

**TERMS OF BUSINESS
INDIRECT CLEARING ADDENDUM**

**INTL FCSTONE LTD
AND
[CLIENT]**

Dated

1. Scope and definitions

1.1 This Addendum is incorporated into, and forms part of, the Agreement.

1.2 IFL may, at its discretion, provide clearing services to the Client in circumstances where the Client is acting as clearing broker for its own clients as part of an indirect clearing arrangement relating to Agreed IC CCPs.¹ Unless otherwise agreed with IFL, the Client agrees that its clients will not be permitted to offer related indirect clearing services.

1.3 Except for the amendments in paragraph 2 (*Netting*):

(a) any right, discretion or obligation of IFL in this Addendum shall apply to IFL solely in its capacity as a general clearing member in relation to Agreed IC CCPs where it is providing related indirect clearing services to the Client; and

(b) any right, discretion or obligation of the Client in this Addendum shall apply to the Client solely where it is providing related indirect clearing services to its clients.

1.4 Capitalised terms used but not defined in this Addendum or the Agreement shall have the following meaning:

(a) "**Agreement**" means the Client Agreement entered into by the parties for the provision of IFL's brokerage services;

(b) "**Agreed IC CCP**" means each Agreed CCP established in the EU or any other Agreed CCP that is agreed by the Parties from time to time to be an Agreed IC CCP for the purposes of this Addendum;

(c) "**IFL/DC IC Transactions**" means Transactions which relate to Indirect Clearing Transactions;

(d) "**IFL /DC IC Transaction Set**" means Netting Transactions which are IFL/DC IC Transactions and which are recorded to the same account or, where there are sub-accounts, the same sub-account in IFL's books and records;

(e) "**Indirect Clients**" means clients of the Client with which the Client has entered into Indirect Clearing Transactions;

(f) "**Indirect Clearing Transactions**" means any transaction between the Client and any of its clients which relates to a IFL/CCP Transaction cleared on an Agreed IC CCP;

(g) "**MiFIR and EMIR Delegated Regulations**" means:

- (i) Commission Delegated Regulation (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No 600/2014

¹ These terms have been designed for four-party indirect clearing chains (CCP-CM-DC-IC).

of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements; and

- (ii) Commission Delegated Regulation (EU) 2017/2155 of 22 September 2017 amending Delegated Regulation (EU) No 149/2013 with regard to regulatory technical standards on indirect clearing arrangements; and

(h) **"Permitted Entity"** means:

- (i) a credit institution authorised in accordance with Directive 2013/36/EU;
- (ii) an investment firm authorised in accordance with Directive 2014/65/EU; or
- (iii) an entity established outside the EU that would be considered to be a credit institution or an investment firm if that entity were established in the EU.

1.5 References in this Addendum to the EU shall be construed to include the UK to the extent that, following withdrawal of the UK from the EU, the UK continues to apply substantially the same rules relating to the provision of indirect clearing services as the EU rules which became applicable on 3 January 2018 and references to Agreed IC CCPs shall be construed accordingly.

2. **Netting**

2.1 If determination of any Liquidation Amount would involve IFL taking into account Netting Transactions which are IFL/DC IC Transactions and any other Netting Transactions ("**Other Transactions**"), then IFL shall calculate separate Liquidation Amounts in accordance with the terms of clause 11 (*Netting*) for, respectively, each IFL/DC IC Transaction Set and Netting Transactions which are Other Transactions. IFL may, in its discretion, aggregate and further net Liquidation Amounts, related margin and other amounts to the extent permitted by Applicable Regulations.

2.2 Without prejudice to paragraph 2.1, any provision which would require any Liquidation Amount, margin or other amount in respect of IFL/DC IC Transactions automatically to be set-off against or combined with any Liquidation Amount, margin or other amounts relating to Other Transactions shall not apply.

3. **Provision of Indirect Clearing Services**

3.1 The Client agrees not to enter, or instruct IFL to enter, into Indirect Clearing Transactions unless:

- (a) the Client is a Permitted Entity;

- (b) the Client publicly discloses the general terms and conditions under which it provides indirect clearing services and IFL has confirmed that it agrees to those general terms and conditions; and
- (c) the Client satisfies any additional requirements set out in IFL's general terms and conditions relating to indirect clearing or as may otherwise be stipulated by IFL from time to time.

By entering into each Transaction related to an Indirect Clearing Transaction, the Client represents and warrants that these conditions are satisfied.

3.2 The Client may request a change in the type of client account in IFL's books and records and in the accounts with the Agreed IC CCP used to clear IFL/DC IC Transactions and related margin. IFL is only obliged to make that change subject to the Client agreeing any further contractual arrangements that may be required and meeting any other requirements of IFL that may apply in order for IFL to facilitate any change in that indirect client account election.

3.3 In respect of IFL/DC IC Transactions held through a **gross omnibus segregated account**, the Client acknowledges that IFL has procedures that apply on the Client's default and which include steps for IFL to port the Transactions to a replacement clearing firm or to pay the liquidation proceeds of positions and assets ("**leapfrog**"), where applicable (which may include, without limitation, IFL having the requisite information to be able to carry out the porting or leapfrog, the arrangement being in compliance with applicable law and legally effective and, for porting, there having been a timely porting request by any cut-off time established by IFL, IFL being able to transact with the replacement clearing firm in accordance with its own internal requirements and IFL being indemnified and held harmless by the Indirect Client to its satisfaction).

3.4 It is a condition of these terms that the Client shall notify IFL immediately if it becomes aware that the Client or its indirect clearing service does not meet the requirements of Applicable Regulations (irrespective of whether those Applicable Regulations are directly applicable to the Client).

4. Information

4.1 Upon request, the Client will provide to IFL a copy of the executed version of contractual terms under which any of its Indirect Clients enter into Indirect Clearing Transactions. Subject to the provisions of clause 4.2 below those terms may be redacted to omit the commercial terms and the identity of the Indirect Clients and to show only aspects relevant to the indirect clearing service.

4.2 Particularly relating to Transactions that are held through a **gross omnibus segregated account** in order to evidence, IFL may require presentation of such executed contractual terms that those Indirect Clients have signed up to the disclaimer included in clause 5.1. Those terms may be redacted to omit commercial terms and to show only aspects relevant to the indirect clearing service.

4.3 In relation to IFL /DC IC Transactions, the Client shall provide IFL with such information, with such frequency and at such times as IFL may require in relation to the

related Indirect Clearing Transactions to enable IFL to meet its obligations to the Agreed IC CCP, including in relation to position reporting and margin calculation.

4.4 The Client shall provide IFL with information upon demand or otherwise as required by IFL to allow IFL to identify, monitor and manage material risks to its resilience and/or risk position which could arise from IFL facilitating the provision of indirect clearing services by the Client.

4.5 Following the occurrence of an Event of Default, the Client shall, immediately upon request, provide IFL with such information as IFL requires (including, as a minimum, any information it requires to comply with Applicable Regulations).

4.6 The Client shall establish procedures satisfactory to IFL which will enable the Client to satisfy its obligations to IFL under clause 4.4.

4.7 In relation to any information disclosed by the Client pursuant to this paragraph which relates to its clients (whether or not the Client has agreed to keep the information confidential), the Client represents that its clients consent to disclosure of the information and data by IFL or its Affiliates to their agents and service providers or by any such persons to the relevant Agreed IC CCP and the Client shall be deemed to have repeated this representation each time such disclosure is made.

5. Relationship with Indirect Clients

5.1 The Client shall include the following provision in any contractual relationship between the Client and an indirect client in relation to Indirect Clearing Transactions where some or all of the related Transactions are held through a **gross omnibus segregated account**. Where the terms "you" and "us" have not been used in the contract between the Client and the relevant indirect client, those terms may be replaced with the relevant terms set out in the contract.

*"Notwithstanding anything in the agreement or any prior agreement between us (the "**Firm**") and you (the "**Client**"), in relation to Transactions ("**EU Indirect Clearing Transactions**") which the Firm clears on a central counterparty ("**CCP**") established in the EU by entering into a related transaction with a clearing member of that CCP (the "**CM/Firm IC Transactions**"), the Client acknowledges and agrees in favour of that clearing member as follows:*

(a) the Client acknowledges that the clearing member is not a party to this agreement;

(b) in relation to EU Indirect Clearing Transactions which relate to CM/Firm IC Transactions held through a gross omnibus segregated account, the Client acknowledges that in the event of a default of the Firm and subject to the satisfaction of certain conditions, the clearing member may:

*(i) transfer the transaction(s) it has with the Firm which are related to those EU Indirect Clearing Transactions to a replacement clearing firm ("**porting**"); or*

(ii) close-out and/or otherwise liquidate related transactions which the clearing member has entered into with the Firm and liquidate associated

margin (without reference to the Client), and return any balance to the Client directly (a "**leapfrog**"); or

(iii) if porting or leapfrog is not successful, return the balance owed to the Firm (if any) for the account of the Client;

(c) the Client acknowledges that the clearing member will set its own requirements which will need to be satisfied in order for the clearing member to be able to facilitate porting or leapfrog and whether the clearing member will port or leapfrog is to be determined in its sole discretion. The clearing member's conditions to porting will include:

(i) notice and other required information having been given to clearing member prior to any cut-off time established by the clearing member;

(ii) the arrangement being in compliance with applicable law and legally effective;

(iii) the clearing member being able to transact with the replacement clearing firm in accordance with its own internal requirements; and

(iv) the clearing member being indemnified and held harmless by the Client to its satisfaction;

(d) in relation to EU Indirect Clearing Transactions which relate to CM/Firm IC Transactions held through a **basic omnibus segregated account**, the Client acknowledges that:

(i) in the event of a default of the Firm, the clearing member may (without reference to the Client) take steps to close-out and/or otherwise liquidate transactions related to EU Indirect Clearing Transactions which the clearing member has entered into with the Firm alongside other transactions of other clients in the same basic omnibus segregated account, and liquidate and apply margin associated with the account to the extent it has been provided to it;

(ii) in such circumstances the clearing member will return the balance owed to the Firm (if any) for the account of the Client; and

(iii) the clearing member shall do so in a timeframe it determines and in accordance with its own processes and procedures; and

(e) the Client acknowledges and agrees that the clearing member is liable to the Firm only and that the clearing member shall have no liability whatsoever to the Client or any other person including, without limitation, for carrying out the procedures referred to in paragraphs (b), (c) and (d) above.

Notwithstanding anything to the contrary in this agreement, this clause shall be governed by English law, is for the benefit of the clearing member and it is agreed that the clearing member may enforce the terms of this clause in accordance with the Contracts (Rights of Third Parties) Act 1999."

5.2 The Client acknowledges and agrees that upon the occurrence of an Event of Default in respect of the Client:

- (a) IFL may at its discretion communicate with the Indirect Clients directly solely in the event that the Client elects to a Gross Omnibus segregated account structure;
- (b) the Firm may, subject to the satisfaction of certain conditions and solely in the event that the Client utilises a **Gross Omnibus segregated account** structure has:
 - (i) transfer Transaction(s) related to Indirect Clearing Transactions to a replacement clearing firm; and/or
 - (ii) close-out and/or otherwise liquidate Transaction(s) related to Indirect Clearing Transactions and liquidate associated margin, and either return any balance to the Indirect Clients directly or return the balance to the Client for the account of the Indirect Clients (and for these purposes, the words "for the account of" shall have the meaning given to them in Article 4(6)(b) or Article 4(7)(e), as applicable, of the MiFIR and EMIR Delegated Regulations); and
- (c) upon request, the Client will notify its Indirect Clients that the Event of Default has occurred and pass on to the relevant Indirect Clients any notice from IFL as to the expected period of time to liquidate the assets and positions relating to the Indirect Clients on IFL's books and records

5.3 For the avoidance of doubt the Client acknowledges and agrees that upon the occurrence of an Event of Default of the Client where a basic omnibus segregated account structure has been elected, IFL shall be limited to the actions outlined in clauses 5.2 (b).

6. Indemnity

The Client indemnifies and holds harmless IFL and its Affiliates from and against, and shall pay on demand, any losses, liabilities, costs or expenses (including legal fees), taxes, imposts and levies which IFL or its Affiliates may incur or be subjected to from time to time in connection with the provision of indirect clearing services related to any Indirect Clearing Transactions (including in relation to any claims against IFL by any Indirect Client for any reason whatsoever).

In witness whereof, the parties have executed this Module to the Agreement on the respective dates specified below with effect from the date specified on the first page of this Addendum.

INTL FCSTONE LTD

[CLIENT]

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Name:

Name:

Position:

Position:

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Name:

Position:

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Name:

Position: