

## CORPORATE ACCOUNT OPENING FORM

### INSTRUCTIONS FOR OPENING AN ONLINE TRADING ACCOUNT

Before completing the account opening forms, please make sure you have read and clearly understood all the information regarding the opening of an account with HMS LUX S.A., including: (1) the HMS General Conditions, (2) the HMS Trading Agreement, (3) the HMS E-Business Agreement, (4) the Risk Warning Notice, (5) the Source of Funds/Wealth Statement, (6) the Tax Conformity Declaration for Account Holder, (7) the Tax Conformity Declaration for Account Holder's Beneficial Owner, (8) the Beneficial Owner Declaration and (9) the Self-Certification (for FATCA and CRS purposes).

These and certain terms and policies governing the relationship between you (hereinafter, the "Client") and HMS LUX S.A. (hereinafter, "HMS") are available on our website ([www.hms.lu](http://www.hms.lu)).

When completing the account opening forms and its attachments (1 to 9, as per above) you are requested to date, place and sign in the identified places. All other pages must bear your initials in the bottom right corner.

#### DOCUMENT CHECKLIST

- Articles and/or Memorandum of Association (or "*Statuts*" or equivalent incorporation document)
- Recent and up-to-date extract from companies' register (or equivalent supporting evidence)
- List of Directors of the Company (from Extract of Trade Register or by Minutes of the Meeting appointing the Directors)
- Identification document (ID card or Passport) of all signatories and directors
- Identification document (ID card or Passport) of the beneficial owner(s) of the Company
- List of Authorised Signatories
- Minutes of meeting appointing HMS LUX S.A. as broker

#### **Additional documents required of the Asset Management Firm opening the account for the party mentioned in section 1 of the Account Opening Forms**

- Articles and/or Memorandum of Association (or "*Statuts*")
- Recent and up-to-date extract from companies' register (or equivalent supporting evidence)
- Minutes of the Meeting appointing Directors of the Company
- List of Directors of the Company (from Extract of Trade Register or by Minutes of the Meeting appointing the Directors)
- Identification document (ID card or Passport) of the beneficial owner(s) of the Company
- Identification document (ID card or Passport) of all signatories and directors
- Limited trading authorization (template available upon request)

HMS LUX S.A reserves the right to ask for additional documentation if considered necessary in order to comply with EU and Luxembourg Anti-Money Laundering and Countering Terrorism Financing regulations.

#### **Additional documents required if the company is an Investment/Hedge Fund**

- Prospectus of the Fund (with approval stamp from market regulator, where applicable)

Once you have completed the forms please send all relevant documents to:

HMS LUX S.A.  
Online Trading Department  
16, Boulevard Royal  
L-2449 Luxembourg

**NOTICE:**

In accordance with the European regime under the Markets in Financial Instruments, including Directive 2004/39/EC of 21 April 2004 (MiFID), Directive 2014/65/EU of 15 May 2014 (MiFID II) and Regulation (EU) N° 600/2014 (MiFIR) – transposed into the Luxembourg legislation, HMS LUX S.A. has to segment and classify all its clients into three categories standardized by MiFID: Retail, Professional and Eligible Counterparty, which effectively become six, with each of those three admitting those cases of *per se* Retail/Professional/Eligible Counterparties clients or those other cases of *elective* Retail/Professional/Eligible Counterparties clients.

As a point of departure, you will be classified as a **Professional Client**.

Notwithstanding, you have the right to request a different categorization, provided you comply with all the featuring elements of the proposed categorisation. However if you do request a different category we may choose not to deal with you on that basis.

[Please note that ALL questions and tables below must be answered.]

## 1 | CLIENT DETAILS AND MAILING INSTRUCTIONS

Name of the company:	Country of incorporation/ establishment:
Registered No:	Date of incorporation/ establishment:

### Registered Office:

Address - Street, No:	Address - Postal Code, City, Country:
Phone Number:	Mobile Number:
Fax Number:	E-mail:

### Postal Office: (if different from above)

Address - Street, No:	Address - Postal Code, City, Country:
Phone Number:	Mobile Number:
Fax Number:	E-mail:

What is the main business activity of the company? \_\_\_\_\_

## 2 | CLIENT PROFESSIONAL / NON-PROFESSIONAL STATUS

Is the client a professional of the financial sector? ☐ Yes ☐ No

If yes, is the client regulated by an official body? ☐ Yes, please specify \_\_\_\_\_  
☐ No

## 3 | CLIENT FINANCIAL STATUS

Please answer the following based on the latest audited accounts.

What are the Company's net Assets?

☐ 0 – 250,000 EUR ☐ 250,001 – 500,000 EUR ☐ 500,001 – 1,000,000 EUR ☐ Over 1,000,001 EUR

## 4 | CUSTODIAN BANK DETAILS

After approval of the documents by HMS LUX S.A., the client will transfer funds from the following account:

Bank Name:		
BIC/SWIFT Code:	Currency:	Amount:

Please select between section **A** or **B**

**A** ☐ The party referred to in section 1 (above) is acting as principal for the **beneficial owner(s)** of the assets deposited on this account. The party referred to in section 1 is a Professional of the financial sector, registered as a:

☐ Investment/Hedge Fund ☐ Bank ☐ P.S.F ☐ Other (specify) \_\_\_\_\_

**B** ☐ The **beneficial owner(s)** of the assets deposited on the account of the party referred to in section 1 (above) is provided here below. The account holder undertakes to inform HMS LUX S.A. of any change to the beneficial ownership of the party referred to in section 1.

#### BENEFICIAL OWNER (PHYSICAL PERSON)

Surname:	First Name:
Marital Status:	Profession:
Date of Birth:	Place of Birth:
Nationality:	Passport / Identity Card No:
Date of Issue:	Place of Issue:
Address - Street, No:	Address - Postal Code, City, Country:
Phone Number:	Mobile Number:
Tax Identification Number:	E-mail:

(In the event of more than one beneficial owner, please copy this page for each additional person and fill in the details)

Where applicable, please indicate below the party that performs the “Due Diligence” and “Anti Money Laundering” procedures for all of the beneficial owners of the assets deposited on this account:

☐ The party referred to in section 1 of the account opening forms ☐ Company with the following details

#### Company:

Company Name:	
Address - Street, No:	Address - Postal Code, City, Country:
Phone Number:	Fax Number:
E-mail:	

Which is your investment objective? [Please mark the most adequate box]

Short Term Growth <input type="checkbox"/>	Medium Term Growth <input type="checkbox"/>	Long Term Growth <input type="checkbox"/>
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Which profile of investment corresponds best to you? [Please mark the most adequate box]

Please note that HMS Trading platform does not provide financial instruments adequate for investors with low risk profile.

<b>Medium Risk</b> <input type="checkbox"/> (Diversified investments with limited use of high-risk instruments)	<b>High Risk</b> <input type="checkbox"/> (Frequent investments with high-risk instruments and use of leverage)
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Which is your level of experience in trading? [Please mark the most adequate box]

<b>Awareness</b> <b>(Basic Knowledge)</b> <input type="checkbox"/>	<b>Novice</b> <b>(Limited Experience)</b> <input type="checkbox"/>	<b>Intermediate</b> <b>(Practical Experience)</b> <input type="checkbox"/>	<b>Advanced</b> <b>(Advance Experience)</b> <input type="checkbox"/>	<b>Expert</b> <input type="checkbox"/>
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What is your investment experience?

Products	Years of Experience	Frequency of Trades	Volume of Trades (average)
Futures			
Forex			
Stocks			
Bonds			
CFDs			

How often do you anticipate trading (per instrument / per month)?

Futures	<input type="checkbox"/> 0 - 5	<input type="checkbox"/> 5 - 10	<input type="checkbox"/> 10 - 25	<input type="checkbox"/> 25 - 50	<input type="checkbox"/> 50+
Forex	<input type="checkbox"/> 0 - 5	<input type="checkbox"/> 5 - 10	<input type="checkbox"/> 10 - 25	<input type="checkbox"/> 25 - 50	<input type="checkbox"/> 50+
Stocks	<input type="checkbox"/> 0 - 5	<input type="checkbox"/> 5 - 10	<input type="checkbox"/> 10 - 25	<input type="checkbox"/> 25 - 50	<input type="checkbox"/> 50+
CFDs	<input type="checkbox"/> 0 - 5	<input type="checkbox"/> 5 - 10	<input type="checkbox"/> 10 - 25	<input type="checkbox"/> 25 - 50	<input type="checkbox"/> 50+

HMS strongly recommends all of its new Clients to experience the online HMS demo version of its trading platform before initiating the actual trading activity.

Have you made yourself sufficiently knowledgeable about the financial instruments you will trade? ☐ Yes ☐ NoAre you fully aware of the risks involved when trading in leveraged financial instruments? ☐ Yes ☐ NoAre you fully aware of the risks involved when trading in non-leveraged financial instruments? ☐ Yes ☐ NoAre you an employee of local or central government or a municipal officer? ☐ Yes ☐ No

Have you used HMS Trading Platform demo and made yourself sufficiently knowledgeable on how to use it? ☐ Yes ☐ No

Have you ever been the subject of an investigation or proceeding, by commodities, securities, or other self-regulatory authority? (If yes, please provide below details, including disposition) ☐ Yes ☐ No

Have you ever initiated or been the subject of litigation, arbitration or any other type of dispute or settlement procedure with a broker or asset manager? ☐ Yes ☐ No

## 7 | CLIENT ACKNOWLEDGEMENTS

ACKNOWLEDGEMENTS	INITIALS
The Client confirms to have read, understood and agreed to the HMS LUX S.A. agreements, particularly the General Conditions, HMS Trading Agreement, E-Business Agreement as well as having clearly understood the Risk Warning Notice and all important information provided to the Client by HMS LUX S.A.	
The Client understands and accepts that the HMS LUX S.A. General Conditions, HMS Trading Agreement, E-Business Agreement, Risk Warning Notice, the information provided on the HMS LUX S.A website ( <a href="http://www.hms.lu">www.hms.lu</a> ) as well as any other agreements and conditions (as amended from time to time) apply to the Clients entire relationship with HMS LUX S.A.	
The Client confirms to have received, read and understood the Key Information Documents ('KIDs') relating to the financial products offered by HMS, and their inherent risks, as well as other information related thereto, as posted on HMS website ( <a href="http://www.hms.lu">www.hms.lu</a> ) and trading platform.	
The Client confirms to have received additional in-depth verbal information about the products and the inherent risks of online trading, margin trading and non-margin trading if so requested.	
The Client confirms to have received satisfactory answers to all of the Clients questions regarding this Agreement, as well as conditions and any other issues relating to the Clients relationship with HMS LUX S.A.	
The Client confirms that the amount deposited into the Clients' online account has been chosen by the Client while taking into consideration the Clients total financial situation.	
The Client confirms to have read and will continue to review the HMS LUX S.A. website ( <a href="http://www.hms.lu">www.hms.lu</a> ) for updates, has understood, accepted and is satisfied with the charges, fees, margin schedule, reuse of equity conditions and margin trading conditions as posted on said website and trading platform.	
The Client confirms that the foregoing information is true and correct, and agrees to notify HMS LUX S.A. of any material changes therein; and authorises it to confirm its accuracy, as it deems necessary.	

## 8 | ACCOUNT INFORMATION

The people undersigned hereby apply to open a joint account with HMS LUX S.A.

Portfolio Base Currency: ☐ EUR ☐ USD ☐ GBP ☐ Other: \_\_\_\_\_  
(Please tick applicable boxes)

The people undersigned hereby apply to open a **corporate** account with HMS LUX S.A.

### Authorised Signatory #1:

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_

### Authorised Signatory #2:

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_

## 1 | GENERAL CONDITIONS

### 1. | PRELIMINARY INFORMATION

- 1.1. The business relations between the Client and HMS LUX S.A. (hereafter referred to as "HMS") are based on mutual trust. HMS places its services at the disposal of the Client for the execution of different types of transactions. The diversity of operations, the large number of transactions and the speed at which they must usually be executed, require, in the interest of a defined and legal relationship, that certain general conditions be defined.
- 1.2. The relationship between HMS and the Client is governed by the following General Conditions and/or "Terms of Business HMS HNW Services Trading Division" and/or "HMS HNW Services Investment & Trading Agreement" and/or "HMS Trading Agreement" and "E-Business Agreement" as well as by customs generally applicable and followed in the Grand Duchy of Luxembourg.
- 1.3. HMS LUX S.A. is licensed as *Courtier en instruments financiers, Commissionnaire, Gérant de Fortune* (Asset Management) under the supervision of the *Commission de Surveillance du Secteur Financier* (the 'CSSF'), responsible for supervising Luxembourg's financial market.
- 1.4. The Client's Funds are deposited and held in financial institutions that are licensed for custodian services. The Client agrees not to hold HMS liable for any default of any depository institutions.
- 1.5. All investments are subject to market movements that may result in losses as well as gains for the Client. The Client should only enter into investments which the Client has made itself familiar with and which are in accordance with the Client's objectives and financial resources.

### 2. | GENERAL PROVISIONS

#### | Services offered

- 2.1. HMS currently offers its Clients three different types of financial services, namely: inter-bank brokerage services, through its Money Markets Department ('MM Dept.'), an online trading platform, through its Online Trading Department ('OT Dept.') and investment trading services, through its HNW Services Department ('HNW Dept.'), which include "execution-only", Asset Management ('AM') and Advisory services.

#### | Account Opening, Signatories and Proxies

- 2.2. When undertaking a relationship with HMS, the Client will indicate the exact data as regards to identification (e.g. name, residence, nationality, etc.). Individuals acting on behalf of other parties must produce documentation proving their legal capacity as agent. Corporate and other legal entities must provide the most recent Articles of Incorporation, duly certified, as well as a recent original extract from the Companies Register or national equivalent. Signatories must be witnessed by resolutions authorizing them to bind and represent the entity in dealings with third parties.
- 2.3. Clients shall provide HMS with any such documents as HMS may request, with respect to Client and beneficial owner identification as covered by the law of 5th April, 1993, related to the financial sector, as well as any future laws or amendments to the aforementioned law as well as regulations issued by the CSSF.
- 2.4. Client assets remitted to HMS before all documentation related to the account opening has been supplied will be blocked until such time that all documents have been supplied. In the case of eventual non-delivery of the required documentation, HMS reserves the right to return the Client assets to the institution(s) and/or person(s) from whence the assets originated. The same holds true for any subsequent non-delivery of documentation that HMS may from time to time request of the Client in compliance with its legal and professional obligations.
- 2.5. The Client shall provide HMS with a specimen of the Client's signature as well as for all parties representing the Client. HMS may rely solely on said specimens, irrespective of any subsequent changes recorded by the Companies Register or other official publications to this effect. The Client warrants to inform HMS of all changes to the list of signatories of the account and to supply the relevant documentation to this effect. HMS shall not be liable for fraudulent use of the Client's signature whether such signature is authentic or forged.
- 2.6. In the case that HMS does not identify fraudulent use of the signature of the Client, and performs transactions based on this signature, it shall, except in the case of gross negligence, be released from its obligation to refund Client assets of losses resulting from such transactions. It shall be considered that HMS carried out the transactions upon proper instruction from the Client.

- 2.7. The Client may use one or more agents to represent the Client in dealing with HMS. Proxies relating to the agent(s) must be in writing and in possession of HMS. They shall remain valid until such point that a registered letter from the Client informs HMS that they have been terminated.
- 2.8. The Client will notify HMS in writing immediately if there is a change in the facts set forth in the account opening request form including the Client's name, address and telephone number. The Client will bear any losses resulting from not communicating to HMS any changes in the Client's legal capacity or that of the Client's agents as well as of any other relevant facts.
- 2.9. HMS will request only information deemed necessary to carry out its internal or legal obligations in order to supply its services to the Client.

#### | Personal Data

- 2.10. The Client acknowledges that in order to satisfy legal requirements HMS will collect and handle personal data relating to its Clients in order to assure its global view and management of the Clients' relations with HMS. The data may be used by HMS in performing its general, specific and legal objectives and are subject to being stored for up to ten (10) years from the end of the relations with the Client, or even for an unlimited period of time. HMS is the responsible person for the handling of these data, according to the relevant legal provisions.
- 2.11. Personal Data will be processed by HMS, when assessing your account opening request and when deciding on it, as well as for the purposes described in the Privacy Notice (henceforth, the 'Notice') published on HMS Website. For more information about the collection, recording and processing of your personal data, the Client will consult the Notice.
- 2.12. Due to professional secrecy requirements, HMS will only communicate such data to third parties, without an express consent by the Clients, within the performance of its contractual obligations and as a consequence of legal, regulatory and judicial requirements. While the refusal to communicate data to HMS and the objection to such data being handled by HMS lies within the discretion of the Client, such refusal or objection will prevent the execution by HMS of the present agreement and will entail the immediate termination of any such agreement.
- 2.13. For clarification on the use of Client's personal data as well as on your rights to access, rectify, oppose, delete the data, limit the processing thereof and your right to data portability, or for the exercise thereof, the Client shall contact HMS Data Protection Officer via the e-mail: [dataprotection@hms.lu](mailto:dataprotection@hms.lu) or by letter addressed to our registered address.

#### | Correspondence, assets transfers

- 2.14. Unless specifically requested by the Client, HMS will send all documents by regular mail when necessary. All correspondence will be sent to the address indicated in the account opening forms or as witnessed by any subsequent requests provided in writing by the Client. Correspondence will be considered received by the Client within 24 hours of its date, unless HMS is in possession of any information to the contrary.
- 2.15. Regardless of any previous "hold mail" provisions, HMS reserves itself the right to contact the Client directly by any means in case of urgency, default, or if legally obliged to do so.
- 2.16. Physical delivery of securities to/from the Client or the Client's representatives will only be performed on the premises of HMS. The Client will bear all transport and security costs relating to such transfers.
- 2.17. The Client shall advise HMS of any errors, omissions or irregularities relating to any correspondence addressed to the Client by HMS within a period of 8 days of the document date. Such advices shall be written and accompanied by a copy of the document in question.

#### | Transaction Instructions

- 2.18. Time shall be of the utmost importance in respect of all Client obligations under this Agreement (including any Transaction).
- 2.19. HMS reserves the right to request a written confirmation of all transactions given by phone.
- 2.20. In the case of illegible or incomplete information relating to transaction instructions, HMS reserves the right to suspend execution of such transactions until clarifications can be obtained as to the missing or incomplete information.
- 2.21. The Client assumes all risks arising from errors in communication or comprehension where complete, legible, written instructions were not supplied. Any written instructions or confirmations of verbal instructions

shall refer to previous verbal communication so as to eliminate the risk of duplicating transactions.

- 2.22. The Client specifically authorises the recording of telephone conversations and electronic communications exchanged between the Client, or the Client's agent(s), and HMS. Such recordings may be used for evidence in a court of law. As the recording is at the discretion of HMS the Client should not rely on the recording being available.
- 2.23. In the event the Client communicates with one of HMS' dealers via the dealers' mobile phone, the Client assumes all risks arising from any breach of confidentiality linked to mobile phone communication. The Client understands that such communications are not recorded and any instruction given by the Client must be followed up in writing to HMS. The Client authorizes HMS to place such Client instructions on a best efforts basis prior to or after receiving written instructions. Failure to send written instructions by the Client will not relieve the Client from its obligations towards HMS and the Client will remain liable towards HMS for any loss arising from such communications.
- 2.24. Instructions will only be accepted and acted upon during normal business hours of HMS unless otherwise agreed in writing. The execution of transactions will be performed within the time needed to verify and process the instructions and in accordance with the market on which the transaction is to be placed.
- 2.25. In the event it has been agreed to accept Client orders outside the normal business hours of HMS, the Client understands and accepts that HMS' dealers may be unavailable during these times. The Client accepts and agrees to hold HMS, its employees, officers and directors harmless from any loss, real or perceived that may arise from any inability to communicate with HMS.
- 2.26. Transactions will normally be carried out with 2 business value days in the favour of HMS, except where market practices differ or specific written agreements have been entered into to the contrary.

#### | Account Statements, Transaction Confirmations

- 2.27. Account statements and transaction confirmations are provided either on-line for the respective products or by mail or e-mail. Except for the case where mail will be sent to the Client by regular post, or other specific arrangements made between the Client and HMS, HMS is not liable for non-delivery, illegible delivery or deviated delivery of communication transmitted via regular post.
- 2.28. HMS is authorized to correct any errors made in transactions or account entries by applying the corrected dates and/or amount/price with correct value date. Corrected transaction statements will be updated either on-line or if delivered by mail or e-mail, the corresponding account entries will appear on the subsequent account statement and will not benefit from a non-periodic mailing.
- 2.29. The Client is responsible for knowing the terms and conditions of all products traded on the Clients account. HMS is not required to transmit notification of expiration or maturity dates nor to take action on the Client's behalf in relation to such products. The disposition of Client rights regarding, but not limited to, stock rights, warrants, options, convertible securities or structured products, must be transmitted by the Client.
- 2.30. The Client is liable for any claims, losses, liabilities, expenses or fines relating to improper trading activity on their account, as so decided by exchange authorities, regulatory bodies or government agencies.

#### | Account Management

- 2.31. HMS does not assume any duties related to the management of the Client's assets, except in the cases where a contract for Asset Management has been established between the Client and HMS, where HMS' responsibility is defined by the limits agreed on the Asset Management mandate. Any realised or unrealised losses incurred by the Client or market fluctuations will not benefit from specific communication on the part of HMS.
- 2.32. Investment decisions are the sole responsibility of the Client and the Client assumes the responsibility for all gains or losses resulting from the Client's investment decisions. Where a contract for Asset Management has been established between the Client and HMS, where HMS' responsibility is defined by the limits agreed on the Asset Management mandate.

#### | Commissions, Fees, Duties

Services provided to the Client will be charged in accordance with the fee schedule and/or practices within the market and the nature of the transaction executed. HMS can modify the relevant fee schedule in force from time to time. For the clients of the Trading Platform the fee schedule is permanently at the disposal of the Client in HMS' website and is deemed to have been accepted by the Client upon entering into a transaction.

- 2.33. Depending on the product and market conditions, HMS will act as "commissionnaire" or risk free principle or agent on behalf of its Client but may act as principle towards its counter-party. HMS, in some cases, may receive commissions from both parties of the transaction. Depending on the product and method of execution, any commission payable by the Client will either be included in the transaction price or be stated separately.
- 2.34. If the Client has been introduced to HMS by a third party, the Client is made aware that HMS may share its revenues with this third party.
- 2.35. The Client shall pay to HMS all taxes, duties and fees arising from the Client's transactions, for which HMS may be held liable. This includes all current and future taxes, duties and fees levied by the Luxembourg or foreign authorities in relation to transactions on behalf of the Client, carried out by HMS.
- 2.36. The Client recognizes that it is the Client's sole responsibility to conform to legislation in force in their country of residence or other tax jurisdiction. Any tax liabilities or obligations resulting from the use of these services are the sole responsibility of the Client.

### 3. | SPECIFIC PROVISIONS

#### | Joint Account

- 3.1. A joint account is an account opened by at least two people. Each holder of a joint account will be considered as a Client and may individually dispose of all assets available on the account. Each Client has the right to dispose of and /or manage the assets on the account, grant third parties power of attorney or revoke powers of attorney already issued, pledge assets or close the account. In the case of death of one of the Clients, the surviving Client and/or the legal successors of the deceased acting together may continue to dispose of all rights and obligations covered by the joint account. All joint holders are jointly and severally liable to HMS for any obligations arising from the joint account.
- 3.2. Any notice or other communication provided by HMS to one such person shall be deemed to have been provided to all such persons.
- 3.3. Powers of attorney issued by the joint holders can only be revoked by the joint holder party to its issuance. Each of the joint holders may inform HMS, in writing, that no instructions may be accepted from any of the other holders, in which case the account will with immediate effect transform into a collective account, requiring the approval of all joint holders for all transactions.
- 3.4. The joint account agreement is between the Clients and HMS. Any agreements amongst the joint Clients concerning rights, obligations and separation of assets and liabilities shall not be considered by HMS in their business relations with the joint Clients, even should such contracts be communicated to HMS.
- 3.5. HMS may at any time, without prior consent of the Client, offset between all accounts of such Client including accounts opened in form of a joint account.

#### | Managed Account

- 3.6. HMS offers Asset Management services but however the Client can open Managed Account(s) operated by an external registered professional authorised to offer Asset Management services to its customers.
- 3.7. Due to the nature and function of an Asset Management firm, the Client authorises HMS to disclose all necessary Client's data including, but not limited to, copies of the Client's account opening forms, account statements, account balances, user name and password to the appointed Asset Management firm. The Client hereby agrees to indemnify and hold HMS harmless from any and all claims of loss that may result from HMS' reliance on the authorisation of such appointment and/or from the failure of the appointed Asset Management firm.
- 3.8. The Client understands and agrees that commissions, spreads and mark-ups for Managed Account are set by the appointed Asset Management Firm and may differ from standard non-managed accounts settings. HMS shall disclose to the Client the eventual payment of a retrocession to the appointed Asset Management firm.
- 3.9. The Client understands and agrees that HMS shall only accept orders relating to the Clients account from the appointed Asset Management firm.
- 3.10. It is the responsibility of the Client to forewarn the appointed Asset Management firm prior to any movements of funds.
- 3.11. The Client's account may only be closed once the appointed Asset Management Firm has closed out any open positions and applied any outstanding fees or charges relating to the Client account with HMS. It is the Client's duty and sole responsibility to ensure that the above measures have been taken by the appointed Asset Management firm.
- 3.12. HMS shall not be liable for any loss (including consequential and other indirect losses), expense, cost or liability suffered or incurred by the Client as result of or in connection with the activities and services provided by an external registered Asset Management firm. The Client hereby agrees to pay HMS promptly on demand any and all losses arising there from and/or any outstanding debit balances due thereon.

INITIALS:



## **Funds Transfers**

- 3.13. HMS will not accept third party payment and consequently, HMS will reject all transfers from third parties. The Client understands and accepts that HMS will only credit the Client account with funds transferred by the Client and will only transfer funds from the Client account to an account opened in the name of the Client. HMS will transfer funds upon order of the Client, within the constraints of the type of account. Such transfers will be performed in accordance with the fee schedule currently in effect at the time of the order.
- 3.14. HMS reserves the right to determine the method of payment to be used when executing a transfer. It shall be deemed proper to execute transfers via any method of payment as used in normal practice in the Grand Duchy of Luxembourg.
- 3.15. The Client account will be credited under the condition that the funds in question have been delivered to one of HMS' bank accounts and that the delivery has been confirmed.

## **Foreign Exchange (Forex)**

- 3.16. Forex transactions with settlement will generally be performed as of the day the order is received. The rate applied will be the prevailing spot market rate at the time of the transaction (less any applicable fees or commissions).
- 3.17. Forex transactions, whether spot or forward, must be covered by available funds. Upon placing an order, HMS is immediately and irrevocably authorized to ensure that the Client has sufficient funds available to permit proper settlement of the transaction. HMS may reverse the transaction if sufficient Client funds are not available.
- 3.18. Each Forex transaction will be considered an isolated operation. HMS reserves the right to refuse Forex orders for any reason, without providing justification.

## **Securities**

- 3.19. HMS will perform operations relating to quoted securities either at the best available price when possible and in accordance with its Best Execution policy or within the limits as set forth in advance by the Client. Under no circumstance may the Client stipulate the counterparty to be used for security transactions.
- 3.20. HMS may refuse to fill Client orders if there are insufficient Client funds available at the time the order is placed or any time thereafter, up to execution of the order on the market or with the counterparty.
- 3.21. Upon receiving orders, HMS may in its sole discretion refuse to fill the order. The Client will be immediately informed of such a case. HMS may not be held liable for any Client losses resulting from such cases.
- 3.22. If sale orders are placed for securities, HMS is not required and will not perform any verification as to the transferability of the securities. Any subsequent claims relating to such an operation will be borne by the Client and the Client undertakes to indemnify HMS for all and any losses it may incur in such a circumstance.
- 3.23. Client securities will be held on fungible accounts at the institution of choice as selected by HMS.
- 3.24. HMS reserves the right to initiate for the account of the Client, without prior Client consent, any Forex transaction necessary to ensure sufficient liquidity for settlement of security transactions.

## **Derivatives**

- 3.25. Where the Client has authorised the execution of derivative transactions, they shall be executed at the sole cost and risk of the Client. The Client has, through such authorization, attested that the risks involved are known to the Client, including the risk that losses on the transaction can be higher than the amounts invested. HMS may request certain guarantees in the form of funds or securities pledged by the Client in order to execute derivative transactions. These funds and securities shall remain pledged for the duration of the contracts in order to guarantee all amounts payable by the Client. HMS will not be held liable for any Client losses, real or perceived, resulting from derivative transactions.
- 3.26. If the unrealised losses on any derivative positions should be greater than the predefined limit, HMS may request additional funds or securities from the Client. HMS at its absolute discretion and without prior warning, reserves the right but not the obligation to close out any positions or to liquidate any blocked funds or any securities, on a discretionary and best effort basis and in accordance with its best execution policy. The Client will remain liable for any resulting deficit after said liquidation.

## **Online Trading**

- 3.27. Third parties supply Price quotes and other financial information provided on HMS' website. HMS believes this information to be correct but cannot guarantee the accuracy of the data. HMS will not be held liable for any losses, real or perceived, resulting from reliance on this data.
- 3.28. The data presented on HMS website shall be assumed to be copyrighted and is for personal use of the Client only. The Client may not distribute

copy or re-use any information found on the site without the written consent of HMS.

- 3.29. The Client is responsible for keeping any login information confidential. The Client will assume all responsibility for transactions placed using their username and password.
- 3.30. The Client will ensure that the Client and/or all Authorised Persons have suitable training in the use of the HMS Trading Platform.
- 3.31. Electronic trading carries certain inherent risks due to the complexity and reliance on numerous connections and electronic services. HMS will strive to ensure timely delivery and execution of orders placed electronically, but due to the inherent risks, the data may be delayed. Such delays may be the result of, but are not limited to, power failures, volume of Internet traffic, power outages, telephone line congestion, hardware failure or software failure.
- 3.32. HMS reserves the right to suspend or terminate access to the site and its services without prior notice. HMS will not be held liable for disruption of service due to events beyond its control, or due to maintenance or upgrade procedures.
- 3.33. HMS does not accept non-cash assets as collateral from its Trading Platform's Clients.

## **HMS' CAPACITY**

When HMS deals for or on behalf of the Client, HMS shall act as principal, riskless principle, or agent unless otherwise indicated in writing or notified to the Client.

- 4.1. For HMS TraderPro and HMS TraderGo, HMS uses the services of Saxo Bank A/S Denmark (Hellerup, Denmark) as technology provider as well as venue for market making, order routing, clearing, settlement and depositary services. The depositary risk of the Client is HMS, Saxo Bank and their third party depositary institutions; the Client agrees not to hold HMS liable for any default/failure of HMS, Saxo Bank or its third party depositary institutions. The Client's identity is not disclosed to Saxo Bank. All Client inquiries are to be directed to HMS.
- 4.2. For HMS' HNW Services Investment Accounts, HMS uses the services of a Luxembourg Bank for investment and depositary services. The depositary risk of the Client is HMS, and their third party depositary institutions; the Client agrees not to hold HMS liable for any default/failure of HMS, or its third party depositary institutions. All Client inquiries are to be directed to HMS.
- 4.3. For HMS' HNW Services Trading Accounts, HMS uses the services of third parties such as foreign intermediary brokers, Foreign Custodians and or other regulated financial institutions, as venue for order routing, execution, clearing, settlement, technology and depositary services. The depositary risk of the Client is HMS, and such third parties; the Client agrees not to hold HMS liable for any default/failure of HMS or such third parties. The Client's identity is undisclosed to any such party. All Client inquiries are to be directed to HMS.

## **MISCELLANEOUS**

### **Research and other published information**

- 5.1. HMS may provide the Client access to research reports, trading recommendations, market commentary and other information in relation to investments, directly or via its counterparty. These may appear on HMS' website ([www.hms.lu](http://www.hms.lu)), HMS Online Trading Platform or other Internet Service. This information (including any recommendations, commentary or other opinions) and material are provided to the Client for informational purposes only and may not be used or considered as investment advice or a recommendation to the Client with respect to such investments. They have been obtained or derived from sources believed by HMS to be reliable, but HMS makes no representation, warranty or guarantee as to their accuracy or completeness. HMS makes no representations as to when the Client will receive the research reports or recommendations. Although HMS endeavours to send all such material to all of its Clients on the same Business Day, the Client may not receive the material at the same time as other Clients. If any such material contains a restriction on the person or category of persons for whom that material is intended or to whom it is distributed, the Client must not pass any of it on to any such person or category of persons.

### **Conflict of interest**

- 5.2. HMS, its associates or other persons connected with HMS may have an interest, relationship or arrangement that is material in relation to any performed transaction or contract, or recommendation provided by third parties on the HMS Website, under this Agreement. By entering into this Agreement the Client agrees that HMS may transact such business without prior reference to the Client. In addition, HMS may provide advice, recommendations and other services to third parties whose interests may be in conflict or competition with the Client's interests, and HMS, its associates and the employees of any of them may act on behalf of other Clients who may take positions opposite to the Client or may be in competition with the Client to acquire the same or a similar position.

**INITIALS:**

When the Client places an order with HMS the Client acknowledges that it has read, understood and accepted HMS' Conflict of Interest Policy, which can be found on the HMS website ([www.hms.lu](http://www.hms.lu)).

#### **| Best Execution**

- 5.3. When HMS executes orders on behalf of its Clients it will do so in accordance with this Best Execution Policy which can be found on the HMS website ([www.hms.lu](http://www.hms.lu)). When the Client places an order with HMS the Client acknowledges that it has read, understood and accepted HMS' Best Execution Policy.

#### **| Corporate Action**

- 5.4. When a Client obtains corporate rights in regards to a financial instrument obtained through HMS services, HMS shall inform the Client of such rights and the available corporate actions, via the Trading Platform (through the 'Corporate Action Voluntary Event' module) or via e-mail. HMS is not responsible for the content of the information communicated to the Client.

#### **| Complaints Handling**

- 5.5. HMS accepts complaints from its Clients whether communicated via e-mail, letter, fax or telephone. Each complaint formally filed shall be dealt in an efficient and effective manner and concluded with a written communication issued by the Head of the concerned Department, in the terms of HMS' Complaints Management Policy that is available at the Company's website ([www.hms.lu](http://www.hms.lu)). More information on filing a complaint may be obtained by contacting HMS via the e-mail: [complaints@hms.lu](mailto:complaints@hms.lu).
- 5.6. Should the Client perceive that the complaint has not been handled adequately, he/she may resort to the out-of-court dispute settlement system by contacting the CSSF (contacts available in [www.cssf.lu](http://www.cssf.lu)).

#### **6. | LIMITATION OF LIABILITY**

As a matter of principle, in its relation with the Client, HMS shall be liable only for its gross negligence or fraudulent action. In particular, but not limited to, HMS shall not be liable for:

- Any loss, expense, cost or liability (together "Loss") suffered or incurred by the Client as a result of or in connection with the provision of the services unless and to the extent that such loss is suffered or incurred as a result of HMS' gross negligence or fraudulent action; or
- Any loss due to actions taken, or not taken, by HMS according to its rights under this Agreement, whether HMS would have been liable for such loss according to general liability rules under Luxembourg law or not, unless such losses are a result of HMS' gross negligence or fraudulent action; or
- Any loss incurred or suffered by the Client while acting in accordance with any market recommendation or information given by HMS, or
- Any loss due to, or in connection with, the acts or omissions of third parties commissioned by HMS, or
- Any loss real or perceived, expense, cost or liability due to or in connection with transmission or reception of orders when the Client communicates with HMS' dealers via the dealers' mobile phone.
- Any loss due to, or in connection with, the non-receipt by the Client of communications and information from HMS
- Any loss suffered or incurred by the Client as a result of any third party (including any counterparty to, or any person whom HMS engages in connection with a Transaction) failing to perform its obligations to HMS and, in such circumstances, HMS shall not be liable to perform its obligations to the Client to the extent that it is unable to do so as a result of the third party's default, or
- Any loss due to, or in connection with, the legal incapacity of the Client, the Client's heirs and agents, the death of the Client, as long

as HMS has not been duly informed hereof, and has acknowledged such information, errors in the devolution of the estate of the Client.

#### **7. | DEFAULT**

If, at any time, the Client does not duly and punctually perform any of the obligations and duties imposed on the Client by law, regulations and this Agreement, and / or if the Client, for whatever reason and on whatever grounds, undertakes or is exposed to any administrative or legal proceedings which may, in the opinion of HMS, adversely affect the Client's ability to do so, then HMS may in good faith and at its sole discretion consider such event as an event of default. HMS may then, as it deems fit, seek redress or terminate this agreement according to the provisions hereafter.

#### **8. | TERMINATION**

- Termination by notice: Either the Client or HMS may, at any time and without any specific reason, terminate this agreement (and the relationship between HMS and the Client) by giving the other party 10 business days' notice thereof. Upon expiration of the relationship, the balance of the Client's accounts will become payable (or receivable) after all relevant fees and charges have been discharged and any ongoing transactions have reached maturity or have been cancelled.
- In the case where ongoing transactions exist, HMS reserves the right to liquidate all positions and to consolidate the Client's cash assets into the Client's base currency. HMS cannot be held liable for any losses, real or perceived, to the Client due to the anticipated closing of such transactions. Wherever possible, HMS will inform the Client of any such eventualities.
- The Client must provide transfer instructions for all of the Client's assets held by HMS, within 60 days of terminating the relationship. In the case the Client does not provide HMS with transfer instructions, HMS will repay the Client funds to the account in the name of the Client from which the Client funds were received. In the case said account no longer exists and where the Client receives interest on the assets held in the Client account with HMS, after 60 days of terminating the Client relationship, HMS will no longer pay interest on the assets held in the Client account.
- These General Conditions, as amended from time to time, will govern the transactions until the Client assets have been withdrawn or transferred to another institution. Any pre-paid commissions or fees will not be reimbursed.
- Termination without notice: In the occurrence of an event of default HMS may, but must not, terminate with immediate effect and without notice this agreement and inform the Client hereof by any adequate means.

#### **9. | GOVERNING LAW AND JURISDICTION**

The relationship between HMS and the Client shall be governed under the laws of the Grand Duchy of Luxembourg. All disputes and actions shall be under the exclusive competence of the Courts of Luxembourg.

#### **10. | MODIFICATION OF THESE GENERAL CONDITIONS**

These General Conditions may be modified at any time. Any such modification will be communicated to the Client, either by letter or e-mail. The modifications are considered to be accepted by the Client unless such opposition has been addressed to HMS in the 8 days following dispatch of the modifications.

The Client has read, understood and accepted these General Conditions and attests as to having received a copy of it.

#### **The Client / Authorised Signatory #1:**

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Signature: \_\_\_\_\_

#### **The Client / Authorised Signatory #2: (When applicable)**

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Signature: \_\_\_\_\_

INITIALS:

## 2 | HMS TRADING AGREEMENT

This Agreement has been entered into

**Between** HMS LUX S.A. (hereinafter "HMS"), a duly registered brokerage company under the laws of Luxembourg, domiciled at 16, Boulevard Royal, L-2449 Luxembourg.

**And**

Name of the Company:	Date of Incorporation:
Address - Street, No:	Address - Postal Code, City, Country:
E-mail:	Phone Number:

The HMS Trader Platforms will be governed by HMS' General Conditions, Electronic Business Agreement (which the Client has read, understood and accepted) and this Agreement. In case of any inconsistency between the General Conditions, the E-Business Agreement and this Agreement, this Agreement takes precedence unless otherwise stated herein.

In addition to the HMS Trader platform you can access your online trading account via any of the methods below. Please select which additional method(s) of accessing your account you would like.

HMS TraderPro (default) ☒  
HMS TraderGo ☐

For more information in regards to the different platforms on offer please refer to HMS' website ([www.hms.lu](http://www.hms.lu))

Please tick the financial instrument(s) that you wish to trade on your account.

Stocks *	<input type="checkbox"/>	Futures*	<input type="checkbox"/>
Forex spot & Forex forwards	<input type="checkbox"/>	Forex Options	<input type="checkbox"/>
Contracts for Difference (CFDs)	<input type="checkbox"/>		

Please note that by ticking an instrument, you attest that you are fully aware of the use and functionality of each financial instrument you tick, its suitability to your profile and financial situation as well as being fully aware of the inherent risks associated with each of the individual financial instruments chosen.

\* Requires exchange data: certain futures exchanges and all stock exchanges require users to complete a subscriber agreement in order to receive real time data. If you would like to receive real time data for instruments traded on a particular exchange, you the Client must complete the relevant exchange Subscriber Agreement, which can be found on the HMS LUX S.A. website ([www.hms.lu](http://www.hms.lu)). For further information regarding subscriber agreements please go to Clause 20 of this agreement.

## 1. DEFINITIONS AND INTERPRETATIONS

- 1.1. For the purpose of this Agreement, the following terms shall have the indicated meanings:
- 1.1.1. "Account" or "Client Account" will mean any account held with HMS;
- 1.1.2. "Account Summary" will be the online statement of movements and related transactions available to the Client;
- 1.1.3. "Account Statement" shall mean a periodic statement of the transactions credited or debited to an Account;
- 1.1.4. "Agent" will be any person or legal entity acting on behalf of the Client but in his/its own name;
- 1.1.5. "Authorised Person" will mean any person or entity authorised by the Client to give instructions to HMS, including ANY person or entity using the user id and password of the Client;
- 1.1.6. "Agreement" will represent this Agreement which along with any other contract entered into by the Client and HMS, governs the relationship that the Client will have with HMS;
- 1.1.7. "Best Execution Policy" shall mean HMS prevailing policy available at the website of HMS and the Trading Platform regarding best execution when executing Client orders;
- 1.1.8. "Bid /Ask spread" means the difference between the bid price and the ask price;
- 1.1.9. "Business Day" will be any day on which banks are open for business in Luxembourg between the hours of 0800 CET and 1800 CET;
- 1.1.10. "CFD Contract" or "CFD" shall mean a contract which is a contract for difference by reference to fluctuations in the price of the relevant security or index;
- 1.1.11. "Client" will mean the customer of HMS that is party to this Agreement;
- 1.1.12. "Client Classification" shall mean HMS' overall, product-, or transaction specific classification of Clients;
- 1.1.13. "Collateral" shall mean any securities or other assets deposited on the Client Account as well as any Client assets held with other institutions on behalf of HMS;
- 1.1.14. "Commissions, Charges and Margins" will be any commissions, fees, charges, interest or other remunerations due to HMS as per the fee schedule ("Commissions, Charges and Margins Schedule") in force at the relevant time;
- 1.1.15. "Conflict of Interest Policy" shall mean HMS' prevailing policy regarding conflicts of interest which is available at the website of HMS;
- 1.1.16. "Contract" shall mean any contract, whether oral or written, for the purchase or sale of any commodity, security, currency or other financial instrument or property, including any option, future, CFD or other transaction relating hereto, entered into by HMS with the Client;
- 1.1.17. "Counterparties" shall be any professional financial institution whom HMS may use to cover transactions made by its Clients;
- 1.1.18. "DMA CFD" shall mean Direct Market Access CFD
- 1.1.19. "Day Trading" shall mean the regular transmission by the Client of intra-day orders to effect both purchase and sale transactions in the same instrument;
- 1.1.20. "Electronic Intervention" shall mean to trade using the Trading Platform;
- 1.1.21. "Event of Default" shall be each and any of those events set out in Clause 17 of this Agreement;
- 1.1.22. "FIFO" is an abbreviation of "First in – First Out" and refers to the fact that in case one or more Contracts with the same characteristics shall be closed, HMS will as a point of departure close the older Contract first;
- 1.1.23. "HMS" shall mean HMS LUX S.A. 16, Boulevard Royal, L-2449 Luxembourg.
- 1.1.24. "HMS Trader account" means a sub-account of HMS Client account with the sole purpose of being used for foreign exchange, foreign exchange options, equities, equities CFD's, index CFD's and Futures online transactions.
- 1.1.25. "Inside Information" will mean any non-public information which would affect the pricing of a transaction if such information were made public;
- 1.1.26. "Limit Order" shall mean an order which becomes a limit order once the specified price is touched;
- 1.1.27. "Margin requirement" shall mean any margin collateral requirement;
- 1.1.28. "Margin Trades" shall mean a CFD Contract, Futures Contract and/or a Forex Contract opened and maintained based on a margin deposit as opposed to a Contract based on a payment in full of the purchase price;
- 1.1.29. "Market Marker" shall mean Saxo Bank A/S Denmark or another professional participant in the financial markets who continuously offers purchase and sale prices for a financial instrument in order to buy and sell respectively in the event of interested Clients.
- 1.1.30. "Market Making" shall mean a financial institution that quotes a Bid (buy) and Ask (sell) for any given contracts;
- 1.1.31. "Market Rules" shall mean the rules, regulations, customs and practices from time to time of any exchange, clearing house or other organization or market involved in the conclusion, execution or settlement of a transaction or Contract and any exercise by any such exchange, clearing house or other organization or market of any power or authority conferred on it;

- 1.1.32. "Net Free Equity" is the basis of calculation of interest, which is calculated in accordance with the definition specified in HMS' Commission, Charges & Margin schedule.
- 1.1.33. "OTC" shall mean any Contract concerning a commodity, security, currency or other financial instrument or property, including any option, future, or CFD, which is not traded on a regulated stock or commodity exchange but "Over The Counter" by HMS' Market Maker.
- 1.1.34. "Principal" will mean any person or entity which is party to a transaction;
- 1.1.35. "Riskless Principle" shall mean Principle that transacts in two simultaneous transactions, which are executed at different prices.
- 1.1.36. "Services" will mean the services provided by HMS under this Agreement;
- 1.1.37. "Service Provider" will mean any third party person or entity that supplies HMS with services related to financial transactions, financial information or technical services related to the carrying out of financial transactions;
- 1.1.38. "Settlement/Trade Confirmation" shall mean a message from the Trading Platform to the Client confirming Client's entry into a Contract;
- 1.1.39. "Target Bid /Ask spread" means the best possible price available to the Client during normal market conditions;
- 1.1.40. "Trading Platform", shall mean any on-line trading platforms made available by HMS in relation to this agreement;
- 1.1.41. "Stop Loss Order" shall mean an order to buy or sell at market when a particular price is reached either above or below the price that prevailed when the order was given;
- 1.1.42. "Margin Utilisation" is the term used on the Trading Platform, under Account Summary page, meaning the amount of equity used to cover margin requirements of open positions expressed in percentage terms;
- 1.2. Any references to individual persons or entities will be considered as referring to any person, persons, entities (incorporated or not), partnerships or associations.
- 1.3. Any references to laws, regulations, statutes or practices shall be deemed to include any changes, amendments or updates enacted before, during or after the signing of this Agreement.
- 1.4. If there is any conflict between this Agreement and relevant Market Rules, the Market Rules shall prevail.

## 2. RECOGNITION OF RISKS

- 2.1. The Client acknowledges, recognises, understands and expressly accepts the inherent risks related to foreign exchange rate trading, investment and securities trading as well as in leveraged and non-leveraged derivatives trading, including for avoidance of doubt trading in CFD's, Futures, Forex, Forex Options. Such transactions are speculative in nature and carry extreme degrees of risk, which may result in substantial losses in relation to the invested amounts. Furthermore, such transactions are appropriate only for persons who, if they trade on margin, can assume risk of loss in excess of their margin deposit.
- 2.2. The Client acknowledges, recognises, understands, and expressly accepts and warrants:
- 2.2.1. That any profit, loss and risk resulting from any Client transaction placed with HMS is the sole responsibility, and liability, as the case may be, of the Client. The Client Account must be sufficiently provisioned (or sufficient other Collateral supplied) to bear at all times any potential losses of such transactions;
- 2.2.2. Because of the low margin normally required in Margin Trades, price changes in the underlying asset may result in significant losses, which losses may substantially exceed the Client's investment and margin deposit;
- 2.2.3. That the Client is willing and able, financially and otherwise, to assume all risk and potential losses involved in speculative trading as envisaged by this Agreement;
- 2.2.4. That the Client agrees not to hold HMS liable for any losses whatsoever incurred by the Client, as a result of any transactions entered into in accordance with this Agreement. This shall also hold true for any transactions, entered into by the Client, based on any information supplied by HMS or HMS' representatives. Any information supplied to the Client from Service Providers, shall, unless otherwise stated, be provided ex gratia and shall not in any event imply the existence of any obligation by HMS to render investment advice. Any transactions placed by the Client based on any such information is done so in the sole discretion of the Client and any losses, liabilities and other obligations arising there from will be incurred by and be the sole responsibility of the Client;
- 2.2.5. That any information whatsoever supplied by HMS, its representatives or Service Providers has been provided in good faith and HMS is not responsible or liable for any errors or erroneous information contained therein;
- 2.2.6. That HMS does not guarantee either profits or limited losses and the Client accepts that no such guarantees are either given or implied by HMS, its representatives or Service Providers. Consequently the Client may not rely on any assurance it believes may have been given in this respect;



- 2.2.7. That the Client has not entered into this Agreement, neither will the Client act in the future, in consideration of or in reliance upon any such guarantees or similar representation referred to in clause 2.2.6 above.
- 2.2.8. Orders may be placed as market orders to buy or sell as soon as possible at the price obtainable in the market, or on selected products as limit and stop orders to trade when the price reaches a predefined level. Limit orders to buy and stop orders to sell must be placed below the current market price, and limit orders to sell and stop orders to buy must be placed above the current market price. If the bid price for sell orders or ask price for buy orders is reached, the order will be filled as soon as possible at the price obtainable in the market. Limit and stop orders are executed consistent with HMS' Best Execution Policy and are not guaranteed executable at the specified price or amount, unless explicitly stated by HMS for the specific order.
- 2.2.9. That Stop Loss Orders, placed on the Trading Platform, normally intended to limit losses to a certain amount, may not effectively limit losses that may arise as a result of entering into any transactions in accordance with this Agreement;
- 2.2.10. That Limit Orders, placed on the Trading Platform, are not guaranteed to be executed even if the market has traded at the limit price, lower or higher;
- 2.2.11. That when short selling CFD's, the Client may experience forced closure of a CFD position in the event the CFD is recalled by HMS' counter party e.g. the underlying stock of that CFD becomes hard to borrow or unborrowable, this forced closure may result in significant losses, such losses may be unlimited;
- 2.2.12. That due to fluctuating market conditions and the nature of transactions that the Client may enter into under this Agreement, it is possible that in certain cases the Client may lose more than either the cash balance of its account or which the Client may have originally anticipated. The Client understands that such losses can be unlimited and that the Client will be liable for any outstanding balances arising there from due to HMS.
- ### 3. CLIENT CLASSIFICATION
- 3.1.1. In compliance with the European regime under the Markets in Financial Instruments, including Directive 2004/39/EC of 21 April 2004 (MiFID), Directive 2014/65/EU of 15 May 2014 (MiFID II) and Regulation (EU) N° 600/2014 (MiFIR) – transposed into the Luxembourg legislation HMS classifies its Clients in three main categories: Eligible Counterparties (ECPs), Professional Clients and Retail Clients.
- 3.2. HMS attaches different levels of regulatory protection to each category and hence to Clients within each category. In particular, Retail Clients are afforded the highest level of regulatory protection; Professional Clients and ECPs are considered to be more experienced, knowledgeable and sophisticated and able to assess their own risk and are thus afforded less regulatory protection.
- 3.3. HMS offers its Clients the possibility to request reclassification online and thus to increase or decrease the level of regulatory protections afforded. Where a Client requests a different categorisation (either on an overall level or on a product level), the Client needs to meet certain specified quantitative and qualitative criteria
- 3.4. On the basis of the Client's request, HMS undertakes an adequate assessment of the expertise, experience and knowledge of the Client to give reasonable assurance, in the light of the nature of transactions or services envisaged that the Client is capable of making his/her own investment decisions and understanding the risks involved. However, if the above-mentioned criteria are not met, HMS reserves the right to choose whether to provide services under the requested classification.
- ### 4. SERVICE
- 4.1. Subject to the Client fulfilling the Client obligations under this Agreement and any other such agreements with HMS, the Client may enter into transactions in the following instruments and investments:
- Futures and CFD's on commodities, securities, interest rate and debt instruments, stock or other indices, currencies and base and precious metals;
  - Spot and forward bullion, currencies and OTC derivatives;
  - Securities, including shares, bonds, and other debt instruments, including government and public issues;
  - Options and warrants to acquire or dispose of any of the instruments above, including options on options; and
  - Such other investments as HMS may from time to time agree.
- 4.2. The services provided by HMS may involve:
- Margined transactions;
  - Short sales (i.e. sales where one party to the Contract is obliged to deliver an asset which it does not possess).
  - Transactions in instruments which are:
  - Traded on exchanges which are not recognised or designated investment exchanges; and/or
  - Not traded on any stock or investment exchange; and/or
  - Not immediately and readily realisable.
- 4.3. The services provided by HMS will NOT include:
- Transactions with Counterparties who are not recognised by an official body as being a financial institution or broker.
- 4.4. Any transaction entered into by HMS for the Client will be for the account and the risk of the Client.
- 4.5. HMS will not enter into any transactions where the Client is not acting as Principal except where specifically agreed in writing by HMS prior to the transaction. HMS reserves the right to refuse, without giving reasons, acceptance of any party as Principal to a transaction.
- 4.6. As all exchange traded transactions and many Contracts will be effected subject to and in accordance with exchanges and Market Rules, the Client accepts that such rules usually contain provisions for wide powers in emergency and/or undesirable situations. Should any exchange or clearinghouse take actions that should affect a Client transaction, then HMS is empowered to, at its discretion, take any actions it deems necessary to protect its interests as well as the interests of the Client.
- 4.7. The Client will not hold HMS liable for any losses whatsoever resulting from actions HMS may take in accordance with Clause 4.6. above.
- 4.8. The Client acknowledges, recognises and understands that where any transaction is effected by HMS as Principle, riskless principle or Agent for the Client, delivery or payment (as appropriate) by the Counterparty or Counterparties to the relevant transaction shall be at the Client's entire risk.
- 4.9. HMS' requirement to deliver instruments or funds to the Client is conditional upon the delivery of such instruments or funds by the Counterparty or Counterparties to the relevant transaction to HMS.
- 4.10. While the Trading Platform is available from Monday 05:00 Sydney local time to Friday 17:00 New York local time, HMS' Helpdesk is only open on Luxembourg Business Days from 08.00 CET to 18.00 CET. Any transactions entered into outside these help desk hours are entered into by the Client with full knowledge that only Electronic Intervention by the Client is possible during these hours. The Client acknowledges that CFD's, DMA CFD's, futures and stocks can only be traded during the time that the relevant exchange is open for business.
- 4.11. HMS reserves the right to suspend services at any time, in part or in whole, should such situations arise where HMS considers such action to be warranted. These situations include, but are not limited to:
- Irregularities in Account opening documents;
  - Suspicion by HMS that the Client is in possession of Insider Information;
  - Inability by HMS or its partners to calculate prices for the requested transaction due to technical reasons or the unavailability of market information.
- 4.12. Notwithstanding any other provision of this Agreement, in providing its Services, HMS shall be entitled to take any action, as it considers necessary in its absolute discretion to ensure compliance with the Market Rules and all other applicable laws and regulatory decisions.
- ### 5. COMMUNICATION AND DEALING BETWEEN HMS AND THE CLIENT
- 5.1. The Client acknowledges, understands and expressly accepts that the service rendered by HMS is based on an electronic system whereby the Client is personally responsible for placing orders (buy and sell) and verifying price quotations via the Client's Trading Platform. When the Client experiences problems to access to the Client's Trading Platform, HMS may accept oral instructions from the Client or from an Authorised Person and may enter into transactions for and on behalf of the Client. HMS will only accept written instructions for closure of account and/or withdrawal of funds
- 5.2. The Company provides the Client with a Help Desk Chat service, as part of the Trading Platform package. This Help Desk Chat is for assistance only.
- 5.2.1. The Company cannot guarantee the confidentiality of information disclosed by the Client thought the use of the Help Desk Chat.
- 5.2.2. In order to protect the Client's identity, the Client acknowledges, recognizes and expressly accepts that the Client is responsible to keep all personal details and passwords confidential. Passing any such information (via the Help Desk Chat) is the sole responsibility of the Client
- 5.2.3. The Company shall not be liable for any transmission of personal details and passwords by the Client through the Trading Platform.
- 5.3. The persons authorised to give HMS instructions on the Client's behalf shall be those notified by the Client to HMS and may be varied by written notice to HMS. HMS is entitled to deem such notification as conclusive and HMS shall not be bound by any such variation until written notice is actually received and confirmed by HMS. HMS shall be entitled to act upon the oral or written instructions of any person so authorized or any person who appears to HMS to be an Authorized Person, notwithstanding that the person is not, in fact, so authorized.

- 5.4. In addition to the General Conditions and the Risk Warning for Foreign Exchange, CFD's, DMA CFD's Futures and Options, the following terms apply to the usage of the Trading Platform as supplied by HMS on its website, which shall be deemed to form part of this Agreement:
- 5.4.1. HMS shall not be liable for any losses incurred by the Client through the use of the Trading Platform. Such losses include, but are not limited to, losses resulting from system failure, transmission failure, transmission delay, or other technical errors, irrespective of the error's occurrence being the result of issues under HMS' control; HMS will not be liable for losses occurred by the Client as a result of defects in the Client's own data, communications equipment and software.
- 5.4.2. HMS may offer real-time tradable prices to the Client. Due to delayed transmission between the Client and HMS, the price offered by HMS may have changed before an order from the Client is received by HMS. If automatic order execution is offered to the Client, HMS shall be entitled to change the price on which the Client's order is executed to the market value at the time at which the order from the Client was received;
- 5.4.3. HMS shall endeavour to offer the Client Forex Target bid / ask spreads as listed under "trading conditions" on the Trading Platform. The Forex Target bid / ask spreads are HMS' best possible bid / ask spreads quoted under normal market conditions. During periods of high volatility or low liquidity, the Forex Target bid / ask spread may be increased and auto execution disabled;
- 5.4.4. HMS shall not be liable to the Client for any loss the Client might suffer due to errors in quotes which are the result of typing errors committed by HMS or HMS' erroneous perception of information entered into the system by the Client. HMS is entitled to make the necessary corrections in the Client's account according to the market value of the asset in question at the time when the error occurred;
- 5.4.5. HMS shall not be liable for any losses incurred by the Client due to errors in the presentation of information in the Trading Platform or other information pages available on the HMS website;
- 5.4.6. The Client shall be responsible for all orders, and for the accuracy of all information transmitted via the internet using its user id and password. Any such transmission carried out using the correct user id and password will be considered as originating from the Client unless HMS is informed in writing by the Client to cease internet trading operation on behalf of the Client;
- 5.4.7. Any instruction sent via the Trading Platform or by e-mail by the Client shall only be deemed to have been received and shall only then constitute a valid instruction and/or binding Contract between HMS and the Client when such instruction has been recorded as executed by HMS and confirmed by HMS to the Client through the Settlement/Trade Confirmation and/or Account Summary, and the mere transmission of an instruction by the Client shall not constitute a binding Contract between HMS and the Client.
- 5.4.8. The Client has the sole responsibility and liability to ensure that the user id and password provided by HMS are not disclosed or revealed so as to enable anyone to act in the Client's name. Any transactions entered into by the Client via the internet will be executed in due form, even if the user id and password of the Client have been obtained by third parties;
- 5.4.9. It is the sole responsibility and duty of the Client to ensure that the Client Account Statement(s) and position(s) are correct at all times. In case of discrepancies, it is the Client's sole responsibility and duty to inform HMS immediately when the discrepancy occurs;
- 5.4.10. A Trade Confirmation will prove that any instruction sent by the Client through the Trading Platform has been received. The transmission and receipt of an order does not constitute in itself a confirmation of acceptance of the transaction. Only the Account Summary confirms that the Client's transaction has been executed;
- 5.4.11. It is possible that errors may occur when pricing certain transactions. HMS cannot be held liable to fulfil any such contract where such errors:
- Were evident to a reasonable person to be errors at the time of the transaction, or
  - HMS is able to substantiate that the pricing was in error as at the moment of the transaction.
- 5.4.12. When the Client instructs HMS to enter into a position which is opposite to one or more of the Client's open positions, HMS will apply the FIFO (First In- First Out) principle and consequently close out the opposite position which was opened as the first of such positions unless the position has related orders or otherwise agreed.
- 5.5. The Client shall promptly provide any instructions to HMS which HMS requests. If the Client does not provide such instructions promptly, HMS may, in its absolute discretion, and without any liability to the Client for such action take such steps at the Client's cost, as HMS considers necessary or desirable for its own protection or the protection of the Client. This provision is similarly applicable in situations when HMS is unable to obtain contact with the Client.
- 5.6. If the Client does not provide HMS with notice of its intention to exercise an option or another Contract which requires an instruction from the Client at the time stipulated by HMS, HMS may treat the option or Contract as abandoned by the Client. If a Contract can be prolonged on expiry, HMS may at its sole discretion choose to prolong or to close such Contract on a best effort basis and in accordance with its Best Execution Policy and credit the Client's account with the proceeds if any are due.
- 5.7. Instructions shall be acknowledged orally or in writing by HMS, as HMS deems appropriate.
- 5.8. HMS may (but shall not in any circumstances be obliged to) require confirmation in such form as HMS reasonably requests if an instruction is to close an account or remit money due to the Client or if it appears to HMS that such confirmation is necessary or desirable.
- 5.9. The Client shall indemnify HMS and keep HMS indemnified against all losses, which HMS may suffer as a result of any error in any instruction given by an Authorized Person or as a result of HMS acting on any instruction, which is, or appears to be, from an Authorized Person.
- 5.10. HMS may, at its sole discretion and without explanation, refuse to act upon any instruction.
- 5.11. In general, HMS shall act according to instructions as soon as practically possible and shall, as far as trading instructions are concerned, act within a reasonable time frame in the context of the nature of the instruction and according with HMS' Best Execution Policy. However if, after instructions are received, HMS believes that it is not reasonably practicable to act upon such instructions within a reasonable time, HMS may defer acting upon those instructions until it is, in HMS' reasonable opinion, practicable to do so or otherwise notify the Client that HMS is refusing to act upon such instructions.
- 5.12. The Client agrees that HMS may record all telephone conversations, internet correspondence (chat), and meetings between the Client and HMS; and provide such correspondence, recordings, or transcripts from such recordings, as evidence to whom HMS in its entire discretion sees it to be desirable or necessary to disclose such information (including, but not limited to, any regulatory authority and/or any court of law) in relation to any dispute or anticipated dispute between HMS and the Client. However, technical reasons may prevent HMS from recording a conversation, and recordings or transcripts made by HMS may be destroyed. Consequently, the Client should not rely on such recordings being available.
- 5.13. The Client must provide HMS with a working e-mail address for the purpose of sending information to the Client. Any such communications sent to the Client via e-mail will be considered as received upon being sent by HMS. HMS is not liable for any non-delivery, delay or alteration of communications sent via e-mail.
- 5.14. HMS may display the Account Statement and Trade Confirmations on the Trading Platform. The Account Statement and Trading Confirmations will be considered as being received by the Client as from the moment they are available on the Trading Platform.
- 5.15. The Trading Platform may be available in several versions, which may be differentiated in various aspects including, but not limited to the level of security applied, products and services available etc. HMS shall not be liable to the Client for any loss, expense, cost or liability suffered or incurred by the Client due to the Client using a version different from HMS' standard version with all available updates installed.
- 5.16. Due to developments in news driven algorithmic trading strategies, certain service providers may not support updates of forex quotes fast enough to reflect the true market price as and when economic data is released.
- Therefore the Client is hereby made aware that when trading via the Trading Platform, placing news driven order strategies, orders may either be rejected or if accepted the trade price readjusted which may result in a net loss to the Client. HMS shall not be liable to the Client for any loss the Client might suffer, real or perceived, resulting from placing such orders.
- Trading strategies aimed at exploiting errors in prices and/or concluding trades at off-market prices (commonly known as "sniping") are not accepted by HMS. Provided that HMS can document that there on the time of the conclusion of the trade were errors in prices, commissions, or in the Trading Platform, and provided HMS can render probable that the Client, based on its trading strategy or other provable behaviour, deliberate and/or systematically has exploited or attempted to exploit such an error, HMS is entitled to take one or more of the following countermeasures:
- Adjust the price spreads available to the Client;
  - Restrict the Client's access to streaming, instantly tradable quotes, including providing manual quotation only
  - Retrieve from the Client's account any historic trading profits that HMS can document as having been gained through such abuse of liquidity at any time during the Client relationship; and/or
  - Terminate the Client relationship immediately by giving written notice.
- 5.17. If the Client operates several Accounts (or sub-accounts) and opposite positions are opened on different Accounts (or sub-accounts), HMS shall not close out such positions. The Client is specifically made aware that unless closed manually by the Client, all such positions may be rolled over on a continuous basis and thereby consequently all incur a cost for such roll-over.
- 5.18. In accordance with the applicable regulatory framework, HMS keeps records all telephonic conversations kept through its telephone lines

for the minimum period defined by law. Likewise, HMS keeps all e-mails exchanged with its Helpdesk for a minimum period of 5 years.

## 6. | MARGIN, COLLATERAL, PAYMENTS AND DELIVERY

- 6.1. The Client shall pay to HMS on demand:
- Such sums of money by way of deposits, or as initial or variation margin as HMS may require from time to time. In the case of a Contract effected by HMS on an exchange, such margin shall be not less than the amount or percentage stipulated by the relevant exchange plus any additional margin that HMS may in its reasonable discretion require;
  - Such sums of money as may from time to time be due to HMS under a Contract and such sums as may be required in or towards clearance of any debit balance on any Account; and
  - Such sums of money as HMS may from time to time require as security for the Client's obligations to HMS under this Agreement or any other Agreement that the Client may have with HMS.
- 6.2. If the Client makes any payment under this Agreement which is the subject to any withholding or deduction, the Client shall pay to HMS such additional amount to ensure that the amount actually received by HMS will equal the full amount HMS would have received had no withholding or deduction been made.
- 6.3. Payments into the Client Account are deposited by HMS on the condition of HMS receiving the amount in question. This shall apply irrespective of whether it has been explicitly stated in receipts or other notices of or requests for payment.
- 6.4. With the prior written agreement of HMS on each occasion, the Client may deposit Collateral with HMS for the purpose of complying with its obligations. The Client is specifically made aware that HMS will not accept non-cash assets as collateral. HMS may at any time refuse to accept any Collateral supplied by the Client.
- 6.5. Any Collateral will be held by an intermediate broker or eligible custodian, appointed by HMS, and the intermediate broker or eligible custodian shall be responsible for claiming and receiving all interest payments, income and other rights accruing to the Client. HMS accepts no responsibility or liability whatsoever for any Collateral when held by an intermediary broker or eligible custodian or the acts or omissions of any such intermediate broker or eligible custodian and shall not be liable to the Client for any losses resulting directly or indirectly from any acts or omissions of such, intermediate broker or eligible custodian
- 6.6. HMS is with the Clients specific consent, entitled to, on behalf of the Client:
- Pass on any money or Collateral received from the Client in order to satisfy HMS' obligations to any third party;
  - Charge, pledge or grant any security arrangement over Collateral in order to satisfy HMS' obligations to any third party in which case the Collateral may or may not be registered in the Client's name;
  - Lend Collateral in order to satisfy HMS' obligations to any third party in which case the Collateral may or may not be registered in the Client's name; and
  - Return to the Client property other than the original Collateral or type of Collateral.
- 6.7. HMS shall not be obliged to account to the Client for any income received by HMS as a result of carrying out any of the activities described in this Clause.
- 6.8. The Client shall be obliged to promptly deliver any money or property deliverable by it under a Contract in accordance with the terms of that Contract and in accordance with any instructions given by HMS for the purpose of enabling HMS to perform its obligations under any corresponding Contract entered into between HMS and a third party.
- 6.9. If the Client fails to provide any margin deposit or other sum due or comply with the margin requirements set as in Clause 6 under this Agreement in respect of any transaction, HMS, at its absolute discretion and without prior warning, reserves the right, but not the obligation, to close all open Contract(s) in order to meet the obligations of the Client. Any such liquidations will be performed with due care, on a discretionary and best effort basis and in accordance with HMS' Best Execution Policy.
- 6.10. If the Client fails to make any payment when it falls due, the Client shall pay interest (from the due date and until payment takes place) on the outstanding amount at the rate stated in the Commission, Charges & Margin Schedule.
- 6.11. The Client is advised that HMS shall have the right, in addition to any other rights it may have under this Agreement, or under Luxembourg law in general, to limit the size of the Client's open positions (net or gross) and to refuse orders to establish new positions. Situations where HMS may exercise such right include, but are not limited to, situations where:
- HMS considers that the Client may be in possession of Inside Information;
  - HMS considers that there are abnormal trading conditions; or
  - The value of the Client's Collateral (as determined by HMS in accordance with Clause 6.4 above) falls below the minimum margin requirement.

## 7. | MARGIN TRADES AND ACCOUNT EXPOSURE

- 7.1. The Client must not invest in more than 70 percent of the Client's account value in any one Margin Trade instrument and/or related Margin Trade instrument. If the Client holds more than 70 percent of its account value in any one Margin Trade instrument and/or related Margin Trade instrument, the Client will be required to reduce exposure. It is the Client's total responsibility to monitor its account(s) and exposure at all times. If the Client does not comply with this requirement, the Client Account will be considered to be over-exposed and HMS, at its absolute discretion and without prior notice to the Client, reserves the right, but not the obligation, to reduce the Client's exposure by closing position(s) in accordance with its Best Execution Policy. The Client is made aware that HMS, at its absolute discretion, may consider certain accounts higher risk and may lower the above threshold to 50 percent. In such cases, HMS shall inform the Client.
- 7.2. On the date of the opening of a Margin Trade between HMS and the Client, HMS may require the Client to have margin on the Account at least equivalent to HMS' initial margin requirement.
- 7.3. HMS' margin requirement shall apply throughout the term of the Margin Trade. It is the sole responsibility and duty of the Client to monitor any margin requirement arising under this Clause 7 and to ensure that sufficient margin is available on the Client Account at any time. HMS may or may not notify the Client that the margin requirements are not met. If, at any time during the term of a Margin Trade, the margin available on the Account is not sufficient to cover HMS' margin requirement, the Client is obliged to close any or all open Contracts in order to meet its obligations. The Client may also fund its account before the Collateral falls below HMS' margin requirement. Such transfer must be made and documented to the satisfaction of HMS immediately after HMS has requested the Client to do so. Even if the Client takes steps to reduce the size of open Margin Trades or to transfer sufficient funds, HMS may close one, several or all of the Clients Margin Trades or part of a Margin Trade and/or liquidate or sell securities or other property in the Client's account at its sole discretion without assuming any responsibility or liability to the Client for such action.
- 7.4. The Trading Platform is a multi-product trading platform, which supports cross product margining for any margin-based investments made in the different financial instruments supported. The Client is therefore required to monitor first and foremost the aggregated margin requirements from all investments as a percentage of the Client's Net Free Equity. At 100% "Margin Utilisation" the Client will be deemed to have utilised all available margin collateral.
- 7.5. The Client's total "Margin Utilisation", irrespective of products traded, must not exceed 100%. If the funds in the Client's account fall below the minimum margin requirements and the "Margin Utilisation" exceeds 100%, the Client will be required to decrease position(s) in order to reduce exposure. It is the Client's total responsibility to monitor position(s) and margins at all times. If the "Margin Utilisation" exceeds 100%, HMS reserves the right but not the obligation to close out all open positions.
- 7.6. If the Client has opened more than one Account, HMS is entitled to transfer money or Collateral from one Account to another, even if such transfer will necessitate the closing of Margin Trades on the Account from which the transfer takes place.
- 7.7. HMS' general margin requirements for different types of Margin Trades are displayed on the Trading Platform under the section "trading conditions". However, HMS reserves the right to determine specific margin requirements for individual Margin Trades.
- 7.8. The Client is specifically made aware that the margin requirements are subject to change without notice. When a Margin Trade has been opened, HMS is not allowed to close the Margin Trade at its discretion but only at the Client's instruction or according to HMS' rights under this Agreement. However, HMS will increase the margin requirements if HMS considers that its risk on a Margin Trade has increased as compared to the risk on the date of the opening of such Margin Trade.

## 8. | ACCOUNTS

- 8.1. Any notice or other communication to be provided by HMS under this Agreement, including Account Statements and Trade Confirmations, may be sent by HMS at its option to the Client in electronic form by display on the Client's account summary in the Trading Platform or by e-mail. The Client is obliged to provide HMS with an e-mail address for this purpose and HMS shall be entitled to rely on this e-mail address unless advised otherwise in writing by the Client. An e-mail message is considered received by the Client when sent from HMS. HMS is not responsible or liable for any delay, alteration, re-direction or any other modification the message may undergo after transmission from HMS. A message on the Client's account in the Trading Platform is considered received by the Client when HMS has placed the message on the Trading Platform.
- 8.2. HMS will make available to the Client a Settlement/Trade Confirmation in respect of any transaction or Contract entered into by HMS with or for the Client and in respect of any open position closed



- by HMS for the Client. Settlement/Trade Confirmations will normally be available following the execution of the transaction.
- 8.3. An Account Summary and Account Statement are available to the Client through the Trading Platform. The Account Summary will normally be updated periodically during HMS' opening hours. The Account Statement will normally be updated every Business Day with information for the previous Business Day. By accepting the terms and conditions under this agreement the Client agrees not to receive any Account Statements or Account Summaries in printed form from HMS other than upon specific request
- 8.4. The Client is obliged to verify the contents of each document, including documents sent in electronic form from HMS (e.g. Account Statements or Trade Confirmations via the Trading Platform or email). Such documents shall, in the absence of manifest error, be deemed conclusive unless the Client notifies HMS in writing to the contrary immediately after having received such document. In the event that the Client is of the opinion that it has entered into a Contract which should have produced a Trade Confirmation or otherwise a posting on the Client's account but the Client has not received such Trade Confirmation, the Client must inform HMS immediately upon such time as such Trade Confirmation should in the normal course of business have been received. In the absence of such information the transaction or Contract may at HMS' reasonable discretion be deemed non-existent and HMS shall have no liability to the Client.
- 9. | COMMISSIONS, CHARGES AND OTHER COSTS**
- 9.1. The Client shall be obliged to pay to HMS the commissions and charges set out in the Commission, Charges & Margin Schedule which can be found on the HMS website [www.hms.lu](http://www.hms.lu). The current Commission, Charges & Margin Schedule is supplied to the Client on demand.
- 9.2. HMS may vary such commissions and charges without notice when the change is to the Client's advantage, or the grounds for changes are due to external circumstances beyond HMS' control. Such circumstances are:
- Changes in the relationship with HMS' counterparties, which affect HMS' cost structures;
  - Changes in commissions and charges from exchanges, clearing houses, information providers or other third party providers that are passed on to the Client by HMS.
- 9.3. HMS may vary such commissions and charges with one month's notice if:
- Market conditions, including competitive behaviour, call for changes to HMS conditions;
  - HMS for commercial reasons wishes to change its general cost and pricing structure;
  - Significant particulars of the Client, based on which individual conditions were provided, have changed;
- 9.4. In addition to such commissions and charges, the Client shall be obliged to pay all applicable VAT and other taxes, storage and delivery charges, exchange and clearing house fees and all other fees incurred by HMS in connection with any Contract and/or in connection with maintaining the business relationship with the Client.
- 9.5. Furthermore, HMS shall be entitled to demand that the following expenses are paid separately by the Client:
- All extraordinary disbursements resulting from the Client relationship e.g. telephone, fax, courier, and postal expenses in case the Client requests hardcopy Trade Confirmations, Account Statements etc. or otherwise which HMS could have delivered in electronic form;
  - Any expenses of HMS, caused by non-performance by the Client of any obligations it may have under this Agreement or any other agreement with HMS, including a fee determined by HMS in relation to forwarding of reminders, legal assistance etc.;
  - Administration fees in connection with security deposits, and any expenses of HMS in relation to a pledge, if provided, including any insurance premium payments; and
  - Any expenses of HMS in connection with auditor's comments/reports if such reports are requested by the Client.
- 9.6. The fees will be charged either as a fixed amount corresponding to payments effected, or as a percentage or hourly rate corresponding to the service performed. The methods of calculation can be combined. HMS reserves the right to introduce new fees.
- 9.7. HMS may share commission and charges with its associates. Introducing third parties or receive remuneration from them in respect of Contracts entered into by HMS. Details of any such remuneration or sharing arrangement will not be set out on the relevant Trade Confirmation. HMS (or any associate) may benefit from commission, mark-up, mark-down or any other remuneration where it acts for the Counterparty to a Contract.
- 9.8. Unless specified otherwise in this Agreement, all amounts due to HMS (or Agents used by HMS) under this Agreement shall, at HMS' option:
- Be deducted from any funds held by HMS for the Client; or
  - Be paid by the Client.

- 9.9. In respect of any transactions to be effected OTC, HMS shall be entitled to quote prices at which it is prepared to trade with the Client. Save where HMS exercises any rights it may have under this Agreement to close a Contract, it is the Client's responsibility to decide whether or not it wishes to enter into a Contract at such prices.
- 9.10. Furthermore, the Client acknowledges, recognises and accepts that the procedures described in Clause 10, Interest and Currency Conversions, and Clause 14, Market Making, may result in additional costs for the Client.
- 9.11. The Client has permanent access of the commissions, charges and other costs incurred by the trading activity through the Trading platform. Likewise, the Client has access to the schedule of commissions, charges and others costs as defined in accordance with the terms of this Agreement.
- 10. | INTEREST AND CURRENCY CONVERSIONS**
- 10.1. Subject to the Clause below and save as otherwise agreed in writing, HMS shall not be liable to:
- Pay interest to the Client on any credit balance in any Account or on any other sum held by HMS; or
  - Accounting to the Client for any interest received by HMS on such sums or in connection with any Contract.
- 10.2. If the balance of an Account exceeds certain amounts (as determined by HMS) then HMS will pay interest on the Client's positive Net Free Equity at such rate as HMS may determine from time to time.
- 10.3. If there is a debit balance on an Account then the Client will pay interest to HMS on the full amount of that balance at such rate as HMS may determine from time to time.
- 10.4. HMS is entitled to (but shall not in any circumstances be obliged to) convert:
- Any realized gains, losses, option premiums, commissions, interest charges and brokerage fees which arise in a currency other than the Client's base currency (i.e. the currency in which the Client's Account is denominated) to the Client's base currency;
  - Any cash currency deposit to another cash currency deposit for the purpose of purchasing an asset denominated in a currency other than the Client's base currency;
  - Any monies held by HMS for the Client into such other currency as HMS considers necessary or desirable to cover the Client's obligations and liabilities in that currency.
- 10.5. HMS may vary such interest rates and/or thresholds for interest calculation without notice when changes are to the Client's advantage, or the grounds for changes are due to external circumstances beyond HMS control. Such circumstances are:
- Changes in the monetary or credit policies domestic or abroad that affect the general interest level in a way that is of importance to HMS;
  - Other changes in the general interest level, including in the money and bond markets that is of importance to HMS;
  - Changes in the relationship with HMS' Counterparties, which affect HMS' cost structures
- 10.6. HMS may vary such interest rates with one month's notice if:
- Market conditions, including competitive behaviour, call for a change to HMS conditions;
  - HMS wishes to change its general commission, fee and pricing structure for commercial reasons;
  - Changes to significant particulars of the Client, based on which individual conditions were provided, occurs.
- 10.7. Whenever HMS conducts currency conversions, HMS will do so at such reasonable rate of exchange as HMS shall select. HMS shall be entitled to charge and retain for its own account a mark-up on the exchange rates for arranging such conversion as HMS may from time to time specify and publish in the Commission, Charges and Margin Schedule.
- 11. | PLEDGE AGREEMENT**
- 11.1. Any and all Collateral transferred to HMS by the Client or held by HMS or by HMS' Counterparties on behalf of the Client is pledged as a security for any existing or future liability that the Client may have or incur in respect of HMS. Without limitation such Collateral shall include the credit balances on Accounts.
- 12. | NETTING**
- 12.1. If on any date the same amounts are payable under this Agreement by each party to the other in the same currency, then, on such date, each party's obligations to make payment of any such amount will be automatically satisfied by netting. If the amounts are not in the same currency, the amounts may be converted by HMS in accordance with the principles referred to in Clause 10.
- 12.2. If the aggregate amount that is payable by one party exceeds the aggregate amount that is payable by the other party, then the party by whom the larger aggregate amount is payable shall pay the



excess to the other party and the obligations to make payment of each party will be satisfied and discharged.

- 12.3. If this Agreement is terminated according to Clause 18, the claims that the parties have against each other shall be finally discharged by means of netting (closed). The value of open contracts shall be determined according to the principles set forth below and the final amount to be paid by one of the parties shall be the difference between the payment obligations of the parties.
- 12.4. If the Client, at any time during the Client relationship, has a negative cash-balance in any account, HMS is entitled but not obligated to net between the Client's accounts. The Client shall bear all the charges and any other costs associated with such netting.
- 12.5. The rates based on which the contracts shall be closed shall be the market rates applicable on the day on which HMS decides to close the Contracts.
- 12.6. HMS may at its reasonable discretion determine the rates by obtaining an offer from a market maker in the asset in question or by applying rates from electronic financial information systems.
- 12.7. When determining the value of the Contracts to be netted, HMS shall apply its usual spreads and include all costs and other charges.
- 12.8. This netting agreement shall be binding towards the estate and creditors of the parties to the Agreement.

### 13. | CLIENT MONEY AND TRANSFERS

The *Système d'indemnisation des investisseurs* ('SII'), or Investor Protection Scheme has been established in Luxembourg and covers investors (both physical persons and legal entities) within the limits and according to the terms and conditions provided by the law of 18 December 2015. The SII provides cover for claims, under the legal conditions in place, on investments up to an amount equivalent to EUR 20,000, whatever their currency or location within the EU. Luxembourg's SII is currently supervised by the *Commission de Surveillance du Secteur Financier* (the 'CSSF'). More information may be obtained at the CSSF's website ([www.cssf.lu](http://www.cssf.lu)).

Funds received from Clients ("Clients' Funds") are deposited and held by a custodian, i.e., a bank or another financial institution that are licensed for custodian services either in the Grand Duchy of Luxembourg and/or outside the Grand Duchy of Luxembourg.

Consequently, Client Funds are exposed to the risk of a bankruptcy of the custodian where the Client Funds are deposited. In this respect, as transactions conducted on the Trading Platform are concerned the following should be noted:

Client Funds are held at a first stage on an omnibus account HMS carries with a Luxembourg bank. Clients' Funds enjoy a certain protection in case of a bankruptcy of such bank by way of the Luxembourg Deposit Guarantee and Investor Compensation Scheme organised by the FGDL, as provided for by Part IV (bis) titled "Deposit guarantee scheme for credit institutions" of the 1993 Law, of which such bank is a member. Further information on the FGDL can be seen on the FGDL website ([www.fgdl.lu](http://www.fgdl.lu)).

At the time a Client opens and funds the Client on-line account, Client funds are transferred from the HMS omnibus account held in Luxembourg to an omnibus account HMS carries with a foreign custodian. The Foreign Custodian will then pass on the Clients' Funds to intermediate brokers, settlement agents and/or clearing houses in order to execute the transaction. The Foreign Custodian has full discretion to choose the intermediate brokers, settlement agents, clearing houses and/or other financial institutions.

Clients' Funds within such omnibus account with a foreign custodian are separated from each other. Clients' names are not disclosed to such custodians.

Clients' Funds that are outside of Luxembourg will not benefit from the protection they enjoy while being held in Luxembourg. Consequently, Clients' Funds may be lost notably in case of failure of Foreign Custodians, intermediary brokers, settlement agents or clearing houses when held by Foreign Custodians, intermediary brokers, settlement agents or clearing houses.

Even though HMS takes every reasonable measure to carefully select on the basis of publicly available information Foreign Custodians as to their solvency, HMS does not guarantee in any way or form the good standing of such institutions and HMS does not accept liability for any default or failure of such institutions. HMS further does not guarantee in any way or form the good standing of intermediary brokers, settlement agents, clearing houses or other financial institutions used by Foreign Custodians and HMS does not accept liability for any default or failure of the intermediary brokers, settlement agents, clearing houses or other financial institutions. For HMS TraderPro and HMS TraderGo, HMS uses the services of Saxo Bank A/S, (Hellerup, Denmark) as foreign custodian.

Any Client opening an online account with HMS for the Trading Platform agrees that the Client is willing to bear the risk and in position to suffer the losses that may result from it. The Client agrees that transfers of the Client's Funds are deemed to be made upon the Client instructions as evidenced by the fact that the Client initiates the opening of an on-line account.

Incoming transfers: The Client understands that at the time a Client opens and funds the Client on-line account, Client funds are

transferred from the HMS omnibus account held in Luxembourg to an omnibus account HMS carries with a foreign custodian. This procedure may take up to three Luxembourg business days from the date the Client funds have been delivered to the HMS omnibus account in Luxembourg.

Outgoing transfers: The Client understands that when withdrawing funds from its on-line account with HMS, HMS must withdraw the Client funds HMS holds with its foreign custodian and transfer the Client funds to an omnibus account HMS holds in Luxembourg. Once the Client funds have been delivered to an account HMS holds in Luxembourg, HMS will transfer the Client's funds according to the Client instructions. This procedure may take up to five Luxembourg business days.

### 14. | MARKET MAKING

14.1. When HMS deals for or on behalf of the Client, HMS shall act as principal or riskless principle or Agent, unless otherwise indicated in writing or notified to the Client. The Client is made aware that HMS is not a market maker. HMS routes all Client orders to its Service Provider Saxo Bank A/S Denmark or its third parties for all market making and order routing services. HMS' service provider or its third parties may for listed securities admitted to trading on a Regulated Market or Multilateral Trading Facility ('MTF') execute said securities outside of the Regulated Market or 'MTF'.

14.2. When HMS executes orders as Agent for the Client via its Service Provider on a recognised stock or futures exchange, HMS will not be a party to such a trade as such orders will be executed in the trading system of the relevant exchange at the best price and the most favourable conditions available at the time of the order or according to the Client's specific instructions, e.g. in a situation where the Client has chosen to limit the order. HMS will not include any additional spread in the price of the execution achieved for the Client but will be remunerated according to the Commission, Charges & Margin Schedule.

14.3. The Client is specifically made aware that in certain markets, including the foreign exchange markets, OTC foreign exchange options and CFD Contracts, the Service Provider and not HMS may act as a Market Maker in this case HMS will act as riskless principle.

14.4. HMS will, upon the Client's written request, in general disclose to the Client whether the Service Provider may act as a Market Maker in a certain instrument.

14.5. When acting as a Market Maker, the Service Provider will under normal market circumstances quote HMS bid and ask prices, HMS will add a mark up or mark down to that spread and quote the Client the HMS spread as per HMS trading conditions.

14.6. In order for HMS to quote prices with the swiftness normally associated with speculative trading, HMS may have to rely on available price or available information that may later prove to be faulty due to specific market circumstances, for instance, but not limited to, lack of liquidity in or suspension of an asset or errors in feeds from information providers or quotes from Counterparties. If so and if HMS has acted in good faith when providing the price to the Client HMS may cancel the trade with the Client but shall do so within reasonable time and shall provide the Client with a full explanation for the reason for such cancellation.

14.7. Following execution of any position on behalf of HMS' Clients, the Service Provider may at its reasonable discretion subsequently offset each such HMS Client position with another Client's position or a position with one of its Counterparties or retain a proprietary position in the market with the intention to obtain trading profits from such positions. Such decisions and actions may therefore result in the Service Provider offsetting said positions at prices different - sometimes significantly different - from prices originally quoted, resulting in trading profits or losses for the Service Provider. This in turn can raise the possibility of the Client incurring what may be seen as an implied cost (i.e. the difference between the price at which the Client traded with HMS and the price at which the Service Provider subsequently traded with Counterparties and/or other Clients) due to any profits realised by the Service Provider as a result of the Market Making function. However, the Market Making function may involve significant costs to the Services Provider if the market moves against the Service Provider as compared to the price at which the Service Provider originally traded.

14.8. The Client accepts that the Service Provider in such markets where the Service Provider acts as Market Maker, may hold positions that are contrary to positions of the Client, resulting in potential conflicts of interest between the Service Provider and the Client, cf. Clause 16.

14.9. In markets, where the Service Provider acts as a Market Maker on HMS' behalf, the Client accepts that HMS or the Service Provider has no obligation to quote prices to Clients at all times in any given market, nor to quote such prices to Clients with a specific maximum spread.

14.10. In markets, where the Service Provider acts as a Market Maker, HMS may or may not charge commissions. However, irrespective of whether or not HMS charges any commissions, the Client accepts that the Service Provider will seek to make additional profits out of its performance as a Market Maker and the size of any such profits may

be considerable if and when compared with the Client's margin deposit.

- 14.11. The Client acknowledges, recognises and accepts that the price quoted to the Client by HMS includes a spread when compared with the price quoted to HMS by the Service Provider as well as compared to the price at which the Service Provider may have covered or expected to be able to cover the Contract in a trade with another Client or a Counterparty. Furthermore, the Client acknowledges, recognises and accepts that said spread constitutes remuneration to HMS and its Service Provider and that such spread will not be specified at the Settlement/Trade Confirmation or otherwise revealed to the Client.
- 14.12. The Client acknowledges, recognizes and accepts that HMS quotes variable spreads on options. The Client is specifically made aware that variable option spreads are affected by actual market conditions, which are beyond HMS' control. HMS does not guarantee any maximum or minimum quotable option spreads.
- 14.13. Any commission costs, interest charges, costs associated to and included in the spreads quoted by the Service Provider on HMS' behalf as a Market Maker in certain markets and other fees and charges will consequently influence the Client's trading result and will have a negative effect on the Client's trading performance compared to a situation if such commission costs, interest charges, costs associated to and included in the spreads did not apply.
- 14.14. Whilst dealing spreads and commissions are normally considered moderate seen in relation to the value of the assets traded, such costs may be considerable when compared with the Client's margin deposit with HMS. As a consequence thereof the Client's margin deposit may be depleted by trading losses that the Client may incur and by the directly visible dealing costs such as commissions, interest charges and brokerage fees as well as the said not visible costs for the Client, caused by the Service Providers performance as a Market Maker.
- 14.15. If the Client is an active trader and is undertaking numerous transactions, the total impact of visible as not visible costs may be significant. Consequently the Client may have to obtain significant profits in the markets in order to cover the costs associated with trading activities with HMS. For very active Clients, such costs may over time exceed the value of the margin deposited. Normally, when trading margined derivatives, the lower the percentage of the applicable margin rate, the higher the proportion of the costs associated with executing a transaction.
- 14.16. The Client is specifically made aware that in the area of market making in foreign exchange, OTC foreign exchange options, CFD Contracts and other OTC products, significant implied costs can arise as a consequence of the profits made by HMS or by the Service Provider performing in its capacity as a Market Maker.
- 14.17. The spread price quoted by HMS to the Client as well as the Service Providers performance as a Market Maker may negatively affect the Client's Account with HMS and the said implied costs are neither directly visible nor directly quantifiable for the Client at any time.
- 14.18. HMS is at no time obliged to disclose any details of its performance or income produced, related to mark-up or mark-downs on spreads, commissions, charges and fees. The Service Provider is at no time obliged to disclose any details of its performance or income produced as a Market Maker or otherwise related to other commissions, charges and fees.
- 14.19. The Client is specifically made aware that CFD Contracts may be OTC products quoted by the Service Provider whilst operating as a Market Maker and not traded on a recognised stock exchange. As a result, the description above of the implied, not visible costs related to the Service Providers performance as a Market Maker may also apply to any CFD Contract.

## 15. | AGGREGATION AND SPLIT

- 15.1. The Service Provider in accordance with HMS' Best Execution Policy is entitled to aggregate HMS Client orders with the Service Providers own orders, orders of any of the Service Providers associates and/or persons connected with the Service Provider including employees and other Clients. Furthermore, the Service Provider may split HMS Client orders when executing these. The orders will only be aggregated or split if the Service Provider reasonably believes it to be in the best interest of HMS' Clients. On some occasions, the aggregation and split of the Client's order may result in the Client obtaining a less favourable price than if the Clients' orders had been executed respectively separately or mutually.

## 16. | CONFLICTS OF INTEREST

- 16.1. HMS, its associates or other persons or companies connected with HMS may have an interest, relationship or arrangement that is material in relation to any performed transaction or Contract, or recommendation provided by HMS, under this Agreement. By entering into this Agreement the Client agrees to and accepts HMS' Conflict of Interest Policy (which distinctly describes the general character and/or background of any conflict of interest). The Client

agrees that HMS or its Service Provider may transact such business without prior reference to any potential specific conflict of interest.

- 16.2. In addition, HMS may provide advice, recommendations and other services to third parties whose interests may be in conflict or competition with the Client's interests, and HMS, its associates and the employees of any of them may act on behalf of other Clients who may take positions opposite to the Client or may be in competition with the Client to acquire the same or a similar position.

## 17. | HMS' COUNTERPARTIES

- 17.1. In order to give effect to the Client's instructions, HMS may instruct a Counterparty selected at HMS' discretion and HMS shall do so where the transaction is to be subject to the rules of an exchange or market of which HMS or its Service Provider is not a member
- 17.2. HMS shall not be responsible or liable for errors committed by such Counterparties unless it is proven that HMS has been grossly negligent when selecting the Counterparties.
- 17.3. The Client may have been referred to HMS by an introducing party. If so, HMS shall not be responsible for any agreement made between the Client and the introducing party and to which HMS is not a party.
- 17.4. The Client is specifically made aware that if the Client enters into relation with HMS via an introducing party, HMS may pay fees or commissions to such party, which may result in additional costs for the Client. The Client acknowledges that such introducing party will be acting as an independent intermediary and that no such party shall be authorised to make any representations or offers on behalf of HMS.

## 18. | DEFAULT AND DEFAULT REMEDIES

- 18.1. The provisions contained in this Clause supplement any other rights that HMS or any of its associates have according to this Agreement, including but not limited to the Pledge Agreement referred to in Clause 11, and furthermore any other rights HMS has according to Luxembourg law.
- 18.2. HMS reserves the right to retain, or make deductions from, any amounts which HMS owes to or is holding for the Client if HMS ascertains that any amounts are due from the Client to HMS or its associates.
- 18.3. The Client authorises HMS, at HMS' discretion, at any time and without notice or liability to the Client, to sell, apply, set-off and/or charge in any manner any or all of the Client's property and/or the proceeds of any of the same of which HMS or any of its associates or Agents has custody or control, in order to discharge any or all of the Client's obligations to HMS or to HMS' associates or Agents as the case may be.
- 18.4. Each and any of the following events shall constitute an Event of Default:
- 18.4.1. If the Client fails to make any payment or fails to do any other act or thing required by this Agreement or by HMS in HMS' reasonable discretion;
- 18.4.2. If the Client fails to remit funds necessary to enable HMS to take delivery of such funds under any Contract on the first due date;
- 18.4.3. If the Client fails to provide assets for delivery, or take delivery of assets, under any Contract on the first due date;
- 18.4.4. If the Client dies or becomes of unsound mind;
- 18.4.5. If an application is made in respect of the Client for any action pursuant to the Luxembourg Bankruptcy Act or any equivalent act or, if a partnership, in respect of one or more of the partners, or if a company, a receiver, trustee, administrative receiver or similar officer is appointed;
- 18.4.6. If a petition is presented for the winding-up or administration of the Client;
- 18.4.7. If an order is made or a resolution is passed for the winding-up or administration of the Client (other than for the purposes of amalgamation or reconstruction with the prior written approval of HMS);
- 18.4.8. If any distress, execution or other process is levied against any property of the Client and is not removed, discharged or paid within seven days; or
- 18.4.9. If any security created by any mortgage or charge becomes enforceable against the Client and the mortgagee or chargee takes steps to enforce the security or charge;
- 18.4.10. If an indebtedness of the Client or any of its subsidiaries becomes immediately due and payable, or capable of being declared so due and payable, prior to its stated maturity by reason of default of the Client (or any of its subsidiaries) or the Client (or any of its subsidiaries) fails to discharge any indebtedness on its due date;
- 18.4.11. If the Client fails to fully comply with any obligations under this Agreement or any Contract including refraining from complying with margin requirements;
- 18.4.12. If any of the representations or warranties given by the Client are, or become, untrue;
- 18.4.13. If HMS or the Client is requested to close a Contract (or any part of a Contract) by any regulatory agency or authority; or
- 18.4.14. If HMS reasonably considers it necessary for its own protection or the protection of its associates.

- 18.5. Upon the existence of an Event of Default, HMS shall be entitled to, and is authorised at its discretion:
- 18.5.1. To sell or charge in any way any or all of the Client's Collateral, assets and property which may from time to time be in the possession or control of HMS or any of its associates or Agents or call on any guarantee;
- 18.5.2. To buy any Collateral, investment or other property where this is, or is in the reasonable opinion of HMS likely to be, necessary in order for HMS to fulfil its obligations under any Contract and the Client shall reimburse HMS for the full amount of the purchase price plus any associated costs and expenses;
- 18.5.3. To deliver any Collateral investment or property to any third party, or otherwise take any action HMS considers to be desirable in order to close any Contract;
- 18.5.4. To require the Client immediately to close and settle a Contract in such manner as HMS may at its sole discretion request;
- 18.5.5. To enter into any foreign exchange transaction, at such rates and times as HMS may determine, in order to meet obligations incurred under a Contract; and
- 18.5.6. To re-invoice all or part of any assets standing to the debit or credit of any Account (including commuting HMS' or the Client's obligation to deliver an asset into an obligation to pay an amount equal to the market value of the asset (determined by HMS at its sole discretion) on the date re-invoicing takes place).
- 18.6. The Client authorises HMS to take any or all of the steps described in this Clause without prior notice to the Client, and acknowledges and agrees that HMS shall not be responsible nor have any liability for any consequences of it taking any such steps. The rights described in this Clause are in addition to any other rights which HMS (or any of its associates) may have against the Client under this Agreement or under Luxembourg law. The Client shall execute such documents and take such other action as HMS may request in order to protect the rights of HMS and its associates under this Agreement or under any agreement the Client may have with HMS or any of its associates.
- 18.7. If HMS exercises its rights to sell any Collateral or property of the Client under this Clause, it will perform such sale, without notice or liability to the Client, on behalf of the Client and apply the proceeds of such sale in or towards discharge of any or all of the Client's obligations to HMS or to HMS' associates.
- 18.8. Without prejudice to HMS' other rights under this Agreement or under Luxembourg law, HMS may, at any time and without notice, combine or consolidate all or any of the accounts maintained by the Client with HMS or any of its associates and off-set any and all amounts owed to, or by, HMS or any of its associates in such manner as HMS at its reasonable discretion may determine.

## 19. | ROLLOVERS (Foreign Exchange)

Entry prices (initial price of the trade when a position is opened) will be readjusted according to interest rate differentials. HMS' Service Provider will automatically rollover any open traded positions at the end of any given trading day on a tom/next basis one banking day before the expected maturity of the given position. Each such tom/next or longer rollover of open positions will be executed at the prevailing tom/next or applicable market rates using the appropriate bid and ask rates.

## 20. | SUSCRIBER AGREEMENT FOR EXCHANGE DATA

The vendor of real time data on the Trading Platform is Saxo Bank, Philip Heymans Allé 15, DK-2900 Hellerup, Denmark. Therefore, the Subscriber Agreement for any exchange data will be contracted between the vendor of the data and you the subscriber.

HMS cannot guarantee the confidentiality of the information disclosed by the Client when signing the Subscriber Agreement. Therefore, disclosure of such confidential information is the sole responsibility of the Client/subscriber. By signing the Subscriber Agreement you automatically agree to:

- Permit HMS to forward your signed Subscriber Agreement to Saxo Bank, Philip Heymans Allé 15, DK-2900, Hellerup, Denmark and Saxo Bank reporting this information to each relevant exchange at the end of each month.
- Acknowledge and accept that HMS no longer has any responsibility for the data confidentiality, which you are disclosing in this process.

## 21. | CLIENT WARRANTIES & REPRESENTATIONS

The Client warrants and represents that:

- The Client is free of any constraints or regulations, legal or otherwise, that would prevent its entering into this Agreement with HMS or any Contract or any transaction under this Agreement;
- The Client has obtained all required permissions and/or authorisations to enter into this Agreement with HMS and that the

Client is properly constituted and has the legal capacity necessary to enter into this Agreement;

- Investments, fund units and any other collateral supplied by the Client is free and clear of any other liens, charges or pledges to the benefit of other institutions other than HMS or its agents;
- All information provided by the Client to HMS is complete and correct and does not contain any material errors. The Client will inform HMS promptly of any changes in such information that are material to their dealings under this Agreement;
- It is in compliance with all laws to which it is subject including, without limitation, all tax laws and regulations, exchange control requirement and registration requirements, and
- The above warranties and representations shall be deemed to be renewed each time the Client communicates with HMS, in either electronic, verbal or written form.

## 22. | INDEMNITY AND LIMITATION OF LIABILITY

- 22.1. The conditions of indemnity and limitation of liability, where not specifically covered in this Agreement are stated in the General Conditions, E-Business Agreement and Account Opening of HMS.
- 22.2. The Client shall indemnify HMS and keep HMS indemnified against all losses, taxes, expenses, costs and liabilities whatsoever (present, future, contingent or otherwise and including reasonable legal fees) which may be suffered or incurred by HMS as a result of or in connection with:
- 22.2.1. The Client's breach of the Agreement;
- 22.2.2. HMS entering into any transaction or Contract; or HMS taking any of the steps which HMS is entitled to take in an Event of Default; unless and to the extent only that such losses, taxes, expenses, costs and liabilities are suffered or incurred as a result of HMS' gross negligence or wilful default.
- 22.2.3. HMS providing any Services in accordance with the provisions of this Agreement and any other agreement that HMS may have in existence with the Client; unless and to the extent only that such losses, taxes, expenses, costs and liabilities are suffered or incurred as a result of HMS' gross negligence or wilful default.
- 22.3. This indemnity shall survive the termination of this Agreement.
- 22.4. HMS shall not be liable for:
- 22.4.1. Any loss (including consequential and other indirect losses), expense, cost or liability (together "Loss") suffered or incurred by the Client as a result of or in connection with the provision of the Services unless and to the extent that such Loss is suffered or incurred as a result of HMS' gross negligence or wilful default; or
- 22.4.2. Any Loss due to actions taken by HMS according to its rights under this Agreement, whether HMS would have been liable for such Loss according to general liability rules under Luxembourg law or not, unless such losses are a result of HMS' gross negligence or wilful default; or
- 22.4.3. any consequential or other indirect loss suffered or incurred by the Client whether arising from HMS' negligence or otherwise; or
- 22.4.4. any Loss suffered or incurred by the Client as a result of any third party (including any Counterparty to, or any person whom HMS engages in connection with a Contract) failing to perform its obligations to HMS and, in such circumstances, HMS shall not be liable to perform its obligations to the Client to the extent that it is unable to do so as a result of the third party's default.
- 22.5. The Client acknowledges, recognises and accepts that any market recommendation and any information communicated by HMS does not constitute an offer to buy or sell or the solicitation of an offer to buy or sell a Contract and that such recommendation and information, although based upon information from sources believed by HMS to be reliable, may be based solely on a broker's opinion and that such information may be incomplete and may be unverified and unverifiable. HMS makes no representation, warranty or guarantee as to, and shall not be responsible or liable for, the accuracy or completeness of any information or trading recommendation furnished to the Client.

## 23. | CONFIDENTIALITY AND DISCLOSURE

- 23.1. All parties to this Agreement will undertake to not disclose to any person or entity any information regarding account details, transactions, investments or other information of a confidential nature (unless required by law, by the applicable regulatory authority or by Market Rules).
- 23.2. The Client hereby authorises HMS to disclose such information as necessary in order to enter into transactions as requested by the Client in compliance with the Luxembourg regulations. Such disclosures may be performed without prior notice to the Client.

## 24. | DURATION, AMENDMENTS AND TERMINATION

- 24.1. This Agreement is entered into for an unlimited period.
- 24.2. HMS may from time to time amend this Agreement by giving 30 days' notice, including but not limited to notice given by email, to the Client. Such changes shall become effective on the date specified in the

notice. The Client may request to terminate this Agreement during the period before the amendments take effect. Any such request must be made in writing to the offices of HMS.

- 24.3. Either party may terminate this Agreement at any time by giving written notice to the opposite party of the Agreement.
- 24.4. On termination, HMS and the Client undertake to complete all Contracts that are already in progress and the terms of this Agreement shall continue to bind both parties in relation to such transactions. HMS is entitled to deduct all amounts due to it before transferring any credit balances on any Account to the Client and it is entitled to postpone such transferring until any and all Contracts between HMS and the Client are closed. Furthermore, HMS is entitled to require the Client to pay any charges incurred in transferring the Client's investments.
- 24.5. At any time after the termination of this Agreement, HMS is entitled, without notice, to close any Contract between HMS and the Client.
- 24.6. It is emphasised that HMS will have no liabilities whatsoever for losses occurred in connection with termination.

## 25. COMPLAINTS AND DISPUTES

- 25.1. In the event that the Client has a complaint against HMS, the Client is obliged to advise HMS of the complaint in writing. HMS is hereafter obliged to investigate the complaint promptly and fully.
- 25.2. Without prejudice to any of HMS' other rights under this Agreement, in any case when the Client and HMS are in a dispute over a Margin Trade or alleged Margin Trade or any instruction relating to a Margin Trade, HMS is entitled at its sole discretion and without notice to close any such Margin Trade or alleged Margin Trade if HMS reasonably believes such action to be desirable for the purpose of limiting the maximum amount involved in the dispute. HMS shall not be responsible for or under any obligation to the Client in connection with any subsequent fluctuations in the level of the relevant Margin Trade. If HMS closes a Margin Trade under this Clause such action shall be without prejudice to HMS' right to contend that such Margin Trade had already been closed by HMS or was never opened by the Client. HMS shall take reasonable steps to inform the Client that HMS has taken such action as soon as practicable after doing so. Where HMS closes a Margin Trade or alleged Margin Trade in accordance with this Clause, the closing shall be without prejudice to the Client's rights to open a new Margin Trade, provided that such Margin Trade is opened in accordance with this Agreement. When calculating margin or other funds required for such Margin Trade, HMS is entitled to do so on the basis that HMS' view of the disputed events or instructions is correct.

## 26. GOVERNING LAW AND JURISDICTION

The relationship between HMS and the Client shall be governed under the laws of the Grand Duchy of Luxembourg. All disputes and actions shall be under the exclusive competence of the Courts of Luxembourg City.

## 27. MISCELLANEOUS

- 27.1. The Client acknowledges that HMS is collecting data that may be personal to the Client, for legitimate business purposes as set out under this Agreement and the Client consents to this. The Client further agrees that HMS may transfer this personal data for such legitimate business purposes as are envisaged under this Agreement without having to inform the Client each and every time that such personal data is so used. HMS for its part acknowledges that the Client may request access to such personal data and may advise HMS on when such personal data may be used. HMS further acknowledges that it is bound to comply with certain Luxembourg laws and regulations governing the use of personal data.

- 27.2. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected.
- 27.3. HMS shall not be liable to the Client for any failure, hindrance or delay in performing its obligations under this Agreement where such failure, hindrance or delay arises directly or indirectly from circumstances beyond its reasonable control. Further, HMS shall not be liable for force majeure events that shall include without limitation any technical difficulties such as telecommunications failures or disruptions, non-availability of HMS' website or the Trading Platform e.g. due to maintenance downtime, declared or imminent war, revolt, civil unrest, catastrophes of nature, statutory provisions, measures taken by authorities, strikes, lock-outs, boycotts, or blockades, notwithstanding that HMS is a party to the conflict and including cases where only part of HMS' functions are affected by such events.
- 27.4. Furthermore, HMS is entitled, in its reasonable opinion, to determine that an emergency or an exceptional market condition exists. Such conditions shall include, but are not limited to, the suspension or closure of any market or the abandonment or failure of any event to which HMS relates its quote or the occurrence of an excessive movement in the level of any Margin Trade and/or underlying market or HMS' reasonable anticipation of the occurrence of such a movement. In such cases HMS may without any liability to the Client increase its margin requirements, close all of the Client's open Margin Trades and/or suspend or modify the application of all or any of the terms of this Agreement, including but not limited to, altering the last time for trading a particular Margin Trade, to the extent that the condition makes it impossible or impracticable for HMS to comply with the term in question.
- 27.5. The Client may not assign any of the Client's rights or delegate any of the Client's obligations either under this Agreement or according to any Contract to any person whereas HMS may assign, in its absolute discretion, its rights or delegate its obligations to any regulated financial institution.
- 27.6. The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 27.7. No delay or omission on the part of HMS in exercising any right, power or remedy provided by law or under this Agreement, or partial or defective exercise thereof, shall:
- impair or prevent further or other exercise of such right, power or remedy; or
  - operate as a waiver of such right, power or remedy.
- 27.8. No waiver of any breach of any term of this Agreement shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.
- 27.9. The Client hereby ratifies all transactions with HMS effected prior to the Client's acceptance of this Agreement and agrees that the rights and obligations of the Client in respect thereto shall be governed by the terms of this Agreement.
- 27.10. By accepting the Terms on behalf of a corporation or other legal entity, the person signing represents and warrants that he/she is authorised to act on behalf of such corporation or legal entity and to bind the same to the Terms and all obligations arising hereunder. If at a later stage it becomes apparent that the signatory was not duly authorised to bind the corporation or the legal entity, HMS will have the right to seek restitution from this person. Furthermore, the signatory shall indemnify HMS against all liabilities, losses, damages, costs and expenses in relation to any claims or actions brought against HMS as a result of the signatory holding out to be authorised to act and bind any such corporation or legal entity.
- 27.11. Client shall be able to communicate with HMS in English or any other language as HMS may offer from time to time. HMS or third parties may have provided the Client with translations of this Agreement. The original English version shall be the only legally binding version for the Client and HMS. In case of discrepancies between the English version and the version accepted by the Client, the English version provided by HMS shall prevail.
- 27.12. The Client accepts that HMS may be closed on European holidays.

### The Client / Authorised Signatory #1:

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_

### The Client / Authorised Signatory #2: (when applicable)

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_



## 3 | E - BUSINESS AGREEMENT

This agreement covers all electronic platforms provided by HMS LUX S.A. (henceforth, 'HMS') to the Client.

### 1. | DEFINITIONS AND INTREPERTATIONS

- 1.1. For the purpose of this Agreement, the following terms shall have the indicated meanings:
  - 1.1.1. "Agreement" will represent this E-Business Agreement, entered into by the Client and HMS, which governs the relationship that the Client will have with HMS along with the remaining elements identified in the Account Opening Form and that may, from time to time, be provided to the Client;
  - 1.1.2. "Authorised Person" will mean any person or entity authorised by the Client to give instructions to HMS, including ANY person using the user id and password of the Client;
  - 1.1.3. "Client's System" shall mean Client's Personal Computer "PC", network, server and/or mainframes;
  - 1.1.4. "Company" shall mean HMS LUX S.A. (or "HMS").
  - 1.1.5. "Counterparties" shall be any professional financial institution whom HMS may use to cover transactions made by its Clients;
  - 1.1.6. "Client" will mean the customer of HMS that is party to this Agreement;
  - 1.1.7. "Designated Link" means designated lease line, or point to point connection;
  - 1.1.8. "ECN" means Electronic Connectivity Network;
  - 1.1.9. "Electronic Services" means a service provided by HMS, for example an internet trading service, offering Clients access to information and trading facilities, via an internet service and/or an electronic order routing system;
- 1.2. Any references to individual persons or entities will be considered as referring to any person, persons, entities (incorporated or not), partnerships or associations.
- 1.3. Any references to laws, regulations, statutes or practices shall be deemed to include any changes, amendments or updates enacted before, during or after the signing of this Agreement.

### 2. | THE CLIENT'S OBLIGATIONS

In relation to the electronic platform provided to the Client by HMS, the Client will:

- accept any updates or modifications to the provided software which the Company consider reasonable or necessary in respect of the services provided to the Client under this Agreement;
- be responsible for the installation and/or proper and regular use of any state-of-the-art virus detection/scanning program.

### 3. | WITHDRAWAL OF AN ELECTRONIC SERVICE

The Company has the right to suspend or withdraw temporarily or permanently any Electronic Service at any time for any of the following reasons:

- 3.1. The Client is in breach of any terms of this Agreement; and/or the Company believes or is told on reasonable authority that the Client is in non-compliance with Applicable Regulations; and/or
- 3.2. the Company is unable to provide electronic access due to a withdrawal, defect in or failure of:
  - network, communication or computer systems owned or operated by the Company or any third party; and/or
  - the Company's network link to any Exchange/ECN.

### 4. | USE OF THE ELECTRONIC SERVICES AND THE SOFTWARE PROVIDED

The Company reserves the right during the term of this Agreement to make such modifications, improvements or additions to the software, Electronic Services or any part or parts thereof as the Company shall deem fit.

### 5. | LIABILITY

- 5.1. Without prejudice to any other terms of this Agreement, relating to the limitation of liability, the Company shall have no liability to the Client in relation to any loss that the Client suffers as a result of any delay or defect in or failure of the whole or any part of (or any combination of):

- the Client's System; and/or the Designated Link; and/or the Internet; and/or the Electronic Trading Access; and/or the provided software; and/or any of the systems or network links identified in clause 3.2. above or any other means of communication.

- 5.2. The Company shall have no liability to the Client in the event that any viruses, worms, software bombs or similar items are introduced into the Client's System via the Designated Link, or provided software.

- 5.3. In no event shall the Company be liable for any special, indirect, incidental, punitive or consequential damages (including, without limitation, loss of business, loss of profit, loss of data, loss or corruption of data, loss of goodwill or reputation or wasted management time)

which may be incurred or experienced as a result of the Client's entering into this Agreement or using or relying on the internet or any other means of communication or any information on it, even if the Company had prior notice of the possibility of such damages arising. Any limitations or restrictions on the liability of either party in this Agreement shall only apply to the extent permitted by any applicable law.

### 6. | INDEMNITY

Without prejudice to any term of this Agreement relating to the provision of indemnities the Client will indemnify the Company against any fine, penalty, liability or other similar charge imposed on the Company for any reason by an Exchange/ECN or any other regulatory authority or under any applicable law or regulations which relates in any way to the Client's implementation of a transaction.

### 7. | ELECTRONIC SERVICES PROVIDED OVER OPEN NETWORKS.

The Client acknowledges that the provision of an Electronic Service may involve information being transported over an open network, the Internet, which is accessible to anybody. Information is therefore transmitted regularly and without control across borders. The Company takes reasonable steps to avoid information being intercepted and read by third parties, by use of techniques such as encryption, however it is not always possible to avoid someone other than the Company and/or service provider gaining access to information about the Company and the Client's dealings with the Company.

### 8. | ELECTRONIC TRADING AND ORDER ROUTING DISCLOSURE STATEMENT

This brief statement does not disclose all of the risk and other significant aspects of Electronic Trading and Order Routing System.

- 8.1. Differences among electronic trading systems: Trading or routing orders through electronic systems varies widely amongst the different electronic systems. You should consult the rules and regulations of the exchange(s) offering the electronic system and/or listing the contract traded or order routed to understand, among other things, in the case of trading systems, the system's order matching procedure, opening and closing procedures and prices, error trade policies and trading limitations or requirements; and, in the case of all systems, qualifications for access and grounds for termination and limitations on the types of orders that may be entered into the system. Each of these matters may present different risk factors with respect to trading on or using a particular system. Each system may also present risks related to system access, varying response time, and security. In the case of internet-based systems, there may be additional types of risks related to the system access, varying response times and security, as well as risks related to service providers on the receipt and monitoring of electronic mail.
- 8.2. Risk associated with system failure: Trading through an electronic trading or order routing system exposes you to risks associated with system or component failure. In the event of system or component failure, it is possible that, for a certain time period, you may not be able to enter new orders, execute existing orders or modify or cancel orders that were previously entered. System or component failure may also result in loss of orders or order priority.
- 8.3. Simultaneous open outcry pit and electronic trading: Some contracts offered on an electronic trading system may be traded electronically and through open outcry during the same trading hours. You should review the rules and regulations of the exchange offering the system and/or listing the contract to determine how orders that do not designate particular process will be executed.

**9. | LIMITATION OF LIABILITY**

9.1. Exchanges offering an electronic trading or order routing system and/or listing the contract may have adopted rules to limit their liability, the liability of brokers, and software and communication system vendors and the amount of damages you may collect for system failure and delays. These limitations of liability provisions vary amongst the exchanges. You should consult the rules and regulations of the relevant exchange(s) in order to understand these liability limitations. Each exchange's relevant rules are available upon request from the industry professional with whom you have an account.

**10. | DURATION, AMENDMENTS AND TERMINATION**

10.1. This Agreement is entered into for an unlimited period.  
10.2. The Company may from time to time amend this Agreement by giving 30 days' notice to the Client. Such changes shall become effective on the date specified in the notice. The Client may request to terminate this Agreement during the period before the amendments take effect. Any such request must be made in writing to the offices of the Company.

10.3. Either party may terminate this Agreement at any time by giving written notice to the opposite party of the Agreement.

**11. | MISCELLANEOUS.**

11.1. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement under the law of that jurisdiction may be invoked as cause for compensation.

**12. | GOVERNING LAW AND JURISDICTION.**

The relationship between the Company and the Client shall be governed under the laws of the Grand Duchy of Luxembourg. All disputes and actions shall be under the exclusive competence of the Courts of Luxembourg City.

The account holder(s) has/have read, understood and accepted the E – Business Agreement and attest(s) as to having received a copy of it.

**The Client / Authorised Signatory #1:**

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_

**The Client / Authorised Signatory #2 (When applicable):**

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_

## 4 | RISK WARNING NOTICE

This brief statement does not disclose all of the risk and other significant aspects of trading in derivatives products such as options and futures. Transactions in options and futures carry a high degree of risk for investors (purchasers and sellers). Therefore, prior to trading in derivatives, the Client should have a good understanding of the nature of such transactions and should familiarize himself to the different types of instruments, risk exposure and contractual obligations. Experience, objectives, financial resources and other relevant circumstances should also be taken into consideration when undertaking such high-risk investments. Therefore, the Client should also carefully consider whether trading or day trading in such instruments is appropriate to the Client's risk profile.

Be aware that the eventual granting of access to higher risk financial products (such as CFDs, for example) by HMS to its Clients depends on a prior assessment conducted by HMS of the appropriateness of such products to the Client. This assessment is essentially supported by the information provided by the Client to HMS via the Account Opening Form, namely in regards to its investment experience and knowledge. Thus, any misinformation provided to HMS exempts us from any liability connected to the access and use of such financial products.

### | DAY TRADING

1. Day trading can be extremely risky. Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. The Client should be prepared to lose all of the funds that the Client uses for day trading. In particular, the Client should not fund day-trading activities with retirement savings, student loans, second mortgages, emergency funds, funds set aside for purposes such as education or home ownership, or funds required to meet living expenses.

2. Be cautious of claims of large profits from day trading. The Client should be wary of advertisements or other statements that emphasize the potential for large profits in day trading. Day trading can also lead to large and immediate financial losses.

3. Day trading requires knowledge of financial markets. Day trading requires in-depth knowledge of the markets and trading techniques and strategies. In attempting to profit through day trading, the Client competes with professional, licensed traders employed by securities firms. The Client should have appropriate experience before engaging in day trading.

4. Day trading requires knowledge of a firm's operations. The Client should be familiar with a securities firm's business practices, including the operation of the firm's order execution systems and procedures. The Client should confirm that the firm has adequate systems capacity to permit Clients to engage in day trading activities.

5. Day trading will generate substantial commissions, even if the per trade cost is low. Day trading involves aggressive trading and each trade generates a commission. The total daily commissions that the Client pays on its trades will add to its losses or significantly reduce its earnings.

### | FOREIGN EXCHANGE, CFDs AND FUTURES

#### 6. Effect of "Leverage" or "Gearing".

Foreign Exchange, CFDs and Futures trading are normally undertaken on the basis of "margin trading". That is a relative small deposit (the margin) is held as collateral in order to control much larger positions in the market.

Therefore, any transactions in Foreign Exchange, CFDs and Futures carry a high degree of risk. Any market movement will have a much higher leverage effect/risk to any open positions in relation to the capital held as security. Open positions are continuously exposed to the potential of changing political and/or economic environments that may affect the price and/or liquidity of underlying assets.

Due to the low margin normally required in margined foreign exchange, CFDs or futures trades, any price changes in the underlying assets may result in significant or unlimited losses, which may substantially exceed the Client's initial investment and any additional margin deposit.

Before participating in the foreign exchange, CFDs or Futures markets, the Client should carefully consider the Client's investment objective, experience and risk profile. Above all only risk capital should be used.

The Client is advised that the minimum margin requirements must be maintained at all times and failure to do so may result in all positions being closed out. Losses are not limited to and may exceed the Client's account balance. The Client shall also remain liable for any resulting deficit balance. If the market moves against the Client's position or margin levels are increased, the Client may be called upon to pay substantial additional funds on short notice to maintain the Client's position.

The Client agrees that each Foreign Exchange, CFDs' Options or Futures transaction is subject to the rules and regulations of the market and or exchange where such transactions are executed.

### | OPTIONS

#### 7. Variable degree of risk.

Trading in options carries a considerable degree of risk. Purchasers and sellers of options should familiarize themselves with the different type of options (i.e. call or put) and the relevant risks associated. The Client should calculate the extent to which the value of the options must increase for the Client's position to become profitable, taking into account the premium and all transaction costs.

An option grants the buyer the right, but not the obligation, to buy or sell the underlying asset at an agreed price (strike price) on a set date. If the Client buys a Call Option, he has the right to buy the underlying asset. The maximum loss is the premium paid up front plus any commission or other transaction charges and the maximum profit is unlimited.

If the Client buys a Put Option, he has the right to sell the underlying asset. The maximum loss is once again the premium paid up front plus any commission or other transaction charges and the maximum profit is unlimited.

When the Client buys an option, the Client should be aware that the price of the underlying asset could move against him/her. The purchaser of options may exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying asset. If the option expires worthless, the maximum loss that the Client can sustain is limited to the premium plus any commission or other transaction charges.

If the option is on a future, the purchaser will acquire a futures position with associated liabilities for margin (see the section on Futures above). If the Client is contemplating purchasing deep-out-of-the-money options, the Client should be aware that the chance of such options becoming profitable is, ordinarily, remote.

Writing (Selling) an option involves greater risk than purchasing an option. By writing or selling an option, the Client accepts a legal obligation to purchase or sell the underlying asset at the agreed price (strike price). Although the premium received by the seller is fixed, the seller can sustain a loss well in excess of that amount. If the market moves unfavourably and the Client fails to comply with the Company's margin requirements, HMS LUX S.A. (hereinafter 'HMS'), at its absolute discretion and without prior warning, reserves the right, but not the obligation, to close out (liquidate) all positions, on a discretionary and best effort basis in order to maintain the margin requirement. The Client's position will be liquidated accordingly and the Client will remain liable for any resulting deficit after said liquidation. The seller will also be exposed to the risk of the purchaser exercising the options and the seller will be obliged to either settle the option in cash or to acquire or deliver the underlying asset. If the option is on a future, the seller will acquire a position in a future with associated liabilities for margin (see the section on Futures above). If the option is covered by the seller holding a corresponding position in the underlying asset or a future or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

The seller of a Call Option is obliged to sell the underlying asset at the agreed strike. The maximum loss is unlimited and the maximum profit is limited to the premium received minus any commission or other transaction charges.

The seller of a Put Option is obliged to buy the underlying asset at the agreed strike. The maximum loss is unlimited and the maximum profit is limited to the premium received minus any commission or other transaction charges.

Hence the risk as a seller of naked options (writing of options), with no underlying asset, is very high.

For example, if the Client writes a put option, the buyer of the option can at any time exercise it against the Client and the Client will become liable to buy the underlying assets at the strike price, even if the market price has become zero. For call option, the risk can be even higher if the Client does not own the underlying asset.

Certain exchanges in some jurisdictions permit deferred payment of the option premium, exposing the purchaser to liability for margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

Investors should also familiarize themselves with the difference between American Style and European style options. Only experienced investors, who are fully aware of the complexities and risks involved and have the financial liquidity and resources to sustain substantial losses, should deal in writing Options.

The Client agrees that each option transaction is subject to the rules and regulations of the market or exchange where such transactions are executed.

## **| ADDITIONAL RISKS COMMON TO FOREIGN EXCHANGE, CFDs, FUTURES AND OPTIONS**

### **8. Risk management.**

The Client has the possibility to place orders with a view to limiting losses. However, these orders are not guaranteed to be executed and may not effectively limit losses due to fluctuating market conditions. Strategies using combinations of positions, such as "spread" and "straddle" positions may be as risky as taking simple "long" or "short" positions.

### **9. Terms and Conditions of Contracts.**

The Client should ask the firm with which the Client deals about the terms and conditions of the specific foreign exchange, CFDs, futures or options which the Client is trading and associated obligations (e.g. the circumstances under which the Client may become obligated to make or take delivery of the underlying asset of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying asset.

### **10. Suspension or Restriction of trading and Pricing Relationships.**

Market conditions (e.g. illiquidity) and/or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or "circuit breakers") may increase the risk of loss by making it difficult or impossible to effect transactions or close a position. For example, a rapid price movement can lead to a suspension or restriction of the relevant exchange trading. And in this case even a stop-loss order will not necessarily be efficient because it may be impossible to execute the order at the stipulated price. The Client will be fully liable for any outstanding deficit balances.

Further, normal pricing relationships between the underlying asset and the future, and the underlying asset and the option may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits when the option is not. The absence of an underlying reference price may make it difficult to judge "fair" value.

### **11. Deposited Cash and Property.**

The Client should familiarize himself/herself with the protections accorded money or other property the Client deposits for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which the Client may recover the Client's money or property may be governed by specific legislation or local rules. In some jurisdictions the property which had been specifically identifiable as the Client's own will be protected in the same manner as cash for purposes of distribution, in the event of a shortfall.

### **12. Commission, fees and other charges.**

Before the Client begins to trade, the Client should obtain a clear explanation of all commission, fees and other charges for which the Client will be liable. These charges will affect the Client's net profit (if any) or increase the Client's loss.

Services provided to the Client will be invoiced in accordance with the practices within the market and the nature of the transaction executed. HMS has the right to modify the relevant fee schedule in force from time to time. It is permanently at the disposal of the Client and is deemed to have been accepted by the Client upon entering into a transaction.

### **13. Transactions in Other Jurisdictions.**

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose the Client to additional risk. Such markets may be subject to regulation, which may offer different or diminished investor protection. The Client's local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where the Client's transactions have been effected.

### **14. Currency Risks.**

The profit or loss in transactions in foreign currency-denominated contracts (whether they are traded in the Client's own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

### **15. Trading Facilities.**

Most open-outcry and electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. The Client's ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the clearing house and/or member firms. Such limits may vary; the Client should ask the firm with which the Client deals for details in this respect.

### **16. Electronic Trading.**

Electronic trading carries certain inherent risks due to the complexity and reliance on numerous connections and electronic services.

HMS will strive to ensure timely delivery and execution of orders placed electronically, but due to the inherent risks, the data may be delayed. Such delay may be the result of, but are not limited to, power failures, volume of Internet traffic, power outages, telephone line congestion, hardware failure or software failure. The result of any system failure may be that the Client's order is either not executed according to Client's instructions or is not executed at all. HMS does not guarantee the Client the access to the Client's account at any time, or the receipt, acceptance and entry of any order transmitted electronically.

Please note: HMS will perform its duties to the best of its abilities, but cannot guarantee "market on open" or "market on close" fills.

### **17. Off-Exchange Transactions.**

In some jurisdictions, and only then in restricted circumstances, firms are permitted to effect off-exchange transactions. The firm with which the Client deals may be acting as the Client's counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks. Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before the Client undertakes such transactions, the Client should familiarize himself/herself with applicable rules and attendant risks.

The Client acknowledges, recognizes understands and expressly accepts the inherent risks related to Foreign Exchange and derivatives trading and that such transactions are speculative in nature and may carry high levels of risk, which may result in substantial losses.

The account holder(s) has/have read, understood and accepted this Risk Warning Notice and attest(s) as to having received a copy of it.

### **The Client / Authorised Signatory #1:**

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_

### **The Client / Authorised Signatory #2 (When applicable):**

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_



## 5 | SOURCE OF FUNDS/WEALTH STATEMENT

As part of the Client Acceptance Procedure, HMS LUX S.A. (hereinafter, 'HMS') is required by the Luxembourg Laws and regulations to request information regarding the source of the funds that will be used for the business activity. Additionally, HMS is required to collect information on the source of wealth of its customers' beneficial owners. It should be noted that this includes the funds that you use for paying our fees and disbursements relating to the transactions.

### 5.1 | SOURCE OF FUNDS INFORMATION

Please provide the below details on the client's bank account from and to where any transfer of funds will be made. Please note that any funds transferred by you to us and by us to you must go through this account. Otherwise, HMS LUX S.A. will be obliged to carry out due diligence on any other account and shall not be held responsible for any delay in transfers for that reason.

Account Holder: \_\_\_\_\_  
 BANK: \_\_\_\_\_  
 Branch address: \_\_\_\_\_  
 Account number: \_\_\_\_\_

### 5.2 | SOURCE OF WEALTH INFORMATION

Please provide a description of the source of wealth of the customer's beneficial owner(s), i.e. how and where has the beneficial owner's overall wealth been generated (e.g. employment, inheritance, etc.). Each beneficial owner must identify his/her respective source of wealth. Summary references like "salary", "investments" or "inheritance", e.g., should be further detailed otherwise they will be rejected.

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I confirm and accept that any information and/or documentation provided to HMS concerning the foregoing may be subject to disclosure and/or production pursuant to orders having legal effect in Luxembourg. Moreover, pursuant to anti-money laundering laws and/or court proceedings, in certain circumstances HMS may be required to disclose information and/or documentation concerning clients to third parties such as, but not limited to, banks providing services to such clients and/or to HMS.

I further agree that HMS shall have no responsibility and/or liability arising directly and/or indirectly as a result of such disclosure.

I confirm that this **Source of Funds/Wealth Statement** represents my/our **true source of funds and source of wealth** as of the signature date.

#### Beneficial Owner #1:

Name: \_\_\_\_\_  
 Location: \_\_\_\_\_  
 Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Signature: \_\_\_\_\_

#### Beneficial Owner #2 (When applicable):

Name: \_\_\_\_\_  
 Location: \_\_\_\_\_  
 Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Signature: \_\_\_\_\_

## 6 | Declaration of Tax Conformity from Corporate Account Holder for the year \_\_\_\_\_\*

The authorised signatory(ies) of the legal person \_\_\_\_\_  
(print name), with registered address at \_\_\_\_\_  
and incorporated on \_\_\_\_/\_\_\_\_/\_\_\_\_, (hereinafter the 'Client'), in relationship with HMS LUX S.A. (hereinafter, 'HMS')  
having its registered office at 16 Boulevard Royal, L- 2449 Luxembourg, and registered with the *Registre du Commerce et des Sociétés* of Luxembourg under number B10.559,

Hereby declare on behalf of the Client that:

- He/she/they is/are aware of and understand all tax obligations and requirements to which the Client is bound as a consequence of that relationship, in accordance with the laws and regulations of the country of registered address and of any other relevant jurisdiction, and that he/she/they is/are aware and fully informed of the consequences thereof.
- He/she/they is/are aware of and understand the transactions, of any kind, realised on the above mentioned account, and that he/she/they is/are aware of and understand the resulting tax obligations and requirements thereof, in accordance with the laws and regulations of the country of registered address and of other jurisdiction concerned by the transactions realised on the above mentioned account, and that he/she/they is/are aware and fully informed of the consequences thereof.

Consequently, in accordance with the applicable laws and regulations, the undersigned declare that all the assets (including cash, securities and other investments) deposited on the account held with HMS, and that all income or proceeds thereof, as well as any interest or holdings, are currently and will continue to be fully disclosed, if applicable, to the relevant tax authorities.

The undersigned understand that should any of the aforementioned statements or undertakings be or become incorrect and should he/she/they do(es) not immediately correct the situation and provide evidence of this to HMS, it may decide to terminate the relationship immediately. The Client shall be liable for any costs or damages resulting therefrom.

### Authorised Signatory #1:

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_

### Authorised Signatory #2:

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_

In accordance with the Law of 23 December 2016 and the CSSF Circular 17/650, this Tax Conformity Declaration constitutes an annual obligation to all HMS clients, as part of the mandatory due diligence in relation to primary tax offences.

\* Please refer to the latest complete fiscal year.

**7 | Declaration of Tax conformity from Corporate Account Holder' Beneficial Owner  
for the year \_\_\_\_\_ \***

I, \_\_\_\_\_, undersigned and residing at \_\_\_\_\_,

being (the) Beneficial Owner of the legal person \_\_\_\_\_ (hereafter the 'Client'), with registered address at \_\_\_\_\_ and incorporated on \_\_\_\_/\_\_\_\_/\_\_\_\_, in relationship with HMS LUX S.A. ('HMS') having its registered office at 16 Boulevard Royal, L- 2449 Luxembourg, and registered with the *Registre du Commerce et des Sociétés* of Luxembourg under number B10.559,

Hereby declare that:

- I am aware of and understand all tax obligations and requirements to which I am bound, as the Beneficial Owner and as a consequence of the terms of the relationship with HMS, in accordance with the laws and regulations of my country of residence and of any other relevant jurisdiction, and that I am aware and fully informed of the consequences thereof.
- I am aware of and understand the transactions, of any kind, realised under the terms of the above mentioned relationship, and that I am aware of and understand the resulting tax obligations and requirements thereof, in accordance with the laws and regulations of my country of residence and of any other jurisdiction concerned by the transactions realised under the terms of the above mentioned relationship, and that I am aware and fully informed of the consequences thereof.

Consequently, in accordance with the applicable regulations, I declare that all the assets (including cash, securities and other investments) resulting from the above mentioned relationship with HMS, and that all income or proceeds thereof, as well as my interest or holdings, are currently and will continue to be fully disclosed, if applicable, to the relevant tax authorities.

I understand that should any of the aforementioned statements or undertakings be or become incorrect and should I not immediately correct the situation and provide evidence of this to HMS, HMS may decide to terminate the relationship with the Client immediately. The Client shall be liable for any costs or damages resulting therefrom.

**The Beneficial Owner:**

Name: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Location: \_\_\_\_\_ Signature: \_\_\_\_\_

In accordance with the Law of 23 December 2016 and the CSSF Circular 17/650, this Tax Conformity Declaration constitutes an annual obligation to all HMS clients, as part of the mandatory due diligence in relation to primary tax offences.

\* Please refer to the latest complete fiscal year.

## 8 | BENEFICIAL OWNER DECLARATION

### 8.1. | BENEFICIAL OWNER(S) INFORMATION

The party/parties referred to in section 2 of the Account Opening Request Form are acting as agent for the beneficial owners of the assets deposited on this account. The actual beneficial owner(s) of the account is/are indicated below. The account holder(s) undertake(s) to inform HMS LUX S.A. of any change in the beneficial ownership of the account.

Surname:	First Name:
Marital Status:	Profession:
Date of Birth:	Place of Birth:
Nationality:	Passport / Identity Card No:
Date of Issue:	Place of Issue:
Address – Street, No:	Address – Postal Code, City, Country:
Phone Number:	Mobile Number:
Fax Number:	E-mail:

### 8.2. | BENEFICIAL OWNER(S) DECLARATION OF NON-U.S. RESIDENCE/CITIZENSHIP

What is your permanent country of residence? \_\_\_\_\_

Do you reside for more than 183 days per year in the United States of America? ☐ Yes ☐ No

Are you a citizen of the United States of America? ☐ Yes ☐ No

Do you have dual nationality? If yes, please state: \_\_\_\_\_ ☐ Yes ☐ No

### 8.3. | BENEFICIAL OWNER(S) ACKNOWLEDGEMENT

The client represents that the foregoing information is true and correct, and agrees to notify HMS LUX S.A. of any material changes therein and further authorises it to confirm its accuracy as it deems necessary.

#### Beneficial Owner:

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_

## Legal Entity

### 9 | Self-certification for the Automatic Exchange of Financial Account Information [CRS and FATCA]

#### Instructions for completion

This form is provided to you in the context of the implementation of the OECD's Standard for the Automatic Exchange of Financial Account Information ("CRS") and the Intergovernmental Agreement on FATCA established between Luxembourg and the United States of America (FATCA Agreement). These international commitments have been enforced in Luxembourg by the Laws of 24 July 2015 ("FATCA Law") and of 18 December 2015 ("CRS Law").

HMS LUX S.A. (or "HMS") is required by these Laws to collect and process certain information about all our Account Holders. Where the Account Holder or any of their Controlling Persons has a tax residence outside Luxembourg or is a U.S. Person, the information given in this form – as well as other financial information with respect to any Financial Account held with HMS – may be reported, on an annual basis, to the Luxembourg Tax Authorities<sup>1</sup> for further transmission to the competent foreign tax authorities.

In the context of these legal obligations, You are required to complete the form below as directed. The necessary definitions can be found in the attached Glossary.

**Please note that the failure or refusal to fill in this Self-certification form will lead to Your classification as a Reportable Person, which may trigger the need for further tax reporting and communication with the Luxembourg Tax Authority.**

#### Section I: Account Holder's Identification

<b>Legal name of Entity</b>	
<b>Country of Incorporation</b>	

#### Current Registered Address

<b>Number, Street</b>	
<b>Postal Code, City</b>	
<b>Country</b>	

#### Tax Residence [Please list below all countries where the entity is resident for tax purposes and the associated TIN]

Country of Tax Residence	Taxpayer Identification Number (TIN)

#### Section II: U.S. Person

<input type="checkbox"/>	<b>By ticking this box the Account Holder confirms to be a U.S. Person pursuant to the FATCA Agreement</b> [If you are a U.S. Person please complete and provide in addition a W-9 Form]
<input type="checkbox"/>	<b>By ticking this box the Account Holder confirms to have granted a Power of Attorney to a U.S. resident.</b>

<sup>1</sup> Administration des Contributions Directes

### Section III: FATCA and CRS Status

The Account Holder is: [Please answer one box of each column]

FATCA	CRS	Classification
<input type="checkbox"/>	<input type="checkbox"/>	Reporting Financial Institution [Please provide GIIN: _____ and W-8Ben form] [If you have applied for a GIIN, please write "applied for"]
<input type="checkbox"/>	<input type="checkbox"/>	Non-Reporting Financial Institution [Please specify: _____]
	<input type="checkbox"/>	Investment entity resident in a non-participating CRS jurisdiction and managed by another FI [Please proceed to Annex I]
<input type="checkbox"/>	<input type="checkbox"/>	Active NFE/NFFE – Operating company
<input type="checkbox"/>	<input type="checkbox"/>	Active NFE/NFFE – Non-financial group entity
<input type="checkbox"/>	<input type="checkbox"/>	Active NFE/NFFE – Other [Please specify: _____]
<input type="checkbox"/>	<input type="checkbox"/>	Passive NFE/NFFE [Please proceed to Annex I]
<input type="checkbox"/>	<input type="checkbox"/>	Public entity/ International organisation/ Central bank
<input type="checkbox"/>	<input type="checkbox"/>	Corporation the stock of which is regularly traded (or its Related Entity) [Name of traded company: _____]
<input type="checkbox"/>		In any other case, please provide a completed W-8 or W-9 form as appropriate

### Section IV: Declaration and Signature

**As (a) representative(s) authorised to sign on behalf of the abovementioned entity, I declare** that I have examined the information on this form and that, to the best of my knowledge and belief, it is true, correct and complete. In particular, I confirm that the entity concerned by this form is not tax resident in any other country than the one(s) listed.

**I commit** to promptly notify HMS, in writing, of any change affecting the declarations on this form. I further acknowledge that if I fail to do so, I may be held personally liable by HMS for any and every consequence arising thereof.

**I confirm**, towards HMS, that the entity respects all the declarative tax obligations vis-à-vis the relevant authorities in the country(ies) in which is present and, where required, that it commits to paying all taxes and fees related to all and any assets and revenues deposited at and/or held at and/or managed by HMS.

**I declare** to have obtained an express agreement from the Controlling Persons mentioned in Annex I to this form to process and disclose the information related to them to the competent tax authorities, in conformity with the general conditions of the agreement(s) established with HMS and with the enforceable regulatory framework, including but not limited to the anti-money laundering and countering terrorism financing.

(Statement of declarations continues in following page)

I **acknowledge** that the data herein declared, as well as any other data in the power of HMS, for this and other regulatory purposes, will be collected, processed, stored and, when due, destroyed, in accordance with the regulatory framework currently in place in Luxembourg. I further understand that the entity and its legal representative(s) have the right of access, rectification, blocking, deletion and objection that may be used as provided in the website of HMS.

**The Authorised representatives of the Account Holder**

Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	___ / ___ / ___	Date:	___ / ___ / ___
Signature:	_____	Signature:	_____

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## Annex I

### Controlling Persons of the Entity

**if the entity is a Passive NFE/NFFE or an Investment Entity resident in a non-CRS jurisdiction**

List all the Controlling Persons of the abovementioned Account Holder in the table provided in the next page.

For any Controlling Person (reportable or not) who has not been previously identified, you are required to provide HMS with:

- a certified copy of ID/Passport;
- an updated Beneficial Owner Declaration; and
- an updated structure chart, dated and signed by the legal representatives.

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**ANNEX I**

List of All Controlling Persons of: _____					
Surname, First Name Date and Place of birth	Type of control (tick only one box)	Residence address and E-mail address	All countries of tax residence (or "U.S. Person")	Taxpayer Identification Number (TIN/NIF)	Signature of Controlling Person
	<input type="checkbox"/> Ownership of _____% <input type="checkbox"/> Other means <input type="checkbox"/> Senior Managing Official [Function: _____]				
	<input type="checkbox"/> Ownership of _____% <input type="checkbox"/> Other means <input type="checkbox"/> Senior Managing Official [Function: _____]				
	<input type="checkbox"/> Ownership of _____% <input type="checkbox"/> Other means <input type="checkbox"/> Senior Managing Official [Function: _____]				
	<input type="checkbox"/> Ownership of _____% <input type="checkbox"/> Other means <input type="checkbox"/> Senior Managing Official [Function: _____]				

## Glossary

The below definitions are based on the OECD Common Reporting Standard for Automatic Exchange of Financial Account Information ("CRS") and the FATCA Intergovernmental Agreement concluded between Luxembourg and the United States of America.

**If you have any questions about these definitions or require further detail, please contact your legal or tax advisor.**

**"Active NFE" or "Active NFFE"** refers to any NFE/NFFE that meets any of the following criteria:

- a) Active operating company – generating 50% or more of its gross income from active operations (as opposed to investments), and less than 50% of the assets held by the entity during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income. A Financial Institution is not an active operating company.
- b) Holding or financing company of a non-financial group;
- c) Start-up companies – The NFE/NFFE does not yet operate a business and has no prior record of operating one but it is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE/NFFE does not qualify for this exception after 24 months following the date of its incorporation;
- d) Entity in liquidation or reorganisation – provided that the NFE/NFFE has not been, in the past 5 years, a Financial Institution and is currently in a liquidation or reorganisation process with the purpose to continue or recommence its business operations (that must be other than that of a Financial Institution);
- e) Treasury centre of a non-financial group;
- f) Non-profit oriented NFE/NFFE.

In sum, if the NFE/NFFE does not fulfil any of the above conditions, it must be considered as a Passive NFE/NFFE.

**"Controlling Person(s)"** of an Entity are the natural persons who effectively exercise(s) control over the Entity. This is generally exercised by the natural person(s) who:

- a) ultimately has/have a controlling ownership interest in the Entity; **or**, where no natural person exercises control through ownership interests, the natural person(s) who
- b) exercise control of the Entity through other means (ex. voting rights); **or**,
- c) the natural person(s) who hold(s) the position of senior managing official.

The above assessment of Controlling Person(s) corresponds to the notion of "(Ultimate) Beneficial Owner" (or "(U)BO"), as presented by Recommendation 10 of the FATF Recommendations and further reaffirmed by the Luxembourg AML Law of 12 November 2004.

All entities classified as Passive NFE/NFFE or Investment Entity that are tax resident in a non-CRS jurisdiction must have (at least) one Controlling Person identified.

**“Financial Institution”** refers to a “Depository Institution”, a “Custodial Institution”, an “Investment Entity” or a “Specified Insurance Company”, as defined here below:

- “Depository Institution” means any Entity that accepts deposits in the ordinary course of a banking or similar business;
- “Custodial Institution” means any Entity that holds, as a substantial portion of its business, Financial Assets on behalf of others;
- “Investment Entity” refers to any Entity:
  - Which primarily conducts one or more of the following activities or operations, for or on behalf of a customer:
    - Trading in money market instruments (cheques, bills, derivatives, etc.), foreign exchange, interest rates and index instruments, transferable securities or commodities’ futures trading;
    - Individual and Collective Portfolio Management; or
    - Investing, administering or managing Financial Assets or money on behalf of other person(s).
  - Whose gross income is primarily attributable to investing, reinvesting or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company or an Investment Entity.

**Note:** The notion of “Investment Entity” includes any Entity that functions as an investment fund, such as private equity funds, venture capital funds, leverage buyout funds or any other investment vehicles whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.

**“Functional Equivalent”** is a number used in certain countries to identify the taxpayers. Examples include: social security number, personal identification number or resident registration number.

**“Non-Reporting Financial Entity”** (under CRS) means any financial institution that is:

- A Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a public Entity, an International organisation or a Central bank; or, a Qualified Credit Card issuer;
- Any other Entity that presents a low risk of being used to evade tax, included in the list of Non-Reporting Financial Institutions published in the Official Journal of the European Union;
- An Exempt Collective investment Vehicle which generally refers to an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective

investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE/NFFE with Reportable Controlling Persons; or

- A Trust to the extent that the trustee is a Reporting Financial Institution and reports all information required to be reported with respect to all Reportable Accounts of the Trust.

**“Non-Reporting Financial Institution”** (under FATCA) refers to a Financial Institution (or other Entity) resident in a jurisdiction that signed an Intergovernmental Agreement with the USA which is described in Annex II of that IGA as a Non-Reporting Financial institution or is, otherwise, classifiable as Deemed-Compliant Foreign Financial Institution under the US Treasury Regulations.

**“NFE”** or **“NFFE”** means **“Non-Financial Entity”** (under CRS) and **“Non-Financial Foreign Entity”** (under FATCA) and they both refer to any Entity that is not a Financial Institution neither a U.S. Person.

**“OECD”** refers to the Organisation for Economic Co-operation and Development, an intergovernmental economic organisation composed of 35 member countries.

**“Passive Income”** refers to a part of the gross income that consists of: (1) dividends and dividend substitute payments; (2) interest and income equivalent to interest; (3) rents, royalties and annuities; (4) the excess of gains over losses from the sale or exchange of Financial Assets that gives rise to the passive income; (5) the excess of gains over losses from transactions (futures, forwards, options and similar) in any Financial Assets; (6) the excess of foreign currency gains over foreign currency losses; (7) net income from swaps; or (8) amounts received under Cash Value Insurance contracts. Please note that in the cases of “NFE”/“NFFE” that regularly acts as a dealer in financial Assets, “passive income” will not include any income from any transaction entered into in the ordinary course of such dealer’s business as such a dealer.

**“Passive NFE”** (under CRS) refers to any Entity that being a NFE is not an Active NFE, or is an Investment Entity resident in a non-CRS jurisdiction.

**“Passive NFFE”** (under FATCA) means any Entity that, being a NFFE, is not an Active NFFE nor is a withholding foreign partnership neither a withholding foreign trust (per U.S. Treasury Regulations).

**“Reportable Person”** refers to any person that is tax resident outside Luxembourg or any U.S. Person.

**“Reporting Financial Institution”** (under FATCA) refers to an Entity that has registered itself with the U.S. Internal Revenue Service (“IRS”) and obtained, or is in the course of obtaining, a Global Intermediary Identification Number (“GIIN”). Under CRS, this notion refers to a Financial institution that does not qualify as a Non-Reporting Financial institution.

**“Tax Resident”** refers to the individuals that are considered resident in a country (or countries) for taxation purposes. The legal concept varies across countries but usually is based in one of the following criteria: (1) Domicile; (2) Nationality; or (3) Place where individual has its main economic activity.

**“TIN”** refers to the Taxpayer Identification Number (or “NIF”, for “*Numéro d’Identification Fiscale*”), which is an identification number issued by certain countries’ tax administrations. In countries that do not issue automatically a TIN/NIF to each taxpayer, this may be requested or, otherwise, replaced by a “Functional Equivalent”.

**“U.S. Person”** refers to a U.S. citizens or resident individual.

You may find additional useful information on these and related concepts under:

[http://www.impotsdirects.public.lu/fr/echanges\\_electroniques.html](http://www.impotsdirects.public.lu/fr/echanges_electroniques.html)

<http://www.oecd.org/tax/automatic-exchange/>

<https://www.irs.gov/businesses/corporations/fatca-information-for-individuals>

<https://www.irs.gov/individuals/international-taxpayers/taxpayer-identification-numbers-tin>

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