



THIS AGREEMENT is made on **BETWEEN**

Bank of Mauritius

and

['the Participant']

**MAURITIUS AUTOMATED CLEARING AND SETTLEMENT SYSTEM
TERMS AND CONDITIONS**

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The Participant named on the covering page to these Terms and Conditions (“Participant”) and the Bank of Mauritius hereinafter referred to as “Central Bank” agree to be bound by these Terms and Conditions, governing the operation of the Participant’s Account with the Central Bank and the provision of certain services relating to the Mauritius Automated Clearing and Settlement System (MACSS), as they may be amended from time to time by agreement between the Participant and the Central Bank.

1. PRELIMINARY

1.1 Definitions

In these Terms and Conditions, unless the context otherwise requires:

“**Account**” means an account maintained by the Participant with the Central Bank.

“**Account Transfer**” means the credit or debit of an Account initiated by the Central Bank.

“**Business Day**” means a day on which the Central Bank is open for the settlement of transactions with banks in Mauritius and on which MACSS is operating to process Payment Instructions and Account Transfers.

“**Court**” means a Mauritian court of appropriate jurisdiction.

“**Dispute**” means a dispute or difference between:

- (a) the Central Bank and the Participant; or
- (b) two or more Participants,

arising out of, or in any way connected with, these Terms and Conditions.

“**Live Operation Date**” means the date on which MACSS starts live operation for and in respect of all its operations, and Settlement is undertaken on a real time basis.

“**Minimum Account Balance**” means the Account balance from time to time set by the Central Bank for the Participant which, for the avoidance of doubt, may be positive, negative, or zero balance and may, if the Central Bank considers necessary, be subject to specific conditions.

“**Net Settlement Batch**” means an Account Transfer involving multiple debits and credits, initiated by the Central Bank to settle net obligations arising from the conduct of a payment or securities clearing system as described in the Procedures.

“Notifiable Event” means, in respect of the Participant:

- (a) its making a general assignment for the benefit of, or entering into a reconstruction, reorganisation, compromise, arrangement or composition with, its creditors; or
- (b) its admitting, whether in writing or otherwise, its inability to pay its debts as they become due from its own money; or
- (c) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
- (d) the presentation or filing of an application in respect of it:
 - (i) in any court or before any agency alleging or for its bankruptcy, winding up or liquidation (or any analogous proceeding) unless it can be demonstrated by the Participant to be vexatious or that it is otherwise unlikely to result in the winding up or liquidation of the Participant, in either case within a period of time to be specified by the Central Bank;
 - (ii) seeking any reorganisation, arrangement, composition, readjustment, administration, winding up, liquidation, dissolution or similar relief, under any present or future statute, law or regulation, such application (except in the case of an application for liquidation or any analogous proceeding) not having been stayed or dismissed within 30 days of its filing; or
- (e) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of it over all or any material part of its property; or
- (f) at least 7 days before it is about to pass a resolution or seek a declaration for its voluntary winding up; or
- (g) the occurrence of any event having a substantially similar effect to any of the events specified in (a) to (f) above under the law of any applicable jurisdiction.

“Payment Instruction” means an instruction initiated by a Participant to debit its Account and credit the account of another Participant in a form specified in the Procedures.

“Procedures” means the procedures and standards adopted by the Central Bank from time to time which govern the operation of MACSS and the conduct of interbank settlement.

“Real-Time Gross Settlement” means the processing and settlement of payment obligations in real time on a gross basis. To the extent it is permissible by law the parties agree that for the purposes of the present agreement and all settlements performed thereunder, a day shall be reckoned as being a 24 hour period, starting from the real time of a transaction to end a second prior to the 24th hour immediately following that transaction and that each second, minute and hour over a day shall be deemed to occur in succession and in the real order in which they develop.

“Settlement” means, in respect of a Payment Instruction or Account Transfer, the successful posting for value of debits and credits to the relevant Accounts of the amounts notified in the Payment Instruction or Account Transfer.

“System Fault” means a fault, malfunction or error in MACSS such that MACSS is unable to perform the functions it is required to perform for the time being.

“Terms and Conditions” means these terms and conditions and all schedules attached or incorporated by reference.

“Valid Instruction” means an Account Transfer or a Payment Instruction initiated from a source approved by the Participant and in a form which provides the Central Bank with a clear instruction to transact.

1.2 Interpretation

In these Terms and Conditions:

- (a) words importing one gender include the other genders;
- (b) the plural number includes the singular and vice versa;
- (c) headings are inserted for convenience of reference and do not alter the interpretation of these Terms and Conditions;
- (d) a reference to any legislation includes any statutory regulations, rules, orders or instruments made or issued pursuant to that legislation and any amendments to, re-enactment of, or replacement of that legislation.

1.3 Governing Law

These Terms and Conditions and the performance of them are governed by Mauritian Law.

2. SCOPE AND EFFECT

2.1 Scope of MACSS

MACSS is the Mauritian Real-Time Gross Settlement (RTGS) System. RTGS ensures that transactions between Participants will only proceed to settlement where the paying Participant has sufficient funds in its Account with the Central Bank. Transactions across Participants' Accounts with the Central Bank can only be effected via MACSS.

2.2 Opening and Operation of the Account

- (a) The Central Bank will open and will maintain an Account for the Participant.
- (b) Subject to these Terms and Conditions, the Participant will at all times while the Account remains operational ensure there are sufficient funds in the Account to meet any Minimum Account Balance requirements as specified by the Central Bank from time to time.
- (c) The opening and maintaining of an Account for the Participant does not confer any particular prudential status on the Participant nor does it represent any form of endorsement by the Central Bank. The Participant will not make any statement or take any actions in any manner or form which might result in any person inferring that the Participant, has any particular prudential status or has any endorsement from the Central Bank.

2.3 Authority to Execute Payment Instructions

The Participant authorises the Central Bank to execute Payment Instructions which are received by the Central Bank in a form as described in the Procedures.

2.4 Authority to Execute Account Transfers

The Participant authorises the Central Bank to effect Account Transfers:

- (a) for transactions arising from the settlement of a Net Settlement Batch;
- (b) for the settlement of fees chargeable to the Participant; and
- (c) for any other transactions that has been agreed in writing by the Participant.

2.5 Types of Payment Instructions Accepted

The Procedures may specify the types and description of Payment Instructions that are acceptable or unacceptable for processing by MACSS.

2.6 Conditions for Settlement

- (a) The Central Bank shall not settle a Valid Instruction if settlement of that Valid Instruction would, upon settlement, reduce the balance of the Participant's Account below the Minimum Account Balance.
- (b) If a Valid Instruction is unable to be settled due to the operation of clause 2.6(a), it will be held, during the Business Day, within MACSS until there are sufficient available funds in the Participant's Account to ensure that the Participant's Account balance will not reduce below the Minimum Account Balance upon Settlement of the Valid Instruction.
- (c) A Valid Instruction will be settled at the point in time at which MACSS successfully posts for value all debits and credits to the relevant Accounts in the amounts notified in that Valid Instruction.
- (d) All Valid Instructions which have not been settled by MACSS before the end of a Business Day will be deleted from MACSS under advice to the Participant.

2.7 Irrevocability of MACSS Payment Instructions

Upon Settlement of a Payment Instruction, all amounts credited to and debited from Accounts shall be final and irrevocable from the point in time at which they are successfully posted to the relevant Account. The Participant and the Central Bank acknowledge that settled Payment Instructions shall not be reversed.

2.8 Notifiable Events

The Participant acknowledges that the Central Bank and each of the Participants relies on all other Participants for the continuing successful Settlement of Payment Instructions. The Participant, in recognition of this reliance, immediately upon the occurrence, or threatened occurrence, of a Notifiable Event will:

- (a) if the Participant has good reason to doubt its authority to continue to make payments, ensure that no further Payment Instructions are submitted to MACSS: and
- (b) notify the Central Bank of the occurrence, or threatened occurrence, of that Notifiable Event and the steps (if any) the Participant is taking to ensure that it continues to have authority to issue Payment Instructions.

2.9 Closure of the Account at Participant's Request

- (a) The Participant may, with the permission of the Central Bank, close its Account upon giving the Central Bank 10 Business Days written notice (or such lesser notice as may be agreed by the Central Bank) of its intention to close that Account.

- (b) Upon receipt of notice in accordance with clause 2.9(a) and making such enquiry as it thinks fit in the circumstances, the Central Bank will notify all other Participants of the proposed date and time of termination of the Participant's Account. No new Payment Instructions may be initiated on that Account after the determined date and time of termination.
- (c) On the determined date and time of termination of the Participant's Account, the Central Bank will close that Account and refund to the Participant any amount standing to the credit of that Account after deducting any fees, charges or interest outstanding in respect of that Account and after all payment obligations in respect of Valid Instructions accepted through MACSS. Any debt outstanding after all payment obligations in respect of Valid Instructions accepted by MACSS have been discharged will be a debt due to the Central Bank recoverable from the Participant.

2.10 Suspension or Termination of Account

- (a) The Participant acknowledges the Central Bank's right, acting reasonably, to suspend or terminate the operation of the Participant's Account at any time, on notification to the Participant or as soon as practicable following such suspension or termination.
- (b) The Central Bank will notify the Participant as soon as reasonably practicable if an Account of any other Participant is suspended or terminated.

2.11 Suspension, Closure or Alteration of the MACSS System and Operations

- (a) The Central Bank and the Participant agree that, for the purposes of these Terms and Conditions, the MACSS Business Day and the hours of operation for the System will be as specified from time to time in the Procedures.
- (b) The Central Bank may temporarily suspend operation of MACSS and/or may temporarily extend or shorten one or more Business Days for such period of time considered by the Central Bank to be reasonably necessary to respond appropriately to:
 - (i) a System Fault or detection of a potential System Fault; or
 - (ii) widespread disruption to Participants' access to MACSS; or
 - (iii) any threat or perceived threat to the maintenance of a sound and efficient financial system.

- (c) The Central Bank will endeavor to notify the Participant of all actions it takes pursuant to this clause 2.11(b) prior to, or as soon as possible after, taking such action, so that following correction of that System Fault or access disruption and/or removal of that threat or perceived threat to the financial system, the Central Bank shall, as soon as possible thereafter, restore operation of the System and/or reinstate normal hours of operation for the Business Day.

2.12 Fixes, Changes and Enhancements to MACSS

Any fixes, changes or enhancements to MACSS that the Central Bank considers to be necessary to:

- (a) ensure MACSS continues to perform as designed; or
- (b) meet any additional reasonable requirements of the Participants; or
- (c) change the functionality of MACSS from the level of functionality in MACSS on the Live Operation Date;

will be implemented by the Central Bank on the condition that the Central Bank can recoup the cost of such changes or enhancements through adjustments in the fees chargeable to the Participant or Participants as the case may be.

2.13 Change Control

- (a) Any change or enhancement to MACSS for the purposes of clause 2.12(b) or clause 2.12(c) will be implemented by the Central Bank in accordance with the change control terms contained in the Procedures.
- (b) The Central Bank will use reasonable endeavors to consult with, and take due account of the views of, the Participants if a fix is required in order to ensure MACSS continues to perform in accordance with its design. However, the Central Bank will not be obliged to consult with the Participant if a fix is required urgently and any delay in effecting that fix is likely to cause major inconvenience to any Participant.

2.14 Business Continuity

- (a) The Central Bank and Participants will develop and maintain an up-to-date Business Continuity Plan that will be monitored and tested on an ongoing basis.
- (b) The Business Continuity Plan will be an integral part of the Procedures and will apply during events that disable the normal business operation of MACSS;
- (c) Participants acknowledge the importance of prompt and full compliance with the requirements of the Business Continuity Plan.

2.15 Fraudulent Activity

- (a) The Participant must ensure that its own systems and procedures provide appropriate protection against fraudulent activity in connection with MACSS.
- (b) All actual or suspected fraudulent activity in connection with MACSS must be reported immediately to the Central Bank.
- (c) Each Participant must provide all reasonable assistance, requested by the Central Bank or any other Participant to investigate and identify the source of any actual or suspected fraud.
- (d) The Central Bank may specify measures to be taken in this regard after consultation with the participants.

2.16 Confidentiality

- (a) The Central Bank and the Participant will apply the normal rules of banker's confidentiality to all Payment Instructions and Account Transfers in accordance with the governing law.
- (b) Subject to clause 2.16(a), these Terms and Conditions shall be a public document and each of the Central Bank and the Participant may disclose or publish:
 - (i) aggregate or summary data on the operation of MACSS;
 - (ii) educational and descriptive information about MACSS.
- (c) The Participant may discuss and exchange information with any other Participant regarding any aspect of the operation or administration of MACSS.
- (d) Each party will instruct its employees, consultants and agents, including its auditors, who will have access to confidential information to maintain the confidentiality of that information in a manner consistent with these Terms and Conditions. Each party will exercise the same degree of care (but no less than reasonable care) to safeguard the confidentiality of the other party's confidential information as it would exercise to safeguard the confidentiality of its own confidential information.
- (e) The provisions of this clause 2.16 will survive closure of the Account.

3. EFFECT AND AMENDMENT OF TERMS AND CONDITIONS

3.1 Effect of MACSS Terms and Conditions

- (a) The Participant acknowledges that it is aware that similar agreements are being subscribed by other Participants. The Participant agrees and binds itself by his subscribing to the present Agreement and the present Terms and Conditions that those Terms and Conditions will have the effect of a contract between any one Participant and all the Participants to the like Agreements and as between the Central Bank and each and every one of the Participants.
- (b) The Participant expressly consents that the Procedures may be amended by the Central Bank from time to time in accordance with these Terms and Conditions and the amended Procedures will be binding on the Participant and between the Participants.

3.2 Amendment of Terms and Conditions

- (a) An amendment to these Terms and Conditions must be in writing, signed by an authorised representative of both parties; and
- (b) the Central Bank is hereby authorised by the Participant to advise all other Participants of the terms of these Terms and Conditions and of any amendments to these Terms and Conditions;

3.3 Procedures

The Central Bank may, at its sole discretion, amend the Procedures which shall be a confidential document, provided that:

- (a) the Participant is notified of any such amendment in advance of its taking effect with sufficient notice as to allow reasonable time for the amendment (if any is required) of the Participant's internal systems and procedures; and
- (b) the Central Bank makes a reasonable effort to consult with Participants in respect of any procedural change likely to impact on the Participant's systems and internal procedures.

3.4 Suspension of Procedures

- (a) The Central Bank may suspend the Procedures in whole or part with the approval (howsoever obtained) of the Participants in circumstances where continued operation of the Procedures would undermine the operation and stability of the system.
- (b) During a suspension of Procedures the Central Bank and Participants must attempt to continue operations, to the extent possible, in accordance with the Procedures.

- (c) During the suspension of Procedures operations will be conducted as determined by the Central Bank following reasonable consultation with the Participants.
- (d) The Central Bank will restore operation of the Procedures as soon as practicable under immediate advice to the Participants.

3.5 Dispute Resolution

- (a) Any dispute arising in connection with the Terms and Conditions which cannot be settled by negotiation between the parties will be referred to dispute resolution in accordance with this clause 3.5. The party considering a dispute has arisen must send a notice to the other party setting out a full description of the matters in dispute.
- (b) Pending the resolution of the dispute, the parties will continue to perform all their obligations under these Terms and Conditions.
- (c) The Chief Executive Officers of the parties must personally or through nominees attempt to resolve the dispute, on the basis that the parties wish to retain an ongoing relationship.
- (d) If the Chief Executive Officers are unable to resolve any dispute within 14 days of receipt of the notice or any longer time that they may agree then either party may give to the other notice that the dispute is not settled. Following issue of such notice the dispute shall be resolved by Arbitration. The Arbitration shall take place in Port Louis, Mauritius. The Arbitrator shall be chosen by mutual consent by the Chief Executive Officers of the Participants involved in the dispute. If within thirty (30) days, no agreement is reached as to the choice and appointment of an Arbitrator, a Judge in Chambers, on the application of the most diligent party, shall appoint the Arbitrator. The decision of the Judge in Chambers shall be final and binding. The appointment of the Arbitrator and proceedings of Arbitration shall be conducted in accordance with the Code of Civil Procedure in force in Mauritius. Each Participant shall bear the cost of arbitration in the proportion decided by the Arbitrator. The Arbitrator's award shall be final, conclusive and binding on the Parties and may be rendered executory in terms of the Laws of Mauritius to that effect. Third parties to the dispute and/or referral may be allowed or required to intervene in the proceedings, in which case any ensuing award shall be binding upon such intervening party.
- (e) Nothing in this clause 3.5 shall preclude either party from first seeking urgent interlocutory and substantive relief from the Court.

4. FEES

4.1 Fees Chargeable to Participant

- (a) The Participant acknowledges the Central Bank's right to set Fees so as to recover its costs in providing, managing and operating MACSS and administering the Account, and that the Fees chargeable to the Participant may be adjusted by the Central Bank from time to time;
- (b) The Central Bank agrees to apply the same fee structure to all Participants utilising the same services within MACSS;
- (c) The Central Bank agrees that charge-out of ongoing variable costs will be linked, where feasible, to system usage; and
- (d) The Participant acknowledges that the Central Bank may change any aspect of fees, following consultation with, and taking due account of the views of, the Participants.

5. DISCLAIMERS AND LIMITATION OF LIABILITY

5.1 Representations and Warranties

The Participant represents and warrants to the Central Bank and to all other Participants that:

- (a) it has made its own independent assessment and approval of the Terms and Conditions and Procedures as being appropriate for the exchange and settlement of Payment Instructions between Participants; and
- (b) it has not relied on any representation made by the Central Bank or any other Participant to induce it to become a Participant or participate in the exchange and settlement of Payment Instructions as provided for in the Terms and Conditions and Procedures.

5.2 Force Majeure

- (a) Neither party will be liable for any act, omission or failure to fulfil its obligations under these Terms and Conditions if and to the extent that such act, omission or failure arises from any cause reasonably beyond its control which prevents compliance with that party's obligations under these Terms and Conditions, (called a "Force Majeure Event").
- (b) An event is not a Force Majeure Event if:
 - (i) the effect of the event could have been avoided had a party performed its obligations under the Terms and Conditions and Procedures;

- (ii) the effect of that event could have been prevented or avoided by exercising a reasonable standard of care; or
 - (iii) it is an event for which the party concerned or any subcontractor of that party is directly responsible.
- (c) The party unable to fulfil its obligations due to a Force Majeure Event will immediately:
 - (i) notify the other party in writing of the Force Majeure Event which has resulted in its failure to fulfil its obligations, the extent to which the Force Majeure Event prevents compliance with the party's obligations, the reasons why, and the expected duration of the Force Majeure Event; and
 - (ii) use all reasonable endeavours to avoid or remove the cause of the Force Majeure Event and perform its obligations as soon as possible and in the meantime, to mitigate the effect of such Force Majeure Event.

5.3 Limit of Liability

The Central Bank will not be liable for any act or failure to act in the performance of its obligations under these Terms and Conditions and Procedures, nor for the consequences of such acts or omissions and will therefore not be liable to the Participant for any loss, loss of opportunity, profit, market, goodwill, interest, expense, costs, claims, demands or other direct or indirect damages suffered or incurred by the Participant, arising out of these Terms and Conditions and Procedures or the performance of them, unless such liability arises from the proven gross negligence, willful default, fraud or theft of the Central Bank or any of its officers or employees (in which case the Central Bank will be liable only for the amount of any funds lost from the Participant's Account as a direct result of such proven gross negligence, willful default, fraud or theft which is not reasonably able to be recovered by the Participant (taking reasonable steps to do so without delay) and provided that the immediate cause of any such loss from the Participant's Account is not due to any act or omission on the part of the Participant).

5.4 Consequential Losses

For the avoidance of doubt, it is expressly agreed that in no event will the Central Bank be liable to the Participant for any indirect, special, incidental or consequential loss or damages of any kind and however arising (including loss of revenues or profits, lost data, business interruptions, or loss arising from errors, or breaches of security, in the Participant's own systems) even if advised of the possibility of such.

6. PARTICIPANTS

6.1 Qualifications for Participants

Participation in MACSS will be restricted to institutions supervised by the Central Bank and licenced to undertake banking activities in Mauritius. The Central Bank will admit new Participants at its sole discretion, always providing that such new Participants be able and agree to comply with all the applicable requirements of the Terms and Conditions and the Procedures.

6.2 Participant Consultation

The Central Bank will consult with, and take into account the views of Participants:

- (a) on matters requiring consultation in terms of the Terms and Conditions and Procedures; and
- (b) from time to time and where practicable, on any issues of substance relating to MACSS.

6.3 Consultative Committees

- (a) The Central Bank may from time to time establish Committees to deal with issues arising from the operation of MACSS.
- (b) The Participant will be invited by the Central Bank to provide suitably qualified personnel to participate in the deliberations of such Committees.

7. MISCELLANEOUS

7.1 Assignment

Neither party may assign or transfer its rights or obligations under these Terms and Conditions and Procedures without the prior written consent of the other party.

7.2 Severability

If any provision of these Terms and Conditions is held to be invalid, illegal or unenforceable, such provision will be severed and the remainder of these Terms and Conditions will remain in full force and effect.

7.3 Waiver

No delay, neglect or forbearance by either party in enforcing against the other, any provision of these terms and conditions will be a waiver, or in any way prejudice any right of that party.

7.4 Notices

- (a) Notices are to be sent by facsimile, personal delivery, or courier to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for this purpose by the addressee to the other party.
- (b) No Notice is to be effective until received. However, any Notices will be deemed to be received:
 - (i) if delivered personally or by courier, when delivered at the recipient's address;
 - (ii) if sent by facsimile transmission, on the date that transmission is received by the recipient in legible form, it being agreed that the onus of proving receipt is on the sender; and will not be met only by a transmission report generated by the sender's facsimile machine which indicates the transmission was sent.
- (c) Any Notice received at a time that is after 5.00pm on a Business Day will be deemed to have been received at 9.00am on the next following day.

7.5 Initial Facsimile Numbers and Addresses

The initial facsimile number and address of each party is set out below:

- (a) **Bank of Mauritius**
 Sir William Newton Street
 PORT LOUIS

 Attention: First Deputy Governor
 Facsimile: 212 0313
 Telephone: 208 3962; and
- (b)

 Attention: _____
 Facsimile: _____
 Telephone: _____

These Terms and Conditions have been drawn up and executed in two originals, one for each party **AS WITNESS** the hands of the duly authorised representative of the parties on the date which appears first on page 1.

SIGNED for and on behalf of
BANK OF MAURITIUS

Signature : _____

Name : _____

Title : First Deputy Governor

Date : _____ [seal]

SIGNED for and on behalf of
[Participant]

Signature : _____

Name : _____

Title : _____

Date : _____ [seal]