



General Terms and Conditions of Business (English Law) SIX x-clear Ltd

for Clearing Services

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General Terms and Conditions of Business (English Law) for Clearing Services

Table of contents

1.0	Definitions and interpretation	8
1.1	Definitions and references	8
1.2	Chapter and clause headings	21
1.3	References	21
1.4	Further interpretation rules	22
1.5	Non-applicability of Contracts Act	22
2.0	Membership	23
2.1	Eligible institutions	23
2.2	Conditions for Membership	23
2.3	Additional conditions and conditional approval	25
2.4	Evidencing documentation, representation and warranty	25
2.5	Admission to Membership	25
2.6	Extension of Membership	26
3.0	Suspension	26
3.1	Reasons for suspension	26
3.2	Consequences of suspension	26
3.3	Continuing consequences of suspension	27
3.4	Notification of suspension	27
4.0	Termination of Membership	27
4.1	Entitlement to terminate	27
4.2	Reasons for termination by X-CLEAR	28
4.3	Reasons of termination by Member	28
4.4	Continuing consequences of termination	28
4.5	Further continuing consequences of termination	28
4.6	Consequences regarding Single Contracts	29
4.7	Notification of termination	29
5.0	Regulations with regard to the NCM	29
5.1	Relationship of X-CLEAR with the NCM	29
5.2	Relationship of the GCM with the NCM	30
5.3	Contractual obligations of the GCM vis-à-vis X-CLEAR	30
6.0	Conditions for Clearing Services	31
6.1	Trading Platform Products and Trading Platforms	31
6.2	Conditions	31
7.0	Obligations of Member	32
7.1	Representations and warranties	32

General Terms and Conditions of Business (English Law) for Clearing Services

7.2	Further representations and warranties	34
8.0	Maintenance of records by Member	35
8.1	General rule	35
8.2	Copies	35
9.0	Reporting requirements of Member	35
10.0	Eligibility of Trading Platform Products	37
11.0	Formation of Single Contracts	37
11.1	General	37
11.2	Open Offer by X-CLEAR	37
11.3	Open Offer in case of election of a Co-CCP by counterparty	38
11.4	Novation in case of Members	38
11.5	Novation in case of a Member and a member of a Co-CCP	39
11.6	Trading days	39
12.0	Off-Order-Book-Trades	39
13.0	Reliance on information	39
14.0	Avoidance of Single Contracts and suspension of Clearing Services	40
14.1	Automatic avoidance of Single Contracts	40
14.2	Election of avoidance and suspension by X-CLEAR	40
14.3	Cancellation of Inter-CCP Contracts	42
14.4	Consequences of cancellation	42
14.5	Notification of cancellation	43
15.0	Terms of Single Contracts	43
15.1	Governing law	43
15.2	Intervention by Governmental Authorities	43
15.3	Acting as principal	43
15.4	Third parties	43
15.5	Liabilities and obligations of X-CLEAR	44
15.6	Risks, rights and obligations	44
15.7	Settlement	44
15.8	Contract Terms	44
15.9	Interpretation rule based on Companies Act	45
15.10	Indemnification	45
15.11	Precedence of Contractual Relationship	45
15.12	Representations and warranties	45

General Terms and Conditions of Business (English Law) for Clearing Services

16.0	Permissible Collateral	46
16.1	Provision of Permissible Collateral	46
16.2	Administration, proceeds and corporate actions	46
17.0	Taxation of Permissible Collateral	47
18.0	Realisation of Permissible Collateral and X-CLEAR's Dedicated Capital Contribution	48
18.1	General rules	48
18.2	Order of realisation of collateral ("Waterfall of Resources")	49
18.3	X-CLEAR's Dedicated Capital Contribution	49
18.4	X-CLEAR's NDL Own Contribution	50
18.5	Replenishment of the Default Fund Segment	51
18.6	Non-Default Loss Allocation (NDLA)	51
18.7	Purpose of collateralisation	51
19.0	Further rules common to Permissible Collateral	51
19.1	Representations and warranties by Member	51
19.2	Representations and warranties by X-CLEAR	52
19.3	Liabilities of Member	52
19.4	Application of Companies Act	52
19.5	Application of EC Collateral Regulations and EC Collateral Directive	53
20.0	Account structures	53
21.0	Settlement	54
21.1	Provision of transaction details	54
21.2	Confirmation and places of Settlement	54
21.3	Approved Settlement System	54
21.4	No liability of X-CLEAR	54
21.5	Holding of sufficient Trading Platform Products or cash	55
21.6	Power of attorney to NCM	55
21.7	Settlement agent	55
21.8	Settlement netting	55
22.0	Late Settlement	55
22.1	Buy-in	55
22.2	Consequences of buy-in	56
22.3	Exclusive governance by Contractual Relationship	56
23.0	Liability	56
23.1	General interpretation rules	56
23.2	Delayed performance by X-CLEAR	57

General Terms and Conditions of Business (English Law) for Clearing Services

23.3	Liability of X-CLEAR	57
23.4	Responsibility of Member	57
23.5	Arrangements with Affiliate of X-CLEAR	58
23.6	Limitation of liability of X-CLEAR	58
23.7	Liability of Second Member	60
23.8	Application of liability	60
23.9	Interpretation of liability-related provisions	60
24.0	Indemnity	61
24.1	Indemnity of Member	61
24.2	Notification and assignment	61
25.0	Confidentiality and data protection	62
25.1	General rule	62
25.2	Exceptions	62
25.3	Assurances by Member	63
25.4	Transfer of Personal Data	64
25.5	Data outsourcing by X-CLEAR	64
25.6	Interpretation according to United Kingdom Data Protection Act	64
26.0	Market disorder	65
26.1	Measures	65
26.2	General rule in case of Event of Force Majeure	65
26.3	Consequences of Event of Force Majeure	65
27.0	Default of Member	66
27.1	General rule	66
27.2	Discretionary Events of Default	66
27.3	Mandatory Events of Default	67
27.4	Occurrence of Member Default or Technical Default	68
27.5	Measures by X-CLEAR upon Default	68
27.6	Members with more than one Partner ID	70
27.7	Netting for affiliated Members ("Group Netting Clause")	70
27.8	Excess proceeds of Close-out Procedure or Late Contribution	71
27.9	No waiver of entitlement	72
27.10	Application of Companies Act	72
28.0	Claims, liabilities and Margins of NCMs in the Default of the GCM	73
28.1	Pre-arranged solutions	73
28.1.1	Key principles and requirements	73
28.1.2	Options in case of individual client account segregation (individual segregation)	74

General Terms and Conditions of Business (English Law) for Clearing Services

28.1.3	Option in case of omnibus client account segregation (omnibus segregation)	75
28.2	Procedure if no pre-arranged solutions are in place	76
29.0	Default of X-CLEAR	77
29.1	Events of Default and Default	77
29.2	General rule	77
29.3	Close-out Procedure	77
30.0	Intellectual property rights	78
31.0	Finality	78
32.0	Charges and Fees	78
32.1	Payment obligations	78
32.2	Price List and monthly statement	79
32.3	Collection	79
33.0	Notifications	79
34.0	Extensions and waivers	80
34.1	Extension or waiver of acts	80
34.2	Extension of submission of information or making payments	80
34.3	No waiver of rights by X-CLEAR	80
35.0	Contractual basis	80
35.1	Contractual Relationship	80
35.2	Amendments to Contractual Relationship	80
35.3	Consultations	81
36.0	Dispute resolution	81
36.1	Addressees of complaints	81
36.2	Bilateral procedure of complaints	81
36.3	No evidential value	82
36.4	Appeal	82
37.0	Communications	82
37.1	Binding Information	82
37.2	Monitoring and review by the Member	82
37.3	Submission of documentation	83
37.4	Recordings	83
37.5	Effectiveness of communication	83
37.6	Responsibility for use of means of transport	83

General Terms and Conditions of Business (English Law) for Clearing Services

38.0	Provisions applicable to a Co-CCP (co-operating Central Counterparty)	84
39.0	Governing law and jurisdiction	84
39.1	Governing law	84
39.2	Jurisdiction	84
40.0	Annex 1: Formation of Single Contracts	85
41.0	Annex 2: GCM – NCM relationship	87
41.1	Regulations of the GCM/NCM Agreement	87
41.2	Order from the Back-up GCM to X-CLEAR with respect to porting	88
41.2.1	Example for an order pursuant to clause 28.1.2 lit. a:	88
41.2.2	Example for an order pursuant to clause 28.1.3:	88
42.0	Annex 3: Settlement Finality Provisions	90
42.1	Introduction	90
42.2	Definitions	90
42.3	Transfer Orders entering the System	94
42.4	Irrevocability of Transfer Orders	95
42.4.1	Securities Transfer Orders	95
42.4.2	Payment Transfer Orders	96
42.5	Duplication of Transfer Orders	96
42.6	Termination of Transfer Orders	96
42.7	Provision of Information	97
42.8	Notification of certain events	97
43.0	Annex 4: Specimen of Group Netting Clause according to clause 27.7 GTC	99

General Terms and Conditions of Business (English Law) for Clearing Services

1.0 Definitions and interpretation

1.1 Definitions and references

In these General Terms and Conditions (English Law) (the "GTC"), the following words and expressions shall have the following meanings:

"Account Operator" is the financial institution which operates the accounts as stated in the Clearing Terms;

"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 state, national, federal, supranational, regional, cantonal, municipal or other standard of a legitimate legislator or a legally responsible judiciary or supervisory authority that was issued in the form of a law, ordinance, regulation or any other official form; in particular, this includes any official regulatory decree of the competent financial supervisory authorities and the applicable accounting standards and principles;

"Approved Settlement System" means an officially regulated and supervised institution approved by X-CLEAR which provides Settlement and other related services in respect of Trading Platform Transactions;

"Back-up GCM/NCM Agreement" means an agreement between a Back-up GCM and an NCM pursuant to clause 28.1.2 lit. a;

"Bank of England" means the central bank of the United Kingdom, which has supervisory authority over X-CLEAR's designated system of payments and securities transfers under Settlement Finality Provisions (Annex 4);

"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 Hour" means an hour on which X-CLEAR is open for business (as communicated by X-CLEAR);

General Terms and Conditions of Business (English Law) for Clearing Services

"**Business Partner Specifications**" means the specifications of the technical infrastructure (such as information technology or communications) required to be met by Members as published by X-CLEAR on the website of SIX > [Securities Services Private](#) > Clearing from time to time;

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

"**Capital Adequacy Ordinance**" ("Eigenmittelverordnung für Banken und Effekthändler") of 1st June 2012 as referred to by the Financial Market Infrastructure Ordinance;

"**Central Counterparty**" means X-CLEAR, a Co-CCP (if any) or other Clearing Organisation 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 Trading Platform Transaction;

"**Clearing Services**" means the central counterparty, collateral, risk management and other related services provided in relation to Trading Platform Transactions;

"**Clearing Account**" means an account operated in accordance with clause 20.0 and the Clearing Terms and held with X-CLEAR in the name of the Member for the recording and tracking of claims and liabilities under Outstanding Contracts of this Member;

"**Clearing Notice**" means the notice from X-CLEAR to the Members which is designated accordingly and published on the website of SIX > Exchange & Services > Go to Securities Services > Clearing;

"**Clearing Organisation**" means any clearing house or organisation duly authorised, regulated, licensed or recognised under Applicable Laws in any jurisdiction, including, without limitation, any recognised clearing house, recognised overseas clearing house or similar entity;

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

"**Close-out Procedure**" means the procedure described in clause 27.5 let. b.;

"**Close-out Settlement Amount**" is the net amount (per currency) to be paid by the Defaulting Member or X-CLEAR pursuant to clause 27.5 let. b.;

General Terms and Conditions of Business (English Law) for Clearing Services

"Co-CCP" (co-operating Central Counterparty) means a Central Counterparty that is party to a Link Agreement with X-CLEAR and is co-providing Clearing Services in respect of a Trading Platform;

"Co-CCP Clearing Services", in relation to a particular Trading Platform Product or category of Trading Platform Products, means Clearing Services 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" (Co-CCP General Clearing Member) 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" (Co-CCP Individual Clearing Member) 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" (Co-CCP Non-Clearing Member) 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 hereunder, as the context may require, in the form published from time to time by the Co-CCP;

"Collateral Account" means a Securities account or a cash account under the legal ownership of X-CLEAR which is labelled with the name of the Member for the booking of Permissible Collateral of this Member and which is operated by and held with the Account Operator in accordance with the Financial Collateral Agreement, chapter 20.0 of these GTC and the Clearing Terms;

"Collateral Service Provider" is a financial institution (in particular a Central Securities Depository or bank) that was appointed and mandated by a Member, within the scope of the options set by X-CLEAR / for the purpose of providing Inter-CCP Collateral, to accept the Permissible Collateral of this Member / the Inter-CCP Collateral of X-CLEAR and to maintain the Collateral Account(s) held in the name of the Member / X-CLEAR;

"Contract for Clearing Services (English Law)" means the agreement governed by English law between X-CLEAR and the Member pursuant to which the Member agrees to be bound by the GTC and the Contractual Relationship;

General Terms and Conditions of Business (English Law) for Clearing Services

"**Contract Terms**" means the terms and conditions of a Single Contract as provided for in clause 15.0;

"**Contractual Relationship**" means, in relation to a Member, the contractual relationship between X-CLEAR and the Member constituted by and comprising the following documents:

- Contract for Clearing Services (English Law),
- Financial Collateral Agreement(s),
- General Terms and Conditions ("GTC"),
- Rules and Regulations
- any Single Contracts to which that Member is a party,

each of them as amended, updated or restated from time to time, as well as any other document given contractual force pursuant to the foregoing, and all in relation to the particular Trading Platform(s) in respect of which X-CLEAR provides Clearing Services to the Member;

"**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;

"**Dedicated Capital Contribution**" means the portion of X-CLEAR's own required capital as assessed pursuant to Swiss Applicable Law, which is one of the layers of Collateral as set forth in clause 18.2 *Order of realisation of collateral ("Waterfall of Resources")*; further information can be found in clause 18.3 *X-CLEAR's Dedicated Capital Contribution*;

"**Default**" is the status in which a Member is set pursuant to clause 27.4, or X-CLEAR is set pursuant to clause 29.1;

"**Default Day**" is the day on which the Default occurs pursuant to clause 27.4;

"**Default Fund Contribution**" means a contribution to the relevant Default Fund Segment made in accordance with the Financial Collateral Agreement, these GTC and the Contractual Relationship;

"**Default Fund Replenishment Contribution**" means a contribution for the replenishment of the relevant Default Fund Segment after an Extraordinary Default

General Terms and Conditions of Business (English Law) for Clearing Services

made in accordance with the Financial Collateral Agreement, these GTC and the Contractual Relationship;

"Default Fund Segment" means the default fund segment which is set up for the coverage of losses and expenditures which incurred to X-CLEAR as a consequence of a Member Default after a Close-out Procedure, and which a Member is assigned to based on its trading exposure to various asset classes and markets (cash markets, derivatives, securities lending and borrowing markets) and to which the Member must contribute Default Fund Contributions and which is used by X-CLEAR in accordance with the Financial Collateral Agreement and the order of realisation of collaterals pursuant to clause 18.2;

"Default Notice" shall have the meaning given to it in clause 27.4;

"Default Proceedings" means the actions and proceedings taken by X-CLEAR under its default rules;

"Default Rules" means all the GTC and other provisions of the Contractual Relationship which provide for the taking of action in the event of a 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;

"Defaulting Member" means a Member that has been declared to be in Default pursuant to clause 27.4;

"Default with Major Impact" means a Default of a Member which affects the relevant Default Fund Segment;

"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 Services 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;

General Terms and Conditions of Business (English Law) for Clearing Services

"**Event of Default**" has the meaning given to it in clauses 27.1 to 27.3 and 29.1;

"**Event of Force Majeure**" means any occurrence outside the control of X-CLEAR or the relevant 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 disabled state 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 a Member, of its 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;

"**Exceeding Drawdown**" means a loss which cannot be compensated by the relevant Default Fund Segment but necessitates a Top-up Contribution from the Member as a consequence of an Extraordinary Default of another Member;

"**Excess Collateral**" means any Intermediated Securities and/or cash which is transferred by the Member to X-CLEAR in excess of its requirement for the provision of Permissible Collateral as determined and called for by X-CLEAR;

"**Exchange**" means a regulated market as defined in Art. 26 ff FMIA, the markets in financial instruments directive (Directive 2004/39/EC) which is located in the EEA, Switzerland or any equivalent market located in a country or territory outside of the EEA or Switzerland;

"**Financial Collateral Agreement**" means the agreement between X-CLEAR and the Member for the collateralisation of Clearing Services;

"**FINMA**" means the Swiss Financial Markets Supervisory Authority;

"**FMI**" means a Financial Market Infrastructure in accordance with the FMIA and the NBO;

"**FMIA**" means the Swiss Financial Market Infrastructure Act of 19 June 2015;

"**FMIO**" means the Swiss Financial Market Infrastructure Ordinance of 25 November 2015;

General Terms and Conditions of Business (English Law) for Clearing Services

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

"**GCM**" (General Clearing Member) 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 authorised, exempt or otherwise regulated under Applicable Laws to deal in Trading Platform Products or, if so authorised or regulated, not a Trading Platform member), and/or trades of NCMs in accordance with these GTC;

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

"**GCM/Back-up GCM Agreement**" means an agreement between a GCM and a Back-up GCM pursuant to clause 28.1.3;

"**Governmental Authority**" means any federal, national, supranational, state, provincial, local or other government, government department, ministry, secretary of state, governmental or administrative authority, governmental 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 Organisations (including especially, without limitation, Swiss FINMA and SNB, ESMA, the Norwegian authorities and any Person given powers under the Applicable Laws of Switzerland, Norway or the EU or national European legislation);

"**GTC**" 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;

"**ICM**" (Individual Clearing Member) 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 authorised, exempt or otherwise regulated under the Applicable Laws to deal in Trading Platform Products or, if so authorised or regulated, not a Trading Platform member) in accordance with these GTC;

"**Indirect Member**" means either an NCM or an X-CLEAR Client;

General Terms and Conditions of Business (English Law) for Clearing Services

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

"Intellectual Property" means copyrights, 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 Collateral" is the collateral that X-CLEAR provides to the Co-CCPs for the exposure of the Co-CCPs against X-CLEAR arising from Inter-CCP Contracts not settled during a Business Day and/or at the end of a Business Day;

"Inter-CCP Contract" means the contract between X-CLEAR and a Co-CCP that arises when a Trading Platform Transaction involves a 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;

"Investment Regulations" are the rules and procedures regulating the investment of X-CLEAR's liquid funds as published on the website of SIX > [Securities Services Private](#) > Clearing;

"Irregular Pledge" means an *Irreguläres Pfandrecht* as such term is understood under the laws of and by Governmental Authorities in Switzerland;

"Lending Norms" means the tables of lending value according to collateral type and collateral designated as acceptable by X-CLEAR, published on the website of SIX > [Securities Services Private](#) > Clearing; from time to time;

"Link Agreement" 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 Services of Trading Platform Transactions by both X-CLEAR and the Co-CCP;

General Terms and Conditions of Business (English Law) for Clearing Services

"**Link Margin Element**" is the collateral component pursuant to the Financial Collateral Agreement which is arising due to Outstanding Contracts whose other leg is cleared by a Co-CCP, to which X-CLEAR is obliged to provide collateral;

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

"**Margins**" means Initial Margin and Variation Margin and the Link Margin Element;

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

"**Matching Service**" means an institution which provides for the matching of Trading Platform Transactions which are concluded bilaterally by a seller and a buyer;

"**Member**" means a GCM or an ICM;

"**Member ID**" is the technical alphanumeric code which identifies a business partner of X-CLEAR whereby such Member may have more than one Member ID per transaction type and/or location;

"**Membership**" means the membership of the Member of X-CLEAR and its participation in the services of X-CLEAR according to chapter 2.0 and in compliance with the Contractual Relationship;

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

"**NBO**" means the Swiss National Bank Ordinance of 18 March 2004 which is relevant for Swiss FMIs which are systemically important;

"**NCM**" (Non-Clearing Member) means a Trading Platform member which is not an Member but participates in the Clearing of Trading Platform Transactions through an GCM pursuant to a GCM-NCM Agreement with this GCM;

"**Non-Defaulting Member**" is a Member, that has not been declared to be in Default (pursuant to clause 27.4 *Occurrence of Member Default or Technical Default*);

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

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

General Terms and Conditions of Business (English Law) for Clearing Services

"Other Loss Event" is an extraordinary event – in particular an Event of Force Majeure (as defined above) – which resulted in inadequate processes or system failures and thus a financially quantifiable loss for X-CLEAR and which was caused by one or more reasons, each of which have a direct, verifiable connection with the loss (adequate causal relationship). X-CLEAR determines whether such an event has occurred at its reasonable discretion;

"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

(i) has maintained an adequate long-term credit rating of at least A or equivalent issued by at least two recognised credit rating agencies;

(ii) is capable of ensuring operational availability during the days and times required for the Payment Bank Procedures;

(iii) participates in the SWIFT messaging system or other message protocol utilised by X-CLEAR;

(iv) is capable of maintaining cut-off times consistent with the Payment Bank Procedures;

(v) has in place business continuity and contingency arrangements necessary to ensure resilience to disruptions to internal systems and processes which may have an adverse effect on the operation of the Payment Bank Procedures;

(vi) has an agreement with X-CLEAR to participate in the Payment Bank Procedures; and

(vii) has satisfied X-CLEAR in relation to maintaining adequate systems and processes for participation in the Payment Bank Procedures;

"Payment Bank Procedures" means the processes and procedures facilitating the transfer of funds to and from a Member's account at a Payment Bank and X-CLEAR's account either held at the same Payment Bank or at another Payment Bank acting as concentration bank for X-CLEAR, for the purposes of transferring Margin, satisfying Margin calls, Financing and Additional Financing Contributions (credit calls), and the return of excess Margin by X-CLEAR. The arrangements with each Payment Bank shall be

General Terms and Conditions of Business (English Law) for Clearing Services

- (i) consistent as to the cut-off times relating to the receipt and satisfaction of Payment Instructions (as defined in Annex 3 hereof) in relation to transfers to and from X-CLEAR's and a Member's account held at the same Payment Bank, and transfers to and from X-CLEAR's or a Member's account held at different Payment Banks; and
- (ii) contain rights exercisable by X-CLEAR (or the Member, as applicable) in the event of non-performance by the Payment Bank including rights of termination;

"Permissible Collateral" means Securities or cash which is determined by X-CLEAR to be permissible collateral for Margins or for all components of the Default Fund Contribution – as described in greater detail in the Clearing Terms and in the Lending Norms – and which is transferred to X-CLEAR in accordance with the Financial Collateral Agreement, irrespective of whether pursuant to X-CLEAR's requirement or in excess of such requirement;

"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 a separate legal personality);

"Price List" 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 a Member and services provided by X-CLEAR to the Member are calculated, as amended and updated from time to time;

"Product Segment" means the product segments either being Derivatives Products, Equity Products or SLB Products for which the Member is admitted to have Clearing Services performed by X-CLEAR;

"Qualified Third Party Lender" means an institution, whether a central bank, a commercial lender or an Affiliate of X-CLEAR, which provides a committed or an advised liquidity back-up facility to X-CLEAR;

"Regular Drawdown" means a partial or full usage of the relevant Default Fund Segment as a consequence of an Extraordinary Default of a Member;

"Replenishment Obligation" means the obligation of a non-defaulting Member in the event of a partial or full drawdown on the Default Fund Segment (which is relevant to that Member) to make Default Fund Replenishment Contributions to the Default Fund Segment pursuant to the Contractual Relationship;

"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

General Terms and Conditions of Business (English Law) for Clearing Services

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 Lending Norms / Permissible Collateral;
- c. the Settlement Rules (User Guides for Settlement);
- d. the Business Partner Specifications;
- e. the Price List.

"Securities" means standardised securities which are capable of being traded on an Exchange or MTF, non-certificated rights with the same function (such as book-entry securities) and derivatives which have an ISIN number;

"Selling Member" means the ICM or GCM (whether or not a relevant Trading Platform member acting on behalf of an 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);

"Settlement Agent" means the party which - based on respective powers of attorney - is involved in completing a transaction between a buyer and seller by transferring securities to the buyer and paying cash or other compensation to the seller;

"Single Contract" means the contract between X-CLEAR and a Member arising by way of Novation or acceptance of the Open Offer 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 GTC;

"SIX SIS" means SIX SIS Ltd, a company incorporated in Switzerland under number CHE-106.842.854 whose registered office is at Baslerstrasse 100, 4600 Olten, Switzerland;

General Terms and Conditions of Business (English Law) for Clearing Services

"SIX Group" means SIX Group Ltd, the parent of SIX Securities & Exchange Ltd 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) a Member, any Approved Settlement System, settlement bank, Payment Bank, other payment banks, payment systems and any provider of Transaction Routing appointed by a Person;

"Swiss Federal Banking Act" means the Swiss Federal Act on Banks and Savings of 8 November 1934;

"Taxes" means all tax liabilities, including, without limitation, stamp duties (both on the issuance and on the transfer of securities), withholding taxes and all other taxes, duties, levies or imposts payable to any competent taxation authority in any jurisdiction, as well as interest, penalties, costs and expenses reasonably related thereto;

"Technical Default" is a situation in which the Member, for reasons that are generally outside of its control, is for a short time unable to fulfil its obligations to X-CLEAR, but in which it is however able to clearly demonstrate that it is still fully solvent from a business perspective and that its ability to act over the long term remains intact. A Technical Default is not deemed to be a Default (within the meaning defined above);

"Top-up Contribution" means the contribution by a non-defaulting Member to cover the loss resulting from an Exceeding Drawdown;

"Trading Platform" means an Exchange or MTF or Matching Service in respect of which X-CLEAR provides Clearing Services;

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

"Trading Platform Member" means a participant of a Trading Platform or another person which is admitted by a Trading Platform to trading on a Trading Platform Market;

"Trading Platform Product" means any product traded on a Trading Platform Market and designated by X-CLEAR eligible for Clearing Services 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,

General Terms and Conditions of Business (English Law) for Clearing Services

procedures and other provisions as may be prescribed or published from time to time by the operator of a Trading Platform;

"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 Member to X-CLEAR as security for the obligations of such 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 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 Ltd, a company incorporated in Switzerland under number CHE-109.036.648 whose registered office is at Hardturmstrasse 201, CH-8005 Zurich, Switzerland;

1.2 Chapter and clause headings

Chapter and clause headings in all constituent parts of the Contractual Relationship are for ease of reference only and shall not affect their interpretation.

1.3 References

Except as stated otherwise, references in these GTC to a clause or chapter are to a clause or chapter of the GTC.

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.

General Terms and Conditions of Business (English Law) for Clearing Services

1.4 Further interpretation rules

In construing these GTC and any other element of the Contractual Relationship, 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.

Each provision of these GTC or any other element of the Contractual Relationship 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 GTC and any other element of the Contractual Relationship unless otherwise stated. The invalidity, illegality or unenforceability of any provision or part of the GTC or any other element of the Contractual Relationship does not affect or impair the continuation in force of the remaining provisions or other parts of the GTC or any other element of the Contractual Relationship or the validity of such provision 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.

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.

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 reasonable but sole, unfettered and absolute discretion.

Any reference in the GTC or any other element of the Contractual Relationship 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.

Clauses 1.3 and 1.4 above shall also apply, mutatis mutandis, to the Clearing Terms.

1.5 Non-applicability of Contracts Act

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

General Terms and Conditions of Business (English Law) for Clearing Services

any of X-CLEAR's Sub-Contractors or NCMs), nor are they intended to confer a benefit on any third party.

2.0 Membership

2.1 Eligible institutions

A Person who has been admitted as a Trading Platform member to a Trading Platform which is linked to X-CLEAR or who otherwise seeks to act as a GCM in accordance with a GCM-NCM Agreement with an 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 a Member:

- a. a Swiss **bank** as defined in the Swiss Federal Act on Banks and Savings of 8 November 1934 (the "Swiss Federal Banking Act");
- b. a Swiss securities dealer as defined in the Swiss Federal Act on Stock Exchanges and Securities Trading (SESTA) of 24 March 1995;
- c. a company approved by a regulatory authority in the EEA with an equivalent license (where relevant), which is also authorised in the respective EEA jurisdiction of the Trading Platform ("passporting"); and
- d. 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 in Switzerland, respectively subject to regulation in Switzerland.

2.2 Conditions for Membership

An applicant for admission as a Member shall be required to comply with the following conditions of Membership, i.e. the applicant:

- a. shall have made the application in writing on the "Application for 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 GCM status where the applicant is not a relevant Trading Platform member, its 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 the Account Operator;
- b. shall have executed the Contract for Clearing Services (English Law) and the Financial Collateral Agreement;

General Terms and Conditions of Business (English Law) for Clearing Services

- c. shall have demonstrated to X-CLEAR's satisfaction that it is able to transfer to X-CLEAR sufficient Margins and make all required Default Fund Contributions that would be required pursuant to these GTC and the Rules and Regulations upon its Membership becoming approved;
- d. 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;
 - (iii) authorised to act on behalf of the applicant in all transactions with or involving X-CLEAR;
- e. shall also have nominated a second Person who meets the requirements of (i) to (iii) above and is authorised to act on behalf of the applicant in the event of the death, incapacity or other inability of the first Person so to act;
- f. must be subject to either Swiss legislation on money laundering or non-Swiss legislation regarding money laundering deemed by X-CLEAR to be acceptable;
- g. 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 a Member, including, without limitation, such IT links to X-CLEAR and software as in the judgment of X-CLEAR are necessary or desirable for a Member to participate in the clearing of Single Contracts;
- h. shall not be subject to an Insolvency;
- i. shall not be subject to any circumstances which could amount to an Event of Default were the applicant to be a Member;
- j. 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;
- k. 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

General Terms and Conditions of Business (English Law) for Clearing Services

- I. 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 any Securities which are to be provided as Permissible Collateral.

2.3 **Additional conditions and conditional approval**

X-CLEAR may at its discretion attach further conditions to any application for 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 **Evidencing documentation, representation and warranty**

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 to 2.3. All information supplied to X-CLEAR in respect of an application for Membership shall be deemed to have been provided by the Member to X-CLEAR on the day of admission as an Member, save to the extent that such information has been amended or revoked at least two Business Days prior to such admission.

The Member hereby represents and warrants, on the first day of Membership and on a continuous basis throughout the duration of its Membership, that it meets all of the Membership criteria in clauses 2.1, 2.2 and 2.3 and that it is in compliance with all of its obligations under these GTC.

2.5 **Admission to Membership**

X-CLEAR will admit applicants to the Membership if the applicant

- a. is an eligible institution (according to clause 2.1);
- b. fulfils all the conditions of Membership (according to clauses 2.2 and 2.3); and
- c. provided satisfactory evidence, representation and warranty as required (according to clause 2.4).

X-CLEAR assures the applicant fair and equal treatment in this process.

General Terms and Conditions of Business (English Law) for Clearing Services

For the avoidance of doubt, the admission of the Member does not provide or entitle such Member to any shareholding or other similar interest in X-CLEAR or any of its Affiliates or Controllers.

2.6 **Extension of Membership**

A Member may at any time apply to extend its Membership to include additional Product Segment(s).

3.0 **Suspension**

3.1 **Reasons for suspension**

Notwithstanding its contractual duty to provide Clearing Services, X-CLEAR shall be entitled at its own discretion to suspend its Clearing Services for a Member by not accepting respectively not novating Trading Platform Transactions (be it by Open Offer or Novation – see chapter 11.0) for such period of time as X-CLEAR deems necessary if X-CLEAR has reason to believe that:

- a. the Member was granted Membership on the basis of inaccurate information;
- b. the Member no longer satisfies the Membership criteria or any particular Membership criterion as prescribed pursuant to clauses 2.1, 2.2 and 2.3;
- c. the Member is obliged to make a notification as described in chapter 9.0 and has failed to do so; or
- d. the Member has not provided and transferred Permissible Collateral in accordance with the Financial Collateral Agreement and the Contractual Relationship.

3.2 **Consequences of suspension**

Upon suspension the Member shall immediately refrain from entering into further Trading Platform Transactions that would be subject to Clearing Services by X-CLEAR.

X-CLEAR shall not enter into any Single Contracts with such Member for the duration of the suspension and, accordingly, any Trading Platform Transactions entered into by a suspended Member shall not result in corresponding Single Contracts (or Inter-CCP Contracts, if applicable) and shall not be subject to Clearing Services 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 Services and Settlement (subject to the application of the provisions relating to Default of a Member – see chapter 27.0 – where relevant).

General Terms and Conditions of Business (English Law) for Clearing Services

3.3 Continuing consequences of suspension

A 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 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 Default Fund Contributions.

3.4 Notification of suspension

X-CLEAR shall notify the Member subject to a suspension. Such notification shall be given in advance of the period of such suspension whenever possible and appropriate. X-CLEAR shall also inform the relevant Trading Platform(s) of the suspension of any Member.

4.0 Termination of Membership

4.1 Entitlement to terminate

Subject to clause 4.2 below, X-CLEAR shall be entitled to terminate the Membership of the Member and a Member shall be entitled to terminate its Membership as a Member of the X-CLEAR clearing system upon a period of notice ("termination period") of no less than thirty calendar days served in writing by way of registered mail on the other party. The termination period shall start on the last day of the calendar month in which it is served (i.e. following the regular monthly reassessment of the Default Fund).

In cases of (as cumulative conditions) i) an Extraordinary Default which obliges the Member to transfer a Default Fund Replenishment Contribution and/or a Top-up Contribution, and ii) the termination notice is served by the Member within the period between the occurrence of an Extraordinary Default and the reassessment of the Default Fund Segment to which the Member must provide its Default Fund Contribution, the termination period shall start on the day of such extraordinary reassessment.

General Terms and Conditions of Business (English Law) for Clearing Services

4.2 Reasons for termination by X-CLEAR

X-CLEAR shall be entitled to terminate the Membership of a Member with immediate effect if X-CLEAR has reason to believe that:

- a. the Member was granted Membership on the basis of inaccurate relevant information;
- b. the 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 a Default of a Member pursuant to chapter 27.0; or
- d. the Clearing Services agreement between the Trading Platform and X-CLEAR has been terminated.
- e. the Member does not agree to a proposed amendment to the Contractual Relationship which X-CLEAR deems relevant and indispensable.

4.3 Reasons of termination by Member

On the occurrence of a Default by X-CLEAR pursuant to clause 29.1, the Member shall be entitled to terminate its Membership with immediate effect.

4.4 Continuing consequences of termination

Upon any termination of a Member's Membership pursuant to this chapter 4.0, the relevant Member shall remain liable to maintain all Margins due from time to time with respect to all relevant Outstanding Contracts and make Default Fund 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.

4.5 Further continuing consequences of termination

Any Person who for any reason ceases to be a 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 a Member;

General Terms and Conditions of Business (English Law) for Clearing Services

- 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 a Member;
- c. subject to claims in respect of its obligations to provide Margins and make Default Fund Contributions until X-CLEAR returns such portion (if any) of the Margins or Default Fund Contributions 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 a Member.

4.6 **Consequences regarding Single Contracts**

Single Contracts concluded prior to the termination of Membership will continue to be subject to Clearing Services, except when there has been a Default, in which case the rules set out in clause 27.0 shall apply. After termination of Membership of a Member, X-CLEAR will not accept any new Single Contracts for Clearing Services to which such 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 Services on or prior to the tenth Business Day before the last day of Membership.

4.7 **Notification of termination**

In the event of a termination under clause 4.2 or 4.3 above, X-CLEAR shall notify the Member subject to the termination. Such notification shall be given in advance if possible and appropriate. X-CLEAR shall also inform the relevant Trading Platform of the termination of the Membership of any Member.

5.0 **Regulations with regard to the NCM**

5.1 **Relationship of X-CLEAR with the NCM**

A Trading Platform member shall not be obliged to become a Member. It may, however, enter into a GCM/NCM Agreement with a GCM and be given the status of an NCM (Non-Clearing Member).

An NCM participates in the Clearing Services of the Trading Platform Transactions it has concluded within the framework of the regulations and conditions of the GCM/NCM Agreement (pursuant to clause 5.2) via the GCM it has specified. Within the ongoing Clearing process, the NCM thus has no direct contractual relationship with X-CLEAR and X-CLEAR shall accept no direct responsibility vis-à-vis the NCM for losses or claims of any kind. This shall be clearly defined in the GCM/NCM Agreement and shall be

General Terms and Conditions of Business (English Law) for Clearing Services

accepted by the NCM – unless the NCM, as an option with respect to the possible Default of the GCM, applies for its own (subsidiary) Membership (pursuant to clause 28.1.2 lit. b).

5.2 Relationship of the GCM with the NCM

Within the ongoing clearing process, the GCM acts towards X-CLEAR as principal and not as an agent on behalf and for the account of the NCM.

In relation to the selection of account segregation pursuant to clause 20.0 and the selection and issuance of orders pursuant to clauses 28.1.2 and 28.1.3 (with respect to the possible Default of the GCM), the GCM acts towards X-CLEAR as an agent on behalf and for the account of the NCM on the basis of the authorisation granted to it by the NCM in the GCM/NCM Agreement.

The GCM shall conclude a **GCM/NCM Agreement** with each NCM linked to it. The GCM shall ensure that each GCM/NCM Agreement into which it enters with an NCM correctly contains all of the elements listed in Annex 2 and shall give them due consideration. In particular, the GCM/NCM Agreement shall govern the authorisation of the GCM as the agent of the NCM with regard to i) the selection of account segregation (pursuant to chapter 20.0) as well as ii) the selection of the option to be carried out in the event of the possible Default of the GCM (pursuant to clause 28.1.2). For this purpose the GCM shall submit to X-CLEAR the form that has been co-signed by the NCM (pursuant to the schedule to the GCM/NCM Agreement in Annex 2).

In the case of individual client account segregation (pursuant to chapter 20.0), the GCM shall request from the NCM at least the same level of Margins (equivalent values) as the GCM based on the Contractual Relationship is required to provide to the Collateral Accounts for the net obligations of the NCM ("*pass-through principle*").

5.3 Contractual obligations of the GCM vis-à-vis X-CLEAR

The GCM shall submit to X-CLEAR a copy of the authorisation(s) pursuant to clause 5.2 and inform X-CLEAR immediately of any revocation thereof. The current status of the GCM/NCM Agreements shall be confirmed to X-CLEAR on an annual basis.

In the case of individual client account segregation,

- a. the GCM shall inform X-CLEAR of the names, addresses and contact details of the NCMs linked to it. X-CLEAR shall be notified of any new NCMs, changes or departing NCMs in advance, and in any event 10 Business Days at the latest before these become effective, using the "Clearing and Settlement Standing Instructions (CSSI)"

General Terms and Conditions of Business (English Law) for Clearing Services

form. The GCM shall also notify X-CLEAR of any changes to a GCM/NCM Agreement which are essential for Clearing Services by X-CLEAR.

- b. the GCM shall, as the agent of the NCM, issue to X-CLEAR the order that the Margin requirement needed for each NCM be calculated separately and agrees that this will be charged to it.

6.0 Conditions for Clearing Services

6.1 Trading Platform Products and Trading Platforms

X-CLEAR shall provide Clearing Services in accordance with the Contractual Relationship only in respect of those Trading Platform Products that are designated as eligible for Clearing Services and only in respect of those Single Contracts to which it becomes a party.

X-CLEAR may, from time to time, at its reasonable discretion suspend Clearing Services in relation to one or more Trading Platforms for such period of time as it may determine.

6.2 Conditions

X-CLEAR shall act as the Central Counterparty for the Member for Trading Platform Transactions subject to the following conditions:

- a. the Membership of the relevant Member has not been suspended or terminated by X-CLEAR;
- b. where the Member is a Trading Platform member, the Member's status as a Trading Platform member has not been suspended or terminated by the Trading Platform;
- c. in the case of an GCM who has entered into a GCM-NCM Agreement with an NCM:
 - (i) the status as a Trading Platform member of the NCM who is a party to the Trading Platform Transaction subject to Clearing Services has not been suspended or terminated by the Trading Platform; or
 - (ii) the GCM has not notified X-CLEAR that it has ceased to provide services to the 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 Members;

General Terms and Conditions of Business (English Law) for Clearing Services

- d. the listing of the Trading Platform Product in respect of which Clearing Services are provided has not been suspended or cancelled by the Listing Authority (where applicable);
- 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 GTC and has not been rendered void 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 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 Services 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 Services, 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.

7.0 Obligations of Member

7.1 Representations and warranties

In connection with these GTC, any and all Single Contracts, the Member's Membership of X-CLEAR and its business and activities as a Member, the 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;

General Terms and Conditions of Business (English Law) for Clearing Services

- f. be familiar with and bear responsibility for the tax requirements and consequences of clearing with X-CLEAR pursuant to the Applicable Law;
- g. provide Margins and Link Margin Element to X-CLEAR pursuant to the Financial Collateral Agreement and the Contractual Relationship;
- h. make all such Default Fund Contribution, Default Fund Replenishment Contribution and/or Top-up Contribution as are required pursuant to the Financial Collateral Agreement and the Contractual Relationship;
- i. 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;
- j. respond promptly to all enquiries or requests for information made by X-CLEAR;
- k. support X-CLEAR – where the latter depends on such support – in the event of X-CLEAR being confronted with judicial or administrative proceedings, whether in Switzerland or abroad, in which X-CLEAR is named instead of the Member or the beneficial owner or in addition to these and where such proceedings are not obviously in contradiction to the Applicable Laws and applicable regulatory standards, and reimburse X-CLEAR for all costs incurred in connection with such proceedings (e.g. legal fees, costs in relation to expert consultations, other third-party costs, internal costs);
- l. 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 GTC or otherwise;
- m. maintain an account or accounts (if required) at a Payment Bank for the deposit of funds required to be transmitted to and from such Member pursuant to these GTC and the Clearing Terms (whether by way of Margin, Default Fund 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 Member or any NCM;
- n. 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;

General Terms and Conditions of Business (English Law) for Clearing Services

- o. 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 Member's compliance with the Contractual Relationship, the risks to which X-CLEAR or the Member is exposed or any other purposes of X-CLEAR; and
- p. 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 Member's obligations under the Contractual Relationship and Applicable Laws.

7.2 Further representations and warranties

In connection with the Contractual Relationship, any and all Single Contracts, its Membership of X-CLEAR and its business and activities as a Member, the 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 being unable to fulfil its obligations in respect of one or more Single Contracts or in respect of any other obligation owed to X-CLEAR, including in relation to circumstances where it has no reasonable grounds for believing that it would be able to avoid such breach of obligations (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 provision of central counterparty Clearing Services by 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 under normal circumstances 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 Organisation;

General Terms and Conditions of Business (English Law) for Clearing Services

- e. engage in conduct that, in the opinion of X-CLEAR, would render the Member unable to satisfy the Membership criteria in chapter 2.0;
- f. knowingly, recklessly, negligently, or carelessly allow any Representative to engage in any conduct that might itself breach these GTC or render the Member unable to satisfy the Membership criteria in chapter 2.0;
- g. breach any Contract Terms; or
- h. engage in any other behaviour which X-CLEAR has notified to the Member as being unacceptable.

8.0 Maintenance of records by Member

8.1 General rule

The 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 Copies

The 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 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 Member or other Person to X-CLEAR, except where an express right to such copy or return is set out in these GTC.

9.0 Reporting requirements of Member

In relation to the Contractual Relationship, the Member shall promptly notify X-CLEAR in writing providing full particulars known to it:

- a. where the 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 Member becomes aware of any facts or matters that may give rise to:

General Terms and Conditions of Business (English Law) for Clearing Services

- (i) a situation in which the financial or operational condition of the Member would not, under normal circumstances, be adequate for the Member to meet its obligations (including, without limitation, its obligations under the Contractual Relationship) or to engage in the business of a being a Member;
 - (ii) an investigation, enforcement action, fine, disciplinary action or other intervention in relation to activities as a Member by the Trading Platform, an Approved Settlement System, any Clearing Organisation or any other Exchange or MTF in relation to which the Member is a member or participant;
 - (iii) commencement of proceedings or investigations against the Member by any Governmental Authority, the threat of withdrawal or actual withdrawal of the Member's license or authorisation in any jurisdiction or a threat to the 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 Member to continue to be a Member;
- d. in the event that it fails to meet any obligation to deposit or pay any Margins or Default Fund Contributions or any other outstanding liabilities towards X-CLEAR or any other Clearing Organisation of which it is a member;
 - 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 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 Organisation;
 - 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 authorisation) by any Governmental Authority, Exchange, MTF, Approved Settlement System or Clearing Organisation;

General Terms and Conditions of Business (English Law) for Clearing Services

- k. of any matter, circumstance, change or occurrence which would cause a statement provided pursuant to this chapter 9.0 or any information supplied in connection with the Member's application for Membership to be inaccurate or incomplete;
- l. of any breaches of its obligations under the Contractual Relationship or of breaches by it of the Applicable Laws including full particulars of the breach; and
- m. of anything relating to the Member of which X-CLEAR would reasonably expect notice.

10.0 Eligibility of Trading Platform Products

X-CLEAR provides Clearing Services for Trading Platform Products which are

- a. traded on the Trading Platform Market; and
- b. deemed eligible for Clearing Services by X-CLEAR (in coordination with the Co-CCPs providing Clearing Services for such Trading Platform Products); and
- c. able to be settled in an Approved Settlement System.

11.0 Formation of Single Contracts

11.1 General

Single Contracts with X-CLEAR are formed either by Novation or acceptance of the Open Offer. Annex 1 defines per Trading Platform which process is applicable for clearing of respective Trading Platform Transactions by X-CLEAR. Subject to this definition either clauses 11.2 and 11.3 or clauses 11.4 and 11.5 apply.

11.2 Open Offer by X-CLEAR

Subject to chapters 6.0 and 14.0, and in an instance where both Trading Platform members that are party to a Trading Platform Transaction are either GCMs, ICMs or NCMs, X-CLEAR makes an Open Offer to each Member (which, pursuant to the relevant GCM-NCM Agreement, in relation to an NCM, is made to the GCM acting as principal on its behalf on a back-to-back basis) in respect of the Trading Platform Product to which the Trading Platform Transaction relates. At the moment that a Trading Platform Transaction arises, the Open Offer shall be deemed to have been accepted by each Member (which, in relation to a NCM, refers to the GCM acting as principal on its behalf on a back-to-back basis pursuant to the relevant GCM-NCM Agreement) whereupon

General Terms and Conditions of Business (English Law) for Clearing Services

two Single Contracts shall arise automatically by way of acceptance of the Open Offer between:

- a. X-CLEAR and the Selling Member where X-CLEAR will assume the role of buyer of the Trading Platform Product to which the Trading Platform Transaction relates, and
- b. X-CLEAR and the Buying Member where X-CLEAR will assume the role of seller of the Trading Platform Product to which the Trading Platform Transaction relates.

11.3 **Open Offer in case of election of a Co-CCP by counterparty**

Subject to chapters 6.0 and 14.0, and in an instance where one Trading Platform member that is party to a Trading Platform Transaction is an GCM, ICM or NCM and the counterparty to the same Trading Platform Transaction, being a Trading Platform member, has elected for a Co-CCP (if any) to act as Central Counterparty (whether by virtue of that Trading Platform member's agreement with a Co-CCP GCM or otherwise), X-CLEAR makes an Open Offer to the Member (which, in relation to an NCM, is made to the GCM acting as principal on its behalf on a back-to-back basis pursuant to the relevant GCM-NCM Agreement) in respect of the Trading Platform Product to which the Trading Platform Transaction relates. At the moment that a Trading Platform Transaction arises, the Open Offer shall be deemed to have been accepted by the Selling Member or Buying Member (as applicable), whereupon:

- a. a Single Contract shall arise automatically by way of acceptance of the Open Offer between X-CLEAR and the Selling Member or Buying Member (as applicable) where X-CLEAR will assume the role of buyer or seller of the Trading Platform Product to which the Trading Platform Transaction relates, respectively, and
- b. an Inter-CCP Contract shall arise between X-CLEAR and the Co-CCP pursuant to and subject to the relevant Link Agreement where X-CLEAR will assume the role of buyer or seller (as applicable) of the Trading Platform Product to which the Trading Platform Transaction relates.

11.4 **Novation in case of Members**

Subject to chapters 6.0 and 14.0, and in an instance where both the Trading Platform members that are party to a Trading Platform Transaction are either GCMs, ICMs or NCMs, Single Contracts shall arise between X-CLEAR and each Member by way of Novation in respect of the Trading Platform Product to which the Trading Platform Transaction relates. Novation shall occur at the moment that a Trading Platform Transaction arises. Where the Single Contract is between X-CLEAR and an GCM, the GCM shall be regarded as acting as principal on behalf of the relevant NCM pursuant to

General Terms and Conditions of Business (English Law) for Clearing Services

the GCM-NCM Agreement. At the moment of Novation, two Single Contracts shall arise automatically between:

- a. X-CLEAR and the Selling Member where X-CLEAR will assume the role of buyer of the Trading Platform Product to which the Trading Platform Transaction relates, and
- b. X-CLEAR and the Buying Member where X-CLEAR will assume the role of seller of the Trading Platform Product to which the Trading Platform Transaction relates.

11.5 **Novation in case of a Member and a member of a Co-CCP**

Subject to chapters 6.0 and 14.0, and in an instance where one Trading Platform member that is party to a Trading Platform Transaction is an GCM, ICM or NCM and the counterparty to the same Trading Platform Transaction, being a Trading Platform member, has elected for a Co-CCP, if any, to act as Central Counterparty (whether by virtue of that Trading Platform member's agreement with a Co-CCP GCM, if any, or otherwise), a Single Contract shall arise between X-CLEAR and the Member by way of Novation in respect of the Trading Platform Product to which the Trading Platform Transaction relates. Novation shall occur at the moment that an Inter-CCP Contract arises. An Inter-CCP Contract shall arise between X-CLEAR and the Co-CCP pursuant to and subject to the relevant Link Agreement where X-CLEAR will assume the role of buyer or seller, as applicable, of the Trading Platform Product to which the Trading Platform Transaction relates. Where the Single Contract is between X-CLEAR and an GCM, the GCM shall be regarded as acting as principal on behalf of the relevant NCM pursuant to the GCM-NCM Agreement. At the moment of Novation a Single Contract shall arise automatically between X-CLEAR and the Selling Member or Buying Member, as applicable, where X-CLEAR will assume the role of buyer or seller of the Trading Platform Product to which the BATS Chi-X Europe Transaction relates, respectively.

11.6 **Trading days**

The trading days relevant for the Trading Platform Market are published by the Trading Platform.

12.0 **Off-Order-Book-Trades**

[Not yet supported by X-CLEAR in English law markets]

13.0 **Reliance on information**

X-CLEAR shall be entitled to rely conclusively and without further enquiry on the accuracy and authenticity of any and all information and data regarding any Trading Platform Transaction, Single Contract or Inter-CCP Contract submitted to X-CLEAR by or

General Terms and Conditions of Business (English Law) for Clearing Services

on behalf of the Trading Platform, any provider of Transaction Routing (if any) any Approved Settlement System, any Co-CCP (if any) or the Member whether or not the Member or an NCM has authorised the submission of such information or the details so submitted.

14.0 Avoidance of Single Contracts and suspension of Clearing Services

14.1 Automatic avoidance of Single Contracts

A Single Contract shall automatically be void *ab initio* if:

- a. the corresponding Trading Platform Transaction is cancelled, rejected or avoided in accordance with the Trading Platform Rules; or
- b. the Trading Platform Product which is the subject of the corresponding Trading Platform Transaction is not a Trading Platform Product eligible for Clearing Services (according to chapter 10.0).

14.2 Election of avoidance and suspension by X-CLEAR

X-CLEAR may, at its discretion,

- (i) on the Business Day the Trading Platform Transaction is effected or on the Business Day following this Business Day elect to avoid any Single Contract and thus rendering the Single Contract void *ab initio*, and
- (ii) withdraw or suspend its Open Offer (on Trading Platforms where Open Offer applies) or accession to Novation (on Trading Platforms where Novation applies) either in relation to a specific Trading Platform Product or the Member, where:
 - a. the Membership of the Member has been suspended by X-CLEAR;
 - b. in the case of a Member who is a Trading Platform member, the Member's status as a Trading Platform member has been suspended or terminated by Trading Platform;
 - c. in the case of a GCM who is not a Trading Platform member, the status as a Trading Platform member of a relevant NCM with whom the GCM has in force a GCM-NCM Agreement has been suspended or terminated by Trading Platform;
 - d. the listing of the Trading Platform Product in respect of which Clearing Services are provided has been suspended by a Listing Authority;

General Terms and Conditions of Business (English Law) for Clearing Services

- e. the Trading Platform Transaction corresponding to the Single Contract has been cancelled or avoided for any reason (other than in accordance with circumstances falling within clause 14.1 a. above), in particular because the Trading Platform Product which is the subject matter of the Trading Platform Transaction cannot be acquired (failed buy-in or securities lending – see Clearing Terms);
- f. the data submitted to X-CLEAR in relation to the corresponding Trading Platform Transaction by the provider of Transaction Routing is not in a format suitable for the provision of Clearing Services by X-CLEAR or is not accurate;
- g. the agreement or agreements X-CLEAR has entered into with Trading Platform (in relation to X-CLEAR's provision of Clearing Services), the Approved Settlement System, the provider of Transaction Routing, or, if applicable, a Link Agreement with a Co-CCP has or have been terminated or is or are otherwise not in force;
- h. the corresponding Inter-CCP Contract (if applicable) has not been formed in accordance with the Link Agreement or has been cancelled by X-CLEAR or the Co-CCP in accordance with the Link Agreement or otherwise;
- i. the Member that is a party to the Single Contract is in Default or a declaration of default has been issued by the operator of the Trading Platform in respect of this Member that is party to the Single Contract and/or corresponding Trading Platform Transaction;
- j. the Approved Settlement System is not proceeding or has failed to effect Settlement of the Single Contract or corresponding Inter-CCP Contract (if applicable) in accordance with the rules of the Approved Settlement System or otherwise;
- k. X-CLEAR determines at its discretion following information received from another source that incomplete, erroneous or conflicting details have been submitted in relation to such Single Contract, the corresponding Inter-CCP Contract (if applicable) or Trading Platform Transaction, including (without limitation) information received from Trading Platform, a Co-CCP, any other Member or any Governmental Authority;
- l. the Single Contract or corresponding Inter-CCP Contract or Trading Platform Transaction results or appears to result from a communications or information technology error or problem;
- m. the Single Contract or the corresponding Inter-CCP Contract or Trading Platform Transaction is or appears to be tainted by or connected with fraud, illegality, insider dealing, market abuse, money laundering or any other breach of Applicable Laws;

General Terms and Conditions of Business (English Law) for Clearing Services

- n. the Single Contract or corresponding Inter-CCP Contract or Trading Platform Transaction is or appears to be a result of or affected by an Event of Force Majeure;
- o. the Single Contract or corresponding Inter-CCP Contract or Trading Platform Transaction is one which any Governmental Authority, a Co-CCP (if applicable), any Approved Settlement System or Trading Platform requires or requests that X-CLEAR treat as void and X-CLEAR considers, at its discretion, that compliance with such a request would be appropriate;
- p. X-CLEAR considers at its discretion that, at the time of formation of the Single Contract, the corresponding Inter-CCP Contract (if applicable) or the corresponding Trading Platform Transaction, the relevant Member is not in compliance with its obligations relating to the provision of Margins and/or Default Fund Contributions.

For the avoidance of doubt, X-CLEAR shall not incur any liability as a result of losses, damages, injuries, delays, costs or expenses incurred or sustained by the Member by reason of such avoidance of a Single Contract or withdrawal or suspension of the Open Offer, respectively by X-CLEAR declining to accede to Novation.

14.3 **Cancellation of Inter-CCP Contracts**

The Member acknowledges that, in accordance with the Link Agreement (if applicable), the Co-CCP may, in certain circumstances (including, without limitation, events relating to market disorder, impossibility of performance and trade emergency) implement measures to cancel concluded Inter-CCP Contracts to which it is a party, by revoking the registration of such Inter-CCP Contracts or otherwise, whether as a result of its suspension or cancellation of the provision of services offered by it as a Central Counterparty in respect of specific Trading Platform Products or otherwise. If such Co-CCP implements such measures, X-CLEAR shall be entitled to cancel concluded corresponding Single Contracts to which it is a party or suspend or cancel Clearing Services in respect of the Trading Platform Products subject to those measures.

14.4 **Consequences of cancellation**

In the event that a Single Contract is void or avoided pursuant to clauses 14.1 to 14.3 X-CLEAR and the affected Member shall immediately be released from any and all rights, liabilities and obligations under the affected Single Contract and all amounts paid pursuant to such Single Contract shall be returned by the Buying Member to X-CLEAR or by X-CLEAR to the Selling Member, as the case may be, in each case without interest.

Any margins already provided by the Member on such Single Contracts shall be segregated and restituted.

General Terms and Conditions of Business (English Law) for Clearing Services

Any further consequences related to the affected Single Contracts are subject to the rules of the respective Trading Platform.

14.5 **Notification of cancellation**

X-CLEAR shall promptly notify the operator of the Trading Platform and the affected Member of the cancellation or avoiding of any Single Contract pursuant to clauses 14.1 to 14.3.

15.0 **Terms of Single Contracts**

15.1 **Governing law**

All Single Contracts shall be governed by and construed in accordance with English law.

15.2 **Intervention by Governmental Authorities**

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 Member and take such action as is required of it as soon as reasonably practicable. The Member acknowledges and agrees that any affected Single Contract shall be suspended or varied accordingly.

15.3 **Acting as principal**

Each 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 to rights of the Member 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.

15.4 **Third parties**

The liabilities and obligations of X-CLEAR pursuant to Single Contracts extend only to, and are enforceable only by, the 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 NCM, nor to any Co-CCP ICM (if any), Co-CCP GCM (if any) or Co-CCP NCM (if any).

General Terms and Conditions of Business (English Law) for Clearing Services

15.5 **Liabilities and obligations of X-CLEAR**

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 GTC 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.

15.6 **Risks, rights and obligations**

Under each Single Contract to which a Buying Member or a Co-CCP (if applicable and as buyer) is a party the benefits, risks, rights and obligations associated with the Trading Platform Product that is the subject of the Single Contract shall pass to the Buying Member (or the Co-CCP in the capacity of buyer) at the moment that the Single Contract is formed in accordance with these Trading Platform Specific GTC. Where, in respect of a Trading Platform Product, there is an entitlement to receive interest, dividends and any other distributions, such rights (referred to as "Entitlements" for the purposes of this clause) shall also form part of the Single Contract, provided that the Single Contract is formed before such Entitlement has expired. Where the Single Contract is formed on or after the expiry of an Entitlement, the Entitlement shall not form part of the Single Contract. Where income earned by the Buying Member (or the Co-CCP, if applicable and as buyer) accrues to the Selling Member (or the Co-CCP, if applicable and as seller) as a result of late delivery of the Trading Platform Product, it shall be a term of the Single Contract that the Selling Member (or the Co-CCP, if applicable and as seller) is subject to an obligation to transfer the value accruing under the Entitlement to the Buying Member (or the Co-CCP, if applicable and as buyer).

15.7 **Settlement**

Settlement of a Single Contract shall take place on the Intended Settlement Date or within such period after formation as is agreed between X-CLEAR and the Approved Settlement System, all as further described in the Clearing Terms.

15.8 **Contract Terms**

The Contract Terms constitute the whole agreement between X-CLEAR and the Member with respect to a Single Contract and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of a Single Contract. The Member represents and warrants to X-CLEAR that, in entering into each Single Contract, it does not rely on any statement, representation, assurance or

General Terms and Conditions of Business (English Law) for Clearing Services

warranty of X-CLEAR or any other Person other than as expressly set out in the Contract Terms. The Member agrees that the only rights and remedies available to it arising out of or in connection with a Single Contract or their subject matter shall be solely in contract (and not in tort or otherwise), in accordance with the Contract Terms. Nothing in this clause shall limit or exclude any liability for fraud, death or personal injury or for any other liability which by law cannot be excluded.

15.9 **Interpretation rule based on Companies Act**

A Single Contract shall be regarded as a "market contract" within the meaning of Section 155 of the Companies Act 1989.

15.10 **Indemnification**

The 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.

15.11 **Precedence of Contractual Relationship**

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 15.11 shall be subject to clause 2.3 of the Contract for Clearing Services (English Law)).

15.12 **Representations and warranties**

In relation to each Single Contract, the 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 NCM in respect of which the GCM has entered into a GCM-NCM Agreement);
- c. it is acting as principal and not as agent;

General Terms and Conditions of Business (English Law) for Clearing Services

- 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 Member or X-CLEAR will breach or conflict with any provision of the constitutional or other organisational document of the Member, or with any agreement or Applicable Law which is binding upon or affects the Member (and in this respect the Member further acknowledges that X-CLEAR will neither review nor be responsible for reviewing any provision of the Member's constitutional or other organisational document, any agreement to which the Member is party or which affects it or any Applicable Law which is binding upon or affects the Member with a view to determining the authority or ability of the Member to enter into or perform any Single Contract);
- f. the 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 is in place (if the Member is an GCM) with a NCM in respect of whom it acts as a Member in relation to any Single Contract. This GCM/NCM Agreement is satisfying the requirements of Annex 2; in particular the NCM agrees that it has no direct contractual relationship to X-CLEAR.

16.0 Permissible Collateral

16.1 Provision of Permissible Collateral

The provision and transfer of Permissible Collateral shall be effected in accordance with the Financial Collateral Agreement, the Clearing Terms and the Lending Norms.

16.2 Administration, proceeds and corporate actions

Responsibility for administering the Permissible Collateral shall rest with X-CLEAR.

The following rules shall apply when Intermediated Securities are provided by the Member as Permissible Collateral and are booked on the Collateral Accounts of X-CLEAR:

- a. X-CLEAR shall be the holder of the participation rights (taking part in the annual general meeting, voting rights and rights of election) attached to the Intermediated Securities booked to the Collateral Accounts of X-CLEAR. If the Member wishes to exercise such participation rights, it must replace the relevant Intermediated Securities required for the exercise of such rights with Permissible Collateral of the

General Terms and Conditions of Business (English Law) for Clearing Services

same value within a reasonable period of time prior to the exercise of any participation rights. X-CLEAR shall not be liable for any loss suffered by the Member as a result of it being unable to exercise participation rights.

- b. All earnings (dividends, interest, and premiums) due on as well as any liquidation proceeds in respect of Intermediated Securities booked to the Collateral Accounts of X-CLEAR shall entitle the Member to compensation payments from X-CLEAR of the same value (in the respective currency) of such earnings or proceeds, less any withholding tax and any expenses or charges actually incurred.
- c. X-CLEAR shall be the holder of options, pre-emption rights and other rights (together, the "Attached Rights") relating to the Intermediated Securities booked to the Collateral Accounts of X-CLEAR and shall inform the relevant Member of the existence of any attached rights. Where the attached right embodies a choice, the Member may issue instructions to X-CLEAR regarding the exercise of such choice, but must replace the relevant Intermediated Securities to which the attached right relates with Permissible Collateral of the same value within a reasonable period of time prior to the exercise of such attached right.

If the Member does not wish to exercise its right to issue instructions in relation to pre-emption rights, then such rights will normally be credited to the Member, unless credit entry is impossible, in which case compensation shall be paid to the Member on the basis of the average market value of these rights on the last trading day on the relevant Trading Platform before expiry of the pre-emption period. X-CLEAR shall not be liable for any loss suffered by the Member as a result of it being unable to exercise pre-emption rights.

If distributions in respect of Intermediated Securities transferred as Permissible Collateral are in the form of Intermediated Securities, X-CLEAR shall return these additional Intermediated Securities when the relevant Permissible Collateral is released.

17.0 Taxation of Permissible Collateral

The following rules shall apply:

- a. In the case of Permissible Collateral provided by Swiss Members in the form of Intermediated Securities of Swiss issuers, X-CLEAR gives an assurance that the transfer of the Intermediated Securities as Permissible Collateral does not trigger Swiss transfer stamp taxes or Swiss withholding tax. The transfer of Intermediated Securities does not constitute a transfer of deed against consideration within the meaning of Art. 13 (1) of the Swiss Federal Act on Stamp Duty. Beneficial ownership of the Intermediated Securities of Swiss issuers according to Art. 21 ff. of the Swiss

General Terms and Conditions of Business (English Law) for Clearing Services

Federal Act on Withholding Tax remains with the Swiss Members. It rests with the Swiss Members to secure the refund of the withholding tax. The provisions of this sub-clause let. a. shall apply as long as the Permissible Collateral is not realised.

- b. In the case of Permissible Collateral provided by non-Swiss Members in the form of Intermediated Securities of Swiss issuers, the Member accepts that (i) any taxes on the transfer of Intermediated Securities to X-CLEAR are to be borne by the Member; (ii) any additional withholding tax burden is to be borne by the Member; and (iii) X-CLEAR is not liable for any reduction or impairment of a refund of withholding tax payments made on such Intermediated Securities.
- c. A Member wishing to use Intermediated Securities of non-Swiss issuers as Permissible Collateral for Margin, shall clarify the tax consequences (such as withholding tax or transfer stamp taxes) in respect of these Intermediated Securities of non-Swiss issuers. A Member who deposits Intermediated Securities of non-Swiss issuers as Permissible Collateral in spite of any potentially adverse tax consequences accepts that (i) any taxes on the transfer of securities to X-CLEAR are to be borne by the Member; (ii) any additional withholding tax burden is to be borne by the Member; and (iii) X-CLEAR is not liable for any reduction or impairment of a refund of withholding tax payments made on such Intermediated Securities.
- d. The Member shall be liable to X-CLEAR for any further tax charges (including, without limitation, corporate income taxes) incurred either by the Member or X-CLEAR as a result of the provision of Permissible Collateral in addition to the tax consequences cited under paragraphs a. to c. above. The same holds true for any further tax charge in case Permissible Collateral must be realised.

18.0 Realisation of Permissible Collateral and X-CLEAR's Dedicated Capital Contribution

18.1 General rules

The kind of provision, administration and realisation of the Permissible Collateral is primarily agreed and regulated in the Financial Collateral Agreement (bilaterally with the individual Member).

In case of realisation of Permissible Collateral, X-CLEAR shall be entitled to realise the Permissible Collateral provided by the Member and booked to the Collateral Accounts and to use the proceeds of any realisation as specified in the Financial Collateral Agreement and the Contractual Relationship.

General Terms and Conditions of Business (English Law) for Clearing Services

18.2 **Order of realisation of collateral (“Waterfall of Resources”)**

In the event of Default of a Member, X-CLEAR shall realise the Permissible Collateral provided by the Member and its own funds (“Layers of Collateral”) in the following order:

1. Permissible Collateral provided by the Defaulting Member to satisfy its Margin obligations and equivalent obligations in respect of Single Contracts subject to Clearing Services by X-CLEAR (pursuant to the Financial Collateral Agreement);
2. Default Fund Contribution of the Defaulting Member to the relevant Default Fund Segment (pursuant to the Financial Collateral Agreement);
3. a maximum of 25 per cent of the capital of X-CLEAR (“Dedicated Capital Contribution” as defined in clause 18.3 hereafter);
4. Default Fund Contributions made by non-defaulting Members to the relevant Default Fund Segment (pursuant to the Financial Collateral Agreement for Default Funds);
5. Top-up Contributions made by non-defaulting Members (pursuant to the Financial Collateral Agreement); and
6. the remainder of X-CLEAR's own reserves and capital.

18.3 **X-CLEAR’s Dedicated Capital Contribution**

Before using Default Fund Contributions of non-defaulting Members X-CLEAR shall make an own contribution for each Default (the “Dedicated Capital Contribution”) to cover losses caused by a Default of a Member.

The Dedicated Capital Contribution is determined as a percentage of the required capital, whereas the latter is assessed pursuant to the provisions of the Swiss Financial Market Infrastructure Ordinance (FMIO) and the Swiss Capital Adequacy Ordinance, and is published on the website of SIX > Exchange & Services > Go to Securities Services > Clearing in the last Annual Report.

X-CLEAR fixes the Dedicated Capital Contribution at a minimum of 25% of the required capital. X-CLEAR shall make a Dedicated Capital Contribution for the entire amount (totalling 25% of its required capital) only once in a period of 1 (one) month following any Default of a Member which necessitated the use of such contribution (“Cooling-off Period of X-CLEAR”). After any use of the Dedicated Capital Contribution X-CLEAR shall

General Terms and Conditions of Business (English Law) for Clearing Services

reinstate its own reserves (part of capital of X-CLEAR) to the extent as required by the Swiss Applicable Laws within the period of time determined by FINMA/SNB.

Clarification: For the Cooling-off Period caused by a Member Default and the Cooling-off Period caused by an Other Loss Event (Clause 18.4 *X-CLEAR's NDL Own Contribution* below), separate accrual accounts are maintained in each case. The Dedicated Capital Contribution (pursuant to Clause 18.3 *X-CLEAR's Dedicated Capital Contribution*) and the NDL Own Contribution (pursuant to Clause 18.4 *X-CLEAR's NDL Own Contribution*) are, however, financed via the same reserves of X-CLEAR.

In case of use of only a portion of the Dedicated Capital Contribution (being a fraction of the 25% per cent of X-CLEAR's required capital), the Cooling-off Period of X-CLEAR shall apply to that portion only. Any losses arising within the Cooling-off Period which are exceeding any residual Dedicated Capital Contribution shall be absorbed by the following "Layers of Collateral" (items 4 to 7 of clause 18.2 above).

18.4 **X-CLEAR's NDL Own Contribution**

In the event of an Other Loss Event, X-CLEAR will, before using the Non-Default Loss Allocation of the Members, for each event provide an own contribution to cover a loss caused by an Other Loss Event.

The NDL Own Contribution is calculated as a percentage of the required capital, where the latter is assessed pursuant to the provisions of the Swiss Financial Market Infrastructure Ordinance (FMIO) and the Swiss Capital Adequacy Ordinance, and is published on the website of SIX > Exchange & Services > Go to Securities Services > Clearing in the last Annual Report.

X-CLEAR fixes the NDL Own Contribution at a minimum of 25% of the required capital.

X-CLEAR shall make the NDL Own Contribution for the entire amount (totalling at least 25% of X-CLEAR's required capital) only once in a period of 1 (one) month following the Other Loss Event which necessitated the use of such contribution ("Cooling-off Period of X-CLEAR"). After any use of the NDL Own Contribution, X-CLEAR shall reinstate its own reserves (part of capital of X-CLEAR) to the extent as required by the Swiss Applicable Laws within the period of time determined by FINMA/SNB.

Clarification: For the Cooling-off Period caused by a Member Default and the Cooling-off Period caused by an Other Loss Event (Clause 18.3 *X-CLEAR's Dedicated Capital Contribution* above), separate accrual accounts are maintained in each case. The Dedicated Capital Contribution (pursuant to Clause 18.3 *X-CLEAR's Dedicated Capital Contribution*) and the NDL Own Contribution (pursuant to Clause 18.4 *X-CLEAR's NDL Own Contribution*) are, however, financed via the same reserves of X-CLEAR.

General Terms and Conditions of Business (English Law) for Clearing Services

If only a portion of the NDL Own Contribution is used, the Cooling-off Period of X-CLEAR shall apply to that portion only. Any losses occurring within the Cooling-off Period which are exceeding any residual NDL Own Contribution shall be absorbed by the Members (pursuant to the Financial Collateral Agreement).

18.5 **Replenishment of the Default Fund Segment**

In the event of a full or partial drawdown on the Default Fund Segment, the non-defaulting Members must make a Default Fund Replenishment Contribution in order to replenish the Default Fund Segment. Details in this regard are laid down in the Financial Collateral Agreement.

18.6 **Non-Default Loss Allocation (NDLA)**

The NDLA provides cover by the Members for losses on the Permissible Collateral and/or X-CLEAR's capital which were not caused by the Default of a Member or Co-CCP and for which X-CLEAR is not liable pursuant to chapter 23.0 *Liability* and thus must be sustained by the Members.

If an Other Loss Event occurs, the NDLA is capped at CHF 40 million per event ("Cap Amount NDLA Other Loss Event").

18.7 **Purpose of collateralisation**

The Member acknowledges and agrees that the purpose of the rules of this chapter 18.0 and, *inter alia*, the provision of Margins and Default Fund Contributions is to address and prevent the incidence of systemic risk that may arise in relation to Clearing Services, the Trading Platform Markets or the respective Trading Platforms.

19.0 **Further rules common to Permissible Collateral**

19.1 **Representations and warranties by Member**

The Member will act as principal and not as agent when providing Permissible Collateral. X-CLEAR will take no account of any right or interest which any Person other than the Member has or may have in connection with any Permissible Collateral. The Member represents and warrants to X-CLEAR on each date on which the Member provides to X-CLEAR Permissible Collateral and on a continuing basis whilst such Permissible Collateral remains held by X-CLEAR, that:

- a. such Permissible Collateral is provided on the basis that it may be used by X-CLEAR and applied in accordance with the relevant Financial Collateral Agreement and the Contractual Relationship;

General Terms and Conditions of Business (English Law) for Clearing Services

- b. the Member is the sole legal owner of all Intermediated Securities or cash used for the Permissible Collateral;
- c. the Permissible Collateral is free and clear of any Encumbrances of the Member or of any third person (other than a lien routinely imposed on all securities in a relevant settlement system or central securities depository, not being X-CLEAR);
- d. all rights, title and interest in and to any Permissible Collateral transferred shall vest in X-CLEAR free and clear of any rights or Encumbrances of the Member or of any third person accordingly; and
- e. the Member is not in breach of any of its contractual obligations towards any third party (including towards any NCM or any X-CLEAR Client) or of any Applicable Laws as a result of the transfer of Permissible Collateral to X-CLEAR.

19.2 **Representations and warranties by X-CLEAR**

X-CLEAR represents and warrants to the Member that any Permissible Collateral provided to X-CLEAR and returned to the Member is not subject to any trust, agreement, arrangement or Encumbrances created or granted by X-CLEAR and that the return of such Permissible Collateral to the Member is not in breach of any contractual obligation of X-CLEAR towards any third party or of any Applicable Laws.

19.3 **Liabilities of Member**

The Member shall be liable to X-CLEAR for any fees, costs, losses, damages, expenses, delays or liabilities incurred by X-CLEAR as a result of X-CLEAR possessing, holding, perfecting the title to or otherwise being associated with, or dealing with, any Intermediated Securities or cash provided to X-CLEAR by the Member as Permissible Collateral.

19.4 **Application of Companies Act**

Each Member is given notice that Part VII of the Companies Act 1989 applies in relation to all Margins and Default Fund, Financing and Additional Financing Contributions and that, as a result, in accordance with the Companies Act 1989 and pursuant to these GTC, *inter alia*:

- a. certain of the English Courts' and insolvency officials' rights to disclaim property, onerous transactions, transactions at an undervalue and similar transactions in relation to Margins and Default Fund, Financing and Additional Financing Contributions will not apply; and

General Terms and Conditions of Business (English Law) for Clearing Services

- b. neither the provision of Margins nor the making of Default Fund, Financing or Additional Financing Contributions is invalid on grounds of inconsistency with Applicable Laws of the United Kingdom relating to Insolvency.

19.5 **Application of EC Collateral Regulations and EC Collateral Directive**

Each Member is given notice that the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "Collateral Regulations"), which implement Directive 2002/47/EC on financial collateral arrangements (the "Collateral Directive"), applies in relation to the provision of Margin and Default Fund Contributions (including security arrangements made under the Financial Collateral Agreement) and that, as a result, in accordance with the Collateral Regulations and the Collateral Directive, *inter alia*:

- a. certain Applicable Laws in the EEA relating to formalities and the registration of charges are not applicable in relation to the provision of Permissible Collateral;
- b. certain Applicable Laws in the EEA relating to Insolvency, to the extent that they restrict X-CLEAR's enforcement of its rights in relation to the provision of Permissible Collateral are not applicable; and

the provisions in relation to the Close-out process will take precedence notwithstanding an Insolvency of the Member.

20.0 **Account structures**

The Member shall have at its disposal the structures more specifically defined in the Clearing Terms for individual client and omnibus client account segregation with respect to its House Accounts and its Client Accounts as well as the NCMs linked to it. The Member shall select the structure that best suits its accounts and custody accounts for claims and liabilities from Outstanding Contracts as well as for depositing Permissible Collateral (Collateral Accounts) and that is in accordance with its Applicable Law. Collateral Accounts shall be held by the Member at the Account Operator.

For Clearing Services by X-CLEAR carried out through the Member for NCMs linked to it, the latter shall be granted a mandatory right in the GCM/NCM Agreement (pursuant to clause 5.2 and Annex 2) to select in favour or against individual client account segregation. Such selection must be followed by the GCM.

General Terms and Conditions of Business (English Law) for Clearing Services

21.0 Settlement

21.1 Provision of transaction details

The operator of the Trading Platform will send relevant details in relation to Trading Platform Transactions involving a Member to X-CLEAR for Clearing Services, netting and the preparation of settlement instructions.

21.2 Confirmation and places of Settlement

X-CLEAR will confirm the Trading Platform Transaction and the associated Clearing Services, netting and settlement instruction details to the Members or the Co-CCP (if applicable) who are counterparties to the Single Contracts or the Inter-CCP Contract, respectively, arising from the relevant Trading Platform Transaction.

Settlement of the Single Contracts or the Inter-CCP Contracts, if applicable, will be effected in the relevant central securities depository or other Approved Settlement System, all in accordance with the Clearing Terms.

21.3 Approved Settlement System

The Member and the Co-CCP (if applicable) shall settle Outstanding Contracts through their participation (whether or not through settlement agents) in the Approved Settlement System and shall have appropriate settlement arrangements in place to enable Settlement of Outstanding Contracts to take place in accordance with these GTC and the Clearing Terms.

The Member and the Co-CCP (if applicable) shall, either themselves or through settlement agents, in accordance with the rules of the Approved Settlement System, maintain at least one custody account to hold Trading Platform Products and a cash memorandum account at a bank accepted by the Approved Settlement System for the purposes of Settlement.

The Member and the Co-CCP (if applicable) or their settlement agents (if any) shall comply with the rules, requirements and obligations applicable to them pursuant to the rules of the Approved Settlement System.

21.4 No liability of X-CLEAR

No liability shall attach to X-CLEAR if the standards as defined in the Contractual Relationship for communication, authentication and data security are not met by a relevant Approved Settlement System, settlement agent or settlement bank.

General Terms and Conditions of Business (English Law) for Clearing Services

21.5 **Holding of sufficient Trading Platform Products or cash**

The Member shall ensure that there is a sufficient quantity of Trading Platform Products or sufficient cash, as the case may be, available to enable Settlement of Outstanding Contracts to take place on the Intended Settlement Date. If the Member does not hold a sufficient quantity of Trading Platform Products or sufficient cash, as the case may be, to enable Settlement of Outstanding Contracts to take place on the Intended Settlement Date, the provisions in chapter 22.0 and chapter 27.0 in respect of a Member's non-performance and Default shall apply.

21.6 **Power of attorney to NCM**

If the GCM wishes an NCM (based on an executed GCM-NCM Agreement) to receive delivery of the Trading Platform Product or payment (as the case may be) as agent of the GCM, the GCM shall grant a legally valid and binding power of attorney to the NCM in favour of such NCM. The GCM shall notify X-CLEAR of this power of attorney in writing, including a copy of such power of attorney with such notification.

21.7 **Settlement agent**

The Member may only use a settlement agent for the purposes of Settlement if required or permitted by the rules of the Approved Settlement System.

21.8 **Settlement netting**

X-CLEAR will carry out settlement netting in accordance with the rules of the relevant Approved Settlement System and the Clearing Terms.

22.0 **Late Settlement**

22.1 **Buy-in**

Where the Selling Member fails to deliver the Trading Platform Product on the Intended Settlement Date such that Settlement of the relevant Outstanding Contract does not occur on that date, X-CLEAR shall be entitled to perform a buy-in in accordance with the following procedures as further defined in the Clearing Terms:

- a. X-CLEAR will start the buy-in process by submitting a buy-in notice to the Selling Member;
- b. On completion of the buy-in, X-CLEAR will advise the Selling Member on the same day by facsimile or electronic means, providing details of the buy-in that has been effected to settle the relevant Outstanding Contract. The Selling Member shall be

General Terms and Conditions of Business (English Law) for Clearing Services

liable to X-CLEAR for any difference between the price of the Trading Platform Product under the relevant Outstanding Contract and the price paid in connection with a buy-in;

- c. X-CLEAR is entitled to charge the Selling Member any costs incurred by X-CLEAR (including, without limitation, expenses, commissions and other charges) or passed on to X-CLEAR by third parties (including, but not limited to Approved Settlement Systems) in connection with the performance of a buy-in; and
- d. Without prejudice to the generality of clause c. above X-CLEAR will charge an administration fee per buy-in notice.

22.2 **Consequences of buy-in**

The payment obligations of the Member, arising from the buy-in effected by X-CLEAR, shall be due and payable immediately upon notification of the same by X-CLEAR. If the Member fails to satisfy such payment obligation, X-CLEAR may at its discretion treat such failure as an Event of Default as defined in chapter 27.0.

22.3 **Exclusive governance by Contractual Relationship**

The Contractual Relationship shall exclusively govern late Settlement, including any processes (such as buy-in) carried out as part of late Settlement, including, but not limited to, any costs associated with such settlement. The Trading Platform Rules shall not apply to any of the aforesaid matters.

23.0 **Liability**

23.1 **General interpretation rules**

The Contractual Relationship and in particular the following provisions on liability 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 Financial Market Infrastructure supervised by FINMA;
- b. the recognition of X-CLEAR as a recognised Third Country CCP by ESMA;
- c. X-CLEAR's and Members' good reputation, high standards of integrity and fair dealing.

General Terms and Conditions of Business (English Law) for Clearing Services

23.2 **Delayed performance by X-CLEAR**

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.

23.3 **Liability of X-CLEAR**

X-CLEAR shall only be liable to the 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.

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.

In particular, X-CLEAR assumes no liability for any charges or any other negative consequences arising in conjunction with clearing through X-CLEAR that are a result of tax laws or ordinances issued by tax authorities pursuant to the Applicable Law. With regard to tax issues, X-CLEAR only provides the services related to the provision of Permissible Collateral stipulated in these GTC, for which X-CLEAR is liable in accordance with the first paragraph of this clause 23.3.

23.4 **Responsibility of Member**

The Member shall bear sole responsibility for the completeness, accuracy and authenticity (i.e. the fact that the information and data with respect to a Trading Platform Transaction originates from a recognised source of X-CLEAR) of information and data transmitted to X-CLEAR in relation to a Trading Platform Transaction to which the Member is a party (save in relation to a Trading Platform Transaction where an NCM, in relation to which the 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 Member, but from the Trading Platform, the NCM, the provider of Transaction Routing, the Payment Bank, the Approved Settlement System, the providers of messaging services, networks or other technical infrastructure or a Co-CCP (if applicable).

Subject to the aforesaid and for the avoidance of doubt:

General Terms and Conditions of Business (English Law) for Clearing Services

- a. X-CLEAR shall not be responsible for the information provided to it in respect of a Trading Platform Transaction and the 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
- b. the Member shall not be responsible for the operational aspects related to Transaction Routing.

23.5 Arrangements with Affiliate of X-CLEAR

X-CLEAR may, from time to time, enter into certain arrangements with an Affiliate of X-CLEAR under which such Affiliate provides certain services to X-CLEAR or which otherwise facilitates X-CLEAR's performance of its obligations under the Contractual Relationship. Subject to clause 23.3 and to any contract (if any) between the Affiliate of X-CLEAR and the Member, no such Affiliate shall owe any Member any duty of care in tort or otherwise in relation to the operation of such arrangements and no 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 Member further shall have no other rights against such Affiliate in connection with the operation of such arrangements.

23.6 Limitation of liability of X-CLEAR

Subject to clause 23.3 (in particular provided that losses are not incurred directly as a result of X-CLEAR's own negligence or wilful default under the Contractual Relationship or fraud) and the standard of care pursuant to clause 23.1, X-CLEAR shall not be liable for any losses, damages, injuries, delays, costs or expenses incurred or suffered by a 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 a Member, an 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 Member, an NCM, or any other third party such as providers of messaging services,

General Terms and Conditions of Business (English Law) for Clearing Services

networks or other technical infrastructure necessary or appropriate for X-CLEAR's provision of Clearing Services;

- d. any failure by the 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 Member or its settlement agent to meet the functional requirements, time deadlines or other requirements of an Approved Settlement System;
- e. except in relation to any provider of outsourced services appointed by X-CLEAR in accordance with clause 23.5, 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 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 reasonable discretion by X-CLEAR, exercise due care in selecting, instructing and monitoring such agents);
- f. any Event of Force Majeure affecting X-CLEAR, its provision of Clearing Services 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 a Member, an 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 a 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

General Terms and Conditions of Business (English Law) for Clearing Services

- I. 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.

23.7 **Liability of Second Member**

If X-CLEAR is found liable to a Member in respect of a Single Contract, but another Member (the "Second 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 Member of the second Single Contract and X-CLEAR shall be entitled to be indemnified by the Second Member in accordance with chapter 24.0.

23.8 **Application of liability**

The provisions of this chapter 23.0 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 Member's Representative(s) are subject to the Contractual Relationship; and
 - a. whether or not the Member's Representative(s) can be conclusively identified (*provided that* it is established that the relevant conduct was in fact carried out by a Member's Representative, albeit an unidentified Member's Representative).

23.9 **Interpretation of liability-related provisions**

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

General Terms and Conditions of Business (English Law) for Clearing Services

d. in any other way,

provided that nothing in the Contractual Relationship shall be construed as:

- a. excluding or limiting liability on the part of X-CLEAR for death or personal injury resulting from its negligence;
- b. excluding liability for fraud;
- c. 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;
- d. excluding or restricting the obligations of X-CLEAR under any Single Contracts; or
- e. excluding or limiting liability for breach of any obligations which in accordance with Applicable Laws cannot be excluded or limited.

24.0 Indemnity

24.1 Indemnity of Member

The Member shall indemnify and hold harmless X-CLEAR and its 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 a breach by the Member of any of its obligations under the Contractual Relationship or a breach by the Member of any Applicable Laws. In this clause 24.1, a Member shall be responsible for all conduct of that Member's Representatives as if that conduct were the conduct of the Member itself. However, notwithstanding the attribution of such conduct to the Member, this clause 24.1 does not affect any loss or liability which the Representative responsible for such conduct may also suffer or incur under any Applicable Laws.

24.2 Notification and assignment

X-CLEAR shall notify the 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 24.1 may apply. Subject to the Member's written consent, X-CLEAR shall assign to the 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 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 Member's prior written consent, such consent not to be unreasonably withheld; and X-CLEAR shall provide the Member with

General Terms and Conditions of Business (English Law) for Clearing Services

all information and, at the Member's expense, with such support as is reasonably required.

25.0 Confidentiality and data protection

25.1 General rule

All confidential information received by X-CLEAR relating to the Member in connection with the provision of Clearing Services including, without limitation, all information concerning past or current positions carried by X-CLEAR for a Member, Margins or Default Fund Contributions, Settlement and any financial statements filed with X-CLEAR by any Member ("Confidential Information"), shall be held in confidence by X-CLEAR and shall not be disclosed to any other Person.

25.2 Exceptions

Clause 25.1 above does not apply to information disclosed by X-CLEAR:

- a. with the written consent of the 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 – where applicable in accordance with the Swiss principles of mutual assistance in administrative and criminal law – by or on behalf of the same in order to fulfil the Governmental Authority's legal requirements. In particular, this refers to forwarding the Member's data to authorities in Switzerland or abroad during estate or bankruptcy proceedings or to persons engaged as part of said proceedings. X-CLEAR is further authorised, in relation to judicial or administrative proceedings that are impending or have already been initiated in Switzerland or abroad in which X-CLEAR is named instead of the Member or the beneficial owner or in addition to these, to disclose the identity of and additional data (including transaction data) pertaining to the Member to third parties if X-CLEAR may be placed at a severe disadvantage in the event that it does not provide this data (e.g. imposition of sanctions, initiation or continuation of judicial or administrative proceedings, serious financial or reputational damage). X-CLEAR shall notify the Participant in advance of its intention to disclose the data;
- c. pursuant to and in accordance with Applicable Laws (after the Member has been given notice, if such notice is permissible under the Applicable Laws or regulatory standards);

General Terms and Conditions of Business (English Law) for Clearing Services

- 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 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, in particular to any X-CLEAR Affiliate, any Trading Platform, Clearing Organisation (including a Co-CCP), provider of Transaction Routing, Approved Settlement System, settlement agent, settlement bank, Payment Bank, other payment bank, payment systems, Account Operator, the Non-Defaulting Members, the European Association of Clearing Houses 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;
- g. to any Governmental Tax Authority relating to Settlement of Single Contracts as is required by Applicable Laws;
- h. irrespective of the above clause 25.2 let. f. and clause 25.5, to companies which belong to SIX Group (Group Companies) under the condition that such Group Company and its directors and employees are subject to materially equivalent confidentiality rules as set forth in these GTC; and
- i. that relates to the fact of being a Member.

25.3 **Assurances by Member**

X-CLEAR is a Data Controller in relation to Personal Data provided to it by the Member and its Representatives. The 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 of the United

General Terms and Conditions of Business (English Law) for Clearing Services

Kingdom, or, for Members subject to the jurisdiction of an EEA Member State or Switzerland, the explicit consent required by the Applicable Laws in that relevant jurisdiction, 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 Member and all of its Representatives is in all respects and in each case lawful; and
- d. the consents referred to in clauses 25.3 let. a. and let. b. above have been provided by each Data Subject or Sensitive Data Subject prior to disclosure of Personal Data or Sensitive Personal Data, as applicable, relating to such Data Subject or Sensitive Data Subject, respectively, to X-CLEAR.

25.4 **Transfer of Personal Data**

X-CLEAR or third parties referred to in clause 25.5 may transfer Personal Data out and outside of the EEA and process Personal Data outside of the EEA but only where the level of data protection conferred by relevant Applicable Laws is at least equivalent to that afforded in the United Kingdom.

25.5 **Data outsourcing by X-CLEAR**

X-CLEAR may in accordance with the Applicable Laws outsource its data processing requirements (including the physical archiving) or other services to third parties, in particular (but not exclusively) to SIX SIX SIS Ltd, SIX Management Ltd, SIX Group Services Ltd and other Affiliates of SIX Group Ltd. The Member hereby grants its consent to such outsourcing and such arrangements. If under an outsourcing arrangement data and information are transmitted to an Affiliate or an external third party, all data receivers will be subject to comprehensive confidentiality provisions. X-CLEAR shall inform the Member in advance within an appropriate period of time in the case it outsources its data processing requirements or other services to third parties outside of Switzerland.

25.6 **Interpretation according to United Kingdom Data Protection Act**

In this chapter 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 of the United Kingdom.

General Terms and Conditions of Business (English Law) for Clearing Services

26.0 **Market disorder**

26.1 **Measures**

The 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
- c. X-CLEAR and the Member shall, in such circumstances, be bound by such measures.

If the operator of the Trading Platform determines in accordance with the Trading Platform Rules that an excessive position or unwarranted speculation or any other undesirable situation or practice is developing or has developed which is affecting or capable of affecting the Trading Platform Market, X-CLEAR may at its discretion take such action as is requested of it by the operator of the Trading Platform in respect of one or more Outstanding Contracts in a Member's name as may be provided for by the Trading Platform Rules or as may be agreed between the operator of the Trading Platform and X-CLEAR.

26.2 **General rule in case of Event of Force Majeure**

Neither X-CLEAR nor the 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.

26.3 **Consequences of Event of Force Majeure**

On the occurrence of an Event of Force Majeure:

- a. the Affected Party, if it is the Member, shall immediately notify X-CLEAR of the same (or, if the Affected Party is X-CLEAR, it shall issue a circular to the 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;

General Terms and Conditions of Business (English Law) for Clearing Services

- b. X-CLEAR shall be entitled to require the 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.

27.0 Default of Member

27.1 General rule

If the Member is unable or likely to be unable to fulfil its obligations relating to one or more Outstanding Contracts or other obligations towards X-CLEAR, X-CLEAR is authorised to take the measures described in clause 27.5 of these GTC. In such cases ("Event of Default"), the right of X-CLEAR to set a Member in Default applies irrespective of whether and how these obligations arose based on the Contractual Relationship.

27.2 Discretionary Events of Default

For X-CLEAR, the following reasons give rise to an event whereby the creditworthiness and/or the solvency and/or the ability to act of the Member is to be verified and in the case of a negative outcome, to declare the Member to be in Default pursuant to clause 27.4:

- a. The Member is unable to fulfill its performance and/or payment obligations based on the Contractual Relationship, in particular based on the Financial Collateral Agreement or in the course of a buy-in process, or is unable to fulfill these in good time.
- b. The responsible government supervisory or judicial authority revokes the admission (licence) of the Member to a market that is considered by X-CLEAR to be of importance for that Member.
- c. The Member has been declared to be in Default, suspended or excluded by a Trading Platform or Clearing Organisation or X-CLEAR becomes aware of a serious breach of the Rules and Regulations of a Trading Platform or Clearing Organisation on the part of the Member.

General Terms and Conditions of Business (English Law) for Clearing Services

- d. The Member is subject to restrictive or disciplinary measures ordered by a responsible government supervisory or judicial authority or a Trading Platform or a recognized Settlement System or another Clearing Organisation, such as investigations, suspension or criminal proceedings.
- e. The Member has a pledgee who is seizing ownership of one or more assets of the Member (with a view to their liquidation).
- f. The Member has been declared insolvent by a creditor and has entered into an agreement, settlement or other beneficial act in favor of one or more creditors.
- g. The shareholders of the Member are passing a resolution on the liquidation of the latter.
- h. The creditors of the Member are passing a resolution under English law on the liquidation of the latter (“creditors voluntary winding-up” pursuant to the UK Insolvency Act 1986).
- i. The Member is in another situation in which, in the reasonable opinion of X-CLEAR, it would not be in the interests of X-CLEAR or the relevant market place (including but not limited to the other Members), if that Member were to remain a Member.

27.3 **Mandatory Events of Default**

If any of the following situations apply, the Member shall be declared to be in Default:

- a. The responsible government supervisory or judicial authority has opened bankruptcy proceedings against the Member or a ruling has been issued appointing a bankruptcy liquidator / trustee with regards to the assets of the Member.
- b. The responsible government supervisory or judicial authority has issued a decree that prohibits the Member from carrying out securities transactions with clients and/or invokes a moratorium and deferment of payment of the Member’s obligations, and in particular prohibits interest payments.
- c. A “trust deed” that is issued by the Member becomes a “protected trust deed” (“trust deed” and “protected trust deed” are defined within the meaning of section 73(1) of the Bankruptcy (Scotland) Act 1985).

General Terms and Conditions of Business (English Law) for Clearing Services

27.4 Occurrence of Member Default or Technical Default

In the case of a negative assessment based on a discretionary Event of Default pursuant to clause 27.2 the Default sets in with the Member at the Default declaration by the competent Default Management Committee of X-CLEAR.

In the case of a mandatory Event of Default pursuant to clause 27.3, the Member is deemed in Default from the occurrence of such Event.

The Default enters into effect at the time the **Default Notice** is sent to the contact address specified in Appendix III of the Contract for Clearing Services.

The issue of a Default Notice shall be disclosed to the the Swiss supervisory authorities of X-CLEAR, the relevant Trading Platform(s), the Co-CCPs (if any), der European Association of Clearing Houses and the Approved Settlement System. The Default Notice shall also be published on the website of SIX > Exchange & Services > Go to Securities Services > Clearing.

In cases of an Event of Default pursuant to clause 27.2 that X-CLEAR does not deem to be serious, X-CLEAR may, prior to the issue of a Default Notice, at its discretion issue a reminder to the Member and allow a period for corrective action to be taken.

In the event of a Technical Default, the Member shall promptly notify X-CLEAR in writing of the reasons for the incident or situation. The Member shall immediately take steps to remedy the causes for the Technical Default and reimburse X-CLEAR for any losses, damage, adverse effects, delays, costs and expenditure that X-CLEAR has had to bear as a result of the non-fulfilment or inadequate fulfilment as well as the corrective measures X-CLEAR has had to take in this regard.

In the event of only a **Technical Default**, the Member shall promptly notify X-CLEAR in writing of the reasons for the incident or situation. X-CLEAR will give the Member an appropriate period of time to remedy the breach and its cause. The Member shall immediately take steps accordingly and reimburse X-CLEAR for any losses, damage, adverse effects, delays, costs and expenditure that X-CLEAR has had to bear as a result of the non-fulfilment or inadequate fulfilment as well as the corrective measures X-CLEAR has had to take in this regard.

27.5 Measures by X-CLEAR upon Default

On occurrence of the Member Default, X-CLEAR shall take with immediate effect each of the following measures (letters a. to d.):

General Terms and Conditions of Business (English Law) for Clearing Services

a. **Suspension of Open Offer and/or Novation**

The Open Offer and/or Novation process as well as the provision of Clearing Services to the Defaulting Member is suspended with immediate effect.

b. **Blocking of all Permissible Collateral in Collateral Account(s)**

All Permissible Collateral shall be blocked, i.e. will not be released and re-transferred to the Defaulting Member (or its bankrupt estate) until the Close-out Procedure is concluded and any Close-out Settlement Amount payable by the Defaulting Member is covered.

c. **Close-out Procedure:**

A Close-out Procedure shall be initiated with respect to all the Outstanding Contracts of a Defaulting Member.

The elements of this procedure are:

The Outstanding Contracts of the Defaulting Member are either

- fulfilled and settled where legally permissible and practicable and in consultation with the recovery agent or bankruptcy liquidator in the regular process in accordance with their terms and the Contractual Relationship; or
- where fulfilment and settlement in the regular process is deemed to be unlikely or impossible or impracticable, fulfilled and settled by X-CLEAR following a **buy-in** or **sell-out** of the net positions of the contracted Trading Platform Products, whereby X-CLEAR may act at any time following the issuance of a Default Notice at its reasonable discretion but in consultation with the recovery agent or bankruptcy liquidator.

As part of this process, the differential values of the net positions are determined per ISIN and currency of the Outstanding Contracts based on the actual purchase costs / sales proceeds.

By aggregating and netting all of the amounts to be paid to and by the Defaulting Member (per currency), a **Close-out Settlement Amount** is calculated, which is owed either by the Member or by X-CLEAR from the time the Default Notice is sent (pursuant to clause 27.4) or the mandatory Event of Default (pursuant to clause 27.3) occurs, in particular the opening of bankruptcy proceedings. This amount is netted against the Permissible Collateral of the Defaulting Member or paid to this Member. The details of this procedure are regulated in the **Clearing Terms** (published on the website SIX > [Securities Services Private](#) > Clearing) and in the Financial Collateral Agreement;

General Terms and Conditions of Business (English Law) for Clearing Services

In any case, the above procedure is subject to the contractual provisions relating to the avoidance of Single Contracts (chapter 14.0) and the legal provisions relating to the cancellation of debits or credits.

- d. In addition to the amounts calculated in the Close-out Procedure, the Member shall be charged all costs and expenses arising in conjunction with the Event of Default. This includes, but is not limited to, costs relating to the liquidation of Collateral, compensation payments for Late Settlement, costs in relation to buy-ins or sell-outs, legal fees or any related extrajudicial expenses as well as, where legally permissible, any interest costs.

X-CLEAR can postpone the taking of such measures in time, especially if a respective order by a government supervisory or judicial authority has been issued.

Furthermore, and notwithstanding the other provisions of this clause 27.5, X-CLEAR may decide to terminate the Membership of the Member in accordance with chapter 4.0.

X-CLEAR shall inform the Member in advance of the measures to be taken, except in the event of situations X-CLEAR deems to be urgent.

27.6 **Members with more than one Partner ID**

If a Member clears transactions with X-CLEAR via more than one Partner ID of X-CLEAR (Partner ID), all Outstanding Contracts under all Partner IDs of this Member shall be subject, on an unrestricted basis, to the measures taken by X-CLEAR pursuant to clause 27.5 from the point at which the Default occurs pursuant to clause 27.4 in relation to this Member. In particular, a collective Close-out Procedure shall take place, which results in a single Close-out Settlement Amount per currency being calculated for this Member.

27.7 **Netting for affiliated Members ("Group Netting Clause")**

Each Member that belongs to a legally affiliated group of companies (affected Group) and has signed a separate, written declaration of consent to the Group Netting Clause (as set out in Annex 5) shall hereinafter be referred to as a "**Consenting Member**".

Unless there are any mandatory standards under Applicable Law to the contrary, X-CLEAR shall be entitled (but not obliged) for Consenting Members of this affected Group which are in Default or were set in Default by X-CLEAR (the "Defaulting Consenting Members") to calculate the Close-out Settlement Amounts and to net these Close-out Settlement Amounts together per currency into one net amount.

General Terms and Conditions of Business (English Law) for Clearing Services

If this net amount is in favour of the Defaulting Consenting Members, X-CLEAR shall transfer this net amount on a pro rata basis according to the individual Close-out Settlement Amounts to those Defaulting Consenting Members which have positive Close-out Settlement Amounts. The individual pro rata positions result from the individual positive Close-out Settlement Amounts of the respective Defaulting Consenting Member which are divided by the sum of all positive Close-out Settlement Amounts.

If this net amount is owed by the Defaulting Consenting Members, this net amount shall be allocated to the single Defaulting Consenting Members on a pro rata basis according to the individual Margin requirements (i.e. in relation to the individual total Margin requirements of each Defaulting Consenting Members to the sum of the total Margin requirements of all Defaulting Consenting Members) and shall be settled accordingly by the realisation proceeds of the Permissible Collateral of the single Defaulting Consenting Members.

If for a Member that belongs to an affected Group consent for the Group Netting Clause has not been obtained from all Members of this Group, the requirements for the provision of Permissible Collateral may be amended in line with the risk involved.

27.8 **Excess proceeds of Close-out Procedure or Late Contribution**

In the event that:

- a. Default Fund Contributions and/or Top-up Contributions of non-defaulting Members have been realised pursuant to the Financial Collateral Agreement and excess amounts remain after the Close-out process (as defined in clause 27.5 let. b.); or
- b. a Defaulting Member makes a Default Fund Contribution after the Default Fund Contributions and/or Top-up Contributions of non-defaulting Members have been realised but only in cases where such contributions by the Defaulting Member are made pursuant to obligations arising prior to such realisation (here referred to as a "Late Contribution"),

then X-CLEAR shall make on a pro rata-basis a total compensation to the non-defaulting Members whose Default Fund Contributions and/or Top-up Contributions have been realised from such proceeds of the Close-out process or Late Contribution up to the maximum amount of the Default Fund Contributions and/or Top-up Contributions made by all Members at the time of the realisation.

General Terms and Conditions of Business (English Law) for Clearing Services

27.9 **No waiver of entitlement**

In the event that X-CLEAR does not take any steps described in clause 27.5 following a Default, X-CLEAR shall not be regarded as having waived its entitlement to take any such step immediately or at all.

27.10 **Application of Companies Act**

For the purposes of this clause 27.10, the term "default rules" means all the GTC and other provisions of the Contractual Relationship which provide for the taking of action in the event of a 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 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 a 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 Member may not contest action taken by X-CLEAR in relation to that 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. the powers of the English Courts to prevent dissipation or application of assets are subject to X-CLEAR's default proceedings;
- e. Governmental Authorities such as but not limited to the Bank of England, have certain powers to require X-CLEAR's default rules to be applied in the event of an insolvency of any 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 Member, or any relevant office-holder acting in relation to the insolvency of the Defaulting Member, on steps taken under this clause 27.0.

General Terms and Conditions of Business (English Law) for Clearing Services

28.0 Claims, liabilities and Margins of NCMs in the Default of the GCM

28.1 Pre-arranged solutions

28.1.1 Key principles and requirements

In the event of a Default by an GCM, X-CLEAR shall ensure that the pre-arranged solutions are carried out by treating all claims and liabilities against X-CLEAR as well as the Margins (according to clause 5.2) of the NCMs linked to the Defaulting GCM in accordance with the applicable contractual agreements and orders, which are in particular:

- the Contractual Relationship of X-CLEAR with the GCM and the Back-up GCM,
- the order from the Back-up GCM to X-CLEAR (pursuant to clauses 28.1.2 lit. a. and 28.1.3),
- in the case of individual client account segregation, the selection made by the individual NCMs (pursuant to clause 28.1.2).

X-CLEAR shall carry out the pre-arranged solution selected by the NCM (in accordance with the following options 1 - 3) within 48 hours after the issuance of a Default Notice on the GCM concerned (pursuant to clause 27.4), provided this solution can be implemented in a timely manner and the following requirements are met:

- a. The following documents must be in place and the corresponding measures taken:
 - Order from the Back-up GCM as the agent of the NCM pursuant to clauses 28.1.2 lit. a. and 28.1.3 as well as the technical activation of the Member based on the instructions on the CSSI form, or
 - Request by the NCM for admission as an ICM pursuant to clause 28.1.2 lit. b. and activation as a Member based on the instructions on the CSSI form, or
 - Order by the Defaulting GCM as the agent of the NCM pursuant to clause 28.1.2 lit. c., which was given based on consent of the recovery agent or by the bankruptcy liquidator;
- b. Existence of a Legal Opinion as to the soundness and enforceability of the selected solution pursuant to clauses 28.1.2 and 28.1.3, in particular based on the applicable insolvency law;

General Terms and Conditions of Business (English Law) for Clearing Services

- c. Additionally in the case of porting (pursuant to clauses 28.1.2 lit. a. and 28.1.3), the coverage of the same settlement markets by the Back-up GCM as the Defaulting GCM;
- d. Additionally in the case of porting (pursuant to clauses 28.1.2 and 28.1.3), the existence of a confirmation from the Back-up GCM of its unconditional agreement to the porting. This confirmation must be issued within 8 Business Hours after the Back-up GCM being informed by X-CLEAR of the occurrence of the Default of the GCM and the amount of the outstanding claims and liabilities as well as the Margins that must be transferred in the form of Permissible Collateral.

The following must be noted:

- X-CLEAR does not offer any safeguards with respect to contributions from NCMs to the assets pledged by the GCMs for Default Funds. This applies irrespective of whether these were made in the form of cash and/or securities.
- In jurisdictions in which Applicable Laws do not explicitly grant exceptions from regular insolvency rules and proceedings with respect to the options and procedures as defined hereafter (clauses 28.1.2 and 28.1.3) a consent or an executorial order (as the case may be) from the responsible restructuring agent, or if bankruptcy proceedings have been initiated, from the bankruptcy liquidator is required. The GCM shall expressly inform the NCM accordingly.
- However, in jurisdictions in which Applicable Laws so require, X-CLEAR shall in accordance with such laws port the positions and Margins of NCMs to a Back-up GCM without the consent of the Defaulting GCM, its restructuring agent (where employed) or bankruptcy liquidator.

The pre-arranged solutions are based on the account segregation selection made by the linked NCMs (pursuant to chapter 20.0). The following options are therefore available:

28.1.2 **Options in case of individual client account segregation (individual segregation)**

In the case of individual account segregation, the GCM shall notify the NCMs linked to it of their right to select between the options listed below in order to protect their claims and liabilities as well as the Margins they have provided with respect to the possible Default of the GCM.

Each NCM shall decide on one of the three following options.

General Terms and Conditions of Business (English Law) for Clearing Services

- a. Individual porting to a Back-up GCM: The NCM independently selects a Back-up GCM and concludes a Back-up GCM/NCM Agreement with it pursuant to the requirements in Annex 2. The Back-up GCM must already have a Membership as a Member. The Back-up GCM shall inform X-CLEAR that it has accepted its back-up function and shall issue an order to X-CLEAR in accordance with the template in Annex 2 to set up the necessary account structures and take any other measures required for a possible porting. X-CLEAR shall confirm this order and inform the Back-up GCM and the NCM once it has taken these measures.
- b. Independent Membership and transfer into own Clearing Accounts and Collateral Accounts: The NCM shall make a direct application to X-CLEAR to be admitted as a ICM (Individual Clearing Member). X-CLEAR shall review this application and then accept or reject it. If this application is accepted, X-CLEAR shall initiate the regular acceptance procedure. The NCM may hold this Membership on a subsidiary basis prior to the occurrence of the Default of the GCM, i.e. not using it, or only using it on a selective basis.
- c. Settlement by means of the Close-Out Procedure (pursuant to clause 27.5 lit. c.): The GCM and the NCM shall agree that upon occurrence of the Default of the GCM, a Close-out Procedure be carried out with respect to the claims, liabilities and Margins of the NCM. In the case of its Default, the GCM as the agent of the NCM shall, in consultation with its restructuring agent (where employed) or, once bankruptcy proceedings have been initiated, the responsible bankruptcy liquidator at the request of the NCM, issue an order to X-CLEAR to carry out a Close-out Procedure pursuant to 27.5 lit. c. In this case, the payment of a positive Close-Out Settlement Amount shall be made directly to the NCM, while a negative Close-out Settlement Amount shall be netted against the proceeds from the Permissible Collateral of the GCM.

The GCM shall inform X-CLEAR (pursuant to the requirements in Schedule 2 to the GCM/NCM Agreement in Annex 2) of the selection of the NCM with respect to the options set out above.

28.1.3 **Option in case of omnibus client account segregation (omnibus segregation)**

In the case of omnibus account segregation, the GCM, as the agent of its NCMs, shall enter into an agreement with a Back-up GCM ("**GCM/Back-up GCM Agreement**"), whereby in the case of its Default, the GCM or the bankruptcy liquidator shall issue an order to X-CLEAR to collectively transfer all claims and liabilities as well as the Margins of all NCMs linked to it to the respective Back-up GCM ("**collective porting**"). It is only possible to split the claims and liabilities amongst multiple Back-up GCM where the Defaulting GCM has multiple omnibus accounts for different groups of NCMs. The Back-up GCM must already have Membership as a Member.

General Terms and Conditions of Business (English Law) for Clearing Services

The GCM shall consult the NCMs linked to it prior to selecting the Back-up GCM and concluding the GCM/Back-up Agreement.

The Back-up GCM shall notify all NCMs concerned that it has accepted its back-up function and signed the GCM/Back-up GCM Agreement. The Back-up GCM shall also inform X-CLEAR that it has accepted the GCM/Back-up Agreement and shall issue an order to X-CLEAR (in accordance with the template in Annex 2) to set up the necessary account structures and take any other measures required for a possible porting. X-CLEAR shall confirm this order and inform the Back-up GCM once it has taken these measures.

The Back-up GCM shall conclude a Back-up GCM/NCM Agreement with each NCM concerned in accordance with the requirements in Annex 2.

28.2 **Procedure if no pre-arranged solutions are in place**

If, prior to the occurrence of the Default of the GCM, the NCMs do not make a selection pursuant to clause 28.1.2 or the GCM as the agent of the NCMs has not concluded a Back-up GCM Agreement (pursuant to clause 28.1.3) or the requirements pursuant to 28.1.1 have not been fulfilled or it transpires that the solution selected (pursuant to clauses 28.1.2 or 28.1.3) cannot be implemented in good time, X-CLEAR shall, in the event of the Default of the GCM and having obtained consent from the responsible restructuring agent, or if bankruptcy proceedings have been initiated following a corresponding order from the bankruptcy liquidator as well as in accordance with the account segregation selection made by the NCM (pursuant to chapter 20.0) as well as taking into consideration the requirements pursuant to clause 28.1.1, either

- a. carry out a **Close-out Procedure individually** for each NCM concerned pursuant to clause 27.5 let. c. with respect to its claims and liabilities as well as Permissible Collateral for Margins referable to the NCM. In this case, the payment of a positive amount (calculated in accordance with clause 27.5 let. d. shall be made directly to the NCM, while a negative amount (calculated in accordance with clause 27.5 let. d. shall be netted against the proceeds from the Permissible Collateral of the Defaulting GCM; or
- b. carry out a **Close-out Procedure collectively** for all claims and liabilities as well as all Permissible Collateral for Margins of the NCMs linked to the Defaulting GCM pursuant to clause 27.5 c. and credit a resulting positive amount to the Defaulting GCM for the account of the NCMs (in accordance with the Defaulting GCM's account segregation structure), or net a resulting negative amount (calculated in accordance with clause 27.5 d.) against the proceeds from the Permissible Collateral of the Defaulting GCM.

General Terms and Conditions of Business (English Law) for Clearing Services

29.0 **Default of X-CLEAR**

29.1 **Events of Default and Default**

X-CLEAR will automatically be in Default in the following circumstances:

- a. FINMA opens insolvency proceedings with respect to X-CLEAR pursuant to Art. 88 FMIA in connection with Art. 33 of the Swiss Federal Banking Act; and
- b. FINMA revokes the authorisation of X-CLEAR as a Financial Market Infrastructure pursuant to Art. 37 of the Swiss Financial Markets Supervision Act or Art. 88 FMIA in connection with Art. 26 para.1 let. g. of the Swiss Federal Banking Act or takes or will take any other measure as described in Art. 26 of the Swiss Federal Banking Act.

29.2 **General rule**

Following a Default by X-CLEAR under clause 29.1, all obligations of X-CLEAR and the Member to make payments and deliveries pursuant to Outstanding Contracts shall not be fulfilled in the usual way but instead X-CLEAR or the Member (as applicable) shall make a single payment calculated according to the procedure set out in clause 29.3.

29.3 **Close-out Procedure**

Subject to any other regulatory provisions, the following Close-out Procedure shall apply in the event of a Default by X-CLEAR:

- a. The Open Offer/Novation process at X-CLEAR with the Members is terminated with immediate effect.
- b. Subject to any contrary legal provisions or any contrary decrees issued by supervisory authorities or decisions by the recovery agent or bankruptcy liquidator, either:
 - (i) the Outstanding Contracts of the Members are fulfilled and settled in the regular process according to the single contractual agreements; or
 - (ii) the Trading Platform Products to be delivered to or by X-CLEAR are purchased / sold by means of a buy-in or sell-out by X-CLEAR or its bankruptcy liquidator and then the Close-out Settlement Amounts are calculated, which are offset against the Permissible Collateral or paid out to the Members.

The details of this procedure are regulated in the Clearing Terms, which are published on the website of SIX > [Securities Services Private](#) > Clearing.

General Terms and Conditions of Business (English Law) for Clearing Services

- c. In any case, the above procedure is subject to the contractual provisions relating to the revocation and dissolution of individual contracts and the legal provisions relating to the cancellation of debits or credits.

30.0 Intellectual property rights

If and to the extent that either X-CLEAR or the Member makes available to the other party, pursuant to these GTC or any other part of the Contractual Relationship, any material in which Intellectual Property subsists, X-CLEAR or the 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.

31.0 Finality

The Member acknowledges that X-CLEAR is the operator of a System (as defined in Annex 4 hereto) for the purposes of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (the "Settlement Finality Regulations") and the Settlement Finality Directive (98/26/EC and its amendment directive 2009/44/EC).

The System has been designated by the Bank of England pursuant to the Settlement Finality Regulations. The provisions relating to X-CLEAR's designation under the Settlement Finality Regulations are set out in Annex 4 hereto.

If the designation of the System should at any time be withdrawn or threatened to be withdrawn, X-CLEAR will inform the Member as soon as reasonably possible.

32.0 Charges and Fees

32.1 Payment obligations

The 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 Member and as determined in accordance with the Rules and Regulations.

Suspension of Membership does not release the Member from the requirement to pay the Membership fee or service fee. If Membership of the Member begins or is terminated during a calendar year the Membership fee paid for that year is payable or will be refunded *pro rata*.

General Terms and Conditions of Business (English Law) for Clearing Services

32.2 **Price List and monthly statement**

X-CLEAR will set out its service charges and Membership fees in the Price List as published and issued to the Member from time to time. In setting its charges and fees the 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 Member of such changes in accordance with chapter 3 of the Contract for Clearing Services (English Law).

In addition, X-CLEAR is entitled to impose default charges and demand payment of additional costs from a Defaulting Member.

X-CLEAR shall provide the Member (by post, facsimile, posting online, other electronic means or otherwise) with a monthly statement of the charges accrued.

32.3 **Collection**

X-CLEAR shall be authorised to collect all monies owed by the Member to X-CLEAR pursuant to the Contractual Relationship from the Member's ordinary account held at SIX 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 SIX SIS as an agent of X-CLEAR. The Member undertakes to instruct SIX SIS to honour all direct debit mandates received from X-CLEAR (where the Member's account is held at SIX SIS) to collect all sums owed by the Member from the Member's accounts held at SIX SIS and transfer the appropriate amount to X-CLEAR's account with SIX SIS. The Member may revoke the direct debit instruction with 14 days' notice, provided that a replacement arrangement at SIX SIS is established prior to such revocation.

33.0 **Notifications**

The Member shall recognise and consent to X-CLEAR notifying a Governmental Authority, the Trading Platform, a Co-CCP (if any), the provider of Transaction Routing, the Approved Settlement System and the Account Operator where the 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 Membership or it is suspended or terminated by X-CLEAR.

General Terms and Conditions of Business (English Law) for Clearing Services

If not prohibited by any Applicable Laws, X-CLEAR will give such notification after having advised the Member accordingly.

34.0 Extensions and waivers

34.1 Extension or waiver of acts

The time fixed by the Contractual Relationship for the performance of any act or acts may be extended, or the performance 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.

34.2 Extension of submission of information or making payments

Without prejudice to the generality of clause 34.1, 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(s) giving rise thereto.

34.3 No waiver of rights by X-CLEAR

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.

35.0 Contractual basis

35.1 Contractual Relationship

The Contractual Relationship (as defined in clause 1.1) shall be binding between X-CLEAR and each Member on the execution of the Contract for Clearing Services (English Law).

35.2 Amendments to Contractual Relationship

Amendments to the Contractual Relationship shall be effected in accordance with chapter 3 of the Contract for Clearing Services (English Law).

Any changes in the provisions of the Contractual Relationship shall enter into unrestricted validity as from the date of their contractual conclusion, i.e. from the date

General Terms and Conditions of Business (English Law) for Clearing Services

of the bilateral signing (in particular the Contract for Clearing Services and the Financial Collateral Agreement), or from publication on the website of SIX > [Securities Services Private](#) > Clearing (in particular the GTC, Rules and Regulations). The respective provisions in earlier editions of the Contractual Relationship shall be repealed from that date and shall cease to be applicable. Any ancillary agreements of a purely procedural or technical nature remain unaffected by this.

As regards any amendments of the Contractual Relationship, the relevant provisions of the Contract regarding Clearing Services are applicable.

35.3 **Consultations**

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.

36.0 **Dispute resolution**

36.1 **Addressees of complaints**

A 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 hereunder), shall initially refer the complaint to its relationship manager. Complaints in respect of matters that can reasonably be regarded as operational or technical in nature should be referred to the Relationship Management in the first instance.

36.2 **Bilateral procedure of complaints**

X-CLEAR shall make a record of the relevant complaint. X-CLEAR 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 Member.

On completion of the investigation of the complaint by X-CLEAR, X-CLEAR shall communicate the results of the investigations to the Member and include details of any action that X-CLEAR have taken or propose to take (which may be conditional on certain actions being taken by the Member). If at this stage the Member is not satisfied with the operational services of any Person in SIX > Securities & Exchange, 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 on the website of SIX > Exchange & Services > Go to Securities Services > Clearing from time to time.

General Terms and Conditions of Business (English Law) for Clearing Services

Where a Member is not satisfied with the outcome of the investigation, it may refer the complaint to the Executive Committee of X-CLEAR. The Executive Committee of X-CLEAR shall adopt such procedures as it sees fit in order to review the outcome of the investigation by X-CLEAR, but shall not be obliged to conduct a new investigation or hear further representations from the Member.

If the Member is not satisfied with the outcome of the complaint following its review by the Executive Committee of X-CLEAR, the Member may refer the complaint to the Executive Board of SIX Securities & Exchange. The Executive Board of SIX Securities & Exchange shall adopt such procedures as it sees fit in order to review the outcome of the Executive Committees of X-CLEAR, but shall not be obliged to conduct a new investigation or hear further representations from the Member.

36.3 **No evidential value**

This complaint procedure, including, without limitation, any outcome, decision or representation made by X-CLEAR, the Executive Committees of X-CLEAR, the Executive Board of SIX Securities & Exchange 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 36.1 and 36.2 shall be undertaken within a reasonable period of time.

36.4 **Appeal**

The Member shall not refer any Dispute to a court, tribunal or other Governmental Authority without first exhausting the procedures laid down in this chapter 36.0.

37.0 **Communications**

37.1 **Binding Information**

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 Member unless and until revoked by the Trading Platform or a Co-CCP. Save as otherwise expressly provided under the Contractual Relationship, X-CLEAR will not undertake any additional or particular verification of such information.

37.2 **Monitoring and review by the Member**

Each Member shall regularly monitor its electronic communication facilities – i.e. the e-mail boxes indicated in the contact data and the website of SIX > Exchange & Services >

General Terms and Conditions of Business (English Law) for Clearing Services

Go to Securities Services > Clearing during the course of each Business Day for receipt of communications from X-CLEAR.

Each Member shall immediately:

- (i) review every communication delivered to it by X-CLEAR, and
- (ii) report to X-CLEAR any error in any such communication.

37.3 **Submission of documentation**

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 37.3, 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 Member making such delivery.

37.4 **Recordings**

X-CLEAR shall be entitled to record telephone communications with the Member, the NCM or Representatives of any of them.

37.5 **Effectiveness of communication**

With the exception of notices from X-CLEAR regarding amendments to the Contractual Relationship, notices issued by X-CLEAR will be deemed to have been served if they have arrived at the Member's last known address (by post, fax, telephone, telex or electronic mail) or are made by way of a Clearing Notice and posted on the website of SIX > Exchange & Services > Go to Securities Services > Clearing. X-CLEAR will rely on the contact addresses supplied or notified by the Member. The Member is obliged to notify X-CLEAR of any changes to its contact address or details.

37.6 **Responsibility for use of means of transport**

Any loss incurred or suffered by a 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 Member, save to the extent that X-CLEAR has not exercised reasonable care.

General Terms and Conditions of Business (English Law) for Clearing Services

38.0 Provisions applicable to a Co-CCP (co-operating Central Counterparty)

A CCP that wishes to obtain a Membership status in X-CLEAR as a Co-CCP shall apply to X-CLEAR for such status in a manner and form which X-CLEAR at its discretion considers appropriate.

X-CLEAR's relationship with a Co-CCP shall be governed by the applicable Link Agreement and this chapter 38.0. Furthermore, the provisions of these GTC, and in particular the Default rules of chapter 27.0, shall apply to the Co-CCP 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 a Member shall be read as a reference to the relationship of the Co-CCP to X-CLEAR as a co-operating Central Counterparty.

X-CLEAR's right to terminate the relationship to the Co-CCP shall only be exercised in circumstances where X-CLEAR has the right to terminate the applicable Link Agreement.

39.0 Governing law and jurisdiction

39.1 Governing law

These GTC and the Rules and Regulations shall be governed by and construed in accordance with the laws of England. The laws of England shall also determine and be the governing law of the non-contractual rights, obligations and remedies (if any) of X-CLEAR and the Member with respect to each other.

39.2 Jurisdiction

Any Dispute shall be subject to the jurisdiction as set forth in the Contract for Clearing Services.

General Terms and Conditions of Business (English Law) for Clearing Services

40.0 Annex 1: Formation of Single Contracts

For the Trading Platforms listed hereafter Single Contracts shall arise between X-CLEAR and a Member and/or the Co-CCP elected by the counterparty by way of the following procedure:

- **Aquis**
means Aquis Trading Platform which is operated by Aquis Exchange Limited which is a company incorporated in England, registered under company number 07909192, whose registered office is Palladium House, 1-4 Argyll Street, London, W1F 7LD, UK:
by Novation
- **Cboe Europe Equities**
means Cboe Europe Equities Trading Platform which is operated by Cboe Europe Limited which is a company incorporated in England, registered under the number 6547680 and whose registered office is at The Monument Building, 11 Monument Street, London EC3R 8AF, UK:
by Novation
- **Equiduct**
means the ETS Trading Platform which is operated by Börse Berlin AG which is a company incorporated in Germany and having its registered office at Fasanenstrasse 3, 10623 Berlin, Germany:
by Novation
- **London Stock Exchange**
means the Trading Platform which is operated by London Stock Exchange plc which is a company incorporated in England and Wales under number 2075721 whose registered office is at 10 Paternoster Square, London EC4M 7LS, UK:
by Open Offer
- **Nasdaq Copenhagen**
means the Trading Platform which is operated by Nasdaq Copenhagen A/S a company incorporated under the laws of Denmark (registry code 19042677) whose office is located at Nikolaj Plads 6, 1047 København K, Denmark:
by Novation
- **Nasdaq Stockholm**
means the Trading Platform which is operated by Nasdaq Stockholm AB a company incorporated under the laws of Sweden (registry code 556383-9058) whose office is located at Tullvaktsvägen 15, SE 105 78 Stockholm, Sweden:
by Novation

General Terms and Conditions of Business (English Law) for Clearing Services

- **Nasdaq Helsinki**
means the Trading Platform operated by a Nasdaq Helsinki Oy a company incorporated under the laws of Finland (registry code 0815051-3) whose office is located at Fabianinkatu 14, PL 361, 00131 Helsinki, Finland:
by Novation
- **Oslo Børs**
means Oslo Børs and Oslo Axess Trading Platforms which is operated by Oslo Børs ASA which is a company incorporated in Norway, registered under company number 983268633, whose registered office is at Tollbugata 2, 0152 Oslo, Norway
by **Open Offer**
- **Sigma X MTF**
means the Trading Platform which is operated by Goldman Sachs International a partnership with company number 2263951 whose registered office is at Peterborough Court, 133 Fleet Street, London, EC4A 2BB, UK:
by Novation
- **Traiana**
means the Trading Platform “Harmony”, an electronic post-trade, pre-settlement messaging platform which is operated by Traiana Inc which is a company incorporated in the State of Delaware, whose principal office is at 11 West 42nd Street, New York, NY 10036, USA:
by Novation
- **Turquoise**
means the Trading Platform which is operated by Turquoise Global Holdings Ltd which is a company incorporated in England and Wales under registered number 07102717 whose registered office is at 10 Paternoster Square, London EC4M 7LS, UK:
by Novation
- **UBS MTF** means the Trading Platform which is operated by UBS Limited which is a company incorporated in England, registered under the number 02035362 and whose registered office is at 1 Finsbury Avenue, London EC2M 2PP, UK:
by Novation

General Terms and Conditions of Business (English Law) for Clearing Services

41.0 Annex 2: GCM – NCM relationship

41.1 Regulations of the GCM/NCM Agreement

The GCM/NCM Agreement must contain the following elements and regulations:

- a. Regulation concerning the **authorisation of the GCM** as the agent of the NCM pursuant to clause 5.2 regarding the selection of account segregation (pursuant to clause 20.0) and the option to be carried out pursuant to clause 28.1.2 as well as the collective porting pursuant to clause 28.1.3 in the event of the Default of the GCM;
- b. Regulation concerning the **authorisation of the NCM** as the agent of the GCM to issue instructions with respect to its Trading Platform Transactions directly to X-CLEAR within the ongoing Clearing process and to have them settled on behalf and for the account of the GCM;
- c. Specification that if an order entered in the Trading Platform by an NCM is matched by the Trading Platform against another order entered in the Trading Platform, a Single Contract shall arise between the GCM and X-CLEAR (in accordance with these GTC) as well as an identical contract between the NCM and the GCM;
- d. Exclusion of any contractual relationship between X-CLEAR and the NCM within the ongoing Clearing process;
- e. Assumption of responsibility by the NCM to comply with the Trading Platform Rules;
- f. Margin and Link Margin Element requirements of the GCM for its NCM(s), whereby in the case of individual client account segregation, these Margins must be requested in the same amount (equivalent value) as calculated separately by X-CLEAR for the respective NCM (according to clause 5.2 GTC);
- g. Use of collateral;
- h. Agreements with respect to account segregation (pursuant to chapter 20.0)
- i. Requirement that the NCM may neither be suspended nor terminated as a Trading Platform member;
- j. Data protection;
- k. Non-performance/default by the NCM;
- l. Period of validity;

General Terms and Conditions of Business (English Law) for Clearing Services

- m. Severability clause;
- n. Applicable law;
- o. Place of jurisdiction, place of performance;
- p. SCHEDULE 1 – **Clearing Notice about segregation and portability:**
explanation of the selection of account segregation pursuant to chapter 20.0 and the options relating to the Default of the GCM pursuant to clause 28.1.2 as well as the consequences of this;
- q. SCHEDULE 2 – **“NCM Instruction”:**
form to be completed, signed (and in case of individual account segregation to be co-signed by the NCM) and submitted to X-CLEAR by the GCM regarding the selection by the NCM with respect to i) account segregation (pursuant to chapter 20.0) and ii) in case of individual client account segregation, the option to be carried out pursuant to clause 28.1.2.

41.2 **Order from the Back-up GCM to X-CLEAR with respect to porting**

41.2.1 **Example for an order pursuant to clause 28.1.2 lit. a:**

The undersigned Back-up GCM [name, domicile] hereby confirms that it entered into a Back-up GCM/NCM Agreement with the undersigned NCM on [date] and hereby issues to SIX X-CLEAR Ltd the order, with respect to a possible Default of the GCM [name, domicile], to set up the necessary account structures and take any other measures required for individual porting to the Back-up GCM (within the scope of the Contractual Relationship of SIX X-CLEAR Ltd with the Members).

SIX X-CLEAR Ltd shall confirm this order and then notify the undersigned Back-up GCM and the co-signing NCM in writing that these measures have been taken.

[legally valid signature of the Back-up GCM]

This order is proper and correct:

[legally valid signature of the NCM]

Enclosure: Completed CSSI form for the corresponding NCM

41.2.2 **Example for an order pursuant to clause 28.1.3:**

The undersigned Back-up GCM [name, domicile] hereby confirms that it entered into a GCM/Back-up GCM Agreement with the undersigned GCM on [date] and hereby issues to SIX X-CLEAR Ltd the order, with respect to a possible Default of the GCM [name, domicile], to set

General Terms and Conditions of Business (English Law) for Clearing Services

up the necessary account structures and take any other measures required for porting to the Back-up GCM (within the scope of the Contractual Relationship of SIX X-CLEAR Ltd with the Members).

SIX X-CLEAR Ltd shall confirm this order and then notify the undersigned Back-up GCM and the co-signing NCM in writing that these measures have been taken.

[legally valid signature of the Back-up GCM]

*This order is proper and correct:
[legally valid signature of the GCM]*

General Terms and Conditions of Business (English Law) for Clearing Services

42.0 Annex 3: Settlement Finality Provisions

42.1 Introduction

For the purposes of this schedule only:

- "General GTC" shall refer to the General Terms and Conditions of Business (English Law) SIX x-clear Ltd for Clearing of Trading Platform Transactions;
- "Norwegian GTC" shall refer to the General Terms and Conditions of Business (English Law) SIX x-clear Ltd (Norwegian Branch) for Clearing of Trading Platform Transactions.

42.2 Definitions

In this Schedule capitalised terms shall bear meanings given to them in clause 1.1 of the General GTC or Norwegian GTC, as applicable, unless otherwise defined herein. The following words and expressions shall have the following meanings:

"Eligible X-CLEAR Client" means an X-CLEAR Client who falls within the definition of "participant" as set out in in Regulation 2 of the Settlement Finality Regulations.

"Participant" means, in relation to the General GTC, X-CLEAR, any Member, any Co-CCP and any Payment Bank; and in relation to the Norwegian GTC, X-CLEAR, any Member, any Co-CCP and any Eligible X-CLEAR Client.

"Payment Instruction" means:

- a. in relation to the General GTC only, an instruction sent by way of electronic message by X-CLEAR to a Payment Bank (including, but not limited to, a SWIFT Financial Markets Direct Debit Message (known as an "MT204 Message") requiring:
 - that an account held by a Member or a Co-CCP (as applicable) with that Payment Bank be debited and a corresponding credit made to an account held by X-CLEAR; or
 - that an account held by X-CLEAR with that Payment Bank be debited and a corresponding credit made to an account held by the Member or a Co-CCP (as applicable); and
- b. in relation to the Norwegian GTC only, either (A) an instruction sent by X-CLEAR to a Member, an Eligible X-CLEAR Client or a Co-CCP (as applicable) by way of electronic message (including, but not limited to, a SWIFT Financial Markets Pending Cash Settlement (known as an "MT598-201 Message")) containing data relating to Cash Settlement preceding the debiting or crediting of the cash account held by X-CLEAR

General Terms and Conditions of Business (English Law) for Clearing Services

and designated to a Member, an Eligible X-CLEAR Client or a Co-CCP (as applicable) and a corresponding crediting or debiting of the cash account held by and in the name of X-CLEAR, or (B) an instruction by X-CLEAR recorded in the Clearing system of X-CLEAR relating to the amount required for purposes of Cash Settlement as between X-CLEAR, on the one hand, and a Member, Eligible X-CLEAR Client or a Co-CCP (as applicable) on the other hand.

"Payment Transfer Order" means:

- a. in relation to the General GTC only, an instruction, given by X-CLEAR to a Payment Bank by way of a Payment Instruction, to debit an account held by a Member (or Co-CCP) with that Payment Bank or debit X-CLEAR's account at that Payment Bank, thereby placing at the disposal of X-CLEAR or the Member (or Co-CCP), respectively, the amount stipulated in the Payment Instruction by means of a book entry on the account of X-CLEAR held at SIX SIS or the Member (or Co-CCP), respectively, or alternatively amounting to an instruction resulting in the assumption or discharge of a payment obligation as defined by the rules of the System; and
- b. in relation to the Norwegian GTC only, a notification either (A) given by X-CLEAR to a Member, an Eligible X-CLEAR Client or a Co-CCP (as applicable) by way of a Payment Instruction or (B) an instruction by X-CLEAR recorded in the Clearing system, in each case resulting in the assumption or discharge of a payment obligation as defined by the rules of the System in respect of the amount stipulated in the Payment Instruction relating to Cash Settlement;

"Securities Transfer Instruction" means, in relation to both the General GTC and the Norwegian GTC, an instruction, given by way of electronic message (whether by the provider of Transaction Routing (being either the relevant Trading Platform itself or an external service provider) or otherwise) to a Central Counterparty via a Transaction Router, or, in relation to the Norwegian GTC, an instruction given by X-CLEAR to a Member, an Eligible X-CLEAR Client or a Co-CCP (as applicable), in each case containing trade data relating to a Trading Platform Transaction (including, but not limited to, a SWIFT Market Side Securities Trade Confirmation (known as an "MT518 Message") and other messages conforming to the Financial Information eXchange ("FIX") Protocol);

"Securities Transfer Order" means:

- a. in relation to both the General GTC and the Norwegian GTC, an instruction given to X-CLEAR by way of a Securities Transfer Instruction, containing trade information relating to a Trading Platform Transaction for the purposes of transferring the title to, or interest in, the product subject of a Trading Platform Transaction by means of a book entry on a register or otherwise;

General Terms and Conditions of Business (English Law) for Clearing Services

- b. in relation to the Norwegian GTC, a notification by X-CLEAR to a Member by way of a Securities Transfer Instruction or otherwise in relation to the creation of a Single Net Contract in Equity Products pursuant to clause 12.8 of the Norwegian GTC;
- c. in relation to the General GTC, a notification by way of a Securities Transfer Instruction or otherwise given by X-CLEAR to a Back-up GCM that an individually-segregated NCM's Single Contracts will be ported pursuant to clause 30.1.2 of the General GTC, or an omnibus-segregated NCM's Single Contracts will be ported pursuant to Clause 30.1.3 of the General GTC, such that new Single Contracts (corresponding to the ported Single Contracts) arise between such Back-up GCM and X-CLEAR;
- d. in relation to the Norwegian GTC, a notification by way of a Securities Transfer Instruction or otherwise given by X-CLEAR to one of the following parties:
 - to a Back-up GCM, notifying that a individually-segregated NCM's Single Contracts will be ported to it pursuant to Clause 29.1.3 of the Norwegian GTC; or
 - to a Back-up GCM, notifying that an omnibus-segregated NCM's Single Contracts will be ported to it pursuant to Clause 29.1.4 of the Norwegian GTC,

in either case, such that new Single Contracts (corresponding to the ported Single Contracts) arise between such party and X-CLEAR;

"**SWIFT**" means the computerised telecommunications network run by the Society for Worldwide Interbank Financial Telecommunication;

"**System**" means the rules, regulations and arrangements set out (1) in relation to Clearing of Trading Platform Transactions on Trading Platforms in jurisdictions other than Norway, in the General GTC, the Contract for Clearing Services (English Law), the Rules and Regulations, the Link Agreements, and in the agreements with Payment Banks (in each case as amended from time to time) and (2) in relation to the Clearing of Trading Platform Transactions on Trading Platforms in Norway, in the Norwegian GTC, the Contract for Clearing Services (English Law), the Contract for X-CLEAR Clients (English Law), the Rules and Regulations, and in the Link Agreements, and, in each of both (1) and (2), related functionality which:

- a. in relation to the Clearing of Trading Platform Transactions on Trading Platforms in jurisdictions other than in Norway, facilitate the provision to X-CLEAR (or to SIX SIS on behalf of X-CLEAR) by Members or Co-CCPs of funds for the purposes of satisfying those Members' or Co-CCPs obligations to satisfy Margin calls from time to time and, in connection therewith, facilitate the debiting of accounts held by

General Terms and Conditions of Business (English Law) for Clearing Services

- Members at Payment Banks or held by Co-CCPs at Payment Banks (as the case may be);
- b. in relation to the Clearing of Trading Platform Transactions on Trading Platforms in jurisdictions other than in Norway, facilitate the provision to a Member or a Co-CCP by X-CLEAR (or SIX SIS on X-CLEAR's behalf) of funds for the purposes of returning excess cash Margin from time to time and, in connection therewith, facilitate the debiting of the account held by X-CLEAR at Payment Banks;
 - c. in relation to the Clearing of Trading Platform Transactions on Trading Platforms in Norway, facilitate Cash Settlement of Net Position Contracts (as defined in the Norwegian GTC);
 - d. facilitate X-CLEAR's role as Central Counterparty in connection with Clearing Services and, in relation thereto, facilitate the entering into of Single Contracts and Inter-CCP Contracts (as applicable); and between X-CLEAR on the one hand and each of the following parties on the other hand:
 - Members (as defined in the General GTC) in respect of the Trading Platform Transactions subject to the General GTC;
 - Members and Eligible X-CLEAR Clients (as defined in the Norwegian GTC) in respect of Trading Platform Transactions in Equity Products and SLB Products subject to the Norwegian GTC;
 - Members and Eligible X-CLEAR Clients (as defined in the Norwegian GTC) in respect of the creation of a Single Net Contract in Equity Products pursuant to Clause 12.8 of the Norwegian GTC;
 - Co-CCPs (as defined in each of the General GTC and Norwegian GTC) in respect of Inter-CCP Contracts corresponding to Trading Platform Transactions in Equity Products and SLB Products;
 - in relation to the General GTC, Back-up GCMs, in respect of the porting of Members' Single Contracts referable to individually- and omnibus-segregated Trading Platform Transactions of an NCM or group of NCMs, respectively); and
 - in relation to the Norwegian GTC: (1) Back-up GCMs, in respect of the porting of Members' Single Contracts referable to individually- and omnibus-segregated Trading Platform Transactions of an NCM or group of NCMs, respectively or (2) Back-up Clearing Administrators or Back-up provisional Clearing Administrators, in respect of the porting of an Eligible X-CLEAR Client's Single Contracts referable to its Trading Platform Transactions; and

General Terms and Conditions of Business (English Law) for Clearing Services

- e. in relation to the Clearing of such Trading Platform Transactions and Products on all Trading Platforms facilitate incidental, supplemental, and related matters.

"Trading Platform" means an "exchange" or a "multilateral trading facility" (each as defined by the markets in financial instruments directive (Directive 2004/39/EC)) or any other Trading Platform approved by X-CLEAR pursuant to the General GTC or Norwegian GTC;

"Transaction Router" means the equipment which directs messages from the computer system of a provider of Transaction Routing to the networks (and associated systems and equipment) operated or used by a Central Counterparty, and which receives messages sent to the computer system of a provider of Transaction Routing or from the networks (and associated systems and equipment) operated or used by a Central Counterparty;

"Transaction Routing" means the various services and functionality whereby data in relation to a Trading Platform Transaction is processed and then transmitted to a Central Counterparty via a Transaction Router (whether provided by a Trading Platform, an Approved Settlement System, in whole or in part, or otherwise); and

"Transfer Order" means either a Securities Transfer Order or a Payment Transfer Order.

42.3 **Transfer Orders entering the System**

- a. A Securities Transfer Order enters the System upon:
- the receipt by X-CLEAR from the provider of Transaction Routing of trade data relating to a Trading Platform Transaction in the form of a Securities Transfer Instruction;
 - the creation of a Single Net Contract in Equity Products pursuant to clause 12.8 of the Norwegian GTC; and
 - the porting of Single Contracts pursuant to clauses 30.1.2 or 30.1.3 of the General GTC or pursuant to Clauses 29.1.3 or 29.1.4 of the Norwegian GTC, as appropriate.
- b. A Securities Transfer Order shall apply and have effect between (i) X-CLEAR and the Member (in the case of the General GTC) or Member or Eligible X-CLEAR Client (in the case of the Norwegian GTC) who are parties to the Single Contract corresponding to the Securities Transfer Order and, where applicable, (ii) X-CLEAR and a Co-CCP who are parties to the Inter-CCP Contract corresponding to the Securities Transfer Order.

General Terms and Conditions of Business (English Law) for Clearing Services

- c. In relation to the General GTC, a Payment Transfer Order enters the System at the moment that X-CLEAR sends an instruction to the relevant Payment Bank by way of a Payment Instruction requiring that Payment Bank either (i) to debit an account held by a Member or Co-CCP at that Payment Bank and make a corresponding credit of such debited amount to the account of X-CLEAR (or SIX SIS on X-CLEAR's behalf) held at that Payment Bank or (ii) to debit X-CLEAR's account (or SIX SIS's account held on X-CLEAR's behalf) at that Payment Bank and make a corresponding credit of such debited amount to the Member's or Co-CCP's account held at that Payment Bank.
- d. In relation to the General GTC, a Payment Transfer Order shall have effect between the Member, a Co-CCP, and the Payment Bank at which the Member or Co-CCP is maintaining a Cash Account, and X-CLEAR.
- e. In relation to the Norwegian GTC, a Payment Transfer Order enters the System at the moment that X-CLEAR sends an instruction to the Member, Eligible X-CLEAR Client or Co-CCP (as applicable) by way of a Payment Instruction or, as applicable, the moment X-CLEAR sends a notification to a Member, Eligible X-CLEAR Client or Co-CCP (as applicable) resulting in the assumption or discharge of a payment obligation in respect of Cash Settlement of Net Position Contracts.
- f. In relation to the Norwegian GTC, a Payment Transfer Order shall have effect between the Member, an Eligible X-CLEAR Client, or a Co-CCP (as applicable), and X-CLEAR.

42.4 **Irrevocability of Transfer Orders**

The status of a Transfer Order shall not be affected by any application of netting, set-off, or closing out of any Single Contracts or Inter-CCP Contracts to which the Transfer Order relates.

42.4.1 **Securities Transfer Orders**

- a. A Securities Transfer Order shall be revocable during the period prior to the end of the Business Day following the trade date of the Transaction by way of the Single Contract being either:
 - automatically void under clause 14.1 of both the General GTC and the Norwegian GTC; or
 - rendered void ab initio under clause 14.2 of both the General GTC and the Norwegian GTC; or

General Terms and Conditions of Business (English Law) for Clearing Services

- the Inter-CCP Contract becoming automatically void or rendered void ab initio under any similar ground under the Link Agreement.
- b. Thereafter a Securities Transfer Order shall be irrevocable and may not be revoked by either X-CLEAR or (in the case of the General GTC) a Member or a Co-CCP or (in the case of the Norwegian GTC) a Member, an X-CLEAR Client or a Co-CCP.
- c. A Securities Transfer Order shall be irrevocable immediately on the creation of a Single Net Contract in Equity Products pursuant to clause 12.8 of the Norwegian GTC, provided that the Securities Transfer Order shall be revocable if and for as long as the original Securities Transfer Order (before the creation of such Single Net Contract) would have been revocable pursuant to this clause 42.4.1 let. a. of this Annex 4.
- d. A Securities Transfer Order shall also be irrevocable immediately following the completion of the porting of Single Contracts pursuant to Clauses 30.1.2 or 30.1.3 of the General GTC or pursuant to Clauses 29.1.3 or 29.1.4 of the Norwegian GTC, as appropriate, provided that the Securities Transfer Order shall be revocable if and for as long as the original Securities Transfer Order (before the porting process) would have been revocable pursuant to clause 42.4.1 let. a. of this Annex 4.

42.4.2 **Payment Transfer Orders**

- a. In relation to the General GTC, a Payment Transfer Order shall be irrevocable at the moment that the Payment Bank debits the account of the Member or Co-CCP, or debits the account of X-CLEAR (or SIX SIS on X-CLEAR's behalf). Thereafter, neither X-CLEAR, nor a Member, nor a Co-CCP nor a Payment Bank shall be able to revoke that Payment Transfer Order.
- b. In relation to the Norwegian GTC, a Payment Transfer Order shall be irrevocable immediately upon the issuance of a Payment Instruction.

42.5 **Duplication of Transfer Orders**

If two or more Transfer Orders exist in respect of the same obligation prior to becoming irrevocable, all such Transfer Orders shall be valid. No duplication of an obligation to pay shall arise as a result of two or more Transfer Orders existing in respect of the same obligation.

42.6 **Termination of Transfer Orders**

Each Securities Transfer Order shall terminate immediately and automatically once Settlement has occurred within the Approved Settlement System.

General Terms and Conditions of Business (English Law) for Clearing Services

Each Payment Transfer Order shall terminate immediately and automatically upon all payments required pursuant to the Payment Transfer Order being received in cleared funds or full satisfaction of the relevant underlying obligations is otherwise made, in either case not subject to any Encumbrances.

42.7 **Provision of Information**

X-CLEAR and each Participant shall provide, upon payment of a reasonable charge, the following information to any person who requests it (save where the request is frivolous or vexatious) within fourteen days of a request being made:

- a. details of X-CLEAR's System which is designated for the purposes of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 and of any other system in which X-CLEAR or the Participant participates; and
- b. information about the rules relevant to the functioning of those systems (including those set out in these GTC).

Each Participant shall provide X-CLEAR on demand with such information as X-CLEAR may reasonably require for the purposes of X-CLEAR meeting its obligations as operator of the System (being a system designated pursuant to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999) including the obligation to co-operate by the sharing of information or otherwise (subject to Applicable Laws) with the Bank of England, any relevant office-holder, and any authority, body or person having responsibility for any matter arising out of, or connected with, the default of a Participant.

42.8 **Notification of certain events**

- a. Each Participant must notify each of X-CLEAR and the Bank of England in writing forthwith, providing full particulars known to it, of any of the following events affecting it:
 - 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); or
 - 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

General Terms and Conditions of Business (English Law) for Clearing Services

accordance with section 73(1) of the Bankruptcy (Scotland) Act 1985 (interpretation)).

- b. Any notification to be made by a Participant pursuant to clause a. above shall be made:
- in the case of a notification to X-CLEAR, both (i) by first class prepaid post to The Head of Operational Risk Management, SIX X-CLEAR AG, Hardturmstrasse 201, CH-8005 Zürich P.O. Box 1758, Switzerland and (ii) by facsimile to +41 58 399 43 11;
 - in the case of a notification to the Bank of England, by first class prepaid post to Manager, Clearing and Settlement, Markets Infrastructure, Financial Services Authority, 25 The North Colonnade, London E14 5HS; fax: +44 (0)20 7676 9735; and
 - in the case of a notification to the Bank of England, by first class prepaid post to The Senior Manager, Payment Systems Oversight, Payments and Infrastructure Division, HO-3, The Bank of England, Threadneedle Street, London EC2R 8AH; fax: +44 (0)20 7601 3217.
- c. Any such notice will only be effectively served, filed, made or provided and delivered to the Bank of England:
- if sent by post, upon receipt by the officer or department specified on a correctly addressed envelope, full postage paid;
 - if delivered in person to the officer or department specified, at the time of delivery or, if not delivered during business hours on a Business Day, on the following Business Day; or
 - if sent by fax, at the time that hard copy confirmation is served.

General Terms and Conditions of Business (English Law) for Clearing Services

43.0 **Annex 4: Specimen of Group Netting Clause according to clause 27.7 GTC**

To:
SIX x-clear Ltd.
Hardturmstrasse 201
Postfach
CH - 8021 Zurich

[Place/Date]

Consent to Group Netting Clause (clause 27.7 GTC) with respect to the legally affiliated group of companies [name of Group]

Dear Sir / Madam

The following declaration of consent refers to the General Terms and Conditions of Business (Swiss Law) of SIX x-clear Ltd. for Clearing Services (hereafter GTC).

The signing Member (as defined in the GTC) herewith acknowledges and declares agreement with the Group Netting Clause with respect to the above referenced group of companies according to clause 27.7 GTC. Henceforth, the member becomes a "Consenting Member" (as defined in the GTC). With this consent clause 27.7 GTC becomes an integral part of the contractual relationship between SIX x-clear Ltd. and the Consenting Member.


Kind regards,

[Consenting Member]

SIX x-clear Ltd
Hardturmstrasse 201
CH-8005 Zurich

Mailing address:
P.O. Box
CH-8021 Zurich

T +41 58 399 4311
F +41 58 499 4311
www.six-group.com

A decorative graphic at the bottom of the page consisting of several overlapping, semi-transparent red shapes. These shapes include horizontal bands and curved, organic forms that create a layered, abstract composition. The colors range from a deep, dark red to a lighter, more vibrant red, with some areas appearing as darker shadows where the shapes overlap.