

CLNet Confirmation Protocol

Date: 20 November 2018

1. In connection with the CLNet payment netting calculation services (the **Services**), for the purpose of this Protocol:
 - (a) **Adherence Letter** means an adherence letter in the form set out in the Exhibit to this Protocol;
 - (b) **Adhering Party** means each person that has agreed to adhere to this Protocol, as set out in paragraph 2 below;
 - (c) **Affiliate** means, in relation to a person, each other entity which directly or indirectly Controls, is directly or indirectly Controlled by (through one or more intermediaries) or is under direct or indirect common Control with, that person from time to time;
 - (d) **Amend Instruction** means an instruction submitted by Participant or Participating Affiliate, in accordance with the submission process, directing CLS Services to change or modify a specified Standard FX Instruction, Opening Instruction, or fix Instruction previously submitted by that Participant or Participating Affiliate;
 - (e) **Calculation Agent Agreement** has the meaning given to that term in paragraph 2(a).
 - (f) **CLS Netting System** means the software, hardware, network and telecommunications equipment and information technology used by CLS Services in the provision of the Services, as modified from time to time;
 - (g) **Confirmation** has the meaning given to that term in paragraph 3(a).
 - (h) **Controls** means, in relation to a person, the direct or indirect ownership of more than 50% of the voting capital or similar right of ownership of that person, or the legal power to direct or cause the direction of the general management and policies of that person, whether through the ownership of voting capital, by contract or otherwise, and **Controls** and **Controlled** shall be interpreted accordingly;
 - (i) **Effective Adherence Date** means the date specified as such in an Adherence Letter;
 - (j) **Eligible Currencies** has the meaning given to that term in paragraph 3(a)(i)(D).
 - (k) **Fund** has the meaning given to that term in paragraph 2(d).
 - (l) **Identification Code** means a BIC, BEI Code or a Fund ID of an entity or any other identifier notified by Participant to CLS Services as a valid code for the identification of an entity;



- (m) **Matching** means the matching of Transaction details reflected in a pair of Standard FX Instructions or the matching of Transaction details reflected in a pair of fix Instructions for the purpose of Netting, and **Match** and **Matched** shall be construed accordingly;
- (n) **NDF** means non-deliverable forward FX transaction;
- (o) **Netting** means the calculation of net payment amounts relating to underlying Transactions between a Service Recipient and a Transaction counterparty, and **Net** and **Netted** shall be construed accordingly;
- (p) **Opening Instruction** means the first instruction that must be submitted to the CLS Netting System by Participant or Participating Affiliate (as the case may be) in respect of an NDF;
- (q) **Other Participant** means a third party that: (a) uses the CLS Netting System or receives or uses services substantially similar to the Services from CLS Services; and (b) has entered into a Calculation Agent Agreement;
- (r) **Other Submitting Party** means, in respect of an instruction (including any Standard FX Instruction, Opening Instruction, or Amend Instruction), the Other Participant or Affiliate of such Other Participant that submits the instruction (including any Standard FX Instruction, Opening Instruction, or Amend Instruction) corresponding to an instruction submitted by Participant or Participating Affiliate;
- (s) **Participant** has the meaning given to that term in paragraph 2(a).
- (t) **Participating Affiliate** has the meaning given to that term in paragraph 2(b).
- (u) **Protocol** means this CLSNet Confirmation Protocol published by CLS Services Ltd. (**CLS Services**) on 20 November 2018;
- (v) **Relevant Third Party** means any third party on behalf of whom Participant uses the Services;
- (w) **Service Recipient** means Participant, each Participating Affiliate, and each Relevant Third Party;
- (x) **Settlement Date** means the date specified in an instruction (including any Standard FX Instruction, Opening Instruction, or Amend Instruction) as the date on which the Transaction to which such instruction relates is scheduled for settlement;
- (y) **Settlement Rate Source** means, in respect of an NDF, the value(s) to be used for the settlement rate source;
- (z) **Standard FX Instruction** means an instruction for Matching and Netting submitted by Participant or Participating Affiliate, in respect of a Transaction listed in paragraphs (a)-(e) (inclusive) of the definition of Transaction;
- (aa) **Submitting Party** means, in respect of an instruction (including any Standard FX Instruction, Opening Instruction, or Amend Instruction), Participant or Participating



Affiliate that submits the instruction (including any Standard FX Instruction, Opening Instruction, or Amend Instruction) on behalf of itself, or in the case of Participant, on behalf of a Relevant Third Party;

- (bb) **Transaction** means each of the following foreign exchange transactions: (a) FX spot; (b) same-day transactions; (c) tomorrow/next-day transactions; (d) forwards; (e) swaps; (f) NDFs; and (g) any other transaction types notified to Participant by CLS Services from time to time; and
- (cc) **Valuation Date** means the valuation date agreed between the transaction counterparties for the valuation of the NDF Transaction.

2. Adherence to this Protocol shall be evidenced by the following:

For a Single Entity

- (a) in the case of a party (**Participant**) to an agreement governing the Services (**Calculation Agent Agreement**), by the execution of such Calculation Agent Agreement;
- (b) in the case of an Affiliate of a Participant that is covered by a Calculation Agent Agreement to which such Participant is a party (**Participating Affiliate**), by the execution and delivery of an Adherence Letter to CLS Services, as agent, in accordance with paragraph 10 below;

For Multiple Entities

- (c) in the case of Participating Affiliates and Relevant Third Parties (as applicable), by the execution and delivery of an Adherence Letter by Participant, acting on behalf of each of the persons identified therein, to CLS Services, as agent, in accordance with paragraph 10 below. For the avoidance of doubt, each person so identified in the Adherence Letter shall be treated as a separate Adhering Party for purposes of this Protocol; and
- (d) in the case of an investment or asset manager (including any person identified in paragraphs 2(a) to 2(c) (inclusive)) that, as agent, enters into Transactions on behalf of a fund (the **Fund**, which is the principal to the Transactions), by the execution and delivery of an Adherence Letter by the investment or asset manager, acting on behalf of the Fund(s) identified therein, to CLS Services, as agent, in accordance with paragraph 10 below. For the avoidance of doubt, each Fund so identified in the Adherence Letter shall be treated as a separate Adhering Party for purposes of this Protocol.

3. With respect to any Transaction to which the Adhering Party and another Adhering Party are both counterparties:

- (a) the notification from the CLS Netting System confirming that the Standard FX Instructions or Opening Instructions, as applicable, relating to such Transaction have been classified as Matched Standard FX Instructions or matched Opening Instructions, as applicable, in the CLS Netting System shall, as between the Adhering Parties, constitute a confirmation by the Adhering Party of each of the following economic terms of the Transaction underlying the Standard FX



Instructions or Opening Instructions, as applicable, so Matched or matched, as applicable, by the CLS Netting System (**Confirmation**):

- (i) in respect of Non-NDF underlying Transactions:
 - (A) the Identification Codes of the Submitting Party and the Other Submitting Party of the Standard FX Instructions relating to the same Transaction;
 - (B) the Settlement Date;
 - (C) the Identification Codes of the Transaction counterparties; and
 - (D) the amounts and identities of the buy and sell eligible currencies included as part of the Services (**Eligible Currencies**);
- (ii) in respect of NDF underlying Transactions:
 - (A) the Identification Codes of the Submitting Party and the Other Submitting Party of the Opening Instructions relating to the same Transaction;
 - (B) the Settlement Date;
 - (C) the Identification Codes of the Transaction counterparties;
 - (D) the amounts and identities of the buy and sell Eligible Currencies;
 - (E) the NDF settlement currency;
 - (F) the NDF Valuation Date; and
 - (G) Settlement Rate Source(s);
- (b) for the purposes of such Confirmation:
 - (i) if, subsequent to Standard FX Instructions being classified as Matched or Opening Instructions being classified as matched, as applicable, in the CLS Netting System:
 - (A) the Adhering Parties agree to amend the Transaction to which those Standard FX Instructions or Opening Instructions, as applicable, relate, and, following such agreement, submit Amend Instructions to the CLS Netting System in respect of the relevant Standard FX Instructions or Opening Instructions, as applicable; and
 - (B) following the submission of such Amend Instructions, the Standard FX Instructions or Opening Instructions, as applicable, are re-classified as Matched Standard FX Instructions or matched Opening Instructions, as applicable,



the notification from the CLS Netting System of such classification shall, as between such Adhering Parties, constitute an amended Confirmation of the terms so Matched or matched by the CLS Netting System which supersedes the earlier Confirmation of such terms;

- (ii) if the Standard FX Instructions or Opening Instructions, as applicable, relating to such Transaction which were classified as Matched Standard FX Instructions or matched Opening Instructions, as applicable, are subsequently:
 - (A) amended by or on behalf of an Adhering Party on a unilateral basis; or
 - (B) rescinded by or on behalf of an Adhering Party on a unilateral basis or by or on behalf of Adhering Parties on a bilateral basis,

such amendment or rescission shall, as between such Adhering Parties, have no effect on the earlier Confirmation of the terms so Matched or matched by the CLS Netting System unless another pair of Standard FX Instructions or Opening Instructions, as applicable, relating to the same Transaction has been submitted to the CLS Netting System and classified as Matched Standard FX Instructions or matched Opening Instructions, as applicable, in the CLS Netting System, in which case the earlier Confirmation shall be superseded by the subsequent Confirmation of the terms Matched or matched in such other pair of Standard FX Instructions or Opening Instructions, as applicable; and

- (iii) such Confirmation shall not supersede any other confirmation that may be sent by such Adhering Party outside the CLS Netting System, whether such other confirmation is received before or after such classification or notification of the Standard FX Instructions or Opening Instructions, as applicable, as Matched Standard FX Instructions or matched Opening Instructions, as applicable, in the CLS Netting System.

4. Neither CLS Services nor its Affiliates shall have any liability to any person, for any failure to provide, delay in providing, or error contained in, any such notification or classification described in paragraph 3(a) and 3(b) above.
5. For the avoidance of doubt, the processing of any related instruction (including any Standard FX Instruction, Opening Instruction, or Amend Instruction) in the CLS Netting System shall not be affected by any separate confirmation outside of the Service in respect of any Transaction that may be given to, by, or on behalf of any Transaction counterparty to such Transaction.
6. The agreements contemplated by this Protocol will, as between any two Adhering Parties, be effective on the later of the Effective Adherence Dates specified in the respective Adherence Letters of the two Adhering Parties; provided, however, that:
 - (a) no Adherence Letter shall specify an Effective Adherence Date that is less than thirty (30) calendar days following the date of execution of that Adherence Letter; and



- (b) the Effective Adherence Date for Participant shall be the 'Effective Date' of the relevant Calculation Agent Agreement executed by Participant.

Such agreements contemplated by this Protocol will apply to any Standard FX Instructions or Opening Instructions, as applicable, submitted to the CLS Netting System by or on behalf of an Adhering Party, regardless of whether such Standard FX Instructions or Opening Instructions, as applicable, are submitted before or after such Effective Adherence Date.

- 7. In adhering to this Protocol, an Adhering Party may not specify additional provisions, conditions, or limitations in its Adherence Letter. Any purported adherence that CLS Services, as agent, determines in good faith is not in compliance with this paragraph will be void.

8. **Acknowledgement of Scope of this Protocol**

- (a) Each Adhering Party acknowledges and agrees that this Protocol does not apply to any Transaction for which related instructions (including any Standard FX Instruction, Opening Instruction, or Amend Instruction) are not submitted to the CLS Netting System.
- (b) The adequacy of a Confirmation for the purpose of 'legal confirmation' or equivalent concept under applicable laws of any jurisdiction is to be determined and assessed by the Adhering Party, and CLS Services makes no guarantee, representation or warranty that the form of Confirmation is acceptable in any jurisdiction.

9. **Representations**

- (a) Each Adhering Party represents to each other Adhering Party with which it has, or may have, an instruction (including any Standard FX Instruction, Opening Instruction, or Amend Instruction) submitted to the CLS Netting System relating to a Transaction between them, on the date on which the later of them adheres to this Protocol in accordance with paragraph 2, that:
 - (i) it has the power to execute and deliver the Adherence Letter (or otherwise adhere to the Protocol) and to perform its obligations under any such Adherence Letter and this Protocol, and has taken all necessary action to authorise such execution, delivery, and performance;
 - (ii) such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
 - (iii) all governmental and other consents that are required to have been obtained by it with respect to each such Adherence Letter or this Protocol have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and



- (iv) its obligations under each such Adherence Letter and this Protocol constitute legal, valid, and binding obligations of such Adhering Party, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
- (b) With respect to any Adherence Letter that an Adhering Party has delivered to CLS Services in which any of its Affiliates, other third parties or Funds are identified, such Adhering Party represents to each other Adhering Party with which such Affiliate, third party or Fund has, or may have, an instruction (including any Standard FX Instruction, Opening Instruction, or Amend Instruction) submitted to the CLS Netting System relating to a Transaction between the Affiliate, third party or Fund and such other Adhering Party that it has the authority to bind the Affiliate, third party or Fund to this Protocol.

10. **Delivery of Executed Adherence Letters**

Each Adherence Letter must be in writing in the following form:

- (a) one manually signed original copy; and
- (b) one conformed copy containing, in place of each signature, the printed or typewritten name of each signatory,

and each manually signed original copy and conformed copy must be delivered to CLS Services at the following address:

CLS Services Ltd.
Exchange Tower
1 Harbour Exchange Square
London E14 9GE
United Kingdom
Attn: General Counsel

and each such copy must be delivered as a separate PDF (portable document format) attachment in an email to CLS Services in England at protocols@cls-services.com.

Each Adhering Party agrees that, for evidentiary purposes, a conformed copy of each Adherence Letter certified (for the purposes of confirming that the conformed copy is a true copy) by the General Counsel or other appropriate officer of CLS Services will be deemed to be an original.

[Exhibit Follows]



EXHIBIT

FORM OF ADHERENCE LETTER

Via Electronic Mail (protocols@cls-services.com)

[insert date]

CLS Services Ltd
Exchange Tower
One Harbour Exchange Square
London 14 9GE
United Kingdom

Re: **CLSN Net Confirmation Protocol –Adherence Letter**

Dear Ladies and Gentlemen:

This letter constitutes an Adherence Letter as referred to in the Protocol.

Except as otherwise expressly stated, capitalized terms used in this Adherence Letter have meaning given to those terms in the Protocol.

The provisions contained in the Protocol are incorporated into this Adherence Letter.

1. Adherence to Protocol

(a) The purpose of this letter is to confirm (*check applicable box(es)*):

(i) Single Entity

the adherence of our institution:

[INSERT LEGAL NAME OF ADHERING PARTY]

to the Protocol;

(ii) Multiple Entities (non-Investment/Asset Manager)

(A) the adherence of our institution:

[INSERT LEGAL NAME OF ADHERING PARTY]

to the Protocol; and

(B) acting on behalf of each entity listed below, the adherence of such entities to the Protocol:



[INSERT LEGAL NAME OF AFFILIATE OR RELEVANT THIRD PARTY, AS APPLICABLE]¹

(C) that our institution is duly authorized to provide such confirmation on behalf of each entity listed in paragraph 1(a)(ii)(B) above.

(iii) Investment/Asset Managers

(A) the adherence of our institution:

[INSERT LEGAL NAME OF ADHERING PARTY (PARTICIPANT OR INVESTMENT OR ASSET MANAGER)]

to the Protocol, acting on behalf of each Fund (*check applicable box(es)*):

[INSERT LEGAL NAME OF FUND]²

(B) that our institution is duly authorized to provide such confirmation on behalf of each such Fund.

(b) *Effective Adherence Date.* The adherence of our institution and each other Adhering Party referred to herein is effective as of the following date (**Effective Adherence Date**):³

[INSERT RELEVANT DATE]

2. Appointment as Agent and Release

We hereby appoint CLS Services as our agent for the limited purposes of the Protocol. Except as otherwise stated in the Protocol, we hereby waive, and release CLS Services and any of its Affiliates from, any rights, claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Adherence Letter or the adherence of our institution or any other Adhering Parties identified herein to the Protocol or any actions contemplated as being required by CLS Services under the Protocol.

¹ Please insert additional rows as needed, as each Affiliate and Relevant Third Party should be listed in a separate row.

² Please insert additional rows as needed, as each Fund should be listed in a separate row.

³ The Effective Adherence Date must be at least 30 calendar days following the date of this Adherence Letter.



3. Contact Details

Our contact details for purposes of this Adherence Letter are:

Name:	[insert]
Address:	[insert]
Telephone:	[insert]
Email:	[insert]

* * *

We hereby consent to the publication of the conformed copy of this letter by CLS Services and to the disclosure by CLS Services of the contents of this letter in each case on any publicly available website of CLS Services or any of its Affiliates.

Yours faithfully,

[INSERT LEGAL NAME OF ADHERING PARTY]

acting on behalf of itself and each other Adhering Party identified herein.

By:

Name:	[redacted]
Title:	[redacted]
Signature:	[redacted]