

MORGAN STANLEY MTF Participant Agreement

This **Agreement** is made on [*date*] by and between:

Morgan Stanley France S.A., a limited liability company, organised under the laws of France, whose registered office is at 61 rue de Monceau, 75008, Paris, France (the “**Operator**”); and

The Participant as identified hereunder and in the attached Application Form; (each a “**Party**” and together the “**Parties**”).

IT IS HEREBY AGREED AS FOLLOWS:

1. Interpretation

- 1.1 Capitalised terms used but not defined in this Agreement shall have the meaning given in the rules of MORGAN STANLEY MTF as amended from time to time (“**Rules**”).
- 1.2 In this Agreement references to statutory provisions, regulations, notices or Applicable Law shall include those provisions, regulations, notices or rules as amended, extended, consolidated, substituted or re-enacted from time to time. Any reference to a statute, statutory provision or statutory instrument includes a reference to all rules and regulations made under it.
- 1.3 Unless the context requires otherwise, words importing the singular shall be deemed to include the plural and vice versa.

2. Term

This Agreement shall commence on the date hereof and shall continue until terminated in accordance with Clause 5 (*Suspension and Termination*).

3. Services

Subject to the Participant’s compliance with this Agreement and the Rules, the Operator shall use reasonable endeavours to provide the Services to the Participant in accordance with the Rules.

4. Participant’s Obligations

- 4.1 The Participant acknowledges and agrees that in order to be accepted as a participant of MORGAN STANLEY MTF, and at all times whilst it remains a participant of MORGAN STANLEY MTF, the Participant must satisfy the Admission Criteria.
- 4.2 The Participant shall comply at all times with the requirements of this Agreement, the Rules, the Participant Manual, the MORGAN STANLEY MTF Technical Specifications and any other manuals, procedures, guidance and directions given by the Operator, and the various legends, disclaimers, terms and conditions displayed on or linked to the Services, in each case as amended from time to time.

5. Suspension and Termination

- 5.1 The Operator may, at its absolute discretion, suspend a Participant, or restrict the Participant's right to place Orders or receive information from MORGAN STANLEY MTF at any time, in accordance with the Rules.
- 5.2 This Agreement and the resulting membership of the Participant shall terminate upon the effective date and time of:
 - 5.2.1 the resignation of the Participant in accordance with the Rules;
 - 5.2.2 the termination of the Agreement by the Participant in accordance with Clause 14.4 (*Amendments*);
 - 5.2.3 the Operator's termination of the Participant's membership in accordance with the Rules; or
 - 5.2.4 the Operator's withdrawal of MORGAN STANLEY MTF or of the Services in accordance with the Rules.

6. Fees

- 6.1 The Operator shall invoice the Participant for the Fees for the Services monthly in advance during the Term, and the Participant shall pay such Fees in accordance with this Clause 6.
- 6.2 The Operator may increase the Fees at any time for any one or more of the Services by the provision of at least thirty days' notice to the Participant.
- 6.3 All Fees are payable by the Participant in full without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort, breach of statutory duty or otherwise, save for negligence, wilful default or fraud or as may be required by law.
- 6.4 The Participant shall assume full and complete responsibility for the payment of all taxes relating to the provision of Services to the Participant (other than income taxes imposed on the Operator) ("**Taxes**"). All Fees are quoted exclusive of Taxes which may be payable thereon. Such Taxes will be added to the Operator's invoices, as appropriate, at the base rate prescribed by legislation. If the Participant is required under Applicable Law to deduct or withhold any such Tax from the Fees, then such amount shall be increased so that the net amount actually received by the Operator after the deduction or withholding of such Tax will equal one hundred per cent (100%) of the Fees.
- 6.5 All Fees are payable by the Participant within thirty days of the date of the Operator's invoice, except where there is a legitimate dispute over such invoice in which case Participant shall pay any undisputed portion

of the invoice in full. The Operator may add interest on overdue payments at a rate equal to the HSBC Bank Plc annual base rate (from time to time) plus two per cent, calculated on a quarterly basis.

7. Permitted Entities

- 7.1 MORGAN STANLEY MTF may be accessed directly only by (i) the Participant and (ii) Direct Electronic Access clients (in accordance with the Rules) (“**Permitted Entities**”), through the use of an Access Method.
- 7.2 In respect of business conducted on MORGAN STANLEY MTF or business related thereto, a Participant shall be responsible for the acts and conduct of all individuals trading under its user account (including individuals related to its other Permitted Entities) as if the acts and conduct of each of those persons were the acts and conduct of the Participant. In particular, a Participant shall be held responsible for a violation of a relevant obligation committed by any such person and the Operator may take measures under these Rules and relevant agreements, including the suspension or termination of the Participant. It is the sole responsibility of the Participant to ensure compliance, by itself and by each of its other Permitted Entities with this Agreement, the Rules, the MORGAN STANLEY MTF Technical Specifications and any other manuals, procedures, guidance and directions given by the Operator as well as all Applicable Law.

8. Limitation of Liability

- 8.1 The Operator does not exclude or in any way limit or exclude its liability:
- 8.1.1 for fraud, death or personal injury caused by the Operator; or
 - 8.1.2 to the extent the same may not be excluded or limited as a matter of law.
- 8.2 Subject to Clause 8.1, the Participant hereby acknowledges and agrees that the Services are provided “AS IS” and on an “AS AVAILABLE” basis. The Operator does not guarantee the accuracy, timeliness, completeness, performance or fitness for a particular purpose of the Services. No responsibility is accepted by or on behalf of the Operator for any errors, omissions, or inaccuracies in the Services. The Operator accepts no liability for the results of any acts or omissions taken on the basis of the Services.
- 8.3 Subject to Clause 8.1, the Operator shall not be liable to the Participant or to any Permitted Entity under or in connection with this Agreement for any of the following, in each case howsoever arising (save to the extent caused by the Operator’s fraud) and in each case whether such loss or damage was foreseeable or in the contemplation of the relevant parties and whether arising out of breach of contract, tort or breach of statutory duty: management time; trading losses; loss of income; loss of actual or anticipated profits; loss of business; loss of contracts; loss

of goodwill; loss of reputation; expenditure; loss of opportunity; loss of anticipated savings; loss of, damage to or corruption of data; or indirect or consequential loss or damage of any kind.

8.4 Subject to Clauses 8.1, 8.2 and 8.3, the Operator's entire liability howsoever arising (save for fraud) and whether arising out of breach of contract, tort or breach of statutory duty in respect of any claims or losses of any nature, arising directly or indirectly, from this Agreement shall be limited in respect of each incident to the greater of:

8.4.1 £50,000;

8.4.2 the Fees paid and/or payable by the Participant in the quarter in which the claim arises.

8.5 The Participant hereby acknowledges and agrees that it shall bring any claim arising under or relating to this Agreement within two years from the date of the claim arising, or, if later, within two years from the date that the Operator or the Participant first became aware of the matters leading to the claim, and failure to do so shall result in any such claim automatically and irrevocably expiring.

9. Representations and Warranties

9.1 The Operator represents and warrants that it has full power and authority, and all rights, authorisations and licences, to provide the Services to the Participant.

9.2 The Participant represents and warrants that it has full power and authority, and all rights, authorisations and licences, to enter into and perform this Agreement, and that its entry into and performance of this Agreement will not infringe the rights of any third party or cause it to be in breach of any obligations to a third party.

9.3 The Participant represents and warrants that no information, statement or representation made by it or by any of its Officers, employees or agents in the Application Form, or other communication to the Operator is false or misleading and undertakes to promptly notify the Operator of any change to such information.

9.4 The Participant represents and warrants that it complies with the Admission Criteria.

9.5 The Participant represents and warrants that:

9.5.1 it has the right and authority to enter Orders and execute Transactions in the manner contemplated by this Agreement and the Rules; and

9.5.2 its use of MORGAN STANLEY MTF and the Services, any Orders entered by the Participant on MORGAN STANLEY MTF and any provision of access to MORGAN STANLEY MTF by the Participant to a Direct Electronic Access client, is in compliance with Applicable Law.

9.6 The Participant represents and warrants that no Act of Insolvency with respect to the Participant has occurred or is continuing, and no such event or circumstance will occur as a result of entering into or performing its obligations under this Agreement.

9.7 The Participant represents and warrants that, to the extent that it provides any personal data to the Operator under this Agreement, it has:

9.7.1 obtained any consents required under any applicable data protection laws, including the General Data Protection Regulation ((EU) 2016/679), any national implementing laws, regulations and secondary legislation, and any successor laws arising out of the withdrawal of a member state from the European Union (“**Applicable Data Protection Laws**”); and

9.7.2 given any processing information required under Applicable Data Protection Laws, including the information required under Article 13 of the General Data Protection Regulation ((EU) 2016/679),

to, the relevant data subjects for the provision of their personal data and any processing by or on behalf of the Operator under this Agreement.

9.8 Each warranty, representation or undertaking of the Parties in Clauses 9.1 to 9.7 is made as at the date hereof and shall be made on a continuing basis.

9.9 Except as explicitly stated to the contrary in this Agreement the Participant hereby acknowledges and agrees that all warranties, conditions, representations and terms, whether express or implied by statute or otherwise, with respect to MORGAN STANLEY MTF and/or Services, including but not limited to any implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy are excluded from the terms of this Agreement to the maximum extent that they may be excluded as a matter of law.

10. Indemnities

10.1 The Participant agrees to indemnify and hold harmless the Operator, the Operator’s Affiliates and each of its or their partners, directors, officers, employees and agents (the “**Morgan Stanley Parties**”) from and against any and all reasonably and properly incurred costs, expenses, liabilities, claims, losses or damages to which any Morgan Stanley Party may become subject which arise out of the use of the Services or access to the MORGAN STANLEY MTF by the Participant or any Permitted Entity or breach of this Agreement or the Rules by the Participant except to the extent that such damage or loss is caused directly by the wilful default, gross negligence or fraud of the Operator or a Morgan Stanley Party or breach of this Agreement or the Rules by the Operator.

10.2 The Participant agrees that it will not, without the Operator's written agreement, effect the settlement or compromise of, or consent to the entry of any judgement with respect to, any pending or threatened action or claim in respect of which indemnification may be sought hereunder unless such settlement, compromise or judgement (a) includes an unconditional release of the Operator and any relevant Morgan Stanley Party from all liability arising out of such action or claim; (b) does not include any admission of fault or culpability by or on behalf of the Operator or any relevant Morgan Stanley Party; and (c) does not bind any Morgan Stanley Party as to its future conduct

11. Participant Data

11.1 The Operator acknowledges that the Participant owns all intellectual property rights in any data (including but not limited to order data, price and volume data) transmitted by the Participant to MORGAN STANLEY MTF ("**Participant Data**").

11.2 The Participant hereby grants the Operator and its Affiliates, agents and contractors an irrevocable, non-exclusive royalty free licence to use or disclose (and may retain any fees, charges or other benefit obtained in connection with any such use or disclosure) the Participant Data for its legitimate business purposes including but not limited to the processing of Orders, trade reporting and the clearing and settlement of Transactions provided that the Operator shall not disclose Participant Data to third parties (other than officers, employees, agents or contractors engaged in the operation or oversight of MORGAN STANLEY MTF or in the provision of the Services) in a manner which would directly or indirectly identify the Participant as the specific source of the Participant Data (except (i) pursuant to written authorisation from the Participant or (ii) in accordance with Applicable Law or the Rules).

12. Operator Data

The Participant acknowledges that the Operator or its licensors own all intellectual property rights in: (a) any data (including without limitation bids, offers, prices, executions and volumes of Transactions on MORGAN STANLEY MTF, but excluding Participant Data), analytics, research or other information contained in, displayed on or generated by the operation of MORGAN STANLEY MTF ("**Operator Data**"); and (b) the MORGAN STANLEY MTF and the Services generally. The Operator hereby grants the Participant a non-exclusive, non-transferable licence to use any Operator Data received from the MORGAN STANLEY MTF: (i) in its internal pricing engines and pricing models; (ii) to provide confirmations of Orders executed on MORGAN STANLEY MTF to the Participant's clients; and (iii) to the extent necessary to comply with Applicable Law. The Participant shall not be permitted to use the Operator Data other than as expressly set out in this Clause 12 without the prior written consent of the Operator.

13. Confidentiality

- 13.1 Each of the Parties undertakes to maintain and procure the maintenance of the confidentiality of Confidential Information at all times and to keep and procure the keeping of all Confidential Information secure and protected against theft, damage, loss or unauthorised access, and not at any time, whether during the term of this Agreement or at any time thereafter, without the prior written consent of the other Party directly or indirectly, to use or authorise or permit the use of or disclose, exploit, copy or modify any Confidential Information, or authorise or permit any third party to do the same, other than as permitted hereunder.
- 13.2 Each of the Parties undertakes to disclose Confidential Information only to those of its officers, employees, Affiliates, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement, and to procure that such officers, employees, Affiliates, agents and contractors are made aware of the confidential nature of the information and observe the confidentiality obligations in this Clause 13.
- 13.3 The Operator may disclose Confidential Information of the Participant to facilitate:
 - 13.3.1 the clearing and settlement of Transactions;
 - 13.3.2 the operation of MORGAN STANLEY MTF for the purposes contemplated under this Agreement and the Rules.
- 13.4 Each Party may disclose Confidential Information of the other Party as may be required by law, regulation or order of a competent authority.
- 13.5 Each Party may disclose Confidential Information to a professional advisor as reasonably required provided such disclosure is subject to obligations of confidentiality.
- 13.6 Upon termination or expiry of this Agreement, each Party shall, subject to Applicable Law and the Parties' respective document retention policies and procedures, promptly and at the option of the disclosing Party return, or upon request erase and/or destroy, to the extent reasonably practicable and permissible in accordance with Applicable Laws, all excess copies of documents or records containing Confidential Information.
- 13.7 “**Confidential Information**” means the terms, conditions and subject matter of this Agreement and all information disclosed by one Party to the other or otherwise received by the other in the negotiation, entering into and performance of this Agreement, which relates directly or indirectly to that Party or any third party with which it has or proposes to have business dealings and its or their officers, employees, agents, suppliers or customers, including without limitation: technical, business and financial information; plans; dealings; trade secrets;

inventions; products; research and development; production; business processes; price information; marketing and sales information; designs; product lines; and any information which the recipient Party has been informed is confidential or which it might reasonably expect the other Party would regard as confidential but excluding information:

13.7.1 that is already in the public domain;

13.7.2 which subsequently becomes part of the public domain other than as a result of an unauthorised disclosure; or

13.7.3 which is or becomes available to the receiving Party from a third party who is legally entitled to possess and provide the information to the receiving Party.

Confidential Information expressly excludes Participant Data and Operator Data, which are subject to Clauses 11 and 12 above.

13.8 The Participant shall not, without the prior written consent of the Operator in each instance, (i) use in advertising, publicity, marketing or other promotional materials or activities, the name, trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof, of the Operator, its Affiliates or their respective partners or employees, or (ii) represent directly or indirectly that any product or any service provided by the Participant has been approved or endorsed by the Operator.

13.9 For the avoidance of doubt neither this Clause 13 nor any other provision of this Agreement shall affect the Operator's rights and powers or the Participant's obligations under the Rules including, without limitation, Rule 14 (*Information*).

14. Amendments

14.1 The Operator may, in its absolute discretion, amend this Agreement or the Rules by prior written notice to the Participant at any time. Unless otherwise required under Applicable Law, amendments to this Agreement shall not apply retrospectively and the Operator will give the Participant at least ten (10) calendar days' notice before any such amendment comes into force.

14.2 Where the Operator deems it appropriate to do so, it shall consult with Participants in advance of making material changes to this Agreement. Any such consultation process will be notified to Participants via a Participant Notice.

14.3 All amendments to this Agreement or the Rules will be notified to Participants via a Participant Notice, and be effective at such time as specified in the relevant Participant Notice.

14.4 In the event that the Participant considers any amendment to be unfavourable, it may terminate this Agreement upon written notice to the Operator, provided that in the case of amendments other than those

to the Fees, it gives the Operator notice in writing within one month of the date of the relevant Participant Notice.

15. Severability

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

16. Assignment

16.1 Neither the Operator nor the Participant may transfer, novate or assign this Agreement or any of its rights or obligations hereunder to a third party without the prior written consent of the other party such consent not to be unreasonably withheld or delayed.

16.2 Notwithstanding Clause 16.1, in connection with a transfer of substantially all the assets of the Operator to an Affiliate, the Operator may, upon written notice to the Participant, transfer to an Affiliate all of the rights, powers, liabilities and obligations of the Operator and the Operator under this Agreement and the Rules. Upon such notice, such Affiliate shall acquire the same rights and liabilities as it would have acquired and assumed if it had been an original party to this Agreement in substitution for the Operator and (i) the Operator shall be released from further obligation to the Participant, and (ii) the Participant shall be released from further obligation to the Operator. The provisions of this Clause 16.2 shall override any contrary provisions in this Agreement, express or implied.

17. Force Majeure

Neither Party shall be liable for any delay nor failure to perform its obligations hereunder so long as that delay or failure is the result of an event beyond its reasonable control. Notwithstanding the foregoing, each Party agrees and acknowledges that its settlement obligations cannot be waived under this, or any other, provision in this Agreement.

18. Notices

All notices in relation to this Agreement shall be delivered in writing and shall be sent to the contact details set out in the Application Form, or to such other contact details as one Party notifies to the other in writing from time to time. All notices shall be sent either by first class post (in which case they will be deemed to arrive on the second business day after posting), or by email (in which case they shall be deemed to arrive on the business day on which they are sent, provided that no non-delivery message is received by the sender).

19. Entire Agreement

This Agreement contains all the terms agreed between the Parties regarding its subject matter and supersedes any prior agreement, understanding or

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

20. Survival

The terms and conditions of Clauses 1 (*Interpretation*), 6 (*Fees*), 7 (*Permitted Entities*), 8 (*Limitation of Liability*), 10 (*Indemnities*), 11 (*Participant Data*), 12 (*Operator Data*), 13 (*Confidentiality*), 15 (*Severability*) and 16 (*Assignment*) to 22 (*Governing Law*) shall survive any termination, cancellation, replacement, expiration, or modification of this Agreement.

21. Waiver

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

22. Governing Law

Any dispute, controversy or claim, whether contractual or non-contractual, arising out of or in connection with this Agreement (including any dispute regarding its existence, validity, interpretation, breach or termination) shall be referred to and finally resolved by arbitration as follows:-

- I. The arbitration shall be conducted in accordance with the London Court of International Arbitration (LCIA) Rules, which are deemed to be incorporated by reference into this clause.
- II. The seat or legal place of the arbitration shall be Paris, France.
- III. The language of the arbitration shall be English.
- IV. The tribunal shall consist of three arbitrators. Each party shall nominate an arbitrator. The third arbitrator, who shall act as chairman of the tribunal, shall be nominated by the two party-nominated arbitrators. If the third arbitrator is not so nominated within 15 calendar days of the date of the appointment of the later of the two party-nominated arbitrators, the third arbitrator shall be appointed by the LCIA Court.
- V. Nothing in this clause shall be construed as preventing either Party from seeking conservatory or similar interim relief in any court of competent jurisdiction.
- VI. Judgment for the enforcement of any arbitral award may be entered in any court of competent jurisdiction.

VII. The governing law of this Agreement (including its validity and scope), and any non-contractual obligations arising out of or in connection with it, shall be French law.

23. Announcements

No public announcement, press release, communication or circular or other marketing or publicity materials concerning the content of this Agreement will be made or sent by either party without the prior written consent of the other party.

On behalf of the Operator:

On behalf of the Participant:

Signed: _____

Signed: _____

Position: _____

Position: _____

Company: **Morgan Stanley France S.A.**

Company: _____

Date: _____

Date: _____