



## **TERMS OF BUSINESS**

## **PROFESSIONAL CLIENT**

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## TERMS OF BUSINESS

### 1. Introduction

1.1 These Terms of Business, which include the product specific Annex (attached hereto (the "Terms")), together with certain other documents that will be provided to you and/or can be accessed through the Company's website, Trading Facility, or upon request, namely:

- a) the Rate Card;
- b) any application or form that the Client submits to open an Account;
- c) our 'Execution Policy', which explains certain aspects of how we quote prices and deal with Orders and Transactions; and
- d) our 'Risk Warning and Further Disclosure', which summarises the key risks involved in investing,

and which together (and as amended and updated from time to time) are referred to as the "Agreement", set out the terms and conditions which by conducting business with ITI Capital Limited ("Company", "us", "our" "we") you (the "Client", "you") agree and accept will apply in relation to your investment activities with the Company.

1.2 There are additional documents and information available to the Client upon request which do not form part of the Agreement. These include:

- a) our 'Conflict of Interest Policy', which explains how we handle conflicts of interests in a manner that treats customers fairly;
- b) our 'Privacy and Security Policy', which explains how we deal with personal information that you provide to the Company;
- c) any instructions, guides and worked examples published or provided by the Company explaining how to enter into and close Transactions on the Trading Facility; and
- d) our 'Complaints Handling Procedure', which details how we deal with customer complaints.

1.3 For your benefit and protection, you should take sufficient time to read the Terms, as well as any additional documents and information available on our website or on request. You should contact the Company to ask for further information or seek independent professional advice if you do not understand anything. You will be deemed to have accepted these Terms if you instruct us to provide Services to you following receipt of the Terms, and each time you send Instructions in accordance with clause 7.1(a).

### 2. Definitions and Interpretation

2.1 In these Terms, the following words and phrases shall, unless the context otherwise requires, have the following meanings and may be used in the singular or plural as appropriate. Additional definitions are included in relevant Annexes provided to you (where applicable).

"Account" means any account, including a Currency Sub-Account, that the Company maintains for the Client for dealing in the products or services made available under these Terms and in which the Client's cash and assets are held and to which realised profits and/or losses are debited;

"Account Statement" shall mean a periodic statement of the Transactions and/or charges credited or debited to an Account at a specific point in time;

“Act of Insolvency” means in respect of the Client:

- a) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with creditors; or
- b) its becoming insolvent or unable to pay its debts or admits in writing that it is unable to pay its debts as they become due; or
- c) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
- d) the presentation or filing of a petition in respect of it (other than by the other party to these Terms) in respect of any obligation under these Terms) in any court of before any agency alleging or for the bankruptcy, winding-up or insolvency of such party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition (except in the case of a petition for winding-up or any analogous proceeding, in respect of which no such 30 day period shall apply ) not having been stayed or dismissed with 30 days of its filing; or
- e) its seeking or becoming subject to the appointment of a receiver, administrator, liquidator, trustee or analogous officer over all or any material part of its assets; or
- f) it being dissolved or having a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); or
- g) the convening of any meeting of its creditors for the purposes of considering a voluntary arrangement as referred to in Section 3 of the Insolvency Act 1986 (or any analogous proceeding); or
- h) its being subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified above (inclusive).

“Agent” means an individual person or legal entity undertaking a Transaction on behalf of another individual person or legal entity in his/its own name or in the Client’s name;

“Annex” means the product specific annex setting out the various products available to Clients under the Agreement and the additional terms, conditions and ancillary matters applicable to Transactions in such products;

“Applicable Regulations” means FCA Rules or any other rules of a relevant regulatory authority or any other rules of a relevant Market and all other applicable laws, and regulations as in force from time to time;

“Associated Company” means, in respect to the Company, the Company’s subsidiaries or holding companies or subsidiaries of such holding companies with “subsidiary” and “holding company” being as defined in Section 1159 of the Companies Act 2006 (as amended from time to time);

“Base Currency” is the currency in which the Client’s Account is denominated and in which the Company will debit and credit the Client’s Account;

“Business Day” means any day other than a Saturday or Sunday where the banks are open for general commercial business in London, United Kingdom;

“Client Money” means, in accordance with the Client Money Rules, money of any currency that the Company receives or holds for the Client, or on the Client’s behalf, in the course of or in connection with, the business contemplated by the Agreement other than money which is due

and payable by the Client to the Company or any third party and, for the avoidance of doubt, shall include Margin held or received by the Company in the form of currency;

“Client Money Rules” means the rules set out in the CASS Client Assets sub-section of the Business Standards in the FCA Rules, and in particular (but without limitation) section 7 “Client Money Rules” thereof.

“Collateral” means any securities, financial instruments or currency acceptable to the Company which you transfer to the Company in accordance with clause 15 of these Terms, and shall include any certificates of or evidencing title and transfer thereto.

“Confidential Information” has the meaning given to it in clause 31 of these Terms;

“Confirmation” means a notification from the Company to the Client confirming the Client’s entry into a Transaction;

“Currency Sub-Account” means a sub-account established to hold a currency other than the Client’s designated Base Currency.

“Custody Assets” means Securities, investments and any other other assets (whether tangible or intangible) held or received by us for your Account, and, for the avoidance of doubt, shall include any non-currency Margin;

“Custody Rules” means the rules set out in the CASS Client Assets sub-section of the Business Standards in the FCA Rules, and in particular (but without limitation) section 6 “Custody Rules” thereof.

“EEA” means the European Economic Area, which is all the countries in the EU plus Iceland, Norway and Liechtenstein;

“Event of Default” means any of the events listed in clause 19.1 of these Terms;

“Equivalent Collateral” means securities, financial instruments or currency of an identical type, nominal value, description and amount as the Collateral and shall include any certificates of or evidencing title and transfer thereto.

“FCA” means the United Kingdom Financial Conduct Authority or any successor organisation or authority;

“FCA Rules” means the Handbook of Rules and Guidance of the FCA as amended from time to time;

“Force Majeure Event” has the definition given to it in clause 20.1 of these Terms;

“Group Entity” means the Company, any subsidiary undertaking, any parent undertaking and any subsidiary undertaking of any parent undertaking from time to time of the Company (as defined in section 1162 of the Companies Act 2006) (a “Group Undertaking”), together with any other undertaking under which a Group Undertaking has an interest by way of shares or voting rights of 25% or more or has the ability to appoint a majority of the board appointees;

“Information” means quotes, news, research and information accessible via the Trading Facility and/or Secure Access Website (including through links to outside websites) or from the Company via any other means.

“Instructions” means instructions for Services provided to the Client by the Company in accordance with these Terms;

“Introducing Broker” means a broker that is not an Associated Company that refers Clients to the Company in accordance with the provisions of clause 17.

“Introducing Broker Agreement” means the agreement entered into by any Introducing Broker and the Company as set out in clause 17.2.

“Limit Order(s)” means an order to buy or sell a financial instrument at its specified price limit or better, and for a specified size;

“Losses” means losses, obligations, actions, claims, liabilities, damages, penalties, actions, judgements, suits, costs, disbursements and expense of any nature (including those incurred to any dealer, exchange or clearing house and reasonable legal fees and other reasonable costs and expenses relating to investigating or defending any such demands or charges of claims) of any kind or nature whatsoever, including costs of enforcement;

“Market” means any market, multilateral trading facility or organised trading facility subject to government or state regulation with established trading rules and trading hours including without limitation a Regulated Market, a Multilateral Trading Facility or Organised Trading Facility;

“Market Order” means an Order to enter or leave the market at the best current price at that time;

“Margin” means both (i) the deposit of funds in a currency, and/or (ii) Securities, investments and other assets (whether tangible or intangible), in an amount and form acceptable to the Company, that the Company may, in its absolute discretion, require, identify and accept from time to time as security against loss or risk of loss in respect of any present, future or contemplated Transaction;

“Margin Liquidation Event” means a liquidation and/or close out event as a result of you failing to meet or maintain your Margin Requirement as set out in clause 8.3

“Margin Requirement” means the amount of Margin, determined by the Company in its absolute discretion, that the Client is required to deposit and/or hold with the Company as consideration for entering into a Transaction and/or maintaining an Open Position;

“Obligations” means, at any time, the aggregate (as determined by the Company in its sole discretion) of all monies, debts, liabilities, obligations, whether present or future, actual or contingent, owing or incurred by the Counterparty to the Company under or in connection with this Agreement, the Services and/or any Transaction.

“Open Position” means a Transaction which has not been closed in whole or in part under these Terms;

“Order” means an instruction to purchase or sell a product offered by the Company from time to time, at a price quoted by the Company as appropriate;

“Principal” means the individual person or legal entity which is a party to a Transaction;

“Professional Client” has the meaning given to it in the FCA Rules;

“Rate Card” means the details of any interest, costs, fees or other charges which apply to the Client’s Account with the Company as provided to the Client and as varied and updated from time to time;

“Regulated Market” means a multilateral trading system operated by a market operator in the EEA such as the London Stock Exchange that brings together multiple third party buying and

selling interests in financial instruments where the instruments traded are admitted to the Market according to its rules and systems;

“Secure Access Website” means the password protected part of the Company’s website (or any website notified to the Client by the Company) through which the Client can view its Account information;

“Security” means investments within articles 76 to 80 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“Security Interest” means the security interest created pursuant to clause 11.1 of the Terms.

“Services” means the services to be provided to the Client by the Company under these Terms;

“Stop Orders” means an order to buy or sell a financial instrument once the price of that financial instrument reaches a specified price (known as the stop price);

“Trading Facility” means the password protected online or downloadable electronic facility where the Client can trade with the Company under these Terms; and

“Transaction” means a contract in a financial instrument or any other contractual arrangement entered into between the Client and the Company.

- 2.2. References in these Terms to any law, statute, regulation or enactment shall include references to any modification, amendment, extension, or re-enactment thereof.
- 2.3. In the Terms, references to an individual person shall include bodies corporate, unincorporated associations, partnerships and individuals.
- 2.4. Capitalised words and phrases defined in the FCA Rules have the same meaning in these Terms unless expressly defined in these Terms.
- 2.5. Headings and notes in the Terms are for reference only and shall not affect the contents and interpretation of the Terms.

### **3. Regulatory Disclosures, Complaints and Compensation**

- 3.1. The Company has its registered office at Level 33, Tower 42, 25 Old Broad Street, London EC2N 1HQ and is authorised and regulated by the FCA with FCA reference number 171487.
- 3.2. We must comply with all Applicable Regulations and will not break any of these regulations notwithstanding a contrary provision in the Agreement. Accordingly, in circumstances where there is a conflict between our regulatory obligations and a term of the Agreement, the Applicable Regulations will overrule the Agreement. Nothing in this Agreement will act to exclude or limit any responsibility we have to you under Applicable Regulations. We may take, or decide not to take, any action we consider necessary to make sure we comply with any Applicable Regulations. Further, any failure by the Company to comply with Applicable Regulations shall be a matter between the Company and the relevant regulatory authority and shall not create any rights for, or liability to, the Client and you agree that neither the Company nor its directors, officers, employees or agents shall have legal responsibility to you.
- 3.3. If you have any complaints against the Company please contact in the first instance, our Compliance Officer, at ITI Capital Limited, Level 33 Tower 42, 25 Old Broad Street, London EC2N 1HQ, UK (tel. +44 (0)20 3 889 8333, fax +44 (0)20 3 889 8331, email [compliance@iticapital.com](mailto:compliance@iticapital.com)).
- 3.4. Subsequently, if the complaint has not been dealt with to your satisfaction, you will, provided you meet the FCA definition of an “Eligible Complainant”, be able to complain directly to the Financial Ombudsman Service.

- 3.5 Business conducted by the Company under these Terms subject to FCA regulation is covered by the Financial Services Compensation Scheme (the "FSCS") if you meet the FCA definition of an "eligible claimant". Payments under the FSCS are subject to a maximum payment of £50,000 per investor. Further information on the scheme can be obtained from us on request or from the FCA or the FSCS.

#### **4. Client Categorisation**

- 4.1. For the purposes of the FCA Rules, and based on the information the Client has provided to the Company, the Company will categorise the Client as a Professional Client. In accordance with FCA Rules, the Client has the right to request a different categorisation. Where the Company does agree to a re-categorisation of the Client in accordance with the Conduct of Business Sourcebook ("COBS") 3 of the FCA Rules, the Client may either gain or lose protections (as the case may be) afforded by certain FCA Rules (which the Company will advise the Client of when the Client seeks re-categorisation).
- 4.2. You acknowledge that in order to ensure compliance with the Money Laundering Regulations 2007, the Proceeds of Crime Act 2002 and the Joint Money Laundering Steering Group Guidance Notes (as amended from time to time) or any other Applicable Regulations, we will require verification of identity and source of any funds which are received into your Account from you. You agree to provide on demand satisfactory evidence to verify your identity and source of funds and to do all other acts and such things as may reasonably be required so as to comply with such Applicable Regulation. You acknowledge that we may also undertake electronic identity checks, and other online identity verification services should we believe such action to be appropriate. Any failure to provide the relevant information within a reasonable time period may result in a delay in our ability to provide Services to you and, ultimately, may result in our ceasing to deal with you or provide Services. We accept no responsibility or liability arising directly or indirectly as a result of our need to do this.

#### **5. Capacity**

- 5.1. In relation to any Transaction, the Company will effect such Transaction as Principal unless it is expressly agreed that the Company shall act as Agent for the Client with respect to a certain Transaction or Service within these Terms or otherwise.
- 5.2. The Client shall, unless otherwise agreed in writing, relative to the Company, enter into Transactions as Principal. If the Client acts as Agent, regardless of whether the Client identifies the Principal to the Company, the Company shall not accept the said Principal as a customer, and consequently the Company shall at all times consider the Client as Principal in relation to any Transaction and our client for the purposes of the FCA Rules.
- 5.3. Unless otherwise specifically agreed or as expressly set out in the Annex in respect of a particular product or mandated by Applicable Regulations, the provision of the Services by the Company shall not constitute the giving of advice and neither the Company nor any Group Entity shall have any fiduciary duties to the Client.

#### **6. Access and Use of the Trading Facility and/or Secure Access Website**

- 6.1 In order to use the Trading Facility and/or Secure Access Website, the Client will need to request a username and password ("Access Code") from the Company. The Client will need to provide the Access Code each time it wishes to use the Trading Facility and/or Secure Access Website.
- 6.2 In relation to the Access Code, the Client acknowledges and undertakes that:
- a) the Client will be responsible for the confidentiality and use of its Access Code;
  - b) other than with the Company's prior written consent, the Client will not disclose its Access Code to any third party;

- c) the Company may rely on all instructions, orders and other communications entered using the Client's Access Code, and the Client will be bound by any Transaction entered into or expense incurred on its behalf in reliance on such instructions, orders and other communications;
  - d) the Client will immediately notify the Company if the Client becomes aware of the loss, theft or disclosure to any third party or of any unauthorised use of its Access Code; and
  - e) the Company will not be liable or responsible for any unauthorised use of the Access Code resulting from your negligence or fraud.
- 6.3 If the Company believes that unauthorised persons are using the Client's Access Code without the Client's knowledge, the Company may, in good faith but without prior notice, suspend the Client's rights to use the Trading Facility. In such circumstances, the Company will inform the Client of such action as soon as reasonably practicable. Further, if the Company believes that the Client supplied its Access Code to other persons in breach of clause 6.2(b) above, the Company may immediately terminate this Agreement.
- 6.4 Information, which may be prepared by independent providers, is the property of the Company, the independent providers or their licensors (as the case may be). You agree not to reproduce, distribute, sell or commercially exploit the Information in any manner without the prior written consent of the Company or the independent providers (as the case may be). The Company reserves the right to terminate access to the Information and none of the Information constitutes either a recommendation by the Company or an offer to buy or sell a particular product. Neither the Company nor the independent providers guarantee the accuracy, timeliness or completeness of the Information. Reliance on Information is at your own risk. In no event will the Company (or any independent providers) be liable for consequential, incidental, special or indirect damages arising from use of the Information. There is no warranty of any kind, express or implied, regarding the Information.
- 6.5 Access to the Trading Facility or Secure Access Website is provided "as is". The Company makes no warranties, express or implied representations or guarantees as to the merchantability and/or fitness for any particular purpose or otherwise with respect to the Trading Facility or Secure Access Website, their content, any documentation or any hardware or software provided. Technical difficulties could be encountered in connection with either the Trading Facility or Secure Access Website and the internet may be interrupted through no fault of the Company. These difficulties could involve, among others, failures, delays, malfunction, software erosion or hardware damage, which could be the result of hardware, software or communication link inadequacies or other causes. Such difficulties could lead to possible economic and/or data loss.
- 6.6 The Company grants you a non-exclusive, non-transferable license to use the software provided via access to the Trading Facility and the Secure Access Website, but title to the software (including all patents, copyrights and trademarks) is not transferred. You agree not to sell, exchange or transfer the software to any third party. You agree not to copy, modify, translate, decompile, reverse engineer, disassemble or reduce to human readable form, or adapt the software or use it to create a derivative work, unless authorised in writing by the Company.
- 6.7 In no event will the Company, any Associated Company, or any of their employees be liable for any possible loss, cost or damage which might occur as a result of or arising out of using, accessing, installing, maintaining, modifying, de-activating, or attempting to access either the Trading Facility or Secure Access Website or otherwise except where such losses are caused by the Company's negligence or breach of contract.
- 6.8 The Company may change the content, presentation, performance, user facilities and availability of any part of the Trading Facility and Secure Access Website at any time.

6.9 We will do our best to take all reasonable steps to protect your personal information but cannot guarantee the security of any information you provide online. You accept the security implication of passing information over the internet and agree to access our Trading Facility and Secure Access Website at your own risk. You agree that the Company will have no legal responsibility for any mistakes, missing information or breaks in security beyond our reasonable control.

## **7. Dealing between the Company and Client**

7.1 In accordance with these Terms, the Client may request a quotation, provide the Company (or any of its Associated Companies and/or Agents where so permitted by the Company) with Instructions or otherwise trade with the Company as follows:

- a) all requests for quotations, Instructions for execution of Transactions between the Client and the Company and other trade matters must be given to the Company face to face, electronically through the Trading Facility or by telephoning the Company (or an Associated Company who will receive and transmit the Client's Instructions to the Company).
- b) an Instruction will become a valid Order on acceptance by the Company in accordance with clause 7.3.
- c) in arranging the execution of Orders following Instructions placed by telephone, the Company acts will act in an Agent capacity on the Client's behalf.
- d) without prejudice to clause 7.1(c), the Company will act as Principal to the Client's transactions arranged by the Company and its employees.
- e) the charges, remuneration and commission receivable by the Company as set out in the Rate Card, will not differ because of the Client's interactions with the Company.
- f) the Company will only accept Instructions by telephone during specified hours, which will be notified to the Client from time to time.
- g) the Company may impose more restrictive time limits on when Instructions may be given.
- h) the Company will not accept Instructions left by way of an answering machine or facsimile.
- i) with respect to dealing via telephone, all telephone calls with the Company are recorded for the purposes of fraud prevention and quality control. By agreeing to these Terms, the Client consents and agrees to the recording of such telephone conversations by the Company.

7.2 Verbal quotes provided by the Company (or any of its Associated Companies or Agents where permitted) are indicative only. Such quotations are provided for information purposes only and do not constitute an offer to buy or sell any product or instrument at that price. Where the Client places an Order following a quotation, the Company shall consider that the Client is placing an Order at the Company's then offered rate. The Client acknowledges that such rate may differ from the quotation provided by the Company.

7.3 Any Instruction shall only be deemed to have been received and shall only then constitute an Order when such Instruction has been recorded by the Company and confirmed by the Company to the Client orally or through the Trading Facility. An Order shall not constitute a binding Transaction between the Company and the Client (even if accepted by the Company) nor does acceptance of the Order constitute a representation that the Company will execute the Order. A binding Transaction between the Client and the Company will only occur when an Order is executed, recorded and confirmed by the Company to the Client through the Trading Facility, trade Confirmation and/or Account Statement. When Instructions are given over the telephone,

the Company or its affiliates and agents shall acknowledge the reception of the Instructions orally or in writing, as appropriate, such acknowledgement shall constitute the acceptance of a valid Order.

- 7.4 The Company shall be entitled to rely upon any Instruction given or purporting to be given by the Client or any other person on the Client's behalf without further enquiry as to the genuineness, authority or identity of any such person giving or purporting to give such Instructions.
- 7.5 Unless otherwise directed, the Company will select the market/dealer to which to route your orders. For products traded at multiple markets, the Company may provide "Smart Routing", which seeks the best market for each order through a computerised algorithm. You should choose Smart Routing if available. If you direct orders to a particular market, you assume responsibility for knowing and trading in accordance with the rules and policies of that market (e.g. trading hours, order types, etc.). The Company cannot guarantee execution of every Order at the best posted price as: (i) the Company may not access to every market/dealer; (ii) other orders may trade ahead; (iii) market centers may not honour posted prices or may re-execute orders for manual handling; or (iv) market rules, decisions of system failures may prevents/delay execution of your Orders or cause an Order not to receive the best price.
- 7.6 Orders may be placed as Market Orders to buy or sell as soon as possible at the price obtainable by the Company, or on selected products as Limit Orders and Stop Orders to trade when the price reaches a pre-defined level. Limit Orders to buy and Stop Orders to sell must be placed below the then current price offered by the Company, and Limit Orders to sell and Stop Orders to buy must be placed above the then current price offered by the Company. If the bid price for sell orders or ask price for buy orders is reached, the Order will be filled as soon as possible at the price then offered by the Company. Limit Orders and Stop Orders are executed consistent with the Company's Execution Policy and are not guaranteed executable at the specified price or amount, unless explicitly stated by the Company for the specific Order. Limit Orders, Stop Orders and Market Orders shall be subject to the following terms:
- a) the Company will try to execute Limit Orders, Stop Orders and Market Orders as soon as practicable but market conditions, available liquidity and technological issues can affect the time it takes to execute such orders and all orders are executed in due turn. The Company cannot guarantee that a Limit Order or a Stop Order will be executed even if the limit or stop price is reached. The Company does not accept any liability for any actual or potential loss the Client may suffer if there is a delay in execution except where such loss is caused by the Company's negligence, breach of contract or fraud; and
  - b) market conditions, available liquidity and technological issues may result in the execution of a Stop Order being at a price above or below the stop price. The Company does not accept any liability for any actual or potential loss the Client may suffer if the execution of a Stop Order occurs at a price above or below the stop price except where such loss is caused by the Company's negligence, breach of contract or fraud.
- 7.7 You acknowledge that trading any product on a foreign market is speculative and involves high risk. There are also special risks associated with trading outside ordinary market hours, including the risk of lower liquidity, higher volatility, changing prices, un-linked markets, post instruction news announcement affecting prices and wider spreads.
- 7.8 The Company may, at its sole discretion refuse to accept any Instruction from the Client, without giving any reasons. Additionally, the Company may refuse to execute any Order with or without reason, and the Company may cancel any Order previously given by the Client, and accepted by the Company, provided that the Company has not acted on the Client's Order. In such circumstances, the Company will notify the Client as soon as reasonably practicable and use reasonable endeavours to work with the Client to amend or change (as the case may be) any such Instruction so as to create an executable Order and a binding Transaction.

- 7.9 The Company cannot accept responsibility for any actual or potential financial loss (including, for the avoidance of doubt, loss caused by market movements) that may arise if the Client is unable to contact the Company to place an Order and/or close an Open Position by any of the agreed dealing methods, except where such inability is caused by the Company's negligence, breach of contract or fraud.
- 7.10 You represent to the Company that you are knowledgeable of, and able to assume, the risks associated with any trading activity undertaken by you. You further represent and acknowledge that you are not relying on the Company for any investment advice in respect to your trading activity, that you are solely responsible for all decisions on whether to invest, hold, dispose of any assets, enter into any Transactions or maintain or close any Open Positions and that you have, where necessary and as you deem appropriate, taken independent professional advice.

## **8. Margin**

- 8.1 To the extent that you enter into any Transaction or maintain any Open Positions that the Company, in its sole and absolute discretion, determines carries a Margin Requirement, you will on demand (i) provide such initial and/or variation Margin as is determined by the Company, in its sole and absolute discretion, to meet such Margin Requirement; and (ii) at all times monitor your Account to ensure that sufficient Margin is held by the Company to satisfy such Margin Requirement. We reserve the right to vary the amount and type of Margin required at our sole and absolute discretion and you acknowledge that the Margin Requirement may, in our sole and absolute discretion, be in excess of the margin requirement of any exchange, clearing house or regulator in respect of the Transactions and/or Open Positions concerned.
- 8.2 You acknowledge that the Company is not required to issue a demand for Margin and does not have to notify you of your failure to meet or maintain your Margin Requirement prior to exercising its rights under this Agreement.
- 8.3 You acknowledge that if your Account has insufficient Margin to meet the Margin Requirements, or is otherwise in deficit, the Company has the right, in its sole and absolute discretion, but not the obligation, to consider that a Margin Liquidation Event has occurred and, without prior notice to you nor any demand for further Margin, to exercise its rights under clause 19.2 to satisfy the Margin Requirement, remove any Account deficit and (at its option acting in good faith and in its sole and absolute discretion if it considers it necessary for its continued protection) provide such additional Margin as the Company considers prudent to maintain the Margin Requirements over the next three (3) Business Days. For the avoidance of doubt, should the Company determine in its sole and absolute discretion that exercising its rights under a Margin Liquidation Event will not be sufficient to satisfy your ongoing Margin Requirements, the Company may at any time declare an Event of Default pursuant to clause 19.1 g) and exercise all its rights under these Terms.
- 8.4 In the event of a Margin Liquidation Event, you shall be liable and will promptly pay the Company for any deficiencies in your Account that arise from such liquidations and/or close outs. The Company shall have no liability to you for any loss sustained by you in connection with the exercise of its rights under a Margin Liquidation Event (or if the the Company delays effecting, or does not effect such liquidations and close outs) even if you re-establish certain of liquidated and/or closed out Open Positions and/or Transactions at a worse price.
- 8.5 Without prejudice to clause 8.2 above, the Company may choose (for whatever reason) to issue a demand for Margin. Any demand for Margin made (i) prior to 12:00pm (noon) London time on any Business Day must be met by 17:00pm London time on the same Business Day, and (ii) after 12:00pm (noon) London time must be met by 12:00pm (noon) London time on the next following Business Day. Where the Company has issued a demand for Margin, the Company agrees that it may not take any action under clause 8.3 above until the relevant deadline for delivery of Margin pursuant to this clause 8.4 has elapsed and you have failed to deliver Margin

to meet the Margin Requirement UNLESS the Company gives the Client effective prior notice in accordance with clause 29.3 c), d) and e).

- 8.6 If the amount of Margin held by us is greater than the amount we in our absolute discretion require, we will return to you any excess Margin in the form of cash, equivalent securities and/ or other collateral, as we determine.
- 8.7 On the termination of the Terms in accordance with clause 25 (Suspension and Termination) and following the application of any Margin held by us in satisfaction of your obligations and liabilities to us, if there are no outstanding Transactions governed by these Terms and we determine at our sole discretion that we are not at loss or risk of loss on present, future or contemplated Transactions under the Terms, we will return to you any remaining Margin in the form of cash, equivalent securities and/ or other collateral as we determine.
- 8.8 All Margin held by us shall be held pursuant to the Client Money Rules or the Custody Rules (as appropriate) as set out in the Terms and subject to the Security Interest.

## **9. Trading Confirmations and Account Statements**

- 9.1 The Company will provide the Client with general Account information either:
  - a) through the Trading Facility and/or Secure Access Website; or
  - b) via email.
- 9.2 Account information will usually include Confirmations with ticket numbers, purchase and sale rates, used Margin, amounts available for margin trading, statements of profits and losses, current open and pending positions and any other information as required by the FCA Rules. The Company will notify you as to which method for delivery of Account information will be applicable to your Account.
- 9.3 The Client acknowledges and accepts that the posting of Confirmations within the Account information accessed through the Trading Facility and/or Secure Access Website will be deemed delivery of trading Confirmations by the Company to the Client. Confirmations shall, in the absence of manifest error and whether posted through the Trading Facility and/or Secure Access Website or sent via email, be conclusive and binding on the Client, unless the Client notifies the Company of its rejection in writing within five Business Days of:
  - a) the Company's posting of the Confirmation within the Trading Facility and/or Secure Access Website; or
  - b) receipt by the Client of the Confirmation via email (in accordance with clause 29.3e)); or
  - c) if the Company notifies the Client of an error in the Confirmation within the same period.
- 9.4 Where the Client receives Account information through the Trading Facility and/or Secure Access Website, the Client can generate and/or access daily, monthly and/or yearly reports of its Account. The provision of Account information coupled with the Client's ability to generate such reports will be deemed delivery of Account Statements by the Company to the Client. The Client has an obligation to generate its own Account Statement at least once a month, to be done on the first day of each month for the preceding month. The Client may request receipt of Account Statements via email at any time by submitting a written request to the Company's Compliance Officer by email at (compliance@iticapital.com). Clients who receive Account information via email will be sent an Account Statement at least once a month.
- 9.5 Account Statements shall, in the absence of manifest error and whether generated from the Trading Facility and/or Secure Access Website by the Client or sent via email, be conclusive and

binding on the Client, unless the Client notifies the Company of its rejection in writing within five Business Days of:

- a) the first day of each month (such rejection to pertain to the previous month in accordance with the Client's obligations under clause 9.3 where the Client has not elected to receive Account Statements via email); or
- b) receipt by the Client of the Account Statement via email (in accordance with clause 29.3e)); or
- c) if the Company notifies the Client of an error in the Account Statement within the same period.

## **10. Commissions, Charges, and Other Costs**

- 10.1 The Client shall be obliged to pay to the Company the commissions and charges set out in the Rate Card, and any additional commissions and charges notified to the Client by the Company from time to time whether in the Rate Card or not provided that agreement to any such additional commissions and charges has been obtained from the Client. The Rate Card is available on the Company's website and will be supplied to the Client on demand.
- 10.2 The Company shall, on notice, be entitled to demand that the following expenses be paid separately by the Client:
  - a) all extraordinary disbursements resulting from the client relationship (e.g. telephone, telefax, courier, and postal expenses in cases where the Client requests hardcopy Confirmations, Account Statements etc. which the Company could have delivered in electronic form);
  - b) any expenses, or charges or penalties incurred by the Company caused by the Client's non-performance of its obligations under these Terms; and
  - c) administration fees in connection with security deposits, and any expenses of the Company in relation to a pledge, if provided, including any insurance premium payments.
- 10.3 Unless specified otherwise in the Terms, all amounts properly due to the Company (or Agents used by the Company) under the Terms shall be deducted from any monies held by the Company for the Client without notice or demand and shall not be treated as Client Money for the purposes of the FCA Rules.
- 10.4 If the Company receives or recovers any commission, cost, expense, fee or any other amount in respect of a Client's obligations under these Terms in a currency other than that in which the amount was payable, whether pursuant to a judgment of any court or otherwise, the Client shall compensate the Company and not hold the Company responsible for any cost (including costs of conversion) and loss suffered by the Company as a result of receiving such amount in a currency other than the currency in which it was due.

## **11. Payment and Withdrawal**

- 11.1 The Client agrees to comply with the following when making payments to the Company under these Terms:
  - a) payments due (including deposits) will be required in Pounds Sterling, United States Dollars, Euros, or any other currency reasonably specified by the Company and agreed with the Client from time to time;
  - b) the Client may make any payment due to the Company (including deposits) by a bank transfer or any other method specified by the Company from time to time. Unless

otherwise agreed between the Company and the Client, the Company will not accept payments or deposits in the form of cash;

- c) the Client is responsible for all third party electronic, telegraphic transfer or other bank fees in respect of payment as well as any fees or charges imposed by the Company, which may be based on the elected payment method. Any fees or charges imposed by the Company will be listed on the Rate Card;
- d) if any payment is not received by the Company on the date such payment is due, then (without limitation of any other rights the Company may have) the Company will be entitled to charge interest on the overdue amount (both before and after judgment) at the interest rate prescribed in the Rate Card from the date payment was due until the actual date of payment;
- e) any payment made to the Company will only be deemed to have been received when the Company receives cleared funds; and
- f) the Client bears the responsibility to ensure that payments made to the Company are correctly designated in all respects, specifying without limitation the Client's Account details where required by the Company.

11.2 The Client will be asked to designate a Base Currency for its Account which shall either be Pounds Sterling, United States Dollars, Euros or any other currency agreed with the Company from time to time. The Client and the Company may agree to establish one or more Currency Sub-Accounts for the purpose of holding currencies other than the Base Currency in the Account from time to time. Where the Client wishes to deposit funds in its Account in a currency other than its designated Base Currency or any credit is to be applied to the Account in a currency other than the Client's designated Base Currency by reason of a Transaction, fee or otherwise, and in circumstance where the Client does not have a Currency Sub-Account set up to hold the relevant currency, the Company will convert (at the Client's cost) such funds into the Client's Base Currency at the time of the credit or a reasonable time thereafter unless the Company accepts alternative Instructions from the Client.

11.3 Where the Client has a positive balance in its Account, the Client may request a withdrawal from the Company, for any portion of the positive balance. The Company may at its sole and absolute discretion withhold, deduct or refuse to make a payment (in whole or in part) due to the Client where:

- a) the Client has Open Positions on the Account showing a loss;
- b) the requested payment would reduce the Client's Account balance to less than the Margin Requirement for the Client's Open Positions;
- c) the Company reasonably considers that funds may be required to meet any current or future Margin Requirement on Open Positions due to underlying market conditions;
- d) the Client has any actual or contingent liability to the Company, its associates or any Group Entity;
- e) the Company reasonably determines that there is an unresolved dispute between the Company and the Client relating to these Terms or any other agreement between them; and/or
- f) the Client instructs the Company to pay a third party from its Account.

11.4 All payments from the Client's Account shall be made in the form of a return payment by bank transfer.

- 11.5 All payments from the Client's Account will be made in the Base Currency of that Account or in the currency of the relevant Transaction fee, commission or charge at the Company's sole and absolute discretion, unless the Client and the Company agree in advance that such payment should be made in a different currency. Where the Client and the Company agree that such payment should be made in a different currency, and the Client does not have a sufficient credit balance in a Currency Sub-Account designated in that different currency to satisfy the payment obligation, the Company will (at the Client's cost) convert all or part (as the case may be) of the relevant payment amount from the Base Currency to the then agreed currency for payment.
- 11.6 The Company reserves the right to convert (at the Client's cost) any or all credits and/or debits standing to the Client's Account, irrespective of the currency of such credit or debit, into the Client's Base Currency at any time without notice to the Client save where the (i) the Client and the Company have agreed the use of Currency Sub-Accounts as part of the Client's Account and/or (ii) the other currency balance is the result of the Client and Company having entered into a Spot FX Transaction as defined, and further described, in Part IV of the Annex to these Terms.
- 11.7 Whenever the Company conducts currency conversions, the Company will do so at such reasonable rate of exchange as the Company selects. The Company shall be entitled to add a mark-up to the exchange rates. The prevailing mark-up, if any, is defined in the Rate Card.
- 11.8 The Company and the Client may agree from time to time that clauses 11.2 and 11.5 shall not apply to the Client. Where the Company and the Client so agree, the Client will have the facility to hold debits and credits in multiple currencies within the Account subject to the following:
- a) all funds transferred into the Client's Account (by either the Client or the Company) will remain in the currency of transfer unless the Company accepts alternative Instructions from the Client. Where the Company accepts alternative instructions, the Company will convert (at the Client's cost) such funds into the currency of the Client's choice.
  - b) all payments from the Client's Account will be made in the currency of the payment obligation unless the Client and the Company otherwise agree. Where the Client does not hold the relevant currency for payment and the Client and the Company do not agree to convert all or a portion of the Client's funds to meet the payment obligation, the Company will charge the Client's Account with a floating debit in the amount and currency of the relevant payment obligation. The floating debit will accrue interest at the relevant rate prescribed in the Rate Card. It is the Client's responsibility to extinguish this obligation by either asking the Company to convert (at the Client's cost) available funds, or to transfer sufficient funds in the relevant currency. Until the Client takes such action, the Company will continue to charge interest. Where the Client has such floating debit balances on its Account, the Company will not allow the Client to enter into Transactions with its available funds in excess of the net balance (available funds less floating debit obligations at the Company's elected rate of exchange).
  - c) the provisions of this clause 11.8 shall not restrict the Company's rights at clauses 11.6 and 11.4 or any other rights of set-off otherwise permitted by the Terms. The Client should be aware that the Company can exercise its right to convert all debits and credits into the Client's Base Currency at any time and for any reason irrespective of the provisions of this clause 11.8.
- 11.9 Unless the Company provides the Client with written notice to the contrary, all payments and deliveries by the Company to the Client will be made on a net basis and the Company shall not be obliged to deliver or make payment to the Client unless and until the Client provides the Company with the appropriate documents or cleared funds.

## **12. Security Interest and Rights of Set Off**

- 12.1 As continuing security for the payment and discharge of all your payment and other responsibilities to us, you hereby charge, by way of first fixed charge in favour of the Company and any Group Entity, the Custody Assets, your Client Money and all of your rights, title or interest in, to or under any contract with the Company or any Group Entity whether arising prior to the date of these Terms or thereafter and whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, financial, physical, secured or unsecured.
- 12.2 The Security Interest shall remain in full force and effect by way of continuing security and shall not be affected in any way by any settlement of account and shall be in addition to any other security, guarantee or indemnity now or hereafter held by the Company or any Group Entity in respect of your responsibilities under the Terms.
- 12.3 You hereby authorise the Company at any time after the occurrence of an Event of Default to:
- a) sell or otherwise realise all or any of the Custody Assets in such manner, at such time or times and to such person or persons as the Company in its absolute discretion thinks fit; and
  - b) apply the proceeds of sale in or towards discharge of your responsibilities to us in such manner and order as the Company thinks fit.

The Company will use reasonable endeavours to obtain the best price available in all the circumstances for sales or realisation of Custody Assets.

- 12.4 Without prejudice to the Company's right to require payment from the Client in accordance with these Terms, the Company will have no obligation to carry out its responsibilities to pay money or deliver assets to you if you have not met your responsibilities to pay money or deliver assets to the Company. In such circumstances, the Company may set off any money you owe us against any money we owe you and pay to you only the excess. In addition, under general law, we have the right to use any credit balance that you have in any account (including any joint account held with the Company or any Group Entity in which you have an interest) to off-set or repay any debit balance which you owe us (whether in your sole name or in any joint account held with the Company or any Group Entity in which you have an interest). Where we exercise our rights under this clause 11.4, we will have no further responsibilities to you under this clause and for this purpose we may value our payment requirements in good faith but in our sole discretion.
- 12.5 You shall not create or have outstanding any mortgage, pledge, lien, hypothecation, security interest, right of set off or other charge or encumbrance, or any other agreement or arrangement having the same economic effect, over or in respect of Custody Assets, other than the Security Interest or a lien routinely imposed on all Securities in a relevant clearing system or where the security interest, lien or right of set-off is required by applicable law in a jurisdiction accessed through a local third party service provider.

## **13. Client Money**

- 13.1 Subject to clauses 14.7 and 14.11, we will hold your money as Client Money in a client bank account, set up with statutory trust status. This means we will separate your funds from our funds at a bank, in accordance with the FCA Rules. We may hold your money with other clients' money in a pooled account, which has been named as a client bank account. This means that we hold client money as part of a common pool of money, so you do not have a claim against a specific amount in a specific account. You would make your claim against the client money pool in general. If any bank we use were to fail for any reason, you would share a percentage of the shortfall depending on your original share of the assets in the pool. Pooled property may be used for the account of any of the relevant clients

- 13.2 We will promptly place your money into one or more accounts opened with a central bank, an EEA credit institution or a bank authorised in another country, or in a qualifying money market fund. Those accounts will be identified separately from any accounts we use to hold money we own. We may pass your money to another organisation (for example, an exchange, intermediate broker, over-the-counter organisation or clearing house) to hold or control so we can carry out a Transaction through or with that person or to meet your responsibility to provide Margin for a Transaction. In the absence of our negligence, we will have no responsibility for any acts (or failure to act) of any other organisation we pass your money to. Those organisations may have a security interest over or right to use that money as a result of any money owed to them. The organisation we pass your money to may hold it in a general account and it may not be possible to separate it from our money, or their money. If the organisation becomes insolvent, we will only have an unsecured claim against the organisation on your and our other clients' behalf. You realise that this means the other organisation may not pay us enough money to cover the claims of you and all other clients.
- 13.3 We may pass your money to an intermediate broker, settlement agent or organisation which may be based outside the EEA. In these circumstances, the law and applicable regulations to the bank, broker, agent or organisation holding your money will be different from that of the UK or other EEA states. If the bank, broker, agent or organisation is unable to return your money, it may be treated differently from the position which would apply if the money was in an EEA state.
- 13.4 Where any obligations owing to the Company from the Client are due and payable to us, we may, in accordance with the Client Money Rules, cease to treat as Client Money so much of the money so held as equals the amount of those obligations and you agree that we may apply that money in or towards satisfaction of all or part of those obligations due and payable to us.
- 13.5 You understand and agree that where permitted by and in accordance with the Client Money Rules, we are entitled to cease to treat unclaimed balances held on your account as client money.
- 13.6 Unless otherwise agreed in writing, you agree that you are not entitled to and will not receive any interest on the Client Money held by us.

#### **14. Client Assets**

- 14.1 Custody Assets will be held or received by us in accordance the Custody Rules and subject to clause 14.3 below we agree to act as custodian or to arrange for the Custody Assets to be held in custody. Where we do so, we will open, or cause to be opened, such accounts as are required to safeguard adequately your ownership rights in those securities and other assets in the event of our insolvency, and to minimise the chance of loss or diminution of those assets. We will identify, record and hold all Custody Assets separately from any of our own investments and other assets, and in such a way that we can identify the Custody Assets at any time.
- 14.2 You hereby authorise us to register or arrange the registration of Custody Assets in any name permitted by the Custody Rules. Normally, your Custody Assets will be held in your name or in the name of an eligible nominee. However, where we are prevented from holding your Custody Assets in your name or in the name of an eligible nominee, we may, where permitted by and in accordance with the Custody Rules, register or record your Custody Assets in the name of a third party (including, without limitation, a custodian). In the event we are prevented from holding your Custody Assets in the name of a third party, we may, where permitted by and in accordance with the Custody Rules, register or record your Custody Assets in our name. If Custody Assets are held in our name or that of a third party, the Custody Assets may not be segregated from our assets or those of the third party and, in the event of a default by us or the third party, may not be as well protected from any claims by our or their creditors.
- 14.3 Custody Assets registered or recorded in the name of a nominee will be pooled with those of one or more of our other clients. In the event of an irrecoverable shortfall following any default

or failure by the custodian responsible for pooled investments, you may not receive your full entitlement and may share in that shortfall pro rata to your original share of the assets in the pool. When corporate events (such as partial redemptions) affect some but not all of the investments held in a pooled account, we will allocate the investments so affected to particular clients in such fair and equitable manner as we consider appropriate (which may without limitation involve pro rata allocation or an impartial lottery).

- 14.4 We may appoint sub custodians to hold Custody Assets, and such sub custodian may be any of our Associated Companies. Those assets will usually be held in a single account that is identified as belonging to our clients and we will identify them in our books and records. The broad effect of this is that if there is a shortfall as a result of the sub custodian suffering financial loss, you may share in that shortfall with other clients, depending on the amount of your Custody Assets held with the sub custodian.
- 14.5 We will only deposit your Custody Assets with a person in a non-EEA jurisdiction which does not regulate custody activities if (i) the nature of the financial instrument requires it to be deposited in such a jurisdiction; or (ii) we receive a prior written instruction from you. If we deposit your Custody Assets with a person in a non-EEA jurisdiction, such Custody Assets shall be subject to the law of that jurisdiction and your rights in relation to those assets may differ accordingly, in which case the consequences of so doing are entirely at your own risk.
- 14.6 We will claim all amounts of any dividends, interest, payments or analogous sums to which you may be entitled in relation to Custody Assets and of which we are notified, but we shall not be responsible for claiming any entitlement or benefit you may have under any applicable taxation treaty or arrangement. Unless otherwise agreed with you we shall not be responsible for notifying you of any voting rights or other powers or rights arising or exercisable in respect of any Custody Asset or for exercising or taking any actions in respect of the same.
- 14.7 In the event that income in the form of dividends is declared but not paid with respect to any securities recorded as being held as Custody Assets, we may, in our sole discretion, provisionally treat as your money, and therefore as Client Money, an amount equal to the income notwithstanding that we have not actually received such amount. You understand and agree that if, for any reason, we fail to receive the income, we may, at any time in our sole discretion, reverse any such credit and stop treating it as your money and subject to the Client Money rules.
- 14.8 In acting as custodian or nominee, we accept responsibility for all Custody Assets registered in the name of our nominee companies or Associated Companies. Where we use sub custodians, clearing agents or other delegates (who are not Associated Companies), we will not be liable for any act or failure to act or for the solvency, of any of our sub custodian, clearing agents or delegates unless, and to the extent that, we have failed to exercise reasonable skill, care and diligence in the selection and monitoring of the sub custodian, clearing agent or delegate. If any of these parties suffer severe financial loss or becomes insolvent you may not get back all your Custody Assets. We will do all we reasonably can to recover any loss on your behalf.
- 14.9 The Company shall be responsible for the duration of any sub custodian agreement for satisfying itself as to the ongoing suitability of the sub custodian to provide custodial services and shall maintain an appropriate level of supervision of the sub custodian and make appropriate enquiries periodically to confirm that the obligations of the sub custodian continue to be competently discharged.
- 14.10 In the event that we identify a discrepancy as a result of, or that reveals, a shortfall (as such term is defined in the FCA Rules) with respect to your Custody Assets, and we determine that the Client Asset Rules require us to do so, we will, until such time as the relevant discrepancy is resolved, hold for you an amount of our own assets and/or money in accordance with the Client Asset Rules and these Terms to cover the value of such shortfall.
- 14.11 You understand and agree that:

- a) where money or Securities are the subject of a delivery versus payment transaction through a commercial settlement system (a "DVP Transaction") we may, but we are not required to, hold these for you in accordance with the Client Money Rules or Custody Rules during the relevant DVP Period; and
- b) in the event that a DVP Transaction fails to settle during the DVP Period, rather than holding the relevant securities received from the Client (and which are expected to settle) in accordance with the Custody Rules, the Company may elect in its sole discretion, to hold segregated for the Client an amount of the Company's own money equivalent to the value of the relevant securities in accordance with the Client Money Rules until such time as the relevant DVP Transactions settles.

For the purposes of the above:

"DVP Period" means in respect of the relevant transaction, the period from (and including) the day on which the Client fulfils the relevant payment or delivery obligation (as applicable) to the Company in respect of such transaction to (and including) the earlier of (a) the day on which the relevant transaction settles and (b) the third Business Day following the day on which you fulfilled the relevant payment or delivery obligation (as applicable) to the Company.

## **15. Rights of Use**

- 15.1 As security against the Obligations, you agree from time to time to transfer to the Company all right, title and interest in and to certain Collateral identified by the Company, free and clear of any liens, claims, charges or encumbrances of the Client or any third party. For these purposes, you hereby authorise the Company to identify and designate Custody Assets and/or cash held in any Account as Collateral and to transfer the Collateral into a proprietary account of the Company, subject to the Company's obligation to redeliver Equivalent Collateral on satisfaction of the Obligations. The parties acknowledge that the provisions of this Agreement comprise a financial collateral arrangement within the meaning of The Financial Collateral Arrangements (No. 2) Regulations 2003 (as amended).
- 15.2 Following such transfer into a proprietary account of the Company, such Collateral will neither be (as the case may be) Custody Assets held pursuant to the Custody Rules nor Client Money held pursuant to the Client Money Rules, and the Client will rank as a general, unsecured creditor in the event of the Company's insolvency. The Collateral will not be segregated from the other assets of the Company and the Company shall have the right to deal with, lend, dispose of, pledge, charge, hypothecate or otherwise use (together "Use") all such Collateral in the course of its business. The Client agrees that the Company may retain for its own account all fees, profits and other benefits received in connection with any such Use of Collateral but the Company will otherwise ensure that the Client receives the same equivalent economic benefits (whether by delivering equivalent securities or manufacturing payments) as Custody Assets not identified and transferred as Collateral.
- 15.3 Upon satisfaction by the Customer of all its Obligations, the Company shall return to the Client Equivalent Collateral provided that if, for any reason, the Company is unable to deliver such Equivalent Collateral it will deliver to the Client cash of equivalent market value (as determined by the Company in its sole discretion) to the outstanding Equivalent Collateral. For the avoidance of doubt, on such redelivery, the Equivalent Collateral shall be designated as Custody Assets or Client Money (as the case may be) and held by the Company subject to the Security Interest.

## **16. Tax**

- 16.1 The Company shall not provide any advice to the Client on any tax issue related to any Services. The Client is advised to obtain individual and independent counsel from its financial advisor, auditor or legal counsel with respect to tax implications of the respective Services.

16.2 The Client is responsible for the payment of all taxes that may arise in relation to its Transactions.

### **17. Introducing Brokers**

17.1 The Client may have been referred to the Company by an Introducing broker. The Client acknowledges that any such Introducing Broker will either be acting as an independent intermediary or as Agent for the Client and that the Introducing Broker is not an Agent of the Company. The Company shall not be responsible for the terms, or the performance, of any agreement the Client enters with any such Introducing Broker nor for the lack of any such Agreement, and the Company makes no representation or warranty (whether express or implied) as to the capability, quality and performance of such Introducing Broker. The Client acknowledges that the Introducing Broker is not authorised to make any representation concerning the Company and the Company's Services and it is the Client's responsibility to evaluate any Introducing Broker before engaging its services.

17.2 The terms on which the Company will engage with any Introducing Broker will be set out in the Introducing Broker Agreement. The Company is specifically made aware that the engagement of an Introducing Broker may result in additional costs for the Client as the Company may pay fees or commissions (whether regularly or on a one-off basis) to the Introducing Broker in respect of any successful introduction of a Client, and the Client, Company and Introducing Broker may agree fee or charge sharing arrangements in respect of the Services provided by the Company to the Client.

17.3 Where the Client has been referred to the Company by an Introducing Broker, the Client may by express notice in writing authorise the Company to provide access to certain of the Client's personal information, including the Client's trading activity, to enable the Introducing Broker arrangement. You may revoke this authorisation at any time by giving us notice in writing to that effect, such revocation to be effective from the third Business Day after delivery of the Notice in accordance with clause 29.3.

### **18. Conflicts of Interest**

18.1 The Company, its associates or Associated Companies may have an interest, relationship or arrangement that is material in relation to any Transaction affected, or advice provided by the Company under the Terms.

18.2 The Company is required to take reasonable steps to identify and manage conflicts of interest between the Company and its customers as well as conflicts of interest between customers that arise in the course of the Company's provision of Services. The Company operates in accordance with a Conflicts of Interest Policy, a summary of the Company's Conflicts of Interest Policy is available on the Company's website, or upon written request to the Company's Compliance Officer by email to ([compliance@iticapital.com](mailto:compliance@iticapital.com)).

18.3 The Company is under no obligation to:

- a) disclose to the Client that the Company, its associates or Associated Companies have a material interest in a particular Transaction with or for the Client, provided the Company has managed such conflicts in accordance with its Conflicts of Interest Policy;
- b) disclose to the Client or take into consideration any fact, matter or finding which might involve a breach of confidence to any other person, or which comes to the notice of any of the Company's directors, officers, employees or agents, where the individual(s) dealing with the Client have no actual notice of such fact, matter or finding; or
- c) account to the Client for any profit, commission or remuneration made or received from or by reasons of any Transactions or circumstances in which the Company, its associates or Associated Companies have a material interest or where in particular circumstances a conflict of interest may exist.

## 19. Default and Default Remedies

19.1 Each of the following shall constitute an Event of Default:

- a) If an Act of Insolvency occurs;
- b) if the Client has failed to make any payment or transfer (including following a demand for Margin) when due or the Client is in material breach of any part of these Terms;
- c) if the Client fails to remit funds necessary to enable the Company to take delivery under any Transaction on the first due date;
- d) if the Client fails to provide assets for delivery, or take delivery of assets, under any Transaction on the first due date;
- e) the Company considers it necessary or desirable to prevent what is considered to be or might be an act by the Client that is a violation of any laws, Applicable Regulations, or good standard of market practice;
- f) if the Company reasonably believes that any material information provided by the Client was untrue at the time it was given, or any material information provided by the Client has become untrue since the time that it was originally given (including, for the avoidance of doubt but without limitation, any representation, warranty or undertaking provided under clause 22) and the Client has failed to notify the Company of the same, and the Client knew, knows or should have known that such information is both material and is or was intended to be relied on by the Company for any practical purpose, including but not limited to: (i) reasons relating to the Company's determination of what Services it should provide to the Client (if any), and/or (ii) the operation of or evaluation against criteria provided in the Company's published or unpublished policies or procedures, and/or the Company's obligations to comply with any laws, rules or regulations; or
- g) if the Company reasonably considers it necessary for its own protection or the protection of a Group Entity (including, for the avoidance of doubt but without limitation, where a Margin Liquidation Event has occurred and there is no reasonable prospect that the actions taken can satisfy your ongoing Margin Requirement); or
- h) if any action is taken or event occurs which the Company considers might have a material adverse effect on the Client's ability to perform any of its obligations under the Agreement.

19.2 Upon the occurrence of an Event of Default, the Company may, in its sole and absolute discretion, take all or any of the following actions:

- a) liquidate and/or close out any Open Positions and all or any Transactions at any time and in any manner and through any market or dealer;
- b) cancel any Orders on the Client's Account;
- c) prohibit the Client from accessing or using the Client's Account;
- d) suspend access to the Trading Facility and/or the Secure Access Website;
- e) suspend and/or in any way limit or restrict the Client's ability to place any Order, give any instruction or effectuate any Transaction in relation to the Client's Account;
- f) vary the Margin Requirements applicable to the Client;

- g) reverse any Transactions (as if they had never been entered into in the first place) and the effect of such Transactions on the Client's Account;
- h) determine the market value of any Equivalent Collateral owed by the Company to the Client;
- i) determine the market value of all Obligations owed by the Client to the Company;
- j) sell any or all of the Client's securities, assets and property which may from time to time be in the possession or control of the Company or any Group Entity or any Agents of the Company or call on any guarantee. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to these Terms or to any exercise by the Company to consolidate mortgages or the Company's power of sale;
- k) require the Client to close any or all of its Open Positions by a specified date selected by the Company;
- l) make appropriate deductions or credits from or to the Client's Account;
- m) terminate any Services provided to the Client from time to time;
- n) terminate this Agreement immediately without notice, or with notice with termination occurring on a specified date selected by the Company;
- o) exercise the Company's right of set-off;
- p) modify, change, or switch, with or without notice to the Client: (i) the Client's Account type or settings within the Client's Account (including, but not limited to, any Margin Requirements or execution model); and/or (ii) the terms of or parameters regarding any Services the Company provides to the Client from time to time; and/or
- q) pay to the Client the fair market value at the time the Company exercises such right, of any investments held by the Company, any Group Entity or any Agents of the Company, instead of returning to the Client investments equivalent to those credited on its Account.

19.3 The Client authorises the Company to take any or all of the actions described in clause 19.2 of these Terms without notice to the Client and acknowledges that the Company shall not be responsible for any consequences of its taking such actions, unless the Company has acted negligently or fraudulently in exercising its rights following an Event of Default. The Client shall execute all documents and take any action as the Company may request in order to protect the rights of the Company and any Group Entity under the Terms or under any agreement the Client may have entered into with any Group Entity.

19.4 If the Company exercises its rights to sell under clause 19.2 and following application of the proceeds of sale and any other rights the Company has, including, without limitation, rights under any general lien and rights of set off, and there is:

- a) a shortfall, the Client will immediately pay to the Company cleared and available funds in the Base Currency to satisfy the shortfall; or
- b) an excess, the Company will immediately pay to the Client cleared and available funds in the Base Currency in order to satisfy the excess and close the Client's Accounts.

## **20. Force Majeure**

20.1 Neither party (nor any Associated Companies) shall be liable for any failure, delay or omission to perform any of their obligations or duties if the failure arises from any cause or causes beyond their control, including without limitation, acts of God, acts or regulations of government or

other authorities, restrictions on transfer or conversion, requisitions, involuntary transfers, war, fire, flood, explosions, civil commotion, strikes or other industrial disputes, power failure, failure of telecommunications lines, connection or equipment, any failure or defects in any hardware or software owned by the Company or owned or supplied by third parties, or any failure of a broker, exchange or clearing house for any reason to perform its obligations (a "Force Majeure Event").

- 20.2 Upon the occurrence of a Force Majeure Event, the parties shall use commercially reasonable efforts to resume performance and either party may give the other party written notice that a Force Majeure Event has occurred. Upon occurrence of a Force Majeure Event, all of the parties' obligations to each other under these Terms shall be immediately suspended for the duration of such Force Majeure Event.
- 20.3 Upon the occurrence of a Force Majeure Event the party not suffering from the Force Majeure Event may terminate the Agreement after thirty (30) calendar days where the Force Majeure Event is preventing such party from performing its obligations

## **21. Exclusions and Limitations of Liability**

- 21.1 Nothing in these Terms shall exclude or restrict any duty or liability owed by the Company to the Client under the Financial Services and Markets Act 2000, the FCA Rules or any other legal rights (as amended or replaced from time to time) you may have in connection with the services we provide to you. Apart from the foregoing, neither the Company nor its directors, officers, employees, or Agents shall be liable to the Client or any third party for any losses, damages, costs or expenses, loss of profits, loss of goodwill or reputation, lost data, loss of use of the Trading Facility, business interruption, business opportunity, costs of substitute, services or downtime costs incurred or suffered by the Client under these Terms (including any Transaction or where the Company has declined to enter into a proposed Transaction) unless such loss arises directly from the Company's respective negligence, breach of contract or fraud.
- 21.2 The Company does not accept liability:
- a) FOR THE PERFORMANCE OR PROFITABILITY OF ANY TRANSACTION OR INVESTMENT ACTIVITY UNDERTAKEN BY THE CLIENT. YOU ARE WHOLLY RESPONSIBLE FOR ANY INVESTMENT DECISIONS YOU MAKE AND FOR ALL INSTRUCTIONS YOU PROVIDE TO US;
  - b) FOR ANY LOSS THAT THE CLIENT SUFFERS IN AN EVENT WHERE ANY COMPUTER VIRUSES, WORMS, SOFTWARE BOMBS, OR SIMILAR ITEMS ARE INTRODUCED INTO THE CLIENT'S COMPUTER HARDWARE OR SOFTWARE VIA THE TRADING FACILITY OR SECURE ACCESS WEBSITE, PROVIDED THE COMPANY HAS TAKEN REASONABLE STEPS TO PREVENT ANY SUCH INTRODUCTION EXCEPT WHERE THE COMPANY HAS ACTED NEGLIGENTLY OR IN BREACH OF CONTRACT;
  - c) FOR ANY LOSS THAT THE CLIENT SUFFERS FOR ANY BREAKDOWN OR FAILURE OF ANY TRANSMISSION OR COMMUNICATION SYSTEM OR EQUIPMENT OR COMPUTER FACILITY OR TRADING SOFTWARE, WHETHER BELONGING TO THE COMPANY OR ITS ASSOCIATED COMPANIES, THE CLIENT, ANY MARKET, OR ANY SETTLEMENT OR CLEARING SYSTEM WHEN THE CLIENT TRADES ONLINE (VIA INTERNET) OR FOR ANY CAUSE PREVENTING THE COMPANY FROM PERFORMING ANY OR ALL ITS OBLIGATIONS EXCEPT WHERE THE COMPANY HAS ACTED NEGLIGENTLY OR IN BREACH OF CONTRACT;
  - d) FOR ANY ACTIONS THE COMPANY MAY TAKE PURSUANT TO ITS RIGHTS UNDER THESE TERMS, INCLUDING (FOR THE AVOIDANCE OF DOUBT BUT WITHOUT LIMITATION) IN EXERCISING ITS RIGHTS UNDER A MARGIN LIQUIDATION EVENT OR FOLLOWING AN EVENT OF DEFAULT, EXCEPT WHERE THE COMPANY HAS ACTED NEGLIGENTLY OR IN BREACH OF CONTRACT;

- e) FOR ANY LOSSES OR OTHER COSTS OR EXPENSES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THE PLACEMENT OF ORDERS BY THE CLIENT OR THE EXECUTION OF TRANSACTIONS WITH THE COMPANY;
- f) FOR ANY ADVERSE TAX IMPLICATIONS OF ANY TRANSACTION WHATSOEVER;
- g) BY REASON OF ANY DELAY OR CHANGE IN MARKET CONDITIONS BEFORE ANY PARTICULAR TRANSACTION IS AFFECTED; AND
- h) FOR COMMUNICATION FAILURES, DISTORTIONS OR DELAYS WHEN USING THE TRADING FACILITY EXCEPT WHERE THE COMPANY HAS ACTED NEGLIGENTLY OR IN BREACH OF CONTRACT.

21.3 Nothing in these Terms will limit the Company's liability for death or personal injury resulting from its negligence.

21.4 In no event shall the Company be liable to you or any third party for damages, direct or otherwise, in excess of the lower of either (i) the amount paid to us by you in respect of the Services provided, or (ii) £3 million. This limitation is cumulative, and the sum of multiple claims may not exceed this limit.

21.5 The Company, and its employees and officers, will not in any circumstances be liable for any consequential loss, damage or liability (including but not limited to loss of profit) regardless of whether it is aware of the likelihood of such loss, damage or liability.

## **22. Client's Representations, Warranties and Undertakings**

22.1 You hereby represent, warrant and undertake on the date you place an Instruction and/or enter into a Transaction, and on a continuing basis that:

- a) you have full authority to enter into the Agreement and engage the Company to provide Services to you, that (if relevant) all necessary corporate consents and authorities to enter into Transactions and receive Services under these Terms have been obtained and will be maintained;
- b) you have all necessary powers, licenses and permissions (including all governmental or regulatory consents) and have taken all necessary actions to carry out lawfully your obligations under the Terms, that all such requirements remain in full force and effect and you will use all reasonable efforts to ensure that they remain in full force and effect and that all such conditions continue to be complied with;
- c) you have the knowledge and experience to understand the risks of each Transaction, you have made your own assessment as to the suitability and appropriateness of each Transaction and, where necessary, you have taken independent advice (including, without limitation legal and tax advice) to ensure you fully understand the provisions of these Terms and the legal and financial effects and risks of any Transactions;
- d) you are not relying on any advice, assurance, representation, statement, promise or undertaking from the Company as to the expected performance of any Transaction;
- e) no event of default (howsoever described) or other circumstance which with the giving of notice by a third party could create an event of default (howsoever described) has occurred or is continuing and that no such event of circumstance will occur as a result of you entering into a Transaction or performing your obligations under these Terms;
- f) there is not, and you will not create or permit to be outstanding any mortgage, pledge, lien, security or other charge or encumbrance over any Custody Assets, other than the Security Interest created under these Terms and any lien or charge routinely required by

exchange or clearing house rules in connection with the maintenance of any Open Position or the performance of any Transaction;

- g) you will comply with and fulfil your obligations under any Transactions entered into pursuant to these Terms;
- h) you will promptly provide the Company with such information regarding your financial and business affairs as we may reasonably request; and
- i) you will promptly notify us if you breach these Terms or if any of the representations, warranties and undertakings ceases to be true to a material extent.

### **23. Indemnity**

23.1 The Client shall indemnify and hold harmless the Company and its Associated Companies and the directors, officers, employees or agents of the Company (and its Associated Companies), on a full indemnity basis, from and against all Losses arising from (i) any act or omission by the Client, and (ii) the Company dealing for or on behalf of the Client pursuant to these Terms including (without limitation):

- a) any action taken or omitted to be taken in good faith by the Company pursuant to an Instruction, and, for the avoidance of doubt, the Company shall be under no obligation to make any investigation or inquiry as to the contents of any Instruction, but may rely upon any Instruction in accordance with clause 7.4;
- b) claims of third parties which may be assessed, and taxation which may be assessed or imposed, in respect of any Custody Assets, or against the Company (and its Associated Companies) by reason of its holding or having received or held such Custody Assets.

23.2 The indemnity granted by this Clause 23 is given to the Company for itself and as trustee for its directors, officers, employees, nominees, sub-custodian, correspondents and other agents, on terms that each such person shall have an independent right of action against the Client. This clause shall not restrict the Company's rights to recover from the Client any amount payable to paid to such persons in respect of any Transaction of Losses arising in connection with these Terms.

23.3 If any action or proceeding is brought by or against the Company, against or by a third party, in relation to any Transaction entered into pursuant to these Terms, the Client shall co-operate with the Company to the fullest extent possible in the prosecution of defence of such action or proceedings.

### **24. Amendments**

24.1 The Company will notify the Client of any proposed change to the Terms by sending the Client a copy of the proposed changes at least thirty (30) calendar days prior to the changes becoming effective, either by email or by post, to the email and/or postal address most recently notified by the Client to the Company. The Terms are always available in an up to date form on the Company's website or can be available by contacting the Company.

24.2 If, as a result of changes the Company proposes to make, the Client wishes to terminate the Agreement, the Client may do so in accordance with clause 24 by sending notice to the Company within the period set out in the amendment notice after which the changes will become effective (which will be at least thirty (30) calendar days'). The Company will not charge the Client for transferring any investments or money held for the Client to the Client or to any third party if the Agreement is terminated under the terms of this paragraph.

24.3 Where the Client wishes to terminate the Agreement and where, after a period of fourteen (14) calendar days has expired since the Client gave the Company notice to that effect, the Client still

has open Accounts and/or Open Positions the Company shall have the right to automatically close the Client's Accounts and Open Positions without any further notice to the Client.

- 24.4 The Company may amend the Rate Card by giving no less than twenty (20) calendar days' notice to the Client, by providing it to the Client by email or post, to the email and/or postal address most recently notified by the Client to the Company. The Client is responsible for regularly reviewing the Rate Card for any updates and agrees to be bound by the changes unless the Agreement is terminated in accordance with clause 25 below.
- 24.5 If, as a result of changes the Company proposes to make to the Rate Card, the Client wishes to terminate the Agreement, the Client may do so in accordance with clause 25 by sending notice to the Company within the period set out in the amendment notice after which the changes will become effective (which will be at least (20) Business Days). The Company will not charge the Client for transferring any investments or money held for the Client to the Client or to any third party if the Agreement is terminated under the terms of this paragraph.
- 24.6 Where the Client wishes to terminate the Agreement as a result of changes to the Rate Card and where, after a period of fourteen (14) calendar days has expired since the Client gave the Company notice to that effect, the Client still has open Accounts and/or Open Positions the Company shall have the right to automatically close the Client's Accounts and Open Positions without any further notice to the Client.

## **25. Suspension and Termination**

- 25.1 The Client may terminate the Agreement immediately by giving written notice to the Company. The Client agrees that at any time after the termination of the Agreement, the Company may, without notice to the Client, close out any or all of the Client's Open Positions.
- 25.2 The Company may suspend or terminate this Agreement by giving fifteen (15) Business Days written notice to the Client. The Client agrees that at any time after the expiration of the notice of termination of the Agreement, the Company may, without further notice to the Client, close out any or all of the Client's Open Positions. Where the Company suspends the Client's Account, the Company may prevent the Client from opening any new positions, but the Company will not close the Client's Open Positions unless otherwise allowed by these Terms. The provisions of this clause 25.2 shall not prevent the Company from exercising any of its rights to terminate or suspend the Agreement as provided elsewhere in these Terms.
- 25.3 The Company may terminate (temporarily or permanently) at any time all or any of the Services without notice to the Client if it, in its sole discretion but acting in good faith, considers that compliance with Applicable Regulations necessitates such action. In such circumstances, the Company will use best efforts to resolve the situation but if it is unable to do so will give the Client notice to terminate the Agreement in accordance with clause 25.2 save that such notice will be effective immediately.
- 25.4 Upon the termination of the Agreement, all amounts payable by the Client to the Company will become immediately due and payable including (but without limitation):
- a) all outstanding fees, charges and commissions;
  - b) any dealing expenses incurred by terminating these Terms; and
  - c) any losses and expenses realised in closing out any Transactions or settling or concluding outstanding obligations incurred by the Company on the Client's behalf.
- 25.5 Termination of the Agreement will not affect any rights or obligations, which may already have arisen between the Company and the Client. The termination of these Terms will not affect the coming into force or the continuance in force of any provision in these Terms which is expressly, or by implication, intended to come into, or continue in force, on or after such termination.

25.6 If termination occurs, the Company will, as soon as reasonably practicable and subject to these Terms, deliver to the Client any money or investments in the Client's Account(s) subject to any applicable charges and rights of set-off as set out on the Company's Rate Card. A final statement will be issued to the Client where appropriate.

## **26. In the Event of Death**

26.1 Subject to clause 27, in the event of the Client's death whilst a client of the Company, the Account will be suspended and the Company may close any Open Position. The Account may continue to incur custody charges until it is closed. No instructions over any account will be accepted until the title of the Client's personal representatives to the account has been established (which may include the requirement to perform standard Know Your Client and Due Diligence checks on the personal representatives) at which point the Client's personal representatives may instruct the Company to sell, transfer or otherwise dispose of the Client's assets.

26.2 The Company will not be responsible for losses during the period between the Client's death and the receipt by the Company of formal notice of it, or for losses between the Client's death and the receipt by the Company of a certified copy of the grant of probate or letters of administration (as appropriate) and nor shall the Company be liable for any losses arising as a result of the Company not administering any of the Client's investments following death. The Account will continue to incur charges until it is closed.

## **27. Joint Accounts**

27.1 Where the Agreement is entered into between the Company and more than one person, as regards each person (except where the Company has agreed otherwise in writing):

- a) Both persons shall be considered a Client and their obligations and liabilities under the Agreement are joint and several (which means, for instance, that any one person can withdraw or transfer the entire balance of the Account to their personal bank and/or investment account with the Company, and in the case if a debit balance or debt owed by the Client to the Company, each Account holder is responsible for the repayment of the entire balance and not just a share of it).
- b) They each have full authority (as full as if they were the only person entering into the Agreement) on behalf of the others to give or receive any instruction, notice, request or acknowledgement without notice to the others, including an instruction to liquidate and/or withdraw investments from the Account and/or close any Account.
- c) Subject to any particular terms agreed in connection with the management of the Account, the Company may in its sole discretion, require an instruction, request or demand to be given by all the joint account holders before the Company takes any action for any reason or no reason whatsoever.
- d) Any such person may give the Company an effective and final discharge in respect of any obligations under the Agreement.
- e) Upon the death of any joint account holder, the Company will transfer the investments and the responsibility for any obligations connected with the Account into the surviving joint account holder's name. This Agreement will remain in full force between the Company and the surviving joint account holder.

27.2 Unless otherwise agreed in writing, the Company may contact and deal with only one of the Account holders named in the Company's records subject to any legal requirements to the contrary.

- 27.3 Either Account holder may ask the Company to convert the Account into a sole account. The Company may (but shall not be obliged to) require authority from all Account holders before doing so. Any person removed from the Account will continue to be liable for all obligations under the Agreement relating to the period before they were removed from the Account.

## **28. Managed Accounts**

- 28.1 From time to time you may provide an Agent with authorisation to enter into Transactions, procure Services and otherwise give us instructions on your behalf and in connection with your Accounts. You acknowledge that the Agent is not authorised to make any representation concerning the Company and the Company's Services and it is the Client's responsibility to evaluate any Agent before engaging its services. You hereby further acknowledge that the Company shall have no responsibility or liability for the actions or omission of the Agent and the Company makes no representation or warranty (whether express or implied) as to the capability, quality and performance of any such Agent. For the avoidance of doubt, and notwithstanding any dealings we have with the Agent, you remain our client and you will be responsible and liable for any Instructions, Orders, Transactions and any other Services provided to you following receipt of instructions from the Agent on your behalf.
- 28.2 Prior to accepting any Instruction from your Agent, you must provide the Company with the executed Investment Management Agreement (or similar document) or a valid Power of Attorney evidencing the authorisation (to the reasonable satisfaction of the Company) you have given to the Agent. You agree that the Company may provide access to certain of the Client's personal information, including the Client's trading activity, its Accounts and Account statements to the Agent.
- 28.3 You may revoke the Agent's authorisation at any time by giving us notice in writing to that effect, such revocation to be effective from the start of the third Business Day after delivery of the Notice in accordance with clause 29.3.

## **29. Notices and Communication with the Client**

- 29.1 The Company may notify, instruct, or communicate with the Client by telephone, post, fax, email, face to face or by posting a message or document on the Company's website or Trading Facility, and the Client agrees that the Company may contact the Client through any of these mediums at any time. The Company will use the address, fax number, phone number, or email address specified in the Client's Account opening documentation or such other address the Client may subsequently provide the Company.
- 29.2 Unless otherwise provided in these Terms, the Client will be deemed to have acknowledged and agreed with the content of any notice, instruction or other communication unless the Client notifies the Company to the contrary in writing within fifteen (15) Business Days of the date on which the Client is deemed to have received it in accordance with clause 29.3 below.
- 29.3 Any notice, instruction or other communication (which shall include the delivery of Confirmation via hard copy or email) will be deemed to have been properly given by the Company:
- a) if hand delivered, when left at the Client's last known home or work address;
  - b) if sent by first class post to the address last notified by the Client to the Company, on the third business day after being placed in the post;
  - c) if given verbally over the telephone, immediately where the Company speaks with the Client;
  - d) if sent by fax, immediately upon receipt of a successful transmission report;

- e) if sent by email, immediately after the email is sent providing the Company does not receive confirmation of a failed delivery from the relevant email provider; and/or
  - f) if posted on the Company's website, Trading Facility and/or Secure Access Website, on the next following business day following the business day it has been posted.
- 29.4 The Client is responsible for reading all notices posted on the Company's website, Trading Facility and/or Secure Access Website in a timely manner.
- 29.5 The Client may notify the Company by post, fax, or email, each of which shall constitute written notice. The Client will use the Company's registered address, fax number, or email address specified by the Company from time to time in accordance with any notice requirement. The Client may also instruct or communicate with the Company by telephone or via a face to face meeting.
- 29.6 A notice made or delivered to the Company will be effective in accordance with clause 29.3, mutatis mutandis.
- 29.7 The Client and the Company shall communicate with one another in English.
- 29.8 The Company shall not be liable for any delay in the Client receiving any communication once dispatched by the Company, except where the delay is caused by the Company's wilful default, fraud or negligence.
- 29.9 The Company will record monitor and retain all communications (including email, electronic messaging and facsimile), telephone conversations and other electronic communications with the Client and will normally record telephone, mobile phone or other mobile handheld device-based conversations between the Client and the Company's employees who act in a trading or sales capacity. The records will be available for whatever period may be required under Applicable Regulations. The records will be available to you upon request during that period. Where you request such records, we may charge you an administration fee and such fee will be disclosed to you in advance of any related costs being incurred.

### **30. Intellectual Property**

- 30.1 The Company's website, Trading Facility, Secure Access Website and any and all information or materials that the Company may supply or make available to the Client (including any software which forms part of those items) are and will remain the Company's property or that of its service providers. Such service providers may include providers of real-time price data to the Company. In addition:
- a) all copyrights, trademarks, design rights and other intellectual property rights in those items are and will remain the Company's property (or those of third parties whose intellectual property the Company uses in relation to products and services the Company provides for the Client's Account);
  - b) the Company supplies or makes them available to the Client on the basis that:
    - a. the Company can also supply and make them available to other persons; and
    - b. the Company may cease providing them at its sole and absolute discretion or if the Company's service providers require the Company to do so;
  - c) the Client must not supply all or part of them to anyone else and the Client must not copy all or any part of them;
  - d) the Client must not delete, obscure or tamper with copyright or other proprietary notices the Company may have put on any of those items; and/or

- e) the Client must only use these items for the operation of its Account in accordance with these Terms.

### **31. Data Protection and Confidentiality**

- 31.1 In this clause, "Data Protection Laws" means General Data Protection Regulation ("GDPR") (with effect from 23 May 2018 and/or any other legislation in force from time to time in the EU/United Kingdom relating to either or both privacy or the processing of personal data, all as they may be amended or superseded from time to time. The expressions "controller", "data controller", "personal data" and "process" shall have the meanings ascribed to them in the Data Protection Laws.
- 31.2 For the purposes of the Data Protection Laws, the Company will be the data controller in respect of any personal data which the Client provides to the Company and we shall be responsible for ensuring that we process it in compliance with the Data Protection Laws.
- 31.3 The Company collects the Client's personal data in two ways:
  - a) Information the Client gives the Company. The Client may give the Company personal data by filling in forms or by corresponding with the Company by phone, email or otherwise. This includes personal data the Client provides when becoming a client of the Company and requesting or engaging with the Company in connection with the Services. The personal data the Client gives the Company may include the Client's name, address, e-mail address, phone number, financial information, identification documents and personal description(s). The Client confirms that any personal data given to the Company is given lawfully by the Client in accordance with Data Protection Laws, to the extent applicable.
  - b) Information the Company receives from other sources. The Company may obtain information from other sources in order to carry out the services under these Terms.
- 31.4 The Company uses the Client's personal data for the following purposes:
  - a) assessing and processing an application for our Services;
  - b) to provide the Services (and this may require that we verify information the Client provides in the course of becoming a client and carry out assessments about the Client), which includes carrying out the Company's obligations arising from its agreements with the Client and Transactions undertaken with or for the Client and the management of our relationship with you;
  - c) for internal analysis and research in order to facilitate the provision of the Services to the Client;
  - d) monitoring or recording telephone calls with you to resolve any queries or issues or for regulatory purposes;
  - e) record keeping to ensure our Services operate with the law and relevant Applicable Regulations;
  - f) to comply with reporting, legal and/or regulatory requirements; and
  - g) to offer the Client additional investment products or services (except where the Client has asked the Company not to). The Company may use external third parties to process the Client's personal data on its behalf where necessary to enable the Company to provide the Services, but only for the purposes described above. The Company may also share the Client's personal data with Associated Companies in accordance with requirements for GDPR but only for the purposes described above.

- 31.5 It is necessary for the Company to process the Client's personal data in the ways described in clauses 31.4 (a) to (e) in order for us to perform the Services for the Client. If the Company processes the Client's personal data in the way described in clause 31.4(f), this will be because it is necessary for the Company to comply with a legal and/or regulatory obligation.
- 31.6 The Client's personal data may be stored electronically and/or in hard copy form. The Company is committed to ensuring that the Client's personal data is secure. In order to prevent unauthorised access or disclosure the Company has put in place suitable physical, electronic and managerial procedures to safeguard and secure personal data in accordance with the Data Protection Laws. The Company will retain personal data for as long as the Client uses the Services and then for up to seven years, subject to legal or Applicable Regulations.
- 31.7 The Company, or the third parties with whom the Company shares the Client's personal data, may be located outside the EEA in countries and the company as a controller of personal information, will ensure all personal information held outside the EEA with a third party is subject to requirements of GDPR.
- 31.8 The Company may also disclose the Client's personal data to any purchaser of the whole or part of our business or on any merger or group reorganisation, provided that the personal data will only be used for the purposes set out above.
- 31.9 The Client has the right to ask for a copy of the personal data (subject access request) which the Company holds about the Client, subject to certain exceptions, and the Client should inform the Company in a timely manner in order to update or correct your personal data. The Client also has the right to erase any personal data the Company holds about it, to restrict the processing of your Personal Data (where appropriate) and/or request that it be ported to another data controller, again, subject to certain exceptions.
- 31.10 The Client acknowledges and agrees that, if the Client exercises any of the rights listed above and, as a result, the Company no longer has the personal data necessary for our performance of the Services the Company may be required to terminate the Services following such request. If the Company is no longer able to provide the Services following the exercise of the Client's rights, the Company may terminate this Agreement with immediate effect.
- 31.11 In accordance with the Data Protection Laws, the Client also has the right to request a copy of your Personal Data and/or lodge a complaint with the UK regulator for data protection. In the first instance please contact the Compliance Department ([compliance@iticapital.com](mailto:compliance@iticapital.com)).
- 31.12 Information of a confidential nature ("Confidential Information") which you provide to us will be kept strictly confidential, subject to our legal obligations.
- 31.13 Unless you notify us to the contrary in writing, we shall be entitled to disclose information which is in the public domain and/or is a matter of public record. In addition, you agree that we can disclose Confidential Information to:
- a) our auditors;
  - b) our insurers;
  - c) the FCA and any other relevant regulatory authority or operator of a Regulated Market; and
  - d) to providers of services we need to run the business,
- in all cases only once and to the extent we have received reasonable assurances that the recipients of the Confidential Information will treat the information so provided as confidential.
- 31.14 These Terms and all Transactions entered into between us are strictly confidential and may not be disclosed without your and our prior written consent, unless you or we are required to do so

by law, Applicable Regulations or a regulatory or governmental authority. In such circumstances, and unless we reasonably consider, acting in good faith, that we are not able to do so, we will endeavour to give you prior notice of any such disclosure.

31.15 For further information please refer to our “Privacy and Security Policy” which can be provided to the Client on request.

## **32. Miscellaneous**

32.1 The Company may, but the Client may not, at any time transfer or assign absolutely its rights, benefits and/or obligations under these Terms by providing the Client with not less than ten (10) Business Days written notice. Any such transfer or assignment shall be subject to the assignee undertaking in writing to be bound by and perform the Company’s obligations under these Terms.

32.2 The Client’s rights and obligations under these Terms are personal to the Client. This means that the Client cannot assign them without the Company’s prior written consent.

32.3 In order to comply with its obligations under various legislative and regulatory requirements including but not limited to the Companies Act 1985 & 2006, the Financial Services and Markets Act 2000, the FCA Rules, the United Kingdom Listing Authority’s Listing Rules, and/or the City Code on Takeovers and Mergers, the Company may be required to make certain disclosures relating to the Client’s Transactions, which may or may not involve disclosing the Client’s identity. In addition to complying with such obligations, the Company may comply with any request for information pertaining to the Client from any relevant regulatory or government authority. The Client agrees that such compliance does not constitute a breach of any obligation of confidentiality, which the Company owes to the Client pursuant to these Terms.

32.4 Where the Agreement specifies a time or period by which we or you must carry out responsibilities under it, we must both keep to these time scales and time will be of the essence in respect of those obligations. If there is no timescale given, any responsibilities must be carried out within a reasonable time in all the circumstances. We may serve notice on you, and you may serve notice on us, stating that legal action may be taken if the obligations and responsibilities are not met within a reasonable time period.

32.5 The rights and remedies provided under these Terms are cumulative and do not (save as expressly provided in these Terms) exclude any rights or remedies provided by law.

32.6 The Company is under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to the Client. No delay or failure by the Company to exercise any of its rights under these Terms (including any Transaction) or otherwise shall operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy shall prevent further exercise of that right or remedy or the exercise of any other rights or remedies. No course of conduct or previous dealings shall create any future obligation to perform in the same manner.

32.7 If, at any time, any provision of these Terms is or becomes illegal, invalid, or unenforceable in any respect under the law of any jurisdiction, then such provision or part thereof will, to that extent, be deemed severable and not form part of these Terms. Neither the legality, validity nor enforceability of the remaining provisions of the Terms shall be in any way affected.

32.8 The Client and the Company do not intend that any provision of these Terms should be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to these Terms.

32.9 The Company considers, and you acknowledge and agree, that the Agreement contains all relevant terms that have been agreed between us and you, and that it supersedes all prior or contemporaneous oral or written communications, proposal, agreements or representations.

However, the fact that an agreed term may not be set out in the Agreement does not necessarily mean it is not binding, but in such circumstances you (or we) would need to be able to prove that the term was agreed and the person who agreed the term was authorised to do so. Further, the law implies certain terms into an agreement even if such terms are not expressly set out in its terms.

### **33. Governing Law and Jurisdiction**

- 33.1 A transaction which is subject to the rules of a Market shall be governed by the law applicable to it under those rules.
- 33.2 The Agreement and the relationship between the parties (including any non-contractual obligation arising out of or relating to this Agreement) shall be governed by and construed in accordance with English law. Any disputes and claims will be dealt with by the courts of England and Wales.

## ANNEX

This Annex, which forms part of the Terms, sets out certain additional terms and conditions applicable to the specific products set out herein. In the event of an inconsistency between the Annex and the Terms, the provisions in this Annex shall take precedence.

### PART I - SECURITIES AND EXCHANGE-TRADED FUNDS

#### 1. Defined Terms

The following words and phrases shall, unless the context otherwise requires, have the following meanings:

“Debt Security” has the meaning given it under the FCA Rules;

“Equity” has the meaning given to the term 'equity share' under FCA Rules;

“ETF” means Exchange-Traded Fund;

“ETF Share” means a unit or share of an ETF that is available to the Client for investment purposes through the Trading Facility and/or Secure Access Website;

“Exchange-Traded Fund” has the meaning given to it under the FCA Rules;

“Instrument” means either or both a Security and/or an ETF Share, as the context requires;

“Security” has the meaning given to it under the FCA Rules, and includes Equity and Debt Security;

“Short Sales” means a transaction in which you sell investments which you do not own at the time of the sale.

#### 2. Risks

We have set out a general description of the nature and risks associated with the products and investments we offer in the Risk Warning Notice. A copy of the Risk Warning Notice is available on our website and upon request. You should review this information before trading under these Terms.

#### 3. Purchases “on margin”

From time to time, we may (at the Company’s sole discretion) agree an Extension of Credit to you in accordance with Part V of this Annex in connection with the purchase by you of Instruments “on margin”.

#### 4. Dealings Between you and the Company

4.1 We will treat each Instruction you place (in accordance with clause 7.1 of the Terms) as an offer to purchase or sell Instruments subject to these Terms. We may, in our reasonable discretion:

- a) refuse to accept any Instruction from you;
- b) accept your Instruction subject to certain conditions; or
- c) acting reasonably, refuse to proceed with an Order that we have accepted. If we do this, we will notify you as soon as reasonably practicable, subject to Applicable Regulations and laws.

4.2 Once accepted by us, the Order is irrevocable and you cannot amend or cancel your Order, unless, before the execution of a particular Order, you provide alternate Instructions to us and receive confirmation from us of any amendment or cancellation of the Order.

4.3 You acknowledge and accept that:

- a) if we incur additional reasonable expenses (examples of which include, but are not limited to, premiums and discounts) when carrying out your Order and we are unable to contact

you to tell you about these after reasonable efforts to do so, we may proceed to execute your Order and incur those expenses which will then be payable by you;

- b) there may be a delay in the execution of an Order because all Orders are executed strictly by reference to time of receipt. In particular, an Order received when the relevant exchange is closed will not be executed until after it next re-opens. We will present that Order for execution when the exchange next reopens or, if a large number of Orders have been received while the Market is closed, as soon as reasonably practicable after the exchange next reopens.

4.4 As set out in clause 7.6 of the Terms, Orders may be placed as Market Orders to buy or sell as soon as possible at the price obtainable in the Market, or on selected products as Limit and Stop Orders to trade when the price reaches a pre-defined level. In addition:

- a) we may, but are not required to, cancel a pending Order if the Client places a Limit Order or Stop Order for an Equity in respect of which trading is suspended or has a Corporate Action before execution;
- b) we may publish your Limit Order if it relates to shares admitted to trading on a Regulated Market and that Order cannot be immediately executed under prevailing market conditions, unless you expressly instruct otherwise.

4.5 In certain circumstances and where the Company thinks (in its sole discretion) that it is in the best interests of the Client, the Company may purchase and/or subscribe for Instruments on a principal basis and as soon as practicable sell such Instruments to the Client by crediting the Instruments and debiting the corresponding cash balance from the Client's Accounts on a delivery versus payment basis. The Company will only undertake such action on condition that:

- a) it has received a firm and irrevocable Order from the Client to purchase and/or subscribe for such Instruments; and
- b) the Client hereby indemnifies the Company for all direct costs and expenses (including for the avoidance of doubt and without limitation the market value of the purchase and/or subscription) of entering into such back to back transaction as "riskless principal".

## **5. Short Selling**

You may enter into Transactions that are Short Sales provided always that you clearly designate the Transaction as a Short Sale on providing your Instruction to the Company. Any such Transaction will be carried and identified in your Account as a Short Sale with the related loan by the Company to you of the relevant Instruments to settle the Transaction recorded as a liability owed to the Company. The fees for the borrow will be set out in the Rate Card.

## **6. Execution via Third Parties**

6.1 We may, at our reasonable discretion, arrange for a Transaction to be effected with or through a third party. We will not be liable to you for any act or omission of any such third party, except where the Company has acted negligently, fraudulently or in wilful default in relation to the appointment of the third party.

6.2 Transactions placed by us on your behalf in Markets outside of Great Britain may be executed via a third party and as such are subject to their service levels. As a result, late reported Transactions can be booked to your Account at any time prior to the start of the next trading day. It is possible that an Order that has been confirmed as cancelled or expired may be subject to a late reported fill. You should contact us if you have any doubt as to the status of a particular Transaction.

## **7. Settlement**

7.1 Settlement dates vary by Market. You should inform yourself of the relevant settlement date

for each Transaction prior to submitting an Instruction. We may provide such information upon request.

- 7.2 Depending on the product and Market, we may lengthen or shorten the standard settlement dates. Where permitted by the Market, we and you may agree to lengthen or shorten the settlement dates pertaining to your Transactions.
- 7.3 The Client is responsible for paying for each Transaction we execute for you (as Principal or Agent), whether by payment of the purchase price, delivery of the relevant assets, or otherwise as the relevant Market requires. Except as otherwise agreed, the Client must pay for any Instruments the Company purchases for the Client on or before the settlement date.
- 7.4 Investments held for you in custody will be used to settle your sale Transactions. Otherwise, in respect of all sale Transactions you:
- a) promise to us that, at the time of placing an Instruction to sell, you own the relevant Instruments; and
  - b) will immediately arrange for delivery to us of the certificates, transfer forms and other documents of or evidencing title and transfer in respect of the Instruments, , at the latest by the contracted settlement date, otherwise payment to you may be delayed.
- 7.5 When the Client purchases Instruments, the Client only obtains unconditional title or right to the Instruments once final payment to the Company has been made .
- 7.6 Delivery or payment by the counterparty to any Transaction we place or execute as your Agent will be your responsibility. Our obligation to deliver Instruments to you or to account to you or any other person on your behalf for the proceeds of sale of any instruments is conditional on our receipt of the relevant Instruments or sale proceeds from the counterparty to the Transaction.
- 7.7 We will not be responsible and will not compensate you in the event a counterparty fails to settle a Transaction. The only exception to this is when we specifically agree with you in writing that we will assume the risk of a counterparty failing to settle a Transaction. Any such exceptional agreement will be on a case-by-case basis (i.e. it will be limited to the particular Transaction at the time and must not be interpreted as giving rise to any kind of promise, understanding, assurance or belief that we will agree to accept any similar risk in relation to any other Transaction at any time in the future).
- 7.8 There may be circumstances beyond our control, which may prevent us from settling Transactions into which you have entered or which we have entered on your behalf. This may occur, for example, where the counterparty to the Transaction defaults on its obligations (i.e. because it has become insolvent). If this occurs, we will use reasonable endeavours to settle the Transaction for you. However, there may be circumstances where this is impossible. For example, if the Transaction is subject to the rules of an exchange or Market then we will have to act in compliance with those rules. Where a Transaction has to be settled through a settlement system this may also mean that there is significant delay in settlement or that settlement does not occur. You will remain liable for the Company's obligations in relation to every Transaction until settlement or other conclusion of the Transaction occurs.
- 7.9 The securities settlement conventions in certain Markets that apply to the holding of Instruments or settlement of Transactions for you may result in a delay before proceeds of sale are received for you, or title to an Instrument passes to you.

## **8. Corporate Actions**

- 8.1 Where an Instruction is given to the Company in respect of an Equity for which a corporate action is imminent, we may decline to accept your instructions or refuse to execute a Transaction on the basis of the Instructions.

- 8.2 Where (in respect of an Equity held by us for your Account or deliverable to us for your Account) any corporate actions occur, we shall not be obliged to inform you of the corporate action or undertake any action, even if you specifically instruct us, unless we expressly consent in writing. If we inform you of a corporate action and you tell us within such period as we specify that you wish to exercise any rights arising out of corporate actions and provided there are sufficient cleared funds in your Account, we will use reasonable endeavours to give effect to your instructions but only on such terms as you advise and are acceptable to the Company. Otherwise, we will take such action, or refrain from taking any action, as we may in our reasonable discretion determine. For the avoidance of doubt, we will have no liability if a company fails to tell us about a corporate action.
- 8.3 We may, but shall not be obliged to, claim and receive dividends, interest payments and other income payments accruing to your investments held by a nominee. Where a scrip dividend is offered and we agree to take action for your benefit, we will elect to take the cash alternative unless the default option is for the issuance of shares.
- 8.4 We shall not be obliged to, but we may, using reasonable endeavours, arrange for you to receive the report, accounts and other information issued by a company, attend shareholders' meetings or unit holders' meetings and vote in person or direct how our nominee should vote on your behalf.
- 8.5 Where a corporate action results in a fractional entitlement to part of a share, then we will sell such fractional shares and credit your Account with a cash value that may be subject to a minimum charge for administration. Details of this charge are set out on the Rate Card.
- 8.6 Where corporate actions (such as partial redemptions) affect some but not all the investments held in a pooled account, we shall allocate the investments which are affected to relevant customers in such a fair and equitable manner as we reasonably consider appropriate.
- 8.7 If the terms of a corporate action require an election to be made on behalf of our entire nominee holding in a company, we reserve the right not to offer an option to the Client, where it is reasonable to do so. We will use reasonable endeavours to give you an alternative option, but we cannot guarantee that this will match the options offered by the relevant company.
- 8.8 If we are notified of a class action or group litigation that is being proposed or taken concerning investments that our nominee is holding, or has held, on your behalf, we are not required to tell you about this or otherwise act on that notification.

## **9. Tax**

- 9.1 Where we receive a payment for a tax adjustment of a dividend relating to an Instrument we or our Nominee holds for your benefit, we will credit your Account with the payment subject to a minimum charge for administration (if any), more details of which are set out on the Rate Card.
- 9.2 Where you seek to trade in U.S. Securities, the Client must complete a Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (W8BEN Form), as provided by the United States Internal Revenue Service, before entering a Transaction for U.S. Securities on the Account. We will require an original signed copy of the W8BEN Form.
- 9.3 In exceptional circumstances, we may allow you to trade U.S. Securities without holding the original W8BEN Form. However, we will only permit this exception where we hold a scanned copy of your W8BEN Form in anticipation of receiving your original signed W8BEN Form within two weeks. Any such exception must be agreed by us in writing.

## **10. Transfer of Securities**

- 10.1 When opening an Account with us, you may request to transfer assets and/or Open Positions from a non-affiliated broker to us, by completing a transfer request form. We will use reasonable efforts to effect the transfer of Instruments and/or open positions. However,

because the transfer of Instruments and/or open positions involves the participation of a non-affiliated broker, we cannot guarantee that every request will be fulfilled.

- 10.2 We reserve the right not to accept the transfer of any or all Instruments and/or open positions from a non-affiliated broker. Where we do accept a transfer, we may charge you a fee in accordance with the then prevailing Rate Card. Any fees imposed by the non-affiliated broker will be charged to your Account. We are not responsible for informing you of the non-affiliated broker's fees. You should make yourself aware of such fees before requesting the transfer.

## **PART II - FUTURES AND OPTIONS**

### **1. Definitions**

The following words and phrases shall, unless the context otherwise requires, have the following meanings:

"Close Out" means, in relation to a contract, to close out (including by entering into equal and opposite contracts), unwind, cancel or otherwise terminate or allow to expire and "Closing Out" and "Closed Out" will be interpreted accordingly;

"Equity" has the meaning given to the term 'equity share' under the FCA Rules, which generally means, shares comprised in a company's equity share capital;

"Options Contract(s)" means any Transaction in an option (as defined by the FCA Rules) entered into between you and us;

"Futures Contract(s)" means any Transaction in a future (as defined by the FCA Rules) entered into between you and us.

"Underlying Instrument" means the index, commodity, currency, Equity or other instrument, asset or factor whose price or value provides the basis for the Company or any third party to determine its price or the executable price for a Market or product.

### **2. Risks**

We have set out a general description of the nature and risks associated with the products and investments we offer in the Risk Warning Notice. A copy of the Risk Warning Notice is available on our website and upon request. You should review this information before trading under these Terms.

### **3. Dealings Between you and the Company**

- 3.1 We may enter into Futures Contracts and Options Contracts with you in accordance with the Terms.

- 3.2 We may enter into an Options Contract with you involving an obligation to make, or to take, delivery of the Underlying Instrument of the contract at a future date and price, or in some cases to settle the position with cash. The obligation to make or to take delivery of the contract's Underlying Instrument will only relate to instances where the Underlying Instrument is a Futures Contract or an Equity; in such instances, unless otherwise agreed in writing by us and you and you acknowledge and agree that you will not acquire any interest in the relevant Underlying Instrument or be entitled to receive dividends or any equivalent thereof, to exercise voting rights, to receive any rights pursuant to any rights or bonus issue, or to participate in any placing or open offer prior to the exercise of the Options Contract. Where the Options Contract is for cash settlement, you acknowledge and agree that you will not be entitled to delivery of, or be required to deliver, the Underlying Instrument to which an Options Contract relates, nor will you acquire any interest in the relevant Underlying Instrument, unless we otherwise agree in writing.

- 3.3 You understand that Markets may from time to time sanction the making of contracts by us off-exchange in order to satisfy your order, where there has been an error in the execution of your order on-exchange. Where a better price (an improvement) can be obtained, we may seek to secure and offer that improvement to you. Where, in response to your Order, we have bought or sold in accordance with the instruction in your Order to buy or, as the case may be, to sell but have traded the wrong delivery/expiry month or wrong exercise price of the relevant contract, then we may in accordance with Applicable Regulations offset any loss arising from that Transaction against any improvement achieved for you in the course of correctly satisfying your Order, thus offering you only the net improvement, if any.
- 3.4 Unless otherwise agreed in writing between us and you or where the Applicable Regulations provide otherwise, whenever any Transaction is entered into to Close Out any existing Transaction, then the obligations on us and you under both sets of Transactions shall automatically and immediately be terminated upon entering into the second Transaction, except for any settlement payment due in respect of such closed out Transactions.
- 3.5 Where the relevant Market or intermediate broker does not specify a particular Transaction when making a delivery or exercising a contract, we may allocate randomly or in a way which seems to us to be most equitable.

#### **4. Close Out and Exercise**

- 4.1 Unless you have instructed us to Close Out a Futures Contract and/or Options Contract under clause 4.2 of this Part II of the Annex, prior to the maturity of such contract (but in any event not less than one (1) Business Day prior to the maturity of such contract) you will give us such Instructions and take such actions as we reasonably require (and within such time limit as we notify to you) to enable us to settle, deliver or, in the case of an Options Contract, exercise or allocate a contract. If you fail to give us any such Instructions or to take any such actions prior to the maturity of a Futures Contract and/or Options Contract (but in any event not later than one (1) Business Day prior to the maturity of such contract), we may:
- a) Close Out any such contract;
  - b) make or receive delivery of any Underlying Instrument or asset; or
  - c) take action to cover, reduce or eliminate any potential losses in respect of the relevant contract, on such terms and in such manner as we, in our reasonable discretion, deem appropriate.
- 4.2 Subject to the requirements of these Terms, any Applicable Regulations and any further requirements we notify to you, you may at any time before the time for performance of a Contract (but in any event not less than one (1) Business Day prior to maturity of such contract) request we Close Out such contract or, if a purchased Option Contract, to exercise that Option Contract. We will not be responsible to you for the consequences of failing to exercise an Option Contract if we do not receive sufficiently clear and timely Instructions from you in relation to the exercise of such option. If Closing Out a Futures Contract and/or Options Contract results in a sum of money being due to the agent, settlement system, exchange, clearing house, broker or other third party by us, we will notify you of that amount which will be immediately payable by the Client to the Company.

#### **5 Contracts Requiring Non-Cash Settlement**

- 5.1 With respect to Options Contracts requiring non-cash settlement, the Client shall make the Securities or other financial instruments (including Underlying Instruments) deliverable by it available for settlement on or before the settlement date. Where there are insufficient

Securities or other financial instruments in the Client's Account and the Company proceeds to settlement, the Company may buy the Securities or other financial instruments required for delivery at a price it believes to be reasonable, charge the Client's Account for the cost thereof, deliver the Securities or other financial instruments to satisfy the delivery obligation, and credit the Client's Account with the net proceeds thereof (after deduction of commission and other costs).

- 5.2 The Client will notify the Company of all relevant details required by the Company of the Client's settlement agent in respect of Transactions which may be subject to delivery obligations. The Client will procure that its settlement agent enters into such other documentation as may be necessary to ensure that the clearing and settlement of such Transactions takes effect without liability to the Company.

## **6. Clearing and Give Up Arrangements**

- 6.1 Unless otherwise agreed between the Company and the Client, as per clause 6.2 of Part II of this Annex, the Company will clear all Transactions with another broker or dealer as specified by the Company.
- 6.2 The Client may request, but the Company shall not be obliged to comply, that the Company establish a give-up arrangement between the Client, the Company and another broker or dealer. Where the Company agrees to enter into such a relationship, the Client authorises the Company to enter into and execute any International Uniform Give-Up Agreement (or similar document) on the Client's behalf. Where the Client and the Company are party to an International Give-Up Agreement, the provisions of the International Give-Up Agreement shall prevail over these Terms in the event of any inconsistency.
- 6.3 In respect of every Transaction made between the Company and the Client and given up to be cleared by another broker or dealer as specified by the Client:
- a) if such broker or dealer accepts the give-up, the Company shall (without prejudice to any claim it may have for commission or other payment) upon such acceptance cease to be a party to the Transaction and shall have no obligation to the Client for its performance; and/or
  - b) if such other broker or dealer declines to accept the give-up, the Company shall be entitled at its option either to confirm the Transaction with the Client or to liquidate it by such sale, purchase, disposal or other Transaction or cancellation as the Company may in its absolute discretion determine, whether on the relevant Market or by private contract or any other feasible method (including the Company taking it over or transferring it to an Associated Company), and any balance resulting from such liquidation shall be promptly settled between the Client and the Company but without prejudicing the Company's rights under these Terms or otherwise.
- 6.4 Subject to Applicable Regulations, clauses 6.4 and 6.5 of Part II of this Annex apply where there is a give-up agreement between the Client, the Company and a third party executing broker, and the reference number or mnemonic applicable to the Client is quoted by such executing broker when a Transaction is submitted to the Company for clearing. In acting as the Client's clearing broker, the Company shall accept a Transaction given up to it for clearing only if the Company has agreed with the Client to clear Transactions of such a description and the acceptance thereof would not breach any position or other limits applicable to the Client's account with the Company. Notwithstanding any provision contained in the relevant give-up agreement, if the Company accepts such Transaction for clearing, such Transaction shall be binding and conclusive on the Client immediately on its acceptance for clearing by the Company whether or not the details of such Transaction have previously been confirmed to the Company by the Client. The

Company shall not be liable to the Client for any losses, costs, expenses or damages arising from any discrepancy between details in the Client's instructions to such executing broker and details of Transactions submitted to the Company for clearing. Any dispute relating to a Transaction given up or attempted to be given up to the Company for clearing shall be determined under Applicable Regulations.

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

## **PART III – MUTUAL FUNDS**

### **1. Definitions**

The following words and phrases shall, unless the context otherwise requires, have the following meanings:

“Mutual Fund” means a professionally managed investment vehicle that pools shareholders' money to invest in a portfolio of various financial instruments and assets pursuant to the stated objectives of the vehicle.

“Mutual Fund Share” means a unit or share in a Mutual Fund that is available to the Client for investment purposes through the Trading Facility and/or Secure Access Website.

### **2. Risks**

We have set out a general description of the nature and risks associated with the products and investments we offer in the Risk Warning Notice. A copy of the Risk Warning Notice is available on our website and upon request. You should review this information before trading under these Terms.

### **3. Purchases “on margin”**

From time to time, we may (at the Company's sole discretion) agree an Extension of Credit to you in accordance with Part V of this Annex in connection with the purchase by you of Mutual Funds “on margin”.

### **4. Dealings Between you and the Company**

4.1 We will treat each Instruction you place (in accordance with clause 7.1 of the Terms) as an offer to purchase or sell Mutual Fund Shares subject to these Terms. We may, in our reasonable discretion:

- a) refuse to accept any Instruction from you;
- b) accept your Instruction subject to certain conditions; or
- c) acting reasonably, refuse to proceed with an Order that we have accepted. If we do this, we will notify you as soon as reasonably practicable, subject to Applicable Regulations and laws.

4.2 Once accepted by us, the Order is irrevocable and you cannot amend or cancel your Order, unless, before the execution of a particular Order, you provide alternate Instructions to us and

receive confirmation from us of any amendment or cancellation of the Order.

## **5. Short Selling**

We will not accept instructions for Short Sales in relation to Mutual Fund Shares.

## **6. Settlement**

- 6.1 Settlement dates vary by Market and type of Mutual Fund. You should inform yourself of the relevant settlement date for each Mutual Fund Share Transaction prior to submitting an Instruction. We may provide such information upon request.
- 6.2 The Client is responsible for paying for each Mutual Fund Share Transaction we execute for you (as Principal or Agent), whether by payment of the purchase price, delivery of the relevant Mutual Fund Shares. Except as otherwise agreed, the Client must pay for any Mutual Fund Shares the Company purchases for the Client on or before the settlement date.
- 6.3 Mutual Fund Shares held for you in custody will be used to settle your sale Transactions. Otherwise, in respect of all sale Transactions you:
  - a) promise to us that, at the time of placing an Instruction to sell, you own the relevant Mutual Fund Shares; and
  - b) will immediately arrange for delivery to us of the certificates, transfer forms and other documents of or evidencing title and transfer in respect of the Mutual Fund Shares, at the latest by the contracted settlement date, otherwise payment to you may be delayed.
- 6.4 When the Client purchases Mutual Fund Shares, the Client only obtains unconditional title or right to the Mutual Fund Shares once final payment to the Company has been made.
- 6.5 There may be circumstances beyond our control, which may prevent us from settling Transactions into which you have entered or which we have entered on your behalf. If this occurs, we will use reasonable endeavours to settle the Transaction for you. However, there may be circumstances where this is impossible. For example, if the Transaction is subject to the rules of an exchange or Market then we will have to act in compliance with those rules. You will remain liable for the Company's obligations in relation to every Transaction until settlement or other conclusion of the Transaction occurs.
- 6.6 The securities settlement conventions in certain Markets that apply to the holding of Mutual Fund Shares or settlement of Transactions for you may result in a delay before proceeds of sale are received for you, or title to an Instrument passes to you.

## **7. Transfer of Mutual Fund Shares**

- 7.1 When opening an Account with us, you may request to transfer Mutual Fund Shares from a non-affiliated broker to us, by completing a transfer request form. We will use reasonable efforts to effect the transfer but because the transfer involves the participation of a non-affiliated broker, we cannot guarantee that every request will be fulfilled.
- 7.2 We reserve the right not to accept the transfer of any or all Mutual Fund Shares from a non-affiliated broker. Where we do accept a transfer, we may charge you a fee in accordance with the then prevailing Rate Card. Any fees imposed by the non-affiliated broker will be charged to your Account. We are not responsible for information you of the non-affiliated broker's fees. You should make yourself aware of such fees before requesting the transfer.

## **PART IV – SPOT FOREIGN EXCHANGE (“FX”)**

### **1. Definitions**

The following words and phrases shall, unless the context otherwise requires, have the following meanings:

“Spot Date” means the Business Day on which a Spot FX Transaction is settled;

“Spot FX Transaction” means a Transaction to buy one currency against selling another currency at an agreed price for settlement on the Spot Date.

### **2. Risks**

We have set out a general description of the nature and risks associated with the products and investments we offer in the Risk Warning Notice. A copy of the Risk Warning Notice is available on our website and upon request. You should review this information before trading under these Terms.

### **3. Dealings Between you and Company**

3.1 We may enter into Spot FX Transactions with you in accordance with the Terms.

3.2 Each Instruction for a Spot FX Transaction must designate (i) the currency you wish to buy, and (ii) the currency you wish to sell. We may, in our reasonable discretion:

- (a) refuse to accept an Instruction from you;
- (b) accept your Instruction subject to certain conditions; or
- (c) acting reasonably, refuse to process an Order we have accepted. If we do this we will notify you as soon as reasonably practicable subject to Applicable Regulations and laws.

3.3 Once accepted by us, the Order is irrevocable and you cannot amend or cancel your Order, unless, before the execution of a particular Order, you provide alternate Instructions to us and receive confirmation from us of any amendment or cancellation of the Order.

3.4 If an Order is accepted by us and in circumstances where you do not have a Currency Sub-Account in the purchased currency to enable us to effect settlement, the Company will deem that you have given us an Instruction to establish a Currency Sub-Account in the relevant currency and any reasonable administrative expenses incurred in establishing the Currency Sub-Account and executing the Order will be payable by you.

### **4. Settlement**

You should inform yourself of the relevant Spot Date for each Spot FX Transaction prior to submitting an Instruction. The Spot Date for most currency pairs is usually two Business Days after the Order is executed. We may provide such information upon request.

## PART V – EXTENSIONS OF CREDIT

### 1. Definitions

The following words and phrases shall, unless the context otherwise requires, have the following meanings:

“Loan” means an extension of credit to you in an amount exceeding £25,000, or the foreign currency equivalent thereof.

### 2. Dealings Between the Company and the Client

- 2.1 From time to time, and at the Company’s sole and absolute discretion, the Company may agree to make a Loan to you by advancing sums to your Account (or to a Currency Sub-Account).
- 2.2 Any such Loan will only be available, and may only be extended, to you when the Company considers, in its sole and absolute discretion, that the net value of your Open Positions, any Transactions carried in your Account and any Custody Assets, together with any Margin held by the Company, are:
- a) in excess of the value of the Loan by an amount acceptable to the Company (as determined by the Company in its sole and absolute discretion); and
  - b) subject to the Company’s Security Interests and rights of set off pursuant to these Terms.
- 2.3 Each Loan will be outstanding from day to day and repayable in the currency or currencies in which it was denominated on demand provided that the Company give you a reasonable time in all the circumstances to effect the mechanics of payment prior to declaring an event of Default pursuant to clause 19 of the Terms. For the avoidance of doubt, you may repay the Loan at any time.

### 3. Interest

- 3.1 Interest on the Loan shall accrue daily as calculated by the Company as follows:
- a) The aggregate amount in the relevant currency of the Loan outstanding on that day; multiplied by
  - b) The interest rate per annum as reasonably determined by the Company and notified in advance to you on the extension of each Loan; divided by
  - c) 360,365 or 366, as determined by the Company with reference to the usual base year day count fraction that is customarily used for calculating interest for the currency in question.
- 3.2 Interest will be payable to the Company monthly in arrears. You authorise the Company to debit your Account or the relevant Currency Sub-Account (as the case may be) with accrued interest and your account statement will itemise any such interest payment debited from the Account.

## **PART VI - Contracts for Differences**

You may enter into certain Contracts for Differences (“CFD”) Transactions with the Company in accordance with these Terms and the processes set out in, and products shown as available for CFD Transactions on, the Secure Access Website and Trading Facility. In entering into a CFD Transaction you represent and warrant that you will (i) designate each such Transaction as a CFD, (ii) provide the Margin required for creating an Open Position in a CFD, and (iii) at all times and on demand, maintain the Margin Requirement.

## **Part VII – Research**

Without prejudice to clause 6.4 of the Terms, you may from time to time receive research and analysis (“Research”) made available to Clients by the Company. The cost of receiving the Research (whether on a subscription or ad hoc basis) will be set out in the Rate Card. Where such Research includes a recommendation in respect of the purchase or sale of the underlying investment(s) that are the subject of the Research, the Company acknowledges that such recommendation constitutes investment advice in financial instruments (as such terms are defined in the FCA Rules) for the purposes of the Conduct of Business Sourcebook of the FCA Rules.

## **Part VIII - SIPP**

### **1. Definitions**

The following words and phrases shall, unless the context otherwise requires, have the following meanings:

“Permitted Investments” means those investments that the Client and/or Trustee may enter into with the Company in accordance with the SIPP Rules;

“SIPP” means a Self-Invested Personal Pension;

“SIPP Rules” means those rules and regulations governing the administration and use of the SIPP scheme, in force and effect from time; and

“Trustee” refers to the authorised SIPP provider through whom the Client holds its SIPP.

### **2. Capacity**

2.1 The Company shall treat the Client and the Trustee as its customer for the purposes of these Terms.

2.2 The Client is and will remain the beneficial owner of the assets within the SIPP. The Trustee is the legal owner of the assets and shall, unless otherwise agreed in writing, enter into Transactions with the Company as Principal.

2.3 The Trustee has given the Client authority to instruct the Company under a power of attorney and the Company will be entitled to rely on the power of attorney until it is revoked, such revocation to be in writing.

### **3. Dealings between the Company and the Client**

3.1 The Client or the Trustee may only send instructions in relation Transactions that are Permitted Investments. The Company accepts no liability for any direct or indirect loss suffered by the Client or the Trustee in the event that an investment is not a Permitted Investment. The Company is not able to prevent the Client from dealing in investments which are not Permitted Investments.

- 3.2 Investment decisions, and ongoing compliance with the SIPP Rules, are the sole responsibility of the Client and/or the Trustee. The Company does not and will not provide investment or pension advice to the Client and/or the Trustee.
- 3.3 The Client and the Trustee acknowledge and agree that the Company may, from time to time, place restrictions on the trading of SIPP funds in terms of the products that may be traded and the reduced leverage that can apply to these products. These restrictions may be additional to those imposed by the SIPP Rules.
- 3.4 The Company is not responsible and will not be liable for the maintenance and/or running of the Client's SIPP. The Company shall have no responsibility for redressing any breach of the terms of the SIPP, as may have been set by the HMRC.

#### **4. Limitation of Liability and Indemnification**

- 4.1 The Client and the Trustee agree to indemnify the Company for all losses, taxes, expenses, costs and liabilities whatsoever (present, future, contingent or otherwise including reasonable legal fees) which may be suffered or incurred by the Company as a result of or in connection with this the SIPP unless and to the extent that such losses, taxes, expenses, costs and liabilities are suffered or incurred as a result of the Company's negligence, fraud, Wilful default or breach of contract.
- 4.2 The Company acknowledges that the Trustee's liability shall, in relation to the Client and Permitted Investments, be strictly limited to the assets contained in the SIPP by the Client.
- 4.3 The Client acknowledges that if it breaches the Terms or acts fraudulently, negligently or with wilful default, or if there are insufficient funds in the Client's SIPP to meet any of the Client's or Trustee's obligations, the Company is entitled to pursue the Client for any costs or liabilities which exceed the funds in the Client's SIPP.

#### **PART IX – ISA**

If the Client holds an Individual Savings Account ("ISA") conforming to the Individual Savings Account Regulations 1998 made by HM Treasury under Chapter 3 of Part 6 of the Income Tax (Trading and Other Income) Act 2005 and Section 151 of the Taxation of Chargeable Gains Act 1992 (as may be from time to time amended or replaced) with the Company, the terms and conditions previously provided to the Client by the Company (the "ISA Terms") shall continue to govern such Services. You are remind the company does not provide any advice on taxation and/or investments with an ISA.

For the avoidance of doubt, in the event of any conflict between these Terms and the ISA Terms, the ISA Terms shall take precedence and no provision of the Terms shall be construed to create or apply any rights over the Client's ISA that are inconsistent with or contrary to the ISA Regulations.