



MTS SWAPS MARKET

GENERAL TERMS & CONDITIONS (MAY 2014 EDITION)





Terms and Conditions

1. - DEFINITIONS

- 1.1 Capitalised terms used in these Terms and Conditions are to be understood – unless otherwise indicated – as having the meanings specified in the definitions contained in Rules.
- **“Authorised Persons”**: shall mean the persons in charge of direct trading on the MTS Market within the Participant’s organisational structure or who have otherwise been authorised as such by the Participant;
 - **“Terms and Conditions”**: shall mean these Terms and Conditions;
 - **“Participant”**: shall mean a person admitted to trading on the MTS Market, who signs the Membership Documentation with MTS for the use of one or more Services;
 - **“Membership Documentation”**: shall mean the contract between MTS and the Participant relating to the provision of Service(s) indicated in the Application to Participate in MTS SWAP Market and is made up of the Application to Participate in MTS Markets, these Terms and Conditions and relevant Schedules, as well as by any documents included by reference;
 - **“Market Data”**: shall mean any and all elementary and/or aggregate data emanating directly or indirectly from the MTS Platform or generated by the MTS Market including without limitation: (i) the Participant Data; (ii) any and all data of other Participants on the MTS Market; (iii) the database of all Participant’s data; (iv) data relating to the MTS Market and the financial instruments made available to the Participant in the framework of the provision of the Service; (v) any data derived directly or indirectly from the same;
 - **“MTS Market”**: shall mean the multilateral trading facility organised and managed by MTS in the United Kingdom known as MTS SWAPS Market;
 - **“MTS”**: shall mean EuroMTS Limited, i.e. the company owner of the Service to which the Application to Participate in MTS SWAP Market is sent.
 - **“MTS Data”** shall mean the Market Data excluding the Participant Data;
 - **“Participant Data”** shall mean the data and information which is entered into the MTS Market by the Participant that has signed the Application to Participate (as forms part of the Membership Documentation) or any of its Clients for the purpose of trading on the MTS Market;
 - **“Parties”**: shall mean the Participant and MTS;
 - **“Rules”**: shall mean the Market Rules of the MTS SWAP Market which form part of the Schedules;
 - **“Schedules”**: shall mean the Rules, MTS GUI Licence Terms and Conditions, Price List, Privacy Form and the Markets Access Form;
 - **“Service(s)”**: shall mean the provision by MTS of the System and of access to and use of such System for the purpose of trading financial instruments on the MTS Market in accordance with the provisions of the Membership Documentation and any other service described in the Membership Documentation, including the license of software as identified in the Schedule MTS GUI Licence Terms and Conditions and including, if so indicated in the Application to Participate to the MTS Market and in the Market Rules, the automated transmission by MTS on behalf of the relevant Participant to a trade of a copy of a trade confirmation to a trade repository in order to facilitate the settlement, clearing and reconciliation process; and
 - **“System”** shall mean the electronic trading system through which financial instruments may be traded in the MTS Market.
- 1.2 In this Agreement, unless the context requires otherwise:
- (a) references to the singular include the plural, references to any gender include all other genders, and references to "persons" shall include individuals, bodies corporate, unincorporated associations, businesses, joint ventures and partnerships





and that person's legal and personal representatives, successors and permitted assigns;

- (b) references to any legislation, statute or statutory provisions includes a reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision;
- (c) clause and schedule headings are for information only and shall not affect the construction of these Terms and Conditions;
- (d) any reference to "including" shall mean "including without prejudice to the generality of the foregoing phrase or term" and references to "written", "in writing" or any similar expression shall include all data in written form whether represented in hand-writing, fax, printed, electronic, including email or other format; and
- (e) words in the singular shall include the plural and vice versa.

2. – OBJECT AND EXECUTION OF THE MEMBERSHIP DOCUMENTATION

- 2.1 The object of the Membership Documentation shall be the supply, against payment of a consideration, of the Service(s) requested by the Participant by MTS on a reasonable efforts basis.
- 2.2 In the event of conflict and/or incompatibility, including when these derive from subsequent amendments, the contents of the Rules shall prevail over the Terms and Conditions.
- 2.3 The Terms and Conditions, including the Schedules as amended and applicable from time to time, shall always be available on the website of MTS (www.mtsmarkets.com/Documents).
- 2.4 The Membership Documentation shall be understood to have been executed at the time when the Participant receives a written communication from MTS of the acceptance of the Application to Participate in MTS Markets containing, *inter alia*, an indication of the day from which the Service will be supplied to the Participant. However, from the time the Participant receives a written communication from MTS with confirmation of receipt of the Application to Participate in MTS Markets, dealings between the Participant and MTS shall be governed by the Terms and Conditions and the relevant Schedules insofar as they are applicable.

3. – OBLIGATIONS AND PERFORMANCE OF MTS

- 3.1 The Services provided by MTS, on a reasonable efforts basis, to the Participant shall consist in:
 - (a) enabling the Participant, upon payment of a consideration pursuant to Article 12.1 below, to trade the financial instruments made available for trading on the MTS Market;
 - (b) the provision, pursuant to these Terms and Conditions and the Rules, of the Market Data and information relating to the MTS Market, including information relating to trades;
 - (c) the automated transmission by MTS on behalf of the relevant Participants to a trade of a copy of a Trade confirmation either a) to 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) directly to the relevant clearing house. Failure by MTS to provide such trade confirmation to the trade repository shall not exonerate a Participant from settling the trade or carrying out any obligations relating to the trade (and MTS shall not be held liable whatsoever under any circumstances for failure to generate and provide, or for incorrectly generating and/or providing such trade confirmation to the trade repository nor to either of the Participants to a trade where such failure is caused by events beyond MTS's reasonable control)





In addition to the foregoing, MTS may also provide preventive and corrective maintenance services, software upgrades and services of support to the Participant in relation to the System equipment located in the facilities of the Participant, to be provided, subject to prior agreement between the Parties, during business hours through telephone assistance (helpdesk), remote diagnosis and, if necessary, technical assistance at the Participant's premises.

- 3.2 The Services shall be provided by MTS in compliance with the Terms and Conditions applicable thereto, including the relevant Schedules and shall be provided by MTS on a reasonable efforts basis only.
- 3.3 MTS shall perform the services it is bound to supply with due care and professional diligence and shall make reasonable interventions with regard to its systems (including without limitation the System) for the purpose of ensuring the continuity of the Service.
- 3.4 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 – shall do reasonable efforts to resolve the problem.
- 3.5 The Participant acknowledges and accepts that in order to supply the Service MTS may avail itself of third parties, it being understood that the contractual relationship shall be exclusively between the Participant and MTS.
- 3.6 For the purposes of the preceding paragraphs, MTS hereby guarantees that it shall at all times:
 - a) be the owner or have valid title to the tangible and intangible assets used to supply the Service and that such assets shall be free from claims of third parties;
 - b) have all the technology, expertise, adequately qualified staff and IT facilities needed and suitable for the supply of the Service;
 - c) be the owner of the Service and hold all the related rights;
 - d) have all the authorisations needed to supply the Service.
- 3.7 MTS shall limit, suspend or cease the supply of the Service to the Participant in the events provided for in the Terms and Conditions and specified in the Schedules.
- 3.8 For the avoidance of doubt, MTS is not a party to any transaction and is no instance responsible for the clearance or settlement of any transaction on the System.
- 3.9 MTS shall comply with all laws and regulations applicable to a multilateral trading facility in the United Kingdom 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 FCA.

4. – OBLIGATIONS OF THE PARTICIPANT

The Participant is required to:

- a) comply with all the provisions of the Terms and Conditions 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 paragraphs 8.2 and 9.5. The Participant acknowledges that MTS may implement any amendment and supplement relating to the Services, the Terms and Conditions and Schedules, 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 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 care and expenses, 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 MTS Data exclusively for the purposes of the Service;
- 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 high 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 business day subsequent to that on which the written communication thereof reaches MTS, by fax (to the number +390642120200) or email (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 on MTS Market and duly and timely settle the Contract carrying out all the obligations, if any, 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 material change to its organisational structure, including changes in the names of the Authorised Persons notified to MTS within the Market Access Form, when this may negatively affect the correct operativeness in the Market and the performance of the obligations under the Contracts. In the event that Participant provides to MTS any details or information regarding their operational structure, Participant will notify MTS of any material changes to such details or information promptly upon such change taking place in order to ensure that the information retained by MTS is at all times current.;
- h) comply promptly with any reasonable request made by MTS in the performance of its duties as the manager of the Service thereof concerning 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 MTS Data exclusively for the performance of the trading activities on MTS Market and such other purposes as may be agreed in writing with MTS from time to time. Subject to the rights for a Participant to grant sub-licences to use the Market Data to Clients in accordance with paragraph 11.4, the right is, therefore, excluded to copy, record, reproduce, transfer to third parties, market or economically exploit in any other manner such MTS Data, in whole or in part. In partial derogation from what provided above, the Participant has the right to supply the MTS Data to the Authorised Persons so that these may use it exclusively for trading in the MTS Market. The Participant guarantees to MTS that the Authorised Persons will not use the MTS Data for purposes other than the trading in the MTS Market, and that they will not copy, record, reproduce, transfer to third parties, market, or economically exploit the MTS Data, in whole or in part, in any other manner. All other usage of the MTS 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 MTS Data by the Authorised Persons. The Participant shall have the right to freely use and exploit the Participant Data.





- l) arrange for and maintain operational adequate automatic control systems of prices, quantities and frequency of the orders entered into the MTS Market;
- m) adopt reasonable 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) cooperate with MTS, or third persons designated by MTS, also allowing their employees or collaborators to have escorted access the Participant's premises, to the extent that such access is required by MTS, for the purpose of enabling (a) the performance, subject to reasonable prior notice, of controls aimed at checking the status of provisions of the Service(s) and/or use of the Market Data; and (b) the performance of testing operations in compliance with reasonable guidelines provided by MTS to the Participant in writing, 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. MTS undertakes that, in carrying out the activities set out in this paragraph 4(n), the MTS employees and/or collaborators shall: (i) not access a Participant's premises more than once in any calendar year (except 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) treat all information obtained in connection with the action undertaken in accordance with this paragraph 4(n) 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 realised 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 accept and acknowledge 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. The Participant shall also be responsible for ensuring that the relevant ISDA or equivalent documentation is in place with any counterparty to a Contract. Accordingly, settlement, credit and market risks relating to any Contract shall be borne entirely by the Participants. MTS shall not be liable or responsible for any failure, delay in performance, default or breach by the Participant of their obligations pursuant to any trade. Accordingly, clearing, settlement, credit and market risks relating to any trade shall be borne entirely by the Participant.

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 directives issued by the relevant authorities and parties having jurisdiction over the organisation and operation of the MTS Market. This may involve the suspension or interruption of the Service 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 in accordance with the Rules and 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 the services, which MTS supplies to the Participant hereunder, MTS shall:
- if possible, notify the Participant by e-mail of the faulty service 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.
- 5.4 In the event that the Service is completely unavailable for the placing of trades by the Participant for a period of one entire Trading Day, MTS shall provide to the Participant, on a pro-rata basis, a refund of the portion of the annual membership fees paid by the Participant for each Trading Day on which the Service continues to be unavailable.

6. – Security of Access to the System

- 6.1 The Participant undertakes to protect its encrypted keys and relevant conservation media, its identification codes (“PINs”) and access codes (“passwords”) of authorised persons and to notify MTS immediately of the existence of possible risk situations deriving from any default in the performance of 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 losses suffered as a result of the cancellation by MTS of keys or passwords where this cancellation is caused by any unauthorised access to the System that is a consequence of a 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 conservation means, the PINs, the suspected wrongful use, loss of secrecy and integrity defect of the same. MTS shall promptly cancel such private keys and PINs and issue new keys and PINs to the Participant following such notice.
- 6.3 The Participant undertakes to access the System exclusively through Authorised Persons and to notify MTS of their personal data. Such personal data shall be collected and processed in accordance with MTS privacy and data protection policy as published from time to time on the MTS website (www.mtsmarkets.com) and in accordance with the Data Protection Act 1998 and all other applicable laws. 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, this 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 and MTS each undertake to take reasonable steps to implement such security measures as to prevent any unauthorised or wrongful use of the System. This comprises, 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 the use of the System if the Participant, suspects or is aware of (or if MTS notifies the Participant that MTS 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. Insofar as is practical and subject to MTS's reasonable judgment in complying with applicable laws, regulations, and guidelines, if MTS notifies the Participant of such an event, MTS shall provide reasonable evidence of any concerns before access to the System is suspended or required to be suspended. For the avoidance of doubt, the Participant shall only be obliged to suspend use of the System (and MTS shall only suspend Participant's use of the System) for such period as MTS reasonably considers that a technical dysfunction or a violation of the System's security exists, or for the duration of any of the events listed in paragraphs 6.1 and 6.2, or for the duration required under any applicable laws, regulations, or guidelines, and MTS shall promptly notify the Participant on becoming aware that such circumstances have ended.
- 6.6 On request of MTS, the Participant shall promptly interrupt any individual access to the System in the event that MTS reasonably considers that such person is violating or, however, 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. Where permitted by all applicable laws and regulations and deemed practicable by MTS in its sole discretion, MTS shall issue to the Participant an incident report following any material interruption of the Participant's access to the System.

7. - CONFIDENTIALITY

- 7.1 Each of the Parties, acknowledging the confidential nature of the information and documentation pertaining generally to the Services (including in particular that MTS shall not disclose the details of the Participant and Client (as defined in the Rules) in relation to any particular offers or trades incorporated within the Market Data unless insofar as is reasonably required for compliance with laws, regulations, and guidelines) shall guarantee the other Party, for the duration of this contractual relationship and 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.
- 7.2 Subject to paragraph 7.3 below, each of the Parties undertakes to disclose confidential information of the other Party only to those of its officers, directors, employees, agents, contractors and Associated Companies 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, directors, employees, agents, contractors and Associated Companies are made aware of and observe the confidentiality obligations in this paragraph 7.
- 7.3 Each Party may disclose confidential information of other Party:
- a) to the persons described in paragraph 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.
- 7.4 The obligation referred to in the previous paragraph shall not prevent the communication or disclosure by MTS in anonymous and aggregate form of Market Data.
- 7.5 The obligations of confidentiality in this paragraph 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.

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 nature (e.g. Notices) shall be made by means of the website of the MTS, except in case of malfunctioning or unavailability of the website. In particular, in case of the obligation referred to in paragraph 4.1a) above, communication given by means of such website shall be considered to be known by the Client from the time it is posted on the website and shall become effective on the later date specified in the communication.
- 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.
- 8.4 Communications of an operational nature regarding the ordinary functioning of the Service may also be sent between the Parties electronically by way for example of client service announcements, unless specified otherwise in the Schedules.
- 8.5 Individual communications shall be sent by each of the Parties to the other Party to the addresses expressly specified by the Participant in the Application to Participate in MTS Markets and those of an operational nature regarding the ordinary functioning of the Service to the addresses specified in the Application to Participate in MTS Markets.
- 8.6 Communications referred to in paragraphs 8.3 and 8.4 above shall be understood to be known by the other Party from the time of their receipt or in any case three working days after the notice being sent if earlier and shall become effective at the time specified in the Terms and Conditions and the Schedules or, in the absence thereof, on the later date specified in the communication.

9. – AMENDMENTS TO THE TERMS AND CONDITIONS AND RELEVANT SCHEDULES

- 9.1 The Participant acknowledges and accepts that MTS may modify or supplement any provision of the Terms and Conditions, including the Schedules, without prejudice to the provisions of paragraph 13.3 below.





- 9.2 MTS shall inform the Participant of such amendments by sending the text via email at the address indicated in the Application to Participate in MTS Markets, or, by posting the text thereof on its website pursuant to paragraph 8.2 above, in both cases at least 20 (twenty) Trading Days, as defined in the Rules, before the effective date of the amendments. 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 which, for the avoidance of doubt, shall be such that the Participant may exercise the right of withdrawal prior to the relevant amendment coming into force.
- 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) calendar days.
- 9.4 Changes to the Price List, 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 60 (sixty) calendar days. MTS shall determine and communicate the effective date of changes to the Price List in the Client's favour.
- 9.5 Without prejudice to the provisions of paragraphs 9.2 and 9.4 above, MTS shall send an e-mail to the Participant, to the address provided in the Application to Participate in MTS Markets, as amended and communicated to MTS, containing the notification of the changes on the website. In case of changes to the Rules, MTS shall send the e-mail on the same day of the notification of the changes through the website.
- 9.6 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.
- 9.7 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.

10. - LIABILITY

- 10.1 Except as expressly set forth in this Agreement, all warranties, representations and agreements with respect to the provision of the Services or otherwise, whether oral or in writing and whether express or implied, either by operation of law, statutory or otherwise, are hereby expressly excluded to the maximum extent permitted by law.
- 10.2 Except in relation to fraud or death or personal injury or for breach of MTS' obligations of confidentiality and to the maximum extent permitted by law, MTS shall not be liable to the Participant in any circumstances for any loss, whether direct or indirect, of profits, business, anticipated savings, or for any indirect or consequential loss, in respect of provision of the Services, any other service provided pursuant to this Agreement or otherwise arising under or in relation to this Agreement, whether for breach of contract, tort (including negligence) or otherwise.
- 10.3 Subject to Clause 10.2 above, MTS's maximum liability (except in relation to fraud or death or personal injury or for breach of MTS' obligations of confidentiality) arising under or in relation to this Agreement, whether for breach of contract, tort (including negligence) or otherwise, shall, in respect of any one incident or series of incidents, attributable to the same cause, be limited in aggregate to £50,000 (fifty thousand pounds Sterling).
- 10.4 MTS shall be in no way liable for any loss or damage, whether direct or indirect, incurred by the Participant arising from any failure, act, omission or negligence of any third party provider of communication facilities.
- 10.5 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 indemnified by MTS. Failure to meet such time limit shall entail lapse of the Participant's rights in this regard. 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.

- 10.6 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 arising out of or in connection with any breach of the Membership Documentation by the Participant and hereby authorises MTS as of now to file a third-party claim against it. In the event that any third party makes a claim, or notifies an intention to make a claim, against MTS which may reasonably be considered likely to give rise to a liability under this paragraph 10.6, MTS shall:
- a) as soon as reasonably practicable notify the Participant in writing of the claim;
 - b) not, without the prior consent of the Participant, make any admission relating to the claim or attempt to settle such, provided that the Participant considers and defends any claim diligently and in a way that does not bring the reputation of MTS into disrepute;
 - c) allow the Participant, at its own cost, to conduct all negotiations and proceedings and to settle the claim, always provided that the Participant shall obtain MTS's prior approval of any settlement terms, which is not to be unreasonably delayed or withheld. MTS reserves the right to participate in and represent itself in any claim;
 - d) use its reasonable endeavours to minimise the losses in respect of which it seeks to recover under such indemnity; and
 - e) provide the Participant with any reasonable assistance regarding the claim as is reasonably required by the Participant, subject to reimbursement by the Participant of all costs incurred by MTS in providing such assistance.
- 10.7 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.
- 10.8 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, as better specified in these Terms and Conditions.
- 11.2 The Participant agrees that the copyright, database rights or other Intellectual Property Rights of whatever nature contained or subsisting in the MTS 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 right and title to the MTS 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 (except as set out in paragraph 11.4), revocable licence to use the Market Data for the purpose of receiving the Services (including using the System) and as far as necessary for the purposes of:
- clearing and settlement;
 - trade reporting;
 - to comply with applicable laws, regulations, and guidelines; and
 - for reasonable business record keeping purposes.

MTS agrees that the Participant may grant sub-licences to use such MTS Data for the purpose of enabling Clients (as defined in the Rules) to trade on the MTS Market but a Participant shall not be permitted to grant a sub-licence to use the Market Data for any other 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:
- to the extent required to provide the Swap Market and any related Services to that Participant; and
 - in an anonymised and aggregated form only, for any reasonable purpose whatsoever. MTS hereby acknowledges and agrees that it shall keep the details of the Participant and Client (as defined in the Rules) 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: (i) the Participant; or (ii) any of the Client, Sponsor or Dealer.

- 11.2 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) and in MTS marketing brochures and presentational materials subject to the Participant's prior 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. MTS shall remove all references to the Participant as being an MTS Participant and the Participant's name and logo from MTS website, brochures and materials promptly on termination of the Participant's use of the Services.

12. – FEES

- 12.1 For the supply of the Service the Participant shall pay MTS the fees set out in the Price 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, if the Participant fails to pay the fees due within the prescribed time, default interest shall be charged automatically on the outstanding amount without the need for a written notification; such default 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.
- 12.3 Without prejudice to the right to file a separate action for money had and received, 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.
- 12.4 The Participant shall remain subject to the obligation to pay any amounts applied in accordance with the Rules or these Terms and Conditions. The payment of amounts shall not preclude the possibility for MTS to demand strict performance and/or claim compensation of damages for any additional loss actually suffered.

13. - DURATION OF THE CONTRACT AND WITHDRAWAL

- 13.1 The contract formed between the Participant and MTS via the Membership Documentation (the "**Participation Agreement**") shall be for an indefinite term.
- 13.2 The Participant shall have the right to withdraw from the Participation Agreement at any time by sending a notice, pursuant to paragraph 8.4, indicating the effective date of withdrawal; the notice must arrive at least 90 (ninety) calendar days before such date. Withdrawal shall not exonerate the Participant, even in part, from the requirement to perform all the obligations undertaken under the Membership Documentation prior to such withdrawal or from complying with any obligations that are expressly stated or impliedly intended to continue following termination of the Participation Agreement.
- 13.3 By way of derogation from paragraph 13.2 above, in case of amendments referred to in Article 9, the Participant may exercise the right of withdrawal from 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 withdrawal may be communicated up to 1 p.m. on the trading day for MTS preceding the effective date of the amendment.
- 13.4 In all the cases of withdrawal referred to in paragraph 13.3 – provided, however, that the withdrawal becomes effective before the application of the amendments it is based on – the contractual conditions previously in force shall apply to the Participant.
- 13.5 If the withdrawal notice is received after the expiration of the time limits specified in the preceding paragraphs, then the withdrawal shall not take effect unless MTS waives the time limit established in its favour. These Terms and Conditions may specify cases in which withdrawal is not effective at the time provided in the withdrawal notice.
- 13.6 In the event that the Participant withdraws from the Participation Agreement in accordance with paragraph 13.3 above and the amendment which is the cause of such withdrawal 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 withdrawal 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 Price List. The parties agree that any dispute as to whether an amendment is material shall be resolved in accordance with paragraphs 17 and 18.
- 13.7 Notwithstanding the provisions of the Rules, MTS may exercise the right of withdrawal, 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 withdrawal pursuant to this paragraph, MTS shall not be required to pay any penalty or indemnity.





14. – EXPRESS TERMINATION CLAUSE

- 14.1 The Participation Agreement shall be deemed to be terminated without the need of any further action by MTS in the following events:
- a) in the event of failure to pay the fees within the prescribed time limits for more than 90 (ninety) calendar days;
 - b) in the events of exclusion from the Service provided for in the Rules or these Terms and Conditions;
 - c) in the case in which the performance of the Service ceases as a consequence of legislative or administrative measures.
- 14.2 In addition to a Participant's right to withdraw from the Participation Agreement in accordance with paragraphs 13.2 and 13.3, the Participant shall have the right to withdraw from the Participation Agreement with immediate effect at any time by sending a notice, pursuant to paragraph 8.4, indicating the effective date of withdrawal, and MTS shall have the right to terminate this Agreement with immediate effect at any time by sending a notice indicating the effective date of termination, if:
- a) if the Services are interrupted or suspended for any reason (other than due to a default of the Participant) for a period of forty (40) Trading Days or more;
 - b) if the other Party commits any material breach (whether a single breach of a material obligation, or a number of breaches or repeated breaches that, if taken together, constitute a material breach) of this agreement which breach is irremediable, or which breach (if remediable) is not remedied within thirty (30) days after the service of written notice requiring the same; or
 - c) if the other Party ceases or threatens to cease to trade (either in whole, or as to any part or division involved in the performance of this agreement), or becomes or is deemed insolvent, is unable to pay its debts as they fall due, has a receiver, administrative receiver, administrator or manager appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or takes or suffers any similar or analogous procedure, action or event in consequence of debt in any jurisdiction.
- 14.3 In the event that the Participant terminates or withdraws from the Membership Documentation in accordance with paragraph 14.2 (a) to (c) or MTS withdraw or terminates in accordance with 13.7, 14.1(c), or MTS terminates the System in accordance with the Market Rules, 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 or withdrawal onwards.

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 The Participation Agreement and/or the rights and obligations deriving therefrom may not be transferred by the Parties to third parties. The Participant shall hereby authorise MTS to transfer the Membership Documentation and/or the rights and obligations deriving therefrom in the event of the merger of MTS with another company or the transfer of the business segment comprising the Service. 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 for the purposes of the Membership Documentation. 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.

- 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 MTS shall be liable for the acts and omissions of any person to whom MTS has sub-contracted the whole or any part of its obligations as if they were the acts and omissions of MTS.

16. – Anti-Bribery

- 16.1 MTS and its officers, directors and employees acting for it in connection with this agreement (“**Relevant Persons**”) shall:
- comply strictly with all applicable anti-corruption laws applicable to MTS or such Relevant Persons (as applicable), including the Bribery Act 2010 (“**Relevant Requirements**”); and
 - have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements.
- 16.2 MTS shall be responsible for the observance and performance by Relevant Persons of the Relevant Requirements.
- 16.3 For the purposes of this paragraph 16, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.
- 16.4 In the event of any breach of any of the warranties set out in this paragraph 16, without prejudice to paragraph 13, the Participant may terminate this agreement immediately upon giving notice in writing to MTS.

17. – SETTLEMENT OF DISPUTES

- 17.1 Before reverting to arbitration as provided by 18.1 below, the Participant and MTS shall attempt to resolve any problems that arise between them consequent upon the Membership Documentation through formal notices and bilateral meetings to find possible solutions.

18. – Governing Law and Jurisdiction

- 18.1 Any dispute or issue arising out of or in connection with the Membership Documentation, including any question regarding its existence, validity, termination, form, interpretation and the obligations deriving there under, including the participation to the markets and the acts consequent thereto and the application and interpretation of the Rules, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be three.

The seat, or legal place, of arbitration shall be London, United Kingdom.

The language to be used in the arbitral proceedings shall be English.

The governing law of the contract shall be the substantive law of England and Wales.



