A "swap dealer" as provided in Section 1a(49) of the Commodity Exchange Act and in CFTC Regulations promulgated thereunder.

**Target Rate:** The rate at which Client has instructed Convera to purchase/sell Contract Funds if and when the stipulated rate is Sustainable and Purchasable.

**Transaction Confirmation:** A Notification that details the transaction(s) (other than any Option Contracts) Client has directed Convera to execute upon Convera's receipt of Settlement from Client.

## 2. Intent

**Intent:** These Terms and Conditions govern the contractual relationship between the Parties and set forth certain Services which Convera will deliver and Client will receive.

## 3. Conducting Business with Convera

- A. Reliance on Instruction.** Client hereby authorises Convera to accept, act and rely upon any Instruction that Convera may reasonably believe to have been made by Client.
- B. Accuracy of Instruction.** Before transmitting an Instruction to Convera, Client shall be responsible for ensuring all information contained in the Instruction is complete, accurate, and if in writing, legible. If Client subsequently learns of any error in an Instruction, Client must immediately notify Convera in writing.
- C. Inaccuracy of Instruction.** If Client fails to provide a timely, complete, accurate and legible Instruction, Convera will place the Contract Funds in a Short-term Holding Balance for the purpose of performing the transaction(s) intended by

Client pending receipt from Client of the information necessary to complete the transaction(s), provided that Client is not otherwise in default hereunder. Convera shall not be liable for any loss or damage suffered by Client as a result of any such delay.

- D. Fees.** Client understands that Convera will charge certain fees for the Services and agrees to pay such fees when they become due. The fees shall be set forth in a fee schedule that will be provided to Client from time to time or upon request. Convera may change the fees charged for the Services at its sole discretion at any time upon written notice to Client. Client is deemed to have accepted such changes unless Client objects in writing within thirty (30) days from the date of the notice.

#### 4. License Agreement and Terms of Use

- A. Consideration.** If Client accesses the Services through GlobalPay, Client agrees to abide by these Terms and Conditions. In consideration of Client's agreement to be so bound, and upon Client's request to obtain access to GlobalPay, Convera grants Client a non-exclusive, non-transferable, and non-sublicensable license to use GlobalPay for the sole purpose of facilitating its use of Services.
- B. GlobalPay Restrictions.** Client agrees that GlobalPay is and shall remain the exclusive property of Convera. Accordingly, Client shall not distribute or disclose GlobalPay to, or permit use of GlobalPay by, any third party. Client shall not, directly or indirectly, decompile, disassemble, reverse engineer or otherwise attempt to derive or discern the source code or internal workings of GlobalPay.
- C. GlobalPay Security.** Client understands the importance of security and agrees to use GlobalPay solely in the ordinary course of Client's business and agrees to restrict GlobalPay access.
- D. GlobalPay Termination.** Client agrees Convera may terminate Client's license to access and use GlobalPay at any time for any reason. Convera will provide written Notification of such termination.

#### 5. GlobalPay Security

- A. Client's Access Methods.** If Client requests access to GlobalPay, Client will select an authentication method from those currently offered by Convera and Convera will provide such authentication method to Client. The security of Client's access and transactions in GlobalPay shall at all times be the sole responsibility of Client and shall be administered by Client. Client shall appoint an Administrator and provide Convera with the name of that individual. The Administrator shall be responsible for maintaining the security of Client's access to GlobalPay including, but not limited to, maintaining the secrecy of Client's password(s) and assignment of user identification(s) ("Client's Access Methods").
- B. Authorised Users.** Client will provide Convera with a list identifying each individual authorised to access GlobalPay on behalf of Client ("Authorised User(s)"). Initially, Convera will assign a user identification and initial password to the Administrator and each Authorised User. Client's Administrator may modify the password, add/remove Authorised User(s) and/or enable Authorised Users to initiate electronic debit payments.
- C. Security Breach.** Client shall notify Convera immediately in the event of any suspected breach of Client's Access Methods. Notwithstanding such Notification, Client accepts responsibility for all acts or omissions of any person using this Service through Client's Access Methods, and Client will be bound by the terms of all online transactions executed and orders placed through GlobalPay using Client's Access Methods. All data transmissions generated by use of Client's Access Methods will be deemed to be authorised by Client and made by an Authorised User whether or not Convera acknowledges receipt of such data transmission.
- D. Security of Client's Access Methods.** Client shall at all times be solely responsible for the security of Client's Access Methods and agrees that any use of the same to provide an Instruction to Convera shall be binding on Client.
- E. Authorised Access.** Client understands that access to the secure areas of GlobalPay is restricted to Authorised Users. Any unauthorised attempt to access these areas may be subject to prosecution.

## 6. Standing Order Instructions

- A. Standing Order Instruction.** If Client issues a Standing Order Instruction to Convera, Client authorises Convera to accept and act in accordance with the Standing Order Instruction to purchase or sell Contract Funds at a specified Target Rate. Each Standing Order Instruction shall be effective only after Convera has received it, accepted it and has had a commercially reasonable opportunity to act upon it.
- B. Standing Order Term.** If the terms of the Standing Order Instruction are met, Convera will send to Client a Transaction Confirmation. If the terms of the Standing Order Instruction are not met by the end of the Standing Order Effective Period, the Standing Order Instruction will expire. Client agrees promptly to review each Transaction Confirmation for accuracy and immediately advise Convera of any error or discrepancy therein.
- C. Cancellation of Standing Order.** In order to rescind a Standing Order Instruction, Convera must receive from Client a written Instruction directing cancellation. In the absence of such Instruction, Convera shall honour the Standing Order Instruction and Client shall be liable for all transaction costs and fees.
- D. Target Rate.** If the Target Rate does not become Sustainable and Purchasable during the Standing Order Effective Period, the Standing Order Instruction shall automatically expire at the end of the Standing Order Effective Period. Standing Order Instructions are accepted between 8:00 a.m. and 5:30 p.m. (local Convera office time). Unless otherwise stated in the order, orders shall remain in force until 11:59 p.m. (local Convera office time) on the last day of the Standing Order Effective Period.

## 7. Foreign Currency Forward Contracts, Future Payments Transactions and NDFs

- A. Transaction Timing.** Convera agrees to process Forward Contract transactions, Future Payments Transactions and NDFs for Client as soon as commercially practicable (during normal business hours) after receiving an Instruction. Notwithstanding anything herein to the contrary, the Parties agree that a transaction shall be deemed to be binding and final once a transaction confirmation number has been generated by Convera or one of its affiliated group companies. Once a transaction confirmation number has been generated and the Instruction has been processed, Convera will send to Client a Transaction Confirmation. Client shall notify Convera immediately, and in any event within 24 hours of Convera sending Client a Transaction Confirmation, of any error or omission in the Transaction Confirmation. If no such Notification by Client is made within 24 hours as set out above, the relevant transaction will be deemed to be confirmed by Client 24 hours from the time that Convera sent the Transaction Confirmation to Client. Convera will send drafts to Client or will initiate electronic funds transfers upon receipt of immediately available funds from Client. Convera will deliver the Contract Funds in accordance with Client's Instruction, provided Convera receives full Settlement from Client.
- B. Forward Contract.** Client may authorise Convera to enter into a Forward Contract orally, through GlobalPay, or by delivering a Standing Order Instruction. Each Forward Contract will be governed by these Terms and Conditions.
- C. Advance Payment for / Cancellation of the Forward Contract.** Within two (2) business days of Client's Instruction to enter into a Forward Contract, unless otherwise agreed in writing, Convera must receive from Client an Advance Payment in the amount of ten percent (10%) of the value of the Forward Contract. Convera does not pay interest on Advance Payments. Convera may at any time and at its own discretion request one or several additional Advance Payments in order to maintain the relative value of the funds to be purchased from Convera. Client hereby agrees to the performance of such Advance Payments. If any required Advance Payment(s) is not received by Convera within two (2) business days after Convera's Notification of such requirement, Convera may cancel the Forward Contract without any liability to Client. In the event of such cancellation, Client agrees to pay to Convera on demand within five (5) business days the amount of any and all losses and expenses incurred by Convera in connection with the cancellation. Where Client's default results in cancellation of a Forward Contract, Client agrees that Convera's sole liability to Client shall be to return any Client funds that remain after deducting Convera's losses and expenses incurred.
- D. Delivery of Funds.** On the Delivery Date, and provided that Convera has received full Settlement for the funds to be purchased from Convera, Convera will deliver those funds into Client's available Short-term Holding Balance. Client may initiate payments from the Short-term Holding Balance by providing Instructions to Convera in writing or through GlobalPay.

- E. Settlement Due Date.** Delivery of the funds to be purchased from Convera shall not be made unless Convera receives full Settlement from Client. If a Delivery Window has not been elected, Client's Payment is due on the Delivery Date. If a Delivery Window has been elected, full Settlement must be received on or before the close of the Delivery Window.
- F. Future Payments Transaction.** Client may authorise Convera to enter into a Future Payments Transaction only by delivering an Instruction. Convera may, in its sole discretion limit the provision of Future Payment Services to Client to a predetermined maximum transaction value that will be expressed in Swiss Francs for each Future Payments Transaction. Convera will advise Client of any limit that applies before Convera commences providing Future Payments Services to Client. Once Settlement for a Future Payments Transaction has been received by Convera, Convera will release the payment in accordance with Client's Instruction. Convera may charge a fee to transfer the funds to the designated beneficiary or Client, if applicable, as notified to Client at the time of entering into the Future Payments Transaction. Client will be responsible for ensuring that the Settlement amount is received in the agreed currency.
- G. Update Release Date.** In the event that Client desires to change the Release Date of the Future Payments Transaction, or any portion thereof, before the Release Date, Client may do so subject to Convera's express agreement.
- H. Modifying the Future Payments Transaction Amount.** Client may amend its release Instructions prior to the Release Date by submitting an Instruction to Convera not to release the full amount of funds on the Release Date. If Client instructs Convera not to release the full amount of funds on the Release Date then Client may elect to instruct Convera to immediately resell the excess funds at the current market rate or Convera will hold the balance of excess funds in a Short-term Holding Balance in accordance with Section 10 of the Terms and Conditions. Client remains liable for the full amount of the funds to Convera. Once the funds have been placed into a Short-term Holding Balance, if Convera does not receive a timely Instruction for the disposition of such funds prior to the expiry of ninety (90) days, the funds will be converted into Client's home currency at the then prevailing exchange rate and returned to Client.
- I. Termination of a Future Payments Transaction.** If Client disputes the validity or existence of a Future Payments Transaction or defaults, or communicates its intent to default, on any of its obligations described in these Terms and Conditions, or is subject to an Insolvency Event or ceases or threatens to cease to carry on business or sells all, or substantially all of the assets of the business, Convera may terminate and unwind, without any notice to Client, the relevant Future Payments Transaction and/or any other outstanding Future Payments Transaction(s) agreed between Convera and Client without any liability to Convera and/or take any other steps that Convera deems appropriate (in accordance with the provisions of these Terms and Conditions) to mitigate the potential loss(es) caused by Client's failure to honour its contractual obligations under the Future Payments Transaction(s). In the event of such termination, Client agrees to pay to Convera on demand within five (5) business days the amount of any and all losses and expenses incurred by Convera in connection with the termination and unwinding of the Future Payments Transaction(s) including any loss incurred by Convera arising from a fluctuation in the foreign currency market that weakens the value of the Future Payments Transaction(s) from the Contract Date to the date of termination.
- J. Foreign Currency Volatility.** Client understands that Future Payments Transactions and Forward Contracts cannot be cancelled (except as provided in Sections 7(C) and 11(A) and (B)), after they have been agreed and entered into. Client confirms that it is aware of the volatility of foreign currency markets. Client expressly accepts the risk that if the value of the purchased funds to be settled weakens/strengthens during the period covered by the Transaction Confirmation and is weaker/stronger at the Delivery Date or Release Date, as applicable, the value of the amount of currency which Client agreed to sell to Convera may be less favourable than the then current price for the purchased currency. Client is aware that Future Payments Transactions entered into with Convera and Forward Contracts purchased from Convera are not futures contracts subject to CFTC Regulations.
- K. NDFs.** The Client may request Convera to enter into an NDF with the Client by delivering an Instruction or by delivering a Standing Order Instruction. Each NDF will be governed by these Terms and Conditions. The Client agrees to perform the NDF entered into in conformity with its provisions, including those concerning the Value Date and the Cash Settlement Amount.
- L. On the Value Date:**
- (a) if the Contract Rate is more favourable for the Client than the Fixing Rate, Convera will pay the Client the difference in the Settlement Currency into the Client's available Short-term Holding Balance (Client may initiate payments from the Short-term Holding Balance by providing Instructions to Convera in writing or through GlobalPay) or to a Beneficiary in accordance with the Client's Instruction(s); or



- (b) if the Contract Rate is less favourable for the Client than the Fixing Rate, the Client will pay Convera the difference in the Settlement Currency.

## 8. Options Contracts

**A. Option Contract.** Client may offer to enter into a foreign exchange option contract by placing an Instruction with Convera which may be accepted by Convera (such offer and acceptance, the “**Option Contract**”). Client may be a Buyer or Seller of the Option Contract, depending upon whether it is a Put Option or a Call Option. An Option Contract arranged by telephone will be confirmed by Convera sending a copy of the Option Confirmation to Client by email or facsimile transmission, and Client shall fax or email a scanned copy of the Option Confirmation to Convera immediately after receipt with Client’s signature on it. If the Option Confirmation is not in accordance with Client’s understanding of the terms and conditions of the Option Contract, Client shall promptly, but in no event later than twenty-four (24) hours after receipt of the Option Confirmation, notify Convera by phone and in writing of any discrepancy. In the event of any inconsistency between the Option Confirmation and any previous documents or communication between Convera and Client, the Option Confirmation shall prevail. If Client does not receive the Option Confirmation, or fails to provide Convera with a signed copy of the Option Confirmation, the Option Contract shall be deemed confirmed in the event Client has not notified Convera of lack of receipt or any discrepancy within twenty-four (24) hours after the Option Confirmation was sent by Convera to Client.

**The Premium.** Client must pay Convera the Premium, where the Premium has been included as part of the Option Contract, during business hours, in accordance with Convera’s instructions, within twenty-four (24) hours after the Option Trade Date for an upfront Premium or within twenty-four (24) hours after the Expiry Date for a deferred Premium. The Premium is not refundable. If Client does not pay the Premium in accordance with these Terms and Conditions then, in addition to any other rights it may have, Convera is not obliged to accept any Instructions in relation to the relevant Option Contract and may terminate the Option Contract and recover all costs and expenses in relation to the Option Contract. In addition, if Client does not pay the Premium in accordance with these Terms and Conditions, then Client may not be entitled to exercise the relevant Option Contract or, if applicable, such Option Contract may not be deemed to be exercised, as described in Section 8(D) of these Terms and Conditions.

**B. The Strike Rate.** Each Option Contract shall specify the exchange rate (the “**Strike Rate**”) at which the put currency and the call currency may be exchanged on the Exercise Date.

**Exercising the Option (Client).** (a) Where Client holds the right to exercise an Option Contract at the Expiry Time on the Expiry Date and if it would be in Client’s best interest (as determined by Convera in its sole discretion) to exercise such Option Contract, such Option Contract shall (unless Client otherwise instructs Convera by telephone or by email) be deemed to be exercised on the Expiry Date at the Expiry Time, without the need for Client to serve a Notice of Exercise on Convera. (b) Where Client holds the right to exercise an Option Contract and such Option Contract is not deemed to be exercised pursuant to paragraph (a) of this Section 8(D), Client may exercise such Option Contract by giving a Notice of Exercise to Convera on the Expiry Date, not later than the Expiry Time.

**C. Exercising the Option (Convera).** Where Convera holds the right to exercise an Option Contract at the Expiry Time on the Expiry Date, such Option Contract shall be deemed to be exercised on the Expiry Date at the Expiry Time without the need for Convera to serve a Notice of Exercise on Client, unless Convera notifies Client in writing prior to such Expiry Date that it does not wish to exercise such Option Contract.

**D. Settlement.** If (a) an Option Contract is deemed to be exercised pursuant to Section 8(D) or Section 8(E) of these Terms and Conditions or (b) Client has given a Notice of Exercise in accordance with Section 8(D) of these Terms and Conditions, then the Parties agree that on the Option Settlement Date (i) the Buyer will pay the Seller the Put Currency Amount in the put currency, and (ii) the Seller will pay the Buyer the Call Currency Amount in the call currency.

**E. Closing, Canceling (Surrendering) or Modifying an Option Contract.** Client may request Convera to close out, surrender or modify the Option Contract. Convera at its absolute and unfettered discretion may agree to accept this request if Client has paid any required Premium or other amounts due and any notice of closure, cancellation (surrender) or modification has been received by Convera before the Expiry Time on the Expiry Date. Convera will calculate the relevant closing Strike Rate and Premium and the net difference, if any will be passed on to Client on demand. Client acknowledges that a modification of an Option Contract may, in addition to potentially modifying the Expiry Date or Exercise Date, require Client to enter into additional Option Contracts, Forward Contracts or spot contracts in order for Convera to accomplish such modification.

- F. Option Contract Lapses.** If an Option Contract (i) has not been exercised in accordance with Section 8(D) or Section 8(E) of these Terms and Conditions or (ii) has not been closed out, surrendered or modified in accordance with Section 8(G) of these Terms and Conditions, then the Option Contract will lapse at the Expiry Time.
- G. Margin.** Subject to terms set out on the Option Confirmation and any credit-based terms provided to Client by the Convera Credit Department via a trading facilities letter ("**Facilities Letter**"), Convera may in its sole discretion require Client to pay an amount solely determined by Convera (the "**Margin**") in the event Client is Out of the Money. Convera shall have the right to determine the Mark to Market value of funds required on a daily basis. Client will transfer any Margin due within two (2) Days of a request from Convera, otherwise Client will be in default hereunder. Each such transfer shall be made by way of a "title transfer" security, and shall be made to an account of Convera as notified by Convera to Client. Any Margin transferred from Client to Convera ("**Posted Margin**") shall be held by Convera for the sole purposes of setting off any claims becoming due and payable by Client under an Option Contract against the Posted Margin. Convera shall return such part of any Posted Margin as is not required to cover the Mark to Market value of the Options, as determined by Convera on a daily basis. Notwithstanding any other contracts, terms and conditions, representations or warranties to the contrary, Convera reserves the right to re-evaluate and amend the Facilities Letter as required.
- H. Default.** If: (i) Client fails to complete the Option Contract in accordance with the agreed terms; (ii) Client fails to pay any Premium, or any Margin, to Convera when due; or (iii) an Insolvency Event occurs, then Client agrees that Convera shall no longer be obliged to fulfill the Option Contract, or any other existing Option Contract or, if applicable, Forward Contract with Client, nor to enter into any further contract with Client, and Convera may, in its sole discretion (a) calculate the value of the Option Contract or Option Contracts and any required amounts payable to terminate the Option Contract(s) and offset the obligations of Client under it against the Posted Margin; (b) charge Client with the damages, losses, including loss of profit, incurred by Convera, and additional processing fees, interest, costs and expenses incurred by Convera; (c) set off the amounts payable under paragraphs (a) and (b) to obtain a net amount to be paid by one party to the other; and/or (d) terminate the Option Contract and any other Option Contract or Forward Contract with Client. Further, Convera may withhold, net, or set off any amounts it owes to Client against any and all amounts owed or that may be owed to it or its affiliates, including any fees, losses or indemnities.
- I. Independent Contract.** Each Option Contract shall be independent from any other business activity entered into between Client and Convera.

## 9. Representations, Undertakings, Notifications and Acknowledgments

- A. Representations and Warranties (General).** Client represents and warrants that Client is not a Swap Dealer, MSP, Financial Entity, Commodity Pool, Investment Fund or Special Entity. These representations shall be deemed renewed each time Client enters into a Swap with Convera. Client agrees to promptly notify Convera if any of the above representations change. In addition, Client acknowledges and understands that Convera bears no responsibility to Client for any regulatory obligations that Client has in any jurisdiction as a result of entering into a Swap with Convera.
- B. Representations and Warranties (Option Contracts and NDFs).** If, and for so long as, Client is party to any Option Contract and/or NDF, Client represents and warrants that it, and, if its obligations under such Option Contract and/or NDF are guaranteed, the guarantor, is an Eligible Contract Participant that meets at least one of the criteria set forth in Schedule A to these Terms and Conditions and has initialed or placed a check mark in Schedule A indicating that Client, and, if applicable, the guarantor, satisfies one of the categories set forth therein. If, and for so long as, Client is party to any Option Contract and/or NDF, Client shall promptly inform Convera if Client, or, if applicable, its guarantor, is no longer an Eligible Contract Participant; and Client acknowledges that Convera shall treat Client, and, if applicable, its guarantor, as an Eligible Contract Participant unless so notified. In the event Client, or, if applicable, its guarantor, is no longer an Eligible Contract Participant, Client may no longer execute Option Contracts and/or NDFs with Convera. Client hereby acknowledges and agrees that entering into any Option Contract and/or NDF with Convera at any time at which Client, or, if applicable, its guarantor, does not qualify as an Eligible Contract Participant will constitute a breach of these Terms and Conditions and that Convera may, in addition to any other remedies it may have hereunder or under applicable law, terminate and unwind, without any notice to Client, any Option Contracts and/or NDFs agreed to between Convera and Client without any liability and/or take any other steps Convera deems fit. In the event of such

termination, Client agrees to pay to Convera on demand within five (5) Days the amount of any and all losses and expenses incurred by Convera in connection with the termination and unwinding of the Option Contracts and/or NDFs.

- C. Independent Judgement.** By agreeing to these Terms and Conditions, and each time Client enters into a Swap with Convera, Client represents and warrants that (i) it has properly delegated decision-making authority such that it is capable of evaluating, and has independently evaluated, risks with regard to any relevant Swap or trading strategy involving a Swap and any applicable regulatory and legal issues; (ii) it is exercising its independent judgment in evaluating any recommendations provided by Convera; (iii) it understands and acknowledges that Convera is acting in its capacity as a counterparty and not as a fiduciary, that any recommendation made by Convera is solely incidental to the entry by Convera into the Swap as a counterparty, and that Convera is not undertaking to assess the suitability of any recommendation on Client's behalf; (iv) it has complied in good faith with its own written policies and procedures that are reasonably designed to ensure that the persons responsible for evaluating any recommendation provided by Convera and making trading decisions on behalf of Client are capable of doing so; and (v) it has the ability to absorb any losses under Swaps.
- D. LEI.** Client shall obtain and maintain, at Client's own expense, an LEI and shall provide such LEI to Convera. Client acknowledges that Client's LEI may be provided by Convera, an affiliate of Convera or a third party service provider to Convera or an affiliate of Convera (the "**Convera Reporting Entities**") to the CFTC or to a Swap Data Repository. Client understands that Convera Reporting Entities will have no ability to ensure whether the CFTC or any Swap Data Repository maintains Client's LEI on a confidential basis and Client does hereby indemnify and save harmless the Convera Reporting Entities from any disclosure of Client's LEI by the CFTC, any Swap Data Repository or any party acting on their behalf.
- E. Reporting and Recordkeeping Obligations.** Client agrees that it will deliver to Convera the information required by Convera (in form and substance satisfactory to Convera) in time for Convera to comply with CFTC Regulations. Data provided pursuant to CFTC Regulations shall be provided in such format and via such communication channel as Convera determines in its sole discretion. Client agrees to provide or complete such documentation and perform such acts as Convera requires in connection with Convera's compliance with CFTC Regulations. On each occasion on which Client delivers information to Convera under this Section 9, Client represents to Convera that the information it delivers is, at the time of delivery, true, accurate and complete in every respect. Client acknowledges that Convera is under no obligation to verify any information provided by Client under this Section 9 and that Convera may include such information in reports submitted to the CFTC or the Swap Data Repository. Client acknowledges that transactions entered into pursuant to these Terms and Conditions may be considered Swaps for purposes of recordkeeping rules of the CFTC and that Client may (and, in the case of Option Contracts, will) be required to retain full, complete, and systematic records, together with all pertinent data and memoranda with respect to each Swap transaction in the formats and for the time periods provided under applicable CFTC Regulations. Client understands that no Convera Reporting Entity shall have any responsibility for ensuring Client's compliance with such recordkeeping obligations. Client understands that if Client has any questions concerning Client's recordkeeping obligations, it is Client's obligation to seek legal counsel and Client shall not rely upon any advice provided by Convera.
- F. Access to a Swap Data Repository.** Client acknowledges that Client is entitled to obtain access to one or more Swap Data Repositories to which Client's transactions may be reported by a Convera Reporting Entity. Any fees or expenses in connection with such access will be the sole responsibility of Client. Client understands that CFTC Regulations require Client to report promptly to Convera if Client discovers any error or omission with respect to any Swap data reported to a Swap Data Repository. Client undertakes to comply with such obligations and acknowledges that Convera bears no liability or responsibility for any error or omission in data it reports to a Swap Data Repository.
- G. Liability.** Convera shall not be required to do or cause to be done anything that (i) is not permitted or is otherwise contrary to or inconsistent with the operating procedures of any third party service provider or the Swap Data Repository (including any decision by a third party service provider or the Swap Data Repository not to permit Convera to submit data in accordance with the terms of this Section 9) or (ii) is contrary to any law, rule or regulation or Convera is otherwise prevented from doing so by any law, rule or regulation.
- H. Status as a Financial Entity.** Client shall inform Convera if Client is a Financial Entity. Client acknowledges that, unless Client has informed Convera that it is a Financial Entity, Convera will be entitled to treat it as not being a Financial

Entity. If Client is a Financial Entity, Client agrees that Convera shall be the reporting counterparty for purposes of CFTC Regulations.

- I. International Swaps.** Client shall notify Convera if any Swap entered into pursuant to these Terms and Conditions is an International Swap. Such Notification from Client shall include the identity of the non-US trade repository or repositories not registered with the CFTC to which the International Swap was reported, along with the Swap identifier or identifiers used by the non-US trade repository or repositories to identify the International Swap.
- J. Life Cycle Events.** Client shall notify Convera as soon as practicable, but in no event later than 10 a.m. (local Convera office time) on the second "business day" (as defined in CFTC Regulation 45.1) of the occurrence of any Life Cycle Event with respect to Client, including, without limitation, any permitted novation or assignment with respect to Client's obligations under any Swap entered into pursuant hereto.
- K. Compliance with FMIA.** Client represents and warrants that, to the extent it is subject to the risk mitigation obligations of the FMIA, it will comply on a continuous basis with the FMIA and, in particular, the provisions of Schedule B to these Terms and Conditions.

## 10. Short-term Holding Balances

Client acknowledges and confirms that Short-term Holding Balances intended for the performance of payments by Client may be maintained for a maximum of sixty (60) days. Convera does not pay any interest on such Short-term Holding Balances. If Convera does not receive an Instruction for the disposition of such funds upon expiration of the afore-mentioned term, Client hereby authorizes Convera to convert such funds into the currency of the Settlement at the then-prevailing exchange rate and to return them to Client. Client undertakes to provide Convera in due time with all information required for the refund.

## 11. Settlement Terms

- A. Full Settlement.** Unless otherwise provided in these Terms and Conditions, Client agrees to make all required payments promptly to Convera in immediately available funds. If Client fails to make immediate payment in full settlement for the transaction, Convera will notify Client. If Client does not deliver payment within five (5) business days following such Notification, Convera shall have the right to initiate any proceedings necessary to recover any balance due. Such steps shall be at the sole discretion of Convera. In case of Client's default in payment in connection with the settlement of Future Payments Transactions, Forward Contracts, Option Contracts and/or spot contracts, Convera may, amongst other options, in particular also cancel other Future Payments Transactions, Forward Contracts, Option Contracts and/or spot contracts of Client with immediate effect. Client agrees to compensate Convera for all costs and expenses incurred by Convera resulting from Client's failure to pay and Convera's effort to collect any balance due (including costs and expenses in connection with the cancellation of Future Payments Transactions, Forward Contracts, Option Contracts and spot contracts). Client agrees that Convera may recover interest upon any unpaid amounts due at the statutory late payment rate of 5% p.a. or at LIBOR plus 3% whichever shall be higher.
- B. Settlement in the Event of Default.** In the event of default in payment by Client, Client hereby expressly agrees that Convera may, upon expiration of the term set forth in Section 11(A) of these Terms and Conditions, by way of set-off or otherwise, satisfy the respective liabilities of Client as well as costs and expenses sustained by Convera out of any Advance Payments, Short-term Holding Balances, Client funds stemming from the cancellation of Future Payments Transactions, Forward Contracts, Option Contracts and spot contracts, or other obligation it has to Client, without any further Notification to Client. In the event such funds are insufficient, Client shall remain liable to Convera for full settlement and will promptly pay on demand the amount of any respective claims including costs and expenses sustained by Convera.
- C. Direct Debit.** If Client has authorised Convera to initiate direct debit on Client's bank account (e.g. LSV ("Lastschriftverfahren"), BDD or via SDD), Client agrees that in the case of direct debit Instructions transmitted through GlobalPay, the usage of the password as described in Section 5 of these Terms and Conditions is a security procedure which constitutes a commercially reasonable method of protecting against unauthorised direct debits and may be used in place of a personal identification code (PIC). Client agrees to be bound by any direct debit Instructions, whether authorised or not, issued in its name and acted upon by Convera, and Client agrees to indemnify Convera and

hold it harmless from and against any and all liability and expense incurred by Convera in connection with its execution of direct debit Instructions which Convera may have assumed were issued by an Authorised User. In the event Client elects not to use or adhere to the security procedures described above, Client shall remain liable as set forth hereinabove for any direct debit Instructions issued in its name, whether authorised or not, and acted upon by Convera. Client agrees that Convera and Client's depository institution are authorised to credit Client's account from time to time in the event that credit adjustments become necessary. Client authorises Convera to contact Client's depository institution to obtain necessary information.

- D. Change of Direct Debit Instructions; Authorised User.** The security procedure set forth herein also applies to any amendments to and cancellations of direct debit Instructions. Client agrees promptly to notify Convera in writing signed by an authorised officer of Client of any changes in the identity of the authorised persons. Convera shall not be bound by any such notice until Convera has had a reasonable opportunity to act upon it.
- E. Dishonoured Settlement.** In the event any cheque or direct debit authorised by Client is dishonoured by Client's bank, Convera will charge and Client agrees to pay a handling fee of CHF 50.00 for each returned cheque or direct debit.

## 12. Data Rights; Confidentiality

- A. Limitation on Client's GlobalPay Rights.** Client agrees that all Convera web-pages (including service marks, logos and trademarks), Services, applications, process and systems are Convera property and protected by copyright law or other intellectual property laws. Except as set forth in this Section 12, Client may not: (i) reproduce any part(s) thereof in any form, (ii) create any derivative work based thereon, or (iii) incorporate the site into other websites, electronic retrieval systems, publications or otherwise. Client is, however, provided Client agrees to comply with the terms of use posted on the website, permitted to view, use, and download a single copy of any web-pages, (but not any applications, processes or systems) for the purposes of its internal recordkeeping and accounting for transactions.
- B. Convera's Intellectual Property.** Client acknowledges and agrees that all copyright and other intellectual property rights in and to any deliverables produced by Convera in carrying out any of the Services for Client (including, but not limited to reports, compilations or databases in any and all media) shall be the property of Convera. Client shall be permitted to use such reports, compilations or databases for its own internal business purposes but it shall not disclose, disseminate, sell or otherwise make any such deliverables available to any third party whether in whole or in part, without the express written consent of Convera.
- C. Information for Services.** Client acknowledges that, in order for Convera to perform any of the Services hereunder, it will be necessary for Client to provide certain information to Convera, such as Client's identification number, banking details, transaction currencies, amounts, etc. ("**Confidential Client Information**").
- D. Privacy of Client Information.** Convera shall not disclose, sell or otherwise transfer Confidential Client Information to any third party other than its contractors, business partners, affiliated entities and financial institutions without Client's express written authorisation, provided, however, that Convera can disclose such information to any third party if such disclosure is required by law or is necessary for the performance of the obligations hereunder.
- E. Data Protection.** Client agrees and acknowledges that Convera is authorised to collect and process personal data of Client in order to carry out the Services, to ensure accurate order processing, to assure quality service and to effectuate financial transactions as well as for own marketing purposes of Convera. Personal data may also be passed to relevant third parties (such as banks) in order to carry out the Services. Client agrees and hereby acknowledges that personally identifiable information may be transferred to, and processed by, Convera International, Inc. (USA) in the United States and other relevant concerned persons in Switzerland and other countries for the purposes set out in this Section 12(E). In the event that Client is the employing entity of individuals who are authorised to transact business on Client's behalf or in the circumstance where Client is providing services to third parties, Client agrees that it is Client's sole responsibility to ensure that such employees and/or third parties are aware of, and agree to, the purposes of processing as set out in this Section 12(E), and the fact of such transfer of that individual's personal data to, and processing by or on behalf of, Convera International, Inc. (USA) in the United States and other relevant concerned persons in Switzerland and other countries and Client hereby indemnifies Convera in respect of any claims by such individuals in respect of any breach by Client of this obligation.

### 13. Indemnification; Limitation of Liability; Exclusion of Warranties

- A. Client Indemnity.** Client agrees to indemnify and hold Convera harmless for any damages, losses, costs and expenses incurred by Convera in connection with any Instruction made by Client or Convera's reasonable actions in response to receiving an Instruction from Client, unless such damages, losses costs and expenses are caused by Convera's gross negligence or intentional misconduct.
- B. Warranty Exclusion for GlobalPay.** Client understands that GlobalPay and the license to use and access it are provided on an "as is" basis, without warranty of any kind, either expressed or implied. Convera does not warrant the accuracy or completeness of the information available through GlobalPay and disclaims any liability for errors or omissions or interruptions to access.
- C. Underlying Payment Warranty Exclusion.** Convera does not warrant any aspect of the underlying transactions, including, for example, whether goods or services for which payment is being made are conforming or satisfactory or whether payment has been made in the right amount or within the time agreed between Client and payee.
- D. Verification of Identification and Transmission Errors Disclaimer.** All claims, damages and losses resulting from (i) the failure of Convera to detect forgeries or other defective identification of Client, (ii) legal incapacity of Client, and (iii) errors, inaccuracies, delays, misuses or other irregularities in the use of communication by postal services, telephone, telefax, e-mail, GlobalPay, or other means of transmission shall exclusively be borne by Client unless caused by gross negligence or intentional misconduct of Convera.
- E. Limitation of Liability.** Client agrees that Convera shall not be liable to Client for any damages, whether direct, indirect or consequential, arising from any provision of Services under these Terms and Conditions or in connection with any failure or performance, error, omission, interruption, defect, delay in operation or transmission, computer virus, line or system failure (even if Convera has been advised of the possibility of such damages), except where such damages were caused by gross negligence or intentional misconduct of Convera.

### 14. Legal Compliance

- A. Limitation on Services.** Client agrees not to use GlobalPay to make payments for any illegal purpose. In addition, Client certifies that it will not use GlobalPay to make any payments relating to gambling, pornography or other similar activities.
- B. Client Funds.** Client represents and warrants that it has legal title to all funds used in connection with the transactions, and that any transaction is being undertaken in accordance with applicable law. Client represents and warrants that Client has entered into these Terms and Conditions for lawful and commercial purposes connected with Client's business and not for the purpose of investment or speculation.
- C. Disclosure.** Client understands and agrees that Convera may disclose any transaction-related information in order to satisfy Convera's legal obligations under applicable law, including, but not limited to, the Commodity Exchange Act of the USA and CFTC Regulations, relevant anti-money laundering, trade and economic sanctions laws and/or regulations, or as may be required by any court or governmental authority or as may be necessary to perform the obligations hereunder.
- D. Additional Information.** Upon request, Client agrees to provide any additional information that Convera may need to satisfy its obligations under Section 14(C) of these Terms and Conditions.
- E. Risk mitigation and reporting.** If Client requests Services from Convera for which Client becomes subject to risk mitigation obligations under the FMIA, the provisions set out in Schedule B to these Terms and Conditions shall apply.

### 15. General Terms & Conditions

- A. Relief.** Convera and Client agree that money damages may not be a sufficient remedy for breach of the confidentiality and license undertakings in these Terms and Conditions. Accordingly, in addition to all other remedies, each Party shall

be entitled to seek specific performance and injunctive relief as a remedy for any breach of those provisions. Client and Convera agree to waive any requirement for a bond in connection with the granting of any such injunctive relief.

- B. Governing Law and Venue.** Either Party's failure to exercise any of its rights under these Terms and Conditions will not be deemed a waiver of such rights or remedies. If any provision is held to be unenforceable by a court of competent jurisdiction, the remainder of the provisions shall remain in full force and effect. These Terms and Conditions are governed by the laws of Switzerland, without regard to the law of conflicts, and the Parties agree to be subject to the jurisdiction and venue of the courts of Zurich with respect to any disputes arising out of these Terms and Conditions. These Terms and Conditions are not assignable or transferable by Client without the prior written consent of Convera. Convera will have the right to transfer or otherwise deal with its rights and obligations under these Terms and Conditions and any transaction entered into pursuant to an Instruction upon notice to the Client and the Client hereby consents to any such transfer or dealing.
- C. Modification of Terms and Conditions.** Convera reserves the right, in its sole discretion, to change these Terms and Conditions upon written notice to Client, or, in the case of any Services accessed through GlobalPay, upon posting of the changes to the GlobalPay website. Client is deemed to have accepted the changes so conveyed unless Client objects in writing within thirty (30) days from the date of the notice. Any Client modification or amendment to these Terms and Conditions shall not be binding unless set forth in a written Addendum signed by Client and Convera.
- D. Force Majeure.** Except for the obligation to pay for Services delivered, non-performance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, other natural disasters, governmental acts, acts of terror or orders or restrictions, failure of suppliers, or act of God, or any other reason where failure to perform is beyond the control and not caused by the negligence of the nonperforming Party.
- E. Telephone Recordings.** Client understands and explicitly accepts and agrees that telephone communications to and from Convera may be monitored and/or recorded for quality control and evidence purposes. Client undertakes to ensure that all of its employees and representatives who communicate by telephone with Convera are aware of and in agreement with such telephone monitoring and/or recording. Any and all data, including telephone recordings, may be routed, stored and/or backed up outside of Switzerland by or on behalf of Convera.
- F. Historical Transaction Data Costs.** Client understands and agrees that, to the extent possible, Convera will respond to any Client request for copies of historical transaction or other similar information, however, the costs associated with retrieving and providing such information will be billed to Client.
- G. Entire Agreement.** These Terms and Conditions, amended by Convera from time to time, constitute the entire agreement between the Parties in relation to the subject matters contained therein and replace in this respect all prior agreements between the Parties.
- H. Termination and Survival.** Either Party may terminate these Terms and Conditions, without giving reasons, at any time with immediate effect upon providing written notice to the other Party. The provisions in these Terms and Conditions relating to GlobalPay security in Section 5, the cancellation and settlement of Forward Contracts (Sections 7 (C), (D) and (E)), the termination of a Future Payments Transaction (Section 7(I)), the Settlement Terms (Section 11), and all of Sections 12, 13, 14 and 15 shall survive completion of Convera's Services to Client and termination of these Terms and Conditions.

## Schedule A

Client certifies, represents and warrants that Client is a corporation, partnership, limited liability company, business or other entity that qualifies as an Eligible Contract Participant based on at least one of the following criteria [*please initial beside each criterion that describes Client*].

1. Client has total assets  $\geq$  USD 10,000,000 as evidenced by its most recently prepared annual accountant-reviewed, compiled or audited financial statements; OR
2. Client's obligations under the Option Contracts are guaranteed by an entity that has total assets  $\geq$  USD 10,000,000 as evidenced by its most recently prepared annual accountant-reviewed, compiled or audited financial statements; OR
3. Client has net worth  $\geq$  USD 1,000,000 as evidenced by its most recently prepared annual accountant-reviewed, compiled or audited financial statements; OR
4. Client is an entity where a) all of its owners meet at least one of the criteria in 1) to 3) above, and b) it and its owners have, in aggregate, net worth  $\geq$  USD 1,000,000 as evidenced by most recently prepared annual accountant-reviewed, compiled or audited financial statements.

### Notes

For the purpose of identifying owner(s) of Client under point 4) above:

- (a) Any person holding a direct ownership interest in Client shall be considered to be an owner of Client; provided, however, that any Shell Company shall be disregarded, and the owners of such Shell Company shall be considered to be the owners of Client. "**Shell Company**" means any entity that limits its holdings to direct or indirect interests in entities that must rely on point 4) above to meet the Eligible Contract Participant definition.
- (b) In determining whether an owner of an entity is an Eligible Contract Participant, an individual may be considered to be a proprietorship eligible contract participant only if the individual:
  - i. Has an active role in operating a business other than an entity;
  - ii. Directly owns all of the assets of the business;
  - iii. Directly is responsible for all of the liabilities of the business; and
  - iv. Acquires its interest in Client in connection with the operation of the individual's proprietorship or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the individual in the operation of the individual's proprietorship.



# Schedule B

## 1. Scope of this Schedule

- 1.1. This Schedule B applies if Client is subject to risk mitigation and reporting obligations under the FMIA in connection with the Services. Pursuant to this Schedule B, 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 of Client under the FMIA.
- 1.2. This Schedule B applies to any Service for which Client is subject to risk mitigation and reporting obligations under the FMIA (each a "Transaction").
- 1.3. The provisions of paragraphs 3 to 5 of this Schedule B 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 paragraphs 3 to 5 of this Schedule B apply only to the extent that that the respective obligations under the FMIA apply to Client and such obligations are not fulfilled under a foreign jurisdiction that is recognized by the Swiss Financial Market Supervisory Authority as equivalent to the FMIA

## 2. Classification under the FMIA

- 2.1. Confirms to Client that it has the FMIA status of small Non-Financial Counterparty.
- 2.2. Client confirms to Convera that it has the FMIA status specified in the Annex to this Schedule B; and this confirmation shall be deemed to be repeated each time a Transaction is entered into.
- 2.3. If such classification changes, Client shall inform Convera as soon as practicable of its new classification.

## 3. Portfolio Reconciliation

- 3.1 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) If paragraph 3.1(c) applies, the Parties will discuss this with each other and work towards resolving such discrepancies as soon as practicable.
  - (e) Unless the Reconciling Party informs the other Party by 4 p.m. (Zurich time) 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 paragraph 3.1(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 and have so specified in the Annex to this Schedule B, the procedures of such service provider shall apply instead of the provisions of paragraph 3.1, provided that the Parties may agree on a different method for performing 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 shall be deemed to have been agreed by both Parties if the Party that receives the request does not object within five Banking Days.

## 4. Agreement on Dispute Resolution

The Parties agree on the following procedure for the identification and resolution of Disputes:

- (a) A Party identifies a Dispute by sending a notice to the other Party identifying the subject of the Dispute (including the Transactions concerned).
- (b) On receipt of a notice in accordance with paragraph 4(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.
- (c) If the Dispute is not resolved within five Banking Days from the date of receipt of the notice referred to in paragraph 4(a), 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 with regard to the subject matter of this Schedule B, and 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 Schedule B shall prevail over any documentation governing the Transactions.
- 6.3. The agreements contained in the Annex to this Schedule B are integral parts of this Schedule B.

## 7. Applicable law and Jurisdiction

This Schedule B shall be subject to the applicable law and choice of jurisdiction specified in Section 15 of these Terms and Conditions.

## 8. Definitions

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

**Banking Day:** Any business day on which banks in the respective domiciles of each Party are open.

**Data Delivery Date:** Each date agreed between the Parties 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:** The Banking Day immediately preceding a Data Delivery Date.

**Disputes:** 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:** 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.

**Key Terms:** With respect to a Relevant Transaction and a Party, all details that the relevant 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.

**large Financial Counterparty:** 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 with effect from the date that is four months after the date on which it first exceeded such threshold.

**large Non-Financial Counterparty:** 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 with effect from the date that is four months after the date on which it first exceeded such threshold:

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

**Non-Financial Counterparty:** A 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.

**OTC derivative:** 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:** The Key Terms in relation to all outstanding Relevant Transactions between the Parties, determined as at the close of business on the Determination Day, with a scope and level of detail that allows the performance of the Portfolio Reconciliation.

**Portfolio Reconciliation:** A Party's comparison of the Portfolio Data provided by the other Party with the data in its own books and records with regard to the Relevant Transactions for the purposes of identifying any contradictions and discrepancies.

Portfolio Reconciliation Period:

- (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:** 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:** The Party performing a Portfolio Reconciliation in the sense of paragraph 3.1(b).

**Relevant Transaction:** Any Transaction subject to the obligation to perform Portfolio Reconciliations pursuant to the FMIA.

**Sending Party:** The Party specified as such in the Annex to this Schedule B, provided that both Parties may be Sending Parties.

**Small Financial Counterparty:** 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.

**Small Non-Financial Counterparty:** 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.

## Annex to Schedule B

By applying Schedule B, Client and Convera agree that the following terms apply:

A) The Parties confirm to each other that they:

	Convera	Client
are incorporated or domiciled in Switzerland	-	
are incorporated or domiciled outside Switzerland	Y	

B) The Parties confirm to each other that they qualify as follows (please select for each of Convera and Client only one option):

	Convera	Client
as a "large Financial Counterparty"	-	
as a "small Financial Counterparty"	-	
as a "large Non-Financial Counterparty"	-	
as a "small Non-Financial Counterparty"	Y	
as one of the following public sector entities: Swiss Confederation, Canton, Municipality, Swiss National Bank, Bank for International Settlements	-	
as a public sector entity held by or guaranteed by the Swiss Confederation, a Canton or Municipality (not qualifying as a Financial Counterparty)	-	
as a multilateral development bank	-	
as a foreign central bank or as the ECB, EFSF or ESM	-	
as an entity responsible for administration of public debt	-	
as a sovereign financial institution providing loans for business development purposes	-	

C) "Sending Party" (the Party that sends the Portfolio Data to the other Party – please select only one of the three options):

- Convera only
- Client only
- Both Parties

D) The Parties confirm that the following method shall apply to the Portfolio Reconciliation:

	Convera	Client
Transfer of Portfolio Data on the portfolio statement of the specified Party	-	
Reconciliation of the Portfolio Data via the following third-party service provider: [specify]	-	

E) The Parties confirm that they have adhered to the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol:

**Convera:**

**Client:**

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