

# MTS S.P.A. MARKETS

## Terms and Conditions

JANUARY ~~APRIL~~ 1ST, 202~~14~~ EDITION

These Terms and Conditions apply to all Regulated Markets and MTFs managed by MTS SpA



# PART I

## Terms and Conditions

### 1. Definitions

Capitalised terms used in these Terms and Conditions are to be understood – unless otherwise indicated herein– as having the meanings specified in the definitions contained in the relevant Rules.

- **"Authorised Persons"**: shall mean the persons authorised to directly trade on the MTS Market within the Participant's organisational structure;
- **"Central Counterparty Service"** shall mean the guarantee service managed by one or more third party (i.e. "Central Counterparty(ies)");
- **"Market Data"**: shall mean the elementary and/or aggregate data and information ~~entered into the MTS Market by the Participant for the purpose of trading and/or~~ generated in the MTS Market, as well as all the data relating to the MTS Market and the financial instruments made available to the Participant in the framework of the provision of the Service. All such Market Data emanating directly or indirectly from the MTS Market belongs exclusively to MTS;
- **"Membership Portal"**: shall mean the online platform that MTS provides to Participants as made available from time to time and as described in these Terms and Conditions.
- **"Membership Documentation"**: shall mean the agreement between MTS and the Participant relating to the provision of Service(s), as selected by the Participant in its Application Form to participate in the MTS Market. The Membership Documentation is comprised by the Application Form, these General Terms and Conditions and the relevant Schedules, as well as by any documents included by reference, as applicable from time to time;
- **"MTS"**: shall mean MTS S.p.A, an Italian company with registered office in Via Tomacelli 146, Rome, Italy.
- **"MTS Market"**: shall mean, as the case may be the regulated markets and/or multilateral trading facilities organised and managed by MTS selected by the Participant in its Application Form;
- **"Participant"**: shall mean an entity admitted to trading on the MTS Market, having signed the Membership Documentation with MTS for the use of one or more Services;
- **"Participant Data"**: shall mean the elementary and/or aggregate data and information entered into the MTS Market by the Participant for the purpose of trading;
- **"Parties"**: shall mean the Participant and MTS;

- **"Rules"**: the Market Rules of the market/s that that has or have been selected by Participant in the Application Form, as applicable from time to time, and governing the performance and use of the requested Service(s); For MTS Italy Rules is meant to include also the relevant Provisions.;
- **"Schedules"**: shall mean the Rules, the Fee Schedule and the Privacy Form. Further, it shall also mean, where applicable, Settlement Schedules, the MTS GUI Licence Terms and Conditions, the Market Access Form and the Onboarding Form.
- **"Top BondVision Dealer"**: shall mean the top ten BondVision Dealers based on total cash volume (10-Year Euro-Equivalent Duration weighted) that have signed a side letter giving them the rights indicated in paragraph 9.7 below. -MTS will make the selection annually in January based on the previous 12 months traded volumes.
- **"Service(s)"**: shall mean the provision by MTS of access to the System for the purpose of trading financial instruments on the MTS Market. The scope of such access will be in accordance with the provisions of the Membership Documentation and any other service described in the Membership Documentation, including, the licensing of software as identified in the Schedule MTS GUI Licence Terms and Conditions and, where applicable, the automated transmission by MTS of a trade and/or settlement instructions and/or a copy of a trade confirmation to a post-trade processing firm in order to facilitate the settlement and reconciliation process or to a Central Counterparty Service as the case might be;
- **"Settlement Schedules"**: shall mean, insofar as applicable, the Clearing and Settlement Form, the power of attorney, the Settlement Declaration, and the CCP User Application Form;
- **"Settlement Service"** shall mean, where applicable, the settlement, clearing and reconciliation of financial instruments and trades;
- **"System"** shall mean the electronic trading system through which the financial instruments are negotiated in the MTS Market;
- **"Technical Specifications"** means a series of technical documents, including the Conformance Test Guide, the so called Technical Bulletin, or any one thereof, published on a web based portal (known as MTS Technology Portal), whose access codes are made available to the Participant, as amended and integrated from time to time by MTS, describing the functionalities and operations of the relevant Market;
- **"Terms and Conditions"**: shall mean these MTS General Terms and Conditions;
- **"Technology Portal"**: means a web-based password protected platform available to Participants
- **"Working Day"**: a day when the TARGET2 system is open for business.

## 2. Object and Execution of the Membership Documentation

- 2.1 The object of the Membership Documentation is to set out the terms under which MTS shall supply Participants with the Service(s) on a reasonable efforts basis in return for the payment of consideration. This agreement constitutes an obligation of means and not of results.
- 2.2 To the extent of any conflict or inconsistency between any terms contained in the Membership Documentation (including any amendments thereof) the prevailing terms shall be those contained in the following documents in prevailing order:
- a) The Application Form (including the Data Protection Terms);
  - b) The Rules;
  - c) These Terms and Conditions; and
  - d) The other Schedules different from the Rules.
- 2.3 The Terms and Conditions, including the Schedules, as amended and applicable from time to time, shall be available on the MTS website (<http://www.mtsmarkets.com/mtsresources>).
- 2.4 The Membership Documentation shall be binding from the time the Participant receives a communication via email from MTS indicating the acceptance of the Participant's Application Form to participate in MTS Markets. This communication will include confirmation of the day from which the Service will be supplied to the Participant.

## 3. Obligations and performance of MTS

The Services provided by MTS, on a reasonable efforts basis, to the Participant shall consist of:

- a) enabling the Participant to trade the financial instruments made available for trading on the relevant MTS Market;
- b) the provision, pursuant to these Terms and Conditions and the Rules, of Market Data and information relating to the MTS Market, including information relating to trades for the sole purpose of trading on the relevant MTS Market;
- c) if the Service so requires, the automated transmission by MTS, on behalf of the relevant Participants, of settlement instructions and/or trade confirmation to either a) the relevant post-trade processing firms, in order to facilitate the clearing, settlement and reconciliation process of the Trade between the two Participants or b) a relevant clearing house. Failure by MTS to provide such trade confirmation to the trade repository shall not exonerate a Participant from the obligation to settle the trade or any other obligations relating to the

trade. MTS shall not, under any circumstances, be held liable for failure to generate and provide, or for incorrectly generating and/or providing trade confirmations to either the trade repository or a Participant to a trade.

- d) Additionally, MTS may also provide preventive and corrective maintenance services, software upgrades and support services to the Participant in relation to System equipment located in on the Participant's premises. This support, if provided, will be carried out during business hours through telephone assistance (helpdesk), remote diagnosis and, if necessary, technical assistance at the Participant's premises. These additional support services might be provided for an additional fee as agreed between MTS and the relevant Participant.
- 3.1 The Service shall be provided by MTS on a reasonable efforts basis only.
  - 3.2 MTS shall perform the Services with due care and skill and shall, where reasonable, make interventions with regard to its systems for the purpose of ensuring the continuity of the Service.
  - 3.3 If all or part of the performance inherent in the Service is interrupted, suspended, delayed or somehow the subject of anomalies, then MTS, where possible and after informing the Participant, if deemed necessary by MTS, shall take reasonable commercial efforts to resolve the problem.
  - 3.4 The Participant acknowledges and accepts that in order to supply the Service MTS may sub-contract certain activities to third parties. However, at all times, the contractual relationship shall be exclusively between the Participant and MTS.
  - 3.5 For the purposes of the preceding paragraphs, MTS hereby declares that it:
    - a) is the owner or has valid title to, or otherwise has the right to use, the tangible and intangible assets used to supply the Service and that such assets are free from claims of third parties which would prevent the performance of the Services in accordance with the Membership Documentation;
    - b) has all the technology, expertise, adequately qualified staff and IT facilities needed and suitable for the supply of the Service;
    - c) is the owner of the Service and hold all the related rights; and
    - d) has all the authorisations needed to supply the Service.
  - 3.6 MTS may limit, suspend or cease the supply of the Service to the Participant in the events provided for in these Terms and Conditions and in the Schedules.
  - 3.7 For the avoidance of doubt, MTS is not a party to any transaction and is in no instance responsible for the clearance or settlement of any transaction on the System.
  - 3.8 MTS shall comply with all laws and regulations applicable to a regulated market and/or a multilateral trading facility, as the case might be, in Italy when providing the Service and shall ensure that the Services and the System themselves comply

with such laws and regulations and shall maintain an applicable licence from the relevant Italian authority.

## 4. Obligations of the Participant

### 4.1 The Participant is required to:

- a) comply with all the provisions of the Membership Documentation from time to time in force including the Schedules, as amended and updated from time to time pursuant to Article 9 below, and to keep continuously abreast of what is published on the website of MTS pursuant to paragraph 8.2 and the contents of the Technical Specifications. The Participant acknowledges that MTS may implement any amendment and supplement relating to the Services which, at MTS exclusive discretion, are deemed necessary or useful for a better operation and management of the System or however deriving from instructions given by the competent authorities. The Participants acknowledge that failure to comply with the Technical Specifications may result in failure to receive the Service or part of it. The Participant shall be notified of any amendment and/or supplement with reasonable advance notice with respect to the coming into force of the same;
- b) maintain all accesses and connections required for a correct use of the System and to execute all the necessary agreements (such as if applicable, communication and connectivity agreement, software conformance agreements, etc.) for the use of the Service equipping itself, at its expense, with the necessary hardware, network infrastructure and software for availing itself of the Service, and to make all the necessary electronic connections, ensuring the full functionality thereof during the time when the Service is provided;
- c) use the basic and applications software of the Service, licensed and/or sublicensed to the Participant by MTS, the related documentation and, more in general, the Service itself and the Market Data exclusively for the purposes of the Service. The Participant acknowledges that notwithstanding MTS' reasonable endeavours, MTS does not warrant or represent the accuracy, timeliness, correctness, completeness, performance or fitness for a particular purpose of the Market Data nor that the supply of the Market Data will be free of interruption;
- d) indicate in the Application to Participate in MTS Markets the name of the contract representative of the Participant as a person in a sufficiently senior position, authorised to receive from and submit to MTS, in the name and on behalf of the Participant, any declaration or instruction provided for in the Terms and Conditions and the Schedules. The replacement of such person shall take effect, unless agreed otherwise by the Parties, from the fifth Working Day subsequent to that on which the written communication thereof reaches MTS, by fax (to the number +390642120200) or email (**[monitoring@mtsmarkets.com](mailto:monitoring@mtsmarkets.com)**), or such later date as specified by the Participant in the communication;

- e) provide the data and information requested under the applicable provisions of law, the Terms and Conditions, including the Schedules, in a truthful, complete and accurate way and in the format established by MTS;
- f) perform the contracts ("Contracts") entered into by the Participant on MTS Market and in a timely manner, settle the Contract carrying out all the obligations relating to the Contract;
- g) notify MTS promptly, or in any case within the time limits established in the Schedules, of any subsequent failure to satisfy the requirements for use of the Service and of any change to its organisational structure, including changes in the names of the Authorised Persons notified to MTS within the Market Access Form and/or the Onboarding Form, if applicable; further the Market Participant shall at all times keep up-to-date the list of contacts provided to MTS within the Contact Details Form attached to the Application to Participate in MTS Markets.
- h) comply promptly with any reasonable request made by MTS, in the performance of its duties as the manager of the Service, relating to any data, information or documents to be transmitted to MTS;
- i) inform MTS promptly by e-mail within the shortest time possible of any problem relating to the Service of which the Participant becomes aware. The e-mail address to be used pursuant to this clause is: **clientservices@mtsmarkets.com**;
- j) carry out, under its exclusive responsibility and at its exclusive expense, all the necessary activities for the connection of the Participant's equipment to the System;
- k) use the Market Data exclusively for and strictly in connection with trading in the MTS Market and as outlined in Clause 11. The Participant guarantees that they will not copy, record, reproduce, transfer to third parties, market, or economically exploit the Market Data, in whole or in part, in any other manner. All other usage of the Markets Data is subject to the execution of specific licence agreement with MTS or any of its affiliates. To such purpose, the Participant shall adopt suitable technical-organisational and contractual solutions for the control and monitoring of the use of the Market Data.
- l) arrange for and maintain operationally adequate automatic control systems of prices, quantities and frequency of the orders entered into the MTS Market, as a minimum in accordance with the laws, regulations and guidelines applicable to the Participant from time to time;
- m) adopt all the necessary measures for the purpose of preventing unauthorised uses of the System and ensure that the orders transmitted were not generated by unauthorised sources or activities;
- n) allow MTS, or any third parties designated by MTS, at all reasonable times on reasonable notice to have access to the Participant's premises, for the purpose of enabling (a) the performance of controls aimed at checking the status of provisions of the Service(s) and/or use of the Market Data; (b) the performance of testing operations in compliance with the guidelines provided by MTS, as well as communicate, if requested by MTS following alleged

irregularities in the use of the Market Data, a list of the fixed or portable terminals, able to receive or view the Market Data used by the Participant, and (c) the verification of compliance with the Rules and the Membership Documentation. MTS undertakes that, in carrying out the activities set out in this paragraph 4(n), MTS or any third party designated by MTS shall: (i) not access the Participant's premises more than once in any calendar year (except in the event that MTS shall be entitled to undertake additional audits where and to the extent that MTS considers it reasonably necessary to undertake such audits in order to ensure compliance with applicable laws or requirements of any regulatory authority), (ii) comply with such reasonable security policies and procedures as the Participant specifies and shall not cause any damage to or loss of the Participant's premises, systems, data or any property and shall use reasonable endeavours not to cause any interruption to the Participant's business, (iii) only access such areas of the Participant's premises and such of its systems and records as are necessary for the purposes described in this paragraph 4(n) and (iv) subject to applicable laws and regulations, treat all information obtained in connection with the action undertaken in accordance with this paragraph as confidential and use it solely for the reasonable purposes for which the audit was permitted to be carried out pursuant to this paragraph 4(n), provided that nothing shall prevent such employees and/or collaborators from providing such information to MTS where necessary to achieve the purpose envisaged by this paragraph 4(n).

- o) ensure that any computer systems directly connected to the System and operated by the Participant or provided by third parties are in compliance with the Rules and have passed the compatibility test with the System and with the subsequent versions of the same issued by MTS;
- p) the Participant hereby accepts and acknowledges that it is solely responsible for its own assessment of the fitness, capacity, creditworthiness and conduct of any other Participants that may be trading with it on the System. If applicable for the relevant MTS Market, the Participant shall also be responsible for ensuring that the relevant ISDA documentation is in place with any counterparty to a Contract. Accordingly, settlement, clearing, credit and market risks relating to any Contract shall be borne entirely by the Participants.

## **5. Suspensions, Interruptions and Delays in the Execution of the Services**

- 5.1 The Participant hereby acknowledges and accepts that MTS is bound to comply with all laws, regulations, guidelines and requests issued by the relevant authorities having jurisdiction over the organisation and operation of the MTS Market, the Clearing and Settlement Systems and Central Counterparty Services. This may involve the suspension or interruption of the Service and/or of the MTS Market or its performance according to particular procedures, but will not affect the Participant's obligations with respect to the payment of the fees.



- 5.2 MTS Services shall also be suspended as a result of a cause provided for under the contract between the Participant and its settlement agent or as a result of a suspension event provided for under the Rules, in accordance with the Rules. Additionally, MTS Services shall also be suspended anytime MTS decides to take such an action in order to fulfil its obligation to maintain orderly markets;
- 5.3 In the event of malfunctions, breakdowns or other causes of delay in the provision of or failure to provide all or part of the Services, MTS shall:
- whenever reasonably possible notify the Participant by e-mail of the malfunction as soon as practicable after becoming aware of the same;
  - take reasonable steps to resume the Service as soon as possible; and
  - supply technical information regarding the manner in which the Services will be resumed as soon as is reasonably practicable.

## 6. Security of Access to the System

- 6.1 The Participant undertakes to protect its encrypted keys and relevant storage devices, its identification codes ("Username") and access codes ("passwords") of Authorised Persons and to notify MTS immediately of the existence of possible risk situations deriving from any impossibility of performing the obligations listed in the paragraphs below. MTS has the right, but not the obligation, to cancel public and/or private keys or to take any other measure that it deems necessary for the purpose of ensuring an appropriate control of the access to the System, as well as the security, integrity and secrecy of the same. MTS shall not be liable, from any standpoint, for the cancellation of the keys or passwords caused by any unauthorised access to the System that is a consequence of the behaviour or omission of the Participant.
- 6.2 The Participant undertakes to notify MTS in writing within the shortest time possible of the loss, if any, of private keys, their storage devices, the PINs or the suspected wrongful use, loss of secrecy and integrity defect of the same. MTS shall cancel the relevant PIN and passwords as soon as reasonably possible after receiving the communication.
- 6.3 The Participant undertakes to access the System exclusively through Authorised Persons and to notify MTS of their data. The Participant is responsible for any order, contract or other use of the System by its personnel or representatives, regardless of whether these were authorised or not by it to use the System. Equally, the Participant is responsible for the observance and compliance by its personnel and representatives with the applicable laws and Rules, the Membership Documentation and any other document connected with the use of the System and the software that is necessary for using the Service and, therefore, it acknowledges that it is its responsibility to inform its personnel of the obligations deriving from the Membership Documentation. Consequently, the Participant acknowledges and agrees that the violation by its personnel and its

representatives of any provision of the Membership Documentation shall represent a violation by the Participant itself.

- 6.4 The Participant undertakes to implement such security measures as to prevent any unauthorised or wrongful use of the System. This will comprise of, at least, the adoption of any reasonable measure and the maintenance of any reasonable procedure for the purpose of ensuring that the System is accessible only by Authorised Persons and that the transactions carried out on the System are not altered, lost or destroyed.
- 6.5 The Participant undertakes to interrupt immediately its use of the System on MTS's notice or if it suspects or is aware of a technical dysfunction or a violation of the System's security, or upon the occurrence of any of the events listed in paragraphs 6.1 and 6.2 above. The Participant undertakes to notify MTS in writing immediately of the existence of such circumstances.
- 6.6 On MTS's request, the Participant shall promptly interrupt any individual access to the System in the event that MTS reasonably considers that such person is violating or using the System in a wrongful manner. The Participant acknowledges and agrees that MTS shall have the right, at its discretion, to adopt any measures that are considered necessary for the purpose of preventing the access to the System by such person and the Participant.

## 7. Confidentiality

- 7.1 Each of the Parties, acknowledging the confidential nature of the information and documentation pertaining generally to the Services, shall guarantee the other Party, for the duration of this contractual relationship and for three years after the termination or withdrawal due to any reason whatsoever of this Membership Documentation, that the information and documentation acquired in relation to the performance of the Membership Documentation will be (i) treated confidentially, (ii) kept 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 relevant Party, directly or indirectly, to use or authorise or permit the use of or disclose, exploit, copy or modify any confidential information of such Party, or authorise or permit any third party to do the same, other than for the sole purpose of the performance and exercise of its rights and obligations hereunder and under the Membership Documentation subject to applicable laws and regulations and save as required for the performance of the Services.
- 7.2 Each Party may disclose confidential information of other Party:
  - a) to the persons described in Clause 4(n) for the purposes specified in that paragraph;
  - b) as may be required by law, regulation or order of a governmental authority to be disclosed by the receiving Party provided that, to the extent practicable in the circumstances, the confidential information is disclosed under terms of

confidentiality of at least as high a standard as those imposed on the receiving Party under this paragraph 7 and the disclosing Party is, to the extent practicable in the circumstances and subject to the receiving Party's reasonable view of complying with applicable laws, regulations, and guidelines, in each case given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same; or

- c) as reasonably required to be disclosed to a professional adviser of the receiving Party provided that any such professional adviser to whom Confidential Information is disclosed undertakes in writing to be bound by obligations of confidentiality of at least as high a standard as those imposed on the receiving Party under this paragraph 7.
- 7.3 The obligations referred to in previous paragraphs shall not prevent the communication or disclosure by MTS in anonymous form of Market Data.
- 7.4 Upon the Participant ceasing to be a member of the relevant MTS Market, the Participant, upon request by MTS, shall return to MTS or destroy, all the confidential information, to the extent the same are or have not become part of the public domain in the meantime and/or are not required to be retained for regulatory purposes authorities.
- 7.5 The obligations of confidentiality in this Clause 7 shall not extend to any information or matter which the receiving Party can demonstrate:
- a) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality contained in this Agreement;
  - b) was in the possession of the receiving Party, without any obligation of confidentiality, prior to the date of the disclosure of the information or matter to the receiving Party by the disclosing Party; or
  - c) was independently disclosed to it by a third party entitled to disclose the same.
- 7.6 Each Party shall immediately upon becoming aware of the same give notice to the Party to whom the confidential information belongs of any unauthorised disclosure, misuse, theft or other loss of such confidential information, whether inadvertent or otherwise.
- 7.7 The Participant agrees that MTS may share confidential information with any of its employees, directors, advisors, agents and group undertakings. MTS shall ensure the compliance of such employees, directors, advisors, agents and group undertakings with Clause 7 of this Agreement, and shall remain liable for any breach of Clause 7 by any of them.

## 8. Communications

- 8.1 MTS shall send to the Participant communications of a general nature and individual communications in the ways specified in the following paragraphs.

- 8.2 Communications of a general or operational nature concerning the operation of the relevant MTS Market or the ordinary functioning of the System, unless specified otherwise in the Schedules, shall be sent via MTS Client Service market communication emails to the contacts indicated in the Contact Details Form attached to the Application Form or on the MTS Membership Portal and/or by publishing them on MTS website ([www.mtsmarkets.com](http://www.mtsmarkets.com)). These communications shall be considered received on the day of sending of the email or of posting on the website.
- 8.3 Without prejudice to specific procedures laid down in the Schedules for particular communications, individual communications shall be made by MTS or the Participant in writing and sent by registered letter with return receipt, fax, courier service or any other means permitting documentation evidencing receipt, including email. Individual communications shall be sent by each of the Parties to the other Party to the addresses expressly specified by the Participant in the relevant Application Form and/or on the dedicated area of the MTS Membership Portal. These communications shall be considered delivered three Working Days after dispatch.

## 9. Amendments to the Terms and Conditions and relevant Schedules

- 9.1 [Subject to paragraph 9.7 below and ~~Ww~~](#)without prejudice to the provisions of paragraph 13.3 below, the Participant acknowledges and accepts that MTS may modify or supplement any provision of the Terms and Conditions, including the Schedules, and Rules in particular, at any time at its sole discretion.
- 9.2 MTS shall inform the Participant of such amendments by sending a notice via email at the address indicated in the Application Form (Administration or Finance or Legal / Compliance contacts), and/or on the MTS Membership Portal or, by posting the text thereof on its website pursuant to paragraph 8.2 above, in all cases at least 10 (ten) Working Days before the coming in to force of the amendments. In case of posting the new version on the website or on the MTS Membership Portal MTS, via its client services email notification service, will also send an email to the Participant on the same day as the posting on the website or on the MTS Membership Portal informing the Participants of such changes. The email will be sent to any of the contacts indicated in the Contact Details Form attached to the Application Form. In such communication MTS shall specify the time within which the Participant may exercise the right of withdrawal referred to in paragraph 13.3 below.
- 9.3 As a matter of urgency arising as a consequence of measures adopted by the competent authorities or for duly explained technical or operational reasons that shall be given, the time referred to in paragraph 9.2 above may be reduced by MTS to a minimum of 5 (five) Working Days.
- 9.4 9.4 Changes to the Fee Schedule, except for those in the Participant's favour, shall be communicated in the manner specified in paragraph 9.2 above with

advance notice of not less than 30 (thirty) calendar days. MTS shall determine and communicate the effective date of changes to the Fee Schedule in the Client's favour.

- 9.5 In the cases referred to in the preceding paragraphs the Participant may exercise the right of withdrawal from the Membership Documentation within the time and in the manner and with the effects specified in Article 13, paragraphs 3, 4 and 5.
- 9.6 Additions to the Terms and Conditions or to the Schedules concerning the introduction and offer of new non-mandatory services shall not constitute amendments pursuant to and for the purposes of this article.
- 9.7 The Top BondVision Dealers, in accordance with the procedures and subject to the conditions included in a side letter, signed between MTS and each Top BondVision Dealer, shall have the opportunity to express their concerns about changes to the BondVision Dealer and Quote Provider Fee Schedule. For the avoidance of doubt, considering the BondVision Dealer and Quote Provider Fee Schedule applies to all BondVision Dealers and Quote Providers, in case concerns were to be expressed by Top BondVision Dealers, the proposed changes will not be introduced to any BondVision Dealer and Quote Provider.

## 10. Liability

- 10.1 MTS shall be liable for direct losses deriving from this Membership Documentation, only if the losses are the immediate and direct consequence of MTS wilful misconduct or gross negligence (defined under Italian law as "*dolo e colpa grave*").
- 10.2 The Participant must send MTS a report within 10 (ten) calendar days, under penalty of foreclosure, from the day on which it became aware, or should have become aware using due diligence of the occurrence of a loss-producing event it deems should be reimbursed by MTS. Participant's rights shall lapse in case of failure to meet such time limit. The report shall contain a precise indication of the time at which the loss-producing event occurred, the circumstances under which it occurred and an assessment of the loss produced. The related supporting documentation, including in relation to the size of the loss incurred and consequent claim, must be received by MTS within 20 (twenty) calendar days of the expiration of the deadline referred to above.
- 10.3 Without prejudice to any liability that MTS may have vis-à-vis the Participant, the Participant hereby indemnifies and holds MTS harmless, in the event of claims for damages deriving from actions by third parties, including other Participants, from any claim for compensation of damages made in relation to deeds or actions relating to the performance of the Membership Documentation and hereby authorises MTS as of now to file a third-party claim against it pursuant to Article 106 of the Italian Code of Civil Procedure.
- 10.4 The Parties agree that no liability shall exist for non-performance of obligations deriving from the Membership Documentation if such non-performance is due to

events beyond the control of the non-performing Party, including, but not limited to those caused by:

- a) wars, rebellions, terrorist attacks, earthquakes, floods, fires or other causes of force majeure;
- b) national or local strikes (including at company level);
- c) electrical outages or interruptions and/or malfunctioning of electronic data carrier services due to faults in data transmission lines provided by persons other than MTS or provided by third parties referred to in paragraph 3.4;
- d) impediments or obstacles caused by legislative or administrative measures or judicial acts.

- 10.5 MTS is required to give effect to all the instructions issued by the authorities and/or by other persons they have authorised. This may lead to temporary suspensions and delays in the performance of the obligations of MTS or in their performance in special ways; the Participant shall nonetheless be required to perform the obligations deriving from the Membership Documentation and pay the sums due to MTS.

## 11. Intellectual property rights

- 11.1 The Service and relevant Market Data, as well as all that is licensed or sub-licensed by MTS, shall be used by the Participant respecting all the intellectual property rights of MTS or third parties, including without limitation as expressly set out in these Terms and Conditions and/or on MTS website.
- 11.2 The Participant agrees that the copyright, database rights or other intellectual property rights of whatever nature contained or subsisting in the Market Data shall remain the property of MTS.
- 11.3 For the purpose of these Terms and Conditions intellectual property rights shall mean to include all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in designs, rights in computer software, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. MTS retains all rights and title to the Market Data and Services (including the right to create derived data).
- 11.4 MTS grants to the Participant a limited, non-transferrable, royalty free, non-sublicensable, revocable licence to use the Market Data for the purpose of trading on the Market and as far as necessary for the purposes of:
- a) clearing and settlement;
  - b) trade reporting;

- c) to comply with applicable laws, regulations, and guidelines; and
  - d) for reasonable business record keeping purposes.
- 11.5 The Participant owns all right and title to the Participant Data, including all intellectual property rights of whatever nature contained or subsisting in the Participant Data provided that the Participant grants to MTS a perpetual, irrevocable, royalty-free licence to use such Participant Data:
  - a) to the extent required to operate the Market and provide any related Services to the Participant; and
  - b) in an anonymised form only, for any reasonable purpose whatsoever. MTS hereby acknowledges and agrees that it shall keep the details of the Participant anonymous when distributing Market Data and that MTS shall only be permitted to use such Participant Data in a manner and format where it is not possible to identify the Participant.
- 11.6 The Participant agrees that (i) it may be identified by name as a "MTS Participant" in press releases regarding MTS, (ii) the Participant's name and logo may be used for the purposes of identifying the Participant as a MTS Participant on the MTS website ([www.mtsmarkets.com](http://www.mtsmarkets.com)) and in MTS marketing brochures and presentational materials subject to the Participant's approval of the use of its name and logo. MTS shall not change the manner in which it uses the Participant's name and/or logo without the prior written approval of the Participant, such approval not to be unreasonably withheld or delayed. Except in the circumstances contemplated above, MTS shall not, without the prior written consent of the Participant in each instance, (i) use in advertising, publicity or otherwise the name of the Participant nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by the Participant or any of its affiliates, or (ii) represent, directly or indirectly, that any product or any service provided by MTS in connection with MTS has been approved or endorsed by the Participant or any of its affiliates.

## 12. Fees

- 12.1 For the supply of the Service the Participant shall pay MTS the fees set out in the Fee Schedule ~~List~~ attached to these Terms and Conditions in the amounts, within the time and in the manner specified therein.
- 12.2 Without prejudice to Article 14 below, and unless stated otherwise in the Fee Schedule, all fees are payable by the Participant within 30 days of the date of MTS' invoice. MTS may add default interest automatically on the outstanding amount without the need for a written notification; such late payment interest is to be calculated at the highest three-month Euribor recorded in the period the payment is overdue plus a spread equal to two percentage points. The late payment interest cannot be in any case lower than zero.
- 12.3 Without prejudice to the right to file a separate action for money, the Participant may not raise any objections, even in the event of interruptions or suspensions in



the supply of the Service, aimed at avoiding or delaying payment of the fees due. Any invoice queries including, without limitation, any request by the Participant for repayment of overpaid amounts must be made within three months of the end of the month to which the relevant invoice relates. The Participant shall not be entitled to query an invoice and/or claim repayment of any overpaid amounts after this period.

- 12.4 The Participant shall remain subject to the obligation to pay any amount applied in accordance with the Rules or these Terms and Conditions. The payment of penalties shall not preclude the possibility for MTS to demand strict performance and/or claim compensation of damages for any additional loss actually suffered.

## 13. Term and Termination

- 13.1 This Membership Documentation shall be for an indefinite term until terminated in accordance with this clause 13 or as provided in the Membership Documentation.
- 13.2 Either Party shall have the right to terminate the Membership Documentation at any time by sending the other party a written notice, pursuant to paragraph 8.3, indicating the effective date of termination; the notice must arrive at least 90 (ninety) calendar days before such date. Termination shall not exonerate the Participant, from performing the relevant obligations undertaken under the Membership Documentation or even indirectly deriving from the use of the Service.
- 13.3 By way of derogation from paragraph 13.2 above, in case of amendments referred to in Article 9, the Participant may terminate the Membership Documentation in the manner specified in paragraph 13.2 by giving MTS the relevant notice within the time established by MTS in the communication containing the text of the amendments referred to in paragraph 9.2 above. In case of amendments made pursuant to paragraph 9.3 above, the advance notice of termination may be communicated up to 1.00 p.m. on the trading day for MTS preceding the effective date of the amendment.
- 13.4 In all the cases of termination referred to in paragraph 13.3 – provided that the termination becomes effective before the application of the amendments it is based on – the contractual conditions previously in force shall continue to apply to the Participant.
- 13.5 If the termination notice is received after the expiration of the time limits specified in the preceding paragraphs, then the termination shall not take effect unless MTS waives the time limit established in its favour.
- 13.6 In the event that the Participant terminates the Participation Agreement in accordance with paragraph 13.3 above and the amendment which is the cause of such termination is a material amendment, MTS will refund to Participant on a pro-rata basis the proportion of the annual membership fees paid by the Participant for the period from the effective date of termination onwards. For the purposes of this agreement a material amendment shall include but not be limited



to: any material reduction in MTS' liabilities or responsibilities under the agreement or any material changes to the Fee Schedule. The parties agree that any dispute as to whether an amendment is material shall be resolved in accordance with article 16.

- 13.7 Notwithstanding the provisions of the Rules, MTS may exercise the right of termination, giving adequate advance notice, within the time limits and in the manner referred to in paragraph 8.2, in cases of transformation of the Service, including as a consequence of measures adopted by the competent authorities or in case of termination of operation of the Service. In cases of termination pursuant to this paragraph, MTS shall not be required to pay any amount to Participants. MTS can also exercise its right of termination at any time, even without notice, when required in order to maintain fair and orderly markets and in case of material breach by Participants of the Membership Documentation.
- 13.8 MTS may terminate the Membership Documentation Agreement forthwith by giving the Participant written notice in the event of the Participant failure to pay the fees within the prescribed time limits for more than 90 (ninety) calendar days

## 14. Express Termination Clause

- 14.1 The Membership Documentation shall be understood to be terminated de jure, as provided for in Article 1456 of the Italian Civil Code, in the following events:
- a) failure by the Participant to pay the fees within the prescribed time limits for more than 90 (ninety) calendar days;
  - b) exclusion from the Service provided for in the Rules or these Terms and Conditions;
  - c) the Services are substantially transformed, or the relevant MTS Market is closed, as a consequence of legislative or administrative measures adopted by the competent Authorities or a decision of MTS the performance of the Service ceases. In case of a decision of MTS, adequate notice shall be provided to Participant, if feasible.
  - d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Participant.
- 14.2 Either party may terminate the Membership Documentation forthwith by giving the other party written notice if that other party:
- a) makes a UK voluntary arrangement with its creditors (or a similar procedure under a foreign law) or becomes subject to an administration order;
  - b) has a receiver appointed over any of its property or assets, or an encumbrancer takes possession;
  - c) goes into liquidation or is voluntarily wound up;
  - d) it is declared bankrupt or insolvent;

- e) takes or is subject to any action similar to that specified in this Clause 14.2 from (a) to (c) in any jurisdiction; or
- f) the other party repeatedly breaches any of the terms of the Membership Documentation in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Membership Documentation.

## 15. General Provisions

- 15.1 The Membership Documentation, including the Terms and Conditions and the Schedules, shall constitute the totality of the terms and conditions governing the Service and shall cancel and replace any earlier agreement and any oral or written communication made prior to the execution of the Membership Documentation.
- 15.2 Save as provided in this clause 15.2, the Membership Documentation and/or the rights and obligations deriving therefrom may not be assigned or transferred by the Parties to third parties. Nevertheless, MTS may assign or transfer the Membership Documentation and/or all the rights and obligations deriving therefrom in the event of the merger of MTS with another company, the transfer of the business segment comprising the Service, or for any other reason to any other company controlled directly or indirectly by the same company controlling directly or indirectly MTS, even if located in a different jurisdiction. Should this be the case, MTS shall give the Participant adequate advance notice.
- 15.3 In the event of the merger or acquisition of the Participant with another company or the transfer of the business segment comprising the Service, the Participant undertakes to give MTS at least 30 (thirty) calendar days advance notice of the effective date of the merger or transfer. The Participant shall remain liable – and likewise the company merging through incorporation, the company resulting from the merger or the transferee – for any delay in giving such advance notice to MTS, including the case in which such delay leads to MTS having to suspend the Participant, the company merging through incorporation, the company resulting from the merger or the transferee, as the case may be, for the time needed for the performance of the tasks for which it is competent. The new company may have to submit a new application and undergo a new membership process if so decided by MTS.
- 15.4 The omitted or late exercise of one or more of the rights pertaining to a Party under the Membership Documentation may not be understood to mean that the Party in question has waived the exercise of such rights.
- 15.5 The version in the English language available on the MTS website of the relevant Application Form and the Terms and Conditions, including the Schedules, are translations of the version in the Italian language. It is understood that in the event of a discrepancy between the two versions, the version in Italian shall prevail.

- 15.6 Clauses 4.1(k), 7, 11, 12, 15.5 and 16 shall survive the termination of this Agreement.

## 16. Settlement of Disputes and Arbitration Clause

- 16.1 Save as provided by Article 23 and following of the Rules, the Participant and MTS shall attempt to resolve any problems that arise between them based upon the Membership Documentation through formal notices and bilateral meetings to find possible solutions.
- 16.2 Disputes concerning fees and penalties referred to in Article 12 shall be settled by the Italian courts, with the Courts of Rome enjoying exclusive jurisdiction in this regard.
- 16.3 Save as provided in the relevant Rules and by paragraph 2 above, any dispute between MTS and the Participant that concerns or derives directly or indirectly from the Membership Documentation (including claims for damages) shall first be submitted to an Appeals Board ("Collegio dei Probiviri").
- 16.4 The Appeals Board referred to in paragraph 16.3 shall be made up of three members appointed by MTS Board of Directors, which shall also appoint one of the members to be the chairman. The seat of the Appeals Board shall be at MTS offices. All the members of the Appeals Board shall be chosen from among independent persons of proven expertise in matters concerning financial markets. The appointment shall be for three years and be renewed. Where one of the members vacates the position before the expiry of the term of his appointment, MTS Board of Directors shall appoint a substitute; such appointment shall be for a term equal to the remainder of the term of office of the other members of the Appeals Board.
- 16.5 The Appeals Board shall render a reasoned opinion in accordance with law within 30 (thirty) days of the date the dispute was referred to it subject to affording the Parties an opportunity to state their cases in the meantime. The chairman of the Appeals Board may, in agreement with the other members of the Appeals Board, entrust the examination of the question to a single member of the Appeals Board. The proceedings shall be conducted in the Italian language.
- 16.6 The opinion of the Appeals Board shall be notified promptly to the Parties in writing. It shall not be binding on the Parties and where one of the latter initiates arbitration pursuant to paragraph 16.7, it shall not be binding on the arbitrators appointed, who shall have the broadest prerogatives and powers to re-examine the entire dispute without any preclusion. The fees of the members of the Appeals Board shall be borne by the losing party.
- 16.7 Any dispute between MTS and the Participant concerning and/or consequent upon the Membership Documentation that have not been settled by the Parties accepting the opinions of the Appeals Board referred to in the preceding

paragraphs shall be submitted to a Board of Arbitration ("Collegio Arbitrale") made up of three members. The Party requesting arbitration shall send the other Party, in the manner provided for in the first paragraph of Article 810 of the Italian Code of Civil Procedure, a document containing the declaration of its intention to begin arbitration proceedings, with an indication of the disputed matter and the name of its arbitrator. Within 20 (twenty) days of such notification the other Party must designate the second arbitrator in the same manner; in the event of its failing to do so, the second paragraph of Article 810 of the Italian Code of Civil Procedure shall apply. Within 20 (twenty) days of the service on the Party requesting arbitration of the document containing the designation of the second arbitrator, the arbitrators so designated – each duly informed by the Party that designated him/her – shall proceed by mutual consent to appoint the third arbitrator, who shall act as chairman. In the event of delay and/or failure to agree within the time referred to above, either of the Parties may apply to the President of the Court of Rome to designate the second arbitrator and/or the third arbitrator. Arbitrators shall be substituted in the same way as they are appointed. The proceedings before the Arbitration Board must begin, under penalty of being considered null and void, within 30 (thirty) days of receipt of the notification referred to in paragraph 6.

- 16.8 The seat of the Arbitration Board shall be in Rome at the place established by its chairman. The Board of Arbitration may nonetheless hold its meetings in the place it establishes in the Italian Republic. It is ritual and it shall decide in accordance with Italian law. The arbitrators must render their award within 90 (ninety) days of the acceptance by the chairman of the Board of his/her appointment; this time may be extended for not more than 90 (ninety) days only where the Arbitration Board considers that expert evidence needs to be obtained. The award shall also determine and allocate the arbitration costs and the arbitrators' fees. The arbitration proceedings shall be conducted in the Italian language.
- 16.9 It is understood that the Parties may apply for the award to be filed and enforced in accordance with the applicable provisions of the Italian Code of Civil Procedure. The award may be appealed based on ground of incorrect application of law pursuant to Article 829, paragraph 3, of the Italian Code of Civil Procedure.
- 16.10 For matters not expressly provided for in this article, the rules laid down in Article 806 *et seq.* of the Italian Code of Civil Procedure shall apply.

## 17. Governing Law and Jurisdiction

- 17.1 Without prejudice to Article 16 above, both the Participant and MTS accept the jurisdiction of the Courts of Rome for any matter or act that must be submitted to the courts of law and agree on the Italian law as the law governing the Membership Documentation, including, but not limited to, any matter regarding the form, the interpretation and the requirements for the validity of the agreement, the obligations deriving there under (including those relating to the compensation of damages) and their performance.

## 18. Financial traceability

- 18.1 MTS assumes all obligations regarding the traceability of the financial transactions provided by Law 136/2010 (as subsequently amended and implemented).

## PART II

### MEMBERSHIP PORTAL

#### 19. Membership Portal

- 19.1 MTS will make the Membership Portal available to the Participant subject to these Terms and Conditions and the Participant agrees to use the Membership Portal in accordance with these Terms and Conditions.
- 19.2 On and from the date the Participant signs the Application Form, the Participant shall be provided with access to the Membership Portal and to the Portal Services available therein in so far as is necessary for the Participant's needs as determined solely by MTS. Upon first logging into the Membership Portal, the Participant shall either a) check that the information held about the Participant within the Membership Portal is complete and accurate, and contact MTS about any issues or make necessary changes through the Membership Portal as appropriate, or b) input into the appropriate areas of the Membership Portal all the information required. The information shall always be kept up-to-date by the Participant.
- 19.3 MTS reserves any and all rights in and to the Membership Portal and the Information available and stored therein. MTS hereby grants to the Participant for as long as it remains a Participant of the relevant MTS Market a limited, revocable, non-exclusive, non-transferable licence for the Participant only to provide its appointed representatives with access to the Membership Portal and to the relevant Information to the extent necessary to utilise the Membership Portal for the Participant's own internal business purposes to the extent these are relevant to the accessing and trading on the relevant MTS Market.
- 19.4 MTS shall use reasonable endeavours to provide the Membership Portal and the relevant services in accordance with the Membership Documentation
- 19.5 The Membership Portal enables the Participant:
  - a) to view Information made available by MTS;
  - b) to manage and amend Participant information concerning the Participant profile and instrument classes it trades on the Markets, always subject to MTS' confirmation,;
  - c) to make variations electronically to existing agreements via the Membership Portal rather than by way of hard copy agreement, always subject to MTS' confirmation;
  - d) to enter into new agreements with MTS electronically via the Membership Portal rather than by way of hard copy agreement, always subject to MTS confirmation; and

- e) to access and utilise any and all other services made available to the Participant by MTS via the Membership Portal from time to time as further described in the documentation available on the Membership Portal itself.

(Together the "Portal Services").

- 19.6 If an appointed representative ceases to be authorized by the Participant to have access to the Membership Portal for any reason, the Participant must promptly notify MTS of such change in authorisation. Upon proper notification MTS will cancel the relevant appointed representative "User ID" as soon as reasonably practicable.
- 19.7 The Participant is responsible for ensuring that its appointed representatives preserve the confidentiality of their User IDs at all times. The Participant shall, and shall procure that each appointed representative shall, keep its User ID safe and secure at all times and not enable, directly or indirectly, its User ID to be used by anyone else under any circumstances. If the Participant knows or has reasonable grounds to suspect that any person not authorised to access the Membership Portal has obtained a User ID or has had unauthorised access to the Membership Portal, the Participant must promptly notify MTS.

## 20. Participant obligations

20.1 The Participant acknowledges and agrees that:

- a) these Terms and Conditions apply to any and all access to and use of the Membership Portal by the Participant and its appointed representatives;
- b) each and every product or service ordered by the Participant as applicable, via the Membership Portal] may be subject to the terms of separate agreements to be proposed by MTS;
- c) it shall be responsible for and shall manage and control all of its accesses to and use of the Membership Portal including via its allocated appointed representatives and User IDs;
- d) it shall only provide access to the Membership Portal to its appointed representatives;
- e) it shall not disclose or distribute access to the Membership Portal directly or indirectly to any third party except as explicitly permitted in accordance with these Terms and Conditions;
- f) at all times it shall be responsible for checking the accuracy and completeness of the Information relating to the Participant on the Membership Portal;
- g) it shall not use the Membership Portal for any purpose other than for managing the Participant's own account and relevant information; and
- h) it shall not use the Membership Portal (or any information contained therein) for any illegal purpose or to bring MTS, its businesses or markets into disrepute or to make available, copy, reproduce, retransmit, disseminate,

sell, licence, distribute, publish, broadcast or otherwise circulate the Information to any person other than in accordance with these Terms and Conditions.

20.2 Additionally, the Participant acknowledges and agrees that:

- a) any transaction executed in the Membership Portal by an appointed representative of the Participant is sufficient evidence of Participant's agreement to be bound unequivocally by such a transaction and any applicable terms and conditions and shall constitute a legitimate transaction for the particular products and services in question;
- b) that subject where applicable to MTS confirmation, it agrees to be bound by the terms of each and every transaction executed on the Membership Portal and/or by any Information input in the Membership Portal by any duly appointed representative;
- c) not to dispute the validity of any transactions entered into by the Participant;
- d) MTS will be entitled to treat as binding and duly authorised any input added on the Membership Portal by an appointed representative for the particular offer or instruction; and
- e) if it so instructs MTS, MTS may enter Information and transactions into the Membership Service Portal on behalf of the Participant.

20.3 The Participant acknowledges and agrees that:

- a) on first accessing the Membership Portal, it will review the Information and advise MTS if any Information contains any inaccuracies within five days of such first access;
- b) after the end of such five-day period and subject to any amendments notified to MTS the Information shall be considered to be the true and accurate record of all records between the Participant and MTS unless either party can prove otherwise to the reasonable satisfaction of the other party; and
- c) it shall keep accurate and up-to-date backup records of all Information separately from the Membership Portal, considering that such records may be required for regulatory reasons and that the Participant shall be entirely responsible for the same.

## 21. MTS rights

21.1 In the event that MTS considers that the Participant's use of or access to the Membership Portal is causing or is likely to cause technical problems for MTS, jeopardy to the quality of the Membership Portal and/or Information or interference with the continued access to the Membership Portal and/or the Information for other customers then MTS may suspend access to the Membership Portal and/or suspend the Participant's access to the Membership Portal without notice.



- 21.2 MTS reserves the right with or without notice (but giving as much notice as reasonably practicable) to suspend or limit the Participant's, or any particular appointed representative, access to the Membership Portal or any part of the same or to decline to grant the appointed representative status to any particular person.
- 21.3 MTS reserves the right to suspend the provision of the Membership Portal immediately during the investigation of a suspected breach of these terms and conditions by the Participant and/or an appointed representative and/or a User ID associated with an appointed representative, provided that such suspension shall only be for the course of the investigation or suspension and a reasonable period thereafter. If a suspected breach is shown to have occurred, MTS may terminate this Membership Documentation Agreement immediately without further obligation to Participant in respect of the Membership Portal.



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