

# **myAPS APPLICATION**

## End User License Agreement

This service is being provided to you, the Customer, by APS Bank plc, of APS Centre, Tower Street, Birkirkara BKR 4012, Malta , company registration number C 2192 (hereinafter “APS” or : “Us/We/Our” as the case may be). Thank you for selecting APS Mobile Banking.

In order to access and use this mobile application, kindly read the underlying Terms and Conditions of Use and the Data Protection Notice (hereinafter collectively referred to as “T&Cs”) in full and acknowledge that you have read and accepted the End User License Agreement (hereinafter collectively referred to as “EULA”) by pressing the “I Accept” button at the end.

## **TERMS AND CONDITIONS OF USE**

**By clicking "I Accept" when installing this mobile application, the Customer will agree to this EULA.**

The Customer and any Authorised Users, both terms as hereinafter defined, may view the most recent version of the T&Cs and EULA at any time via the website <https://www.apsbank.com.mt/>.

The EULA constitutes a binding agreement between the Customer, and APS concerning the use of this mobile application for purposes associated in general with banking and financial services (hereinafter the “Service”) and any and all software and technology (hereinafter the “Application”) made available by APS for the use of this Service by the Customer on the Customer’s Device (as hereinafter defined). In so doing APS will be: (i) verifying the Customer’s identity, email address and mobile number as part of the Self Registration process, in order to (ii) support the provision of Services to the Customer, or to the organization that the Customer is associated with.

### **1. Definitions**

For the purposes of this EULA the following definition and the definitions forming part of the underlying Terms and Conditions of Use apply.

“Authorised Users” shall refer to any person authorised to access this Application for the use of services offered in terms of the underlying Agreement between APS and the Customer, and shall include the Customer himself if the Customer is an individual.

## **2. General**

- 2.1. The EULA supplements and forms part of the terms agreed under the underlying Agreement between the Customer and APS, and nothing in this EULA shall be construed as detracting in any way from your obligations in terms of the relevant underlying Agreement.
- 2.2. APS hereby grants a revocable, non-exclusive, non-transferable right to the Customer to access and use this Application on a single (1) mobile device owned and controlled by you (the “Device”), subject to this EULA. This right of use will start when you have downloaded this Application and use it for the first time and will continue until the use of the Service has ended in terms of the applicable T&Cs.
- 2.3. The Customer shall be responsible for any violations of this EULA by any Authorised User who makes use of this Application on the Device.
- 2.4. The Customer agrees to bring this EULA to the attention of any other Authorised Users that may use this Application via the Device.

## **3. Termination**

- 3.1. The Termination Clause forming part of the underlying Terms and Conditions that can be found on the Bank’s website <https://www.apsbank.com.mt/omni-channel-terms-and-conditions> shall apply.

## **4. Declaration of Sole Responsibility**

APS alone, to the exclusion of all other persons (including but not limited to the internet service and/or mobile network provider or any other intermediary making this Application available for download) is responsible for this Application, and no other person with the exception of APS is under any responsibility or obligation to the Customer in relation to this Application, nor will any such person provide maintenance and support services for this Application unless this is duly authorised by and at APS’s sole discretion.

## **5. Data charges**

APS is not responsible for any charges including but not limited to roaming charges from your mobile service or internet service provider which may apply in conjunction with the Service provided under this Application.

## **6. No Warranties**

- 6.1. This Application is provided on an “as is” and “as available” basis, with no warranties or guarantees of any kind including that the Application is free from defects or viruses or that access to this Application will be uninterrupted or without delays or failures.

6.2. Your use of this Application and any other material downloaded or made available through this Application or any other application on the Device or on any other device is at the Customer's own discretion and risk. The Customer is responsible for adequate protection and back up of data and/or equipment and for undertaking reasonable and appropriate precautions to scan for computer viruses or other destructive properties.

6.3. APS is not responsible for any third-party software that may be used in connection with this Application.

## **7. Changes to underlying T&Cs and EULA**

7.1. APS may change any part of this EULA and the underlying T&Cs at any time, provided that APS shall provide the Customer with a notice period of 60 days, sufficient to allow the Customer to withdraw from the Service before the change takes effect.

7.2. Such withdrawal shall be without charge and shall be effected by deleting this Application, provided that any terms and conditions surviving the termination of the current version of the underlying T&Cs and EULA shall continue to apply even after such withdrawal.

7.3. Should you continue to use this Application after the relevant notice period ends, it will be assumed that you have accepted the changes and the said changes will take effect automatically.

## **8. Permitted Use**

8.1. This Application is to be used solely for the purpose of the Service and shall not be used by anyone for any other purpose that goes beyond this stated scope, and the restricted activities described under this EULA.

**8.2. In particular this Application shall not be used on any device or operating system that has been modified in such a way as to eliminate software restrictions imposed by the mobile or device service provider, or the operating system or mobile manufacturer without their approval, or on any device that has been modified as a result of similar methods, acts or procedures carried out on the said device more commonly known as "jail-breaking" or "rooting". If APS continues to make this Application available to you even notwithstanding violation of the condition under this clause 8.2, this decision shall not constitute a waiver of APS rights or remedies, nor of your obligations, under this or any other clause.**

8.3. The Customer shall not use this Application for any commercial enterprise or profit-generating activities or related purposes for which this Application was not designed, nor shall you make this Application available for use on more than one mobile or other device at a time or on any other mobile device other than the present Device in any manner, including but not limited to reproducing this Application or making the Application available over a digital network.

- 8.4. The Customer may not use this Application for any purpose which is unlawful, abusive or obscene.
- 8.5. The Customer agrees to install any security updates and/or application patches for this Application and the Device as they become available.
- 8.6. The Customer shall be responsible for all claims, damages and costs arising from any breach of the underlying T&Cs and this EULA.
- 8.7. The Customer shall be responsible for all claims, damages and costs arising from APS's reliance on information that the Customer or any Authorised User has provided.
- 8.8. The Service and related technical information, documents and materials is subject to EU and US export control and trade sanctions laws and regulations, including but not limited to the EU dual-use regulations, EU financial sanctions, the US Export Administration Regulations and the US Office of Foreign Assets Control trade sanctions regulations, in effect from time to time ("Trade Controls"). Customer acknowledges the existence of such laws and limitations and agrees to (i) comply strictly with the legal requirements established under the Trade Controls, (ii) cooperate with APS in any official or unofficial audit, inspection or investigation that relates to the Trade Controls, and (iii) not export, re-export, resell, distribute, use or otherwise transfer, directly or indirectly, the Service or any related technical information, documents or materials, or any related product thereof to any destination, company or person restricted or prohibited by the Trade Controls, unless authorized or permitted under applicable Trade Controls and unless Customer has obtained prior written authorization from APS and the applicable governmental organization. Customer's failure to comply with Trade Controls shall constitute a material breach of this Agreement.
- 8.9. Customer, whether by act or omission, shall not cause APS, in APS's reasonable judgment, to be in breach or threatened breach of this Agreement, any Trade Controls or any other applicable laws or regulations and Customer shall defend, indemnify and hold harmless APS from any claim, damages, liability, costs, fees and expenses, incurred by or imposed upon APS as a result of Customer's failure to comply with this Agreement, the Trade Controls or any other applicable laws or regulations.
- 8.10. Customer expressly agrees and acknowledges that APS's ability to perform under this Agreement is subject to Customer's compliance with applicable laws, rules and regulations. Customer agrees that any refusal or failure by APS to perform its obligation hereunder on account of APS's adherence to Trade Controls or compliance with laws will not constitute a breach of any obligation under this Agreement and Customer hereby waives any and all claims against APS for any legal recourse, including, but not limited to, injunctive or declarative relief, loss, cost or expense, including consequential damages, that Customer may incur or be subject to by virtue of such refusal or failure to perform, including suspension or cancellation of a confirmed order.

## **9. Links to Third Party Sites or Content**

APS does not endorse and is not responsible for any websites or other online material linked through this Application and APS recommends that users of this Application view any and all linked website terms, privacy and cookie policy pages to understand how use of that website may affect them. APS is furthermore not responsible for the accuracy, timeliness or the continued availability or the existence of content, hyperlinks, or third party websites or pages linked to this Application.

## **10. Intellectual Property Rights**

- 10.1. The Customer acknowledges and agrees that all rights, title and interest in and to the downloaded software to be used for access to the Service provided under this Application, including this Application itself, and the computer programs contained therein in machine readable object code form as well as any accompanying user documentation along with all subsequent copies, updates or versions thereof which are made available to you (if any), regardless of the media or form in which they may exist shall continue to vest in APS or any third party provider or licensor of the software underlying this Application or the Application itself ("Licensor") as the case may be.
- 10.2. Nothing in this agreement shall be construed as a transfer or license over any vested, contingent and future intellectual property rights belonging to APS, or any rights which have been lawfully licenced to APS by any Licensor, including but not limited to patents, utility models, rights to inventions, mathematical methods, mathematical formulas, mathematical algorithms, copyright and neighbouring and related rights, aesthetic creations, moral rights, *sui generis* rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, design rights (whether registered or unregistered), rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world (hereinafter "IP Rights").
- 10.3. Any claims from Authorised Users or third parties relating to this Application or its possession or use, including alleged breaches of third party IP Rights, product liability claims and compliance with legal or regulatory requirements and consumer protection claims, should be directed to APS.
- 10.4. The Customer shall not, in particular, copy, modify, alter or adapt (which includes enhancement, translation and the creation of derivative works), tamper, decompile or reverse engineer any part of this Application or all of it, nor may you in any way attempt to access or derive any part of the software code underlying this Application or decrypt the said software for any purpose.

## **11. Complaints**

All notices, questions or complaints must be addressed to and sent in writing to APS.

## **12. Special Provisions Concerning the Rights and Obligations under this EULA**

- 12.1. If for any reason a court of competent jurisdiction finds any provision or portion of this EULA to be unenforceable, the remainder of this EULA will continue in full force and effect.
- 12.2. If any part of this EULA becomes invalid, illegal or unenforceable for any reason at all, this will not affect the validity of the remaining provisions of this EULA.
- 12.3. APS reserves the right, at its complete discretion, to change, modify, add and/or remove portions of the Data Protection Notice (as well as APS' full privacy policy and related notices) at any time. If the Customer is an existing client with whom APS has a contractual relationship the Customer shall be informed by APS of any changes made to such notices/policies – including APS's Cookie Policy as may be applicable – as well as other Terms and Conditions of Use relevant to the Application. APS shall also archive and store previous versions of such documents for the Customer's review.
- 12.4. Nothing in this EULA will reduce the Customer's statutory rights.

## **13. Governing Law and Jurisdiction**

Saving, where applicable, the provisions of Article 6(2) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), or any other legislative measure which may replace the said Regulation from time to time, this EULA is governed in all respects by the same laws that govern the underlying T&Cs

- 13.1. If the Customer qualifies as a consumer domiciled in a European Union Member State, jurisdiction with regard to any breach of the underlying T&Cs and this EULA shall be determined in accordance with provisions of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Recast), or any other legislative measure which may replace the said Regulation from time to time.

If, however, the Customer does not qualify as a consumer domiciled in a European Union Member State, all disputes or claims arising out of or relating to this EULA shall be subject to the same jurisdiction provided for in the underlying T&Cs.

## **Data Protection Notice**

- i. APS undertakes to process any personal data submitted to it pursuant to this EULA in accordance with the provisions of the EU General Data Protection Regulation (GDPR), the Maltese Data Protection Act (Chapter 586 of the Laws of Malta) including any applicable subsidiary legislation and also as indicated in this EULA.
- ii. In view of the obligations APS has under the legislation mentioned in Clause i above, by clicking 'I Accept' below the Customer (in those cases where the Customer may be deemed to be a 'data subject'), acknowledges that:
  - APS needs the Customer's personal data (the information the Customer has provided to APS that identifies the Customer as an individual) to provide the Customer with the requested Service and use of this Application. Therefore, in this case, the legal basis used by APS for processing the said personal data is necessity for the performance of a contract with the Customer (this EULA and/or the Underlying Agreement).
  - You, as a 'data subject' as understood under applicable data protection laws, have a number of rights that are applicable **under certain conditions and in certain circumstances**, including your:
    - **Right of access** to your personal data processed by APS;
    - **Right to ask APS to rectify** inaccurate personal data concerning you;
    - Right to have APS erase your personal data ('**right to be forgotten**');
    - **Right to ask APS to restrict** (that is, store but not further process) your personal data;
    - Right to ask APS to provide your personal data to you in a structured, commonly used, machine-readable format, or (where technically feasible) to have it 'ported' directly to another data controller ('**right to data portability**')
    - **Right to object** to APS processing your personal data where there is no consent. For the avoidance of all doubt, since for the purpose of this Agreement, no consent to process personal data is being relied on, **the right to withdraw consent** does not apply;
    - **Right to lodge a complaint** with the relevant supervisory authority.
- iii. This Data Protection Notice represents a digital, condensed explanation of how APS uses your personal information. For more information including more detail on data subject rights, retention periods and the security measures we have in place to protect your personal data, the Customer shall read APS' Master Privacy Policy, available at <https://www.apsbank.com.mt/file.aspx?f=5042> . APS shall provide to the Customer a paper copy of the Master Privacy Policy upon demand.

For more information please contact APS' data protection officer by sending an email to [data protection officer@apsbank.com.mt](mailto:protectionofficer@apsbank.com.mt) or calling on 25603253/2.