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# MODEL TERMS OF BUSINESS

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## 1. Interpretation

In these Terms of Business, the following words and expressions have the following meanings:

“Applicable Law”	(a) the FSA Rules, (b) the rules, regulations, by-laws, orders, directives, procedures and guidance of any governmental organisation, body having regulatory or enforcement responsibility, self-regulatory organisation, exchange, market, or clearing house, and (c) all other applicable laws, rules and regulations
“Affiliate”	the meaning given to “affiliated company” in the FSA Rules
“Broker”	the broker specified in Schedule 1
“Business Day”	a day on which banks are generally open for business in London
“Limit Order”	as defined in the FSA Rules
“Client Money Rules”	Chapter 4 of the CASS (Non Directive Client Money Rules) (or Chapter 7 of CASS (Directive Client Money Rules), as applicable) and any related FSA Rules relevant to client money
“EEA”	the European Economic Area
“FSA”	the Financial Services Authority
“FSA Rules”	the rules and guidance contained in the Handbook issued by the FSA
“FSMA”	the Financial Services and Markets Act 2000
“Instruction”	any instruction, order, notice, demand or request
“Investment”	any investment which is a “designated investment” as defined in FSA Rules
“Investment Advice”	the provision of Personal Recommendations to the Manager, either upon its request or at the initiative of the Broker, in respect of one or more Transactions
“Manager”	the manager specified in Schedule 1
“MiFID”	European Parliament and Council Directive 2004/39/EC on markets in financial instruments
“MiFID Implementing Directive”	Commission Directive 2006/73/EC implementing Directive 2004/39/EC
“Multilateral Trading Facility”	as defined in the FSA Rules
“Order Allocation Policy”	in relation to the Broker or the Manager as the

	context requires, a policy providing in sufficiently precise terms for the fair allocation of aggregated orders and Transactions, including how the terms, volume and price of orders determines allocations and the treatment of partial executions
“Pension Fund Disclosure Code”	the Pension Fund Disclosure Code published by the Investment Management Association and endorsed by the National Association of Pension Funds (Third Edition), as amended from time to time
“Personal Recommendation”	as defined in the FSA Rules
“Principal”	a person, body of persons, a company or any other entity on whose behalf the Manager acts
“Regulated Market”	as defined in the FSA Rules
“Settlement Date”	in relation to each Transaction, the date upon which any obligation (whether for the payment of money, delivery of securities or otherwise) falls to be performed by any party
“Taxes”	taxes, duties, imposts and fiscal and regulatory charges of any nature, wherever and whenever imposed, including without limitation value added taxes, stamp taxes and any other tax on documents or transfers (either <i>ad valorem</i> or fixed)
“Terms of Business”	this agreement and the schedules hereto, any supplement, notice and further schedules (including without limitation confirmations and statements) and additional documents entered into between the parties from time to time in any format or by any means and whether or not product specific or expressly incorporated into this agreement, and each as from time to time amended, and/or supplemented
“Trade Date”	in relation to a Transaction, the date upon which the terms of the Transaction are agreed between the Manager and the Broker
“Transaction”	any transaction in or comprising an Investment

1.2 In these Terms of Business, unless the context otherwise requires: references to Clauses, Sub-clauses and Schedules are to clauses, sub-clauses and schedules to these Terms of Business; the singular includes the plural and vice versa; “person” denotes any person, partnership, corporation or other association of whatever nature; any references to any statute, statutory instrument or regulations shall be references to such statute, statutory instrument or regulations as from time to time amended, re-enacted or replaced and to any codification, consolidation, re-enactment or substitution thereof from time to time in force; and any reference to any self-regulating organisation and rules made by it shall, apart from in this Clause, include its successor and rules made by the

successor in substitution for those rules. Headings are for convenience only and have no bearing on the interpretation of these Terms of Business.

## 2. Scope and Application

These Terms of Business shall apply solely to business conducted between the Broker and the Manager.

The services which may be provided by the Broker under these Terms of Business are:

- (i) dealing in Investments upon the Manager's Instructions in accordance with Clause 16;
- (ii) arranging or introducing Transactions upon the Manager's Instructions in accordance with Clause 16;
- (iii) giving Investment Advice on the merits of any Transaction;
- (iv) the provision of investment research; and,
- (v) such other services as may be agreed between the Broker and the Manager from time to time.

2.3 Unless arising pursuant to Clause 2.2 (iii) or otherwise agreed, the Broker shall not owe the Manager any duty to advise as to the merits of, the risks involved in, the tax consequences or suitability of any Transaction. The Manager shall make its own assessment of the Transaction and exercise its own judgement on the merits of the Transaction.

2.4 Where the Broker provides Investment Advice pursuant to Clause 2.2 (iii):

- (i) the Manager agrees to provide the Broker with such information regarding its investment objectives so as to enable the Broker to make a Personal Recommendation that is suitable for the Manager's needs;
- (ii) the Broker agrees to provide the Manager with a Personal Recommendation that as far as is reasonably practicable will achieve the outcome indicated by the Manager taking into account specific Instructions given by the Manager; and,
- (iii) the Broker shall be entitled to assume that:
  - a) in relation to any proposed Transaction where Investment Advice is being provided, the Manager has the necessary level of knowledge and experience in order to understand the risks involved in the proposed Transaction; and,
  - b) that the Principal is able financially to bear any related investment risks consistent with its investment objectives.

2.5 All services provided under these Terms of Business shall be governed by these Terms of Business and Applicable Law so that:-

- (i) in the event of any conflict between these Terms of Business and Applicable Law, Applicable Law shall prevail;
- (ii) nothing in these Terms of Business shall exclude or restrict any obligation which either party has to the other party under Applicable Law;

- (iii) either party shall be entitled to take such action or steps or omit to take any action or steps as it reasonably considers necessary to ensure compliance with Applicable Law, including the taking of any action to avoid or mitigate any loss arising as a result of a change in Applicable Law; and,
  - (iv) Applicable Law and all such actions taken under Clause 2.5 (iii) shall be binding upon a Principal.
- 2.6 Subject to Clause 2.8 below, these Terms of Business set out the entire terms on which the Broker will undertake business with the Manager and supersede all arrangements previously in force between the Broker and the Manager concerning business covered by these Terms of Business.
- 2.7 Wholesale deals in relation to non-investment products which are the subject of "The Non-Investment Products Code - For principals and broking firms in the wholesale markets" of April 2009 (as amended from time to time) shall not be governed by these Terms of Business.
- 2.8 In the case of specific types of Transactions, these Terms of Business may be complemented by other terms or agreement which relate to these specific Transactions, if the Broker and the Manager agree to them. To the extent that such other terms or agreement, if agreed between the Broker and the Manager, are inconsistent with these Terms of Business, such other terms or agreement will prevail over these Terms of Business.
- 2.9 By carrying out Transactions with the Manager after the date of receipt by the Broker of these Terms of Business, the Broker consents to the provisions of these Terms of Business, notwithstanding any terms put forward by the Broker subsequently unless agreed by the parties.

### **3. Client Categorisation**

The Broker will categorise the Manager as a "professional client" for the purposes of the FSA's Conduct of Business Sourcebook ("COBS").

### **4. Capacity in which the Manager acts**

- 4.1 The Manager shall at all times in relation to business conducted pursuant to these Terms of Business be acting as agent on behalf of one or more Principals.
- 4.2 The Manager shall not be liable as principal to perform any terms of any Transaction (including, but not limited to, any settlement obligations) but this is without prejudice to any liability of the Manager under any of these Terms of Business. Each Principal shall be liable to the Broker in respect of all obligations and liabilities to be performed in respect of any Transaction entered into under these Terms of Business.

### **5. The Manager's Power and Authority to contract**

- 5.1 In relation to each Transaction between the Broker and a Principal which the Manager makes or purports to make on behalf of the Principal, the Manager warrants to the best of the Manager's knowledge and belief that:
  - (i) the Principal has all the requisite power and legal capacity under the laws of the relevant jurisdictions to enter into the Transaction with the Broker and perform its obligations;

- (ii) the Principal has all the requisite power to authorise the Manager as agent for this purpose; and,
- (iii) the Manager has been duly authorised to enter into the Transaction on behalf of the Principal.

5.2 In the case of each Principal, the Manager's knowledge and belief is based upon the express warranty of the Principal contained in the investment management agreement between the Manager and the Principal.

## **6. Manager's Representations**

6.1 The Manager represents and warrants to the Broker that the Manager:

- (i) is authorised and regulated by the FSA;
- (ii) has obtained and will continue to maintain all authorisations, licences, consents, and approvals required of it by Applicable Law in order for it to enter into, and to perform its obligations under, these Terms of Business;
- (iii) has complied and will continue to comply with all its obligations relating to money laundering in respect of any Principal pursuant to Applicable Law; and,
- (iv) will not enter into any Transactions on behalf of a Principal where the Manager has reason to believe at the time at which it enters into the Transaction that the Principal does not have sufficient funds to settle the Transactions or the Principal will not be able to perform any settlement obligations under the Transaction.

6.2 No other representation or warranty, express or implied, is made by the Manager. Each representation and warranty given under this clause shall be deemed repeated on each occasion a Transaction is entered into.

## **7. Disclosure of Principal's Details in the event of a default**

In the event of a default (howsoever defined) on the part of any Principal in respect of any indebtedness or obligation of such Principal in relation to a Transaction between such Principal and the Broker made hereunder, the Manager undertakes promptly to disclose the identity and address of such Principal and to take all reasonable steps to assist in rectifying such failure subject at all times to any regulatory, legal or other constraints, at the Manager's absolute discretion. For the avoidance of doubt, nothing in this Clause shall oblige the Manager to institute legal proceedings against a Principal.

## **8. Aggregation and Allocation by the Manager**

8.1 The Manager will only place an order for execution where it results from a decision to effect a Transaction on behalf of one or more Principals (whether or not identified to the Broker). A contract on the terms of the order shall be deemed to have been made between the Broker and the Manager on behalf of each Principal concerned with effect from the Trade Date.

8.2 The Manager undertakes that it has established and will effectively implement an Order Allocation Policy. In the event of a partial execution of an order, the Manager's Order Allocation Policy will determine the definitive allocation of such partially filled order either to a single Principal or to several Principals each of whom will be responsible only for that part of the order allocated to it.

- 8.3 For the purpose of assessing any damage suffered by the Broker (but for no other purpose) if the Manager fails to perform its obligations under Sub-clause 8.2, then it shall be assumed that, if the Transaction concerned (to the extent not allocated) had been allocated in accordance with Clause 8.2, all the terms of the Transaction would have been duly performed.

## **9. Capacity of the Broker**

- 9.1. In relation to any Transaction entered into under these Terms of Business, the Broker may act:

- (i) in its capacity as principal;
- (ii) in its capacity as agent for an Affiliate or a third party (including any underlying client of the Broker); or,
- (iii) as an arranger for or introducer to an Affiliate or a third party.

- 9.2. In relation to each Transaction, prior to effecting such Transaction, the Broker will notify the Manager of the capacity in which it acts and, as applicable, provide to the Manager the name of the Affiliate or, in the case of a third party, the name and the address of such third party.

- 9.3. In the absence of notification of capacity, the Broker shall be deemed to be acting as principal and the Broker shall be liable as principal.

- 9.4. The Broker will identify in Schedule 1 hereto the Affiliates which it shall use in connection with these Terms of Business.

- 9.5. The Manager may require the Broker not to act as agent, introducer or arranger in relation to any particular Transaction or generally.

## **10. Use of Affiliates and Agents**

- 10.1 The Broker will act in good faith and with reasonable skill and care in the selection, use and monitoring of any Affiliate, third party delegate or agent for the purposes contemplated by these Terms of Business including but not limited to reasonable due diligence including financial and credit analysis, legal and regulatory verification and risk assessment.

- 10.2 The Broker shall procure that any Affiliate, third party delegate or agent permits the Manager, the Manager's professional advisers and any regulatory authority access on reasonable notice to any records kept by it relating to the Manager or any relevant Principal.

## **11. Broker's Duties**

The Broker undertakes to perform its services in good faith and with reasonable skill and care.

## **12. Non Disclosure of Inside Information**

The Broker undertakes to ensure that neither it, nor its officers or employees, nor the officers or employees of any Affiliate, delegate or agent, disclose to the Manager or any of its officers or employees, any information which is inside information as defined in Part V of the Criminal Justice Act 1993 or Part VIII of FSMA, or which is otherwise subject to, any relevant laws or regulations governing or relating to insider dealing in the United Kingdom or in any other jurisdiction outside the United Kingdom, without their prior written consent.

### **13. Broker's Representations and Warranties**

13.1 The Broker represents and warrants to the Manager that:

- (i) it is authorised and regulated by the FSA or other competent regulatory authority in the EEA;
- (ii) it has full power and authority to enter into these Terms of Business and each Transaction hereunder; and,
- (iii) it has obtained and will continue to maintain all authorisations, licences, consents and approvals required of it by Applicable Law in order for it to undertake the services and enter into, and to perform its obligations under, the Transactions and these Terms of Business.

13.2 The Broker represents and warrants on behalf of itself and on behalf of any Affiliate, third party or agent (as applicable) for which the Broker has acted as agent, arranger or introducer (as applicable), in relation to any Transaction, that:

- (i) such transaction will be valid and binding upon it in accordance with these Terms of Business;
- (ii) it has complied and will continue to comply with Applicable Law; and,
- (iii) information supplied by it to the Manager or a Principal, whether orally or in writing, including without prejudice to the generality of the foregoing any information relating to its business and financial affairs, is true, accurate and complete in all respects.

13.3 Each representation and warranty given under this clause shall be deemed repeated on each occasion a Transaction is entered into.

### **14. Investment Research**

14.1 Where the Broker provides the Manager with investment research which purports to be objective or independent, it shall clearly label or describe it as such.

14.2 The Broker will use its reasonable endeavours to ensure that any research is accurate, complete and up-to-date as at the date of its publication.

### **15. Conflicts of Interest**

15.1 In conducting business with or for the Manager as contemplated under these Terms of Business:

- (i) the Broker shall identify conflicts of interest between (1) (a) the Broker, its managers, employees, delegates or persons directly or indirectly linked by control to the Broker including Affiliates and (b) the Manager and (2) between the Broker's clients;
- (ii) the Broker shall maintain and operate effective organisational and administrative arrangements to prevent conflicts of interests from adversely affecting the interests of its clients; and,

- (iii) where arrangements to manage conflicts of interest are not sufficient to ensure that risks to the interests of clients will be prevented, the Broker shall clearly disclose to the Manager the general nature and source of conflicts of interest before conducting business with the Manager. Such disclosure must be made in a durable medium and include sufficient detail to enable the Manager to take an informed decision with respect to the service in the context of which the conflict of interest arises.

15.2 The Broker will provide the Manager in good time before the provision of services pursuant to these Terms of Business with such information as the Manager may request in relation to the Broker's management of its conflicts of interest.

15.3 The Broker shall notify the Manager in good time about any material change to information previously disclosed to the Manager for this purpose.

## **16. Instructions**

16.1 Except where specified to the contrary the Manager may give Instructions to the Broker orally by phone or in writing by letter, fax, email or any other electronic means.

16.2 In acting on any Instruction given on the Manager's behalf the Broker shall act in good faith. The Broker and any delegate or agent appointed by it may only accept and act on Instructions received from an individual who has been identified in Schedule 2 hereto as authorised to give Instructions to the Broker under these Terms of Business.

16.3 Any Instruction shall not be deemed to take effect until actually received by the Broker.

The Broker may refuse to act on any Instruction if:

- (i) the Broker is in doubt as to the authenticity of any of the Manager's Instructions; or,
- (ii) in acting on them the Broker would be in breach of Applicable Law.

Any decision taken not to follow Instructions or to take or refrain from taking any action must be notified by the Broker to the Manager immediately.

## **17. Order Execution**

17.1 When executing (either as principal or agent), receiving and transmitting, arranging or introducing or otherwise effecting orders pursuant to these Terms of Business, the Broker agrees that it shall at all times:

- (i) act honestly, fairly and professionally in accordance with the best interests of the Manager;
- (ii) comply with its conflicts of interest policy;
- (iii) in relation to Transactions which fall within the scope of Article 21 of MiFID, Article 45 of the MiFID Implementing Directive and/ or the FSA Rules relating to best execution, take all reasonable steps to obtain the best possible result for the Manager ("best execution");
- (iv) in relation to Transactions which fall within the scope of Clause 17.1(iii), comply with its order execution policy and provide the Manager with a copy of its order execution policy or with a sufficiently detailed summary of such policy;

- (v) in relation to Transactions falling outside the scope of Article 21 of MiFID, Article 45 of the MiFID Implementing Directive and/ or the FSA Rules relating to best execution, endeavour to obtain the best possible result for the Manager having particular regard to any conflicts of interest which may arise; and,
  - (vi) to enable the Manager to assess the Broker's approach in Clause 17.1(v), provide the Manager with a copy of its conflicts of interest policy or with a sufficiently detailed summary of such policy.
- 17.2 To the extent that the Broker identifies situations in which the regulatory obligation to provide best execution does not apply (namely Transactions falling outside the scope of Article 21 of MiFID, Article 45 of the MiFID Implementing Directive and /or the FSA rules relating to best execution), the Broker shall notify the Manager in writing of the details of such situations specifying the relevant Instruments and markets.
- 17.3 The Manager hereby consents to the Broker's order execution policy attached hereto at Schedule 3.
- 17.4 The Manager reserves the right to request that the Broker supply such further information about the order execution policy as it may reasonably require.
- 17.5 Unless otherwise notified, the Manager agrees that the Broker may execute orders outside a Regulated Market or a Multilateral Trading Facility.
- 17.6 The Manager may give to the Broker specific Instructions as to how it wishes an order to be executed and in these circumstances the Broker's obligations under Clause 17.1 above will be modified accordingly.
- 17.7 The Broker agrees that, upon request from the Manager, it will promptly provide to the Manager such evidence as is required to demonstrate that the Broker has executed the Manager's orders in accordance with its order execution policy.
- 17.8 The Broker agrees to notify the Manager of any proposed material change to its order execution policy. Any changes to the order execution policy are subject to the Manager's prior written consent.
- 18. Order Handling and Allocation of Orders by the Broker**
- 18.1 The Broker will ensure that orders executed or transmitted on behalf of the Manager are promptly and accurately recorded and, where applicable, allocated in accordance with the Broker's Order Allocation Policy.
- 18.2 The Broker will execute any order received from the Manager and other comparable orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable.
- 18.3 The Broker may aggregate the Manager's orders with its own orders, orders of its Affiliates, or orders of its other clients. However, the Broker agrees that it will only aggregate the Manager's order if it is likely that the aggregation will work overall to the advantage of the Manager although the Manager acknowledges that the effect of the aggregation may work to its disadvantage in relation to a particular order.
- 18.4 If the Broker aggregates the Manager's order with one or more other orders and the aggregated order is partially executed, the Broker will allocate the related Transactions in accordance with its Order Allocation Policy.

## **19. Limit Orders**

- 19.1 Unless otherwise notified in writing by the Manager to the Broker, the Broker agrees not to immediately make public (where it would otherwise be required to do so by Applicable Law) any of the Manager's Limit Orders (or part thereof) in respect of shares admitted to trading on a Regulated Market which are not immediately executed under prevailing market conditions

[except in circumstances where the Broker determines that making the order (or part thereof) public is required to execute the order (or part thereof) in accordance with the obligations of best execution owed to the Manager by the Broker pursuant to Applicable Law and/or the FSA Rules.]

OR

[. In circumstances where the Broker determines that making an order, or part of it, public is necessary in order for the Broker to comply with its obligations of best execution owed to the Manager by the Broker pursuant to Applicable Law and/or the FSA Rule, the Broker shall obtain the prior express approval of the Manager to publish the order or part thereof.]

## **20. Trade Reporting**

Where the Broker effects a Transaction in relation to shares admitted to trading on a Regulated Market outside a Regulated Market or Multilateral Trading Facility, the Broker shall arrange to make public the information regarding the Transaction unless the Manager informs the Broker in writing that it will make the relevant information public. The Broker shall report the client side of any Transaction and shall not make additional reports in respect of the same Transaction.

## **21. Transaction Reporting**

- 21.1 Where the Broker is regulated by the FSA:

- (i) in relation to any Transactions which are required to be reported to the FSA pursuant to the FSA Rules (whether such requirement falls upon the Broker, the Manager or both parties), the Broker shall report the Transactions to the FSA; and,
- (ii) for the purposes of the relevant FSA Rule, the Broker warrants that it intends to remain regulated by the FSA and that should the Broker cease to be so regulated, it will notify the Manager prior to any change in its regulatory status.

- 21.2 Where the Broker is regulated by a competent regulatory authority in the EEA other than the FSA:

- (i) the Broker shall report to the relevant EEA regulatory authority all Transactions it is required to report; and,
- (ii) for the purposes of the relevant FSA Rule, the Broker warrants that it intends to remain regulated by the competent EEA authority who is charged with oversight of the MiFID provisions and that should the Broker cease to so regulated, it will notify the Manager prior to any change in its regulatory status.

## **22. Monitoring of Settlement and Disclosure of Third Party details in the event of a default**

- 22.1 The Broker will monitor the settlement of each Transaction and advise the Manager immediately if it becomes aware of any issues relating to settlement in respect of such Transaction. The Broker will take all reasonable steps to investigate any potential settlement failure and work closely with the Manager to resolve or mitigate such potential failure.

- 22.2 In relation to any Transaction between a Principal and a third party made hereunder, in the event of a default (howsoever defined) on the part of such third party in relation to such Transaction, the Broker undertakes promptly to disclose the identity and address of such third party (to the extent not already disclosed) and such other information as may be requested by the Manager and to take all reasonable steps to assist in rectifying such failure subject at all times to any regulatory, legal or other constraints.

**23. Client Money and Asset Segregation**

- 23.1 To the extent that the Broker holds money belonging to any Principal, the Broker shall treat any such money as client money in accordance with the Client Money Rules..
- 23.2 To the extent that the Broker holds securities belonging to any Principal, the Broker will hold any such securities in trust for such Principal, segregate them from any securities belonging to the Broker as principal and refrain from any action, such as pledging or otherwise disposing of them.

**24. Safe Custody Arrangements**

The Broker may, if requested by the Manager, provide custody services for the assets of a Principal. Such services will be the subject of separate agreement(s).

**25. Confirmations, Contract Notes and Statements**

- 25.1 In respect of each Transaction,, the Broker shall provide in a durable medium essential information concerning the execution of such Transaction by no later than the close of business on the Trade Date in the market on which such Transaction was executed. Such essential information is the information specified in Schedule 4 hereto.
- 25.2 The Manager agrees that the Broker may dispatch a confirmation to an agent nominated in writing by the Manager for this purpose.
- 25.3 The Manager may request from the Broker such additional information in relation to any Transaction as the Manager may [reasonably] require.
- 25.4 [All confirmations, contract notes or statements issued by the Broker shall bind the Manager unless an objection is received by the Broker within one Business Day of receipt.]

OR

[Responsibility for the accuracy of contract notes, confirmations and statements remains with the Broker and the Manager does not accept that a failure on its part to respond within any set period constitutes acceptance of their accuracy.]

**26. Settlement**

- 26.1 The Manager shall provide account and settlement details to the Broker for the purposes of settlement of Transactions under these Terms of Business. Unless otherwise instructed by the Manager, the Broker shall settle directly with the Principal's custodian. Unless expressly agreed between the Manager and the Broker or market practice otherwise requires, all amounts payable by the Principal to Broker and vice versa shall be on a delivery versus payment basis.
- 26.2 In circumstances where the Broker appoints a delegate or an agent to perform any services in respect of a Transaction the Broker must ensure that settlement instructions in relation to the

Transaction clearly identify the Broker as the counterparty to the Transaction so that the Principal or its agent can match the Transaction for settlement purposes.

## **27. Interest on late settlement**

- 27.1 For the purpose of this clause “contractual settlement arrangement” means an arrangement entered into between the Principal and its custodian pursuant to which the custodian agrees to give value to the Principal on a date agreed between the Principal and its custodian irrespective of whether settlement actually occurs on such date.
- 27.2 In the event of a late payment of cash in respect of a Transaction for a Principal which is the fault of the Broker or its agents, the Broker shall indemnify the Principal for all direct loss it suffers.
- 27.3 In the event of a late payment of cash by the Principal in respect of a Transaction for a Principal which is the fault of the Manager, the Manager shall pay to the Broker interest at a rate of [LIBOR + 2%].
- 27.4 In the event of a late payment of cash by the Principal in respect of a Transaction for a Principal which is the fault of the Principal, the Manager shall use its best efforts to procure payment by the Principal to the Broker of interest at a rate of [LIBOR + 2%].
- 27.5 The parties acknowledge that where there are no contractual settlement arrangements in place, they may only claim interest on a Transaction in accordance with Clause 27.2., 27.3 or 27.4 above, when the interest amount on that Transaction equals or exceeds [500 US dollars (or its equivalent in any other currency)].
- 27.6 Any claims for interest must be submitted within [sixty (60)] calendar days of the Settlement Date.

## **28. Fees, Commissions and Charges**

- 28.1 The Manager and the Broker shall agree from time to time any fees, commissions, charges and expenses in respect of Transactions executed under these Terms of Business. The Manager and the Broker shall agree that such fees, commissions, charges and expenses shall be inclusive of any VAT.
- 28.2 The Manager agrees to ensure as far as is reasonably practicable that any fees, commissions and expenses as may be agreed between the Manager and the Broker from time to time in respect of Transactions executed under these Terms of Business are paid to the Broker by the relevant Principal as soon as reasonably practicable following receipt of notice from the Broker to the Manager of the amount due.
- 28.3 For the avoidance of doubt, the Manager shall not be liable for non-payment of any fees, commissions, charges or expenses due in respect of any Transaction.
- 28.4 The Broker undertakes to comply with the Statement of Good Practice issued by the London Investment Banking Association (“LIBA”) on 24 March 2005 regarding reviews of commission payments and undertakes to provide the Manager with such information as is necessary to enable the Manager to comply with the Pension Fund Disclosure Code and any applicable FSA Rules.

## **29. Inducements**

- 29.1 Where the Broker provides or receives any fee, commission or non-monetary benefit (other than such fees, commissions and charges referenced in Clause 28 above) to or from a third party, the Broker shall disclose to the Manager the existence, nature and amount of the fee, commission or benefit in a manner which is comprehensive, accurate and understandable prior to any services being entered into under these Terms of Business. For the avoidance of doubt, non-monetary benefit shall include entertainment.
- 29.2 The Broker undertakes to provide promptly to the Manager such further details as the Manager may request.
- 29.3 The Broker shall notify the Manager in good time of any change to any information provided to the Manager under this Clause.

### **30. Taxes**

- 30.1 The Manager shall ensure as far as is reasonably practicable that a sum equal to any Taxes which may be payable as a result of or in connection with Transactions executed under these Terms of Business (other than taxes payable by the Broker in respect of its profits, gains or income) are paid to the Broker by the relevant Principal as soon as reasonably practicable following receipt of notice from the Broker to the Manager of the amount due. As soon as practicable after receipt of such amount, the Broker shall pay such Taxes. The Manager shall not be liable for the non-payment of any Taxes due in respect of any Transaction.
- 30.2 All payments to the Principal shall be made free and clear of, and without withholding or deduction for, any Taxes of whatsoever nature, unless the same is required by Applicable Law. In that event, the Broker agrees to pay such additional amounts as will result in the net amounts receivable by the Principal (after taking into account such withholding or deduction) being equal to such amounts as would have been received by the Principal had such withholding or deduction not taken place.

### **31. Liability**

- 31.1 No indemnity, express or implied, is given by the Manager in respect of its or its Principals' obligations under these Terms of Business. The Manager shall not be liable to the Broker in respect of losses, liabilities, damages, costs, claims or expenses suffered or incurred by the Broker, otherwise than as a result of the negligence, wilful default, breach of contract, bad faith or fraud of the Manager.
- 31.2 In relation to any Transaction entered into pursuant to these Terms of Business, the Broker shall be liable as principal in respect of losses, liabilities, damages, costs, claims or expenses suffered or incurred by the Manager or any of its Principals as a result of the negligence, wilful default, breach of contract, bad faith or fraud of the Broker or of any of its officers or employee or that of any its clients (other than the Manager) or that of any of its Affiliates (whether or not identified by the Broker to the Manager pursuant to the provisions of Clause 9.4).
- 31.3 Unless agreed otherwise, in relation to any Transaction entered into pursuant to these Terms of Business, the Broker shall be liable as principal in respect of losses, liabilities, damages, costs, claims or expenses suffered or incurred by the Manager or any of its Principals as a result of negligence, wilful default, breach of contract, bad faith or fraud of any third party for which the Broker has acted as agent, arranger or introducer.
- 31.4 The Broker shall not be liable for any consequential loss (whether arising directly or indirectly) out of or in consequence of anything done or omitted to be done by the Broker, any Affiliate or agent.
- 31.5 The Manager shall not be liable for any consequential loss (whether arising directly or indirectly) out of or in consequence of anything done or omitted to be done by the Manager or any Principal.

- 31.6 The Manager shall not be liable for any of the Broker's costs, charges or expenses incurred in enforcing any rights under these Terms of Business.
- 31.7 Nothing in these Terms shall exclude or restrict any liability which may not be excluded pursuant to Applicable Law.

### **32. Event of Default by the Broker**

The occurrence at any time with respect to the Broker (or in relation to sub-paragraphs (iii), (iv) and (v) below any Affiliate of the Broker (whether or not identified by the Broker to the Manager pursuant to the provisions of Clause 9.4)) of any of the following events constitutes an event of default ("Event of Default") with respect to the Broker:

- (i) the Broker fails to perform any of its obligations under these Terms of Business;
- (ii) the Broker fails to make any payment when due under or to make or take delivery of any property when due under these Terms of Business;
- (iii) the Broker (or any Affiliate of the Broker) commences a voluntary case or other procedure seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to itself or its debts under any bankruptcy, insolvency, regulatory, supervisory or similar law, or seeking the appointment of a trustee, receiver, liquidator, administrator or other similar official (each an "Administrator") of the Broker (or of such Affiliate) or any substantial part of its assets (or those of such Affiliate); or if the Broker (or such Affiliate) takes any corporate action to authorise any of the foregoing;
- (iv) an involuntary case or other procedure is commenced against the Broker (or any Affiliate of the Broker) seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to the Broker (or such Affiliate) or its debts (or those of such Affiliate) under any bankruptcy, insolvency, regulatory, supervisory or similar law or seeking the appointment of an Administrator of the Broker (or such Affiliate) or any substantial part of the Broker's assets (or those of such Affiliate);
- (v) the Broker (or any Affiliate of the Broker) is unable to pay its debts as they fall due or is bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to the Broker (or such Affiliate); or any indebtedness of the Broker (or such Affiliate) is not paid on the due date therefore or becomes, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable; or any suit, action or other proceedings relating to these Terms of Business are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or part of the property, undertaking or assets of the Broker (or of such Affiliate);
- (vi) the Broker (or any Administrator acting on behalf of the Broker) disaffirms, disclaims or repudiates any obligation under these Terms of Business;
- (vii) any representation or warranty made, given or repeated or deemed made, given or repeated by the Broker under these Terms of Business proves to have been false or misleading in any material respect as at the time it was made, given or repeated or deemed made, given or repeated; or,

- (viii) any event of default (however described) on the part of the Broker occurs under any other agreement or any supplement to these Terms of Business with the Manager or any underlying Principal.

### **33. Manager's Powers following an Event of Default**

Subject to Applicable Law, at any time after the Manager has determined, in its sole discretion, that there has been an Event of Default and to the extent that the default situation is not governed by Applicable Law, the Manager shall be entitled, without prior notice to the Broker and without prejudice to other rights and remedies, to take any actions it considers appropriate in its sole discretion (and without being liable for any losses suffered by the Broker as a result), including but not limited to the following:

- (i) to treat any or all Transactions then outstanding as having been repudiated by the Broker, in which event the Manager's obligations under such Transaction(s) shall thereupon be cancelled and terminated;
- (ii) to sell such Investments as are in the possession of the Manager as the Manager may in its absolute discretion think fit (without being responsible for any loss or diminution in price) in order to realise funds sufficient to cover any amount due hereunder;
- (iii) to replace or reverse or close-out any Transaction (or part thereof), buy, sell, borrow or lend or enter into any other Transaction or take, or refrain from taking, such other action at such time or times and price and in such manner as, in the sole discretion, the Manager considers necessary or appropriate to cover, reduce or eliminate its loss or liability under or in respect of any of the Broker's contracts, positions or commitments or the Manager's contracts, positions or commitments relating to them,;
- (iv) set-off any obligation of the Manager to the Broker against any of the Broker's obligations to the Manager; and/or,
- (v) set-off any obligation of a Principal to the Broker against any of the Broker's obligations to such Principal.

33.2 The Manager may convert any funds realised pursuant to this Clause 33.1 at such rate and into such currencies as it may reasonably consider appropriate at the relevant time.

33.3 The Manager will promptly notify the Broker in writing of any action(s) taken under Clause 33.1

### **34. Force Majeure**

34.1 Neither the Broker nor the Manager nor any Principal shall be liable for any partial performance or non-performance of their obligations under these Terms of Business by reason of any cause beyond their reasonable control, including but not limited to acts of God, terrorism, war, enemy action, industrial disputes, breakdown, failure or malfunction of any telecommunications or computer service, riot, civil commotion, rebellion, storm, tempest, accident, fire, lock-out, postal or other strike, acts or regulations of any governmental or supranational bodies or authorities, or failure of any relevant exchange or clearing house, regulatory or self-regulatory organisation for any reason to perform its obligations.

34.2 The Broker shall only be entitled to rely on Clause 34.1 if it has complied with the business continuity requirements under the Applicable Law and/or the FSA Rules.

### **35. Set Off and Other Security Rights**

- 35.1 Any rights of set-off, security, contractual lien, retention or other analogous rights that the Broker may seek to exercise against a defaulting Principal shall only be exercised by the Broker in respect of any obligation owed by a defaulting Principal to the Broker against the property of that defaulting Principal which may be held by the Broker and for the avoidance of doubt the Broker agrees in such a situation not to exercise any such rights against the property of any other Principal or the Manager. Where exercising any such rights the Broker shall, where reasonably practicable, give prior written notice to the Manager and, if not, as soon as reasonably practicable after the exercise of any such rights shall give written notice to the Manager. In either case, such notice shall give a full explanation of the basis for exercising such rights and the actions taken by the Broker in respect of that defaulting Principal. For the avoidance of doubt, the Broker agrees it shall not exercise any power of sale that it may have against the property of a defaulting Principal without the prior written consent of the Manager.
- 35.2 In respect of a Principal with which the Manager has an agreement limiting recourse to a particular portfolio of assets, the Broker will only have recourse to the extent of those assets. In respect of a Principal that is a trustee, corporation or other person or group of persons formed as a collective investment scheme having an “umbrella” structure the Broker agrees that it will only have recourse against those assets attributable to the relevant sub-fund of the umbrella in respect of which the Manager has effected a Transaction and that the Broker will not have recourse against any other assets of that umbrella that have been allocated to any other sub-fund of such umbrella notwithstanding that it is at law a single legal entity.

### **36. Amendments**

- 36.1 Save as provided in Clauses 36.2 and 36.3 below, these Terms of Business may not be amended unless the Manager and the Broker agree the amendment in writing.
- 36.2 Either party to these Terms of Business may amend its address and details for correspondence as set out in Schedule 1 or details relating to instructions as set out in Schedule 2 by providing a written notice to the other of such amendment.
- 36.3 Either party may amend these Terms of Business in accordance with the provisions of this Clause 36 without the need to obtain the consent of a Principal(s).

### **37. Complaints**

All complaints should in the first instance be made in writing and sent to the Broker at the address set out in Schedule 1 and marked for the attention of the compliance officer.

### **38. Confidentiality and Data Protection**

- 38.1 Neither the Manager nor the Broker shall disclose confidential information concerning the other which it has acquired as a consequence of these Terms of Business or any Transactions executed under it.
- 38.2 The obligations under these Terms of Business shall not apply to any confidential information lawfully in a party's possession otherwise than as a result of these Terms of Business or coming into the public domain otherwise than by breach by any party of its obligations contained in these Terms of Business. In addition, these Terms of Business shall not prohibit a party from disclosing any confidential information concerning the other party to any relevant regulatory, government or fiscal authority where required to do so, or pursuant to any law or regulation or the order of any court of competent jurisdiction.

- 38.3 Notwithstanding Clause 38.1 but subject to any other provisions of these Terms of Business or any other agreement as to confidential information made between the parties from time to time, neither party shall be prevented from disclosing any such confidential information of the other party to its officers, employees, agents, delegates or professional advisers to the extent that such disclosure is required in the performance of these Terms of Business, and that any such officer, employee, agent, delegate, or professional adviser is informed of the confidential nature of such information and agrees not to disclose such information, other than in accordance with the provisions of this clause.
- 38.4 Both parties consent and confirm that they are duly authorised to consent on behalf of their officers, employees, and (where appointed) have obtained representations from their agents and delegates that their officers and employees have consented, to the processing and use by the other party of personal data (as defined in the Data Protection Act 1998) provided under these Terms of Business or otherwise acquired, which may include the transfer and processing of such data outside of the EEA. Such personal data may include, for example, names, addresses, job descriptions and responsibilities.
- 38.5 Such personal data may be used by either party only for the purpose of administering these Terms of Business and any Transactions executed in accordance with it.

#### **39. Telephone Recording**

Either party may record and monitor telephone conversations and any other communications without the use of a warning or warning tone. The Broker and the Manager agree that such records may be used as evidence in the event of a dispute or investigation and shall be admissible as evidence in any legal proceedings, to the fullest extent permissible by Applicable Law.

#### **40. Notices and Communications**

- 40.1 All notices and communications (other than Instructions under Clause 16 above) to be provided under these Terms of Business may be given by letter or fax and should be sent to the address or fax number specified in respect of each party in Schedule 1, and marked for the attention of any person specified in that Schedule for these purposes. Unless otherwise specified, all such notices and communications shall take effect on actual receipt.
- 40.2 Any notice given by post will be deemed given [two] Business Days after posting and any notice given by delivery, facsimile or electronic transmission will be deemed given upon delivery, facsimile or transmission,(as the case may be).

#### **41. Website Use**

Unless otherwise agreed, the Manager does not consent to the Broker using its website to provide information to the Manager where required by virtue of a regulatory rule, these Terms of Business or otherwise.

#### **42. Consent**

Where the Broker is required to obtain consent from the Manager to a particular matter, such consent will only be regarded as having been given if the Manager sends a notice in writing to this effect signed by a duly authorised person on behalf of the Manager.

#### **43. Termination**

- 43.1 These Terms of Business may be terminated at any time with immediate effect by either party giving written notice to the other party.
- 43.2 Termination will be without prejudice to the completion of Transactions which are outstanding at the time the notice to terminate is received by the other party. The Broker shall not accept new orders following termination but will be obliged to settle any outstanding Transactions under these Terms of Business and Applicable Law. The Broker shall as soon as reasonably practicable after termination of these Terms of Business, deliver to the Manager any cash or securities to which it is entitled.
- 43.3 Termination will be without payment or other penalty other than payment of any outstanding fees or commissions or charges due to the Broker.
- 43.4 Termination will not affect accrued rights, indemnities, existing commitments or any contractual provision which is capable of surviving termination (including, without limitation, the data protection and warranty provisions).

#### **44. Assignment**

Neither party may assign or transfer its rights and obligations under these Terms of Business or any Transaction effected hereunder without the prior written consent of the other party. Any purported assignment thereof shall be in breach of such party's obligations hereunder and shall be invalid.

#### **45. Illegality**

- 45.1 To the extent that any provision of these Terms of Business is void, voidable or unenforceable, that fact shall not affect the operation of any other clause, sub-clause sentence or part thereof.
- 45.2 Rights and remedies, powers and privileges contained herein are cumulative and not exclusive of any rights or remedies provided by law. No failure to exercise or delay in exercising the same shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof.

#### **46. Rights under Contracts (Rights of Third Parties) Act 1999**

- 46.1 In relation to any particular Transaction, the Principal on whose behalf the Transaction is entered into shall have the right to enforce the Transaction including any terms of the Transaction set out in this Agreement. The relevant Principal shall have the right to enforce the terms of these Terms of Business in accordance with section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 46.2 The Manager and the Broker may terminate (in accordance with the provisions of Clause 43 above) or vary any of these Terms of Business (in accordance with the provisions of Clause 34 above) without the consent of any third party. A Principal shall not have a right to amend any provision of these Terms of Business or terminate these Terms of Business
- 46.3 These Terms of Business are entered into for the benefit of existing and future Principals of the Manager, who are deemed to have accepted these Terms of Business.

#### **47. Governing Law**

- 47.1 These Terms of Business shall be governed by and construed in accordance with English law and the Broker and the Manager both irrevocably submit to the exclusive jurisdiction of the English courts.

- 47.2 If the Broker does not have a permanent place of business in England or Wales, the Broker shall at all times maintain, and notify the Manager of, an agent for service of process in England or Wales and, in any event, any claim form, order, petition, judgment or other legal process shall be deemed to be sufficiently served on the Broker if delivered to any Affiliate of the Broker at its permanent place of business in England and Wales.

## SCHEDULE 1 – Broker and Manager Details and Broker’s Affiliates Details

### Broker’s Details

Full Legal Name of Broker:

Broker’s Registered Address:

Address for Notices:

Tel No.:

Fax No.:

Contact:

### Manager’s Details

Full Legal Name of the Manager:

Manager’s Registered Address:

Address for Notices:

Tel No.:

Fax No.:

Contact:

### Broker’s Affiliates Details

(In relation to each Affiliate, please provide its full legal name and registered address)

**SCHEDULE 2 – Instructions – Manager’s Authorised Persons**

**SCHEDULE 3 – Broker’s order execution policy**

## **SCHEDULE 4 – Trade Confirmation Information**