

## **AUTOMATIC COLLATERAL MANAGEMENT SERVICE AGREEMENT**

**Please note that only the Spanish version of this document produces legal effect. Any translation is provided for commercial purposes only.**

### **THE PARTIES**

Of the one part, Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A., Unipersonal ("IBERCLEAR"), formed under Spanish legislation, with registered offices in Madrid, Plaza de la Lealtad, 1, 28014, with Tax Identification No. A-82695677, represented by [Mr./Ms.] [...], with National ID Card [...], acting by virtue of the powers granted under the deed dated [...], before Madrid Notary [Mr./Ms] [...], with number [...] of his/her protocol, registered in the Mercantile Register of Madrid, Volume ..., Book ..., Folio ..., Section ..., Sheet ..., Entry ... .

And, of the other part: [...] [...] ("the ENTITY"), formed under the [...] legislation, with registered office in [...], with Tax Identification No. [...], represented by Mr./Ms. [...], with National ID Card [...], acting by virtue of the powers granted under the deed dated [...], before the Notary of [...] Mr./Ms. [...] , under number [...] of his/her protocol, on record in the Mercantile Registry of [...], at volume..., book..., folio..., section..., sheet..., entry

Hereinafter, these parties shall be individually known as a "Party" and jointly known as "the Parties".

The Parties acting as stated above mutually acknowledge the capacity of the other to draw up this service provision agreement (hereinafter, "the Agreement"), and their representatives state that their respective powers of attorney have not been limited, suspended or revoked in any way. Therefore:

### **RECITALS**

I. That IBERCLEAR is a Central Securities Depository subject to Regulation (EU) No. 909/2014 of July 23, and regulated in Royal Legislative Decree 4/2015, of October 23, approving the text Consolidated version of the Securities Market Law, its development regulations and its internal Regulation, which, among other functions, carries out the accounting record corresponding to securities represented by book entries included in the Accounting Register at its expense, which are admitted to negotiation in regulated markets, multilateral trading systems or others. IBERCLEAR is also the entity responsible

for the management of the settlement system of transactions on securities included in the Accounting Register at its expense. That IBERCLEAR, on exercising the powers legally granted to it has developed an automatic collateral management service for the securities recorded in the registers held by it, which enables the counterparties in a financial transaction to delegate to an agent the selection, management and optimisation of the collateral posted in such financial transaction, in order to offer efficient solutions which enable a reduction of the cost and the operating risks arising from the manual allocation of collateral and the maximisation of the financial capacity of the financial entities, optimising the assets available.

- II. That IBERCLEAR offers the automatic collateral management service for all securities registered in the ARCO Settlement System (hereinafter, the System).
- III. That the ENTITY is a Participant in the System and is interested in making use of the automatic collateral management service developed by IBERCLEAR.

In accordance with the foregoing, the Parties sign this Agreement and are governed by the following:

## **CLAUSES**

### **One. Definitions**

The following definitions are general and apply to all of the clauses in this Agreement and its Appendices.

**Recipient of collateral:** the ENTITY that receives securities as collateral for a particular trade from the Provider of the collateral, to cover their risk exposure.

**Provider of collateral:** the ENTITY that provides securities as collateral for a particular trade to the Recipient of collateral or the Bank of Spain or another institution legally empowered to accept collateral through the pledged account, pursuant to the final paragraph of article 2.b) of the sixth additional provision of Act 13/1994, of 1 June, on the Autonomy of the Bank of Spain, to cover risk exposure.

**Collateral Account:** a securities account opened in IBERCLEAR in the name of the Recipient of collateral to hold the securities received as collateral for a financial trade, pursuant to the terms and conditions set out in this Agreement.

**Source Account:** a securities account opened in IBERCLEAR in the name of the Provider of collateral, in which the ENTITY deposits securities for use as collateral in its financial trading.

**Triparty pledge account:** an account opened in IBERCLEAR in the name of the ENTITY and pledged in favour of the Bank of Spain or other institution legally empowered to accept collateral through the pledged account, pursuant to the final paragraph of article

2.b) of the sixth additional provision of Act 13/1994, of 1 June, on the Autonomy of the Bank of Spain.

**Proprietary account for pledge of securities between participants:** a proprietary securities account opened in IBERCLEAR in the name of the Provider of collateral, used to register the securities pledged as financial collateral in favour of another participant, through the automatic pledging procedure.

**Financial transactions:** the following are considered financial transactions. This list is non-exhaustive and for information only:

- a) Financial collateral agreements.
- b) Securities loans.
- c) The financial transactions performed with financial instruments derived from those outlined in paragraphs two to eight of article 2 of the Securities Market Law (LMV) approved by Legislative Royal Decree 4/2015, of 23<sup>rd</sup> of October.
- d) Repo trades, understood as those involving the simultaneously contracting of two securities sales in the opposite directions, both involving securities with identical characteristics and for the same nominal amount, but with a different execution date.

This is irrespective of whether these financial transactions are part of a contractual netting agreement.

**Service Regulations:** Circulars, Instructions and Procedures Manual of the ARCO Settlement System.

**Authorised person(s):** a physical person or persons authorised by the ENTITY to act in its name and on its behalf, undertaking obligations with IBERCLEAR in relation, inter alia, to: the signature of this agreement; the use of access codes for automatic collateral management services; and the sending of notifications relating to the provision of the services under this Agreement. This authorisation must at all times be set down in a notarised power of attorney presented by the ENTITY and validated by IBERCLEAR.

## **Two. Purpose**

The purpose of this Agreement is to establish the terms and conditions under which IBERCLEAR will provide the ENTITY the automatic collateral management service (hereinafter, the Service), in the framework of a financial transaction in which the ENTITY is one of the contracting parties, as well as in the framework of credit transactions of the ENTITY with Banco de España.

The Service provided by IBERCLEAR comprises the following:

- i. The matching of cash traded in financial transactions agreed between the counterparties to the trades.

- ii. The valuation and selection of securities, pursuant to the eligibility criteria previously defined by the participants.
- iii. Adjustments for variations in the price of the securities provided as collateral or for their withdrawal, through replacements and optimisation processes.
- iv. Supply of frequent information on the activity performed within the framework of the Service.

The Service also comprises coordination of the aforementioned actions with the accounting entries required for registration of the pledge and settlement of corresponding cash amounts, as the case may be.

The ENTITY may contract the Service to act as a:

- i. Collateral receiver, through the opening of an account called "Collateral Account" and the signing of **Appendix A** "Operational Profile of the Participant", **Appendix B** "General Eligibility Criteria", and **Appendix C** "Collateral receiver. Counterparty acceptance form".
- ii. Collateral provider, through the opening of an account called "Source Account" and the signing of Appendix A "Operational Profile of the Participant", **Appendix D** "Collateral provider. Counterparty acceptance form" and the signing by its counterparty of Appendix C "Collateral receiver. Counterparty acceptance form".
- iii. Collateral provider in transactions whose counterparty is Banco de España through the opening of the account called "Triparty pledged account" and the signing of Appendix A "Operational Profile of the Participant", Appendix D "Collateral provider. Counterparty acceptance form" and the signing by Banco de España of Appendix C "Collateral receiver. Counterparty acceptance form".
- iv. Provider of collateral in transactions where the counterparty is another participant and the collateral is provided through the automatic pledge procedure, by opening a "proprietary securities pledge account between participants" and signature of Appendix A "Operational Profile of the Participant", Appendix D "Provider of collateral".
- v. Collateral receiver, in transactions where the counterparty is another participant and the collateral is provided through the automatic pledge procedure, through the signature of Appendix A "Operational Profile of the Participant and Appendix C "Collateral receiver. Counterparty acceptance form"

### **Three. Notifications in relation to the Service.**

The Service Regulations set out the formats, procedures and requirements for notifications between the Parties in relation to the Service.

The ENTITY sends instructions relating to the Service via standard messaging. IBERCLEAR will provide the ENTITY with a web application for consulting and sending instructions relating to the Service (hereinafter, "CollPoint" or "the Application").

IBERCLEAR will facilitate the access of CollPoint to the ENTITY and to the Authorised Person(s), in accordance with the procedures, formats and technical specifications established in the Service Regulations and in the Application's user manual made available to the ENTITY.

The ENTITY will hold IBERCLEAR harmless from any damage or losses, direct or indirect, arising from access to and use of CollPoint and from the notifications made by unauthorised person(s).

IBERCLEAR shall establish the formats, procedures and requirements for communications between the ENTITY and IBERCLEAR in relation to the service set out in Clause Two. These formats, procedures and requirements may be modified by IBERCLEAR as necessary for provision of the Service, notifying the ENTITY of such changes and the stating the date when they will come into effect.

The amendment of the formats, procedures and requirements of the notifications is subject to the provisions of the amendments clause in this Agreement.

The ENTITY hereby expressly authorises IBERCLEAR to transmit all information required for provision of the Service to the ENTITY acting as the counterparty in the financial transaction, whether as the Recipient or Provider of collateral.

#### **Four. Obligations of the Parties**

##### **a) Obligations of IBERCLEAR**

IBERCLEAR undertakes through this Agreement to:

- i. Provide the ENTITY with the Service in line with this Agreement and the procedures, formats and technical specifications stipulated in the Service Regulations.
- ii. Have adequate technical and employee resources to comply with its obligations and for correct provision of the Service in the terms and conditions envisaged in the Agreement.
- iii. Collaborate diligently in the supply of information, collecting such information as might be pertinent for achieving the purposes of this agreement and communicating this to the ENTITY. Likewise, it will be responsible for obtaining the permits, licences and consent required from third parties not party to this Agreement in order to adequately comply with the Agreement.
- iv. Notify the ENTITY of any error, incident or malfunction which it may experience or which may affect it in relation to the provision of the Service, as soon as it has knowledge thereof.

- v. Adopt the measures within its control to mitigate the consequences arising from any error, incident or malfunction in the Service.

## **b) Obligations of the ENTITY**

The ENTITY undertakes through this Agreement to:

- i. Use the Service in accordance with the procedures, formats and technical specifications set out in the Service Regulations, and adopt the measures required for efficient use of the Service.
- ii. Retain the status of Participant in the System at all times and comply with the rules that govern this System.
- iii. Verify the validity and term of the financial transactions and of the collateral agreements with its respective counterparties, assuming that such verifications are the sole responsibility of the ENTITY and its counterparty.
- iv. Adopt all security measures to protect the CollPoint application and the other systems provided to the ENTITY by IBERCLEAR and which support the provision of the Service vis-à-vis unauthorised use.
- v. Adopt all appropriate security measures to avoid damage to the CollPoint application and to the other systems provided to the ENTITY by IBERCLEAR and which support the provision of the Service and, specifically, those which are required to avoid the introduction into the information technology elements of any type of malicious code (malware).
- vi. Have adequate technical and employee resources to comply with its obligations and for correct provision of the Service in the terms and conditions envisaged in the Agreement.
- vii. Keep all information relating to authorised person(s) up-to-date at all times.

All authorisations, consents and powers of attorney granted to the authorised person(s) by the Service Regulations and filed with IBERCLEAR will remain valid until IBERCLEAR is notified of their revocation or amendment.

Unless the aforementioned notification specifies a subsequent date, the revocation or amendment will be deemed to be effective from the second business day following the date of receipt by IBERCLEAR.

- viii. Collaborate diligently in the supply of information, collecting such information as might be pertinent for achieving the purposes of this agreement, and communicating this to IBERCLEAR. Likewise, it will be responsible for obtaining the permits, licences and consent required from third parties not party to this Agreement in order to adequately comply with the Agreement.
- ix. Notify IBERCLEAR of any errors, incidents or malfunctions that it may experience or that might affect it in relation to the provision of the Service, as soon as it has knowledge thereof.

- x. Adopt the measures within its power to mitigate any loss or damage that might occur and which might give rise to liability claims against IBERCLEAR.

The obligations established for the ENTITY in this Clause must also be met by its employees, internal and external collaborators, its subcontractors, and especially the Authorised Person(s).

#### **Five. Service fees**

The Parties agree that the Services provided under this Agreement shall accrue the fees set out in the Service Regulations.

The payment of the fees, costs and charges referred to in this clause shall be paid by the ENTITY in the manner and timetable set down in the Service Regulations.

The above fees, costs and charges are subject to Value-Added Tax, or any other tax that may replace this in future.

IBERCLEAR may also, at any time, review the rates, in which case the ENTITY will be notified of the review of the rates in accordance with the provisions of the Service Regulation.

Notwithstanding the provisions of the termination clause of this Agreement, if the deadlines indicated in the Service Regulation have passed without the ENTITY having paid IBERCLEAR the corresponding rates and expenses, IBERCLEAR may apply late payment interest, equivalent to one percent (1%) per month of the amount pending payment, applied for each day for which the aforementioned deadline is breached.

#### **Six. Liability**

IBERCLEAR will be liable to the aggrieved ENTITY or ENTITIES for any damages sustained by them as a direct consequence of acts attributable to IBERCLEAR in provision of the Service, except in events of exclusive fault of the ENTITY or ENTITIES. IBERCLEAR's economic liability for actions attributable to it before the ENTITY or ENTITIES affected shall as a maximum be fifty percent (50%) of the amount the Provider of collateral or counterparty of the Recipient of collateral affected paid for provision of the Service in the twelve months prior to the incident.

This amount shall be the maximum claimable by the Provider or Recipient of collateral for an action attributable to IBERCLEAR. The distribution of this amount among the ENTITIES affected shall be decided between them.

IBERCLEAR shall not be held liable for any direct or indirect damage or injury the ENTITY might suffer as a result of interruptions or incidents in the provision of the Service that are not attributable to IBERCLEAR, such as, inter alia, interruptions, faults and defects in telephone lines, cables and other media used by IBERCLEAR to provide the Service, or that the Parties might determine for communication with each other.

The ENTITY will be liable to IBERCLEAR for any direct or indirect damage or loss sustained as a result of non-compliance with the obligations set out herein. The ENTITY

will hold IBERCLEAR harmless for any damage and losses caused, undertaking to pay any expenses incurred by IBERCLEAR.

### **Seven. Force majeure**

If the instance of force majeure continues ten (10) calendar days after the interruption of the Service, either of the Parties may terminate this Agreement without giving rise to any liability for either of the Parties.

### **Eight. Duration**

This Agreement will remain in force until the termination thereof, due to early termination or discontinuance by any of the Parties.

Either of the Parties may unilaterally discontinue the Agreement, notifying the other Party of its wish to terminate such Agreement, with a minimum advance notice period of six (6) months from the effective termination date.

### **Nine.-Amendments**

IBERCLEAR may unilaterally modify the Service Regulations, and undertakes to inform the ENTITY at least two [2] months in advance, wherever practicable, before the entry into operation of the changes to any affected procedures or technical specifications, provided that such modifications in their turn require changes in the form of provision of the Service under this Agreement, and entail a material modification of the prevailing terms and conditions.

Any amendments to the Service Regulation will be published by IBERCLEAR in accordance with the provisions of the Service Regulation. Unless the ENTITY notifies IBERCLEAR, through written notification within the ten (10) business days following the publication date of the amendment, of its opposition to the cited amendments, they will be understood as accepted and will be applicable from the date on which the amendment takes effect.

If, as a result of a change in the regulations applicable to any of the Parties, the manner of providing the Service referred to in this Agreement is affected, requiring an amendment of the conditions in force, the Parties undertake to strive to ensure the negotiation of the new conditions required to adapt to the aforementioned changes.

Subject to the exception set out in the first paragraph, the terms of this Agreement will not be amended unless both Parties agree to the change in writing, through signature by the authorised person(s).

### **Ten. Termination**

The Agreement may be terminated unilaterally by either of the Parties in the event of failure to comply with any obligations undertaken by the other Party to this Agreement, if the non-compliance is not corrected by the non-compliant Party within thirty (30) days of receipt of notification from the other Party.



The termination shall be notified in writing, pursuant to the notification clause of this Agreement.

In particular, and by way of example, the following shall be grounds for termination:

- a) One of the Parties ceasing their business activity, for whatever reason.
- b) The incapacity of one of the Parties to diligently perform the obligations set down in this Agreement, its Appendices and the Service Regulations.
- c) If seizure orders and other interim measures are declared against one of the Parties, demonstrating a weakening of their solvency, or financial difficulties in meeting their normal business obligations.
- d) Use of the Service for purposes and in conditions other than as set down in this Agreement.
- e) The loss of the status of Participant in the System.

Termination will result in the automatic maturity and immediate liquidation and enforceability of all amounts mutually owed by the Parties. In this case, balances may be offset.

In the event of a declaration of bankruptcy, the Parties undertake to comply with the provisions of Act 22/2003, of 9 July, regarding Bankruptcy.

#### **Eleven. Effects of termination**

Termination of this Agreement shall give rise to the immediate discontinuation of the use of the services, as well as the automatic accrual and expiration, and the immediate settlement and claimability of any amounts owed by either of the Parties, who may choose to offset balances, where applicable.

The ENTITY will be bound to adopt all the measures necessary to close the accounts that it has open in IBERCLEAR with regards to the provision of the Service, being responsible for all expenses accruing from the termination date of the Agreement.

The ENTITY shall return the codes and passwords giving access to the applications and systems comprising the Service to IBERCLEAR, together with all technical, business and other information that it holds relating to the Service.

#### **Twelve. Subrogation**

The ENTITY may not subrogate or assign to any third party or entity, totally or partially, the rights or obligations provided for in this Agreement, without prior written consent from IBERCLEAR.

IBERCLEAR may fully or partially subrogate or cede the rights and obligations set down in this Agreement to any of the companies in the Bolsas y Mercados Españoles, Sociedad Holding de Mercados y Sistemas Financieros, S.A. Group, notifying the ENTITY of this.



### **Thirteen. Personal data protection**

The Parties understand that a series of operations and procedures may be performed under this Agreement that involve the holding of personal data or files containing such personal data.

To this end, the Parties shall adopt the necessary technical and organisational measures established in Spain's Organic Personal Data Protection Law 15/1999 of 13 December in order to guarantee the security of the data processed, and to prevent any alteration, loss, processing or unauthorised access, in due consideration of the status of technology, the type of personal data in the files and the possible risks to which this might be exposed.

The ENTITY undertakes to hold IBERCLEAR harmless for any claim that may be filed against it by any third party in the following cases:

- a) In the event of the opening of any type of case by the authorities with competence for data protection due to wilful or negligent non-compliance by the Entity with Spanish data protection legislation, in relation to the personal data processed under the Agreement; and
- b) As a result of any breach of the obligations undertaken by the ENTITY to the owners of the data with respect to the confidentiality, duty of secrecy and safekeeping of the data, and its processing, transfer or notification to third parties.

Once the Service has been provided or this Agreement has been terminated, IBERCLEAR is bound to destroy the personal data or to return it to the ENTITY.

### **Fourteen. Intellectual and industrial property**

IBERCLEAR guarantees that the applications and other systems it provides to the ENTITY in support of the provision of the Service do not breach any patents or intellectual and industrial property rights that may be the subject of a claim against IBERCLEAR, and that it is the holder, or has the required authorisation from the holder, of the corresponding intellectual and industrial property rights for all of the applications and other systems it uses in providing the Service.

Under this Agreement, the ENTITY acquires no right or licence over the software and other systems made available to it by IBERCLEAR and required for the provision of the Service.

### **Fifteen. Confidentiality**

The Parties are bound to maintain the strictest level of confidentiality vis-à-vis third parties with all data from the other Party, as well as the technical information or documentation that may be acquired when exercising this Agreement. The definition of third parties shall not be understood to include persons or entities belonging to the BME

Group, or providers of the technical infrastructure required for performance of the Service.

The Parties undertake not to disclose to third parties any technical information or documents they may receive as a result of performance of this Agreement or the Service, without express written consent from the other Party.

The Parties exclude from the definition of confidential information: any information that is or becomes public, unless it is made public as a result of breach of the obligations set down in this clause; and any information that has to be disclosed by law or as a result of a judicial ruling or a requirement by competent authorities.

In the event of termination of this Agreement for any reason, the Parties undertake to deliver to the other Party all the confidential information in their possession or in the possession of their employees or associates, or to destroy this at the express request of the other Party and in the manner established by the latter, whatever the medium in which this information is stored. Furthermore, a representative of each of the Parties shall certify to the other Party that the information in its possession has been returned, deleted or destroyed in accordance with the above, and that it therefore holds no copies of any or all of the documentation associated with this information.

The undertakings acquired by the Parties with respect to confidentiality will remain in force after the termination of this Agreement on a permanent basis.

#### **Sixteen. Notifications**

All notifications between the Parties directly referring to the validity, breach or termination of the Agreement must be served in writing by any means proving the receipt thereof.

Notifications in relation to this Agreement, other than those envisaged in clause three, shall be served to the following people and addresses:

The Parties undertake to keep the aforementioned contacts up-to-date and report any change to the data included therein, as indicated above.

#### **Seventeen. Independence of the Parties**

The Parties acknowledge they are fully independent entities acting with total independence in terms of carrying on their own businesses and activities, and therefore it may not at any time be construed that either of them is acting as the representative, nominee or agent of the other Party.

#### **Eighteen. Applicable law and competent jurisdiction**

This Agreement shall be governed for all purposes by Spanish law, which is the only law applicable thereto.

The Parties will submit to the courts of the city of Madrid for any dispute arising from compliance, interpretation or termination of the Agreement that cannot be resolved by mutual agreement, expressly waiving any other jurisdiction to which they might be entitled.

In witness whereof, the Parties enter into this Agreement in two counterparts in the place and on the date indicated in the heading.

IBERCLEAR

THE ENTITY

## **LIST OF APPENDICES**

**Appendix A** "Operational Profile of the Participant"

**Appendix B** "General Eligibility Criteria"

**Appendix C** "Collateral recipient. Counterparty acceptance form"

**Appendix D** "Collateral Provider - Counterparty acceptance form for contract registration"