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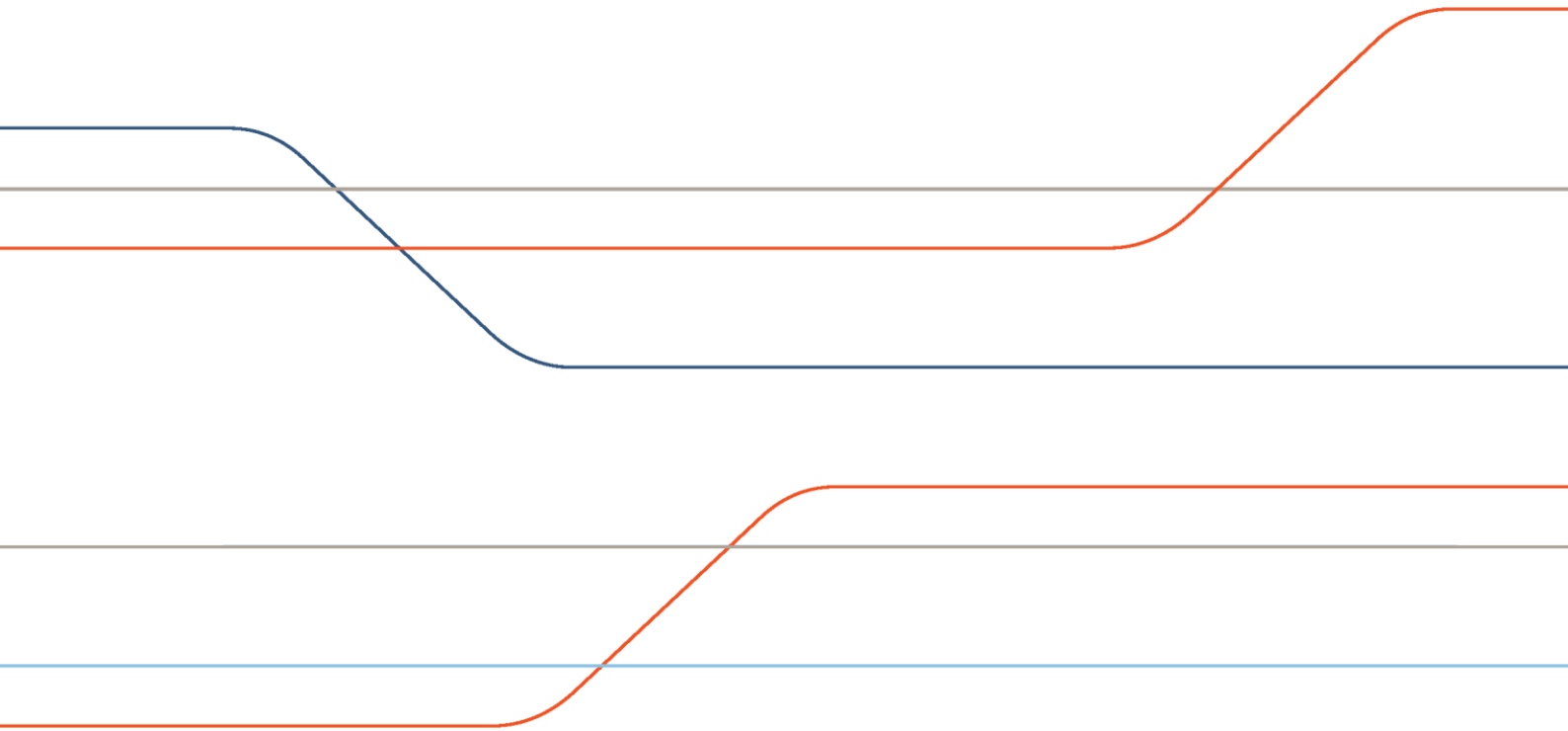
General Terms and Conditions of Business (Swiss Law)

SIX x-clear Ltd

for Clearing Services

xcl-300

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

Table of contents

1.0	Definitions and interpretation	7
1.1	Definitions and references	7
1.2	Chapter and clause headings	17
1.3	References	17
1.4	Further interpretation rules	17
2.0	Membership	18
2.1	Eligible institutions	18
2.2	Conditions for Membership	18
2.3	Additional conditions and conditional approval	20
2.4	Evidencing documentation, representation and warranty	20
2.5	Admission to Membership	20
2.6	Extension of Membership	21
3.0	Suspension of Membership	21
3.1	Reasons for suspension	21
3.2	Immediate consequences of suspension	21
3.3	Continuing consequences of suspension	21
3.4	Notification of suspension	22
4.0	Termination of Membership	22
4.1	Entitlement to terminate	22
4.2	Reasons for termination by x-clear	22
4.3	Termination by x-clear in case of amendments	22
4.4	Reasons of termination by Member	23
4.5	Continuing consequences of termination	23
4.6	Further continuing consequences of termination	23
4.7	Consequences regarding Single Contracts	23
4.8	Notification of termination	23
5.0	Regulations with regard to the NCM	24
5.1	Relationship of x-clear with the NCM	24
5.2	Relationship of the GCM with the NCM	24
5.3	Contractual obligations of the GCM vis-à-vis x-clear	25
6.0	Conditions for Clearing Services	25
6.1	Trading Platform Products and Trading Platforms	25
6.2	Conditions	25
7.0	Obligations of Member	26
7.1	Representations and warranties	26
7.2	Further representations and warranties	28
8.0	Maintenance of records	29
8.1	General rule	29
8.2	Copies	29

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

9.0	Reporting requirements of Member	29
10.0	Securities Eligible for Clearing Services	30
11.0	Formation of Single Contracts	31
11.1	General	31
11.2	Open Offer by x-clear	31
11.3	Open Offer in case of election of a Co-CCP by counterparty	31
11.4	Trading days	32
12.0	Off-order-book-trades	32
13.0	Reliance on information	33
14.0	Avoidance of Single Contracts and suspension of Clearing Services	33
14.1	Automatic avoidance of Single Contracts	33
14.2	Election of avoidance and suspension by x-clear	33
14.3	Cancellation of Inter-CCP Contracts	35
14.4	Consequences of cancellation	35
14.5	Notification of cancellation	35
15.0	Terms of Single Contracts	35
15.1	Governing law	35
15.2	Intervention by Governmental Authorities	35
15.3	Acting as principal	36
15.4	Third parties	36
15.5	Liabilities and obligations of x-clear	36
15.6	Risks, rights and obligations of the Member	36
15.7	Settlement	37
15.8	Contract Terms	37
15.9	Indemnification	37
15.10	Precedence of Contractual Relationship	37
15.11	Representations and warranties	37
16.0	Permissible Collateral	38
16.1	Provision of Permissible Collateral	38
16.2	Administration, proceeds and corporate actions	38
17.0	Taxation of Permissible Collateral	39
18.0	Realisation of Permissible Collateral and x-clear's Dedicated Capital Contribution	40
18.1	General rule	40
18.2	Order of realisation of collateral	40
18.3	x-clear's Dedicated Capital Contribution	41
18.4	Purpose of collateralisation	41
19.0	Further rules common to Permissible Collateral	41

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

19.1	Representations and warranties by Member	41
19.2	Representations and warranties by x-clear	42
19.3	Liabilities of Member	42
20.0	Account structures	42
21.0	Settlement	42
21.1	Provision of transaction details	42
21.2	Confirmation and places of Settlement	43
21.3	Approved Settlement System	43
21.4	No liability of x-clear	43
21.5	Holding of sufficient Trading Platform Products or cash	43
21.6	Power of attorney to NCM	43
21.7	Settlement agent	44
21.8	Settlement netting	44
22.0	Late Settlement	44
22.1	Buy-in	44
22.2	Consequences of buy-in	44
22.3	Exclusive governance by Contractual Relationship	45
23.0	Liability	45
23.1	General interpretation rule	45
23.2	Delayed performance by x-clear	45
23.3	Liability of x-clear	45
23.4	Responsibility of Member	45
23.5	Arrangements with x-clear Affiliates	46
23.6	Limitation of liability of x-clear	46
23.7	Liability of second Member	48
23.8	Application of liability	48
23.9	Interpretation of liability-related provisions	48
24.0	Indemnity	49
24.1	Indemnity of Member	49
24.2	Notification and assignment	49
25.0	Confidentiality and data protection	49
25.1	General rule	49
25.2	Exceptions	50
25.3	Assurances by Member	51
25.4	Transfer of Personal Data	51
25.5	Data outsourcing by x-clear	51
26.0	Market disorder	52
26.1	Measures	52
26.2	General rule in case of Event of Force Majeure	52
26.3	Consequences of Event of Force Majeure	52

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

27.0	Default of Member (“Member Default”)	53
27.1	General rule	53
27.2	Discretionary Events of Default	53
27.3	Mandatory Events of Default	54
27.4	Occurrence of Member Default or Technical Default	54
27.5	Measures by x-clear upon Default	55
27.6	Members with more than one x-clear Partner ID	56
27.7	Netting for affiliated Members (“Group Netting Clause”)	56
27.8	Excess proceeds of Close-out Procedure or Late Contribution	57
27.9	No waiver of entitlement	57
28.0	Claims, liabilities and Margins of NCMs in the Default of the GCM	57
28.1	Pre-arranged solutions	57
28.1.1	Key principles and requirements	57
28.1.2	Options in case of individual client account segregation (individual segregation)	59
28.1.3	Option in case of omnibus client account segregation (omnibus segregation)	60
28.2	Procedure if no pre-arranged solutions are in place	60
29.0	Default of x-clear	61
29.1	Events of Default and Default	61
29.2	General rule	61
29.3	Close-out Procedure	61
30.0	Intellectual property rights	62
31.0	Finality	62
32.0	Charges and Fees	62
32.1	Payment obligations	62
32.2	Price List and monthly statement	62
32.3	Collection	62
33.0	Notifications	63
34.0	Extensions and waivers	63
34.1	Extension or waiver of acts	63
34.2	Extension of submission of information or making payments	63
35.0	Contractual basis	63
35.1	Contract for Clearing Services (Swiss Law)	63
35.2	Amendments to Contractual Relationship	64
35.3	Consultations	64
36.0	Dispute resolution	64
36.1	Addressees of complaints	64
36.2	Bilateral procedure of complaints	64
36.3	No evidential value	65
36.4	Appeal	65

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

37.0	Communications	65
37.1	Binding Information	65
37.2	Monitoring and review by Member	65
37.3	Submission of documentation	65
37.4	Recordings	66
37.5	Effectiveness of communication	66
37.6	Responsibility for use of means of transport	66
38.0	Clearing Services membership for Co-CCPs	66
39.0	Governing law and jurisdiction	66
39.1	Governing law	66
39.2	Jurisdiction	67
40.0	Annex 1: Formation of Contracts	68
41.0	Annex 2	69
41.1	Regulations of the GCM/NCM Agreement	69
41.2	Order from the Back-up GCM to x-clear with respect to porting	70
41.2.1	Example for an order pursuant to clause 28.1.2 lit. a:	70
41.2.2	Example for an order pursuant to clause 28.1.3:	70
42.0	Annex 3: Provisions applicable to a Co-CCP	72
43.0	Annex 4: Specimen of Group Netting Clause according to clause 27.7 GTC	73
44.0	Annex 5: Specific provisions for the Clearing Services of Liquidnet/OTE Transactions	74
44.1.1	Scope	74
44.1.2	Additional definitions	74
44.1.3	Securities eligible for Clearing Services	74
44.1.4	Formation of Single Contracts	75
44.1.5	Specifics of the Settlement of Liquidnet/OTE Transactions	75

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

1.0 Definitions and interpretation

1.1 Definitions and references

In these General Terms and Conditions of Business (Swiss 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;

"**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;

"**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);

"**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 its website 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

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

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 chapter 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 Securities Services;

"**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 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. d.;

"**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. d.

„**Collateral Account**“ means a Securities account or a cash account operated in accordance with clause 20.0 and the Clearing Terms and held with the Account Operator in the name of the Member for the recording of Permissible Collateral of this Member;

"**Co-CCP**" means a Central Counterparty that is party to a Link Agreement with x-clear and is co-providing Clearing Services services in respect of a Trading Platform;

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

"**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;

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

"**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;

"**Contract for Clearing Services (Swiss Law)**" means the agreement governed by Swiss Law between x-clear and the Member pursuant to which the Member agrees to be bound by the GTC and the Contractual Relationship;

"**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 (Swiss 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;

"**Dedicated Capital Contribution**" means the portion of x-clear's own capital as defined by Swiss law (i.e. Financial Market Infrastructure Act, Financial Market Infrastructure Ordinance and Ordinance on Capital Adequacy) which is one of the Layers of Collateral as set forth in clause 18.2;

"**Default**" is the status in which a Member is set pursuant to clause 27.4, or x-clear is set pursuant to 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;

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

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

"**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;

"**Event of Default**" has the meaning given to it in clauses 27.2, 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

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

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 Switzerland, the EEA or any equivalent market located in a country or territory outside of Switzerland or the EEA;

"Extraordinary Default" means a Default of a Member which affects the relevant Default Fund Segment;

"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;

"FISA" means the Swiss Federal Intermediated Securities Act of 3 October 2008;

"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;

"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 a 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;

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

"**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 (Swiss 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;

"**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;

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

"**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;

"**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 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;

"**Link Margin Element**" is the collateral component arising due to Outstanding Contracts whose other leg is cleared by a Co-CCP of x-clear, to which x-clear is obliged to provide collateral under the respective Master Link Agreement;

"**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;

"**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 Switzerland, the EEA or any equivalent facility located in a country or territory outside Switzerland or the EEA;

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

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

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

"**Off-Order-Book Trade Rules**" means the rules in these GTC as well as the Trading Platform Rules of SSX which govern the Clearing Services of trades which arise outside the order book;

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

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

"**Permissible Collateral**" means Securities or cash determined by x-clear to be permissible collateral for Margins, Link Margin Element, Default Fund Contributions, Default Fund Replenishment Contribution and Top-up Contribution as further described in the Clearing Terms and in the Lending Norms;

"**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 that is relevant to that Member, to make a Default Fund Replenishment Contribution to the Default Fund Segment pursuant to the Financial Collateral Agreement and 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 Person's directors, partners, officers, executives, employees, Affiliates, contractors or agents;

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

"**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 Termination and Suspension Procedure Rules;
- d. the Late Settlement and Buy-in Rules;
- e. the Settlement Rules (User Guides for Settlement);
- f. the Business Partner Specifications;
- g. the Price List.

"**Securities**" means Intermediated Securities, 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;

"**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;

"**SIX Group**" means SIX Group Ltd, the parent of SIX Securities Services Ltd which is itself the parent of x-clear;

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

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

"**SSX**" means SIX Swiss Exchange Ltd, a Trading Platform (stock exchange) incorporated in Switzerland and registered under the company number CHE-106.787.008 whose registered office is Selnaustrasse 30, 8001 Zurich, Switzerland;

"**SSX Rules**" are the Trading Platform rules of SSX which are actually in force;

"**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 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, 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;

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

"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 Brandschenkestrasse 47, CH-8002 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.

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

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

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 according to Applicable Laws.

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

2.0 Membership

2.1 Eligible institutions

A Person who has been admitted as a Trading Platform member 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 bank as defined in the Swiss Federal Act on Banks and Savings of 8 November 1934 (the "Swiss Federal Banking Act");
- b. a firm authorised by a Governmental Authority in the EEA with equivalent permissions (where relevant) and passported into the relevant EEA jurisdiction of the Trading Platform;
- c. a non-Swiss bank or a non-Swiss Securities dealer which, in the opinion of x-clear, is subject to an adequate degree of regulation and supervision equivalent to that of a bank or securities dealer in Switzerland, respectively, subject to regulation in Switzerland; and
- d. a "securities dealer" as defined in the SESTA.

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:

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

- 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 (Swiss Law) and the Financial Collateral Agreement;
- 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; and
- 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

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

proposed activities under the direct supervision and responsibility of the Person referred to in d. above;

- k. 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 a 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 (if applicable) 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.

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.

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

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 of Membership**

3.1 **Reasons for suspension**

Notwithstanding its contractual duty to provide Clearing Services services, x-clear shall be entitled to suspend the Membership of a Member 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 clause 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 **Immediate consequences of suspension**

Upon suspension of Membership, 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, where relevant, of the provisions of the GTC relating to Default).

3.3 **Continuing consequences of suspension**

An 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

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

- 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, the termination period shall start on the day of such extraordinary reassessment.

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 Member Default pursuant to chapter 27.0; or
- d. the Clearing Services services agreement between the Trading Platform and x-clear has been terminated.

4.3 Termination by x-clear in case of amendments

x-clear may also terminate the Membership of a Member with immediate effect in accordance with the Contract for Services (Swiss Law).

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

4.4 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.

4.5 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.

4.6 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;
- 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 or releases 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.

4.7 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.

4.8 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

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

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 Services 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 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*").

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

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)" 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 a 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

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

- (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;
- 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;
- 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;
- f. be familiar with and bear responsibility for the tax requirements and consequences of Clearing Services with x-clear pursuant to the Applicable Law;

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

- g. provide Margins and Link Margin Element to x-clear in accordance with the Financial Collateral Agreement and the Contractual Relationship;
- h. make all such Default Fund Contribution, Default Fund Replenishment Contribution and 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;
- 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 Services 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.

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

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;
- 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;
- 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.

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

8.0 Maintenance of records

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:
 - (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

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

- (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 Services 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;
- k. of any matter, circumstance, change or occurrence which would cause a statement provided pursuant to this clause 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 Securities Eligible for Clearing Services

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 Trading Platform Products; and
- c. able to be settled in an Approved Settlement System.

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

11.0 Formation of Single Contracts

11.1 General

Single Contracts with x-clear are formed by acceptance of the Open Offer. Annex 1 defines per Trading Platform which process is applicable for Clearing Services of respective Trading Platform Transactions by x-clear.

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

- (i) 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
- (ii) 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 a 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:

- (i) 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
- (ii) 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

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

seller (as applicable) of the Trading Platform Product to which the Trading Platform Transaction relates.

11.4 Trading days

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

12.0 Off-order-book-trades

Subject to the conditions set out below, x-clear will also act as the Central Counterparty in SSX Off-Order-Book Trades. The following rules apply:

- a. An Off-Order-Book Trade between two SSX Members will give rise to a bilateral agreement between the two SSX Members in accordance with the SSX Rules.
- b. Where both parties to an Off-Order-Book Trade are either Members or NCMs, x-clear will enter into the Off-Order-Book Trade as the Central Counterparty, if the Off-Order-Book Trade can be accepted into Clearing Services under the SSX Rules and the respective Rules & Regulations of x-clear and if the bilateral agreement referred to in letter a) can and will be cancelled at the moment of x-clear's interposition.
- c. Subject to cases defined in chapter 14.0, x-clear has the right to reject and cancel the Off-Order-Book Trade until the end of the first trading day after Matching (T + 1). If the Off-Order-Book Trade is cancelled, the bilateral agreement between the two Members will remain in force.
- d. Subject to chapter 11.0 and chapter 14.0 and in an instance where one SSX Member that is party to the Off-Order-Book Trade is a GCM, ICM or NCM and the counterparty to the same Off-Order-Book Trade, being an SSX Member, has elected for a Co-CCP, if any, to act as Central Counterparty, x-clear will enter into the Off-Order-Book Trade in respect of that Off-Order-Book Trade as the Central Counterparty, if the Off-Order-Book Trade can be accepted into Clearing Services under the SSX Rules and the Respective Rules & Regulations of x-clear as well as under the respective provisions of the Co-CCP. x-clear will only enter into the Off-Order-Book Trade if it gets confirmation by the Co-CCP on or before the Business Day following the trade date that an Inter-CCP Contract will arise between x-clear and the Co-CCP pursuant to and subject to the relevant Link Agreement.
- e. The interposition of x-clear as the Central Counterparty will give rise to two Single Contracts, the first between the selling Member and x-clear and the second between x-clear and the buying Member. These Single Contracts will not arise retrospectively but at the time of x-clear's interposition. The type of Security, the price and the number of Securities will be identical to the Off-Order-Book Trade and the remaining terms of these contracts will be subject to the GTC (Swiss Law). Chapters 11.0 and 14.0 will apply mutatis mutandis to the transfer of benefits and risks, time of performance, place of performance and pre-emptive rights, dividends and distributions.

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

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 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 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;
 - 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);

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

- 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;
- 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.

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

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 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.

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 Swiss 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

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

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 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).

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 of the Member

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).

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

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 Services 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 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 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.

15.10 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.

15.11 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 (Swiss 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 a 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 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

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

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 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

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

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 rule

x-clear shall be entitled to realise the Permissible Collateral, which is 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.

18.2 Order of realisation of collateral

In the event of Default of a Member, x-clear shall be entitled to 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 Contributions 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);
5. Default Fund Replenishment Contributions made by non-defaulting Members to replenish the relevant Default Fund Segment (pursuant to the Financial Collateral Agreement);
6. Top-up Contributions made by non-defaulting Members (pursuant to the Financial Collateral Agreement); and
7. the remainder of x-clear's own reserves and capital.

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

18.3 **x-clear's Dedicated Capital Contribution**

Before using Default Fund Contributions of non-defaulting Members x-clear shall use 25 per cent of its own capital (the "Dedicated Capital Contribution") to cover losses caused by a Member Default.

x-clear shall make a Dedicated Capital Contribution for the entire amount (totalling 25 per cent of its determined capital) only once in a period of 1 month following any Member Default which necessitated the use of such contribution ("Cooling-off Period 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 capital), the Cooling-off Period of x-clear shall also apply to that portion only. Any losses occurring within the Cooling-off Period which are exceeding any residual Dedicated Capital Contribution shall be absorbed by the subsequent Layer(s) of Collateral (items 4 to 7 of clause 18.2 above).

After any use of the Dedicated Capital Contribution x-clear shall reinstate its own reserves and capital to the extent as required by the Swiss Financial Market Infrastructure Ordinance and the Swiss Capital Adequacy Ordinance within the period of time determined by FINMA/SNB.

18.4 **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 Margin 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;
- 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);

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

- 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 Securities provided as Permissible Collateral and returned to the Member are 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.

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.

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.

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

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.

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 (in respect of which the GCM has executed a 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

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

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**

An 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 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 paragraph 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.

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

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 rule**

The Contractual Relationship shall at all times be observed, interpreted and given effect in the manner most conducive to the promotion and maintenance of:

- a. the status of x-clear as a Financial Market Infrastructure supervised by FINMA;
- b. the recognition of x-clear as a recognised Third Country CCP by ESMA and
- c. x-clear's and the Members' good reputation, high standards of integrity and fair dealing.

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 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

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

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 any).

Subject to the aforesaid and for the avoidance of doubt:

- 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 x-clear Affiliates

x-clear may, from time to time, enter into certain arrangements with an x-clear Affiliate under which such Affiliate provides certain services to x-clear or which otherwise facilitate x-clear's performance of its obligations under the Contractual Relationship. Subject to clause 23.3 and to any contract (if any) between the x-clear Affiliate 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;

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

- 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, 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 25.5, 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 (Swiss 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 and 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
- d. 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
- d. in any other way,

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

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

- 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 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, Link Margin Element, Default Fund Contribution, Default Fund Replenishment Contribution and Top-up Contribution,

General Terms and Conditions of Business (Swiss Law)

for Clearing Services

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 in compliance with the Applicable Laws of Switzerland dealing with secrecy, in particular, but not limited to, Art. 14 para. 2 and Art. 147 FMIA, Art. 162 Swiss Criminal Code, Art. 271 Swiss Criminal Code, Art. 273 Swiss Criminal Code, the Swiss Federal Law on Data Protection and the Ordinance on the Swiss Federal Law on Data Protection.

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);
- 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 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

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

surveillance or disciplinary purposes or in relation to any possible or actual Default or the termination or suspension of Membership;

- g. 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
- h. that relates to the fact of being a Member.

25.3 Assurances by Member

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 Swiss Data Protection Act or, for Members subject to the jurisdiction of the United Kingdom or an EEA Member State, 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 lit. a. and 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 or outside of Switzerland and Process Personal Data outside of Switzerland but only where the level of data protection conferred by relevant Applicable Laws is at least equivalent to that afforded in Switzerland

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 SIS Ltd, SIX Systems Ltd, SIX Management Ltd, SIX Group Services Ltd and other Affiliates of the 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

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

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.

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;
- 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

General Terms and Conditions of Business (Swiss Law)

for Clearing Services

- c. x-clear shall be entitled to subject affected Outstanding Contracts to Clearing Services 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 ("Member Default")

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 how and whether 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 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.
- 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.

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

- 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 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).

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 Securities Services.

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 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

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

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 c.):

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 Member is suspended (with regards to the specific Trading Platform Products or in another way) with immediate effect.

b. 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
- at x-clear's discretion and in consultation with the recovery agent or bankruptcy liquidator, where fulfilment and settlement in the regular process is deemed to be unlikely or impossible or impracticable, fulfilled and settled following a **buy-in** or **sell-out** of the net positions of the contracted Trading Platform Products by x-clear.

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 "Termination and Suspension Procedure Rules" (published on the website of SIX Securities Services) and in the Financial Collateral Agreement;

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.

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

- c. 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 governmental 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 x-clear Partner ID**

If a Member clears transactions with x-clear via more than one x-clear Partner ID (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 4) 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.

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

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

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.

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.

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 a 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 and 28.1.3)

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

- 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 of 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;
- 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.

General Terms and Conditions of Business (Swiss Law)

for Clearing Services

- 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.

- 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 Services Accounts and Collateral Accounts:
The NCM shall make a direct application to x-clear to be admitted as a ICM (Individual Clearing Services 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. b):
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. b. 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.

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

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.

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. b. 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.b. shall be made directly to the NCM, while a negative amount (calculated in accordance with clause 27.5 let.b. 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 let. b. and credit a resulting positive amount (calculated in accordance with clause 27.5 let.b. to the Defaulting GCM for the account of the NCMs (in accordance with

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

the Defaulting GCM's account segregation structure) or net a resulting negative amount (calculated in accordance with clause 27.5 let.b.) against the proceeds from the Permissible Collateral of the Defaulting GCM.

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 "**Termination and Suspension Procedure Rules**", which are published on the website of SIX Securities Services.

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

- c. In any case, the above procedure is subject to the contractual provisions relating to the avoidance 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 the finality provisions of Art. 89 FMIA (system protection) apply.

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*.

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 (Swiss Law).

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 SIS, an account at a Payment Bank or via the Swiss payments system Swiss Interbank Clearing Services ("SIC") by direct debit. Collection will be effected by SIS as an agent of x-clear. The Member

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

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

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 or events giving rise thereto.

35.0 Contractual basis

35.1 Contract for Clearing Services (Swiss Law)

The Contractual Relationship shall be binding between x-clear and each Member on the execution of the Contract for Clearing Services Services (Swiss Law).

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

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 (Swiss Law).

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**

An 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 of SIX Securities Services in the first instance.

36.2 **Bilateral procedure of complaints**

x-clear or SIS shall make a record of the relevant complaint. x-clear, and if applicable, SIS, shall at their discretion conduct an investigation into the matters raised by the complaint and shall, if they consider it necessary, request further particulars of the complaint from the Member.

On completion of the investigation of the complaint by x-clear and/or SIS, x-clear shall communicate the results of the investigations to the Member and include details of any action that x-clear and/or SIS have taken or propose to take (which may be conditional on certain actions being taken by the Member). If at this stage the Member is not satisfied with the operational services of any Person in SIS, it may escalate the complaint to the relevant level of operative management in accordance with the details relating to escalation of complaints as published by x-clear and/or SIS on the SIX Securities Services website from time to time.

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

If the Member is not satisfied with the outcome of the complaint following its review by the Executive Committee of x-clear or SIS, respectively, the Member may refer the complaint to the Executive Board of SIX Securities Services. The Executive Board of SIX Securities Services shall adopt such procedures as it sees fit in order to review the outcome of the

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

Executive Committees of x-clear or SIS, but shall not be obliged to conduct a new investigation or hear further representations from the Member.

36.3 **No evidential value**

This complaints procedure, including, without limitation, any outcome, decision or representation made by x-clear, SIS, the Executive Committees of x-clear or SIS, the Executive Board of SIX Securities Services, 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 (if applicable). 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 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 Securities Services – 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

General Terms and Conditions of Business (Swiss Law)

for Clearing Services

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 Securities Services. 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.

38.0 Clearing Services membership for Co-CCPs

A Co-CCP (if any) that wishes to obtain a membership status in x-clear as a Co-operating Clearing House (as defined in the applicable Link Agreement) shall apply to x-clear for such status in a manner and form x-clear at its discretion considers appropriate. Pursuant to the applicable Link Agreement, the Co-CCP shall comply with, and be subject to, the provisions relating to the status of a Co-operating Clearing Services House as set out in Annex 3. For the avoidance of doubt, x-clear's relationship with a Co-CCP (if any) shall be exclusively governed by this chapter 38.0, the applicable Link Agreement, Annex 3 – and not any provision of the Contractual Relationship (apart from this chapter 38.0 and as otherwise provided in Annex 3).

39.0 Governing law and jurisdiction

39.1 Governing law

Swiss law – exclusive of its conflict of law rules – is applicable to all disputes in connection with the legal relationships between x-clear and its Members, namely due to this Contractual Relationship. In particular, with regard to Intermediated Securities Swiss law shall also be applicable (Art. 108c Swiss Private International Law Statute and Art. 4 Hague Convention on the Convention on the Law applicable to certain rights in respect of Securities held with an Intermediary). This choice of law is also valid for property law issues insofar as a choice of law is admissible with respect to the said issues (see Art. 104 et seq. Swiss Private International Law Statute).

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

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 (Swiss Law) for Clearing Services

40.0 **Annex 1: Formation of Contracts**

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

SIX Swiss Exchange (“SSX”) means a trading platform which is operated by SIX Swiss Exchange, a company incorporated in Switzerland and registered under the company number CH-020.6.000.206-7 whose registered office is Selnaustrasse 30, 8001 Zurich, Switzerland:

by Open Offer

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

41.0 Annex 2

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 chapter 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 Services 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 Services 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;
- m. Severability clause;
- n. Applicable law;

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

- 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 impact and costs 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 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]



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

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

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

42.0 **Annex 3: Provisions applicable to a Co-CCP**

The provisions of chapter 38.0 of these GTC shall apply to the Co-operating Clearing House *mutatis mutandis* but only in respect of its obligations in respect of Inter-CCP Contracts. In particular, references to "Outstanding Contracts" shall be replaced by references to "Inter-CCP Contracts" and references to the Membership of a Member shall be read as a reference to the membership of the Co-CCP as a Co-operating Clearing House.

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

The provisions of this Annex 3 shall be regarded as part of the "default rules" of x-clear applicable to a Co-operating Clearing House.

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

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

To:
SIX x-clear Ltd.
Brandschenkestrasse 47
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 and the Consenting Member.

Kind regards,

[Consenting Member]

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

44.0 **Annex 5: Specific provisions for the Clearing Services of Liquidnet/OTE Transactions**

44.1.1 **Scope**

This Annex supplements the General Terms and Conditions of Business (Swiss law) of x-clear and the Clearing Terms of x-clear for SIX Swiss Exchange by stipulating additional and specific provisions for clearing transactions if such transactions have arisen from Trading Platform Transactions which were matched on the Liquidnet Trading Platform and were accepted for Clearing Services by x-clear.

44.1.2 **Additional definitions**

The following specific terms and definitions stand for the respective general terms in the GTC of x-clear:

"Liquidnet" means Liquidnet Europe Limited, a company incorporated in England and Wales under registration number 04232799, and having its registered office at 6th Floor, Finsbury Square, London EC2A 1AE as well as a remote member of SSX;

"Liquidnet Member" stands for "Trading Platform member" and means a member of the Liquidnet Trading Platform or any other person approved by the Liquidnet Trading Platform who trades on that platform;

"Liquidnet/OTE Product" stands for "Trading Platform Product" and means a Trading Platform Product which is traded on the Liquidnet Trading Platform and is admitted to Clearing Services by x-clear;

"Liquidnet/OTE Transaction" stands for "Trading Platform Transaction" and means an over-the-exchange transaction which was concluded over the SIX Swiss Exchange Liquidnet Service outside of the order book of SSX at the mid-point price;

"Liquidnet Trading Platform" stands for "Trading Platform" and means the H2O segment of the Trading Platform operated by Liquidnet;

"Mid-Point-Matching" means the matching of orders for the sale or purchase of a Liquidnet/OTE Product between two members of SSX or between a member of SSX and Liquidnet Europe Limited as Remote Member of SSX;

"SIX Swiss Exchange Liquidnet Service (SLS)" means the service offered by SSX which provides access to the Liquidnet non-displayed liquidity pool of securities and the Mid-Point-Matching process based on the SSX Rules.

44.1.3 **Securities eligible for Clearing Services**

x-clear provides Clearing Services for Liquidnet/OTE Products which are

- a. listed for trading on the Liquidnet Trading Platform; and

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

- b. listed and admitted to trading by the SIX Swiss Exchange Liquidnet Service (SLS); and
- c. deemed eligible for Clearing Services by x-clear (in coordination with the Co-CCPs); and
- d. able to be settled in an Approved Settlement System.

44.1.4 **Formation of Single Contracts**

For OTE/Liquidnet Transactions, Single Contracts shall arise between x-clear and a Member and/or the Co-CCP elected by the counterparty by way of the **Open Offer** procedure. The provisions of clauses 11.2 and 11.3 GTC apply.

44.1.5 **Specifics of the Settlement of Liquidnet/OTE Transactions**

With respect to the Settlement of Liquidnet/OTE Transactions, the provisions of the Clearing Terms for SSX and the following specifics apply:

- a. Liquidnet/OTE Transactions subject to Clearing Services by x-clear will be settled on the basis of the Applicable Laws, rules and market practices prevailing in the home market of the relevant Security (the "Home Market Basis") with the exception of internationally listed securities.
- b. International securities will be settled on the basis of the Applicable Laws, rules and market practices as applied by the International Central Securities Depository (ICSD) approved as the place of settlement.
- c. Each Member must have appropriate settlement arrangements in place to enable Settlement to take place in accordance with the Clearing Terms for SSX.
- d. Members shall notify x-clear of their settlement arrangements for different countries and markets. x-clear will use SIX SIS as its custodian for settling its leg of the settlement instruction in different markets.
- e. The settlement model for Non-Swiss Securities transactions requires the participant to provide cross-border Liquidnet/OTC settlement instructions in order to facilitate settlement.
- f. The settlement model for the Swiss market is automated and does not require additional instructions from the participant in order to facilitate settlement.
- g. For Swiss ISINs, the Clearing Terms for SIX Swiss Exchange apply. For foreign ISINs these provisions (chapter 44.1.5) of this Annex apply.

Securities Lending and Borrowing - as a means for x-clear to acquire missing securities at the selling Member's expense to ensure delivery to the buying Member - is excluded in the case of Liquidnet/OTE Transactions.

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