



ISDA/~~FOA~~FIA EMIR Reporting Delegation Agreement

THIS AGREEMENT is dated as of [●] and is made BETWEEN:

(A) [●] (the "*Reporting Delegate*"); and

[(B) [●] (the "*Client*").]

OR [(B) [●] (the "*Agent*") acting for and on behalf of the principal(s) (each, a "*Client*") listed in Schedule [●] (*List of Clients*) to this Agreement [or otherwise identified to the Reporting Delegate's satisfaction].]

WHEREAS

(1) Pursuant to Article 9 of the European Market Infrastructure Regulation, certain parties who enter into, modify or terminate certain derivatives transactions are required to report specified data to a trade repository or, if no trade repository is available, to the European Securities and Markets Authority.

(2) The Client has requested that the Reporting Delegate helps the Client meet its reporting obligations by reporting, on the Client's behalf, relevant data to a trade repository or, if no trade repository is available, to the European Securities and Markets Authority. The Client and the Reporting Delegate have entered into this reporting delegation agreement (the "*Agreement*") to formalise the terms under which such reporting is to be performed.

IT IS AGREED as follows:

1. Interpretation

(a) **Definitions.** The terms defined in Section 18 (*Definitions and Construction*) and elsewhere in this Agreement will have the meanings therein specified for the purpose of this Agreement.

(b) **Election Schedule.** The Election Schedule and each other Schedule, if any, supplement and form part of this Agreement.

(c) **Inconsistency.** In the event of any inconsistency between the provisions of the Election Schedule and the other provisions of this Agreement, the Election Schedule will prevail.¹

2. Delegation of Reporting

(a) In respect of each Relevant Transaction:

¹ If additional Schedules are used then, depending on their content, the parties may wish to consider extending the inconsistency provision to set out the relative priorities of the Schedules against each other and against the rest of the Agreement.

- (i) the Client requests, appoints and authorises that the Reporting Delegate submit; and
- (ii) subject to the other provisions of this Agreement, the Reporting Delegate agrees to submit,

the Relevant Data to a Relevant Trade Repository by the Reporting Deadline.

(b) In respect of each Relevant Transaction where the Relevant Data is to include (or is solely) Counterparty Data, the Client:

- (i) agrees it will deliver to the Reporting Delegate its Counterparty Data [(which may include Static Data)]² in time for the Reporting Delegate to comply with its obligation under Section 2(a);
- (ii) agrees and acknowledges that if it fails to comply with Section 2(b)(i), the Reporting Delegate will be under no obligation to (but may) submit the Relevant Data to a Relevant Trade Repository by the Reporting Deadline;
- (iii) represents to the Reporting Delegate that the information it delivers under Section 2(b)(i) is, at the time of delivery, true, accurate and complete in every material respect; and
- (iv) acknowledges that the Reporting Delegate may rely on the Counterparty Data without investigation.

(c) Without prejudice to Section 7(a), in respect of each Relevant Transaction, the Reporting Delegate will determine in its sole and absolute discretion whether the Reporting Obligation has arisen, the characterisation of the Relevant Transaction and, where the Relevant Data is to include Common Data, the Common Data (which may be by reference to trade information provided by a Reporting Delegate Affiliate where such affiliate is the Client's counterparty to such Relevant Transaction). If unique reference(s) need to be generated for inclusion in the Relevant Data, the Client agrees that the Reporting Delegate may generate such unique reference(s).

(d) If the Reporting Delegate does not or will not report the Relevant Data by the Reporting Deadline in accordance with Section 2(a), the Reporting Delegate will notify the Client as soon as reasonably practicable and the Client will be entitled to report such Relevant Data to a Trade Repository or to appoint a third party to make such report on such Client's behalf. Other than in this instance or as otherwise agreed between the parties in writing, the Client will not report or arrange the reporting of the Relevant Data to a Trade Repository and will notify the Reporting Delegate immediately if it has reported or arranged the reporting of the Relevant Data to a Trade Repository other than in accordance with this provision.

[(e) If the Client provides Counterparty Data in the form of Static Data pursuant to Section 2(b)(i), the Client agrees and acknowledges that the provision of such Static Data, unless otherwise agreed between the parties in writing, is subject to the restrictions and the effectiveness grace period set out in the [Election Schedule]/[operational and procedural reporting conditions set out in Schedule [●] (*Operational and Procedural Provisions*)]³.]

[(f) [The Reporting Delegate will be under no obligation in respect of this Agreement until it has received from the Client, in form and substance satisfactory to the Reporting Delegate, the documentation listed in Schedule [●] and has notified the Client of such.] [The parties agree they are bound by the

² Include if the Reporting Delegate is willing to accept data in this form and, if so, consider Section 2(e) and the related definition and additional Schedule.

³ It may be that such restrictions/conditions are best included in the operational and procedural reporting conditions that the Reporting Delegate may wish to specify in accordance with Section 2(f).

operational and procedural reporting conditions set out in Schedule [●] (*Operational and Procedural Provisions*).]]

3. Correction of Errors

(a) Notwithstanding Section 3(b) immediately below, the Client acknowledges and agrees that the Reporting Delegate is not obliged to discover errors in or check the accuracy, authenticity or completeness, of any Relevant Data, whether that information derives from the Client or any other person (including without limitation any trading venue, central counterparty or similar financial market infrastructure but excluding the Reporting Delegate and each Reporting Delegate Affiliate).

(b) Subject to Section 3(a) immediately above, if either party becomes aware of a material error in any Relevant Data reported to a Trade Repository in accordance with this Agreement, it will notify the other party if required by and otherwise in accordance with [the operational and procedural reporting conditions set out in Schedule [●] (*Operational and Procedural Provisions*)] and both parties will use reasonable efforts, acting in good faith and a commercially reasonable manner, to resolve such error.

4. Relevant Trade Repository

(a) The "*Relevant Trade Repository*" is, in respect of a Relevant Transaction and unless otherwise agreed between the parties in writing:

- (i) a Trade Repository specified in Paragraph 4 (*Relevant Trade Repository*) of the Election Schedule;
- (ii) if the Reporting Delegate is not permitted to submit the Relevant Data to any such Trade Repository by the Reporting Deadline, the Trade Repository selected by the Reporting Delegate; or
- (iii) if, in accordance with Article 9(3) of EMIR, no Trade Repository is available to record the Relevant Data, ESMA,

as determined by the Reporting Delegate in its sole and absolute discretion.

[(b) The Reporting Delegate will notify the Client of each Relevant Trade Repository determined under Section 4(a)(ii) and (iii) to which it submits Relevant Data within [●] business days after such determination.]

5. Use of Third Parties

(a) The parties agree that the Reporting Delegate may utilise the services of a Third Party Service Provider to facilitate the submission of Relevant Data or other performance by the Reporting Delegate of its obligations under this Agreement (including but not limited to any platform, system, interface or other technology developed by any such Third Party Service Provider for such purpose). If the Reporting Delegate appoints a Third Party Service Provider, it will notify the Client of such appointment as soon as reasonably practicable. Where the Reporting Delegate has discretion in selecting a Third Party Service Provider, it will use reasonable care in the selection of the Third Party Service Provider [and in the on-going monitoring by the Reporting Delegate of the services provided by such Third Party Service Provider in connection with this Agreement]⁴.

⁴ Depending on the type of Third Party Service Provider used, the parties may want to consider further language relating to the level of service provided by the Third Party Service Provider.

(b) Where the Third Party Service Provider is an affiliate of the Reporting Delegate, the provisions of Sections 8 (*Liability*), 10 (*Indemnity*) and 11 (*Confidentiality Waiver*) apply in respect of such Third Party Service Provider as if such Third Party Service Provider was the Reporting Delegate.

6. [Reserved]

[Placeholder]

7. Client Acknowledgment

The Client acknowledges and agrees that:

(a) the Client remains solely responsible and liable for (i) submission of all data subject to the Reporting Obligation which is not included in the Relevant Data; and (ii) compliance with the Client's Reporting Obligation generally;

(b) any submission by the Reporting Delegate of Relevant Data under this Agreement is made with a view to facilitating the Client's reporting of data pursuant to the Reporting Obligation and is independent of any Reporting Obligation that the Reporting Delegate or any Reporting Delegate Affiliate may or may not be subject to;

(c) where the Reporting Delegate is not itself subject to the Reporting Obligation, any submission by the Reporting Delegate of Relevant Data is solely for the purpose of fulfilling its obligations under this Agreement;

(d) the Reporting Delegate will not be required to provide any services or otherwise perform under this Agreement to the extent any failure by it to provide services or otherwise perform is due to a breach of this Agreement by, or other act or omission of, the Client, any Relevant Trade Repository or any Third Party Service Provider;

(e) without prejudice to any other agreement the Client may have with any Relevant Trade Repository or any Third Party Service Provider, the Client will not have recourse under or in relation to this Agreement against any Relevant Trade Repository or any Third Party Service Provider in respect of any Relevant Data submitted under this Agreement or any other activities contemplated by this Agreement; and

(f) the Reporting Obligation and, accordingly, the service the Reporting Delegate provides under this Agreement, remain at all times subject to change as a result of further regulatory developments and guidance.

8. Liability

(a) The Reporting Delegate shall, at all times, perform its obligations and exercise discretion under this Agreement with reasonable care, provided that the Reporting Delegate shall not be required to do or cause to be done anything which (i) is not permitted or is otherwise contrary to or inconsistent with the operating procedures of any Third Party Service Provider or any Relevant Trade Repository (including any decision by a Third Party Service Provider or any Relevant Trade Repository not to permit the Reporting Delegate to submit Relevant Data in accordance with the terms of this Agreement); or (ii) is contrary to any law, rule or regulation or the Reporting Delegate is otherwise prevented from doing by any law, rule or regulation.

(b) Notwithstanding any other provision of this Agreement but subject to the remaining provisions of this Section 8 (*Liability*), the Reporting Delegate, each Reporting Delegate Affiliate and the directors, officers, employees, contractors and agents of the Reporting Delegate and each Reporting Delegate Affiliate

shall not have any liability to the Client (or any person claiming under or through it) whether in contract, tort (including negligence), breach of statutory or regulatory duty or otherwise, for:

- (i) any Losses arising directly from, or in connection with:
 - (1) the Reporting Delegate's provision of, or the Client's use of, the services agreed to be provided by the Reporting Delegate under this Agreement;
 - (2) any acts, omissions or failures of any third party, including but not limited to any Third Party Service Provider or a Relevant Trade Repository (including any decision by a Third Party Service Provider or a Relevant Trade Repository not to permit the Reporting Delegate to submit Relevant Data via the Third Party Service Provider or to a Relevant Trade Repository on behalf of the Client);
 - (3) the Reporting Delegate's performance of its obligations or exercise of its rights under this Agreement (including, without limitation, the rights of the Reporting Delegate under Section 2(c) and/or the use by the Reporting Delegate of a platform, system, interface or other technology provided by any Third Party Service Provider);
 - (4) the failure of any platform, system, interface or other technology, including any internal platform, system, interface or other technology, which the Reporting Delegate uses or intends to use in the performance of its obligations or exercise of its rights under this Agreement; or
 - (5) a third party accessing or intercepting any information or data of the Client,

except⁵ to the extent that such Losses are due to the [gross] negligence, wilful default or fraud of the Reporting Delegate, any Reporting Delegate Affiliate or the directors, officers, employees, contractors or agents of the Reporting Delegate or each Reporting Delegate Affiliate; or

(ii) any indirect or consequential loss or damage or for any direct or indirect loss of business, profits, anticipated savings or goodwill.

(c) The parties agree that this Section 8 (*Liability*) represents a fair and equitable position. Nothing in this Agreement will exclude or limit any duty or liability which may not be excluded or limited under applicable law or regulation.

9. Force Majeure

If the Reporting Delegate is prevented, hindered or delayed from or in performing any of its obligations under this Agreement as a result of a Force Majeure Event, such obligation(s) shall be suspended for so long as that Force Majeure Event continues.

10. Indemnity

The Client agrees to indemnify and hold harmless each of the Reporting Delegate, each Reporting Delegate Affiliate and the directors, officers, employees, contractors and agents of the Reporting Delegate and each Reporting Delegate Affiliate from and against any and all Losses incurred by or awarded against them arising from or in connection with:

⁵ The Reporting Delegate may wish to include an appropriately restricted cap on liability.

- (a) any claim or action brought by any third party to the extent that such claim or action arises out of or in connection with or is caused, directly or indirectly, by the activities of the parties contemplated by this Agreement;
- (b) any information provided to the Reporting Delegate and/or each Reporting Delegate Affiliate by the Client, including but not limited to all information included in any Relevant Data made known to the Reporting Delegate and/or each Reporting Delegate Affiliate by the Client; or
- (c) any regulatory or investigative inquiries or information subpoenas which arise out of or in connection with the activities of the parties contemplated by this Agreement,

except to the extent that such Losses are the direct result of:

- (i) the [gross] negligence, wilful default or fraud of the Reporting Delegate or its directors, officers, employees, contractors or agents; or
- (ii) the [gross] negligence, wilful default or fraud of any Reporting Delegate Affiliate or its directors, officers, employees, contractors or agents.

11. Confidentiality Waiver

The following provision(s) apply if stated to apply in the Election Schedule.

- (a) Notwithstanding anything to the contrary in this Agreement or in any non-disclosure, confidentiality or other agreement between the parties, each party hereby consents to the disclosure of information:
 - (i) to the extent required or permitted under, or made in accordance with, the provisions of EMIR and any applicable supporting law, rule or regulation ("**EMIR and Supporting Regulation**") which mandate reporting and/or retention of transaction and similar information or to the extent required or permitted under, or made in accordance with, any order or directive in relation to (and including) EMIR and Supporting Regulation regarding reporting and/or retention of transaction and similar information issued by any authority or body or agency in accordance with which the other party is required or accustomed to act and also to the extent required in accordance with the terms of this Agreement as determined by the Reporting Delegate in its sole and absolute discretion ("**Reporting Requirements**"); or
 - (ii) to and between the other party's head office, branches or affiliates, or any persons or entities who provide services to such other party or its head office, branches or affiliates, in each case, in connection with such Reporting Requirements.

Each party acknowledges that pursuant to EMIR and Supporting Regulation, regulators require reporting of trade data to increase market transparency and enable regulators to monitor systemic risk to ensure safeguards are implemented globally.

Each party further acknowledges that disclosures made pursuant hereto may include, without limitation, the disclosure of trade information including a party's identity (by name, address, corporate affiliation, identifier or otherwise) to any Trade Repository or one or more systems or services operated by any such trade repository ("**TR**") and any relevant regulators (including without limitation, ESMA and national regulators in the European Union) under EMIR and Supporting Regulation and that such disclosures could result in certain anonymous transaction and pricing data becoming available to the public. Each party further acknowledges that, for purposes of complying with regulatory reporting obligations, a party may use a third party service provider to transfer trade information into a TR and that a TR may engage the services of a

global trade repository regulated by one or more governmental regulators. Each party also acknowledges that disclosures made pursuant hereto may be made to recipients in a jurisdiction other than that of the disclosing party or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for data as the counterparty's home jurisdiction. For the avoidance of doubt, (1) to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for purposes of such law; (2) any agreement between the parties to maintain confidentiality of information contained in this agreement or in any non-disclosure, confidentiality or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the Reporting Requirements as set out herein; and (3) nothing herein is intended to limit the scope of any other consent to disclosure separately given by each party to the other party.

The consenting party represents and warrants that any third party to whom it owes a duty of confidence in respect of the information disclosed has consented to the disclosure of that information.

(b) Notwithstanding anything to the contrary in this Agreement or in any non-disclosure, confidentiality or similar agreement between the parties, each party hereby consents to the disclosure of information to the extent required by EMIR and any applicable supporting law, rule or regulation which mandate reporting and/or retention of transaction and similar information [and also to the extent required in accordance with the terms of this Agreement as determined by the Reporting Delegate in its sole and absolute discretion] (the "**Reporting Requirements**"). Each party acknowledges that disclosures made pursuant to this provision may include, without limitation, the disclosure of trade information including a party's identity (by name, identifier or otherwise) to any trade repository registered in accordance with Article 55 of EMIR or[, if no trade repository so registered can accept the information to be reported to it under the Reporting Requirements,] recognised in accordance with Article 77 of EMIR (each, a "**TR**") and relevant regulators and that such disclosures could result in certain anonymous transaction and pricing data becoming available to the public. Each party further acknowledges that, for purposes of complying with regulatory reporting obligations, a TR may engage the services of a global trade repository regulated by one or more governmental regulators, provided that such regulated global trade repository is subject to comparable confidentiality provisions as is a TR. For the avoidance of doubt, to the extent that applicable non-disclosure, confidentiality, bank secrecy or other law imposes non-disclosure requirements on transaction and similar information required to be disclosed pursuant to the Reporting Requirements but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for purposes of such other applicable law. [Each party acknowledges that disclosures made pursuant hereto may be made to recipients in a jurisdiction other than that of the disclosing party or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for data as the disclosing party's home jurisdiction.]

(c) The confidentiality waiver stated in the Election Schedule forms part of this Agreement.

12. Amendment and Termination

(a) The Reporting Delegate may, by written notice to the Client, amend (in whole or part) this Agreement and any operational and procedural documents or processes in respect of reporting delegated under this Agreement to accommodate any change in law, rule, regulation or operational requirement but any such amendment will only be effective if not rejected by the Client by written notice. If:

- (i) the Client rejects an amendment by written notice, this Agreement will terminate without such amendment taking effect⁶; or
- (ii) the Client does not reject an amendment by written notice, the Client will be deemed to have agreed to such amendment to this Agreement.

The timings and other requirements, if any, in respect of this provision (including, without limitation, in respect of termination) are as set out in the Election Schedule. Notices delivered in respect of this Section 12(a) are subject to Section 15 (*Notices*).

(b) Either party may terminate this Agreement by giving written notice to the other party in accordance with Section 15 (*Notices*). Such termination will be effective at the expiry of the notice period, if any, specified for this purpose in the Election Schedule.

(c) The provisions of Sections 8 (*Liability*), 10 (*Indemnity*), 11 (*Confidentiality Waiver*), 14 (*Miscellaneous*), 17 (*Governing Law and Jurisdiction*), as well as this Section 12 (*Amendment and Termination*) shall survive the expiration or termination of this Agreement.

13. Representations

Each party makes the following representations to the other party on the date this Agreement is entered into and, in the case of the representations in Sections 13(a)(iii), (d) and (e), at all times until the termination of this Agreement:

(a) *Basic Representations*

- (i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing.
- (ii) **Powers.** It has the power to execute this Agreement, to deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary action to authorise such execution, delivery and performance.
- (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
- (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
- (v) **Obligations Binding.** Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

⁶ The parties may wish to consider further amendments such as permitting the Reporting Delegate to withdraw a rejected amendment within a set period.

- (b) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement.
- (c) **No Agency.** It is entering into this Agreement as principal and not as agent of any person or entity.
- (d) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into this Agreement, it being understood that information and explanations related to the terms and conditions of this Agreement will not be considered investment advice or a recommendation to enter into this Agreement. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of this Agreement.
- (e) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of this Agreement.

14. Miscellaneous

- (a) **Consideration.** Each party hereby agrees and acknowledges that it is entering into this Agreement in consideration of (i) the mutual representations, warranties and covenants contained in this Agreement; (ii) maintaining a trading relationship with a counterparty with which it can enter into further Relevant Transactions; and (iii) other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties).
- (b) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.
- (c) **Amendments.** Unless otherwise expressly permitted by another provision of this Agreement, an amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of e-mails or by an exchange of electronic messages on an electronic messaging system.
- (d) **Partial Invalidity.** If, at any time, any term of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, this will not affect:
- (i) the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or
 - (ii) the legality, validity or enforceability in other jurisdictions of that or any other term of this Agreement.
- (e) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(f) **Counterparts.** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(g) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege, whether in respect of a dispute between the parties or otherwise. Relevant Data reported to a Trade Repository in accordance with this Agreement is provided without prejudice to any present or future dispute between the parties in relation to such Relevant Data.

(h) **Third Party Rights.** Other than in respect of each Reporting Delegate Affiliate and each other affiliate of a Reporting Delegate and the directors, officers, employees, contractors and agents of the Reporting Delegate, each Reporting Delegate Affiliate and each other affiliate of Reporting Delegate and the rights that such entities or people are granted under this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement. Notwithstanding any term of this Agreement, the consent of any person who is not a party to this Agreement is not required to rescind or vary this Agreement at any time. For the avoidance of doubt, where an Agent is validly acting on behalf of one or more Clients, such action is considered to be the action of each relevant Client so is not barred by the exclusion of third party rights in this provision.

(i) **Transfer.** Neither party may transfer or assign any interest or obligation in respect of this Agreement without the prior written consent of the other party. Any purported transfer that is not in compliance with this Section 14(i) will be void.

15. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner described below to the address or number or in accordance with the electronic messaging system or e-mail details provided in the Election Schedule (as may be amended in accordance with Section 15(b)) and will be deemed effective as indicated:

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
- (v) if sent by electronic messaging system, on the date it is received; or
- (vi) if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a business day with respect to the receiving party or that communication is delivered (or attempted) or received, as applicable, after 4 p.m. local time on a business day with respect to the receiving party, in which case that

communication will be deemed given and effective on the first following day that is a business day with respect to the receiving party.

(b) **Change of Details.** Either party may by written notice to the other change the address, telex or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

16. Execution as Agent

If this Agreement is executed by an Agent acting for and on behalf of one or more Clients:

(a) each Client will be bound as principal to this Agreement and references herein to a "party" or "parties" will be to the Client and the Reporting Delegate, as appropriate, and not to the Agent unless expressly stated to the contrary;

(b) if there is more than one Client:

(i) this document evidences a separate Agreement between the Reporting Delegate and each Client as though a separate Agreement had been documented and executed between the Reporting Delegate and each Client. The obligations of each Client under this Agreement shall be several but not joint in respect of the obligations of any other Client and no Client shall, as a result of this Section 16 (*Execution as Agent*), be liable to the Reporting Delegate for the actions of any other Client; and

(ii) to the extent the elections in the Election Schedule vary between Clients, the Agent will ensure the variation of elections is communicated to the Reporting Delegate in form and substance satisfactory to the Reporting Delegate; and

(c) the Agent represents to the Reporting Delegate that the Agent has the power and authority to execute and deliver this Agreement and to perform its obligations thereto on behalf of its Client(s), the Agent has taken all necessary action to authorise such execution, delivery and performance and the Agent has in its files a written agreement or power of attorney authorising it to act on the Client's behalf in respect thereof.

17. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

(b) **Jurisdiction.**

With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement ("**Proceedings**"), each party irrevocably:

(i) submits to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court; and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court;

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

(iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Election Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Sections 15(a)(i), 15(a)(iii) or 15(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

18. Definitions and Construction

(a) Definitions

For the purposes of this Agreement:

"CCP" means any central counterparty authorised under Article 14 of EMIR or recognised under Article 25 of EMIR.

"CCP Service" means in respect of a CCP, an over-the-counter derivative clearing service offered by such CCP.

"Cleared" means, in respect of a Relevant Transaction, that such Relevant Transaction has been or will be submitted (including where details of such Relevant Transaction are submitted) to a CCP for clearing in a relevant CCP Service and that such CCP has or is to become a party to a resulting or corresponding transaction, as applicable, pursuant to such CCP's Rule Set.

"Common Data" means, with respect to a Relevant Transaction, the information corresponding to the fields listed in Table 2 (*Common Data*) of the Reporting Annexes, as determined by the Reporting Delegate in its sole and absolute discretion.

"Convention Court" means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

"Counterparty Data" means, with respect to a Relevant Transaction and a party, the information required to complete the fields set out in Table 1 (*Counterparty Data*) of the Reporting Annexes.

"Derivative" has the meaning given to it in Article 2(5) of EMIR.

"Election Schedule" means Schedule 1 (*Election Schedule*) to this Agreement.

"EMIR" means Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories dated 4 July 2012.

"ESMA" means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

"European Union" means the economic and political union established in 1993 by the Maastricht Treaty, with the aim of achieving closer economic and political union between member states that are primarily located in Europe.

"Exchange-Traded Derivative" means a Derivative the execution of which takes place on a regulated market within the meaning of Article 4(1)(14) of Directive 2004/39/EC or on a third-country market considered equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC.

"Force Majeure Event" means any event which occurs due to reasons outside of the Reporting Delegate's control (including, but not limited to, any natural, systems, facilities, technological, political or other cause and whether in respect of a Relevant Trade Repository, Third Party Service Provider, Reporting Delegate Affiliate, Reporting Delegate, third party or otherwise) and which cannot be overcome by reasonable diligence and/or without unreasonable expense solely by the Reporting Delegate.

"Losses" means all losses, damages, fines, penalties, costs, expenses or other liabilities (including legal and other professional fees).

"OTC Derivative" means a Derivative that is not an Exchange-Traded Derivative.

"Proceedings" has the meaning given to it in Section 17 (*Governing Law and Jurisdiction*).

"Process Agent" has the meaning given to it in the Election Schedule.

"Relevant Data" has the meaning given to it in the Election Schedule.

"Relevant Trade Repository" has the meaning given to it in Section 4 (*Relevant Trade Repository*).

"Relevant Transaction" has the meaning given to it in the Election Schedule.

"Reporting Annexes" means (i) the Annex to the Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 and published 23 February 2013 in the Official Journal of the European Union; and (ii) the Annex to the Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 and published 21 December 2012 in the Official Journal of the European Union.

"Reporting Deadline" means the deadline for reporting the Relevant Transaction as specified in Article 9 of EMIR and as determined by the Reporting Delegate in its sole and absolute discretion.

"Reporting Delegate Affiliate" has the meaning given to it in the Election Schedule.

"Reporting Obligation" means the obligation to report details of derivative contracts that are concluded, modified or terminated to a trade repository or ESMA in accordance with Article 9 of EMIR.

"Rule Set" means, with respect to a CCP, the relevant rules, conditions, procedures, regulations, standard terms, membership agreements, collateral addenda, notices, guidance, policies or other such documents promulgated by the relevant CCP and amended and supplemented from time to time.

"**Static Data**" means Counterparty Data for the fields set out in Schedule [●] (*Static Data*), as may be amended by the parties from time to time by written agreement.

"**Third Party Service Provider**" means a third party including, without limitation, a CCP, appointed by the Reporting Delegate to submit Relevant Data by the Reporting Deadline to a Relevant Trade Repository.

"**Trade Repository**" means any entity registered as a trade repository in accordance with Article 55 of EMIR or recognised as a trade repository in accordance with Article 77 of EMIR.

(b) Construction

(i) Unless this Agreement expressly provides to the contrary, any reference in this Agreement to:

(1) a party or any other person includes its successors in title, permitted assigns and permitted transferees;

(2) an amendment includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and amended will be construed accordingly;

(3) a person includes any individual, firm, company, corporation, government, state or agency of a state or any association or body (including a partnership, trust, fund, joint venture or consortium), or other entity (whether or not having separate legal personality);

(4) a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which persons to which it applies are generally accustomed to comply) of any governmental, inter-governmental or supranational body, agency or department, or of any regulatory, self-regulatory or other authority or organisation; and

(5) a provision of law is a reference to that provision as amended and includes any subordinate legislation.

(ii) A reference to a "Section" is a reference to a section of this Agreement, a reference to a "Schedule" is a reference to a schedule to this Agreement and a reference to a "Paragraph" is a reference to a paragraph of the Election Schedule.

(iii) The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

(iv) For the avoidance of doubt, the meanings of the terms "contractor" and "agent" as used in Sections 8 (*Liability*) and 10 (*Indemnity*) do not include any Third Party Service Provider.

THIS AGREEMENT has been executed by the parties on the respective dates specified below with effect from the date stated at the beginning of this Agreement.

SIGNATORIES

.....

Reporting Delegate

.....

[**Client**]/[**Agent** acting for and on behalf of the Client(s) listed in Schedule [●] (*List of Clients*) to this Agreement [or otherwise identified to the Reporting Delegate's satisfaction].]

.....

((Pre-)LEI number, if available)

.....

((Pre-)LEI number, if available)

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Schedule 1

Election Schedule

(1) Relevant Transactions

"Relevant Transaction" means, unless otherwise agreed between the parties in writing, each transaction (a) to which the Client is party; (b) that is subject to the Reporting Obligation as determined by the Reporting Delegate in its sole and absolute discretion; and (c) that satisfies the following characteristics⁷:

Transaction type	Reporting Delegate is	Transaction type	Reporting Delegate Affiliate is
<input type="checkbox"/> OTC Derivative other than a Cleared OTC Derivative	Client's counterparty	<input type="checkbox"/> OTC Derivative other than a Cleared OTC Derivative	Client's counterparty
<input type="checkbox"/> Cleared OTC Derivative	<input type="checkbox"/> Client's original counterparty (executing broker) <input type="checkbox"/> Client's clearing broker	<input type="checkbox"/> Cleared OTC Derivative	<input type="checkbox"/> Client's original counterparty (executing broker) <input type="checkbox"/> Client's clearing broker
<input type="checkbox"/> Exchange-Traded Derivative	Client's clearing broker ⁸	<input type="checkbox"/> Exchange-Traded Derivative	Client's clearing broker ⁹

[If the Reporting Delegate or a Reporting Delegate Affiliate is acting as the executing broker in respect of a transaction, such transaction will cease to be a Relevant Transaction if and at the point in time when neither the Reporting Delegate nor any Reporting Delegate Affiliate is a party to the transaction with the Client.]¹⁰

Only transactions entered into [or modified] after _____ will be Relevant Transactions.

[Any other qualifying criteria for a transaction to be a Relevant Transaction (such as class: credit; equity; etc): _____.]

⁷ The parties may wish to tailor this section, and indeed all and any part of the Election Schedule, to reflect their preferences as to the reporting service to be provided including, for example, different start dates for reporting of different types of trade, exclusion of certain trade types or trades that are reported through other services, that certain sets of trades will only be reported once the Client has completed other specified actions, such as signing up to use a given third party service, or specific requirements for back-loading. This type of detail could also be included in an operational or procedural schedule.

⁸ The parties may wish to consider whether the initial exchange match be treated as a contract subject to reporting.

⁹ As immediately above.

¹⁰ This sentence is for use where the Reporting Delegate is offering a reporting service covering trades where the Reporting Delegate or a Reporting Delegate Affiliate is executing broker but neither the Reporting Delegate nor any Reporting Delegate Affiliate is the clearing broker and the Reporting Delegate is concerned it will not receive the information that the Reporting Delegate needs in order to be able to provide the reporting service, such as updates to reported information or information regarding the modification or termination of the transaction. If an executing broker still wishes to offer a reporting service covering such events that occur after the trade is given up, it should consider how it will get the information it needs and also make any consequential amendments to this Agreement. Alternatively, the Client may wish to delegate such reporting to its clearing broker.

[Where this Agreement has been executed by an Agent for and on behalf of one or more Clients, Relevant Transactions will only include transactions executed by the Agent for and on behalf of such Clients.]¹¹

(2) Relevant Data

"Relevant Data" means, in respect of each Relevant Transaction and unless otherwise agreed between the parties in writing:

the Counterparty Data the Common Data

[however, the following data does not form part of the Relevant Data and will not be reported by the Reporting Delegate: *[Insert list of data points, if any, that the Reporting Delegate will not report, such as, in the Counterparty Data, fields 17-21 (valuation) and 22-26 (collateral value).]*]

(3) Reporting Delegate Affiliate

"Reporting Delegate Affiliate" means each of: *[State names/identities. If none, state none.]*.

(4) Relevant Trade Repository

Subject to and in accordance with Section 4 (*Relevant Trade Repository*), the Relevant Data should be reported to a Trade Repository listed below or such other Trade Repository as the parties may agree in writing:

*[insert TR name]*¹² *[insert TR name]* *[insert TR name]* *[insert TR name]*

(5) Amendment and Termination

(a) **Notice Periods in Respect of Amendments.** With reference to Section 12(a):

(i) amendments will be effective on the later of the date specified in the relevant notice and the date that is _____ calendar days following the date on which the notice of amendment is deemed to be effective in accordance with Section 15 (*Notices*);

(ii) a rejection notice from the Client will only be effective if delivered to the Reporting Delegate on or before the date that is _____ calendar days following the date on which the amendment notice is deemed to be effective in accordance with Section 15 (*Notices*); and

(iii) if the Client delivers a rejection notice within the period specified in (ii) immediately above, this Agreement will terminate on the date that is _____ calendar days following the date on which the rejection notice is deemed to be effective in accordance with Section 15 (*Notices*), unless otherwise agreed between the parties.

(b) **Termination Notice Period.** With reference to Section 12(b), the notice period for termination notices is _____ calendar days¹³ following the date on which the termination notice is deemed to be effective in accordance with Section 15 (*Notices*).

¹¹ Optional language for use where an Agent only has authority to act on behalf of a Client in respect of certain transactions. For example, this may occur where a number of investment managers act severally for a single fund.

¹² If more than one trade repository is listed, parties may want to specify certain trade repositories for particular trade types.

¹³ The parties may wish to specify different notice periods for certain events, such as a shorter or zero day period in the event of counterparty insolvency.

(6) Contact Information

With reference to Section 15 (*Notices*), the contact details for all communications¹⁴ in connection with this Agreement are:

- (a) with respect to the Reporting Delegate, _____;
and
- (b) with respect to the Client, _____,

in each case, as may be amended in accordance with this Agreement.

(7) Confidentiality Waiver

Section 11(a) does does not apply to this Agreement.

Section 11(b) does does not apply to this Agreement.

Section 11(c) does does not apply to this Agreement and, if marked in this sentence as applicable, the confidentiality waiver is [*insert the text of the desired confidentiality waiver here or include a cross-reference here and attach the provision*].

(8) Process Agent

The Reporting Delegate appoints as its Process Agent: _____.

The Client appoints as its Process Agent: _____.

[(9) Static Data

With reference to Section 2(e), the Client:

- (a) is not permitted to update the Static Data more frequently than once every _____;
and
- (b) acknowledges and agrees that the Reporting Delegate is not obliged to use the Static Data until the _____ business day following receipt of such Static Data from the Client.]

¹⁴ One or both parties may wish to specify different contact information for certain notices, such as termination notices.

[Schedule [●]]

[Static Data]

[To be inserted: the list of fields of Counterparty Data which are expected to change infrequently or at least not on a trade by trade basis.]

[Schedule [●]]

[Operational and Procedural Provisions]

[If included (see Section 2(f)), these can be attached here.]

[Schedule [●]]

[List of Clients]

[With reference to Section 16 (*Execution as Agent*) of this Agreement, the Agent is acting for and on behalf of the Clients listed in this Schedule, as amended from time to time by the written agreement of the parties.]

[This can be included here if an Agent is signing on behalf of multiple Clients (see the parties section on page 1 and the execution blocks).]