



© TP ICAP 2021 – ICAP Terms of Business January 2021

# ICAP

## Terms and Conditions of Business

With effect from  
19 August 2021

For more information see [www.icap.com/regulatorydisclosures](http://www.icap.com/regulatorydisclosures)

© TP ICAP 2021 – ICAP Terms of Business August 2021

Clause	Page
1. DEFINED TERMS.....	4
2. APPLICATION AND SCOPE.....	7
3. INFORMATION.....	8
4. COMMUNICATIONS.....	8
5. CLIENT CATEGORISATION.....	8
6. POWER TO SELL, BUY IN OR CLOSE OUT.....	9
7. FEES/CHARGES.....	10
8. FEES, COMMISSIONS OR NON-MONETARY BENEFITS THAT WE MAY RECEIVE OR PAY .....	10
9. REPRESENTATION, WARRANTIES AND UNDERTAKINGS .....	10
10. APPROPRIATENESS AND SUITABILITY.....	12
11. CONFLICT OF INTERESTS .....	13
12. RIGHTS OF SET OFF AND RETENTION OF YOUR FUNDS.....	13
13. Netting .....	14
14. EVENTS OF DEFAULT.....	18
15. LIABILITY .....	20
16. INDEMNITY.....	21
17. INTELLECTUAL PROPERTY .....	21
18. COMPLAINTS .....	22
19. FORCE MAJEURE.....	23
20. VARIATION .....	23
21. TERMINATION.....	23
22. SUPPLY OF DATA.....	23
23. CONFIDENTIALITY .....	25
24. DATA PROTECTION .....	25
25. E-COMMERCE .....	26
26. TIME OF THE ESSENCE.....	26
27. ASSIGNMENT .....	26
28. NOTICES.....	26
29. RIGHTS AND REMEDIES.....	27
30. ILLEGALITY .....	27
31. ENTIRE AGREEMENT .....	27
32. RIGHTS OF THIRD PARTY .....	27
33. GOVERNING LAW AND JURISDICTION .....	27
34. BROKING SERVICES.....	28
35. INSTRUCTIONS .....	29
36. EXECUTION OF ORDERS.....	30
37. AGGREGATION.....	31
38. CLIENT LIMIT ORDERS .....	31
39. TRADING LIMITS, POSITION LIMITS AND POSITION MANAGEMENT CONTROLS .....	31
40. CONFIRMATIONS .....	32
41. TRANSPARENCY .....	32
42. SETTLEMENT.....	32
43. CLIENT MONEY.....	33



44. SYSTEMS ..... 34

## PART ONE – DEFINITIONS

### 1. DEFINED TERMS

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

**Applicable Regulations** means:

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

**Broking Services** means any brokerage, financial and other services, including any Trading Venue Services, that we may now or in the future agree to make available to you under these Terms any other service as agreed between us from time to time.

**Client Categorisation Notice** has the meaning given to it in Clause 5.

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

**Client Money Rules** means the provisions of the FCA's Client Assets Sourcebook relating to Client Money.

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

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

**Event of Default** means any of the events specified in Clause 13.

**Execution Policy** has the meaning given to it in Clause 36.1.

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

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

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

**Financial Instrument** has the meaning given to it in the FCA Rules.

**Information** has the meaning given to it in Clause 17.1.

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

**Intellectual Property Rights** means all right, title and interest in and to (i) trademarks, service marks, brand names and other indications of origin and the goodwill associated with the foregoing; (ii) inventions, patents, trade secrets, know-how, processes and systems; (iii) copyright and database rights;



and (iv) any other intellectual property or similar proprietary rights in any jurisdiction, in each case whether registrable or not.

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

**Multilateral Trading Facility** or **MTF** has the meaning set out in the FCA Rules and references to an ICAP MTF in these Terms are references to an MTF operated by an ICAP Provider.

**Organised Trading Facility** or **OTF** has the meaning set out in the FCA Rules and references to an ICAP OTF in these Terms are references to an OTF operated by an ICAP Provider.

**Participant Information** has the meaning given to it in Clause 17.4.

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

**Rulebook** means the relevant rulebook(s) or system protocol(s), inclusive of any applicable market notice, operational procedures of other information amending or supplementing the applicable rulebook(s) or system protocol(s) from time to time, which may apply to the Broking Services and/or Electronic Broking Services provided to you. The Rulebook(s) form part of the contractual arrangements which applicable Broking Services provided to you and are incorporated by reference into these Terms.

**System** means the various electronic trading platforms owned and operated by us, including in our capacity as an operator of an MTF or OTF, which includes various proprietary and third party software, firmware, hardware, keypads and supporting documentation (each trading platform and its components a "**System**") throughout the world. Reference to "**System**" in these Terms shall be deemed to refer to any relevant System to which you have been granted access pursuant to these Terms.

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

**TP ICAP Group Company** means any company of the TP ICAP group, the ultimate holding company of which is TP ICAP Group plc.

**ICAP Provider** means any ICAP Group Company details of which are set out in Clause 3.2 or any other company notified to you from time to time. ICAP Provider shall include any Affiliate of such ICAP Provider.

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

**Trading Venue Services** means any services provided to you in our capacity acting as an operator of an OTF or MTF, including access to any System, which we may now or in the future agree to make available to you under these Terms.

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



**Users** means any authorised users of the System in accordance with the Rulebook, including yourself.



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

### **2. APPLICATION AND SCOPE**

- 2.1 These Terms define the basis on which the relevant ICAP Provider(s) will provide you with Broking Services and shall apply when any ICAP Provider provides a Broking Service to you. The relevant ICAP Provider arranging the Broking Services for you shall be notified to you in writing from time to time.
- 2.2 In the event of any inconsistency between the provisions of any applicable Rulebook and these Terms, the terms of the Rulebook shall prevail to the extent of the conflict.
- 2.3 The Broking Services that we provide you pursuant to these Terms are subject to Applicable Regulations so that:
- (i) if there is a conflict between these Terms and any Applicable Regulations, the latter will apply;
  - (ii) nothing in these Terms shall exclude or restrict any duty or liability which we may have to you under the Applicable Regulations;
  - (iii) we may take or omit to take any action which we consider necessary to ensure compliance with any Applicable Regulations and that we are not required to do anything which would in our opinion infringe any such Applicable Regulation;
  - (iv) all Applicable Regulations and whatever we do or fail to do in order to comply with them will be binding on you;
  - (v) such actions that we take or fail to take for the purpose of compliance with any Applicable Regulations shall not render us or any of our directors, officers, employees or agents liable; and
  - (vi) you agree to comply with all Applicable Regulations.
- 2.4 These Terms create a contractual relationship between you and us and are legally binding. These Terms will take effect when you first undertake business with us after having received them and you will be deemed to accept and consent to these Terms for as long as we are providing a Broking Service to you.
- 2.5 Any reference in any documentation between you and us to an earlier version of these Terms, shall, from the date these Terms take effect, be read as a reference to these Terms or to the relevant or corresponding part thereof.
- 2.6 The Terms shall apply to you regardless of your jurisdiction to the extent that they are not incompatible with your local legal and regulatory requirements.



### 3. INFORMATION

- 3.1 The ICAP Providers are members of the TP ICAP group, the ultimate holding company of which is TP ICAP Group plc, and each will be trading through the ICAP business divisions of TP ICAP.
- 3.2 The ICAP Providers are:
- (i) ICAP Energy Limited, incorporated in the UK (company number: 02553782) with its registered office at 135 Bishopsgate, London, EC2M 3TP, UK;
  - (ii) ICAP Global Derivatives Limited incorporated in the UK (company number: 03635229) with its registered office at 135 Bishopsgate, London EC2M 3TP, UK;
  - (iii) TP ICAP Markets Limited incorporated in the UK (company number: 00500777) with its registered office at 135 Bishopsgate, London, EC2M 3TP, UK;
  - (iv) ICAP WCLK Limited incorporated in the UK (company number: 01852009) with its registered office at 135 Bishopsgate, London, EC2M 3TP, UK;
  - (v) ICAP Corporates LLC, the London branch of the US entity (company number: BR015265) located at 135 Bishopsgate, London, EC2M 3TP, UK; and
  - (vi) ICAP Securities USA LLC, the London branch of the US entity (registered number: FC019077), located at 135 Bishopsgate, London, EC2M 3TP, UK.
- 3.3 The ICAP Providers operating in the UK are authorised and regulated by the Financial Conduct Authority located at 12 Endeavour Square, London E20 1JN.

### 4. COMMUNICATIONS

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

### 5. CLIENT CATEGORISATION

- 5.1 For the purpose of the FCA Rules and based on the information available to us, we have categorised you as either a '**Professional Client**' or an '**Eligible Counterparty**' and will have notified you of this in a separate notice (the **Client Categorisation Notice**). You shall notify us immediately if, at any point, you cease to fall, within such definition and you are responsible for notifying us of any change that could affect your categorisation.



- 5.2 You are entitled to request a different client categorisation. If you request categorisation as an Eligible Counterparty and we agree to such categorisation, you will lose the protection afforded by certain of the FCA Rules, including:
- (i) the requirement for us to act in accordance with your best interests;
  - (ii) the restriction on the payment or receipt by us of any inducements;
  - (iii) the obligation on us to achieve Best Execution in respect of your orders;
  - (iv) the requirement to implement procedures and arrangements which provide for the prompt, fair and expeditious execution of your orders; and
  - (v) when we offer an investment service together with another service or product as part of a package or as a condition for the same agreement or package, the requirements for us to inform you whether it is possible to buy the different components separately.
- 5.3 If you request categorisation as a retail client we will not be able to deal with you.
- 5.4 Until we receive any request from you pursuant to Clause 5.2, we shall deal with you on the basis of our original categorisation as set out in the Client Categorisation Notice.
- 5.5 Unless we otherwise notify you in writing and subject to Clause 5.6, we shall treat you alone as our client for the purposes of the FCA Rules and you will be liable as such. Subject to such notification to the contrary, you agree that no other person (whether disclosed to us or not) shall be our client nor have any rights hereunder, unless we expressly agree otherwise.
- 5.6 Unless otherwise indicated in writing to us, we shall assume that there are no restrictions to the type of transaction we may enter into with you or the markets upon which transactions may be effected.

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

- 6.1 If, at any time, we have any reason to believe that you (or where you are acting on behalf of an Underlying Client, your Underlying Client) may be unable or unwilling to meet any liabilities which you (or your Underlying Client) have incurred to us or which we may have incurred on your (or your Underlying Client's) behalf or to comply with any other obligations under these Terms, we shall be entitled (and are irrevocably authorised by you) to take all or any of the following actions without prior notice to you:
- (i) sell any investments bought on your (or your Underlying Client's) behalf but for which you have not paid on or before the relevant settlement day;
  - (ii) close or rescind open positions on your account, including in respect of your Underlying Client, if applicable. We may do so, for example, if any cash or investments have not been delivered by you on or before the relevant settlement day; and
  - (iii) take any other steps (whether or not similar to the above) we may consider to be necessary to meet any obligations which you have to comply with under these Terms or otherwise to protect our position.

6.2 Any costs or losses incurred by us in effecting any or all of Clause 6.1 (i), (ii) or (iii) will be paid by you to us.

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

## **7. FEES/CHARGES**

7.1 Unless otherwise agreed, you will be responsible for our charges, which will be levied in accordance with our rates in effect at the time the charges are incurred or as otherwise notified to you (including those relating to holding custody investments), verbally or in writing in good time prior to dealing. Any alteration to these charges will be notified to you at or before the time of the change. Details of all relevant charges (including any access or installation charges for Electronic Broking Services) will be separately notified to you. Without prejudice to these obligations, you agree to the fullest extent permissible under Applicable Law to a limited application of the detailed information requirements on costs and associated charges and consent to us providing you information under this Clause 7.1 on such basis.

7.2 Where required by Applicable Law, the information under Clause 7.1 will provide for separate evidence of costs and charges where a Broking Service is packaged with another service or product or is provided as a condition for the same agreement or package.

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

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

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

8.1 We may, to the extent permitted by the FCA Rules, pay or receive fees, commissions or non-monetary benefits to and from intermediaries introducing business to us, associated companies or other third parties. We will provide separate disclosure of the essential arrangements relating to such fees, commissions or non-monetary benefits to you (where such disclosure is required by law or Applicable Regulation), unless we have categorised you as an Eligible Counterparty.

8.2 We will provide you with further details about our arrangements in relations to such fees, commissions and non-monetary benefits through [www.icap.com/regulatorydisclosures](http://www.icap.com/regulatorydisclosures) (our **Inducements Disclosures**). Where necessary under FCA Rules we will provide you with further details about such arrangements as they relate to particular services separately.

## **9. REPRESENTATION, WARRANTIES AND UNDERTAKINGS**

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

- (i) you have full power and authority, as well as all necessary licences, authorisations, consents and approvals to enter into these Terms and to instruct us to provide Broking Services to you, including to execute or arrange any transaction and to perform all your obligations hereunder;

- (ii) you have adequate resources to enter into and perform any such transaction which you decide to undertake;
- (iii) these Terms and any transactions entered into hereunder are your valid and binding obligations enforceable against you in accordance with these Terms, subject to bankruptcy or other applicable laws;
- (iv) by entering into these Terms and any transactions hereunder, you will not violate any applicable laws or regulations or any agreement or rule by which you are bound or by which any of your assets are affected;
- (v) all information you have given to us is true and complete and any changes to the information given to us will be promptly notified to us;
- (vi) you will ensure that all relevant investments or any documents of title and/or transfer forms and/or any relevant payments are delivered, paid or transferred to us or to whomever we may direct in sufficient time on or before the contractual settlement date to enable us to settle the transaction in accordance with market requirements;
- (vii) your use of the System will be in compliance with all applicable laws, rules and regulations and accepted trading rules, market/System customs and conventions and the Rulebook;
- (viii) each transaction you enter into is based on your own independent judgement and not on any recommendation or advice provided by us or the System;
- (ix) you (or where you are acting as agent on behalf of an Underlying Client, your Underlying Client) will have full responsibility for payment and collection of all taxes, costs and registrations fees incurred by or in connection with the Broking Services provided by us to you;
- (x) where you have access to a Trading Venue (including an ICAP operated MTF or OTF) or third country equivalent or Infrastructure via our membership, you acknowledge full understanding of and compliance at all times with the laws, rules and regulations that apply to the same, including the Rulebook; and
- (xi) no Event of Default with respect to you (or, where you are acting as agent on behalf of an Underlying Client, your Underlying Client) has occurred and is continuing and no such events or circumstance will occur as a result of entering into and performing obligations under these Terms.

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

- (i) the Underlying Client(s) have adequate resources over which you have authority, to enter into and perform any such transaction which you decide to undertake on their behalf;
- (ii) any transactions entered into under these Terms are valid and binding obligations enforceable against your Underlying Client(s) in accordance with these Terms, subject to bankruptcy or other applicable laws;

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

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

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

9.5 We represent and warrant that we have and will continue to have any applicable licences, authorisations, permits, consents and approvals required by the regulatory authorities to operate the System and perform its obligations hereunder and that we own or are licensed all Intellectual Property Rights in or to the System.

9.6 The representation and warranty contained in Clause 9.5 shall not apply in respect of liability that arises as a result of any modifications to the System without our prior written consent, use of the System in combination with any software, hardware or other materials not provided or authorised by us or information, technology or materials provided by you.

## **10. APPROPRIATENESS AND SUITABILITY**

10.1 When providing Broking Services to you, to the extent that ICAP is required by FCA Rules, ICAP will assess whether the Broking Service or product envisaged is appropriate for you. As an Eligible Counterparty or Professional Client, you are deemed to have the necessary knowledge and experience to understand the risks involved in any Broking Service and/or product provided or offered to you under these Terms. Therefore, the Broking Services that we provide to you under these Terms, including any bundle of services or products, will be deemed appropriate for you when we are required by the FCA Rules to assess appropriateness for you.

- 10.2 For the avoidance of doubt, ICAP is not required to assess the suitability of any Broking Service provided or offered to you under these Terms, unless we are providing investment advice to you, and you will therefore not benefit from the protection of FCA's rules on assessing suitability.

## **11. CONFLICT OF INTERESTS**

- 11.1 Situations can arise where our interests, or those of our staff, conflict with your interests or where your interests compete with those of our other clients. In accordance with the FCA Rules and our own Conflicts of Interest Policy (available on request or on our website [www.icap.com/regulatorydisclosures/conflicts](http://www.icap.com/regulatorydisclosures/conflicts) ), we have in place arrangements to manage conflicts of interest that arise between ourselves, or those of our staff, and our clients and between our different clients and therefore ensure that risks of damage to your interests will be prevented.

- 11.2 Where we do not consider that the arrangements under our Conflicts of Interest Policy are sufficient to ensure with reasonable confidence that risks adversely affecting your interests will be prevented, we will inform you of the nature of the conflict and the steps taken to mitigate those risks so that you can decide how to proceed.

- 11.3 Your attention is drawn to the fact that when we enter into or arrange a transaction for you (including through an ICAP MTF or OTF) we, an associated company or some other person connected with us may have an interest, relationship or arrangement that is material and potentially conflicting with the transactions, investments or service that we provide to you. This could happen when:

- (i) we enter into or arrange a transaction for you and:
- (b) we or one of our associated companies could for example be matching your transaction with that of another client by acting on his behalf as well as yours; or
- (c) one of our associated companies could be dealing as principal for its own account by selling the investment concerned to you or buying it from you;
- (i) we, or an associate, issues research, an associate, may undertake or have undertaken own account transactions in the investment concerned or any related investment.

- 11.4 When we are not able to deal with a conflict of interest effectively we may in some circumstances be unable to provide you with the service you require and we shall not be obliged to disclose the reason why or any further information relating thereto.

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

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

- (i) sums to be paid in settlement of transactions;

- (ii) settlement of our fees, commissions or charges or any other amounts referred to in Clause 7 or any liabilities or costs incurred when exercising rights under Clause 6 or any other provision of these Terms;
- (iii) any interest payable to us; and
- (iv) payments to us pursuant to any indemnity.

12.2 Until you have paid or discharged in full all monies and liabilities owed to us (or any other TP ICAP Group Company) any monies from time to time outstanding to the credit of any of your accounts with us (or any other TP ICAP Group Company) shall not be due and payable although we may in our reasonable discretion make payments to you from such accounts, or otherwise exercise our rights of set off and/or combination and/or consolidation.

12.3 Where you are acting under these Terms as agent on behalf of one or more Underlying Clients, we will be entitled to exercise our rights under this Clause 12 to set off the assets or retain funds from one of your Underlying Clients only against the debts owed by that particular Underlying Client and any reference to 'you' in this Clause 12 will be replaced by a reference to 'the Underlying Client'.

### **13. NETTING**

13.1 Accounts: We will maintain accounts to record your transactions, positions, exposures, balances, debits and credits with us, and with respect to any and all transactions executed hereunder and our dealings with you. Without prejudice to our rights under these Terms and the remaining provisions of this Clause 13, we shall have the right in our sole discretion at any time without notice to you, to net, set-off, combine or consolidate all or any of your accounts with us (or any other TP ICAP Group Company), or any such accounts of your Affiliates, in such manner as we determine, subject to Applicable Regulations.

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

(i) you (if the relevant aggregate amount due from you and your Affiliates) is greater than the relevant aggregate amount due from us (and any other TP ICAP Group Company); or

(ii) us (if the relevant aggregate amount due from you and any of your Affiliates is less than the relevant aggregate amount due from us and any other TP ICAP Group Company),

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

- 13.3 No Set Off By You: You (or your Affiliates) shall have no right to set-off or net any obligations owed to you (or your Affiliates) by us (or any other TP ICAP Group Company), against obligations owed to us (or any other TP ICAP Group Company) by you (or your Affiliates).
- 13.4 Consequences of an Event of Default: On the occurrence of an Event of Default as set out in Clause 14, we may exercise our rights under sub-clauses 13.7 to 13.11 below, except that, if so specified by us by notice to you or in our communications with you, in the case of the occurrence of any Event of Default specified in Clause 13.1(iv) of the definition of Events of Default (a "Bankruptcy Default"), the automatic termination provisions of sub-clause 7 below shall apply ("Automatic Early Termination").

Liquidation Date: Subject to the following sub-clause, at any time following the occurrence of an Event of Default, we may, by notice to you, specify a date (the "Liquidation Date") for the termination and liquidation of all Netting Transactions in accordance with this clause. If a Liquidation Date is so designated or occurs, then notwithstanding any terms in a Relevant Agreement to the contrary, a notice designating the Liquidation Date as an Early Termination Date shall be deemed to have simultaneously been served or an Early Termination Date to have automatically simultaneously occurred on the Liquidation Date under the other Relevant Agreement(s) (and the occurrence or deemed occurrence of each such Early Termination Date under a Relevant Agreement shall occur automatically and any acceleration or termination notice requirements or other conditions to the occurrence of the Early Termination Date under a Relevant Agreement shall be deemed to have been satisfied).

For the purposes of this sub-clause:

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

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

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

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

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

- 13.5 Automatic termination: Where Automatic Early Termination under Clause 13.5 applies, the date of the occurrence of any Bankruptcy Default shall automatically constitute a Liquidation Date in respect of all Netting Transactions, without the need for any notice by us and the provisions of the following sub-clause shall then apply.
- 13.6 Calculation of Liquidation Amount: Upon the occurrence of a Liquidation Date:
- (i) no further payments or deliveries shall be required under any Netting Transactions which would, but for this clause, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount;
  - (ii) the Early Termination Amount due following the occurrence of an Early Termination Date in respect of each Relevant Agreement shall be calculated in accordance with the terms of the applicable Relevant Agreement, but notwithstanding anything to the contrary in either Relevant Agreement, each Early Termination Amount due under a Relevant Agreement shall fall due on the Liquidation Date and be applied in accordance with this clause (where “Early Termination Amount” means, in respect of a Relevant Agreement and following the occurrence (or deemed occurrence) of an Early Termination Date under that Relevant Agreement, the termination amount, settlement amount, cancellation amount or such other amount that becomes payable or repayable under, or other amount calculated in accordance with, such Relevant Agreement in respect of such Early Termination Date, together with (but without duplication) any accrued but unpaid amounts payable by one party to the other prior to the occurrence of such Early Termination Date under such Relevant Agreement and as determined by the party required to make the relevant calculations in respect of the Early Termination Amount in accordance with the provisions of such Relevant Agreement);
  - (iii) we shall (on, or as soon as reasonably practicable after, the Liquidation Date) determine (discounting if appropriate), in respect of each Netting Transaction, the amounts due between the parties in respect of such Netting Transactions on the Liquidation Date, including (where applicable) the total cost, loss or, as the case may be, gain to us, in each case converted (if



necessary) into the currency specified by us or otherwise in writing or, failing any such specification, the lawful Currency of the United Kingdom (the "Base Currency") (and, if appropriate, including any loss of bargain, cost of funding, the face amount of any deposits, or, without duplication, cost, loss or, as the case may be, gain as a result of the termination, liquidation, obtaining, performing or re-establishing of any related hedging, market or trading position (which may for the avoidance of doubt include any losses or gains in respect of internal transactions and arrangements, buy-ins, margin requirements, exchange requirements for cleared transactions, or market risk on derivatives or other open positions) as a result of the termination, pursuant to these Terms, of each payment or delivery which would otherwise have been required to be made under such Netting Transaction (assuming satisfaction of each applicable condition precedent and having due regard, if appropriate, to such market quotations published on, or official settlement prices set by the relevant market as may be available on, or immediately preceding, the date of calculation). Subject to Applicable Regulations, the determination of any such costs, losses or, as the case may be, gains in respect of the Netting Transactions shall include any such Netting Transactions entered into by your Affiliates and us and any other TP ICAP Group Company, together with any such Netting Transactions entered by any other TP ICAP Group Company with you and your Affiliates; and

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

- 13.7 Payer: If the Liquidation Amount determined pursuant to this clause is a positive amount, you shall pay it to us and if it is a negative amount, we shall pay it to you, in each case in accordance with sub-clause 13.9 below. We shall notify you of the Liquidation Amount, and by whom it is payable, as soon as reasonably practicable after the calculation of such amount (the "Liquidation Amount Notice").
- 13.8 Payment: The Liquidation Amount shall be paid in the Base Currency by the close of business on the business day following the completion of the termination and liquidation under this clause (converted as required by applicable law into any other currency, any costs of such conversion to be borne by you, and (if applicable) deducted from any payment due to you) and delivery of the Liquidation Amount Notice. Any Liquidation Amount not paid on the due date shall be treated as an unpaid amount and bear interest, at the average rate at which overnight deposits in the currency of such payment are offered by major banks in the London interbank market as of 11.00 am (London time) (or, if no such rate is available, at such reasonable rate as we may select) plus 1% per annum for each day for which such amount remains unpaid.
- 13.9 Base Currency: For the purposes of any calculation hereunder, we may convert amounts denominated in any other currency into the Base Currency at such rate prevailing at the time of the calculation as we shall reasonably select.
- 13.10 Payments: Unless a Liquidation Date has occurred or has been effectively set (in which event, payments shall become due in accordance with sub-clause 13.8 above), we shall not be obliged to make any payment or delivery scheduled to be made by us to you for as long as an Event of

Default or any event which may become (with the passage of time, the giving of notice, the making of any determination hereunder, or any combination thereof) an Event of Default with respect to you has occurred and is continuing.

- 13.11 Additional rights: Our rights under this clause shall be in addition to, and not in limitation or exclusion of, any other rights which we may have (whether by agreement, operation of law or otherwise). Any obligation to pay the Liquidation Amount shall be subject to our rights of set-off under Clause 12. Without prejudice to the determination of the Liquidation Amount due following the Liquidation Date, if as a result of termination of a transaction we (or any other TP ICAP Group Company) incur any loss or expense in entering into replacement transactions or in otherwise hedging our exposures arising in connection with a transaction so terminating, you shall be required to pay to us the amount determined by us in good faith and without double counting of the Liquidation Amount to be equal to the loss or expense incurred in connection with such replacement transactions or hedging (including all fees, costs and other expenses).
- 13.12 Single agreement: These terms, the particular terms applicable to each Netting Transaction, and all amendments to any of them shall together constitute a single agreement between us. We both acknowledge that all Netting Transactions entered into on or after the date these Terms take effect are entered into in reliance upon the fact that these Terms and all such terms constitute a single agreement between us.
- 13.13 Infrastructure default rules: The provisions of this clause shall not be applicable to any transaction to the extent that action which conflicts with or overrides the provisions of these Terms has been started in relation to that transaction by a relevant Infrastructure under Applicable Regulations and is continuing.
- 13.14 Underlying Clients: Notwithstanding any other provision in these Terms, if you are acting on behalf of an Underlying Client and an Event of Default occurs in respect of an Underlying Client, our rights under this clause shall be limited to the relevant account(s), positions and transactions of such Underlying Client.

#### **14. EVENTS OF DEFAULT**

- 14.1 An Event of Default is deemed to have occurred if any of the following happens:
- (i) you (or, where you are acting as agent on behalf of an Underlying Client, your Underlying Client) fail to make any payment due to us or any other TP ICAP Group Company or to deliver any securities due to us or any other TP ICAP Group Company (or to our agents); or
  - (ii) you (or, where you are acting as agent on behalf of an Underlying Client, your Underlying Client) fail to perform any other obligation owed to us or any other TP ICAP Group Company under these Terms; or
  - (iii) any representation or warranty you make to us or any other TP ICAP Group Company proves false or misleading either under these Terms or under any other agreement between you and us or any other TP ICAP Group Company; or
  - (iv) you (or, where you are acting as agent on behalf of an Underlying Client, your Underlying Client) become unable to pay your debts as they fall due or become insolvent or bankrupt or become the subject of any insolvency, bankruptcy, administration or similar proceedings; or

- (v) the occurrence of an event of default, termination event or other similar event (however so described) under any these Terms or any other agreement entered into between us and you (or, where you are acting as agent on behalf of an Underlying Client(s), your Underlying Client(s)).
- 14.2 Where you act as agent on behalf of one or more Underlying Clients, any Event of Default in relation to you shall constitute an Event of Default in relation to each of your Underlying Clients (each for the purpose of this Clause 13, a **Relevant Underlying Client**), except where that Underlying Client:
- (i) is not otherwise subject itself to an Event of Default; and
  - (ii) has requested, and we have agreed, that we continue to provide Broking Services to that Underlying Client either on the basis that the Underlying Client will be our client for all purposes or another investment manager or agent appointed on behalf of that Underlying Client will be our client for the purposes of the Applicable Regulations and the relevant parties have entered into an appropriate agreement with us.
- 14.3 In such circumstances, we shall continue to provide Broking Services to that Underlying Client on these Terms as if you were not a party and all references to you were to the Underlying Client or its agent (as applicable).
- 14.4 Any Event of Default in relation to an Underlying Client on whose behalf you are acting as agent shall constitute an Event of Default in relation to that Underlying Client alone and not to you or any other Underlying Client on whose behalf you act under these Terms.
- 14.5 Following the occurrence of an Event of Default, we shall be entitled, without prior notice to you, to take any or all of the following actions and in all cases you will immediately indemnify us on demand for any losses, costs or expenses which we suffer or incur as a result:
- (i) to treat any or all outstanding transactions between you (or, where applicable, the Relevant Underlying Client) and us or any other TP ICAP Group Company as having been cancelled or terminated;
  - (ii) to sell any or all of the investments or other property which we or any other TP ICAP Group Company or our associated companies are holding or are entitled to receive on your behalf (or on behalf of your Underlying Client) and to apply the proceeds in or towards satisfaction of any obligation or liability you (or, where applicable, the Relevant Underlying Client) may have to us or any other TP ICAP Group Company or our associated companies (including any contingent or prospective liability);
  - (iii) to set off (as described in Clause 12) any obligation we or any other TP ICAP Group Company owe to you (or, where applicable, the Relevant Underlying Client), and/or to apply any cash we or any other TP ICAP Group Company hold for your (or, where applicable, the Relevant Underlying Client's) account, against any obligation or liability you (or, where applicable, the Relevant Underlying Client) may have to us any other TP ICAP Group Company (including any contingent or prospective liability);
  - (iv) to close out, replace or reverse any transaction, enter into any other transaction or take, or refrain from taking, such other action at such time or times and in such manner as, at our sole discretion, we or any other TP ICAP Group Company consider necessary or appropriate to cover, reduce or eliminate our or the other TP ICAP Group Company's loss or liability under or in respect of any contracts, positions or commitments; or

- (v) to terminate these Terms.

## 15. LIABILITY

- 15.1 We shall not be liable for any loss of opportunity whereby the value of your account may have been increased nor for any reduction in the value of your account as a result of market movements. We shall not be liable for the taxation consequences of any transaction nor shall we be liable for taxation charges arising for any reason.
- 15.2 Neither we nor our directors, officers, employees, agents nor any other TP ICAP Group Company shall be under any liability whatsoever for any loss or damage sustained by you as a result of or in connection with the services to which these Terms apply and the provisions contained in these Terms except insofar as, and then only to the extent that, such loss or damage is caused by gross negligence or wilful default, or fraud, or any failure to comply with the FCA Rules or the provisions of the Financial Services and Markets Act 2000 (**FSMA**).
- 15.3 Neither we nor our directors, officers, employees, agents nor any other TP ICAP Group Company shall be liable for any loss arising from any act or omission of any agent or third party who performs services pursuant to these Terms except to the extent that such loss is caused by wilful default, fraud or negligence in the selection of such agents or third parties on the part of us or our directors, officers, employees, agents or any other TP ICAP Group Company.
- 15.4 Nothing in these Terms will:
  - (i) exclude or restrict any obligation we may have to you, nor any liability we may incur to you, in respect of a breach by us of the FCA Rules;
  - (ii) exclude or restrict any liability we may have in relation to the death or personal injury of any person caused by our negligence or for fraudulent misstatement; or
  - (iii) exclude or restrict to an extent prohibited by law any duty or liability we may have to you.
- 15.5 Neither we, nor any member of the TP ICAP group nor our software providers, agents or subcontractors shall be liable to you for any loss of profit, data, business or goodwill or for any indirect or consequential loss or damage arising in connection with the System or these Terms (in each case whether arising from gross negligence, breach of contract, indemnity or otherwise) even if we have been notified of the possibility of that damage or loss.
- 15.6 Neither we nor any member of the TP ICAP group nor our software providers, agents or subcontractors shall be liable for:
  - (i) the capacity, reliability, availability, accuracy or performance of the System or the acts or omissions of other Users;
  - (ii) the commercial advisability of any order, revocation (of an order) or transaction;
  - (iii) the reliability or accuracy of any information supplied by any party to the agreement in relation to any order, revocation or transaction;
  - (iv) any other obligation or liability arising in relation to an order, revocation or transaction;

- (v) for the capacity, reliability or performance of you or any other User with regard to any order, revocation or transaction.

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

## 16. INDEMNITY

16.1 We shall defend, indemnify and hold you (including your officers, directors, employees and agents) harmless from and against all losses, liabilities, claims and damages (collectively, **Losses**), as a result of any third-party claim or proceeding of any nature (**Proceeding**) against you determining that the System, or the use thereof by you (or your officers, directors, employees and agents) as authorised hereunder, violates any Intellectual Property Rights of any third party provided that such Losses do not result from (i) any fraud, negligence or wilful misconduct on your (or your officers', directors', employees' and agents') part; (ii) violation of applicable laws and regulations by you (or your officers, directors, employees and agents); (iii) any breach by you of these Terms; or any misuse of any Broking Service or System by you.

16.2 You irrevocably and unconditionally agree to indemnify us, our directors, officers, employees, agents and any other TP ICAP Group Company on demand and keep us fully and effectively indemnified (whether before or after termination of these Terms) against:

- (i) any claims, liabilities or expenses of any kind which may be incurred by us as a direct or indirect result of our acting under these Terms; and
- (ii) from and against any Losses to which we may become subject, insofar as such Losses arise out of or in connection with, or are based upon any Proceeding against us that arises out of or relates to (i) any access, use, or misuse of the System by you or by any person accessing the System using your access details; or (ii) your failure to settle or otherwise perform or comply with the terms of any transaction.

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

16.4 If a Proceeding is commenced against a party entitled to indemnification under this Clause 16 (**Indemnified Party**), notice shall be given to the party obligated to provide such indemnification (**Indemnifying Party**) as soon as reasonably practicable. The Indemnifying Party shall be entitled to take control of the Proceeding and any settlement of it and the Indemnified Party shall give the Indemnifying Party, at the Indemnifying Party's reasonable cost, all reasonable assistance in relation to the Proceeding

## 17. INTELLECTUAL PROPERTY

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

inure solely for the benefit of us and/or our licensors (other than yourself) and/or their respective successors.

- 17.2 You acknowledge that the Intellectual Property Rights in the System and the Information are a valuable asset of ours and/or our licensors (other than yourself) and/or their respective successors and you shall protect and safeguard the Intellectual Property Rights in and to the System and the Information by using the same degree of care that you generally use to protect your own Intellectual Property Rights, business assets and confidential information, but in any event with no less than a reasonable degree of care.
- 17.3 You shall promptly notify us upon becoming aware of any infringement or misappropriation of any Intellectual Property Rights of any ICAP Group Company or its licensors. You shall comply with all reasonable requests made by us (at our reasonable expense) to protect and enforce the Intellectual Property Rights of any ICAP Group Company or its licensors in the System and the Information.
- 17.4 You acknowledge and agree that we shall be permitted, and you grant us a non-exclusive, perpetual, transferable, world-wide and royalty-free licence (without warranties of any kind, express or implied), to use, distribute, sub-licence, disclose and sell for the benefit of the TP ICAP group any data provided by yourself (including via submission to the System) and all price, volume and other information regarding Participant's transactions (collectively **Participant Information**) provided that except as otherwise permitted hereunder, we may disclose Participant Information on an aggregated basis only and without directly or indirectly identifying you as the specific source of such information (it being understood and agreed that we may disclose to any person the list of our clients (including the Users of any System) (from time to time). Subject to the foregoing licence, between us, you retain all ownership and other rights with respect to the Participant Information.
- 17.5 You shall not sell, lease, license, transfer, provide or otherwise make available to any third party any form of access to or use of (i) the System; or (ii) to any of the Information. You shall permit access to the Information only by Users for the sole purposes of entering into transactions via the System or performing related support functions.
- 17.6 You agree that you shall not alter, enhance, make derivative works of, download to computer, decompile, disassemble or reverse engineer all or any part of the System or the Information except solely to the extent (i) expressly required by applicable law or permitted by these Terms; or (ii) necessary in direct connection with transaction-related support functions.
- 17.7 You acknowledge and agree that any Information you receive from us is to be used by you solely for the purpose of trading. If at any time you wish to use this data for any other purpose, you must seek our express consent and obtain a specific licence from us to do so.

## **18. COMPLAINTS**

- 18.1 In relation to business conducted with us, we have internal procedures for handling complaints fairly and promptly. If you have a complaint about us you should raise it in the first instance with your contact at ICAP. We will endeavour to resolve it informally. If however you are not satisfied with the response (or if you prefer not to raise the matter with a particular individual) you may raise the matter with our Head of Compliance EMEA.
- 18.2 If you wish to make a formal complaint this should be made in writing and addressed to the Head of Compliance EMEA at the relevant ICAP Provider's registered address set out in Clause 3.2.

- 18.3 Your formal complaint will then be investigated internally by employees who were not involved with the subject matter of your complaint and have been trained in complaints handling. Further details of the complaints-handling process, including information about our complaints management policy and when and how you may be able to refer your complaint to the Financial Ombudsman Service, will be provided to you on request or otherwise when acknowledging your complaint.

## **19. FORCE MAJEURE**

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

## **20. VARIATION**

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

- 20.2 All such modifications, amendments or additions shall have immediate effect.

## **21. TERMINATION**

- 21.1 You may terminate these Terms at any time by written notice to us subject to your having no outstanding obligation to us. We may terminate these Terms at any time by written notice to you.

- 21.2 Termination shall not affect your obligation to settle transactions effected prior to the date of termination and shall not prejudice any right or obligation that may already have arisen. We shall also continue to have the right to disclose information where required to a UK or overseas regulator.

## **22. SUPPLY OF DATA**

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

- (i) we shall send or make available the Data to you and/or your Affiliates by such method(s) from time to time and at such times as we in our sole discretion decide or as we from time to time otherwise agree with you and/or your Affiliates;
- (ii) you acknowledge that the Data is for use by Eligible Counterparties and Professional Clients only and it is not intended for Retail Clients as defined by the FCA Rules;

- (iii) save as provided in (ix) below, you undertake to keep the Data confidential and not to disclose the Data or any part of it to any person (and 'person' shall include without limitation any individual, partnership, company or corporation), except that you may disclose the Data to your officers and employees and those of your Affiliates as applicable provided in each case that (i) use of the Data is for the purpose of trading only (ii) you inform them of the confidential nature of the Data; and (iii) you procure that they comply with these Terms as if they were a party to these Terms;
- (iv) you and your Affiliates undertake not to use the Data or permit or suffer the same to be used for any purpose other than your or your Affiliates' internal use for the purpose of trading. You undertake not to, and shall procure that your Affiliates shall not, re-distribute the Data to parts of your business not receiving Broking Services, sell, transfer or sub-licence the Data to any third party or permit or suffer the same to be sold, transferred or sub-licensed;
- (v) you undertake not to, and shall procure that your Affiliates shall not, disclose to any person the fact that we are supplying the Data to you and/or your Affiliates without our prior written consent;
- (vi) you agree that the Data belongs to, and is the intellectual property of, us, our Affiliates and/or our and their respective licensors and that any Data you receive from us is to be used by you solely for the purpose of trading. If at any time you wish to use this Data for any other purpose, you must seek our express consent and obtain a specific licence from us to do so;
- (vii) you acknowledge that the Data is not intended to be relied upon as authoritative or taken in substitution for the exercise of judgement and that it is not, and should not be construed as, an offer, bid or solicitation in relation to any financial instrument. You further acknowledge that the Data is obtained from sources believed to be reliable and may also be based on opinions, estimates, projections and extrapolations constituting our judgement (including that of our relevant Affiliates and/or their respective licensors). We and our Affiliates do not guarantee, and expressly disclaim any liability for, and make no representations or warranties, whether express or implied, as to the Data's currency, accuracy, timeliness, completeness or fitness for any particular purpose. We and our Affiliates accept no liability whatsoever for any loss (including, but not limited to, any direct, indirect or consequential loss, whether or not such loss is foreseeable and whether or not we have been appraised of the use to which the Data will be put) howsoever arising from the Data's use, the timeliness or its delivery or its failure to be delivered at all;
- (viii) you agree that damages would not be adequate remedy for any breach of these Terms and that we may be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of these Terms. We and each of our relevant Affiliates shall be entitled to enforce these Terms against you and/or your Affiliates;
- (ix) your obligations under paragraph (iii) (and those of your Affiliates) shall not apply to the extent that disclosure of the Data is required to be made as a result of a subpoena, requirement or official request from any competent judicial, administrative, legislative or regulatory or self-regulatory authority or body; provided, however, that unless prohibited by court order you shall provide advance notice to us of the intended disclosure of the Data in order to allow us an opportunity to object to the disclosure of the Data; and



- (x) For the purpose of this Clause 22, 'you' shall include a reference to yourself as well as all or any of your Affiliates who directly or indirectly receive Data from time to time (on whose behalf you shall be deemed to contract).

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

### **23. CONFIDENTIALITY**

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

23.2 For the purposes of this Clause 23, '**Confidential Information**' shall mean all non-public information that is stated to be or that can reasonably be expected to be of a confidential or trade secret nature in any form obtained by a party from the other party in the performance of these Terms including, but not limited to, any processes, financial information or data, proprietary data, information or documents and these Terms, all information regarding the System and the fees or commissions payable by the Participant hereunder save to the extent that such information:

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

23.3 Without prejudice to Clause 22.1, each party may use or disclose Confidential Information where required to do so by reason of law or regulation provided that, where lawful and practical to do so, the disclosing party shall provide prior notice of such disclosure to the non-disclosing party as soon as practicable in order to permit the non-disclosing party (where possible) to seek a protective order or take other appropriate action to safeguard the Confidential Information by appropriate legal means.

23.4 This Clause 22 shall survive termination or expiry of these Terms.

### **24. DATA PROTECTION**

24.1 In this Clause 23:

**Data Protection Laws** means:

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

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

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

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

## 25. E-COMMERCE

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

## 26. TIME OF THE ESSENCE

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

## 27. ASSIGNMENT

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

## 28. NOTICES

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

- 28.2 With the exception of dealing instructions to us (which must be communicated in accordance with Clause 35, if applicable) notices shall be deemed to have been served three (or, in the case of overseas clients, seven) business days after having been posted, or if sent by facsimile or other electronic means, one business day after transmission. A business day is any day when investment business is generally conducted in London or such other financial centre as is notified to us by you prior to the relevant transaction.

## **29. RIGHTS AND REMEDIES**

- 29.1 The rights and remedies provided under these Terms shall be cumulative and not exclusive of those provided by law. We shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to you. We may waive any right, power or privilege under these Terms only by (and to the extent of) an express statement in writing. No failure by us to exercise or delay by us in exercising any of our rights under these Terms or otherwise shall operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy shall prevent further exercise of that right or remedy or the exercise of another right or remedy.

## **30. ILLEGALITY**

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

## **31. ENTIRE AGREEMENT**

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

## **32. RIGHTS OF THIRD PARTY**

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

## **33. GOVERNING LAW AND JURISDICTION**

- 33.1 The provisions of these Terms shall be governed by the laws of England and Wales.
- 33.2 You agree that the courts of England are to have exclusive jurisdiction to settle any disputes, which may arise out of or in connection with these Terms. Nothing contained in this Clause 33 shall limit our right to take proceedings against you in any other court of competent jurisdiction.

## **PART THREE – BROKING SERVICES**

### **34. BROKING SERVICES**

34.1 The services that we provide to you are made available to you in accordance with Applicable Law and are subject to the limitations set out under Clause 34.2.

An ICAP Provider in its sole discretion and subject to these Terms may provide Broking Services to you.

34.2 Limitations on the scope of our Broking Services:

- (i) Trading Venue Services are subject to the applicable Rulebook and in the event of conflict between these Terms and the applicable Rulebook, the applicable Rulebook shall prevail to the extent of the conflict;
- (ii) Where so indicated in the applicable Rulebook, you agree and give your consent to us executing your orders on an ICAP OTF as a Matched Principal Transaction and each time you place an order or submit a trading interest to an ICAP OTF you are deemed to consent for the ICAP OTF to execute such order or trading interest as a Matched Principal Transaction;
- (iii) except in circumstances where we expressly agree otherwise, we shall not provide you with any investment advice (as such term is defined in FCA Rules) under these Terms;
- (iv) except in circumstances where we expressly agree otherwise and in such case further terms and conditions shall apply, we shall not act as custodian of your assets held in connection with the Broking Services and the provisions of the FCA's Client Assets Sourcebook relating to safe custody assets will not apply;
- (v) we do not provide any representations as to the suitability in relation to any transaction (including any order placed or trading interest submitted in relation to these). This means that you are responsible for obtaining any advice you require to determine whether you should enter into any transaction;
- (vi) you are responsible for obtaining any legal, accounting, financial or tax advice you may need in determining whether any Broking Service or Financial Instruments is suitable for your needs;
- (vii) any information provided to you in relation to these Terms will be for your information only and is not in any way to be relied upon as financial or investment advice as to the suitability of placing an order or submitting a trading interest or entering into any transaction;
- (viii) insofar as is permissible under the Applicable Regulations and FCA Rules, the ICAP Provider (unless otherwise agreed with you in writing) does not owe you any fiduciary duty or any similar obligation under these Terms; and
- (ix) you agree that even though we have entered into these Terms, an ICAP Provider may refrain from providing any of the Broking Services until all of our internal procedures for establishing accounts have been completed and the necessary internal approvals have been obtained.

34.3 Risk warnings:

- (i) we will provide you with a notice of risks related to our Broking Services and Financial Instruments; and
- (ii) this information will be made available at [www.icap.com/regulatorydisclosures](http://www.icap.com/regulatorydisclosures) or such other website as notified to you by us. You should read the notice carefully.

**35. INSTRUCTIONS**

- 35.1 You may communicate your dealing instructions to us verbally or in writing (which will include by letter, fax or electronically). If you give us instructions in writing, such instructions must be received by us during normal business hours allowing sufficient time for us to act upon them. Any instruction is transmitted at your own risk. We shall not be liable for any loss suffered on account of any instruction not being received by us.
- 35.2 In relation to exchange rules regarding pre-execution communications (including but not limited to ICE Futures Europe Rule G4, ICE Futures US Rule 4.02 (k) & CME Group Rule 539), we are required to obtain consent from clients in order to engage in pre-execution communications. By providing us with an order, you are deemed to have provided your consent for us to engage in pre-execution communications on your behalf, in accordance with the rules, as amended from time to time.
- 35.3 We shall be entitled to rely on and treat as binding upon you any order which we believe to be from you or from your agent(s) (however received) which we have accepted in good faith. No liability shall attach to us if an order which has been processed is subsequently discovered to have been given in error or without your authority.
- 35.4 You agree that acceptance of an instruction to withdraw or amend an existing instruction is always subject to our receiving the instruction in time for the appropriate action to be taken and subject to the applicable Rulebook.
- 35.5 We shall be entitled to rely on and treat as binding upon you any instructions which we believe to be from you or from your agent(s) (however received) which we have accepted in good faith. No liability shall attach to us if an instruction which we have accepted and acted upon bona fide is subsequently discovered to have been given forged, falsified or amended without your authority.
- 35.6 Where these Terms are addressed to more than one person any instruction, notice, demand, acknowledgement or request to be given by or to you under these Terms may be given by or to any one of you. We need not enquire as to the authority of any person we believe to be authorised to give instructions on your behalf.
- 35.7 You agree that all telephone conversations and any other communication across any media, which we may have with you (or any third party), will be monitored and recorded. As required by FCA Rules, ICAP will always record telephone conversations and electronic communications that result in transactions or that may result in transactions in Financial Instruments. Where ICAP is required to record communications under FCA Rules, a copy of the recording of the communications will be made available to you on request for a period of five years from the date of the communication. The FCA may request that we retain certain or specific records for longer than five years and, if it does, the records retained as a result of such a FCA request will be available to you for a period of up to seven years. All recordings and other records shall be and remain our sole property. We may use such recordings as evidence in the event of a dispute

and such recordings will be accepted by you as conclusive evidence of instructions received from you.

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

## 36. EXECUTION OF ORDERS

- 36.1 If you are a Professional Client, the FCA Rules on best execution will apply to you. In executing orders in certain Financial Instruments on your behalf, the ICAP Provider is under a regulatory duty to seek to take all sufficient steps to obtain the best possible result for you, taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order. This is known as '**Best Execution**'. For the avoidance of doubt, Best Execution obligations apply when the ICAP Provider executes an order on your behalf in the capacity of an ICAP OTF. ICAP owes no duties to you in respect of Best Execution, other than as set out in the FCA Rules, and any other duties are expressly excluded.
- 36.2 These Terms incorporate our Execution and Order Policy (**Execution Policy**), as amended from time to time. The current version of our Execution Policy are available on our website at [www.icap.com/regulatorydisclosures/orderexecution](http://www.icap.com/regulatorydisclosures/orderexecution). By agreeing to these Terms and by providing instructions to us, you confirm that you have read and agree and consent to the Execution Policy. We will notify you of any material changes to our Execution Policy but it is your responsibility to check for any other changes to our Execution Policy as published from time to time on our website. You are deemed to agree and consent to the Execution Policy as in effect from time to time each time you place an order or submit a trading interest.
- 36.3 The circumstances in which an ICAP Provider will not be executing orders on your behalf are set out in the Execution Policy.
- 36.4 When you give us a specific instruction for execution of your order, the Execution Policy will not apply and the ICAP Provider will execute your order in accordance with your instructions. You should be aware that providing specific instructions to an ICAP Provider for execution of your

order may prevent the ICAP Provider from taking steps that we have designed and implemented through the Execution Policy to achieve Best Execution.

36.5 Where necessary, we have separately sought your consent to execute your orders outside of a Trading Venue. Subject to having provided us with such consent, you agree that, whenever you place an order with us, an ICAP Provider shall be entitled in its absolute discretion and without reference to you, to select the medium for executing your order and any related transactions we enter into as a result of your order, including, for the avoidance of doubt, MTFs and OTFs (including ICAP MTFs and OTFs).

36.6 The Execution Policy does not apply if you have been categorised as an Eligible Counterparty.

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

### **37. AGGREGATION**

37.1 The Execution Policy sets out our order allocation policy and provides for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

37.2 Subject to Applicable Regulations and in accordance with our Execution Policy, an ICAP Provider may combine your order with its own orders, orders of persons connected with ICAP and orders of other clients. For Professional Clients, when doing so in relation to orders in Financial Instruments, the ICAP Provider must reasonably believe that it is unlikely that the aggregation will work to the overall disadvantage of the relevant clients. However, such aggregation may on some occasions operate to your advantage and on others to your disadvantage.

### **38. CLIENT LIMIT ORDERS**

38.1 Where you place with us a client limit order in shares which are admitted to trading on a Trading Venue and that order is not immediately executed under prevailing market conditions, you expressly instruct us to exercise discretion in determining whether or not to immediately publish such a limit order where otherwise we would be required to do so under FCA Rules.

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

39.1 Position limits and position management controls may be imposed by Applicable Regulations. In relation to the Brokerage Services that we provide to you under these Terms, we may also set out and communicate to you appropriate trading and position limits to mitigate and manage our own counterparty, liquidity, operational and other risks.

39.2 As required by Applicable Regulations, we may monitor your positions against such limits and you agree to provide us with access to applicable information, including but not limited to all relevant documentation about the size and purpose of a position or exposure entered into, information about the beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market.

39.3 In order to ensure compliance with Applicable Regulations with regard to position limits and position management controls or trading or position limits set by us, we may require you to

limit, terminate or reduce the positions which you may have at any time and we may decline to execute an order, suspend your access to any Trading Venue or third country equivalent and/or Infrastructure, take action to close out any one or more transactions, or take any other appropriate action.

#### **40. CONFIRMATIONS**

40.1 Following execution of each transaction carried out pursuant to these Terms, we will promptly provide you with the essential information concerning the execution of that order. Unless provided to you by another person, we may also subsequently provide more detailed information regarding such transactions (a **Confirmation**). The way in which we provide information will depend on the Financial Instrument and the way in which it was transacted and we may agree or otherwise notify you in advance of how such information will be provided. On your request, we will supply information about the status of your order. If you are an Eligible Counterparty we may separately agree the content and timing of the information we provide, including with respect to Confirmations.

40.2 You will notify us immediately upon receipt if you are not in agreement with any Confirmation or other notification from us. In the absence of such immediate notification by you, the Confirmation or notification will (in the absence of manifest error) be binding on you.

#### **41. TRANSPARENCY**

41.1 ICAP or any Execution Venues accessed by ICAP on your behalf may have regulatory obligations in respect of any pre-trade or post-trade information relating to the execution of any transactions. Where an ICAP Provider executes an order with or for you it may make the relevant transaction information public or report such transaction information to a relevant government or regulatory authority in accordance with Applicable Regulations. You agree and acknowledge that ICAP may use this information for its own commercial purposes and you waive any duty of confidentiality attaching to the information we are obliged to disclose.

#### **42. SETTLEMENT**

42.1 Unless otherwise specifically agreed with you, we must act in accordance with the usual terms for settlement of the appropriate Trading Venue or third country equivalent or Infrastructure where applicable and/or market convention when providing our Broking Services.

42.2 Unless we expressly agree to the contrary, all amounts of every kind which are payable by you to us and vice versa in relation to the settlement of trades will be payable on delivery against payment basis.

42.3 We are not obliged to finalise (which includes to make any settlement or to delivery any investments) any Broking Service unless and until we (or our settlement agents) have received all necessary documents (including, for the avoidance of doubt settlement instructions) or cleared funds or instruments.

42.4 If, in any transaction, we deliver securities or pay money to you or to your order when you are obliged to pay money or deliver securities to us or to our order at that time or subsequently and, for whatever reason, your obligations are not performed simultaneously with or prior to our obligations, you shall hold on trust for us any such securities or money received from us until your own obligations to us are fully performed.



42.5 If you have not delivered the appropriate funds or securities to us on the due date for settlement, we reserve the right, as appropriate, to exercise a sell-out or buy-in of the relevant securities (as described in Clause 6) or acquire alternative securities by whatever means we determine in our absolute discretion. Where we do so, our obligation to deliver the securities to you; accept the securities from you or receive/ pay the consideration will cease. You shall be responsible for (and indemnify us against) any losses we incur arising out of your non-performance or any actions we take as a result thereof.

### **43. CLIENT MONEY**

43.1 When we hold Client Money on your behalf, we will do so in accordance with the FCA Client Money Rules. We will promptly place any Client Money received into an account or accounts (including a designated client fund account (as defined by the FCA Rules), the usage of which you consent by entering into these Terms) opened at a central bank, a credit institution within the EEA or a bank authorised by its local regulator outside of the EEA.

43.2 You agree that money will not be treated as Client Money in respect of delivery versus payment transactions that we settle for you through a commercial settlement system (including where we are a direct member or participant of such commercial settlement system or where we are sponsored by such member or direct participant) if:

(a) In respect of a purchase, we intend the money from you to be due to the firm within one business day following the fulfilment of your delivery obligation to us; or

(b) In respect of a sale, we intend the money in question to be due to you within one business day following the fulfilment of your delivery obligation to us.

43.3 On your instructions, we may pass Client Money received from you to a third party (e.g. a market, intermediate broker, OTC counterparty or Infrastructure), including a third party outside the United Kingdom, to hold or control in order to effect a transaction through or with that person or to satisfy your obligation to provide collateral in respect of a transaction. We have no responsibility for any acts or omissions of any third party to whom we pass Client Money received from you. The third party to whom we pass Client Money may hold it in an omnibus account and it may not be possible to separate it from our money, or the third party's money. In the event of the insolvency or any other analogous proceedings in relation to that third party, we will only have an unsecured claim against the third party on behalf of you and our other clients, and you will be exposed to the risk that the money received by us from the third party is insufficient to satisfy the claims of you and all other clients with claims in respect of the relevant account.

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

43.5 Interest will not be payable to you in respect of any Client Money which we hold for you (including, in particular, funds received in advance of the due date for settlement or representing dividends) unless specifically agreed between us.

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

- 43.7 You consent to us ceasing to treat any money held for you or on your behalf as Client Money where there has been no movement on your balance for a period of at least six years, notwithstanding any payments or receipts of charges, interest or similar items. Before doing this we will however write to you at your last known address in to return the balance to you and we undertake to make good any valid claims against any released balances even if we have ceased treating your money as Client Money. All steps taken by us, including those relating to steps to be taken for *de minimis* unclaimed client money, will be in accordance with the FCA Client Money Rules. After such time we may, in our sole discretion, decide to pay away to a registered charity of our choice any Client Money balances. In such circumstances, we (or one of our Affiliates) will unconditionally undertake to pay you a sum equal to the relevant Client Money balances paid away in the event that you seek to claim the Client Money balances.
- 43.8 Where any obligations owing to us from you are due and payable to us, we may cease to treat as Client Money so much of the money held on your behalf as equals the amount of those obligations in accordance with the Client Money Rules. You agree that we may apply that money in or towards satisfaction of all or part of those obligations due and payable to us. For the purposes of this Clause, any such obligations other than fees and commissions become immediately due and payable, without notice or demand by us, when incurred by you or on your behalf.
- 43.9 For the avoidance of doubt, the ICAP Providers listed in 3.2(ii), 3.2(v) and 3.2(vi) do not hold Client Money in the course of providing Broking Services, do not have permission from the FCA to hold Client Money, and Clauses 43.1 to 43.8 do not apply.

#### **44. SYSTEMS**

- 44.1 We shall make available to you those Electronic Broking Services which we have agreed to provide you from time to time.
- 44.2 By installing, accessing or in any way using any of the Systems, whether yourself or through your traders, employees or agents, you agree with us to be bound by these Terms and the applicable Rulebook in respect of that System.
- 44.3 We shall have the right to amend the provisions of any Rulebook from time to time. Changes will be notified before the effective date of such changes by way of a Market Notice, posted on the applicable website or by transmitting them electronically to your designated email addresses, provided that any amendment may be made effective immediately on notice to you where in our reasonable opinion, it is necessary to permit the System and/or us to comply with any applicable legal or regulatory requirement, applicable market convention or to facilitate the continued operation or use of the System or any part thereof. Your continued use of the System after receipt of such a notice shall constitute acceptance of such amendment by us.
- 44.4 We hereby grant to you, until such time as these Terms are terminated with immediate effect by either party giving written notice to the other, a revocable, non-exclusive, non-transferable licence to access and use the System in accordance with these Terms and the applicable Rulebook, for the sole purpose of (i) entering into transactions via the System; and (ii) receiving and transmitting information generated by or made available through the System from time to time.
- 44.5 We may impose pre-trade controls on order entry for all Financial Instruments Users may trade through the System, including price collars, maximum order values, maximum order volumes and maximum message limits and/or change limits on the amount, size and type of Investments that a User may trade through the System.

- 44.6 We shall provide the System to Users on such days and hours as we may establish and notify to Users from time to time (including in the Rulebook) and shall operate the System in accordance with these Terms, any applicable Rulebook, applicable market/System customs and conventions and otherwise as contemplated by the System.
- 44.7 We shall have sole discretion and control over, and the right to modify at any time, the System's functionality, configuration, appearance, content and the Products made available for trading via the System provided that any modification that requires amendment to the Rulebook will be notified by ICAP in accordance with Clause 44.3.
- 44.8 We shall have the right with or without notice (but giving as much notice as reasonably practicable) to suspend, limit or terminate any User's access to, the System or any part of the System or to decline to grant access in the event that, without limitation:
- (i) any User is not eligible for such access under the Rulebook; or
  - (ii) we, in our reasonable opinion, consider such action to be necessary to protect and preserve the security or integrity of the System, our rights in the System or other Users of the System; or
  - (iii) we suspect market or System abuse, misuse or non-use.
- 44.9 We shall have the right to stop, block or cancel any transaction on reasonable grounds and in accordance with applicable law and market convention including, without limitation, on any grounds set out in the Rulebook, any applicable error trade policy, manifest error, unauthorised use of any trading algorithm, or market or System abuse or misuse.
- 44.10 Prior to access to the System being granted, you must comply with any eligibility criteria set out in the Rulebook and any other reasonable request we may make in relation to the establishment of connectivity or System installation.
- 44.11 We shall have no duty to verify whether any information submitted to the System by any person using your valid access details was authorised by you and you will be solely responsible for all acts or omissions of any person using the System through your valid access methods and bound by any and all such bids, offers and other orders and commands and resultant transactions.
- 44.12 It is your responsibility to comply with any security measures and procedures for authentication requested by us from time to time and to ensure that only Users have access to the System. You will ensure that your access to the System is not used for any improper purpose. Each party shall maintain commercially available virus checking software to protect itself and the System from viruses.
- 44.13 You shall (i) comply with all reasonable instructions notified to you by us from time to time in relation to your access to and use of the System (including for the purposes of ensuring orderly trading conditions including adjusting or ceasing to use any trading algorithm or trading system or effecting an orderly withdrawal from the market); (ii) notify us immediately of any defect in the System or any unauthorised access or change to the System of which you become aware; and (iii) be responsible for any transaction formed through the System.
- 44.14 You shall not use the System, or any information obtained through use of the System, with the intention of avoiding payment of commissions to us (for example, by using the System to identify a potential counterparty with a view to trading directly with such counterparty outside the System, or by entering into a low volume of transactions on the System with the specific

intention of subsequently entering into further identical transactions with the same counterparty outside the System in each case without using us or any member of the TP ICAP group as the broker).

- 44.15 We may monitor the User's use of the System, including the use of algorithms, for the purposes of ensuring orderly trading and compliance with Applicable Regulations, including for the detection of potential market manipulation. The User agrees that we may carry out whenever necessary a review of the User's internal risk control systems relating to the User's use of the System.
- 44.16 We shall use reasonable endeavours to ensure or procure that:
- (i) the System is properly supplied, maintained and capable of operation in accordance with these Terms;
  - (ii) you are provided with reasonable assistance towards familiarisation with, and reasonable access to a help desk relating to, the operation and functioning of the System; and
  - (iii) such enhancements or upgrades reasonably necessary for the effective operation or functioning of the System are from time to time made, with reasonable care and skill.
- 44.17 In relation to any System, any reference to ICAP shall include those members of the TP ICAP group which from time to time (i) own or operate that System; and/or (ii) act in the capacity of broker, dealer, inter-dealer broker, operator or owner of information in connection with that System; and each such member of the TP ICAP group shall have an interest in, take the benefit of and be bound by the terms of these Terms, as applicable.
- 44.18 Immediately on termination of these Terms in accordance with Clause 21, we shall each remove from the System any outstanding prices submitted by you, provided that you agree to be bound by any transaction resulting from any order entered into the System before termination of these Terms.

