



# Daiwa Capital Markets Europe Limited

## PROFESSIONAL CLIENT AGREEMENT

*This client agreement, together with any Schedule(s), and accompanying documents (including the cover letter), as amended from time to time, (this "Agreement") sets out the terms of the contract between you and us. 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.*

March 2023

## MODULE A - INTRODUCTION

### 1 GENERAL INFORMATION

- 1.1 **Information about us:** We, Daiwa Capital Markets Europe Limited, are authorised and regulated by the Financial Conduct Authority ("**FCA**"). Our registered office is 5 King William Street, London EC4N 7AX. Our Financial Services Register no. is 124490. The FCA's registered office is at 12 Endeavour Square, London, E20 1JN. Our LEI number is MIM2K09LFYD4IB163W58.
- 1.2 **Communication with us:** You may communicate with us in writing (including fax), by email or other electronic means, or orally (including by telephone). The language of communication shall be English, and you will receive documents and other information from us in English. Our website at [www.uk.daiwacm.com](http://www.uk.daiwacm.com) contains further details about us and our services.
- 1.3 **Capacity:** We may act as principal or as agent on your behalf. Unless otherwise stated in the relevant trade confirmation or other communication, we will act as principal. On the basis of the information provided by you, we shall treat you as a professional client for the purposes of the FCA Rules. You have the right to request a different client categorisation. If you request categorisation as an eligible counterparty and we agree to such categorisation, we will provide you with our terms of business for eligible counterparties and we would no longer be required by regulatory rules to provide certain protections granted to professional clients. However, notwithstanding the absence of applicable regulatory rules, we would endeavour to provide a service which is overall effective and commercially reasonable. The regulatory protections concerned include formal requirements in the following areas: (a) to act in accordance with your best interests; (b) to provide certain information to you before providing services; (c) not to give or receive inducements; (d) to achieve best execution in respect of your orders; (e) to execute orders subject to other constraints as regards timing and handling relative to other clients' orders; and (f) to provide certain reports, confirmations and statements.
- 1.4 If you request to be categorised as a retail client, thereby requiring a higher level of regulatory protection, we will not be able to provide our services to you.
- 1.5 You agree and acknowledge your client categorisation and that you are responsible for keeping us informed about any change that could affect your categorisation as a professional client. In relation to execution services, we are entitled to assume that you have the knowledge and experience to understand the products and services which are offered to you and that therefore such products or services are appropriate for you. If you do not have the knowledge and experience adequate to understand the risks involved, you may be at a disadvantage.
- 1.6 You act as principal and not as agent (or trustee) on behalf of someone else. If you act as agent the terms of Appendix D - Agency Module will apply. Please indicate on the Acknowledgement Schedule if this is to be applied.
- 1.7 **Commencement:** This Agreement sets out the basis on which we will provide services to you. This Agreement and the Acknowledgements Schedule governs each Transaction entered into or outstanding between us following your acceptance of this Agreement. Subject to Applicable Regulations and this Agreement, there shall be no restrictions on the Transactions in respect of which we may deal with you. This Agreement supersedes any previous agreement between you and us on the same

subject matter, and takes effect when you signify acceptance of this Agreement. If you do not return the signed Acknowledgements Schedule to us, we shall be entitled to treat your continuing instructions to and dealing with us as signifying acceptance of this Agreement and the Acknowledgements Schedule. This Agreement and the Acknowledgements Schedule shall apply to all Transactions contemplated under this Agreement.

- 1.8 **Subject to Applicable Regulations:** This Agreement and all Transactions are subject to Applicable Regulations so that: (a) if there is any conflict between this Agreement and any Applicable Regulations, the latter will prevail; (b) nothing in this Agreement shall exclude or restrict any obligation which we have to you under Applicable Regulations; (c) we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Regulations; (d) all Applicable Regulations and whatever we do or fail to do in order to comply with them will be binding on you; and (e) such actions that we take or fail to take for the purpose of compliance with any Applicable Regulations shall not render us or any of our directors, officers, employees or agents liable.
- 1.9 **Market action:** If a Market (or intermediate broker or agent, acting at the direction of, or as a result of action taken by, a Market) or relevant Regulatory Body takes any action which affects a Transaction, then we may take any action which we, in our reasonable discretion, consider desirable to correspond with such action or to mitigate any loss incurred as a result of such action. Any such action shall be binding on you. If a Market or relevant Regulatory Body makes an enquiry in respect of any of your Transactions, you agree to co-operate with us and to promptly supply information requested in connection with the enquiry.
- 1.10 **Costs and charges:** Our charges will be subject to negotiation and agreement with you and you will pay our charges as agreed with you from time to time. These charges may include: any taxes imposed by any competent authority on any account opened or Transaction effected by or cleared for you; any fees or other charges imposed by a Market or any clearing organisation; interest on any amount due to us at the rates then charged by us (and which are available on request); and any other value added or other applicable taxes of any of the foregoing, including any withholding tax. Information about our investment services and products will be provided in accordance with all Applicable Regulations and as set out below in relation to ex ante costs and ex post costs.
- 1.11 **Ex ante costs information:** We shall notify you of our costs and charges related to the provision of our services and in respect of any Transaction in good time prior to the provision of such service. We may change these at anytime.
- 1.12 **Ex post costs information:** We will only provide you with ex post cost information to the extent we are required under Applicable Regulations. You therefore agree that we may disapply any requirement to provide information as set out in article 50 of the Commission Delegated Regulation ((EU) 2017/565) under MiFID II where we are able to.
- 1.13 **Limited MiFID II costs disclosure:** Further, you agree to our limited application of the detailed costs and charges disclosure requirements in accordance with article 50 of the Commission Delegated Regulation ((EU) 2017/565) under MiFID II and in our absolute discretion including but not limited to:
- (a) providing information to you about our costs and charges in a format other than a durable medium;

- (b) not providing you with details of third party payments in relation to our ex-ante costs and charges disclosure;
  - (c) not providing an illustration of the cumulative effect of costs on the return on an investment; and
  - (d) not providing you with details of the foreign exchange rate which we have used to convert costs and charges denominated in one currency into the currency in which our usual costs and charges figures are disclosed.
- 1.14 **Additional costs:** You should be aware of the possibility that other taxes or costs may exist that are not paid through or imposed by us. In addition, we may charge additional costs as agreed with you from time to time to cover any internal costs or disbursement, such as administrative charges, incurred by us in providing the services to you.
- 1.15 **Payments:** All payments to us under this Agreement shall be made in such currency as we may from time to time specify to the bank account designated by us for such purposes. All such payments shall be made by you without any deduction or withholding. All payments made by us to you shall be made to an account held in your name. Any request or instruction from you for us to pay an account other than in your name shall be subject to our sole discretion and in compliance with our anti-money laundering and/or money laundering reporting obligations.
- 1.16 **Remuneration and sharing of charges:** Subject to any relevant Applicable Regulations, we may receive remuneration from, or share charges with, an Associate or other third party in connection with Transactions carried out on your behalf.
- 1.17 **Description of service:** We may provide you with dealing services in respect of all Financial Instruments (as defined in Section C of Annex I of MiFID II) for which we have permission in accordance with our execution policy. Acceptance of these terms constitute your express consent to our execution policy.
- 1.18 We may carry out transactions on any market or exchange that we determine and may also carry out over-the-counter transactions. Dealing services may include:
- (a) the reception and transmission of orders;
  - (b) the execution of orders on behalf of clients;
  - (c) foreign exchange services where these are connected to the provision of investment services; and/or
  - (d) investment research and financial analysis or other forms of general recommendation relating to transactions in financial services.
- 1.19 Our policy provides for the possibility that your orders may be executed outside a trading venue, which through your acceptance of these terms you agree and acknowledge with respect to all Transactions.
- 1.20 Specific information and additional terms relating to Fixed Income, Equity and OTC Derivatives business are contained in the Appendices included with this Agreement.
- 1.21 If you wish to undertake Futures and Options transactions please refer to Appendix E.

- 1.22 We may enter into an agreement with you to provide you with direct electronic access to a Market ("**Electronic Facilities**"). In the absence of any separate agreement, these terms set out the essential rights and obligations between you and us in relation to the provision by us of Electronic Facilities in Appendix H. We retain responsibility for obligations under MiFID II in connection with such Electronic Facilities and are responsible for ensuring you comply with MiFID II requirements and with the rules of any applicable Market in connection with your activities through such access.
- 1.23 We may also provide other services if so agreed including the provision of services in relation to:
- (a) the underwriting of financial instruments or the placing of financial instruments on a firm commitment basis;
  - (b) the safe-keeping and administration of financial instruments for the account of clients including custodianship and related services;
  - (c) the provision of advice to undertakings on capital structure, strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
  - (d) services relating to Underwriting;
  - (e) securities lending and borrowing; or
  - (f) Gensaki and repurchase agreements,
- which are not covered by this Agreement alone and which may require supplementary or separate terms and documentation to be signed by you.
- 1.24 **Language:** This Agreement is supplied to you in English and we will continue to communicate with you in English for the duration of this Agreement.

## **2 RIGHT TO CANCEL**

- 2.1 **Right to Cancel:** You should note that you are not entitled to cancel this Agreement (but you can terminate it as set out in the Termination clause).

## **MODULE B - ADVICE**

### **3 ADVICE**

- 3.1 **Limitation on information:** We generally provide information to our clients (whether orally or in writing) on products, services or transactions offered by us or general market information, but we give no representation, warranty or guarantee as to its accuracy or completeness or as to any tax consequences or accounting treatment.
- 3.2 **Scope of advice:** In the vast majority of cases, the information that we will provide you with will not constitute a personal recommendation (as defined under Applicable Regulations). On the rare occasions where we do provide you with a personal recommendation then it will be provided under the terms of a separate agreement pursuant to which, having regard to your categorisation as a Professional Client, we will assume that (a) you have the necessary level of knowledge and experience to understand the risks involved in relation to the relevant products, services or transactions; (b) you are able financially to bear any related investment risks consistent

with your investment objectives; and (c) your investment objectives are consistent with the products, services and transactions that we specifically offer as detailed to you previously.

- 3.3 **Further information:** We may occasionally need to obtain such further information from you as we reasonably require to assess the suitability or appropriateness of the relevant product, service or transaction for you before we can deal with or for you. If you do not, or are unable to, provide us with the information we request in a timely manner, the information you provide is insufficient, or we consider that the relevant product, service or transactions is not suitable or appropriate for you, then this may result in a delay in dealing and/or we may refuse to deal, with or for you.
- 3.4 **No continuing obligation:** After our initial suitability assessment we shall not be responsible for reviewing on an ongoing basis the suitability or appropriateness of any product, service or transaction we have provided to or conducted with you.
- 3.5 **Investment research and other published information:** We may provide you with research. Where we do, however, it will be provided under the terms of a separate agreement under which the fees for such will be calculated separately from any dealing services, safe custody services and any other services which we may provide to you from time to time. You will pay a fee for the research as set out in the separate agreement, such fees to be reviewed annually between you and us. Further, any such research provided would not amount to advice. We may from time to time send published research reports and recommendations and other publications to you. If the document contains a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on to any such person or category of persons. We make no representations as to the time of receipt by you of research reports or recommendations and cannot guarantee that you will receive such research reports or recommendations at the same time as other clients. We shall not be liable for any investment decision you make, based in whole or in part, on any investment research report, recommendation or other publication we send to you. Any such published research reports or recommendations may appear in one or more screen information service. Please refer to our Conflicts of Interest Policy for further information on how we manage conflicts which would affect the impartiality of investment research we provide to you.
- 3.6 **Tax advice:** We will not provide any tax advice. In addition, we shall not at any time be deemed to be under any duty to provide tax advice.

## MODULE C - OUR RELATIONSHIP WITH YOU

### 4 CONFIDENTIALITY AND DATA PROTECTION

- 4.1 **Confidentiality:** We will treat all information we hold about you or your account or Transactions as confidential, even when you are no longer a client. You agree, however, that we may disclose this information to our Associates and that we and they may disclose it: to those who provide services to us or act as our agents; to anyone to whom we transfer or propose to transfer any of our rights or duties under this Agreement; to credit reference agencies or other organisations that help us and others make credit decisions and reduce the incidence of fraud or in the course of carrying out identity, fraud prevention or credit control checks; and to regulators and governmental agencies, in any jurisdiction, where we are required to do so by Applicable Regulations, there is a public duty to disclose; at your request; or with your consent.

- 4.2 **Data protection:** Before providing us with any information relating to identifiable living individuals (“**Data Subjects**”) in connection with this Agreement you should ensure that those Data Subjects are aware of: our identity; that we may use their information to administer and operate your account; that this may involve disclosure of their information as discussed in clause 4.1 above and transfer of their information to any country; and that they have rights of access to, and correction of, their information which they may exercise by contacting us in writing at [headofprivacy@uk.daiwacm.com](mailto:headofprivacy@uk.daiwacm.com).

To provide our services we may wish to transfer personal data to entities based outside of the EU, in particular the UK, Hong Kong and Japan, which may not have the benefit of equivalent data protection legislation. In such instances we have put in place appropriate safeguards to protect personal data. By entering these terms, you confirm that where you are a corporate customer, in respect of each Data Subject whose personal data you provide to us, you have obtained their consent for you to provide this information to us and for us to use it as described above, and you can demonstrate this to us if requested. You also confirm that you have notified those Data Subjects that they can obtain a copy of our privacy notice from our website at [www.uk.daiwacm.com](http://www.uk.daiwacm.com), setting out: (i) what personal data we may collect; (ii) for what purpose personal data may be processed; and (iii) the basis on which we are entitled to process their personal data.

- 4.3 **Data Subject Rights:** Data Subjects may have rights of access to some or all of the information we hold about them, to have inaccurate information corrected, to object to the processing of their personal data or request its erasure and to tell us that they do not wish to receive marketing information, under data protection law. If they wish to exercise any of these rights, then they may contact us in writing at [headofprivacy@uk.daiwacm.com](mailto:headofprivacy@uk.daiwacm.com).

## MODULE D - ORDER PLACEMENT

### 5 INSTRUCTIONS AND BASIS OF DEALING

- 5.1 **Placing of instructions:** You may give us instructions in writing (including fax), by email or other electronic means or orally (including by telephone), unless we tell you that instructions can only be given in a particular way. If you give instructions by telephone, your conversation will be recorded (see clause 14.4). If any instructions are received by us by telephone, computer or other medium we may ask you to confirm such instructions in writing. We shall be authorised to follow instructions notwithstanding your failure to confirm them in writing. Instructions for the simultaneous sale and purchase of a security or financial instrument on behalf of the same beneficial owner may not be given under this Agreement. In this Agreement "instructions" and "orders" have the same meaning.
- 5.2 **Authority:** We shall be entitled to rely on and act for you upon instructions given or purporting to be given by you or any person authorised on your behalf without further enquiry as to the genuineness, authority or identity of the person giving or purporting to give such instructions.
- 5.3 **Cancellation/withdrawal of instructions:** We can only cancel your instructions if we have not acted upon those instructions. Instructions may only be withdrawn or amended by you with our consent.
- 5.4 **Right not to accept orders:** We may, but shall not be obliged to, accept instructions to enter into a Transaction. If we decline to enter into a proposed Transaction, we shall not be obliged to give a reason but we shall promptly notify you accordingly. We also reserve

the right to refrain from effecting any transaction until we have received written instructions from you and/or recorded any telephone conversation with you. We also reserve the right to refrain from effecting any transaction before we have received from you appropriate documents of title or any appropriate payment of cash on account, if required.

- 5.5 **Control of orders prior to execution:** We have the right (but no obligation) to set limits and/or parameters to control your ability to place orders at our absolute discretion. Such limits and/or parameters may be amended, increased, decreased, removed or added to by us at our absolute discretion and may include (without limitation): (a) controls over maximum order amounts and maximum order sizes; (b) controls over our total exposure to you; (c) controls over prices at which orders may be submitted (to include (without limitation) controls over orders which are at a price which differs greatly from the market price at the time the order is submitted to the order book); (d) controls over the Electronic Services (to include (without limitation) any verification procedures to ensure that any particular order or orders has come from you); or (e) any other limits, parameters or controls which we may be required to implement in accordance with Applicable Regulations.

We do not generally operate as a systematic internaliser, or engage in systematic internaliser activities as defined by MiFID II, however where we do we shall comply with the Applicable Regulations.

Subject to the pre-trade quotation obligations set out in MiFID II, if we act as a systematic internaliser in a particular financial instrument, and we make available quotes to you in relation to such financial instrument, we may limit the number of Transactions in that financial instrument that we undertake with you (or, where applicable, your principal or principals) and/or the total number of Transactions we may enter into in aggregate with you on the basis of such published quote where it exceeds our internal risk limits or where the number and/or volume of orders sought by you and other clients considerably exceeds the norm.

- 5.6 **Execution of orders:** We shall use our reasonable endeavours to execute any order promptly, but in accepting your orders we do not represent or warrant that it will be possible to execute such order or that execution will be possible according to your instructions. We shall carry out an order on your behalf only when the relevant Market is open for dealings, and we shall deal with any instructions received outside Market hours as soon as possible when that relevant Market is next open for business (in accordance with the rules of that Market). You agree that we may execute an order on your behalf outside a Market. Our order execution policy will generally apply, save where you give us a specific instruction to the contrary. You confirm that you have read and agree to both our order execution policy and our conflicts policy, a summary of which is available on our website at [www.uk.daiwacm.com](http://www.uk.daiwacm.com). We will notify you of any material changes to either policy, but it is your responsibility to check for any other changes to either our order execution policy or our conflicts policy. We will consider the continued placement of orders by you to constitute your continued consent to our order execution policy and our conflicts policy as in effect from time to time.
- 5.7 **Crossing of orders:** We may arrange for a Transaction to be executed, either in whole or in part, by selling an investment to you from another client, or a client of an Associate of ours, or vice-versa. We shall not give you prior notice if we arrange for a Transaction to be executed in this manner.



- 5.8 **Programme Trades:** Where we accept an order to effect a Programme Trade, you agree that we are not obliged to notify you whether we act as principal or agent. If you would like us to execute a Programme Trade on a market as your agent, you must give instructions to us to that effect. In such case, we shall take all reasonable steps to obtain best execution, subject always to any specific instructions from you. If you do not instruct us to execute the Programme Trade as agent we will execute the Programme Trade as principal subject to Applicable Regulations. Upon request we will provide you with information comparing the execution of your Programme Trade with industry standard benchmarks and/or with any benchmark determined by you. We may execute an own account transaction in any investment included in a Programme Trade. Where you ask us to bid as principal on a Programme Trade that is based on market prices at a designated strike time or on an agreed benchmark, unless otherwise agreed in relation to such Programme Trade, we may at any time following your request for the bid, undertake transactions, including transactions using information provided by you, in the relevant securities or related securities which could have an impact on the strike prices achieved for you in the relevant securities. "**Programme Trade**" means a transaction or series of transactions executed in order to acquire or dispose of all or part of a basket of securities or a portfolio.
- 5.9 **Aggregation of orders:** We may combine your order with our own orders and orders of other clients. By combining your orders with those of other clients we must reasonably believe that this is in the overall best interests of our clients. Best interests are not solely determined by price. However, aggregation may result in you obtaining a less favourable price in relation to a particular order.
- 5.10 **Confirmations:** We shall send you confirmations at the end of the trading day for any Transactions that we have executed on your behalf on that trading day, by electronic mail or other method of electronic communication, to the e-mail address on record for you. It is your responsibility to inform us of any change to your e-mail address, the non- receipt of a confirmation, or whether any confirmations are incorrect before settlement. Confirmations shall, in the absence of manifest error, be conclusive and binding on you, unless we receive from you objection in writing within one Business Day of receipt or we notify you of an error in the confirmation within the same period.
- 5.11 **Performance and settlement:** You will promptly deliver any instructions, money, documents or property deliverable by you under a Transaction in accordance with that Transaction as modified by any instructions given by us for the purpose of enabling us to perform our obligations under the relevant matching Transaction on a Market or with an intermediate broker. This clause sets out below, the terms that are intended to ensure compliance with CSDR:
- (a) Following us notifying you of the execution of a Transaction within the scope of CSDR, you agree to provide us a written allocation with all the information referred to in Article 2 of the Settlement Discipline RTS, each within the timeframes stipulated in that Article. You agree that where you send us written allocations under this clause, this also constitutes written confirmation of your acceptance of the terms of the Transaction.
  - (b) You may provide the written allocation and confirmation referred to in this clause by any communication procedure agreed between you and us.

- (c) We shall confirm receipt of the written allocation and confirmation referred to in this clause within the timeframe required under Article 2 of the Settlement Discipline RTS.
- (d) You shall not be required to provide the written allocation and confirmation referred to in this clause upon execution of a Transaction where you grant us access to, or otherwise make available to us, on an ongoing basis, the information referred to in Article 2 of the Settlement Discipline RTS.
- (e) For the purposes of this clause:
  - (i) “**CSDR**” means Regulation (EU) No 909/2014 and the Settlement Discipline RTS as they may be modified from time to time;
  - (ii) “**Effective Date**” shall mean the date given in Article 42 of the Settlement Discipline RTS, as modified from time to time, or such other date notified by Us to You in writing (which may be by email);
  - (iii) “**Settlement Discipline RTS**” means Commission Delegated Regulation (EU) 2018/1229 as it may be modified from time to time; and
  - (iv) “**Transaction**” means any transaction which you undertake with or through us which is within the scope of Article 5(1) CSDR, except where an exemption under Article 2 of the Settlement Discipline RTS applies.

5.12 **Intermediate and third party brokers and other agents:** We may, at our entire discretion, arrange for any Transaction to be effected with or through the agency of an intermediate broker, who may be an Associate of ours, or who may be a third party, and who may not be in the United Kingdom, unless otherwise instructed by you. Where we can exercise discretion, our order execution policy will apply to our choice of where to send or transmit such orders. However, once sent or transmitted or where we do not have discretion, our order execution policy and other requirements or obligations set out in Applicable Regulations may not apply to a non-EEA third party broker or non-EEA Associate and such non-EEA third party broker or non-EEA Associate shall execute such orders and operate in accordance with applicable local law and regulations.

Transactions which are only booked to us and/or where the client-facing activities (such as agreeing the terms of the transaction) are carried on exclusively by employees of our Associates or branches established outside the EEA may not be subject to our order execution policy and other requirements or obligations (such as those related to conduct of business) set out in Applicable Regulations. Where we transmit orders to any third party intermediate broker or Associate, we will be responsible for the selection of the third party intermediate broker or Associate to the extent we have discretion over such choice and as set out in our order execution policy however the rules under which that third party intermediate broker or Associate executes such orders and operates shall be in accordance with the applicable local law and regulations.

Neither us nor our respective directors, officers, employees or agents will be liable to you for any act or omission of an intermediate broker or agent, that is not an Associate of ours. No responsibility will be accepted for any intermediate brokers or agents selected by you.

5.13 **Position limits:** We may require you to limit, reduce or terminate the number of open positions which you may have with us at any time and we may in our sole discretion

close out any one or more Transactions in order to ensure that such position limits are maintained.

- 5.14 **Trade reporting:** In accordance with MiFID II, either party may be obliged to make information about certain transactions concluded outside of a trading venue (as defined by MiFID II) public. Where you are an investment firm and we transact in financial instruments outside the rules of a trading venue, the responsibility, where applicable, for reporting the Transaction shall fall on the relevant party designated under MiFID II. Unless otherwise agreed in writing, where you are an investment firm we will not report such Transactions on your behalf. Where you are not an investment firm we will report the Transaction in such financial instrument. In either case, the relevant Transaction information will be made public in accordance with MiFID II and both parties waive any duty of confidentiality attaching to the information required to be disclosed. If we are required to report the Transaction we may rely upon third parties to undertake this task.

Notwithstanding the other provisions in this clause, to the extent you separately notify us (and we agree), we may provide you with an assisted trade reporting service to facilitate your trade reporting obligation. In this case, you will use an Approved Publication Arrangement ("**APA**") of our choice, unless you notify us otherwise of your preferred APA. In either case, you agree to provide the APA with all the relevant information for them to accept trade reporting data from us, and you agree to provide us with all relevant information to enable us to send data to the APA. You and we agree that this service is not an inducement, is not an outsourcing arrangement, and that you will remain responsible for reporting the transaction at all times, under Applicable Regulations.

- 5.15 **Transaction reporting:** To the extent that we might transaction report, we will only provide this service on your behalf subject to an express agreement in writing between us, separate to these terms (and in accordance with the provisions of section 5, Appendix A where applicable). Where we do so, we are required to report whether relevant transactions (such as transactions in equities) were short sales or otherwise. Where we have this information you agree that we will include whether such transaction was a short sale or otherwise in the transaction report, to satisfy our obligations under Applicable Regulations. Where we do not have such information and you have not confirmed whether such sale is a short sale or otherwise, we will report to the relevant regulator, as part of the transaction report, that such information has not been disclosed to us.
- 5.16 **Regulatory reporting:** We may be obliged to make information about certain Transactions public. You agree and acknowledge that any and all proprietary rights in such Transaction information are owned by us and you waive any duty of confidentiality attaching to the information which we reasonably disclose.
- 5.17 **Liability for reporting obligations:** We do not accept any responsibility or liability for the accuracy or completeness of your reporting obligations, whether or not you use information received from us via Financial Information Exchange Protocol (FIX) as the basis for satisfying your trade and/or transaction reporting obligations under any Applicable Regulations.
- 5.18 **DAC 6 Transaction reporting:** As an EEA client, you shall determine whether or not you have any reporting obligations arising from a proposed or consummated Transaction due to the operation of Council Directive (EU) 2018/822 (commonly known as Mandatory Disclosure Rules or DAC 6) as implemented into local laws and, where a proposed or

consummated Transaction is reportable, You shall file or instruct an advisor to file a report to the extent required under DAC 6 laws. Upon reasonable request, you shall provide DCME in writing:

- (i) the determination you or your tax advisor(s) have made regarding whether a proposed or consummated Transaction is subject to reporting under DAC 6, as implemented under local laws;
- (ii) a summary of the reasoning for that determination; and
- (iii) if relevant, the reporting reference number received upon submission of a DAC 6 filing.

For the purposes of this clause, "Transaction" shall have the meaning ascribed to it under the Council Directive (EU) 2018/82.

## **MODULE E - CLIENT MONEY**

### **6 CLIENT MONEY**

6.1 **Client money:** We will normally settle transactions on a delivery versus payment basis ("DvP") which means that any money received by us in relation to this Agreement will therefore not be eligible to be treated as client money under the FCA CASS Rules and will therefore not be segregated from our own accounts. In entering into this Agreement, you agree and acknowledge that we may, at our discretion, use the DvP exemption in the Client Money Rules.

To the extent that we do hold money of yours (for example, money returned to us as a result of settlement failure or as a result of incorrect instructions), we shall treat it as client money under the Client Money Rules which impose certain responsibilities on us to ensure that your money is protected.

6.2 **Passing money to third parties:** We may pass money received from you to a third party (e.g. a market, intermediate broker, OTC counterparty or clearing house) to hold or control in order to effect a Transaction through or with that person or to satisfy your obligation to provide collateral (e.g. initial margin requirement) in respect of a Transaction. We have no responsibility for any acts or omissions of any third party to whom we pass money received from you. The third party to whom we pass money may hold it in an omnibus account and it may not be possible to separate it from our money, or the third party's money. In the event of the insolvency or any other analogous proceedings in relation to that third party, we will only have an unsecured claim against the third party on behalf of you and our other clients, and you will be exposed to the risk that the money received by us from the third party is insufficient to satisfy the claims of you and all other clients with claims in respect of the relevant account.

6.3 **Interest:** We shall not pay you interest, or account to you for profits earned, on client money but may agree to do so from time to time.

6.4 **Group banks:** After due consideration, we may choose to hold your money with an Associate or other bank which is a bank in the same group as ourselves. Please let us know if you do not want your money to be placed with a group bank.

6.5 **Overseas banks, intermediate broker, settlement agent or OTC counterparty:** We may hold client money on your behalf outside the EEA. The legal and regulatory regime

applying to any such bank or person will be different from that of the United Kingdom and in the event of the insolvency or any other analogous proceedings in relation to that bank or person, your money may be treated differently from the treatment which would apply if the money was held with a bank in an account in the United Kingdom. We will not be liable for the insolvency, acts or omissions of any third party referred to in this sub- clause.

- 6.6 **Depository's lien:** We may deposit your money with a depository who may have a security interest, lien or right of set-off in relation to that money.
- 6.7 **Unclaimed client money:** Where, for a minimum period of six years, your account has been dormant, and, notwithstanding our reasonable efforts to trace you (which will include at least three attempts to contact you, at least two of which will be in writing at your last known address), we are unable to contact you to obtain your instructions, you agree that we may, where the amount is over £100 and in accordance with the FCA Rules, cease to hold your money as client money and donate it to a registered charity of our choice. Where we subsequently obtain your instructions, we undertake unconditionally to make good any valid claim and we shall make repayment to you from our funds of the sum previously held by us as client money.
- 6.8 **Definition:** In this clause 6, "**Client Money Rules**" means the provisions of the FCA's Client Assets Sourcebook relating to client money for firms carrying out MiFID business.

## MODULE F- MARGIN

### 7 MARGINING ARRANGEMENTS

- 7.1 **Margin call:** You agree to pay us on demand such sums by way of margin as are required from time to time under the Rules of any relevant Market (if applicable) or as we may in our discretion reasonably require for the purpose of protecting ourselves against loss or risk of loss on present, future or contemplated Transactions under this Agreement.
- 7.2 **Form of margin:** Unless otherwise agreed, margin must be paid in cash. The currency of the cash margin you pay to us shall be the currency of the relevant underlying Transaction (if applicable) or as we may in our discretion reasonably decide from time to time. Cash margin is paid to us as an outright transfer of title and you will not retain any interest in it. Cash margin received by us will be recorded by us as a cash repayment obligation owed by us to you.
- 7.3 **Non-cash margin:** Where we agree to accept non-cash collateral, it must be in a form acceptable to us. The value of the non-cash collateral and the proportion of that value to be taken into account for margin purposes shall be determined by us in our absolute discretion.
- 7.4 **Set-off on default:** If there is an Event of Default or this Agreement terminates, we shall set-off the balance of cash margin owed by us to you against your obligations (as reasonably valued by us) to us. The net amount, if any, payable between us following such set-off, shall take into account the Liquidation Amount payable under the Netting Module of this Agreement.
- 7.5 **Security interest:** As a continuing security for the performance of the Secured Obligations under or pursuant to this Agreement, you grant to us, with full title guarantee, a first fixed security interest in all non-cash margin now or in the future provided by you

to us or to our order or under our direction or control or that of a Market or otherwise standing to the credit of your account under this Agreement or otherwise held by us or our Associates or our nominees on your behalf.

- 7.6 **Further assurance:** You agree to execute such further documents and to take such further steps as we may reasonably require to perfect our security interest over, be registered as owner of or obtain legal title to the margin, secure further the Secured Obligations, enable us to exercise our rights or to satisfy any market requirement.
- 7.7 **Substitution:** You may not withdraw or substitute any property subject to our security interest without our consent.
- 7.8 **Negative pledge:** You undertake neither to create nor to have outstanding any security interest whatsoever over, nor to agree to assign or transfer, any of the cash or non-cash margin transferred to us, except a lien routinely imposed on all securities in a clearing system in which such securities may be held.
- 7.9 **Power to charge:** You agree that we may, to the extent that any of the margin constitutes "financial collateral" and this Agreement and your obligations hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "**Regulations**") as amended from time to time, free of any adverse interest of yours or any other person, grant a security interest over margin provided by you to cover any of our obligations to an intermediate broker or Market, including obligations owed by virtue of the positions held by us or other of our clients.
- 7.10 **Power of sale:** If an Event of Default occurs, we may exercise the power to sell all or any part of the margin. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to any exercise by us of our rights to consolidate mortgages or our power of sale. We shall be entitled to apply the proceeds of sale or other disposal in paying the costs of such sale or other disposal and in or towards satisfaction of the Secured Obligations.
- 7.11 **Power of appropriation:** To the extent that any of the margin constitutes "financial collateral" and this Agreement and your obligations hereunder constitute a "security financial collateral arrangement" under the Regulations, we shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations. For this purpose, you agree that the value of such financial collateral so appropriated shall be the amount of the margin, together with any accrued but unposted interest, at the time the right of appropriation is exercised. The parties further agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.
- 7.12 **General lien:** In addition and without prejudice to any rights to which we may be entitled under this Agreement or any Applicable Regulations, we shall have a general lien on all property held by us or our Associates or our nominees on your behalf until the satisfaction of the Secured Obligations.
- 7.13 **Definition:** In this clause 7, "**Secured Obligations**" means the net obligation owed by you to us after the application of set-off under the clause headed "Set-off on default" in this Module.

## **MODULE G - REPRESENTATIONS AND UNDERTAKINGS**

## 8 REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 **Representations and warranties:** You represent and warrant to us on the date this Agreement comes into effect and as of the date of each Transaction that:

- (a) you have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully to enter into and perform this Agreement and such Transaction and to grant the security interests and powers referred to in this Agreement;
- (b) the persons entering into this Agreement and each Transaction on your behalf have been duly authorised to do so;
- (c) this Agreement, each Transaction and the obligations created under them both are binding upon you and enforceable against you in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, order, charge or agreement by which you are bound;
- (d) no Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the above) an Event of Default (a "**Potential Event of Default**") has occurred and is continuing with respect to you or any Credit Support Provider;
- (e) you act as principal and sole beneficial owner (but not as trustee or agent (unless otherwise disclosed to us)) in entering into this Agreement and each Transaction;
- (f) any information which you provide or have provided to us in respect of your financial position, domicile or other matters is accurate and not misleading in any material respect;
- (g) you are willing and financially able to sustain a total loss of funds resulting from Transactions and trading in such Transactions is a suitable investment vehicle for you;
- (h) you have the necessary experience and knowledge in order to understand the risks involved in relation to Transactions or services provided by us to you under this Agreement;
- (i) except where we expressly agree (and document separately), you are not relying on and shall not rely on any communication (written or oral) from us as investment advice or as a recommendation in relation to any particular Transaction or service;
- (j) except as otherwise agreed by us, you are the sole beneficial owner of all margin you transfer 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 such securities may be held; and
- (k) **Brexit Reverse Solicitation Provision:** If you are an EEA client and;

- i. you have an ongoing client relationship with DCME which predates the end of the transition period (31 December 2020) following the UK's departure from the EU ("Brexit");
- ii. you have received a notification from us inviting you to transfer your business relationship to our affiliate, Daiwa Capital Markets Deutschland GmbH ("DCMD");
- iii. notwithstanding our notification to you pursuant to (ii) above, we have construed from your specific communication, action (or inaction) that you nevertheless intend to retain your relationship with DCME rather than transfer it to DCMD;
- iv. following Brexit, DCME's services are not directed at EEA clients and, therefore, pursuant to (iii) above, any services from us will be considered to be provided to you at your own exclusive initiative and also that any Transactions with us will be considered to have been entered in to on the basis of reverse solicitation;
- v. you understand that following Brexit we can offer/continue to offer specific services or activities which we have historically provided to you and that arose further to your request, but would not, pursuant to that request, be able to extend to you an unrelated service or activity that was not raised by you separately at your exclusive initiative;
- vi. with respect to Equity business and certain Fixed Income business, you may be contacted by a representative of DCMD from 1 January 2021. Such representative will be acting on behalf of DCME and your trades will to be passively booked to DCME.



8.2 **Covenants:** You covenant to us that:

- (a) you will at all times obtain and comply, 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;
- (b) you will promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to yourself or any Credit Support Provider;
- (c) you will use all reasonable steps to comply with all Applicable Regulations in relation to this Agreement and any Transaction, so far as they are applicable to you or us;
- (d) you will not send orders or otherwise take any action that could create a false impression of the demand or value for a security or financial instrument, or send orders which you have reason to believe are in breach of Applicable Regulations. You shall observe the standard of behaviour reasonably expected of persons in your position and not take any step which would cause us to fail to observe the standard of behaviour reasonably expected of persons in our position;
- (e) upon demand, you will provide us with such information as we may reasonably require to evidence the matters referred to in this clause or to comply with any Applicable Regulations; and
- (f) you will notify us of any material changes in regulatory status or your ability to enter into investment business transactions with us.

**MODULE H - DEFAULT, NETTING AND TERMINATION**

**9. EVENTS OF DEFAULT**

9.1 **Events of Default:** The following shall constitute Events of Default:

- (a) you fail to make any payment when due under this Agreement or to make or take delivery of any property when due under, or to observe or perform any other provision of this Agreement and such failure continues for two Business Days after notice of non-performance has been given by the Non-Defaulting Party to the Defaulting Party;
- (b) you commence a voluntary case or other procedure seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official (each a "**Custodian**") of you or any substantial part of your assets, or if you take any corporate action to authorise any of the foregoing, and in the case of a reorganisation, arrangement or composition, we do not consent to the proposals;
- (c) an involuntary case or other procedure is commenced against you seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any

bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent) or seeking the appointment of a Custodian of you or any substantial part of your assets and such involuntary case or other procedure either (a) has not been dismissed within five days of its institution or presentation or (b) has been dismissed within such period but solely on the grounds of an insufficiency of assets to cover the costs of such case or other procedure;

- (d) you or any Credit Support Provider (or any Custodian acting on behalf of either of you or a Credit Support Provider) disaffirms, disclaims or repudiates any obligation under this Agreement or any guarantee, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party ("**Credit Support Provider**"), or of you, in favour of us supporting any of your obligations under this Agreement (each a "**Credit Support Document**");
- (e) any representation or warranty made or given or deemed made or given by you 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;
- (f) (i) any Credit Support Provider fails, or you yourself fail to comply with or perform any agreement or obligation to be complied with or performed by you or it 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 your obligations under this Agreement, unless we have agreed in writing that this shall 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) any event referred to in paragraphs (b) to (d) or (h) of this sub-clause occurs in respect of any Credit Support Provider;
- (g) you are dissolved, or, if your 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 your dissolution, removal from such a register, or the ending of such a registration;
- (h) where you or your Credit Support Provider is a partnership, any of the events referred to in paragraphs (b) to (c) or (h) of sub-clause 1 of this clause occurs in respect of one or more of your or its partners;
- (i) we consider it necessary or desirable to prevent what we consider is or might be a violation of any Applicable Regulation or good standard of market practice;
- (j) we consider it necessary or desirable for our own protection or any action is taken or event occurs which we consider might have a material adverse effect upon your ability to perform any of your obligations under this Agreement;
- (k) any event of default (however described) occurs in relation to you under any other agreement between us which you are a party to.

## 10. NETTING

- 10.1 **Rights on default:** On the occurrence of an Event of Default, we may exercise our rights under this clause, except that in the case of the occurrence of any Event of Default specified in paragraphs (b) or (c) of the definition of Events of Default (each a "**Bankruptcy Default**"), the automatic termination provision of this clause shall apply.
- 10.2 **Liquidation Date:** Subject to the following sub-clause, at any time following the occurrence of an Event of Default, we may, by notice to you, specify a date (the "**Liquidation Date**") for the termination and liquidation of Transactions in accordance with this clause.
- 10.3 **Automatic termination:** The date of the occurrence of any Bankruptcy Default shall automatically constitute a Liquidation Date, without the need for any notice by us and the provisions of the following sub-clause shall then apply.
- 10.4 **Calculation of Liquidation Amount:** Where we have notified you of a Liquidation Date:
- (a) neither of us shall be obliged to make any further payments or deliveries under any Netting Transactions which would, but for this clause, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount;
  - (b) we shall (on, or as soon as reasonably practicable after, the Liquidation Date) determine (discounting if appropriate), in respect of each Netting Transaction referred to in paragraph (a) the total cost, loss or, as the case may be, gain, in each case expressed in a currency specified by us in writing or, failing any such specification, the lawful currency of the United Kingdom (and, if appropriate, including 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) as a result of the termination, pursuant to this Agreement, of each payment or delivery which would otherwise have been required to be made under such Netting Transaction had no Liquidation Date occurred (and assuming satisfaction of each applicable condition precedent and having due regard, if appropriate, to such market quotations published on, or official settlement prices set by the relevant Market as may be available on, or immediately preceding, the date of calculation); and
  - (c) we shall treat each cost or loss to us, determined as above, as a positive amount and each gain by us, so determined, as a negative amount and aggregate all of such amounts to produce a single, net positive or negative amount, denominated in the base currency (the "**Liquidation Amount**").
- 10.5 **Payer:** If the Liquidation Amount determined pursuant to this clause is a positive amount, you shall pay it to us and if it is a negative amount, we shall pay it to you. We shall notify you of the Liquidation Amount, and by whom it is payable, immediately after the calculation of such amount.
- 10.6 **Other transactions:** Where termination and liquidation occurs in accordance with this clause, we shall also be entitled, at our discretion, to terminate and liquidate, in

accordance with the provisions of this clause, any other transactions entered into between us which are then outstanding.

- 10.7 **Payment:** Unless a Liquidation Date has occurred or has been effectively set, we shall not be obliged to make any payment or delivery scheduled to be made by us under a Netting Transaction 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 hereunder, or any combination thereof) an Event of Default with respect to you has occurred and is continuing.
- 10.8 **Base currency:** For the purposes of any calculation hereunder, we may convert amounts denominated in any other currency into the lawful currency of United Kingdom or other lawful currency as we may in our absolute discretion decide to use from time to time at such rate prevailing at the time of the calculation as we shall reasonably select.
- 10.9 **Payments:** Unless a Liquidation Date has occurred or has been effectively set, we shall not be obliged to make any payment or delivery scheduled to be made by us under a Transaction 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 hereunder, or any combination thereof) an Event of Default with respect to you has occurred and is continuing.
- 10.10 **Additional rights:** Our rights under this clause shall be in addition to, and not in limitation or exclusion of, any other rights which we may have (whether by agreement, operation of law or otherwise).
- 10.11 **Application of netting to Netting Transactions:** This clause applies to each Netting Transaction entered into or outstanding between us on or after the date this Agreement takes effect.
- 10.12 **Single agreement:** This Agreement, the particular terms applicable to each Netting Transaction, and all amendments to any of them shall together constitute a single agreement between us. We both acknowledge that all Netting Transactions entered into on or after the date this Agreement takes effect are entered into in reliance upon the fact that the Agreement and all such terms constitute a single agreement between us.
- 10.13 **Other agreements:** Subject to sub-clause 6 of this clause, the provisions of this clause shall not apply to any Transaction which is subject to liquidation and termination under another agreement. However, any sum resulting from a liquidation and termination under another agreement, may be set-off against the Liquidation Amount.

## 11 RIGHTS ON DEFAULT

- 11.1 **Default:** On an Event of Default or at any time after we have determined, in our absolute discretion, that you have not performed (or we reasonably believe that you will not be able or willing in the future to perform) any of your obligations to us, in addition to any rights under the Netting Clause we shall be entitled without prior notice to you:
- (a) instead of returning to you investments equivalent to those credited to your account, to pay to you the fair market value of such investments at the time we exercise such right;
  - (b) to sell such of your investments as are in our possession or in the possession of any nominee or third party appointed under or pursuant to this Agreement, in

each case as we may in our absolute discretion select or and upon such terms as we may in our absolute discretion think fit (without being responsible for any loss or diminution in price) in order to realise funds sufficient to cover any amount due by you hereunder; and/or

- (c) to close out, replace or reverse any Transaction, buy, sell, borrow or lend or enter into any other Transaction or take, or refrain from taking, such other action at such time or times and in such manner as, at our sole discretion, we consider necessary or appropriate to cover, reduce or eliminate our loss or liability under or in respect of any of your contracts, positions or commitments.

## 12 TERMINATION WITHOUT DEFAULT

- 12.1 **Termination:** Unless required by Applicable Regulations, either party may terminate this Agreement (and the relationship between us) by giving ten Business Days written notice of termination to the other. We may terminate this Agreement immediately if you fail to observe or perform any provision of this Agreement or in the event of your insolvency other than in the case of force majeure.

Upon terminating this Agreement, all amounts payable by you to us will become immediately due and payable including (but without limitation):

- (a) all outstanding fees, charges and commissions;
- (b) any dealing expenses incurred by terminating this Agreement; and
- (c) any losses and expenses realised in closing out any transactions or settling or concluding outstanding obligations incurred by us on your behalf.

Upon termination of this Agreement all outstanding unexecuted orders or transactions will be cancelled.

- 12.2 **Existing rights:** Termination shall not affect then outstanding rights and obligations (in particular relating to the Indemnities and Limitation of Liability Module and the Miscellaneous and Governing Law Module) and Transactions which shall continue to be governed by this Agreement and the particular clauses agreed between us in relation to such Transactions until all obligations have been fully performed.

## MODULE I - INDEMNITIES AND LIMITATION OF LIABILITY

### 13 EXCLUSIONS, LIMITATIONS AND INDEMNITY

- 13.1 **General exclusion:** Neither we nor our directors, officers, employees, or agents shall be liable for any losses, damages, costs or expenses, whether arising out of negligence, breach of contract, misrepresentation or otherwise, incurred or suffered by you under this Agreement (including any Transaction or where we have declined to enter into a proposed Transaction) unless such loss is a reasonably foreseeable consequence or arises directly from our or their respective gross negligence, wilful default or fraud. In no circumstance, shall we have liability for losses suffered by you or any third party for any special or consequential damage, loss of profits, loss of revenue, 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 our liability for death or personal injury resulting from our negligence.

- 13.2 **Tax implications:** Without limitation, we do not accept liability for any adverse tax implications of any Transaction whatsoever.
- 13.3 **Changes in the market:** Without limitation, we do not accept any liability by reason of any delay or change in market conditions before any particular Transaction is effected.
- 13.4 **Limitation of liability:** We shall not be liable to you for any partial or non-performance of our obligations hereunder by reason of any cause beyond our reasonable control, including without limitation any breakdown, delay, malfunction or failure of transmission, communication or computer facilities, industrial action, act of terrorism, act of God, acts and regulations of any governmental or supra national bodies or authorities or the failure by the relevant intermediate broker or agent, agent or principal of our custodian, sub-custodian, dealer, Market, clearing house or regulatory or self-regulatory organisation, or any other third party, for any reason, to perform its obligations. Nothing in this Agreement will exclude or restrict any duty or liability we may have to you under the regulatory system (as defined in the FCA Rules), which may not be excluded or restricted thereunder.
- 13.5 **Responsibility for orders:** You will be responsible for all orders entered by you or on your behalf via the Electronic Services and you will be fully liable to us for the settlement of any Transaction arising from it.
- 13.6 **Entire Agreement:** You acknowledge that you have not relied on or been induced to enter into this Agreement by a representation other than those expressly set out in this Agreement. We will not be liable to you (in equity, contract, tort or under the Misrepresentation Act 1967) for a representation that is not set out in this Agreement and that is not fraudulent.
- 13.7 **Indemnity:** You shall pay to us such sums as we may from time to time require in or towards satisfaction of any debit balance on any of your accounts with us and, on a full indemnity basis, any losses, liabilities, costs or expenses (including legal fees and any incurred interest), taxes, imposts and levies which we may incur or be subjected to with respect to any of your accounts or any Transaction or any matching Transaction on a Market or with an intermediate broker or as a result of any misrepresentation by you or any violation by you (or your Credit Support Provider) of your (or your Credit Support Provider's) obligations under this Agreement (including any Transaction) or by the enforcement of our rights.

## MODULE J - MISCELLANEOUS AND GOVERNING LAW

### 14. MISCELLANEOUS

- 14.1 **Amendments:** We have the right to amend the terms of this Agreement. You confirm that you have read and agree to our Terms of Business (which is also available upon request or on our website at [www.uk.daiwacm.com](http://www.uk.daiwacm.com)). It is your responsibility to check for changes to our Terms of Business as published from time to time at the above address. If we make any material change to this Agreement, we will give at least ten Business Days written notice to you. Such material amendment will become effective on the date specified in the notice. Unless otherwise agreed, an amendment will not affect any outstanding order or Transaction or any legal rights or obligations which may already have arisen.

- 14.2 **Notices:** Unless otherwise agreed, all notices, instructions and other communications to be given by us under this Agreement shall be given to the address or fax number provided by you to us. Likewise, all notices, instructions and other communications to be given by you under this Agreement shall be given to our address or fax number and/or by notice in writing by either party. You will notify us of any change of your address in accordance with this clause.
- 14.3 **Electronic communications:** Subject to Applicable Regulations, any communication between us using electronic signatures shall be binding as if it were in writing. Orders or instructions given to you via e-mail or other electronic means will constitute evidence of the orders or instructions given. We may provide information to our counterparties by posting such information on our website.
- 14.4 **Recording of calls:** In accordance with Applicable Regulations, we will record telephone conversations without use of a warning tone to ensure that the material terms of the Transaction, and any other material information relating to the Transaction is promptly and accurately recorded. Such records will be our sole property and accepted by you as evidence of the orders or instructions given. Subject to Applicable Rules, records may be made available to you on request and will be presented in the language used to provide the service. Any requests should be made to the Head of Compliance, Daiwa Capital Markets Europe Limited, 5 King William Street, London, EC4N 7AX.
- 14.5 **Our records:** Our records, unless shown to be wrong, will be evidence of your dealings with us in connection with our services. You will not object to the admission of our records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer. You will not rely on us to comply with your record keeping obligations, although records may be made available to you on request at our absolute discretion.
- 14.6 **Your records:** You agree to keep adequate records in accordance with Applicable Regulations to demonstrate the nature of orders submitted and the time at which such orders are submitted.
- 14.7 **Complaints** If you have a complaint about us, please contact the Head of Compliance, Daiwa Capital Markets Europe Limited, 5 King William Street, London, EC4N 7AX. Our complaints procedure will follow the requirements of Applicable Rules. All complaint submissions are free of charge. Further information can be obtained upon request.
- 14.8 **Third party rights:** This Agreement shall be for the benefit of and binding upon us both and our respective successors and assigns. You shall not assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer your rights or obligations under this Agreement or any interest in this Agreement, without our prior written consent, and any purported assignment, charge or transfer in violation of this clause shall be void. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999.
- 14.9 **Time of essence:** Time shall be of the essence in respect of all obligations of yours under this Agreement (including any Transaction).
- 14.10 **Rights and remedies:** The rights and remedies provided under this Agreement are cumulative and not exclusive of those provided by law. We shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to you. No failure by us to exercise or delay by us in exercising any of our rights under this

Agreement (including any Transaction) or otherwise shall operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy shall prevent further exercise of that right or remedy or the exercise of another right or remedy.

- 14.11 **Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained
- 14.12 **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 such provision under the law of any other jurisdiction shall in any way be affected or impaired.

## 15 GOVERNING LAW AND JURISDICTION

- 15.1 **Governing law:** A Transaction which is subject to the Rules of a Market shall be governed by the law applicable to it under those Rules. Subject thereto, this Agreement shall be governed by and construed in accordance with English law.
- 15.2 **Law applicable to relationship prior to the conclusion of the Agreement:** The law applicable to the relationship between us prior to the conclusion of this Agreement is English law.
- 15.3 **Jurisdiction:** Each of the parties irrevocably:
- (a) agrees for our benefit that the courts of England shall have jurisdiction to settle any suit, action or other proceedings relating to this Agreement ("**Proceedings**") and irrevocably submits to the jurisdiction of such courts (provided that this shall not prevent us from bringing an action in the courts of any other jurisdiction); and
  - (b) (waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court and agrees not to claim that such Proceedings have been brought in an inconvenient forum or that such court does not have jurisdiction over it.
- 15.4 **Waiver of immunity and consent to enforcement:** You irrevocably waive to the fullest extent permitted by applicable law, with respect to yourself and your revenue and assets (irrespective of their use or intended use) all immunity on the grounds of sovereignty or other similar grounds, including from enforcement with regard to any assets held by a central bank from (a) suit, (b) jurisdiction of any courts, (c) relief by way of injunction, order for specific performance or for recovery of property, (d) attachment of assets (whether before or after judgment) and (e) execution or enforcement of any judgment to which you or your revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agree that you will not claim any immunity in any Proceedings. You consent generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings, including, without limitation, 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.

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

## 16 INTERPRETATION

- 16.1 **Interpretation:** In this Agreement:

**"Applicable Regulations"** means:

- (a) all FCA Rules or any other rules of a relevant regulatory authority;
- (b) the Rules of the relevant Market; and
- (c) all other applicable laws, rules and regulations as in force from time to time;

**"Associate"** means our subsidiaries and holding company, Daiwa Securities Group Inc., and all persons and entities that directly and indirectly controls, is controlled by or is under common control with Daiwa Securities Group Inc.;

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

**"Credit Support Provider"** means any person who has entered into any guarantee, hypothecation, agreement, margin or security agreement in our favour in respect of your obligations under this Agreement;

**"Electronic Services"** means a service provided by us, 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;

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

**"Event of Default"** means any of the events of default as listed in paragraphs 9.1 (a) to (k) of sub-clause 1 of the Clause headed **"Default, Netting and Termination"**;

**"Market"** means, except in the LIFFE Schedule, any regulated market, multilateral trading facility or organised trading facility (as such terms are defined in the FCA Rules) and each a "trading venue" and together "trading venues";

**"MiFID II"** means the EU Markets in Financial Instruments Directive 2014/65/EU) and EU Markets in Financial Instruments Regulation (EC) No 600/2014);

**"Netting Transaction"** means a Transaction which is intended to be subject to the clause entitled **"Netting"**;

**"Rules"** means articles, rules, regulations, procedures and customs, as in force from time to time;

**"Regulatory Body"** means the FCA or the Prudential Regulation Authority ("PRA") (including any successor bodies, determined by law or statute) or an authority exercising

functions corresponding to the functions exercised by the FCA and PRA under the laws of another EEA State; and

**"Transaction"** means any transaction subject to this Agreement, and includes:

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

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 matched with any transaction within paragraph (a), (b) or (c) of this definition; or
- (e) any other transaction which we both agree, in any specific Module, or otherwise, shall be a Transaction

16.2 **General interpretation:** A reference in this Agreement to a "clause" or "Schedule" shall be construed as a reference to, respectively, a clause or Schedule of this Agreement, unless the context requires otherwise. References in this Agreement to any statute or statutory instrument or Applicable Regulations include any modification, amendment, extension or re-enactment thereof. A reference in this Agreement to "document" shall be construed to include any electronic document. The masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires. Words and phrases defined in the FCA's Rules have the same meaning in this Agreement unless expressly defined in this Agreement.

16.3 **Schedules:** The clauses contained in the attached Schedule(s) (as amended from time to time) shall apply. We may from time to time send to you further Schedules in respect of Markets or Transactions. In the event of any conflict between the clauses of any Schedule and this Agreement, the clauses of the Schedule shall prevail. The fact that a clause is specifically included in a Schedule in respect of one Market or Transaction shall not preclude a similar clause being expressed or implied in relation to any other Market or Transaction.

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

## APPENDIX A - EQUITIES MODULE

### 1 SCOPE

- 1.1 **Transactions:** The clauses in this Module apply to Transactions in Equity Securities. For these purposes, "**Transaction**" means a transaction relating to an Equity Security or under which delivery of an Equity Security is contemplated upon its formation falling within paragraphs (a) to (d) of the definition of "Transaction" in the Interpretation Module.
- 1.2 If Transactions in Equity Securities arise under and are subject to the terms of a Global Master Securities Lending Agreement ("GMSLA") or other industry standard master agreement (if any) in place between you and us, the clauses in this Module shall apply in addition to, and without prejudice to, the terms of such GMSLA or other standard master agreement. In the event of any conflict, the provisions of the GMSLA or other standard master agreement shall prevail over this Module.
- 1.3 **Netting:** Any Transaction to which this Module applies shall, subject as follows, be deemed included in the definition of "Netting Transaction" for the purposes of this Agreement and subject to termination and liquidation under the clause headed "Netting" (the "**Netting Clause**") following an Event of Default. The Netting Clause shall not apply to any Transaction in Equity Securities to the extent that such Transaction has become subject to close-out netting under the terms of a GMSLA in place between us.

### 2 DEALING AS PRINCIPAL

**Execution and capacity:** Every order which we may take is accepted and executed on the basis that we act on our own account as principal and not as agent for you.

### 3 TRADING PROCEDURES

- 3.1 **Our quotes:** You acknowledge that any prices displayed by us are, or may be, indicative only. Therefore in certain market conditions the market price may have moved between the sending and the actual execution of a Transaction. Such movement may be in your favour or against you.
- 3.2 **Cut-off times:** We may establish cut-off times for instructions which may be earlier than the times established by the particular Market and/or any clearing house involved in any Transaction, and you shall have no claims against us arising out of the fact that an order was not placed by you ahead of our cut-off time.
- 3.3 **Corporate Actions:** Where an order is given to us in respect of any Equity Security for which a Corporate Action is imminent we may decline to accept your instructions.
- 3.4 **Our duty in respect of Corporate Actions:** Where, in respect of any Equity Securities held by us for your account or deliverable to us for your account, any Corporate Actions occur, we shall not be obliged to undertake any action.

### 4 OFF-MARKET AND GREY MARKET INVESTMENTS

- 4.1 **Off-Market Transactions:** If we sell you any Equity Securities which are not quoted on a Market recognised or designated by the FCA, then, unless we specify a longer period, we shall, to the extent required by law, ensure the availability to you of a reasonable repurchase price for such Equity Securities for three months after the original sale to

you. You may find it difficult to sell such Equity Securities after the end of such period due to their nature and possible illiquidity.

4.2 ***Suspended and grey market investments:*** We may enter into Transactions for or with you in:

- (a) an Equity Security whose listing on a Market is suspended, or the listing of or trading in which has been discontinued, or which is subject to a Market announcement suspending or prohibiting trading; or
- (b) a grey market investment, which is an Equity Security for which application has been made for listing or admission to trading on a Market where the Equity Security's listing or admission has not yet taken place (otherwise than because the application has been rejected) and the Equity Security is not already listed or admitted to trading on another Market.

4.3 ***Transparency:*** It is possible that there may be insufficient published information on which to base a decision to buy or sell such Equity Securities as referred to in the two preceding clauses.

## 5 SHORT-SELLING

5.1 ***Sales presumed not to be Short Sales:*** Unless your instructions specify to the contrary, all sale instructions are accepted by us on the understanding that you own the Equity Securities sold. We shall not accept any instruction for a Short Sale Transaction if no satisfactory arrangements for making available the relevant Equity Securities for delivery have been agreed with us (which may include your entering into a securities lending arrangement with us or a third party or your agreement to our doing so on your behalf). We shall not accept any instructions for a short sale transaction where there are regulatory restrictions that apply to such transactions.

5.2 ***Short Sale instructions:*** Upon our acceptance of a Short Sale instruction, we shall record the position as if you had sold the Equity Securities to us as principal. We shall in respect of any Short Sale Transaction effect delivery of the Equity Securities on or before the settlement date. To do so we may borrow Equity Securities from a third party or lend them to you ourselves. Unless you advise us that you have arranged [for us] to borrow the Equity Securities from a particular lender (in which case we shall, subject to whatever conditions have been previously agreed between us and you, seek to confirm such arrangements), we shall have absolute discretion in the selection of lenders.

5.3 ***Rolled Transactions:*** Where Equity Securities have been borrowed by you or on your behalf to cover settlement obligations, each Short Sale will be closed out upon notice, by you or us, of not less than the standard settlement period for the relevant Market or clearing organisation. When a Short Sale is closed out, you shall deliver or procure delivery of the relevant Equity Securities in accordance with our directions. Notice shall be deemed to have been given by you under this sub-clause, specifying delivery after expiry of such standard settlement period, if an Event of Default occurs or this Agreement is terminated.

5.4 ***Income:*** If we are required to pay income in respect of any Equity Securities subject to a Short Sale to any person from which such Equity Securities have been borrowed on your behalf, we shall debit a sum of money from your account equivalent to the amount necessary to enable us to make an equivalent payment to such person in relation to the

applicable loan of the Equity Securities together with such expenses or fees as may apply.

## 6 LIMIT ORDERS

- 6.1 **Sufficient Funds:** If you instruct us in respect of a Limit Order for the purchase of any Equity Securities, you will ensure that there are sufficient funds in your account to meet that Limit Order. We will not restrict you from subsequently entering further instructions which may result in insufficient funds for a Limit Order to be executed.
- 6.2 **Our role as principal:** Any Limit Order in respect of an Equity Security in which we act as market-maker or otherwise as principal will be given by you on the understanding that:
- (a) the order will not be executed unless and until we bid for the Equity Security at the same or a higher price than that specified in the order (in the case of a sell order) or offer it at the same or a lower price than that specified in the order (in the case of a buy order) with a view to purchasing or selling (as the case may be) the Equity Security concerned in the amount of the order; and
  - (b) until execution, you may buy the Equity Security (where the order you gave was to buy) at a price equal to or lower than stated in the order, or sell it (where the order was to sell) at a price equal to or higher than that stated in the order. Any such purchase or sale may be from or to any third party and for our own account or for that of any affiliated company.
- 6.3 **Cancellation:** If you wish to cancel a Limit Order before its execution or expiry, subject to Applicable Regulations the order remains valid until you receive a confirmation of cancellation of that order from us.
- 6.4 **Partial fills:** No partial fill of a Limit Order will be executed. We accept no responsibility if the order is not filled.
- 6.5 **Publication:** Unless you notify us to the contrary, we shall not immediately make public any Limit Order in respect of shares admitted to trading on an EEA regulated Market which is not immediately executed under prevailing market conditions.

## 7 SETTLEMENT AND OWNERSHIP

- 7.1 **Purchases:** You shall pay for any Equity Securities purchased for you on or before the settlement date. If, by the time due for settlement of a Transaction (as determined by us), there is insufficient cash in your account to enable us to meet the settlement obligations, we shall not be obliged to settle the Transaction. Where there is insufficient cash in your account and we do proceed to settlement, we may accept delivery of the Equity Securities, charge your account for the payment to satisfy your obligation, sell the Equity Securities at a price we believe to be reasonable, and credit your account with the net proceeds thereof (after deduction of commission and other costs).
- 7.2 **Sales:** You shall make Equity Securities sold by you available for settlement on or before the settlement date. If, by the time due for settlement of a Transaction (as determined by us), there are insufficient Equity Securities held for your account, we shall not be obliged to settle the Transaction. Where there are insufficient Equity Securities in your account and we do proceed to settlement, we may buy the Equity Securities required for delivery at a price we believe to be reasonable, charge your account for the cost thereof, deliver

the Equity Securities to satisfy the delivery obligation, and credit your account with the net proceeds thereof (after deduction of commission and other costs).

- 7.3 **Title:** If in any Transaction we deliver Equity Securities or pay money on your behalf, but your obligations in respect of that Transaction are not performed simultaneously with or prior to our own delivery or payment, then we shall not be obliged to credit your account with any Equity Securities or money received by us from any third party until your own obligations to us are fully performed; and any such Equity Securities or money received by us shall be our property not yours.
- 7.4 **Finality:** We shall owe no payment or delivery obligation and shall not be deemed to hold any property belonging to you as a result of settlement of a Transaction until we have received, with finality, the cash or Equity Securities to which you are entitled.
- 7.5 **Contractual Settlement:** We may, in our discretion, provisionally credit and debit your account on the due date of settlement as if the Transaction had settled on that date even where, under Applicable Regulations, the Transaction has not settled in your favour or our favour with finality. We may, however, in our absolute discretion reverse any such provisional debits and credits at any time until we receive payment (on sale) or delivery (on purchase) on your behalf with finality. We shall not be liable to you in respect of income or any other rights relating to the Equity Securities which would have accrued on the monies or investments if settlement had taken place on the contractual settlement date.
- 7.6 **CREST:** Where you instruct us to effect settlement by accepting the transfer of Equity Securities to our nominated CREST account you accept that payment obligations upon settlement will be dealt with through a settlement bank and that the creation of a settlement bank payment obligation will to the extent of such obligation discharge payment due from us.
- 7.7 **Non-DvP Markets:** In some securities markets, delivery of Equity Securities and payment may not be made simultaneously. In such markets we may make payment or delivery of Equity Securities at such time and in such manner as is in accordance with relevant local law and practice or with the customs prevailing in the relevant market. You shall bear the risk that the counterparty to the Transaction may not pay or perform on time or at all.
- 7.8 **Fails:** We will notify you if settlement of a Transaction fails to take place on the contractual settlement date, whether because of a default by a counterparty to that Transaction or otherwise.
- 7.9 **Aggregation for settlement:** Settlements in respect of executed Transactions may, in our discretion, be netted to the lowest number of movements for each type of Equity Security reasonably possible, subject to Applicable Regulations.
- 7.10 **Relevant Markets and Clearing Organisations:** Where more than one trading Market is potentially relevant in respect of a Transaction or an Equity Security, it shall be within our discretion to determine the settlement period or other matters relevant to the operation of this Module.

## 8 STABILISATION

- 8.1 **Stabilisation Activity:** We may effect Transactions in Equity Securities that may be the subject of stabilisation, a price supporting process that may take place in the context of new issues. The effect of stabilisation can be to make the market price of the new issue temporarily higher than it would otherwise be. We shall owe you no duties in respect of legitimate stabilisation activities which we undertake.

## 9 TRANSPARENCY

- 9.1 **Trade reporting:** Under Applicable Regulations, we may be obliged to make information about certain Transactions public. You agree and acknowledge that any and all proprietary rights in such Transaction information are owned by us and you waive any duty of confidentiality attaching the information which we are obliged to disclose.

## 10 DEFINITIONS

- 10.1 **Definitions:** In this Module, the following terms have the following meanings:

**"Corporate Action"** means any step taken by an issuer of Equity Securities with reference to holders of its Equity Securities, and includes: capital reorganisation; capitalisation; change in listing; consolidation; conversion; delisting; de-merger; alteration in ranking; redemption; rights issue; scheme of arrangement; takeover; or any equivalent or analogous step under the law of any relevant jurisdiction;

**"Equity Security"** means any security which is a share in a company, or a security equivalent to a share in a company, a partnership or other entity, provided that it is negotiable on the capital Market, and includes a depository receipt in respect of a share;

**"Limit Order"** means an order to buy or sell an Equity Security at its specified price limit or better and for a specified size; and

**"Short Sale"** means a Transaction for the sale of equities not owned by you at the time scheduled for settlement of the Sale Transaction.

## APPENDIX B - FIXED INCOME MODULE

### 1. SCOPE

- 1.1. **Transactions:** The clauses in this Module apply to Transactions in Fixed Income Securities. For these purposes, "**Transaction**" means a transaction relating to a Fixed Income Security or under which delivery of a Fixed Income Security is contemplated upon its formation and "**Fixed Income Security/ies**" means any security which is a debt or contingent interest claim in a company, partnership or other entity, provided that it is negotiable on the capital market.
- 1.2. If Transactions in Fixed Income Securities arise under and are subject to the terms of a Global Master Repurchase Agreement ("GMRA") or other industry standard master agreement (if any) in place between you and us, the clauses in this Module shall apply in addition to, and without prejudice to, the terms of such GMRA or other standard master agreement. In the event of any conflict, the provisions of the GMRA or other standard master agreement shall prevail over this Module.
- 1.3. **Netting:** Any Transaction to which this Module applies shall, subject as follows, be deemed included in the definition of "**Netting Transaction**" for the purposes of this Agreement and subject to termination and liquidation under the clause headed "**Netting**" (the "**Netting Clause**") following an Event of Default. The Netting Clause shall not apply to any Transaction in Fixed Income Securities to the extent that such Transaction has become subject to close-out netting under the terms of a GMRA in place between us.

### 2. DEALING AS PRINCIPAL

- 2.1. **Execution and capacity:** Every order which we may take is accepted and executed on the basis that we act on our own account as principal and not as agent for you.

### 3. TRADING ARRANGEMENTS

- 3.1. **Bond market liquidity:** You acknowledge that fixed income instruments may be illiquid and that the market price of any particular instrument may be difficult to ascertain.
- 3.2. **ICMA Rules and Recommendations:** All Transactions in "international securities" as that term is defined in the Rules and Recommendations of the International Capital Market Association and unless agreed otherwise at the time of trade in non-US debt or convertible instruments shall be subject to such Rules and Recommendations, which are included within the meaning of "**Applicable Regulations**" for the purposes of this Module.

### 4. SETTLEMENT AND OWNERSHIP

- 4.1. **Purchases:** You shall pay for any Fixed Income Securities purchased for you on or before the settlement date. If, by the time due for settlement of a Transaction (as determined by us), there is insufficient cash in your account to enable us to meet the settlement obligations, we shall not be obliged to settle the Transaction. Where there is insufficient cash in your account and we do proceed to settlement, we may accept delivery of the Fixed Income Securities, charge your account for the payment to satisfy your obligation, sell the Fixed Income Securities at a price we believe to be reasonable, and credit your account with the net proceeds thereof (after deduction of commission and other costs).



- 4.2. **Sales:** You shall make Fixed Income Securities sold by you available for settlement on or before the settlement date. If, by the time due for settlement of a Transaction (as determined by us), there are insufficient Fixed Income Securities held for your account, we shall not be obliged to settle the Transaction. Where there are insufficient Fixed Income Securities in your account and we do proceed to settlement, we may buy the Fixed Income Securities required for delivery at a price we believe to be reasonable, charge your account for the cost thereof, deliver the Fixed Income Securities to satisfy the delivery obligation, and credit your account with the net proceeds thereof (after deduction of commission and other costs).
- 4.3. **Title:** If in any Transaction we deliver Fixed Income Securities or pay money on your behalf, but your obligations in respect of that Transaction are not performed simultaneously with or prior to our own delivery or payment, then we shall not be obliged to credit your account with any Fixed Income Securities or money received by us from any third party until your own obligations to us are fully performed; and any such Fixed Income Securities or money received by us shall be our property not yours.
- 4.4. **Finality:** We shall owe no payment or delivery obligation and shall not be deemed to hold any property belonging to you as a result of settlement of a Transaction until we have received, with finality, the cash or Fixed Income Securities to which you are entitled
- 4.5. **Non-DvP Markets:** In some securities markets, delivery of Fixed Income Securities and payment may not be made simultaneously. In such markets we may make payment or delivery of Fixed Income Securities at such time and in such manner as is in accordance with relevant local law and practice or with the customs prevailing in the relevant market. You shall bear the risk that the counterparty to the Transaction may not pay or perform on time or at all.

## 5. CHARGES FOR FAILURES TO DELIVER US TREASURY SECURITIES

- 5.1. The Treasury Markets Practice Group ("TMPG") and the Securities Industry and Financial Markets Association ("SIFMA") have published a "U.S. Treasury Securities Fails Charge Trading Practice" (the "**Fails Charge Trading Practice**")\*. This provides a standardised procedure to assess and pay Fails Charges (as defined therein) in connection with delivery failures involving Treasuries (as defined therein). The process has been introduced to reduce the overall incidence of fails in the marketplace, which prevent efficient market clearing and undermine overall market liquidity, and to compensate a non-failing counterparty.
- 5.2. You agree that any delivery-versus-payment or delivery-versus-transfer Transaction in Treasuries entered into between you and us shall be subject to the terms of the Fails Charge Trading Practice unless we otherwise agree with you in respect of a particular Transaction. In line with TMPG guidance we will not submit claims of less than or equal to \$500.
- 5.3. By entering into any Transaction with us for the delivery of Treasuries against the payment of funds or the transfer of securities (including any cash purchase or sale, forward purchase or sale, Treasury option, repurchase "repo" or reverse repo transaction, or bonds borrow or loan transaction), you will be deemed to have agreed that such transaction will be subject to the Fails Charge Trading Practice, unless explicitly agreed otherwise with respect to a specific Transaction. Similarly, by entering into any such

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\* [www.sifma.org/capital\\_markets/docs/Fails-Charge-Trading-Practice.pdf](http://www.sifma.org/capital_markets/docs/Fails-Charge-Trading-Practice.pdf)

Transaction, we shall be deemed to have agreed that such Transaction will be subject to the Fails Charge Trading Practice, unless explicitly agreed otherwise with respect to a specific Transaction. Both of us also shall be deemed to have agreed for any such Transactions that the failure to enforce such a Fails Charge in any one Transaction or in multiple Transactions shall not constitute a waiver of the foregoing rights with regard to any other Transactions subject to a Fails Charge. The claim of a Fails Charge shall be without prejudice to any other rights or remedies under the applicable agreement governing the Transaction or applicable law, and shall not constitute a waiver of the non-failing party's right to exercise any other remedy.

- 5.4. We will follow Treasury Markets Practice Group guidance when calculating any Fail Charges and will aim to submit any claims by the 10th business day of the following month. Payment or notice of claim rejection must be submitted to us by the last business day of that month.

## APPENDIX C – OTC DERIVATIVES MODULE

### 1 SCOPE

- 1.1 **Transactions:** The clauses in this Module apply to Transactions in OTC Derivatives. For these purposes, a "**Transaction in OTC Derivatives**" means a transaction being a future, option, contract for differences, swap, forward or derivative contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof. For the avoidance of doubt, this excludes any Transaction which falls to be treated under the conditions of Appendix E "Futures and Options Module" terms.
- 1.2 Transactions in OTC Derivatives shall be concluded under and subject to the terms of an ISDA Master Agreement or other industry standard master agreement and related credit support documentation (if any) in place between you and us. The clauses in this Module shall apply in addition to, and without prejudice to, the terms of such ISDA Master Agreement and related credit support documentation. In the event of any conflict, the provisions of the ISDA Master Agreement and related credit support documentation shall prevail over this Module.
- 1.3 **Netting:** Any Transaction to which this Module applies shall, subject as follows, be deemed included in the definition of "**Netting Transaction**" for the purposes of this Agreement and subject to termination and liquidation under the clause headed "**Netting**" (the "**Netting Clause**") following an Event of Default. The Netting Clause shall not apply to any Transaction in OTC Derivatives to the extent that such Transaction has become subject to netting under the terms of an ISDA Master Agreement in place between us.
- 1.4 **Services to be provided:** Except as provided elsewhere in this Agreement:
- (a) there are no restrictions on the types of Transactions in OTC Derivatives in which you wish to deal; and
  - (b) we will assume that you do not intend any investment restrictions or limits to apply to your account, unless you notify us in writing and we confirm our acceptance in writing.

### 2 DEALING AS PRINCIPAL

- 2.1 **Execution and capacity:** Every order which we may take is accepted and executed on the basis that we act on our own account as principal and not as agent for you.

### 3 RISK WARNINGS

**IF YOU HAVE AUTHORISED US TO DEAL WITH OR FOR YOU IN DERIVATIVES YOU SHOULD READ THE RISK WARNINGS SET OUT IN THIS MODULE.**

- 3.1 **Risk:** You should note that markets in Derivatives can be volatile and that such investments carry a high risk of loss. In each case a relatively small adverse market movement may result in loss of the original investment together with any commission or other transaction charges and also in the case of margined transactions, in an unquantifiable further loss exceeding any margin deposited.
- 3.2 In accordance with the requirement expressed in Article 19(3) of MiFID II this notice summarises the nature of, and principal risks associated with, Derivatives in relation to which we may provide services to you under this Agreement. This notice is provided to

you, as a professional client, in compliance with the rules of the FCA. This notice cannot disclose all the risks and other significant aspects of Derivatives. You should not deal in Derivatives unless you understand their nature and risks and the extent of your exposure to risk. You should also be satisfied that the Derivative is suitable for you in the light of your circumstances and financial position.

- 3.3 We may enter into derivatives transactions with you or on your behalf, which may result in your having a 'short' position. Certain strategies may be riskier than simple 'long' or 'short' position.
- 3.4 Although warrants and/or derivative instruments can be utilised for the management of investment risk, some of these products are unsuitable for many investors. Different instruments involve different levels of exposure to risk and in deciding whether to trade in such instruments you should be aware of the following points.
- 3.5 While some off-exchange markets are highly liquid, transactions in off-exchange or 'non transferable' derivatives may involve greater risk than investing in on-exchange derivatives because there is no exchange market on which to close out an open position. It may be impossible to liquidate an existing position, to assess the value of the position arising from an off-exchange transaction or to assess the exposure to risk. Bid prices and offer prices need not be quoted, and, even where they are, they will be established by dealers in these instruments and consequently it may be difficult to establish what is a fair price. Off-exchange derivative transactions also bear counterparty risk and ultimately this might mean that the bank or broker who is principal to a transaction might fail to perform in accordance with the terms of the over-the-counter contract due to an act of default.
- 3.6 **Warrants:** A warrant is a time-limited right to subscribe for shares, debentures, loan stock or government securities and is exercisable against the original issuer of the underlying securities. A relatively small movement in the price of the underlying security results in a disproportionately large movement, unfavourable or favourable, in the price of the warrant. The prices of warrants can therefore be volatile.
- 3.7 It is essential for anyone who is considering purchasing warrants to understand that the right to subscribe which a warrant confers is invariably limited in time with the consequence that if the investor fails to exercise this right within the predetermined time- scale then the investment becomes worthless.
- 3.8 You should not buy a warrant unless you are prepared to sustain a total loss of the money you have invested plus any commission or other transaction charges.
- 3.9 Some other instruments are also called warrants but are actually options (for example, a right to acquire securities which is exercisable against someone other than the original issuer of the securities, often called a 'covered warrant').
- 3.10 **Securitised derivatives:** These instruments, often structured products, may give you a time-limited or absolute right to acquire or sell one or more types of investment which is normally exercisable against someone other than the issuer of that investment, or they may give you rights under a contract for differences or a total return swap which allow for speculation on fluctuations in the value of the property of any description or an index, such as the FTSE 100 index. In both cases, the investment or property may be referred to as the "underlying instrument". These instruments often involve a high degree of gearing or leverage, so that a relatively small movement in the price of the underlying

investment results in a much larger movement, unfavourable or favourable, in the price of the instrument. The price of these instruments can therefore be volatile. These instruments have a limited life, and may (unless there is some form of guaranteed return to the amount you are investing in the product) expire worthless if the underlying instrument does not perform as expected. You should only buy this product if you are prepared to sustain a total loss of the money you have invested plus any commission or other transaction charges.

3.11 **Futures:** Transactions in futures (sometimes called forwards) involve the obligation to make, or take, delivery of the underlying asset of the contract at a future date, or in some cases to settle the position with cash. They carry a high degree of risk. The 'gearing' or 'leverage' often obtainable in futures trading means that a small deposit or down payment can lead to large losses as well as gains. It also means that a relatively small amount can lead to a proportionately much larger movement in the value of your investment, and this can work against you as well as for you. Futures transactions have a contingent liability, and you should be aware of the implications of this, in particular the margining requirements, which are set out in paragraph 3.15 below.

3.12 **Options:** There are many different types of options with different characteristics subject to the following conditions:

(a) Buying options:

Buying options involves less risk than selling options because, if the price of the underlying asset moves against you, you can simply allow the option to lapse. The maximum loss is limited to the premium, plus any commission or other transaction charges. However, if you buy a call option on a futures contract and you later exercise the option, you will acquire the future. This will expose you to the risks described under 'futures' and 'contingent liability investment transactions'.

(b) Writing options:

If you write an option, the risk involved is considerably greater than buying options. You may be liable for margin to maintain your position and a loss may be sustained well in excess of the premium received. By writing an option, you accept a legal obligation to purchase or sell the underlying asset if the option is exercised against you, however far the market price has moved away from the exercise price. If you already own the underlying asset that you have contracted to sell (when the options will be known as 'covered call options') the risk is reduced. If you do not own the underlying asset ('uncovered call options') the risk can be unlimited. Only experienced persons should contemplate writing uncovered options, and then only after securing full details of the applicable conditions and potential risk exposure.

(c) Traditional options:

Certain London Stock Exchange member firms under special exchange rules write a particular type of option called a 'traditional option'. These may involve greater risk than other options. Two-way prices are not usually quoted and there is no exchange market on which to close out an open position or to effect an equal and opposite transaction to reverse an open position. It may be difficult to assess its value or for the seller of such an option to manage his exposure to risk.

- 3.13 **Contracts for differences:** Futures and options contracts can also be referred to as contracts for differences. These can be options and futures on the FTSE 100 index or any other indexes, as well as currency and interest rate swaps. However, unlike other futures and options, these contracts can only be settled in cash. Investing in a contract for differences carries similar risks as investing in a future or an option and you should be aware of these as set out in paragraphs 3.11 and 3.12 above respectively. Transactions in contracts for differences may also have a contingent liability and you should be aware of the implications of this as set out in paragraph 3.15 below.
- 3.14 **Foreign markets:** Foreign markets will involve different risks from the UK markets. In some cases the risks will be greater. The potential for profit or loss from transactions on foreign markets or in foreign denominated contracts will be affected by fluctuations in foreign exchange rates.
- 3.15 **Contingent liability investment transactions:** Contingent liability investment transactions, which are margined, require you to make a series of payments against the purchase price, instead of paying the whole purchase price immediately.
- 3.16 If you trade in futures, contracts for differences, other derivative instruments such as swaps or sell options, you may sustain a total loss of the margin you deposit to establish or maintain a position. If the market moves against you, you may be called upon to pay substantial additional margin at short notice to maintain the position. If you fail to do so within the time required, your position may be liquidated at a loss and you will be responsible for the resulting deficit.
- 3.17 Even if a transaction is not margined, it may still carry an obligation to make further payments in certain circumstances over and above any amount paid when you entered the contract.
- 3.18 **Limited liability transactions:** The amount you can lose in limited liability transactions will be less than in other margined transactions, which have no predetermined loss limit. Nevertheless, even though the extent of loss will be subject to the agreed limit, you may sustain the loss in a relatively short time. Your loss may be limited, but the risk of sustaining a total loss to the amount agreed is substantial.
- 3.19 **Collateral:** The way in which collateral will be treated will vary according to the type of transaction and where such collateral is traded. There could be significant differences in the treatment of your collateral, depending on whether you are trading on a recognised or designated investment exchange, with the rules of that exchange (and the associated clearing house) applying, or trading off-exchange. We reserve the right to implement a higher margining requirement than the exchange. Deposited collateral may lose its identity as your property once dealings on your behalf are undertaken. Even if your dealings should ultimately prove profitable, you may not get back the same assets which you deposited, and may have to accept payment in cash.
- 3.20 **Commissions:** Before you begin to trade, you should obtain details of all commissions and other charges for which you will be liable. If any charges are not expressed in money terms (but, for example, as a percentage of contract value), you should obtain a clear and written explanation, including appropriate examples, to establish what such charges are likely to mean in specific money terms. In the case of futures, when commission is charged as a percentage, it will normally be as a percentage of the total contract value, and not simply as a percentage of your initial payment.

- 3.21 **Suspensions of trading:** Under certain trading conditions it may be difficult or impossible to liquidate a position. This may occur, for example, at times of rapid price movement if the price rises or falls in one trading session to such an extent that under the rules of the relevant exchange trading is suspended or restricted. Placing a stop-loss order will not necessarily limit your losses to the intended amounts, because market conditions may make it impossible to execute such an order at the stipulated price.
- 3.22 **Clearing house protections:** The risk associated with the performance of a transaction may be taken on by the exchange or clearing house. However, in most circumstances you are unlikely to benefit from this if we or another party defaults on its obligations to you. There is no clearing house for certain Derivatives which are not traded under the rules of a recognised or designated investment exchange.
- 3.23 **Insolvency:** Our insolvency or default, or that of any other brokers involved with your transaction, may lead to positions being liquidated or closed out without your consent. In certain circumstances, you may not get back the actual assets, which you lodged as collateral and you may have to accept any available payments in cash.

## APPENDIX D - AGENCY MODULE

This module covers business where you act as agent for your clients and you should indicate to us on the Acknowledgement Schedule that it should apply.

### 1 APPLICATION AND SCOPE

- 1.1 **Scope of these terms:** These terms set out the basis on which we will provide the services referred to in the Agreement to you where you are acting as agent for each Counterparty. Where you are acting for your own account the supplemental terms set out in this Module shall not apply.
- 1.2 **Notification:** You will notify us before placing any order on behalf a Counterparty that you are acting as agent for that Counterparty and inform us of the identity, address and any other details which we require in respect of each Counterparty to enable us to form a credit and counterparty risk assessment in respect of any Transaction.
- 1.3 **Instructions:** You may give us oral and written instructions and orders. We shall not accept nor act upon any instructions received by anyone other than persons duly authorised by you ("**Authorised Persons**"). For this purpose we shall assume all personnel are authorised unless we receive written notification from you to the contrary. If we refuse to act on any instruction or order, we shall notify you as soon as practicable of our refusal.
- 1.4 **Capacity:** Each Transaction will be entered into by you as agent for and on behalf of the Counterparty specified by you (whether by code name or otherwise) in accordance with term 1.5 below. Unless we agree otherwise in writing, we shall treat you alone as our client and we shall not treat any Counterparty as our client for the purposes of the FCA Rules.
- 1.5 **Nature of Counterparties:** You represent, warrant and undertake on your own behalf and as agent for the Counterparties that no Counterparty will be a state or a separate entity within the meaning of the State Immunity Act 1978 and that a Counterparty shall, at the time an instruction is given in respect of it, have the characteristics and conform to any criteria agreed between us from time to time.
- 1.6 **Counterparty accounts:** We shall, in respect of each Counterparty, establish and maintain one or more separate sub-accounts (each a "**Counterparty Account**"). You undertake, as agent for the relevant Counterparty and on your own behalf, in respect of each instruction given, to specify within two hours of giving an instruction (or such other time as we may reasonably specify) the Counterparty Account to which the relevant instruction relates. Until you specify a specific Counterparty Account you shall be personally liable, as principal, in respect of the relevant Transaction. You further undertake, as agent for each Counterparty and on your own behalf, to notify us immediately if any two or more Counterparty Accounts relate to the same Counterparty.
- 1.7 **Separate administration:** We shall, subject to these terms, administer Counterparty Accounts which we reasonably believe relate to different Counterparties separately, including for the purposes of calculating any margin requirement. We shall not exercise any power to consolidate accounts or set off amounts owing between Counterparty Accounts relating to different Counterparties.



1.8 **Documentation:** You agree to forward to a Counterparty any documentation in relation to such Counterparty that we are required to provide under the FCA Rules and which we make available to you for that purpose.

## 2 **ADVICE**

2.1 **Limitations:** You, as agent for the Counterparties and on your own behalf, retain full responsibility for making all investment decisions with respect to any Counterparty. We will not be responsible for judging the merits or suitability of any Transaction to be entered into on behalf of a Counterparty. Unless otherwise required under Applicable Regulations, we shall have no responsibility for your or any Counterparty's compliance with any laws or rules governing or affecting your conduct or that of any Counterparty, or for your or any Counterparty's compliance with any laws or rules governing or affecting Transactions.

## 3 **REPRESENTATIONS, WARRANTIES AND COVENANTS**

3.1 **The Agreement:** The representations and undertakings Module shall not apply to you.

3.2 **Representations and warranties:** As agent for each Counterparty and on your own behalf, you represent and warrant to us as of the date these terms come into effect and as of the date of each Transaction that:-

- (a) you and the Counterparty each have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully to enter into and perform these terms, the Agreement and each Transaction and to grant the security interests and powers referred to in the Margin Module and elsewhere in these terms and the Agreement;
- (b) the person(s) entering into these terms, the Agreement and each Transaction have been duly authorised to do so;
- (c) these terms, the Agreement, each Transaction and the obligations created under each of them are binding upon, and are enforceable against, you and/or the Counterparty (as applicable) in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, order, charge or agreement by which you or the Counterparty is bound;
- (d) no Event of Default or Potential Event of Default has occurred and is continuing with respect to you or the Counterparty;
- (e) each of you and the Counterparty is permitted under its constitution and any applicable law or regulation and is financially able to sustain any loss which may result from Transactions, and that entering into Transactions is a suitable investment vehicle for the Counterparty;
- (f) the relevant Counterparty owns, with full title guarantee, all investments, margin (or collateral) deposited with, transferred to us or charged in our favour, by you acting as agent for the Counterparty and such investments, margin (or collateral) are free from any prior mortgage, charge, lien or other encumbrance whatsoever and neither you acting as agent for the relevant Counterparty, nor the Counterparty itself, will further pledge or charge such investments, margin

(or collateral) or grant any lien over them while it is pledged or charged to us except with our prior written consent; and

- (g) any information which you provide or have provided to us in respect of your or the Counterparty's financial position, domicile, or other matters is accurate and not misleading in any material respect.

3.3 **Covenants:** You, as agent for each Counterparty and on your own behalf, covenant to us that you will:

- (a) ensure at all times that you and the Counterparty obtain and comply with the terms of and do all that is necessary to maintain in full force and effect all authority, powers, consents, licences and authorisations referred to above;
- (b) promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to yourself or the Counterparty.
- (c) provide to us on request such information regarding your and the Counterparty's financial or business affairs as we may reasonably require to evidence the authority, powers, consents, licenses and authorisations referred to above or to comply with any Applicable Regulations;
- (d) provide to us on request copies of the relevant sections of the Counterparty's constitutive documents relating to its capacity to enter into Transactions and appoint an agent to act on its behalf and that any such extract will, to the best of your knowledge, be true and accurate in all material respects and you will not omit or withhold any information which would render the information so supplied to be false or inaccurate in any material respect;
- (e) either: (i) execute as agent for the Counterparty where you are duly authorised to do so, or, in each other case: (ii) procure that the Counterparty executes, as applicable, on our request all such transfers, powers of attorney and other documents as we may require to vest any assets or otherwise grant any security interest or other interest referred to in the Margin Module of the Agreement in us, our nominee, a purchaser or transferee.
- (f) immediately notify us if you cease to act for any Counterparty or if the basis upon which you act on behalf of the counterparty alters to an extent which would affect this Agreement or any Transaction made thereunder; and

immediately notify us in writing if at any time any of the warranties, representations or undertakings in this module are or become or are found to be incorrect or misleading in any material respect.

## 4 ANTI-MONEY LAUNDERING

4.1 **Anti-money laundering:** You represent, warrant and undertake that you are now and will be at all material times in the future in compliance with all Applicable Regulations concerning money-laundering. We are required to follow the Applicable Regulations concerning money-laundering relating to the identification of the Counterparty unless clause 4.2 applies, and if satisfactory evidence of identity has not been obtained by us within a reasonable time period, we reserve the right to cease to deal with you.

- 4.2 If you are a UK or EU regulated credit or financial institution, or a regulated financial sector firm from a FATF country (i.e. a member of the Financial Action Task Force), we shall deal with you on the understanding that you are complying with EU regulations (or the local equivalent) concerning money-laundering and that evidence of the identification of any Counterparty will have been obtained and recorded under procedures maintained by you.

## 5 MARGINING ARRANGEMENTS AND DISCHARGE

- 5.1 **Margin:** References to "you" in the Margin Module of the Agreement shall all be deemed to be references to you acting as agent on behalf of each Counterparty in respect of which you provide margin to us from time to time.
- 5.2 **Discharge:** Where under any term any payment or other performance (including the delivery of securities or any other property) is due from us, it shall be a discharge of our obligation to make such payment or performance to you notwithstanding that any Counterparty shall be interested (whether beneficially or otherwise) in such payment or performance.

## 6 NETTING

- 6.1 **Events of Default:** References to "Party" in the Netting Module of the Agreement shall be deemed to be references to you acting on your own behalf and to each Counterparty. If any Event of Default occurs in respect of you or a Counterparty we shall be entitled to exercise our rights under the Netting Module of the Agreement in accordance with the following sentences of this term and the expression "**Defaulting Party**" shall be construed accordingly. In respect of an Event of Default which occurs in respect of you (as opposed to any Counterparty), our rights under the Netting Module of the Agreement shall apply separately in respect of each Counterparty Account. If an Event of Default occurs in respect of a Counterparty, our rights under the Netting Module of the Agreement shall be limited to the relevant Counterparty Account(s).

## 7 INDEMNITY

- 7.1 **Indemnification:** Notwithstanding that you may act as agent you undertake as principal to indemnify us in respect of any liabilities, costs, damages and losses incurred in relation to any Transaction effected by you as agent on behalf of any Counterparty, including but not limited to where you as agent has acted beyond your authority or capacity as agent or where you have or had a reasonable expectation that the Counterparty is not or will not be able to perform any of its obligations.

## 8 INTERPRETATION

- 8.1 **Interpretation of these terms:** In this Module:

"Counterparty" means any counterparty agreed to in writing by us from time to time on behalf of which you are to enter as agent into Transactions with us; and where a counterparty does not constitute a single legal person, means the trustees, individuals or other persons who are the primary representatives of the organisation, trust or fund on whose behalf they are dealing.

## APPENDIX E – FUTURES & OPTIONS MODULE (INCLUDING LIFFE SCHEDULE)

### 1 SCOPE

- 1.1 **Transactions:** The clauses in this Module apply to transactions in futures and options. In this Module, "**Transaction**" means a transaction listed in sub-clauses (i)-(iv) of the definition of Transaction in the Interpretation Module, which constitutes a "**Future**" or an "**Option**" (as defined in articles 83 and 84 respectively of The Financial Services and Markets Act 2000 (Regulated Activities) Order (2001) and traded on a Market.
- 1.2 **Netting:** Any Transaction to which this Module applies shall, subject as follows, be deemed included in the definition of "**Netting Transaction**" for the purposes of this Agreement and subject to termination and liquidation under the clause headed "**Netting**" (the "**Netting Clause**") following an Event of Default. The Netting Clause shall not apply to any Transaction to the extent that action which conflicts with or overrides the provisions of the Netting Clause has been started in relation to that Transaction by a Market or clearing organisation under Applicable Regulations and is continuing.

### 2 TRADING ARRANGEMENTS

- 2.1 **Matching trades:** In respect of every Transaction made between us subject to the Rules of a Market, we shall, unless otherwise agreed in writing in relation to a particular Market, act as principal in any Transaction with you. We shall make (or arrange to make through an intermediate broker who may be an associate) on a principal-to-principal basis a matching Transaction on the relevant Market or accept the allocation to us of such a Transaction.
- 2.2 **Give-up:** In respect of every Transaction made between us and given up to be cleared by another broker or dealer as specified by you:
- (a) if such broker or dealer accepts the give-up, we shall (without prejudice to any claim we may have for commission or other payment) upon such acceptance cease to be a party to the Transaction and shall have no obligation to you for its performance;
  - (b) if such other broker or dealer declines to accept the give-up, we shall be entitled at our option either to confirm the Transaction with you or to liquidate it by such sale, purchase, disposal or other Transaction or cancellation as we may in our discretion determine, whether on the relevant Market or by private contract or any other feasible method (including taking it over ourselves or transferring it to an associate); and any balance resulting from such liquidation shall be promptly settled between us but without prejudicing our rights under this Agreement or otherwise.
- 2.3 **International Uniform Give-up Agreement:** You authorise us to enter into and execute any International Uniform Give-up Agreement on your behalf. Where you and we are party to an International Uniform Give-up Agreement, in the event of any inconsistency the provisions of such agreement shall prevail over this Agreement.
- 2.4 **Allocation on delivery or exercise:** Where the relevant Market or intermediate broker does not specify a particular Transaction when making a delivery or exercising an option, we may allocate randomly or in a way which seems to us to be most equitable.

- 2.5 **Exercise of options:** You understand that Markets have established exercise cut-off times for the tender of instructions in relation to exercise of options and that options will become worthless in the event that you do not deliver instructions by such expiration time. You also acknowledge that we may establish exercise cut-off times which may be earlier than the exercise cut-off times established by the relevant Market, and you shall have no claims against us arising out of the fact that an option was not exercised, save in circumstances where the option was not exercised as a direct result of our negligent failure to inform you of our own exercise cut-off time in respect of the particular option.
- 2.6 **Deemed exercise of options:** Where by virtue of Market Rules an option is exercised automatically under a back-to-back Transaction which has been entered into by us on your instructions, the corresponding Transaction to which you and we are both party will be deemed to have been automatically exercised at the same time.
- 2.7 **Correction of order:** You understand that Markets may from time to time sanction the making of contracts by us off-exchange in order to satisfy your order, where there has been an error in the execution of your order on-exchange. Where a better price (an improvement) can be obtained, we may seek to secure and offer that improvement to you. Where, in response to your order, we have bought or sold in accordance with the instruction in your order to buy or, as the case may be, to sell but have traded the wrong delivery/expiry month or wrong exercise price of the relevant contract, then we may in accordance with the Rules of any relevant Market offset any loss arising from that trade against any improvement achieved for you in the course of correctly satisfying your order, thus offering you only the net improvement, if any.
- 2.8 **Close-out:** Unless otherwise agreed in writing between you and us or where the Rules of a Market provide otherwise [or in relation to Transactions subject to the Rules of any Market specified for these purposes in the Individually Agreed Terms Schedule], whenever any Transaction is entered into to close out any existing Transaction, then the obligations of each of us under both sets of Transactions shall automatically and immediately be terminated upon entering into the second Transaction, except for any settlement payment due in respect of such closed out Transactions.

### 3 CLEARING SERVICES

- 3.1 **Transaction given up to us for clearing:** Subject to the Rules of any relevant Market, this clause applies where there is a give-up agreement between you, us and a third party executing broker, and the reference number or mnemonic applicable to you is quoted by such executing broker when a Transaction is submitted to us for clearing. In acting as your clearing broker we shall accept a Transaction given up to us for clearing only if we have agreed with you to clear Transactions of such a description and the acceptance thereof would not breach any position or other limits applicable to your account with us. Notwithstanding any provision contained in the relevant give-up agreement, if we accept such Transaction for clearing, such Transaction shall be binding and conclusive on you immediately on its acceptance for clearing by us whether or not the details of such Transaction have previously been confirmed to us by you. We shall not be liable to you for any losses, costs, expenses or damages arising from any discrepancy between details in your instructions to such executing broker and details of Transactions submitted to us for clearing. Any dispute relating to a Transaction given up or attempted to be given up to us for clearing shall be determined under applicable arbitration rules of the relevant Market.

- 3.2 **Fees paid to executing broker:** Subject to the Rules of any relevant Market, if a give-up agreement between you, us and a third party executing broker provides that the executing broker will invoice us directly for its commissions in relation to the execution of an order, then we shall be entitled to rely on the details specified in any invoice presented to us by such executing broker and, notwithstanding that the amounts specified in the invoice may be incorrect, you shall fully reimburse us for any sum paid to the executing broker in respect of that invoice. We shall have no liability to you for any losses, costs, expenses or damages incurred or suffered by you as a result of an incorrect amount being specified in an invoice.

#### 4 FINANCIAL FUTURES REQUIRING NON-CASH SETTLEMENT

- 4.1 **Sales:** You shall make securities deliverable by you available for settlement on or before the settlement date. Where there are insufficient securities in your account and we do proceed to settlement, we may buy the securities required for delivery at a price we believe to be reasonable, charge your account for the cost thereof, deliver the securities to satisfy the delivery obligation, and credit your account with the net proceeds thereof (after deduction of commission and other costs).
- 4.2 **Settlement agent:** You will notify us of all relevant details required by us of your settlement agent in respect of Transactions which may be subject to securities delivery obligations. You will procure that your settlement agent enters into such other **documentation as may be necessary to ensure that the clearing and settlement of such** Transactions takes effect without liability to us.

#### 5 EFP TRANSACTIONS

- 5.1 **EFPs:** Subject to the terms of any particular EFP Transaction, in relation to each EFP Transaction, upon our becoming bound to Futures Contracts entered into in replication of the Physical Contract, the Physical Contract shall be automatically discharged.
- 5.2 **Reverse EFPs:** Subject to the terms of any particular Reverse EFP Transaction, in relation to each Reverse EFP Transaction, the Physical Contract with you shall arise automatically upon the closing out (including by creation of opposite positions, on the relevant Market) of the Futures Contracts which the Physical Contract is intended to replace.
- 5.3 **Existence of transactions:** The existence of an EFP Transaction or Reverse EFP Transaction is conditional on registration of the Futures Contracts (or, as the case may be, contracts effecting close-out) occurring on the date specified in the confirmation relating to the Transaction.
- 5.4 **Payment:** We will notify you of the amount of any payment due between us as a result of entering into an EFP Transaction or Reverse EFP Transaction, to whom it is payable and when.
- 5.5 **Definitions:** In this clause:

"**EFP Transaction**" means a transaction between us which comprises a Physical Contract which is intended to be replaced by Futures Contracts;

"**Futures Contract**" means a contract on terms prescribed by a Market;

**"Physical Contract"** means a Transaction the terms of which are comparable with the terms of Futures Contract, which is not entered into on or back-to-back with a transaction entered into by us on a Market;

**"Reverse EFP Transaction"** means a transaction between us which comprises a Physical Contract which is intended to replace Futures Contracts; and

**"LIFFE"** means NYSE Euronext Liffe.

## LIFFE SCHEDULE

Terms defined in the Rules of LIFFE shall have the same meanings in all parts of this Schedule

### Part 1

#### GENERAL PROVISIONS FOR ALL TRANSACTIONS

The terms set out in part 1 of this Schedule shall apply in respect of Transactions made between ***us subject to the Rules of LIFFE from time to time in force. Any requirements referred to in this*** schedule shall refer to requirements currently in force. They cover matters that (a) we are required to deal with pursuant to LIFFE General Notice 399 and (b) other LIFFE related terms. Please note that most of the LIFFE required terms set out in General Notice 399 have been incorporated into the main body of the Agreement.

#### 1. Exclusion of liability

Pursuant to the exclusion of liability provisions contained in the LIFFE Rules, as amended from time to time by General Notice, you understand that business on the LIFFE market (the "**Exchange**") operated by LIFFE may from time to time be suspended, restricted or closed for such period as may be determined in the interests of maintaining a fair and orderly market in accordance with the Rules of LIFFE. Any such action may result in our, and through us, you being prevented from or hindered in entering into contracts in accordance with the Rules of LIFFE. Furthermore, failures or malfunction of LIFFE communications or equipment, market facilities or the ATS central processing system, or software provided by LIFFE may result in our being hindered in or prevented from entering into contracts in the terms of Exchange Contracts, or may result in errors in orders or in contracts in the terms of Exchange Contracts. We and LIFFE wish to draw the following exclusion of liability to your attention:

Unless otherwise expressly provided in the Rules of LIFFE or in any other agreement to which LIFFE is party, we and LIFFE shall not be liable to you for any loss, damage, injury or delay, whether direct or indirect, arising from any of the circumstances described above or any failure of some or all market facilities or from any act or omission of LIFFE, its officers, employees, agents or representatives under the Rules of LIFFE or pursuant to the LIFFE's obligations under statute or from any breach of contract by or any negligence howsoever arising of LIFFE, its officers, employees, agents or representatives.

#### 2. Arbitration

Notwithstanding any other agreement between you and us, any dispute arising from or relating to this Agreement, insofar as it relates to contracts made subject to the Rules of LIFFE, and any dispute arising from or relating to any such contract, unless resolved between us, be referred to arbitration under the Rules of LIFFE, or to such other organisation as LIFFE may direct before either of us resort to the jurisdiction of the courts (other than to obtain an injunction or an order for security for a claim).

#### 3. LIFFE CONNECT®

Client orders

You should be aware that the Exchange has a number of powers which, if exercised, may impact upon our ability to submit an order on your behalf or which may lead to the cancellation of an order after submission to the LIFFE CONNECT® Trading Host prior to execution. In particular, in addition to the powers already available to the Exchange (including those in



relation to investor protection and maintaining an orderly and proper market), you should be aware that, in respect of LIFFE CONNECT® :

- (a) the Exchange has the power to suspend a member's or responsible trader's access to LIFFE CONNECT® following a single warning, and to terminate a member's access under certain conditions;
- (b) the Exchange will cancel all outstanding orders on the default of the member;
- (c) orders outside the price limits will be rejected automatically by the Trading Host;
- (d) all orders with the exception of GTC orders will be cancelled automatically at Market Close or when the responsible trader logs out without having nominated a replacement responsible trader, whichever is the earlier;
- (e) all orders (including GTC orders) will be cancelled at close of business on the Last Trading Day of the expiry month to which they relate; and
- (f) all orders (with exception of GTC orders) will be cancelled automatically if the Trading Host fails.

## Part 2

### GENERAL PROVISIONS FOR SPECIFIC TYPES OF TRANSACTIONS

The terms set out in this part of this Schedule shall apply in addition to Part 1, as set out below, in respect of:

- (a) all Linked LIFFE Contracts and Linked Participating Exchange Contracts (both as defined below), pursuant to LIFFE General Notice 880;
- (b) all Three Month Euroyen Interest Rate Contract (the "**Euroyen Contract**") *where you are a customer in respect of the LIFFE contract*, pursuant to LIFFE General Notice 807;
- (c) all Three Month Euroyen Interest Rate Contract (the "**Euroyen Contract**") *where you are a customer in respect of the LIFFE contract and the TIFFE Contract*, pursuant to LIFFE General Notice 807.

In the case of conflict between terms set out in General Notice 399 and the terms set out in General Notice 807, and General Notice 880, the terms of General Notice 399 shall prevail.

#### 4. Exclusion of Liability

LIFFE shall have no liability whatsoever to any member or client in contract, tort (including, without limitation, negligence), trust, as fiduciary or under any other cause of action (except in respect of gross negligence, wilful default or fraud on its part), in respect of any damage, loss, cost or expense of whatsoever nature suffered or incurred by any member or client, as the case may be, as a result of: any suspension, restriction or closure of the market administered by either a Participating Exchange, the Exchange, or TIFFE (as the case may be) whether for a temporary period or otherwise, or as a result of a decision taken on the occurrence of a market emergency; any failure by a Participating Exchange, the Exchange, LCH or TIFFE (as the case may be) to supply each other with data or information in accordance with arrangements from time to time established between all or any of them; the failure of communications facilities or technology supplied, operated or used by either a Participating Exchange, the Exchange, LCH

or TIFFE (as the case may be) for the purposes of the Link; any event which is outside its or their control; any act or omission of either a Participating Exchange (where a Participating Exchange is acting otherwise than in connection with its clearing function) or the Exchange in connection with any Participating Exchange Contract, Linked LIFFE Contract or Linked Participating Exchange Contract, or any act or omission of the Exchange or TIFFE in connection with any TIFFE Euroyen contract or LIFFE Euroyen Contract; any act or omission of a Participating Exchange, the Exchange, LCH or TIFFE (as the case may be) in connection with the operation of the Link or the arrangements for the transfer of contracts.

## **5. Margin and client money/assets**

Following the transfer of a Linked LIFFE Contract and the creation of a Participating Exchange Contract or prior to the transfer of a Linked Participating Exchange Contract and the creation of a LIFFE Contract, margin requirements will be determined in accordance with the rules of the Participating Exchange rather than the Rules of LIFFE. Any money or assets held in any country outside the UK may be subject to the applicable law of that country and UK client money and other assets rules may not apply. You should satisfy yourself that this is acceptable to you before instructing us to transact any such business.

Following the transfer of the LIFFE Euroyen contract and the creation of a TIFFE Euroyen contract, margin requirements will be determined in accordance with TIFFE Rules rather than the Rules of LIFFE. Any money or assets held in Japan will be subject to applicable Japanese law rather than English law and UK client money rules (if applicable), and you should satisfy yourself that this is acceptable to you before instructing us to transact Euroyen business.

## **TRANSFER PROVISIONS**

### **6. Outward Transfers of Linked Participating Exchange Contracts**

We shall endeavour to secure the transfer through the relevant Link of each Linked LIFFE Contract made between us which is intended for transfer. Upon confirmation by the relevant Participating Exchange of receipt of trade/position details from LCH, rights and obligations under such contract, save for outstanding obligations with respect to fees and margin and those rights and obligations referred to in the Rules of LIFFE and the Regulations of LCH, shall be discharged and there shall arise simultaneously a Participating Exchange Contract between us. The Participating Exchange Contract shall be subject to the rules of the relevant Participating Exchange and shall not be subject to the provisions of this Agreement. Upon the transfer of a Linked LIFFE Contract we shall, without prejudice to any claim we may have including, without limitation, for fees or margin, cease to be a party to the contract and shall have no obligation to you for its performance.

### **7. Delayed Outward Transfers of Linked Participating Exchange Contracts**

In the event that, on any LIFFE trading day or Participating Exchange Day (as appropriate), LCH or the Participating Exchange is unable for whatever reason to transmit details of all Linked LIFFE Contract, Linked Participating Exchange Contract, or LIFFE Euroyen Contract, or LCH or TIFFE or the relevant Participating Exchange is unable to receive or acknowledge receipt of all such details, any such contract made between us on that day shall remain as an undischarged Linked LIFFE Contract, a Linked Participating Exchange Contract or an undischarged LIFFE Euroyen Contract, (but without prejudice to any default provisions agreed between us which may be operated to discharge such contract), subject to the Rules of LIFFE and the General Regulations and Default Rules of LCH, or the rules of the Participating Exchange (as appropriate) as from time to time in force, until such time as transfer can be achieved.

## **8. Impossibility of Outward Transfers of Linked Participating Exchange Contracts**

If it is not possible for whatever reason for details of contracts in the terms of the Linked LIFFE Contract to be transmitted by LCH, or for the relevant Participating Exchange to receive or acknowledge receipt of all such details, so that transfer of such contracts cannot occur on any particular day, and any circumstances preventing such transfer continues so that the Link is suspended or terminated, any such contract made between us during any such period shall remain as an undischarged contract in the terms of a Linked LIFFE Contract, subject to the Rules of LIFFE and the Regulations of LCH as from time to time in force, and shall be performed in accordance with its terms or may be closed out or otherwise discharged, in accordance with the Rules and any agreement reached between us.

## **9. Inward Transfers of Linked Participating Exchange Contracts**

In respect of each Linked Participating Exchange Contract made between us which is intended for transfer through the relevant Link, rights and obligations under such contract, save for outstanding obligations with respect to fees or margin and any other rights or obligations referred to in the Rules of the Participating Exchange, shall be discharged upon confirmation by LCH of receipt of trade/position details from the Participating Exchange and there shall arise simultaneously a LIFFE Contract between us. The LIFFE Contract shall be subject to the Rules of LIFFE and the General Regulations and Default Rules of LCH.

## **10. Delayed Inward Transfers of Linked Participating Contracts**

In the event that, on any Participating Exchange trading day, the relevant Participating Exchange is unable for whatever reason to transmit details of all contracts in the terms of a Linked Participating Exchange Contract, or LCH is unable to receive or acknowledge receipt of all such details, any such contract made between us on that Participating Exchange on that day shall remain an undischarged contract in the terms of a Linked Participating Exchange Contract (but without prejudice to any default provisions agreed between us which might be operated to discharge such contract), subject to the rules of the Participating Exchange as from time to time in force, until such time as transfer can be achieved.

## **11. Impossibility of Inward Transfers of Linked Participating Exchange Contracts**

If it is not possible for whatever reason for details of contracts in the terms of a Linked Participating Exchange Contract to be transmitted by the relevant Participating Exchange, or for LCH to receive or acknowledge receipt of all such details, so that transfer of such contracts cannot occur on any particular day, and any circumstance preventing such transfer continues so that the Link is suspended or terminated, any such contract made between us on that Participating Exchange during that period shall remain as an undischarged contract in the terms of a Linked Participating Exchange Contract, subject to the rules of the Participating Exchange as from time to time in force and shall be performed in accordance with its terms or may be closed out or otherwise discharged in accordance with the Rules and any agreement reached between us.

## **12. Transfers of Euroyen Contracts: in respect of LIFFE contracts**

In respect of each Euroyen Contract made between us, we shall endeavour to secure its transfer through the Link. Upon confirmation by LIFFE of receipt of trade/position details from LCH, rights and obligations under such contract (save for outstanding obligations with respect to fees or margin and those rights and obligations referred to in the Rules of LIFFE and the Regulations of LCH) shall be discharged.

### **13. Transfers of Euroyen Contracts: in respect of both LIFFE and TIFFE contracts**

In respect of each Euroyen Contract made between us, we shall endeavour to secure its transfer through the Link. Upon confirmation by TIFFE of receipt of trade/position details from LCH, rights and obligations under such contract (save for outstanding obligations with respect to fees or margin and those rights and obligations referred to in the Rules of LIFFE and the Regulations of LCH) shall be discharged and there shall arise simultaneously a TIFFE Euroyen contract between us. The TIFFE contract shall be subject to the Rules of TIFFE.

## APPENDIX F – HONG KONG CLIENT RULES

This module apply to Transactions which involve securities or futures contracts that are listed or traded on one of the Hong Kong exchanges or to derivatives, including over-the-counter derivatives, written over such securities or futures contracts, traded by that registered persons in Hong Kong (as principal or agent). All such transactions shall be referred to in this Module as "**Relevant Transactions**".

As part of the Hong Kong Government's framework to ensure the order and transparency of the securities market, the Securities and Futures Commission and the Stock Exchange of Hong Kong Limited (the "**Hong Kong Regulators**") are operating a 'Client Identity Rule Policy' (the "**Rules**") which requires all licensed or registered securities dealers to ascertain and record the identity and contact details of the ultimate beneficiary for whom they process a transaction as well as the person(s) who give(s) instructions in relation to that transaction (the "**Client Information**"). The Rules apply to all Relevant Transactions.

### 1 THE RULES

- 1.1 Under the Rules, we are required to provide the identity and contact details of the ultimate beneficiary for whom they process a transaction as well as the person(s) who give(s) instructions in relation to that transaction (the "**Client Information**") to the Hong Kong Regulators within two business days of any request originating from them. In exceptional market circumstances, the Client Information may have to be available very shortly after the request.
- 1.2 We understand that if you act for third parties as agent you may not wish to disclose the identities of your clients to us. This has been recognised by the Hong Kong Regulators who allow us to comply with the Rules if you agree to provide the Client Information to the Hong Kong Regulators directly.
- 1.3 You hereby agree and acknowledge that if you effect transactions for your own account or for the account of your clients or other persons, whether on a discretionary or non-discretionary basis, and whether as agent or by entering into matching transactions as principal with your clients or other persons, that in relation to Relevant Transactions where we have received an enquiry originating from the Hong Kong Regulators, the following provisions shall apply:
  - (a) **Consent to disclosure:** You consent to our disclosure, without your further consent, to the Hong Kong Regulators of information relating to the identity, address, occupation and contact details of the person with the ultimate beneficial interest in the transaction of (if different from the ultimate beneficiary insofar as known to you) of the party who originated the instructions for the transaction.
  - (b) **Obligation to disclose:** Subject to as provided below, you shall, immediately upon request by us (which request shall include the relevant contact details of the Hong Kong Regulators), inform either us or the Hong Kong Regulators of the identity, address, occupation and contact details of your client for whose account the transaction was effected and (so far as known to you) of the person with the ultimate beneficial interest in the transaction. You shall also inform the Hong Kong Regulators of the identity, address, occupation and contact details of any third party (if different from the client/the ultimate beneficiary) who originated the transaction.

- (c) If you effected the transaction for a collective investment scheme, discretionary account or discretionary trust, you shall, immediately upon our request (which request shall include the relevant contact details of the Hong Kong Regulators), inform the Hong Kong Regulators of the identity, address, occupation and contact details of the scheme, account or trust and, if applicable, the identity, address, occupation and contact details of the person who, on behalf of the scheme, account or trust, instructed you to effect the transaction.
- (d) If you effected the transaction for a collective investment scheme, discretionary account or discretionary trust, you shall, as soon as practicable, inform us when your discretion to invest on behalf of the scheme, account or trust has been overridden. In the case where your investment discretion has been overridden, you shall, immediately upon our request (which request shall include the relevant contact details of the Hong Kong Regulators), inform the Hong Kong Regulators of the identity, address, occupation and contact details of the person(s) who has or have given the instruction in relation to the transaction.
- (e) If you are aware that your client is acting as intermediary for its underlying client(s), and you do not know the identity, address, occupation and contact details of the underlying client for whom the transaction was effected, you confirm that:
  - (i) you have arrangements in place with your client which entitle you to obtain this information from your client immediately upon request or procure that it be so obtained; and
  - (ii) you will, upon our request in relation to a transaction, promptly request this information from your client on whose instructions the transaction was effected, and provide the information to the Hong Kong Regulators as soon as received from your client or procure that it be so provided.
- (f) **Secrecy laws:** If you are based in a jurisdiction with client secrecy laws, you consent to the disclosure of information in accordance with the above paragraphs. In circumstances where you act for the account of clients and such secrecy laws prohibit disclosure, you will procure the consent of the ultimate beneficiary of the transaction to the disclosure of any information in accordance with the above paragraphs. In addition, as client you agree to waive the protections afforded by any applicable client secrecy laws, or as a counterparty or intermediary, you agree to procure the written waiver of the beneficiary to such protections in relation to Relevant Transactions.

1.4 **Effect of this Module:** You agree that the above terms shall continue in effect notwithstanding the termination of business dealings between us and you.

## APPENDIX G – FAILURE TO DELIVER OF JAPANESE GOVERNMENT SECURITIES

In August 2010, the Japanese Securities Dealers Association (“**JSDA**”) announced that “The Japanese Government Securities Guidelines for Real Time Gross Settlement” will be partially amended and that the “Practical Guidelines for Handling of Fails Charges” will be implemented. The latest edition of these Guidelines can be viewed at JSDA’s website ([www.jsda.or.jp/en/rules-guidelines/guidelines/](http://www.jsda.or.jp/en/rules-guidelines/guidelines/)). This reviewed market practice for settlement failures was introduced on 1<sup>st</sup> November 2010.\*

Under the reviewed market practice, if a fail occurs in any transaction in Japanese government securities based on a delivery-versus-payment (“**DVP**”) settlement, the party receiving the securities will be entitled to demand that the party failing to deliver the securities pays a Fails Charge (a financial penalty imposed on the failing party pursuant to the procedures specified in the “Practical Guidelines for the Handling of Fails Charges” ) This new practice is referred to as the “**Fails Charge Handling Practice**”.

We have decided to adopt this Fails Charge Handling Practice for purposes of our transactions with all our counterparties, and accordingly, are notifying you that any delivery-versus-payment transactions in Japanese Government securities entered into between you and us will be subject to the following conditions, unless explicitly agreed otherwise with respect to a specific transaction.

These terms are deemed to cover any transaction between you (“**Trade Counterparty**”) and us (“**Company**”) encompassing any DVP settlement of Japanese Government securities (including settlement by the delivery of government securities against the payment of funds on the same date in the case where an agreement to that effect is made between the parties to the transaction under which their mutual claims and debts are preserved explicitly). The term “any DVP settlement of Japanese Government securities” referred to in the previous sentence includes purchase and sale transactions and repurchase transactions which includes the start and closing legs of transactions in conditional purchase and sale transactions and lending and returning in lending transactions.

The Fails Charge Handling Practice will apply to all settlements made on or after 1<sup>st</sup> November 2010 (the “**Effective Date**”) unless explicitly agreed upon in connection with and specific transaction. Similarly the Company will be deemed to have agreed that the Fails Charge Handling Practice will apply to all settlements unless otherwise explicitly agreed upon in connection with any specific transaction.

In the event that either party fails to claim Fails Charges with respect to one or more transactions to which the Fails Charge Handling Practice applies, that party shall not be deemed to waive its right to claim Fails Charges in relation to other applicable transactions. In addition, either party’s claim of a Fails Charge shall not preclude the party from exercising any other right available under the agreement for the transaction in question or any applicable law, and none of the Trade Counterparty, Company or any third party shall in any way be deemed to have waived such a right.

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\* The JSDA has established the market practice for Fails Charges with the intention of preventing frequent settlement failures from occurring when the market is experiencing low interest rates. JSDA has reviewed and improved the market practice for settlement failures and partially amended the JSDA regulations (the “Regulations concerning handling of Short Sale and Lending transactions of Bonds” and the “Regulations concerning Handling of Conditional Sale and Purchase of Bonds, etc.”). In “The Japanese Government Securities Guidelines for real Time gross Settlement” to be amended at this time, the provisions for how to handle Fails Charges are stipulated in Part III “Guidelines concerning Fails”. In addition the “Practical Guidelines for handling of Fails Charges” will be created to stipulate how to introduce Fails Charges and the standard procedures for calculating, claiming and paying/receiving Fails Charges. In the new guidelines, the procedures relating to Fails Charges are specified, and it is recommended, in respect of bond lending transactions with cash collateral to execute a memorandum concerning fails to clearly specify the handling of a settlement failure if it has not yet been executed by the parties to a transaction.

We will aim to submit any claims by the 10<sup>th</sup> business day of the following month. Payment or notice of claim rejection must be submitted to us by the last business day of that month. We will not submit claims for any charge of less than JPY 50,000 per calendar month.



## APPENDIX H – DIRECT ELECTRONIC ACCESS

This module applies where you have requested access to and use of certain electronic systems and services including direct market access facilities (“**Electronic Facilities**”) to facilitate the placing, routing and execution of orders in certain designated market(s) for and on behalf of account(s) and sub-account(s) (“**Accounts**”) which you (or your underlying customers through you) have opened with us from time to time. The Electronic Facilities to be provided will either be provided by us, one of our Affiliates, or made available through us by one or more third party facilities provider(s).

Where we agree to provide you with Electronic Facilities, we will separately notify you from time to time which market or markets you are authorised to access and what fees and expenses we will charge for the provision of Electronic Facilities and related equipment (if required).

Where you are acting on behalf of any underlying customer (“**Authorised User**”), you will be required to represent that your customer has irrevocably and unconditionally authorised you as its agent with full power to execute on its behalf all transactions through the Electronic Facilities and that your underlying customer has undertaken to approve, confirm, ratify and settle all transactions executed by you on its behalf.

All Electronic Facilities are provided on an ‘as is and ‘as available’ basis and are subject to any operating instruction, upgrades, fixes, enhancements and other terms and conditions imposed by any relevant facilities provider, by us, or by any relevant regulatory body from time to time, which you are required to observe. We will endeavour to inform you of any changes to the Electronic Facilities where we envisage that there could be a material impact to any functionality but shall not be held liable for any disruption to the services.

We may, at any time, reject, cancel, or make any adjustment which we deem necessary to any trading order transmitted by you via the Electronic Facilities, when (a) we consider, at our absolute discretion, that such order may breach or may have breached any provision of the Applicable Rules (b) the price limit designated by you exceeds the scope of the price established by the market where the relevant order is to be executed; or (c) when we deem in our absolute discretion that the order may harm the integrity of the market.

You also understand that you are subject to our internal trading limits which will be notified to you in advance. In the event that you exceed such trading limits, we may, in our sole absolute discretion, cease accepting orders and shall notify you of this as soon as reasonably practicable. All amounts due in excess of the trading limits shall immediately become due and payable by you. No further orders shall be placed by you through the Electronic Facilities until further notice from us.

We will reserve the right to revoke your and your Authorised Users’ access to the Electronic Facilities at any time without prior notice. We will not be held liable to you (or the Authorised Users) for any loss, damage, costs, or expenses of whatsoever nature and howsoever arising which may be suffered by you (or the Authorised Users) as a result of our decision to impose any restriction on, suspend, disallow or terminate your (or the Authorised Users’) use of the Electronic Facilities.

You and your Authorised Users will comply at all times with Applicable Regulations, restrictions and limits, operating instructions, and other terms and conditions related to the Electronic Facilities, which may be imposed from time to time by any facilities provider, by us, or by any relevant regulatory body at any time and for any reason, without prior notice. We shall be subject to record keeping requirements in providing Electronic Facilities which you agree to and will comply with.

Access to Electronic Facilities will be subject to our rights of proprietary copyright and all other intellectual property rights in connection with the access to and use of the Electronic Facilities. You agree to, and to procure the Authorised Users agree to, obtain and maintain all necessary licenses, consents and authorities relating to the access to and use of the Electronic Facilities from time to time. You further agree to indemnify us for all losses, damages, liabilities, and claims made against us arising from or as a result of your (or the Authorised Users') use of the Electronic Facilities. These indemnity provisions will survive termination of this agreement or termination of your access and use of the Electronic Facilities.

You agree that we will not execute any orders for you (or any Authorised Users) through the Electronic Facilities unless and until there are sufficient cleared funds, securities, margin or other assets in the Accounts, as required by us from time to time.

The Electronic Facilities may be provided by a third party service provider or by us or an Associate of ours with the assistance and technology of a third party service provider or providers. Neither we nor an Associate shall be liable or responsible for any loss incurred by you or any person in connection with and arising out of any action or omission, advice, representation, failure or default attributable to a service provider.

## ACKNOWLEDGEMENTS SCHEDULE

If there is anything you wish to query, please contact Daiwa Capital Markets Europe Limited ("DCME") as soon as possible.

**After reading this Agreement and the relevant Appendices, please complete this Schedule, sign it and return one copy to DCME.**

All joint account holders must sign. All trustees must sign. A company should arrange for this Agreement to be executed by authorised signatories of the company (and evidence of authority may be requested).

### A. Agreement

I/We have read, understood and agree to the clauses set out in this Professional Client Agreement. Where I/we sign in a representative capacity, I/we confirm that I/we have full power and authority to enter into this Agreement

### B. Express consents

Please complete this Schedule by ticking the boxes below to indicate your express consent to the following.

1. I/we agree and acknowledge that DCME may execute an order on our behalf outside a trading venue, as defined in MiFID II.<sup>1</sup>
2. I/we agree and acknowledge that in the case of a limit order in shares admitted to trading on a regulated market which are not immediately executed, DCME is not bound to facilitate the earliest possible execution of that order by making it public in an easily accessible manner.<sup>2</sup>
3. I/we agree that DCME may enter into arrangements for securities financing transactions in respect of financial instruments held by DCME on my/our behalf in an omnibus account held by a third party, or otherwise use financial instruments held in such an account for DCME's own account or for the account of another client.<sup>3</sup>

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1. **MiFID II, Article 27(5):** "... Member States shall require that investment firms *obtain the prior express consent of their clients before proceeding to execute their orders outside a trading venue*. Investment firms may obtain such consent either in the form of a general agreement or in respect of individual transactions."

2. **MiFID II, Article 28(2):** "Member States shall require that, in the case of a client limit order in respect of shares admitted to trading on a regulated market or traded on a trading venue which are not immediately executed under prevailing market conditions, *investment firms are, unless the client expressly instructs otherwise, to take measures to facilitate the earliest possible execution of that order by making public immediately that client limit order in a manner which is easily accessible to other market participants. ...*".

3. **Commission Delegated Directive 2017/593, Article 5:** [paraphrased] Member States shall not allow investment firms to enter into arrangements for securities financing transactions in respect of financial instruments held by them on behalf of a client:

(1) or otherwise use such financial instruments for their own account or the account of any other person or client of the firm, unless ... : (a) *the client has given his prior express consent* to the use of the instruments on specified terms, as clearly evidenced in writing and affirmatively executed by signature or equivalent, and (b) the use of that client's financial instruments is restricted to the specified terms to which the client consents.

(2) which are held on behalf of a client in an omnibus account maintained by a third party, or otherwise use such financial instruments for their own account or the account of any other person or client of the firm, unless ... : (a) *each client whose financial instruments are held together in an omnibus account must have given prior express consent* in accordance with point (a) of paragraph 1 ...

**MiFID II, Article 16(8):** "An investment firm shall, when holding financial instruments belonging to clients, make adequate arrangements so as to safeguard the ownership rights of clients, especially in the event of the investment firm's insolvency, and to *prevent the use of a client's financial instruments on own account except with the client's express consent.*"

- 4. I/we agree that DCME may deposit financial instruments held on my/our 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.<sup>4</sup>
- 5. I/we confirm that I/we have regular access to the Internet and consent to you providing us with information by electronic message or by posting such information on your website at [www.uk.daiwacm.com](http://www.uk.daiwacm.com) or such other website as you may from time to time notify to us.<sup>5</sup>
- 6. I/we act as agent and therefore the terms of Appendix D – Agency Module shall apply to this Agreement.

(1) Signed:

[name]

[date]

(2) Signed:

[name]

[date]

(3) Executed by ..... [name of company]

All notices given pursuant to this Agreement should be delivered to us at:

Address:

.....  
 .....

*To be completed by counterparties without a permanent place of business in the United Kingdom.*

Our Agent for Notices and Service of Process in the United Kingdom is:

Name:

.....

Address:

.....  
 .....

4. **Commission Delegated Directive 2017/593, Article 3(3):** Member States shall ensure that investment firms do not deposit financial instruments held on behalf of clients with a third party in a third country that does not regulate the holding and safekeeping of financial instruments...unless... :

(a) the nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in that third country;

(b) ... a professional client, ... requests the firm in writing to deposit them with a third party in that third country.

5. **Commission Delegated Regulation 2017/565, Article 3(1):** Where, for the purposes of this Regulation, information is required to be provided in a durable medium as defined in Article 4(1) point 62 of [MiFID II] investment firms shall have the right to provide that information in a durable medium other than on paper only if:

(a) the provision of that medium is appropriate to the context ...; and

(b) the person to whom the information is to be provided, when offered the choice ... specifically chooses the provision of information in that other medium.