

**SMBC Nikko Capital Markets Limited and SMBC Derivative Products Limited****Standard Terms of Business for equities and fixed income securities and customised over the counter derivatives**

SMBC Nikko Capital Markets Limited ("**CM Ltd**") and SMBC Derivative Products Limited ("**DP Ltd**") are companies incorporated under the laws of England and Wales having their registered offices at 100 Liverpool Street, London, EC2M 2AT. Both companies are authorised and regulated by the Financial Conduct Authority ("**FCA**"). CM Ltd, registration number 171935, DP Ltd, registration number 172073.

For the purposes of these Terms, "**we**", "**us**" and "**our**" means either CM Ltd or DP Ltd, depending on which entity you engage to provide you with Services under these Terms, and "**you**" and "**your**" means you, the client.

**1. General Information**

- 1.1 These Standard Terms of Business, together with any accompanying documents (including the cover letter), as amended from time to time (together, these "**Terms**") set out the terms of the contract between you and us. These Terms constitute a contractual agreement having legal effect which you accept by beginning or continuing to undertake business with us following receipt of these Terms. These Terms prevail over any terms that you may send to us and supersede any previous agreement between you and us on the same subject matter.
- 1.2 Subject as otherwise stated herein, these Terms supersede any previous written or oral agreement between the parties in relation to the matters dealt with in these Terms and contain the entire agreement between the parties relating to the subject matter of these Terms at the date hereof to the exclusion of any terms implied by law which may be excluded by contract.
- 1.3 Notwithstanding the foregoing, the terms of any Derivatives Transactions arranged or entered into by us will be separately governed and documented by the relevant ISDA Master Agreement, Global Master Repurchase Agreement, Global Master Securities Lending Agreement, or similar, ("**Relevant Derivative Agreement**"). To the extent there is a conflict between these Terms and the Relevant Derivative Agreement, the terms of the Relevant Derivative Agreement shall prevail.
- 1.4 To the extent there is a conflict between these Terms and any separate written agreement (including those referred to in Clause 11), the terms of such separate written agreement will prevail.
- 1.5 Unless otherwise specified, these Terms govern all business transacted by us with or for you and all Services provided by us to you, whether as principal, or as agent for our Affiliates, in connection with Securities trading and Derivatives Business.

**2. Client Categorisation**

- 2.1 We have separately notified you of your status as a "professional client" or an "eligible counterparty". Subject to your right to request a different status referred to below, we will treat you as such for all purposes. Categorisation is undertaken on the basis of our internal client categorisation process. Different rules and different levels of protection apply to you depending upon your client categorisation.
- 2.2 You have the right to request a different client categorisation from our categorisation of you. In the event we intended to categorise you as a "professional client" and you request and confirm categorisation as an "eligible counterparty", should we agree to such categorisation, you will lose the protection afforded by certain rules of the Financial Conduct Authority ("**FCA**"), including obligations to act in accordance with your best interests, restricting the payment or receipt by us of inducements, to achieve best execution in respect of your orders, to execute orders subject to other constraints on timing and handling relative to other clients' orders, to assess the appropriateness of products and services proposed or provided to you, and to ensure that information provided by us is fair, clear and not misleading. If you request categorisation as a "retail client", we will not provide you with any Services.
- 2.3 You agree that you are responsible for keeping us informed about any change that could affect your client categorisation. Should we become aware that you no longer fulfil the conditions that made you eligible for professional client or eligible counterparty treatment (as applicable), we will reassess your circumstances and reclassify you accordingly.

**3. Agency**

- 3.1 Unless otherwise agreed, if you are acting as agent on behalf of a Principal, we will treat you alone as our client for the purposes of the FCA rules and Applicable Regulations and you will be liable as such. You accept these Terms for yourself and on behalf of each of the Principals. No other person (whether identified to us or not) shall be our client nor have any rights under these Terms. The provisions of Schedule 2 shall additionally apply.

**4. Applicable Regulations and Infrastructure Action**

- 4.1 These Terms and all Transactions are subject to Applicable Regulations so that: (i) if there is any conflict between these Terms and any Applicable Regulations, the latter will prevail; and (ii) we may take or omit to take any action we consider reasonably necessary to ensure compliance with any Applicable Regulations and whatever we do or omit to do in order to comply with them will be binding on you and will not result in liability to us.
- 4.2 From time to time, an Infrastructure may require us, in respect of Transactions in Securities and Derivatives, to meet certain disclosure requirements or otherwise provide you with notice of certain Infrastructure requirements. Any such requirement or notice will be deemed to form part of these Terms when provided to you and will be binding on you accordingly.
- 4.3 If an Exchange (or intermediate broker, Clearing Member or agent, acting at the direction of, or as a result of action taken by, an Exchange) or other Infrastructure takes any action which affects a Transaction (including an action under an Exchange Transaction), then we may take any reasonable action which we, at our discretion, consider desirable to correspond with such action or to mitigate any risk raised or loss incurred as a result of such action. Any such action will be binding on you.
- 4.4 We may refuse to enter into, execute, transmit, deal in or otherwise arrange any Transaction or perform any obligation pursuant to these Terms, including (but not limited to) where such action or performance (i) would cause us to breach any prohibition or restriction imposed or specified by an Applicable Regulator; (ii) would be prohibited, or made impracticable to effect on reasonably commercial terms, by any suspension or removal from trading of a financial instrument imposed by an Applicable Regulator pursuant to Applicable Regulations; or (iii) where we have agreed with you or any other person that we are not obliged to, or shall not, make public or otherwise report a Transaction, but we are nonetheless required by Applicable Regulations to report, publish or arrange the publication of such Transaction (pursuant to a market transparency requirement or otherwise), however, notwithstanding such agreement, we may publish or arrange the publication of such Transaction and may delegate such reporting or publication to another person.

**5. Services**

- 5.1 Pursuant to these Terms, we may contemplate or execute Transactions in Securities and Derivatives Business with you and provide you with certain ancillary services in relation to Transactions in Securities and Derivatives Business, including dealing and brokerage services and introducing and arranging ("**Services**"). Our Services may be provided in relation to Securities traded on Exchanges, including in Europe, the United States of America and Japan/other Asian Exchanges.
- 5.2 We set out in Schedule 1 to these Terms a non-exhaustive list of the descriptions of the risks involved in Transactions in certain types of Securities and Derivatives. By entering into these Terms you acknowledge and confirm you have read, understand and accept the risk statements contained in Schedule 1 to these Terms.
- 5.3 We may, at our absolute discretion and at any time, determine that we either will or will not offer the Services (or any part of them).
- 5.4 We will not provide any investment advice or otherwise act on your behalf in deciding to effect Transactions nor do we recommend whether or not a particular Transaction is suitable for you. We will not make any investment or other decisions on your behalf. You have sole responsibility for making any investment decisions. We will not give you investment, legal or tax advice in relation to any Transactions or Services.
- 5.5 Notwithstanding Clause 5.4, we may, from time to time and at our own discretion, provide you with information about Securities and Derivatives. However, we are not obliged to provide you with continuous information nor advice in relation to any Securities or Derivatives purchased (or proposed to be purchased) by you pursuant to these Terms or

otherwise and we give no representation, warranty or guarantee as to the accuracy or completeness of such information.

## **6. Appropriateness**

- 6.1 In respect of the Services, we may require you to provide information in relation to your knowledge and experience in the investment field relevant to the specific type of product or service (and updates to such information as necessary) relating to you, your agents, employees, underlying principals or others and you agree to provide such information as we may require.
- 6.2 If you have been categorised as a “professional client” or an “eligible counterparty”, we assume, as we are entitled to do, that you have the necessary experience and knowledge in order to understand the risks involved in Transactions in respect of the Services for the purposes of assessing whether a Transaction is appropriate for you (where we have an obligation to make such an assessment).
- 6.3 Where you request at your own initiative the provision of Services in relation to the execution or reception and transmission of your orders in respect of Non-Complex Financial Instruments, then, unless otherwise agreed, we are not required to assess the appropriateness of such Transaction or Service for you and you therefore will not have the benefit of certain FCA conduct of business regulations relating to the assessment of appropriateness.

## **7. Use of Brokers, Introductory, Arranging and Order Routing Services**

- 7.1 To effect Transactions in Securities, we may instruct a broker. A broker instructed by us may be an Affiliate of ours. Unless agreed in writing to the contrary, we will remain your counterparty to Transactions, acting as principal.
- 7.2 Where agreed in writing, separately from the Terms, we may act solely in the role of an introducer and introduce you to a broker dealing in the relevant Securities for the purposes of marketing and/or effecting any transactions in Securities (an “**Introduced Broker**”). In such circumstances, the Introduced Broker will be acting as principal as your contractual counterparty to the transactions. For the avoidance of doubt, we will not be your contractual counterparty in respect of any transactions entered into by you when carried out by an Introduced Broker and in relation to any such transactions you will be the client of that Introduced Broker.
- 7.3 Where you deal with or through a Routing Broker or Introduced Broker, the terms of such broker and, where relevant, its execution policy, will apply to the execution of the order.
- 7.4 We may provide an order routing service in Securities. Orders will be routed to a Routing Broker. You are responsible for the proper entry and transmission of the data relating to an order.
- 7.5 We reserve the right to refuse to route an order at any time and shall be under no obligation to divulge the reason.
- 7.6 You understand that when you are responsible for placing, amending and cancelling orders, their placing, amendment and cancellation shall be governed by Applicable Regulations. Accordingly, amendment and/or cancellation of orders is not guaranteed.
- 7.7 You must ensure that all orders and Transactions made pursuant to this Clause 7 comply with Applicable Regulations.
- 7.8 All Transactions between you and an Introduced Broker, or a Routing Broker in respect of which we provide order routing services, shall be subject to the terms of business (if any) and any other agreement or arrangement between the relevant broker and you (“**Introduced/Routing Broker Terms**”). You may be required to enter into written Introduced/Routing Broker Terms as a pre-condition to us introducing/routing your orders to such a broker.
- 7.9 As between us and you, if there is inconsistency between these Terms and Introduced/Routing Broker Terms, these Terms will prevail.
- 7.10 We make no representation or warranty as to the services provided by, or creditworthiness of, Routing Brokers or Introduced Brokers. Where a broker, Introduced Broker or a Routing Broker is an overseas broker, Introduced Broker or Routing Broker then the services of that overseas broker, Introduced Broker or Routing Broker may not be regulated by the FCA.
- 7.11 You agree that:
- (a) the acceptance or rejection of orders routed by us is at the discretion of the broker, Routing Broker or Introduced Broker (as applicable), and we have no responsibility therefore; and

(b) we shall not be liable for breach by a broker, Routing Broker or an Introduced Broker of such broker's terms.

## **8. Third Party Services**

8.1 We may provide Services with or through our Affiliates or Third Party Providers. You authorise us to use the services of Third Party Providers in our provision of the Services without your further consent and on such terms as we may determine and without a diminution of our rights.

8.2 Third Party Providers may include Infrastructures. Infrastructures have certain rules and regulations with which we must comply. You must read such rules and regulations and represent and warrant to us that you shall comply with such rules and regulations (to the extent applicable) and any other terms and conditions that Third Party Providers require with respect to your use of Third Party Services.

## **9. Order Execution**

9.1 By entering into these Terms, you expressly consent to our execution policy, a summary of which has been provided to you separately. We will execute your orders in accordance with that policy.

9.2 In the context of Derivatives Business, we will be entering into Derivatives with you which are customised, bilateral agreements negotiated directly with you. As such, there is only one Execution Venue with which we will execute orders with you directly on a private basis in most circumstances (being us, or an Affiliate of ours, acting as your counterparty in a principal capacity), although, if required in accordance with EMIR, these orders will be cleared through a central counterparty. If you decide to proceed with any Derivatives Business quote we may give you, and to the extent best execution applies pursuant to the rules of the FCA, we will assume that we have provided the best possible result.

9.3 Please be aware that where we act in response to a request for a quote, we will meet our obligations to take all sufficient steps to obtain the best possible result for our clients by executing the order immediately after the quote is provided if the client accepts the order immediately, or if the quote is not accepted immediately, as soon as is reasonably practicable after the quote is accepted by the client, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.

9.4 Unless otherwise agreed between the parties in writing, you expressly consent to our executing your orders outside of a regulated market, a multilateral trading facility or an organised trading facility (as such terms are defined in UK MiFIR).

9.5 You expressly instruct us not to make public any limit order relating to a transaction in Securities which is not immediately executed under prevailing market conditions.

9.6 We may, in certain circumstances, aggregate your order with our own orders and with orders of other clients. In some cases aggregation may result in you obtaining a less favourable price than would otherwise have been the case.

## **10. Basis of Dealing**

10.1 Except where otherwise required by Applicable Regulations or notified to you, we deal as principal and not as agent on your behalf.

10.2 If Applicable Regulations require us to act as your agent on an Exchange or other Infrastructure you undertake to sign and deliver any required additional customer documentation.

## **11. Direct Electronic Access**

11.1 Should we, or our Affiliates, provide you with direct electronic access, in relation to Securities trading, to a trading venue (i) without routing orders through our, or our Affiliates', internal electronic trading system, or (ii) through the use of a nominated technical system or technical connection between us, your rights and obligations arising from such provision will be set out in a separate, binding, written agreement.

## **12. Instructions**

12.1 Unless otherwise notified by us, you may transmit your Instructions to us by telephone and facsimile, in writing, or electronically, including by email or electronic message protocol or system via electronic links and Instructions shall be transmitted to us at your risk. Instructions shall not take effect unless actually received by us and, in the case of any Instructions transmitted to any system, formally acknowledged by us. We shall not be required to confirm any such Instruction prior to execution or otherwise, and you agree to indemnify us and hold us harmless if you suffer any loss in reliance thereon.

- 12.2 We are not obliged to accept or execute any Instruction nor need we give any reasons for declining to do so.
- 12.3 We shall be entitled to rely on and treat as binding any Instructions which we believe to be from you or a person authorised to act on your behalf, and which we have accepted in good faith. Without prejudice to the above, you acknowledge that we may rely conclusively on, and you shall be bound by, any Instructions or other communications which purport to originate from you without any duty to make any investigation or enquiry as to the validity of such reliance.
- 12.4 If any instruction is ambiguous or conflicts (in part or whole) with another Instruction, you agree that we are entitled to act in good faith on what we reasonably understand to be the Instruction and any action we take or omit to take as a result will be binding on you.
- 13. Unsettled Positions**
- 13.1 Except as otherwise stated, we will have no responsibility for taking or failing to take action in respect of any rights you may have under any Unsettled Position unless we receive timely Instructions from you.
- 13.2 Where any action is taken by us or a third party pursuant to any Applicable Regulations which affects any of your Unsettled Positions generally or corresponding Exchange Transactions to which we are a party, we will make such allocation amongst the affected customer Unsettled Positions as we think fit, to which allocation you shall be bound. We shall use commercially reasonable efforts promptly to notify you of such event, but will not be liable for any loss incurred by you as a result of such action or any failure to notify.
- 14. Payment and Delivery**
- 14.1 By entering into a Transaction in Securities you become unconditionally obliged, in respect of each Unsettled Position resulting from such Transaction, to pay or deliver such amount of cash or Securities to us or at our direction as we are required to pay or deliver to (or at the direction of) the Clearing Member or the Infrastructure within such time as we may specify and undertake that you will effect such payment or delivery in sufficient time to enable us to meet our obligations to the Clearing Member or the Infrastructure on time.
- 14.2 You will not be entitled to receive delivery of Securities or payment of cash from us, nor to any right of ownership or other proprietary interest in or in relation to such Securities or cash, in settlement of a Transaction unless and until you have complied with Clause 14.1 and we have received unconditional and final delivery of such Securities (including, where relevant, payment or delivery of any cash amounts or other assets that the Infrastructure or Clearing Member is permitted to make in accordance with Applicable Regulations in lieu of, or in substitution for, its obligation to deliver Securities) or payment of cash from the Infrastructure or Clearing Member.
- 14.3 If you fail to pay any sum when due in respect of a Transaction, interest will be payable on the unpaid sum until payment is received. Interest will be calculated at one per cent. above the Bank of England's base rate. Such interest will be payable on demand and may be deducted by us from any amount due to you from us or our Affiliates.
- 15. Position Limits**
- 15.1 We will have the right, whenever we in our absolute discretion deem such action necessary or desirable for the purposes of complying with Applicable Regulations, to limit or require the reduction of the size and number of Unsettled Positions (net or gross) which may at any time be outstanding, or to Close Out any one or more Unsettled Positions in order to reduce the Unsettled Positions carried with us.
- 15.2 The FCA or other national competent authorities will impose position limits in respect of certain commodity derivatives, and position management controls may be imposed by an Exchange. In order to ensure that such position limits and position management controls are complied with, we may require you to limit, terminate or reduce the positions which you may have with us at any time and we may in our sole and absolute discretion Close Out any one or more Transactions.
- 16. Pre Hedging**
- 16.1 We may undertake pre-hedging activity in respect of Transactions conducted by us as principal with you by executing principal transactions in the market before and/or after executing your Transaction.
- 16.2 When you indicate your interest in a Transaction or seek a request for quote in a Transaction, we may use that information to engage in pre-hedging activity, which may include entering into transactions prior to executing your

Transaction or request with a view to facilitating your Transaction or request. Any transactions entered into by us with a view to facilitating your Transaction will be entered into by us as principal, not as an agent for you.

16.3 Any pre-hedging or hedging transactions entered into by us may be commensurate with the size and nature of your order, could be at different prices from the price at which we execute your Transaction, may affect the market price of or liquidity of the product(s) you are buying and/or selling and may result in profit, or loss, to us.

16.4 When engaging in pre-hedging activity, we have in place procedures to ensure that your Transaction is executed in an orderly fashion and in a manner unlikely to disadvantage you or create undue market impact although there is no guarantee that these activities will result in the desired outcome.

16.5 Any pre-hedging will be in accordance with our internal guidelines and policies and the principles established by regulators and will take into consideration prevailing market conditions and the size and nature of your anticipated Transaction.

## **17. ICMA Rules and Recommendations**

17.1 All Transactions in "international securities" as that term is defined in the rules and recommendations of the International Capital Market Association ("**ICMA**"), and unless agreed otherwise at the time of trade in non-US debt or convertible instruments, shall be subject to ICMA rules and recommendations.

## **18. Short-selling**

18.1 You are required to advise us if any sale order given to us is a short sale and we shall have the right to refuse to accept any short sale order.

## **19. Late settlement and Settlement Fails**

19.1 Without prejudice to any other remedy we may have under these Terms or Applicable Regulations, if at any time you fail to deliver Securities in compliance with any obligation which you may have under these Terms, you authorise (but without requiring) us:

- (a) to borrow or to buy (for your account) such Securities necessary to make delivery thereof and to deliver the same; and
- (b) to purchase or otherwise acquire (for your account) Securities equivalent to any Securities borrowed by us pursuant to our powers under sub-Clause (a) above and to use such Securities to perform our obligations to the lender of such Securities to deliver Securities equivalent to the borrowed Securities.

19.2 In connection with the requirements of the CSDR, we may be charged cash penalties ("Cash Penalties") or receive payments of cash penalties ("Penalty Credits") in connection with our provision of investment services to you which relate to a transaction executed by you that fails to settle ("Settlement Fails"). Unless otherwise agreed with you, we may, at our discretion, charge you an amount up to any Cash Penalties we incur for Settlement Fails or make a payment to you in connection with a Penalty Credit, in each case, that may arise in connection with transactions executed by you.

## **20. No holding of Client Money or Client Assets**

20.1 Transactions will be settled on a delivery versus payment basis. Consequently, we will not hold Client Money or "client assets", as such terms are defined in the FCA rules, on your behalf in connection with Transactions carried out under these Terms.

## **21. Communications and Notices**

21.1 Any notice or other communication in connection with these Terms shall be in writing and sent by electronic mail to the email address most recently given. A notice or other communication shall take effect from the time it is received. Notwithstanding the foregoing, you consent to us communicating with you via notices posted to our website. We will communicate with you, and you will communicate with us, in English.

21.2 The parties agree that electronic transmission of information cannot be guaranteed to be secure or error free and could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use and they will both use commercially reasonable procedures to check for the then most commonly known viruses before sending electronically. The parties recognise that such procedures cannot be a guarantee that transmissions will be

virus free and they shall each be responsible for protecting their own interests in relation to electronic communications and for ensuring that an electronic communication is not misaddressed.

## **22. Reporting Trading Information**

- 22.1 We will not make any trade or transaction reports for you in respect of Transactions, unless otherwise agreed with you in writing, or unless such obligation to report falls upon us whilst acting as a Systematic Internaliser.
- 22.2 We may be required to report details in respect of Transactions to a relevant regulatory authority pursuant to Applicable Regulations (including under Article 26 UK MiFIR) or to a trade repository or otherwise in accordance with Applicable Regulations ("**Transaction Reporting Requirements**").
- 22.3 We may from time to time require you to provide all information (and updates to such information as necessary) relating to you and your agents, employees, underlying principals or others as we may reasonably require in order to comply with any market transparency requirements and Transaction Reporting Requirements as we may reasonably believe may arise in respect of your Transactions. You agree to deliver to us such information and represent to us that such information as you deliver is, at the time of delivery, true, accurate and complete in every material respect and you acknowledge and agree that we may rely on the information without investigation, unless and until you inform us otherwise. You undertake to provide us, on reasonable notice, with any material changes or updates to this information.
- 22.4 We may refuse to enter into, execute, transmit, deal in or otherwise arrange any Transaction where you have not provided such information (and waived or procured the waiver of any confidentiality or data protection/privacy obligations in respect of such information) as we may reasonably require: (a) in order for us to comply with any Transaction Reporting Requirements or market transparency requirements in respect of a Transaction; or (b) where our non-receipt of such information (including, without limitation, an applicable legal identifier code) would mean that we are prohibited by Applicable Regulations to enter into, execute, transmit, deal or otherwise arrange (as the case may be) such Transaction.
- 22.5 The parties shall, before concluding a Transaction outside the rules of an Exchange (whether acting as, or on behalf of, the buyer or seller thereof), confirm to each other whether each is a Systematic Internaliser in respect of the relevant Transaction.
- 22.6 Where you transmit an order relating to a Transaction to us, we shall be under no obligation (unless expressly agreed otherwise) to report the Transaction resulting from the order concerned or transmit the order details to another investment firm in accordance with Article 4 of UK MiFID2 RTS 22.
- 22.7 Unless otherwise agreed, we will provide you with trading confirmations promptly following the execution of an order with essential information concerning the execution of the order in accordance with the FCA rules on reporting information to clients. We will supply to you, on request, information about the status of your order.

## **23. Your Representations, Warranties and Undertakings**

- 23.1 You represent, warrant and undertake to us, as of the date of these Terms, the date of any Instruction and the date of each Transaction that:
- (a) you have all necessary authority, powers, capacity, consents, licences, approvals and authorisations, and have taken all necessary action to enable you lawfully to enter into and perform your obligations under these Terms and each Transaction;
  - (b) these Terms, each Transaction and the obligations created under them are binding upon you and enforceable against you in accordance with their terms and do not and will not violate the terms of any Applicable Regulations, charge or agreement by which you are bound;
  - (c) at the time of transfer by you of any Securities, you will have full and unqualified right to make such transfer and upon such transfer the transferee will receive all right, title and interest in and to those Securities free from any charge, lien, pledge, encumbrance or other adverse interest;
  - (d) all information which you have provided, and will provide, to us is true, complete, accurate and not misleading, and you will promptly provide us with any further information properly required from time to time by any competent authority, Infrastructure, Third Party Provider or us, as applicable;



- (e) any person (including any third party) appointed by you to give and/or receive notices, Instructions and/or other communications on your behalf under these Terms has all the requisite power, authority and regulatory or governmental consents to give and receive such notices, Instructions and/or other communications;
- (f) you are familiar with any relevant Infrastructure rules and you will not take any action or make any omission that will cause any person to be in breach of or in default under any relevant Infrastructure rules;
- (g) to the extent that you are not acting as principal but as agent for a Principal:
  - (i) you are expressly authorised by the Principal to instruct us in respect of the Securities, the Services and any Transaction; and
  - (ii) the Principal can make the representations and warranties set out in sub-clauses (a) to (e) and (h) to (j) inclusive as if it were the party to these Terms and shall not cause you to be in breach of these Terms or cause you or us to be in breach of any Applicable Regulations;
- (h) you are subject to, and are fully in compliance with, the UK Bribery Act 2010 (as amended from time to time) or are subject to, and are fully in compliance with, all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption in your jurisdiction;
- (i) you have not relied, are not relying and will not rely on any communication or information (written or oral) from us as investment advice or as an assurance as to the expected performance of any Transaction, and you have taken or will have taken such review and/or advice as you consider necessary to ensure that any Transaction meets your needs prior to entering into any Transaction;
- (j) in using the Services, you will comply at all times with, and not in any way violate, these Terms and any Applicable Regulations;
- (k) no Event of Default has occurred and is continuing or will occur by your entering into, or performing your obligations under, these Terms; and
- (l) you represent and warrant that your use of the Electronic Services, as applicable, will be for the purposes of your business, trade or profession. The parties acknowledge and agree that the requirements of the EU's Electronic Commerce Directive (2000/31/EC), as implemented in the United Kingdom, are excluded to the fullest extent permissible by law.

23.2 You will notify us promptly if there is any material change in any such information provided, or if any of the above representations shall materially change or cease to be true and correct.

## **24. Liability**

24.1 Our liability for any loss, liability, damage or expense arising out of or in connection with the Services, whether under any express or implied term of these Terms, shall be limited as described in Clauses 24.2 to 24.6 below, unless otherwise expressly provided in these Terms. References to negligence include negligence which causes death or personal injury.

24.2 We will not be liable for any loss, liability, damage or expense which may be sustained by you unless such loss arises solely and directly from negligence, wilful default, dishonesty or fraud by us or any of our officers, directors or employees.

24.3 We will have no liability for any partial or total non-performance of any Service if such partial or total non-performance results from any event or state of affairs beyond our reasonable control including, without limitation, any failure of communication or computer systems or equipment or suspension of trading by any Infrastructure, clearing bank or the Custodian or any other Third Party Provider.

24.4 We accept no liability for any loss, liability, damage or expense that arises out of a failure by you to provide information reasonably requested by us (or our Affiliates) or by reason of such information being incomplete or inaccurate.

24.5 We accept no liability for:

- (a) losses, whether direct or indirect, of profits, goodwill, revenue, anticipated savings or of data; or
- (b) any indirect, consequential or incidental losses,



regardless of whether the possibility of such losses was disclosed to, known by, or could reasonably have been foreseen by us.

24.6 Nothing in these Terms shall exclude or limit any duty or liability which we may have which may not be excluded or restricted pursuant to Applicable Regulations.

24.7 References in this Clause 24 and Clause 26 to us include references to our Affiliates and any Third Party Providers, and their respective officers, directors, employees, agents and licensors.

## **25. Indemnity**

You will indemnify, and keep indemnified, us and our Affiliates and respective personnel on demand against any and all acts, proceedings, claims, demands, obligations, charges, reasonable fees and expenses, taxes, payments, liabilities, losses, injuries, costs and damages whatsoever incurred or payable (including, without limitation, the reasonable costs of professional advisors, and all costs, charges, liabilities and expenses arising out of any claims, actions or proceedings brought against us by Third Party Providers) arising:

- (a) out of any breach by you of these Terms; and/or
- (b) pursuant to or in connection with these Terms (including in connection with any Transaction effected on your behalf, at your request or otherwise in order to comply with your Instructions) and the provision of the Services (including but not limited to any Third Party Services) unless due solely and directly to our wilful default, dishonesty or fraud.

## **26. Default**

26.1 You must notify us immediately upon becoming aware that an Event of Default has occurred.

26.2 Following the occurrence of an Event of Default we may, without prior notice to you, take any and all actions that we reasonably consider to be necessary or desirable in the circumstances, including (without limitation):

- (a) to declare any or all amounts owing by you (or, where you are acting as agent, your Principal) to us to be immediately due and payable (to the extent that this is not already the case at the relevant time);
- (b) to withhold delivery of Securities or payment of cash to you that we would otherwise be required to make in connection with any Transactions;
- (c) to buy-in or sell-out Securities for your account and at your risk in settlement of an Unsettled Position;
- (d) to charge you interest on any payment which is overdue from you at such rate and on such basis as we customarily charge for unauthorised overdrafts accruing from the date such payment is due; and
- (e) we reserve the right to Close Out any Transaction if we determine in our reasonable discretion that such action is required by Applicable Regulations or is otherwise necessary or reasonable for the purposes of limiting risk. If we Close Out any Transaction, you hereby agree to indemnify us for any loss we suffer as a result of taking such action. In each case, we shall use commercially reasonable efforts promptly to notify you of such event, but will not be liable for any loss incurred by you as a result of such action or any failure to notify.

In each case, we may carry out any such action in such manner and on such terms as we in our absolute discretion think fit and we shall not be responsible for any losses occasioned by such action.

26.3 Following the occurrence of an Event of Default, we may by notice to you:

- (a) terminate or suspend these Terms in whole or with respect to one or more Exchanges with immediate effect;
- (b) demand performance by you of your obligations to us in such manner as is determined by us; or
- (c) seek repayment of any losses suffered by us in consequence of the Event of Default.

26.4 Upon the occurrence of an Event of Default, we shall have the right without prior notice to you, and without any obligation to exercise instead a power of sale under these Terms, to set-off or apply any obligation of yours owed to us or any of our Affiliates (whether or not arising under these Terms, matured or contingent and irrespective of currency, place of payment or booking office of the obligation) against any obligation owed to you by us or any of our Affiliates

(whether or not arising under these Terms, matured or contingent and irrespective of currency, place of payment or booking office of the obligation). For the purpose of cross-currency set-off, we may convert either obligation at the applicable market exchange rate selected by us on the relevant date. If an obligation is unascertained, we may estimate that amount and set-off in respect of that estimate, subject to the relevant party accounting to the other when the amount of the obligation is ascertained. Nothing in this Clause will be effective to create a charge or other security interest.

## **27. Conflicts Policy**

27.1 We have policies and procedures to identify, consider and manage potential conflicts of interest and protect the integrity of our relationships with our clients. Our personnel are required to comply with such policies and procedures and may not do anything directly or indirectly that is prohibited thereunder. A copy of our conflicts policy is available upon request.

## **28. Client Reports**

28.1 We shall provide reports to you in relation to the execution of Transactions as may be required in accordance with Applicable Regulations.

## **29. Fees, Charges and Payments**

29.1 We will notify our charges to you separately from time to time.

29.2 You agree that, notwithstanding our requirement to provide you with information on costs and associated charges under the rules of the FCA Handbook, and excluding any costs and charges in connection with any Transactions that embed a derivative, we may provide you with only certain details in respect of such costs and charges where agreed with you.

29.3 Where permitted by Applicable Regulations, we may share charges with, or receive remuneration from, third parties (including Affiliates) in respect of Transactions we carry out with or for you, or we may be acting on both sides of the Transaction. We will provide you with further details in respect of any such charges.

29.4 Without prejudice to Clauses 9 or 10, we may, in certain circumstances, apply a mark-up or mark-down in the price of a Transaction in Securities and Derivatives, which is likely to vary on a transaction-by-transaction basis. Any mark-up or mark-down applied to client Transactions by us will be fair and reasonable, and shall be included in the final price of a Transaction in order to compensate us (as the market participant) for a number of considerations, which might include risks taken, costs incurred, and services rendered.

29.5 Unless we agree otherwise, all money payable by you or your Principals will be paid using immediately available, freely convertible funds in the relevant currency on the due date regardless of any right of equity, set-off or counterclaim that you may allege against us.

## **30. Taxes**

30.1 All sums payable by you or your Principal will be paid free and clear of any taxes, unless you or your Principal are required by law to withhold or deduct tax. In this case, unless we agree otherwise, you or your Principal will pay an additional amount so that we receive an amount after withholding or deduction of tax that equals the amount that we would have received without such withholding or deduction.

30.2 You are responsible for paying any taxes due and making claims relating to taxes (such as for exemption from withholding tax), for filing any tax returns and for providing information to the tax authorities in relation to any business we carry on with or for you. You agree to reimburse us for any fees we incur on your behalf or otherwise in connection with the provision of the Services to you in accordance with these Terms.

## **31. Confidentiality and Privacy**

31.1 We are not obliged to disclose to you, or to take into consideration in providing the Services, information where the disclosure of it to you would be a breach of duty or confidence to any other person.

31.2 Neither party ("**Receiving Party**") will disclose any information (irrespective of whether it is marked "confidential" or not) relating to the other party ("**Disclosing Party**") obtained in connection with these Terms, including information relating to these Terms, the Services or any Transaction ("**Confidential Information**"), to any third party except (i) with the consent of the Disclosing Party, (ii) as is reasonably necessary to implement or perform these Terms, including

(without limitation) disclosure to Infrastructures, brokers and other intermediaries and counterparties, (iii) as is required by court order or otherwise by Applicable Regulations, (iv) to Applicable Regulators, on their request, (v) to the Receiving Party's personnel, professional advisers, other service providers and insurers (each of whom shall be subject to confidentiality obligations where they are not an officer, employee or director of the Receiving Party, or are not under a professional duty to protect confidentiality), or (vi) to the Receiving Party's Affiliates which are subject to confidentiality obligations.

31.3 Clause 31.2 shall not apply to any information which:

- (a) is in or subsequently enters the public domain other than as a result of a breach of Clause 31.2;
- (b) has been or is subsequently received by the Receiving Party from a third party which is under no confidentiality obligation in respect of that information;
- (c) has been or is subsequently independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or
- (d) was previously known to the Receiving Party free of any obligation to keep it confidential.

31.4 Clauses 31.1 to 31.3 shall remain in full force and effect notwithstanding any termination of these Terms.

31.5 Where you are a legal entity or are acting on behalf of other individuals, in respect of the processing of any personal data pursuant to these Terms:

- (a) Each party acknowledges that:
  - (i) the status of each party is a question of fact determined under Data Protection Laws; and
  - (ii) without limiting Clause 31.5(a)(i), the parties acknowledge that, in relation to personal data processed under these Terms, it is their mutual understanding that they are each an independent data controller. Each party shall comply with its obligations under Data Protection Laws in relation to the processing of personal data under, or in connection with the performance of, these Terms.
- (b) Each party shall only process personal data for the purposes of performing its obligations, and exercising its rights under these Terms.
- (c) In respect of each individual whose personal data you provide to us, you shall ensure that you are able lawfully to provide those personal data to us and will, before doing so, ensure that the individuals to whom the personal data relates have:
  - (i) been informed of our identity, the personal data (or categories of personal data) to be disclosed and the information set out in our privacy notice for customers, which is available at <https://www.smbcgroup.com/emea/notices-reporting/privacy>; and
  - (ii) where relevant, any necessary consents required under Data Protection Law have been collected from those individuals.
- (d) If a party receives a written request from an individual to exercise any of their rights under Data Protection Law, which concerns processing of personal data undertaken by the other party, the party receiving the request shall:
  - (i) promptly and without undue delay, and in any event within three days from the date on which it received the request, forward the request to other party; and
  - (ii) cooperate and provide reasonable assistance in relation to that request to enable the other party to respond in accordance with Data Protection Laws (including in compliance with applicable deadlines and information requirements).
- (e) Each party shall, taking into account the state of the art, the costs of implementation and the nature, scope, context and purpose of processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including the risk of unauthorised or unlawful processing of

personal data, and of accidental or unlawful loss, alteration, unauthorised disclosure or destruction of, or damage to, personal data.

- (f) Each party ("**Notifying Party**") shall promptly notify the other party ("**Notified Party**") after becoming aware of a personal data breach affecting personal data, and the Notifying Party shall:
  - (i) provide the Notified Party a reasonable description of the personal data breach; and
  - (ii) upon the Notified Party's written request, provided the Notified Party with reasonable cooperation and assistance in respect of the personal data breach.
- (g) Each party shall only process or transfer personal data in or, in the case of transfer, to, any country or territory outside the United Kingdom and EEA (as applicable) if and for so long as:
  - (i) an Adequacy Decision is in place;
  - (ii) the transfer is subject to a derogation in accordance with Article 49 EU GDPR or Article 49 UK GDPR (as applicable);
  - (iii) it is made in accordance with Article 46 EU GDPR or Article 46 UK GDPR (as applicable), including where standard contractual clauses approved by the UK Information Commissioner's Office or European Commission (as applicable) are in place between the exporting party and the data recipient.

31.6 Each party consents to the monitoring and recording of all communications, including telephone conversations, with the other party with or without the use of a warning tone or other notification. Absent contrary evidence, our records of such communications shall be our sole property and accepted by you as conclusive evidence of their content. A copy of such recordings and communications will be available on request for a period of five years and, where requested by the FCA, for a period of up to seven years.

## 32. Termination

- 32.1 These Terms shall continue in full force and effect until terminated by us or you by written notice from one party to the other. Such notice may be given no less than thirty (30) days prior to the date of termination, provided that such notice may be immediately effective following your Event of Default.
- 32.2 Termination shall be without prejudice to the completion of Transactions already initiated and will not affect outstanding rights or liabilities.

## 33. General

- 33.1 Notwithstanding any other provision of these Terms, we may delegate the performance of all or part of our duties and obligations to an Affiliate. Our liability under these Terms shall not be affected by any such delegation.
- 33.2 Neither the relationship between us and you, nor the Services to be provided by us nor any information provided to you, nor any other matter, shall give rise to any fiduciary or equitable duties on our part which would oblige us (or any of our Affiliates or agents) to accept responsibilities more extensive than those set out in these Terms.
- 33.3 These Terms may be amended or supplemented by us by delivery to you of the amendments or revised Terms. An amendment or supplement which is made to reflect a change of Applicable Regulations may take effect immediately or otherwise as we may specify. Any other amendment or supplement will take effect no earlier than 10 days after we deliver the notice. No other amendment to these Terms shall be effective unless in writing and signed by a duly authorised representative of us.
- 33.4 Neither these Terms nor any rights, powers, liabilities or obligations under or pursuant to these Terms may be transferred or assigned by you or by us without the prior consent of the other party (such consent not to be unreasonably withheld or delayed), save that we may, upon dispatch of written notice to you, transfer to an Affiliate any or all of our rights, powers, liabilities and obligations under or pursuant to these Terms. The parties agree that these Terms shall extend to and be binding upon their respective successors and assigns.
- 33.5 Our rights and remedies under these Terms are cumulative and are not exclusive of any rights or remedies provided by law or by any other agreement. No waiver by us of any Event of Default or breach of any obligation arising under

these Terms shall constitute a waiver of any other such event or breach and no exercise or partial exercise by us of any remedy shall constitute a waiver of the right subsequently to exercise that or any other remedy.

- 33.6 Each provision of these terms is severable and if any provision (or any part of any provision) of these Terms is or becomes invalid under, or contravenes, any Applicable Regulations, the remaining provisions (and, where applicable, the remainder of the provision in question) shall not be affected and shall remain in full force.
- 33.7 So far as is permitted by Applicable Regulations and except in the case of fraud, you agree and acknowledge that your only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with these Terms shall be for breach of the terms of these Terms, to the exclusion of all other rights and remedies (including those in tort or arising under statute).
- 33.8 Subject to Clauses 24 and 25 above (which shall confer rights upon third parties as contemplated therein), nothing in these Terms is intended to confer any rights on any person not a party under the Contracts (Rights of Third Parties) Act 1999. No consent of any third party shall be needed for the termination or amendment of any terms of these Terms.
- 33.9 These Terms and any non-contractual matters in connection with them will be governed by and construed in accordance with English law. The parties agree that the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with these Terms (including a dispute regarding the existence, validity or termination of these Terms) or the consequences of their nullity (a "Dispute"). The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and, accordingly, that they will not argue to the contrary.
- 33.10 If you do not have your registered office or principal place of business in the United Kingdom, you must immediately appoint a party as an agent for service in the United Kingdom and notify us of such appointment as soon as is practically possible.

#### 34. Interpretation

- 34.1 In these Terms, the following words and expressions have the following meanings:

**Adequacy Decision** means, in respect of a third country, a territory, or one or more specified sectors within that third country, a finding of adequacy:

- (a) by the Secretary of State in the UK, as set out in adequacy regulations made pursuant to section 17A of the UK DPA; or
- (b) pursuant to Article 45 of the EU GDPR,

in each case to the extent applicable to a transfer of personal data outside the United Kingdom or EEA (as applicable) pursuant to these Terms.

**Affiliate** means any entity that directly or indirectly controls, is controlled by or is under common control with us, including, without limitation, joint ventures;

**Applicable Regulations** includes the FCA rules or the rules of any successor to the FCA or of any other relevant regulatory authority, any Infrastructure rules, any bilateral or tripartite agreement between us and any Infrastructure, and all other applicable laws, rules and regulations as are in force from time to time as they relate to us and/or you;

**Applicable Regulator** means the FCA or any other relevant regulatory authority regulating us and/or you in any jurisdiction;

**Clearing Member** means any third party which is a clearing member of any Exchange or clearing house and which has been appointed by us to provide us with clearing and settlement services in respect of orders placed by you;

**Client Money** has the meaning given to it in the Glossary of the FCA Handbook in respect of the rules under CASS 7;

**Close Out** means, in relation to a Transaction, to close out, unwind, cancel or otherwise terminate or allow to expire and Closing Out and Closed Out shall be interpreted accordingly;

**CASS** means the Client Assets Sourcebook of the FCA Handbook;

**COBS** means the Conduct of Business Sourcebook of the FCA Handbook;

**Confidential Information** has the meaning given in Clause 31.2;

**CSDR** means, as applicable:

- (a) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;
- (b) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018;

**Custodian** means the person you have designated to safeguard and administer your assets;

**Data Protection Law** means any law, enactment, regulation or order applicable in the United Kingdom or EEA concerning the processing of personal data, including:

- (a) the EU GDPR as it forms part of retained EU law as defined in the European Union (Withdrawal) Act 2018 (**UK GDPR**);
- (b) the UK Data Protection Act 2018 (**UK DPA**);
- (c) the General Data Protection Regulation 2016/679 (**EU GDPR**);
- (d) any law, enactment, regulation or order transposing, implementing, adopting, supplementing or derogating from, the EU GDPR and the EU Directive 2002/58/EC in each Member State,

each to the extent applicable to the activities or obligations of the parties under or pursuant to these Terms;

**Derivatives** means customised over the counter derivatives;

**Derivatives Business** means all business, including the sale, purchase and trading of Derivatives, undertaken by us;

**EEA** means the European Economic Area from time to time which currently comprises the member states of the European Union, and Iceland, Liechtenstein and Norway;

**Electronic Services** includes all electronic communications between us including but not limited to access to and use of systems that route orders and any related software or hardware we may provide to you to enable you to use such services including those which may be provided pursuant to Clause 11;

**EMIR** means, as applicable:

- (a) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; and
- (b) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018;

**Event of Default** means any of:

- (a) a material breach of any of your obligations under these Terms or any other agreement entered into with us;
- (b) any representation or warranty by you is incorrect when made or repeated or deemed to have been made or repeated;
- (c) the initiation of any criminal, disciplinary or enforcement action against you by any regulatory authority or Infrastructure;
- (d) the commencement of any insolvency, liquidation, administration, reorganisation or analogous proceeding with respect to you;
- (e) the entering into by you of any arrangement for a transfer of all or substantially all of your business, or any merger, amalgamation, consolidation or similar process with the effect that the recipient (in the case of transfers) or the surviving entity (in respect of mergers etc.) does not assume all of your obligations under these Terms;

- (f) the entering into by you of any general assignment, arrangement or composition with or for the benefit of your creditors;
- (g) an event of default or similar event occurs under any other agreement between us; or
- (h) where you act as agent on behalf of a Principal, any of the foregoing which occurs in relation to a Principal;

**Exchange** means any market (including a regulated market, multilateral trading facility or organised trading facility (as such terms are defined in UK MiFIR) or alternative trading system) on which we agree to provide dealing services to you under these Terms;

**Exchange Transaction** means a transaction entered into on an Exchange to which we are party as principal or agent;

**Execution Venue** means a trading venue (or its operator), a market maker (each within the meaning contemplated under the FCA Handbook), a Systematic Internaliser, or other liquidity provider;

**FCA Handbook** means the handbook of rules and guidance issued by the FCA from time to time;

**Infrastructure** means any Exchange, clearing house, payment system, settlement system, securities depository or trade repository.

**Instructions** means any instructions given by you or on your behalf in respect of your account, allocations to such accounts, or the Services provided to you by us pursuant to these Terms including, without limitation, an instruction to enter into a Transaction with or for you;

**loss** includes any loss, cost, liability, expense or damage (including without limitation all reasonable legal fees and expenses);

**Introduced Broker** has the meaning given in clause 7.2;

**Introduced/Routing Broker Terms** has the meaning given in clause 7.8;

**Non-Complex Financial Instrument** means a financial instrument which is considered to be non-complex for the purposes of COBS 10A.4.1R of the FCA Handbook;

**Principal** means any person for whom you act as agent in respect of Transactions under these Terms, excluding us where you act as our agent in respect of an Exchange Transaction;

**Routing Broker** means a broker specified by you to which you wish us to route an order;

**Securities** means any of debt instruments or shares sold, purchased or traded by us;

**Systematic Internaliser** has the meaning given to it in the Glossary of the FCA Handbook;

**Third Party Provider** means any third party appointed by us and/or our Affiliates to provide Services or access pursuant to Clauses 8 and/or 11;

**Third Party Services** means Services provided through our Affiliates or Third Party Providers;

**Transaction** means any transaction contemplated or executed by or between you and us, or any third party, pursuant to these Terms;

**UK MiFID2 RTS 22** means Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018;

**UK MiFIR** means Regulation (EU) No. 600/2014 on markets in financial instruments as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018; and

**Unsettled Position** means, at any time, any Transaction, in respect of which your obligations to either deliver Securities or to pay cash to us which remains to be fulfilled, either in full or in part.

## 34.2 In these Terms

- (a) **data controller, personal data, personal data breach, and processing** shall have the meanings given to them in Data Protection Laws;



- (b) references to the singular include the plural and *vice versa*;
- (c) references to any provision of any Applicable Regulations includes a reference to that provision as amended, extended, consolidated, substituted or re-enacted from time to time; and
- (d) words defined in the Applicable Regulations shall have the same meaning as in those Applicable Regulations, unless otherwise defined herein or the context requires otherwise.

## Schedule 1

### Risk Factors and Warnings

This notice is provided to you in compliance with the rules of the Financial Conduct Authority (FCA). This notice (which should be read in conjunction, as applicable, with the risk disclosure notice available on our website) cannot disclose all the risks and other significant aspects of trading under these Terms. You should not deal in these products unless you understand their nature and the extent of your exposure to risk. You should also be satisfied that the product is suitable for you in the light of your circumstances and financial position.

#### **1 Shares**

A share is an instrument representing a shareholder's rights in a company. Shares may be issued in bearer or registered form and may be certificated or non-certificated. One share represents a fraction of a corporation's share capital. Dividend payments and an increase in the value of the security are both possible, although not guaranteed. The shareholder has financial and ownership rights which are determined by law and the issuing company's articles of association. Unless otherwise provided, transfers of bearer shares do not entail any formalities. However, transfers of registered shares are often subject to limitations.

Dealing in shares may involve risks including but not limited to the following:

- (a) Company risk: a share purchaser does not lend funds to the company, but becomes a co-owner of the company. He or she thus participates in its development as well as in chances for profits and losses, which makes it difficult to forecast the precise yield on such an investment. An extreme case would be if the company went bankrupt, thereby wiping out the total sums invested.
- (b) Price risk: share prices may undergo unforeseeable price fluctuations causing risks of loss. Price increases and decreases in the short, medium and long-term alternate without it being possible to determine the duration of those cycles. General market risk must be distinguished from the specific risk attached to the company itself. Both risks, jointly or in aggregate, influence share prices.
- (c) Dividend risk: the dividend per share mainly depends on the issuing company's earnings and on its dividend policy. In case of low profits or losses, dividend payments may be reduced or not made at all.

#### **2 Bonds**

A bond is a negotiable debt instrument issued in bearer or registered form by a company or a government body to creditors and whose par value at issuance represents a fraction of the total amount of the debt. The duration of the debt as well as the terms and conditions of repayment are determined in advance. Unless stipulated otherwise, a bond is repaid either at the maturity date, or by means of annual payments, or at different rates determined by drawing lots. The interest payments on bonds may be either: (i) fixed for the entire duration or (ii) variable and often linked to reference rates, e.g. Euro Interbank Offered Rate (EURIBOR) or Sterling Overnight Interbank Average Rate (SONIA), amongst others. The purchaser of a bond (the creditor) has a claim against the issuer (the debtor).

Dealing in bonds may involve risks including but not limited to the following:

- (a) Insolvency risk: the issuer may become temporarily or permanently insolvent, resulting in its incapacity to repay the interest or redeem the bond. The solvency of an issuer may change due to one or more of a range of factors depending on the issuing company, the issuer's economic sector and/or the political and economic status of the countries concerned. The deterioration of the issuer's solvency will influence the price of the securities that it issues.
- (b) Interest rate risk: uncertainty concerning interest rate movements means that purchasers of fixed-rate securities carry the risk of a fall in the prices of the securities if interest rates rise. The longer the duration of the loan and the lower the interest rate, the higher a bond's sensitivity to a rise in the market rates.
- (c) Credit risk: the value of a bond will fall in the event of a default or reduced credit rating of the issuer. Generally, the higher the relative rate of interest (that is, relative to the interest rate on a risk-free security of similar maturity and interest rate structure), the higher the perceived credit risk of the issuer.

- (d) Early redemption risk: the issuer of a bond may include a provision allowing early redemption of the bond if market interest rates fall. Such early redemption may result in a change to the expected yield.
- (e) Risks specific to bonds redeemable by drawing: bonds redeemable by drawing have a maturity that is difficult to determine, so unexpected changes in the yield on these bonds may occur.
- (f) Risks specific to certain types of bond: additional risks may be associated with certain types of bond, for example floating rate notes, reverse floating rate notes, zero coupon bonds, foreign currency bonds, convertible bonds, reverse convertible notes, indexed bonds and subordinated bonds. For such bonds, you are advised to make enquiries about the risks referred to in the issuance prospectus and not to purchase such securities before being certain that all risks are fully understood. In the case of subordinated bonds, you are advised to enquire about the ranking of the debenture compared with the issuer's other debentures. Indeed, if the issuer becomes bankrupt, those bonds will only be redeemed after repayment of all higher ranked creditors and as such there is a risk that you will not be reimbursed. In the case of reverse convertible notes, there is a risk that you will not be entirely reimbursed, but will receive only an amount equivalent to the underlying securities at maturity.

### 3 **Bail-In Risk**

This is the risk that the financial instruments of certain issuers, including banking institutions, building societies, investment firms and certain banking group companies, may be subject to action taken by governmental, banking and/or other regulatory authorities, for example to address banking crises pre-emptively, whether or not the express terms of such financial instruments anticipate such action. The relevant authorities may have broad discretion on the action that they may take and their powers may be extended in response to particular events. Examples of the actions that they may be able to take could include the following:

- (a) The reduction, including to zero, of the principal of the fixed income instruments of such issuers;
- (b) The conversion of such fixed income instruments into equity securities or other instruments of ownership (resulting in the dilution of ownership interests of existing shareholders);
- (c) The variation of the terms, including with respect to maturity, of such fixed income instruments; and
- (d) Shareholders being divested of their shares.

In addition to bail-in risk, certain issuers (principally, banking institutions) may issue a hybrid form of subordinated fixed income security known as contingent convertible securities ("**CoCos**"). These financial instruments are intended to either convert into equity or have their principal written down upon the occurrence of certain "**triggers**" linked to regulatory capital thresholds or where the issuer's regulatory authorities question the continued viability of the entity as a going concern. There may be broad discretion conferred on the issuer with respect to the determination as to whether any of these triggers have occurred and the specific features and characteristics of CoCos may vary significantly, as they are typically tailored to the particular issuer and its regulatory requirements. Therefore, it is particularly important to review the relevant terms and conditions. Some additional risks associated with CoCos are:

- (a) Typically, there is no stated maturity and the coupon is fully discretionary. This means coupons can potentially be cancelled at the issuer's discretion or at the request of the relevant regulatory authority in order to help the issuer to absorb losses;
- (b) If the CoCos are converted into the issuer's underlying equity securities following a conversion event, each holder will be subordinated due to their conversion from being the holder of a debt instrument to being the holder of an equity instrument;
- (c) The market value of the CoCos will fluctuate based on unpredictable factors including, without limitation:
  - (i) the creditworthiness of the issuer and/or fluctuations in such issuer's applicable capital ratios;
  - (ii) supply and demand for the CoCos;
  - (iii) general market conditions and available liquidity; and
  - (iv) economic, financial and political events that affect the issuer, its particular market or the financial markets in general.

#### **4 Derivatives**

A derivative is a type of financial instrument whose value is based upon the value of an underlying asset, index, rate or reference point. Derivatives involve the transfer of risk from one party to another. They can be used to limit a party's exposure to a variable or allow a party to gain exposure to that variable.

- (a) Understanding the risk of derivative products: you should not deal in derivative products unless you understand the nature of the contract you are entering into and the extent of your exposure to risk. You should also be satisfied that the contract is suitable for you in light of your circumstances and financial position. Although derivatives can be utilised for the management of investment and liability risk, some of these products are unsuitable for many investors. Derivative products will not always act in the same way. Relationships with us may differ depending on the product and nature of the transaction, and clearing houses may not always owe you a direct commitment. Different products involve different levels of exposure to risk and in deciding whether to trade in such products you should be aware of the following points.
- (b) Off-exchange transactions: when trading financial derivative products with us, you will be entering into off exchange derivative transactions. All positions entered into with us must be executed with us and cannot be executed with any other entity. Transactions in off-exchange derivatives may involve greater risk than investing in on exchange derivatives because there is no exchange market on which to close an open position. It may be impossible to liquidate an existing position, to assess the value of the position arising from an off-exchange transaction or to assess the exposure to risk. Bid prices and offer prices need not be quoted by us, and, even where they are, we may find it difficult to establish a fair price, particularly when the relevant exchange or market for the underlying is closed or suspended.

#### **5 Foreign markets**

Foreign markets will involve different risks from the UK markets. In some cases the risks will be greater. The potential for profit or loss from transactions on foreign markets or in foreign denominated contracts will be affected by fluctuations in foreign exchange rates.

#### **6 Collateral**

The way in which collateral will be treated will vary according to the type of transaction and where such collateral is traded. There could be significant differences in the treatment of your collateral, depending on whether you are trading on a recognised or designated investment exchange, with the rules of that exchange (and the associated clearing house) applying, or trading off-exchange. We reserve the right to implement a higher margining requirement than the exchange. Deposited collateral may lose its identity as your property once dealings on your behalf are undertaken. Even if your dealings should ultimately prove profitable, you may not get back the same assets which you deposited, and may have to accept payment in cash.

The FCA rules on client money and client assets do not apply to us as we will not hold collateral in the form of money or assets on behalf of clients. Any collateral posted by you is therefore not subject to the protections of the FCA rules on client money.

#### **7 Commissions**

Before you begin to trade, you should obtain details of all commissions and other charges for which you will be liable. If any charges are not expressed in money terms (but, for example, as a percentage of contract value), you should obtain a clear and written explanation, including appropriate examples, to establish what such charges are likely to mean in specific money terms.

#### **8 Suspensions of trading**

Under certain trading conditions it may be difficult or impossible to liquidate a position. This may occur, for example, at times of rapid price movement if the price rises or falls in one trading session to such an extent that under the rules of the relevant exchange trading is suspended or restricted. Placing a stop-loss order will not necessarily limit your losses to the intended amounts, because market conditions may make it impossible to execute such an order at the price stipulated.

**9 Clearing house protections**

On many exchanges, the performance of a transaction is 'guaranteed' by the exchange or clearing house. However, this guarantee is unlikely in most circumstances to cover you, the client, and may not protect you if we or another party defaults on its obligations to you. Additionally, in relation to Derivatives Business, Transactions are not executed on any exchange or through any clearing house; although if required in accordance with EMIR, Transactions will be cleared through a central counterparty.

**10 Insolvency**

Our insolvency or default, or that of any other brokers involved with your transaction, may lead to positions being liquidated or closed out without your consent. In certain circumstances, you may not get back the actual assets which you lodged as collateral and you may have to accept any available payments in cash.

## Schedule 2

### Agents

This Schedule 2 applies where you are an agent acting on behalf of an underlying principal.

Where you have disclosed to us that you act as agent on behalf of a Principal and have identified that person to us to our reasonable satisfaction, we may agree to treat the Principal as our client for the purposes of Applicable Regulations subject to the Principal entering into these Terms and any other agreements we may require. You hereby provide your agreement, in accordance with FCA rules, to us treating the Principal as our client in such cases.

You agree, warrant and represent as at the date of each Transaction which you enter into on behalf of the Principal that:

- 1 For UK regulatory purposes, you are our sole customer or client (as both terms are defined in the FCA rules) to the exclusion of your underlying Principal.
- 2 You are fully authorized to act on behalf of the Principal pursuant to these Terms and to use the resources of the Principal to meet any of its obligations under these Terms and any Transactions. You have not acted, and will not act, in breach of your authority.
- 3 In entering into any Transaction on behalf of the Principal, you have no reason to believe that the Principal would not be able to enter into such Transaction or perform its obligations thereunder or that your Principal would (or would cause you to) not comply with these Terms and any Applicable Regulations.
- 4 You undertake that you will procure that your Principal will not create or have outstanding any security interest whatsoever on or over any of the Securities.
- 5 You are subject to, and are fully in compliance with, Applicable Regulations covering matters including, but not limited to, client identification and categorisation, the detection and prevention of money laundering, anti-corruption and bribery, the prevention of terrorism, and sanctions as amended from time to time and you have obtained evidence of and recorded the identity of your Principal in accordance with such regulations and/or requirements.
- 6 All Securities delivered by you pursuant to a Transaction will be beneficially owned by your Principal free from all liens, charges and encumbrances other than those which may arise in our favour.
- 7 In relation to Securities, money or other property which belongs beneficially to your Principal, references in any documentation relating to a Transaction to you shall be construed as references to your Principal.
- 8 You will be, and you will procure that your Principal will be, jointly and severally liable, each as if a Principal, to us in respect of all obligations and liabilities to be performed by you pursuant to and in respect of any Transaction(s) entered into as part of the Services provided to you pursuant to these Terms.
- 9 You have, and you will procure that your Principal has, obtained all consents, licences and authorisations to enable you and your Principal to enter into, perform and comply with your and your Principal's obligations under any Transaction and you will, and will procure that your Principal will maintain in full force and effect all such consents, licences, and authorisations and you will or procure that your Principal will provide us with copies or other evidence of such consents or approvals as we may reasonably require.
- 10 You undertake, at our request, to supply us with such financial or other information about your Principal as we may reasonably require.
- 11 You will notify us promptly in writing if there is any material deterioration in the financial condition of your Principal or if you cease to act for any Principal.
- 12 You will notify us prior to or promptly after you provide us with an Instruction on behalf of any Principal that you are acting as agent for that the Principal and inform us of the identity, address and any other details which we may require to provide our services under these Terms to the Principal. Without limitation to the foregoing, where you have entered

into a Transaction on behalf of a Principal, you will provide us with all the information required by us for the settlement of such Transaction no later than 24 hours prior to the due date for settlement of that Transaction.

- 13 Our liability shall also be limited in respect of your Principal as it is limited in respect of you pursuant to Clause 24.
- 14 You will be jointly and severally liable for the performance by the Principal of its obligations under a transaction.
- 15 You shall only submit an Instruction or enter into a Transaction contemplated or executed by or between us and you pursuant to these Terms on behalf of a Principal when you have, under your management, assets of such Principal which are sufficient, at the time such Transaction is entered into, to satisfy that Principal's obligations under the Transaction by the applicable settlement date of such Transaction and you have the full authority of that Principal to use such assets to meet such obligations.
- 16 Notwithstanding the foregoing, or any provision of these Terms to the contrary, you agree that, for settlement purposes only, we may settle directly with the Principal and will be entitled to take any action to effect such settlement.
- 17 Upon the occurrence of an Event of Default by any of your Principals, or the failure of any of your Principals to meet any of their material obligations hereunder, you will provide us with the full name, registered office (as well as, if the Principal's registered office address is not in the UK, the address of a process agent that the Principal has agreed to maintain for the duration of the receipt of services under this agreement) and contact details of the relevant Principal 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 Principal, to minimise our exposure and/or redress any loss or damage we may have suffered.