



## **AMT FUTURES LIMITED**

### **PROFESSIONAL CLIENT AGREEMENT**

AMT FUTURES Limited's registered office:

Level 35, 110 Bishopsgate, London EC2N 4AY

Registered in England No. 696733

AMT Futures Limited (“**AMTF**” or the "**Firm**") is a wholly owned subsidiary of Amalgamated Metal Corporation PLC. AMTF is authorised and regulated by the Financial Conduct Authority ("**FCA**"), a financial regulator responsible for the regulation of firms in the UK providing financial services to consumers. This document reflects the requirements of the FCA Rules as they apply to AMTF.

This client agreement, together with the Annex and any Schedule(s), and accompanying documents (including the Terms of Business Letter and the Account Opening Form, as amended from time to time) (together the "**Agreement**") sets out the terms of the contract between you (the "**Client**") and the Firm. It is, therefore, very much in your interests to read it carefully. Please let us know as soon as possible if there is anything which you do not understand. This Agreement is modelled on an industry standard document produced by FIA. We are members of this Trade Association.

## PROFESSIONAL CLIENT AGREEMENT

*This Client Agreement, together with the Annex and any Schedule(s), and accompanying documents (including the cover letter and any other documentation referred to in the Annex and any Schedule, as amended from time to time) (this "Agreement") set out the terms of the contract between the Firm and the Client.*

### GENERAL TERMS

#### 1. RELATIONSHIP BETWEEN THE FIRM AND THE CLIENT

- 1.1 **Information about the Firm:** The Firm is authorised and regulated by the Financial Conduct Authority ("FCA"). The Firm's registered office/principal place of business is Level 35, 110 Bishopsgate, London, EC2N 4AY. The FCA's registered office is 12 Endeavour Square, London E20 1JN.
- 1.2 **Communication with the Firm:** The language of communication between the Firm and the Client shall be English, and the Client will receive documents and other information from the Firm in English. The Firm's website at [amtfutures.co.uk](http://amtfutures.co.uk) contains further details about the Firm and its services and other information relevant to this Agreement. Please see clause 29.2 (*Communications/Notices*) below for further information on the permitted form of communications.
- 1.3 **Categorisation:** Unless otherwise agreed, the Firm will treat the Client as a professional client for the purposes of the FCA Rules. The Client may request a different client categorisation. If the Client requests categorisation as an eligible counterparty and the Firm agrees to that categorisation, the Firm would no longer be required by regulation to provide certain protections granted to professional clients. The relevant regulatory protections for professional clients which would not apply to eligible counterparties include obligations:
- (a) to act in accordance with the Client's best interests;
  - (b) that restrict the payment or receipt by the Firm of inducements;
  - (c) to achieve best execution in respect of the Client's orders;
  - (d) to execute orders subject to other constraints as regards timing and handling relative to other clients' orders; and
  - (e) to ensure that information the Firm provides is fair, clear and not misleading.

If the Client requests to be categorised as a retail client, thereby requiring a higher level of regulatory protection, the Firm may not be able to provide its Services (as defined below) to the Client. The Client must inform the Firm about any change that could affect the Client's categorisation as a professional client.

1.4 **Commencement and scope:** This Agreement sets out the basis on which the Firm may provide Services to the Client. This Agreement supersedes and replaces any previous agreement between the Client and the Firm for the provision of Services. This Agreement governs each order made by the Firm on the Client's behalf and each Transaction entered into between the Firm and the Client on or after the execution of this Agreement.

1.5 **Subject to Applicable Regulations:** This Agreement, the provision of Services by the Firm and/or any Associate and all Transactions are subject to Applicable Regulations, which means that:

- (a) the Firm and any Associate may take or not take any action as they consider appropriate to ensure compliance with Applicable Regulations and any such action or inaction is binding on the Client; and
- (b) any provision of this Agreement and/or obligation of the Firm to provide Services which is inconsistent with Applicable Regulations shall not apply to the extent of the inconsistency.

The Firm and any Associate, and any of their directors, officers, employees or agents, will not be liable for any action that the Firm or any Associate takes or does not take for the purpose of compliance with Applicable Regulations.

1.6 **Infrastructure action:** If:

- (a) an Infrastructure gives a direction (including to a Clearing Member or other intermediary) which affects the Client's orders or Transactions or the Services; or
- (b) an Infrastructure, Clearing Member or other intermediary relevant to the Client's orders or Transactions or the Services becomes insolvent or is suspended from operating,

then the Firm may take any action which it, in its reasonable discretion, considers appropriate to correspond with the direction or event or to mitigate any Loss or other impact to the Firm and/or the Client incurred or potential Loss or other impact which may be incurred as a result of the action or event. Any such action taken by the Firm is binding on the Client (including, in relation to any default or insolvency of the Clearing Member, electing to close out, transfer or take advantage of any available arrangements to continue any Agreed CCP Transactions making use of alternative clearing arrangements).

## **SERVICES SPECIFIC TERMS**

### **2. THE SERVICES**

2.1 **General:** The Firm and any of its Associates may, on the Client's instruction:

- (a) execute orders on the Client's behalf on trading venues or off-venue;
- (b) transmit orders on the Client's behalf to an executing broker;
- (c) clear Transactions at Agreed CCPs through a relationship with a Clearing Member; and/or
- (d) provide any other service agreed between the Firm and the Client,

in each case, subject to the terms of this Agreement. The services described above are referred to collectively as the "**Services**".

- 2.2 **Electronic means:** The Client understands and agrees that the Firm will communicate to the Client by electronic means only. The Firm may provide the Services and information ancillary to the Services either directly or through a third-party technology or market data provider. The Client agrees to be bound by any separate electronic trading or services terms, rules, conventions, user guides or instructions which relate to the provision of the Services by electronic means and of any trading venue, including any disclosures, disclaimers and other policies displayed on any Electronic Service, which the Client may click-through or which the Client may have separately agreed. Where the Firm provides the Client with direct electronic access to a trading venue, the applicable terms will be set out in a separate written agreement between the Firm and the Client.
- 2.3 **No advice:** Unless the Firm and the Client agree otherwise in writing, the Firm does not advise on the merits of particular orders or Transactions in respect of which it provides Services, or their taxation consequences. From time to time, the Firm may provide information which is ancillary to the Client's relationship with the Firm (including trading recommendations or market commentary); the information is provided solely to enable the Client to make the Client's own investment decisions and does not amount to advice. The Firm makes no representation as to the accuracy or completeness of the information and shall not be liable in any way for that information. The information may be inconsistent with the proprietary investments or recommendations of the Firm or its Associates. The Client should refer to the Firm's conflicts of interest policy for further information on how the Firm manages conflicts which would affect the impartiality of information the Firm provides to the Client.
- 2.4 **Own judgement and suitability:** Upon entering into this Agreement and each time the Client instructs the Firm to execute or transmit any order or enter into any Transaction, the Client represents that: (i) it has been solely responsible for making its own independent appraisal and investigations into the risks of the order or Transaction; (ii) it has sufficient knowledge, market sophistication, professional advice and experience to make its own evaluation of the merits and risks of the order or Transaction; and (iii) it has not relied upon or been induced to enter into this Agreement by any statements, representations or undertakings from the Firm that are not set out in this Agreement. The Firm gives the Client

no warranty as to the suitability of the products executed, transmitted or cleared under this Agreement and the Firm assumes no fiduciary duty to the Client with respect to the suitability of those products.

2.5 **Trading limits, position limits and position management controls:** Position limits and position management controls may be imposed by Applicable Regulations. In relation to the Services, the Firm may also set out and communicate to the Client appropriate trading and position limits which are binding on the Client. In order to ensure compliance with: (i) Applicable Regulations; and/or (ii) trading or position limits set by the Firm, the Firm may require the Client to limit, terminate or reduce the positions which the Client may have at any time and the Firm may decline to execute an order or take any other action the Firm deems appropriate. The Firm, its Associates and their respective directors, officers, employees or agents will not be liable to the Client for any breach of limits applicable to the Client.

2.6 **Confirmations:**

(a) Unless: (i) the Firm enters into a separate agreement with the Client regarding the content and timing of confirmations; or (ii) a confirmation has been provided to the Client by another person, the Firm will send the Client confirmations (which may be communicated together in a report or statement of trades) the next trading day for any orders that the Firm or its agent has executed on the Client's behalf on that trading day. The confirmation may be sent by email or another electronic communication method used by the Parties. The Firm may or may not include data on existing positions.

(b) It is the Client's responsibility to inform the Firm if it does not receive a confirmation or if any confirmations are incorrect. Confirmations shall, in the absence of manifest error, be conclusive and binding on the Client, unless the Firm receives an objection in writing from the Client within one Business Day of despatch to the Client or the Client notifies the Firm of an error in the confirmation within the same period. This is a confirmation-only service and is not an agreement by the Firm to provide transaction reporting for the purposes of Applicable Regulations.

2.7 **Authority:** The Firm and its Associates are entitled to rely upon communications and other actions (including instructions and the exercise of discretions) from any authorised officer, employee or agent of the Client and any communication or action which the Firm or its Associates believe in good faith to have originated from the Client or its authorised agent. The communication or action will be binding on the Client.

2.8 **Responsibility for instructions:** If there is an ambiguity in an instruction given by the Client or where an instruction is in conflict with another instruction, the Firm and/or its Associates will be entitled to act in good faith on what it reasonably believes the instruction

to be and the action or inaction of the Firm and/or its Associates will be binding on the Client.

### 3. EXECUTION OF ORDERS

- 3.1 ***Right not to accept orders for execution:*** The Firm may accept instructions to execute or transmit an order. If the Firm declines to execute or transmit an order, the Firm will notify the Client as soon as reasonably practicable but the Firm is not obliged to give a reason.
- 3.2 ***Control of orders prior to execution:*** The Firm may set limits and/or conditions to control the Client's ability to instruct the execution of and/or transmission of orders. Those limits and/or parameters may be amended, removed or added to by the Firm at any time.
- 3.3 ***Cancellation/withdrawal of instructions for execution:*** The Client may only cancel its instructions for execution if the Firm has not acted upon those instructions. Instructions may only be withdrawn or amended by the Client with the Firm's consent.
- 3.4 ***Execution of orders on a trading venue:*** If the Firm accepts an instruction in respect of an order for execution, the Firm will use commercially reasonable endeavours to execute or arrange for the execution of any order promptly, but in accepting the Client's orders the Firm does not represent or warrant that it will be possible for it or an intermediate broker to execute such an order or that execution will be possible according to the Client's instructions. The Firm or an intermediate broker may execute an order on the Client's behalf outside a trading venue (including executing orders outside an EU Regulated Venue). When executing orders on a trading venue, the Firm or an intermediate broker will execute an order only when the relevant trading venue is open for dealings and instructions received outside trading hours will be processed when possible (in accordance with the Rules of the relevant trading venue).
- 3.5 ***The Firm's order execution policy:*** The Client confirms that it has read and agrees to the Firm's order execution policy. That policy will apply unless the Client gives specific instructions that are inconsistent with the order execution policy. The Firm will notify the Client of any material changes to the Firm's order execution policy, but it is the Client's responsibility to check for any other changes to the Firm's order execution policy as published from time to time on the Firm's website. The Firm will consider the continued placement of orders by the Client to constitute the Client's continued consent to the Firm's order execution policy that is in effect from time to time.
- 3.6 ***Crossing of orders for execution:*** The Firm may arrange for an order to be executed, either in whole or in part, by selling an investment to the Client from another client, or a client of an Associate of the Firm, or vice versa. The Firm will not give the Client prior notice if the Firm arranges for an order to be executed in this manner.

- 3.7 **Aggregation of orders for execution:** The Firm may combine the Client's order for execution with the Firm's own orders and orders of other clients for execution. By combining the Client's orders for execution with those of other clients, the Firm must reasonably believe that this is in the overall best interests of the Firm's clients. However, aggregation may result in the Client obtaining a less favourable price in relation to a particular order. The Client should refer to the Firm's order execution policy as published from time to time on the Firm's website for more information.
- 3.8 **Intermediate brokers and other agents:** If the Firm is not a member of a particular trading venue, the Firm may choose to transmit orders for execution on the Client's behalf with or through an intermediate broker, including a Clearing Member, and the Firm may use other parties or agents in the course of providing related Services. Any such intermediate broker, party or agent may or may not be an Affiliate of the Firm, and may not be in the UK. The Firm, its Associates and their respective directors, officers, employees or agents will not be liable to the Client for any act or omission of an intermediate broker, party or agent.
- 3.9 **Pre-execution communications:** The Client acknowledges that the Firm, its Associates or any intermediate broker, including a Clearing Member, may enter into pre-execution communications on the Client's behalf while executing an order for the Client.

#### 4. ELECTRONIC TRADING TERMS

- 4.1 **Scope:** These clauses apply to the Client's use of any Electronic Services to the extent they are made available to the Client by the Firm.
- 4.2 **Access:** Once the Client has gone through the security procedures associated with an Electronic Service provided by the Firm, the Client will get access to such service, unless agreed otherwise or stated on the Firm's website. The Firm's Electronic Services will normally be available during market opening hours. The Firm may change our security procedures at any time and the Firm will tell the Client of any new procedures that apply to the Client once it is reasonably practicable to do so.
- 4.3 **Direct electronic access:** Where the Firm agrees to provide the Client with direct electronic access to an Infrastructure in the EU, the terms upon which the Firm agrees to make that service available will be set out in a separate written agreement between the Client and the Firm.
- 4.4 **Restrictions on services provided:** There may be restrictions on the number of Transactions that the Client can enter into on any one day and also in terms of the total value of those Transactions when using an Electronic Service. The Client must refer to the Firm for details of the limits imposed upon Transactions carried out through its Electronic Services from time to time. The Client acknowledges that some Infrastructures place restrictions on the types of orders that can be directly transmitted to their electronic trading systems and the transmission of such orders to the Infrastructure is dependent upon the accurate and timely

receipt of prices or quotes from the relevant Infrastructure or market data provider. The Client acknowledges that an Infrastructure may cancel such an order when upgrading its systems, trading screens may drop the record of such an order, and the Client enter such orders at the Client's own risk.

- 4.5 **Right Of Access:** In respect of any Infrastructure to which the Firm allows the Client to receive information or data using Electronic Services, the Firm may at any time or times, on reasonable notice (which, in certain circumstances, may be immediate) enter (or instruct its or the Infrastructure's subcontractors to enter) the Client's (or, in a co-hosting situation, third parties') premises and/or servers and inspect the Client's (or, in a co-hosting situation, third parties') system to ensure that it complies with the requirements notified by the Firm to the Client from time to time and that the Client is using Electronic Services in accordance with this Agreement and any requirements of any relevant Infrastructure or Applicable Regulations.
- 4.6 **Access requirements:** The Client will be responsible for providing the system to enable it to use an Electronic Service (the "**System**").
- 4.7 **Virus detection:** The Client will be responsible for the installation and proper use of any virus detection/scanning program the Firm requires from time to time.
- 4.8 **Maintaining standards:** When using an Electronic Service the Client must:
- (a) ensure that the System is maintained in good order and is suitable for use with such Electronic Service;
  - (b) run such tests and provide such information to the Firm as the Firm shall reasonably consider necessary to establish that the System satisfies the requirements notified by the Firm to the Client from time to time;
  - (c) carry out virus checks on a regular basis;
  - (d) inform the Firm immediately of any unauthorised access to an Electronic Service or any unauthorised Transaction or instruction which the Client knows of or suspects and, if within the Client's control, cause such unauthorised use to cease; and
  - (e) not at any time leave the terminal from which the Client has accessed such Electronic Service or let anyone else use the terminal until the Client has logged off such Electronic Service.
- 4.9 **System defects:** In the event the Client becomes aware of a material defect, malfunction or virus in the System or in an Electronic Service, the Client will immediately notify the Firm of such defect, malfunction or virus and cease all use of such Electronic Service until the Client has received permission from the Firm to resume use.



- 4.10 **Intellectual Property:** All rights in patents, copyrights, design rights, trade marks and any other intellectual property rights (whether registered or unregistered) relating to the Electronic Services remain vested in the Firm or its licensors. The Client will not copy, interfere with, tamper with, alter, amend or modify the Electronic Services or any part or parts thereof unless expressly permitted by the Firm in writing, reverse compile or disassemble the Electronic Services, nor purport to do any of the same or permit any of the same to be done, except in so far as such acts are expressly permitted by law. Any copies of the Electronic Services made in accordance with law are subject to the terms and conditions of this Agreement. The Client shall ensure that all the licensors' trademarks and copyright and restricted rights notices are reproduced on these copies. The Client shall maintain an up-to-date written record of the number of copies of the Electronic Services made by it. If the Firm so requests, the Client shall as soon as reasonably practical, provide to the Firm a statement of the number and whereabouts of copies of the Electronic Services. In the event that the Client receives any data, information or software via an Electronic Service other than that which the Client is entitled to receive pursuant to this Agreement, the Client will immediately notify the Firm and will not use, in any way whatsoever, such data, information or software.
- 4.11 **Liability and indemnity:** Without prejudice to any other terms of this Agreement relating to the limitation of liability and provision of indemnities, clauses 4.12 (*System errors*) to 4.17 (*Infrastructure*) shall apply to the Firm's Electronic Services.
- 4.12 **System errors:** The Firm shall have no liability to the Client for damage which the Client may suffer as a result of transmission errors, technical faults, malfunctions, illegal intervention in network equipment, network overloads, malicious blocking of access by third parties, internet malfunctions, interruptions or other deficiencies on the part of internet service providers. The Client will be responsible for all orders entered on the Client's behalf via the Electronic Services and the Client will be fully liable to the Firm for the settlement of any Transaction arising from them. The Client acknowledges that access to Electronic Services may be limited or unavailable due to such system errors, and that the Firm reserves the right upon notice to suspend access to Electronic Services for this reason.
- 4.13 **Delays:** Neither the Firm nor any third party software provider accepts any liability in respect of any delays, inaccuracies, errors or omissions in any data provided to the Client in connection with an Electronic Service. For the avoidance of doubt, Electronic Services may not be provided on a continuous basis and neither the Firm nor any third party provider accepts any liability in this respect.
- 4.14 **Viruses from an Electronic Service:** The Firm shall have no liability to the Client (whether in contract or in tort, including negligence) in the event that any viruses, worms, software bombs or similar items are introduced into the System via an Electronic Service or any software provided by the Firm to the Client in order to enable the Client to use the

Electronic Service, provided that the Firm has taken reasonable steps to prevent any such introduction.

- 4.15 ***Viruses from your System:*** The Client will ensure that no computer viruses, worms, software bombs or similar items are introduced into the Firm's computer system or network and the Client will indemnify the Firm on demand for any loss that the Firm suffers arising as a result of any such introduction.
- 4.16 ***Unauthorised use:*** The Firm shall not be liable for any loss, liability or cost whatsoever arising from any unauthorised use of the Electronic Service. The Client shall on demand indemnify, protect and hold the Firm harmless from and against all losses, liabilities, judgements, suits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using an Electronic Service by using the Client's designated passwords, whether or not the Client authorised such use.
- 4.17 ***Infrastructures:*** The Firm shall not be liable for any act taken by or on the instruction of a Infrastructure or regulatory body.
- 4.18 ***Suspension or permanent withdrawal with notice:*** The Firm may permanently withdraw an Electronic Service, by giving the Client ten (10) days' written notice.
- 4.19 ***Immediate suspension or permanent withdrawal:*** The Firm has the right, unilaterally and with immediate effect, to suspend or withdraw permanently the Client's ability to use any Electronic Service, or any part thereof, without notice, where the Firm considers it necessary or advisable to do so, in its discretion and in good faith, for example due to the Client's non-compliance with the Applicable Regulations, breach of any provisions of this Agreement, on the occurrence of an Event of Default, network problems, failure of power supply, for maintenance, or to protect the Client when there has been a breach of security or for other reasons (including reasons not related to electronic trading and/or use of the Electronic Services). In addition, the use of an Electronic Service may be terminated automatically upon the termination (for whatever reason) of: (i) any licence granted to the Firm which relates to the Electronic Service; or (ii) this Agreement. The use of an Electronic Service may be terminated immediately if an Electronic Service is withdrawn by any Infrastructure or the Firm is required to withdraw the facility to comply with Applicable Regulations.
- 4.20 ***Effects of termination:*** In the event of a termination of the use of an Electronic Service for any reason, upon request by the Firm, the Client shall, at the Firm's option, return to the Firm or destroy all hardware, software and documentation the Firm has provided to the Client in connection with such Electronic Service and any copies thereof.

## 5. CLEARING OF TRANSACTIONS

### 5.1 *Agreed CCP Transactions:*

- (a) Where the Firm accesses an Agreed CCP indirectly through a Clearing Member, a Transaction will arise between the Firm and the Client (any such Transaction being an "**Agreed CCP Transaction**") immediately when an equivalent transaction (a "**CM/Firm Transaction**") arises between the Firm and the Clearing Member.
- (b) The terms of an Agreed CCP Transaction referred to in paragraph (a) above will be identical to those of the related CM/Firm Transaction, except that:
  - (i) each Agreed CCP Transaction will be governed by, and be subject to, the terms of this Agreement; and
  - (ii) under each Agreed CCP Transaction, the Firm will take the opposite position to the position it has under the related CM/Firm Transaction.
- (c) The Transaction referred to in paragraph (a) above will replace any related, pre-existing Transaction between the Firm and the Client.

5.2 ***Rejected transactions:*** If an Agreed CCP or Clearing Member does not accept a transaction for clearing, the Firm will notify the Client promptly and the Firm will have no obligation under this Agreement or otherwise (and, in particular, no obligation in respect of any Loss which may arise as a result of any interval before notification of non-acceptance is made) to the Client in respect of the transaction. The Firm may take any step to terminate such a transaction which is still subsisting after the moment of non-acceptance.

5.3 ***Relationship with Infrastructures:*** The Firm may notify any Infrastructure of the position limits or position management controls applicable to the Client's trading.

5.4 ***Right not to accept transactions:*** The Firm may choose not to accept any transaction for clearing. If the Firm declines to accept any transaction for clearing, the Firm will promptly notify the Client but the Firm is not obliged to give a reason.

5.5 ***Capacity:*** Unless otherwise agreed in writing:

- (a) in entering into any Transaction, the Firm acts as principal and not as agent on the Client's behalf; and
- (b) the Client acts as principal and not as agent (or trustee) on behalf of someone else.

## 6. GIVEN-UP AND TRANSFERRED TRANSACTIONS

- 6.1 ***Transaction given up to the Firm for clearing:*** This clause applies where there is a give-up agreement between the Client, the Firm and an executing broker, and the reference number or mnemonic applicable to the Client is quoted by the executing broker when a transaction is submitted for clearing. In acting as the Client's clearing broker, a transaction given-up to the Firm will be eligible for clearing by the Firm only if the Firm has agreed with the Client to clear transactions of such a description and the acceptance thereof would not breach any position limits or any other limits applicable to the Client or the Firm. Notwithstanding any provision contained in the relevant give-up agreement, if the Firm accepts a transaction for clearing, the transaction will be binding and conclusive on the Client whether or not the details of the transaction have previously been confirmed to the Firm by the Client. The Firm will not be liable to the Client for any Losses arising from any discrepancy between details in the Client's instructions to any executing broker and details of transactions submitted to the Firm for clearing.
- 6.2 ***Fees paid to executing broker:*** If a give-up agreement between the Client, the Firm and an executing broker provides that the executing broker will invoice the Firm directly for its commissions in relation to the execution of an order, then the Firm will be entitled to rely on the details specified in any invoice presented to the Firm by the executing broker. The Firm will have no liability to the Client for any Losses incurred or suffered by the Client as a result of an incorrect amount being specified in an invoice.
- 6.3 ***Transferred transactions:*** If a transaction for the account of the Client is entered into with a Clearing Member which has previously been cleared by another Clearing Member, then a Transaction will arise between the Firm and the Client when the related CM/Firm Transaction arises.
- 6.4 ***Rejected give-up transactions:*** If, for any reason, an Agreed CCP or Clearing Member does not accept a transaction entered into on a trading venue and given up to the Firm for clearing or any transaction entered into bilaterally and submitted to the Agreed CCP or Clearing Member for clearing, then the Firm will promptly notify the Client and the executing broker, and the Firm will have no obligation or liability to the Client and, in particular, no obligation to give reasons to the Client in relation to the non-acceptance of the transaction.

## 7. SETTLEMENT OF CLEARED TRANSACTIONS

- 7.1 ***Performance and settlement:*** Where due in accordance with the terms of any Transaction, and the Client has not agreed with the Firm to roll the Transaction, the Client will make available to the Firm all requisite securities, commodities, money, documents or other property deliverable by the Client under a Transaction so as to enable the Firm to perform its obligations under the relevant Firm/CCP Transaction or CM/Firm Transaction in a timely manner and, in any event, by any deadline notified by the Firm.

- 7.2 **Physical settlement terms not agreed:** If the Firm and the Client have not agreed to specific physical settlement terms by the second Business Day prior to the earlier of: (i) the date on which the property is deliverable in accordance with the applicable settlement cycle; or (ii) the relevant time at which the relevant CCP is entitled to take action under the Rules, then the Firm may close out the Transaction, roll the Transaction or take such other action as it considers appropriate (including, where the Client is due to deliver to the Firm, to proceed to settlement in accordance with clause 7.3 (*Buy-in*)). The Client acknowledges that the Firm may require a Transaction to be rolled and agrees that the Firm may do so by giving notice to the Client on or prior to the relevant settlement date.
- 7.3 **Buy-in:** Unless the Transaction will be rolled or closed out, if insufficient securities or commodities have been provided by the deadline specified by the Firm, the Firm may proceed to settlement or close-out notwithstanding; and to that end the Firm may buy the securities or commodities required for delivery at a price the Firm believes to be reasonable, charge the Client's account for the cost, deliver the securities or commodities to satisfy the delivery obligation, and credit the Client's account with any net proceeds (after deduction of commission and other costs).
- 7.4 **Delivery-related terms:** In respect of any physically settled Transaction or property relating thereto:
- (a) unless otherwise agreed, the Firm may satisfy any delivery obligation in respect of a Transaction in the manner and to a place that the Firm may determine (including delivery through a system that provides for transfer of entitlements in the relevant property via a nominee or agent). The Client will make all necessary arrangements to receive such delivery;
  - (b) the Client will provide any settlement or other instructions, documents of title or other documentation requested by the Firm in the timeframes that the Firm may notify to the Client from time to time;
  - (c) the Client agrees to comply with the requirements of any relevant storage, warehouse or delivery service or facility or settlement agent;
  - (d) the Firm may arrange for delivery, shipping, storage, selection of delivery or storage facility, insurance or similar arrangements in respect of the property in order to facilitate, or in furtherance of, the performance of such Transaction;
  - (e) title in any property delivered under this Agreement shall pass at the time of delivery, except where the Firm delivers property to the Client where any relevant payment is outstanding, in which case the ownership of the property shall remain with the Firm until the Firm has received full payment for the property;

- (f) where property is in the Client's possession prior to title passing to the Client, the Client agrees to preserve, or procure the full preservation of, such property and remedy or otherwise compensate the Firm in full for any damage or deterioration that may occur to the property in the Client's possession;
- (g) the Client acknowledges and agrees that it shall bear the risks and Losses associated with any delivery to or by the Client of property (including, without limitation, costs and expenses associated with any warehousing of property prior to delivery), except to the extent that any Loss which arises is a reasonably foreseeable consequence and arises directly from the Firm's or the Firm's Affiliates' gross negligence, wilful default or fraud;
- (h) the Client agrees that it shall pay when due all rent, storage or other charges relating to such property to be delivered;
- (i) in the event of any dispute relating to a delivery and where requested by the Firm, the Client will permit the Firm to conduct the resolution of such dispute and/or to consent to the withdrawal, without any liability, of the Firm from any arbitration proceedings where the result of such withdrawal would be that such proceedings would then proceed between the Client as buyer/seller/counterparty and the other party as buyer/seller/counterparty, as the case may be;
- (j) the Client agrees to deliver all property required to be delivered by it to the Firm for its own account (other than margin) with full title guarantee and represents that it is the sole beneficial owner of all property which it delivers, free and clear of any interest of any person other than the recipient, including any security interest, lien, claim, charge, encumbrance or other restriction (including a warehouse's lien) (a "**Third-Party Interest**"); and
- (k) the Client agrees that property delivered shall vest in the recipient free and clear of any interest of any person, other than an interest of or granted by the recipient, including any Third-Party Interest (other than any lien routinely imposed on all securities in a relevant clearance system).

If the Client does not comply with the requirements set out in this clause 7.4 (*Delivery-related terms*), the Firm will have no liability in relation to the failure of a delivery. In the absence of instructions from the Client, the Firm may send notices relating to any Transaction or any other service where it deems it appropriate to do so.

**7.5 Settlement Agent:** The Client will notify the Firm of all relevant details which the Client's settlement agent requires to be provided by the Firm in respect of Transactions which may be subject to delivery obligations. The Client will procure that its settlement agent enters into any documentation as may be necessary to ensure that the settlement of Transactions takes effect without liability to the Firm.

## 8. FUTURES AND OPTIONS

- 8.1 **Allocation on delivery or exercise:** Where the relevant Infrastructure or Clearing Member does not specify a particular CM/Firm Transaction (as applicable) when making a delivery or exercising an option, the Firm may allocate the delivery or exercise to any Transaction.
- 8.2 **Exercise of options:** If the Client does not deliver instructions to exercise option Transactions (which the Firm may require to be in a form as specified by notice to the Client from time to time) prior to the earlier of the exercise cut-off time established by the relevant Infrastructure or the Firm, options Transactions may expire and become worthless. If the Client does not instruct the Firm by the applicable cut-off time, the Firm will have no liability for the option Transaction not being exercised. In the absence of instructions from the Client, the Firm may exercise an option Transaction where it is in-the-money.
- 8.3 **Deemed exercise of options:** Where a CM/Firm Transaction is an option which has been exercised automatically under Applicable Regulations or other applicable terms, the corresponding Transaction between the Firm and the Client will be deemed to have been exercised automatically at the same time.
- 8.4 **Correction of order:** If a Firm executes an order but has traded the wrong delivery/expiry month or wrong exercise price, the Firm may offset any Loss arising from the erroneous order against any improvement achieved for the Client in the course of correctly satisfying the order, thus offering the Client only the net improvement, if any.
- 8.5 **Offsetting Transactions:** Unless otherwise agreed in writing between the Firm and the Client or where the Rules of an Infrastructure provide otherwise, whenever any Transaction between the Firm and the Client is entered into to close out any existing Transaction, then the obligations of each of the Firm and the Client under both sets of Transactions will be terminated automatically and immediately upon the Parties entering into the second Transaction, except for any settlement payment due in respect of such closed out Transactions, and any fines, amounts due which relate to the existing Transaction under clause 28.4 (*Charges*) and other payments/rights claimed under general indemnities.

## ADDITIONAL TERMS

### 9. CLIENT MONEY

- 9.1 **Client Money:** The Firm will treat money received from the Client or held by the Firm on the Client's behalf in accordance with the Client Money Rules.
- 9.2 **Deposit with UK or non-UK bank, or holding money with other permitted third parties:**
- (a) Subject to the provisions in this clause 9.2 (*Client Money*), the Firm will deposit money received from the Client with:

- (i) a central bank, a credit institution incorporated in the UK; or
  - (ii) a bank authorised outside the UK.
- (b) The Firm may allow another third party (for example, an Infrastructure, Clearing Member or other intermediary) to hold Client Money in order to effect one or more Transactions through or with that person or to satisfy the Client's obligation to provide collateral in respect of a Transaction.
  - (c) The Firm may hold money held for the Client with any bank or other third party in an omnibus account.
  - (d) The Firm has no responsibility or liability for:
    - (i) any acts or omissions of any bank, credit institution or other third party with whom the Firm holds money received from the Client; or
    - (ii) any bank, credit institution or other third party in the event of the insolvency or analogous proceedings in relation to the relevant entity.

In the event described in paragraph (ii) above, the Firm will only have an unsecured claim against the third party on behalf of the Client and the Firm's other clients, and the Client will be exposed to the risk that the money received by the Firm from the third party is insufficient to satisfy the claims of the Client and all other clients in respect of the relevant account with that third party.

9.3 ***Transfer of Client Money where Client Money Rules cease to apply:*** The Client agrees and acknowledges that:

- (a) where the Firm transfers money held for the Client out of the relevant Client Money account to a third party on the Client's instructions (other than where the transfer is to another Client Money account of the Firm) or pursuant to a Title Transfer Collateral arrangement, this will involve a transfer of full ownership of the money to that third party, in which case the Client will no longer have a proprietary claim to that money and the transferee may deal with it in its own right; and
- (b) where the Firm is required to transfer Client Money to a third party on a title transfer basis, at the time of the transfer by the Firm to the third party, the Client shall be deemed to have transferred full ownership of the money to the Firm immediately before the transfer by the Firm to the third party in accordance with the Title Transfer Provisions.

9.4 ***Placing money in a qualifying money market fund:*** If the Firm places money received from the Client in a qualifying money market fund (as defined in the FCA Rules), the money will not be held in accordance with the requirements of the Client Money Rules for



holding Client Money, and the units or shares in the qualifying money market fund will be held for the Client as custody assets in accordance with the Custody Rules. The Client, by signing this Agreement, consents explicitly to the placement of the Client's money in a qualifying money market fund.

9.5 **DVP exemption:** The Client agrees that money will not be treated as Client Money in respect of any delivery versus payment transactions that the Firm settles through a Commercial Settlement System (in the Firm's capacity as a direct member or participant of such Commercial Settlement System or where the Firm is sponsored by such a direct member or participant), if:

- (a) in respect of a purchase, the Firm intends the money from the Client to be due to the Firm within one (1) Business Day following the fulfilment of the Firm's delivery obligation to the Client; or
- (b) in respect of a sale, the Firm intends the money in question to be due to the Client within one (1) Business Day following the fulfilment of the Client's delivery obligation to the Firm,

(the "**DVP exemption**"), provided that the Firm will stop using the DVP exemption in respect of any particular transaction if the relevant payment or delivery by the Firm to the Client has not occurred by the close of business on the third business day following the date on which the Firm makes use of the DVP exemption in respect of that transaction.

9.6 **Interest:** The Firm shall not pay the Client interest, nor account to the Client for profits earned, on Client Money other than as expressly confirmed by the Firm to the Client in writing.

9.7 **Overseas banks, intermediate broker, settlement agent or OTC counterparty:** The Firm may hold Client Money on the Client's behalf outside the UK or outside the EEA. The legal and regulatory regime applying to any such bank or person will be different from that of the UK and, in the event of the insolvency or any other analogous proceedings in relation to that bank or person, the Client's money may be treated differently from the treatment which would apply if the money was held with a bank or other person in an appropriate account in the UK.

9.8 **Depository's lien:** The Firm may deposit the Client's money with a depository who may have a security interest, lien or right of set-off in relation to that money in certain circumstances to the extent permitted by the FCA Rules.

9.9 **Right of application of Client Money:** In accordance with the Client Money Rules:

- (a) the Firm may cease to treat as Client Money an amount of the Client Money held by the Firm for the Client which is equal to the amount of any obligations due and payable by the Client to the Firm;
- (b) the Firm may apply that money in or towards satisfaction of all or part of those obligations of the Client; and
- (c) any such obligations of the Client become immediately due and payable by the Client to the Firm, without notice or demand by the Firm, when incurred by the Client or on the Client's behalf.

9.10 **Additional security:** As a continuing security for the payment and discharge of any obligations owed by the Client to the Firm, the Client grants to the Firm, with full title guarantee, a first fixed security interest in all right, title and interest the Client has in respect of money (other than margin) that the Firm holds for the Client as Client Money in accordance with the Client Money Rules. The Firm shall be entitled to enforce that security interest by applying that Client Money in or towards satisfaction of all or any part of the obligations of the Client which are due and payable to the Firm but unpaid.

9.11 **Unclaimed Client Money:** The Client agrees that:

- (a) the Firm may, in its sole discretion, decide to pay to a registered charity of its choice any money that the Firm holds for the Client as Client Money, and in that case the Firm shall cease to treat that money as Client Money, if:
  - (i) there has been no movement on the Client's balance for six (6) years (notwithstanding any payments or receipts of charges, interest or similar items); and
  - (ii) the Firm has been unable to contact the Client having taken reasonable steps in accordance with the Client Money Rules to trace the Client and return the money.

In those circumstances, subject to clause 9.11(b) below, the Firm unconditionally undertakes to pay the Client (or ensure that a member of its group unconditionally undertakes to pay the Client) a sum equal to the relevant Client Money balance paid to charity in the event that the Client seeks to claim the Client Money balance in future;

- (b) if the aggregate balance of the Client Money the Firm holds for the Client is GBP 100 or less, the Firm may, in its sole discretion, decide to pay the money to a registered charity of its choice, in which case the money shall cease to be Client Money, if:

- (i) there has been no movement on the balance for six (6) years (disregarding any payments or receipts of charges, interest or similar items); and
- (ii) the Firm has made at least one attempt to contact the Client to return the balance using the most up-to-date contact details the Firm has for the Client, and the Client has not responded to the relevant communication within twenty-eight (28) days of it having been made.

9.12 **Transfer of business:** Except in respect of *de minimis* sums transferred in accordance with the Client Money Rules (where the Client's consent is not required), the Client agrees that the Firm may transfer to another person, as part of a transfer of business to that person, Client Money balances, provided that:

- (a) the sums transferred will be held for the Client by the person to whom they are transferred in accordance with the Client Money Rules; or
- (b) if not held in accordance with paragraph (a) above, the Firm will exercise all due skill, care and diligence in assessing whether the person to whom the Client Money is transferred will apply adequate measures to protect these sums.

For the purposes of this clause, *de minimis* sums shall mean £100 or less.

9.13 **Statements:** The Client is entitled to request at any time a statement of the Client Money held by the Firm for the Client under this Agreement in accordance with the Client Money Rules. The Firm may charge a commercial cost for providing such a statement,

9.14 **Shortfalls:** Notwithstanding the foregoing, to the extent required by the FCA Rules, where the Firm's reconciliation processes identify a discrepancy indicating that the total of custody assets actually held by the Firm for the Client may fall short of the Firm's obligation to hold custody assets for the Client (a "**Potential Shortfall**"), until the discrepancy is resolved, the Firm will hold as client money in a Client Money account in accordance with the Client Money Rules an amount of Client Money which is sufficient to cover the value of the potential shortfall (the "**Potential Shortfall Amount**"). In carrying out the Firm's processes to resolve the discrepancy, the Firm may conclude that: (i) the Client has incurred a loss for which the Firm is liable to Client pursuant to the terms of this Agreement; (ii) the Client has incurred a loss but the Firm is not liable to the Client for such loss pursuant to the terms of this Agreement; or (iii) the Client has incurred no loss. In the event of (i) or (ii), the Firm will inform Client of the relevant circumstances. Once the Firm has satisfied its liability in respect of (i), or has concluded that (ii) or (iii) applies, the potential shortfall amount will be due and payable to the Firm and will be transferred out of the Client Money account. If the Firm becomes insolvent prior to fulfilment of its obligations in relation to (i), subject to and in accordance with the Client Money Rules the

Potential Shortfall Amount will be available for distribution to the Client, and the Client will have a claim in respect of that Client Money as a result of the Firm's liability under (i).

## 10. MARGIN

- 10.1 **Margin calls:** The Client agrees to transfer to the Firm on demand (and no later than any deadline specified by the Firm) such amounts by way of margin as are required from time to time under the Rules applicable to any Clearing Service (or any relevant Infrastructure) or as the Firm may require. The Firm may make a separate margin call in relation to each Clearing Service, and the Firm may make aggregated margin calls in relation to two or more Clearing Services. The Firm may make multiple margin calls on the Client on a particular day. In determining the amounts of margin, the Client's obligations to the Firm and the Firm's obligations to the Client, the Firm may apply whichever methodology (including judgements as to the future movement of markets and values) the Firm considers appropriate. Notwithstanding clauses 29.2 (*Communications/Notices*) and 29.3 (*Effectiveness of notices*), any margin call will be effective on the day on which notice of the margin call is given by the Firm.
- 10.2 **Form of margin:** Margin must be provided by the Client in the form of a type of Acceptable Margin. If the Firm has not notified the Client of types of Acceptable Margin, margin must be paid by the Client in cash. The currency of the cash margin will be the currency or currencies notified by the Firm from time to time or, if no such currencies have been notified, the currency of the Transaction. If the Firm notifies the Client of Acceptable Margin, the Client may only satisfy the requirement to provide margin by transferring assets of the classes, and subject to the haircuts and any other provisions, specified by the Firm. The Firm may amend the eligibility criteria, the applicable haircuts and other requirements for Acceptable Margin at any time.

*Margin for each Clearing Service:* For each Clearing Service, margin transferred as collateral is subject to the Security Interest Provisions and, in the case of cash, is subject to clause 9 (*Client Money*) and, in the case of assets to which the Schedule 1 (*Custody*) applies, Schedule 1. Payments settled to market in relation to a Clearing Service will not constitute margin transferred as collateral for the purposes of this clause 10 (*Margin for each Clearing Service*).

## 11. SECURITY INTEREST PROVISIONS

- 11.1 **Security interest:** As continuing security for the discharge of the Secured Obligations, the Client grants to the Firm, with full title guarantee: a first fixed security interest in all of the Client's rights, title and interest in respect of all cash margin held subject to the Client Money Rules and non-cash margin to which the Security Interest Provisions apply which is: (i) provided by the Client to the Firm; (ii) under the direction or control of the Firm or a Clearing Member or an Agreed CCP (or any relevant Infrastructure) in relation to Transactions; or (iii) otherwise standing to the credit of the Client's account under this

Agreement, in each case whether held by the Firm or an Associate or a nominee of the Firm.

11.2 ***Substitution and control:*** The Client may not withdraw or substitute any property subject to the Firm's security interest without the Firm's consent.

**11.3 *Distributions and interest:***

(a) ***Distributions:*** The Firm will treat payments and distributions of cash, securities or other property received by it in respect of the Acceptable Margin as an addition to the Security Interest Collateral upon it being credited to the relevant account, and the Firm will transfer to the Client those amounts which are not payments or distributions of principal within the time period specified by the Firm from time to time (or, if no period has been specified, as soon as is reasonably practicable after they are credited to the account).

(b) ***Interest:*** The Firm will treat an amount equal to any interest paid in respect of cash comprised in the Security Interest Collateral as an addition to the Security Interest Collateral upon it being credited to the relevant account. The Firm will pay that amount to the Client within the time period specified by the Firm from time to time (or, if no period has been specified, as soon as is reasonably practicable after the date any interest is treated as comprised in the Security Interest Collateral). The Firm may charge the Client for any negative interest it incurs as a result of holding cash margin on the Client's behalf.

11.4 ***Negative pledge:*** The Client undertakes neither to create nor to have outstanding any security interest or other encumbrance over, nor to agree to assign or transfer, any margin which constitutes Security Interest Collateral, except for: (i) the security interest in this Agreement; and/or (ii) a lien routinely imposed on all securities in a clearing system in which such securities may be held.

11.5 ***Further assurance:*** The Client agrees to execute such further documents and to take such further steps as the Firm may reasonably require: (i) to perfect the Firm's security interest over, be registered as owner of or obtain legal title to the margin which constitutes Security Interest Collateral; (ii) to secure further the Secured Obligations; (iii) to enable the Firm to exercise its rights; or (iv) to satisfy Applicable Regulations and/or any Infrastructure requirement.

11.6 ***Power of sale:*** At any time following an Event of Default, the Firm may sell all or any part of the margin that constitutes Security Interest Collateral. To the extent that any Secured Obligations are due and payable, the Firm will be entitled to apply the proceeds of sale or other disposal, and the costs associated with such sale or other disposal, in or towards satisfaction of the Secured Obligations.

11.7 **Right of use:** To the extent that any margin constitutes financial collateral which is not Client Money, the Firm may use and dispose of the margin that constitutes Security Interest Collateral as if the Firm were the owner of it. Where the right of use is exercised in relation to margin ("**Reused Margin**"):

- (a) Reused Margin will be transferred to a proprietary account belonging to the Firm (or to any other account selected by the Firm from time to time) by way of absolute transfer and will become the absolute property of the Firm (or of the transferee) free from any security interest under this Agreement and from any other interest of the Client; and
- (b) the Title Transfer Provisions will apply, so that the Reused Margin constitutes Title Transfer Collateral (and not Security Interest Collateral). If the Firm arranges for the return of the Reused Margin or Equivalent Margin to accounts of the Client subject to the security interest then, upon return, that margin will be subject to the security interest set out in the Security Interest Provisions, unless otherwise agreed.

11.8 **Power of appropriation:** To the extent that any margin that is Security Interest Collateral constitutes financial collateral, at any time on or after a Liquidation Date the Firm may appropriate all or any part of the margin in or towards discharge of the Secured Obligations. For this purpose, the value of the financial collateral appropriated will be:

- (a) (in the case of cash) the amount of the margin together with any accrued but unpaid interest; and
- (b) (in the case of non-cash margin) the Value as determined by the Firm, at the time the right of appropriation is exercised.

The Parties further agree that the method of valuation provided for in this Agreement constitutes a commercially reasonable method of valuation.

11.9 **Transfers of Client Money between margin accounts:** In order to satisfy any margin requirement in respect of a Clearing Service which must be satisfied with assets owned by the Firm absolutely, the Firm may transfer by way of absolute transfer to its proprietary account (or any other account selected by the Firm from time to time) and free from any security interest under this Agreement and from any other interest of the Client the requisite amount of any cash held under the Client Money Rules.

That transfer will satisfy the Client's transfer obligation in proportion to the value of the margin transferred. The Title Transfer Provisions will apply to those assets upon transfer to a proprietary account belonging to the Firm (or to any other account selected by the Firm from time to time).

## 12. TITLE TRANSFER PROVISIONS

- 12.1 **Transfer of margin:** Cash and Acceptable Margin which are subject to the Title Transfer Provisions will be provided by way of absolute transfer and will become the property of the Firm.
- 12.2 **Return of margin:** The Firm is obliged to transfer Equivalent Margin (to "**return**" margin) to the Client following a demand for its return only to the extent that the Client's obligations which any Applicable Regulations or the Firm require to be margined have been discharged.
- 12.3 **Discharge of return obligation upon termination of Transactions:** On any Liquidation Date or date on which Transactions are terminated pursuant to clause 16 (*Termination Following a Firm Trigger Event*) or clause 17 (*Termination Following a CCP Default*), the Firm will have an obligation to return Equivalent Margin in respect of the affected Transactions which shall be discharged to the extent that it is taken into account in a Liquidation Amount or Cleared Set Termination Amount in accordance with clause 18.2 (*Title Transfer Collateral*).

### 12.4 **Distributions and interest:**

- (a) **Distributions:** If a holder of securities comprised in the Title Transfer Collateral would receive payments or distributions of cash or other property on any day ("**Distributions**"):
- (i) the Firm will treat any cash, securities or other property of the same type, nominal value, description and amount as any Distributions (less any deductions on account of tax) ("**Equivalent Distributions**") as an addition to the Title Transfer Collateral held by the Firm once the Firm has credited the Equivalent Distributions to the relevant account; and
  - (ii) the Firm will transfer to the Client any Equivalent Distributions (other than distributions of principal) within the time period as may be specified by the Firm from time to time (or, if no such period has been specified, on the first Business Day after they have been credited to the relevant account).
- (b) **Interest:** The Firm will treat an amount equal to any interest payable in respect of cash comprised in the Title Transfer Collateral as an addition to the Title Transfer Collateral held by such Party upon it being credited to the relevant account. The Firm may charge the Client for any negative interest it incurs as a result of taking cash margin from the Client. The Firm will transfer to the Client after the date any interest is treated as comprised in the Title Transfer Collateral an amount equal to that interest within the time period which may be specified by the Firm from time to time (or, if no such period has been specified, on the first Business Day after the interest is credited to the relevant account).

- 12.5 ***Title transfer:*** Each Party agrees that all right, title and interest in and to any Acceptable Margin, Equivalent Margin, Equivalent Distributions or interest in respect of Title Transfer Collateral which it transfers to the other Party under the Title Transfer Provisions will vest in the recipient free and clear of any interest of or granted by any person other than the recipient, including any security interest, lien, claim, charge, encumbrance or other restriction (other than any a lien routinely imposed on all securities in a relevant clearance system). Notwithstanding the use of terms such as "margin" which are used to reflect terminology used in the market for such arrangements, nothing in the Title Transfer Provisions is intended to create a security interest in any Acceptable Margin, Equivalent Margin, Equivalent Distributions or interest in respect of Title Transfer Collateral transferred pursuant to this Agreement.
- 12.6 ***Full title guarantee:*** All transfers of margin, Equivalent Margin, Equivalent Distributions and interest effected pursuant to this clause are made with full title guarantee.
- 12.7 ***Substitution:*** The Client may, with the Firm's prior written consent, transfer to the Firm replacement Acceptable Margin in substitution for Title Transfer Collateral with the same or greater Value provided by the Client, whereupon the Firm will transfer Equivalent Margin of the requested Value to the Client, provided that the requested Value of Equivalent Margin is the same as or lesser than the Value of the Acceptable Margin.
- 12.8 ***Return of alternative margin:*** If applicable Rules allow a Clearing Service to deliver margin of a different type and description to the margin posted to the Agreed CCP Service or the Clearing Member returns margin other than Equivalent Margin, then (notwithstanding any provision of this Agreement requiring the Firm to deliver Equivalent Margin to the Client) the Firm may deliver to the Client margin of other types and descriptions, provided that the aggregate value of delivered margin is no less than the Value of the Equivalent Margin otherwise deliverable. If the Client delivers more than one type of Title Transfer Collateral to the Firm in respect of a Clearing Service and the Firm is obliged to return part of the Title Transfer Collateral to the Client, the Firm will be entitled to choose which Equivalent Margin it uses to satisfy the relevant return obligation.

### **13. REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 13.1 ***Representations and warranties:*** The Client represents and warrants to the Firm on the date this Agreement comes into effect and as of the date of each Transaction that:
- (a) if applicable, the Client is duly organised and validly existing under the law of its jurisdiction of organisation or incorporation and, if relevant under that law, is in good standing;
  - (b) if the Client is an individual, the Client has reached the age of 18 years or over and has full capacity to enter into this Agreement;



- (c) the Client has the capacity and all necessary authority, powers, consents, licences, authorisations and approvals under Applicable Regulations and has taken all necessary action to lawfully enter into and perform its obligations under this Agreement and each Transaction, to validly execute and deliver the Agreement and to grant the security interests and powers referred to in this Agreement;
- (d) the persons entering into this Agreement and each Transaction on the Client's behalf have been duly authorised to do so;
- (e) this Agreement and each Transaction are valid and binding upon the Client and enforceable against the Client in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any Applicable Regulations, order, charge or agreement by which the Client is bound;
- (f) unless otherwise agreed in writing, the Client acts as principal (but not as trustee) and sole beneficial owner in relation to each Transaction;
- (g) any information that the Client provides or that has been provided to the Firm in respect of the Client's financial position is accurate and a true and fair presentation of the Client's financial position, and information which the Client provides or has provided in relation to the Client's domicile or other matters is accurate and not misleading in any material respect;
- (h) the Client is willing and financially able to sustain a total loss of funds resulting from orders which are executed or transmitted by the Firm and from entering into Transactions, and that placing those orders and entering into and trading in Transactions is a suitable investment strategy for the Client;
- (i) the Client understands the terms and conditions, potential losses and risks of engaging in all Transactions, in dealing with Infrastructure where such Transactions are executed and cleared, and is capable of assuming and willing to assume (financially and otherwise) those potential losses and risks;
- (j) except as otherwise agreed by the Firm, the Client is the sole beneficial owner of all margin the Client transfers under this Agreement, free and clear of any security interest whatsoever other than a lien routinely imposed on all securities in a clearing system in which those securities may be held or imposed by a third-party custodian or other similar institution;
- (k) the Client is not required to make a deduction or withholding for or on account of tax from a payment under this Agreement;
- (l) under the law of the jurisdiction of residence, incorporation or organisation of the Client (as applicable), it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp,

registration or similar tax or fee be paid on or in relation to this Agreement or the Services or Transactions contemplated by this Agreement;

- (m) no Event of Default or event which would, upon expiry of any applicable grace period, become an Event of Default has occurred and is continuing and the Client is not subject to recovery and/or resolution measures;
- (n) the Client is not a "US person" (as defined in the Commodity Futures Trading Commission ("**CFTC**") and US Securities Exchange Commission ("**SEC**") regulations and interpreted in rules, guidance and orders issued by the CFTC and SEC from time to time);and
- (o) the Client is not: (i) an employee benefit plan (as defined in Section 3(3) of the US Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") that is subject to Title I of ERISA, or a plan or arrangement (including an individual retirement account or a Keogh plan) within the meaning of Section 4975 of the US Internal Revenue Code of 1986, as amended (the "**Code**") that is subject to Section 4975 of the Code (each, a "**Plan**"); (ii) any entity whose underlying assets are deemed to include "plan assets" under the US Department of Labor Regulations 29 CFR section 2510.3-101, as modified by Section 3(42) of ERISA, by reason of a Plan's investment in the Client (a "**Benefit Plan Investor**"); (iii) a person acting on behalf of a Benefit Plan Investor; or (iv) a governmental plan, church plan, or other plan subject to restrictions similar or analogous to those contained in the foregoing provisions of ERISA or the Code; and
- (p) the contractual relationship between the Client and the Firm established pursuant to this Agreement is not intended to be used as a basis for providing Clearing Services to any of the Client's own clients as part of an indirect clearing arrangement in relation to any CCP.

13.2 **Covenants:** The Client covenants to the Firm that:

- (a) the Client will at all times obtain and comply with, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in this clause 13 (*Covenants*);
- (b) the Client will and is able to, upon request, promptly provide the Firm with information in respect of the Client's financial position, domicile or other matters and/or with the information as the Firm may reasonably require to evidence the matters referred to in this clause 13 (*Covenants*);
- (c) the Client will promptly notify the Firm of the occurrence of any Event of Default or of any event that may become an Event of Default with respect to the Client;

- (d) the Client will: (i) comply with all Applicable Regulations in relation to this Agreement and each order and Transaction, so far as they are applicable to it; and (ii) use all reasonable steps to comply with all Applicable Regulations in relation to this Agreement and each order or Transaction, where the Applicable Regulations do not apply to the Client but the Client's cooperation is needed to help the Firm comply with its obligations;
- (e) the Client will not send orders or otherwise take any action that could create a false impression of the demand or value for a financial instrument or commodity, or send orders which the Client has reason to believe are in breach of Applicable Regulations. The Client will observe the standard of behaviour reasonably expected of persons in the Client's position and not take any step which would cause the Firm to fail to observe the standard of behaviour reasonably expected of persons in the Firm's position; and
- (f) where applicable, the Client will provide to the Firm evidence of the conclusion timeframe of a Transaction as and when the Clearing Member or Firm may reasonably require for the purposes of Article 4 of RTS 26; and
- (g) where applicable, the Client will provide to the relevant CCP the information referred to in Article 1(2) of RTS 26 within thirty (30) minutes of the conclusion of the Transaction.

## 14. EVENTS OF DEFAULT

14.1 *Events of Default:* Each of the following will constitute an "**Event of Default**":

- (a) the Client fails to make any payment or to make or take delivery of any property, in each case, when due under this Agreement, or to observe or perform any other provision of this Agreement;
- (b) the occurrence of an Insolvency Event in relation to the Client;
- (c) the Client or any Credit Support Provider (or any custodian acting on behalf of either of the Client or a Credit Support Provider) disaffirms, disclaims or repudiates any obligation under this Agreement or any guarantee, hypothecation agreement, margin or security agreement or any other document containing an obligation of the Client or a third party in favour of the Firm supporting any of the Client's obligations under this Agreement (each a "**Credit Support Document**");
- (d) any representation or warranty made or given or deemed made or given by the Client under this Agreement or any Credit Support Document proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given;

- (e) the Client or any Credit Support Provider transfers all or substantially all its assets to another entity, or otherwise is consolidated, amalgamated or merged with or into another entity or undergoes a similar process, with the effect that the resultant, surviving or transferee entity does not assume all obligations of the Client or the Credit Support Provider (as applicable) under this Agreement or any Credit Support Document, or the Credit Support Document does not apply to the obligations of the resultant, surviving or transferee entity to the same extent as it applied to the obligations of the Client;
- (f) (i) any Credit Support Provider, or the Client, fails to comply with or perform any agreement or obligation to be complied with or performed by it, or the Client, in accordance with the applicable Credit Support Document; (ii) any Credit Support Document expires or ceases to be in full force and effect prior to the satisfaction of all the Client's obligations under this Agreement, unless the Firm has agreed in writing that this will not be an Event of Default; (iii) any representation or warranty made or given or deemed made or given by any Credit Support Provider pursuant to any Credit Support Document proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given; or (iv) an event equivalent to an Insolvency Event occurs in respect of any Credit Support Provider;
- (g) the Client or Credit Support Provider is dissolved, or, if its capacity or existence is dependent upon a record in a formal register, the registration is removed or ends, or any procedure is commenced seeking or proposing the Client's dissolution, removal from such a register or the ending of such a registration;
- (h) where the Client or a Credit Support Provider is a partnership, an event equivalent to an Insolvency Event occurs or any of the events referred to in paragraph (g) above occurs in respect of one or more of the Client's or the Credit Support Provider's partners;
- (i) the Firm considers it necessary or desirable to prevent what the Firm considers is or might be a violation of any Applicable Regulations or a good standard of market practice;
- (j) the Firm considers it necessary or desirable for the Firm's own protection or for the protection of the Client (including to prevent a violation or continued violation of Applicable Regulations) or any action is taken or event occurs which the Firm considers might have a material adverse effect upon the Client's or a Credit Support Provider's ability to perform any of its obligations under this Agreement or a Credit Support Document including loss of a necessary licence;

- (k) any event of default (however described) occurs in relation to the Client or a Credit Support Provider under any other agreement between the Firm and/or its Associates with the Client or Credit Support Provider (as applicable); or
- (l) any other event specified to be an Event of Default for these purposes in the Annex or elsewhere in this Agreement occurs.

## 15. TERMINATION FOLLOWING AN EVENT OF DEFAULT

- 15.1 **Liquidation Date:** At any time following an Event of Default, the Firm may, by notice to the Client, specify a date (the "**Liquidation Date**") for the termination and liquidation of Transactions. However, if "Automatic Termination" is selected in the Annex, in the case of the occurrence of any Insolvency Event in respect of the Client, the date of any such event will automatically constitute a Liquidation Date, without the need for any notice.
- 15.2 **Liquidation Amount:** Upon the occurrence of a Liquidation Date, all Transactions will terminate and, following the termination, no further payments or deliveries in respect of the Transactions or the Title Transfer Collateral or any interest, howsoever described, on those payment obligations will be required to be made, and an amount equal to the Liquidation Amount will instead be payable (whether by payment, set-off or otherwise) following the termination. The "**Liquidation Amount**" means the aggregate net sum of:
- (a) in respect of each Cleared Transaction Set, the Cleared Set Termination Amounts (as defined below); and
  - (b) in respect of any Transactions not included in any Cleared Transaction Set, an amount determined by the Firm as if those other Transactions constituted a Cleared Transaction Set and the provisions of clause 18 (*Cleared Set Termination Amounts*) applied in the same way.
- 15.3 **Alternative determination:** For the purposes of determining any Liquidation Amount, the Firm may perform the relevant calculation as if all Transactions were to constitute a single Cleared Transaction Set.

## 16. TERMINATION FOLLOWING A FIRM TRIGGER EVENT

- 16.1 **Consequence of Firm Trigger Event:** Upon the occurrence of a Firm Trigger Event, the Transactions in the Cleared Transaction Set(s) corresponding to the terminated CM/Firm Transactions will automatically terminate and, following the termination, no further payments or deliveries in respect of those Transactions or the related Title Transfer Collateral or any interest, howsoever described, on those payment obligations will be required to be made, and an amount equal to the Cleared Set Termination Amount will instead be payable in relation to the relevant Cleared Transaction Set following the termination.

## 17. TERMINATION FOLLOWING A CCP DEFAULT

**Consequence of CCP Default:** Upon the occurrence of a CCP Default, the Transactions in the relevant Cleared Transaction Set will, except to the extent otherwise stated in the relevant Rules, automatically terminate at the same time as the related Firm/CCP Transactions and, following the termination, no further payments or deliveries in respect of those Transactions or any interest, howsoever described, on those payment obligations will be required to be made, and an amount equal to the Cleared Set Termination Amount will instead be payable following the termination.

## 18. CLEARED SET TERMINATION AMOUNTS

18.1 **Calculation:** A "**Cleared Set Termination Amount**" means, in respect of a Cleared Transaction Set, an amount equal to the sum, without duplication, of:

- (a) an amount (which may be positive or negative or zero) equal to the aggregate values upon termination of all Transactions in the relevant Cleared Transaction Set, determined in a commercially reasonable manner and which is based on the values of the related CM/Firm Transaction(s) under the CM/Firm Clearing Agreement. If the amount relating to the relevant Transaction(s) is owed to the Firm, the value determined in respect of the related Transaction(s) under this paragraph (a) will be assigned a positive sign, and if the amount relating to the Transaction(s) is owed to the Client, the value determined in respect of the related Transaction(s) under this paragraph (a) will be assigned a negative sign;
- (b) any amount which became payable in respect of any Transaction in the relevant Cleared Transaction Set, or which would have become payable but for a condition precedent not being satisfied in respect of any such Transaction, prior to the termination of the relevant transaction but which remains unpaid at the time of the termination, together with accrued, unpaid interest;
- (c) the Relevant Collateral Value relating to the Cleared Transaction Set;
- (d) any Shortfall Amount relating to CM/Firm Transactions transferred (ported) from the Firm to a replacement firm, where "**Shortfall Amount**" means the amount (expressed as a positive value) of any collateral which is: (i) in excess of the collateral transferred in respect of the Transactions in the Cleared Transaction Set to the replacement firm; and (ii) has been transferred by the Firm to the replacement firm; and (iii) is not included in the Relevant Collateral Value, determined as if the excess constituted Title Transfer Collateral, without applying any haircut; and
- (e) any other amount attributable under this Agreement to the Transactions in the relevant Cleared Transaction Set which was payable but unpaid at the time of

termination and is not otherwise included in paragraphs (a), (b), (c) and (d) above, together with accrued, unpaid interest.

18.2 When determining any Cleared Set Termination Amount:

- (a) the Cleared Set Termination Amount is subject to adjustment in accordance with paragraphs 18.2(c) and 18.4;
- (b) any amounts referred to in paragraphs 18.1(b), (c), (d) and (e) above shall be assigned a positive sign if they are owed by the Client to the Firm and a negative sign if they are owed by the Firm to the Client (and, for these purposes and in relation to the determination of the Relevant Collateral Value, amounts which represent Title Transfer Collateral that has not been returned to a transferor shall be considered to be owed by the transferee to that transferor); and
- (c) to the extent the relevant CM/Firm Transactions have been transferred (ported) from the Firm to a replacement firm together with the entirety of the associated Title Transfer Collateral (if any), the value of the corresponding Transaction(s) and the associated margin or collateral taken into account in determining a Relevant Collateral Value will both be zero for the purpose of determining a Cleared Set Termination Amount. If any Firm/CCP Transaction(s) are transferred (ported) but with only a proportion of the associated collateral or margin, then for the purpose of determining a Cleared Set Termination Amount the Relevant Collateral Value will be increased by the value, as at the date of transfer, of the collateral or margin so transferred.

18.3 Any outstanding obligation of the Firm or the Client to return or transfer Title Transfer Collateral is extinguished to the extent that its value has been taken into account in determining a Cleared Set Termination Amount.

18.4 Any outstanding obligation of the Firm or the Client referred to in paragraph 18.1(b), (d) or (e) is extinguished to the extent that its value has been taken into account in determining a Cleared Set Termination Amount.

- (a) The Client will notify the Firm promptly after becoming aware that it has been paid an amount or received credit or any asset (or will be paid or receive credit or any asset) directly from an Agreed CCP or Clearing Member in connection with one or more Transactions. If any such amount, credit or asset has not otherwise been taken into account in the determination of what is due between the Parties under this Agreement, then the Firm will make any adjustment as the Firm determines appropriate in order to reflect that payment or receipt. For these purposes the relevant adjustment may include an obligation on the Client to pay to the Firm any amount: (i) received by the Client from an Agreed CCP or Clearing Member; and/or (ii) corresponding to the value of an asset received by the Client from an Agreed

CCP or Clearing Member, that exceeds the amount due to the Client from the Firm in respect of Transactions relating to the relevant Agreed CCP under this Agreement; and

- (b) when making any adjustment, the Firm may take into account the value of an asset received by the Client at the time that the Agreed CCP or Clearing Member determines that the asset is to be transferred to the Client (irrespective of when the asset is actually received by the Client).
- 18.5 Notwithstanding anything to the contrary in this Agreement, Payment Netting (as defined below) will not apply to the Cleared Set Termination Amount and, following the occurrence of a Firm Trigger Event, Transactions in the relevant Cleared Transaction Set will be deemed not to be in the same Payment Netting Group as any other Transactions.
- 18.6 ***Payments to the Firm for the account of clients:*** If the Firm receives a termination amount in respect of terminated Firm/CCP Transactions for the account of clients, the Firm will allocate that amount between the Client and other clients of the Firm in relation to the relevant Agreed CCP Service in its discretion. For this purpose the Firm will only be obliged to calculate the Client's allocation to the extent that it has information on the termination amounts for all clients in relation to the relevant Agreed CCP Service; the Firm will use reasonable efforts to obtain the information or otherwise determine the allocation in accordance with the terms of the clearing agreement with each such client.
- 18.7 ***Hierarchy of events:*** If Transactions are capable of being terminated pursuant to more than one clause of this Agreement, the clause under which termination first occurs will prevail.
- 18.8 ***Alternative value:*** If on or about the Liquidation Date or the date of the Firm Trigger Event or CCP Default, as applicable, the Firm, the CCP or any Clearing Member has appropriated and/or sold collateral of the same type, nominal value, description and amount as all or part of the Title Transfer Collateral that relates to the Transferred Margin Balance, then the Firm may elect to determine such Relevant Collateral Value (or such part of the Relevant Collateral Value) by reference to the net proceeds of the sale of and/or the value ascribed by the CCP to such collateral (assigned a negative sign) instead of using the methodology prescribed in the definition of Relevant Collateral Value.

## **19. CALCULATION AND SETTLEMENT OF TERMINATION AMOUNTS**

- 19.1 ***Responsibility for determination of amounts:*** The Firm will determine any Liquidation Amount or Cleared Set Termination Amount. Where the Firm determines a Liquidation Amount or Cleared Set Termination Amount, it will do so as soon as reasonably practicable after a Liquidation Date, the occurrence of a CCP Default or a Firm Trigger Event.
- 19.2 ***Settlement:*** Once it has made its determination, the Firm will promptly notify the Client in writing of that amount and whether it is payable by the Firm or the Client. If the Liquidation



Amount or Cleared Set Termination Amount is positive, it will be due from the Client to the Firm, and if it is negative, the absolute value of the Liquidation Amount or Cleared Set Termination Amount will be due from the Firm to the Client. The Liquidation Amount or Cleared Set Termination Amount (as applicable) will be payable:

- (a) (if payable by the Client, or in relation to a Firm Trigger Event in circumstances where there were no outstanding Transactions immediately before that event) in the Base Currency and on the first Business Day after delivery of the notification of the amount payable; and
- (b) (in other cases) in the Base Currency or, if applicable, in the currency of the relevant close-out, termination or other settlement amount payable by the Clearing Service in relation to the CM/Firm Transaction(s), as the case may be, in accordance with the relevant Rules and on the first Business Day after the Firm has received payment in full in respect of all relevant CM/Firm Transactions, as the case may be.

## **20. LIMITED RECOURSE**

20.1 ***Limitation of recourse:*** The Client agrees that performance and payment of obligations owed by the Firm to the Client under or in respect of Transactions and this Agreement are limited by, and contingent on, the actual performance or payment by:

- (a) the relevant Agreed CCP or Clearing Member to the Firm in relation to the related Firm/CCP Transactions, CM/Firm Transactions or any related collateral arrangements; and
- (b) any account bank, custodian or other third party holding cash, margin or other property for the Firm which relates to the Client,

and the Firm will only be obliged to perform its obligations to the Client under or in respect of Transactions, margin or other obligations under this Agreement to the extent that: (i) the Agreed CCP or Clearing Member actually performs its obligations to the Firm in relation to the related Firm/CCP Transactions, CM/Firm Transactions or any related collateral arrangements; or (ii) the relevant account bank, custodian or other third party holding cash or collateral performs its obligations.

20.2 ***Good discharge:*** Any amounts that would have been paid by the Agreed CCP or Clearing Member to the Firm but for the application of:

- (a) netting or set-off in accordance with Applicable Regulations; or
- (b) any provision of Applicable Regulations for porting or direct settlement following a Firm Trigger Event,

will be considered to have been paid to the Client and to have discharged the Firm's obligations to the Client to the same extent.

- 20.3 **Notification:** The Firm will give notice in writing to the Client of any deduction or withholding from any payment or performance effected under this clause 20 (*Limited Recourse*) as soon as reasonably practicable following the relevant event.

## 21. ADDITIONAL RIGHTS

- 21.1 **Lien:** In addition and without prejudice to any rights to which the Firm may be entitled under this Agreement or any Applicable Regulations, the Firm will have a general lien on all property held by the Firm or an Associate or nominee of the Firm on behalf of the Client until the discharge of all obligations under this Agreement and any Transactions.
- 21.2 **Set-off:** Without prejudice to any other rights to which the Firm may be entitled, the Firm may at any time and without notice set off any amount (whether actual or contingent, present or future) owed by the Client to the Firm against any amount (whether actual or contingent, present or future) owed by the Firm to the Client. For these purposes, the Firm may ascribe a commercially reasonable value to any amount which is contingent or which is unascertained for any other reason and the Firm may convert any amounts denominated in different currencies into the Base Currency in accordance with clause 31.2 (*Base Currency*).

## 22. EXCLUSIONS, LIMITATIONS AND INDEMNITY

- 22.1 **General exclusion:** The Firm and its Associates, and their directors, officers, employees or agents, will not be liable for any Losses incurred or suffered by the Client under or in connection with this Agreement (including by reason of entering into or performing any Transaction or the Services or where the Firm has declined to enter into a proposed Transaction or perform the Services), unless the Loss is a reasonably foreseeable consequence of, and arises directly from, the Firm's or its Associates' gross negligence, wilful default or fraud, or, in the case of the Firm, any gross negligence in the appointment of Associates by the Firm. In no circumstance will the Firm, its Associates or their directors, officers, employees or agents have liability for Losses suffered by the Client or any third party for any special or consequential damage, loss of profits, loss of goodwill or loss of business opportunity arising under or in connection with this Agreement, whether arising out of negligence, breach of contract, misrepresentation or otherwise. Nothing in this Agreement will limit liability for fraud, or negligence which causes death or personal injury.
- 22.2 **Adverse implications of Transactions:** Neither the Firm nor its Associates accept liability for any adverse tax, accounting or other implications of the Firm's or the Associates' performance of the Services or any Transaction whatsoever.

- 22.3 **Changes in the market:** Neither the Firm nor its Associates accept any liability by reason of any delay or change in market conditions before any particular order or Transaction is effected.
- 22.4 **Force Majeure:** The Firm and its Associates will not be liable to the Client for any partial performance or non-performance of the Firm's or its Associates' obligations under this Agreement by reason of any cause beyond the Firm's or its Associates' reasonable control, including any breakdown, delay, malfunction or failure of transmission, communication or computer facilities, industrial action, act of terrorism, war, act of God, acts and regulations of any governmental, quasi-governmental or supranational bodies or authorities or failure by the relevant intermediate broker or other intermediary, account bank, custodian, sub-custodian, Infrastructure or any agent of the above, for any reason, to perform its obligations.
- 22.5 **Effect of Applicable Regulations:** Nothing in this Agreement will exclude or restrict any duty or liability the Firm may have to the Client under Applicable Regulations which may not be excluded or restricted.
- 22.6 **Entire Agreement:** The Client acknowledges that the Client has not relied on or been induced to enter into this Agreement by a representation other than those expressly set out in this Agreement. The Firm will not be liable to the Client (in equity, contract or tort under the Misrepresentation Act 1967) for a representation that is not set out in this Agreement and that is not fraudulent.
- 22.7 **Indemnity:** The Client will indemnify the Firm and its Associates on demand against any Losses which the Firm or its Associates may incur or be subjected to from time to time:
- (a) in performing the Services or with respect to any of the Client's accounts or assets (including where the Firm provides the Client or its directors, employees or agents with access to any Infrastructure);
  - (b) in relation to any order or Transaction or any Firm/CCP Transaction or CM/Firm Transaction or any transaction which: (i) an Agreed CCP or Clearing Member does not accept for clearing for any reason; or (ii) is automatically accepted by the Firm and is subsequently unwound for any reason;
  - (c) which are allocated by a Clearing Member, Agreed CCP or Agreed CCP;
  - (d) for any cost of funding which the Firm incurs in providing margin in relation to any Firm/CCP Transaction or CM/Firm Transaction as a result of the Firm holding insufficient cash margin from the Client;
  - (e) as a result of any misrepresentation by the Client or any breach of this Agreement (including any Transaction) or Applicable Regulations by the Client or caused by the Client;

- (f) which arise from the Firm enforcing its rights under the Agreement, acting (or omitting to act) in reliance on communications or actions of the Client or taking other action contemplated by the Agreement; or
- (g) as a result of any investigation, action, litigation or proceeding by or involving any government agency, Infrastructure, regulatory or self-regulatory authority, counterparty, dealer, or other third party with respect to Transactions (including any dispute relating to delivery).

22.8 ***Errors in transaction reporting or other reports:*** The Firm is not bound by the prices or other details of orders or Transactions which are included in any transaction or other report and, upon the Firm becoming aware of the relevant error, it may make any necessary corrections to affected reports.

22.9 ***Relationship to this Agreement:*** The provisions of this clause 22 (*Exclusions, Limitations and Indemnity*) apply notwithstanding any other term of this Agreement.

### **23. INFORMATION ABOUT THE CLIENT AND THE FIRM**

23.1 ***Confidentiality of Client information:*** The Firm will treat all non-public information it holds about the Client or the Client's account or Transactions as confidential. The Client agrees, however, that the Firm may disclose that information to its Associates without the Client's consent, and that the Firm and its Associates may disclose that information without the Client's consent to:

- (a) those who provide advice or other services to the Firm or act as the Firm's agents;
- (b) anyone to whom the Firm transfers or proposes to transfer any of the Firm's rights or duties under this Agreement;
- (c) credit reference agencies or other organisations that help the Firm and others: (i) make credit decisions and reduce the incidence of fraud; or (ii) in the course of carrying out identity, fraud prevention or credit control checks;
- (d) any other party where the Firm is required to do so by Applicable Regulations or where the Firm's interests require disclosure;
- (e) to any Infrastructure, regulator or government agency upon request from such entity; and/or
- (f) in the case of a joint account, and in relation to any information obtained by the Firm from any of the joint account holders in relation to the account or Transactions, any of the joint account holders.

23.2 **Confidentiality of Firm information:** The Client will treat all non-public information it holds about the Firm and its Associates as confidential, including the terms of this Agreement. The Firm agrees, however, that the Client may disclose that information to its Affiliates and, where reasonably necessary, to its agents and others who provide legal or professional advice to the Client without the Firm's consent, and that the Client and its Affiliates may disclose that information without the Firm's consent to any party where the Client is required to do so by Applicable Regulations or to any regulator or government agency upon request from such entity.

23.3 **Data protection:** The Firm and the Client acknowledge and agree that they will each be acting as independent Controllers of the Personal Data processed in connection with this Agreement. Unless otherwise provided by this Agreement, each party shall be responsible for complying with the obligations imposed on a Controller by the Data Protection Law. Before providing the Firm with any Personal Data in connection with this Agreement, the Client warrants that it has complied with the Data Protection Law in connection with such processing and shall provide the following information to those individuals (except where those individuals already have the information):

- (a) the categories of Personal Data that the Client is providing to the Firm;
- (b) the Firm's identity, and the fact that those individuals can contact the Firm at [info@amtfutures.co.uk](mailto:info@amtfutures.co.uk);
- (c) that the Firm may process those individuals' Personal Data for the purposes of administering and operating the Client's account, complying with Applicable Regulations, protecting the security of the Firm's systems and data, updating and enhancing the Firm's customer records, in connection with external auditing and quality checks, enforcing the Firm's legal rights or defending or undertaking legal proceedings, marketing the Firm's services to the Client and sharing with members of the Firm's corporate group and third parties in connection with a significant corporate transaction or restructuring affecting the Firm;
- (d) that this processing is permitted by the Data Protection Law because it is: (i) necessary for the purposes of the Firm's legitimate interests in pursuing the purposes set out in paragraph (c) above (which are not overridden by prejudice to the relevant individuals' privacy) and shall identify what those legitimate interests are; and/or, in some cases, (ii), necessary so that the Firm can comply with Applicable Regulations;
- (e) that the Firm may disclose the Personal Data of those individuals to persons in the categories identified in clause 23.1 (*Confidentiality of Client information*);
- (f) that this may involve transfer of the personal data of those individuals to any country, but that in those cases, except where the relevant country has been

determined to ensure an adequate level of data protection by the UK's Secretary of State or the Firm needs to make the transfer in order to perform a contract concluded in the interests of the relevant individual, the Firm will ensure that the transferred Personal Data are protected by an appropriate data transfer agreement (and that further details of these transfers and copies of the relevant agreements are available from the Firm on request);

- (g) that the Firm will retain the Personal Data of those individuals for no longer than seven years following the termination of the Client's relationship with the Firm unless the Firm has an ongoing legitimate business need to retain it for the purpose for which it is used;
- (h) that those individuals: (i) have rights of access to and rectification or erasure of their Personal Data and to restrict or object to its processing, which they can exercise by contacting the Firm (see paragraph (b) above); and (ii) can lodge complaints about the Firm's processing of their Personal Data with the office of the Information Commissioner ([www.ico.org.uk](http://www.ico.org.uk)); and
- (i) the source from which the Firm received the Personal Data and whether the Personal Data was obtained from publicly available sources.

## **24. INFORMATION COLLECTION AND REPORTING**

24.1 ***Collection of information:*** The Client will promptly provide the Firm with any information the Firm determines is required, permitted or desirable to enable the Firm or any Associate of the Firm to comply with any Applicable Regulations, to respond to requests from any Infrastructure, Clearing Member, other intermediate broker or regulatory body in relation to the Client's orders or Transactions or other matters relating to the Services (including the identity of Clients given direct access to a trading venue by electronic means). The Client agrees to cooperate with the Firm and that any information relevant to the enquiry may be passed to any Associate of the Firm or any Infrastructure, Clearing Member, other intermediate broker or regulatory body as may be appropriate and the Client will update that information or data as required by the Firm from time to time. The Client will notify the Firm in writing within thirty (30) days of any material change in the validity of, or information contained in, any information that the Client has previously provided to the Firm further to this clause 24 (*Information Collection and Reporting*). If the relevant information relates to a third party (including a client of the Client for whom the Client is providing related services), the Client will procure the third party's consent to such disclosure.

24.2 ***Other reporting:*** Without prejudice to any provision of this Agreement relating to information or data or its disclosure, the Client consents to the disclosure by the Firm or its Associates of any information or data in connection with or relating to the Client, this Agreement and/or any Transaction (including pricing data) to the extent that the Firm

determines is required, permitted or desirable to comply with Applicable Regulations, to respond to requests from any Infrastructure or regulatory body in relation to the Client's orders or Transactions or to perform the Services. If the relevant information relates to a third party (including a client of the Client for whom the Client is providing related services), the Client will procure the third party's consent to that disclosure.

## **25. DEATH OR LEGAL INCAPACITY OF THE CLIENT**

- 25.1 ***Incapacity:*** If the Client is an individual, this Agreement will automatically terminate if the Firm receives written notice of the Client's legal incapacity and clause 27 (*Consequences of Voluntary Termination*) shall apply as if this were a voluntary termination in accordance with clause 26 (*Voluntary Termination*) (subject to clause 25.2 (*Power of Attorney*) below).
- 25.2 ***Power of Attorney:*** Where a power of attorney has been granted over the Client's account, the Firm will continue to administer the account in accordance with the attorney's instructions until such time as the power of attorney is revoked, or until the time of the Client's death.
- 25.3 ***Death:*** If the Client is an individual, upon the death of the Client, the Firm will require a certified copy, or original, of the death certificate. After receiving such notification of death, the Firm may terminate this Agreement with immediate effect and clause 27 (*Consequences of Voluntary Termination*) shall apply as if this were a voluntary termination in accordance with clause 26 (*Voluntary Termination*). The Firm may take such steps before receiving grant of probate or letters of administration, in which case, it need not notify any person until receipt of the same, when the Firm will notify the Client's executor, personal representative or solicitor (executor) of the steps it has taken. If the Firm takes such steps after receiving grant of probate or letters of administration, it will notify the executor. In any event, the Firm will not otherwise accept any instructions on the Client's account or release any funds until grant of probate or letters of administration are received. The terms of this Agreement will be binding on the Client's executor .

## **26. VOLUNTARY TERMINATION**

- 26.1 ***Termination of a Clearing Service and/or this Agreement:*** Either Party may terminate any Agreed CCP Service and/or this Agreement (and, in the case of termination of this Agreement, the relationship between the Parties) for no reason by giving no less than ten (10) days' written notice of termination to the other or the Firm may terminate immediately on notice following an Event of Default. Without prejudice to the Firm's powers in clause 27 (*Consequences of Voluntary Termination*), termination of any Clearing Service or the Agreement in accordance with this clause 26.1 (*Termination of a Clearing Service and/or this Agreement*) shall not automatically cause the Transactions to terminate.

## 27. CONSEQUENCES OF VOLUNTARY TERMINATION

27.1 **Surviving terms:** If the Agreement is terminated in accordance with clause 26.1 (*Termination of a Clearing Service and/or this Agreement*), outstanding rights and obligations (including those relating to netting and indemnities, those relating to margin and those created by the miscellaneous and governing law clauses) and Transactions will survive the termination of this Agreement. Subject to the exercise of the Firm's powers under clause 27.2 (*Additional powers on termination of the Agreement*), clause 27.3 (*Additional powers on termination of a Clearing Service*) and clause 27.4 (*Active management*), the outstanding rights and Transactions will continue to be governed by its provisions and the supplementary terms particular to those Transactions until all obligations have been fully performed.

27.2 **Additional powers on termination of the Agreement:** If this Agreement terminates in accordance with clause 26.1 (*Termination of a Clearing Service and/or this Agreement*), the Firm and, at the Firm's discretion, its Associates, will be entitled without prior notice to the Client:

- (a) instead of returning to the Client, or accounting for, investments equivalent to those credited to the Client's account, to pay to the Client the fair market value of those investments at the time the Firm exercises this right;
- (b) to sell any of the Client's investments that are in the Firm's possession (or in the possession of any nominee or third party) as the Firm may select and upon the terms as the Firm may think fit (without being responsible for any Loss or diminution in price) in order to realise funds sufficient to cover any amount due from the Client;
- (c) to close out, replace or reverse any Transaction, buy, sell, borrow or lend or enter into any other transaction (or combination of transactions) or contract, open any new positions, or take, or refrain from taking, any other action in the Firm's discretion to cover, reduce, hedge, manage or eliminate its risk or Loss under or in respect of any of the Client's contracts, positions or commitments;
- (d) to treat any (or all) instructions received from the Client which have not been effected by the Firm as having been repudiated; and/or
- (e) to transfer any outstanding Transactions to the Clearing Member or another clearing member.

27.3 **Additional powers on termination of a Clearing Service:** If a Clearing Service terminates in accordance with clause 26.1 (*Termination of a Clearing Service and/or this Agreement*), the Firm and, at the Firm's discretion, its Associates, will be entitled in respect of any Transactions related to such terminated Clearing Service without prior notice to the Client to exercise the rights set out in paragraphs (c), (d) or (e) of clause 27.2 (*Additional powers*



on termination of the Agreement) in connection with the Transactions associated to the terminated Clearing Service.

- 27.4 **Active management:** If the Firm exercises any of its powers under clause 27.2 (*Additional powers on termination of the Agreement*) or clause 27.3 (*Additional powers on termination of a Clearing Service*) to terminate or close out any Transactions, the Firm shall be entitled to determine the resultant amount (if any) owed by the Firm or the Client in relation to those Transactions. The Client agrees that, for these purposes, the Firm is entitled to take into account any Losses realised in closing out any Firm/CCP or CM/Firm Transactions or settling or concluding outstanding obligations incurred by the Firm on the Client's behalf.

The Firm's rights under this clause 27.4 (*Active management*) apply separately to each Transaction and the Firm does not need to account for a single amount payable by the Firm or the Client in respect of all Transactions. Any account for payment in relation to closed-out or terminated Transactions will not prejudice the Firm's surviving rights in relation to Transactions which have not been closed out or terminated (including the Firm's right to charge amounts under clause 28.4 (*Charges*), to demand amounts under applicable indemnities and to make margin calls in respect of those Transactions).

- 27.5 **Right of Retention:** If this Agreement terminates in accordance with clause 26.1 (*Termination of a Clearing Service and/or this Agreement*), the Firm will not be obliged to make any payment or delivery scheduled to be made by it under a Transaction or to repay cash subject to the Client Money Rules or return any Title Transfer Collateral or perform any other obligation under this Agreement to the extent that the Firm determines that margin may be required to be posted under any relevant Rules or to the extent that the Client owes, or may owe, obligations to the Firm.

## 28. PAYMENTS, DELIVERIES AND PAYMENT NETTING

- 28.1 **Payments, deliveries and other obligations:** Unless a Liquidation Date has occurred, the Firm will not be obliged to make any payment or delivery scheduled to be made by it under a Transaction or to repay cash subject to the Client Money Rules or return any Title Transfer Collateral or perform any other obligation under this Agreement for as long as an Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination under this Agreement, or any combination thereof) an Event of Default has occurred and is continuing.
- 28.2 **Withholding:** The Firm may make any deduction, that it is required to make by any Applicable Regulations and any payment required in connection with that deduction. The Firm will not be required to increase any payment or otherwise compensate the Client for any payment in respect of which it makes a deduction.
- 28.3 **Gross-up:** All payments under this Agreement by the Client to the Firm will be made free of and without withholding or deduction, including on account of any taxes, duties,

assessments or governmental charges of whatsoever nature imposed, withheld or assessed by any relevant tax authority, unless required by Applicable Regulations, in which case the Client will pay such additional amounts as will result in the receipt by the Firm of an amount which it would have received had no deduction or withholding been made.

- 28.4 **Charges:** The Client will pay the Firm's charges as notified by the Firm, including:
- (a) any fees, commissions or other charges charged by the Firm for the provision of the Services (including any minimum account fee);
  - (b) any taxes or duties imposed by any competent authority on any account opened or Transaction effected by or cleared for the Client;
  - (c) any fees or other charges imposed by any Infrastructure or Clearing Member, or any Associate or service provider involved in the provision of the Services or which the Firm agrees to be responsible for under a give-up agreement;
  - (d) any fines imposed by any competent authority where attributable to the Client's conduct; and
  - (e) any other value added or other applicable taxes in respect of any of the foregoing, including any withholding tax.

These amounts will be payable on the due date specified by the Firm or otherwise on demand.

- 28.5 **Payments:** All payments to the Firm under this Agreement (other than margin) will be made, unless otherwise agreed, in same day funds in any currency which the Firm may specify from time to time to the bank account designated by the Firm for such purposes.

- 28.6 **Currency conversion:** If the Client provides cash to the Firm in a currency other than that in which the Client's obligation is denominated, the Firm may (at the Client's cost) convert the currency provided so as to satisfy the obligation to the extent possible.

- 28.7 **Payment Netting:** If "**Payment Netting**" is selected in the Annex in relation to a group of Transactions (a "**Payment Netting Group**"), then, if on any date amounts would otherwise be payable in the same currency in respect of one or more Transactions in a Payment Netting Group, each Party's obligation to make payment of those amounts will be settled by the payment by the Party with the larger aggregate obligation of an amount equal to the excess of the larger aggregate amount over the smaller aggregate amount.

- 28.8 **Default and Negative Interest:** The Firm may charge interest on any amount due to the Firm at the rates then charged by the Firm which are available on request. In relation to

any monies held by the Firm for the Client (including Client Money), the Firm may charge negative interest where appropriate.

- 28.9 **Remuneration and inducements:** The Firm may, with the Client's agreement, receive remuneration from or share charges with an Associate or with a third party in connection with the provision of Services for the Client's account where this is designed to enhance the quality of the service provided to the Client. The Firm will upon request disclose such remuneration or sharing arrangements to the Client, together with the calculation methodology used to calculate such payments.

## 29. RECORDS, NOTICES AND CONTRACTUAL ARRANGEMENTS

- 29.1 **Modification of terms:** The Firm may change the terms of this Agreement immediately upon giving written notice where required by Applicable Regulations or by giving at least ten (10) Business Days' written notice to the Client and any change will take effect on the date specified in the notice. Unless otherwise agreed or required by Applicable Regulations, an amendment will not affect any outstanding order or Transaction or any legal rights or obligations which may already have arisen.

- 29.2 **Communications/Notices:** Unless otherwise agreed:

- (a) all notices, instructions and other communications to be given by the Firm to the Client under this Agreement will be given via email or other electronic means to the contact details provided by the Client for this purpose in the Annex or otherwise notified by the Client from time to time; and
- (b) all notices and other communications to be given by the Client to the Firm under this Agreement will be given to the contact details (whether electronic or otherwise) provided by the Firm for this purpose in the Annex or otherwise notified by the Firm from time to time.

The Client will notify the Firm of any change of the Client's contact details in accordance with this clause 29.2 (*Communications/Notice*). Provided the Firm sends any communication to the contact details that the Client has most recently provided to the Firm, the Firm will have satisfied its duties to communicate such information to the Client.

- 29.3 **Effectiveness of notices:** Notices, instructions and other communications given in accordance with clause 29.2 (*Communications/Notices*) will only be effective on the date indicated below (or, if that day is not a Business Day or the notice is given after 5:00 p.m. in the place of receipt, the immediately following Business Day):

- (a) if in writing and delivered in person or by courier, on the date it is delivered;
- (b) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;

- (c) if sent by email, on the date it is delivered; and
  - (d) if sent by any other electronic messaging system, on the date it is received.
- 29.4 **Electronic communications:** Instructions given to the Client via email or other electronic means will constitute evidence of the instructions given. Communications between the Client and the Firm will be recorded. A copy of the record will be available on request for a period of five years and, where requested by the FCA or other relevant regulatory authority, for a period of up to seven (7) years.
- 29.5 **Recording of calls:** If the Client gives the Firm instructions by telephone, the Client's conversation may be recorded. The Firm may record telephone conversations without use of a warning tone. The records will be the Firm's sole property and accepted by the Client as evidence of the orders or instructions given.
- 29.6 **The Firm's records:** The Firm's records, unless shown to be wrong, will be evidence of the Client's dealings with the Firm in connection with the Services. The Client will not object to the admission of the Firm's records as evidence in any legal proceedings on the grounds that those records are not originals, are not in writing or are documents produced by a computer. The Client will not rely on the Firm to comply with the Client's record keeping obligations, although records may be made available to the Client on request.

## 30. DISCLOSURES

- 30.1 **Complaints procedure:** The Firm is obliged to put in place internal procedures for handling complaints fairly and promptly. The Client may submit a complaint to the Firm, for example by letter, telephone, email or in person. The Firm will send the Client a written acknowledgement of the Client's complaint promptly following receipt, enclosing details of the Firm's complaints procedures, including when and how the Client may be able to refer the Client's complaint to the Financial Ombudsman Service. The Client should contact the Firm if the Client would like further details regarding the Firm's complaints procedures.
- 30.2 **Investor protection schemes:** The Firm is a member of the Financial Services Compensation Scheme (the "**Scheme**") in the UK. The Scheme is only available to certain types of claimants and claims. Payments to eligible claimants under the Scheme will vary depending on the type of protected claim (for example, deposits or investments) the claimants hold with respect to the relevant institution. Payments under the Scheme in respect of investments are subject to a maximum payment to any eligible investor of GBP 85,000. Further details of the Scheme are available on request or at the Scheme's official website at [www.fscs.org.uk](http://www.fscs.org.uk).

## 31. MISCELLANEOUS

- 31.1 **Single agreement:** This Agreement, the particular terms applicable to each Transaction, and all amendments to any of them shall together constitute a single agreement between the Parties. Each Party acknowledges that all Transactions entered into on or after the date this Agreement takes effect are entered into in reliance upon the fact that this Agreement and all such terms constitute a single agreement.
- 31.2 **Base Currency:** For the purposes of any calculation under this Agreement, the Firm may convert amounts denominated in any currency into the Base Currency at such rate prevailing at the time of the calculation as the Firm reasonably selects.
- 31.3 **Third-Party Rights:** This Agreement will be for the benefit of and binding upon the Firm and the Client and their respective successors and assigns. A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999, except that each Associate may enforce terms which purport to confer a benefit on it in accordance with the terms of this Agreement and the Contracts (Rights of Third Parties) Act 1999.
- 31.4 **Transfer:** The Client will not assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer the Client's rights or obligations under this Agreement, or any interest in this Agreement, without the Firm's prior written consent, and any purported assignment, charge or transfer in violation of this clause will be void. The Firm may transfer its rights and obligations under this Agreement without the Client's consent pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity.
- 31.5 **Time of essence:** Time is of the essence in respect of all obligations of the Client under this Agreement (including any Transaction).
- 31.6 **Rights and remedies:** The rights and remedies provided under this Agreement are cumulative and not exclusive of those provided by law. The Firm will be under no obligation to exercise any right or remedy available to it either at all or in a manner or at a time beneficial to the Client. No failure by the Firm to exercise, or delay by the Firm in exercising, any of the Firm's rights under this Agreement (including any Transaction) or otherwise will operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy will prevent further exercise of that right or remedy or the exercise of another right or remedy.
- 31.7 **Partial invalidity:** If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement, nor the legality, validity or enforceability of those provision under the law of any other jurisdiction will in any way be affected or impaired.

31.8 **Mandatory CCP Provisions:** In entering into any Transaction, the Client represents that, where applicable, it is aware of the Rules of the related Clearing Service and agrees to be bound by and comply with the Mandatory CCP Provisions of the related Clearing Service.

31.9 **Counterparts:** This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## 32. GOVERNING LAW AND JURISDICTION

32.1 **Governing law:** This Agreement, all Transactions and all non-contractual obligations and other matters arising from or in connection with this Agreement and any Transaction will be governed by and construed in accordance with English law.

32.2 **Law applicable to relationship prior to the conclusion of the Agreement:** The law applicable to the relationship between the Firm and the Client prior to the conclusion of this Agreement is English law.

32.3 **Jurisdiction:** Each of the Parties irrevocably:

- (a) agrees, subject to paragraph (c) below, that the courts of England and Wales have exclusive jurisdiction to settle any dispute arising from or in connection with this Agreement and, for that purpose, submits to the jurisdiction of the courts of England and Wales;
- (b) waives any grounds for objection that it may otherwise have to the courts of England and Wales settling any disputes arising from or in connection with this Agreement and, accordingly, agrees not to contend that the courts of England and Wales are an inappropriate or inconvenient forum or otherwise should not exercise their jurisdiction to settle any such dispute; and
- (c) agrees that nothing in this clause 32 (*Governing Law and Jurisdiction*) prevents the Firm from taking proceedings in any other court with jurisdiction or, to the extent allowed by law, from taking concurrent proceedings in more than one court.

32.4 **Service of process:** If the Client is situated outside England and Wales, process by which any Proceedings in England are begun may be served on the Client by being delivered to the address in England or Wales nominated by the Client for this purpose in the Annex. This does not affect the Firm's right to serve process in another manner permitted by law.

32.5 **Waiver of immunity and consent to enforcement:** The Client irrevocably waives to the fullest extent permitted by applicable law, with respect to the Client and its revenue and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from: (i) suit; (ii) jurisdiction of any courts; (iii) relief by way of injunction, order for specific performance or for recovery of property; (iv) attachment of

assets (whether before or after judgment); and (v) execution or enforcement of any judgment to which the Client or the Client's revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees that the Client will not claim any immunity in any Proceedings. The Client consents generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings, including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.

### 33. INTERPRETATION

#### 33.1 *Definitions:* In this Agreement:

"**Acceptable Margin**" means cash and non-cash assets designated as such by the Firm from time to time;

"**Account Opening Form**" means the account opening form as provided by the Firm to the Client and executed by the Client in connection with this Agreement and including any amendment, addition or variation thereof as the Firm and Client may agree between them from time to time;

"**Affiliate**" means, in relation to the Firm or the Client (as applicable), an undertaking in the same group;

"**Agreed CCP**" means any central counterparty clearing organisation elected by the Firm to be an Agreed CCP and communicated to the Client from time to time;

"**Agreed CCP Service**" means any central counterparty clearing service elected by the Firm to be an Agreed CCP Service and communicated to the Client from time to time;

"**Applicable Regulations**" means:

- (a) the FCA Rules or any other rules of a relevant regulatory authority (including the Prudential Regulatory Authority) or a relevant self-regulatory organisation;
- (b) the Rules of any relevant Infrastructure;
- (c) all other applicable laws, rules, procedures, guidance, codes, standards and regulations (including accounting rules and anti-money laundering/sanctions legislation); and
- (d) any directions given by a governmental body, regulator or self-regulatory organisation;

"**Associate**" means:

- (a) an Affiliate of the Firm;
- (b) a representative or delegate whom the Firm, or an Affiliate of the Firm, appoints;
- (c) any sub-contractor or other service provider engaged in connection with the Services; and/or
- (d) any other person with whom the Firm has a relationship that might reasonably be expected to give rise to a community of interest between the Firm and such person;

"**Base Currency**" means the currency specified as such in the Annex (or, if no such currency is specified, GBP);

"**Business Day**" means a day which is not a Saturday or a Sunday and upon which banks are open for business in London;

"**CCP**" means a central counterparty clearing organisation;

"**CCP Default**" means the occurrence of a default, termination event or other similar event in respect of an Agreed CCP that entitles the Clearing Member or Firm to terminate, or results in automatic termination of, Firm/CCP Transactions;

"**Cleared Set Termination Amount**" has the meaning given to it in clause 18 (*Cleared Set Termination Amounts*);

"**Cleared Transaction Set**" means all Transactions which relate to CM/Firm Transactions: (i) that have terminated; and (ii) in respect of which a separate Liquidation Amount or Cleared Set Termination Amount is required to be determined under the CM/Firm Clearing Agreement;

"**Clearing Member**" means an entity used by the Firm to provide clearing services in relation to an Agreed CCP;

"**Clearing Service**" means any clearing service, including an Agreed CCP Service;

"**Client Money**" means all cash held by the Firm pursuant to the Client Money Rules;

"**Client Money Rules**" means CASS 7 of the FCA's Client Assets Sourcebook setting out the client money rules;

"**CM/Firm Clearing Agreement**" means the agreement between the Firm and a Clearing Member pursuant to which related CM/Firm Transactions are entered into by the Firm and the Clearing Member;



"**CM/Firm Transaction**" has the meaning given to it in paragraph (a) of clause 5.1 (*Agreed CCP Transactions*);

"**Commercial Settlement System**" means a system commercially available to firms that are members or participants, a purpose of which is to facilitate the settlement of transactions using money and/or assets held on one or more settlement accounts;

"**Conflicts of Interest Policy**" means the conflicts of interest policy of the Firm as amended, restated or otherwise varied from time to time;

"**Controller**" has the meaning given to it in s32(1) Data Protection Act 2018;

"**Credit Support Document**" has the meaning given to it in paragraph (c) of clause 14.1 (*Events of Default*);

"**Custody Rules**" means CASS 6 of the FCA's Client Assets Sourcebook setting out the custody rules;

"**Data Protection Laws**" means all laws and regulations applicable to the Processing of Personal Data under this Agreement, including the UK GDPR and the UK Data Protection Act 2018;

"**Distributions**" has the meaning given to it in clause 12 (*Title Transfer Provisions*);

"**EEA**" means European Economic Area;

"**Electronic Services**" means a service provided by the Firm, for example an internet trading service offering Clients access to information and trading facilities, via an internet service, a WAP service and/or an electronic order routing system;

"**Equivalent Distributions**" has the meaning given to it in clause 12 (*Title Transfer Provisions*);

"**Equivalent Margin**" means cash and/or securities of the same type, nominal value, description and amount as Acceptable Margin transferred by the Client to the Firm or the Firm to the Client, as applicable, or otherwise comprised in the Title Transfer Collateral (or, if any transferred margin has been redenominated, converted, redeemed or otherwise modified, cash and/or securities collateral of the same type, nominal value, description and amount of the cash and/or securities into which margin has been redenominated, converted, redeemed or otherwise modified);

"**EU**" means the European Union;

"**EU Regulated Venue**" means a regulated market, multilateral trading facility or organised trading facility in the EU;

"**Event of Default**" has the meaning given to it in clause 14 (*Events of Default*);

"**FCA Rules**" means the FCA's handbook of rules and guidance;

"**Firm/CCP Transaction**" means a transaction between the Clearing Member or Firm and an Agreed CCP that arises when a Transaction is cleared through the relevant Agreed CCP Service;

"**Firm Trigger Event**" means the termination of CM/Firm Transactions under a CM/Firm Clearing Agreement as a result of an event of default (howsoever described) in respect of the Firm;

"**Indirect Clearing Transactions**" means any transaction between the Client and any of its clients which relates to a Transaction cleared on an Agreed CCP; and

"**Infrastructure**" means any CCP, settlement system, trading venue or trade repository;

"**Insolvency Event**" means, in relation to any person:

- (a) the person commences a voluntary case or other procedure seeking or proposing liquidation, administration, reorganisation, moratorium, or other similar relief or the equivalent in another jurisdiction with respect to the person or the person's debts under any insolvency, regulatory, corporate or similar law, or seeking the appointment of a receiver, liquidator, administrator or other similar official, or the equivalent in another jurisdiction (each an "**Insolvency Official**") of the person or any substantial part of the person's assets, or the person proposes a compromise or composition with its creditors, or the person takes any corporate action to authorise any of the foregoing;
- (b) an involuntary case or other procedure is commenced against the person, seeking or proposing liquidation, administration, reorganisation or moratorium, or other similar relief or the equivalent in another jurisdiction with respect to the person or the person's debts under any insolvency, regulatory, corporate or similar law or seeking the appointment of an Insolvency Official of the person or any substantial part of the person's assets; and/or
- (c) the person is unable to pay its debts as they fall due or is bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to the person; or any indebtedness of the person is not paid on the due date, or becomes capable at any time of being declared due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of the person's property, undertaking or assets (tangible and intangible);

**"Liquidation Amount"** has the meaning given to it in clause 15 (*Termination Following an Event of Default*);

**"Liquidation Date"** has the meaning given to it in clause 15 (*Termination Following an Event of Default*);

**"Loss"** or **"Losses"** means any losses, claims, injuries, damages, judgments, interest on judgments, assessments, taxes, imposts, levies, costs, fees, charges, expenses, amounts paid in settlement or other liabilities (including, without limitation, legal costs, costs of collection and any cost incurred in successfully defending against any claim), howsoever arising;

**"Mandatory CCP Provisions"** means, with respect to a Clearing Service: (i) the provisions, if any, specified as such in respect of such in the Annex (which may be by reference to a website of the relevant CCP); or (ii) if no such provisions are specified, each provision, if any, specified by the relevant CCP in respect of any Clearing Service as mandatory for inclusion in the terms of transactions between clearing members of that CCP and their respective clients (to the extent that such clients are of the same classification for the purposes of the relevant Rules);

**"Parties"** means the Firm and the Client (and **"Party"** means either of them);

**"Payment Netting Group"** has the meaning given to it in clause 28.7 (*Payment Netting*);

**"Personal Data"** means any information relating to an identified or identifiable natural person processed by in connection with the Services (an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to the physical, physiological, mental, economic, cultural or social identity of that natural person);

**"Relevant Collateral Value"** means, in respect of Transactions in a Cleared Transaction Set and any date on which a Cleared Set Termination Amount is determined, an amount equal to the Value (without applying any haircut but otherwise as determined in accordance with this Agreement) of all collateral that:

- (a) is attributable to such Transactions;
- (b) has been transferred by one party to the other in accordance with this Agreement and has not been returned at the time of such termination or otherwise applied or reduced in accordance with the terms of this Agreement; and
- (c) is not beneficially owned by, or subject to any encumbrances or any other interest of, the transferring party or of any third person ("**Title Transfer Collateral**");

**"Reused Margin"** has the meaning given to it in clause 11 (*Security Interest Provisions*);

**"RTS 26"** means the retained Commission Delegated Regulation (EU) 2017/582 of 29 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing, as it forms part of English law by virtue of the European Union (Withdrawal) Act 2018, as well as any updates to this regulation enacted from time to time;

**"Rules"** means, with respect to an Infrastructure, the articles, rules, regulations, procedures, standard terms, membership agreements, collateral addenda, notices, guidance, policies or other such documents promulgated by the relevant Infrastructure in respect of such Infrastructure as amended and supplemented from time to time;

**"Secured Obligations"** means all obligations, present or future, actual or contingent or prospective, owing or which may become owing by the Client to the Firm under this Agreement and all Transactions, such obligations to be calculated after the application of any rights of netting and set-off arising under this Agreement or by operation of law;

**"Security Interest Collateral"** means collateral which, at any time, has been transferred by the Client to the Firm in relation to one or more Transactions in accordance with the Security Interest Provisions and/or the Client Money Rules and has not been returned;

**"Security Interest Provisions"** means the terms set out in clause 11 (*Security Interest Provisions*);

**"Services"** has the meaning given to it in clause 2 (*The Services*);

**"Title Transfer Collateral"** means collateral which, at any time, has been transferred by the Client to the Firm in relation to one or more Transactions in accordance with the Title Transfer Provisions and has not been returned;

**"Title Transfer Provisions"** means the terms set out in clause 12 (*Title Transfer Provisions*);

**"Transaction"** means any transaction between the Firm and the Client for which the Firm is providing Clearing Services under this Agreement;

**"transaction"** means any of the following:

- (a) a contract made on a trading venue or pursuant to the Rules of a trading venue;
- (b) a contract which is subject to the Rules of an Infrastructure;
- (c) a contract which would (but for its term to maturity only) be a contract made on, or subject to the Rules of, a trading venue and which, at the appropriate time, is to be

submitted for clearing as a contract made on, or subject to the Rules of, an Infrastructure;

in any of cases (a), (b) and (c) being a future, option, contract for differences, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof;

- (d) a transaction which is back-to-back with any transaction within paragraph (a), (b) or (c) of this definition; or
- (e) any other transaction which the Firm and the Client both agree will be a transaction;

**"Transferred Margin Balance"** means, in respect of Transactions in a Cleared Transaction Set, the aggregate Value of Title Transfer Collateral that has been transferred to the Firm under the Title Transfer Provisions, as reduced from time to time by any return of Equivalent Margin or Reused Margin to the Client;

**"UK"** means the United Kingdom of Great Britain and Northern Ireland;

**"US"** means the United States of America; and

**"Value"** means, with respect to margin, in the case of:

- (a) cash, the amount of the cash expressed in the Base Currency (as converted, where relevant, in accordance with clause 31.2 (*Base Currency*));
- (b) securities for which prices are publicly quoted, an amount expressed in the Base Currency and reasonably determined by the Firm as reflecting the value of the securities, by reference where reasonably practicable to independent price sources;
- (c) other Acceptable Margin or Equivalent Margin, an amount expressed in the Base Currency and reasonably determined by the Firm as reflecting the value of the Acceptable Margin or Equivalent Margin, by reference where reasonably practicable to independent price sources; and
- (d) items that are not Acceptable Margin or otherwise permissible under clause 10.2 (*Form of margin*), zero for the purposes of determining the Client's compliance with any margin obligation, and otherwise in accordance with paragraph (a), (b) or (c) above,

except that, for the purposes of the Firm's determination of any margin balances and whether margin calls have been satisfied, further deductions will be made to the values referred to in paragraphs (a), (b) and (c) above to reflect haircuts (if any).

33.2 **General interpretation:** In this Agreement:

- (a) a reference to:
  - (i) a "clause", "Annex" or "Schedule" will be construed as a reference to, respectively, a clause of or an annex or schedule to this Agreement, unless the context requires otherwise;
  - (ii) any statute or statutory instrument or Applicable Regulations includes any modification, amendment, extension or re-enactment thereof, as in force from time to time;
  - (iii) a "document" or "agreement" (including this Agreement) is a reference to that document or agreement as modified or replaced from time to time and will be construed to include any electronic document or agreement;
  - (iv) "include" will be construed to be without limitation; and
  - (v) a person may refer to either a natural or legal person and includes a reference to that person's legal personal representatives, successors and permitted assigns and transferees;
- (b) the masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires;
- (c) words and phrases defined in the FCA's Rules have the same meaning in this Agreement unless expressly defined in this Agreement; and
- (d) any power or right conferred upon the Firm may be exercised by the Firm in its sole and absolute discretion, subject only to Applicable Regulations.

33.3 **Annex and Schedules:**

- (a) The clauses contained in the Annex and any attached Schedule(s) (as amended from time to time) will apply.
- (b) The Firm may from time to time send to the Client further Schedules in respect of trading venues or Transactions or other matters. In the event of any conflict between the clauses of any Schedule and this Agreement or any Schedule and the Annex, the clauses of the Schedule will prevail. The fact that a clause is or is not specifically included in a Schedule in respect of one trading venue or Transaction will not preclude a similar clause being expressed or implied in relation to any other trading venue or Transaction. The Firm may amend existing Schedules by giving notice to the Client in advance.

33.4 **Headings:** Headings are for ease of reference only and do not form part of this Agreement.

## SCHEDULE 1

### CUSTODY

#### 1. SCOPE

- 1.1 **Appointment of Custodian:** The Client agrees that the Firm acts as custodian of the Client's assets which the Firm may from time to time safeguard and administer under this Agreement.
- 1.2 **Types of accounts:** The Firm shall open in the Client's name one or more custody accounts recording any shares, stocks, debentures, bonds, securities, or other similar property (including evidence of or title to securities and all rights in respect of securities) deposited or transferred by the Client or on its behalf with or to the Firm or its sub-custodian or collected by the Firm or its sub-custodian for the Client's account ("**Custody Assets**"). The Firm at all times reserves the right to reverse any provisional or erroneous entries (including reversals necessary to reflect adjustments by its sub-custodian to its records as a result of bad deliveries) to the custody accounts with effect back-valued to the date upon which the final or correct entry (or no entry) should have been made.
- 1.3 **Security Interest Provisions:** If the Agreement provides that, for any Clearing Service, non-cash margin is to be held subject to the Security Interest Provisions, then the Security Interest Provisions shall apply to any of the Client's Custody Assets which also constitute margin that has been provided pursuant to the Security Interest Provisions.

#### 2. ARRANGEMENTS FOR CUSTODY

- 2.1 **Registration:** Custody Assets which are in registrable form may be registered in the Client's name, in the name of a nominee company, in the name of a third party or in the Firm's name.
- 2.2 **Statements:** The Client is entitled to request at any time a statement of Custody Assets held by the Firm for the Client under this Agreement. The Client agrees that for the provision of any such statement the Firm may charge the Client such amount as the Firm determines to be a commercial cost for providing such statement.

#### 3. SUB-CUSTODIANS

- 3.1 **Use of Third Parties:** The Firm may from time to time delegate to sub-custodians, nominees, agents, depositories, clearing houses and clearing systems inside or outside the UK, which may include entities within the same group as us, any of the Firm's duties under these custody terms including (without limitation) the safekeeping of the Custody Assets (together "**Third Parties**"). The Firm is not liable for the acts or omissions or insolvency of any ThirdParty, except that the Firm accepts responsibility to the Client for any nominee company controlled by the Firm, or controlled by any of the Firm's affiliates, to the extent required by the FCA



Rules. Consequently, if a Third Party becomes insolvent, there may (except to the extent stated in the preceding sentence) be some risk to the Client's Custody Assets if all or part of the Client's Custody Assets held by such Third Party are not delivered to the Firm's order by the Third Party's insolvency official.

3.2 ***Custody Assets held by Third Parties:*** The Client's Custody Assets may be held overseas by a Third Party on the Firm's behalf. Furthermore:

- (a) the Client's Custody Assets may be held in an omnibus account by the Third Party, and there is a risk that the Client's Custody Assets could be withdrawn or used to meet obligations of other persons, or that the balance of assets held by the Third Party does not reconcile with the quantity which the Third Party is required to hold, and the Client may not in such circumstances receive the Client's full entitlement of Custody Assets;
- (b) in some jurisdictions it may not be possible to identify separately the Custody Assets which a Third Party holds for clients from those which it holds for itself or for us, and there is a risk that the Client's Custody Assets could be withdrawn or used to meet the obligations of the Third Party, or lost altogether if the third party becomes insolvent;
- (c) legal and regulatory requirements may be different from those applying in the UK particularly where an account containing the Client's Custody Assets is subject to the laws of a non-EEA jurisdiction.

3.3 ***Liens and set-off rights:*** Where any of the Client's Custody Assets are held with a Third Party (including a depository), such Third Party (or any person to whom the holding of the Client's Custody Assets is delegated) may have a security interest, lien, right of set-off, or similar rights over the Client's Custody Assets. Where the Client's Custody Assets are held by a Third Party (or any person to whom the holding of the Client's Custody Assets is delegated), and such Third Party or other person has a security interest, lien, right of set-off, or similar rights over the Client's Custody Assets, the Client is exposed to the risk that such Third Party or other person may exercise such rights over the Client's Custody Assets and reduce the amount of the Client's Custody Assets even where the Client has not breached any of its obligations under this Agreement.

3.4 ***Third Parties in Non-EEA States:*** The Firm may use a Third Party in a country which is not an EEA state and where the holding and safekeeping of financial instruments is not regulated. The Firm will only do so when the nature of the Custody Assets or of the services provided to the Client connected with those Custody Assets requires them to be deposited with such a Third Party.

## 4. INSTRUCTIONS

- 4.1 **Authorised Persons:** The Client shall provide the Firm with a list of the officers, employees or agents who are authorised, either alone or with others, to act on the Client's behalf in the giving of Instructions (as defined below) and performance of any other acts, discretions or duties under these custody terms ("**Authorised Person(s)**") together with specimens of their signatures if written instructions are to be given. The Firm shall be entitled to rely upon the continued authority of an Authorised Person for those purposes until the Firm receive notice from the Client to the contrary.
- 4.2 **Instructions:** Notwithstanding any agreement between the Client and the Firm, the Firm may act upon instructions ("**Instructions**") in respect of the safe custody service provided by the Firm to the Client under these custody terms from an Authorised Person received by the Firm via telephone, telex, facsimile transmission or other teleprocess or electronic instruction system acceptable to the Firm and transmitted with such testing or authentication as the Firm may specify. Instructions shall continue in full force and effect until cancelled or superseded. If any Instructions are received by the Firm by telephone the Client shall confirm them before the close of business on the same day by another method acceptable to the Firm. The Firm shall be authorised to follow Instructions notwithstanding the Client's failure to confirm them in writing.
- 4.3 **Acting on Instructions:** The Firm may in its absolute discretion refuse to act on Instructions. If any Instructions are incomplete, unclear, ambiguous, and/or in conflict with others the Firm may in its absolute discretion and without any liability on its part, act upon what the Firm believes in good faith them to be or refuse to act on them until any incompleteness, unclarity, ambiguity or conflict has been resolved to the Firm's satisfaction. Any Instruction shall be conclusively deemed to be a valid Instruction from the Client to the Firm if the Firm believe it to be genuine. The Client is responsible for any loss, claim or expense incurred by the Firm for following or attempting to follow any Instructions.
- 4.4 **Actions not requiring Instructions:** The Client agrees that the Firm may without any further Instructions from the Client carry out the following actions relating to the Custody Assets:
- (a) collect and receive, for the Client's account, any payments (whether income or capital) and distributions in respect of the Custody Assets, and take any action necessary and proper in connection with them, including (without limitation) the presentation of coupons and other interest items, the endorsement for collection of cheques, drafts and other negotiable instruments and the deduction or withholding of any sum on account of any tax: (i) required (or which in the Firm's view is required) to be so deducted or withheld; or (ii) for which the Firm is, in relation to the Client's account, liable or accountable by law or practice of any relevant revenue authority of any jurisdiction;

- (b) execute in the Client's name such ownership and other certificates as may be required to obtain payment in respect of the Custody Assets; and
- (c) exchange interim or temporary documents of title to Custody Assets for definitive ones.

## 5. SCOPE OF THE FIRM'S RESPONSIBILITY

- 5.1 ***Dividends and other income:*** The Firm shall as soon as reasonably practicable pay to the Client all dividends, interest payments or other entitlements accruing to the Client in relation to the Custody Assets, subject to deductions and to the exercise of any of the Firm's rights under these custody terms.
- 5.2 ***Corporate actions:*** Provided the Firm receive the relevant information, the Firm will use reasonable endeavours to notify the Client of all matters in respect of which the Client have voting rights and of all calls for redemption, grants or expirations of conversion rights, takeovers, grants or expirations of subscription rights, mergers, offers, consolidations, reorganisations and capitalisations or such other corporate actions or any other administrative or supervisory matters affecting the Custody Assets. Unless otherwise agreed with the Client in writing, the Firm will not take any action in relation to such matters except in accordance with Instructions, provided that this shall be without prejudice to the exercise of any rights or discretions under this Agreement or Applicable Regulations that the Firm has in respect of Custody Assets that are also subject to the Security Interest Provisions.

## 6. LIEN

- 6.1 ***General lien over Custody Assets:*** In addition to any general lien or other rights to which the Firm may be entitled under any applicable law, the Firm shall have a general lien over the Custody Assets until the satisfaction of all liabilities and obligations (whether actual or contingent) owed by the Client to the Firm (whether under these custody terms or otherwise). The lien is a continuing security regardless of any intermediate payment or settlement of account.
- 6.2 ***Realising Custody Assets:*** If the Client fails to pay any sum or liability the Client owes to the Firm, the Firm is entitled at any time, without notice to the Client and without prejudice to any other right or remedy which the Firm may have, to sell all or any of the Custody Assets in such manner and at such price as the Firm may deem expedient without being responsible for any loss and to apply the net proceeds thereof in or towards payment or discharge of any sum or liability as the Firm may think fit. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to these custody terms or to any exercise by the Firm of its power of sale.

6.3 **Further Assurance:** The Client agrees to execute such further documents and to take such further steps as the Firm may reasonably require to perfect the Firm's security interest over, be registered as owner of or obtain legal title to Custody Assets, secure further liabilities and obligations (whether actual or contingent) owed by the Client to the Firm and enable the Firm to exercise its rights.

## 7. SECURITIES LENDING AND OTHER USE OF CUSTODY ASSETS

7.1 **Authority to lend:** The Client agrees that the Firm may use the Client's Custody Assets for the purposes of any Securities Loan to us, to an Affiliated Company, to another client of the Firm's, or to a third party. Where the Firm arranges a Securities Loan in respect of the Client's Custody Assets, full title and ownership to the assets lent will be transferred to the borrower free and clear of any liens, claims, charges or encumbrances or any other interest of the Client's or any third party. The Client will no longer have a proprietary claim to such Custody Assets and the borrower shall, accordingly, have the right to deal with them in its own right. The Client will have a right to redelivery of equivalent assets, but these will not be identical to the assets lent. For these purposes "**Securities Loan**" means a loan or borrowing of securities, and includes sale-and-repurchase (repo) transactions, a reverse repo, a buy/sell-back and a sell/buy back.

7.2 **Authority to use:** The Client also agrees that in addition to a Securities Loan, the Firm may use the Client's Custody Assets for other purposes where permitted under this Agreement.

Where the Firm uses the Client's Custody Assets, the Client agrees that:

- (a) the full title and ownership to the Custody Assets used is transferred to the Firm, free and clear of any liens, claims, charges or encumbrances or any other interest of the Client or any third party, for the purpose of securing or otherwise covering the Client's obligations to the Firm under the Agreement; and
- (b) the Firm will not hold such assets in accordance with the Custody Rules.

7.3 **Borrowers:** Securities Loans shall be entered into with any of a list of borrowers selected by the Client. The Firm do not accept liability for the default of any borrower.

7.4 **Terms and conditions:** Securities Loans shall be documented on market standard documentation. The Client authorises the Firm to negotiate and execute such documentation on the Client's behalf. The Firm shall require that cash or securities collateral is provided to the Firm, for the Client's benefit, in respect of each Securities Loan, including where the Firm itself acts as borrower. The Client does not require the Firm to provide collateral from its own resources where the value of collateral provided to the Firms falls below that of the lent Custody Assets, except where the Firm itself is borrower.

## 8. DVP EXEMPTION

8.1 **DVP exemption:** The Client agrees that assets will not be treated as Custody Assets in respect of any delivery versus payment transactions that the Firm settles through a Commercial Settlement System (in its capacity as a direct member or participant of such Commercial Settlement System or where the Firm is sponsored by such a direct member or participant), if:

- (a) in respect of a purchase, the Firm intends the asset in question to be due to the Client within one business day following the fulfilment of the Client's payment obligation to the Firm; or
- (b) in respect of a sale, the Firm intends the asset in question to be due to the Firm within one business day following the fulfilment of the Firm's payment obligation to the Client,

(the "**DVP exemption**"), provided that the Firm will stop using the DVP exemption in respect of any particular transaction if the relevant payment or delivery by the Firm to the Client has not occurred by the close of business on the third business day following the date on which the Firm makes use of the DVP exemption in respect of that transaction.

## 9. UNCLAIMED CUSTODY ASSETS

9.1 **Unclaimed Custody Assets:** The Client agrees that the Firm may, in its sole discretion, decide to: (i) liquidate any unclaimed Custody Asset at market value, and pay away the proceeds; or (ii) pay away any such unclaimed Custody Asset, in either case to a registered charity of the Firm's choice if the Firm has held the relevant Custody Asset for at least twelve (12) years; in the twelve (12) years preceding the divestment of that Custody Asset the Firm has not received instructions relating to any Custody Asset from the Client or on the Client's behalf; and the Firm has been unable to contact the Client having taken reasonable steps in accordance with the Custody Rules to trace the Client and return the Custody Asset, in which case the Firm shall cease to treat such assets as Custody Assets. In such circumstances, the Firm (or a member of its group) will unconditionally undertake to pay the Client a sum equal to the value of the Custody Asset at the time it was liquidated or paid away in the event that the Client seeks to claim the Custody Asset in future.

## **SCHEDULE 2**

### **INDIRECT CLEARING**

#### **1. SCOPE AND DEFINITIONS**

- 1.1 The Firm may, at its discretion, provide Clearing Services to the Client in respect of Agreed CCPs through a relationship with a Clearing Member.
- 1.2 Any right, discretion or obligation of the Firm in this Schedule shall apply to the Firm solely in its capacity as a direct client in relation to Agreed CCPs where it is providing related indirect Clearing Services to the Client.
- 1.3 Any right, discretion or obligation of the Client in this Schedule shall apply to the Client solely where it is acting as the recipient of the services described in paragraph 1.1.

#### **2. PROVISION OF INDIRECT CLEARING SERVICES**

- 2.1 Unless otherwise agreed with the Firm, the Client agrees not to enter into any transaction between the Client and any of its clients which relates to a Transaction cleared on an Agreed CCP.
- 2.2 The Client may request a change in the type of client account in the Firm's books and records and in the accounts with the Agreed CCP used to clear Transactions and related margin. The Firm is only obliged to make that change subject to the Client agreeing any further contractual arrangements that may be required and meeting any other requirements of the Firm that may apply in order for the Firm to facilitate any change in that indirect client account election.

#### **3. ACCOUNTS**

- 3.1 The Firm will provide the Client with sufficient information to allow the Client to identify the Agreed CCP and the Clearing Member used to clear the Client's positions.
- 3.2 In most cases, the Client may choose between:
  - (a) an omnibus account with the assets and positions held by the Firm for the account of its indirect clients, including the Client (a basic omnibus segregated account); or
  - (b) an omnibus account with the assets and positions held by the Firm for the account of its indirect clients, including the Client, in which the Clearing Member will ensure that the positions of an indirect client do not offset the positions of another indirect client and that the positions and assets of one indirect client cannot be used to cover the positions of another indirect client (a gross omnibus segregated account).

- 3.3 The levels of segregation and the risks associated with each type of account are set out at this link: <https://www.amtfutures.co.uk/indirect-clearing>. By trading the Transactions through the Firm, you will be deemed to have read and understood all risk disclosure statements with respect to your trading activities regarding the Transactions that the Firm have provided to you.
- 3.4 If the Client does not communicate its election to the Firm before within a reasonable time, the Firm will assign a basic omnibus segregated account to the Client. The Client may nevertheless change to a gross omnibus segregated account by sending a written request to the Firm.

#### **4. INFORMATION**

- 4.1 The Client acknowledges that the Firm is obliged:
- (a) to provide such information, with such frequency and at such times as the Clearing Member may require in relation to Transactions relating to Agreed CCPs to enable the Clearing Member to meet its obligations to the Agreed CCP, including in relation to position reporting and margin calculation;
  - (b) to provide the Clearing Member with information as required by the Clearing Member to allow it to identify, monitor and manage material risks to its resilience and/or risk position which could arise from the Firm's provision of indirect Clearing Services to the Client; and
  - (c) following the occurrence of an Event of Default in respect of the Firm, to provide the Clearing Member immediately upon request with such information as the Clearing Member requires in connection with the Firm's provision of indirect Clearing Services to the Client (including, as a minimum, any information it requires to comply with Applicable Regulations). This may include information about, or relating to, the Client.
- 4.2 Notwithstanding any other term of the Agreement, the Client consents to disclosure of any information and data referred to in this paragraph by the Firm or its Affiliates to their agents and service providers, including the relevant Clearing Member or Agreed CCP, or by any such persons to the relevant Clearing Member or Agreed CCP.

#### **5. RELATIONSHIP WITH CLEARING MEMBER**

- 5.1 The Client acknowledges that upon the occurrence of a default of the Firm, the Clearing Member may communicate with the Client directly.
- 5.2 Notwithstanding anything in the Agreement or any prior agreement between the Firm and the Client, in relation to Indirect Clearing Transactions which the Firm clears on an Agreed CCP

by entering into related CM/Firm Transactions, the Client acknowledges and agrees in favour of that Clearing Member as follows:

- (a) the Client acknowledges that the Clearing Member is not a party to this Agreement;
- (b) in relation to Indirect Clearing Transactions which relate to CM/Firm Transactions held through a gross omnibus segregated account, the Client acknowledges that in the event of a default of the Firm and subject to the satisfaction of certain conditions, the Clearing Member may:
  - (i) transfer the transaction(s) it has with the Firm which are related to those Indirect Clearing Transactions to a replacement clearing firm ("**porting**");
  - (ii) close-out and/or otherwise liquidate related transactions which the Clearing Member has entered into with the Firm and liquidate associated margin (without reference to the Client), and return any balance to the Client directly (a "**leapfrog**"); or
  - (iii) if porting or leapfrog is not successful, return the balance owed to the Firm (if any) for the account of the Client;
- (c) the Client acknowledges that the Clearing Member may set its own requirements which will need to be satisfied in order for the Clearing Member to be able to facilitate porting or leapfrog and whether the Clearing Member may port or leapfrog is to be determined in its sole discretion. The Clearing Member's conditions to porting may include:
  - (i) notice and other required information having been given to the Clearing Member prior to any cut-off time established by the Clearing Member;
  - (ii) the arrangement being in compliance with applicable law and legally effective;
  - (iii) the Clearing Member being able to transact with the replacement clearing firm in accordance with its own internal requirements; and
  - (iv) the Clearing Member being indemnified and held harmless by the Client to its satisfaction;
- (d) in relation to Indirect Clearing Transactions which relate to CM/Firm Transactions held through a basic omnibus segregated account, the Client acknowledges that:
  - (i) in the event of a default of the Firm, the Clearing Member may (without reference to the Client) take steps to close-out and/or otherwise liquidate transactions related to Indirect Clearing Transactions which the Clearing Member has entered into with the Firm alongside other transactions of other



clients in the same basic omnibus segregated account, and liquidate and apply margin associated with the account to the extent it has been provided to it;

(ii) in such circumstances the Clearing Member will be obliged to return the balance owed to the Firm (if any) for the account of the Client; and

(iii) the Clearing Member shall do so in a timeframe it determines and in accordance with its own processes and procedures; and

(e) the Client acknowledges and agrees that the Clearing Member is liable to the Firm only and that the Clearing Member shall have no liability whatsoever to the Client or any other person including, without limitation, for carrying out the procedures referred to in paragraphs (b), (c) and (d) above.

5.3 Notwithstanding anything to the contrary in this Agreement, paragraph 4.2 above shall be governed by English law, is for the benefit of the Clearing Member and it is agreed that the Clearing Member may enforce the terms of this paragraph in accordance with the Contracts (Rights of Third Parties) Act 1999.

## SCHEDULE 3

### UNCLEARED OTC SCHEDULE

#### 1. SCOPE

- 1.1 **Scope of these terms:** These terms set out the basis on which the Firm and the Client may enter into uncleared over-the-counter derivative transactions under the Agreement (and other transactions to which the Firm and the Client agree that this Uncleared OTC Schedule shall apply) ("**Uncleared OTC Transactions**"). This Schedule is incorporated into, and forms part of, the Agreement. Any Uncleared OTC Transaction between the Firm and the Client that is not expressed to be subject to another netting agreement shall be subject to the Agreement.
- 1.2 **No advice:** Unless the Firm and the Client otherwise agree in writing, the Firm does not advise on the merits of Uncleared OTC Transactions or their taxation consequences.
- 1.3 **Own judgment and suitability:** Each time the Client and the Firm enter into an Uncleared OTC Transaction, the Client represents that:
- 1.3.1 it has been solely responsible for making its own independent appraisal and investigations into the risks of the Uncleared OTC Transaction;
  - 1.3.2 it has sufficient knowledge, market sophistication, professional advice and experience to make its own evaluation of the merits and risks of the Uncleared OTC Transaction; and
  - 1.3.3 it has not relied upon or been induced to enter into the Uncleared OTC Transaction by any statements, representations or undertakings from the Firm that are not set out in the Agreement.
- 1.4 The Firm gives the Client no warranty as to the suitability of any Uncleared OTC Transaction for the Client and the Firm assumes no fiduciary duty to the Client with respect to the suitability of such Transactions.

#### 2. TRANSACTIONS

- 2.1 **Transaction and timing:** Notwithstanding anything to the contrary, each Uncleared OTC Transaction shall constitute a "Transaction" for all purposes under the Agreement (including, without limitation, clause 4.6 (*Capacity*) of the Agreement) and such Transaction shall arise when the relevant Uncleared OTC Transaction is entered into between the Firm and the Client.
- 2.2 **Netting:** The Uncleared OTC Transactions shall constitute "Transactions not included in any Cleared Transaction Set" for the purposes of clause 15.2(b) of the Agreement and accordingly, upon the occurrence of a Liquidation Date, they would be deemed to constitute a Cleared Transaction Set with such other Transactions that are not included in any Cleared Transaction Set and the provisions of clause 18 (Cleared Set Termination Amounts) shall apply in the same way to such Uncleared OTC Transactions, save that:

- 2.2.1 when determining the value in respect of Uncleared OTC Transactions to be allocated to the relevant Cleared Set Termination Amount pursuant to clause 18.1(a) of this Agreement, the Firm shall solely take into consideration any loss of bargain, cost of funding or, without duplication, cost, loss or, as the case may be, gain, as a result of the termination, liquidation, obtaining, performing or re-establishing of any hedge or related trading position;
- 2.2.2 clauses 18.1(d), 18.2(c), 18.4(a) and (b) and 18.6 shall not apply to any element of the determination that is related solely to the Uncleared OTC Transactions.
- 2.3 **Orders:** Uncleared OTC Transactions, and any requests for the Firm to enter into such Transactions, do not constitute "orders" for the purposes of the Agreement, although the Firm and the Client agree that the term "orders" shall be deemed to include Uncleared OTC Transactions where applicable in the following clauses of the Agreement:
- 2.3.1 clause 2.6 (*Confirmations*);
- 2.3.2 all provisions in clause 3 (*Execution of orders*) except for clauses 3.4 (*Execution of orders on a trading venue*) and 3.8 (*Intermediate brokers and other agents*); and
- 2.3.3 clause 29.5 (*Recording of calls*).
- 2.4 **Services:** The entry into, and performance of, Uncleared OTC Transactions by the Firm with the Client shall constitute a "Service" for the purposes of the Agreement.
- 2.5 **Clearing:** If any Uncleared OTC Transaction is capable of being cleared by the Firm and, as a result of its submission for clearing, a Transaction arises in accordance with clause 5 (*Clearing of Transactions*) of the Agreement, the Uncleared OTC Transaction shall terminate and be replaced by the cleared Transaction, and the Uncleared OTC Transaction will cease to be a "Transaction" under the Agreement from the time that the cleared Transaction arises.
- 2.6 **Settlement:** Where a Liquidation Amount relates solely to Uncleared OTC Transactions, such Liquidation Amount will be payable in the Base Currency on the first Business Day after notification of the amount payable.
- 2.7 **Representations and warranties:** The Client represents and warrants to the Firm on the date this Agreement comes into effect and as of the date of each Transaction that the Client is willing and financially able to sustain a total loss of funds resulting from Uncleared OTC Transaction(s) which are entered into with the Firm and that entering into and trading in Uncleared OTC Transaction(s) is a suitable investment strategy for the Client.
- 2.8 **Covenants:** The Client covenants to the Firm that the Client will not enter into any Uncleared OTC Transactions or otherwise take any action that could create a false impression of the demand or value for a security, financial instrument, commodity,

or enter any transaction which the Client has reason to believe are in breach of Applicable Regulations. The Client will observe the standard of behaviour reasonably expected of persons in the Client's position and not take any step which would cause the Firm to fail to observe the standard of behaviour reasonably expected of persons in the Firm's position.

### **3. NFC- STATUS**

3.1 ***Application of Protocol:*** The provisions of the attachment to the ISDA 2013 EMIR NFC Representation Protocol published on 8 March 2013 (the "**NFC Protocol**") (and available on [www.isda.org](http://www.isda.org)) shall apply to the Uncleared OTC Transactions under the Agreement, with the following amendments and elections:

3.1.1 References to "Transaction" are deemed to be references to an Uncleared OTC Transaction under the Agreement.

3.1.2 The definition of "Adherence Letter" is deemed to be deleted.

3.1.3 The definition of "effectively delivered" is amended by replacing the words "the address details set out for this purpose in the Adherence Letter" with "the contact details set out in the notices provision of the Agreement".

3.1.4 The definition of "Protocol" is deemed to be deleted.

3.1.5 Confirmation of status:

3.1.5.1 The Firm confirms that it is a party that does not make the NFC Representation.

3.1.5.2 The Client confirms that it is a party making the NFC Representation.

3.2 ***Margin:***

3.2.1 Margin will be exchanged in accordance with the terms of the Agreement and, for the purposes of this clause, references to "Clearing Service" under clause 10 (*Margin*) of the Agreement shall be construed as though they were replaced with the term "Service" as defined in paragraph 2.4 of this Uncleared OTC Schedule.

3.2.2 In the event that the Client is subsequently classified as an NFC+ Party (as such term is defined in the NFC Protocol), the Firm shall issue revised margin terms to the Client to ensure compliance with the associated regulatory obligations applicable to variation margin.

### **4. PORTFOLIO RECONCILIATION, DISPUTE RESOLUTION AND DISCLOSURE**

4.1 The provisions of the attachment to the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published on 19 July 2013 (and available on [www.isda.org](http://www.isda.org)) (the "**PR/DR Protocol**") shall apply to the Uncleared OTC Transactions under the Agreement,

with the following amendments and elections:

- 4.1.1 References to "Transaction" are deemed to be references to an Uncleared OTC Transaction under the Agreement.
- 4.1.2 The definition of "Adherence Letter" is deemed to be deleted and references to "Adherence Letter", "such party's Adherence Letter" and "Adherence Letter of such party" are deemed to be references to the Agreement.
- 4.1.3 References to "Implementation Date" are deemed to be references to the date of the Agreement.
- 4.1.4 The definition of "Protocol" is deemed to be deleted.
- 4.1.5 The words "(as defined in the Protocol)" appearing in Part I(3)(b) of the attachment to the PR/DR Protocol are deemed to be deleted.
- 4.1.6 The definition of "Local Business Day" is deemed to be deleted and references to "Local Business Day" are deemed to be references to "Business Day" as defined in the Agreement.
- 4.1.7 The definitions of "Portfolio Data Sending Entity" and "Portfolio Data Receiving Entity" are replaced with the following:
  - "Portfolio Data Sending Entity" means the Firm; and
  - "Portfolio Data Receiving Entity" means the Client.
- 4.1.8 Appointment of Affiliate as agent: For the purposes of Part I(3)(a) of the attachment to the PR/DR Protocol:
  - 4.1.8.1 The Firm appoints the following Affiliate as its agent: None.
  - 4.1.8.2** The Client appoints the following Affiliate as its agent: None.
- 4.1.9 Use of a third party service provider: For the purposes of Part I(3) of the attachment to the PR/DR Protocol, the Parties may agree to appoint a third party service provider.
- 4.1.10 Contact details for Portfolio Data, discrepancy notices and Dispute Notices: The Firm agrees to deliver the following items to the Client using the contact details that the Firm has already on record as amended by the Client when notified:
  - 4.1.10.1 Portfolio Data
  - 4.1.10.2 Notice of a discrepancy
  - 4.1.10.3** Dispute Notice

## ANNEX

### 1. Termination and Netting

Automatic Termination: Applicable

Payment Netting: Applicable in respect of all payments (which will form a single "**Payment Netting Group**".)

### 2. Base Currency

Base Currency: Sterling (GBP)

### 3. Address for Notices

The respective details for notices to the Firm and the Client are as follows:

#### *The Firm's Details*

*For the purposes of clause 29.2(a) (notices other than those relating to close-out, termination or determinations of any Liquidation Amount or Cleared Set Termination Amount):*

Address: Level 35, 110 Bishopsgate, London EC2N 4AY  
United Kingdom

Email address: AMTFclientservices@amcgroup.com

Attention: Client Services

*For the purposes of notices relating to close-out, termination or determinations of any Liquidation Amount or Cleared Set Termination Amount:*

Name: Chief Operating Officer

Address: Level 35, 110 Bishopsgate, London EC2N 4AY  
United Kingdom

Email address: AMTFoperations@amcgroup.com

***The Client's Details***

*For the purposes of clause 29.2(b) all notices:*

Address:

Email address:

Attention:

**4. Service of Process**

*[Include details of the Client's service of process agents or the address at which the Firm or Client can be given service of process in England and Wales, if the Client is not incorporated (if a non-natural person) or resident (if a natural person) in the UK]*

The indemnity in clause 22.6 (*Indemnity*) shall be extended to cover any Losses which the Firm or its Associates may incur or be subjected to from time to time as a result of the failure of the Client to appoint or maintain an agent to accept service of process on its behalf in England and Wales.

**5. Additional Representations**

Not applicable

**6. Other Provisions**

Each of the following shall be a Transaction for the purposes of paragraph (e) of the definition of "Transaction": any futures, option, contract for difference, swap, spot or forward contract of any kind in relation to any commodity, financial instrument (including any security), currency, interest rate index or any combination thereof not otherwise included.

## EXECUTION SCHEDULE

The Client should address any further queries to the Firm as soon as possible.

**The Client should complete and sign this Schedule and return one signed copy to the Firm.**

All trustees must sign. A company should arrange for this Agreement to be executed in accordance with applicable law.

A Agreement (all customers)

The Client has read, understood and agrees to the clauses set out in this Agreement. As a representative of the Client, I confirm that I have full power and authority to enter into this Agreement.

[Executed for and on behalf of .....] [*If applicable*]

By:

Signed:.....

Signed:.....

[*name*] .....

[*name*] .....

[*title*] .....

[*title*] .....

B By signing above, the Client hereby agrees and acknowledges that:

*Please tick each box below*

- (i)  the Firm may execute an order on the Client's behalf outside a trading venue (including a UK or an EU Regulated Venue);
- (ii)  the Firm may place the Client's monies in a qualifying money market fund;
- (iii)  in the case of a limit order in shares admitted to trading on a regulated market or traded on a regulated market, multilateral trading facility or organised trading facility which is not immediately executed, the Firm is not bound to facilitate the earliest possible execution of that order by making it public in an easily accessible manner;
- (iv)  the Firm may enter into arrangements for securities financing transactions in respect of financial instruments held by the Firm on the Client's behalf or otherwise use such financial instruments for the Firm's own account or the account of another client;



- (v)  the Firm may enter into arrangements for securities financing transactions in respect of financial instruments held by the Firm on the Client's behalf in an omnibus account held by a third party, or otherwise use financial instruments held in such an account for the Firm's own account or for the account of another client;
- (vi)  the Client's custody assets may be registered or recorded in the Firm's name; and
- (vii)  the Firm may deposit financial instruments held on the Client's behalf with a third party in a third country that does not regulate the holding and safekeeping of financial instruments for the account of another person.