

## GCM Supplement to Terms of Business (“GCM Supplement”)

This GCM Supplement supplements the Terms of Business in place between Instinet Europe Limited (“**we**”, “**our**” or “**us**”), and [Insert Name of Client] (“**you**”), a copy of which is attached to this GCM Supplement as Schedule B, (“**Terms**”) and where relevant, supersedes all previous versions of the GCM Supplement. The current Terms shall remain in full force and effect subject always to the provisions set out in this GCM Supplement. In this GCM Supplement, capitalised words shall have the same meaning as set out in the existing Terms unless otherwise defined in this GCM Supplement. In the event of any conflict between the existing Terms and this GCM Supplement, the terms of this GCM Supplement shall prevail.

For the purpose of this GCM Supplement and where the context so requires, a reference to “**Client**” shall include a reference to “**Underlying Client**”. The Terms shall be supplemented as follows (however, the Client acknowledges that there are specific Clearing Services which may be subject to additional terms and conditions which will need to be agreed between the Parties before such Clearing Services are provided to the Client):

### A. Introduction

From the GCM Effective Date until this GCM Supplement is terminated in accordance with the terms of this GCM Supplement or the Terms, Instinet shall provide the Clearing Services to the Client subject to, and in accordance with, the terms of this GCM Supplement.

### B. Clearing Services

#### 1. Clearing of Client Transactions

A Client Transaction will arise between Instinet and the Client without the need for any further action by either Party immediately upon registration of a Firm/CCP Transaction relating to the Client to one of Instinet’s client account with an Agreed CCP. The terms of and obligations relating to each such Client Transaction will be identical to those of the related Firm/CCP Transaction, except (i) to the extent that they are inconsistent, each such Client Transaction will be governed by, and be subject to, the terms of the Agreement (including, in particular, in relation to margin and collateral) and any other relevant agreement between Instinet and the Client; and (ii) that under each such Client Transaction, Instinet will take the opposite position to the position it has under the related Firm/CCP Transaction.

If an Execution Venue, Agreed CCP or Competent Authority takes any action which affects a Firm/CCP Transaction or pursuant to any judgement, order or direction of a Competent Authority, then Instinet may take any action which it, in its reasonable discretion, considers desirable to correspond with such action or to mitigate any loss incurred as a result of such action. Any such action shall be binding on the Client.

#### 2. Acting as a General Clearing Member

The Client acknowledges and agrees that Instinet, in accordance with Applicable Rules or pursuant to any judgement, order or direction of a Competent Authority, will on at least an annual basis conduct an assessment of the Client’s performance against the Performance Criteria. If, in Instinet’s reasonable opinion, the Client fails to satisfy any of the Performance Criteria, Instinet may take such steps as it reasonably considers necessary or desirable to address such failure, including without limitation amending trading and/or position limits or suspending or terminating Clearing Services.

In relation to Instinet’s provision of Clearing Services, Instinet may set out and communicate to the Client trading and position limits in connection with Client Transactions to mitigate and manage Instinet’s own counterparty, liquidity, operational and other risks.

### 3. Right not to accept transactions

Instinet may choose not to accept any transaction for clearing. If Instinet declines to accept any transaction for clearing, it will promptly notify the Client but Instinet is not obliged to give a reason.

### 4. Rejected transactions

If an Agreed CCP does not accept a transaction for clearing, Instinet will notify the Client as soon as practicable, and Instinet will have no obligation under the Agreement (and in particular no obligation in respect of any loss which may arise as a result of any interval between non-acceptance and notification thereof) to the Client in respect of the transaction. Instinet may take any step to terminate such a transaction which is still subsisting after the moment of non-acceptance.

### 5. Give-up arrangements

Where there is a give-up arrangement between Instinet as clearing broker, the Client and a third party executing broker, Instinet may accept a transaction for clearing without inquiry or investigation. If Instinet accepts such transaction for clearing, such transaction shall be binding and conclusive on the Client immediately on acceptance, whether or not the Client has previously confirmed the details of such transaction to Instinet. Where Instinet is requested to pay the executing broker on behalf of the Client, it may do so and if it does, it shall not have any obligation to verify the correctness of the invoice or carry on any further checks and shall have the right to be fully reimbursed by the Client for any sum paid to the executing broker in respect of that invoice. The Client acknowledges that Instinet shall have no liability to the Client for any losses, costs, expenses or damages incurred or suffered by the Client as a result of an incorrect amount being specified in an invoice.

### 6. Margin

- a) The Client agrees to transfer to Instinet on demand such sums by way of margin as are required from time to time under the rules of any relevant Execution Venue or Agreed CCP or as Instinet may reasonably require for the purpose of protecting itself against loss or risk of loss on present, future or contemplated Client Transactions under the Agreement (which, for the avoidance of doubt, may be required on an intraday basis).
- b) Unless otherwise agreed, margin must be paid in cash. Cash margin is transferred to Instinet by way of title transfer such that Instinet becomes legal and beneficial owner of it. Accordingly, the Client Money Rules will not apply and the Client will not retain any interest in such money. Cash margin received by Instinet will be recorded by Instinet as a cash repayment obligation owed by Instinet to the Client.
- c) Instinet will return Equivalent Margin to the Client: (a) upon discharge of the obligations of the Client which Instinet requires to be margined; or (b) if earlier, on the date of termination of the Agreement.
- d) The Client has a right at any stage to request the payment to it of any margin Instinet holds in excess of amounts requested by Instinet to be posted as margin pursuant to this GCM Supplement from time to time.
- e) If there is an Event of Default or the Agreement terminates, Instinet may set off the balance of cash margin owed by Instinet to the Client against the Client's obligations under the Agreement (as reasonably valued by Instinet) as they become due and payable to Instinet and Instinet shall be obliged to pay the Client (or entitled to claim from the Client, as appropriate) only the net balance after all such obligations have been taken into account.

### 7. Payment Netting

If on any date amounts would otherwise be payable in the same currency in respect of one or more Client Transactions, each Party's obligations to make payment of such amounts will be settled by the payment by the Party

with the larger aggregate obligation of an amount equal to the excess of the larger aggregate amount over the smaller aggregate amount.

## 8. Termination following a Firm Trigger Event

Upon the occurrence of a Firm Trigger Event, the Client Transactions in the relevant Cleared Transaction Set will, except to the extent otherwise stated in the Applicable Rules of the Agreed CCP, automatically terminate at the same time as the related Firm/CCP Transactions and, following such termination, no further payments or deliveries in respect of such Client Transactions or any default interest, howsoever described, on such payment obligations will be required to be made, and the amount payable following such termination will be the relevant Cleared Set Termination Amount.

## 9. Termination following a CCP Default

Upon the occurrence of a CCP Default, the Client Transactions in the relevant Cleared Transaction Set will, except to the extent otherwise stated in the Applicable Rules of the Agreed CCP, automatically terminate at the same time as the related Firm/CCP Transactions and, following such termination, no further payments or deliveries in respect of such Client Transactions or any default interest, howsoever described, on such payment obligations will be required to be made, and the amount payable following such termination will be the relevant Cleared Set Termination Amount, except that for the purposes of determining the Cleared Set Termination Amount no Shortfall Amount (as defined below) will be determined.

## 10. Termination following an Event of Default

Any provisions of the Agreement that: (A) would entitle Instinet to withhold any payment or delivery as a result of the occurrence of an Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination, or any combination thereof) an Event of default in respect of the Client; or (B)(1) would entitle Instinet to terminate transactions upon the occurrence of an Event of Default or other similar event, howsoever described, or would automatically terminate transactions upon the occurrence of any such event in respect of the Client, or (2) provide for the consequences of, and rights arising upon or pursuant to, the occurrence of any such event (including, without limitation, the provisions relating to the calculation of, and obligation to pay, any amount payable by either party following such early termination), will continue to apply in respect of Client Transactions.

## 11. Cleared Set Termination Amounts – Calculation and adjustments

- a) A Cleared Set Termination Amount will be an amount calculated on the date of the relevant Firm Trigger Event or CCP Default equal to the sum, but without duplication, of:
- (i) the aggregate of the Firm/CCP Transaction Values for all Client Transactions in the relevant Cleared Transaction Set, where "**Firm/CCP Transaction Value**" means an amount (expressed as a positive or negative value or zero) determined in respect of or otherwise ascribed to the Firm/CCP Transaction(s) corresponding to such Client Transactions under the Applicable Rules of the Agreed CCP. If the value determined or ascribed to the Firm/CCP Transaction(s) is positive for Instinet as against the Agreed CCP, the value determined in respect of the related Client Transaction(s) will be positive for the Client as against Instinet, and vice versa;
  - (ii) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any Transaction in the relevant Cleared Transaction Set on or prior to the termination of such transaction but which remains unpaid at the time of such termination, together with accrued, unpaid interest in accordance with the rate prescribed in the Terms;
  - (iii) the Relevant Collateral Value, where "**Relevant Collateral Value**" means, in respect of Client Transactions in a Cleared Transaction Set, an amount (expressed as a positive value or zero) equal to the value (without applying any haircut) of the collateral that has been transferred by the Client to Instinet, as reduced by any return of Equivalent Margin to the Client;

- (iv) the Shortfall Amount relating to Firm/CCP Transactions transferred (ported) from Instinet to another clearing member of the Agreed CCP, where "Shortfall Amount" means the amount (expressed as a negative value) by which the value of collateral (without applying any haircut) transferred by Instinet to the other clearing member exceeds the Relevant Collateral Value in respect of the corresponding Client Transactions in the relevant Cleared Transaction set (determined for this purpose as if the sub-clause d) relating to porting did not apply); and
  - (v) any other amount attributable to the relevant Client Transactions under the Agreement which was payable but unpaid at the time of termination and is not otherwise included in sub-paragraphs (i), (ii), (iii), (iv) and (v), together with accrued, unpaid interest in accordance with the rate prescribed in the Terms.
- b) The Cleared Set Termination Amount is subject to adjustment as set out in the sub-clauses d), e) and f) below.
  - c) Any outstanding obligation of Instinet or the Client to return or transfer collateral is extinguished to the extent that its value has been taken into account in determining a Cleared Set Termination Amount.
  - d) If, following a Firm Trigger Event, any Firm/CCP Transaction(s) are transferred (ported) from Instinet to another clearing member of the Agreed CCP, the value of the corresponding Client Transaction(s) and the associated Relevant Collateral Value will both be zero for the purpose of determining a Cleared Set Termination Amount. If any Firm/CCP Transaction(s) are transferred (ported) but with only a proportion of the associated collateral or margin, then for the purpose of determining a Cleared Set Termination Amount the Relevant Collateral Value will be reduced by the value, as at the date of transfer, of the collateral or margin so transferred.
  - e) The Client will notify Instinet as soon as reasonably practicable after becoming aware that it has been paid an amount or received credit or any asset (or will be paid or receive credit or any asset) directly from an Agreed CCP in connection with one or more Client Transactions. If any such amount, credit or asset would otherwise be taken into account in the determination of what is due between the Parties under the Agreement, then Instinet will make such adjustment as Instinet determines appropriate (acting reasonably and in good faith) to the amount due in order to reflect that payment or receipt. In addition:
    - (i) Such an adjustment may include an obligation on the Client to pay to Instinet any amount (i) received by the Client from an Agreed CCP and/or (ii) corresponding to the value of an asset received by the Client from an Agreed CCP, that exceeds the amount due to the Client from Instinet in respect of the relevant Agreed CCP under the Agreement.
    - (ii) When making such an adjustment, Instinet may take into account the value of an asset received by the Client at the time that the Agreed CCP determines that such asset is to be transferred to the Client (irrespective of when the asset is actually received by the Client).
  - f) If Instinet receives a termination amount in respect of terminated Firm/CCP Transactions for the account of clients, Instinet will allocate such amount pro rata between the Client and other clients of Instinet in relation to the relevant Agreed CCP. For this purpose Instinet will only be obliged to calculate the Client's pro rata allocation to the extent that it has information of the termination amounts for all clients in relation to the relevant Agreed CCP. Instinet will use reasonable efforts to obtain such information or otherwise determine the allocation in accordance with the terms of the clearing agreement with each such client.

## **12. Cleared Set Termination Amounts – Determination and payment**

- a) Instinet will determine Cleared Set Termination Amount unless there has been a Firm Trigger Event, in which case the Client may determine any relevant Cleared Set Termination Amount. However, after a Firm Trigger Event, Instinet may give notice to the Client requiring it to determine a Cleared Set Termination Amount and if the Client does not do so within two Business Days of delivery of the notice, Instinet may itself determine the relevant Cleared Set Termination Amount. Where Instinet does determine the relevant Cleared Set Termination Amount, it will do so as soon as reasonably after the occurrence of a CCP Default or, in the case of a Firm Trigger Event, the time it becomes entitled to determine the relevant Cleared Set Termination Amount.
- b) The Party which determines the Cleared Set Termination Amount will promptly notify the other Party in writing of the Cleared Set Termination Amount. If the Cleared Set Termination Amount is a positive number, it will be due from

Instinet to the Client and if it is a negative number, it will be due from the Client to Instinet. The Cleared Set Termination Amount is payable:

- (i) (if payable by the Client, or there were no outstanding Client Transactions immediately before the Firm Trigger Event) in the Base Currency and on the first Business Day after delivery of the notification of the amount payable;
  - (ii) (in other cases) in the currency applicable to the relevant terminated Firm/CCP Transaction(s) in accordance with the relevant Rules and on the first Business Day after Instinet has received any payment in respect of all relevant terminated Firm/CCP Transactions.
- c) If there is an Event of Default, for the purposes of calculating the Cleared Set Termination Amount you expressly authorise us to (1) determine the Base Currency and/or (2) convert funds from one currency into another currency at such rate prevailing at the time of the calculation as we shall reasonably select, in either case as we consider appropriate (acting reasonably and in good faith).

### **13. Cleared Set Termination Amounts – Hierarchy of events**

If Client Transactions are capable of being terminated pursuant to more than one clause of the Agreement, the clause under which termination first occurs will prevail.

### **14. Limited recourse**

- a) The Client agrees that performance and payment of obligations owed by Instinet to the Client under or in respect of Client Transactions are limited by and contingent on the actual performance or payment by the relevant Agreed CCP to Instinet in relation to the related Firm/CCP Transactions or any related collateral arrangements, and Instinet will only be obliged to perform its obligations to the Client under or in respect of Client Transactions to the extent that the Agreed CCP actually performs its obligations to Instinet in relation to the related Firm/CCP Transactions or any related collateral arrangements.
- b) Any amounts that would have been paid by the Agreed CCP to Instinet but for the application of:
  - (i) netting or set-off in accordance with the Applicable Rules; or
  - (ii) any provision of Applicable Rules for porting or direct settlement following a Firm Trigger Event, will be considered to have been paid to the Client.
- c) Instinet will give notice in writing to the Client of any deduction, withholding or other reduction from any payment or performance effected under this clause as soon as reasonably practicable following the relevant event.

### **15. Risk disclosure document and cost statement**

- a) For the purposes of Article 38 and 39 of EMIR, Instinet has made the following disclosures:
  - (i) a risk disclosure on the levels of protection associated with an Individual Segregated Account and Omnibus Segregated Account; and
  - (ii) a cost statement on the price and fees for the Clearing Services, including discounts and rebates and the conditions to benefit from those reductions, and the costs associated with an Individual Segregated Account and Omnibus Segregated Account.
- b) The above disclosures are available on Instinet's website at [www.instinet.com](http://www.instinet.com).

### **16. Mandatory CCP Provisions**

The Client agrees to be bound by and comply with the Mandatory CCP Provisions of each Agreed CCP. To the extent of any inconsistency between the terms of the Agreement and any Mandatory CCP Provision, such Mandatory CCP Provision will prevail in respect of the relevant Cleared Transaction Set.

**C. Termination**

Without prejudice to any other provision of the Terms, either Party may terminate this GCM Supplement on 30 Business Days' prior written notice to the other party in accordance with the notice provisions in the Terms.

**D. Payment and Taxes**

The Client shall pay the GCM Fees for the Clearing Services as determined by Instinet from time to time. All GCM Fees are: (i) payable in the Base Currency, (ii) exclusive of VAT and other applicable taxes, charges, or assessments (including any penalties or interest) ("**Taxes**") imposed on the Client or a Client Transaction by any Competent Authority relating to the provision of the Clearing Services and (iii) the responsibility of the Client. GCM Fees shall be invoiced to the Client (which may include electronic form) monthly in arrears and payable within thirty (30) days of the invoice date. Interest shall accrue on a daily basis from the date payment becomes overdue until Instinet has received full payment of the overdue amount together with all interest that has accrued at a default interest of 4% above the Bank of England base rate.

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**INSTINET EUROPE LIMITED**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**[INSERT NAME OF CLIENT]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## Schedule A: Definitions

### 1. Definitions

In this GCM Supplement:

<b>Agreed CCP</b>	means any clearing organisation specified as such Appendix to this GCM Supplement or otherwise agreed from time to time;
<b>Base Currency</b>	subject to Clause 11(c) of this GCM Supplement, means GBP unless otherwise agreed between the Parties;
<b>CCP Default</b>	means the occurrence of a default, termination event or other similar event in respect of an Agreed CCP that entitles Instinet to terminate, or results in automatic termination of, Firm/CCP Transactions;
<b>Cleared Set Termination Amount</b>	has the meaning given to it in the clause entitled "Cleared Set Termination Amounts" in this GCM Supplement;
<b>Cleared Transaction Set</b>	means all Client Transactions in respect of which the related Firm/CCP Transactions are cleared through the same Agreed CCP;
<b>Clearing Services</b>	means the provision of client clearing services in accordance with this GCM Supplement;
<b>Client Transaction</b>	means, with respect to a Firm/CCP Transaction, the related transaction that arises between Instinet and the Client or any Underlying Client, as the case may be, pursuant to Clause 1 of this GCM Supplement, as may be modified from time to time in accordance with the Agreement;
<b>EMIR</b>	means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;
<b>Equivalent Margin</b>	means, in relation to cash, a payment of the same amount and in the same currency and, in relation to securities, securities of the same issuer or debtor, forming part of the same issue or class and of the same nominal amount, currency and description or, where the financial collateral arrangement provides for the transfer of other assets following the occurrence of any event relating to or affecting any securities provided as financial collateral, those other assets;
<b>Firm/CCP Transaction</b>	means a transaction between Instinet and an Agreed CCP that arises when a transaction is cleared through the relevant Agreed CCP;
<b>Firm Trigger Event</b>	means, with respect to an Agreed CCP: an event that (a) the relevant Agreed CCP formally declares to constitute a default in respect of Instinet; or (b) results in the automatic termination of all relevant Firm/CCP Transactions (or would result in the automatic termination of all relevant Firm/CCP Transactions if there were Firm/CCP Transactions outstanding at that time), in each case in accordance with the Applicable Rules of the Agreed CCP;
<b>GCM Effective Date</b>	means the date Instinet notifies the Client in writing (which may be by email) that it will begin providing the Clearing Services to it;
<b>GCM Fees</b>	means all fees, costs and expenses associated with providing the Clearing Services to the Client;
<b>Individual Segregated Account</b>	means an account held by Instinet at an Agreed CCP which enables Instinet to distinguish the assets and positions held for the account of a client from the assets and positions held for the account of its other clients;
<b>Mandatory CCP Provisions</b>	means with respect to an Agreed CCP (a) the provisions, if any, specified as such in the Supplement to this GCM Supplement relating to such Agreed CCP; or (b) if no such provisions are specified in respect of such Agreed CCP in the relevant Supplement, each provision, if any, specified by an Agreed CCP as mandatory for inclusion in the terms of the

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Agreement and/or transactions between clearing members of that Agreed CCP and their respective clients and, in either case, which such provisions may, without limitation, be intended to be applicable and binding as between such clearing members and their respective clients or to create rights of the relevant Agreed CCP against such clients or liabilities of such clients to that Agreed CCP and which may be (i) published from time to time by the relevant Agreed CCP on its website or made publicly available otherwise in a form that is accessible without any subscription or payment of any fee and (ii) amended and supplemented from time to time by the relevant Agreed CCP;

## **Omnibus Segregated Account**

means an account held by Instinet at an Agreed CCP which enables Instinet to distinguish its assets and positions from the assets and positions held for the account of its clients (or a group of clients);

## **Performance Criteria**

means:

- (a) credit strength, including any guarantees given;
- (b) internal risk control systems;
- (c) intended trading strategy;
- (d) payment systems and arrangements that enable the Client to ensure a timely transfer of assets or cash as margin, as required by Instinet in relation to the Clearing Services;
- (e) systems settings and access to information that helps the Client to respect any maximum trading limit agreed with Instinet;
- (f) any collateral provided to Instinet by the Client;
- (g) operational resources, including technological interfaces and connectivity; and
- (h) any involvement of the Client in breach of the rules ensuring the integrity of the financial markets, including involvement in market abuse, financial crime or money laundering activities,

as such list may be modified by Instinet by notice from time to time;

## Supplement to this GCM Supplement: Agreed CCPs

Instinet acts as a general clearing member in relation to the Agreed CCPs listed below. A link to the risk disclosures made by each CCP under Article 39 EMIR can be found next to the relevant CCP.

In addition, the Client acknowledges that it has read and understands the Notice to End-users of SwapClear Client Clearing Services which is published on LCH Limited's website and can be found in the list below.

<b>BME Clearing</b>	<a href="http://www.bmeclearing.es/ing/Participants/Structure/SegregationAndPortability.aspx">http://www.bmeclearing.es/ing/Participants/Structure/SegregationAndPortability.aspx</a>
<b>CCP.A</b>	<a href="https://www.ccpa.at/en/download-area/">https://www.ccpa.at/en/download-area/</a>
<b>CC&amp;G</b>	<a href="https://www.lseq.com/sites/default/files/content/CCG/Files/Due_Dilligence/CCG_Disclosure_Framework_For_FMI.pdf">https://www.lseq.com/sites/default/files/content/CCG/Files/Due_Dilligence/CCG_Disclosure_Framework_For_FMI.pdf</a>
<b>Eurex Clearing AG</b>	<a href="http://www.eurexclearing.com/blob/284984/624db0c39a1913798147f82e07fdb242/data/EMIR_disclosure_document_39.pdf">http://www.eurexclearing.com/blob/284984/624db0c39a1913798147f82e07fdb242/data/EMIR_disclosure_document_39.pdf</a>
<b>European Central Counterparty N.V.</b>	<a href="https://euroccp.com/home/participants-centre/documentation/#regulations">https://euroccp.com/home/participants-centre/documentation/#regulations</a>
<b>LCH Limited</b>	<a href="https://www.lch.com/system/files/media_root/Account%20Structure%20brochure.pdf">https://www.lch.com/system/files/media_root/Account%20Structure%20brochure.pdf</a> (EMIR Risk Disclosure) <a href="http://www.lch.com/documents/731485/1692074/swapclear+client+clearing+end-user+notice+revised.pdf/60cec7fb-c890-4a5c-88cb-a2d82f6363c0">http://www.lch.com/documents/731485/1692074/swapclear+client+clearing+end-user+notice+revised.pdf/60cec7fb-c890-4a5c-88cb-a2d82f6363c0</a> (Notice to End-users)
<b>LCH.Clearnet SA</b>	<a href="https://www.lch.com/system/files/media_root/Account%20Structure%20brochure.pdf">https://www.lch.com/system/files/media_root/Account%20Structure%20brochure.pdf</a>
<b>SIX x-clear Ltd</b>	<a href="https://www.six-group.com/securities-services/dam/downloads/clearing/clearing-notices/2014/clr-ug-140909-clearing-notice-en.pdf">https://www.six-group.com/securities-services/dam/downloads/clearing/clearing-notices/2014/clr-ug-140909-clearing-notice-en.pdf</a>

