

## **x-clear General Terms and Conditions of Business (English Law) for Clearing of Trading Platform Transactions**

**Version of 15 December 2009**

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## 1 Definitions and interpretation

1.1 In these General Terms and Conditions of Business (English Law) (the "**GTCB**"), the following words and expressions shall have the following meanings:

"**Acceptance**" means the acceptance by an x-clear Member of the Open Offer;

"**Affiliate**" means, with respect to any undertaking, an undertaking which is a parent undertaking or subsidiary undertaking of that undertaking or a subsidiary undertaking of any parent undertaking of that undertaking (noting that the expressions "**parent undertaking**" and "**subsidiary undertaking**" shall have the meaning given to them in section 1162 of the Companies Act 2006 and the expression "**undertaking**" shall have the meaning given to it in section 1161 of the Companies Act 2006);

"**Applicable Laws**" means any applicable national, federal, supranational, state, regional, provincial, local or other statute, law, ordinance, regulation, rule, code, guidance, order published practice or concession, judgment, requirement or decision of a Governmental Authority and, for the avoidance of doubt, includes, without limitation, any rule or principle of common law or equity, all the provisions of the FSA Rules, and applicable accounting standards and principles;

"**Approved Settlement System**" means an institution which provides Settlement and other related services in respect of Trading Platform Transactions;

"**Business Day**" means a day on which all of the Trading Platform, the provider of Transaction Routing, the Co-CCP (if any), the Approved Settlement System and x-clear are open for business;

"**Business Partner Specifications**" means the specifications of the technical infrastructure (such as information technology or communications) required to be met by x-clear Members as published by x-clear on its website from time to time;

"**Buying x-clear Member**" means an x-clear ICM or x-clear GCM (whether or not a relevant Trading Platform Member acting on behalf of an x-clear NCM) which was, in respect of a Trading Platform Transaction, the buyer of a Trading Platform Product;

"**Central Counterparty**" means x-clear, a Co-CCP, if any, or other Clearing Organization contracted to act as central counterparty by a trading platform and thereby to be interposed as the counterparty to its members on either or both the "buy" and "sell" legs of a transaction on a trading platform;

"**Clearing**" means the central counterparty, collateral, risk management and other related services provided in relation to Trading Platform Transactions and any derivations of "Clearing" shall be construed accordingly;

"**Clearing Organization**" means any clearing house or organization duly authorized, regulated, licensed or recognized under Applicable Laws in any jurisdiction, including, without limitation, any recognized clearing house, recognized overseas clearing house or similar entity;

"**Clearing Terms**" means the terms and conditions on, inter alia, Permissible Collateral, Margin and Contribution requirements, in respect of a particular Trading Platform, as amended from time to time, and set out in a document of such name and referred to in the Trading Platform Specific GTCB;

"**Close-out Netting**" means the procedure described in Clause 18.5(d);

"**Co-CCP**" means a Central Counterparty that is party to a Link Agreement, if any;

"**Co-CCP Clearing Member**" means a Co-CCP GCM or a Co-CCP ICM;

"**Co-CCP Clearing Services**", if any, in relation to a particular Trading Platform Product or category of Trading Platform Products, means Clearing provided (or to be provided) by a Co-CCP to a Co-CCP Clearing Member for such Trading Platform Product or category of Trading Platform Products;

"**Co-CCP GCM**" means a Person authorized by the Co-CCP pursuant to the Co-CCP Regulations to receive Co-CCP Clearing Services in respect of own-account trades and trades by Co-CCP NCMs;

"**Co-CCP ICM**" means a Person authorized by the Co-CCP pursuant to the Co-CCP Regulations to receive Co-CCP Clearing Services in respect of own-account trades but not on behalf of Co-CCP NCMs;

"**Co-CCP NCM**" means a Trading Platform Member that is not a Co-CCP Clearing Member and who benefits from the Co-CCP Clearing Services on a back-to-back basis as provided by a Co-CCP GCM;

"**Co-CCP Regulations**" means all the rules and regulations of a Co-CCP as from time to time in force and any arrangements, directions, procedures and provisions made thereunder, as the context may require, in all cases in the form published from time to time by the Co-CCP;

"**Contract for Clearing Services (English Law)**" means the agreement governed by English law between x-clear and the x-clear Member pursuant to which the x-clear Member agrees to be bound by the GTCB, the Trading Platform Specific GTCB and the Rules and Regulations and references to "Contract for Clearing Services (English Law)" in these GTCB or in any other part of the Contractual Relationship shall be read as references to all such contracts (whether entered into by an x-clear GCM or an x-clear ICM);

"**Contract Terms**" means the terms and conditions of a Single Contract as provided for in Clause 11;

"**Contractual Relationship**" means, in relation to an x-clear Member, the contractual relationship between x-clear and the x-clear Member constituted by, and comprising, the Contract for Clearing Services (English Law), the GTCB, the Trading Platform Specific GTCB, Single Contracts to which that x-clear Member is a party, the Rules and Regulations and Pledge Agreements (as amended, updated or restated from time to time) and any other documents given contractual force pursuant to the foregoing, all in relation to the particular Trading Platform(s) in respect of which x-clear provides Clearing to the x-clear Member;

**"Contribution"** means a contribution to the Default Fund made in accordance with the Trading Platform Specific GTCB and the Clearing Terms;

**"Control"** means the rights and powers exercised over a Person by a Controller;

**"Controller"** has the meaning given to that term in section 422 of the FSMA;

**"Co-operating Clearing House"**, if any, has the meaning given to it in the applicable Link Agreement;

**"Default"** has the meaning given to it in Clause 18.4 (in relation to the x-clear Member) and Clause 19.1 (in relation to x-clear), and any derivations thereof shall be construed accordingly;

**"Default Fund"** means the default fund set up in relation to a specific Trading Platform or in relation to a joint default fund for several Trading Platforms and described further in the Trading Platform Specific GTCB and the Clearing Terms;

**"Default Notice"** shall have the meaning given to it in Clause 18.4;

**"Defaulting x-clear Member"** means an x-clear Member that has been declared to be in Default pursuant to Clause 18.4;

**"Dispo Collateral Accounts"** shall have the meaning given to it in the Trading Platform Specific GTCB and the Clearing Terms;

**"Dispute"** means any dispute, difference, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise) arising out of, in relation to, or in connection with, the provision of Clearing by x-clear, or the Contractual Relationship or any of its constituent parts, or with its or their negotiation, including, without limitation, any dispute as to its or their construction, validity, enforceability, performance, or any breach of any of the constituent parts of the Contractual Relationship;

**"EEA"** means the European Economic Area;

**"Encumbrance"** means any claim, charge, mortgage, security, lien, equity, power of sale, option or other right to purchase, usufruct, hypothecation, retention of title, right of pre-emption or other third party right or security interest of any kind or an agreement to create any of the foregoing, and any derivations of "Encumbrance" shall be construed accordingly;

**"Event of Default"** has the meaning given to it in Clause 18.1;

**"Event of Force Majeure"** means any occurrence outside the control of x-clear or the relevant x-clear Member (as applicable) which hinders or prevents the performance in whole or in part of any of its obligations hereunder (other than an obligation to make any payment), including, but not limited to, fire, flood, storm, earthquake, explosion, war, hostilities, diseases, epidemics, accidents howsoever caused, riots, civil commotion, malicious damage (other than malicious damage caused by employees of the relevant party or its Affiliate), acts of third parties such as the partial or complete unusability of such third party's technical systems (including, without limitation, the systems operated by the Trading Platform, any Approved Settlement System, the provider of Transaction Routing and a Co-CCP, if any) but excluding matters caused by acts of

a party and of its Sub-Contractors and, in the case of an x-clear Member, of its x-clear NCMs), strike, lockout, work to rule or other industrial dispute, lack of energy supply, the actions or omissions of settlement banks or bank transfer systems or wires, criminal action, embargoes, acts of God, acts of Governmental Authorities, delays in transportation or communications;

"**Exchange**" means a regulated market as defined in the markets in financial instruments directive (Directive 2004/39/EC) located in the EEA or any equivalent market located in a country or territory outside the EEA;

"**FINMA**" means the Swiss Financial Markets Supervisory Authority or any successor entity;

"**FSA**" means the Financial Services Authority in the United Kingdom or any successor entity;

"**FSA Rules**" means all rules, requirements, directions and guidance issued by the FSA from time to time;

"**FSMA**" means the UK's Financial Services and Markets Act 2000;

"**GCM-NCM Agreement**" means the agreement between an x-clear GCM and an x-clear NCM pursuant to which, *inter alia*, the x-clear GCM agrees to act as a contractual counterparty to x-clear in respect of Single Contracts arising from Trading Platform Transactions to which the x-clear NCM is a party;

"**Governmental Authority**" means any federal, national, supranational, state, provincial, local or other government, government department, ministry, secretary of state, minister, governmental or administrative authority, agency, commission, court, tribunal, judicial body or arbitral body or any other Person exercising judicial, executive, interpretative, enforcement, investigative or legislative powers or authority anywhere in the world including, without limitation, any Person which exercises a regulatory or supervisory function under the Applicable Laws of any jurisdiction in relation to financial services, the financial markets, Exchanges, MTFs or Clearing Organizations (including, but not limited to the FSA, any Person given powers under the FSMA, the Bank of England, HM Treasury, the Office of Fair Trading, the SNB and the FINMA);

"**GTCB**" means these General Terms and Conditions of Business (English Law);

"**Haircut**" means a percentage reduction in the value of collateral corresponding to the difference between the market value of a Security (as determined by x-clear at its discretion) and its deemed collateral value;

"**Initial Margin**" means the Permissible Collateral required to be provided to x-clear as security for the obligations of an x-clear Member in respect of that member's Outstanding Contracts as further described in the Clearing Terms;

"**Insolvency**" shall have the meaning given to it in Clause 18.3;

"**Intellectual Property**" means copyright, trademarks, design rights, patents, domain names, database rights and know-how, in each case whether registered or unregistered and including, without limitation, applications to register and rights to apply for registration, and all similar or equivalent rights which may subsist anywhere in the world;

**"Intended Settlement Date"** means the date designated for Settlement of a Single Contract by the rules of the Approved Settlement System or, if applicable, the Trading Platform;

**"Inter-CCP Contract"**, if any, means the contract between x-clear and a Co-CCP, that arises when a Trading Platform Transaction involves an x-clear Member on the one side and the Co-CCP Clearing Member on the other, which reflects the same terms and conditions (save as to the parties and certain of its terms and conditions as agreed between x-clear and the Co-CCP from time to time) of the corresponding Trading Platform Transaction and which arises pursuant to a Link Agreement;

**"Intermediated Securities"** means monetary and corporate rights of a fungible nature against an issuer which have been credited to a securities account held by a duly supervised and regulated custodian;

**"Irregular Pledge"** means an *Irreguläres Pfandrecht* or *Gage Irrégulier*, as such terms are understood under the laws of, and by Governmental Authorities in Switzerland;

**"Link Agreement"**, if any, means an agreement between x-clear and a Co-CCP relating to the clearing link established or to be established between them in respect of the Clearing of Trading Platform Transactions by both x-clear and the Co-CCP;

**"List of Securities eligible for Clearing"** means the list as published on the x-clear website from time to time designating the Trading Platform Products that are subject to Clearing by x-clear at that time;

**"Listing Authority"** shall mean the Governmental Authority exercising functions in relation to or relevant to the listing of any Trading Platform Product;

**"Margin"** means Initial Margin and Variation Margin;

**"Matching"** means the matching of orders for the sale or purchase of a Trading Platform Product;

**"MTF"** means a multilateral trading facility as defined in the markets in financial instruments directive (Directive 2004/39/EC) located in the EEA or any equivalent facility located in a country or territory outside the EEA;

**"Novation"** means the automatic generation of Single Contracts;

**"Open Offer"** means the standing offer issued by x-clear to enter into a Single Contract;

**"Outstanding Contracts"** means Single Contracts and Inter-CCP Contracts (in relation to a Co-CCP) that have not yet settled;

**"Payment Bank"** means a credit institution, bank, trust company or other institution which has a current agreement with x-clear to participate in the Payment Bank Procedures;

**"Payment Bank Procedures"** means the payment mechanism operated by x-clear (and as further described in the Clearing Terms) to transfer funds between x-clear and the x-clear

Member and by which x-clear discharges its obligations relating to cash-settled transactions and transfers Margin;

"**Permissible Collateral**" means Securities or cash determined by x-clear to be permissible collateral for Margin or Contributions as further described in the Clearing Terms;

"**Person**" means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated association, government, state or agency of a state or any association or partnership of two or more of the foregoing (whether or not having separate legal personality);

"**Pledge Agreements**" means the Pledge Agreement for Margins and the Pledge Agreement for Default Funds;

"**Pledge Agreement for Default Funds**" means the Swiss-law governed agreement between SIS and the x-clear Member in relation to that x-clear Member's posting of collateral by way of a Regular Pledge in satisfaction of the x-clear Member's obligation to contribute to the Default Fund(s);

"**Pledge Agreement for Margins**" means the Swiss-law governed agreement between SIS and the x-clear Member in relation to the collateral posted by that x-clear Member as Margin by way of an Irregular Pledge;

"**Regular Pledge**" means a *Reguläres Pfandrecht* or *Nantissement*, as such terms are understood under the laws of, and by Governmental Authorities in Switzerland;

"**Representative**" means any Person that carries out or is responsible for any of the functions of another Person, including, without limitation, any one or more of the other Person's directors, partners, officers, executives, employees, Affiliates, contractors or agents;

"**Rules and Regulations**" means the following documents prepared and issued by x-clear from time to time with respect to a particular Trading Platform as amended and updated:

- (a) the Clearing Terms;
- (b) the List of Securities eligible for Clearing;
- (c) the Business Partner Specifications; and
- (d) the Schedule of Fees.

"**Schedule of Fees**" means the tariff on the basis of which the fees and other amounts to be invoiced by x-clear in respect of the membership of an x-clear Member and services provided by x-clear to the x-clear Member are calculated, as amended and updated from time to time;

"**Securities**" means Intermediated Securities, standardized securities that are capable of being traded on an Exchange or MTF, non-certificated rights with the same function (such as book-entry securities) and derivatives as defined in Art.2(a) of the SESTA and which have an ISIN number, and "Security" shall be construed accordingly;

"**Selling x-clear Member**" means the x-clear ICM or x-clear GCM (whether or not a relevant Trading Platform Member acting on behalf of an x-clear NCM) which was, in respect of a Trading Platform Transaction, the seller of a Trading Platform Product;

"**SESTA**" means the Swiss Federal Act on Stock Exchanges and Securities Trading of 24 March 1995;

"**Settlement**" means the processes required to effect performance of Outstanding Contracts (or of Inter-CCP Contracts, as the context requires);

"**Single Contract**" means the contract between x-clear and an x-clear Member arising by way of Novation or Acceptance and reflecting the terms and conditions in respect of the identity, price and quantum of the Trading Platform Product subject of the Trading Platform Transaction to which the contract relates, and which arises pursuant to these GTCB and the Trading Platform Specific GTCB;

"**SIS**" means SIX SIS AG, a company incorporated in Switzerland under number CH-249.3.003.233-8 whose registered office is at Baslerstrasse 100, 4600 Olten, Switzerland;  
"SIX Group" means SIX Group AG, the parent of SIX Securities Group AG which is itself the parent of x-clear;

"**SNB**" means the Swiss National Bank;

"**Sub-Contractor**" means any third party service provider or contractor appointed by a Person excluding a Co-CCP, if any, an x-clear Member, any Approved Settlement System and any provider of Transaction Routing appointed by a Person;

"**Trading Platform**" means an Exchange or MTF in respect of which x-clear provides Clearing;

"**Trading Platform Market**" means a market operated by a Trading Platform under the Trading Platform Rules;

"**Trading Platform Member**" means a member of a Trading Platform or other Person approved by a Trading Platform who trades on a Trading Platform Market;

"**Trading Platform Product**" means any product traded on a Trading Platform Market from time to time and designated for Clearing by x-clear in the List of Securities eligible for Clearing in respect of that Trading Platform Market;

"**Trading Platform Rules**" means all the rules of a particular Trading Platform from time to time in force and any user guides, arrangements, notices, directions, procedures and other provisions as may be prescribed or published from time to time by a particular Trading Platform;

"**Trading Platform Specific GTCB**" means the terms and conditions that are specific to a particular Trading Platform, contained in a document that is appropriately entitled;

"**Trading Platform Transaction**" means a trade in a Trading Platform Product made in accordance with and subject to the relevant Trading Platform Rules whether or not as a result of Matching, and whether or not binding between the Trading Platform Members;

**"Transaction Routing"** means the various services and functionality whereby data in relation to a Trading Platform Transaction is processed and transmitted to a Central Counterparty (or Central Counterparties, as applicable);

**"Variation Margin"** means the Permissible Collateral required to be provided by each x-clear Member to x-clear as security for the obligations of such x-clear Member in respect of its Outstanding Contracts, which covers fluctuations in the market prices of Trading Platform Products to which Outstanding Contracts relate, and which is based on the mark to market values of the x-clear Member's net position in all Outstanding Contracts for each Trading Platform Product as further described in the Clearing Terms;

**"x-clear"** means SIX x-clear AG, a company incorporated in Switzerland under number CH-020.3.024.561-6 whose registered office is at Brandschenkestrasse 47, CH-8002 Zurich;

**"x-clear Collateral Accounts"** shall have the meaning given to it in the Trading Platform Specific GTCB and the Clearing Terms;

**"x-clear GCM"** means a Person admitted by x-clear to clear own-account trades (including those entered into by an Affiliate that is fully consolidated, but not authorized, exempt or otherwise regulated under Applicable Laws to deal in Trading Platform Products or, if so authorized or regulated, not a Trading Platform Member), and/or trades of x-clear NCMs in accordance with these GTCB and the Trading Platform Specific GTCB;

**"x-clear ICM"** means a Person admitted by x-clear to clear own-account trades only (including those entered into by an Affiliate that is fully consolidated, but not authorized, exempt or otherwise regulated under the Applicable Laws to deal in Trading Platform Products or, if so authorized or regulated, not a Trading Platform Member) in accordance with these GTCB and the Trading Platform Specific GTCB;

**"x-clear Member"** means an x-clear GCM or an x-clear ICM;

**"x-clear NCM"** means a Trading Platform Member which is not an x-clear Member and which participates in the Clearing of Trading Platform Transactions pursuant to a GCM-NCM Agreement with an x-clear GCM;

- 1.2 Clause headings in these GTCB are for ease of reference only and shall not affect their interpretation. References in these GTCB to a clause are to a clause of the GTCB (unless otherwise specified).
- 1.3 Any reference to a statute, statutory provision, rule or other Applicable Law shall include any notice, order, guidance, example, regulation or subordinate legislation made or provided from time to time under that statute, statutory provision, rule or other Applicable Law which is in force from time to time. Any reference to a statute, statutory provision, rule or other Applicable Law shall include such statute, provision, rule or Applicable Law as modified, re-enacted or consolidated from time to time and (so far as liability thereunder may exist or can arise) shall include also any past statute, statutory provision or Applicable Law (as from time to time modified, re-enacted or consolidated) which was applicable at the time of any relevant act or omission.

- 1.4 In construing these GTCB, general words whether or not introduced by the word "other" shall not be given a restricted meaning by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing and general words shall not be given a restricted meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.
- 1.5 Each provision of these GTCB shall, unless the context otherwise requires, be construed as an independent provision and shall be in addition and without prejudice to any other provision of the GTCB unless otherwise stated. The invalidity, illegality or unenforceability of any GTCB or part of a GTCB does not affect or impair the continuation in force of the remaining GTCB or other parts of a GTCB or the validity of such GTCB or part thereof in any other jurisdiction. The parties will use all reasonable endeavours to replace any invalid, illegal or unenforceable provision with a valid, legal or enforceable provision, as the case may be, the economic result of which is as close as possible to that envisaged by the invalid or unenforceable provision.
- 1.6 Words importing one gender shall (where appropriate) include any other gender and words importing the singular shall (where appropriate) include the plural and vice versa.
- 1.7 Any matter or right stated to be in, of or at x-clear's discretion or any entitlement conferred on x-clear by any provision of any part of the Contractual Relationship shall be subject to, and exercisable at, x-clear's sole, unfettered and absolute discretion.
- 1.8 Any reference in the GTCB to a Person's negligence, wilful default or fraud shall be construed to include the negligence, wilful default or fraud of any other Person for which such first Person is vicariously liable.
- 1.9 Clauses 1.3 to 1.8 above shall also apply, *mutatis mutandis*, to the Trading Platform Specific GTCB and the Clearing Terms.
- 1.10 The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contractual Relationship or any of its constituent parts and accordingly nothing in that relationship or in those parts shall be directly or indirectly enforceable by any third party (such as any of x-clear's Sub-Contractors or x-clear NCMs), nor are they intended to confer a benefit on any third party.

## 2 Membership

- 2.1 A Person who has been admitted as a Trading Platform Member or who otherwise seeks to act as an x-clear GCM in accordance with a GCM-NCM Agreement with an x-clear NCM, and who falls within one of the following categories as at the date of application to x-clear may apply to x-clear to become an x-clear Member:
  - (a) a bank as defined in the Swiss Federal Act on Banks and Savings of 8 November 1934 (the "**Swiss Federal Banking Act**");
  - (b) a firm authorized by the competent Governmental Authority in Denmark, Finland or Sweden, by the FSA with the permissions necessary to participate in Clearing granted under Part IV of the FSMA or appropriately authorized elsewhere in the EEA with equivalent permissions (where relevant) and passported into the UK;

- (c) a non-Swiss bank or a non-Swiss Securities dealer which, in the opinion of x-clear, is subject to an adequate degree of regulation and supervision equivalent to that of a bank or securities dealer, respectively, subject to regulation in Switzerland; and
- (d) a "securities dealer" as defined in the SESTA.

2.2 An applicant for admission as an x-clear Member shall be required to comply with the following conditions of membership:

- (a) the application shall be made in writing on the "Application for x-clear Membership" form and shall be accompanied by confirmation by the applicable Trading Platform of the applicant's or, in the case of an application for x-clear GCM status where the applicant is not a relevant Trading Platform Member, its x-clear NCM's membership as a Trading Platform Member, confirmation of its or its settlement agent's admission as a participant in the relevant Approved Settlement Systems and confirmation that it has Dispo Collateral Accounts in its name maintained at SIS;
- (b) the applicant shall have executed the Contract for Clearing Services (English Law), the Pledge Agreement for Margins and the Pledge Agreement for Default Funds;
- (c) the applicant shall demonstrate to x-clear's satisfaction that it is able to transfer to x-clear sufficient Margin and make all required Contributions that would be required pursuant to these GTCB, the Trading Platform Specific GTCB and the Rules and Regulations upon its membership becoming approved;
- (d) the applicant shall have nominated a Person, satisfactory to x-clear, who is:
  - (i) a director, general partner, trustee or officer of the applicant (or Person occupying a similar status or performing similar functions);
  - (ii) responsible for the clearing operations of the applicant; and
  - (iii) authorized to act on behalf of the applicant in all transactions with or involving x-clear;and the applicant shall also have nominated a second Person who meets the requirements of (i) above and is authorized to act on behalf of the applicant in the event of the death, incapacity or other inability of the first Person so to act;
- (e) the applicant must be subject to either Swiss legislation on money laundering or non-Swiss legislation regarding money laundering deemed by x-clear to be acceptable;
- (f) the applicant shall demonstrate to x-clear's satisfaction that it is capable of complying with the technical and operational requirements as prescribed and set out in the Rules and Regulations and it has such facilities, equipment, operational capability, personnel, hardware and software systems as are capable of supporting its business as an x-clear Member, including, without limitation, such IT links to x-clear and software as in the judgment of x-clear are necessary or desirable for an x-clear Member to participate in the Clearing of Single Contracts;
- (g) the applicant shall not be subject to an Insolvency;

- (h) the applicant shall not be subject to any circumstances which could amount to an Event of Default were the applicant to be an x-clear Member;
  - (i) the applicant shall have an address to which all notices, orders and other communications from x-clear may be transmitted or delivered, staffed during normal business hours necessary for its proposed activities under the direct supervision and responsibility of the Person referred to in (d) above;
  - (j) the applicant shall hold an account or accounts (as necessary) at a Payment Bank in relation to each of which a direct debit mandate has been established in favour of x-clear; and
  - (k) if Permissible Collateral in the form of Securities is to be provided as Margin, the applicant shall have executed all necessary documentation relating to the transfer of such Securities and shall not be in dispute with x-clear or any third party in relation to the ownership over or rights relating to such Securities.
- 2.3 x-clear may at its discretion attach further conditions to any application for x-clear Member status prior to such status being granted. x-clear may grant approval to an applicant conditional upon its satisfying certain requirements, provided that the applicant has expressed its intention to meet such requirements and provided evidence of its ability to do so.
- 2.4 Applicants for membership must provide, except insofar as x-clear at its discretion waives such obligation, information or documentation to x-clear evidencing compliance to x-clear's satisfaction with each of the criteria set out or required pursuant to Clauses 2.1, 2.2 and 2.3. Failure by an applicant to supply such information or documentation may result in an application being rejected.
- 2.5 All information supplied to x-clear in respect of an application for membership shall be deemed to have been provided by the x-clear Member to x-clear on the day of admission as an x-clear Member, save to the extent that such information has been amended or revoked at least two Business Days prior to such admission.
- 2.6 The x-clear Member hereby represents and warrants, on the first date of membership and on a continuous basis throughout the duration of its membership, that it meets all of the membership criteria in this Clause 2 and is in compliance with all of its obligations under these GTCB and the Trading Platform Specific GTCB.
- 2.7 For the avoidance of doubt, the admission of the x-clear Member does not provide or entitle such x-clear Member to any shareholding or other similar interest in x-clear or any of its Affiliates or Controllers.

### **3 Suspension of membership**

- 3.1 x-clear shall be entitled to suspend the membership of an x-clear Member for such period of time as x-clear deems necessary if x-clear has reason to believe that:
- (a) the x-clear Member was granted membership on the basis of inaccurate information;
  - (b) the x-clear Member no longer satisfies the membership criteria or any particular membership criterion as prescribed pursuant to Clauses 2.1, 2.2 or 2.3;
  - (c) the x-clear Member is obliged to make a notification as described in Clause 9 and has failed to do so; or
  - (d) the conditions of Clause 7.4 of the Trading Platform Specific GTCB are satisfied.
- 3.2 Upon suspension of membership, the x-clear Member shall immediately refrain from entering into further Trading Platform Transactions that would be subject to Clearing by x-clear. x-clear shall not enter into any Single Contracts with such x-clear Member for the duration of the suspension and, accordingly, any Trading Platform Transactions entered into by a suspended x-clear Member shall not result in corresponding Single Contracts (or Inter-CCP Contracts, if applicable) and shall not be subject to Clearing by x-clear. Trading Platform Transactions concluded prior to the suspension shall not be affected by any suspension and shall continue to be subject to Clearing and Settlement (subject to the application, where relevant, of the provisions of the GTCB and the Trading Platform Specific GTCB relating to Default).
- 3.3 An x-clear Member that has been suspended shall, during the term of such suspension and thereafter, remain and continue to be:
- (a) subject to and bound by the Contractual Relationship;
  - (b) obliged to pay any and all fees, fines, assessments and other charges imposed by x-clear; and
  - (c) liable to x-clear and to all other x-clear Members for all obligations arising under Single Contracts and all obligations incurred before, during or after such suspension including, but not limited to, obligations to deposit and maintain Margin and make Contributions.
- 3.4 x-clear shall wherever practicable notify the x-clear Member subject to a suspension in advance of the period of such suspension. x-clear shall also inform the relevant Trading Platform of the suspension of any x-clear Member.

#### **4 Termination of membership**

- 4.1 Subject to Clause 4.2 below, x-clear shall be entitled to terminate the membership of any x-clear Member and an x-clear Member shall be entitled to terminate its membership as an x-clear Member upon no less than thirty days written notice served by way of registered mail, electronic mail or facsimile on the other party, and the notice shall be deemed to be served at midnight on the last day of the calendar month in which it is served.
- 4.2 x-clear shall be entitled to terminate the membership of an x-clear Member with immediate effect if x-clear has reason to believe that:
- (a) the x-clear Member was granted membership on the basis of inaccurate information;
  - (b) the x-clear Member no longer satisfies the membership criteria or any particular membership criterion pursuant to Clauses 2.1, 2.2 or 2.3;
  - (c) there is an Event of Default pursuant to Clauses 18.1 and 18.2; or
  - (d) the clearing services agreement between the Trading Platform and x-clear has been terminated.
- 4.3 x-clear may also terminate the membership of an x-clear Member with immediate effect in accordance with Clause 3.4 of the Contract for Clearing Services (English Law).
- 4.4 On the occurrence of a Default by x-clear pursuant to Clause 19, the x-clear Member shall be entitled to terminate its membership with immediate effect.
- 4.5 Upon any termination of an x-clear Member's membership pursuant to this Clause 4 or Clause 18, the relevant x-clear Member shall remain liable to maintain all Margin due from time to time with respect to all relevant Outstanding Contracts and make Contributions until Settlement of all Outstanding Contracts, and shall further be obliged to:
- (a) transfer or liquidate all of its Outstanding Contracts; and
  - (b) take such other actions as x-clear at its discretion deems appropriate or necessary.
- 4.6 Any Person who for any reason ceases to be an x-clear Member shall remain and continue to be:
- (a) subject to any complaints proceedings, investigations or disciplinary proceedings which relate in whole or in part to any acts or omissions of that Person whilst it was an x-clear Member;
  - (b) obliged to pay all fees, fines, assessments or other charges payable by that Person to x-clear as a result of Single Contracts cleared and any other obligations entered into or incurred prior to the termination of its status as an x-clear Member;
  - (c) subject to claims in respect of its obligations to provide Margin and make Contributions until x-clear returns such portion (if any) of the Margin or Contribution as x-clear determines in accordance with the Contractual Relationship; and
  - (d) obliged to x-clear in relation to all Single Contracts and obligations entered into or incurred prior to the termination of its status as an x-clear Member.

- 4.7 Single Contracts concluded prior to the termination of membership will continue to be subject to Clearing, except when there has been a Default, in which case the rules set out in Clause 18 shall apply. After termination of membership of an x-clear Member, x-clear will not accept any new Single Contracts for Clearing to which such x-clear Member purports to be a party. Furthermore, where a notice of termination has been given pursuant to Clause 4.1, further Single Contracts shall only be accepted for Clearing on or prior to the tenth Business Day before the last day of membership.
- 4.8 In the event of a termination under Clause 4.2 or 4.3 above, x-clear shall, wherever practicable, give advance notification of the termination to the x-clear Member subject to the termination. x-clear shall also inform the relevant Trading Platform of the termination of the membership of any x-clear Member.

## **5 Relationship between an x-clear GCM and an x-clear NCM**

- 5.1 A Trading Platform Member is not obliged to become an x-clear Member, but can enter into a GCM-NCM Agreement with an x-clear GCM and be regarded as an x-clear NCM. The x-clear GCM shall ensure that any GCM-NCM Agreement it enters into with an x-clear NCM properly and fully contains and addresses matters listed in Schedule 1 hereto. An x-clear GCM shall act as principal and shall not act as agent on behalf of and for the account of an x-clear NCM with which it has entered into a GCM-NCM Agreement.
- 5.2 The x-clear GCM shall notify x-clear on each occasion it executes a GCM-NCM Agreement with a Trading Platform Member or when a GCM-NCM Agreement has been terminated or any power of attorney granted by the x-clear GCM to the x-clear NCM has been revoked. The x-clear GCM shall notify x-clear with advance notice of at least ten Business Days of any material amendments to any GCM-NCM Agreement it has entered into save that all GCM-NCM Agreements to which the x-clear GCM is a party shall at all times properly and fully contain and address the matters listed in Schedule 1 hereto.
- 5.3 For the avoidance of doubt, there shall not arise any legal relationship between x-clear and the x-clear NCM by virtue of the x-clear GCM becoming subject to the Contractual Relationship or otherwise whether in contract, tort or other ground and x-clear accepts no liability in respect of any losses or liabilities of an x-clear NCM. The x-clear GCM undertakes to provide in the GCM-NCM Agreement between it and an x-clear NCM for the x-clear NCM's agreement and acceptance of the exclusion of any contractual or other relationship between the x-clear NCM and x-clear.

## 6 Conditions for Clearing

- 6.1 x-clear shall provide Clearing in accordance with the Contractual Relationship only in respect of those Trading Platform Products that are designated as eligible for Clearing in the List of Securities eligible for Clearing and only in respect of those Single Contracts to which it becomes a party.
- 6.2 x-clear may, from time to time, in its discretion suspend Clearing in relation to one or more Trading Platforms for such period of time as it may determine.
- 6.3 x-clear shall act as the Central Counterparty for the x-clear Member for Trading Platform Transactions subject to the following conditions:
- (a) the membership of the relevant x-clear Member has not been suspended or terminated by x-clear;
  - (b) where the x-clear Member is a Trading Platform Member, the x-clear Member's status as a Trading Platform Member has not been suspended or terminated by the Trading Platform;
  - (c) in the case of an x-clear GCM who has entered into a GCM-NCM Agreement with an x-clear NCM:
    - (i) the status as a Trading Platform Member of the x-clear NCM who is a party to the Trading Platform Transaction subject to Clearing has not been suspended or terminated by the Trading Platform; or
    - (ii) the x-clear GCM has not notified x-clear that it has ceased to provide services to the x-clear NCM or that it has terminated the GCM-NCM Agreement, provided that such notification shall have been made in accordance with and subject to procedures established by x-clear and notified to x-clear Members;
  - (d) the listing of the Trading Platform Product in respect of which Clearing is provided has not been suspended or cancelled by the Listing Authority;
  - (e) the Trading Platform Transaction corresponding to the Single Contract arising under the Trading Platform Rules pursuant to Matching has not been cancelled or avoided for any reason;
  - (f) the Single Contract has been formed pursuant to the GTCB and the Trading Platform Specific GTCB and has not been rendered void or avoided by x-clear in accordance with the provisions of the Contractual Relationship and the corresponding Inter-CCP Contract (if applicable) has been formed pursuant to the Link Agreement, if any, and has not been rendered void or avoided by x-clear or the Co-CCP in accordance with the Link Agreement;
  - (g) the data submitted to x-clear by the provider of Transaction Routing is in a format suitable for the provision of Clearing by x-clear and is accurate; and
  - (h) there is in place at the moment of formation of the Single Contract and its Settlement an agreement or agreements between x-clear and the Trading Platform relating to x-clear's provision of Clearing, an agreement or agreements between x-clear and the Approved

Settlement System, an agreement or agreements with the provider of Transaction Routing and, if applicable, a Link Agreement with the Co-CCP.

## **7 Obligations of x-clear Members**

- 7.1 In connection with these GTCB, any and all Single Contracts, the x-clear Member's membership of x-clear and its business and activities as an x-clear Member, the x-clear Member represents and warrants that it shall at all times:
- (a) comply with the Contractual Relationship and any other agreement it has with x-clear;
  - (b) comply with all Applicable Laws;
  - (c) comply with the Trading Platform Rules if it is a Trading Platform Member;
  - (d) act in good faith in its dealings with x-clear;
  - (e) pay all fees and other charges promptly;
  - (f) provide Margin to x-clear in accordance with the Trading Platform Specific GTCB and the Clearing Terms;
  - (g) make all such Contributions as are required pursuant to the Trading Platform Specific GTCB and the Clearing Terms;
  - (h) make all payments as and when they fall due pursuant to the Contract Terms of all Single Contracts to which it is or becomes party;
  - (i) respond promptly to all enquiries or requests for information made by x-clear;
  - (j) promptly file with x-clear such information regarding its financial statements (including copies thereof), financial standing, Controllers, Affiliates, ownership and management as x-clear may from time to time require in accordance with these GTCB and the Trading Platform Specific GTCB or otherwise;
  - (k) maintain an account or accounts (if required) at a Payment Bank for the deposit of funds required to be transmitted to and from such x-clear Member pursuant to these GTCB, the Trading Platform Specific GTCB and the Clearing Terms (whether by way of Margin, Contributions or otherwise) and have arrangements with a Payment Bank satisfactory to x-clear for the transfer by wire or other means of funds into and out of such account or accounts on the order of x-clear and without the need for x-clear (or the Payment Bank or any other Person) to seek the consent of such x-clear Member or any x-clear NCM;
  - (l) immediately notify x-clear if any information previously provided to x-clear by or on behalf of it is or becomes, for any reason, materially false, inaccurate or misleading;
  - (m) make staff of suitable seniority available to attend such meetings as are called by x-clear at reasonable notice for the purpose of assessing the x-clear Member's compliance with the Contractual Relationship, the risks to which x-clear or the x-clear Member is exposed or any

other purposes of x-clear; and

- (n) have adequate systems and controls in place in order to ensure that all clearing business conducted by it, including, without limitation, in relation to individual Single Contracts, complies with the x-clear Member's obligations under the Contractual Relationship and Applicable Laws.

7.2 In connection with the Contractual Relationship, any and all Single Contracts, its membership of x-clear and its business and activities as an x-clear Member, the x-clear Member represents and warrants that it shall not at any time:

- (a) provide any information to x-clear (including, without limitation, information for the purpose of obtaining or reinstating membership) which is false, misleading or inaccurate in any material respect;
- (b) enter into or fail to perform any Single Contract either intending to be party to an Event of Default or to be in Default or having no reasonable grounds for believing that it would be able to avoid such Event of Default or Default (and it shall not be sufficient to have intended to comply with any contractual or other provision governing the consequences of Default);
- (c) engage in any other activity or practice or participate in, facilitate, procure, counsel, incite, encourage, aid or abet any conduct by a third party which could reasonably be considered by x-clear to be capable of impairing the orderly conduct of business of x-clear;
- (d) take any action or make any omission or knowingly or recklessly permit the use of its services, facilities or membership or clearing privileges by any Person in a manner which in the reasonable opinion of x-clear is liable to: (i) create, maintain or exacerbate actual or attempted breaches, infringements or violations of the Contractual Relationship (or arrangements, provisions or directions made or given thereunder); or (ii) otherwise be substantially detrimental to the interests or objectives of x-clear as a Clearing Organization;
- (e) engage in conduct that, in the opinion of x-clear, would render the x-clear Member unable to satisfy the membership criteria in Clause 2;
- (f) knowingly, recklessly, negligently, or carelessly allow any Representative to engage in any conduct that might itself breach these GTCB or the Trading Platform Specific GTCB or render the x-clear Member unable to satisfy the membership criteria in Clause 2;
- (g) breach any Contract Terms; or
- (h) engage in any other behaviour which x-clear has notified to the x-clear Member as being unacceptable.

## **8 Maintenance of records**

- 8.1 The x-clear Member undertakes to keep accurate records showing the details of each Single Contract to which it is a party and any other information in such form as shall be required by x-clear from time to time in accordance with Applicable Laws.
- 8.2 The x-clear Member who provides or presents any documentation or other materials to x-clear is required to make a copy (whether electronic or physical) prior to each occasion of doing so and must maintain each such copy for such time as the x-clear Member considers necessary for the purposes of statutory limitation periods, statutory record keeping obligations under any Applicable Laws or otherwise. x-clear shall not be obliged to return or provide a copy of any document or other materials presented or provided by the x-clear Member or other Person to x-clear, except where an express right to such copy or return is set out in these GTCB or the Trading Platform Specific GTCB.

## **9 Reporting requirements for x-clear Members**

- 9.1 The x-clear Member shall promptly notify x-clear in writing providing full particulars known to it:
- (a) where the x-clear Member intends or implements a change in its regulatory status. Notice must be given no later than on the issue of any provisional or interim notice or on the issue of the relevant ruling, decree or notice by a Governmental Authority;
  - (b) in relation to any change of Control, prior to such change of Control or as soon as it becomes aware of that change or proposed change, whichever is the earlier;
  - (c) where the x-clear Member becomes aware of any facts or matters that may give rise to:
    - (i) a situation in which the financial or operational condition of the x-clear Member would not, in the opinion of x-clear, be adequate for the x-clear Member to meet its obligations (including, without limitation, its obligations under the Contractual Relationship) or to engage in the business of a being an x-clear Member;
    - (ii) an investigation, enforcement action, fine, disciplinary action or other intervention in relation to activities as an x-clear Member by the Trading Platform, an Approved Settlement System, any Clearing Organization or any other Exchange or MTF in relation to which the x-clear Member is a member or participant;
    - (iii) commencement of proceedings or investigations against the x-clear Member by any Governmental Authority, the threat of withdrawal or actual withdrawal of the x-clear Member's license or authorization in any jurisdiction or a threat to the x-clear Member's creditworthiness, stability or operational reliability; or
    - (iv) any other situation where it would not be in the best interests of x-clear or the marketplace for such x-clear Member to continue to be an x-clear Member;
  - (d) in the event that it fails to meet any obligation to deposit or pay any margin as and when required by any Clearing Organization of which it is a member (other than x-clear);

- (e) of any financial or commercial difficulty which is likely to amount to an Event of Default;
- (f) in relation to any other circumstances that may amount to an Event of Default;
- (g) where it is or will be no longer possible for the x-clear Member to comply with the technical and operational requirements prescribed by x-clear in the Rules and Regulations;
- (h) in the event that it fails to comply with any applicable financial requirements of any Governmental Authority, Exchange, MTF, Approved Settlement System or Clearing Organization;
- (i) of an Insolvency affecting it or any of its Affiliates;
- (j) of any action taken against it (including, without limitation, any notice, fine, censure, warning, default proceeding, disciplinary proceeding, investigation, suspension or expulsion or any withdrawal of, revocation of or failure to renew any permission, license or authorization) by any Governmental Authority, Exchange, MTF, Approved Settlement System or Clearing Organization;
- (k) of any matter, circumstance, change or occurrence which would cause a statement provided pursuant to this Clause 9 or any information supplied in connection with the x-clear Member's application for membership to be inaccurate or incomplete;
- (l) of any breaches by it of the Contractual Relationship or Applicable Laws including full particulars of the breach; and
- (m) of anything relating to the x-clear Member of which x-clear would reasonably expect notice.

## **10 Formation and cancellation of Single Contracts**

- 10.1 Single Contracts are formed either by Novation or Acceptance. The provisions relating to the formation of Single Contracts (whether by Novation or Acceptance) and cancellation of Single Contracts are set out in the Trading Platform Specific GTCB.

## **11 Terms of Single Contracts**

- 11.1 All Single Contracts shall be governed by and construed in accordance with English law.
- 11.2 Where x-clear is required or requested by a Governmental Authority to vary or suspend performance of a Single Contract or an Inter-CCP Contract (if applicable) at any time, it shall notify the x-clear Member and take such action as is required of it as soon as reasonably practicable. The x-clear Member acknowledges and agrees that any affected Single Contract shall be suspended or varied accordingly.
- 11.3 Each x-clear Member that is party to a Single Contract shall act as principal and not as agent. In performing its obligations and exercising its rights under the Contractual Relationship, x-clear shall treat the entitlement of the x-clear Member to rights pursuant to Single Contracts to be a

full legal and beneficial entitlement, and not subject to any Encumbrance in favour of any Person other than x-clear.

- 11.4 The liabilities and obligations of x-clear pursuant to Single Contracts extend only to, and are enforceable only by, the x-clear Member. A Person who is not a party to a Single Contract shall have no rights under or in respect of such Single Contract. Rights of third parties to enforce any term of any Single Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise are expressly excluded. Without limiting the generality of the foregoing, x-clear shall have no liability or obligation whatsoever to an x-clear NCM, nor to any Co-CCP ICM (if any), Co-CCP GCM (if any) or Co-CCP NCM (if any).
- 11.5 x-clear shall have no liability or obligation in relation to any Trading Platform Transaction unless and until a Single Contract arises in accordance with these GTCB and the Trading Platform Specific GTCB and such Single Contract is not rendered void, avoided or otherwise cancelled, at which point x-clear's liabilities and obligations in respect of the Trading Platform Transaction shall be as determined under the Single Contract. x-clear's obligations and liabilities under any Single Contract shall be limited to those arising pursuant to the Contractual Relationship, and are subject to x-clear's right to avoid a voidable Single Contract.
- 11.6 The x-clear Member shall indemnify and hold harmless x-clear in respect of any Single Contract in accordance with the provisions of the Contractual Relationship relating to indemnity and liability. The liability of x-clear and its Representatives under any Single Contract shall be subject to all the exclusions on liability set out in the Contractual Relationship.
- 11.7 Each Single Contract shall be subject to the Contractual Relationship, which shall form a part of and be incorporated by reference into, the Contract Terms. In the event of any inconsistency between the Contract Terms and the Contractual Relationship, the Contractual Relationship shall prevail (and further this Clause 11.7 shall be subject to Clause 2.3 of the Contract for Clearing Services (English Law)).
- 11.8 In relation to each Single Contract, the x-clear Member makes the following representations and warranties as at the formation of each Single Contract and also on a continuing basis throughout the duration of such Single Contract, that:
- (a) the data submitted by it to the Trading Platform is complete and correct in all respects, noting that no representation or warranty is made as to the operational aspects related to Transaction Routing;
  - (b) the Trading Platform Rules and all Applicable Laws have been complied with in respect of the corresponding Trading Platform Transaction (except in relation to an x-clear NCM in respect of which the x-clear GCM has entered into a GCM-NCM Agreement);
  - (c) it is acting as principal and not as agent;
  - (d) except as permitted by the Trading Platform Rules, the Single Contract and the corresponding Trading Platform Transaction are free of all Encumbrances;
  - (e) neither the execution nor performance of the Single Contract by or on behalf of the x-clear Member or x-clear will breach or conflict with any provision of the constitutional or other organisational document of the x-clear Member, or with any agreement or Applicable Law which is binding upon or affects the x-clear Member (and in this respect the x-clear Member further acknowledges that x-clear will not review nor be responsible for reviewing any

provision of the x-clear Member's constitutional or other organisational document, any agreement to which the x-clear Member is party or which affects it or any Applicable Law which is binding upon or affects the x-clear Member with a view to determining the authority or ability of the x-clear Member to enter into or perform any Single Contract);

- (f) the x-clear Member has full power and all necessary authority to enter into the Single Contract and perform any act that may be required pursuant to the Single Contract and pursuant to the Contractual Relationship in respect of the Single Contract; and
- (g) a GCM-NCM agreement satisfying the requirements of Clause 5 above is in place (if the x-clear Member is an x-clear GCM) with an x-clear NCM in respect of whom it acts as an x-clear Member in relation to any Single Contract, pursuant to which such x-clear NCM agrees, *inter alia*, that the x-clear NCM has no relationship, whether under contract or otherwise, with x-clear in respect of a Single Contract or pursuant to the Contractual Relationship.

## **12 Collateral, x-clear Default Funds, x-clear Collateral Accounts, etc.**

- 12.1 Provisions relating to the collateral to be provided by the x-clear Member, the x-clear Default Funds to which the x-clear Member has to make a Contribution, the x-clear Collateral Accounts and other ancillary matters are set out in the Trading Platform Specific GTCB and the Clearing Terms.

## **13 Settlement and late Settlement**

- 13.1 Provisions relating to Settlement and late Settlement of Outstanding Contracts and corporate actions in respect of Trading Platform Products to which Outstanding Contracts relate are set out in the Trading Platform Specific GTCB and the Clearing Terms.

## **14 Liability**

- 14.1 The Contractual Relationship shall at all times be observed, interpreted and given effect in the manner most conducive to the promotion and maintenance of:
  - (a) the status of x-clear as a bank supervised by the FINMA and any other status or recognition held by x-clear with any Governmental Authority;
  - (b) recognition of x-clear as a recognised overseas clearing house under the FSMA and the good reputation of x-clear (and x-clear Members); and
  - (c) high standards of integrity and fair dealing.

- 14.2 Where an obligation of x-clear must be performed immediately, promptly or by or prior to a specified time or date but performance does not occur at that time or on that date, x-clear shall not be in breach of the Contractual Relationship if, after x-clear has exercised all reasonable endeavours, it performs the relevant obligation when it is able to after such specified time or date.
- 14.3 x-clear shall only be liable to the x-clear Member for any direct loss caused by inadequate performance or non-performance of the Contractual Relationship as a result of the negligence, wilful default or fraud attributable to x-clear.
- 14.4 x-clear assumes no liability for any other losses or claims, including, without limitation, in relation to indirect or consequential losses, loss of bargain, lost profits or loss of earnings, unrealised savings or additional expense incurred.
- 14.5 The x-clear Member shall bear sole responsibility for the authenticity, accuracy and completeness of information and data transmitted to x-clear in relation to a Trading Platform Transaction to which the x-clear Member is a party (save in relation to a Trading Platform Transaction where an x-clear NCM, in relation to which the x-clear Member has entered into a GCM-NCM Agreement, is a party), except in cases where x-clear is negligent, and such responsibility shall, for the avoidance of doubt, extend to instances where x-clear does not receive such information or data directly from the x-clear Member, but from the Trading Platform, the x-clear NCM, the provider of Transaction Routing, the Approved Settlement System, the providers of messaging services, networks or other technical infrastructure or a Co-CCP (if any). Subject as aforesaid and for the avoidance of doubt: (i) x-clear shall not be responsible for the information provided to it in respect of a Trading Platform Transaction and the x-clear Member shall bear any losses arising as a result of information submitted to x-clear in relation to a Trading Platform Transaction that is illegible or cannot be read correctly, as well as losses caused by forged or incorrect information; and (ii) the x-clear Member shall not be responsible for the operational aspects related to Transaction Routing.
- 14.6 x-clear may, from time to time, enter into certain arrangements with an x-clear Affiliate under which such Affiliate provides certain services to x-clear or which otherwise facilitate x-clear's performance of its obligations under the Contractual Relationship. Subject to Clause 14.3 and to any contract (if any) between the x-clear Affiliate and the x-clear Member, no such Affiliate shall owe any x-clear Member any duty of care in tort or otherwise in relation to the operation of such arrangements and no x-clear Member shall have any right to take any action against any such Affiliate (or any person for whom any such Affiliate is vicariously liable) for damages, compensation, payment or remedy of any other nature on any ground whatsoever in respect of any acts or omissions or events which occur as a result of such arrangements. The x-clear Member further shall have no other rights against such Affiliate in connection with the operation of such arrangements.
- 14.7 x-clear shall not be liable to any x-clear Member or any other Person in respect of any losses, damages, injuries, delays, costs or expenses incurred or suffered by such x-clear Member or Person arising out of or in connection with the following non-exhaustive grounds:
- (a) any suspension, restriction or closure of x-clear or its services;
  - (b) measures, orders or decrees issued by a Governmental Authority in relation to an x-clear Member, an x-clear NCM, Trading Platform, a Co-CCP (if any), the provider of Transaction Routing, the Approved Settlement System or a third party;

- (c) any act or omission of the Trading Platform (including, without limitation, suspension or restriction of services by the Trading Platform), a Co-CCP (if any), the provider of Transaction Routing, the Approved Settlement System, any other x-clear Member, an x-clear NCM, or any other third party such as providers of messaging services, networks or other technical infrastructure necessary or appropriate for x-clear's provision of Clearing;
- (d) any failure by the x-clear Member to put in place and maintain appropriate settlement arrangements to enable Settlement to take place in accordance with the Contractual Relationship, including, but not limited to, failure by the x-clear Member or its settlement agent to meet the functional requirements, time deadlines or other requirements of an Approved Settlement System;
- (e) any act or omission of a third party providing any services or functionality in relation to Settlement, including, but not limited to, any settlement agents appointed by x-clear or by the x-clear Member (save that x-clear shall, when appointing settlement agents to act on its behalf and where such appointment has been made by the exercise of unfettered discretion by x-clear, exercise reasonable care in selecting and monitoring such agents);
- (f) any Event of Force Majeure affecting x-clear, its provision of Clearing or any other of its services;
- (g) any dispute relating to the validity, existence or terms of any Single Contract;
- (h) the exercise (or failure to exercise) by x-clear of any discretion or right conferred upon it pursuant to the Contractual Relationship;
- (i) the exercise (or failure to exercise) by an x-clear Member, an x-clear NCM, the Trading Platform, a Co-CCP (if any), the provider of Transaction Routing, the Approved Settlement System of any discretion or right conferred upon it pursuant to the Trading Platform Rules (including, without limitation, in relation to erroneous trades);
- (j) any action in defamation in connection with the issue of any Default Notice, conduct of any proceedings relating to Default, rejection of any application to become an x-clear Member or otherwise for exercise of any of its discretions or rights hereunder;
- (k) any Single Contract being void or avoided, the corresponding Single Contract representing the opposite leg of the Trading Platform Transaction being cancelled pursuant to the Contractual Relationship, the corresponding Trading Platform Transaction being cancelled pursuant to the Trading Platform Rules or the corresponding Inter-CCP Contract (if applicable) being cancelled pursuant to the Link Agreement, if any, including, without limitation, the causes and consequences of such Single Contract, Trading Platform Transaction or Inter-CCP Contract (if applicable) being void, voidable or avoided; and
- (l) any implied warranties or representations in relation to x-clear's systems, including, but not limited to, warranties of merchantability or warranties of fitness for a particular purpose.

14.8 If x-clear is found liable to an x-clear Member in respect of a Single Contract and another x-clear Member (the "second x-clear Member") is found liable to x-clear in respect of a Single Contract which arose pursuant to the same Trading Platform Transaction corresponding to the first Single Contract, then the liability of x-clear under the first Single Contract shall be deemed to be a

foreseeable consequence of the breach by the second x-clear Member of the second Single Contract and x-clear shall be entitled to be indemnified by the second x-clear Member in accordance with Clause 15.

- 14.9 The provisions of this Clause 14 shall apply:
- (a) without prejudice to the liability of any other Person subject to the Contractual Relationship or the Trading Platform Rules;
  - (b) in the case of inconsistency with any other provision of the Contractual Relationship, in priority to that other provision;
  - (c) whether or not the x-clear Member's Representative(s) are subject to the Contractual Relationship; and
  - (d) whether or not the x-clear Member's Representative(s) can be conclusively identified (*provided that* it is established that the relevant conduct was in fact carried out by an x-clear Member's Representative, albeit an unidentified x-clear Member's Representative).
- 14.10 Any provision in the Contractual Relationship to the effect that x-clear shall not be liable in respect of a particular matter shall be construed to mean that x-clear shall not have any liability which x-clear might, in the absence of such a provision, incur, whether x-clear could incur such a liability:
- (a) under the Contractual Relationship (whether such terms are express or implied by Applicable Laws or otherwise);
  - (b) in tort;
  - (c) for misrepresentation; or
  - (d) in any other way,
- provided that* nothing in the Contractual Relationship shall be construed as:
- (i) excluding or limiting liability on the part of x-clear for death or personal injury resulting from its negligence;
  - (ii) excluding liability for fraud;
  - (iii) limiting any liability of x-clear below the amount of any benefit x-clear itself has received by reason of the act, omission or event giving rise to such liability;
  - (iv) excluding or restricting the obligations of x-clear under any Single Contracts; or
  - (v) excluding or limiting liability for breach of any obligations which in accordance with Applicable Laws cannot be excluded or limited.

## 15 Indemnity

- 15.1 The x-clear Member shall indemnify and hold harmless x-clear and its directors, officers and employees against any and all losses, liabilities, damages, injuries, delays, costs and expenses incurred or suffered by any of them arising out of, or in connection with, the x-clear Member's conduct, a breach by the x-clear Member of any of its obligations under the Contractual Relationship, or a breach by the x-clear Member of any Applicable Laws. In this Clause 15.1, "conduct" includes, without limitation, any act, omission, conduct or behaviour in connection with the Contractual Relationship, and for the purposes of determining an x-clear Member's liability for any conduct, an x-clear Member shall be responsible for all conduct of that x-clear Member's Representatives as if that conduct were the conduct of the x-clear Member itself. However, notwithstanding the attribution of such conduct to the x-clear Member, this Clause 15.1 does not affect any loss or liability which the Representative responsible for such conduct may also suffer or incur under any Applicable Laws.
- 15.2 x-clear shall notify the x-clear Member promptly in writing as soon as it becomes aware of any action, proceeding, suit, arbitration, dispute, claim, demand, inquiry, investigation or hearing to which Clause 15.1 may apply. x-clear shall, at its discretion, assign to the x-clear Member sole responsibility for the conduct of any litigation in connection with such claims or legal action, or the conduct of any settlement negotiations or other dispute resolution procedures, at the x-clear Member's own discretion and at its own expense. x-clear shall not be entitled to fulfil any demand, grant any concession or reach a settlement without the x-clear Member's prior written consent, such consent not to be unreasonably withheld; and x-clear shall provide the x-clear Member with all information and, at the x-clear Member's expense, with such support as is reasonably required.

## 16 Confidentiality and data protection

- 16.1 All confidential information received by x-clear relating to the x-clear Member in connection with the provision of Clearing including, without limitation, all information concerning past or current positions carried by x-clear for an x-clear Member, Margin, Contributions, Settlement and any financial statements filed with x-clear by any x-clear Member ("**Confidential Information**"), shall be held in confidence by x-clear and shall not be disclosed to any other Person.
- 16.2 Clause 16.1 above does not apply to information disclosed by x-clear:
- (a) with the written consent of the x-clear Member involved, such consent not to be unreasonably withheld or delayed;
  - (b) to a Governmental Authority where a request is formally made to x-clear by or on behalf of the same, whether or not such request has the force of law;
  - (c) pursuant to and in accordance with Applicable Laws;
  - (d) which becomes published or otherwise generally available to the public, except in consequence of a wilful default or negligent act or omission by x-clear in contravention of its obligations under the Contractual Relationship;
  - (e) to the extent such information was made available to x-clear by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect

of such information to x-clear or the x-clear Member or which has been disclosed to x-clear by a third party under an express statement that it is not confidential;

- (f) in the event of such disclosure being necessary for the performance by x-clear of its obligations under the Contractual Relationship; and
- (g) to any x-clear Affiliate, any Exchange or MTF, Clearing Organisation (including a Co-CCP, if any), provider of Transaction Routing, Approved Settlement System, settlement agent or any of their or x-clear's Representatives, auditors, lawyers or other advisers including, without limitation, for audit, compliance, market surveillance or disciplinary purposes or in relation to any possible or actual Default or the termination or suspension of membership as an x-clear Member;
- (h) regarding the fact of being an x-clear Member.

16.3 x-clear is a Data Controller in relation to Personal Data provided to it by the x-clear Member and its Representatives. The x-clear Member shall ensure that:

- (a) any and all of its Representatives and any other person in relation to whom Personal Data are provided to x-clear ("**Data Subjects**") have consented in advance to such data being Processed by x-clear;
- (b) any and all of its Representatives and any other person in relation to whom Sensitive Personal Data are provided to x-clear ("**Sensitive Data Subjects**") have provided the explicit consent required by the Data Protection Act 1998 to enable such data to be lawfully Processed by x-clear;
- (c) the disclosure of Personal Data and Sensitive Personal Data (if any) by the x-clear Member and all of its Representatives is in all respects and in each case lawful; and
- (d) the consents referred to in Clauses 16.3(a) and (b) above have been provided by each Data Subject prior to disclosure of Personal Data relating to such Data Subject to x-clear.

16.4 x-clear or third parties referred to in Clause 16.6 may transfer Personal Data (including Sensitive Personal Data) outside the EEA and Process Personal Data (including Sensitive Personal Data) outside the EEA but only where the level of data protection conferred by relevant Applicable Laws is at least equivalent to that afforded in the UK.

16.5 In this Clause only, the terms "**Process**" (and derivations thereof), "**Sensitive Personal Data**", "**Personal Data**" and "**Data Controller**" each have the meaning given to such terms in the Data Protection Act 1998.

16.6 x-clear shall be entitled to outsource its data processing requirements to third parties, in particular to SIS, SIX Systems AG, SIX Group Services AG and other Affiliates of the SIX Group AG, and the x-clear Member hereby grants its consent to such outsourcing and such arrangements.

## 17 Market disorder

- 17.1 The x-clear Member acknowledges that, in accordance with the Trading Platform Rules, the Trading Platform may:
- (a) exercise certain rights in respect of the non-performance or default of a Trading Platform Member; and
  - (b) in certain circumstances, cancel a Trading Platform Transaction (pursuant to a request or otherwise), "contra" in respect of a Trading Platform Transaction or suspend or halt trading in specific Trading Platform Products,

and x-clear and the x-clear Member shall, in such circumstances, be bound by such measures.

- 17.2 Neither x-clear nor the x-clear Member (in the relevant case, an "**Affected Party**") shall be liable for any failure or delay in performing any of its obligations under or pursuant to the Contractual Relationship to the extent that such failure or delay is due to an Event of Force Majeure and it shall be entitled to a reasonable extension of the time for performing such obligations as a result of such Event of Force Majeure.

- 17.3 On the occurrence of an Event of Force Majeure:

- (a) the Affected Party, if it is the x-clear Member, shall immediately notify x-clear of the same (or, if the Affected Party is x-clear, it shall issue a circular to the x-clear Member that is affected) and the Affected Party shall exercise reasonable endeavours to resume performance of any of its obligations affected by the Event of Force Majeure;
- (b) x-clear shall be entitled to require the x-clear Member to take such action as x-clear may direct in respect of Single Contracts affected by the Event of Force Majeure; and
- (c) x-clear shall be entitled to subject affected Outstanding Contracts to Clearing and/or Settlement in accordance with x-clear's directions to be issued at x-clear's discretion, and x-clear shall be entitled to require or implement appropriate measures to achieve such Clearing and/or Settlement. x-clear shall, where relevant and practicable, endeavour to consult any Affected Party in advance of requiring or implementing such measures.

## 18 Default by the x-clear Member

- 18.1 If the x-clear Member is unable or likely to be unable to fulfil its obligations in respect of one or more Outstanding Contracts or fulfil any other obligation towards x-clear, howsoever arising and whether or not pursuant to the Contractual Relationship (an "**Event of Default**"), x-clear shall be entitled to take the measures described below in Clause 18.5 of these GTCB.

- 18.2 x-clear shall be entitled to treat each of the following non-exhaustive grounds as an Event of Default:

- (a) the x-clear Member is in breach of a contractual obligation it owes to x-clear;
- (b) the x-clear Member fails to fulfil any payment obligation on time or at all or any obligation to provide collateral on time or at all (including, but not limited to, fees, fines and amounts in respect of Settlement, Margin and Contributions);

- (c) the x-clear Member is subject to:
  - (i) the occurrence of any situation in which the financial or operational condition of the x-clear Member is not, in the opinion of x-clear, adequate for the x-clear Member to meet its obligations (including, without limitation, its obligations to comply with the Contractual Relationship) or to engage in the business of being an x-clear Member;
  - (ii) the commencement of proceedings or investigations, enforcement action, fines, disciplinary action or other interventions in relation to activities as an x-clear Member by a Governmental Authority, the Trading Platform, the Approved Settlement System or any other Clearing Organisation, Exchange or MTF of which the x-clear Member is a member or participant;
  - (iii) the threat of withdrawal or actual withdrawal of the x-clear Member's licence or authorisation in any jurisdiction or a threat to the x-clear Member's credit-worthiness, stability or operational reliability; or
  - (iv) any other situation where it would not, in the opinion of x-clear, be in the best interests of x-clear or the marketplace (including, but not limited to, other x-clear Members) for such x-clear Member to continue to be an x-clear Member;
- (d) the x-clear Member is in material breach of the rules and regulations of an Exchange, MTF, or a Clearing Organisation or has been suspended or excluded by such Exchange, MTF or Clearing Organisation; or
- (e) the FINMA takes action pursuant to Articles 31 and 36 of the Swiss Financial Markets Supervision Act, or pursuant to Article 26 let. a to let. f of the Swiss Federal Banking Act or Article 36a of the SESTA, or a Governmental Authority takes similar action against an x-clear Member, provided that such action by a Governmental Authority relates to the creditworthiness, solvency or operational reliability of the x-clear Member.

18.3 The x-clear Member will automatically be subject to an Event of Default in the following circumstances:

- (a) an order is made by a Swiss court to declare the x-clear Member bankrupt ("Konkurseröffnung"; Articles 175, 189, 190, 191 and 192 of the Federal Law on Debt Collection and Bankruptcy, Article 33 of the Swiss Federal Banking Act, or Article 36a of SESTA) or an order is made prohibiting the payment of interest and/or declaring a moratorium (Article 26 let. h of the Swiss Federal Banking Act, or Article 36a of SESTA), or an order is made to appoint a receiver or trustees for an x-clear Member in connection with a petition for proceedings for an arrangement with creditors (Article 293 of the Federal Law on Debt Collection and Bankruptcy);
- (b) the FINMA revokes the authorisation of the x-clear Member pursuant to Article 37 of the Swiss Financial Markets Supervision Act, Article 23 quinquies or Article 26 para. 1 let g of the Swiss Federal Banking Act, or Article 36 SESTA, or takes or will take any other measure as described in Articles 31 or 36 of the Swiss Financial Markets Supervision Act (if applicable);
- (c) the x-clear Member enters into liquidation whether compulsory or voluntary or an order is made or resolution is passed for its winding up or dissolution, or for the striking off of the x-

clear Member's name from a register of companies or of other corporate bodies (other than for the purposes of a solvent amalgamation or reconstruction approved in writing by x-clear on the basis that the resulting company undertakes the x-clear Member's obligations under the Contractual Relationship and is commercially acceptable to x-clear) or has a receiver, administrative receiver, administrator or similar official appointed over all or any of its assets, or a petition is made for such appointment, or any receiver, administrative receiver, administrator or similar official so appointed is not discharged within a period of 30 days of his appointment, or has an Encumbrancer taking possession of or selling an asset of the x-clear Member;

- (d) the x-clear Member is declared insolvent or makes any assignment, arrangement, composition or compromise for the benefit of any creditors or significant creditor or a scheme of arrangement being approved by a Governmental Authority (except where such insolvency or composition occurs in Switzerland);
- (e) the x-clear Member is unable to pay debts as they fall due within the meaning of section 123 of the Insolvency Act 1986 or is over indebted within the meaning of and pursuant to Articles 725, 817 or 903 of the Swiss Code of Obligations;
- (f) the passing of a creditors' voluntary winding up resolution (and for this purpose "creditors' voluntary winding up resolution" means a resolution for voluntary winding up (within the meaning of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989) where the winding up is a creditors' winding up (within the meaning of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989));
- (g) a trust deed granted by the Participant becoming a protected trust deed (and for this purpose "trust deed" and "protected trust deed" shall be construed in accordance with section 73(1) of the Bankruptcy (Scotland) Act 1985 (interpretation)); and
- (h) upon the occurrence under Applicable Laws of any applicable jurisdiction of anything analogous to or having a substantially similar effect to any of the events described in Clauses 18.3(a) to (e) inclusive,

each of the events described in Clauses 18.3(a) to 18.3(f) inclusive being an event of "**Insolvency**" in relation to the x-clear Member.

- 18.4 In respect of an Event of Default arising pursuant to Clauses 18.1 and 18.2 but which does not amount to an Event of Default pursuant to Clause 18.3, x-clear shall be entitled to issue a notice of Default (a "**Default Notice**") to the x-clear Member and declare the x-clear Member to be in "**Default**". The issue of a Default Notice shall be disclosed to the relevant Trading Platform, the Co-CCPs, if any, and the Approved Settlement System. Except in relation to an Event of Default pursuant to Clause 18.2(b), if an x-clear Member is subject to an Event of Default as a result of a technical or other minor defect, the x-clear Member shall promptly provide to x-clear with a written description of the reasons for the non-performance. The x-clear Member shall promptly rectify the causes of the non-performance. The x-clear Member shall indemnify x-clear for any losses, damages, injuries, delays, costs and expenses incurred or sustained by x-clear as a result of such non-performance and any related corrective action. In other cases, prior to the issue of a Default Notice, x-clear can at its discretion issue a reminder to the x-clear Member and allow a period for corrective action to be taken and if such action is regarded by x-clear, at its discretion, as removing the grounds for a Default, x-clear shall be entitled to regard the x-

clear Member as not being in Default. Following an Event of Default arising pursuant to Clause 18.3, the x-clear Member shall be regarded by x-clear to be in "Default" and the x-clear's Member's membership shall terminate with immediate effect and x-clear shall effect a Close-out Netting as further described in Clause 18.5(d).

- 18.5 Following the issue of a Default Notice, x-clear shall at its discretion be entitled to take one or more of the following measures (and, except in cases which x-clear in its discretion considers urgent, x-clear shall give the x-clear Member advance notice of any such measures):
- (a) (except in respect of a breach or potential breach falling within Clause 18.5(b)), issue a warning to the x-clear Member, which will specify an appropriate deadline by which the x-clear Member shall be required to rectify the breach;
  - (b) in the event of serious breaches, occurrences or infringements amounting to an Event of Default pursuant to Clause 18.2, suspend the provision of Clearing services to the x-clear Member (in relation to the specific Trading Platform Products or otherwise) for a maximum of three months. If upon expiry of this period the x-clear Member has failed to satisfy its obligations, or to perform them in full or otherwise rectify the breach or infringement, x-clear shall be entitled to terminate the membership of the x-clear Member and any other contract with the x-clear Member with immediate effect;
  - (c) in the case of a breach or potential breach falling within Clause 18.2(b), grant the x-clear Member a short extension of the period within which payment by the x-clear Member shall be made;
  - (d) suspend performance by x-clear and the x-clear Member under Outstanding Contracts and apply the following procedure ("**Close-out Netting**") to Outstanding Contracts to which the Defaulting x-clear Member is a party resulting in the payment of the Settlement Amount (as defined in Clause 18.5(d)(iii) below):
    - (i) in respect of each Outstanding Contract:
      - (A) establish the replacement value of the Trading Platform Product required to be delivered to or by the x-clear Member by reference to the closing price of the Trading Platform Product on the day the Default occurred or the Default Notice was issued; if the Trading Platform Product is not traded on such day, the last available closing price for the Trading Platform Product on an Exchange in the country of the issuer of the Trading Platform Product (if the Trading Platform Product is also listed or admitted to trading on an Exchange) will apply. The replacement value is calculated in the currency in which the Trading Platform Product was traded on that Exchange; and
      - (B) establish the total value of all the payments which were required to be made to or by the x-clear Member;
    - (ii) establish any other amounts (including, without limitation, commissions) which are or were required to be paid by or to the x-clear Member under the Contractual Relationship and any other contract with x-clear;
    - (iii) aggregate all such amounts and convert these amounts using (where it thinks relevant) a currency exchange rate it considers appropriate at its own discretion into sterling; and

then net the outstanding amounts so as to produce a single, net amount to be paid to or by the Defaulting x-clear Member (the "**Settlement Amount**");

- (iv) notify the x-clear Member immediately of this Settlement Amount, stating which party is to pay the Settlement Amount. The Settlement Amount shall be paid by the x-clear Member or by x-clear, as the case may be, within a period of two Business Days of the said notification being made. If the paying party fails to pay within this period, interest on arrears will be charged at the three-month LIBOR rate for the sterling money market plus a margin of one per cent. If the Settlement Amount is payable by the x-clear Member, x-clear shall be entitled to realise the Permissible Collateral provided by the x-clear Member as Margin by way of discharge of such payment obligation; and
- (v) charge the x-clear Member for all costs and expenses incurred in connection with the measures referred to in Clause 18.5(d) including, without limitation, costs incurred in connection with the realisation of collateral, and court and any related out-of-court costs. x-clear shall be entitled to realise the Permissible Collateral provided by the x-clear Member as Margin by way of discharge of such payment obligation.

- (e) notwithstanding the other provisions of this Clause 18.5, terminate the membership of the x-clear Member on the occurrence of a Default.

18.6 In the event that x-clear does not take any steps described in Clause 18.5 following a Default, x-clear shall not be regarded as having waived its entitlement to take any such step immediately or at all.

18.7 For the purposes of this Clause 18.7, the term "**default rules**" means all the GTCB and other provisions of the Contractual Relationship which provide for the taking of action in the event of an x-clear Member being unable, appearing to be unable, or being likely to be unable, to meet its obligations in respect of one or more Outstanding Contracts and "**default proceedings**" means the actions and proceedings taken by x-clear under its default rules. The x-clear Member is given notice that Part VII of the Companies Act 1989 applies in relation to Single Contracts in the event of a Default and that as a result in so far as there are proceedings relating to an Insolvency of an x-clear Member in the UK, in accordance with the Companies Act 1989, inter alia:

- (a) the Contractual Relationship will apply notwithstanding the otherwise mandatory nature of Applicable Laws of the United Kingdom relating to Insolvency;
- (b) the insolvency practitioner of the Defaulting x-clear Member may not contest action taken by x-clear in relation to that x-clear Member under the Contractual Relationship;
- (c) third parties will have a duty in certain circumstances to give certain assistance to x-clear for the purpose of giving effect to the Contractual Relationship;
- (d) powers of the English Courts to prevent dissipation or application of assets are subject to x-clear's default proceedings;
- (e) the Governmental Authorities such as but not limited to the FSA have certain powers to require x-clear's default rules to be applied in the event of an Insolvency of any x-clear Member even if no action is taken by x-clear; and

- (f) x-clear may be required to produce a report under section 162 of the Companies Act 1989 and to report to the Defaulting x-clear Member, or any relevant office-holder acting in relation to the Insolvency of the Defaulting x-clear Member, on steps taken under this Clause 18.

## **19 Default by x-clear**

19.1 x-clear will automatically be in Default in the following circumstances:

- (a) the FINMA opens insolvency proceedings with respect to x-clear pursuant to Article 33 of the Swiss Federal Banking Act; and
- (b) the FINMA revokes the authorisation of x-clear as a bank pursuant to Article 37 of the Swiss Financial Markets Supervision Act or Article 23quinquies and/or Article 26 para. 1 let g. of the Swiss Federal Banking Act or takes or will take any other measure as described in Article 26 of the Swiss Federal Banking Act.

19.2 Following a Default by x-clear under Clause 19.1, all obligations of x-clear and the x-clear Member to make payments and deliveries pursuant to Outstanding Contracts shall not be fulfilled in the usual way but instead x-clear or the x-clear Member (as applicable) shall make a single payment calculated according to the procedure set out in Clause 19.3.

19.3 In respect of each Outstanding Contract:

- (a) x-clear shall:
  - (i) establish the replacement value of the Trading Platform Product required to be delivered to or by x-clear by reference to the closing price of the Trading Platform Product on the day the Default occurred; if the Trading Platform Product is not traded on such day, the last available closing price for the Trading Platform Product on an Exchange in the country of the issuer of the Trading Platform Product (if the Trading Platform Product is also listed or admitted to trading on an Exchange) will apply. The replacement value is calculated in the currency in which the Trading Platform Product was traded on that Exchange; and
  - (ii) establish the total value of all the payments which were required to be made to or by the x-clear Member;
- (b) x-clear shall establish any other amounts which are or were required to be paid by or to x-clear under the Contractual Relationship and any other contract between x-clear and the x-clear Member;
- (c) x-clear shall aggregate all such amounts using (where it thinks relevant) a currency exchange rate it considers appropriate and convert these amounts at its own discretion into sterling; and x-clear will then net the outstanding amounts so as to produce a single, net amount to be paid by x-clear to the x-clear Member or by the x-clear Member to x-clear;
- (d) x-clear shall notify the x-clear Member as soon as practicable of the amount calculated pursuant to Clauses 19.3(a) to (c), stating which party is to pay such amount. This amount shall be paid by the x-clear Member to x-clear or by x-clear to the x-clear Member, as the

case may be, within a period of two Business Days of the said notification being made. If the paying party fails to pay within this period, interest on arrears will be charged at the three-month LIBOR rate for the sterling money market plus a margin of one per cent. If such amount is payable by the x-clear Member to x-clear, x-clear shall be entitled to realise the Permissible Collateral provided by the x-clear Member as Margin by way of discharge of such payment obligation.

## 20 Intellectual property rights

If and to the extent that either x-clear or the x-clear Member makes available to the other party, pursuant to these GTCB or any other part of the Contractual Relationship, any material in which Intellectual Property subsists, x-clear or the x-clear Member, as the case may be, warrants that the use by the other party or its Representatives of such material for the purposes for which such material was made available shall not infringe the rights of any third party.

## 21 Settlement Finality

x-clear shall be entitled to amend these GTCB, the Trading Platform Specific GTCB and the Rules and Regulations in accordance with Clause 3 of the Contract for Clearing Services (English Law) in order to ensure or facilitate "system" designation or the retention of such designation pursuant to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (the "**Settlement Finality Regulations**") and such amendments shall be set out in Schedule 3 of these GTCB.

## 22 Schedule of fees

- 22.1 The x-clear Member shall pay an annual membership fee, payable *pro rata temporis* in Swiss francs (CHF) as part of the regular monthly fees payable by the x-clear Member and as determined in accordance with the Rules and Regulations.
- 22.2 Suspension of membership does not release the x-clear Member from the requirement to pay the membership fee or service fee. If membership of the x-clear Member begins or is terminated during a calendar year the x-clear membership fee paid for that year is payable or will be refunded pro rata.
- 22.3 The x-clear Member will set out its service charges and membership fee in the Schedule of Fees as published and issued to the x-clear Member from time to time. In setting its charges and fees the x-clear Member acknowledges and agrees that x-clear is entitled to take into account the charges and fees, if any, imposed on or charged to x-clear by the Approved Settlement System, the provider of Transaction Routing or a Co-CCP, if any. x-clear shall be entitled to vary the amount of the charges or fees from time to time and shall notify the x-clear Member of such changes in accordance with Clause 3 of the Contract for Clearing Services (English Law).
- 22.4 x-clear shall provide the x-clear Member (by post, facsimile, posting on-line, other electronic means or otherwise) with a monthly statement of the charges accrued.
- 22.5 x-clear shall be authorised to collect all monies owed by the x-clear Member to x-clear pursuant to the Contractual Relationship from the x-clear Member's ordinary account held at SIS, an account at a Payment Bank or via the Swiss payments system Swiss Interbank Clearing ("**SIC**")

by direct debit. Collection will be effected by SIS as an agent of x-clear. The x-clear Member undertakes to instruct SIS to honour all direct debit mandates received, from x-clear (where the x-clear Member's account is held at SIS) to collect all sums owed by the x-clear Member from the x-clear Member's accounts held at SIS and transfer the appropriate amount to x-clear's account with SIS. The x-clear Member may revoke the direct debit instruction with 14 days' notice, provided that a replacement arrangement at SIS is established prior to such revocation.

### **23 Notification to the Trading Platform and others**

The x-clear Member shall recognise and consent to x-clear notifying a Governmental Authority, the Trading Platform and, where applicable, a Co-CCP (if any), the provider of Transaction Routing and the Approved Settlement System where the x-clear Member:

- (a) is no longer in a position to fulfil its contractual obligations in respect of Outstanding Contracts;
- (b) commits a material breach of its contractual obligations towards x-clear; or
- (c) relinquishes its x-clear membership or it is suspended or terminated by x-clear.

### **24 Extension and waiver of provisions in the Contractual Relationship**

- 24.1 The time fixed by the Contractual Relationship for the doing of any act or acts may be extended, or the doing of any act or acts required by Contractual Relationship may be waived, by x-clear whenever at its discretion it considers that such extension or waiver is necessary or in the best interests of x-clear.
- 24.2 Without prejudice to the generality of Clause 24.1, the time fixed by the Contractual Relationship for filing any report or other document, for submitting any information or for making deposits or payments may be extended by x-clear whenever at its discretion it considers that such extension is necessary or in the best interests of x-clear. Any such extension may continue in effect after the event or events giving rise thereto.
- 24.3 No failure by x-clear to exercise or delay on its part in exercising any of its rights or pursuing any of its remedies under the Contractual Relationship shall constitute a waiver of its rights or remedies for any purpose (current or future). No exercise of any right or remedy shall preclude any future exercise thereof or of any other right or remedy.

## **25 Contractual basis**

- 25.1 The Contractual Relationship shall be binding between x-clear and each x-clear Member on the execution of the Contract for Clearing Services (English Law).
- 25.2 Amendments to the Contractual Relationship shall be effected in accordance with Clause 3 of the Contract for Clearing Services (English Law).
- 25.3 Any requirement or obligation under the Contractual Relationship (or any constituent part thereof) on x-clear to hold consultations shall not be construed as imposing any obligation on x-clear to comply with the directions, requests or suggestions of the consultees.

## **26 Dispute resolution**

- 26.1 An x-clear Member that wishes to make a complaint to x-clear in relation to the performance by x-clear of its obligations arising under the Contractual Relationship (or to the extent applicable thereunder, SIS), shall initially refer the complaint to its relationship manager at SIS. Complaints in respect of matters that can reasonably be regarded as operational or technical in nature should be referred to the x-clear desk of SIS in the first instance.
- 26.2 x-clear or SIS shall make a record of the relevant complaint. x-clear, and if applicable, SIS, shall at their discretion conduct an investigation into the matters raised by the complaint and shall, if they consider it necessary, request further particulars of the complaint from the x-clear Member.
- 26.3 On completion of the investigation of the complaint by x-clear and/or SIS, x-clear shall communicate the results of the investigations to the x-clear Member and include details of any action that x-clear and/or SIS have taken or propose to take (which may be conditional on certain actions being taken by the x-clear Member). If at this stage the x-clear Member is not satisfied with the operational services of any Person in SIS, it may escalate the complaint to the relevant level of operative management in accordance with the details relating to escalation of complaints as published by x-clear and/or SIS on their websites from time to time.
- 26.4 Where an x-clear member is not satisfied with the outcome of the investigation by x-clear or SIS, it may refer the complaint to the Executive Committee of x-clear or SIS. The Executive Committee of x-clear or SIS respectively shall adopt such procedures as it sees fit in order to review the outcome of the investigation by x-clear or SIS, but shall not be obliged to conduct a new investigation or hear further representations from the x-clear member.
- 26.5 If the x-clear Member is not satisfied with the outcome of the complaint following its review by the Executive Committee of x-clear or SIS respectively, the x-clear Member may refer the complaint to the Executive Board of SIX Group. The Executive Board of the SIX Group shall adopt such procedures as it sees fit in order to review the outcome of the Executive Committee of x-clear or SIS respectively, but shall not be obliged to conduct a new investigation or hear further representations from the x-clear member.
- 26.6 This complaints procedure, including, without limitation, any outcome, decision or representation made by x-clear, SIS, the Executive Committee of x-clear or SIS respectively, the Executive Board of the SIX Group, or any Representative or other person or body authorised to act on behalf of any one of them shall have no evidential value in any subsequent proceedings, of

whatever nature. Any actions, steps or review carried out pursuant to the procedures outlined in Clauses 26.1 to 26.5 shall be undertaken within a reasonable period of time.

- 26.7 The x-clear Member shall not refer any Dispute to a court, tribunal or other Governmental Authority without first exhausting the procedures laid down in this Clause 26.

## **27 Communications**

- 27.1 Information relating to Trading Platform Transactions received by x-clear from the Trading Platform (or a Co-CCP, if any) shall be binding on the x-clear Member unless and until revoked by the Trading Platform or a Co-CCP (if applicable). Save as otherwise expressly provided under the Contractual Relationship, x-clear will not undertake any additional or particular verification of such information.
- 27.2 Each x-clear Member shall regularly monitor its electronic communication facilities during the course of each Business Day for receipt of communications from x-clear. Each x-clear Member shall immediately (a) review every communication delivered to it by x-clear and (b) report to x-clear any error in any such communication.
- 27.3 Except as otherwise specifically prescribed in the Contractual Relationship, all reports, documents, papers, statements, notices, checks, and other communications and other materials (each for the purposes of this Clause 27.3, hereinafter referred to as a "**Document**") required or permitted by the Contractual Relationship to be submitted to x-clear shall be delivered to x-clear (or its designated agent, where applicable) at such times, in such form and in such manner as x-clear shall require. Without prejudice to the foregoing, each Document delivered to x-clear shall clearly state the identity of the x-clear Member making such delivery.
- 27.4 x-clear shall be entitled to record telephone communications with the x-clear Member, the x-clear NCM or Representatives of any of them.
- 27.5 With the exception of notices from x-clear regarding amendments to Contractual Relationship, notices issued by x-clear will be deemed to have been served if they have arrived at the x-clear Member's last known address (by post, fax, telephone, telex or electronic mail) or are made by way of x-clear Member circular and posted on x-clear's website. x-clear will rely on the contact addresses supplied or notified by the x-clear Member. The x-clear Member is obliged to notify x-clear of any changes to its contact address or details.
- 27.6 Any loss incurred or suffered by an x-clear Member arising from the use of post, fax, telephone, telex, electronic mail and other means of transmission or transport (including, without limitation, as a result of loss, delay, misunderstandings, distortion or duplications) shall be borne by that x-clear Member, save to the extent that x-clear has not exercised reasonable care.

## **28 Clearing membership for Co-CCPs**

A Co-CCP, if any, that wishes to obtain the membership status in x-clear as a Co-operating Clearing House (as defined in the applicable Link Agreement) shall apply to x-clear for such status in a manner and form x-clear at its discretion considers appropriate. Pursuant to the applicable Link Agreement, the Co-CCP shall comply with, and be subject to, the provisions relating to the status of a Co-operating Clearing House as set out in Schedule 2. For the

avoidance of doubt, x-clear's relationship with a Co-CCP, if any, shall be exclusively governed by this Clause 28, the applicable Link Agreement, Schedule 2 and not any provision of the Contractual Relationship (apart from this Clause 28 and as otherwise provided in Schedule 2).

## **29 Governing law and jurisdiction**

- 29.1 These GTCB, the Trading Platform Specific GTCB and the Rules and Regulations shall be governed by and construed in accordance with the laws of England and Wales. The laws of England and Wales shall also determine, and be the governing law of, the non-contractual rights, obligations and remedies (if any) of x-clear and the x-clear Member with respect to each other. To the extent that any provision of the Pledge Agreements conflicts with any provision of the Contract for Clearing Services (English Law), the GTCB, the Trading Platform Specific GTCB or the Rules and Regulations, the provisions relating to the nature, scope, rights and obligations in respect of a Regular Pledge or Irregular Pledge (and the holding of the assets subject to a Regular Pledge (under the Pledgeholder Agreement)) shall be governed by the Pledge Agreements and the obligation to provide Margin, make Contributions, enter into the Pledge Agreements and the grounds upon which Margin or Contributions can be realised shall be governed by the Contract for Clearing Services (English Law), the GTCB, the Trading Platform Specific GTCB and the Rules and Regulations.
- 29.2 Subject to Clause 29.3, any Dispute shall be subject to the exclusive jurisdiction of the High Court of England and Wales. x-clear and each x-clear Member shall hereby be deemed irrevocably to have submitted to the jurisdiction of the High Court and to have waived irrevocably any objection to proceedings, any remedy or the enforcement of any remedy in or by the High Court on the ground of venue, or that proceedings have been brought in an inconvenient or inappropriate forum or on any other ground.
- 29.3 Notwithstanding Clause 29.2, where there is a Dispute arising from or in connection with any part of the Contractual Relationship and such part contains provisions expressly dealing with jurisdiction, then such Dispute shall be subject to those provisions and the provisions of Clause 29.2 shall not apply to such Dispute.

## Schedule 1

### Provisions for the GCM-NCM Agreement

- (a) Legislation applicable to the relationship between the x-clear GCM and the x-clear NCM, with the x-clear NCM as agent of the x-clear GCM.
- (b) If an order entered by the x-clear NCM on the Trading Platform is matched on such platform with another order entered on the Trading Platform, transactions between the x-clear GCM and x-clear (in accordance with the GTCB and the Trading Platform Specific GTCB) and between the x-clear NCM and the x-clear GCM are generated.
- (c) If a Co-CCP, if any, is also a Central Counterparty in respect of the Trading Platform Transaction, all x-clear NCM entries in the Trading Platform's order book are directly effective in favour of or to the debit of x-clear.
- (d) Exclusion of any contractual or other relationship in the relationship between x-clear and the x-clear NCM.
- (e) Responsibility for compliance with Trading Platform Rules to be borne by the x-clear NCM.
- (f) The x-clear GCM's margin requirements of its x-clear NCM.
- (g) Authorisation (where applicable) of the x-clear NCM by the x-clear GCM to assume responsibility for settlement directly vis-à-vis x-clear in the name and for the account of the x-clear GCM.
- (h) Status of the x-clear NCM as a Trading Platform Member neither suspended nor terminated.
- (i) Data Protection.
- (j) Use of collateral.
- (k) Non-performance/default by the x-clear NCM.
- (l) Period of validity.
- (m) Severability.
- (n) Governing law.
- (o) Place of jurisdiction; place of performance.

## **Schedule 2**

### **Provisions applicable to a Co-operating Clearing House**

The provisions of Clause 18 of the GTCB and the provisions of the Trading Platform Specific GTCB shall apply to the Co-operating Clearing House mutatis mutandis but only in respect of its obligations in respect of Inter-CCP Contracts. In particular, references to "Outstanding Contracts" shall be replaced by references to "Inter-CCP Contracts" and references to the membership of an x-clear Member shall be read as a reference to the membership of the Co-CCP as a Co-operating Clearing House.

Further, x-clear's right to terminate the membership of the Co-CCP, if any, as a Co-operating Clearing House shall only be exercised in circumstances where x-clear has the right to terminate the applicable Link Agreement.

The provisions of this Schedule 2 shall be regarded as part of the "default rules" of x-clear applicable to a Co-operating Clearing House within the meaning of section 188 of the Companies Act 1989.

**Schedule 3**

**"Settlement Finality Provisions"**

*[Provisions to be incorporated upon designation of x-clear under the Settlement finality Regulations]*