

BlockMatch MEMBER TERMS AND CONDITIONS

These Terms and Conditions (as defined below) are applicable to all trading members of BlockMatch. These Terms and Conditions are made between:

INSTINET EUROPE LIMITED, with company registration number 01915961, a firm authorised and regulated by the Financial Conduct Authority (the “**FCA**”) whose registered office is at 1 Angel Lane, London EC4R 3AB (the “**Operator**”); and

The **Member** (as defined below).

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

In these Terms and Conditions, unless the context otherwise requires, the following words shall have the following meanings:

Accredited Software Provider: means any of the entities listed from time to time on the BlockMatch Website as an accredited software provider through which the Member accesses the Platform as indicated on its Application Form;

Affiliate: means in relation to a Party, any party directly or indirectly Controlling, Controlled by or under the direct or indirect Control of such Party;

Agreement: means, the Application Form, these Terms and Conditions, the Fee Schedule, the Privacy Policy, the Technical Specification, the Rules and any Order Form, in each case which govern the Member’s access to and use of BlockMatch and provision of the Services;

Application Form: means the member application form signed by the Member pursuant to which the Member applies for and agrees to Membership on the terms of the Agreement including any supplements to the same;

Applicable Law: means and includes:

- (a) any and all statutes, statutory provision, statutory instruments and other subordinate legislation and all judgments of any relevant court of law (including any and all regulations of the European Parliament while directly applicable in any relevant part of the United Kingdom and any laws or regulations implementing any such regulations in any relevant part of the United Kingdom) and all orders, regulations, statutes, instruments and/or other subordinate legislation made under any of the above in any relevant part of the United Kingdom;
- (b) all regulations, directions, rules, requirements, guidance, orders, decrees and codes of conduct of any Competent Authority, which are applicable to the Agreement or any Party (or any DEA User) or any activity of any Party (or DEA User);

BlockMatch: means a Multilateral Trading Facility (“**MTF**”), operated by Instinet Europe Limited, which is authorised and regulated by the UK Financial Conduct Authority (“**FCA**”),

pursuant to the Regulation on Markets in Financial Instruments (600/2014) and the Directive on Markets in Financial Instruments (2014/65/EU) (“**MiFID II**”);

BlockMatch Data: includes any and all data emanating directly or indirectly from BlockMatch including data created by the Member (or any DEA Member) when accessing BlockMatch;

BlockMatch Data Licence: means the agreement provided by the Operator governing access to and use of BlockMatch Data;

BlockMatch Website: means the BlockMatch web site at www.blockmatch.com as amended or replaced from time to time;

Business Day: means a day other than Saturday or Sunday on which commercial banks are open for general business in England;

Central Counterparty or CCP: has the meaning set out in the Rules;

Change of Control: means, in respect of the Member, the occurrence of a change in the person or entity who: (a) directly or indirectly owns or Controls; or (b) is directly or indirectly owned or Controlled by; or (c) is in common ownership or Control with, the Member;

Competent Authority: means any national, state or local government authority, any government, quasi-governmental, regulatory, judicial, public or administrative agency, authority or body, any court of competent jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public statutory person (whether autonomous or not) acting within their powers and who have jurisdiction over this Agreement or any Party (including the FCA) and in the case of all the above, from which there is no right of appeal;

Confidential Information: means the terms, conditions and subject matter of this Agreement and all information disclosed by one Party to the other (or by any DEA User) or otherwise received by the other in the negotiation, entering into and/or performance of the Agreement, which relates directly or indirectly to that Party (or by any DEA User) or any third party with which it has or proposes to have business dealings and/or its or their officers, employees, agents, suppliers or customers. Confidential Information includes the BlockMatch Data and any information within or relating to the same; technical, business and financial information; products and/or services; research and development, business processes, and/or prices; marketing and sales information; any information obtained in the course of an audit pursuant to Clause 22 and any information which the recipient Party has been informed is confidential or which it might reasonably expect the other Party would regard as confidential but excludes information which:

- is already in, or subsequently becomes part of, the public domain in each case other than as a result of an unauthorised disclosure; and/or
- is known to the receiving Party before it was first disclosed by or on behalf of the other Party and in respect of which the receiving Party was not under any other duty of confidentiality;
- is, or becomes, available to the receiving Party from a third party who is legally entitled to possess and provide the information to the receiving Party;

Control: in relation to any entity, means the power, direct or indirect, to direct or cause the direction of the management and policies of such entity whether by contract, ownership of shares, membership of the board of directors, agreement or otherwise and without limiting any of the foregoing any entity owning more than fifty per cent of the voting securities of a

second entity shall be deemed to control that second entity (and “**Controlling**” and “**Controlled**” shall be construed accordingly);

Costs: means any cost, expense, liability, claim, action, proceeding, loss or damage, whether direct, consequential, special and/or incidental in nature (including reasonable legal fees);

Data Protection Laws: means the UK Data Protection Act 1998 (the “DPA”) on or before 25 May 2018 and the GDPR from 25 May 2018;

Direct Electronic Access or **DEA:** means direct market access and sponsored access;

DEA Provider: means a Member who in accordance with the Rules is authorised to provide DEA to underlying DEA Users;

DEA User: means the customer or client of a DEA Provider;

Eligibility Criteria: means the criteria set out in the Rules;

Event of Default: means without limitation in respect of any Member (or where relevant any DEA User):

- (a) failure to settle any Trade on a timely basis or fails to pay any amount due and owing to the Operator or the Operator acting reasonably, believes such failure(s) is likely to occur;
- (b) a breach of the Rules, Terms and Conditions or Membership Agreement;
- (c) matters defined or held to be such in accordance with the Rules;
- (d) failure to continue to satisfy the Eligibility Criteria;
- (e) the occurrence of any adverse economic, market or financial situation;
- (f) the occurrence of an Insolvency Event;
- (g) any sanction imposed by the Member’s relevant Competent Authority which could in the opinion of the Operator affect the Member’s ability to comply with the Rules;

including in each case above a belief on the part of the Operator (acting reasonably) that such failure, breach or occurrence may or is likely to occur;

FCA: means the Financial Conduct Authority (or any successor entity which regulates the conduct of the Operator);

Fees: means the fees (if any) applicable to the Member’s use of the Services as set out in the Fee Schedule;

Fee Schedule: means the list of Fees published by the Operator on the BlockMatch Website from time to time;

GDPR: means: (a) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 until the date on which the United Kingdom leaves the European Union; and (b) thereafter any superseding or equivalent legislation enacted in the United Kingdom;

Insolvency Event: means in relation to a person:

- (a) a meeting of or negotiation with creditors of that person being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being proposed by or in relation to that person;
- (b) a chargeholder, receiver, administrative receiver or other similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven (7) days) on the whole or a material part of the assets of that person;
- (c) that person ceasing to carry on all or a substantial part of its business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986 (except that, for the purposes of this Agreement, the reference to pounds sterling £750 in section 123(1) of that Act shall be construed as a reference to pounds sterling £50,000);
- (d) that person or its directors or the holder of a qualifying floating charge or any of its creditors giving notice of their intention to appoint, appointing or making an application to the court for the appointment of an administrator; or
- (e) a petition being advertised or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of that person, or
- (f) the happening in relation to that person of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets;

Intellectual Property: means all copyright and related rights, moral rights, database rights, trade marks and trade names, rights to goodwill and to sue in passing off, rights in designs, patents, rights to inventions, utility models, rights in semiconductor or circuit layouts and the right to have confidential information (including know-how and trade secrets) kept confidential and any and all other intellectual property rights, in each case whether registered or unregistered, and including all applications (and rights to apply) for, and renewals and extensions of and rights to claim priority from such rights, and any and all similar or analogous rights and forms of protection, which in each case subsist now or in the future in any part of the world;

IPR Claim: has the meaning given in Clause 14.2;

Member Notice: means a notice to the members of BlockMatch made in accordance with the Rules;

Member: the trading member identified on the Application Form and that is a signatory of the Application Form;

Member Data: means data input into BlockMatch through the Member's connection to BlockMatch (including by the Member or any DEA User);

Membership: means a Member's membership of BlockMatch;

Membership Date: means the date on which the Member's membership commences as set out in the Rules;

MiFID II: means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments as amended, updated and replaced from time to time;

Order Form: means an order form for any additional Services, in such form as the Operator shall determine, which shall be subject to and in accordance with these Terms and Conditions;

Party/Parties: means the Member and/or Operator as applicable;

Platform: means the system, hardware, software, networks and other technology which from time to time operates BlockMatch;

Privacy Policy: means Operator's policy for processing of personal data as published on the Operator Site from time to time;

Products: means any and all financial instruments of any kind that the *Operator* admits to be traded via BlockMatch as described in the Rules;

Post Termination Use: has the meaning given in Clause 7.3;

Records: means all information and documents relating to the use by the Member and/or any DEA User of the Services and/or BlockMatch (including all information and documents which the Member (and/or any DEA User) is required to maintain by Applicable Law) or maintain and provide by the Rules;

Rules: means the rules set out in the BlockMatch Rule Book, together with all Member Notices, policies, procedures, conditions as amended, updated or replaced and published by the Operator on the BlockMatch Website Site from time to time;

Services: means the services (if any) provided by Operator to the Member in its absolute discretion from time to time and which are ancillary to the provision of Blockmatch to Members from time to time;

Technical Specification: means the technical specification, if any, relating to the Platform and use of the Platform provided by the Operator from time to time;

Term: means the duration of the Agreement as determined in accordance with Clause 3;

Terms and Conditions: means Clauses 1 to 24.6 inclusive, in each case as amended, supplemented or appended from time to time in accordance with their terms; and

"VAT": has the meaning given in Clause 9.4.2.

2. INTERPRETATION

2.1 In this Agreement a reference to:

- 2.1.1 a Clause or Schedule is, except where expressly stated otherwise, a reference to a clause of and schedule to these Terms and Conditions;
- 2.1.2 a Party is to a party to the Agreement and includes that Party's successors and permitted transferees;
- 2.1.3 a word importing the singular shall (where appropriate) include the plural and vice versa;

- 2.1.4 general words are not to be given a restrictive meaning because they are followed by examples, and any words introduced by the word “including” or any similar expression are to be construed as illustrative and shall not limit the sense of the related general words;
 - 2.1.5 any statute, statutory provision or statutory instrument includes, unless otherwise stated, a reference to all rules and regulations made under it;
 - 2.1.6 written notice does not include notice given by email; and
 - 2.1.7 Applicable Law or any element thereof is a reference to Applicable Law or such element as from time to time in force and as from time to time amended, extended, consolidated, re-enacted, replaced, superseded or otherwise converted, succeeded or modified or incorporated into law.
- 2.2 The headings in this Agreement are for convenience only and shall not affect its interpretation.
- 2.3 So far as possible all provisions of the Agreement shall be interpreted in such a way that they are consistent with each other, but if there is any conflict or ambiguity between the documents which comprise the Agreement, the order of precedence shall be the:
- 2.3.1 Rules;
 - 2.3.2 Application Form;
 - 2.3.3 Privacy Policy;
 - 2.3.4 Terms and Conditions;
 - 2.3.5 Order Form
 - 2.3.6 Fee Schedule; and
 - 2.3.7 Technical Specification.

3. TERM

- 3.1 The Agreement shall commence on and from the Membership Date and continue until terminated in accordance with the terms of this Agreement.
- 3.2 The Order Form shall commence on the date set out in the relevant Order Form and continue until the earlier of (a) one year from the effective date of the Order Form (as specified in the relevant form) (b) termination of this Agreement in accordance with its terms.

4. SERVICES

- 4.1 Subject to the Member’s compliance with the Agreement, the Operator shall use reasonable endeavours to:
 - 4.1.1 provide the Platform in accordance with the Technical Specification; and
 - 4.1.2 provide the Services to the Member.

5. MEMBER'S OBLIGATIONS

5.1 The Member must at all times:

5.1.1 have in place an agreement with a CCP or in the case of a Member who is not a General Clearing Member (as defined in the Rules) or a Direct Clearing Member (as defined in the Rules), an agreement with a General Clearing Member and any other relevant documentation required by the Central Counterparty;

5.1.2 satisfy the Operator that it has adequate arrangements for the clearing and settlement of all Trades concluded on BlockMatch;

5.1.3 meet the Eligibility Criteria; and

5.1.4 comply with the Terms and Conditions and the Rules.

5.2 [If the Member wishes to connect to BlockMatch the Member shall be solely responsible for establishing and maintaining a connection to BlockMatch, either]:

5.2.1 directly; or

5.2.2 using an Accredited Software Provider of such minimum quality as the Operator may reasonably prescribe from time to time in accordance with the Technical Specification.]

5.3 As a condition of the Agreement, the Member represents, warrants and undertakes that:

5.3.1 it has, and will continue to have, the right and authority to enter Orders, Trade Acceptances, AIOs and Quotes and any resultant Trades (each as defined in the Rules) in the manner contemplated by the Agreement;

5.3.2 it (and as applicable its DEA Users) shall be unequivocally bound by any Trade executed via BlockMatch in accordance with the Rules.

5.3.3 its access to and use of BlockMatch and the Services, any orders entered by the Member (or any DMA Member) on the Operator, and any provision of access to BlockMatch by the Member to an DEA User, will comply with the Rules and Applicable Law.

5.4 The Member shall provide the Operator with at least sixty (60) days prior written notice (or if different the notice period set out in the Rules) of all matters material and relevant to its Membership including those set out in the Rules.

5.5 The Member acknowledges and agrees the Platform, Services and BlockMatch and all information on the Services, Platform and/or BlockMatch including the BlockMatch Data are proprietary to the Operator.

5.6 If and to the extent that the Member has or acquires any rights in any Member Data, the Member irrevocably and absolutely assigns (and if and to the extent that any DEA User has or acquires any rights in Member Data, the Member shall procure that such DEA User irrevocably and absolutely assigns) in each case by way of present assignment of future rights where appropriate to the Operator with full title guarantee any and all right, title and interest in and to Member Data for the full term of such rights throughout the world to the intent that all such rights shall belong absolutely to the Operator.

5.7 The Member acknowledges and agrees that if and to the extent that it (or any DEA User) wishes to access and use any BlockMatch Data this will be subject to the terms and conditions of the BlockMatch Data Licence. The Member and each DEA User, where relevant, must enter into a BlockMatch Data Licence with the Operator before receiving or accessing any BlockMatch Data.

6. TERMINATION

6.1 The Member's Membership may be terminated by the Operator at any time in accordance with the Rules.

6.2 Subject to Clause 7, the Agreement and the Member's Membership may be terminated:

6.2.1 at will by either Party by the provision of at least one month's written notice to that effect to the other Party;

6.2.2 immediately by either Party on written notice if the other Party is in material breach of the Agreement (including repeated breaches which in aggregate constitute a material breach) and (where the matter is capable of remedy) has failed to remedy such default or breach within thirty days (30) following the date on which notice requiring such remedy is given (or deemed to be given) to the defaulting Party; or

6.2.3 immediately by either Party if the other Party is subject to an Insolvency Event;

6.2.4 immediately by the Operator if the Member is subject to an Event of Default.

6.3 The Operator may terminate the Agreement by written notice if the Member is engaged in any activity that the Operator reasonably determines to be detrimental to the business of the Operator. Such notice may in the Operator's absolute discretion take effect immediately or give the Member an opportunity to cease or modify the relevant activity.

6.4 Any termination of the Agreement shall automatically terminate:

6.4.1 the Member's Membership;

6.4.2 All Services provided pursuant to any Order Form, unless the Parties agree in writing otherwise.

6.5 The termination of the Agreement for any reason shall not give either Party any right to claim from the other (or any DEA User any right to claim from the Operator) or impose on either Party any liability to pay any compensation, indemnity or reimbursement whatsoever by reason of such termination, but termination shall be without prejudice to any rights or remedies available to, or any obligations or liabilities accrued to, either Party at the effective date of termination.

7. POST-TERMINATION

7.1 On termination of the Agreement for any reason, the Member shall:

7.1.1 within seven (7) days from (and including) the termination date pay any and all sums due to the Operator in full;

7.1.2 subject to Clause 7.2,

- (a) immediately cease to access and utilise the Platform, Services and BlockMatch and BlockMatch Data;
- (b) expunge (without the possibility of reconstitution) from its systems and records all copies of BlockMatch Data;
- (c) return (or at the Operator's option, erase or destroy) all confidential and other material provided to it in connection with the Agreement in accordance with Clause 15.5; and

7.1.3 remain subject to the terms of the Agreement until such time as the Operator is satisfied that the Member has met all of its outstanding obligations and fully enabled BlockMatch to comply with the Rules and Applicable Law in respect of the Agreement and the Member (and any DEA User).

7.2 Subject to Clause 7.3, on termination of the Agreement for any reason, the Member shall be entitled to access and use the Platform, Services or retain and use BlockMatch Data subject to and in accordance with the terms of this Agreement and the BlockMatch Data Licence to the extent and for the period necessary to settle and clear any Trades (as defined in the Rules) that were conducted on BlockMatch prior to the effective date of termination.

7.3 If the Member wishes to access and use the Platform or Services or retain and access BlockMatch Data after termination of the Agreement ("**Post Termination Use**") under Clause 7.2, it shall provide complete and accurate information regarding the required access, retention and use and the reasoning for the same to the Operator and the Operator may refuse such use if it does not reasonably believe it falls within the purposes described under Clauses **Error! Reference source not found.** and 7.2 and/or the Operator may impose conditions and restrictions upon the Member's Post Termination Use.

8. SUSPENSION OF THE AGREEMENT

8.1 The Operator reserves the right to refuse access to BlockMatch to any Member in breach (or that the Operator believes to be in breach) of Clause 5.1.

8.2 The Operator may suspend provision of the Services and/or the Member's Membership in accordance with the Rules.

8.3 In addition, without prejudice to any other rights and remedies of the Operator, the Operator may suspend the Member's access to or use of the Services and/or the Member's Membership at any time and without incurring any liability to the Member:

8.3.1 if reasonably necessary as determined in the sole opinion of the Operator to ensure the integrity, security, availability and/or running of BlockMatch; and/or

8.3.2 during the investigation of a suspected breach of the Agreement by the Member, provided that such suspension shall only be for the course of the investigation and a reasonable period afterwards;

8.3.3 in the case of an Event of Default.

9. PAYMENT, SET OFF AND TAX

9.1 The Member shall pay the Fees in accordance with the Fee Schedule.

- 9.2 Unless otherwise stated in the Fee Schedule, the Operator shall invoice the Member for the Fees for the Services as soon as practicable after the end of each calendar month for Fees relating to the previous month.
- 9.3 The Operator may increase the Fees at any time for any one or more of the Services by giving the Member at least thirty (30) days' notice.
- 9.4 The Member shall assume full and complete responsibility for the payment of the Fees and of any and all taxes, fees or assessments and other amounts imposed on the Member by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof, and any and all penalties or interest, (other than income taxes imposed on Operator) relating to:
- 9.4.1 the provision of Services to the Member and indirectly to any DEA User; and/or
- 9.4.2 transactions in Products, including any applicable value added tax or sales taxes ("**VAT**").
- 9.5 All Fees are exclusive of VAT and any other similar tax or levy which may be payable on or in respect of the Fees. Such taxes and levies will be added to the Operator's invoices, as appropriate, at the rate prescribed by Applicable Law. If the Member is required by Applicable Law to deduct or withhold any such tax, levy, charge or assessment from the Fees, then the amount payable by the Member shall be increased so that the net amount actually received and retained (free of any liability in respect of such deduction or withholding) by the Operator after such deduction or withholding equals the Fees that the Operator would have received had such deduction or withholding not been made or required to be made. If the Operator subsequently receives a credit for such deduction or withholding and this credit relieves the Operator of a then-current obligation to pay tax, the Operator shall pay the amount of such credit to the Member.
- 9.6 All Fees are payable by the Member within thirty (30) days of the date of the Operator's invoice. Without limiting any other rights and/or remedies the Operator may have in respect of overdue payment, Member shall pay the Operator interest on overdue payments at the rate of 4% a year above the base rate (from time to time) of the Bank Of England. Such interest shall accrue on a daily basis from the due date until payment (whether before or after judgment). If the Member gives the Operator written notice of a good faith dispute in respect of any invoice, interest under this Clause 9.6 will be payable only after the dispute is resolved, on sums found or agreed to be due, from the due date for such disputed amount.
- 9.7 Except as required by Applicable Law, all Fees are payable by the Member in full without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

10. DEA USERS' ACCESS TO THE SERVICES

- 10.1 Only the Member is permitted to access BlockMatch directly. The Member may allow one or more DEA Users to indirectly access BlockMatch via the Member, whether the DEA User uses the Member's connection (direct market access) or not (sponsored access) but in either case in accordance with the Rules.
- 10.2 The Member shall at all times remain directly liable and responsible for any and all activities of each DEA User in relation to the Agreement.

- 10.3 It is the sole responsibility of the Member to ensure compliance, by itself and its DEA Users, with the Agreement and any and all Rules and Applicable Law.
- 10.4 The Member shall indemnify, hold harmless and keep fully and effectively indemnified the Operator on demand from and against any and all Costs incurred by the Operator arising out of or in connection, directly or indirectly, with any DEA User's access to and/or use of the Platform, BlockMatch and/or any of the Services. The Operator will notify the Member in writing of the claim under this Clause 10.4 promptly on becoming aware of it.

11. FORMATION OF CONTRACT VIA BLOCKMATCH

- 11.1 Unless otherwise stated in the Rules, trades that are matched on Blockmatch are binding agreements between Members that will be novated to the applicable CCP for settlement and clearing.

12. LIMITATION OF LIABILITY

- 12.1 The Operator does not exclude or in any way limit its liability for:
- 12.1.1 fraud or fraudulent misrepresentation;
 - 12.1.2 death or personal injury caused by the Operator's negligence; and/or
 - 12.1.3 any liability to the extent the same may not be excluded or limited as a matter of Applicable Law.
- 12.2 Subject to Clauses 12.3 and 12.4, the Operator shall be liable to the Member for loss incurred by the Member as a result of any breach of the warranty in Clause 13.1 to the extent such loss was foreseeable by the Parties at the date of the Agreement as likely to be incurred by the Member in the ordinary course as a result of such breach.
- 12.3 Subject to Clauses 12.1 and 12.2, the Operator shall not be liable to the Member under or in connection with the Agreement for any and all of the following, howsoever arising and whether foreseeable or in the contemplation of the Parties and whether directly or indirectly arising out of breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise:
- 12.3.1 management time;
 - 12.3.2 trading losses;
 - 12.3.3 loss of income;
 - 12.3.4 loss of actual or anticipated profits;
 - 12.3.5 loss of business;
 - 12.3.6 loss of contracts;
 - 12.3.7 loss of goodwill or reputation;
 - 12.3.8 payments to the Member's customers or other third parties (whether due under contract or for breach of statutory duty, or pursuant to any order of any Court or regulatory authority, or made on an ex gratia basis, or otherwise);
 - 12.3.9 wasted expenditure;

- 12.3.10 loss of opportunity;
 - 12.3.11 loss of anticipated savings;
 - 12.3.12 account of profits;
 - 12.3.13 loss of, damage to or corruption of data and/or loss or theft of, or damage to, any medium on which data is stored;
 - 12.3.14 costs of replacement services and workarounds (including costs of procuring such services and/or third party charges for their supply);
 - 12.3.15 costs of enforcing the Agreement;
 - 12.3.16 increases in insurance premia or excess;
 - 12.3.17 (to the extent permitted under Applicable Law), fines or statutory financial sanctions;
 - 12.3.18 obligations to pay aggravated, special, exemplary or punitive damages; and/or
 - 12.3.19 indirect, consequential or special loss or damage of any kind.
- 12.4 Subject to Clauses 12.1 and 12.3, the Operator's entire liability howsoever arising and whether arising out of breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise to the Member and/or any other person in respect of any and all claims or losses of any nature arising directly or indirectly from the Agreement shall be limited in respect of all incidents or series of incidents to £50,000 (fifty thousand pounds sterling):
- 12.5 The Member acknowledges and agrees that:
- 12.5.1 if it disputes the accuracy of any invoice, the Member shall:
 - (a) give the Operator written notice of such dispute within three (3) months following the date of receipt of the relevant invoice, otherwise the invoice will be deemed accepted and may not be disputed; and
 - (b) pay in accordance with the Agreement the amount not disputed in good faith, pending reconciliation of the reported discrepancy,
 - (c) and interest under Clause 9.6 will be payable only after the dispute is resolved, on sums found or agreed to be due, from the due date for such disputed amount.
 - 12.5.2 except as provided in Clause 12.5.1, it must notify the Operator in writing of any claim arising under or relating to the Agreement within six (6) months from the date of the claim arising, or, if later, within six (6) months from the date the Member first became aware of the matters leading to the claim, and failure to do so shall result in any such claim automatically and irrevocably expiring at the end of such six (6) month period.
- 12.6 The Member agrees that:
- 12.6.1 it has considered the allocation of liabilities and risks, including the exclusions and limitations of liability and force majeure provisions in the Agreement in the

context of all the circumstances of the transactions to which the Agreement relates;

12.6.2 such allocation takes into account such matters as the nature of the Services, the Fees, and the possible availability and cost to each party of putting in place preventative, curative, alternative, insurance and other measures to minimise the impact and amount of any loss it may incur if such risk should materialise; and

12.6.3 the exclusions and limitations of liability in the Agreement are reasonable as between the Parties in all the circumstances.

13. WARRANTIES

13.1 The Operator represents, warrants and undertakes that it has all rights, authority and licences needed to provide the Platform and Services to the Member in accordance with the Agreement.

13.2 The Member acknowledges and agrees that, subject to Clauses 4.1 and 13.1, the Platform and Services are provided "AS IS" and on an "AS AVAILABLE" basis. The Operator does not guarantee the accuracy, timeliness, completeness, performance or fitness for a particular purpose of the Platform or Services. No responsibility is accepted by or on behalf of the Operator for any errors, omissions, or inaccuracies in the Platform or Services. The Operator accepts no liability for the results of any acts or omissions taken on the basis of the Platform or Services.

13.3 The Member warrants, represents and undertakes on a continuing basis that:

13.3.1 It has the power and authority to enter into this Agreement;

13.3.2 it has, and is in compliance with, all necessary licences, authorisations, consents, approvals, powers and authorities to enter into the Agreement and to generally perform the Member's obligations as set out in the Agreement;

13.3.3 it shall cooperate fully with the Operator in respect of any enquiries made by a Competent Authority in relation to the provision of and/or the Member and/or its DEA Users access to and use of BlockMatch, the Platform and Services; and

13.3.4 any information supplied by the Member and/or its DEA Members to the Operator is complete, accurate and not misleading in any material respect and the Member agrees to notify the Operator immediately should any such information (or any part of it) change in any material respect.

13.4 The Member undertakes that it shall not during the term of the Agreement, enter into any contract or accept any obligation inconsistent or incompatible with any of its obligations under the Agreement.

13.5 The Member acknowledges and agrees that, except as explicitly set out in the Agreement, all warranties, conditions, representations and terms, whether express or implied by statute, common law or otherwise, with respect to the Operator, BlockMatch, the Platform and/or the Services, including any implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy, are excluded from the terms of the Agreement to the maximum extent permitted by Applicable Law.

14. INDEMNITIES

- 14.1 The Member shall indemnify, hold harmless and keep fully and effectively indemnified the Operator on demand from and against any and all Costs to which the Operator may become subject which arises out of any breach by the Member or any DEA User of any of the Rules and/or any of Clauses 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 7.1, 7.2, 7.3, 10, 13.3, 13.4 and 15 The Operator will notify the Member in writing of the claim under this Clause 14.1 promptly on becoming aware of it.
- 14.2 Subject to Clauses 12.3 and 12.4, the Operator shall indemnify, hold harmless and keep fully and effectively indemnified the Member on demand from and against any and all Costs reasonably incurred by the Member as a direct result of any claim that the Member's use of BlockMatch in accordance with the Agreement infringes the Intellectual Property Rights of a third party ("**IPR Claim**") provided that the Member:
- 14.2.1 notifies the Operator in writing of the IPR Claim immediately on becoming aware of it;
- 14.2.2 grants sole control of the defence of the IPR Claim to the Operator;
- 14.2.3 gives the Operator all reasonable assistance including giving the Operator prompt, complete and accurate information and full assistance to enable the Operator to settle or defend the IPR Claim; and
- 14.2.4 shall mitigate its losses to the maximum effect practicable in the circumstances.

15. CONFIDENTIALITY

- 15.1 Each Party undertakes:
- 15.1.1 to at all times keep (and procure the keeping of) all Confidential Information confidential, secure and protected against theft, damage, loss and unauthorised access and/or disclosure; and
- 15.1.2 not at any time, whether during the term of the Agreement or at any time afterwards, without the prior written consent of the other Party directly or indirectly to (or authorise or permit any third party to) use, disclose, exploit, copy or modify any Confidential Information, except for the sole purpose of the exercise of its rights, and/or performance of its obligations, under the Agreement.
- 15.2 Without prejudice to Clause 15.1, each Party:
- 15.2.1 undertakes to disclose Confidential Information only to those of its affiliates, officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated by the Agreement, and to procure that such officers, employees, agents and contractors are made aware of and observe the confidentiality obligations in this Clause 15.
- 15.2.2 may disclose Confidential information to a professional advisor as reasonably required provided always that any such professional adviser to whom Confidential Information is disclosed is subject to obligations of confidentiality of at least as high a standard as these imposed on the receiving Party under this Clause 15.

- 15.3 Each Party may disclose Confidential Information of the other Party as may be required by Applicable Law (and in the case of the Operator by the Rules) provided that, to the extent practicable and permissible in the circumstances, it gives the other Party reasonable advance notice of the intended disclosure and takes into account any reasonable requests of the other Party in relation to the form and content of such disclosure.
- 15.4 In addition to the disclosure rights set out in Clause 15.2, where circumstances require it to do so, the Operator may disclose information to a third party. Such circumstances include:
- 15.4.1 to co-operate, by the sharing of information and documents of any kind, with a Competent Authority;
 - 15.4.2 for the purpose of enabling it to institute, carry on or defend any proceedings including any court proceedings or disciplinary proceedings in relation to the management of BlockMatch and in relation to the Rules; and
 - 15.4.3 for the protection of investors and the maintenance of high standards of market integrity and fair dealing.
- 15.5 Upon termination of the Agreement, each Party shall return, or at the option of the disclosing party erase (without the possibility of reconstitution) and/or destroy, all confidential and other material provided to it in connection with the Agreement and in each such case shall certify in writing that it has done the same.
- 15.6 Nothing in the Agreement shall require either Party to return or destroy any document, material or record which it is required to retain by Applicable Law or to satisfy the requirements of any relevant regulatory authority.

16. AMENDMENTS

- 16.1 The Operator reserves the right to alter, amend and vary the Services, BlockMatch, the Platform, the Products and/or the Agreement at any time. The Operator:
- 16.1.1 may make minor and/or technical changes by notice with immediate effect; and
 - 16.1.2 shall give the Member as much advance notice of material changes as is reasonably practicable in the circumstances.
- 16.2 If the Member is not satisfied with material changes notified in accordance with Clause 16.1.2, the Member may terminate the Agreement on the date on which such revision would have become effective by giving at least three months' notice or if less notice is provided by Operator of the change, as much notice as is possible before the revision comes into effect.

17. SEVERABILITY

If and to the extent that any term of the Agreement (or any part of any term) is agreed by the Parties or found to be illegal, invalid or unenforceable under any Applicable Law, such term (or such part) shall, insofar as it is severable from the remaining terms be deemed to be deleted from the Agreement and the other terms shall remain unaffected and in full force.

18. TRANSFER AND SUB-CONTRACTING

- 18.1 The Member may not assign, novate or otherwise transfer, or sub-contract, any or all of its rights, liabilities or obligations under the Agreement to a third party (including a DEA User) without the prior written consent of the Operator.
- 18.2 The Operator may assign, novate or otherwise transfer, or sub-contract, all or any of its rights, liabilities and/or obligations under the Agreement. The Operator shall be liable for the acts and omissions of its sub-contractors.

19. FORCE MAJEURE

Neither Party shall be liable for any delay or failure to perform any of its obligations under the Agreement if and to the extent that such delay or failure is the result of an event beyond its reasonable control. The Member acknowledges and agrees that its settlement obligations cannot be waived under this, or any other, provision in the Agreement and that its absolute and unconditional settlement obligations under the Agreement shall remain in full force and effect.

20. NOTICES

- 20.1 Notices in relation to the Agreement shall not be valid unless given in accordance with this Clause 20.
- 20.2 The Operator may:
- 20.2.1 send and publish notices as set out in the Rules;
 - 20.2.2 publish notices on the BlockMatch Website and;
 - 20.2.3 send other notices (including those of termination of the Agreement or a Member's suspension) to the Member by email and/or in writing to the contact address set out on the Application Form or such other contact address as is subsequently notified to the Operator by the Member for the purposes of receipt of notices.
- 20.3 The Member:
- 20.3.1 shall send notices as set out in the Rules; and
 - 20.3.2 in all other cases, may send other notices pursuant to this Agreement such as notice to terminate in writing to the Operator at its registered office address or such other contact address as is subsequently notified to the Member by the Operator.
- 20.4 The Member specifically consents to the Operator providing it with information (whether or not personally addressed to them) in an electronic format, either by means of the BlockMatch Website, or by email using the address notified by the Member to the Operator from time to time. Except as otherwise expressly provided, the language of communication shall be English and the Member will receive documents and other information from Instinet in English.

21. DATA PROTECTION

- 21.1 For the purposes of this Clause, the terms "personal data", "processing", "data subject", "data controller", "controller", "data processor" and "processor" shall have the

meanings given to them under Data Protection Law. A “personal data breach” and “supervisory authority” shall be defined with reference to the GDPR.

- 21.2 The Member acknowledges and accepts that the Operator may obtain and process personal data about the Members’ and it’s DEA User’s (if any) customers, employees or agents (the “**Client Personal Data**”). The types of Client Personal Data that the Operator may process in the course of this Agreement includes [individuals’ names, office address, telephone number and email address]. The Client Personal Data will be used in accordance with the Operator’s Privacy Policy/Statement of Information Use.
- 21.3 The Parties acknowledge that the factual arrangement between them dictates the role of each Party in respect of Data Protection Laws. Notwithstanding the foregoing, the Parties anticipate that each Party shall act as a data controller or controller (as applicable) in respect of its respective processing of the Client Personal Data under this Agreement.
- 21.4 The Member acknowledges and agrees that the Operator shall be permitted to transfer the Client Personal Data in accordance with Clause 15 including outside of the European Economic Area.
- 21.5 Each Party shall comply with Data Protection Laws in respect of its processing of the Client Personal Data and shall at all times act so as to enable the other Party to comply with Data Protection Laws and not do or omit to do anything to put the other Party in breach of the Data Protection Laws and in particular, each Party shall:
- 21.5.1 take appropriate technical and organisational measures against unauthorised or unlawful processing of the Client Personal Data and against accidental loss or destruction of, or damage to, the Client Personal Data and that, having regard to the state of technical development and the cost of implementing any measures, such measures will ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Client Personal Data to be protected and shall regularly review and update the technical and organisational measures implemented to keep the Client Personal Data secure and confidential in order to demonstrate that the processing of Client Personal Data is performed in accordance with the Data Protection Laws;
 - 21.5.2 inform the other Party without undue delay, and in any event within thirty-six (36) hours of becoming aware of a personal data breach affecting any of the Client Personal Data and provide all reasonable assistance to the other Party in respect of the same;
 - 21.5.3 ensure that only individuals who require access to the Client Personal Data are given access (and only to the extent necessary) and that such individuals are bound by contractual or statutory confidentiality obligations in relation to the Client Personal Data;
 - 21.5.4 notify the other Party without undue delay in the event that a data subject whose personal data forms part of the Client Personal Data seeks to exercise one of its rights under Data Protection Laws and this relates to the Client Personal Data; and
 - 21.5.5 maintain all information, records, data and other documentation as are required by Data Protection Laws.

- 21.6 The Member warrants that it has notified the affected data subjects whose Client Personal Data is being shared with the Operator of:
- 21.6.1 all relevant information that is required to be disclosed under Data Protection Laws, particularly in relation the Operator's processing of the Client Personal Data as further outlined in this Clause 21; and
 - 21.6.2 has a legal and fair basis for transferring all of the Client Personal Data to the Operator, including having procured any consents from the affected data subjects that may be necessary in the circumstances, particularly so that the Operator is legally permitted to provide the services and to record telephone conversations in accordance with Clause 21.

22. AUDIT

- 22.1 The Member shall upon request immediately make available to the Operator the Records as may reasonably be required by the Operator. Where such Records relate to DEA User(s), the Member shall procure the delivery of the Records to the Operator.
- 22.2 The Member shall keep the Records (and shall procure that any DEA User shall keep the Records relating to such DEA User) for the term of the Agreement, for at least two (2) years after its termination for any reason and such further period as required by Applicable Law.
- 22.3 The Operator shall, at its own cost and expense, have the right to conduct an audit of the Member or any DEA User in order to determine the Member's compliance with the terms of the Agreement. The Member will co-operate and provide the Operator (and/or its authorised representatives) with such assistance as the Operator may reasonably require for the purpose of the audit including providing the Operator (and/or its authorised representatives) with reasonable access or procuring reasonable access to:
- 22.3.1 any relevant site or facility or part of a facility;
 - 22.3.2 the relevant personnel; and
 - 22.3.3 the Records, and if requested, providing the Operator with a copy of the relevant sections of any such materials.
- 22.4 If the audit shows:
- 22.4.1 an underpayment of the Fees by the Member, the Member shall repay the Operator the amount of the underpayment and the reasonable costs of the audit within thirty (30) days' of receiving an invoice from the Operator in relation to the underpayment and reasonable costs of the audit and the terms of Clause 9.6 shall apply to any overdue payment;
 - 22.4.2 an overpayment of the Fees by the Member, the Operator shall repay the amount of the overpayment within thirty (30) days' of receiving an invoice from the Member in relation to the overpayment; or
 - 22.4.3 a breach of the Agreement, without prejudice to any other rights and remedies available to the Operator, the Member will at its own cost immediately take the steps necessary for it to comply.

22.5 If as part of its regulation of the Operator the Competent Authority requires access to and/or copies of any Records, the Member will provide such access and/or copies (as appropriate) and co-operate with the Competent Authority as required.

23. ENTIRE AGREEMENT

23.1 The Agreement constitutes the entire agreement and understanding between the Parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the Parties, whether oral or written, regarding such subject matter.

23.2 Each Party agrees that in entering into the Agreement it does not rely on (and shall have no remedy in respect of) any statement, representation, warranty or understanding (unless made fraudulently) by the other Party or any other person, except as expressly set out in this Agreement. Each Party's only remedies for breach of the Agreement shall be for breach of contract as provided in the Agreement.

24. GENERAL

24.1 Further assurance

Each Party shall, at the request of the other Party and at its own cost, do (and use reasonable endeavours to procure that others do) everything necessary to give full effect to the Agreement.

24.2 Counterparts

The Agreement may be executed in one or more counterparts, and by different Parties on separate counterparts, each of which shall be an original and all of which together shall constitute a single instrument.

24.3 Survival

The termination for any reason of this Agreement shall not affect any right and/or liability of any Party which has accrued before termination or any provision of the Agreement which expressly or by implication is intended to come into or continue in force on or after termination (including Clauses 1, 2, 6.4, 6.5, 7, 9, 11, 12, 14.1, 14.2, 15, 17, 19, 20, 22, 23, 24.4, 24.5, and 24.6 and this Clause 24.3).

24.4 Waiver

No forbearance or delay by any Party in exercising or enforcing any right (nor the continued performance of the Agreement) shall prejudice or restrict the rights of that Party. No waiver of any right or of any breach of the Agreement shall be deemed to be a waiver of any other right or other or subsequent breach. No single or partial exercise of any right or remedy shall restrict the further exercise of that or any other right or remedy. Except as provided in Clauses 23 and 24.5, the rights and remedies provided in the Agreement are in addition to and not exclusive of any right or remedy provided by law.

24.5 Contracts (Rights of Third Parties) Act 1999

Nothing in the Agreement is intended to confer any benefit on or to be enforceable by any person who is not a party to the Agreement (including any DEA User) whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. The Parties may by written agreement rescind or vary any term of the Agreement without the consent of any third party (including any DEA User).

24.6 **Governing Law**

The Agreement (and any non-contractual rights arising out of or in connection with it, and any claim or dispute in relation to its formation) shall be governed by and interpreted in accordance with English law and each Party submits to the exclusive jurisdiction of the English Courts.