

# EDGEWATER



**Edgewater Markets Limited.**

**Terms and Conditions of Business**

With effect from 7 January 2025

For more information, see [www.edgewatermarkets.com/uk](http://www.edgewatermarkets.com/uk)

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## PART ONE – DEFINITIONS AND APPLICATION AND SCOPE

### 1. DEFINED TERMS

**Account** shall mean the account or accounts in your name held with us and which are opened and operated in accordance with these Terms.

**Affiliate** shall mean, in respect of any party, persons who control, are controlled by, or are under common control with such party.

**Applicable Regulations** means:

- (i) all applicable laws, rules, regulations, instruments and provisions in force from time to time;
- (ii) the rules of a relevant market in which we may carry on business on your behalf; and
- (iii) rules, principles and codes of practice of any regulatory authority to which the parties are subject, including the FCA Rules.

**Broking Services** means any brokerage, financial and other services that we may now or in the future agree to make available to you under these Terms.

**Client Categorisation Notice** has the meaning given to it in Clause 5.1.

**Client Information** has the meaning given to it in Clause 32.4.

**Client Money** has the meaning given to it in the FCA Rules.

**Client Money Rules** has the meaning given to it in Clause 15.2(ii).

**Confidential Information** has the meaning given to it in Clause 37.2.

**Confirmation** has the meaning given to it in Clause 14.1

**Data** has the meaning given to it in Clause 36.1.

**Distribution** has the meaning given to it in Clause 21.1(v).

**Electronic Broking Services** means any Broking Services, and licences to such Broking Services, that we or any of our affiliates may now or in the future agree to make available to you through electronic means, either directly or through a third-party service provider, including, without limitation, the various websites owned and operated by us (or our Affiliates) and any maintenance services in relation to equipment provided under these Terms.

**Eligible Counterparty** has the meaning given to it in the FCA Rules.

**Equivalent Distribution** has the meaning given to it in Clause 21.1(v)(a).

**Event of Default** means any of the events specified in Clause 29.1.



**Execution Policy** has the meaning given to it in Clause 11.2.

**Execution Venue** has the meaning given to it in the FCA Rules.

**FCA or Financial Conduct Authority** means the UK Financial Conduct Authority and any successor body from time to time.

**FCA Rules** means the rules, guidance and principles of the FCA from time to time.

**Financial Instrument** has the meaning given to it in the FCA Rules but also includes, where applicable, FX Spot and Commodity Spot transactions.

**Firm** has the meaning given to it in Clause 3.1.

**Group Company** means any company of the Firm's group, including the ultimate holding company, Edgewater Markets LLC.

**GMT** means Greenwich Mean Time

**Indemnified Party** has the meaning given to it in Clause 31.3.

**Indemnifying Party** has the meaning given to it in Clause 31.3.

**Information** has the meaning given to it in Clause 32.1.

**Infrastructure** means any central counterparty, settlement system, trading venue or trade repository.

**Intellectual Property Rights** means all right, title and interest in and to (i) trademarks, service marks, brand names and other indications of origin and the goodwill associated with the foregoing; (ii) inventions, patents, trade secrets, know-how, processes and systems; (iii) copyright and database rights; and (iv) any other intellectual property or similar proprietary rights in any jurisdiction, in each case whether registrable or not.

**Margin** means as defined in Section 13 (Margin Arrangements).

**Margin Call** means as defined in Section 13 (Margin Arrangements).

**Margined Transaction** means any Transaction entered into by you with us from time to time and subject to our Margin requirements.

**Matched Principal Transaction** means any transaction where the Firm interposes itself between the buyer and the seller to the transaction in such a way that meets the definition of matched principal trading in the FCA Rules.

**Open Position** means a Transaction which has not been closed in whole or in part under these Terms.

**Proceeding** has the meaning given to it in Clause 31.3.

**Professional Client** has the meaning given to it in the FCA Rules.



**Relevant Underlying Client** has the meaning given to it in Clause 29.2.

**Retail Client** has the meaning given to it in the FCA Rules.

**Secured Obligations** means the net obligations owed by you to us after the application of set-off.

**Scheme** has the meaning given to it in Clause 25.1.

**Terms** means these terms of business between us and you, any applicable cover letter, supplements, schedules, notices, agreements, guidelines, modifications or amendments thereto, including, without limitation, any other document that we may require to be executed by you in order to provide you with our Broking Services.

**Redelivered Collateral** has the meaning given to it in Clause 21.1(viii)(b).

**Title Transfer Collateral** means collateral which, at any time, has been transferred by you, or a third-party on your behalf, to the Firm in relation to one or more transactions in accordance with Clause 21 and has not been returned.

**Trading Venue** means a regulated market, multilateral trading facility and/or organised trading facility as defined under the FCA Rules.

**Transaction** means any transaction in a Financial Instrument or any other contractual arrangement entered into between you and us, including any commodity Transaction, any CFD Transaction, any Rolling Spot Forex Transaction or any Spot Forex Transaction.

**Underlying Client** means, where you act as an investment manager or investment adviser, or otherwise act as agent on behalf of an underlying fund or customer the identity of which has been disclosed to us, such underlying fund or customer.

**Website** means Edgewater Markets Limited's website, as amended from time to time, which may be found on <https://edgewatermarkets.com/uk>

**Working Days** means days not including Saturday or Sunday or legal holidays in the United Kingdom.

## 2. APPLICATION AND SCOPE

- 2.1 These Terms, together with any schedules, supplemental terms, risk warning notices, and accompanying documents, define the basis on which the Firm will provide you with Broking Services, and shall apply when the Firm provides a Broking Service to you.
- 2.2 The Broking Services that we provide you and any transaction you (or where applicable, your principal(s)) enter into with us, or we enter into on your behalf, pursuant to these Terms, are subject to Applicable Regulations so that:
- (i) if there is a conflict between these Terms and any Applicable Regulations, the latter will apply;
  - (ii) nothing in these Terms shall exclude or restrict any duty or liability which we may have to you under the Applicable Regulations;
  - (iii) we may take or omit to take any action which we consider necessary to ensure compliance with any Applicable Regulations and we are not required to do anything which would, in our opinion, infringe any such Applicable Regulation;
  - (iv) all Applicable Regulations, and whatever we do or fail to do in order to comply with them, will be binding on you;
  - (v) 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; and
  - (vi) you agree to comply with all Applicable Regulations.
- 2.3 These Terms create a contractual relationship between you and us and are legally binding. These Terms will take effect when you first undertake business with us after having received them and you will be deemed to accept and consent to these Terms for as long as we are providing a Broking Service to you.
- 2.4 Any reference in any documentation between you and us to an earlier version of these Terms, shall, from the date these Terms take effect, be read as a reference to these Terms or to the relevant or corresponding part thereof.
- 2.5 The Terms shall apply to you regardless of your jurisdiction to the extent that they are not incompatible with your local legal and regulatory requirements.
- 2.6 These Terms have been prepared on the basis that you are a Professional client or an Eligible Counterparty.



## **PART TWO – INFORMATION ON THE FIRM, YOUR CATEGORISATION AND OUR POLICIES AND REGULATORY OBLIGATIONS**

### **3. INFORMATION ON THE FIRM**

3.1 Edgewater Markets Limited (the **Firm**) is authorised and regulated by the Financial Conduct Authority (Reference Number 988539). The Financial Conduct Authority may be contacted at:

FCA Head Office  
12 Endeavour Square  
London  
E20 1JN  
Email: [firm.queries@fca.org.uk](mailto:firm.queries@fca.org.uk)  
Switchboard: 0300 500 0597

3.2 The Firm's address and contact details are as follows:

9th Floor  
30 Crown Place Financial  
London  
EC2A 4EB

**Email:** london@edgewatermarkets.com  
**Telephone:** 020 7965 4554

### **4. COMMUNICATIONS**

4.1 Communications in relation to these Terms and the Broking Services under it may be in writing, by email or other electronic means, or orally (including by telephone). Except where otherwise agreed, the language of communication shall be English, and you will receive documents and other information from us in English.

4.2 The Firm may provide certain information required under Applicable Regulations (whether or not personally addressed to you) in an electronic format. You specifically consent to the Firm providing this information in an electronic format, either by email or by means of our website [www.edgewatermarkets.com/uk](http://www.edgewatermarkets.com/uk) or any other website as to which the Firm may from time to time notify you.

### **5. CLIENT CATEGORISATION**

5.1 For the purpose of the FCA Rules, and based on the information available to us, we are required to categorise you. You will be notified of your classification in a separate notice (the **Client Categorisation Notice**).

5.2 The classification is not permanent and you shall notify us immediately if, at any point, you cease to fall within such definition, and you are responsible for notifying us of any change that could affect your categorisation.

5.3 Being categorised as an Eligible Counterparty or Professional Client may mean that you lose certain



client protections that apply to Professional Clients or Retail Clients under the FCA Rules, including:

- (i) the requirement for us to act in accordance with your best interests;
- (ii) the restriction on the payment or receipt by us of any inducements;
- (iii) the obligation on us to achieve Best Execution in respect of your orders;
- (iv) to execute orders subject to other constraints as regards timing and handling relative to other clients' orders; and
- (v) to ensure that information the Firm provides is fair, clear and not misleading.

5.4 You are entitled to make a written request for a different client categorisation under the FCA Rules. If you request to be classified as:

- (i) a Professional Client, we may agree to treat you as a Professional Client in respect of one or more orders, transactions or Financial Instruments, or we may decide that we are no longer able to provide any of the Broking Services to you; or
- (ii) a Retail Client, we will no longer be able to provide any of the Broking Services to you.

5.5 As an Eligible Counterparty or a Professional Client, you will not be afforded some of the protections afforded to Retail Clients. For example, the FCA Rules on communications with Eligible Counterparties and Professional Clients are less prescriptive than for Retail Clients, and under the FCA rules, the Firm will be entitled to make certain assumptions about Eligible Counterparties, for example, in relation to their knowledge and experience. You confirm you understand and have considered the implications of the loss of these protections.

5.6 Until we receive any request from you pursuant to Clause 5.2 or 5.4 we shall deal with you on the basis of our original categorisation as set out in the Client Categorisation Notice.

## **6. YOUR CAPACITY**

6.1 Unless we otherwise notify you in writing, and subject to Clause 6.2, we shall treat you alone as our client for the purposes of the FCA Rules and you will be liable as such. Subject to such notification to the contrary, you agree that no other person (whether disclosed to us or not) shall be our client or have any rights hereunder, unless we expressly agree otherwise.

6.2 Unless otherwise indicated in writing to us, we shall assume that there are no restrictions to the type of transaction we may enter into with you or the markets upon which transactions may be effected, subject to Applicable Regulations.

6.3 You represent that, unless otherwise agreed, you act as principal at all times when dealing with the Firm.

6.4 Without prejudice to Clause 6.3, you represent that, if you are party to any transactions executed pursuant to these Terms as agent for, or on behalf of, another person, then:

- (i) in doing so, you are expressly authorised by, or otherwise acting within the scope of the authority you have received from, your principal(s); and

- (ii) notwithstanding Clause (i), you will procure the performance by your principal(s) of all obligations and liabilities arising under or by virtue of these Terms or any transactions carried out hereunder, failing which you will be liable to the Firm as if you were a principal in respect of all such obligations and liabilities.

## **7. APPROPRIATENESS AND SUITABILITY**

When providing Broking Services to you, to the extent that the Firm is required by FCA Rules to assess whether the Broking Services or product envisaged is appropriate for you, you agree that due to your categorisation, the Firm will assume that you have the necessary knowledge and experience to understand the risks involved in any Broking Service and/or product provided or offered to you under these Terms. For the avoidance of doubt, you agree that the Firm is not required to assess the suitability of any Broking Service or product provided or offered to you under these Terms.

## **8. CONFLICT OF INTERESTS**

- 8.1 Situations can arise where our interests, or those of our staff, conflict with your interests or where your interests compete with those of our other clients. In accordance with the FCA Rules and our own Conflicts of Interest Policy we have in place arrangements to manage conflicts of interest that arise between ourselves, or our staff, and our clients and between our different clients, and therefore ensure that risks of damage to your interests will be prevented. We set out in this Clause 8 a summary of our Conflicts of Interest Policy. Further information is available upon request.
- 8.2 Where we do not consider that the arrangements under our Conflicts of Interest Policy are sufficient to ensure with reasonable confidence that risks adversely affecting your interests will be prevented, we will inform you of the nature of the conflict and the steps taken to mitigate those risks so that you can decide how to proceed.
- 8.3 Your attention is drawn to the fact that when we enter into or arrange a transaction for you we, an associated company or some other person connected with us may have an interest, relationship or arrangement that is material and potentially conflicting with the transactions, investments or service that we provide to you. This could happen when:
  - (i) we enter into or arrange a transaction for you and:
    - (a) we or one of our associated companies could, for example, be matching your transaction with that of another client by acting on his behalf as well as yours; or
    - (b) one of our associated companies could be dealing as principal for its own account by selling the investment concerned to you or buying it from you; or
  - (ii) we, or an associate, issues research, or may undertake or have undertaken own account transactions in the investment concerned or any related investment.
- 8.4 When we are not able to deal with a conflict of interest effectively we may in some circumstances be unable to provide you with the service you require and we shall not be obliged to disclose the reason why or any further information relating thereto.

## **9. COMPLAINTS**

- 9.1 In relation to business conducted with us, we have internal procedures for handling complaints fairly

and promptly. If you have a complaint about us, you should raise it in the first instance with your contact at the Firm. We will endeavour to resolve it informally. If, however, you are not satisfied with the response (or if you prefer not to raise the matter with a particular individual) you may raise the matter with our Head of Compliance.

- 9.2 If you wish to make a formal complaint, this should be made in writing and addressed to the Head of Compliance EMEA at the address set out in Clause 3.1.
- 9.3 Your formal complaint will then be investigated internally by employees who were not involved with the subject matter of your complaint and have been trained in complaints handling. Further details of the complaints-handling process, including information about our complaints management policy and when and how you may be able to refer your complaint to the Financial Ombudsman Service, will be provided to you on request or otherwise when acknowledging your complaint.

## 10. RECORDINGS

- 10.1 To the extent permitted by Applicable Regulations, you agree that the Firm will record all telephone conversations, and any other communications across any media (including email, instant messaging, facsimile, telephone conversations and other electronic communications) which we may have with you (or any third party) will be monitored and recorded. As required by FCA Rules, the Firm will record telephone conversations and electronic communications that result in transactions, or that may result in transactions, in Financial Instruments. Where the Firm is required to record communications under FCA Rules, a copy of the recording of the communications will be made available to you on request for a period of five years from the date of the communication. The FCA may request that we retain certain or specific records for longer than five years and, if it does, the records retained as a result of such an FCA request will be available to you for a period of up to seven years. All recordings and other records shall be and remain our sole property. We may use such recordings as evidence in the event of a dispute and such recordings will be accepted by you as conclusive evidence of instructions received from you.

## 11. EXECUTION

- 11.1 If you are a Professional Client, the FCA Rules on best execution will apply to you. In executing orders in certain Financial Instruments on your behalf, the Firm is under a regulatory duty to seek and to take all sufficient steps to obtain the best possible result for you, taking into account the price, cost, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order. This is known as '**Best Execution**'. The Firm owes no duties to you in respect of Best Execution, other than as set out in the FCA Rules, and any other duties are expressly excluded.
- 11.2 These Terms incorporate our Execution and Order Policy (**Execution Policy**), as amended from time to time. The current version of our Execution Policy is available on our website. By agreeing to these Terms and by providing instructions to us, you confirm that you have read and agree and consent to the Execution Policy. We will notify you of any material changes to our Execution Policy, but it is your responsibility to check for any other changes to our Execution Policy as published from time to time on our website. You are deemed to agree and consent to the Execution Policy as in effect from time to time each time you place an order or submit a trading interest.
- 11.3 The circumstances in which the Firm will not be executing orders on your behalf are set out in the Execution Policy.
- 11.4 When you give us a specific instruction for execution of your order, the Execution Policy will not apply

and the Firm will execute your order in accordance with your instructions. You should be aware that providing specific instructions to the Firm for execution of your order may prevent the Firm from taking steps that we have designed and implemented through the Execution Policy to achieve Best Execution.

- 11.5 Subject to having provided us with such consent, you agree that, whenever you place an order with us, the Firm shall be entitled in its absolute discretion, and without reference to you, to select the medium for executing your order and any related transactions we enter into as a result of your order.
- 11.6 The Execution Policy does not apply if you have been categorised as an Eligible Counterparty.
- 11.7 If the Firm accepts an instruction in respect of an order for execution, the Firm will use commercially reasonable endeavours to execute or arrange for the execution of any order promptly, but in accepting your orders the Firm does not represent or warrant that it will be possible for it or an intermediate broker to execute such an order or that execution will be possible according to your instructions. You hereby consent to the Firm executing orders on your behalf outside a trading venue (including executing orders outside a UK-regulated Trading Venue or EU-regulated venue, as applicable). When executing orders on a trading venue, the Firm or an intermediate broker will execute an order only when the relevant trading venue is open for dealings, and instructions received outside trading hours will be processed when possible (in accordance with the Rules of the relevant trading venue).

## 12. AGGREGATION

- 12.1 The Execution Policy sets out our order allocation policy and provides for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.
- 12.2 Subject to Applicable Regulations and in accordance with our Execution Policy, the Firm may combine your order with its own orders, orders of persons connected with the Firm and orders of other clients. For Professional Clients, when doing so in relation to orders in Financial Instruments, the Firm must reasonably believe that it is unlikely that the aggregation will work to the overall disadvantage of the relevant clients. However, such aggregation may on some occasions operate to your advantage and on others to your disadvantage.

## 13. MARGINING ARRANGEMENTS

- 13.1 Margin Arrangements: You agree to transfer to us such sums by way of margin (**Margin**) as determined pursuant to **Annex 1 (Margining)**. Margin requirements may be set and varied from time to time at our discretion without prior notice to you including without limitation subsequent variation of any Margin rates set at the time that a Transaction is opened.
- 13.2 Acceptable Margin: Unless otherwise agreed, Margin must be paid in cash (**Cash Margin**). 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. You are required at all times to maintain in your Account sufficient Funds to meet all Margin requirements.
- 13.3 Margin Call: We are not under an obligation to keep you informed of your Account balance and the Margin required as it is your responsibility to monitor any shortfalls. However, we may at any time notify you, that unless you deposit into your Account(s) such additional Margin to meet our Margin requirements, we may liquidate any or all Open Positions without further notice to you (**Margin Call**).

- 13.4 Once issued, you must immediately comply in full with the Margin Call by way of cleared, same day funds regardless of any currency value fluctuations and irrespective of any recovery in the market value of the subject Open Positions. You may not increase or establish any new Open Positions while any Margin Call remains unsatisfied. Notwithstanding the aforementioned, we are not obliged to make any Margin Call to you or within any specific time period.
- 13.5 If you receive a Margin Call from us, it may be made at any time by telephone, telephone answering machine message, voice mail, email, or External Platforms or any other means of electronic communication. Therefore, you must notify us immediately and provide alternate contact details to ensure that Margin Calls can be made if you will not be contactable at your usual contact details provided. Where we do make a Margin Call to you, in no way does this waive our rights to liquidate your Transactions as stipulated in Sections 13.3 and 13.4
- 13.6 Margin does not represent the total extent of your financial liability to us as you are liable for all losses in respect of any Transaction and any other costs or payments due under this Agreement. Furthermore, you acknowledge and agree that any waiver of Margin or failure to make a Margin Call cannot be relied upon, or treated as, an act, omission or representation as to the current value of any of your Open Positions with us.
- 13.7 Close-out: In the event there is insufficient Margin on your Account or in the event that the deposited Margin is not sufficient to satisfy the required Margin, as determined by us and in accordance with Section 13 Margin Arrangements, we may at our sole discretion choose to close or terminate any or all your Open Positions immediately without notice to you.
- 13.8 As specified in Section 29 Events of Default and without prejudice to our rights pursuant to Section 13 Margin Arrangements to liquidate, close or terminate your Open Positions immediately without notice:
- (i) your failure to comply with a Margin Call will constitute an Event of Default after the expiry of the applicable grace period; and/or
  - (ii) the entry into any Transaction with you that results in there being insufficient Margin to cover any actual or anticipated losses or liabilities in connection with your Account will constitute an Event of Default and we may at our discretion exercise our right in Section 29 Events of Default, regardless of whether or not there has been a Margin Call.
- 13.9 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.
- 13.10 Set-off on Default: If there is an Event of Default or this Agreement terminates, we may set-off the balance of cash Margin owed by us to you against your obligations (as reasonably valued by us) to us or to any of our Affiliates. The net amount, if any, payable between us following such set-off, shall take into account the Liquidation Amount payable under Section 28 (Netting).
- 13.11 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 Affiliates or our nominees on your behalf.
- 13.12 Substitution: You may not withdraw or substitute any property subject to our Security Interest

without our consent.

- 13.13 Negative Pledge: You undertake neither to create nor to have outstanding any Security Interest whatsoever, 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.
- 13.14 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 Affiliates or our nominees on your behalf until the satisfaction of the Secured Obligations.

## 14. CONFIRMATIONS

- 14.1 Following execution of each transaction carried out pursuant to these Terms, we will provide you with the essential information concerning the execution of that order in accordance with FCA Rules. Unless provided to you by another person, we may also subsequently provide more detailed information regarding such transactions (a **Confirmation**). The way in which we provide information will depend on the Financial Instrument and the way in which it was transacted and we may agree or otherwise notify you in advance of how such information will be provided. On your request, we will supply information about the status of your order. If you are an Eligible Counterparty we may separately agree the content and timing of the information we provide, including with respect to Confirmations.
- 14.2 You will notify us immediately upon receipt if you are not in agreement with any Confirmation or other notification from us. In the absence of such immediate notification by you, the Confirmation or notification will (in the absence of manifest error) be binding on you.

## PART THREE – BROKING SERVICES

### 15. BROKING SERVICES

- 15.1 The Firm, in its sole discretion and subject to these Terms may provide Broking Services to you. Broking services that we may provide, in accordance with Applicable Regulations, to you on your instructions include:
- (i) executing orders on your behalf on trading venues or off-venue;
  - (ii) receiving and transmitting orders on your behalf to an executing broker;
  - (iii) dealing with you as principal, including (but not limited to) on a matched principal basis); and
  - (iv) providing any other service agreed between you and the Firm,
- in each case, subject to these Terms and the limitations set out under Clause 15.2.
- 15.2 Limitations on the scope of our Broking Services:
- (i) we shall not act as custodian and hold any of your assets on your behalf, and the provisions of the FCA Rules relating to safe custody assets will not apply;
  - (ii) we shall not hold any Client Money on your behalf, and the provisions of the FCA Rules relating to Client Money will not apply (the **Client Money Rules**);

- (iii) we will not provide any representations as to the suitability in relation to any transaction (including any order placed or trading interest submitted in relation to it). This means that you are responsible for obtaining any advice you require to determine whether you should enter into any transaction;
- (iv) we shall not provide you with any investment advice or personal recommendations;
- (v) you are responsible for obtaining any legal, accounting, financial or tax advice you may need in determining whether any Broking Service or Financial Instrument is suitable for your needs;
- (vi) any information provided to you in relation to these Terms will be for your information only and is not in any way to be relied upon as financial or investment advice as to the suitability of placing an order or submitting a trading interest or entering into any transaction;
- (vii) insofar as is permissible under the Applicable Regulations and FCA Rules, the Firm (unless otherwise agreed with you in writing) does not owe you any fiduciary duty or any similar obligation under these Terms; and
- (viii) you agree that even though we have entered into these Terms, the Firm may refrain from providing any of the Broking Services until all of our internal procedures for establishing accounts have been completed and the necessary internal approvals have been obtained.

## 15.3 Risk warnings:

There are certain risks related to the Broking Services and entering into transactions in Financial Instruments. We will provide you with a notice of such risks, and this information will be made available at [www.edgewatermarkets.com/uk](http://www.edgewatermarkets.com/uk) or such other website as notified to you by us. You should read the notice carefully.

## 16. INSTRUCTIONS

- 16.1 You may communicate your dealing instructions to us verbally or in writing (by letter, fax or electronically). If you give us instructions in writing, such instructions must be received by us during normal business hours, allowing sufficient time for us to act upon them. Any instruction is transmitted at your own risk. We shall not be liable for any loss suffered on account of any instruction not being received by us.
- 16.2 We shall be entitled to rely on, and treat as binding upon you, any order which we believe to be from you or from your agent(s) (however received) which we have accepted in good faith. No liability shall attach to us if an order which has been processed is subsequently discovered to have been given in error or without your authority.
- 16.3 You agree that acceptance of an instruction to withdraw or amend an existing instruction is always subject to our receiving the instruction in time for the appropriate action to be taken, and subject to the applicable Rulebook.
- 16.4 We shall be entitled to rely on, and treat as binding upon you, any instructions which we believe to be from you or from your agent(s) (however received) which we have accepted in good faith. No liability shall be attached to us if an instruction which we have accepted and acted upon bona fide is subsequently discovered to have been given forged, falsified or amended without your authority.



- 16.5 Where these Terms are addressed to more than one person, any instruction, notice, demand, acknowledgement or request to be given by or to you under these Terms may be given by or to any one of you. We need not enquire as to the authority of any person we believe to be authorised to give instructions on your behalf.
- 16.6 We shall not be under any obligation to accept a dealing instruction from you, nor need we give any reasons for declining to do so, and, where we do accept a dealing instruction from you, we shall seek to action it as soon as reasonably practicable. We will make all reasonable efforts to notify you promptly of any refusal by us of a dealing instruction, but shall not be responsible for any losses, costs, damages or expenses incurred by you as a result of our refusal to effect a transaction or as a result of any delay or any change in market conditions before the transaction is effected.
- 16.7 You agree that, whenever you place an instruction with us to purchase Financial Instruments, during the period between the execution of the order and the settlement, you shall be solely responsible for instructing us to take up any rights, exercise any conversion or subscription rights, deal with take-over or other offers or capital re-organisations, or exercise any voting rights or affect any other corporate actions with respect to such securities, and that we shall have no obligations to notify you of any such rights nor shall we be obliged to take any action in respect of such rights unless and until we receive timely instructions from you.
- 16.8 Where we act as principal in executing a transaction in an investment which is not a packaged product or readily realisable security (as defined in the FCA Rules), the unit price of the transaction shall be arrived at by reference to the market price for the investment then available on the market on which such investments are generally traded or, if no such price is available, on a best efforts basis, and any reference in a confirmation to a market price shall be construed accordingly.

## **17. EXECUTION OF ORDERS**

- 17.1 We may act on both a name-passing basis or on a matched-principal basis. Where we act on a name-passing basis, we shall not, directly or indirectly, be acting as principal in respect of, or be responsible for, or otherwise guarantee, performance of any Broking Service provided to you. Where we or our clearer act as principal, you acknowledge, agree and consent to us or our clearer providing such Broking Service to you on a matched or riskless principal basis.

## **18. TRADING LIMITS, POSITION LIMITS AND POSITION MANAGEMENT CONTROLS**

- 18.1 Position limits and position management controls may be imposed by Applicable Regulations. In relation to the Broking Services that we provide to you under these Terms, we may also set out and communicate to you appropriate trading and position limits to mitigate and manage our own counterparty, liquidity, operational and other risks.
- 18.2 As required by Applicable Regulations, we may monitor your positions against such limits, and you agree to provide us with access to applicable information, including, but not limited to, all relevant documentation about the size and purpose of a position or exposure entered into, information about the beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market.
- 18.3 In order to ensure compliance with Applicable Regulations with regard to position limits and position management controls, or trading or position limits set by us, we may require you to limit, terminate or reduce the positions which you may have at any time and we may decline to execute an order, suspend





your access to any Trading Venue or third country equivalent and/or Infrastructure, take action to close out any one or more transactions, or take any other appropriate action.

## **19. INFORMATION COLLECTION AND REPORTING**

- 19.1 You shall promptly provide the Firm with any information the Firm determines is required, permitted or desirable to enable the Firm, an associate of the Firm or any Group Company to comply with any Applicable Regulations, or to respond to requests from any Infrastructure, Execution Venue or regulatory body in relation to your orders or transactions or other matters relating to the Broking Services. You agree to cooperate with the Firm and that any information relevant to the enquiry may be passed to any associate of the Firm, Group Company or any Infrastructure, Execution Venue or regulatory body as may be appropriate and you shall update that information or data as required by the Firm from time to time. You shall notify the Firm in writing promptly of any material change in the validity of, or information contained in, any information that you previously provided to the Firm further to this Clause. If the relevant information relates to a third party (including a client of yours for whom you are providing related services), you shall procure the third party's consent to such disclosure.
- 19.2 Without prejudice to any provision of these Terms relating to information or data or its disclosure, you consent to the disclosure by the Firm, its Associates or a Group Company of any information or data in connection with or relating to you, these Terms and/or any transaction (including pricing data) to the extent that the Firm determines is required, permitted or desirable to comply with Applicable Regulations, to respond to requests from any Infrastructure, Execution Venue or regulatory body in relation to your orders or transactions or to perform the Broking Services. If the relevant information relates to a third party (including a client of yours for whom you are providing related services), you shall procure the third party's consent to that disclosure.

## **20. SETTLEMENT**

- 20.1 Unless otherwise specifically agreed with you, we must act in accordance with the usual terms for settlement of the appropriate Trading Venue or third country equivalent or Infrastructure where applicable and/or market convention when providing our Broking Services.
- 20.2 Unless we expressly agree to the contrary, all amounts of every kind which are payable by you to us and vice versa in relation to the settlement of trades will be payable on delivery against payment basis.
- 20.3 We are not obliged to finalise (which includes to make any settlement or to deliver any investments) any Broking Service unless and until we (or our settlement agents) have received all necessary documents (including, for the avoidance of doubt, settlement instructions) or cleared funds or instruments.
- 20.4 If, in any transaction, we deliver securities or pay money to you or to your order when you are obliged to pay money or deliver securities to us or to our order at that time or subsequently and, for whatever reason, your obligations are not performed simultaneously with or prior to our obligations, you shall hold on trust for us any such securities or money received from us until your own obligations to us are fully performed.
- 20.5 If you have not delivered the appropriate funds or securities to us on the due date for settlement, we reserve the right, as appropriate, to exercise a sell-out or buy-in of the relevant securities (as described in Clause 22) or acquire alternative securities by whatever means we determine in our absolute discretion. Where we do so, our obligation to deliver the securities to you, accept the securities from



you or receive/pay the consideration will cease. You shall be responsible for (and indemnify us against) any losses we incur arising out of your non-performance or due to any actions we take as a result thereof.

## 21. TITLE TRANSFER PROVISIONS

### 21.1 Title Transfer Collateral:

- (i) You agree to transfer to the Firm on demand (and no later than any deadline specified by the Firm) Title Transfer Collateral in the form and amount as specified by the Firm and as required from time to time under the rules applicable to any Infrastructure or as the Firm may require for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations.
- (ii) The Firm shall transfer cash and/or securities of the same type, nominal value, description and amount as Title Transfer Collateral transferred by you to the Firm (or, if any transferred collateral has been redenominated, converted, redeemed or otherwise modified, cash and/or securities collateral of the same type, nominal value, description and amount of the cash and/or securities into which collateral has been redenominated, converted, redeemed or otherwise modified) to you following a demand for its return, or termination of a transaction or these Terms, only to the extent that your obligations which any Applicable Regulations or the Firm require to be margined, have been discharged and in accordance with the provisions in Clauses 27 and 28.
- (iii) You represent that all right, title and interest in and to any Title Transfer Collateral which you transfer to the Firm under these Terms will vest in the Firm free and clear of any liens, claims, charges or encumbrances or any other interest of or granted by any person other than the Firm, including any security interest, lien, claim, charge, encumbrance or other restriction (other than any lien routinely imposed on all securities in a relevant clearance system). As full ownership of the Title Transfer Collateral will be transferred to the Firm, you agree that you will not have a proprietary claim over such Title Transfer Collateral and the Firm may deal with them as its own assets.
- (iv) Nothing in these Terms is intended to create, or does create, in your favour any mortgage, charge, lien, pledge, encumbrance or other security interest in any cash or other property transferred to the Firm under these Terms.
- (v) If a holder of securities comprised in the Title Transfer Collateral would receive payments or distributions of cash or other property on any day (**Distributions**):
  - (a) the Firm will treat any cash, securities or other property of the same type, nominal value, description and amount as any Distributions (less any deductions on account of tax) (**Equivalent Distributions**) as an addition to the Title Transfer Collateral held by the Firm; and
  - (b) the Firm will transfer to you any Equivalent Distributions (other than distributions of principal) within the time period as may be specified by the Firm from time to time.
- (vi) The Firm will treat an amount equal to any interest payable (or chargeable) in respect of cash comprised in the Title Transfer Collateral as an addition (or reduction) to the Title Transfer Collateral held by the Firm upon it being credited to (or debited from) the relevant account.

- (vii) In order to undertake transactions with or through banks, prime brokers, and regulated intermediate brokers ("Trading Counterparties") the Firm may need to place collateral with them. There may be circumstances where the Firm places TTCA funds with a Trading Counterparty based outside the United Kingdom.
- (viii) From time to time, where the Firm determines, pursuant to the FCA Rules, that it is no longer appropriate for the Firm to continue to hold or receive all or part of any Title Transfer Collateral, the Firm will, to the extent possible, redeliver to you:
  - (a) assets of the same type and amount as all or part of such Title Transfer Collateral; or
  - (b) cash equal to the value of all or part of such Title Transfer Collateral (the **Redelivered Collateral**).
- (ix) Where the Firm redelivers to you Redelivered Collateral under Clause (viii), full title or ownership of such Redelivered Collateral will no longer be held by the Firm and, instead, full title or ownership of such Redelivered Collateral will pass to you.
- (x) The risks involved with and the effect of the Firm having received any Title Transfer Collateral are highlighted in information posted on the Firm's website pursuant to Clause 15.3.
- (xi) All transfers of Title Transfer Collateral effected pursuant to this Clause 21.1 shall be made with full title guarantee.
- (xii) Any notification that you would like to terminate the arrangements in this Clause 21.1 should be made in writing to the Firm and will only take effect when we have acknowledged that termination in writing.

## 21.2 Client Money:

- (i) When you transfer money to the Firm, or money is paid to the Firm on your behalf, you agree that:
  - (a) the full ownership of the money is transferred to the Firm for the purpose of securing or otherwise covering your obligations under these Terms; and
  - (b) except to the extent that the Firm has agreed in writing to the contrary, the Firm will not hold that money in accordance with the Client Money Rules.
- (ii) Money received by the Firm from you or a third party in this way for your account will be an unsecured amount owed by the Firm to you, even where the Firm is acting as your agent. Accordingly, the Client Money Rules will not apply and you will not have a proprietary claim over that money, that money will not be held for you by the Firm (whether in a segregated account or otherwise), and the Firm can deal with it as the Firm's own.
- (iii) In the event of the Firm's insolvency, you will only have an unsecured claim against the Firm for repayment of that money, and that claim will be subject to the exercise by the Firm of any set-off rights the Firm may have under these Terms or under general law.
- (iv) Money transferred to the Firm will be recorded by the Firm as a cash repayment obligation

owed by the Firm to you.

- (v) The Firm will transfer an equivalent amount of money back to you where, in its discretion, the Firm considers that the amount of money you have transferred to the Firm is more than is necessary to cover your obligations to the Firm, subject to the exercise by the Firm of any set-off rights the Firm may have under these Terms or under general law.
- (vi) Any notification that you would like to terminate the arrangements in this Clause 21 should be made in writing to the Firm.

21.3 On your instructions, we may pass cash or collateral received from you to a third party, including a third party outside the United Kingdom, to hold or control in order to effect a transaction through or with that person or to satisfy your obligation to provide collateral in respect of a transaction. We have no responsibility for any acts or omissions of any third party to whom we pass cash or collateral received from you. The third party to whom we pass cash or collateral 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 an insolvency or any other analogous proceedings in relation to that third party, we will have only 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.

21.4 Where cash or collateral is held by a credit institution, bank or third party outside of the United Kingdom, the legal and regulatory regime applying to such credit institution, bank or third party may be different from that of the United Kingdom and, in the event of failure of such person, your money may be treated in a different manner from that which would apply if the money were held in an account in, or by third party in, the United Kingdom.

21.5 Any cash or collateral held by us shall be subject to a right of set-off, lien or other security interest as set out in these Terms.

21.6 Any cash or collateral held by us will not be held in accordance with FCA CASS rules. This means that:

- (i) money will not be subject to the protections conferred by the client money rules;
- (ii) this money will not be segregated from the money of the firm in accordance with the client money rules and will be used by the firm in the course of its own business; and
- (iii) the professional client will rank only as a general creditor of the firm.

## **PART FOUR – GENERAL TERMS AND CONDITIONS**

### **22. POWER TO SELL, BUY IN OR CLOSE OUT**

22.1 If, at any time, we have any reason to believe that you (or where you are acting on behalf of an Underlying Client, your Underlying Client) may be unable or unwilling to meet any liabilities which you (or your Underlying Client) have incurred to us or which we may have incurred on your (or your Underlying Client's) behalf or to comply with any other obligations under these Terms, we shall be entitled (and are irrevocably authorised by you) to take all or any of the following actions without prior notice to you:

- (i) sell any investments bought on your (or your Underlying Client's) behalf but for which you have not paid on or before the relevant settlement day;
- (ii) close or rescind open positions on your account, including in respect of your Underlying Client, if applicable. We may do so, for example, if any cash or investments have not been delivered by you on or before the relevant settlement day; and
- (iii) take any other steps (whether or not similar to the above) we may consider to be necessary to meet any obligations with which you have to comply under these Terms or otherwise to protect our position.

22.2 Any costs or losses incurred by us in effecting any or all of Clause 22.1(i), 22.1(ii) or 22.1(iii) will be paid by you to us.

22.3 Any restrictions on our power to sell or otherwise deal with assets of yours charged to us or held by us contained in the Law of Property Act 1925 or any other applicable law are, to the extent permitted by law, excluded.

## **23. FEES/CHARGES**

23.1 Unless otherwise agreed, you will be responsible for our charges, which will be levied in accordance with our rates in effect at the time the charges are incurred or as otherwise notified to you, verbally or in writing in good time prior to dealing. Any alteration to these charges will be notified to you at or before the time of the change.

23.2 Where required by Applicable Regulations, the Firm shall provide you, in good time, with information with regard to all costs and relevant charges in connection with the provision of services and costs of Financial Instruments through its website or by such other means as may be notified to you from time to time. Without prejudice to these obligations, you agree to the fullest extent permissible under Applicable Regulations to a limited application of the detailed information requirements on costs and associated charges and consent to us providing you information under this Clause 23.2 on such basis.

23.3 Where required by Applicable Regulations, the information under Clause 23.2 will provide for separate evidence of costs and charges where a Broking Service is packaged with another service or product or is provided as a condition for the same agreement or package.

23.4 Unless otherwise agreed in writing, you will be responsible for the payment of any brokerage fees, clearing fees, exchange house fees, transfer fees, registration fees, stamp duty and any other applicable taxes, and all other liabilities, charges, costs, and expenses payable in connection with transactions effected or services provided by us on your behalf.

23.5 All amounts (including, without limitation, all fees and charges) payable by you shall be due on demand without set-off, counterclaim or deduction.

## **24. FEES, COMMISSIONS OR NON-MONETARY BENEFITS THAT WE MAY RECEIVE OR PAY**

24.1 You agree that the Firm may receive from, or pay to, third parties (including Affiliates) fees, commissions or other non-monetary benefits, and may share charges in respect of the Broking Services provided to you with third parties (including Affiliates), when it is satisfied that the payment or benefit is designed to enhance the quality of the Broking Services. The Broking Services provided under these Terms do not include independent investment advice or portfolio management in accordance with

Application Regulations. The amount or basis of any fee, commission or other non-monetary benefit received by the Firm from such a third party or paid by the Firm to such a third party in connection with a transaction with or for you, and the amount or basis of any charges shared with a third party (other than employees of the Firm), will be disclosed to you to the extent required by Applicable Regulations, and such disclosure may be in summary form only. Further details will be available upon request.

## 25. COMPENSATION

25.1 The Firm is covered by the Financial Services Compensation Scheme in the United Kingdom (the **Scheme**) which can pay compensation in respect of protected "investment business" where there is an eligible claim. The Scheme is only available to certain types of claimants and claims as set out in the FCA Rules, and payments to eligible claimants may vary depending on the type of claim you hold with respect to the Firm. If you have eligible claims under the Scheme, such claims are subject to maximum limits on compensation, as published from time to time on the Scheme's official website. As at September 2023, the compensation limit for investment business is set at an aggregate maximum of £85,000 per eligible claimant. Further information is available from the FCA, from the Financial Services Compensation Scheme at 10th Floor, Beaufort House, 15 St Botolph Street, London EC3A 7QU or from the Scheme's official website, which can be accessed at <https://www.fscs.org.uk/>.

## 26. REPRESENTATION, WARRANTIES AND UNDERTAKINGS

26.1 You represent, warrant and undertake to us at the date of these Terms and on a continuing basis that:

- (i) you have full power and authority, as well as all necessary licences, authorisations, consents and approvals to enter into these Terms and to instruct us to provide Broking Services to you, including to execute or arrange any transaction and to perform all your obligations hereunder;
- (ii) you have adequate resources to enter into and perform any such transaction which you decide to undertake;
- (iii) these Terms and any transactions entered into hereunder are your valid and binding obligations, enforceable against you in accordance with these Terms, subject to bankruptcy or other applicable laws;
- (iv) by entering into these Terms and any transactions hereunder, you will not violate any applicable laws or regulations, or any agreement or rule by which you are bound or by which any of your assets are affected;
- (v) all information you have given to us is true and complete and any changes to the information given to us will be promptly notified to us;
- (vi) you will ensure that all relevant investments or any documents of title and/or transfer forms and/or any relevant payments are delivered, paid or transferred to us or to whomever we may direct in sufficient time on or before the contractual settlement date to enable us to settle the transaction in accordance with market requirements;
- (vii) each transaction you enter into is based on your own independent judgement and not on any recommendation or advice provided by us;

- (viii) you (or where you are acting as agent on behalf of an Underlying Client, your Underlying Client) will have full responsibility for payment and collection of all taxes, costs and registration fees incurred by or in connection with the Broking Services provided by us to you; and
- (ix) no Event of Default with respect to you (or, where you are acting as agent on behalf of an Underlying Client, your Underlying Client) has occurred and is continuing, and no such events or circumstance will occur as a result of entering into and performing obligations under these Terms.

26.2 Where you are acting under these Terms as agent on behalf of one or more Underlying Clients, you represent, warrant and undertake to us at the date of these Terms and on a continuing basis that:

- (i) the Underlying Client(s) have adequate resources over which you have authority to enter into and perform any such transaction which you decide to undertake on their behalf;
- (ii) any transactions entered into under these Terms are valid and binding obligations enforceable against your Underlying Client(s) in accordance with these Terms, subject to bankruptcy or other applicable laws;
- (iii) where your use of the Electronic Broking Services is for the benefit and account of your Underlying Client(s), you have been given full authority from such Underlying Client to use the Electronic Broking Services for their benefit and account;
- (iv) you have no reason to believe that your Underlying Client(s) will in the foreseeable future not be able to meet any settlement or payment obligations or are likely to become insolvent;
- (v) you have obtained and recorded evidence of the identity of your Underlying Client(s) in accordance with applicable laws and regulations (including, without limitation, anti-money laundering regulations) and have provided us with client account identifiers to enable us to allocate transactions appropriately; and
- (vi) in the event of an Event of Default by any of your Underlying Clients, or the failure of any of your Underlying Clients to meet any of their material obligations, you will provide us with the full name, registered office and contact details of the relevant Underlying Client and take all other steps as we may reasonably (acting in good faith) require in order that we might take such steps as are necessary, including, but not limited to, instituting legal proceedings against your Underlying Client, to minimise our exposure and/or redress any loss or damage we may have suffered.

26.3 You shall provide us with such information as we require in relation to these Terms, including all information required to comply with all Applicable Regulations, including all applicable anti-money laundering rules and regulations. You warrant that, to the best of your knowledge, any information provided to us by you is complete, accurate and not misleading in any material respect, and you agree to notify us should such information change in any material respect.

26.4 When making a decision to deal in Financial Instruments, you should consider the risk inherent in those products, and in any services and strategies related to them. Your assessment should include a consideration of a variety of potential risks including those relating to credit, the market, liquidity, interest rate, insolvency, foreign exchange, contingent liabilities, execution venue, and legal and tax issues.



## **27. RIGHTS OF SET OFF AND RETENTION OF YOUR FUNDS**

27.1 We shall be entitled at any time to retain or make deductions from or set off amounts which we (or any other Group Company) owe to you (whether absolute or contingent and whether matured or unmatured, and including, without limitation, the proceeds of any sale) in respect of any liability you have or may have towards us (or any other Group Company) under these terms, whether such liability is absolute or contingent and whether matured or unmatured, including, for example, when appropriate:

- (i) sums to be paid in settlement of transactions;
- (ii) settlement of our fees, commissions or charges or any other amounts referred to in Clause 23 or any liabilities or costs incurred when exercising rights under Clause 22 or any other provision of these Terms;
- (iii) any interest payable to us; and
- (iv) payments to us pursuant to any indemnity.

27.2 Where you are acting under these Terms as agent on behalf of one or more Underlying Clients, we will be entitled to exercise our rights under Clause 27 to set off the assets or retain funds from one of your Underlying Clients only against the debts owed by that particular Underlying Client, and any reference to 'you' in Clause 27 will be replaced by a reference to 'the Underlying Client'.

## **28. NETTING**

28.1 Payment Netting: If on any date there are amounts which would otherwise be payable (in the same currency or across different currencies, if we elect in our sole discretion for such amounts to be subject to this clause) under these Terms (including without limitation any transaction executed hereunder (including any Matched Principal Transaction)) or any other agreement entered into between us (or any other Group Company) and you (or any of your Affiliates) (unless specified otherwise in such other agreement), both by us to you (and/or from any other Group Company to you or your Affiliates (as applicable)), and by you to us (and/or from your Affiliates to us or any other Group Company (as applicable)), then we may, but are not obliged to, aggregate the amounts so payable on such date and each party's obligation to make the relevant original payments shall be discharged and replaced by an obligation for either:

- (i) you (if the relevant aggregate amount due from you and your Affiliates) is greater than the relevant aggregate amount due from us (and any other Group Company); or
- (ii) us (if the relevant aggregate amount due from you and any of your Affiliates) is less than the relevant aggregate amount due from us and any other Group Company),

to pay the other party the positive net difference between the two aggregate amounts. If the relevant amounts are in different currencies, we shall convert those sums into the currency of our choice (being one of the currencies in which payments are due) at the spot rate of exchange determined by us.

28.2 No Set Off By You: You (or your Affiliates) shall have no right to set-off or net any obligations owed to you (or your Affiliates) by us (or any other Group Company), against obligations owed to us (or any



other Group Company) by you (or your Affiliates).

- 28.3 Consequences of an Event of Default: On the occurrence of an Event of Default as set out in Clause 29, we may exercise our rights under sub-clauses 28.5 to 28.10 below, except that, if so specified by us by notice to you or in our communications with you, in the case of the occurrence of any Event of Default specified in Clause 29.1(viii) of the definition of Events of Default (a **Bankruptcy Default**), the automatic termination provisions of sub-clause 28.5 below shall apply (**Automatic Early Termination**).
- 28.4 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 all Netting Transactions in accordance with this clause. If a Liquidation Date is so designated or occurs, then notwithstanding any terms in a Relevant Agreement to the contrary, a notice designating the Liquidation Date as an Early Termination Date shall be deemed to have simultaneously been served or an Early Termination Date to have automatically simultaneously occurred on the Liquidation Date under the other Relevant Agreement(s) (and the occurrence or deemed occurrence of each such Early Termination Date under a Relevant Agreement shall occur automatically and any acceleration or termination notice requirements or other conditions to the occurrence of the Early Termination Date under a Relevant Agreement shall be deemed to have been satisfied).

For the purposes of this sub-clause:

**Default Event** means the occurrence of any default, event of default, termination event or similar event or circumstance under (and howsoever described or defined in) a Relevant Agreement in respect of you.

**Early Termination Date** means, in respect of a Relevant Agreement and following the occurrence (or deemed occurrence) of a Default Event under that Relevant Agreement, the date designated (or deemed to be designated) for the termination, acceleration or other cancellation of all transactions, liabilities, obligations and/or exposures under that Relevant Agreement following the occurrence of such Default Event, howsoever described.

**Netting Transactions** means all transactions, positions, exposures, debts, liabilities, balances, credits, debits and other obligations between the parties (other than those which are subject to a Relevant Agreement) whether actual or contingent and whether recorded in the accounts or otherwise. Netting Transactions shall include any or all transactions entered into between you and us, including, without limitation, but without duplication: any Matched Principal Transaction, purchase or sale transaction entered into with you or on your behalf, any open positions recorded on your account or otherwise, any transaction in commodities or securities, any deposit or other moneys or securities or other assets you hold with us or are entitled to receive from us or we hold with you or are entitled to receive from you (and for the purposes of this clause, the relevant party's obligation to repay or redeliver any such money or assets shall be accelerated to fall due on the Liquidation Date and such obligation shall be dealt with in accordance with this clause (and in respect of any cash, the obligation shall be to pay the face amount thereof, and in respect of any non-cash assets, any obligation to return or deliver any such non-cash assets shall be replaced by an obligation on the relevant party to pay to the other party the current market value of such non-cash assets, as determined by us in our sole discretion)), any other payment or delivery obligation, any derivative transaction (including any rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-

currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap or credit spread transaction), repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions), any type of transaction that is similar to any transaction referred to above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement), any combination of these transactions and any transaction recorded at a market entered into with you or on your behalf. Subject to Applicable Regulations, Netting Transactions shall include any such transactions entered into by your Affiliates and us and any other Group Company, together with any such transactions entered into by any other Group Company with you and your Affiliates.

**Relevant Agreement** means any master agreement, trading agreement or similar agreement entered into between us and you (or, subject to Applicable Regulations, entered into by your Affiliates and us and any other Group Company, or entered into by any other Group Company with you and your Affiliates) which governs certain types or categories of products or transactions, including, without limitation, any ISDA Master Agreement, Global Master Repurchase Agreement and/or Global Master Securities Lending Agreement).

- 28.5 Automatic Termination: Where Automatic Early Termination under Clause 28.3 applies, the date of the occurrence of any Bankruptcy Default shall automatically constitute a Liquidation Date in respect of all Netting Transactions, without the need for any notice by us, and the provisions of the following sub-clause shall then apply.
- 28.6 Calculation of Liquidation Amount: Upon the occurrence of a Liquidation Date:
- (i) no further payments or deliveries shall be required 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;
  - (ii) the Early Termination Amount due following the occurrence of an Early Termination Date in respect of each Relevant Agreement shall be calculated in accordance with the terms of the applicable Relevant Agreement, but notwithstanding anything to the contrary in any Relevant Agreement, each Early Termination Amount due under a Relevant Agreement shall fall due on the Liquidation Date and be applied in accordance with this clause (where "Early Termination Amount" means, in respect of a Relevant Agreement and following the occurrence (or deemed occurrence) of an Early Termination Date under that Relevant Agreement, the termination amount, settlement amount, cancellation amount or such other amount that becomes payable or repayable under, or other amount calculated in accordance with, such Relevant Agreement in respect of such Early Termination Date, together with (but without duplication) any accrued but unpaid amounts payable by one party to the other prior to the occurrence of such Early Termination Date under such Relevant Agreement and as determined by the party required to make the relevant calculations in respect of the Early Termination Amount in accordance with the provisions of such Relevant Agreement);
  - (iii) we shall (on, or as soon as reasonably practicable after, the Liquidation Date) determine (discounting if appropriate), in respect of each Netting Transaction, the amounts due between the parties in respect of such Netting Transactions on the Liquidation Date, including (where applicable) the total cost, loss or, as the case may be, gain to us, in each case converted (if necessary) into the currency specified by us or otherwise in writing or, failing any such specification, the lawful Currency of the United Kingdom (the **Base Currency**) (and, if appropriate, including any loss of bargain, cost of funding, the face amount of any deposits,

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 related hedging, market or trading position (which may for the avoidance of doubt include any losses or gains in respect of internal transactions and arrangements, buy-ins, margin requirements, exchange requirements for cleared transactions, or market risk on derivatives or other open positions) as a result of the termination, pursuant to these Terms, of each payment or delivery which would otherwise have been required to be made under such Netting Transaction (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). Subject to Applicable Regulations, the determination of any such costs, losses or, as the case may be, gains in respect of the Netting Transactions shall include any such Netting Transactions entered into by your Affiliates and us and any other Group Company, together with any such Netting Transactions entered into by any other Group Company with you and your Affiliates; and

- (iv) we shall treat each amount due to us and cost or loss to us, determined under sub-clauses (ii) and (iii) above, as a positive amount, and each amount due from us and gain by us, determined under sub-clauses (ii) and (iii) above, as a negative amount, and aggregate all of such amounts to produce a single, net positive or net negative amount, denominated in the Base Currency (the **Liquidation Amount**). Subject to Applicable Regulations, the determination of the Liquidation Amount shall include (x) the amounts due to us from your Affiliates or due to any other Group Company from you or your Affiliates (as applicable, and expressed as a positive amount) and (y) the amounts due to you from any other Group Company or due to your Affiliates from us or any other Group Company (as applicable, and expressed as a negative amount).

28.7 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, in each case in accordance with sub-clause 28.8 below. We shall notify you of the Liquidation Amount, and by whom it is payable, as soon as reasonably practicable after the calculation of such amount (the **Liquidation Amount Notice**).

28.8 Payment: The Liquidation Amount shall be paid in the Base Currency by the close of business on the business day following the completion of the termination and liquidation under this clause (converted as required by applicable law into any other currency, any costs of such conversion to be borne by you, and (if applicable) deducted from any payment due to you) and delivery of the Liquidation Amount Notice. Any Liquidation Amount not paid on the due date shall be treated as an unpaid amount and bear interest, at the average rate at which overnight deposits in the currency of such payment are offered by major banks in the London interbank market as of 11.00am (London time) (or, if no such rate is available, at such reasonable rate as we may select) plus 1% per annum for each day for which such amount remains unpaid.

28.9 Base Currency: For the purposes of any calculation hereunder, we may convert amounts denominated in any other currency into the Base Currency at such rate prevailing at the time of the calculation as we shall reasonably select.

28.10 Payments: Unless a Liquidation Date has occurred or has been effectively set (in which event, payments shall become due in accordance with sub-clause 28.8 above), we shall not be obliged to make any payment or delivery scheduled to be made by us to you 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.

- 28.11 **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). Any obligation to pay the Liquidation Amount shall be subject to our rights of set-off under Clause 27. Without prejudice to the determination of the Liquidation Amount due following the Liquidation Date, if as a result of the termination of a transaction we (or any other Group Company) incur any loss or expense in entering into replacement transactions or in otherwise hedging our exposures arising in connection with a transaction so terminating, you shall be required to pay to us the amount determined by us in good faith and without double counting of the Liquidation Amount to be equal to the loss or expense incurred in connection with such replacement transactions or hedging (including all fees, costs and other expenses).
- 28.12 **Single Agreement:** These terms, 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 these terms take effect are entered into in reliance upon the fact that these Terms and all such terms constitute a single agreement between us.
- 28.13 **Infrastructure Default Rules:** The provisions of this clause shall not be applicable to any transaction to the extent that action which conflicts with or overrides the provisions of these Terms has been started in relation to that transaction by a relevant Infrastructure under Applicable Regulations and is continuing.
- 28.14 **Underlying Clients:** Notwithstanding any other provision in these Terms, if you are acting on behalf of an Underlying Client and an Event of Default occurs in respect of an Underlying Client, our rights under this clause shall be limited to the relevant account(s), positions and transactions of such Underlying Client.

## **29. EVENTS OF DEFAULT**

- 29.1 An Event of Default is deemed to have occurred if any of the following happens:
- (i) you (or, where you are acting as agent on behalf of an Underlying Client, your Underlying Client) fail to make any payment due to us or any other Group Company or to deliver any securities due to us or any other Group Company (or to our agents);
  - (ii) you fail to comply with a Margin Call;
  - (iii) you enter into a Transaction which results in there being insufficient Margin to cover any actual or anticipated losses or liabilities in connection with your Account;
  - (iv) you (or, where you are acting as agent on behalf of an Underlying Client, your Underlying Client) fail to perform any other obligation owed to us or any other Group Company under these Terms;
  - (v) any Funds in Transit are not delivered within the specified timeline;
  - (vi) any Funds in Transit are cancelled where the Client is utilising a Funds in Transit Credit without prior written agreement with us;
  - (vii) any representation or warranty you make to us or any other Group Company proves false or misleading either under these Terms or under any other agreement between you and us or any other Group Company;

- (viii) you (or, where you are acting as agent on behalf of an Underlying Client, your Underlying Client) become unable to pay your debts as they fall due or become insolvent or bankrupt or become the subject of any insolvency, bankruptcy, administration or similar proceedings; or
- (ix) the occurrence of an event of default, termination event or other similar event (however so described) under any these Terms or any other agreement entered into between us and you (or, where you are acting as agent on behalf of an Underlying Client(s), your Underlying Client(s)).

29.2 Where you act as agent on behalf of one or more Underlying Clients, any Event of Default in relation to you shall constitute an Event of Default in relation to each of your Underlying Clients (each for the purpose of this Clause 29.2, a **Relevant Underlying Client**), except where that Underlying Client:

- (i) is not otherwise subject itself to an Event of Default; and
- (ii) has requested, and we have agreed, that we continue to provide Broking Services to that Underlying Client either on the basis that the Underlying Client will be our client for all purposes or another investment manager or agent appointed on behalf of that Underlying Client will be our client for the purposes of the Applicable Regulations and the relevant parties have entered into an appropriate agreement with us.

29.3 In such circumstances, we shall continue to provide Broking Services to that Underlying Client on these Terms as if you were not a party and all references to you were to the Underlying Client or its agent (as applicable).

29.4 Any Event of Default in relation to an Underlying Client on whose behalf you are acting as agent shall constitute an Event of Default in relation to that Underlying Client alone and not to you or any other Underlying Client on whose behalf you act under these Terms.

29.5 Following the occurrence of an Event of Default, we shall be entitled, without prior notice to you, to take any or all of the following actions, and in all cases you will immediately indemnify us on demand for any losses, costs or expenses which we suffer or incur as a result:

- (i) to treat any or all outstanding transactions between you (or, where applicable, the Relevant Underlying Client) and us or any other Group Company as having been cancelled or terminated;
- (ii) to sell any or all of the investments or other property which we or any other Group Company or our associated companies are holding or are entitled to receive on your behalf (or on behalf of your Underlying Client) and to apply the proceeds in or towards satisfaction of any obligation or liability you (or, where applicable, the Relevant Underlying Client) may have to us or any other Group Company or our associated companies (including any contingent or prospective liability);
- (iii) to set off (as described in Clause 27) any obligation we or any other Group Company owe to you (or, where applicable, the Relevant Underlying Client), and/or to apply any cash we or any other Group Company hold for your (or, where applicable, the Relevant Underlying Client's) account, against any obligation or liability you (or, where applicable, the Relevant Underlying Client) may have to us or any other Group Company (including any contingent or prospective liability);

- (iv) to close out, replace or reverse any transaction, 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 or any other Group Company consider necessary or appropriate to cover, reduce or eliminate our or the other Group Company's loss or liability under or in respect of any contracts, positions or commitments; or
- (v) to terminate these Terms.

## **30. LIABILITY**

- 30.1 We shall not be liable for any loss of opportunity whereby the value of your account may have been increased nor for any reduction in the value of your account as a result of market movements. We shall not be liable for the taxation consequences of any transaction nor shall we be liable for taxation charges arising for any reason.
- 30.2 Neither we nor our directors, officers, employees, agents nor any other Group Company shall be under any liability whatsoever for any loss or damage sustained by you as a result of or in connection with the services to which these Terms apply and the provisions contained in these Terms except insofar as, and then only to the extent that, such loss or damage is caused by gross negligence or wilful default, or fraud. Nothing in these Terms will exclude or restrict any duty or liability the Firm may have to you under Applicable Regulations which may not be excluded or restricted.
- 30.3 Neither we nor our directors, officers, employees, agents nor any other Group Company shall be liable for any loss arising from any act or omission of any agent or third party who performs services pursuant to these Terms except to the extent that such loss is caused by wilful default, fraud or negligence in the selection of such agents or third parties on the part of us or our directors, officers, employees, agents or any other Group Company.
- 30.4 Nothing in these Terms will:
  - (i) exclude or restrict any obligation we may have to you, or any liability we may incur to you, in respect of a breach by us of the FCA Rules;
  - (ii) exclude or restrict any liability we may have in relation to the death or personal injury of any person caused by our negligence or for fraudulent misstatement; or
  - (iii) exclude or restrict to an extent prohibited by law any duty or liability we may have to you.
- 30.5 Neither we, nor any other Group Company, nor our software providers, agents or subcontractors shall be liable to you for any loss of profit, data, business or goodwill or for any indirect or consequential loss or damage arising in connection with these Terms (in each case whether arising from gross negligence, breach of contract, indemnity or otherwise) even if we have been notified of the possibility of that damage or loss.
- 30.6 Neither we nor any other Group Company, nor our software providers, agents or subcontractors shall be liable for:
  - (i) the commercial advisability of any order, revocation (of an order) or transaction;

- (ii) the reliability or accuracy of any information supplied by any party to the agreement in relation to any order, revocation or transaction;
- (iii) any other obligation or liability arising in relation to an order, revocation or transaction; and
- (iv) for the capacity, reliability or performance of you with regard to any order, revocation or transaction.

30.7 You warrant and represent to us that you accept that the restrictions on our liability, the liability of other members of our group, our software providers, agents and subcontractors as set out in these Terms are reasonable in all circumstances.

## 31. INDEMNITY

31.1 You irrevocably and unconditionally agree to indemnify us, our directors, officers, employees, agents and any other Group Company on demand and to keep us fully and effectively indemnified (whether before or after termination of these Terms) against any claims, liabilities or expenses of any kind which may be incurred by us as a direct or indirect result of our acting under these Terms.

31.2 However, this indemnity shall not apply to any loss or liability to the extent it arises or results from our negligence or wilful default, fraud or any contravention by us of the FCA Rules or the provisions of the FSMA.

31.3 If a third-party claim or proceeding of any nature (**Proceeding**) is commenced against a party entitled to indemnification under this clause 31 (**Indemnified Party**), notice shall be given to the party obligated to provide such indemnification (**Indemnifying Party**) as soon as reasonably practicable. The Indemnifying Party shall be entitled to take control of the Proceeding and any settlement of it, and the Indemnified Party shall give the Indemnifying Party, at the Indemnifying Party's reasonable cost, all reasonable assistance in relation to the Proceeding.

## 32. INTELLECTUAL PROPERTY

32.1 All Intellectual Property Rights in and to any data (including, without limitation, bids, offers, prices and volumes of transactions, but excluding Client Information as defined below), analytics, research or other information you become a party to during the provision of the Broking Services (collectively, the **Information**) are owned by, or licensed to, us and you agree such Intellectual Property Rights shall remain vested exclusively in us and/or our licensors (other than yourself) and/or their respective successors both during and after the term of these Terms. Any goodwill generated through the Broking Services provided to you shall inure solely for the benefit of us and/or our licensors (other than yourself) and/or their respective successors.

32.2 You acknowledge that the Intellectual Property Rights and the Information are a valuable asset of ours and/or our licensors (other than yourself) and/or their respective successors and you shall protect and safeguard the Intellectual Property Rights and the Information by using the same degree of care that you generally use to protect your own Intellectual Property Rights, business assets and confidential information, but in any event with no less than a reasonable degree of care.

32.3 You shall promptly notify us upon becoming aware of any infringement or misappropriation of any Intellectual Property Rights of any Group Company or its licensors. You shall comply with all reasonable





requests made by us (at our reasonable expense) to protect and enforce the Intellectual Property Rights of any Group Company or its licensors and the Information.

- 32.4 You acknowledge and agree that we shall be permitted, and you grant us a non-exclusive, perpetual, transferable, world-wide and royalty-free licence (without warranties of any kind, express or implied), to use, distribute, sub-license, disclose and sell for the benefit of our group any data provided by yourself and all price, volume and other information regarding your transactions (collectively, **Client Information**), provided that, except as otherwise permitted hereunder, we may disclose Client Information on an aggregated basis only and without directly or indirectly identifying you as the specific source of such information (it being understood and agreed that we may disclose to any person the list of our clients (from time to time). Subject to the foregoing licence between us, you retain all ownership and other rights with respect to the Client Information.
- 32.5 You shall not sell, lease, license, transfer, provide or otherwise make available to any third party any form of access to, or use of, any of the Information.
- 32.6 You agree that you shall not alter, enhance, make derivative works of, download to computer, decompile, disassemble or reverse engineer all or any part of the Information except solely to the extent (i) expressly required by applicable law or permitted by these Terms or (ii) necessary in direct connection with transaction-related support functions.
- 32.7 You acknowledge and agree that any Information you receive from us is to be used by you solely for the purpose of trading. If at any time you wish to use this data for any other purpose, you must seek our express consent and obtain a specific licence from us to do so.

### **33. FORCE MAJEURE**

- 33.1 We shall not be in breach of our obligations under these Terms if there is any total or partial failure of performance of our duties and obligations occasioned by any act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, inability to communicate with market makers for whatever reason, failure of any computer dealing or settlement system, prevention from or hindrance in obtaining any energy or other supplies, labour disputes of whatever nature, or late or mistaken delivery or payment by any bank or counterparty, or any other reason (whether or not similar in kind to any of the above) beyond our control.

### **34. VARIATION**

- 34.1 We may, from time to time, by written notice to you, make such modifications, amendments and additions to these Terms as we consider necessary or desirable, including those required in order to comply with any applicable law or the requirements of any governmental or other regulatory body, or to comply with the rules of a Trading Venue or third country equivalent or Infrastructure.
- 34.2 All such modifications, amendments or additions shall have immediate effect.

### **35. TERMINATION**

- 35.1 You may terminate these Terms at any time by written notice to us, subject to your having no outstanding obligation to us. We may terminate these Terms at any time by written notice to you.
- 35.2 Termination shall not affect your obligation to settle transactions effected prior to the date of



termination and shall not prejudice any right or obligation that may already have arisen. We shall also continue to have the right to disclose information where required to a UK or overseas regulator.

## 36. SUPPLY OF DATA

36.1 If you, through whatever medium, receive non-live pricing data or other information about pricing (the **Data**) from us and/or our Affiliates which you use for the purpose of trading, revaluation, mark-to-market revaluation or any other similar purpose, you will be receiving the Data subject to the following conditions, regardless of your regulatory classification:

- (i) we shall send or make available the Data to you and/or your Affiliates by such method(s) from time to time and at such times as we in our sole discretion decide or as we from time to time otherwise agree with you and/or your Affiliates;
- (ii) you acknowledge that the Data is for use by Eligible Counterparties and Professional Clients only and it is not intended for Retail Clients as defined by the FCA Rules;
- (iii) save as provided in (ix) below, you undertake to keep the Data confidential and not to disclose the Data or any part of it to any person (and 'person' shall include, without limitation, any individual, partnership, company or corporation), except that you may disclose the Data to your officers and employees and those of your Affiliates as applicable, provided in each case that, (i) use of the Data is for the purpose of trading only; (ii) you inform them of the confidential nature of the Data; and (iii) you procure that they comply with these Terms as if they were a party to these Terms;
- (iv) you and your Affiliates undertake not to use the Data or permit or suffer the same to be used for any purpose other than your or your Affiliates' internal use for the purpose of trading. You undertake not to, and shall procure that your Affiliates shall not, re-distribute the Data to parts of your business not receiving Broking Services, sell, transfer or sub-licence the Data to any third party, or permit or suffer the same to be sold, transferred or sub-licensed;
- (v) you undertake not to, and shall procure that your Affiliates shall not, disclose to any person the fact that we are supplying the Data to you and/or your Affiliates without our prior written consent;
- (vi) you agree that the Data belongs to, and is the intellectual property of, us, our Affiliates and/or our and their respective licensors and that any Data you receive from us is to be used by you solely for the purpose of trading. If at any time you wish to use this Data for any other purpose, you must seek our express consent and obtain a specific licence from us to do so;
- (vii) you acknowledge that the Data is not intended to be relied upon as authoritative or taken in substitution for the exercise of judgement and that it is not, and should not be construed as, an offer, bid or solicitation in relation to any financial instrument. You further acknowledge that the Data is obtained from sources believed to be reliable and may also be based on opinions, estimates, projections and extrapolations constituting our judgement (including that of our relevant Affiliates and/or their respective licensors). We and our Affiliates do not guarantee, and expressly disclaim any liability for, and make no representations or warranties, whether express or implied, as to the Data's currency, accuracy, timeliness, completeness or fitness for any particular purpose. We and our Affiliates accept no liability whatsoever for any loss (including, but not limited to, any direct, indirect or consequential loss, whether or not such loss is foreseeable and whether or not we have been apprised of the use to which the



Data will be put) howsoever arising from the Data's use, the timeliness or its delivery or its failure to be delivered at all;

- (viii) you agree that damages would not be adequate remedy for any breach of these Terms and that we may be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of these Terms. We and each of our relevant Affiliates shall be entitled to enforce these Terms against you and/or your Affiliates;
- (ix) your obligations under paragraph (iii) (and those of your Affiliates) shall not apply to the extent that disclosure of the Data is required to be made as a result of a subpoena, requirement or official request from any competent judicial, administrative, legislative or regulatory or self-regulatory authority or body; provided, however, that unless prohibited by court order you shall provide advance notice to us of the intended disclosure of the Data in order to allow us an opportunity to object to the disclosure of the Data; and
- (x) for the purpose of this clause 36 'you' shall include a reference to yourself as well as all or any of your Affiliates who directly or indirectly receive Data from time to time (on whose behalf you shall be deemed to contract).

36.2 Notwithstanding the foregoing, any end of day order recap files made available to you as part of Trading Venue Services may be provided to a Regulator or to an Approved Reporting Mechanism acting on your behalf to provide such information to the applicable Regulator.

## 37. CONFIDENTIALITY

37.1 Each party shall keep confidential all Confidential Information (as defined below) of the other party or the other party's Affiliates both during the term and after termination of these Terms. Each party may disclose Confidential Information to its professional advisers but otherwise may only disclose Confidential Information to those of its and its Affiliates' employees and representatives who need to know such Confidential Information for the purposes of exercising or performing the rights and obligations under these Terms and have been informed of the confidential nature of the Confidential Information divulged. No party will disclose Confidential Information to any third party except as otherwise permitted in these Terms.

37.2 For the purposes of this Clause 37, **Confidential Information** shall mean all non-public information that is stated to be or that can reasonably be expected to be of a confidential or trade secret nature in any form obtained by a party from the other party in the performance of these Terms including, but not limited to, any processes, financial information or data, proprietary data, information or documents, and these Terms and the fees or commissions payable by you hereunder, save to the extent that such information:

- (i) is already in the public domain at the time of disclosure or subsequently enters the public domain other than by a breach of any obligation of confidentiality;
- (ii) is received by a party from a third party which is under no confidentiality obligation in respect of that information;
- (iii) is independently developed by the receiving party without the use of the other party's Confidential Information; or
- (iv) was previously known to the receiving party free of any confidentiality obligation.

37.3 Without prejudice to Clause 37.1, each party may use or disclose Confidential Information where required to do so by reason of law or regulation, provided that, where lawful and practical to do so, the disclosing party shall provide prior notice of such disclosure to the non-disclosing party as soon as practicable in order to permit the non-disclosing party (where possible) to seek a protective order or take other appropriate action to safeguard the Confidential Information by appropriate legal means.

37.4 This Clause 37 shall survive termination or expiry of these Terms.

## 38. DATA PROTECTION

38.1 In this Clause 38:

**Data Protection Laws** means:

- (i) from 3 January 2018 until 24 May 2018 (inclusive), the UK Data Protection Act 1998;
- (ii) from and including 25 May 2018, Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC; and
- (iii) any other Applicable Regulations relating to, or impacting on, the Processing of Personal Data.

The terms **data controller**, **personal data**, **processing** (and **process**, **processes** and **processed** shall be construed accordingly) and **sensitive personal data** shall each have the meaning given to them in the Data Protection Laws.

38.2 You acknowledge that we may process information (including personal data and sensitive personal data) about you in the course of providing Broking Services to you pursuant to these Terms. Each party acknowledges that, for the purposes of Data Protection Laws, it is a data controller of personal data and that it, in common (but not jointly) with other party, determines the manner and purposes for which personal data is processed. Each party shall comply with its obligations under Data Protection Laws.

38.3 As between the parties, you represent to us that you will ensure that any of your directors, employees, officers, agents or clients whose personal data we process pursuant to these Terms is aware of the use of such data, and you agree to indemnify us against any loss, costs or expenses arising out of any breach of this representation.

## 39. E-COMMERCE

39.1 These Terms are drafted on the basis that you are not a 'consumer' as defined in the E-Commerce Directive (i.e. you are not an individual or, if you are, you are dealing in the course of your trade, business or profession). As a non-consumer you hereby fully agree as permissible under the E-Commerce Directive that we shall not be required to make any disclosures or comply with any requirements which would otherwise be required by the E-Commerce Directive.

## 40. TIME OF THE ESSENCE

40.1 Time shall be of the essence with respect to any payment, delivery or other obligation you may have to us under these Terms.

## **41. ASSIGNMENT**

41.1 You may not assign any of your rights or obligations under these Terms to any other person without our prior written agreement. We may assign our rights or obligations to any Group Company or our associated companies or to any person or entity who may acquire the whole or any part of our business or assets.

## **42. NOTICES**

42.1 All notices between us shall be in writing and may be served personally or by facsimile, or by other electronic means, or by first class post to us at the address we may provide in writing from time to time.

42.2 With the exception of dealing instructions to us (which must be communicated in accordance with this Clause 42 if applicable), notices shall be deemed to have been served three (or, in the case of overseas clients, seven) business days after having been posted, or if sent by facsimile or other electronic means, one business day after transmission. A business day is any day when investment business is generally conducted in London or such other financial centre as is notified to us by you prior to the relevant transaction.

## **43. RIGHTS AND REMEDIES**

43.1 The rights and remedies provided under these Terms shall be 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. We may waive any right, power or privilege under these Terms only by (and to the extent of) an express statement in writing. No failure by us to exercise or delay by us in exercising any of our rights under these Terms 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.

## **44. ILLEGALITY**

44.1 If any provision or term of these Terms or any part thereof shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such term or provision shall be divisible from these Terms and shall be deemed to be deleted from these Terms, provided always that, if any such deletion substantially affects or alters the commercial basis of these Terms, we reserve the right to amend and modify these Terms in such fashion as may be necessary or desirable in the circumstances.

## **45. ENTIRE AGREEMENT**

45.1 Save as provided herein, these Terms contain the entire agreement and understanding of the parties regarding the subject matter hereof and supersede any previous agreement between the parties relating to the subject matter hereof. Except as otherwise provided herein, these Terms may not be amended, modified or superseded, unless expressly agreed in writing by the parties.

## **46. RIGHTS OF THIRD PARTY**

46.1 No person who is not a party to these Terms, other than any other Group Company, may enforce any of these Terms or rely on any exclusion of limitation contained in these Terms whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.



**47. GOVERNING LAW AND JURISDICTION**

47.1 The provisions of these Terms shall be governed by the laws of England and Wales.

47.2 You agree that the courts of England are to have exclusive jurisdiction to settle any disputes, which may arise out of or in connection with these Terms. Nothing contained in this Clause 47 shall limit our right to take proceedings against you in any other court of competent jurisdiction.

Signed:

Date:

Client Name:

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**Signed:** Emanuel Georgouras, CEO, Edgewater Markets Limited

A handwritten signature in black ink, appearing to read 'Emanuel Georgouras', written in a cursive style.

**Date:**

## **Annex 1 - Margining**

### **1. Scope**

1.1 This **Annex 1** supplements **Section 13 – Margining Arrangements** of these Terms

### **2. Transfer and Return Obligations**

- 2.1 **Transfer:** In respect of each Valuation Date, if the amount of the Margining Requirement exceeds the Value of the Transferred Margin, then you will immediately Transfer to us Acceptable Margin having Value as of the date of the Transfer at least applicable to the applicable Margin Delivery Amount (rounded up to the nearest integral multiple). Unless otherwise agreed or prevented by local regulations or law, all transfer of securities or collateral to us will be executed as a full title transfer arrangement.
- 2.2 **Return:** Upon a demand made by you on or promptly following the Valuation Date, if the value of the Transferred Margin exceeds the amount of the Margining Requirement, then we will Transfer to you such Equivalent Margin having a value as of the date of Transfer equal to the applicable Margin Return Amount (rounded down to the nearest integral multiple).
- 2.3 **Redelivery Obligation:** On the later of (a) the date of termination of this Agreement and (b) when we determine that no obligations are outstanding from you to us, we will also Transfer to you Equivalent Margin having a Value as of the date of Transfer equal to the Margin Return Amount calculated as if the Margining Requirement were then zero.
- 2.4 **Cash Collateral:** All cash placed by you with us being treated by us as collateral, shall be deemed to constitute Transferred Margin.
- 2.5 **Net Obligations:** We shall not be obliged to Transfer Applicable Margin to you if you have a net exposure to us. You agree that all margining will be “one way” for our benefit.

### **3. Funds in Transit**

- 3.1 **Funds In Transit:** Edgewater Markets Limited will, on prior written agreement with a Client, allow for a Funds in Transit Credit to be placed on a Client Account subject to receipt of acceptable Proof of Funds in Transit. Funds in Transit are agreed on a case-by-case basis and the prior agreement to place a Funds in Transit Credit on a Client Account is no obligation for us to do so in the future.
- 3.2 **Proof of Funds In Transit:** Edgewater Markets Limited will accept a SWIFT Payment Reference Number, provided in writing by email as suitable Proof of Funds in Transit. Other acceptable Proof of Funds in Transit will be entirely at Edgewater Markets Limited’s discretion.
- 3.3 **Funds in Transit Credit:** Edgewater Markets Limited will apply a Funds in Transit Credit to a Client Account, subject to a haircut of 50% of the value of the Funds in Transit, to cover the Margining Requirement.
- 3.4 **Deadline:** Funds in Transit Credits will apply until 17:00 GMT the Working Day after the Margin Call provided acceptable Proof of Funds in Transit is provided within one (1) hour of the Margin Call.
- 3.5 **Non-Delivery of Funds in Transit:** if Funds in Transit are not delivered within the specified Deadline this will be considered an Event of Default.
- 3.6 **New Positions:** a Funds in Transit Credit cannot be used to open new positions.
- 3.7 **Receipt of Funds in Transit:** Edgewater Markets Limited will confirm to you in writing the receipt of Funds in Transit. Receipt of Funds in Transit will be determined at Edgewater Markets Limited’s sole discretion. When Funds in Transit are received the outstanding balance of the Funds in Transit will be applied to the Account, subject to Charges detailed under 3.8
- 3.8 **Charges:** a Funds in Transit Credit will incur charges at a rate of the higher of either 5% or 2% Interest over the Bank Rate annualised unless otherwise agreed directly with you in writing (rounded up to the nearest integral multiple per Working Day it is utilised). This will be deducted from your Account

balance.

- 3.9 Cancellation of a Swift Payment where a Funds in Transit Credit has been applied will be considered an Event of Default unless other Acceptable Margin has been received by Edgewater Markets Limited.

#### **4. Dividends and Interest Amount**

- 4.1 Dividends: We will treat any cash, securities or other property of the same type, nominal value, description and amount as the relevant Dividends (less any deductions on account of any Tax) (Equivalent Dividends) as an addition to the Transferred Margin. "Dividend" means all payments and distributions of cash or other property which a holder of securities or the same type, nominal value, description, and amount as securities comprised in the Transferred Margin receives on any Business Day.
- 4.2 Interest: We will also treat an amount equal to any interest payable on the principal amount of any cash comprised in the Transferred margin (Interest) as an addition to the Transferred Margin, unless agreed otherwise between us and you, no interest is payable by us on any Transferred Margin transferred by you. You agree that, if interest is deemed to be negative for any reason, then it will be treated as a deduction from the Transferred Margin.
- 4.3 Payment of Dividends and Interest: We will Transfer to you on the first (1) Business Day after receipt of any Dividend or the Business Day on which any applicable interest becomes payable, any Equivalent Dividends or Interest, provided that we reasonably consider that to do so would not require a Margin Delivery Amount to be transferred if that Business Day was a Valuation Date.

#### **5. Substitutions**

- 5.1 Substitution: You may, with our prior written consent, transfer new Acceptable Margin to us in substitution for the Transferred Margin having the same nominal value and of the same amount as determined by us, as such new Acceptable Margin, whereupon we will transfer to you Equivalent Margin in respect of the Transferred margin being substituted.

#### **6. Default**

- 6.1 Default: If a Liquidate Date is specified or deemed to occur as a result of an Event of Default, the Default Margin Amount as at that date will be taken into account when determining the relevant Liquidation Amount. For this purpose "Default margin Amount" means the amount, calculated in our Base Currency of the aggregate value as at the relevant Liquidation Date (as determined by us) of the Transferred Margin.

#### **7. Gross-Up**

- 7.1 Gross-Up: All payments by you under this Annex 1 will be made free and without withholding or deduction for any taxes, duties, assessments or governmental charges of whatsoever nature imposed, withheld or assessed by any relevant tax authority, unless required by law, in which case you shall pay such additional amounts as will result in the receipt by the payee of the amount which it would have received, had no deduction or withholding been made.

#### **8. Representations and Transfer of Title**

- 8.1 Encumbrances: Each party represents to the other party (which representation will be deemed repeated as of each date of which a Transfer of Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest is made) that it is the sole owner or otherwise has the right to Transfer all the aforementioned property, free and clear of any security interest, lien, encumbrance or other restriction.
- 8.2 Clean Title: Each Party agrees that all right, title and interest in and to any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest which it transfers to the other party shall vest in

the recipient free and clear of any security interest, lien, charges or encumbrance or other such restriction. Notwithstanding the use of the terms such as "Margin" and "Collateral" which are used to reflect the terminology used in the market for such transactions, nothing in these provisions is intended to create or does create in favour of either party mortgage, charge, pledge, lien, encumbrance or other security interest in Any Acceptable Margin, Equivalent Margin, Equivalent Dividends on Interest Transferred hereunder.

8.3 Withdrawal: a block on withdrawals will be placed on your Account while a Funds in Transit Credit is applied.

## 9. Calculation and Conversion

9.1 Calculation and Conversion: All calculations shall be done by us in a commercially reasonable manner and shall, in the absence of a manifest error, be binding. We shall convert any amount not denominated in USD to USD at the spot rate available to us at the time for the sale of USD against a purchase of that currency.

## 10. Defined Terms and Interpretation

10.1 Defined Terms: In this **Annex 1**

**"Acceptable Margin"** means the items determined by us pursuant to **Section 13**.

**"Bank Rate"** means the rate of Interest set by the Bank of England on its website.

**"Default Margin Amount"** means as defined in **Section 6.1** of this **Annex 1**.

**"Dividend"** means as defined in **Section 4.1** of this **Annex 1**.

**"Equivalent Dividend"** means as defined in **Section 4.1** of this **Annex 1**.

**"Equivalent Margin"** means any cash and/or securities of the same type, nominal value, currency and amount as Acceptable Margin Transferred hereunder and in relation to any Acceptable Margin (subject to any variations in quality and weight as is permitted under the exchange rules) as the Acceptable margin Transferred hereunder.

**"Exchange Rules"** means, in relation to any commodity, rules of the exchange applicable to contracts for the sale and purchase of that commodity.

**"Funds in Transit"** means a Transfer of Acceptable Margin or Equivalent Margin that has been instructed by you to Edgewater Markets Limited, but has not been received on account.

**"Funds in Transit Credit"** means a temporary credit to your account of an amount subject to any haircut Edgewater Markets Limited deems appropriate for a period of up to two (2) Working Days to meet the Margining Requirement.

**"Interest"** means as defined in **Section 4.2** of this **Annex 1**.

**"Margin Delivery Amount"** means with respect to any Valuation Date, the amount by which the Margining Requirements exceeds the value of the Transferred Margin as of that date (adjusted to include any prior Margin Delivery Amount and to exclude any prior Margin Return Amount, the Transfer of which, in either case, has not been completed).





**“Margin Return Amount”** means with respect to any Valuation Date, the amount by which the value of the Transferred Margin, **as of that date** (adjusted to include any prior Margin Delivery Amount and to exclude any prior Margin Return Amount, the Transfer of which, in either case, has not been completed) exceeds the Margining Requirement.

**“Margining Requirement”** shall be such requirement determined by us by reference to one or more Transactions between us. We are entitled to calculate the Margining Requirement by reference to what we consider to be our exposure (which may be positive or negative) pursuant to one or more transactions between us, together with such additional requirements determined by us in our sole discretion.

**“Proof of Funds in Transit”** means written confirmation of the SWIFT Payment Reference Number, or other evidence, as deemed appropriate at our sole discretion, provided by email to [operations@edgewatermarkets.com](mailto:operations@edgewatermarkets.com) of Funds in Transit.

**“SWIFT Payment Reference Number”** means the UETR (Unique End-to-end Transaction Reference) provided by SWIFT.

**“Transfer”** means, with respect to any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest Amount:

- a) In the case of cash, payment received into the recipient’s bank account or to another account as stipulated by the recipient.
- b) In the case of securities that can be delivered by book-entry, the giving of irrevocable transfer instructions to the relevant depository, clearing system or other institution responsible for the books, and/or compliance with any other procedures necessary to enable the recipient to obtain legal and beneficial ownership in the securities; and
- c) In the case of certified securities that cannot be delivered by book-entry, delivery in suitable physical form to the recipient accompanied by all certificates and other documents of title, duly executed and stamped stock transfer forms and any other documents necessary to enable the recipient to obtain legal and beneficial ownership in the securities;

**“Transferred Margin”** means the aggregate of all Acceptable Margin that has been Transferred to us and received by us hereunder, as reduced from time to time by any Transfer of Equivalent margin to you under these terms.

**“Valuation Date”** means any day selected by us. There may be multiple Valuation Dates within any calendar year.

**“Value”** means, for any Valuation Date or other date for which Value is calculated, with respect to (but after applying such haircuts as we determine from time to time):

- a) Cash, the amount expressed in the Base Currency;
- b) Other Acceptable Margin or Equivalent Margin, an amount expressed in our Base Currency and reasonably determined by us by reference where reasonable practicable to independent price sources (if any), as reflecting the value of such Acceptable Margin or Equivalent Margin; and;
- c) Items that are not Acceptable Margin or Equivalent Margin are zero.

# EDGEWATER



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