



## MTF Participant Agreement

This **MTF Participant Agreement** is between Chi-X Europe Limited, a company incorporated in England with registered company number 1651728 whose registered office is located at 26<sup>th</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LB (“**Chi-X**”) and [ ], a company incorporated in [ ] with company number [ ] whose registered office is located at [ ] (the “**Participant**”)”) (each a “**Party**” and together the “**Parties**”).

**WHEREAS**, Chi-X is authorised by the FSA (defined below) to operate a multilateral trading facility, which it operates and provides via the System (as defined below);

**WHEREAS**, Chi-X desires to provide the Participant and the Participant desires to utilise the System; and

### IT IS HEREBY AGREED AS FOLLOWS:

#### 1. Definitions

In this Agreement, unless the context otherwise requires, the following words shall have the following meanings:

**Affiliate:** means, in relation to either Party, any entity which directly or indirectly owns or Controls or is directly or indirectly owned or Controlled by or in common ownership or Control with that Party;

**Agreement:** means, in order of precedence, the Rules, these terms and conditions and the Price List which govern the Participant’s access to and use of the System;

**Authorised Entity:** means a client of the Participant that indirectly trades on the System via the Participant in accordance with Clause 8.1;

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

**Chi-X Data:** includes any and all data emanating directly or indirectly from the System including without limitation data created by the Participant when accessing the System;

**Chi-X Parties:** means Chi-X and/or its Affiliates, and its or their officers, employees, members, employees and contractors;

**Confidential Information:** means the terms, conditions and subject matter of this Agreement and all information disclosed by one Party to the other or otherwise received by the other in the negotiation, entering into and performance of this Agreement, which relates directly or indirectly to that Party or any third party with which it has or proposes to have business dealings and its or their officers, employees, agents, suppliers or customers, including without limitation: the Chi-X Data and any information within or relating to the same; technical; business and financial information; plans; dealings; trade secrets; inventions; products; research and development; production; business processes; price information; marketing and sales information; designs; product lines and any information which the recipient Party has been informed is confidential or which it might reasonably expect the other Party would regard as confidential but excluding:

- information: that is already in the public domain; and/or
- which subsequently becomes part of the public domain other than as a result of an unauthorised disclosure; and/or
- which is or becomes available to the receiving Party from a third party who is legally entitled to possess and provide the information to the receiving Party;



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**Control:** means holding more than 50% of the shares, or stock having the power to vote at a general meeting or equivalent; or by having the power to control the composition of the board of directors or, the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a person, whether through the ownership of stock, by contract or agency or otherwise and “**Controls**” and “**Controlled**” shall be interpreted accordingly;

**Credit Approval:** means an appropriate level of credit worthiness as determined in Chi-X’s absolute discretion from time to time;

**Effective Date:** means the last date of signature by a Party set out below;

**Fees:** means those fees applicable to the Participant as set out in the Price List;

**FSA:** means the Financial Services Authority and any replacement or equivalent authority fulfilling the regulatory functions of the Financial Services Authority, including if applicable equivalent or analogous regulators in foreign jurisdictions;

**Initial Term:** means one year;

**Intellectual Property:** means any and all rights whether registered or unregistered and whether in existence now or in the future including without limitation copyright, trade marks, design rights, patents, utility models, database rights, rights in semiconductor or circuit layouts and the right to have confidential information kept confidential and any other similar or analogous rights and any application or right to apply for registration or renewal of any such rights;

**Laws:** means any and all laws, statutes, orders, regulations (including without limitation directions of the FSA), directives, edicts, bye-laws, schemes, warrants, instruments, codes of practice and guidelines to which Chi-X and/or the System is subject or with which Chi-X chooses to comply;

**Price List:** means the list of Fees published by Chi-X on the Website from time to time;

**Privacy Policy:** means Chi-X’s policy for processing of personal data as published on its Website from time to time;

**Products:** means any and all financial products that Chi-X enables to be traded via the System;

**Rebate:** means the rebate applicable to the Participant as set out in the Price List;

**Rules:** means the Chi-X Rules (including without limitation the Chi-X Exchange Guide and the guidance) published by Chi-X on the Website from time to time;

**Services:** means those services provided by Chi-X to the Participant as further set out in Clause 4;

**System:** means the multilateral trading facility known as the Chi-X system including without limitation the Chi-X visible order book and the order book known as ‘Chi-Delta’;

**Term:** means the duration of this Agreement commencing on and from the Effective Date and continuing unless terminated in accordance with Clause 5.1; and

**Website:** means the Chi-X’s web site [www.chi-x.com](http://www.chi-x.com) as amended or replaced from time to time.

## 2. Interpretation

2.1. In this Agreement a reference to:



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- 2.1.1. a Clause or Schedule is, except where expressly stated otherwise, a reference to a clause of and schedule to this Agreement;
  - 2.1.2. a word importing one gender shall (where appropriate) include any other gender and a word importing the singular shall (where appropriate) include the plural and vice versa; and
  - 2.1.3. any statute or statutory provision includes, except where otherwise stated, the statute or statutory provision as amended, consolidated or re-enacted from time to time, and includes any subordinate legislation made under the statute or statutory provision (as so amended, consolidated or re-enacted).
- 2.2. The headings in this Agreement are for convenience only and shall not affect its interpretation.

### **3. Credit Approval and Rules**

- 3.1. The Participant acknowledges and agrees that it is a precondition of this Agreement that the Participant must achieve an appropriate level of Credit Approval in order to receive any access to the System.
- 3.2. The Participant acknowledges and agrees that on and from the Effective Date and at all times throughout the Term the Participant must:
  - 3.2.1. achieve an appropriate level of Credit Approval;
  - 3.2.2. comply with the Rules; and
  - 3.2.3. comply with Laws applicable to access to and/or trading on the System,in order to receive any access to the System.
- 3.3. The Participant agrees to provide Chi-X with all information reasonably requested by Chi-X for the purposes of assessing the Participant's Credit Approval and ensuring compliance with the Rules in accordance with Clauses 3.1 and 3.2.

### **4. Services**

Subject to the Participants compliance with Clause 3, meeting such requirements and where applicable agreeing to such additional terms and conditions as Chi-X may impose, Chi-X shall provide the Participant with:

- 4.1. access to the System to enter, execute and cancel buy and sell orders for Products in accordance with the Rules;
- 4.2. monitor transactions undertaken on the System to ensure compliance with any applicable law, rule or regulation as required by Chi-X to meet its regulatory obligations;
- 4.3. a licence to publish post trade information, to the extent required by Law; and
- 4.4. provide further services subscribed to by the Participant from time to time including, but not limited to all those services further described on the Website.

### **5. Term and Termination or Suspension of MTF Agreement**

- 5.1. This Agreement shall commence on and from the Effective Date and unless earlier terminated in accordance with the terms of the Agreement shall continue for the Initial Term and thereafter shall automatically renew for further successive terms of one year unless terminated earlier in accordance with the terms of the Agreement.



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- 5.2. Chi-X may immediately terminate the Services, or any portion thereof by notice, if it determines that the Participant:
  - 5.2.1. commits a material breach (including persistent breaches which cumulatively constitute a material breach) of any of the terms of this Agreement and, if such breach is capable of remedy, fails to remedy the breach within ten (10) days of receiving written notice specifying the breach and requiring the breach to be remedied;
  - 5.2.2. becomes or is deemed insolvent, or has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business; or takes or suffers any similar or analogous procedure to any of the events described in this Clause 5.2.2 or is unable to pay its debts as they fall due;
  - 5.2.3. is in breach of Clauses 3.2.1, 3.2.2 and/or fails to provide timely, complete or accurate information in accordance with Clause 3.3;
  - 5.2.4. is engaged in activities that Chi-X reasonably determines to be detrimental to the business of Chi-X;
  - 5.2.5. in Chi-X's sole discretion, poses a credit risk to Chi-X; or
  - 5.2.6. if any of the circumstances in Clause 21 occur.
- 5.3. Chi-X may suspend the Participant's access to the Services at any time if Chi-X would or suspects it would otherwise be entitled or be likely to be entitled to terminate the Agreement in accordance with Clause 5.2 until such time as Chi-X is satisfied that the circumstances giving rise to such suspension no longer apply.
- 5.4. The Participant or Chi-X may terminate this Agreement or any part of the Services for convenience upon thirty (30) days written notice to the other Party.

### **6. Payment and Set Off**

- 6.1. The Participant agrees to make timely payment of the Fees. The failure of the Participant to make any payment within thirty (30) days from the invoice date may result in suspension or termination of Services.
- 6.2. Chi-X may add interest on overdue payments which are undisputed at the prevailing base lending rate of Citibank NA (from time to time) plus three (3) per cent, calculated on a daily basis.
- 6.3. Chi-X reserves the right to change the Fees by not less than fifteen (15) days notice given to the Participant by means of a notice posted on the Website.
- 6.4. Chi-X shall have the right to set off any sums due from the Participant to Chi-X against any sums due from Chi-X to the Participant.

### **7. Taxes**

- 7.1. The Participant shall assume full and complete responsibility for the payment of any taxes, charges or assessments imposed on the Participant by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof, and any penalties or interest, (other than income taxes imposed on Chi-X) relating to the provision of Services to the Participant, including without limitation any applicable value added tax or sales taxes. In addition, if the Participant is required under applicable law to deduct or withhold any such tax, charge or assessment from the amounts due to Chi-X under Clause 6 of this Agreement, then such amount shall be increased so that the net amount actually received by Chi-X after the deduction or withholding of such tax, charge or assessment, will equal one hundred per cent (100%) of the charges specified in Clause 6 of this Agreement.



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- 7.2. The Participant acknowledges and agrees that in accordance with sections 80A and 88A of the UK Finance Act 1986 (the "Act"), for recognition as an intermediary for the purposes of Stamp Duty Reserve Tax exemption the Participant must: (i) carry on a bona fide business of dealing in shares; (ii) not carry on an "excluded business" as defined within the Act; and (iii) have a place of business in the UK.

### 8. Authorised Entities; Use of Services

- 8.1. Only the Participant is permitted to access the System directly. The Participant may allow Authorised Entities to indirectly access the System via the Participant using the Participant's connection.
- 8.2. The Services are provided exclusively to the Participant and to no other person and the Participant agrees that it will take full responsibility for third party use of, or access to, the Services by its Authorised Entities. The Participant shall indemnify Chi-X from and against any and all losses, liabilities, claims, actions, proceedings, costs or expenses (including any legal costs and any other reasonable expenses) incurred by Chi-X arising out of or in connection with, directly or indirectly the Authorised Entities access to and/or use of the System, the Services and/or this Agreement.
- 8.3. Chi-X shall not be responsible for any transactions the Participant or any Authorised Entity may attempt to enter, or orders or instructions the Participant or any Authorised Entity may make or attempt to make or any other use of the Services. The Participant is solely responsible for any losses, damages or costs that it may incur including but not limited to those arising as a result of errors made by the Participant or any Authorised Entity, or the failure of, software or equipment.
- 8.4. The Participant acknowledges and agrees the Services and the System and all information on the Services and the System including without limitation the Chi-X Data are proprietary and confidential to Chi-X or to any applicable third party service providers (if applicable).

### 9. Participant's Obligations

- 9.1. The Participant is solely responsible for all telecommunications costs and all other expenses incurred in linking to, and maintaining its link to, the System.
- 9.2. The Participant shall maintain a connection to the System of such minimum quality as Chi-X may reasonably prescribe from time to time. The failure to provide an adequate connection or adequate equipment may result in termination of this Agreement.
- 9.3. It is the sole responsibility of the Participant to ensure compliance, by itself and its Authorised Entities, with the Laws and the Rules.

### 10. Settlement of Transactions

- 10.1. The Participant shall be absolutely, and unconditionally bound in connection with each Product transaction effected under the Participant's membership or through the Participant's connection to the System and to make and ensure the timely delivery of any Product sold and/or purchased, and monies for any Product purchased in accordance with any applicable Laws, procedures, rules and practices including without limitation those specified by a central counterparty or a settlement system.
- 10.2. The Participant shall notify Chi-X in writing fifteen (15) days prior to any change to the Participant's clearing and settlement arrangements.

### 11. Right to Refuse or Reject

Notwithstanding any other provision in this Agreement, Chi-X reserves the right, in its sole discretion, and without prior notice to the Participant, to reject, cancel or refuse to display or execute any order. Chi-X also has the right to cancel any trade in accordance with the Rules. Chi-X's rights under this Clause 11 apply to orders or trades which, in Chi-X's sole determination, would violate the Rules or any applicable Laws.



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Notwithstanding the foregoing, Chi-X shall use commercially reasonable efforts to provide notice to the Participant of any such rejection, cancellation or refusal in accordance with the Rules.

### **12. Participant's Identity; Use of Participant's Data**

12.1. Chi-X shall not disclose the Participant's identity to the Participant's counterparties or to third-parties in connection with any transactions executed or any messages sent or received by the Participant on the System, except that Chi-X may make such disclosure:- (i) pursuant to written or other authorisation by the Participant; (ii) pursuant to legal proceedings, an order or subpoena of a court or request by a regulatory body having appropriate authority, or to comply with Chi-X's statutory and regulatory responsibilities; (iii) for the purposes of facilitating the clearing and settlement of trades; or (iv) in accordance with the Rules.

12.2. Chi-X may, in its discretion, publish a list of Participants and/or Authorised Entities from time to time.

12.3. The Participant agrees that (to the extent it owns any rights to the same) any and all right, title and interest in all data inputted into the System under the Participant's membership or through the Participant's connection to the System ("Participant Data") is assigned to Chi-X on and from creation.

### **13. Limitation of Liability**

13.1. Chi-X does not exclude or in any way limit liability for:

- 13.1.1. fraud, death or personal injury caused by Chi-X's negligence; and/or
- 13.1.2. any liability to the extent the same may not be excluded or limited as a matter of law; and/or
- 13.1.3. Clause 15.2.

13.2. Subject to 13.1, Chi-X shall not be liable to the Participant, under or in connection with the terms of the Agreement for any and all of the following, howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the Parties to the Agreement and whether arising out of breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise:

- 13.2.1. loss of income;
- 13.2.2. loss of actual or anticipated profits;
- 13.2.3. loss of business;
- 13.2.4. loss of contracts;
- 13.2.5. loss of goodwill or reputation;
- 13.2.6. loss of opportunity;
- 13.2.7. loss of anticipated savings;
- 13.2.8. loss of, damage to or corruption of data; or
- 13.2.9. indirect or consequential loss or damage of any kind.

13.3. Subject to 13.1 and 13.2, Chi-X's entire liability howsoever arising and whether arising out of breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise to the Participant and/or any other person in respect of any claims or losses of any nature, arising directly or indirectly,



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from the Agreement shall be limited in respect of all incidents or series of incidents occurring in any one calendar year, to the Fees and Rebate paid and /or payable in the calendar year in question.

- 13.4. The Participant hereby acknowledges and agrees that it shall bring any claim arising under or relating to the Agreement within six (6) months from the date of the claim arising, or, if later, within six (6) months from the date the Participant first became aware of the matters leading to the claim, and failure to do so shall result in any such claim automatically and irrevocably expiring.

### 14. Warranties

- 14.1. Chi-X represents and warrants that it has all rights, authority and licenses to provide the Services to the Participant.
- 14.2. The Participant warrants that it has full power and authority to enter into and perform this Agreement, and that its entry into and performance of this Agreement will not infringe the rights of any third party or cause it to be in breach of any obligations to a third party.
- 14.3. The Participant undertakes that it shall not, during the term of this Agreement, enter into any contract or accept any obligation inconsistent or incompatible with its obligations under this Agreement.
- 14.4. The Participant hereby acknowledges and agrees that, subject to Clause 14.1 the Services are provided "AS IS" and on an "AS AVAILABLE" basis. Chi-X does not guarantee the accuracy, timeliness, completeness, performance or fitness for a particular purpose of the Services. No responsibility is accepted by or on behalf of Chi-X for any errors, omissions, or inaccuracies in the Services. Chi-X accepts no liability for the results of any acts or omissions taken on the basis of the Services.
- 14.5. The Participant represents and warrants that: (i) it has, and will continue to have, the right and authority to execute trades in the manner contemplated by this Agreement; and (ii) its use of the System and the Services, any orders entered by the Participant on the System and any provision of access to the System by the Participant to an Authorised Entity, is in compliance with any applicable law, rule or and regulation including without limitation the Laws; and (iii) it has read and shall comply with its obligations as set out in the Rules.
- 14.6. Except as explicitly stated to the contrary in this Agreement the Participant hereby acknowledges and agrees that all warranties, conditions, representations and terms, whether express or implied by statute, common law or otherwise, with respect to the System and/or Services, including but not limited to the implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy are excluded from the terms of the Agreement to the extent that they may be excluded as a matter of law.

### 15. Indemnities

- 15.1. The Participant agrees to indemnify and hold harmless Chi-X and their successors and assigns ("Indemnified Parties") from and against any cost, expense, liability, claim, loss or damage, direct, consequential and/or incidental in nature (including reasonable legal fees) (collectively "Costs") based on any claim, demand, proceeding, suit and/or action (collectively and individually, a "Claim") to which any Indemnified Party may become subject which arises out of any breach by the Participant or any Authorised Entity of any of the terms of this Agreement, except to the extent that any such Claim arises as a direct result of a material breach of this Agreement by the Indemnified Parties. Chi-X grants sole control of the defence of the Claim to the Participant. The Participant shall not be required to indemnify in respect of a Claim that is settled without its prior written consent. The Participant shall not without Chi-X's prior written approval admit liability on Chi-X's part, or compromise or settle any claim requiring Chi-X to take or refrain from any action, such approval not to be unreasonably withheld or delayed. Chi-X shall give the Participant all reasonable assistance including but not limited to giving the Participant complete and accurate information and full assistance to enable the Participant to settle or defend the Claim.



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15.2. Chi-X agrees to indemnify and hold harmless the Participant from and against any action or claim that the Participant's use of the System in accordance with the terms and conditions of this Agreement is held finally by a court of law to infringe the Intellectual Property rights of a third party ("IPR Claim") and shall indemnify the Participant from and against any direct, reasonable, losses, damages, costs and expenses (including reasonable legal fees) awarded against the Participant as a direct result of any IPR Claim provided that: the Participant notifies Chi-X in writing of the IPR Claim immediately on becoming aware of it; the Participant grants sole control of the defence of the IPR Claim to Chi-X; the Participant gives Chi-X all reasonable assistance including but not limited to giving Chi-X complete and accurate information and full assistance to enable Chi-X to settle or defend the IPR Claim; the Participant shall mitigate its losses to the maximum effect practicable in the circumstances; and Chi-X may remove or replace the System at its sole option at any time.

### 16. Confidentiality

16.1. Each of the Parties undertakes to maintain and procure the maintenance of the confidentiality of Confidential Information at all times and to keep and procure the keeping of all Confidential Information secure and protected against theft, damage, loss or unauthorised access, and not at any time, whether during the term of this Agreement or at any time thereafter, without the prior written consent of the other Party directly or indirectly, to use or authorise or permit the use of or disclose, exploit, copy or modify any Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the performance of its rights and obligations hereunder.

16.2. Each of the Parties undertakes to disclose Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement, and to procure that such officers, employees, agents and contractors are made aware of and observe the confidentiality obligations in this Clause 16.

16.3. Each Party shall indemnify the other Party for any and all loss or damage incurred by the other Party as a result of any breach by the indemnifying Party or its officers, employees, agents or contractors, of any of its or their obligations under this Clause 16.

16.4. Each Party may disclose Confidential information to a professional advisor as reasonably required provided always that any such professional adviser to whom Confidential Information is disclosed is subject to obligations of confidentiality of at least as high a standard as these imposed on the receiving Party under this Clause 16.

16.5. Upon termination or expiry of this Agreement, each Party shall at the option of the disclosing party return, or upon request erase and or destroy, all confidential and other material provided to the other in connection with this Agreement within five (5) business days of such request and in each such case shall certify in writing that it has done the same.

16.6. Each Party may disclose Confidential Information of the other Party as may be required by law, regulation or order of a competent authority to be disclosed by the receiving Party, provided that, to the extent practicable and permissible in the circumstances, the disclosing Party is in each case given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

### 17. Amendments

17.1. Subject to Clause 17.2 and 17.3, Chi-X reserves the right, at its discretion, to make changes to any part of the Website or the terms of the Agreement at any time. Should the terms of the Agreement be amended, Chi-X will publish details of the amendments on the Website and by email.

17.2. If Chi-X makes a material amendment to the terms of the Agreement, Chi-X shall use all reasonable endeavours to provide at least thirty (30) days' written notice of the same and if the amendment is to the



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Participant's detriment, the Participant shall be entitled to terminate the Agreement effective from the date on which the amendment is to be implemented, by the provision of at least ten (10) days' written notice (or as much notice as reasonably possible in the circumstances if provided with less than ten (10) days notice by Chi-X);

17.3. If Chi-X makes a material technical change, Chi-X shall use reasonable endeavours to provide at least ninety (90) days' written notice.

### 18. Severability

If any term of this Agreement is found to be illegal, invalid, or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms be deemed omitted from the Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.

### 19. Assignment

19.1. The Participant may not transfer, novate or assign this Agreement or any of its rights or obligations hereunder to a third party without the prior written consent of Chi-X such consent not to be unreasonably withheld or delayed. The Participant may novate, transfer or assign all or any of its rights and/or obligations under this Agreement to an Affiliate and will provide Chi-X with at least thirty (30) days' written notice ("Notice of Assignment") of any such assignment. Chi-X shall have a right to terminate this Agreement by the provision of at least five (5) days' written notice following receipt of a Notice of Assignment.

19.2. Chi-X may novate, transfer or assign all or any of its rights and/or obligations under this Agreement and will provide notice to the Participant.

### 20. Dispute Resolution

The Parties agree that if a dispute arises between the Parties it will first be referred to Chi-X management and the Participant's management.

### 21. Material Change to Business; Bankruptcy or Insolvency

The Participant shall provide Chi-X with oral and written notice of any: (i) name change, (ii) Change of Control, or (iii) material change in business or financial condition that could affect the Participant's ability to settle a trade, within fifteen (15) calendar days of the occurrence of any such event. The Participant shall provide immediate written notice to Chi-X in the event the Participant becomes or is deemed insolvent, or has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business; or takes or suffers any similar or analogous procedure to any of the aforementioned events or is unable to pay its debts as they fall due.

### 22. Force Majeure

Neither Party shall be liable for any delay or failure to perform its obligations hereunder so long as that delay or failure is the result of an event beyond its reasonable control. Notwithstanding the foregoing, the Participant agrees and acknowledges that its settlement obligations can not be waived under this, or any other, provision in this Agreement and that the Participant's absolute and unconditional settlement obligations as defined herein shall remain in full force and effect.

### 23. Notices

With respect to notices concerning the administration of the System (including but not limited to notices given under Clause 5 to adjust the Fees) Chi-X may give notices to the Participant both by means of posting notices on its Website and by email. Except as otherwise expressly provided, any other notice which either Party is required or authorised by this Agreement to give or make to the other shall be given in writing by post or hand delivery addressed to the other party at their last known business address. Notices given by hand



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delivery shall be deemed to have been given on the date and at the time of delivery and notices sent by post shall be sent by first class post to the registered address and deemed received on the second business day after posting. In the case of Chi-X such notice must be specifically addressed to the Chief Legal Officer. It is the Participant's responsibility to inform Chi-X of its current contact details and to promptly inform Chi-X of any change to contact details provided to Chi-X.

### **24. Privacy Policy**

The Participant shall provide certain personal information to Chi-X as requested and acknowledges that this is necessary for the provision of the Services. Chi-X will treat any personal information collected in accordance with its Privacy Policy.

### **25. Entire Agreement**

This Agreement contains all the terms agreed between the Parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the Parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to this Agreement except as expressly stated in this Agreement. Neither Party shall have any remedy in respect of any untrue statement made by the other upon which that Party relied in entering into this Agreement (unless such untrue statement was made fraudulently or was as to a fundamental matter including as to a matter fundamental to the other Party's ability to perform its obligations under this Agreement) and that Party's only remedies shall be for breach of contract as provided in this Agreement.

### **26. Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

### **27. Survival**

The terms and conditions of Clauses 6, 7, 8, 9, 12, 13, 14, 15, 16, 18, 20, 30 and 31 shall survive any termination, cancellation, replacement, expiration, or modification of this Agreement.

### **28. Waiver**

Any waiver by the other Party in writing of any of the other Party's obligation hereunder, or any failure to insist upon strict compliance with any obligation shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure.

### **29. Precedence**

Where this Agreement and the Rules conflict, the Rules prevail.

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

Save in respect of the rights of the Indemnified Parties to enforce any of the provisions of this Agreement expressly or impliedly for their benefit, nothing in this Agreement is intended for the benefit of any third party, and the Parties do not intend that any term of this Agreement should be enforceable by a third party either under the Contracts (Rights of Third Parties) Act 1999 or otherwise. The Parties to this Agreement may by written agreement rescind or vary any term of this Agreement without the consent of any third party (which, for the avoidance of doubt, includes the Participant's Affiliates).

### **31. Governing Law**



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This Agreement shall be governed by and construed in accordance with the laws of England and each Party hereby submits to the exclusive jurisdiction of the English Courts.

**IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth below.**

<b>The Participant:</b> By (printed): _____ _____ Signature: _____ _____ Title: _____ _____ Date: _____ _____	<b>Chi-X Europe Limited:</b> By (printed): _____ _____ Signature: _____ _____ Title: _____ _____ Date: _____ _____
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