

## **SECTION A: GENERAL**

### **1. Application and Scope**

**1.1.** These Terms of Business for Professional Clients and Eligible Counterparties together with any related document incorporated by reference hereinto ('Terms' or 'Terms of Business') form the standard agreement between BrokerCreditService (Cyprus) Limited whose registered office is at N 1 Spyrou Kyprianou Avenue&1st October Street, Vashiotis Kalande Offices, 1st floor, Mesa Geitonia, 4004 Limassol, Cyprus ('BCS') and any other entity (the 'Client') meeting the requirements provided for in these Terms (the 'parties') on the terms and conditions upon which BCS agrees to provide investment and ancillary services and to carry on investment activities with or for the Client ('Services').

**1.2.** BCS is authorised and regulated by the Cyprus Securities and Exchange Commission (the 'CySEC') to provide the Services subject to the Investment Services and Activities and Regulated Markets Law of 2007, as amended from time to time (the 'Law'). In providing the Services under these Terms, BCS will act within the scope of Cyprus Investment Firm Authorisation No 048/04 granted to BCS by the CySEC on 08 October 2004, and varied on 17 August 2012 in respect of rendering a service of reception, transmission and execution of client's orders for entering into spot transactions in foreign currency, as from time to time amended (the 'License'). The English version of the License is available at [www.bcscyprus.com](http://www.bcscyprus.com).

**1.3.** These Terms shall take effect as of the date on which BCS commenced rendering Services to the Client. By conducting business with BCS, the Client agrees and accepts these Terms. These Terms will apply to any and all Services and/or transactions, including securities financing transactions which BCS may be carrying out with or for the Client in accordance with these Terms (a 'Transaction').

**1.4.** BCS will notify the Client of any material changes to these Terms via e-mail and by posting updated versions of the Terms on [www.bcscyprus.com](http://www.bcscyprus.com). Unless BCS notifies the Client otherwise or the Applicable Regulations otherwise require, any amendment to the Terms shall take effect after 10 (Ten) Business Days from the date of notification, provided that no variation shall affect Transactions executed prior or to the time of such variation.

**1.5.** In respect of any Transaction or Service, these Terms of Business, including each product specific Section and related documentation as set out therein, shall together constitute a single, integrated agreement between the parties. Accordingly, each party agrees (i) to perform all of its obligations in respect of each Transaction or Service hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions and Services hereunder, and (ii) that payments, deliveries and other actions made by either of them in respect of any Transaction or Service shall be deemed to have been made in consideration of payments, deliveries and other actions in respect of any other Transactions or Services hereunder. The Client understands and agrees that this Section A and Section B will apply to the Client at all times unless otherwise stated herein. In the event of any conflict between the terms of this Section A and any product specific Section, the terms of the product specific Section shall prevail save as otherwise provided therein.

## **2. Client Categorisation**

For the purposes of the Law and based upon the information available to BCS, BCS has classified the Client as a 'professional client' or an 'eligible counterparty'. The Client is entitled to request a different client classification, but in that event BCS may not be able to enter into Transactions or provide Services to the Client under these Terms. The Client understands that classification as a 'professional client' or an 'eligible counterparty' will result in a lesser degree of protection for the Client.

## **3. Services**

**3.1.** BCS will provide Services to the Client in respect of financial instruments set out in the License. The Client understands that certain types of Services, such as managing, underwriting, corporate finance or investment advice are outside the scope of these Terms and will only be provided subject to additional written arrangements between the Client and BCS.

**3.2.** BCS will treat the Client as its client and save as expressly stipulated by law or as BCS may otherwise agree in writing, BCS has no obligation and accepts no liability to any other person for whom the Client may be acting as an agent, intermediary or fiduciary (whether or not the existence or identity of such person has been disclosed to BCS).

**3.3.** To the extent that BCS is required to assess whether a Transaction, Service or product is appropriate for the Client, BCS will, for the purpose of any such appropriateness assessment, rely on the information that has been supplied to BCS by the Client. BCS shall be entitled to assume that in relation to any Transaction, product or Service where specific client instructions have been provided, the Client has the necessary level of knowledge and experience in order to understand the risks involved in the proposed Transaction, product or Service. BCS shall not owe to the Client any duty to advise on the merits or the risks involved in any Transactions. The Client shall make its own assessment of the Transactions and exercise its own judgement on the merits and associated risk. In this regard the Client should note that if BCS merely explains the terms of an instrument or contract or its performance characteristics this does not of itself amount to advice on the merits of a Transaction or on its legal or tax consequences.

**3.4.** The Client understands that where BCS provides market commentary or other information this is incidental to the Service or Transaction and is provided solely to enable the Client to make its own investment decisions and does not amount to advice. BCS gives no representation, warranty or guarantee as to the accuracy or completeness of such information. Where information is in the form of a document containing a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, the Client agrees that it will not pass that information or document on contrary to that restriction.

**3.5.** The Client understands that all investments are subject to risk and the degree of risk is a matter of judgement and cannot be accurately pre-determined. BCS gives no warranty as to the performance or profitability of Client's account with BCS or its investments or any part thereof. The Client represents and warrants to BCS that it has read and fully understood the Risk Disclosure Statement a copy of which is available at [www.bcsyprus.com](http://www.bcsyprus.com).

**3.6.** The Client agrees that BCS may delegate the performance of any of the Services to such person(s) as it may think fit. BCS will give the Client notice of any delegation where a delegee is liable directly to the Client for the performance of the Services. BCS may also appoint such agents as it selects on such terms as BCS considers appropriate.

**3.7.** The Client agrees that BCS may do anything that it considers necessary or desirable to provide the Services or to comply with the Applicable Regulations or Market Rules. For these purposes, the Client irrevocably authorises BCS to execute any documents and do any acts and things on its behalf and agrees to ratify and confirm, anything that BCS may do in the proper and lawful exercise of all or any of the authorities conferred on BCS by this clause.

**3.8.** The Client understands BCS will not provide to it any tax or legal advice in relation to the Services.

#### **4. Applicable Regulations and Market Rules**

**4.1.** All Services and Transactions shall be subject to:

- (i) Laws, rules and regulations of the country where BCS and/or its agents may carry out the Transactions or provide the Services under these Terms, as well as any other country's law, regulations and rules affecting Client's rights and liabilities in respect of the Transactions or Services or related to each of them (the 'Applicable Regulations');
- (ii) Rules, regulations, customs and practices from time to time of any exchanges or other organisation or market, or third party involved in the execution of a Transaction or the provision of a Service and any exercise by any such exchange or other organisation or market, or third party of any power or authority conferred on it (the 'Market Rules').

**4.2.** If any Applicable Regulations or Market Rules are hereafter adopted or altered by any governmental authority, exchange or self-regulatory organisation which shall be binding upon BCS and shall affect in any manner or be inconsistent with any of the provisions hereof, the affected provisions of these Terms shall be deemed modified or superseded, as the case may be, by the applicable provisions of such Applicable Regulations and Market Rules and all other provisions of the Terms and provisions so modified shall in all respects continue in full force and effect. For the avoidance of doubt, BCS will not be obliged to effect any Transaction nor do anything else which BCS reasonably believes would breach any Applicable Regulations or Market Rules.

**4.3.** BCS will use reasonable endeavours to give the Client notice of alterations and/or adaptations of the Applicable Regulations and Market Rules to the extent that BCS has actual knowledge of them at the time of notification. BCS may take or omit to take such action as it reasonably considers necessary to ensure compliance with the Applicable Regulations and Market Rules. BCS shall have no liability to the Client arising from alterations and/or adaptations of Applicable Regulations or Market Rules and its actions undertaken to ensure compliance with such alterations and/or adaptations.

#### **5. Client Order Handling**

**5.1.** Unless the Client has been categorised as an eligible counterparty BCS shall when executing Transactions on Client's behalf, comply with the Best Execution Policy available at [www.bcscyprus.com](http://www.bcscyprus.com) to which the Client consents.

**5.2.** The Client understands that all trading instructions shall be given to individuals at BCS authorised to receive and act upon them. BCS will designate to the Client in writing the individuals authorised to accept and process client trading instructions on its behalf.

**5.3.** BCS will execute client trading instructions as soon as practicable after it receives them during normal market trading hours (which may vary depending on which market the order is to be executed). BCS will execute these instructions through a regulated market but it may trade other than on a regulated market. If BCS receives trading instructions outside normal market trading hours (or with insufficient time to execute them that day) it will execute them at the earliest practicable opportunity following the start of normal trading hours on the following Business Day (unless the order is time limited and has expired), although BCS may not necessarily be able to obtain the opening market price.

**5.4.** The Client understands and agrees that no trading instruction or order once given may be varied or cancelled without BCS's express consent. The Client further agrees that BCS shall have the right to set limits to any Transaction which the Client may carry out with BCS or through BCS at any time.

**5.5.** BCS may determine in its absolute discretion whether it will effect any Transaction for the Client as principal, as agent or partly as principal and partly as agent. The Client agrees that BCS may effect a Transaction for the benefit and at the expense of the Client but in the name of BCS.

**5.6.** In order to give effect to client trading instructions, BCS may instruct a broker or other intermediary selected by BCS who may be one of BCS's Affiliates. For the purposes of these Terms 'Affiliate' means in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person, or any entity directly or indirectly under common control with the person. BCS undertakes to use reasonable care and skill in the selection, appointment and supervision of any broker or intermediary it selects. BCS accepts full liability for any default by a broker which is one of its Affiliates.

**5.7.** BCS may aggregate any Client's order with an order of any other client and/or BCS Affiliate. Aggregation may operate on some occasions to the Client's disadvantage and on other occasions to the Client's advantage. BCS will not carry out a Client's order or a Transaction for BCS own account in aggregation with another client order if it is likely that the aggregation will work overall to the disadvantage of any client whose order is to be aggregated. BCS will allocate the proceeds of such orders among the participating clients in a manner which BCS believes to be fair and equitable and in accordance with its order allocation policy. If the combined order is not executed at the same price BCS may average the prices paid or received and debit or credit the Client with the average net price. If BCS has aggregated Transactions for own account with one or more client orders BCS will not allocate the related trades in a way that is detrimental to a client. If BCS aggregates a client order with a Transaction for its own

account and the aggregated order is partially executed, BCS will allocate the related trades to the Client in priority to BCS.

**5.8.** Where BCS is unable or considers it undesirable or inappropriate to execute an order at once or in a single Transaction, BCS may execute it over such period as BCS deems appropriate and may report to the Client an average price for a series of Transactions so executed instead of the actual price of each Transaction. BCS may undertake a programmed trade or trades comprising a single Transaction or series of Transactions on Client's behalf.

**5.9.** The Client expressly consents to BCS executing Client's orders outside of a regulated market or multilateral trading facility ('MTF') and agrees that whenever the Client places an order with BCS, BCS shall be entitled to select in its sole absolute discretion and without reference to the Client, the venue for executing Client's order. Unless otherwise specifically agreed between the Client and BCS, neither the venue it selects nor the costs or charges BCS may or may not incur in relation to any Transaction will have impact on the fees payable by the Client to BCS.

**5.10.** Where the Client places a limit order in shares which are admitted to trading on a regulated market and that order is not immediately executed under prevailing market conditions, the Client hereby expressly instructs BCS not to make any such order public.

**5.11.** The Client may request that BCS provides to the Client certain data (for example, illustrative pricing, availability, capacity and other matters) with respect to financial instruments, to assist the Client in arranging transactions with another broker or trading counterparty and BCS will endeavour to satisfy those requests. Notwithstanding the foregoing, where the Client wishes to submit requests for illustrative pricing (and BCS agrees), this will be subject to such separate or additional terms and conditions or agreements as BCS may require.

**5.12.** The Client acknowledges that business on a market operated by an exchange, as well as its required settlement or clearing facility, may from time to time be suspended, restricted, closed or otherwise impeded. Any such action may result in inability of either BCS or the Client to enter into or otherwise effect Transactions. BCS will use reasonable endeavours to notify the Client of exchange impediment to the extent that BCS has actual knowledge of it at the time of notification. If an intermediate broker or agent, acting at the direction of, or as a result of exchange impediment takes any actions which affect a Transaction, then BCS may take any counteraction which in its reasonable discretion, will adequately respond or mitigate the loss. Any action taken by BCS shall be binding on the Client and the Client will remain solely and fully liable for any and all losses resulting from exchange impediment directly or indirectly.

## **6. Instructions, Confirmations and Communications**

**6.1.** The Client or any person notified to BCS as authorised by the Client may give BCS orders (instructions) concerning any Transaction or proposed Transaction or any other matter orally (including by telephone) or in writing (including by e-mail or other electronic means), unless BCS informs the Client that instructions can only be given in a particular way. BCS has the right to refuse to take instructions, provided it gives the Client prompt notice of such refusal. BCS shall not be bound to act in accordance with instructions of any person other than the Client

including, without limitation, where the Client is acting as agent, any principal. Instructions shall not take effect unless actually received by BCS.

**6.2.** The Client may utilise, directly or indirectly, applications or electronic services for placing client instructions with BCS.

**6.3.** BCS shall be entitled to rely upon oral, hard copy or electronic orders which it believes in good faith to have been given by an authorised person and shall be fully protected in acting upon any such instructions. The Client hereby waives any claim that any such order was not in writing. The Client shall, on request, confirm any oral instruction in writing provided that BCS may accept and act on oral instruction prior to receipt of any such written confirmation. BCS will not be liable for failure to seek or receive such written confirmation.

**6.4.** BCS and its agents may in their absolute discretion record telephone conversations with the Client or the Client's agents. Such recordings may commence without the provision of a warning tone and the Client agrees it will take all reasonable steps to inform its employees, officers and agents that such recording takes place. BCS and BCS agents' records of telephone conversations shall be the sole property of BCS and conclusive evidence of any oral instruction given.

**6.5.** BCS shall accept client cash or securities transfer orders, including 'delivery versus payment' (DVP) settlement instructions, within the cut-off times set out in BCS Clients' Guide. A copy of the Guide will be sent to the Client via e-mail to the e-mail address notified to BCS.

**6.6.** The cut-off times may be altered by BCS due to public holidays in jurisdictions of the currency of settlement. The cut-off times may also be extended for a reasonable time period required to accept delivery or payment from third parties engaged by BCS to provide Services to the Client.

**6.7.** BCS shall issue to the Client statements of account (an 'Account Statement') and/or trades reports (a 'Trade Report') and/or confirmations of Transactions (a 'Confirmation') at times mutually agreed between the Client and BCS. BCS may send to the Client Confirmations, Trade Reports and Account Statements by electronic mail and/or another electronic communication system accessible to the Client. Only if specifically agreed with the Client will BCS provide the Client with hard copies of Account Statements, Trade Reports or Confirmations within reasonable time after notice requiring doing so is received by BCS.

**6.8.** Confirmations will contain all essential information concerning the execution of the relevant instruction. Trade Reports will contain aggregate essential information on all executed Transactions. Account Statements will contain full information on financial instruments and funds held by BCS for the Client and will include, where applicable, the costs associated with the Transactions and Services undertaken on behalf of the Client. The information on the Account Statement may be shown as at the trade date or the settlement date, provided that the same basis is applied by BCS consistently to all information in the Account Statement. BCS may at its sole discretion, incorporate any Confirmation or Trade Report into an Account Statement. The reporting currency will be United States Dollars (USD), unless otherwise agreed.

**6.9.** If BCS has instructed an intermediate or third party broker on the Client's behalf, a Confirmation may be a copy of the confirmation sent to BCS or directly to the Client by that intermediate or third party broker.

**6.10.** Account Statements, Trade Reports and/or Confirmations shall, in the absence of manifest error, be conclusive and binding on the Client, unless BCS receives written detailed objection from the Client within twenty four hours of dispatch or making a reporting document available to the Client. If the Client fails to object to or request a correction of a Confirmation, Trade Report or Account Statement, that Confirmation, Trade Report or Account Statement shall be deemed agreed by the Client and a failure to object shall not affect the validity or enforceability of any Confirmation, Trade Report or Account Statement. The Client shall not be entitled to refuse to perform its obligations thereunder on the ground that it has not received the Confirmation, Trade Report or Account Statement due to any reasons whatsoever unless the failure to receive the same was due to BCS's failure. A Confirmation, Trade Report or Account Statement (or an amended Confirmation, Trade Report or Account Statement, as the case may be), once not objected by the Client shall be conclusive evidence of the Transactions and other information contained therein and shall supersede all prior oral statements with respect thereto.

**6.11.** The Client understands that it shall be responsibility of the Client to inform BCS of any change to Client's e-mail address or the non-receipt of a Confirmation, Trade Report and/or Account Statement.

**6.12.** Except as otherwise expressly provided in these Terms, all correspondence, Confirmations, Trade Reports, Account Statements, notices, margin calls and other communications will be sent or transmitted to the Client in accordance with Client's communication details to such number or address as the Client has notified to BCS in its account opening documentation. The Client shall immediately notify BCS in writing if there is any change in the information as provided at the time of account opening and thereafter, including the information on Client's authorised persons. The Client shall be fully responsible for any and all acts and omissions of a person who is or who BCS believes in good faith to be an authorised person of the Client. All communications to be given under these Terms shall be in English.

**6.13.** The Client hereby acknowledges that it shall be solely responsible for ensuring that only those persons authorised to operate Client's account(s) or contract with BCS on Client's behalf have access to the Client's designated e-mail box(es) and that BCS shall not be responsible nor liable for any unauthorised use thereof or any losses sustained by the Client in connection therewith or its reliance upon and compliance with instructions and other communications received from the designated e-mail address(es) or inaccuracies, errors or omission in electronic messages.

**6.14.** All communications will be deemed to have been received by the Client where BCS can demonstrate having sent or transmitted them to the recipient at the correct address.

**6.15.** Save as otherwise provided herein, for the purposes of these Terms 'Business Day' means (a) any day other than Saturday, Sunday or a public holiday in the Republic of Cyprus on

which commercial banks are open for business in Limassol; and (b) in relation to the payment of any sum, a day other than a Saturday or a Sunday on which banks are open for business in the principal financial centre of the country of which the currency in which the payment is denominated is the official currency.

**6.16.** References in these Terms to 'written' communications and communications 'in writing' include communications made through any electronic system for communication capable of reproducing communication in hard copy form, including e-mail, unless otherwise stated.

## **7. Derivative Transactions**

**7.1.** The Client may provide BCS with instructions for entering into derivative contracts on a regulated market or an equivalent third-country market or other third-country market accessible to BCS. These instructions may be provided solely with respect to derivative contracts which give its holder the right to acquire securities or give rise to a cash settlement.

**7.2.** If at any time the Client fails to deliver to BCS any financial instruments or cash in compliance with derivative contracts previously bought or sold by BCS on behalf of the Client, or BCS shall deem it necessary (whether by reason of the requirements of any exchange, clearing house or otherwise) to replace any financial instruments, contracts or other assets previously delivered to the Client by BCS by other financial instruments or assets of like or equivalent kind or amount, BCS may without notice either liquidate positions or make or receive delivery on behalf of the Client upon such terms and by such methods which BCS deems feasible. To this end, the Client authorises BCS to borrow, buy or sell any financial instruments or assets necessary to make payment, delivery or replacement. BCS may subsequently repay any borrowing with financial instruments or assets purchased or otherwise acquired for account of the Client or require the Client to pay to BCS for any cost, loss and damage (including consequential damages and penalties) incurred by BCS in connection with any of the foregoing.

**7.3.** The Client understands that exchanges have established exercise cut-off times for the tender of exercise instructions in relation to options and those options may become worthless in the event that the Client does not deliver instructions by expiration time. The Client also acknowledges that BCS may establish exercise cut-off times that are earlier than the exercise cut-off times established by the relevant exchanges, and the Client shall have no claims against BCS arising out of the fact that an option was not exercised if instructions were not provided in a timely manner.

**7.4.** BCS is authorised, but has no obligation, to exercise any option on behalf of the Client that is 'in the money', where the Client has failed to provide instructions to BCS in a timely fashion. Where intermediate brokers do not specify a particular transaction when exercising an option, BCS may allocate in a way that seems to it to be most equitable.

## **8. Settlement**

**8.1.** All business transacted between the Client and BCS will be carried out in accordance with standard settlement practices and/or the Market Rules of the relevant exchanges and for off-exchange trading, the standard settlement practices of the relevant home market.

**8.2.** The Client is responsible for the due performance of every Transaction which BCS enters into with or for the Client and shall be responsible for any losses BCS incurs as a result of Client's failure to deliver appropriate settlement instructions to BCS or to its settlement agent.

**8.3.** By placing an order the Client affirms that it will deliver to BCS on or before the settlement date appropriate financial instruments or funds, and all necessary documents, including, for the avoidance of doubt, settlement instructions. Where BCS enters into any Transaction with the Client to be settled against a designated Client's account with BCS the Client authorises BCS to effect settlement and in that case the Client's agreement to settle against its account will serve as a settlement instruction.

**8.4.** If, in any Transaction, BCS delivers financial instruments or funds to the Client or to Client's order at that time or subsequently and, for whatever reason, Client's obligations are not performed simultaneously with or prior to BCS's obligations, the Client shall hold on trust for BCS any such financial instruments or funds received from BCS until Client's own obligations are properly discharged.

**8.5.** BCS can in its sole discretion provisionally credit and debit Client's account on the due date for settlement ('contractual settlement date') regardless of the actual settlement of the Transaction. BCS can, however, in its absolute discretion, reverse any such provisional debit or credit at any time until the obligations under the relevant Transaction are discharged completely. In case of a reversal, BCS shall not be liable to the Client in respect of income or any other rights or benefits relating to cash and/or financial instruments, which would have occurred if settlement had taken place on the contractual settlement date.

**8.6.** The Client understands that on some securities markets, delivery and payment cannot be made simultaneously. In such markets BCS shall make delivery or payment at such time and in such manner as provided in the Applicable Regulations and/or the Market Rules. The Client shall bear the risk that the counterparty to the Transaction may not pay or perform in time or at all.

## **9. Collateral**

**9.1.** With a view to securing the payment and discharge of all present and future obligations and liabilities, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity whatsoever, and any guarantee or indemnity of any of those obligations, under or in connection with these Terms or any Transaction, together with all interest accruing on such obligations and liabilities and any cost or expense whatsoever, (including, without limitation, reasonable legal fees) which BCS may incur in enforcing, perfecting or maintaining any of its rights, whether pursuant to these Terms or any Transaction, contract or otherwise, including without limitation, the cost of funding or currency exchange and, to the extent not already covered, any loss incurred by BCS in liquidating, obtaining or re-establishing any hedge or related position (the 'Liabilities') the Client hereby

agrees to transfer, novate or assign to BCS legal and beneficial ownership of all cash paid or deemed or treated as paid and all eligible securities delivered or deemed or treated as delivered to the Client pursuant to these Terms and all Transactions relating thereto, together with all eligible rights, title, interest, money, shares, securities or property accruing, offered, or issued at any time in relation to any of the foregoing by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise, with full title guarantee and free from any encumbrances whatsoever (except for a lien routinely imposed on all securities in a relevant clearance system) ('Assets'). The Assets will become the absolute property of BCS free from any security and from any equity, right, title or interest of the Client from the moment the Assets have been credited or otherwise deposited to an account in the name of BCS or a person acting on its behalf ('Collateralised Assets'). When the relevant Liabilities have been unconditionally and irrevocably paid and discharged in full and all facilities which might give rise to Liabilities have terminated, BCS will, at the request and cost of the Client, transfer legal and beneficial ownership of Equivalent Assets (as defined below) back to the Client by crediting or otherwise depositing Equivalent Assets to an account in the name of the Client or a person acting on its behalf.

**9.2.** In these Terms, 'Equivalent Assets' means in relation to cash, a payment of the same amount and in the same currency; in relation to securities, securities of the same issuer, which are part of the same issue and are of an identical type, nominal value, description and (except where otherwise stated) amount as those original securities ('Equivalent Securities'); in relation to eligible derivative contracts, identical rights under a derivative contract of an identical description and amount. Securities will be equivalent to other securities notwithstanding that those securities have been redenominated or that the nominal value of those securities has changed in connection with such redenomination. Where securities have been partly paid, converted, subdivided or consolidated or have become the subject of a takeover or the holders of securities have become entitled to receive or acquire other securities or other property or the securities have become subject to any similar event other than interest, dividends or other distributions thereon, including distributions which are a payment or repayment of principal in respect of the relevant securities, the expression 'equivalent to' shall have the following meanings:

- (i) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (ii) in the case of a call on partly paid securities, securities equivalent to the paid-up securities; provided that, the Client shall have paid to BCS a sum of money equal to the sum due in respect of the call;
- (iii) in the case of a capitalisation issue, securities equivalent to the relevant securities together with the securities allotted by way of bonus thereon;
- (iv) in the case of conversion, sub-division or consolidation, securities equivalent to the securities into which the relevant securities have been converted, sub-divided or consolidated;

- (v) in the case of takeover, a sum of money or securities equivalent to the consideration given;
- (vi) in the case of a rights issue, securities equivalent to the relevant securities together with the securities allotted thereon;
- (vii) in the event that income in the form of securities, or a certificate which may at a future date be exchanged for securities or an entitlement to acquire securities is distributed, securities equivalent to the relevant securities together with securities or a certificate or an entitlement equivalent to those allotted;
- (viii) in the case of any event similar to any of the foregoing, securities equivalent to (as defined in the provisions of this definition) the original securities together with or replaced by a sum of money or securities or other property equivalent to (as so defined) that received in respect of such securities resulting from such event.

**9.3.** The Client agrees that BCS will be entitled at any time without notice to the Client to sell, lend, alienate or otherwise transfer or dispose of, pledge, re-pledge or otherwise encumber to cover any obligations or liabilities, whether present or future, actual or contingent, owed by BCS to any person and arising from time to time, and to hypothecate or rehypothecate, on any terms, whether for its own account or for the account of third parties, any Collateralised Assets and to retain for its own account all fees, income, profits and other benefits arising out of, or in connection with any such sale, borrowing, loan, charge, hypothecation, or disposal. The Client acknowledges that it shall not be entitled to receive any dividends, interest and other distributions or property which may be paid or delivered in respect of the Collateralised Assets and that all voting and other rights and powers which may be exercised by the holder in respect of Collateralised Assets shall be exercised by, or at the direction of, BCS. Any rights the Client may have in relation to Collateralised Assets are limited to the right to substitute Collateralised Assets with cash or securities of the same or greater value or to withdraw excess Collateralised Assets subject to clause 9.5 and 9.6 below.

**9.4.** BCS may from time to time agree to compensate the Client for entering into the contractual arrangement under this clause 9. Any such compensation will represent an arm's length payment determined by BCS on a case-by-case basis and notified to the Client by means of a separate written document.

**9.5.** BCS may, at the request of the Client, in its absolute discretion permit the Client to deal in or otherwise dispose of any of the Collateralised Assets, subject to the other provisions of this clause 9. If at any time BCS consents to such a dealing or disposition, that consent shall in no way constitute a waiver of BCS's right to refuse to give its consent to any other request. Without prejudice to clause 9.6 below, any instruction to deal in Collateralised Assets prior to satisfaction of all Liabilities will constitute a call for the delivery of Equivalent Assets, which BCS will execute on condition that the Client will have delivered or procured the delivery to an account in the name of BCS or a person acting on its behalf of securities or cash recognised by BCS to be eligible to secure Liabilities.

**9.6.** The Client may withdraw Equivalent Assets prior to satisfaction of the Client's Liabilities to the extent the market value of Collateralised Assets attributed to the Client on the books

and records of BCS in aggregate exceeds the Liabilities. The Client agrees that BCS may return Equivalent Assets to the Client at any time prior to satisfaction of all Liabilities. For all purposes, including any legal proceedings, a certificate by any senior officer of BCS as to the sums or Liabilities for the time being due to or incurred by BCS shall be conclusive in the absence of manifest error.

**9.7.** The Client agrees that if on the due date for delivery of Equivalent Securities BCS shall be unable to deliver any Equivalent Securities to the Client, BCS may, upon giving prior notice to the Client credit the cash accounts opened with BCS for the Client, in an amount equal to the market value of Equivalent Securities.

**9.8.** For the purposes of clause 9.6 and 9.7 above, market value with respect to Collateralised Assets in form of securities or Equivalent Securities, as the case may be, shall be the price for such securities obtained from a source selected by BCS in its reasonable discretion; provided that if prices for such securities are available on an exchange, the price shall be the closing price on such exchange where securities are predominantly traded on a trading day immediately preceding the day of determination and the price of securities that are suspended, or in respect of which there is no source or a discontinuous source, shall be determined by BCS by reference to such pricing sources as BCS reasonably considers appropriate. If any Liability and any Collateralised Assets in form of securities or Equivalent Securities, as the case may be, are expressed or denominated in different currencies, BCS may convert either Liability or market value at a market rate of exchange available to BCS at the time of conversion.

**9.9.** The Client irrevocably authorises BCS to execute any documents and do any acts and things on its behalf that the Client is required to execute and do under this clause 9 and/or that BCS deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred on BCS by this clause 9 or by law. The Client ratifies and confirms, and agrees to ratify and confirm, anything that BCS may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in this clause 9.

**9.10.** The Client understands and agrees that Collateralised Assets whilst under BCS's control will be registered, recorded or held in the name of BCS or its nominee and that BCS will not register, record or hold any Collateralised Assets in Client's name. Consequently, such Collateralised Assets will not be segregated from and will form part of, BCS's proprietary assets and will be held free and clear of all trusts in favour of the Client. BCS will nonetheless separately identify on the internal books and records of BCS contractual claims belonging to each of its clients so that to enable it at any time and without delay to distinguish claims attributed to one client from those attributed to any other client. Any accounts with third parties in which Collateralised Assets will be held, will not be identified on the books and records of a third party as accounts containing assets belonging to clients of BCS. No Collateralised Assets will be afforded protection under the Applicable Regulations as client securities or client funds. In the event of BCS's insolvency, the Client as an unsecured general creditor will have only a contractual claim to the delivery of Equivalent Assets, and will have no

proprietary claim with respect to any securities or cash originally paid or delivered to BCS for or on behalf of the Client.

**9.11.** The Client understands and agrees that this clause 9 will apply to the Client at all times except where the Client elects not to hold any cash or other assets with BCS or where the Client and BCS have expressly agreed in writing that Section C will govern. The arrangement under this clause 9 may be terminated either in accordance with clause 16 or 17 of this Section or the Client may request by giving BCS at least 5 Business Days' notice in writing that this arrangement shall be terminated and all cash and/or financial instruments which are held with or will be credited or otherwise deposited to BCS shall be held or credited, as the case may be subject to Section C of these Terms. No such request will be effective unless BCS has agreed in writing to that request.

**9.12.** Nothing in this clause 9 is intended to create or does create in favour of BCS any mortgage, charge, lien, pledge, encumbrance or other security interest in any cash or other property transferred to BCS by the Client under the terms of this clause 9.

## **10. Loans, Margin and Margin Call**

**10.1.** The Client understands and agrees that it shall perform and settle all Transactions in accordance with their respective terms subject to the Relevant Regulations and Market Rules.

**10.2.** BCS may, in its sole discretion and subject to the provisions of these Terms, agree to lend cash or advance securities or provide any other extension of credit to the Client in respect of any Transaction. Any cash loan credited to the cash account or advanced securities debited to the securities account of the Client, as the case may be, shall be subject to all the terms of clause 9 above (unless the Client and BCS have agreed that Section C will govern).

**10.3.** BCS may agree to execute any order given by the Client or may (and is hereby irrevocably authorised by the Client to) discharge any obligation of the Client to pay money or deliver securities under or in connection with a Transaction or otherwise pursuant to these Terms notwithstanding that the relevant obligations and liabilities at a given time exceed all cash of the relevant currency which is for the time being credited to the cash accounts or, as the case may be, securities of the description and amount in question which are for the time being debited to securities accounts of the Client and in either case available for the purpose. Any such execution or discharge by BCS shall be treated as a legally binding cash loan or, as the case may be, securities borrowing made between BCS as lender and the Client as borrower on condition that the Client shall immediately on demand by BCS repay any such loan together with fees and interest thereon, or deliver to BCS securities equivalent to the loaned securities (as defined in clause 9.2 above and free from all liens, charges, beneficial interests or other encumbrances in favour of any person) together with fees and interest thereon, and shall make such payments as are provided by clause 10.4 with respect to income on such securities.

**10.4.** In respect of any securities standing to the credit of a securities account of the Client, the Client shall pay to BCS an amount equal to, and in the same currency as, the amount payable by the issuer or, in the case of income in the form of securities or other property, deliver to BCS equivalent to such securities (as defined in Clause 9.2 above) or other property.

The amount payable shall in each case be increased by any amount which is required by law to be deducted or withheld in respect of tax by or on behalf of the issuer of the relevant securities or otherwise.

**10.5.** Interest charges and other fees shall apply to the value of any cash or securities borrowings made to the Client which charges will accrue daily at the annualised rate and on the basis agreed between the Client and BCS from time to time. BCS will debit Client's cash account with such accrued interest periodically without prior notice. With respect to loaned securities, interest will accrue on the market value of securities as determined by BCS. The Client understands that the interest rate and fees may be adjusted by BCS from time to time without the Client's consent. However, BCS will provide notice to the Client before such change takes effect.

**10.6.** If BCS determines in its reasonable discretion that the Client is unable, at the time delivery is due or elected, to deliver securities equivalent to loaned securities, BCS shall accept payment by the Client of the market value of such Equivalent Securities (together with outstanding fees and interest) and Client shall indemnify and hold BCS harmless from and against all losses which it may incur or which arise directly in connection with such failure to deliver.

**10.7.** On each occasion that any cash loan or securities borrowing is entered into or remains outstanding, the Client will be deemed to have represented and warranted to BCS that the purpose of the loan or borrowing is consistent with the Client's investment objectives and that the proceeds thereof will not be used for any purpose which is unlawful under any Applicable Regulations.

**10.8.** Except for Transactions that have been fully paid for by the Client, the Client agrees to deposit and maintain in Client's accounts with BCS cash and/or securities in such amounts, at such times and in such form as from time to time required to meet any applicable margin requirements which requirements may include, without limitation, initial, original, variation and maintenance margin requirements. If BCS determines that additional margin is required, the Client agrees to credit to BCS such additional margin upon demand. The Client acknowledges that margin requirements established by BCS may exceed the margin required of BCS by any intermediate broker, clearing house, settlement agent, exchange or market.

**10.9.** The Client acknowledges and agrees that BCS may from time to time issue to the Client a single or collective margin call. The Client undertakes to promptly meet all margin calls in such manner as BCS shall in its sole discretion determine subject to the other provisions of these Terms.

## **11. Foreign Exchange**

**11.1.** The Client shall be responsible for instructing BCS to convert any monies held by BCS for the Client into another currency as the Client considers necessary to conduct its business in that currency. Where the Client instructs BCS to settle a Transaction in a currency different from the currency of the Transaction the Client authorises BCS to convert the settlement

amount and in that case the Client's instruction to settle will serve as a currency conversion instruction.

**11.2.** Whenever BCS conducts currency conversions on Client's instructions BCS will do so at such reasonable rate of exchange as it shall select. BCS shall be entitled to charge and retain for its own account a mark-up on the exchange rates for arranging such conversion or shall be entitled to charge the Client fees and commissions related with currency conversions as may be notified by BCS to the Client. All foreign exchange transacted by BCS on Client's instructions will be carried out in accordance with the standard practices for the relevant currencies unless agreed otherwise. The Client understands that any profit or loss arising out of a fluctuation in the exchange rate affecting currency conversion will be for its own account and risk. The Client understands that a debit balance in one currency cannot be offset against a credit balance in another currency.

## **12. Fees and Commissions**

**12.1.** Any fees in respect of Transactions or Services under these Terms will be calculated on a commission basis, collected from the Client at such times as mutually agreed between the Client and BCS or as notified by BCS to the Client from time to time. The fees, commissions and charges payable will be documented in the Fee Schedule to these Terms.

**12.2.** The Client will be responsible for the payment of any and all commissions, brokerage fees, transfer fees, registration fees, any applicable duties and taxes, and all other liabilities, charges, costs and expenses payable in connection with Transactions effected or Services provided by BCS or executed on Client's behalf. If the Client instructs BCS to provide a Service or to execute a Transaction which is not commissioned on the Fee Schedule, BCS may in its sole discretion choose to execute the Transaction or provide the Service and the Client undertakes to pay to BCS such fee in respect of the Transaction or the Service as may be notified to the Client by BCS promptly upon receipt of the relevant instruction.

**12.3.** In the course of providing Services to the Client, BCS may pay or receive or share fees, commissions or other non-monetary benefits with or from any other person (including its Affiliates). If relevant, the Client will be notified separately of the details of such arrangements.

**12.4.** For the avoidance of doubt, the Client shall additionally pay value added tax and any other relevant tax or imposition at the rates applicable from time to time that relate to the fees, commissions and charges.

## **13. Payment**

**13.1.** The Client agrees to pay any amount due to BCS as it becomes due regardless of any rights of equity, counterclaim or set-off which the Client may have against BCS, free and clear of, and without withholding or deduction for, any taxes of whatsoever nature, unless the same is required by any applicable laws or rules binding on the Client. In that event, unless otherwise agreed, the Client will pay such additional amounts as will result in the net amounts receivable by BCS (after taking account of such withholding or deduction) being equal to such amounts as would have been received by BCS had no such taxes been required to be withheld or deducted.

**13.2.** The Client authorises BCS to debit any of its accounts, whether held by BCS, one of BCS Affiliates or a third party, to pay any amounts due to BCS pursuant to these Terms or any Transaction effected hereunder, including any of BCS fees.

**13.3.** BCS may deduct or withhold all forms of tax (wherever in the world whenever imposed) from any payment if obliged to do so under Applicable Regulations binding on BCS. In accounting for tax or making deductions or withholdings of tax, BCS may estimate the amounts concerned. Any excess of such estimated amount over the final confirmed liability shall be credited or sent to the Client as soon as practicable after the determination of the final liability.

**13.4.** Except as otherwise required or determined by the Applicable Regulations or Market Rules, the Client shall be solely responsible for all filings, tax returns and reports on any Transactions which must be made by the Client to any relevant authority, whether governmental or otherwise, and for the payment of all taxes (including without limitation any transfer, withholding or value added taxes), imports, levies or duties due from the Client on any dividends, principal or interest, or any other liability or payment arising out of or in connection with a Transaction.

**13.5.** Without prejudice to the clause 13.4. above the Client agrees that, so long as it has or may have any obligation under these Terms or under any financial collateral arrangement to which it is a party it will deliver to BCS or, in certain cases to such government or tax authority as BCS reasonably directs any forms, documents or certificates relating to taxation and upon reasonable demand by BCS, any form or document that may be required or reasonably requested in writing in order to allow BCS to make a payment under these Terms without any deduction or withholding for or on account of any tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the Client), with any such form or document to be accurate and completed in a manner reasonably satisfactory to BCS and to be executed and to be delivered with any reasonably required certification, in each case by the date specified by BCS or, if none is specified, as soon as reasonably practicable.

**13.6.** If BCS receives or recovers any amount in respect of an obligation of the Client in a currency other than that in which such amount was payable, whether pursuant to a judgment of any court or otherwise, the Client shall indemnify BCS and hold BCS harmless from and against any reasonable cost (including costs of conversion) and actual loss suffered by BCS as a result of receiving such amount in a currency other than the currency in which it was due.

#### **14. Interest, Late Settlement**

**14.1.** The Client will be charged interest on:

- (i) any debit balance in any of its cash accounts;
- (ii) any and all monies owed by the Client to BCS and not paid when due;
- (iii) any balance in any of its securities accounts with respect to the market value of securities (as determined by BCS) that have been lent to the Client by BCS; and

- (iv) any securities receivable by BCS from the Client which have not been delivered on the date originally scheduled for delivery with respect to the market value of such securities (as determined by BCS).

**14.2.** Interest will accrue daily on a compounded 360/Actual basis at the following rates (and if it is not available on a day which is not a Business Day, the rate available on the day immediately preceding such Business Day):

- (i) for USD, the overnight Federal Funds Effective Rate as reported under column EFF on Bloomberg Page 'FEDL01' + X%;
- (ii) for EUR, the overnight rate as published by the European Central Bank and reported on Bloomberg page 'EONIA Index'+ X%;
- (iii) for GBP, the SONIA rate appearing opposite SONIO/N as reported on Bloomberg page 'SONIO Index'+ X%;
- (iv) for RUB, the MOSPRIME overnight rate as reported on Bloomberg page 'MOSKON Index'+ X%;
- (v) for other currencies not mentioned above, at the effective cost to BCS of funding or borrowing as determined by BCS in good faith and using commercially reasonable methods and practices.

**14.3.** The Client shall also be liable according to the standard practices of the relevant home market as set out in the Market Rules applicable to the Transaction.

**14.4.** Interest will be payable as a separate debt. BCS may debit interest charges to any of Client's cash accounts at such times as BCS considers appropriate, unless otherwise agreed. Details of interest charges will be included in the Client's Account Statements.

## **15. Representations and Warranties**

**15.1.** The Client makes to BCS the representations and warranties in clause 15.1.1 to clause 15.1.17 which representations and warranties will be deemed to be repeated on each date on which a Transaction is to be entered into or securities or Equivalent Securities are to be transferred or a payment is to be made under these Terms. Where relevant, the Client makes the representations and warranties as set out in clause 15.1.1 to clause 15.1.17 on behalf of a person providing financial collateral for the Client under the Terms.

**15.1.1.** It is duly incorporated and validly existing under the law of its jurisdiction of incorporation and has the power and authority to carry on its business as it is being conducted.

**15.1.2.** It has the power and authority to execute, deliver and perform its obligations under these Terms, the Transactions contemplated by them or a financial collateral arrangement. No limit on its powers will be exceeded as a result of any Transaction contemplated by the Terms or financial collateral arrangement.

**15.1.3.** The execution, delivery and performance of the obligations in, and Transactions contemplated by, the Terms or financial collateral arrangement do not and will not contravene or conflict with its constitutional documents, any agreement or instrument binding on it or its assets.

**15.1.4.** If relevant, it is authorised under all applicable laws and regulations and has all necessary permissions in each case to enable it to perform its obligations under the Terms or any Transaction or financial collateral arrangement and has taken all necessary action and obtained all other required or desirable authorisations to enable it to execute, deliver and perform its obligations under the Terms, the Transactions contemplated by them and the financial collateral arrangement and to make them admissible in evidence in its jurisdiction of incorporation. Any such authorisations are in full force and effect.

**15.1.5.** Its obligations under the Terms and any Transaction or financial collateral arrangement are legal, valid, binding and enforceable and the Terms, Transactions and financial collateral arrangement create (or, once entered into, will create) valid and legally binding obligations enforceable in accordance with their terms.

**15.1.6.** These Terms and each Transaction creates (or, once entered into, will create) valid, legally binding and enforceable security interest for the obligations expressed to be secured by it in favour of BCS, having the priority and ranking ahead of all (if any) security and rights of third parties;

**15.1.7.** It is not necessary to file, record or enroll these Terms or a financial collateral arrangement with any court or other authority or pay any stamp, registration or similar taxes in relation to the Terms, any Transaction or financial collateral arrangement.

**15.1.8.** The choice of Cyprus law as the governing law of the Terms or the financial collateral arrangement will be recognised and enforced in its jurisdiction of incorporation or principal place of business and any judgment obtained in relation to the Terms or the financial collateral arrangement will be recognised and enforced in that jurisdiction.

**15.1.9.** No Event of Default has occurred, is continuing or will occur as a result of entering into or performing its obligations under these Terms or any Transaction or financial collateral arrangement and no other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument or any law or regulation or judicial or official order which is binding on it or to which any of its assets is subject. The Client shall notify BCS of any Event of Default (and the steps, if any, being taken to remedy it) immediately on becoming aware of its occurrence.

**15.1.10.** No litigation, arbitration or administrative proceedings are taking place, pending or, to its knowledge, threatened against it, any of its directors or any of its assets at law or in equity before any court, tribunal, governmental body, agency or official or any arbitrator.

**15.1.11.** It will comply with all laws, rules, regulations and disclosure requirements of any relevant jurisdiction, exchange, market or regulatory authority which may be applicable to it or its investments from time to time.

**15.1.12.** It shall provide to BCS assistance and shall supply to BCS promptly, any information about its financial condition, business and operations that BCS may reasonably request.

**15.1.13.** All investments to which these Terms or a financial collateral arrangement apply are and will so long as these Terms are in force, be free from any impediment which would prevent any related Transactions and are beneficially owned by it or the person or ultimate beneficiary on whose behalf it is acting directly or indirectly. It or each of its underlying customers on whose behalf the Client is acting under these Terms has good, valid and marketable title to, all its assets.

**15.1.14.** The information, in written or electronic format, supplied to BCS in connection herewith was, at the time it was supplied or at the date it was stated to be given (as the case may be) complete, true and accurate not misleading in any material respect, nor rendered misleading by a failure to disclose other information except to the extent that it was amended, superseded or updated by more recent information supplied to BCS.

**15.1.15.** It is not a US person within the meaning of US income tax laws as in effect from time to time and none of the persons which directly or indirectly own ten percent or more of it (being a person other than an individual) is a US person.

**15.1.16.** All investments or other property supplied to BCS under these Terms or a financial collateral arrangement, are at all times free from any charge, lien, pledge or encumbrance other than one which is routinely imposed by a system in which such investments or property may be held.

**15.1.17.** It has requested from BCS any Service and is entering into these Terms or a financial collateral arrangement at its own initiative without any solicitation by BCS or any of its Affiliates and has made its own independent decision with respect to the matters contemplated by the Terms or the financial collateral arrangement with no reliance being made upon BCS. Unless otherwise expressly agreed with BCS, it is entering into these Terms or a financial collateral arrangement as principal and not as agent or trustee on behalf of any other person.

## **16. Events of Default**

**16.1.** Each of the following events in relation to the Client or if applicable, any financial collateral provider of the Client shall constitute an 'Event of Default':

**16.1.1.** It fails to make any payment when due under or to make delivery of any property when due, or to observe or perform any other provision of these Terms or a financial collateral arrangement;

**16.1.2.** It admits to BCS that it is unable to or intends not to perform any of its obligations to BCS under these Terms, any Transaction or financial collateral arrangement;

**16.1.3.** An event of default or equivalent event (however described) occurs under any agreement between it and BCS or any of BCS Affiliates;

**16.1.4.** Any its material document or constitutional document is modified in a manner which, in the reasonable discretion of BCS, may have a material adverse effect on any Transaction or on its ability to perform its obligations to BCS;

**16.1.5.** It disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges validity, legality or enforceability of these Terms, any Transaction or financial collateral arrangement;

**16.1.6.** Any Transaction or financial collateral arrangement is or becomes unenforceable, invalid or illegal or any security interest granted by it to BCS ceases to be in effect;

**16.1.7.** Any of its assets are transferred or ordered to be transferred to a trustee or any governmental authority or agency;

**16.1.8.** Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened against it or its assets;

**16.1.9.** A representation made or repeated or deemed to have been made or repeated proves to have been incorrect, inaccurate or misleading in any material respect;

**16.1.10.** It seeks, consents to or acquiesces in the commencement of proceedings for liquidation, bankruptcy or the appointment of a liquidation committee or similar body or official;

**16.1.11.** A petition is presented or filed or claim lodged against it with any court, arbitral court or any other body for insolvency, dissolution or liquidation (or any analogous or similar proceedings) in any jurisdiction;

**16.1.12.** The institution of supervision, external administration, receivership or a liquidation committee or a temporary administrator, external administrator, receiver or similar officer is appointed;

**16.1.13.** A meeting of creditors is convened to consider an amicable settlement, or an intent to convene such meeting is stated; or

**16.1.14.** Its financial condition meets the insolvency criteria established by the legislation applicable to it.

**16.2.** The Client hereby irrevocably and unconditionally authorises BCS without notice to the Client, on or at any time after the occurrence of an Event of Default (provided that an Event of Default which is an insolvency event (as set out in clause 16.1.10 to 16.1.14 above) will be deemed to have occurred at the time immediately preceding the commencement of an insolvency or any similar or analogous condition or event) to:

**16.2.1.** Terminate the agreement to provide the Services and treat any or all Transactions between the Client and BCS whether contemplated or outstanding as having been cancelled or terminated;

**16.2.2.** Sell, alienate, realise or otherwise transfer at such time or times and to such person or persons as BCS in its absolute discretion thinks fit any or all financial instruments which BCS or its agents are holding or are entitled to receive on the Client's behalf and to apply the proceeds in or towards satisfaction of any obligations or liabilities of the Client to BCS;

**16.2.3.** Combine, consolidate or merge all or any liabilities and/or transfer any sum standing to the credit of any Client's account with BCS or which BCS or its agents are entitled to receive on the Client's behalf in or towards satisfaction of any obligation or liability the Client may have to BCS and/or to set-off any obligation BCS owes to the Client against any liability of the Client to BCS, notwithstanding that account balances and the liabilities may not be expressed in the same currency and BCS is hereby authorised to effect any necessary conversions at a market rate of exchange then prevailing; or

**16.2.4.** 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 BCS sole discretion, it or its agents consider necessary or appropriate to cover, reduce or eliminate loss or liability under or in respect of any contracts, positions or commitments of the Client;

**16.2.5.** Appropriate any or all financial instruments in or towards discharge of any obligation or liability owed to BCS by the Client.

**16.2.6.** The Client agrees that for the purposes of clause 16.2.5 above the value of appropriated financial instruments shall be equal to the default market value of the financial instruments to be determined by BCS on or as soon as reasonably practicable after an Event of Default as follows:

**16.2.6.1.** If prices for financial instruments to be evaluated are available on an exchange, the default market value shall be the closing price on such exchange on a trading day immediately preceding the day of determination;  
or

**16.2.6.2.** If on or about a determination date BCS has sold financial instruments which form part of the same issue and are of an identical type and description as financial instruments to be evaluated (regardless as to whether or not such sales or purchases have settled), BCS may elect to treat as the default market value the net proceeds of such sale after deducting all reasonable costs, commissions, fees and expenses incurred in connection therewith (provided that, where financial instruments sold are not identical in amount, BCS may, acting in good faith, either:

- (i) elect to treat such net proceeds of sale divided by the amount of financial instruments sold and multiplied by the amount financial instruments to be evaluated; or
- (ii) elect to treat such net proceeds of sale of financial instruments actually sold as the default market value of that proportion of financial instruments subject to evaluation, and, in that case, the default market value of the balance shall be determined separately in accordance with the provisions of this clause; or

**16.2.6.3.** if on or about a determination date BCS has received bid quotations in financial instruments of the relevant description from two or more market makers or regular dealers in the appropriate market in a commercially reasonable size, BCS may elect to treat as the default market value the price quoted by each of them (or where a price is quoted by more than two market makers, the arithmetic mean of such prices) adjusted by BCS in a commercially reasonable manner to reflect accrued but unpaid distributions and to deduct anticipated transaction costs; or

**16.2.6.4.** if, acting in good faith BCS either has endeavored but been unable to carry out evaluation or has determined that it would not be commercially reasonable to accept the prices obtained in accordance with clause 16.2.6.1, 16.2.6.2 or 16.2.6.3 above, BCS may treat such as the default market value the amount which, in the reasonable opinion of BCS, represents their fair

value between the parties hereto, less all transaction costs which would be incurred or reasonably anticipated in connection with the purchase or sale of financial instruments; and

**16.2.6.5.** If the prices, claims or liabilities are expressed in different currencies, BCS may convert either price, claim or liability at a market rate of exchange then prevailing.

**16.3.** The Client acknowledges and agrees that the method of valuation set out in clause 16.2.6 above represents a commercially reasonable method of valuation. BCS shall maintain accounts evidencing the amounts owed to it by the Client, in accordance with its usual practice. Entries in those accounts shall be prima facie evidence of the existence and amount of the Client's obligations as recorded in them. If BCS issues any certificate, determination or notification of a rate or any amount payable, it shall be (in the absence of manifest error) conclusive evidence of the matter to which it relates.

**16.4.** Where the value of the assets appropriated, sold or otherwise disposed of pursuant to clause 16.2 exceeds the Client's liabilities BCS will account to the Client for the excess balance. If the liabilities exceed the value of the assets, the Client will remain liable to BCS for any balance due. The Client undertakes to immediately transfer to BCS the amount appropriate to fully pay and discharge all liabilities.

**16.5.** Without prejudice and in addition to any right or remedy which BCS or its Affiliates may be entitled to exercise whether by law or otherwise, the Client's funds and financial instruments shall be subject to a general lien in favor of BCS or its Affiliates, insofar as there remain any outstanding amounts due or liabilities (whether actual or contingent) outstanding owed by the Client to BCS or any of its Affiliates.

## **17. Termination**

**17.1.** Without prejudice to anything contained in clause 16 above, either party may terminate these Terms at any time by giving written notice of termination to the other party. Termination of these Terms shall be:

**17.1.1.** Without prejudice to the completion of any Transaction or Transactions already initiated and any Transaction or all Transactions outstanding at the time of termination will be settled and delivery or payment will be made;

**17.1.2.** Without prejudice to and shall not affect any accrued rights, existing commitments or any contractual provision intended to survive termination; and

**17.1.3.** Without penalty or other additional payment save that the Client will:

(iii) pay outstanding fees and charges;

(iv) compensate all expenses incurred by BCS under these Terms up to the date of termination;

(v) compensate all expenses incurred by BCS in terminating these Terms; and

(vi) compensate BCS all non-mitigatable losses realised in settling or terminating outstanding obligations.

**17.2.** The Client is required to provide BCS with outward transfer instructions as soon as reasonably practicable and where no such instructions have been received on or before termination date, the Client will be subject to a separate fee accruing on its assets up to the date of withdrawal. The Client understands that BCS will not be able to transfer Client's account balance out unless moneys held in the Client's account(s) are sufficient to make a transfer and to cover related expenses. The Client acknowledges that no payment or transfer may be made unless all the necessary anti-money laundering checks have been completed. The Client understands that the payment or transfer will be made to an account in the Client's name and agrees that no interest will be paid to the Client on moneys held by BCS for the Client on or after termination date.

## **18. Liability and Indemnities**

**18.1.** BCS shall not be liable for loss suffered by the Client in connection with these Terms unless such loss has been proved to directly arise from gross negligence, wilful misconduct or fraud of BCS. In no event shall BCS be liable for any indirect, consequential or special loss, howsoever arising. BCS shall be released from liability pursuant to this clause to the extent that the loss is incurred as a result of the gross negligence or wilful misconduct of the Client.

**18.2.** Except as otherwise expressly stated herein, BCS shall not be responsible for loss resulting from an act or omission of any third party, whether or not appointed by BCS, which is beyond the control of BCS and shall not be obliged to request such third party to comply with its obligations but undertakes to provide reasonable assistance to the Client in doing so.

**18.3.** The Client shall indemnify BCS, its Affiliates and each of their directors, officers, employees, financiers, auditors, partners, agents or advisers ('Indemnified Party') within three Business Days of demand against any and all actions, claims, demands, liabilities, proceedings, costs, fees, charges, losses, expenses, settlements, taxes, duties, levies, damages and liabilities of every description (including without limitation legal fees, accountant's fees, fines and penalties) ('Loss') whether actual or future, which may be sustained or incurred by or asserted against any Indemnified Party arising out of, in connection with, or as a result of:

- (i) the occurrence of an Event of Default;
- (ii) investigating any event which an Indemnified Party reasonably believes is an Event of Default;
- (iii) acting or relying on any notice, request, information or instruction which an Indemnified Party reasonably believes to be genuine, correct and appropriately authorised by the Client;
- (iv) the settlement or attempted settlement of any Transaction or any failure to settle any such Transaction;
- (v) access to, or use by the Client of the dedicated electronic systems through which BCS provides the Services;
- (vi) the entry into and performance of any agreements with third parties pursuant to these Terms;

- (vii) any action taken by a third party to gain control of cash or securities governed by these Terms;
  - (viii) any obligation or liability being or becoming unenforceable, invalid or illegal or not being recoverable for any other reason whatsoever;
  - (ix) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in an Indemnified Party under these Terms or by law;
  - (x) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the indemnity, guarantee, security or any other right or interest constituted by these Terms; or
  - (xi) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnified Party is a party thereto,
- save where such Loss is incurred as a result of gross negligence, fraud or wilful default on behalf of the relevant Indemnified Party.

**18.4.** Each indemnity in these Terms:

- (i) is a separate and independent obligation from the other obligations in these Terms;
- (ii) gives rise to a separate and independent cause of action;
- (iii) applies whether or not any indulgence is granted by an Indemnified Party;
- (iv) shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under these Terms, or any other judgment or order; and
- (v) shall continue in full force and effect notwithstanding the termination of these Terms.

**18.5.** BCS will not be liable to the other parties for any delay in performance, or for the non-performance of any of its obligations hereunder by reason of any cause beyond BCS reasonable control or for any losses caused by the occurrence of any contingency beyond BCS reasonable control. This includes without limitation acts of God or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, imposing or changing (including a change of interpretation) any law or governmental or regulatory requirement or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; non-performance by subagents or intermediaries; insolvency, default, suspension, failure or closure of any market, exchange, clearing house, settlement or credit institution; limits on trading, rulings by any exchange or market or other regulatory or self-regulatory organisation; interruption or failure of any power or telecommunication lines, computer systems or utility service.

**19. Conflict of Interest**

**19.1.** BCS has in place arrangements to identify and manage conflicts of interest between itself, including its managers and employees, tied agents, or other relevant persons, as well as any person directly or indirectly linked to them by control, as well as between BCS and its clients or between one client and another, that arise in the course of providing the Services. More information on the measures adopted at BCS to mitigate conflict of interest can be found in the conflict of interest policy document on [www.bcscyprus.com](http://www.bcscyprus.com).

**19.2.** Where the organisational or administrative arrangements made by BCS to manage conflict of interest, are not sufficient to ensure, with reasonable confidence, that risks of damage to the Client interests will be prevented, BCS will clearly disclose the general nature or/and sources of conflicts of interest to the Client before undertaking business on its behalf.

**19.3.** The disclosure to the Client will be made in a durable medium and include sufficient detail, taking into account the nature of the Client, to enable it to take an informed decision with respect to the Service in the context of which the conflict of interest arises. The Client understands that BCS may provide that information on paper or in other durable medium. The Client hereby specifically chooses the provision of the information by means of electronic communications to the Client's e-mail address.

**19.4.** The Client acknowledges that BCS shall be under no duty to disclose to the Client any information in making any decision or taking any action in connection with the provision of the Services, or to take into account any information or other matters which come to its notice or the notice of any of its employees, officers, directors, agents or associates:

- (i) where this would, or BCS reasonably believes that it would, be a breach of any duty of fidelity or confidence to any other person; or
- (ii) which comes to the notice of an employee, officer, director or agent of BCS, but does not come to the actual notice of the Client's account manager or other individual providing the Client with the Services.

**19.5.** Except as expressly recognised herein, nothing in these Terms shall create any fiduciary or equitable duty owed by BCS to the Client. The Client understands that BCS and its Affiliates may have interest in any securities subject to a Transaction or relationships or agreements with or relating to the issuer of securities without being required to disclose any of the same to the Client.

## **20. Confidentiality**

**20.1.** Each party undertakes to keep all information relating to the other party's business, customers or financial or other affairs that is of a confidential nature and which is not in the public domain ('Confidential Information') and:

- (i) shall not use any Confidential Information for any purpose other than the performance of its respective obligations under these Terms;
- (ii) without prejudice to clause 20.2, shall not disclose any Confidential Information to any person except with the prior written consent of the other party; and
- (iii) shall undertake reasonable efforts to prevent the use or disclosure of the Confidential Information other than in accordance with this clause.

**20.2.** BCS may disclose any Confidential Information to its directors, officers, employees, sub-contractors, agents and members of its group of companies (where applicable) to the extent that such disclosure is necessary for the purposes of these Terms, and to its professional advisers, any governmental, banking, taxation or regulatory authority or similar body, or any other person to the extent that it is required to do so by any Applicable Regulations, Market Rules or court order

## **21. Personal Data**

**21.1.** The Client acknowledges that BCS may obtain personal data (as defined in the Processing of Personal Data (Protection of Individuals) Law 2001, as amended) about the Client, its counterparties, shareholders, beneficial owners and their respective directors, officers, employees and authorised persons. The Client authorises BCS in providing, and procuring the provision of, the Services, to process as data processor, hold, retain, disclose and transfer personal data (whether provided electronically or otherwise) to any of BCS Affiliates or third party wherever located in the world to the extent necessary for the provision of the Services or otherwise subject to any Applicable Regulations.

**21.2.** The Client represents and warrants to BCS that all relevant data subjects whose personal data it has supplied or will supply to BCS in connection with these Terms have given their informed consent for BCS processing, holding, retaining and disclosing the personal data and have expressly consented to the transfer of the personal data to any country including countries outside the European Economic Area (which may not have data protection laws which are commensurate with those in force in the Republic).

## **22. Complaints**

**22.1.** BCS has established and maintains effective and transparent procedures for the reasonable and prompt handling of complaints or grievances received from its clients.

**22.2.** If the Client wishes to raise a complaint or grievance about the Services, the Client may communicate it in the first instance to its account manager at BCS. If the Client is not satisfied with the response it shall contact BCS Compliance Team at [compliance@bcscyprus.com](mailto:compliance@bcscyprus.com).

## **23. Miscellaneous**

**23.1.** These Terms shall be personal to the Client and accordingly neither the benefit of nor the obligations under any provision of these Terms or any Transaction may be assigned, transferred or delegated by the Client to any third party without the prior written consent of BCS. Notwithstanding the foregoing, BCS may, in its sole and absolute discretion, delegate the performance of its obligations and novate, assign or charge any rights, benefits and obligations under these Terms or all or any part of a Transaction on such terms as it considers appropriate, to a third party by giving prior written notice to the Client.

**23.2.** These Terms constitute the entire agreement between the parties and supersede and extinguish all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to the subject matter of the Terms.

**23.3.** The Client acknowledges and agrees that in conducting business with BCS pursuant to the Terms, the Client does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person other than as expressly set out in the Terms.

**23.4.** No failure to exercise or delay in exercising any right or remedy under the Terms shall constitute a waiver thereof and no single or partial exercise of any right or remedy under the Terms shall preclude or restrict any further exercise of such right or remedy. The rights and remedies contained in the Terms are cumulative and not exclusive of any rights and remedies provided by law.

**23.5.** If any court or competent authority finds that any provision of these Terms (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of these Terms shall not be affected. If any invalid, unenforceable or illegal provision of these Terms would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**23.6.** Any provision of these Terms that expressly or by implication is intended to come into or continue in force on or after termination of these Terms including clauses 12, 14, 17, 18, 20, 23 and 24 shall remain in full force and effect.

## **24. Governing Law**

**24.1.** These Terms and any disputes or claims arising out of or in connection with the Terms or their subject matter, formation, validity, enforceability or termination (including non-contractual disputes or claims) (a 'Dispute') are governed by, and construed in accordance with, the law of the Republic of Cyprus.

**24.2.** Any Dispute shall be referred to and finally resolved by arbitration under the Arbitration Rules (the 'Rules') of the London Court of International Arbitration (the 'LCIA') which Rules are deemed to be incorporated by reference into these Terms. The parties hereby expressly agree that any Dispute will necessarily require resolution as a matter of exceptional urgency. There shall be one arbitrator and the appointing authority shall be the LCIA, such appointment to be made by the LCIA within four days of filing a Request for Arbitration with the LCIA. The seat of the arbitration shall be London, England, all hearings shall take place in London, England, the arbitration proceedings shall be conducted in the English language, and the Award shall be in English.

**24.3.** The Client waives generally all immunity it or its assets may otherwise have in any jurisdiction, including immunity in respect of the giving of any relief by way of injunction or order for specific performance or for the recovery of its assets and the issue of any process against its assets for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets.

## SECTION B: NETTING

1. In this Section '**netting**' means either reducing or eliminating the amount due to be paid (whether or not in the same currency) or delivered by one party to the other (whether or not on the same date) or terminating multiple payment and/or delivery obligations arising between the parties and replacing them by a single payment and/or delivery obligation owing by one party to the other.
2. Unless the Client and BCS expressly agree otherwise, BCS may at any time and without prior notice to the Client set off any liability of the Client to BCS against any liability of BCS to the Client, whether either liability is present or future, actual or contingent, liquidated or unliquidated, and whether or not either liability arises under these Terms or under any other agreement entered into between the Client and BCS, pursuant to which BCS and the Client may from time to time have exposures, contingent liabilities or debts to each other ('Contracts').
3. The Contracts are the following agreements made between BCS and the Client: the Global Master Repurchase Agreement, the Global Master Securities Lending Agreement, the General Terms for Securities Purchase and Sale of BrokerCreditService (Cyprus) Limited and/or any other agreement or contract separately agreed between BCS and the Client to be subject to this Section, as these agreements may be supplemented or amended from time to time (and, in the case of any master agreements or umbrella agreements so identified, each transaction thereunder or covered thereby), and any related credit support or security agreements (other than these Terms), and any terms or conditions incorporated by reference into any of the foregoing. Each of BCS and the Client agrees that in the event of any inconsistency between the terms of any Contract and this Section, the terms of this Section shall prevail.
4. BCS shall determine reciprocal liabilities in accordance with the provisions of these Terms and the relevant Contract and shall aggregate all positive amounts and all negative amounts so determined and net such two amounts and only the balance shall become due by the party owing the greater of those amounts (or having the claims valued at the lower amount), to the other party.
5. Any balance due under this Section shall be paid or delivered, as the case may be, no later than on the Business Day following the day on which BCS notifies the Client of the amount due. Neither party shall be obliged to pay under this Section unless the amount payable exceeds the banking fees in respect of making a bank money transfer. The Client hereby authorises BCS to debit or credit any relevant account maintained by BCS for the Client pursuant to these Terms, in order to effect such payment or delivery. Where the Client and BCS are each simultaneously subject to payment and delivery obligations, the obligations shall be discharged on a delivery-versus-payment basis. Netting, when completed shall fully and properly discharge and terminate any and all obligations subjected to netting under this Section.
6. If the liabilities to be set off are expressed in different currencies, BCS may convert either liability at a market rate of exchange for the purpose of set-off, and the Client shall indemnify BCS immediately on demand from and against any loss suffered or incurred as a result of any discrepancy between the rate of exchange used for such conversion and the rate

or rates of exchange available to BCS at the time of receipt of the net sum owing to BCS by the Client. The Client hereby authorises BCS to debit any cash account maintained by BCS for the Client pursuant to these Terms, in order to effect payment under this clause.

**7.** If any obligation to deliver securities or Equivalent Securities owed to the Client by BCS under or in connection with these Terms or any Contract, has to be replaced for the purposes of this Section by an obligation to pay market value of those securities or Equivalent Securities, then market value with respect to those securities shall be the price for such securities obtained from a source selected by BCS in its sole and absolute discretion; provided that if prices for such securities are available on an exchange, the price shall be the closing price on such exchange on a trading day immediately preceding the day of set-off, and the price of securities that are suspended, or in respect of which there is no source or a discontinuous source, shall be determined by BCS by reference to such pricing sources as BCS considers appropriate and taking into account, in its absolute discretion, any variation in the value of cash or securities due to the availability, liquidity, solvency or market.

**8.** BCS is not obliged to exercise its rights under this Section, but if the rights are exercised, BCS shall promptly notify the Client of the set-off that has been made. BCS will not exercise any right pursuant to this Section with respect to any Contract unless an event of default has occurred or is continuing under that Contract (as defined therein).

**9.** BCS shall maintain accounts evidencing the amounts owed to it by the Client, in accordance with its usual practice. Entries in those accounts shall be prima facie evidence of the existence and amount of the Client's obligations as recorded in them. If BCS issues any certificate, determination or notification of a rate or any amount payable under this Section, it shall be (in the absence of manifest error) conclusive evidence of the matter to which it relates.

**10.** If the exercise of any right pursuant to this Section shall be avoided or set aside by a court or shall be restrained, stayed or enjoined under the Applicable Regulations, then the obligations in respect thereof shall be reinstated, or in the event of restraint, stay or injunction, preserved in the amounts as of the date of restraint, stay or injunction between BCS, on the one hand, and the Client, on the other, until such time as such restraint or injunction shall no longer prohibit exercise of such right.

## **SECTION C: CUSTODY**

1. Subject to this Section, BCS shall open and maintain on the books and records of BCS one or more cash accounts and securities accounts in the name of the Client, to which in the case of cash accounts, there shall be credited all cash paid or deemed or treated as paid to the Client and debited all cash paid or deemed or treated as paid by the Client pursuant to these Terms and all Transactions relating thereto and such other payments as BCS and the Client may from time to time agree; and in the case of securities accounts, there shall be debited all securities delivered or deemed or treated as delivered to the Client and credited all securities delivered or deemed or treated as delivered by the Client pursuant to these Terms and all Transactions relating thereto. The parties acknowledge and agree that any cash ('Client Funds') or securities ('Client Securities') which are held or received by BCS for the Client under this clause shall be held by BCS as client funds or client securities ('Client Assets') in accordance with the Applicable Regulations.

2. BCS shall receive, hold, release, pay, transfer and deliver (or instruct any sub-custodian or agent to receive, hold, release, pay, transfer and deliver) any Client Assets to or from the securities or cash accounts only on receipt of client instructions. The Client authorises BCS to (or to instruct any sub-custodian or agent to) deliver Client Assets to the securities or cash accounts and to transfer Client Assets from the securities or cash accounts, only in accordance with such instructions. BCS shall have full authority to do whatever it reasonably deems necessary in order to effect client instructions. In addition, the Client hereby authorises BCS to do whatever BCS deems necessary in its absolute discretion to effect such transfers of Client Assets to and from the securities or cash accounts as are required pursuant to these Terms or any Transaction.

3. BCS will identify on its books and records that the Client Assets belong to the Client. BCS will require that any sub-custodian or nominee or agent appointed by it, or any securities depository or credit institution which BCS uses to hold Client Assets pursuant to this Section, will identify on its books and records that the Client Assets belong to clients of BCS (to the extent permitted by applicable mandatory law, regulation, or market practice) so that it is readily apparent that such Client Assets do not belong to BCS.

4. The Client authorises BCS to hold Client Assets in fungible accounts holding securities or cash of other BCS clients (but not securities or cash of BCS), such accounts being designated as client accounts. The Client authorises BCS to hold Client Assets in accounts with any sub-custodian or nominee or agent or any securities depository or credit institution appointed by BCS on the basis that such accounts are fungible accounts which hold securities or cash of other customers of the relevant third party (but not securities or cash of such third party).

5. The Client understands and agrees that:

- (a) where Client Assets are held overseas there may be different settlement, legal and regulatory requirements in those jurisdictions from those applying in the Republic of Cyprus, together with different practices for the separate identification of securities or cash;

- (b) in providing the Services described in this Section, BCS may hold Client Assets with other institutions who are in the same group as BCS;
  - (c) the omnibus accounts are a form of pooling and accordingly, Client's individual entitlements may not be identifiable by separate certificates, physical documents or entries on the register or equivalent electronic records. In the event of an irrecoverable shortfall following any default or failure by a party responsible for pooled assets, the Client may not receive full entitlement and may share in that shortfall pro-rata to its original share of assets in the pool; and
  - (d) if the Client instructs BCS to hold Client Assets with or register or record Client Securities in the name of a person not chosen by BCS, the consequences of doing so are at the Client's own risk and BCS shall not be liable therefore.
6. BCS shall be entitled to disclose any information relating to the Client or the Client Assets as is required by any law, court, legal process, professional adviser or banking or other regulatory or examining authorities (whether governmental or otherwise). In addition, where the Client requests the use of a third party tax reclaim service the Client agrees that BCS may disclose information relating to the Client or the Client Assets that is requested by such third party tax reclaim service.

#### ***Client Funds***

7. BCS will hold Client Funds in compliance with the Law and the CySEC Directives on clients' funds. BCS may settle Transactions on a delivery-versus-payment basis; in consequence, BCS will not hold any Client's Funds.
8. In relation to Client Funds the following provisions shall apply:
- (a) when holding Client Funds BCS will make adequate arrangements to safeguard the Client's rights and prevent the use of Client Funds for its own account, except in the case of borrowing by BCS of any interest derived from the Client's Funds held at a bank account with a third party to which the Client hereby expressly consents;
  - (b) unless otherwise agreed, BCS will not pay any interest;
  - (c) BCS will keep such records and accounts as are necessary to enable it at any time and without delay to distinguish Client Funds held for one client from cash held for any other client, and from its own funds;
  - (d) BCS will maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the funds held for the Client;
  - (e) BCS will conduct, on a regular basis, reconciliations between its internal accounts and those of any third party with which Client Funds are held; and
  - (f) BCS will on receiving any Client Funds, promptly place those funds into one or more accounts, opened with a central bank, credit institution, a bank authorised in a third country or a qualifying money market fund.
9. Where BCS does not deposit Client Funds with a central bank, it will exercise all due skill, care and diligence in the selection, appointment and periodic review of a credit institution, bank or money market fund where Client Funds will be placed and the arrangements for the

holding Client Funds. In doing so BCS will take into account the expertise and market reputation of such institutions with a view to ensure protection of Client's rights, as well as any legal or regulatory requirements or market practices related to the holding of Client Funds that could adversely affect Client's rights.

**10.** BCS may allow another person, such as an exchange, a clearing house or an intermediate broker, to hold or control Client Funds where BCS transfers Client Funds for the purposes of a Transaction through or with that person, or to meet Client's obligation to provide collateral for a Transaction (such as an initial, original, variation and maintenance margin requirement for a contingent liability investment).

**11.** BCS may pass Client Funds to an intermediate broker, settlement or clearing agent, exchange or market which is located outside the Republic of Cyprus. In such circumstances the legal and regulatory regime applying to such person(s) will be different from that of the Republic of Cyprus and, in the event of insolvency of such person(s), Client Funds may be treated in a different manner from that which would apply if the money was held by such person(s) in the Republic of Cyprus. Where due to the nature of the law or market practice of an overseas jurisdiction BCS is prevented from holding Client Funds in a separate account identified on books and records of a third party as containing assets belonging only to clients of BCS and not BCS proprietary assets, such Client Funds may not be segregated from assets of BCS, and, in the event of BCS insolvency, such Client Funds may not be as well protected.

**12.** Where BCS deposits Client Funds with a qualifying money market fund, the units in that money market fund will be held in accordance with the requirements for holding financial instruments belonging to clients. The Client has the right to oppose the placement of its funds in a qualifying money market fund. If the Client does not want BCS to place Client Funds into a money market fund, the Client should notify BCS in writing.

**13.** The Client agrees that BCS may cease to treat Client's money as Client Funds if there has been no movement on Client's balance for six years. BCS shall write to the Client at its last known address informing of BCS intention to no longer treat Client balance as Client Funds and thereafter give the Client 28 days to make a claim.

### ***Client Securities***

**14.** With the exception of any assets transferred to BCS pursuant to clause 9 of Section A of these Terms, any securities debited to the securities accounts shall be held by BCS as custodian, and the Client hereby appoints BCS, and BCS agrees to act, as a custodian, in accordance with the terms of this Section with respect to any Client Securities.

**15.** BCS is authorised under this Section to act through and hold Client Securities with sub-custodians being such other entities as BCS may appoint as sub-custodian. In addition, BCS and each sub-custodian appointed by it may deposit Client Securities with, and hold Client Securities in any securities depository (which may include any settlement system, dematerialised book entry system, clearance system or similar system) on such terms as such systems customarily operate. BCS reserves the right to add, replace or remove any sub-

custodians and BCS shall give notice to the Client of any such act as soon as reasonably practicable thereafter.

**16.** BCS will use reasonable skill, care and diligence in the selection of any sub-custodian appointed by it pursuant to this Section and shall be responsible to the Client for satisfying itself as to the ongoing suitability of such sub-custodian, for the maintenance of an appropriate level of supervision over such sub-custodian and for making periodic enquiries to confirm that the obligations of such sub-custodian to BCS are discharged in a satisfactory manner.

**17.** The Client acknowledges and agrees that BCS may grant to any sub-custodian or securities depository a lien or right of retention where that lien or right of retention:

- (a) arises over any Client Securities held by, or deposited with, that sub-custodian or securities depository in respect of amounts owing to that sub-custodian or depository and relates to Services provided to BCS for the Client;
- (b) arises under the operating terms of a settlement depository in whose account Client Securities are recorded or held, for the purpose of facilitating settlement of Transactions involving Client Securities held in that account; or
- (c) in relation to Client Securities held outside the Republic of Cyprus, arises as a result of local applicable law in that jurisdiction or is necessary for BCS to gain access to the local market in that jurisdiction and BCS has taken reasonable steps to determine that holding those Client Securities subject to such lien, right of retention and/or power of sale is in Client's best interests.

**18.** BCS is authorised to hold in bearer form, such securities as are customarily held in bearer form, and register in the name of (at BCS discretion) the Client or BCS or another sub-custodian appointed by BCS or any nominee of BCS or another sub-custodian appointed by BCS, such securities as are customarily held in registered form. BCS shall not be liable for any loss suffered howsoever caused as a result of an instruction to hold Client Securities with, or have them registered in the name of, any person not chosen by BCS.

**19.** BCS will ordinarily register or record legal title to Client Securities in the name of a nominee. Where investments are subject to the law or market practice of a jurisdiction outside the Republic of Cyprus and due to the nature of the law or market practice of an overseas jurisdiction, it is in the Client's best interests or it is not feasible to do otherwise:

- (a) where BCS is prevented from registering or recording legal title to Client Securities in the Client's name or the name of a nominee, BCS may register or record Client Securities in the name of a sub-custodian or other third party; or
- (b) where BCS is prevented from registering or recording legal title to Client Securities in the Client's name, the name of a nominee, or the name of a third party, BCS may register or record Client Securities in the name of BCS. If Client Securities are registered in the name of BCS, such Client Securities may not be segregated from assets of BCS, and, in the event of BCS insolvency, such Client Securities may not be as well protected. Arrangements with sub-custodians are such that Client Securities held with them shall be in a separate account containing assets belonging only to clients of BCS and not BCS

proprietary assets. In any event, BCS will notify the Client of the registration name used in respect of Client Securities which are registrable securities.

**20.** BCS has adequate organisational arrangements in place to minimise the risk of misuse, fraud, poor administration, inadequate recordkeeping or negligence in respect of Client Securities. BCS keeps such records and accounts as are necessary to enable it at any time and without delay to distinguish Client Securities held for one client from those held for any other client, and from BCS own assets. BCS maintains its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the Client Securities. BCS conducts, on a regular basis, reconciliations between its internal accounts and those of any third parties with which Client Securities are held.

**21.** If BCS deposits Client Securities with a person in a non-EEA state, BCS will be subject to the law of that state and Client's rights in relation to those Client Securities may differ accordingly. If the safekeeping of securities is subject to specific regulation and supervision in a jurisdiction where BCS proposes to hold Client Securities with a third party, BCS will not deposit those Client Securities in that jurisdiction with a third party which is not subject to such regulation and supervision.

**22.** BCS will not hold Client Securities with a person in a non-EEA state which does not regulate custody activities unless the nature of Client Securities requires those Client Securities to be held in such a state or BCS receives a prior written instruction from the Client, in which case the consequences of doing so are entirely at Client's own risk.

**23.** The Client shall not be entitled to any fraction or other entitlement arising as a result of BCS holding Client Securities in omnibus accounts, which is not directly referable solely to the holding of the Client and such fractions or entitlements shall be at the disposal of BCS. On partial redemptions, BCS shall use whatever method it deems fair to determine how shares will be redeemed.

**24.** BCS does not make any warranties, representations or other statements whatsoever in respect of the validity or sufficiency of the securities, the enforceability of any rights or interests relating thereto or whether it is appropriate, necessary or desirable to take or omit to take any action in relation thereto, and these matters shall be the exclusive concern of the Client. BCS shall have no duty to advise or make recommendations to the Client in connection with the securities and BCS shall not be responsible for advising the Client as to the investment merits of such securities.

**25.** The Client agrees that BCS may use Client Securities for the purposes of a Securities Loan (as defined herein) to BCS, one of its Affiliates, to another client of BCS, or to a third party. 'Securities Loan' means a loan or borrowing of securities, and includes repurchase transactions, a reverse repurchase transactions, a buy/sell- back, a sell/buy back and a security lending/borrowing. Where BCS agrees to pay interest such interest will be paid as specifically agreed between BCS and the Client in the Client's Fee Schedule or otherwise.

**26.** Where BCS arranges a Securities Loan in respect of Client Securities, title to the loaned Client Securities will be transferred to the borrower, and the securities returned to the Client will be equivalent but not identical to the loaned Client Securities.

- 27.** The Client agrees and acknowledges that BCS may enter into a Securities Loan in respect of Client Securities held in a securities account with BCS or held by BCS in an omnibus account with a third party. BCS shall require that cash or securities collateral is provided to BCS for the Client, in respect of each Securities Loan.
- 28.** Securities Loans shall be documented on market standard documentation. The Client hereby authorises BCS to negotiate and execute such documentation on Client's behalf.
- 29.** If income is paid or distributed by the issuer of any securities:
- (a) in respect of Client Securities standing to the credit of a securities account, the Client will (subject to clause 30) pay to BCS an amount equal to, and in the same currency as, the amount paid by the issuer or, in the case of income in the form of securities, deliver to BCS securities equivalent to such securities;
  - (b) in respect of Client Securities standing to the debit of a securities account, BCS will (subject to clause 31) pay to the Client an amount equal to the amount paid by the issuer or, in the case of income in the form of securities, deliver to the Client securities equivalent to such securities. BCS will credit the relevant cash account in respect of the amount so payable or, as the case may be, debit the relevant securities account in respect of the securities so deliverable.
- 30.** The amount debited or credited under clause 29(a) shall include but not be restricted to:
- (a) any amount which is deducted or withheld in respect of tax by or on behalf of the issuer of the relevant securities, and
  - (b) any additional tax credits to which a holder of such securities as specified by BCS would be entitled in respect of such income.
- 31.** Any amount credited or debited pursuant to clause 29(b) shall not:
- (a) include any amount in respect of cash or securities which is:
    - (i) deducted or withheld in respect of tax by or on behalf of the issuer of the relevant securities;
    - (ii) required to be accounted for to the tax authorities of the Republic of Cyprus in respect of the income in question; or
    - (iii) might be recovered by BCS or any other holder of the securities from any relevant taxation authority outside the Republic of Cyprus in respect of the income in question; and
  - (b) exceed the amount of cash (or the amount of securities comprising income) which the Client would have received from the issuer in respect of the income, had the Client been the holder of such securities on the date, by reference to which the identity is determined of those holders to whom that income is paid, net of any amount which is or, as the case may be, would have been, held or deducted or withheld in respect of tax by or on behalf of the issuer of the relevant securities.
- 32.** BCS will use reasonable efforts to claim dividends and interest payments on Client Securities but will not have any duty to take steps to recover any amounts due in respect of which the issuer or its registrar, paying agent or other agent defaults.

**33.** BCS shall inform the Client as soon as practicable after it becomes aware of the occurrence or prospective occurrence of any conversion, subscription, sub-division, consolidation, redemption, rights issue, takeover or other offer, capital reorganisation, call, capitalisation issue or distribution of, or a granting of, an entitlement to receive securities or any other corporate event ('Corporate Event') with respect to any Client Securities standing to the debit of a securities account.

**34.** Where a Corporate Event giving rise to a right or option occurs, the Client (in respect of Client Securities standing to the debit of a securities account) or BCS (in respect of Client Securities standing to the credit of a securities account) may within a reasonable time before the latest time for the exercise of the right or option give notice to the other party that it wishes to receive Equivalent Securities or other assets in such form as will arise if the right is exercised in such manner as is stated in the notice.

**35.** BCS may, upon service of such notice, credit or debit the relevant cash account or the relevant securities account with such amounts of cash or, as the case may be, securities as would reflect the performance of the instructions in such notice by BCS. If the Client does not serve notice under clause 34, BCS shall credit or debit the relevant cash account or the relevant securities account to reflect the taking of such action as BCS in its absolute discretion deems appropriate provided that BCS notified the Client of a Corporate Event giving rise to a right or option in respect of which no notice is served to BCS. The Client acknowledges that Equivalent Securities, or other assets required to be delivered under clause 34, may be the subject of a loan made by BCS to third parties and that reasonable prior notice (being the period of standard settlement time for the relevant Equivalent Securities or assets) must be given to BCS to provide for the return of such Equivalent Securities or other assets.

**36.** A notice served by the Client under clause 34 shall not be effective (in which case BCS will, as soon as reasonably practicable, inform the Client) where it refers to an event which involves the payment of money by the holder of securities, unless the Client pays to BCS, for value not later than the due date of the relevant payment, an amount equal to that which is required to be paid by such a holder of securities.

**37.** If a call becomes payable in respect of partly-paid Client Securities, or a demand for any fee, assessment, charge or other payment in respect of any Client Securities becomes payable, BCS may debit the cash accounts with a sum equal to the amount so payable, but shall have no liability whatsoever for the consequences of a failure to satisfy any calls made.

**38.** Where BCS, in its capacity as custodian of the Client, or any third party holding Client Securities on behalf of BCS, in its capacity as custodian, is legally liable to meet any payment due or to become due in respect of such Client Securities, the Client will provide BCS or such other person (as the case may be) with funds to meet such payment, for value not later than the day on which the call is payable.

**39.** If a right to vote (other than a right contemplated by a Corporate Event) arises in respect of any Client Securities standing to the debit of a securities account, BCS shall either:

- (a) deliver such Client Securities to the Client or to its order within a reasonable time before the latest time for the exercise of such vote; or

- (b) request instructions from the Client in respect of such voting rights and use its reasonable endeavours to arrange for such voting rights to be exercised in accordance with such instructions provided those instructions are received within such period as BCS reasonably requires.

### ***Security Interest***

**40.** As continuing security for the payment and discharge of all the Liabilities (as defined in Section A), the Client hereby agrees to create in favour of BCS and grants to BCS, with full title guarantee and free from any encumbrances whatsoever, (except for a lien routinely imposed on all securities in a clearing system or an encumbrance created under these Terms), the first rank security interest over:

- (a) all right, title and interest in and to Client Securities debited to any securities account;
- (b) all assets and rights which, or the certificates or documents of title to which, are deposited with, held or recorded by BCS (including without limitation derivative rights under any contract);
- (c) all other securities and all rights, cash (including without limitation dividends) and property whatsoever which may from time to time accrue on, be derived from or be offered in respect of any Client Assets;
- (d) all Client Funds credited to any cash account;
- (e) all rights of the Client arising in respect of any Client Assets, including, without limitation, any rights against any custodian, banker or other person;
- (f) all rights of the Client under these Terms including, without limitation, all rights of the Client to delivery of any equivalent assets (individually or collectively 'Secured Assets').

**41.** The security provided hereunder is continuing security and will extend to the ultimate balance of the Liabilities, regardless of any intermediate payment or discharge in whole or in part by or on behalf of the Client.

**42.** If BCS is satisfied that all the Liabilities have been irrevocably paid in full and that all facilities which might give rise to Liabilities have terminated, (confirmation of which shall not be unreasonably withheld or delayed), BCS shall, at the request and cost of the Client, release, reassign or discharge (as appropriate) the Secured Assets from the security created pursuant to this Section.

**43.** Upon or at any time after the occurrence of an Event of Default in relation to the Client, BCS shall not be obliged to accept any instructions from the Client in respect of the Secured Assets, including without limitation, the exercise of any rights in respect of Corporate Events. Upon giving prior notice or making demand to the Client, BCS may enforce the security and exercise all powers and rights of a secured party conferred by these Terms or by law or otherwise.

**44.** The Client hereby irrevocably authorises BCS, at any time after an Event of Default in relation to the Client and following notice to the Client, to sell or otherwise realise the Secured Assets in such manner as it may reasonably deem appropriate and apply the proceeds of sale in

or towards payment and satisfaction of any Liability in such order and manner as BCS may reasonably determine.

**45.** For all purposes, including any legal proceedings, a certificate by any senior officer of BCS as to the sums or Liabilities for the time being due to or incurred by BCS shall be conclusive in the absence of manifest error.

**46.** The Client shall not create or permit to subsist any charge, pledge, lien or other security interest securing any obligation of any person (or any other agreement or arrangement having a similar effect), over the Secured Assets except for the security created or expressed to be created by or pursuant to this Section in favour of BCS, nor shall it seek or agree to dispose of such Secured Assets, save in accordance with this Section.

**47.** BCS may, at the request of the Client, in its absolute discretion permit the Client to deal in or otherwise dispose of any of the Secured Assets, subject to the other provisions of this Section. If at any time BCS consents to such a dealing or disposition, that consent shall in no way constitute a waiver of BCS right to refuse to give its consent to any other request. If BCS permits such a dealing or disposition of any of the Secured Assets, then on such dealing or disposition the relevant Secured Assets shall be automatically released from the security hereby created.

**48.** For the purpose of perfecting or enforcing the security interest, if BCS so requests at any time or times, the Client will execute and sign as soon as reasonably practicable, all such transfers, assignments, powers of attorney, further assurances or other documents and do all such other acts and things as may reasonably be required to vest or to realise the security or any of it in BCS or to its order or to a purchaser or transferee to perfect or preserve the rights and interests of BCS in respect of the security (including, without limitation, the institution and conduct of legal proceedings) or for the exercise by BCS of all or any of the powers, authorities and discretions conferred on BCS by this Section.

**49.** The Client by way of security hereby irrevocably appoints BCS as its attorney on the Client's behalf and in the Client's name or otherwise to execute any transfers, assignments, further assurances or other documents as may reasonably be required to vest or to realise the security or any of it in BCS or to its order or to a purchaser or transferee to perfect or preserve the rights and interests in respect of the security of BCS (including, without limitation, the institution and conduct of legal proceedings). The Client hereby ratifies and confirms and agrees to ratify and confirm whatever BCS shall do in the exercise or purported exercise of the above power of attorney.

**50.** If BCS reasonably determines that any payment received or recovered by BCS may be avoided or invalidated after the Liabilities have been discharged in full, and after any facility which might give rise to such Liabilities has been terminated, this Section (and the security created hereby) will remain in full force and effect and BCS will not be obliged to release any Secured Assets until the expiry of such period as BCS shall reasonably determine.

**51.** No payment which may be avoided or adjusted under any law, including any enactment relating to bankruptcy or insolvency, and no release, settlement or discharge given or made by BCS on the faith of any such assurance, security or payment, shall prejudice or affect the right

of BCS to recover the Liabilities from the Client or to enforce the security created under this Section, to the full extent of the Liabilities.

### ***Right to Use***

**52.** The Client hereby authorises BCS at any time or times to borrow, lend, charge, pledge or otherwise encumber to cover any obligations or liabilities, whether present or future, actual or contingent, owed by BCS to any person and arising from time to time, and to hypothecate or re-hypothecate, on any terms, whether for its own account or for the account of third parties, and to dispose of or otherwise to use for its own purposes any Client Assets which are included in the Secured Assets by transferring such Client Assets to itself or to another person without giving notice of such transfer to the Client ('Right to Use'). The Client agrees that BCS may retain for its own account all fees, income, profits and other benefits received in connection with exercising its Right to Use.

**53.** Upon exercising the Rights to Use Client Assets will become Collateralised Assets (as defined in Section A) and the Client will have a right against BCS for the delivery of Equivalent Assets (as defined in Section A) in accordance with standard settlement cycles. The Client acknowledges that it shall not be entitled to receive any dividends, interest and other distributions or property which may be paid or delivered in respect of the Collateralised Assets and that all voting and other rights and powers which may be exercised by the holder in respect of Collateralised Assets shall be exercised by, or at the direction of, BCS. In exchange of the Right to Use BCS may agree to pay to the Client compensation. Any such compensation will represent an arm's length payment determined by BCS on a case-by-case basis and notified to the Client by means of a separate written document.

**54.** The Client may from time to time call for the delivery of Equivalent Assets prior to satisfaction of the Client's Liabilities. The amount of Equivalent Assets to be delivered may not at any time exceed an amount by which the market value of Secured Assets (as determined by BCS) in respect of which BCS has exercised its Right to Use in aggregate exceeds the Liabilities. The Client agrees that BCS may return Equivalent Assets to the Client at any time prior to satisfaction of the Liabilities.

**55.** If on the due date for delivery of Equivalent Securities BCS shall be unable to deliver any Equivalent Securities to the Client, BCS may, upon giving prior notice to the Client credit the cash accounts in an amount equal to the market value of Equivalent Securities.

**56.** For the purposes of clause 54 and 55 above, market value with respect to Secured Assets in form of securities or Equivalent Securities, as the case may be, shall be the price for such securities obtained from a source selected by BCS in its sole and absolute discretion; provided that if prices for such securities are available on an exchange, the price shall be the closing price on such exchange where securities are predominantly traded on a trading day immediately preceding the day of determination and the price of securities that are suspended, or in respect of which there is no source or a discontinuous source, shall be determined by BCS by reference to such pricing sources as BCS reasonably considers appropriate. If any Liability and any Secured Assets in form of securities or Equivalent Securities, as the case may be, are

expressed or denominated in different currencies, BCS may convert either Liability or market value at a market rate of exchange available to BCS at the time of conversion.

**57.** Upon delivery to the Client of Equivalent Assets, such Equivalent Assets will become subject to the security interest and constitute Secured Assets, and shall be subject to all the provisions of this Section.

**58.** The Client understands and agrees that Collateralised Assets whilst under BCS's control will be registered, recorded or held in the name of BCS or its nominee and that BCS will not register, record or hold any Collateralised Assets in Client's name. Consequently, such Collateralised Assets will not be segregated from and will form part of, BCS's proprietary assets and will be held free and clear of all trusts in favour of the Client. BCS will nonetheless separately identify on the internal books and records of BCS contractual claims belonging to each of its clients so that to enable it at any time and without delay to distinguish claims attributed to one client from those attributed to any other client. Any accounts with third parties in which Collateralised Assets will be held, will not be identified on the books and records of a third party as accounts containing assets belonging to clients of BCS. No Collateralised Assets will be afforded protection under the Applicable Regulations as client securities or client funds. In the event of BCS's insolvency, the Client as an unsecured general creditor will have only a contractual claim to the delivery of Equivalent Assets, and will have no proprietary claim with respect to any securities or cash originally paid or delivered to BCS for or on behalf of the Client.

## SECTION D: ELECTRONIC TRADING

### 1. Definitions

**'User Code'** means any security access methods provided to the Client to enable it to use the E-Trading Facility, which may include a user identifier, password, authentication code, digital signature or other security method, device or procedure;

**'BCS Trading Application'** or **'BTA'** means any proprietary electronic trading service offered to the Client by BCS.

**'E-Trading Facility'** means dedicated electronic systems through which BCS provides the Services, including BTA.

### 2. General

**2.1.** BCS may provide any of the Services through an E-Trading Facility, meaning that the Client may authorise BCS to act in respect of the Services upon computer generated orders and instructions. To this end, the Client will be given the right to use the automatic routing system, which permits a user to place electronic orders, give notices and other communications to be then routed to an exchange, desk execution or any other designated person or entity.

**2.2.** E-Trading Facility may be a BTA or a third party system operated by another broker, vendor or exchange.

**2.3.** BCS grants to the Client a limited, non-exclusive, personal, revocable, non-transferable right to use E-Trading Facility. The Client shall not copy, license, sell, transfer, make available E-Trading Facility to any other person.

**2.4.** All patents, copyright, trademarks, trade secrets, database rights and all other intellectual property rights of any kind in BTA shall remain at all times the sole and exclusive property of BCS, even where information or items have been created or developed specifically by BCS for or at the request of the Client.

**2.5.** The Client shall not (and shall not permit any third party to) copy, use, analyze, modify, decompile, disassemble, reverse engineer, translate, convert, transfer, assign, sell, lease, service, distribute or otherwise commercially exploit E-Trading Facility.

**2.6.** BCS makes no representation or warranty, either express or implied, with respect to BTA or any third party system in any manner interfaced with BTA (or the results to be achieved by the use thereof), including, but not limited to, the implied warranties, representations, terms or conditions of merchantability, satisfactory quality or fitness for a particular purpose and all such warranties, representations, terms and conditions are hereby waived except for any implied warranties, representations, terms or conditions relating to title.

**2.7.** The Client may use E-Trading Facility for internal business purposes only.

**2.8.** The Client acknowledges and agrees that damages may not be an adequate remedy for breach of the obligations set out in this clause 2 and that nothing in the Terms is intended to limit BCS's right to seek alternative remedies, including an injunction or other equitable remedy.

### **3. Use**

**3.1.** E-Trading Facility shall be used for:

- (a) terminal access(es) for electronic trading;
- (b) transmission of client orders/instructions;
- (c) monitoring the activity and positions in Client's account(s); and
- (d) provision of software and communication links necessary for access.

**3.2.** E-Trading Facility may be used to transmit, receive and confirm execution of trade orders, subject to prevailing market conditions and the Applicable Regulations and Market Rules. BCS shall use all commercially reasonable endeavours to execute any instruction received by it through E-Trading Facility. BCS has no responsibility for transmissions that are inaccurate or not received.

**3.3.** The Client may not upload files that contain software or other material protected by intellectual property rights (or by rights of privacy or publicity) nor files that contain a virus or corrupted data. The Client may not delete any author attributions, legal notices or proprietary designations or labels. The Client may not use E-Trading Facility in a manner that adversely affects the availability of its resources to other members. The Client may not download a file that cannot be legally distributed via E-Trading Facility.

**3.4.** BCS may at any time and in its absolute discretion impose and vary limits and conditions upon the placement of orders using including limits on size, order types and execution venues and conditions concerning collateral requirements. BCS will use reasonable efforts to communicate them to the Client through E-Trading Facility as soon as reasonably practicable.

**3.5.** The Client acknowledges that from time to time, and for any reason, E-Trading Facility may not be operational or otherwise unavailable for example, due to servicing, hardware malfunction, software defect, service or transmission interruption or other cause. The Client represents and warrants to BCS that it has alternative arrangements which will remain in place for the transmission and execution of trading orders, by telephone, facsimile transmission, or otherwise, in the event, for any reason, circumstances prevent the transmission and execution of all, or any portion of, Client's orders E-Trading Facility. In the event E-Trading Facility is not operational, the Client agrees to contact BCS by the alternative means.

**3.6.** The Client shall neither engage in, nor facilitate, nor fail to take reasonable steps to prevent:

- (a) any action or any course of conduct that has the effect, or may be expected to have the effect, of artificially and/or abnormally moving the price or value of any securities admitted to a regulated market or any instrument underlying such securities or the level of any index of which such securities are a component;
- (b) entering artificial orders or otherwise entering into or causing any artificial transaction;
- (c) reporting a fictitious transaction or any other false data to the exchange or other competent authority or causing such data to be input into any of their systems;
- (d) any action or any course of conduct that creates or may reasonably be expected to create any false or misleading impression as to the market in, or price or value of, any securities;

- (e) any other action or any other course of conduct that may damage the integrity and the transparency of the financial market; or
- (f) agreeing or acting in concert with, or providing any assistance to, any person with a view to or in connection with any action or course of conduct referred to in clauses (a) to (e) inclusive.

**3.7.** The Client acknowledges and agrees that BCS may, in its sole discretion and without notice, restrict, suspend or cancel the Client's right to use E-Trading Facility if required to do so by an exchange, regulator, court or tribunal or other competent authority or otherwise in BCS's absolute discretion.

**3.8.** The Client acknowledges that it has read and understood the Applicable Regulations and Market Rules that apply to the trades it undertakes and agrees to act in accordance with such at all times.

#### **4. Electronic Orders**

**4.1.** All orders placed via E-Trading Facility shall be valid and binding on the Client.

**4.2.** No order, once given, may be varied, cancelled or withdrawn without BCS's express consent. Cancellation requests and confirmations may be communicated via the E-Trading Facility or by other means, including orally. The Client shall remain fully responsible for any orders given unless and until the request for cancellation, variation or withdrawal is confirmed as accepted by BCS.

**4.3.** BCS is not obliged to check the accuracy or authenticity of any electronic orders.

**4.4.** The Client shall maintain with respect to E-Trading Facility adequate systems and controls to ensure order accuracy, order size, compliance with credit and order limits is checked and validated and that order direction, order duplication and order retransmission errors do not occur.

**4.5.** BCS shall have the right to reject or cancel orders or enter off-setting orders or restrict Client's ability to enter further orders in the event the Client acts in breach of the terms in this Section. BCS will use reasonable efforts to notify the Client hereof as soon as reasonably practicable.

**4.6.** BCS's computer data records are, save in the case of manifest error, conclusive evidence of its contents and are binding on the Client. The Client agrees that these records will be admissible in evidence.

#### **5. Security**

**5.1.** The Client shall be fully responsible for use and protection of User Code and will be liable to BCS under any and all Transactions occurring in an account opened, held or accessed with User Code. The Client undertakes to keep User Code secure and not to share the User Code with any third party.

**5.2.** The Client represents and warrants to BCS that any individual who retains possession of User Code is a duly authorised representative of the Client, having the power and authority to legally bind the Client.

**5.3.** The Client shall immediately notify BCS in writing if the Client becomes aware of the following:

- (a) loss, theft or unauthorised use of User Code ; or
- (b) failure to receive a message indicating that an order was received and/or executed; or
- (c) failure to receive an accurate confirmation of execution; or
- (d) receipt of a confirmation of an order which the Client did not place; or
- (e) inaccuracies in Client's account balances, positions, or Transaction history.

**5.4.** The use and storage of any information including, without limitation, User Code, portfolio information, Transaction activity, account balances or any other information obtained by the Client through its use of E-Trading Facility shall be sole risk and responsibility of the Client.

## **6. Pay**

**6.1.** Unless otherwise agreed in writing, BCS will not charge the Client separately for the use of E-Trading Facility.

**6.2.** The Client is responsible for supplying and operating all equipment and software necessary to access and use E-Trading Facility which is compatible with and can be properly connected to E-Trading Facility. All costs and expenses in relation to such equipment and software shall be borne by the Client.

## **7. Limitation of Liability**

**7.1.** The Services under this Section are provided on 'as is' 'as available' basis, and BCS does not make and hereby disclaims any representations, endorsements, guarantees, or warranties, express or implied, including, without limitation, any of merchantability, fitness for particular purpose or title.

**7.2.** The Client acknowledges that there are risks inherent in using any electronic trading system, including E-Trading Facility but agrees that the benefits justify these risks. BCS shall not be liable to the Client or to any other person in any way for:

- (a) any defect, error, fault, omission, mistake or inaccuracy in information or data supplied through or generated by E-Trading Facility;
- (b) failure of any systems or equipment (whether or not provided by BCS) or unavailability of E-Trading Facility or any part thereof or that of the Services;
- (c) accepting or acting upon an unauthorised order or instruction which appears (or which BCS believes) to be from the Client;
- (d) delays in execution of orders, supply of information or provision of Services;
- (e) reliance upon any information or materials provided through E-Trading Facility;
- (f) failure to use E-Trading Facility in accordance with the terms of this Section.

## SECTION E: MARGIN TRADING

### 1. Definitions

**'Asset'** means cash and/or financial instruments.

**'Business Day'** means any day other than Saturday or Sunday.

**'Cash Balance'** means as at a date of determination, the net amount of cash in a definite currency in the Client's Margin Account and the cash to be received under selling Transactions in such currency less:

- 1) the cash to be paid or blocked under Transactions in such currency, and
- 2) any charges to Client's Margin Account.

**'Client Indebtedness'** means Client's consolidated indebtedness as calculated by BCS in accordance with the Margin Trading Manual.

**'Eligible Collateral'** means cash and/or securities received by BCS and recognised by it as eligible collateral to secure obligations of the Client under this Section.

**'Equivalent'** or **'equivalent to'** has the meaning given to it in clause 9.2 of Section A.

**'Haircut'** means a haircut applied by BCS to an Asset in accordance with the Margin Trading Manual, to adjust its value for perceived risk. BCS may assign different haircuts for long and short Positions in the same Margin Security and for positive and negative Cash Balances in the same currency.

**'Loan'** means a securities or cash loan granted by BCS to the Client under this Section.

**'Loaned Asset'** means cash and/or securities that the Client has borrowed under the Loan.

**'Margin Account'** means an account opened by BCS for the Client for the purpose of entering into Margin Transactions.

**'Margin Asset'** means any Asset that BCS considers as liquid and includes in Margin List.

**'Margin Call'** means a notice given to the Client by BCS and requesting a transfer of Eligible Collateral.

**'Margin List'** means a list of Margin Assets as notified to the Client by BCS from time to time by any communication means set out in the Terms. The Client agrees that BCS may modify the Margin List without the Client's consent. BCS will notify the Client prior to the date such modification is to take effect.

**'Margin Position'** means the Position that has been opened as a result of Client's Margin Transaction(s).

**'Margin Ratio'** means the ratio which reflects the relation between Eligible Collateral and Client Indebtedness adjusted for adjusted for Haircuts and other risk parameters and calculated by BCS in accordance with the Margin Trading Manual.

**'Margin Securities'** means Margin Assets in the form of securities.

**'Margin Trading Manual'** means the internal manual communicated to the Client by BCS from time to time as applicable to Margin Assets and Margin Transactions that explains how BCS will determine requirements and calculate variables set out in this Section. The Client agrees that BCS may modify this manual without the Client's consent. BCS will notify the Client prior to the date such modification is to take effect.

**'Margin Transaction'** means a purchase or sale of securities, currencies or eligible derivative contracts (as defined in clause 7.1 in Section A) that involves borrowing of a Loaned Asset and where Eligible Collateral is provided as security for the Loan.

**'Overnight REPO', 'Overnight Reverse REPO' and 'Overnight Currency Swap'** means a repurchase, reverse repurchase or spot currency swap transaction for a period of one Business Day.

**'Position'** means contractual claims or obligations of the Client recorded by BCS in the Client's Margin Account.

**'Roll-Over Transactions'** means an Overnight REPO, Overnight Reverse REPO and/or Overnight Currency Swap.

## **2. General**

**2.1.** Where the Client requests Services under this Section and BCS agrees, BCS will enter into Margin Transactions for the Client on the terms set out herein. BCS reserves the right to refuse to enter into Margin Transactions due to concentration, price, market volatility or other risks.

**2.2.** The Client understands that trading under this Section involves borrowing of Loaned Assets. When the Client decides to enter into Margin Transactions, an intraday credit allowance from BCS will be used by the Client. This intraday credit allowance may be used to purchase or sell Margin Assets in the amount that may considerably exceed the value of Eligible Collateral deposited to the Client's Margin Account with BCS. The Client also understands that while Margin Transactions may give a greater opportunity for profit, it is also of a higher degree of risk. The Client agrees to carefully consider whether entering into Margin Transactions is appropriate for the Client, taking into consideration its financial resources, objectives and other relevant circumstances.

**2.3.** Unless otherwise agreed by BCS, the Client may submit orders for entering into Margin Transactions only in respect of Margin Assets.

**2.4.** By reference to Client's Margin Ratio, BCS will assign margin status to the Client's Margin Account which status will define and reflect the level of risk associated by BCS with the Client's Margin Account. Margin status ranges shall be as follows:

- (a) 'Active' which means the Client may submit orders to enter into Margin Transactions within the limits imposed by BCS;
- (b) 'Restricted' which means the Client may submit to BCS orders and/or instructions to the extent that such orders and/or instructions are aimed at reduction of Margin Positions and/or increasing Margin Ratio;
- (c) 'Margin Call' which means BCS shall have an immediate right to give a Margin Call to the Client, and such Margin Call shall be satisfied by the Client as specified in this Section;
- (d) 'Liquidation' which means BCS will be entitled to liquidate any or all Client's Margin Positions by taking actions set out in clause 6 below.

### **3. Order Execution**

**3.1.** Unless otherwise agreed by the parties, before entering into any Margin Transaction the Client shall transfer to BCS Eligible Collateral. Where the Client wishes to enter into a Margin Transaction to buy or sell currency or an eligible derivative contract (as defined in clause 7.1 of Section A) the Client shall transfer to BCS Eligible Collateral in the form of cash.

**3.2.** To execute a Margin Transaction the Client may submit an order to BCS by any acceptable communication means for submitting orders set out in the Terms.

**3.3.** Any order received from the Client shall be checked by BCS with respect to the requirements set by BCS, and, subject to order compliance with the said requirements, shall be executed or transmitted for execution. The Client acknowledges BCS may reject any Client's order for entering into a Margin Transaction, notwithstanding its compliance with the formal requirements of BCS, without giving any reason.

**3.4.** If execution of Client's order results in necessity for the Client to borrow a Loaned Asset to pay or deliver under the relevant Margin Transaction, BCS shall debit Margin Account for the Assets paid or delivered and, if applicable, credit Margin Account for the Assets bought or received. As a result, negative Cash Balance or short Margin Position in related Margin Securities shall appear or grow in absolute value implying Client's emerged or increased indebtedness.

**3.5.** Where the Client enters into a Margin Transaction it simultaneously undertakes to transfer back to BCS cash and/or securities equivalent to the Loaned Assets and, where relevant, equivalent income (as set out in clause 10.4 of Section A). All Loans are intraday credits and shall be fully returned without notice.

**3.6.** The Client shall control its margin status and comply with the requirements set forth in the Terms. Specifically, the Client shall maintain its margin status at an 'Active' level in respect of all Margin Accounts of the Client with BCS. It is the responsibility of the Client to be aware of all its Positions and to ensure those comply with the requirements in this Section at all times.

**3.7.** Subject to clause 9.6, clause 16.5 of Section A, clause 54 of Section C (as the case may be) and clause 3.8 below, the Client may request a withdrawal of any Asset from its Margin Account at any time. The possibility of such withdrawal, however, is dependent on the Client's margin status assigned by BCS. Withdrawal of Assets by the Client is possible only in the case and to the extent the Client's margin status is 'Active' and if there are no other reasons preventing the withdrawal as reasonably determined by BCS. For the avoidance of doubt, if the Client's margin status is 'Restricted', 'Margin Call' or 'Liquidation' then the Client is not entitled to withdraw Assets from any of Client's Margin Accounts with BCS.

**3.8.** Unless otherwise agreed by BCS, the Client can only withdraw actually available on Client's account financial instruments or cash, i.e. BCS is not obliged to arrange funding or lending for execution of Client's withdrawal instructions.

### **4. Roll-Over**

**4.1.** The Client shall perform under and settle all Margin Transactions as set out in the Applicable Regulations and Market Rules and by applicable settlement deadlines. The Client

agrees that where it fails to close out Margin Positions by the end of a trading day as required by the Market Rules or the Margin Trading Manual, the Client will be deemed to agree to enter into a Roll-Over Transaction on the terms and conditions set out below.

**4.2.** BCS may, in its sole discretion, enter into Roll-Over Transactions for or with the Client. All cash and/or securities acquired as a result of, or in connection with Roll-Over Transactions, shall be Eligible Collateral subject to the terms of this Section. The Client understands and agrees that BCS may elect not to enter into Roll-Over Transactions for the Client.

**4.3.** BCS will be entering into Overnight REPOs or Overnight Reverse REPOs at the closing prices for Margin Securities at a market where such Margin Securities are predominantly traded. BCS reserves the right to decide which securities in the account of the Client are to be subject to a Roll-Over Transaction and will normally select the most liquid securities according to the prevailing market conditions.

**4.4.** BCS will be entering into Overnight Currency Swaps at foreign exchange rates quoted by the central banks in the principal financial centre of the country of which the currency in which the Overnight Currency Swap is denominated is the official currency.

**4.5.** The Client agrees that BCS may modify the roll-over procedures in its sole and absolute discretion without the Client's consent. BCS will notify the Client prior to the date such modification is to take effect.

## **5. Commission and Interest**

**5.1.** Interest on Loans will accrue daily at the annualised rate and on the basis agreed between the parties. Failing separate agreement, actual/360 day count convention will apply. BCS will debit the Client's Margin Account with such accrued interest periodically without prior notice. Where the Client borrows Margin Securities interest will accrue on the market value of the Margin Securities as determined by BCS by reference to such pricing sources as BCS considers appropriate and taking into account, in its absolute discretion, any variation in the value of cash or the Margin Securities due to the availability, liquidity, solvency or market volatility or other market variable applicable to the Margin Securities. The Client understands that the interest rates are subject to change by BCS at any time without the Client's consent. BCS will notify the Client prior to the date such change is to take effect.

**5.2.** The Client will be charged commission under Roll-Over Transactions at the annualised rate and on the basis agreed between the parties. Failing separate agreement, actual/360 day count convention will apply. BCS will debit commission due to the Client's Margin Account periodically without prior notice. The Client understands that the commission rates are subject to change by BCS at any time without the Client's consent. BCS will notify the Client prior to the date such change is to take effect.

**5.3.** The Client agrees that BCS may charge commission by increasing or decreasing the repurchase price under a Roll-Over Transaction or charge the commission separately against the Client's Margin Account cash balance.

**5.4.** BCS may pay interest on positive cash balances in the Client's Margin Account provided that relevant interest rates have been specifically agreed between the Client and BCS. Unless

otherwise agreed, simple interest will accrue daily according to the actual number of days elapsed.

## **6. Margin Calls and Liquidation**

**6.1.** On or any time after the Client's margin status reaches or falls below 'Margin Call' level, BCS will be entitled to give the Client a Margin Call to recover Client's margin status to 'Active'. A Margin Call may be given by any communication means agreed under the Terms.

**6.2.** A Margin Call may specify the deadline for making a transfer of Eligible Collateral, or failing such specification the Client shall transfer Eligible Collateral so that the same is received by BCS by 2 p.m. (UTC) on the day following the day of the Margin Call or where aggressive thresholds apply to the Client, a Margin Call shall be satisfied by 2 p.m. (UTC) on the day of the Margin Call.

**6.3.** If a Margin Call is not fulfilled in accordance with its terms BCS may immediately change the Client's margin status to 'Liquidation'.

**6.4.** If the Client's margin status drops down to 'Liquidation' and/or the Client fails to close out Margin Positions under clause 4.1. above, BCS shall have the right to liquidate Client's Positions to the extent necessary for Client's margin status to become 'Active', as set out in clause 16.2 to clause 16.4 in Section A.

**6.5.** The Client shall reimburse BCS for all expenses incurred by BCS with regard to liquidation of Client's Positions. BCS shall not be liable for any losses suffered by the Client as a result of any action or omission on behalf of BCS that is in compliance with the terms of this Section, including liquidation of Client's Margin Positions.

## **SECTION F: REGULATORY REPORTING AND RELATED MATTERS**

1. BCS will report to the CySEC the details of any Transaction in a financial instrument admitted to trading on a regulated market (whether or not the transaction was carried out on such a market) pursuant to Article 25 of Directive 2004/39/EC, as from time to time amended.
2. BCS will make public the details of any Transaction in a share admitted to trading on a regulated market where such Transaction has been executed outside of a regulated market or multi-lateral trading facility, pursuant to Article 28 of Directive 2004/39/EC, as amended from time to time (whether or not the details are published by BCS or by a third party).
3. Where the Client instruct BCS to enter into a derivative contract (as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC, as amended), the execution of which takes place on a regulated market or on a third-country market considered as equivalent to a regulated market as within the meaning of Directive 2004/39/EC or on a regulated market, other than a regulated market as within the meaning of Article 4(1)(14) of Directive 2004/39/EC or a third-country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC (OTC derivative contract), BCS will ensure that the details of any such executed derivative contract or OTC derivative contract and of any modification or termination of the contract are reported to a trade repository pursuant to Article 9 of Regulation (EU) No 648/2012 ('EMIR') as from time to time in force. Where BCS agrees to execute any OTC derivative contract, clause 4 to 14 below will apply.
4. The Client acknowledges that disclosures made pursuant to clause 3 may include, without limitation, the disclosure of trade information including the Client's identity (by name, address, corporate affiliation, identifier or otherwise) to any trade repository registered in accordance with Article 55 of EMIR or recognised in accordance with Article 77 of EMIR or one or more systems or services operated by any such trade repository ('TR') and any relevant regulators (including without limitation, the European Securities and Markets Authority and national regulators in the European Union) under EMIR and that such disclosures could result in certain anonymous Transaction and pricing data becoming available to the public. The Client further acknowledges that, for purposes of complying with regulatory reporting obligations, BCS may use a third party service provider to transfer trade information into a TR and that a TR may engage the services of a global trade repository regulated by one or more governmental regulators. The Client also acknowledges that disclosures made pursuant hereto may be made to recipients in a jurisdiction other than that of the disclosing party or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for personal data as the Client's home jurisdiction. For the avoidance of doubt, (i) to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits the Client to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by the Client for purposes of such law; (ii) any agreement between the Client and BCS to maintain confidentiality of information contained in these Terms or in any non-disclosure, confidentiality or other

agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the reporting requirements as set out herein; and (iii) nothing herein is intended to limit the scope of any other consent to disclosure separately given to BCS by the Client. The Client represents and warrants that any third party to whom it owes a duty of confidence in respect of the information disclosed has consented to the disclosure of that information.

5. The Client and BCS agree to reconcile portfolios as required by the portfolio reconciliation risk mitigation techniques for OTC derivative transactions set out in Article 11(1)(b) of EMIR as supplemented by Article 13 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 and published on 23 February 2013 in the Official Journal of the European Union.

6. On each Business Day following the date of execution of an OTC derivative contract, BCS will provide the Client with the key terms in relation to all outstanding OTC derivative contracts in a form of a Trade Report or an Account Statement, with a scope and level of detail that would be deemed reasonable to BCS. The information to be provided by BCS pursuant to this clause will be prepared as at the close of business on the immediately preceding Business Day of, and as specified in writing by, BCS. The key terms shall include, but shall not be limited to the valuation of each OTC derivative contract, the effective date, the scheduled maturity date, any payment or settlement dates, the notional value of the OTC derivative contract and currency of the sale or purchase of an OTC derivative contract ('Derivative Transaction'), the underlying instrument, and any relevant fixed or floating rates of the Derivative Transaction.

7. On each Business Day immediately following the day specified in clause 6 above, the Client shall perform a comparison of the data provided by BCS against the Client's own books and records of all outstanding Derivative Transactions in OTC derivative contracts in order to identify promptly any misunderstandings of key terms.

8. If the Client identifies one or more discrepancies which the Client determines, acting reasonably and in good faith, are material to the rights and obligations in respect of one or more Derivative Transaction(s), it will notify BCS in writing as soon as reasonably practicable and the Client and BCS will consult with each other in an attempt to resolve such discrepancies in a timely fashion for so long as such discrepancies remain outstanding, using, without limitation, any applicable updated reconciliation data produced during the period in which such discrepancy remains outstanding.

9. If the Client does not notify BCS of any discrepancies by 4 p.m. UTC time on the Business Day following the date on which BCS provided information to the Client, the Client will be deemed to have affirmed such information provided by BCS.

10. For the purposes of performing all or part of the actions under clause 6 and 8 above BCS may appoint an Affiliate to act as agent, immediately on written notice to the Client.

11. Each the Client and BCS agrees that they will use the following procedure to identify and resolve any disputes between them arising out of or in connection with clause 6 to 9 above:

- (a) either party may identify a dispute by sending to the other party a notice in writing which states that it is a dispute notice and which sets out in reasonable detail the issue

- in dispute (including, without limitation, the Derivative Transaction(s) to which the issue relates);
- (b) on or following the date on which a dispute notice is effectively delivered by one party to the other party (or, if, with respect to a dispute, both parties deliver a dispute notice, the date on which the first in time of such notices is effectively delivered), the parties will consult in good faith in an attempt to resolve the dispute in a timely manner, including, without limitation, by exchanging any relevant information and determining and applying a resolution method for the dispute; and
  - (c) with respect to any dispute that is not resolved within five business days of the dispute date, refer issues internally to appropriately senior members of staff of such party or of its adviser or auditor in addition to actions under (b) immediately above.
- 12.** Each the Client and BCS agrees that it will have internal procedures and processes in place to record and monitor any dispute for as long as the dispute remains outstanding.
- 13.** Any action or inaction of BCS pursuant to clause 11 above, shall be without prejudice to any rights or obligations BCS may possess in respect of the Client under any other contractual agreement, by operation of law or otherwise.
- 14.** Unless otherwise specifically agreed in writing between the Client and BCS, BCS will be under no obligation to report the details of any derivative contract on Client's behalf pursuant to Article 9 of EMIR.
- 15.** The Client may request that BCS helps the Client to meet its reporting obligations under Article 9 of EMIR (the 'Reporting Obligation') by reporting, on the Client's behalf, relevant data on on-exchange derivative contracts and/or OTC derivative contracts (individually or collectively a 'Relevant Transaction') to a TR. Where the Client so requests and BCS agrees, clause 16 to 26 will apply.
- 16.** In respect of each Relevant Transaction the Client appoints and authorises that BCS submits and subject to the other provisions of these Terms, BCS agrees to use reasonable endeavours to submit the information corresponding to the fields listed in Table 1 and Table 2 of the Annex to the Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 and the Annex to the Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 (the 'Relevant Data') as determined by BCS in its sole and absolute discretion, to a TR elected by BCS and notified to the Client (a 'Relevant TR') by the later of the deadline for reporting as specified in Article 9 of EMIR (the 'Reporting Deadline').
- 17.** In respect of each Relevant Transaction, the Client:
- (a) agrees it will deliver to BCS in time any data required for BCS to comply with its obligation under clause 16 above;
  - (b) agrees and acknowledges that if it fails to comply with clause 17(a), BCS will be under no obligation to (but may) submit the Relevant Data to a Relevant TR by the Reporting Deadline;
  - (c) represents to BCS that the information it delivers under clause 17(a) is, at the time of delivery, true, accurate and complete in every material respect; and

(d) acknowledges that BCS may rely on the information it delivers under clause 17(a) without investigation.

**18.** Without prejudice to clause 23(a), in respect of each Relevant Transaction, BCS will determine in its sole and absolute discretion whether the Reporting Obligation has arisen, the characterisation of the Relevant Transaction and the Relevant Data. If unique reference(s) need to be generated for inclusion in the Relevant Data, the Client agrees that BCS may generate such unique reference(s).

**19.** If BCS does not report any of the Relevant Data by the Reporting Deadline, BCS will notify the Client as soon as reasonably practicable and the Client will be entitled to report such Relevant Data to a TR or to appoint a third party to make such report on such Client's behalf. Other than in this instance or as otherwise agreed between the parties in writing, the Client will not report or arrange the reporting of the Relevant Data to a TR and will notify BCS immediately if it has reported or arranged the reporting of the Relevant Data to a TR other than in accordance with this provision.

**20.** Notwithstanding clause 21 below, the Client acknowledges and agrees that BCS is not obliged to discover errors in or check the accuracy, authenticity or completeness, of any Relevant Data, whether that information derives from the Client or any other person (including without limitation any trading venue, central counterparty or similar financial market infrastructure but excluding BCS).

**21.** Subject to clause 20 above, if BCS becomes aware of a material error in any Relevant Data reported to a TR in accordance herewith, BCS will use reasonable endeavours to notify the other party if doing so is thought, in the sole discretion of BCS, necessary to resolve such material error, and both parties will use reasonable efforts, acting in good faith and a commercially reasonable manner, to resolve such error. If the Client becomes aware of a material error in any Relevant Data reported to a TR in accordance herewith or any error in any data provided by Client to BCS, the Client will notify BCS as soon as reasonably practicable and both parties will use reasonable efforts, acting in good faith and a commercially reasonable manner, to resolve such error.

**22.** The parties agree that BCS may utilise the services of a third party service provider to facilitate the submission of Relevant Data or other performance by BCS of its obligations hereunder (including but not limited to any platform, system, interface or other technology developed by any such third party service provider for such purpose). Where BCS has discretion in selecting a third party service provider, it will use reasonable care in the selection of the third party service provider.

**23.** The Client acknowledges and agrees that:

(a) BCS shall, at all times, perform its obligations and exercise discretion hereunder with reasonable care, provided that BCS shall not be required to do or cause to be done anything which is not permitted or is otherwise contrary to or inconsistent with the operating procedures of any third party service provider or any Relevant TR (including any decision by a third party service provider or any Relevant TR not to permit BCS to

submit Relevant Data in accordance herewith) or is contrary to any Applicable Regulations or BCS is otherwise prevented from doing by any Applicable Regulations.

- (b) the Client remains solely responsible and liable for submission of all data subject to the Reporting Obligation which is not included in the Relevant Data and compliance with the Client's Reporting Obligation generally;
- (c) any submission by BCS of Relevant Data is made with a view to facilitating the Client's reporting of data pursuant to the Reporting Obligation and is independent of any Reporting Obligation that BCS may or may not be subject to;
- (d) where BCS is not itself subject to the Reporting Obligation, any submission by BCS of Relevant Data is solely for the purpose of fulfilling its obligations hereunder;
- (e) BCS will not be required to provide any services or otherwise perform hereunder to the extent any failure by it to provide services or otherwise perform is due to a breach or other act or omission of, the Client, any Relevant TR or any third party service provider;
- (f) without prejudice to any other agreement the Client may have with any Relevant TR or any third party service provider, the Client will not have recourse under or in relation hereto against any Relevant TR or any third party service provider in respect of any Relevant Data submitted hereunder or any other activities contemplated by this Section; and
- (g) the Reporting Obligation and, accordingly, the service BCS provides, remain at all times subject to change as a result of further regulatory developments and guidance.

**24.** Notwithstanding any other provision of the Terms of Business, BCS and its directors, officers, employees, contractors and agents shall not have any liability to the Client (or any person claiming under or through it) whether in contract, tort (including negligence), breach of statutory or regulatory duty or otherwise, for any losses arising directly from, or in connection with:

- (a) the provision by BCS of, or use by the Client of, the services agreed to be provided by BCS under this Section;
- (b) any acts, omissions or failures of any third party, including but not limited to any third party service provider or a Relevant TR (including any decision by a third party service provider or a Relevant TR not to permit BCS to submit Relevant Data via the third party service provider or to a Relevant TR on behalf of the Client);
- (c) performance by BCS of its obligations or exercise of its rights under this Section;
- (d) the failure of any platform, system, interface or other technology, including any internal platform, system, interface or other technology, which BCS uses or intends to use in the performance of its obligations or exercise of its rights under this Section; or
- (e) a third party accessing or intercepting any information or data of the Client, except to the extent that such losses are due to the gross negligence, wilful misconduct or fraud of BCS or its contractors or agents.

**25.** Neither BCS nor its directors, officers, employees, contractors and agents shall be held liable under or in connection with this Section for any indirect or consequential loss or damage or for any direct or indirect loss of business, profits, anticipated savings or goodwill.

**26.** The Client agrees to indemnify and hold harmless BCS and its directors, officers, employees, contractors and agents from and against any and all losses incurred by or awarded against them arising from or in connection with:

- (a) any claim or action brought by any third party to the extent that such claim or action arises out of or in connection with or is caused, directly or indirectly, by the activities of the parties contemplated by this Section;
- (b) any information provided to BCS by the Client, including but not limited to all information included in any Relevant Data made known to BCS by the Client; or
- (c) any regulatory or investigative inquiries or information subpoenas which arise out of or in connection with the activities of the parties contemplated by this Section, except to the extent that such losses are the direct result of the gross negligence, wilful misconduct, or fraud of BCS or its directors, officers, employees, contractors or agents.

## **SECTION G: AGENCY**

### **1. Application and Scope**

**1.1.** This Section sets out the terms and conditions on which BCS will provide the Services referred to in the Terms to the Client where the Client is acting as agent for another person (an 'Underlying Customer'). Where the Client is dealing as principal (for own account or on a riskless principal basis) this Section shall not apply.

**1.2.** For the purpose of this Section, 'Underlying Customer' shall mean any underlying customer of the Client agreed by BCS from time to time on behalf of which the Client is to enter as agent into Transactions with BCS; and where an Underlying Customer does not constitute a single legal person, means the trustees, individuals or other persons who are the primary representatives of the organisation, trust or fund on whose behalf they are dealing.

**1.3.** Unless BCS agrees otherwise in writing, BCS will treat the Client alone as BCS's client and will not treat any Underlying Customer as BCS's client.

### **2. Advice Limitations**

**2.1.** The Client, as agent for the Underlying Customers and on its own behalf, retains full responsibility for making all investment decisions with respect to any Underlying Customer. BCS will not be responsible for judging the merits or suitability of any Transaction to be entered into on behalf of an Underlying Customer. Unless otherwise required under the Applicable Regulations, BCS shall have no responsibility for the Client's or any Underlying Customer's compliance with any laws or rules governing or affecting Client's conduct or that of any Underlying Customer, or for Client's or any Underlying Customer's compliance with any laws or rules governing or affecting Transactions.

### **3. Representations, Warranties and Undertakings**

**3.1.** As agent for each Underlying Customer and on its own behalf, the Client represents and warrants to BCS as of the date of each Transaction, that:

(a) the Client and its Underlying Customer each have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable the Client to lawfully enter into and perform under this Section, the Terms of Business and each Transaction and to grant security and powers referred to in this Section and the Terms of Business;

(b) the person(s) entering into this Section and each Transaction under it have been duly authorised to do so;

(c) this Section, the Terms of Business and each Transaction and the obligations created under each of them are binding upon, and are enforceable against, the Client and its Underlying Customer in accordance with their terms and do not and will not violate the terms of any regulation, order, charge, agreement or document by which the Client or its Underlying Customer is bound;

(d) the Client and its Underlying Customer (individually and collectively) are permitted under its constitution and any applicable law or regulation and are financially able to sustain any loss which may result from Transactions, and that entering into Transactions is a suitable investment vehicle for the Underlying Customer;

(e) the relevant Underlying Customer owns, with full title guarantee and free from any mortgage, charge, lien or other third party interest or encumbrance whatsoever, all investments, cash, collateral and other property deposited with, transferred to BCS or charged in BCS's favour and that neither the Client acting as agent for the relevant Underlying Customer, nor the Underlying Customer itself, will further pledge or charge such property or grant any lien over such property except with BCS's prior written consent; and

(f) any information which the Client provides or has provided to BCS in respect of the Client or its Underlying Customer is accurate and not misleading in any material respect.

**3.2.** The Client, as agent for each Underlying Customer and on its own behalf, covenants to BCS that the Client will:

(a) ensure at all times that the Client and its Underlying Customer obtain and comply with the terms of and do all that is necessary to maintain in full force and effect all authority, powers, consents, licences and authorisations referred to above;

(b) act as agent for an Underlying Customer where the Client is duly authorised to do so and within the scope of its actual authority;

(c) immediately notify BCS if the Client ceases to act for any Underlying Customer or if the basis upon which the Client acts on behalf of an Underlying Customer alters to an extent which would affect the Terms of Business or any Transaction made thereunder; and

(d) immediately notify BCS in writing if at any time any of the warranties, representations or undertakings in this Section are or become or are found to be incorrect or misleading in any respect.

**3.3.** The Client will be required to provide BCS with information necessary to settle Transactions entered into by BCS under a Client's order. Where payment or delivery in relation to any Transaction is to be made by an Underlying Customer directly to BCS account or to an account in the name of an Underlying Customer or where an Underlying Customer is to be registered with an exchange, market or clearing house, the Client undertakes to inform BCS and to provide to BCS before the due date for settlement or registration, as the case may be, all necessary information and documents, including, for the avoidance of doubt, Underlying Customer's due diligence documents and relevant settlement instructions. The Client as agent for each Underlying Customer authorises BCS to disclose information about the Underlying Customer to a third party to the extent necessary to settle the Transaction for the Underlying Customer or otherwise in accordance with the Applicable Regulations and Market Rules. The Client represents and warrants to BCS that each Underlying Customer whose data the Client supplies or will supply to BCS in connection herewith has given its informed consent for BCS's processing, transferring and disclosing to the relevant third parties the data and information as defined in this Section. The Client understands that registering or accepting cash or securities from an Underlying Customer or settling a Transaction with an Underlying Customer shall be

without prejudice to BCS treating the Client alone as BCS's client. The Client acknowledges that BCS may require further information and documentation in order to complete such registration or settlement.

**3.4.** The Client undertakes to advise BCS in relation to any Transaction, on any service fee payable by the Underlying Customer in consideration for the Client's service in that Transaction which fee may be received by BCS directly from the Underlying Customer, for further credit to the Client's account with BCS.

**3.5.** The Client agrees to forward to an Underlying Customer any documentation in relation to such customer that BCS is required to provide under the Applicable Regulations and which BCS makes available to the Client for that purpose.

**3.6.** Upon request, BCS may, in respect of each Underlying Customer, establish and maintain one or more separate sub-accounts. BCS shall, subject to these Terms, administer sub-accounts which BCS reasonably believes relate to different Underlying Customers separately. BCS shall not exercise any power to consolidate accounts or set off amounts owing between sub-accounts relating to different Underlying Customers. The Client undertakes, as agent for the relevant Underlying Customer and on its own behalf, in respect of each instruction given, to specify the sub-account to which the relevant instruction relates.

#### **4. Anti-Money Laundering**

**4.1.** The Client represents, warrants and undertakes to BCS that the Client is and will at all times be in compliance with all Applicable Regulations combating money laundering and terrorist financing. The Client expressly consents to be relied on to apply customer due diligence measures and where required, will furnish BCS the documentary evidence retained in respect of its Underlying Customer to the extent permitted by the Applicable Regulations.

**4.2.** Where the Client is a credit institution or financial institution or auditor or independent legal professional or person providing to third parties trust and company services<sup>1</sup>, falling under the Directive 2005/60/EC of the European Parliament and the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as from time to time amended (the 'EU Directive') and is subject to mandatory professional registration, recognised by law and to supervision regarding compliance with the requirements of the EU Directive or operates in countries outside the European Economic Area which according to a decision of the Advisory Authority for Combating Money Laundering and Financing of Terrorism, have been determined that they impose equivalent procedures and measures for the prevention of money<sup>2</sup>, the Client represents and warrants to BCS that the Client has:

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<sup>1</sup> The trust services and company services include:

- (a) forming companies or other legal persons;
- (b) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;
- (c) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons;
- (d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;
- (e) acting as or arranging for another person to act as a nominee shareholder for another person.

<sup>2</sup> Australia, South Korea, Brazil, Mexico, Canada, Singapore, Hong Kong, Switzerland, India, South Africa, Japan, The United States of America

- (a) identified and verified the Underlying Customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
- (b) identified the beneficial owner(s) and has taken risk-based and adequate measures to verify its/their identity on the basis of documents, data or information obtained from a reliable and independent source so that the Client knows who the beneficial owner(s) is/are and understands the ownership and control structure of the Underlying Customer;
- (c) verified that the natural person who appears to act on behalf of the Underlying Customer is properly authorised for this purpose and his identity has been established and verified.

**4.3.** Where the Client is a person other than as set out in clause 4.2 above, BCS may refuse to deal or at any time suspend dealing with the Client until BCS obtains evidence in the form and substance satisfactory to BCS, of the Underlying Customers and of the measures, systems, procedures and controls implemented by the Client for the prevention of money laundering and terrorist financing and the identification of the Client's Underlying Customers similar to those laid down in the EU Directive and/or the local implementing legislation.

## **5. Guarantee, Indemnity and Discharge**

**5.1.** Notwithstanding that the Client may act as agent on behalf of its Underlying Customer, the Client is responsible for the due performance of every Transaction which BCS enters into as a result of Client's orders to BCS. In consideration of BCS executing or continuing entering into Transactions under this Section as BCS in its absolute discretion sees fit, the Client unconditionally and irrevocably guarantees to BCS punctual performance by each Underlying Customer of all of its obligations under the Terms and undertakes with BCS that whenever any Underlying Customer does not pay or perform under any Transaction, the Client shall immediately on demand perform in lieu of the Underlying Customer as if it was the principal obligor.

**5.2.** The Client as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 5.1 above, agrees to indemnify and keep indemnified BCS, its Affiliates and each of their directors, officers, employees, financiers, auditors, partners, agents or advisers in full and immediately on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by BCS or them and arising out of, or in connection with:

- (a) any breach of warranties and representations or failure of the Client or its Underlying Customer to perform or discharge any of the liabilities or obligations;
- (b) any of the liabilities or obligations under this Section being or becoming unenforceable, invalid, illegal or not recoverable for any reason whatsoever;

- (c) the exercise or purported exercise by BCS or them of any of the rights, powers, authorities or discretions vested in them under any Transaction subject to this Section, the Terms or by law;
- (d) the settlement or attempted settlement of any Transaction subject to this Section;
- (e) the entry into and performance of any agreements with third parties in performance of this Section;
- (f) any action taken by an Underlying Customer or a third party to gain control of cash or securities governed by this Section;
- (g) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the guarantee, indemnity, security or any other right or interest constituted by this Section, the Terms or defending successfully against any claims of fraud, negligence or wilful default.

**5.3.** The Client, as agent for each Underlying Customer and on its own behalf, agrees that where any payment or other performance (including the delivery of securities or any other property) is due from BCS under the Terms, it shall be a discharge of BCS's obligation to make such payment or performance to the Client notwithstanding that Client's Underlying Customer shall be interested (whether beneficially or otherwise) in such payment or performance.

**5.4.** On termination of this Section or the Terms of Business, this clause 5 shall continue in force and effect.

## SECTION H: OFF-EXCHANGE REPURCHASE TRANSACTIONS

### 1. Definitions

**'Base Currency'** means US dollars;

**'Business Day'** means:

- (i) in relation to the settlement of a Transaction or delivery of Securities under this Section through a settlement system, a day on which that settlement system is open for business;
- (ii) in relation to the settlement of a Transaction or delivery of Securities under this Section otherwise than through a settlement system, a day on which banks are open for business in the place where the relevant Securities are to be delivered and, if different, the place in which the relevant payment is to be made;
- (iii) in relation to the payment of any amount under this Section not falling within (i) or (ii) above, a day other than a Saturday or a Sunday on which banks are open for business in the principal financial centre of the country of which the currency in which the payment is denominated is the official currency and, if different, in the place where any account designated by the parties for the making or receipt of the payment is situated (or, in the case of a payment in euro, a day on which TARGET2 operates); and
- (iv) in all other cases, any day other than Saturday, Sunday or a public holiday in the Republic of Cyprus on which commercial banks are open for business.

**'Buyer'** means for any Transaction, either BCS or the Client acting as buyer of Securities as specified in the related Confirmation;

**'Cash Margin'** means a cash sum paid or to be paid to the Buyer or the Seller in accordance with clause 4;

**'Contractual Currency'** means the currency of the Purchase Price;

**'Equivalent Margin Securities'** mean Securities equivalent to Securities previously transferred as Margin Securities;

**'Equivalent Securities'** mean, with respect to a Transaction, Securities equivalent to Purchased Securities under that Transaction;

**'Equivalent'** or **'equivalent to'** in relation to any Securities means Securities (i) of the same issuer; (ii) part of the same issue; and (iii) of an identical type, nominal value, description and (except where otherwise stated) amount as those original Securities. Securities will be equivalent to other Securities notwithstanding that those Securities have been redenominated or that the nominal value of those Securities has changed in connection with such redenomination. Where Securities have been partly paid, converted, subdivided or consolidated or have become the subject of a takeover or the holders of Securities have become entitled to receive or acquire other Securities or other property or the Securities have become subject to any similar event other than a Distribution, the expression 'equivalent to' shall have the following meanings:

- (i) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;

- (ii) in the case of a call on partly paid securities, securities equivalent to the paid-up securities; provided that, in the case of Equivalent Securities, Seller or, in the case of Equivalent Margin Securities, the party which transferred the relevant Margin Securities shall have paid to the other party a sum of money equal to the sum due in respect of the call;
- (iii) in the case of a capitalisation issue, securities equivalent to the relevant Securities together with the securities allotted by way of bonus thereon;
- (iv) in the case of conversion, sub-division or consolidation, securities equivalent to the securities into which the relevant Securities have been converted, sub-divided or consolidated; provided that, if appropriate, notice has been given in accordance with clause 5.6. of this Section;
- (v) in the case of takeover, a sum of money or securities equivalent to the consideration or alternative consideration of which notice has been given in accordance with clause 5.6. of this Section;
- (vi) in the case of a rights issue, securities equivalent to the relevant Securities together with the securities allotted thereon; provided that notice has been given to the other party in accordance with clause 5.6. of this Section;
- (vii) in the event that income in the form of securities, or a certificate which may at a future date be exchanged for securities or an entitlement to acquire securities is distributed, securities equivalent to the relevant Securities together with securities or a certificate or an entitlement equivalent to those allotted; provided that notice has been given in accordance with clause 5.6. of this Section;
- (viii) in the case of any event similar to any of the foregoing, Securities equivalent to (as defined in the provisions of this definition) the original Securities together with or replaced by a sum of money or Securities or other property equivalent to (as so defined) that received in respect of such Securities resulting from such event;

**'Income'** means, with respect to any Security at any time, all interest, dividends or other distributions thereon, including distributions which are a payment or repayment of principal in respect of the relevant securities or, in case of equities, a payment of redemption proceeds in respect of the relevant securities (**'Distribution(s)'**);

**'Income Payment Date'** means, with respect to any Securities, the date on which Income is paid in respect of such Securities or, in the case of registered Securities, the date by reference to which particular registered holders are identified as being entitled to payment of Income;

**'Margin Percentage'** means, with respect to any Margin Securities or Equivalent Margin Securities, the percentage, if any, agreed by the parties acting in a commercially reasonable manner;

**'Margin Ratio'** means, with respect to a Transaction, the Market Value of the Purchased Securities at the time when the Transaction was entered into divided by the Purchase Price (and so that, where a Transaction relates to Securities of different descriptions and the Purchase Price is apportioned by the parties among Purchased Securities of each such description, a separate Margin Ratio shall apply in respect of Securities of each such

description), or such other proportion as the parties may agree with respect to that Transaction;

**'Margin Securities'** mean, in relation to a Margin Transfer, Securities of the type and value (having applied Margin Percentage, if any) reasonably acceptable to the party calling for such Margin Transfer;

**'Margin Transfer'** means any or any combination of, the payment or repayment of Cash Margin and the transfer of Margin Securities or Equivalent Margin Securities;

**'Market Value'** means with respect to any Securities as of any time on any date, the price for such Securities (after having applied the Margin Percentage, if any, in the case of Margin Securities) at such time on such date obtained by BCS from a generally recognised source agreed by the parties or as otherwise agreed by the parties (and where different prices are obtained for different delivery dates, the price so obtainable for the earliest available such delivery date) having regard to market practice for valuing Securities of the type in question plus the aggregate amount of Income which, as at such date, has accrued but not yet been paid in respect of the Securities to the extent not included in such price as of such date, and for these purposes any sum in a currency other than the Contractual Currency for the Transaction in question shall be converted into such Contractual Currency at the Spot Rate prevailing at the time of the determination. Unless otherwise agreed, the pricing source for calculation of Market Value shall be the relevant page on Bloomberg or, if that page is not published for the relevant day, the relevant page on Reuters, or, if that page is not published for the relevant day, as determined by BCS in a commercially reasonable manner;

**'Maximal Net Exposure'** means the sum of Maximal Transaction Exposures determined in respect of all outstanding Transactions. For this purpose any amounts not denominated in the Base Currency shall be converted into the Base Currency at the Spot Rate prevailing at the relevant time;

**'Maximal Transaction Exposure'** means, with respect to any Transaction, the value defined in the relevant Confirmation for the purpose of calculation of Maximal Net Exposure;

**'Net Margin'** provided to a party at any time, means the excess (if any) at that time of (i) the sum of the amount of Cash Margin paid to that party (including accrued interest on such Cash Margin which has not been paid to the other party) and the Market Value of Margin Securities transferred to that party under clause 4.1. (excluding any Cash Margin which has been repaid to the other party and any Margin Securities in respect of which Equivalent Margin Securities have been transferred or a cash equivalent has been paid to the other party) over (ii) the sum of the amount of Cash Margin paid to the other party (including accrued interest on such Cash Margin which has not been paid by the other party) and the Market Value of Margin Securities transferred to the other party under clause 4.1. (excluding any Cash Margin which has been repaid by the other party and any Margin Securities in respect of which Equivalent Margin Securities have been transferred or a cash equivalent has been paid by the other party) and for this purpose any amounts not denominated in the Base Currency shall be converted into the Base Currency at the Spot Rate prevailing at the time of the determination;

**'Net Paying Securities'** means Securities which are of a kind such that, were they to be the subject of a Transaction to which clause 5 applies, any payment made by the Buyer under clause 5 would be one in respect of which either the Buyer would or might be required to make a withholding or deduction for or on account of taxes or duties or the Seller might be required to make or account for a payment for or on account of taxes or duties (in each case other than tax on overall net income) by reference to such payment;

**'Price Differential'** means, with respect to any Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Purchase Price for such Transaction (on a 360 day, 365 day or other day basis in accordance with the applicable market convention, unless otherwise agreed between the parties for the Transaction) for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of calculation or, if earlier, the Repurchase Date;

**'Pricing Rate'** means, with respect to any Transaction, the per annum percentage rate for calculation of the Price Differential agreed to by the Buyer and the Seller in relation to that Transaction;

**'Purchase Date'** means, with respect to any Transaction, the date on which Purchased Securities are to be sold by the Seller to the Buyer in relation to that Transaction;

**'Purchase Price'** means on the Purchase Date, the price for which Purchased Securities are sold or are to be sold by the Seller to the Buyer;

**'Purchased Securities'** mean, with respect to any Transaction, the Securities sold or to be sold by the Seller to the Buyer under that Transaction, and any New Purchased Securities transferred by the Seller to the Buyer under clause 8 in respect of that Transaction;

**'Repurchase Date'** means, with respect to any Transaction, the date on which the Buyer is to sell Equivalent Securities to the Seller in relation to that Transaction;

**'Repurchase Price'** means, with respect to any Transaction and as of any date, the sum of the Purchase Price and the Price Differential as of such date;

**'Securities'** means financial instruments, including shares or stock in the share capital of a corporation, whether ordinary shares or preference shares or other kinds of shares or stock ('equity Securities' or 'equities'), that are the subject of the purchase and sale Transaction as specified in the related Confirmation;

**'Seller'** means for any Transaction, either BCS or the Client acting as seller of Securities as specified in the related Confirmation;

**'Spot Rate'**, where an amount in one currency is to be converted into a second currency on any date, unless the parties otherwise agree, means the spot rate of exchange determined by BCS based on the relevant page on Bloomberg or, if that page is not published for the relevant day, the relevant page on Reuters, or, if that page is not published for the relevant day, as determined by BCS in a commercially reasonable manner;

**'TARGET2'** means the Second Generation Trans-European Automated Real-time Gross Settlement Express Transfer System, or any other system that replaces it;

**'Term'** means, with respect to any Transaction, the interval of time commencing with the Purchase Date and ending with the Repurchase Date;

**'Termination'**, with respect to any Transaction, refers to the requirement with respect to such Transaction for the Buyer to sell Equivalent Securities against payment by the Seller of the Repurchase Price in accordance with clause 3.8., and reference to a Transaction having a 'fixed term' or being 'terminable upon demand' shall be construed accordingly;

**'Transaction'** means a repurchase transaction;

**'Transaction Exposure'** means, with respect to any Transaction at any time during the period from the Purchase Date to the Repurchase Date (or, if later, the date on which Equivalent Securities are delivered to the Seller or the Transaction is terminated due to an Event of Default), the amount 'E' determined as a result of formula  $E = R - V$ , where:

R = the Repurchase Price at such time;

V = the Adjusted Value of Equivalent Securities at such time or, where a Transaction relates to Securities of more than one description or to which different haircuts apply, the sum of the Adjusted Values of the Securities of each such description.

For this purpose the 'Adjusted Value' of any Securities is their value determined on the basis of the formula:

$V = MV * (1 - H) = MV / MR$ , where:

MV = the Market Value of Equivalent Securities at such time;

H = the 'haircut' for the relevant Securities, if any, as agreed by the parties from time to time, being a discount from the Market Value of the Securities;

MR = the applicable Margin Ratio;

If E is greater than zero, the Buyer has a Transaction Exposure equal to E and if E is less than zero, the Seller has a Transaction Exposure equal to the absolute value of E.

## **2. General**

**2.1.** Subject to the terms of this Section, the Client and BCS shall be considered to have entered as either Buyer or Seller into a binding oral or written agreement, whereby the Seller agrees to sell to the Buyer Securities against the payment of the Purchase Price by the Buyer to the Seller, with a simultaneous agreement by the Buyer to sell to the Seller Equivalent Securities, at a certain date or on demand against the payment of the Repurchase Price by the Seller to the Buyer, when they agree on the material terms of the Transaction.

**2.2.** The terms of this Section shall be incorporated by reference into any Confirmation.

**2.3.** In respect of any Transaction, the terms of this Section, the Terms of Business and the Confirmation shall together constitute a single, integrated agreement between the parties.

**2.4.** In the event of any conflict between the terms of this Section and the Terms of Business, this Section shall prevail. In the event of any conflict between the terms of this Section and the Confirmation, the Confirmation shall prevail.

## **3. Initiation, Confirmation and Termination**

**3.1.** A Transaction may be entered into orally or in writing at the initiation of either party.

**3.2.** Upon agreeing to enter into a Transaction hereunder BCS shall promptly send to the Client a Confirmation of such Transaction.

**3.3.** A Confirmation shall describe the Purchased Securities (including CUSIP or ISIN or other identifying number or numbers, if any), identify the Buyer and the Seller and set forth –

- (i) the Purchase Date;
- (ii) the Purchase Price;
- (iii) the Repurchase Date, unless the Transaction is to be terminable on demand (in which case the Confirmation shall state that it is terminable on demand);
- (iv) the Pricing Rate applicable to the Transaction;
- (v) the Margin Ratio or Haircut;
- (vi) the Maximal Transaction Exposure;
- (vii) in respect of each party the details of the settlement account(s) to the Transaction;
- (viii) any additional terms or conditions of the Transaction;
- (ix) and may be in the form to which the parties agree.

**3.4.** The Confirmation relating to a Transaction shall, together with the terms of this Section and the Terms of Business, constitute prima facie evidence of the terms agreed between the parties for that Transaction.

**3.5.** On the Purchase Date for a Transaction, the Seller shall transfer the Purchased Securities to the Buyer or its agent against the payment of the Purchase Price by the Buyer in accordance with clause 6.4.

**3.6.** Termination of a Transaction will be effected, in the case of on demand Transactions, on the date specified for Termination in such demand, and, in the case of fixed term Transactions, on the date fixed for Termination.

**3.7.** In the case of on demand Transactions, demand for Termination shall be made by the Buyer or the Seller, by telephone or otherwise, and shall provide for Termination to occur after not less than the minimum period as is customarily required for the settlement or delivery of money or Equivalent Securities of the relevant kind.

**3.8.** On the Repurchase Date, the Buyer shall transfer to the Seller or its agent Equivalent Securities against the payment of the Repurchase Price by the Seller (less any amount then payable and unpaid by the Buyer to the Seller pursuant to clause 5).

**3.9.** Where the parties have agreed in relation to a Transaction that BCS shall, acting as agent for the Client, procure the payment of the Purchase or Repurchase Price or the delivery of Securities or Equivalent Securities on behalf of the Client, BCS will do so provided that BCS receives the Purchase or Repurchase Price to be so paid or Securities or Equivalent Securities to be so delivered on or before the Purchase or Repurchase Date.

**3.10.** Before the Purchase Date with respect to any Transaction, a Transaction may be terminated orally or in writing at the initiation of either party. Upon agreeing to terminate a Transaction hereunder BCS shall promptly send to the Client a cancellation notice. Such notice shall be subject to the terms of this Section and the Terms of Business and shall, in the absence of manifest error, be conclusive and binding on the Client, unless BCS receives written detailed objection from the Client within twenty four hours of dispatch. A cancellation notice, once not

objected by the Client shall be conclusive evidence of termination of the Transaction and shall supersede all prior oral statements with respect thereto.

#### **4. Margin Maintenance**

**4.1.** If at any time either party has a Net Exposure (as defined in clause 4.3. below) in respect of the other party it may by notice to the other party require the other party to make a Margin Transfer to it of an aggregate amount or value at least equal to that Net Exposure.

**4.2.** A notice under clause 4.1. above may be given orally or in writing.

**4.3.** For the purposes of this Section a party has a Net Exposure in respect of the other party if the aggregate of all the first party's Transaction Exposures plus any amount payable to the first party under clause 5 but unpaid less the amount of any Net Margin provided to the first party exceeds the aggregate of all the other party's Transaction Exposures plus any amount payable to the other party under clause 5 but unpaid less the amount of any Net Margin provided to the other party; and the amount of the Net Exposure is the amount of the excess. For this purpose any amounts not denominated in the Base Currency shall be converted into the Base Currency at the Spot Rate prevailing at the relevant time.

**4.4.** To the extent that a party calling for a Margin Transfer has previously paid Cash Margin which has not been repaid or delivered Margin Securities in respect of which Equivalent Margin Securities have not been delivered to it or cash amount equivalent to Equivalent Margin Securities has not been paid, that party shall be entitled to require that such Margin Transfer be satisfied first by the repayment of such Cash Margin or the delivery of Equivalent Margin Securities but, subject to this, the composition of a Margin Transfer shall be at the option of the party making such Margin Transfer. Notwithstanding the above, BCS is entitled, when calling for a Margin Transfer, to require from the Client to satisfy the Margin Transfer by payment of Cash Margin.

**4.5.** Any Cash Margin transferred shall be in the Base Currency or such other currency as the parties may agree.

**4.6.** A payment of Cash Margin shall give rise to a debt owing from the party receiving such payment to the party making such payment. Such debt shall bear interest payable at such times, as may be agreed between the parties, and shall be repayable subject to the terms of this Section. Interest rate on Cash Margin in respect of the relevant currency shall be determined for each day cash is held by the transferee (and if it is not a Business Day, for the Business Day immediately preceding such day) as follows, unless agreed between the parties otherwise in writing prior to the payment of the relevant Cash Margin:

(a) For USD, the overnight Federal Funds Effective Rate as reported under column EFF on Bloomberg Page 'FEDL01'.

(b) For EUR, the overnight rate as published by the European Central Bank and reported on Bloomberg page 'EONIA Index'.

(c) For GBP, the SONIA rate appearing opposite SONIO/N as reported on Bloomberg page 'SONIO Index'.

(d) For RUB, the MOSPRIME overnight rate as reported on Bloomberg page 'MOSKON Index'.

(e) For other currencies not mentioned above in this clause, the interest rate as may be determined by BCS at its sole and absolute discretion.

**4.7.** Where the Seller or the Buyer becomes obliged under clause 4.1. above, to make a Margin Transfer, it shall transfer Cash Margin or Margin Securities or Equivalent Margin Securities within the following time periods, unless otherwise agreed:

(a) by the end of the same Business Day if notice is given prior to 9 a.m. (UTC); or

(b) by the end of the next Business Day, if notice is given after 9 a.m. (UTC).

**4.8.** Where a party (the 'Transferor') becomes obliged to transfer Equivalent Margin Securities and, having made all reasonable efforts to do so, is, for any reason relating to the Securities or the clearing system through which the Securities are to be transferred, unable to transfer Equivalent Margin Securities then the Transferor shall immediately but not later than within the time period specified in clause 4.7. above, pay to the other party Cash Margin at least equal to the Market Value of such Equivalent Margin Securities.

**4.9.** The parties may agree that any Net Exposure which may arise shall be eliminated not by Margin Transfers under the preceding provisions of this clause but by the repricing of Transactions under clause 4.10. below, the adjustment of Transactions under clause 4.11. below or a combination of both these methods.

**4.10.** Where the parties agree that a Transaction is to be repriced under this clause, such repricing shall be effected as follows:

- (i) the Repurchase Date under the relevant Transaction (the 'Original Transaction') shall be deemed to occur on the date on which the repricing is to be effected (the 'Repricing Date');
- (ii) the parties shall be deemed to have entered into a new Transaction (the 'Repriced Transaction') on the terms set out in (iii) to (vi) below;
- (iii) the Purchased Securities under the Repriced Transaction shall be Securities equivalent to the Purchased Securities under the Original Transaction;
- (iv) the Purchase Date under the Repriced Transaction shall be the Repricing Date;
- (v) the Purchase Price under the Repriced Transaction shall be such amount as shall, when multiplied by the Margin Ratio applicable to the Original Transaction, be equal to the Market Value of such Securities on the Repricing Date;
- (vi) the Repurchase Date, the Pricing Rate, the Margin Ratio and, subject as aforesaid, the other terms of the Repriced Transaction shall be identical to those of the Original Transaction;
- (vii) the obligations of the parties with respect to the delivery of the Purchased Securities and the payment of the Purchase Price under the Repriced Transaction shall be set off against their obligations with respect to the delivery of Equivalent Securities and payment of the Repurchase Price under the Original Transaction and accordingly only a net cash sum shall be paid by one party to the other. Such net cash sum shall be paid within the minimum period specified in clause 4.7. above.

**4.11.** The adjustment of a Transaction (the 'Original Transaction') under this clause shall be effected by the parties agreeing that on the date on which the adjustment is to be made (the

'Adjustment Date') the Original Transaction shall be terminated and they shall enter into a new Transaction (the 'Replacement Transaction') in accordance with the following provisions:

- (i) the Original Transaction shall be terminated on the Adjustment Date on such terms as the parties shall agree on or before the Adjustment Date;
- (ii) the Purchased Securities under the Replacement Transaction shall be such Securities as the parties shall agree on or before the Adjustment Date (being Securities the aggregate Market Value of which at the Adjustment Date is substantially equal to the Repurchase Price under the Original Transaction at the Adjustment Date multiplied by the Margin Ratio applicable to the Original Transaction);
- (iii) the Purchase Date under the Replacement Transaction shall be the Adjustment Date;
- (iv) the other terms of the Replacement Transaction shall be such as the parties shall agree on or before the Adjustment Date; and
- (v) the obligations of the parties with respect to payment and delivery of Securities on the Adjustment Date under the Original Transaction and the Replacement Transaction shall be settled in accordance with clause 6 within the minimum period specified in clause 4.7. above.

**4.12.** If at any time the Net Exposure of BCS in respect of the Client is in excess of Maximal Net Exposure, clause 16.2 of Section A shall apply.

## **5. Income Payment and Corporate Actions**

**5.1.** Unless otherwise agreed –

- (a) where: (i) the Term of a particular Transaction extends over an Income Payment Date in respect of any Securities subject to that Transaction; or (ii) an Income Payment Date in respect of any such Securities occurs after the Repurchase Date but before Equivalent Securities have been delivered to the Seller or, if earlier, the occurrence of the termination of the Transaction due to an Event of Default then the Buyer shall on the date such Income is paid by the issuer transfer to or credit to the account of the Seller an amount equal to (and in the same currency as) the amount paid by the issuer;
  - (b) where Margin Securities are transferred from one party ('the first party') to the other party ('the second party') and an Income Payment Date in respect of such Securities occurs before Equivalent Margin Securities are transferred or a Cash Margin at least equal to the Market Value of such Equivalent Margin Securities is paid by the second party to the first party, the second party shall on the date such income is paid by the issuer transfer to or credit to the account of the first party an amount equal to (and in the same currency as) the amount paid by the issuer;
- and for the avoidance of doubt references in this clause to the amount of any Income paid by the issuer of any Securities shall be to an amount paid without any withholding or deduction for or on account of taxes or duties notwithstanding that a payment of such Income made in certain circumstances may be subject to such a withholding or deduction.

**5.2.** Unless otherwise agreed –

- (a) where the Purchased Securities the subject of a Transaction consist of or include equities in respect of which an Income Payment Date would, but for this provision, occur during the Term of such Transaction, the Seller shall seek to effect a substitution of such equities in accordance with clause 8.1. before the Notice Date referred to in clause 5.3., but if such a substitution has not been effected by that date then Termination of such Transaction shall, provided that the Seller has notified the Buyer of such Termination in accordance with clause 5.3., occur on, and, accordingly, the Repurchase Date of such Transaction shall fall on, the Business Day immediately preceding such Income Payment Date.
- (b) except to the extent that Equivalent Margin Securities in respect of the relevant Margin Securities have already been transferred or a Cash Equivalent Amount has already been paid, where one party (the 'transferor') has transferred Margin Securities which are equities to the other (the 'transferee') then, on the Business Day preceding the next Income Payment Date in respect of such Margin Securities, the transferee shall transfer to the transferor Equivalent Margin Securities in respect of such Margin Securities in exchange for new Margin Securities as if such transfers were made pursuant to a request under clause 8.4. to which the transferee had agreed; provided that (i) the transferor has given notice to the transferee in accordance with clause 5.3. of the application of this clause 5.2.(b) and (ii) the transferor has provided reasonable details to the transferee of the Margin Securities in question, the relevant Income Payment Date and the new Margin Securities to be exchanged for such Equivalent Margin Securities and the transferee has indicated to the transferor that such new Margin Securities are acceptable to it.

**5.3.** Any notice given pursuant to clause 5.2. above shall not be valid unless given so as to be effective, at the latest, one hour before the close of business on the last Business Day (the 'Notice Date') on which the recipient would customarily be required to initiate settlement of the securities to be transferred by it pursuant to such notice in order for settlement to take place on the Business Day immediately preceding the relevant Income Payment Date. Nothing in clause 5.2. shall prejudice any entitlement of either party to terminate a Transaction in any other manner permitted by this Section.

**5.4.** Unless otherwise agreed between the parties, where (notwithstanding, and without prejudice to, clause 5.2. and 5.3. above) Equivalent Securities in respect of Purchased Securities which are equities or, as the case may be, Equivalent Margin Securities or a Cash Equivalent Amount in respect of Margin Securities which are equities have not been transferred, or paid, as the case may be, by the Buyer to the Seller or the transferee to the transferor prior to an Income Payment Date in respect of such Securities, then clause 5.1. above shall not apply (if it otherwise would) in respect of such Securities, and the Buyer shall or, as the case may be, the transferee shall, on the date Income is paid by the issuer of those Securities, transfer to or credit to the account of the Seller or, as the case may be, the transferor -

- (a) an amount equal to (and in the same currency as) so much of such Income attributable to such Securities as the Buyer or the transferee is (if it is the holder of such Securities

- on such Income Payment Date) or would have been (if it had been the holder of such Securities on such Income Payment Date) paid in cash by the issuer to the holder; and
- (b) an amount equal to such amount, if any, in respect of tax or tax benefit as the Buyer or the transferee is (if it is the holder of such Securities on such Income Payment Date) or would have been (if it had been the holder of such Securities on such Income Payment Date) entitled to claim or recover in cash from the issuer's jurisdiction in respect of such Income payment;

provided that, unless otherwise agreed between the parties, if the Buyer or, as the case may be, the transferee has failed to make reasonable efforts to transfer the relevant Equivalent Securities or Equivalent Margin Securities prior to such Income Payment Date in circumstances where the proviso to clause 5.2.(a) above or, as the case may be, clause 5.2.(b) has been satisfied or where an Income Payment Date occurs after the Repurchase Date but before Equivalent Securities have been delivered to the Seller or, if earlier, the occurrence of an early Termination date, then, instead of transferring or crediting the amount referred to in clauses (a) and (b) of this clause 5.4., the Buyer or, as the case may be, the transferee shall indemnify the Seller or, as the case may be, the transferor in respect of any cost, loss (including for the avoidance of doubt the amount of Income that would have been paid to Seller or, as the case may be, the transferor if it had been the holder of such Securities on such Income Payment Date) or damage (excluding, for the avoidance of doubt, any consequential loss or damage) suffered by such person which it would not have suffered had the relevant Equivalent Securities or Equivalent Margin Securities been transferred prior to such Income Payment Date.

**5.5.** Where the Buyer or, as the case may be, the transferee is required by law to make any transfer or credit pursuant to clauses (a) or (b) of clause 5.4. above subject to withholding or deduction of taxes or duties, and as a result would, but for this clause, be required to pay additional amounts under clause 6.2. of this Section, unless otherwise agreed between the parties, it shall only be obliged to pay such additional amounts to the extent that it could, in the relevant circumstances, have avoided, satisfied or off-set the relevant obligation to withhold or deduct (or to account for the tax withheld or deducted) by utilising any available tax credit in respect of the relevant Securities (or transactions relating to them).

**5.6.** In relation to Purchased Securities or Margin Securities which are equities (and in respect of which Equivalent Securities or, as the case may be, Equivalent Margin Securities have not been transferred or a Cash Margin paid pursuant to clause 4.8. above) the Buyer, in the case of Purchased Securities, or the transferee, in the case of Margin Securities, shall notify the other party, within a reasonable time after the date on which a holder of such Securities would in the normal course have received such notice from the issuer or upon request, of any notice issued by the issuer of such Securities to the holders of such Securities relating to any proposed conversion, sub-division, consolidation, takeover, pre-emption, option or other similar right or event affecting such Securities or of any Income payment declared in respect of such Securities. Whether or not such notice is received from the first party, the other party may –

- (a) where the relevant Securities are Purchased Securities, cause the Transaction to be terminated in accordance with clauses 3.6. to 3.8. of this Section as if the Transaction

were an on demand Transaction or, where the relevant Securities are Margin Securities, request that Equivalent Margin Securities be transferred in respect of such Securities to clause 8.4. of this Section; and/or (as appropriate);

- (b) within a reasonable time before the latest time for the exercise of the right or option give written notice to the first party that on redelivery of Equivalent Securities or Equivalent Margin Securities, as the case may be, it wishes to receive Equivalent Securities or Equivalent Margin Securities in such form as will arise if the right is exercised or, in the case of a right which may be exercised in more than one manner, is exercised as is specified in such written notice; provided that if any sum is required to be paid by a holder of the securities to the issuer or any other person in order to exercise such rights, the other party shall pay to the first party an amount equal to such sum.

**5.7.** Subject as otherwise provided in this Section or as otherwise agreed between the parties, where the Income paid or distributed by the issuer of Purchased Securities or Margin Securities is not in the form of money but is in the form of other property, the obligation of a party under clause 5 to pay to the other party an amount equal to the amount paid by the issuer shall be construed as an obligation to transfer property equivalent to that distributed by the issuer.

**5.8.** Where any voting rights fall to be exercised in relation to any Purchased Securities or Margin Securities which are equities and in respect of which Equivalent Securities or, as the case may be, Equivalent Margin Securities have not been transferred or a Cash Margin has not been paid pursuant to clause 4.8. above, neither the Buyer, in the case of Purchased Securities, nor the transferee, in the case of Margin Securities, shall have any obligation to arrange for voting rights of that kind to be exercised in accordance with the instructions of the other party in relation to such Purchased Securities or Margin Securities, unless otherwise agreed between the parties.

## **6. Payment and Transfer**

**6.1.** Unless otherwise agreed, all money paid hereunder shall be in immediately available freely convertible funds of the relevant currency. All Securities to be transferred hereunder (i) shall be in suitable form for transfer and shall be accompanied by duly executed instruments of transfer or assignment in blank (where required for transfer) and such other documentation as the transferee may reasonably request, or (ii) shall be transferred through any agreed book entry or other securities clearance system or (iii) shall be transferred by any other method mutually acceptable to the Seller and the Buyer.

**6.2.** Unless otherwise agreed, all money payable by one party to the other in respect of any Transaction shall be paid free and clear of, and without withholding or deduction for, any taxes or duties of whatsoever nature imposed, levied, collected, withheld or assessed by any authority having power to tax, unless the withholding or deduction of such taxes or duties is required by law. In that event, unless otherwise agreed, the paying party shall pay such additional amounts as will result in the net amounts receivable by the other party (after taking

account of such withholding or deduction) being equal to such amounts as would have been received by it had no such taxes or duties been required to be withheld or deducted.

**6.3.** The Seller shall promptly pay and account for any transfer or similar duties or taxes chargeable in connection with the transfer of Purchased Securities which are equities and any Equivalent Securities in respect thereof and shall reimburse to the Buyer the amount of any liability incurred by it as a result of Seller's failure to do so. Where Margin Securities which are equities are transferred by one party to the other, the transferor (the first party) shall promptly pay and account for any transfer or similar duties or taxes chargeable in connection with such transfer as well as in connection with any subsequent transfer by the transferee (the second party) of Equivalent Margin Securities in respect thereof to the first party and shall reimburse to the second party the amount of any liability incurred by the second party as a result of the first party's failure to do so.

**6.4.** Unless otherwise agreed in writing between the parties, under each Transaction transfer of Purchased Securities by the Seller and payment of Purchase Price by the Buyer against the transfer of such Purchased Securities shall be made simultaneously and transfer of Equivalent Securities by the Buyer and payment of Repurchase Price payable by the Seller against the transfer of such Equivalent Securities shall be made simultaneously.

**6.5.** Subject to and without prejudice to the provisions of clause 6.4., either party may from time to time in accordance with market practice and in recognition of the practical difficulties in arranging simultaneous delivery of Securities and money waive in relation to any Transaction its rights under this Section to receive simultaneous transfer and/or payment provided that transfer and/or payment shall, notwithstanding such waiver, be made on the same day and provided also that no such waiver in respect of one Transaction shall affect or bind it in respect of any other Transaction.

**6.6.** Unless otherwise agreed, where any Purchased Securities, Equivalent Securities, Margin Securities or Equivalent Margin Securities which are equities are transferred through a settlement system which automatically generates a mandatory payment or delivery, or a mandatory obligation to pay or deliver, against the transfer of such Securities, then –

- (a) such automatically generated payment, delivery or obligation shall be treated as a payment or delivery by the transferee to the transferor, and except to the extent that it is applied to discharge an obligation of the transferee to effect a payment or delivery, such payment or delivery, or obligation to pay or deliver, shall be deemed to be a Margin Transfer made by the transferee; and
- (b) unless the parties shall have agreed otherwise, the party receiving such Margin Transfer shall cause to be made to the other party for value the same day either, where such Margin Transfer is a payment, an irrevocable payment in the amount of such Margin Transfer or, where such Margin Transfer is a delivery, an irrevocable delivery of Securities (or other property, as the case may be) equivalent thereto.

**6.7.** The parties shall execute and deliver all necessary documents and take all necessary steps to procure that all right, title and interest in any Purchased Securities, any Equivalent Securities, any Margin Securities and any Equivalent Margin Securities shall pass to the party to which

transfer is being made upon transfer of the same in accordance with this Section free from all liens (other than a lien granted to the operator of the clearance system through which the Securities are transferred), claims, charges and encumbrances.

Notwithstanding the use of expressions such as 'Repurchase Date', 'Repurchase Price', 'margin', 'Net Margin', 'Margin Ratio' and 'substitution', which are used to reflect terminology used in the market for transactions of the kind provided for in this Section, all right, title and interest in and to Securities and money transferred or paid under this Section shall pass to the transferee upon transfer or payment, the obligation of the party receiving Purchased Securities or Margin Securities being an obligation to transfer Equivalent Securities or Equivalent Margin Securities.

**6.8.** Time shall be of the essence in this Section.

## **7. Contractual Currency**

**7.1.** All the payments made in respect of the Purchase Price or the Repurchase Price of any Transaction shall be made in the Contractual Currency. Notwithstanding the foregoing, the payee of any money may, at its option, accept tender thereof in any other currency, provided, however, that, to the extent permitted by applicable law, the obligation of the payer to pay such money will be discharged only to the extent of the amount of the Contractual Currency that such payee may, consistent with normal banking procedures, purchase with such other currency (after deduction of any premium and costs of exchange) for delivery within the customary delivery period for spot transactions in respect of the relevant currency.

**7.2.** If for any reason the amount in the Contractual Currency received by a party, including amounts received after conversion of any recovery under any judgment or order expressed in a currency other than the Contractual Currency, falls short of the amount in the Contractual Currency due and payable, the party required to make the payment will, as a separate and independent obligation, to the extent permitted by applicable law, immediately transfer such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall.

**7.3.** If for any reason the amount in the Contractual Currency received by a party exceeds the amount of the Contractual Currency due and payable, the party receiving the transfer will refund promptly the amount of such excess.

## **8. Substitution**

**8.1.** A Transaction may at any time between the Purchase Date and Repurchase Date, if the Seller so requests and the Buyer so agrees, be varied by the transfer by the Buyer to the Seller of Securities equivalent to the Purchased Securities, or to such of the Purchased Securities as shall be agreed, in exchange for the transfer by the Seller to the Buyer of other Securities of such amount and description as shall be agreed ('New Purchased Securities') (being Securities having a Market Value at the date of the variation at least equal to the Market Value of the Equivalent Securities transferred to the Seller).

**8.2.** Any variation under clause 8.1. above shall be effected, subject to clause 6.5., by the simultaneous transfer of the Equivalent Securities and New Purchased Securities concerned.

**8.3.** A Transaction which is varied under clause 8.1. above shall thereafter continue in effect as though the Purchased Securities under that Transaction consisted of or included the New Purchased Securities instead of the Securities in respect of which Equivalent Securities have been transferred to Seller.

**8.4.** Where either party has transferred Margin Securities to the other party it may at any time before Equivalent Margin Securities are transferred to it under clause 4 request the other party to transfer Equivalent Margin Securities to it in exchange for the transfer to the other party of new Margin Securities having a Market Value at the time at which the exchange is agreed at least equal to that of such Equivalent Margin Securities. If the other party agrees to the request, the exchange shall be effected, subject to clause 6.5., by the simultaneous transfer of the Equivalent Margin Securities and new Margin Securities concerned. Where either or both of such transfers is or are effected through a settlement system in circumstances which under the rules and procedures of that settlement system give rise to a payment by or for the account of one party to or for the account of the other party, the parties shall cause such payment or payments to be made outside that settlement system, for value the same day as the payments made through that settlement system, as shall ensure that the exchange of Equivalent Margin Securities and new Margin Securities effected under this clause does not give rise to any net payment of cash by either party to the other.

**SECTION I: FINANCIAL COLLATERAL ARRANGEMENTS**

[APPLICATION OF THIS SECTION I IS CONDITIONAL UPON THE WRITTEN ARRANGEMENTS BEING SEPARATELY AGREED UPON BETWEEN THE CLIENT AND BCS]

## SECTION J: SECURITIES PURCHASE AND SALE OUTSIDE A REGULATED MARKET OR MTF

### 1. Definitions

**'Buyer'** means for any Transaction, either BCS or the Client acting as buyer of Securities as specified in the related Confirmation;

**'Contractual Currency'** has the meaning given in clause 5.1.;

**'Delivery Date'** means, with respect to any Transaction, the date on which Securities are to be delivered by the Seller to the Buyer;

**'Income'** means, with respect to any Security at any time, all interest, dividends or other distributions thereon, including distributions which are a payment or repayment of principal in respect of the relevant Security or, in case of equities, a payment of redemption proceeds in respect of the relevant Security;

**'Income Payment Date'** means, with respect to any Securities, the date on which Income is paid in respect of such Securities or, in the case of registered Securities, the date by reference to which particular registered holders are identified as being entitled to payment of Income;

**'Payment Date'** means, with respect to any Transaction, the date, on which the Purchase Price is to be paid by the Buyer to the Seller;

**'Purchase Price'** means the price at which Securities are sold or are to be sold by the Seller to the Buyer;

**'Securities'** means any shares, bonds, and other transferable securities that are the subject of the purchase and sale Transaction, as specified in the related Trade Confirmation and are eligible to be paid for and transferred through the Settlement Depositary;

**'Seller'** means for any Transaction, either BCS or the Client acting as seller of Securities as specified in the related Confirmation;

**'Settlement Depositary'** means any securities depositary, registrar providing for the recording and transfer of title to securities in a computer-based system, or any settlement system, dematerialised book entry system, clearance system or similar system;

**'Trade Date'** means, in relation to any Transaction, the date on which the Buyer and the Seller agree upon the terms and conditions of a Transaction;

**'Transaction'** means a purchase and sale of Securities;

**'Transaction Costs'** has the meaning given in clause 4.6.

### 2. General

**2.1.** Subject to this Section, the Client and BCS may from time to time enter into Transactions as either Buyer or Seller in which the Seller agrees to sell to the Buyer Securities as defined below against the payment of the Purchase Price by the Buyer to the Seller. A Transaction may be entered into orally or in writing at the initiation of either party.

**2.2.** Upon agreeing to enter into a Transaction BCS shall promptly send to the Client a Confirmation of a Transaction.

**2.3.** A Confirmation shall identify the Buyer and the Seller and contain the following information:

- (i) the Securities (including ISIN or other identifying number or numbers, if any) and quantity thereof;
- (ii) the Trade Date;
- (iii) the Purchase Price;
- (iv) the Payment Date and Delivery Date;
- (v) the details of the cash/securities account(s) of the parties; and
- (vi) any additional terms and conditions of the Transaction, if any.

**2.4.** A Confirmation of a Transaction shall, together with this Section and the Terms of Business, constitute a prima facie evidence of the terms agreed between the parties for that Transaction.

**2.5.** In respect of any Transaction, the terms of this Section, the Terms of Business and the Confirmation shall together constitute a single, integrated agreement between the parties. The terms of this Section shall be incorporated by reference into any Confirmations. In the event of any conflict between the terms of this Section and the Terms of Business, this Section shall prevail. In the event of any conflict between the terms of this Section and the Confirmation, the Confirmation shall prevail.

**2.6.** The Seller shall procure the delivery of Securities or deliver such Securities to the Buyer or its agent on the Delivery Date in accordance with the terms of this Section and the relevant Confirmation.

**2.7.** The Buyer shall transfer the Purchase Price to the Seller on the Payment Date. The Purchase Price for debt Securities shall include, where appropriate, accrued coupon yield determined in accordance with the offering document, unless otherwise agreed.

### **3. Income Payment and Corporate Actions**

**3.1.** Unless otherwise agreed between the parties in writing, where the period from and including the Trade Date to and excluding the Delivery Date for a particular Transaction extends over the Income Payment Date, then the Seller shall on the date such Income is paid by the issuer transfer to or credit to the account of the Buyer an amount equal to (and in the same currency as) so much of such Income attributable to such Securities as Buyer would have been paid (if it had been the holder of such Securities on such Income Payment Date) by the issuer to the holder together with an amount equal to such amount, if any, in respect of tax or tax benefit as the Buyer would have been entitled to claim or recover (if it had been the holder of such Securities on such Income Payment Date) from the issuer's jurisdiction in respect of such Income payment provided that where Income is paid before the relevant Delivery Date such Income shall be transferred to the Buyer on the Delivery Date.

**3.2.** Subject as otherwise provided in this Section or as otherwise agreed between the parties, where the Income paid or distributed by the issuer of Securities is not in the form of money but is in the form of other property, the obligation of a party under clause 3.1 to pay to the other party an amount equal to the amount paid by the issuer shall be construed as an obligation to transfer property equivalent to that distributed by the issuer.

**3.3.** In relation to any Securities the Seller shall notify the Buyer, within a reasonable time after the date on which a holder of such Securities would in the normal course have received such notice from the issuer, of any notice relating to any proposed conversion, sub-division, consolidation, takeover, pre-emption, option or other similar right or event affecting such Securities or of any Income payment declared in respect of such Securities and issued by the issuer of such Securities to the holders of such Securities within the period from and including the Trade Date to and excluding the Delivery Date for the relevant Transaction. Whether or not such notice is received from the Seller, the Buyer may within a reasonable time before the latest time for the exercise of the right or option give written notice to the Seller that on the Delivery Date or at such time, as may be agreed between the parties, it wishes to receive Securities in such form as will arise if the right is exercised or, in the case of a right which may be exercised in more than one manner, is exercised as is specified in such written notice; provided that if any sum is required to be paid by a holder of the securities to the issuer or any other person in order to exercise such rights, the Buyer shall pay to the Seller an amount equal to such sum.

**3.4.** Where any voting rights fall to be exercised during the period from and including the Trade Date to and excluding the Delivery Date for a particular Transaction, the Seller shall have no obligation to arrange for voting rights of that kind to be exercised in accordance with the instructions of the other party in relation to such Securities, unless otherwise agreed between the parties.

#### **4. Payment and Transfer**

**4.1.** All money payable by one party to the other in respect of any Transaction shall be paid in immediately available freely convertible funds of the relevant currency free and clear of, and without withholding or deduction for, any taxes or duties of whatsoever nature imposed, levied, collected, withheld or assessed by any authority having power to tax, unless the withholding or deduction of such taxes or duties is required by law. In that event, unless otherwise agreed, the paying party shall pay such additional amounts as will result in the net amounts receivable by the other party (after taking account of such withholding or deduction) being equal to such amounts as would have been received by it had no such taxes or duties been required to be withheld or deducted.

**4.2.** All Securities to be transferred hereunder (i) shall be fully paid for and there shall be no moneys or liabilities outstanding or payable in respect of such Securities or any portion thereof as of the Delivery Date for such Securities, (ii) shall be suitable for transfer and shall be accompanied by all necessary documents and instructions to procure that all right, title and interest in Securities shall pass from the Seller to the Buyer on delivery of the same with full title guarantee, free from all liens (other than a lien granted to the operator of the Settlement Depository), charges and encumbrances whatsoever, and such other documentation as the transferee may reasonably request, and (iii) shall be transferred through the Settlement Depository mutually acceptable to the Seller and the Buyer in accordance with the rules and procedures of such Settlement Depository as from time to time in force.

**4.3.** The Seller shall promptly pay and account for any transfer or similar duties or taxes chargeable in connection with the transfer of Securities and shall reimburse to the Buyer the amount of any liability incurred by it as a result of Seller's failure to do so.

**4.4.** Unless otherwise agreed in writing between the parties, under each Transaction transfer of Securities by the Seller and payment of Purchase Price by the Buyer shall be made simultaneously.

**4.5.** Subject to and without prejudice to the provisions of clause 4.4., either party may from time to time in accordance with market practice and in recognition of the practical difficulties in arranging simultaneous delivery of Securities and money waive in relation to any Transaction its rights under this Section to receive simultaneous transfer and/or payment provided that transfer and/or payment shall, notwithstanding such waiver, be made on the same day and provided also that no such waiver in respect of one Transaction shall affect or bind it in respect of any other Transaction.

**4.6.** Where the parties have agreed in relation to a Transaction that BCS shall, acting as agent for the Client, procure the payment of the Purchase Price or the delivery of Securities on behalf of the Client, BCS will do so provided that BCS receives the Purchase Price to be so paid or Securities to be so delivered on or before the Payment or Delivery Date, as the case may be.

**4.7.** The Seller shall be deemed to have delivered Securities to the Buyer notwithstanding that those Securities have been redenominated or that the nominal value of those Securities has changed in connection with such redenomination. Where at any time between the Trade Date and the Delivery Date Securities have become the subject of a call on partly paid securities, conversion, subdivision, consolidation, takeover or any similar event or the holders of Securities have become entitled to receive or acquire other securities or property, the Seller shall deliver to the Buyer:

- (i) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (ii) in the case of a call on partly paid securities, securities equivalent to the paid-up securities provided that the Buyer shall have paid to the Seller a sum of money equal to the sum due in respect of the call;
- (iii) in the case of a capitalisation issue, Securities together with the securities allotted by way of bonus thereon;
- (iv) in the case of conversion, sub-division or consolidation, securities into which the relevant Securities have been converted, sub-divided or consolidated; provided that, if appropriate, notice has been given in accordance with clause 3.3. above;
- (v) in the case of takeover, a sum of money or securities equivalent to the consideration or alternative consideration of which notice has been given in accordance with clause 3.3. above;
- (vi) in the case of a rights issue, Securities together with the securities allotted thereon; provided that notice has been given to the other party in accordance with clause 3.3. above;

(vii) in the event that income in the form of securities, or a certificate which may at a future date be exchanged for securities or an entitlement to acquire securities is distributed, Securities together with securities or a certificate or an entitlement equivalent to those allotted; provided that notice has been given in accordance with clause 3.3. above;

(viii) in the case of any event similar to any of the foregoing, Securities together with or replaced by a sum of money or Securities or other property equivalent to (as so defined) that received in respect of such Securities resulting from such event.

**4.8.** Time shall be of essence in this Section.

**4.9.** All costs and expenses incurred by the party and paid to a bank, custodian, depository or registrar in connection with performance of such party's obligation to pay money or deliver the Securities (the 'Transaction Costs'), cannot be charged by that party to another party except where the parties specifically agree.

## **5. Contractual Currency**

**5.1.** All the payments made in respect of or connection with the Transaction shall be made in the currency of the Purchase Price (the 'Contractual Currency'). Notwithstanding the foregoing, the payee of any money may, at its option, accept tender thereof in any other currency, provided, however, that, to the extent permitted by applicable law, the obligation of the payer to pay such money will be discharged only to the extent of the amount of the Contractual Currency that such payee may, consistent with normal banking procedures, purchase with such other currency (after deduction of any premium and costs of exchange).

**5.2.** If for any reason the amount in the Contractual Currency received by a party, including amounts received after conversion of any recovery under any judgment or order expressed in a currency other than the Contractual Currency, falls short of the amount in the Contractual Currency due and payable, the party required to make the payment will, as a separate and independent obligation, to the extent permitted by applicable law, immediately transfer such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall.

**5.3.** If for any reason the amount in the Contractual Currency received by a party exceeds the amount of the Contractual Currency due and payable to the extent such amount is in excess of normal banking expenses relating to funds transfers, the party receiving the transfer will refund promptly the amount of such excess and the banking costs shall be paid by the other party.

## **SECTION K: GIVE-UP TRADES**

1. This Section sets out the basis on which BCS may effect sales or purchases of securities which may be given up to a third party broker nominated by the Client ('a give-up broker').
2. The Client may from time to time submit certain orders to BCS which it may identify orders to be given up to a give-up broker.
3. Where BCS fills such orders, BCS may treat the resulting executions as not having been accepted by the Client, but as being available to be given up to the give-up broker. BCS shall nonetheless notify the Client of such executions effected, so that the Client may notify the relevant give-up broker.
4. The give-up broker may then offer to enter into transactions with BCS which may correspond to such executions and BCS may accept such offers and shall deem the give-up to have been effective upon the settlement of such transactions. Any such transactions shall be effected bilaterally between the give-up broker and BCS and not pursuant to the Terms of Business or any other terms or agreements in place between the Client and BCS.
5. At any time prior to such settlement BCS may, in its absolute discretion:
  - (a) settle the relevant order or part thereof into the Client's account without further reference to the Client, whereupon the Client will be deemed to have accepted the order for its own account;
  - (b) enter into further sale or purchase transactions to offset BCS or Client's risk in relation to the relevant securities; and/or
  - (c) take any other action BCS may deem necessary to remove or minimize BCS or Client's risk.
6. BCS may charge fees (at a pre-agreed rate) in respect of settled give-up transactions, for which it may invoice the Client monthly.

The Client agrees to indemnify and keep indemnified BCS, its Affiliates and each of their directors, officers, employees, financiers, auditors, partners, agents or advisers in full and immediately on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by BCS or them and arising out of, or in connection with the arrangements set out in this Section and in particular any actions BCS may take pursuant to clause 5 above. On termination of this Section or the Terms of Business, this clause 7 shall continue in force and effect.