

**BANK OF AMERICA MERRILL LYNCH  
ELECTRONIC TRADING TERMS AND CONDITIONS**

**1. SCOPE**

- 1.1 These Electronic Trading Terms and Conditions (the **Terms**) govern (a) the electronic provision of prices by Bank of America, N.A. and its affiliates (**BofAML**) and the Customer's use of BofAML Algorithms, whether directly or otherwise, for (i) foreign exchange (**FX**) transactions (including FX spot, forward, swap, multi-leg forward and option transactions (each, an **FX Transaction**)) and/or (ii) transactions in any other asset class pursuant to an Additional Terms Module (each, an **Additional Transaction**) (FX Transactions and Additional Transactions, each a **Transaction**) and (b) the execution of any resulting Transaction between BofAML's counterparty (**Customer**) and BofAML.
- 1.2 Customer agrees that these Terms supplement any relevant trading agreement (e.g., ISDA Master Agreement) and/or terms of business between BofAML and Customer and any third party platform or relevant market terms, if applicable. In the event that no such trading agreement has been entered into between BofAML and Customer, these Terms will be deemed to supplement, form part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (Multicurrency-Cross Border) incorporating the 2006 ISDA Definitions and the 1998 ISDA FX and Currency Option Definitions, as if BofAML and Customer had executed an agreement in such form (but without any Schedule except for the election of the laws of the State of New York as the governing law and USD as the Termination Currency) on the date of the first Executed Transaction (as defined below) between BofAML and Customer. In the event of any inconsistency between these Terms and such other agreement(s) and/or other terms, these Terms will prevail for purposes of Executed Transactions (as defined below) only.
- 1.3 By clicking the box indicating acceptance of these Terms on any BofAML Electronic Trading Service (as defined below), sending BofAML an electronic message accepting these Terms, signing a hard copy of these Terms or accessing any BofAML Electronic Trading Service (as defined below), as applicable, in each case on behalf of Customer, Customer, and any agent acting on Customer's behalf (including any investment manager and/or investment advisor), is deemed to accept these Terms and all Additional Terms Modules, including the electronic delivery of required information, and agrees to comply with these Terms and other reasonable instructions notified to Customer relating to the use of BofAML Electronic Trading Services (as defined below).
- 1.4 These Terms are not intended to conflict with and will not override any legal or regulatory requirements to which BofAML is subject. If there is any conflict between a provision of these Terms and Applicable Law (as defined below), BofAML shall be entitled to take, or omit to take, any action it considers necessary to comply with such Applicable Law (as defined below), such action or omission will not constitute a breach of BofAML's obligations under these Terms and such action or omission will be binding on Customer.

## 2. MEANS OF ELECTRONIC PRICE DISTRIBUTION, ORDER SUBMISSION AND EXECUTION

- 2.1 Subject to Applicable Law (as defined below), BofAML may provide Customer with indicative prices for Transactions via:
- (a) an application programming interface (**API**);
  - (b) BofAML's proprietary single dealer platform Instinct Portal, which may be accessed via a Customer-specific graphical user interface (**GUI**);
  - (c) a third-party electronic communication network or other electronic execution channel; or
  - (d) any other means, including via a BofAML website (together with each of the methods in this Clause 2.1, a **BofAML Electronic Trading Service**).
- 2.2 BofAML, in its sole discretion, may provide indicative prices to Customer on a request for quote (**RFQ**) or request for stream (**RFS**) basis. BofAML has no obligation to provide indicative pricing for any Transaction.
- 2.3 If offered by BofAML and elected by Customer, indicative prices provided by BofAML may include prices derived from BofAML's proprietary algorithmic trading services (each, a **BofAML Algorithm**).
- 2.4 Customer may, in its sole discretion, elect to include BofAML's internal matching engine as one of multiple liquidity sources or as the sole source of liquidity when Customer uses certain BofAML Algorithms. Prices and liquidity in BofAML's internal matching engine are derived from activity on the BofAML Electronic Trading Services and may not be identical to prices or liquidity available on external liquidity sources.
- 2.5 Upon receipt of any indicative price provided via a BofAML Electronic Trading Service, Customer may submit an offer to execute a Transaction (a **Customer Offer**) to BofAML via any agreed upon electronic method.
- 2.6 Upon receipt of a Customer Offer, BofAML may in its sole discretion and in consideration of any Customer-specific limits and/or parameters it deems relevant (including limits and parameters described in Section 5 of these Terms) (a) accept, in whole or in part, any Customer Offer or (b) reject any Customer Offer. For any Customer Offer that is accepted in part, any part of such Customer Offer that is not accepted by BofAML will be deemed to be rejected by BofAML.
- 2.7 In addition to the above, with respect to FX Transactions only, BofAML may allow Customer to submit an order through the following mechanisms (each, a **Customer Order**):
- (a) BofAML may allow Customer to set certain price levels and/or parameters at or within which Customer requests BofAML to automatically execute a Transaction. If the Customer Order price level and/or parameters are satisfied, a Transaction will be automatically executed via the agreed upon electronic method. Market conditions at the time the Customer Order is executed may result in a partial fill and Customer agrees that BofAML provides no guarantee or assurance that any Customer Order will be executed in whole or in part.

- (b) BofAML may allow Customer to request that a Transaction be automatically executed at a pre-specified future time using a benchmark price, calculated by BofAML or a third-party benchmark price administrator, as pre-selected by Customer. Upon the publication of such benchmark price, a Transaction will be automatically executed via the agreed upon electronic method.

BofAML may in its sole discretion and in consideration of any Customer-specific limits and/or parameters it deems relevant (including limits and parameters described in Section 5 of these Terms), execute a Transaction for less than the initial Customer Order.

- 2.8 BofAML may, in its sole discretion, aggregate all or part of a Customer Order with the orders of other customers or users of the BofAML Electronic Trading Services where such aggregation is unlikely to disadvantage Customer or other users of the BofAML Electronic Trading Services.
- 2.9 With respect to each Transaction that results from a Customer Offer being accepted for execution by BofAML or the automatic execution of a Customer Order by BofAML, the parties intend that they will only be legally bound by the terms of such Transaction from the moment the relevant Customer Offer is accepted by BofAML (whether electronically or otherwise) or the Customer Order is automatically executed by BofAML (each such transaction, an **Executed Transaction**). Customer and BofAML agree that Executed Transactions executed through a BofAML Electronic Trading Service are valid and effective contracts binding on the parties. BofAML will send Customer an electronic acknowledgment of the terms of each such Executed Transaction.
- 2.10 Unless otherwise agreed between BofAML and Customer, Executed Transactions executed through a BofAML Electronic Trading Service will be settled using each party's standard settlement instructions for such Transactions.

### **3. TERMS OF USE**

- 3.1 Customer acknowledges and agrees that the prices provided by BofAML via each BofAML Electronic Trading Service are indicative prices only and do not represent an offer, a solicitation of an offer, or any advice regarding, or recommendation to enter into, a Transaction. The provision of indicative prices via the BofAML Electronic Trading Services does not represent a commitment by BofAML to enter into a Transaction at a specified price. The indicative prices provided by BofAML are not final and are subject to change until a Customer Offer is accepted by BofAML.
- 3.2 The indicative prices provided by BofAML are determined by BofAML in its sole discretion based upon such factors as BofAML determines relevant, including without limitation, market conditions, exchange rates charged by other parties, BofAML's desired rate of return, market risk, credit risk and other market, economic and business factors. Exchange rates fluctuate, at times significantly, which is likely to cause changes to BofAML's indicative prices, and Customer acknowledges and accepts all risks that may result from such fluctuations. Customer acknowledges that BofAML's indicative prices may be different from prices for similar transactions reported by financial information service providers or other published or electronically available news sources. For FX Transactions, the exchange rate Customer is offered may be different from the rate paid by BofAML to acquire the underlying currency.
- 3.3 Customer acknowledges and agrees that BofAML is authorised to use anonymised Customer Order information in determining the prices that BofAML provides to third parties.

- 3.4 BofAML offers a number of FX algorithms, which are designed to meet different execution objectives, and, accordingly, may differ in urgency of execution, willingness to cross the bid-offer spread and use of limit orders. Customer should familiarize themselves with the intended purpose of each BofAML Algorithm and their parameter controls to ensure that algorithm selection and use is appropriate to their execution objectives.
- 3.5 Customer acknowledges and agrees that to the extent Customer inputs a parameter control in connection with the use BofAML Algorithms, Customer will be regarded as providing BofAML with a specific instruction in relation to that part of the Customer Order which the parameter control manages and BofAML will be regarded as having discharged its obligation, if any, to provide best execution where applicable, in relation to that order to the extent that the parameter control removes from BofAML discretion over that particular aspect of the relevant Customer Order.
- 3.6 BofAML's Algorithms include default settings for liquidity source selection and other parameters that may differ across algorithms. BofAML pre-selects external liquidity sources for its BofAML Algorithms in its sole discretion based upon such factors as it determines relevant, including but not limited to, the algorithm's objectives, relative source liquidity and fill rates. External liquidity sources may vary across BofAML Algorithms. Customer should familiarize themselves with the default settings on the algorithm order entry ticket, which may be overridden by the Customer.
- 3.7 BofAML Algorithms route orders depending on the trading objective of the BofAML Algorithm. Customer acknowledges and agrees (i) that where Customer elects to include BofAML's internal matching engine and one or more external trading venues as liquidity sources, for certain BofAML Algorithms Customer Orders may be placed in the internal matching engine irrespective of whether the same pricing is available on an external liquidity source; and (ii) where Customer selects an external trading venue for BofAML Algorithm Customer Order execution, any residual amount may be placed in BofAML's internal matching engine for execution.
- 3.8 BofAML provides all-in pricing for Transactions. An indicative price provided by BofAML may include profit, fees, costs, charges or other mark ups as determined by BofAML in its sole discretion.
- 3.9 BofAML will act as principal and not as agent on Customer's behalf. Customer acknowledges that the parties to Transactions are engaged in arm's-length negotiations. Customer is a counterparty and the execution of Transactions between BofAML and Customer does not establish a relationship that may create a heightened duty for BofAML. BofAML's dealings with Customer will be carried out on an execution-only basis. BofAML will not give Customer investment advice on any aspect of Customer's trading with BofAML. BofAML is not under any obligation to satisfy itself as to the suitability of Customer's trading with BofAML or to monitor or inform Customer as to the performance of any trade Customer executes with BofAML except as required by Applicable Law (as defined below). Customer trades entirely at Customer's own risk. BofAML makes no representation as to the suitability of any particular Transaction for Customer's investment, trading or hedging needs. Decisions which require an understanding of Customer's specific purposes should be discussed with Customer's professional financial, tax or other advisers.
- 3.10 Customer acknowledges that BofAML makes no representation as to, and does not accept any liability with respect to, the accuracy, completeness or appropriateness for any particular purpose of any pricing information distributed via any of the BofAML Electronic Trading Services. Indicative prices may be higher or lower than prices available elsewhere, and may be based on information provided by third parties, including third party liquidity providers; BofAML is not responsible for the accuracy,

completeness or appropriateness for any particular purpose of the pricing information on any BofAML Electronic Trading Service. Customer acknowledges that actions taken by BofAML in a relevant market may affect the prices available on the BofAML Electronic Trading Services and the performance of any BofAML Algorithm and agrees that BofAML may take any such action and generally engage in any kind of commercial or investment banking or other activity, including other Transactions, in the same manner as it would had these Terms not been entered into by each party.

- 3.11 In connection with BofAML's activities as a dealer and other activities, BofAML may engage in hedging, including, to the extent permitted by Applicable Law, pre-hedging, to facilitate the execution of Transactions and hedge any associated market risk. Such activities may include trading prior to or alongside of Customer's Executed Transaction to the extent permitted by Applicable Law. Hedging transactions may affect the price of the underlying currency, asset, index or reference benchmark, as applicable, and consequently, Customer's cost or proceeds. Customer acknowledges that BofAML bears no liability for these potential price movements. When BofAML's pre-hedging and hedging activity is completed at prices that are superior to the agreed upon execution price or benchmark, BofAML will keep the positive difference as a profit in connection with the Executed Transactions. Customer will have no interest in any BofAML profits. BofAML may take positions in certain currencies, assets, indices or reference benchmarks (including, for example, currencies, assets, indices or reference benchmarks and/or positions that are the same as or similar to Customer's Executed Transaction or different from or the opposite of Customer's Executed Transaction). Customer should assume that BofAML has an economic incentive to be a counterparty to any Executed Transaction with Customer.
- 3.12 Customer acknowledges and agrees that (a) any and all Customer Offers and/or Customer Orders transmitted to BofAML by Customer or by any person or entity acting on behalf of or in the name of Customer (whether or not such use is authorized by Customer) and (b) any and all Executed Transactions occurring as a result of or in connection with such Customer Offers and/or Customer Orders are binding in all respects on Customer. BofAML shall be entitled to rely on any instruction, notice or communication, whether oral or in writing, that it believes to be from an individual authorized to act on behalf of Customer (including any investment manager and/or investment advisor acting on Customer's behalf) (an **Authorized Person**), and Customer shall be bound thereby. BofAML is under no duty of inquiry or verification regarding the identity or capacity of any person submitting Customer Offers and/or Customer Orders that appear to BofAML to have been submitted on Customer's behalf, and any such person will be viewed as having the authority to bind Customer. Customer hereby waives any defense under Applicable Law (as defined below) that any such instruction was not in writing.
- 3.13 Customer shall (a) not permit any person or entity other than Customer or any Authorized Person to submit Customer Offers and/or Customer Orders to BofAML via a BofAML Electronic Trading Service, (b) monitor its and its Authorized Persons' use of, and secure access to, BofAML Electronic Trading Services, and (c) check for Customer Offer and/or Customer Order accuracy. Customer shall notify BofAML as soon as practicable of any occurrence of non-compliance with any of the foregoing requirements. Customer acknowledges that BofAML will not be liable for any loss, liability or cost whatsoever arising as a result of any unauthorized Customer Offers and/or Customer Orders submitted on Customer's behalf.
- 3.14 Customer acknowledges and agrees that BofAML is not obligated to (a) distribute prices via the BofAML Electronic Trading Services or (b) receive submissions of Customer Offers and/or Customer Orders. Customer acknowledges and agrees that, at any time and for any reason, including as a result

of market volatility or liquidity disruption, BofAML may, in its sole discretion, without limitation and without notice to Customer, suspend, cancel or terminate (i) any of the BofAML Electronic Trading Services, (ii) the distribution of prices or indicative prices via any of the BofAML Electronic Trading Services and/or (iii) Customer's ability to submit Customer Offers and/or Customer Orders via any of the BofAML Electronic Trading Services. Customer acknowledges and agrees that at any time and for any reason, after a reasonable attempt to notify Customer, BofAML may to the extent permitted by Applicable Law, cancel any existing and outstanding Customer Orders previously submitted by Customer via any of the BofAML Electronic Trading Services. Customer acknowledges and agrees that such actions taken by BofAML may cause Customer Offers and/or Customer Orders to be delayed, unexecuted or rejected. Where BofAML's prices or indicative prices are based in whole or in part on benchmark prices or prices calculated or published by third parties, Customer agrees that BofAML will have no responsibility for such benchmark or third party price, or any delayed, unexecuted or rejected Customer Offers and/or Customer Orders that result from any event, unavailability of or other disruption related to such benchmark or third party price.

- 3.15 Prior to any event (including execution, material amendment, mutual unwind or novation) with respect to any Transaction to which CFTC Regulation 23.431(b) applies and that is not "available to trade" (as described in Section 2(h)(8) of the Commodity Exchange Act) on a designated contract market (**DCM**) or swap execution facility (**SEF**), Customer can request, and consult on the design of, a scenario analysis to allow Customer to assess Customer's potential exposure in connection with such Transaction. Customer acknowledges that, with respect to any Transaction to which CFTC Regulation 23.431(b) applies and that is not "available to trade" on a DCM or SEF, unless Customer makes a request of BofAML for a specific scenario analysis prior to the relevant event (including execution, material amendment, mutual unwind or novation) (which request, if made orally, will be confirmed in writing), Customer shall not be entitled to any scenario analysis unless BofAML otherwise agrees.
- 3.16 Customer hereby agrees that, notwithstanding CFTC Regulation 23.431(a)(3)(i) and anything to the contrary in any existing or future agreement between BofAML and Customer, BofAML need not disclose to Customer the pre-trade mid-market mark for: (a) all Covered Forex Transactions (as defined in CFTC No-Action Letter No. 12-42 dated December 6, 2012); (b) all transactions in FX swaps, physically settled FX forwards and physically settled FX options specified on page 6, clause (a) of CFTC No-Action Letter No. 13-12 dated May 1, 2013, including by reference to BIS 31 Currencies (as defined therein); and (c) all transactions specified for mid-market mark relief under any additional CFTC no-action letters, rules or regulations. For all other Transactions to which CFTC Regulation 23.431(a)(3)(i) applies, Customer agrees that the pre-trade mid-market mark is deemed to be the average of the bid price and offer price for such Transaction available on the BofAML Electronic Trading Service immediately prior to such Transaction becoming an Executed Transaction.

#### **4. CUSTOMER OBLIGATIONS**

- 4.1 Customer covenants that all transactions conducted via use of the BofAML Electronic Trading Services will be in compliance with all applicable law, rules, regulations, requirements, guidelines and policies of any governmental or quasi-governmental body or regulatory agency, any self-regulatory organization, and any market or clearinghouse through which the trading requests are executed and/or cleared (**Applicable Law**).
- 4.2 In using BofAML Electronic Trading Services, Customer will not engage in any act, whether on its own or in combination with other acts, which is illegal or in violation of any laws, rules, or regulations of any jurisdiction, including without limitation attempting to improperly influence the exchange rate

of any currency or any associated benchmark, level or rate. Customer will not use any BofAML Electronic Trading Service to engage in any market manipulation, spoofing or other conduct prohibited under Applicable Law.

- 4.3 At all times when using a BofAML Electronic Trading Service, Customer agrees to obtain and maintain all appropriate authorizations for any relevant jurisdiction, and if requested by BofAML, Customer will provide evidence of such authorizations. Customer further agrees to immediately inform BofAML of any revocation or loss of any such authorization.
- 4.4 Customer acknowledges and agrees that any Customer Offer and/or Customer Order submitted to BofAML is at Customer's sole risk. Customer accepts continuing responsibility for all Customer Offers and/or Customer Orders submitted, notwithstanding that any such Customer Offer and/or Customer Orders may have been submitted erroneously or by an unauthorized user or that Customer Offer and/or Customer Order data is inaccurate or incomplete when submitted.
- 4.5 Customer shall be responsible for the accuracy and the adequacy of the data and/or information that Customer inputs on the BofAML Electronic Trading Services and any consequences associated with inaccurate or inadequate data and/or information.
- 4.6 BofAML may maintain a record of the data in its systems relating to Customer's use of BofAML Electronic Trading Services for such period as BofAML may determine and may disclose such data as required by Applicable Law or court order. Such BofAML records will be conclusive evidence in the event of any dispute between the parties.

## **5. LIMITS AND PARAMETERS**

- 5.1 Customer acknowledges that BofAML has the right to set limits and parameters to control Customer's ability to use BofAML Electronic Trading Services in BofAML's absolute discretion, and Customer undertakes to comply with those limits and parameters. Such limits and/or parameters may be amended, increased, decreased or removed by BofAML in its absolute discretion at any time and may include (without limitation): (a) controls over maximum trading request amounts and maximum number of trading requests, (b) controls over BofAML's total exposure to Customer, (c) controls over the price at which Customer Offers and/or Customer Orders may be submitted, (d) controls over the frequency of submission of Customer Offers and/or Customer Orders and (e) any other limits, parameters or controls which BofAML may be required to implement under Applicable Law. Customer acknowledges that changes in these limits and parameters made by BofAML in its discretion may cause Customer Offers and/or Customer Orders to be delayed or rejected and agrees that BofAML will not be liable for any damages, loss of profits or other harm incurred by Customer resulting from changes to these limits and parameters.

## **6. ACCESS TO BOFAML PRICES VIA AN API OR GUI**

- 6.1 Subject to these Terms, BofAML grants to Customer a limited, non-exclusive, non-transferable, personal license during the term of these Terms to use (but not modify) the API or GUI, as applicable: (a) on its own account as principal, (b) for Customer's internal use (for viewing data and sending Customer Offers and/or Customer Orders), and (c) if Customer is acting as an appointed counterparty (including a broker-dealer, investment manager or investment advisor), as agent on behalf of its customers, but otherwise not for use on behalf of third parties. All rights not expressly granted herein are reserved by BofAML and its licensors. Customer acknowledges and agrees that all intellectual property rights in and to the API or GUI, as applicable, including any trademarks, belong to BofAML

or BofAML's licensors, as applicable, and are protected under Applicable Law. The API or GUI or aspects thereof may be provided by third parties, and Customer will comply with all additional usage restrictions that such third parties may impose.

- 6.2 It is Customer's responsibility to ensure that Customer's information technology system (Customer's **IT System**) supports access to the API or GUI, as applicable. BofAML may ask Customer to run certain IT System tests, or to provide BofAML with IT System information in connection with Customer's use of the API or GUI. BofAML may require Customer to implement reasonable IT System security measures as a condition of accessing the API or GUI, as applicable. Customer agrees that connecting to the API or GUI, as applicable, is at Customer's own risk and that BofAML will not be responsible for any loss, damage or disruption to Customer's IT System caused by Customer's connection to the API or GUI, as applicable.
- 6.3 Customer will not assign, transfer, grant access or use of, disclose or otherwise provide any content of BofAML's API or GUI to a third party or display data electronically without BofAML's express written consent. Customer agrees that any information that is received through BofAML's API or GUI or otherwise that relates to indicative pricing, execution or market data is BofAML's intellectual property and cannot be shared or disclosed to any third party whatsoever, without BofAML's express written consent.
- 6.4 Customer will take all reasonable steps to ensure that no computer viruses, worms, software bombs or similar items are introduced into BofAML's API or GUI.
- 6.5 BofAML's API or GUI is not directed at or intended to be used by any person in any country or jurisdiction where such distribution or use would be contrary to local law or regulation. It is Customer's responsibility to ensure that Customer complies with any local law or regulation to which Customer is subject.
- 6.6 BofAML does not warrant that the operation of BofAML's API or GUI will be uninterrupted or entirely error free. Additionally BofAML does not give any guarantee as to the accuracy, suitability, reliability, completeness, or performance of BofAML's API or GUI. Where Customer has been disconnected from the API or GUI for any reason due to BofAML's systems or through an error or deliberate change in Customer's external application, Customer accepts that all of Customer's Customer Offers and/or Customer Orders will remain active on the API or GUI and BofAML may execute any such Customer Offers and/or Customer Orders when the conditions of such Customer Offers and/or Customer Orders are met.
- 6.7 As with all BofAML Electronic Trading Services, BofAML reserves the right to modify or withdraw the API or GUI from service or modify or terminate Customer's access to the API or GUI at any time without notice. Customer must follow all instructions, procedures and warnings for the API or GUI, as applicable.

## **7. CONFIRMATIONS OF TRANSACTIONS BETWEEN BOFAML AND CUSTOMER**

- 7.1 Notwithstanding anything to the contrary in any trading agreement (e.g., ISDA Master Agreement) and/or terms of business between BofAML and Customer, confirmation of the terms of Executed Transactions will occur as described in this Section 7 or the relevant Additional Terms Module, as applicable.



- 7.2 For FX Transactions, Customer and BofAML may use the Society for Worldwide Interbank Financial Telecommunications (**SWIFT**) or another third-party service for purposes of confirming the terms of Executed Transactions executed by Customer. For Executed Transactions executed by Customer through a BofAML Electronic Trading Service that are not confirmed using SWIFT messages or another third-party service, BofAML will endeavor to send by any means of notice contemplated by these Terms a confirmation or spreadsheet containing the economic terms (each a **Written Confirmation**) of such Executed Transactions. Customer agrees to review all Written Confirmations upon receipt and promptly notify BofAML of any discrepancies. If Customer has not advised BofAML of any discrepancies by the close of business on the New York business day following receipt of the Written Confirmation, then the terms of such Written Confirmation shall be deemed correct and accepted by Customer, with the same force and effect as if such terms had been recorded in a confirmation letter manually signed by the Customer and returned to BofAML, and such Written Confirmation will serve as the final confirmation and as conclusive evidence of the terms of such Executed Transaction, absent manifest error.
- 7.3 Subject to any additional provisions set out in an applicable Additional Terms Module, after considering the operational and other risks and after implementing the organizational safeguards that Customer determines appropriate, Customer may elect not to receive Written Confirmations in connection with the Executed Transactions that it has executed through a BofAML Electronic Trading Service. Following such election, BofAML may agree not to send Customer Written Confirmations in the ordinary course. Where BofAML has agreed to such a request from Customer, its agreement will be evidenced either by an affirmative response or by BofAML no longer sending Written Confirmations to Customer. Customer and BofAML agree that in the absence of a Written Confirmation, upon BofAML's delivery of any electronic trade acknowledgment pursuant to Section 2.6 above, Customer will review such electronic trade acknowledgment and promptly notify BofAML of any discrepancies. If Customer has not advised BofAML of any discrepancies by the close of business on the New York business day following receipt of such electronic trade acknowledgment, then the terms of such electronic trade acknowledgment shall be deemed correct and accepted by Customer, with the same force and effect as if such terms had been recorded in a confirmation letter manually signed by the Customer and returned to BofAML, and such electronic trade acknowledgment will serve as the final confirmation and as conclusive evidence of the terms of such Executed Transaction, absent manifest error. Customer agrees that the provisions of the Emerging Markets Trade Association (**EMTA**) Template Terms for Non-Deliverable Forward FX Transactions, Template Terms for Non-Deliverable Currency Option Transactions or Template Terms for Non-Deliverable Cross Currency Transactions, as applicable, shall be incorporated into any electronic trade acknowledgement delivered to Customer for any relevant FX Transaction in the form recommended by the EMTA as of the date of the relevant FX Transaction.
- 7.4 Subject to any additional provisions set out in an applicable Additional Terms Module, notwithstanding any agreement contemplated by Section 7.3 above, in the event that the applicable electronic confirmation system is not operational or in the event BofAML determines that it is appropriate for a particular Executed Transaction or type of Transaction, BofAML may elect to send Customer by email, fax or other means a Written Confirmation containing the economic terms of an Executed Transaction executed by Customer. If Customer has not advised BofAML of any discrepancies by the close of business on the New York business day following receipt of such Written Confirmation, then the terms of such Written Confirmation shall be deemed correct and accepted by Customer, with the same force and effect as if such terms had been recorded in a confirmation letter manually signed by the Customer and returned to BofAML, and such Written Confirmation will serve as the final confirmation and as conclusive evidence of the terms of such Executed Transaction, absent

manifest error. The terms contained in any such Written Confirmation shall supersede any electronic trading record or previous confirmation.

## 8. REPRESENTATIONS AND WARRANTIES

8.1 Customer, and if applicable, any agent (including any investment manager and/or investment advisor) acting on Customer's behalf, represents, warrants and agrees as of the date hereof and on the date of each Executed Transaction entered into hereunder that:

- (a) Customer has full right, power and authority to enter into these Terms;
- (b) These Terms are legal, valid, and binding on Customer, and enforceable against Customer;
- (c) Each Authorized Person has the authority to enter into Executed Transactions on behalf of Customer;
- (d) Executed Transactions entered into pursuant to these Terms will not violate any Applicable Law, or any judgment, order or agreement to which Customer or its property is subject or by which it or its property is bound;
- (e) Customer is authorized under its organizational and other governing documents, as amended from time to time, to trade in transactions such as the Executed Transactions and hereby expressly waives any *ultra vires* or similar defense it may have;
- (f) Customer is an "eligible contract participant" as that term is defined in the U.S. Commodity Exchange Act (as amended) and the applicable rules, regulations and regulatory interpretations thereunder;
- (g) All information provided by Customer pursuant to, or in connection with, these Terms is true, correct, complete and accurate;
- (h) Customer is acting for its own account and is capable of assessing the merits of, understanding (on its own behalf or through independent professional advice) and assuming, and understands, accepts and assumes, the terms, conditions and risks of each Executed Transaction, and will make its own independent decisions to enter into Executed Transactions and as to whether each Executed Transaction is appropriate or proper for it based on Customer's own judgment and upon advice from such advisors as Customer has deemed necessary;
- (i) Customer has made its own independent decision to use BofAML Algorithms and is responsible for ensuring the BofAML Algorithm(s) it elects to use is appropriate or proper for its needs based upon its own judgment and upon advice from such advisors as it has deemed necessary. It is not relying on any communication (written or oral) of BofAML as investment advice or as a recommendation to use BofAML Algorithms, it being understood that information and explanations related to the BofAML Algorithms shall not be considered investment advice or a recommendation to use BofAML Algorithms. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of the BofAML Algorithms.

- (j) BofAML is not acting as a fiduciary, investment manager, commodity pool operator, commodity trading advisor or investment or financial adviser on Customer's behalf in respect of any Customer Offer, Customer Orders or Executed Transaction;
- (k) Customer and its Authorized Persons will not rely on any communication (written or oral) of BofAML as investment advice or as a recommendation to submit any Customer Offer and/or Customer Order or enter into any Executed Transaction, and no such communication (written or oral) received from BofAML shall be deemed to be a recommendation or advice or an assurance or guarantee as to the expected results of any Customer Offer, Customer Order or Executed Transaction;
- (l) Customer and its Authorized Persons are fully aware of and understand in full Applicable Law and shall at all times be in full compliance with Applicable Law, including, without limitation, any registration requirements or requirements to maintain books and records relating to Customer Offers and/or Customer Orders submitted to BofAML in a manner strictly in accordance with Applicable Law; and Customer and its Authorized Persons understand that BofAML and its affiliates may monitor and record order flow and trade execution to confirm compliance with Applicable Law;
- (m) The BofAML Electronic Trading Services are not a regulated swap execution facility, exchange, designated contract market, multilateral trading facility, organized trading facility or similarly regulated electronic trading platform, and use of a BofAML Electronic Trading Service does not provide any of the protections afforded by, or constitute trading on, such a regulated platform;
- (n) Unless BofAML is notified and agrees otherwise, no Customer Offer and/or Customer Order submitted to BofAML or Executed Transaction resulting from any such Customer Offer and/or Customer Order will be by, or on behalf of, (i) an "employee benefit plan" within the meaning of Section 3(3) of the U.S. Employee Retirement Income Security Act of 1974 (**ERISA**) that is subject to Part 4 of Subtitle B of Title I of ERISA, (ii) a "plan" within the meaning of Section 4975(e)(1) of the U.S. Internal Revenue Code of 1986, as amended (**Tax Code**) to which Section 4975 of the Tax Code applies, (iii) an entity whose underlying assets include "plan assets" subject to Title I of ERISA or Section 4975 of the Tax Code by reason of Section 3(42) of ERISA, 29 CFR § 2510.3-101 or otherwise, or (iv) a "governmental plan" (as defined in ERISA or the Tax Code) or another type of plan (or an entity whose assets are considered to include the assets of any such governmental or other plan) that is subject to any U.S. federal, state, local or non-U.S. law, rule or restriction that is substantively similar or of similar effect to Section 406 of ERISA or Section 4975 of the Tax Code;
- (o) If Customer is a person who is a resident of Japan, or an entity which is organized, incorporated or formed under Japanese law, or located in Japan (such Customer, a **Japanese Customer**), Customer is a "Professional Investor," as that term is defined in the Financial Instruments and Exchange Act of Japan and the applicable rules, regulations and regulator interpretations thereunder;
- (p) In respect of an over-the-counter FX Transaction, if Customer is a Japanese Customer and a non-Japan BofAML entity is the counterparty to such FX Transaction, Customer is an entity listed in Article 1-8-6, Paragraph (1), Item 2 of the Order for the Enforcement of the Financial Instruments and Exchange Act of Japan;

- (q) In respect of a listed FX Transaction, if Customer is a Japanese Customer and a non-Japan BofAML entity is the counterparty to such FX Transaction, Customer is an entity listed in Article 16, Item 1-2 (i) or otherwise the FX Transaction is exempt from the registration requirement pursuant to Article 16, Item 1-2 (ro) of the Cabinet Office Ordinance on Definitions under Article 2 of the Financial Instruments and Exchange Act; and
- (r) Customer and its Authorized Persons shall promptly notify BofAML if any of the representations, warranties and covenants in this Section 8.1 becomes inaccurate or incomplete.

## **9. TERM, MODIFICATION, TRANSFER AND TERMINATION**

- 9.1 Either party may terminate these Terms at any time on written notice to the other, provided that Section 10 and Section 11 shall survive any such termination. In the event of any such termination, Customer's ability to submit Customer Offers and/or Customer Orders to BofAML shall immediately be terminated. Termination of these Terms will not affect any Executed Transaction executed prior to termination or for which a Customer Offer and/or Customer Order was submitted prior to termination.
- 9.2 These Terms may be modified by BofAML in its sole discretion at any time, and such modification will be effective upon one (1) New York business day's prior written notice to Customer. By continuing to use any BofAML Electronic Trading Service following such notice, Customer is deemed to have accepted such modifications to these Terms and will be bound by such modified Terms. Customer agrees that such modified Terms will apply to any existing Customer Offer and/or Customer Order entered into a BofAML Electronic Trading Service prior to the effective date of such modification.
- 9.3 Neither party may assign or transfer any rights or obligations under these Terms without the prior written consent of the other party, provided that BofAML may assign these Terms to any of its affiliates. These Terms shall be binding upon the permitted assigns or transferees of each party.

## **10. INDEMNITY, DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

- 10.1 Customer and if applicable, any agent (including any investment manager and/or investment advisor) acting on Customer's behalf, agrees to indemnify, defend and hold harmless BofAML and its directors, officers, employees, contractors and agents from and against any and all direct and indirect losses, claims, liability, damages, expenses (including reasonable legal fees and advertising costs reasonably incurred by BofAML in connection with mitigating any damage caused to BofAML's reputation and goodwill) (**Losses**) in connection with (i) any claim arising out of any breach of these Terms by Customer, any Authorized Person or any other employee, officer, contractor or agent (whether authorized or not) of Customer and (ii) any regulatory or other investigation or proceeding arising out of Customer's use of the services provided by BofAML pursuant to these Terms and any Executed Transactions resulting therefrom (including any resulting fines, loss of business caused by any suspension or ban from any relevant market, expenses or other costs arising from an actual or alleged breach by Customer of any Applicable Law and any reasonable legal costs incurred in liaising with any regulator or relevant market).
- 10.2 THE SERVICES CONTEMPLATED BY THESE TERMS ARE PROVIDED BY BofAML ON AN "AS IS" BASIS AT CUSTOMER'S SOLE RISK AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. ALL WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE) ARE EXPRESSLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

10.3 IN NO EVENT SHALL BofAML OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND CONTRACTORS BE LIABLE FOR:

- (a) ANY LOSSES SUFFERED OR INCURRED BY CUSTOMER OR ANY THIRD PARTY WHICH ARISE OUT OF OR IN CONNECTION WITH THESE TERMS OR ANY BREACH OR NON-PERFORMANCE OF THESE TERMS NO MATTER HOW FUNDAMENTAL (INCLUDING BY REASON OF BofAML'S NEGLIGENCE), INCLUDING, FOR THE AVOIDANCE OF DOUBT, ANY LOSSES THAT OCCUR AS A RESULT OF ANY ACTION OR INACTION OF BofAML, INCLUDING BofAML'S INDICATIVE PRICES, ANY RELEVANT MARKET OR ANY OTHER PARTY THAT DIRECTLY OR INDIRECTLY RESULTS IN A CUSTOMER OFFER AND/OR CUSTOMER ORDER BEING EXECUTED, FAILING TO BE EXECUTED, OR BEING EXECUTED ON A DELAYED BASIS;
- (b) ANY LOSSES, DAMAGES, CLAIMS, COSTS OR EXPENSES WHICH ARISE OUT OF OR RELATE TO (i) ANY SERVICE INTERRUPTION OR FAILURE OR INCORRECT OPERATION FOR ANY REASON OF BofAML ELECTRONIC TRADING SERVICES OR ASSOCIATED COMMUNICATIONS SYSTEMS OR EQUIPMENT, OR (ii) ANY INCOMPLETE OR INCORRECT EXECUTED TRANSACTIONS RESULTING FROM INCOMPLETE, INCORRECT, FAILED, INTERCEPTED OR MISDIRECTED COMMUNICATIONS; or
- (c) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS, DAMAGE, CLAIM, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ANY ECONOMIC LOSS OR DAMAGE, LOSS OF PROFITS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS, LOSS OF OR CORRUPTION TO DATA, LOSS OF OPERATION TIME OR LOSS OF CONTRACTS) OF ANY NATURE, WHETHER ARISING FROM TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, ARISING OUT OF OR RELATING TO THE USE OR INABILITY TO USE BofAML ELECTRONIC TRADING SERVICES, EVEN IF BofAML HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.4 BofAML Electronic Trading Services may allow Customer to use BofAML Algorithms to implement a predetermined trading strategy. Customer is responsible for ensuring that any BofAML Algorithm that Customer uses is appropriate for Customer's needs. Customer may use BofAML Algorithms only where allowed by Applicable Law. The effectiveness of a BofAML Algorithm will depend on a number of factors, including the validity of the assumptions underlying that BofAML Algorithm; BofAML Algorithms may not work as intended. The output of any BofAML Algorithm is not investment advice or a recommendation as to the suitability of any investment or proposed transaction through any BofAML Electronic Trading Service.

10.5 BofAML has no liability related to Customer's use of any BofAML Algorithm or of any price derived from any BofAML Algorithm including prices provided by BofAML in response to Customer Orders. BofAML Algorithms may use information provided by third parties, including third party liquidity providers and other pricing sources which may be pre-selected by a BofAML Algorithm or selected by Customer. Customer agrees that BofAML is not responsible for the accuracy, completeness or appropriateness for any particular purpose of the pricing information utilized by or derived from any BofAML Algorithm. Customer acknowledges (a) that the pricing information utilized or derived from a BofAML Algorithm might differ from the price currently available from a third party liquidity

provider or other pricing source; and (b) there may be delays in the dissemination of price updates from pricing sources or latencies in market infrastructure or BofAML's internal processing or communication systems.

- 10.6 BofAML shall not be considered in breach of these Terms in the event of any failure or delay for reasons not within BofAML's reasonable control, including, without limitation, war, disaster, acts of nature, power failure, failure of communications services or networks, labor stoppage, sabotage, computer virus, hacking, unrest or disputes, or acts or omissions of Customer or any third party including national and/or supranational government agencies or bodies and courts of law.

## 11. CONFIDENTIALITY

11.1 The term **Confidential Information** as used herein means any information which is not publicly available and which has been provided by a party or its Representatives (as defined below) (a **Disclosing Party**) to one or more other parties or their Representatives (each, a **Receiving Party**) in connection with the services provided by BofAML pursuant to these Terms, including without limitation, the terms of these Terms. Confidential Information also includes a party's and its affiliates' business strategies and processes; their strategies, techniques, models and processes, including their computer programs, software, code, algorithms, data and documentation, as well as all improvements, enhancements or modifications thereof; and BofAML's indicative prices. Confidential Information shall not include:

- (a) information which was already known to a Receiving Party or in its possession as a result of lawful means prior to the disclosure of the Confidential Information by a Disclosing Party;
- (b) information which is or hereafter becomes generally available to the public domain other than as a result of a breach by the Receiving Party of these Terms;
- (c) information which is obtained by a Receiving Party from a third party without breach, to the Receiving Party's knowledge, by such third party of any obligation of confidentiality with respect to the Confidential Information disclosed; or
- (d) information which has been independently developed by the Receiving Party without reference to or any use of the Confidential Information.

11.2 The Receiving Party agrees that for the duration of the Confidentiality Period (as defined below) it shall: (a) use the Confidential Information solely for the specific purpose for which it was provided; (b) use reasonable precautions and exercise due care to maintain the confidentiality of the Confidential Information; and (c) not disclose the Confidential Information except with Disclosing Party's prior written consent or as otherwise permitted in these Terms. The term "Confidentiality Period" means, with respect to these Terms, the period from and including the date of execution of these Terms to and including the date that is 3 years following the termination of these Terms.

11.3 It is understood that a Receiving Party may disclose such Confidential Information to certain of its representatives, agents, professional advisors, or affiliates (including any investment manager and/or investment advisor) (collectively, **Representatives**) on a "need to know" basis in connection with these Terms (which, in the case of BofAML, shall include Representatives involved in BofAML's trade surveillance program); provided that such Representatives are bound by written confidentiality obligations that are no less restrictive than those set forth in these Terms. Each party in its capacity as a Receiving Party agrees that such Confidential Information will be treated by it and its

Representatives as strictly confidential and will not be disclosed to any other party without the prior written consent of the Disclosing Party. The Receiving Party agrees to be responsible for any breach of these Terms (including this Section 11.3) by its Representatives.

- 11.4 Subject to Applicable Law, Customer authorizes BofAML and its affiliates to disclose or use material confidential information provided by or on behalf Customer to BofAML, including, without limitation, using or sharing internally any information about Executed Transactions. BofAML may analyze, comment on, and disclose anonymized and/or aggregated information about Executed Transactions, together with other relevant market information, internally and to third parties, and this information shall not be Confidential Information under these Terms.
- 11.5 Notwithstanding anything to the contrary contained in these Terms, Customer and BofAML agree that either party and/or its Representatives may be required or choose to disclose the Confidential Information or portions thereof (a) in connection with reporting or other requirements under Applicable Law, (b) at the request of any government agency and/or its Representatives, (c) at the request of any self-regulatory organization, or (d) pursuant to the lawful order, administrative request or guidance of a governmental agency, regulatory or taxation authority or court of competent jurisdiction or by operation of law (including, without limitation, by oral question, interrogatory, subpoena, civil investigative demand or similar process for the purpose of complying with any such laws or regulations). In the event that either party or its Representatives is requested or required (orally or in writing, by law, regulation or interrogatory, request for information or documents, court order, subpoena, deposition, administrative proceeding, inspection, audit, civil investigative demand or other legal, governmental or regulatory process) to disclose any Confidential Information, such party or such Representative may disclose such Confidential Information to the extent that such party or such Representative concludes in good faith that it is required to do so. BofAML and its affiliates shall have no liability for any such disclosure. Each party acknowledges and agrees that it will co-operate fully and promptly with all requests by the other party for the provision of any other information in such party's possession, custody or control which the other party may be required or requested to produce to any such agency or authority. Customer acknowledges that disclosures pursuant to this paragraph may result in Customer data being transmitted and/or retained outside Customer's home jurisdiction.
- 11.6 Except as expressly set out in these Terms, nothing contained in these Terms shall be construed as granting any right or license to either party's Confidential Information or to any invention or discovery derived from or improvement made to such Confidential Information, whether conceived or created prior to or after the date of acceptance of these Terms.
- 11.7 If Customer is a Japanese Customer:
- (a) With regard to personal information of personnel of Japanese Customer which BofAML obtains via or in relation to any BofAML Electronic Trading Service, BofAML will treat such personal information in compliance with its "Privacy Policy" provided separately.

Japanese Customer agrees that BofAML will be able to use such personal information for the purposes of:

- (i) soliciting or selling various financial products or introducing financial services;
- (ii) receiving applications for account opening or financial products and services;

- (iii) fulfilling obligations of customer identification required by the applicable laws and regulations;
  - (iv) managing ongoing transactions such as maturity date control for deposits or loans, etc.;
  - (v) making decisions on applications for financing or on extension of existing transactions;
  - (vi) making decisions on the adequacy of provision of financial products and services considering the principle of suitability;
  - (vii) providing personal information to third parties within the scope necessary for credit business;
  - (viii) carrying out outsourced operations appropriately in the case where all or part of operations containing personal information is outsourced from third parties;
  - (ix) exercising rights or fulfilling obligations under the agreement with a customer, the applicable domestic and foreign laws and regulations, or the agreement executed in accordance with such laws and regulations;
  - (x) responding to requests from domestic and foreign regulators with legitimate authority;
  - (xi) studying and developing financial products and services through market research, data analysis, questionnaires, etc.;
  - (xii) providing information on the financial products and services by sending direct mail, etc.;
  - (xiii) providing information on the financial products and services offered by BofAML group companies or other affiliate companies;
  - (xiv) executing the transactions with customers in an appropriate and smooth manner; and
  - (xv) notwithstanding the purpose of use of personal information, Bank will use individual numbers for the following purposes: (i) administrative duties relating to application or notification of account opening for financial instrument transactions; and (ii) administrative duties relating to preparation or submission of legal documents for financial instrument transactions.
- (b) Japanese Customer provides personal information of its personnel upon obtaining his/her consent, and BofAML will treat such personal information as provided upon such consent.

11.8 Each party acknowledges that breach by it of this Section 11 may cause irreparable injury to other party, which injury will be inadequately compensated in damages. Accordingly each party may be entitled under Applicable Law to the remedies of injunction, specific performance and other equitable relief in respect of any actual breach or threatened breach of this Section 11, in addition to any other legal remedies which may be available.



## 12. MISCELLANEOUS

- 12.1 These Terms and any and all controversies arising out of or in relation to these Terms shall be governed by and construed in accordance with the laws of the State of New York (without reference to its conflict of laws doctrine). With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with these Terms (**Proceedings**), each Party irrevocably submits to the exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City.
- 12.2 CUSTOMER HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS. CUSTOMER AGREES THAT CUSTOMER WILL NOT JOIN OR CONSOLIDATE ANY CLAIMS ARISING OUT OF OR RELATING TO THESE TERMS WITH ANY CLAIMS OF OTHER CUSTOMERS. CUSTOMER AGREES THAT CUSTOMER WILL NOT LITIGATE ANY CLAIMS ARISING OUT OF OR RELATING TO THESE TERMS AS A REPRESENTATIVE OR MEMBER OF A CLASS.
- 12.3 In the event that BofAML is sued by any relevant market or other third party for any reason relating or connected to the services provided by BofAML pursuant to these Terms, and such suit is proceeding in arbitration in accordance with the rules of the applicable relevant market, then BofAML shall have the right in its sole discretion to implead Customer into such arbitration.
- 12.4 In the event that any provision of these Terms or the application thereof to any person or in any circumstance shall be determined to be invalid, unlawful or unenforceable to any extent, such provision shall only be excluded to the extent of such invalidity or unenforceability, the remainder of these Terms shall be unaffected and shall continue to be valid and may be enforced to the fullest extent permitted by Applicable Law and, to the maximum extent permitted, these Terms will be interpreted to give effect to the intentions of the parties expressed in such invalid or unenforceable provision.
- 12.5 These Terms are not intended to, and shall not be deemed to, create any partnership, joint venture, joint enterprise or business relationship between the parties hereto, or to authorize or empower either party to act on behalf of or obligate or bind the other party. Nothing in these Terms, expressed or implied, is intended to confer on any third party (other than BofAML's affiliates where so noted) any rights or remedies under or by reason of these Terms.
- 12.6 Except as otherwise expressly provided herein, all notices permitted or required under these Terms shall be in writing. Notices may be given in any manner set forth below and shall be effective:
- (a) if delivered in person or delivered by courier, on the date of such delivery;
  - (b) if sent by certified or registered mail, on the date such mail is delivered or its delivery attempted;
  - (c) if sent by facsimile transmission, on the date such transmission is received;
  - (d) if sent by electronic messaging service (including email), on the date such electronic message is received; and
  - (e) if posted or made available by BofAML on the website or interface for the relevant BofAML Electronic Trading Service, on the earlier of (i) the first day following BofAML's posting or making the relevant notice available on which Customer accesses such website or interface or

(ii) the first day following BofAML's posting or making the relevant notice available on which Customer executes an Executed Transaction.

12.7 Each party consents to the electronic recording, without the use of an automatic warning tone, of all telephone conversations between or among the parties and their representatives, and each party agrees to procure a similar consent from each of its representatives, as applicable. Each party also agrees, to the extent permitted by Applicable Law, that recordings may be submitted in evidence in any Proceedings.

### 13. CONTRACTUAL RECOGNITION OF BAIL-IN

Where the relevant BofAML entity is either, Merrill Lynch Commodities (Europe) Limited (**MLCE**), Merrill Lynch International (**MLI**) or Bank of America Merrill Lynch International Limited (**BAMLI**) (each of MLCE, MLI and BAMLI referred to herein as a **BRRD Party**), notwithstanding any other provision in these Terms or any other agreement, arrangement or understanding between a BRRD Party and Customer, Customer acknowledges, accepts and agrees to be bound by:

- (a) the effect of the exercise of the UK bail-in power by the relevant UK resolution authority in relation to any Liability of BRRD Party to Customer under these Terms, that may include and result in any of the following, or some combination thereof:
  - (i) the reduction of all (including to zero), or a portion, of the Liability or outstanding amounts due thereon;
  - (ii) the conversion of all, or a portion, of the Liability into shares, other securities or other obligations of BRRD Party or another person (and the issue to or conferral on Customer of such shares, securities or obligations), including by means of an amendment, modification or variation of these Terms;
  - (iii) the cancellation of the Liability;
  - (iv) the amendment or alteration of the amounts due in relation to the Liability, the maturity of and, if applicable, any interest thereon, or the dates on which any payments are due, including by suspending payment for a temporary period;
- (b) the variation of these Terms, as deemed necessary by the UK resolution authority, to give effect to the exercise of the UK bail-in power by the relevant UK resolution authority.

For these purposes:

**"UK bail-in power"** is any write-down, conversion, transfer, modification, or suspension power existing from time to time under, and exercised in compliance with, any laws, regulations, rules or requirements in effect in the United Kingdom, relating to the transposition of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (**BRRD**) as amended from time to time, including but not limited to the Banking Act 2009 as amended from time to time, and the instruments, rules and standards created thereunder, pursuant to which:

- (a) any obligation of BRRD Party (or other affiliate of such entity) can be reduced, cancelled, modified, or converted into shares, other securities, or other obligations of such regulated entity or any other person (or suspended for a temporary period); and

- (b) any right in a contract governing an obligation of BRRD Party may be deemed to have been exercised.

"**Liability**" has the same meaning as in the laws, regulations, rules or requirements that implement the BRRD in the United Kingdom.

#### 14. Stay in Resolution under Japanese Regime

The Customer acknowledges and agrees that, in the event that the FX Transactions(s) are executed out of:

- Merrill Lynch Japan Securities Co., Ltd.;

- Bank of America N. A. Tokyo Branch; or,

- Bank of America N. A. under intermediation by the employees of Bank of America N.A. Tokyo Branch (each of these entities herein as a **Japan BofAML Party**);

- (a) if a "Stay Decision" [*sutei no kettei*] is made under the "Deposit Insurance Act" [*yokin hoken ho*] with respect to Japan BofAML Party, the effect of the "Stay Decision" [*sutei no kettei*] and the "special provisions for procedures of creditor protection" [*saikensha hogo tetsuzuki no tokurei to*] prescribed in Article 131 of the "Deposit Insurance Act" [*yokin hoken ho*] applies to these Terms; and
- (b) Notwithstanding anything in these Terms to the contrary, the provisions of clause (a) hereof shall not apply with respect to these Terms unless, upon the relevant "Stay Decision" [*sutei no kettei*] being made under the "Deposit Insurance Act" [*yokin hoken ho*], the Japanese Financial Services Agency, Prime Minister or Minister of State for Financial Services issues a public statement announcing either that:
- (i) these Terms, and any transaction carried out for the purposes of collateralizing these Terms, as applicable, will be transferred to a successor; or;
- (ii) the duration of the temporary stay designated in such "Stay Decision" [*sutei no kettei*] with respect to these Terms, and any transaction carried out for the purposes of collateralizing these Terms, as applicable, will not exceed two business days in Japan.

For these purposes:

"**Japanese Regulation**" means the "Comprehensive Guidelines for Supervision of Major Banks, etc." [*shuyoko to muke no sogoteki na kantoku shishin*] and the "Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc." [*kinyu shohin torihiki gyosha to muke no sogoteki na kantoku shishin*].

Other words and phrases in quotation marks used in Clause 14 have the meaning given in the Japanese Regulation to the bracketed Japanese word or phrase immediately following such word or phrase, and such words or phrases as used in these Terms shall be interpreted in accordance with the Japanese Regulation.

## 15. Contractual recognition of Bail-in for EU Entities

Where the relevant BofAML entity is either Bank of America Merrill Lynch International DAC or BofA Securities Europe SA (each an "**EU BRRD Party**"), notwithstanding any other provision in the Additional Terms Module or any other agreement, arrangement or understanding between the EU BRRD Party and Client, Client acknowledges, accepts and agrees that the provisions set out in the attachment (the "Attachment") to the ISDA 2016 Bail-in Article 55 BRRD Protocol (Dutch/French/German/Irish/Italian/Luxembourg/Spanish/UK entity-in-resolution version) are incorporated into and form part of the Additional Terms Module. For the purposes of the Attachment, the Additional Terms Module shall be deemed to be a Protocol Covered Agreement and the Implementation Date shall be the effective date of the Additional Terms Module. In the event of any inconsistencies between the Additional Terms Module and the Attachment, the Attachment will prevail.

## 16. U.S. QFC Resolution Stay

The parties agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the "**Protocol**"), the terms of the Protocol are incorporated into and form a part of these Terms, and for such purposes these Terms shall be deemed a Protocol Covered Agreement and each party shall be deemed to have the same status as "Regulated Entity" and/or "Adhering Party" as applicable to it under the Protocol; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the "**Bilateral Agreement**"), the terms of the Bilateral Agreement are incorporated into and form a part of these Terms and each party shall be deemed to have the status of "Covered Entity" or "Counterparty Entity" (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the "**Bilateral Terms**") of the form of bilateral template entitled "Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)" published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at [www.isda.org](http://www.isda.org) and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of these Terms, and for such purposes these Terms shall be deemed a "Covered Agreement," BofAML shall be deemed a "Covered Entity" and Customer shall be deemed a "Counterparty Entity." In the event that, after the date of these Terms, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this paragraph. In the event of any inconsistencies between these Terms and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the "**QFC Stay Terms**"), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to "these Terms" include any related credit enhancements entered into between the parties or provided by one to the other. In addition, the parties agree that the terms of this paragraph shall be incorporated into any related covered affiliate credit enhancements, with all references to BofAML replaced by references to the covered affiliate support provider.

"**QFC Stay Rules**" means the regulations codified at 12 C.F.R. 252.2, 252.81–8, 12 C.F.R. 382.1-7 and 12 C.F.R. 47.1-8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the FDIC under the Federal Deposit Insurance Act and the Orderly Liquidation

Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.

## ADDITIONAL TERMS MODULE

### Commodities Electronic Trading Terms Module

#### 1. SCOPE

- 1.1 This Additional Terms Module supplements the Electronic Trading Terms and Conditions (the **Terms**) entered into by Customer. By clicking the box indicating acceptance of the Terms on any BofAML Electronic Trading Service, sending BofAML an electronic message accepting the Terms, signing a hard copy of the Terms or accessing any BofAML Electronic Trading Service, Customer agrees that the term Transaction, as used in the Terms, will include (a) financially-settled over-the-counter commodity swap transactions (each, an **OTC Derivative**), (b) physically-settled forwards on gold, silver, platinum and palladium (each, a **Physically-Settled Precious Metal Forward**), (c) physically-settled forwards on base metals (each, a **Physically-Settled Base Metal Forward**), (d) physically-settled unallocated gold, silver, platinum and palladium spot transactions (each, a **Precious Metal Spot**) and (e) London Metal Exchange (**LME**) listed futures referencing base metals (each, an **LME Future**) (OTC Derivatives, Physically-Settled Precious Metal Forwards, Physically-Settled Base Metal Forwards, Precious Metal Spot and LME Futures, each a **Commodity Transaction** and collectively, **Commodity Transactions**).
- 1.2 Notwithstanding anything to the contrary in the Terms, in order to view indicative prices and submit Customer Offers for Commodity Transactions on any BofAML Electronic Trading Service, Customer must first execute with an appropriate affiliate of BofAML an appropriate (a) trading agreement or deemed master agreement governing Executed Transactions (an **Underlying Trading Agreement**) incorporating the 2005 ISDA Commodity Definitions in the case of a OTC Derivative or Physically-Settled Forward, or (b) a Give-Up Agreement or Clearing Agreement (in each case, as defined below) in the case of an LME Future.
- 1.3 All instructions sent by Customer to BofAML electronically, and the execution of such instructions by BofAML, shall be subject to the applicable rules, customs, usages of the market, and any BofAML policy requirements which relate to Commodity Transactions executed by or through BofAML. Any additional terms agreed by BofAML and as required by Applicable Law shall apply to execution of Customer's electronically transmitted instructions. In no event will BofAML be responsible for any instructions or orders as to which BofAML has not acknowledged receipt and acceptance by electronic means or otherwise, or be liable for any performance or failure to perform in connection with such instructions or orders.

#### 2. ADDITIONAL REPRESENTATIONS AND WARRANTIES

- 2.1 In addition to the representations and warranties made in Section 8 of the Terms, Customer represents, warrants and agrees for purposes of each Commodity Transaction and as of the date on which

Customer accepts the Terms and on the date of each Executed Transaction that is a Commodity Transaction:

- (a) Customer agrees that BofAML, in its sole discretion, has the right to add to or remove from the BofAML Electronic Trading Services any of the specified types of Commodity Transactions available on the BofAML Electronic Trading Services at any time;
- (b) Customer agrees that BofAML has the right to grant or revoke Customer's ability to trade any one or all of the specified types of Commodity Transactions via the BofAML Electronic Trading Services at any time;
- (c) Customer acknowledges that Commodity Transactions are subject to numerous economic, political, monetary and other risks;
- (d) Customer understands that indicative prices provided by BofAML on the BofAML Electronic Trading Services, if any, do not represent real-time market trade and quotation data;
- (e) Customer shall monitor and comply with any position limit restrictions applicable to Customer, and shall not enter into Commodity Transactions on the BofAML Electronic Trading Services in violation of any such applicable position limit restrictions;
- (f) Customer represents to BofAML that whenever Customer submits a Customer Offer with respect to a Precious Metal Spot, Physically-Settled Precious Metal Forward and Physically-Settled Base Metal Forward, Customer intends to settle any resulting Executed Transaction by physical delivery.
- (g) With respect to each Physically-Settled Precious Metal Forward and Physically-Settled Base Metal Forward, Customer represents to BofAML that Customer (i) is a "commercial market participant" (as defined in the U.S. Commodity Futures Trading Commission's Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping Final Rule, 77 FR 48208 (Aug. 13, 2012)) that regularly makes or takes delivery of the commodity referenced by the Physically-Settled Precious Metal Forward and Physically-Settled Base Metal Forward in the ordinary course of Customer's business (ii) satisfies the commercial participant standard of the Statutory Interpretation Concerning Forward Transactions, 55 FR 39188 (Sep. 25, 1990) (commonly known as the Brent Interpretation), and (iii) will only enter into a Physically-Settled Precious Metal Forward and Physically-Settled Base Metal Forward in connection with such commercial activity;
- (h) Customer will only access the BofAML Electronic Trading Service via the jurisdiction that Customer has designated as its state of incorporation or formation during the BofAML onboarding process (such jurisdiction, the **Applicable Jurisdiction**), and BofAML will be entitled to and shall treat each Customer Offer as originating from the Applicable Jurisdiction; and
- (i) at all times when using the BofAML Electronic Trading Services, Customer has the appropriate authorizations for its Applicable Jurisdiction, and if requested by BofAML, Customer will provide evidence of such authorizations. Customer further agrees to immediately inform BofAML of any revocation or loss of any such authorizations.

### 3. ADDITIONAL PROVISIONS APPLICABLE TO LME FUTURES

- 3.1 Customer and BofAML agree to the following with respect to the purchase and sale of any LME Future:
- (a) Either an enforceable, executed give-up agreement is in place by and between Customer, an appropriate BofAML entity (as executing broker) and a clearing broker (**Give-Up Agreement**) or an enforceable, executed clearing agreement is in place by and between Customer and an appropriate BofAML entity (as clearing broker) (**Clearing Agreement**), pursuant to which a purchase and/or sale of any LME Future via the BofAML Electronic Trading Services would be executed (as applicable). Customers may elect to clear transactions through a Clearing Agreement with BofAML, give-up such transactions through Give-Up Agreement(s), or choose to use a combination of such alternatives.
  - (b) Any Give-Up Agreement shall be an FIA-approved form of document. "FIA" means the Futures Industry Association.
  - (c) In the event that Customer elects to purchase or sell an LME Future through a Give-Up Agreement or a Clearing Agreement, Customer agrees to be solely responsible for ensuring its compliance with any applicable agreement (e.g. the Give-Up Agreement, the Clearing Agreement, etc.) and the laws, rules and regulations of any applicable governmental, regulatory and other self-regulatory authorities. BofAML shall not be liable for any damages or consequences that result therefrom.
  - (d) Any LME Future executed through the use of a Give-Up Agreement or Clearing Agreement shall be subject to the terms of the applicable Give-Up Agreement or Clearing Agreement and all applicable rules of the LME. Any such LME Future executed through the BofAML Electronic Trading Services will be required to be evidenced by a trade confirmation (delivered over customary back-office communication/electronic modes) between the clearing broker, BofAML, Customer and the LME (as applicable). All matching of LME Futures are done via the LME matching system at LME Clear.
  - (e) Customer agrees to communicate to the applicable clearing broker(s) what Customer has executed with BofAML via the BofAML Electronic Trading Services.
  - (f) In the event that an electronic acknowledgement is sent to Customer but subsequently there is non-compliance with any Give-Up Agreement, Clearing Agreement or related document, BofAML reserves the right to terminate any such affected trade. In the event of a terminated trade, BofAML shall not be liable for any damages or consequences that result therefrom.
  - (g) In the event that any LME Future is out of scope and would not otherwise fall under the parameters of the terms and conditions specified in any Give-Up Agreement or Clearing Agreement, such proposed trade would either not be consummated or would be automatically terminated in the Instinct Portal electronic system. BofAML shall not be liable for any damages or consequences that result therefrom.
  - (h) LME Futures via the BofAML Electronic Trading Services will be executed and cleared as per the standing instructions in place between BofAML and Customer. Any LME Futures cleared at BofAML must be governed by a Clearing Agreement and any business Customer intends to give

up to other clearing member(s) must be covered by Give-Up Agreement(s) for all the accounts which Customer wishes to allocate.

- (i) Any LME Futures executed via the BofAML Electronic Trading Services may be allocated among different Customer accounts with various clearing brokers pursuant to different Give-Up Agreements.
- (j) Transactions are individually negotiated and may only be engaged in by institutions and other persons that meet certain business or asset qualifications set forth by BofAML.
- (k) BofAML may also be the clearing broker for Customer with respect to any LME Futures executed via the BofAML Electronic Trading Services.

#### **4. ADDITIONAL PROVISIONS APPLICABLE TO PRECIOUS METAL SPOT AND PHYSICALLY-SETTLED PRECIOUS METAL FORWARDS**

- 4.1 By accessing the BofAML Electronic Trading Services, Customer agrees that Executed Transactions that are Precious Metal Spot and Physically-Settled Precious Metal Forwards shall be settled by delivery, and delivery shall be received or made via unallocated precious metal accounts on a loco London basis (unless otherwise agreed by BofAML and Customer).
- 4.2 Customer represents to BofAML that it maintains an unallocated precious metal account at London Precious Metal Clearing Limited for settlement purposes and has provided appropriate standing settlement instructions to BofAML prior to accessing the BofAML Electronic Trading Services.
- 4.3 By taking delivery of precious metals, Customer acknowledges that Customer will incur delivery charges, sales and use taxes and storage fees. Customer agrees that BofAML shall not be responsible for these costs.
- 4.4 **If Customer elects to use a prime brokerage agreement with a prime broker for which BofAML serves as dealer for Precious Metal Spot and/or Physically-Settled Precious Metal Forwards executed on the BofAML Electronic Trading Services:**
  - (a) Customer agrees to be solely responsible for ensuring that Customer complies with any applicable prime brokerage or similar agreement and any Applicable Law. BofAML shall not be liable for any damages, termination payment or other consequences that result from any violation or default under any such applicable agreement between Customer and its prime broker, or any violation by Customer of Applicable Law.
  - (b) Each Precious Metal Spot and Physically-Settled Precious Metal Forward executed through the use of a prime broker arrangement shall be subject to the terms of a master agreement executed between the prime broker and the appropriate affiliate of BofAML and shall be compliant with the terms of a prime brokerage give up agreement and the corresponding designation notice. Each such Precious Metal Spot and Physically-Settled Precious Metal Forward executed through the BofAML Electronic Trading Services will be required to be evidenced by a trade confirmation (delivered over customary back-office communication modes, including but not limited to the use of electronic confirmation modes) between the prime broker and BofAML.
  - (c) In the event that an electronic acknowledgement is sent to Customer but subsequently there is non-compliance with any applicable prime brokerage or similar agreement (including but not



limited to any give-up agreement between the prime broker and BofAML), BofAML reserves the right to terminate any such affected Precious Metal Spot or Physically-Settled Precious Metal Forward. BofAML shall not be liable for any damages, termination payment or other consequences that result from any such termination.

- (d) In the event that any Precious Metal Spot or Physically-Settled Precious Metal Forward is out of scope and would not otherwise fall under the parameters of the terms and conditions specified in any applicable prime brokerage or similar agreement, such Precious Metal Spot or Physically-Settled Precious Metal Forward shall be deemed to have automatically terminated. BofAML shall not be liable for any damages, termination payment or other consequences that result from any such termination.

## **5. ADDITIONAL PROVISIONS RELATED TO CONFIRMATIONS OF COMMODITY TRANSACTIONS**

- 5.1 Any Commodity Transaction that is executed through the BofAML Electronic Trading Services will be required to be evidenced by a trade confirmation (delivered over customary back-office communication modes, including but not limited to the use of electronic confirmation modes), prepared by BofAML in its sole discretion, and shall be subject to the terms of the Underlying Trading Agreement.
- 5.2 The BofAML Electronic Trading Services allow Customer to view a history of Customer's trading activity. Trade history and transaction data are provided as a convenience and for Customer's information, but are not the official record of Customer's trade activity with BofAML. Any and all trade history and transaction data are provided subject to adjustment and correction and should not be relied upon by Customer. The confirmation sent by BofAML to Customer in accordance with the terms of the Underlying Trading Agreement will constitute the agreed official record of the relevant Executed Transaction between the parties (absent manifest error). BofAML's records relating to trade history and transaction data will constitute dispositive evidence in the event of any dispute regarding the existence of an Executed Transaction. BofAML will not be responsible or liable for any damage that could result from Customer taking any action without confirming the accuracy of any trade history or transaction data provided through the BofAML Electronic Trading Services.