

OTC Clear Clearing Procedures

Chapter 3 Rates and FX Clearing Services

3.11 Cash Settlement Method

3.11.2 Bulk Settlement Run

- (i) In respect of the cash payments relevant to the settlements of Initial Exchange Amount and/or Final Exchange Amount of any Standard Cross-currency Rates Derivatives Contract and Notional Amounts of any Deliverable FX Derivatives Contract relevant to a Currency Pair (swap and FX) for a particular Clearing Member or Sponsored Settlement Member (where applicable), if the netted amounts of at least one of the currencies of a Currency Pair (swap and FX) derived in accordance with section 3.11 (v) is greater than zero, they must be settled through the Bulk Settlement Run process for such Currency Pair (swap and FX), where “**Bulk Settlement Run**” is a money clearing and settlement service linked with the RTGS system provided by HKICL, which settles interbank payments through a payment-versus-payment mechanism on a bulk settlement basis, “**payment-versus-payment**” (or “**PVP**”) is a mechanism whereby a transfer of one currency in a Currency Pair (swap and FX) occurs only if a transfer of the other currency in the Currency Pair (swap and FX) also takes place, and “**Bulk Settlement Run process**” is the settlement process comprising all the Bulk Settlement Runs in the same Currency Pair (swap and FX) on any particular payment date. For a Clearing Member who is not a member of the RTGS system, for cash settlement purpose, it should maintain an account with a member of the RTGS system. If a Clearing Member is a member of the RTGS system, it must settle directly through the Bulk Settlement Run process. A Sponsored Settlement Member must settle directly through the Bulk Settlement Run process.

3.12 Cash Settlement Time

- (i) Save and except the Initial Exchange Amount and the Final Exchange Amount of any Standard Cross-currency Rates Derivatives Contract and the Notional Amounts of any Deliverable FX Derivatives Contract, any cash settlement to be payable by a Clearing Member or by a Sponsored Settlement Member (where applicable) on a particular payment date must be settled by the Clearing Member or by the Sponsored Settlement Member (where applicable):
 - (a) no later than 11:00 hours Hong Kong time on the relevant payment due date if the “OTC Clear Settlement Report (Report Number STRP01)” and/or “OTC Clear Settlement Report for Client (Report Number STRP01_C)” (if applicable) relating to that particular payment date is published at or prior to 08:30 hours Hong Kong time on such day; or
 - (b) in all other cases, within two hours following the “OTC Clear Settlement Report (Report Number STRP01)” and/or “OTC Clear Settlement Report for Client (Report Number STRP01_C)” (if applicable) relating to that particular payment date is published or information equivalent to that which would be set out in such

reports is communicated to Clearing Member by OTC Clear, subject to the availability of RTGS services.

- (ii) In respect of the Initial Exchange Amount and the Final Exchange Amount of any Standard Cross-currency Rates Derivatives Contract and Notional Amounts of any Deliverable FX Derivatives Contract:
- (a) the Clearing Member or the Sponsored Settlement Member (where applicable) must be operationally ready to settle the relevant cash settlement on a particular payment date by reserving sufficient funding for the relevant cash settlement no later than the Notional Exchange USD/HKD Settlement Ready Time for the Currency Pair (swap and FX) of USD and HKD and the Notional Exchange USD/CNY (offshore) Settlement Ready Time for the Currency Pair (swap and FX) of USD and CNY (offshore), on the relevant payment due date regardless of whether the “OTC Clear Settlement Report (Report Number STRP01)” and/or “OTC Clear Settlement Report for Client (Report Number STRP01_C)” (if applicable) relating to that particular payment date is published at or prior to 08:30 hours Hong Kong time on such day or not;
 - (b) the cash settlement process for the Initial Exchange Amount and the Final Exchange Amount of any Standard Cross-currency Rates Derivatives Contract and Notional Amounts of any Deliverable FX Derivatives Contract must be completed by both the Clearing Member or the Sponsored Settlement Member (where applicable) and OTC Clear no later than: (A) the Notional Exchange USD/HKD Settlement Cutoff Time for the Currency Pair (swap and FX) of USD and HKD and the Notional Exchange USD/CNY (offshore) Settlement Cutoff Time for the Currency Pair (swap and FX) of USD and CNY (offshore) or (B) if OTC Clear determines to continue to settle any amount pursuant to section 3.19(ii)(a) of these Clearing Procedures by means of other methods as determined by OTC Clear, then in respect of such amount only, 16:00 hours Hong Kong time, in each case on the relevant payment due date regardless of whether the “OTC Clear Settlement Report (Report Number STRP01)” and/or “OTC Clear Settlement Report for Client (Report Number STRP01_C)” (if applicable) relating to that particular payment date is published at or prior to 08:30 hours Hong Kong time on such day or not but provided that if such reports are not published information equivalent to that which would be set out in such reports is communicated to Clearing Member and/or the Sponsored Settlement Member (where applicable) by OTC Clear no later than the Notional Exchange USD/HKD Settlement Ready Time for the Currency Pair (swap and FX) of USD and HKD, and the Notional Exchange USD/CNY (offshore) Settlement Ready Time for the Currency Pair (swap and FX) of USD and CNY (offshore); and
 - (c) If a Black Rainstorm Warning or a Typhoon Signal Number 8 or above is issued by The Hong Kong Observatory or Extreme Conditions are announced, the special arrangements as set out in section 9.6 of these Clearing Procedures will apply and the operation of the procedures set out in this section 3.12(ii) shall be construed accordingly.

3.19 Notional Exchange Failure Handling Procedures

Following the occurrence of a Notional Exchange Failure:

- (i) OTC Clear may, on the basis of the Notional Exchange Failure, determine that the Non-delivering Clearing Member is or appears to be unable, or likely to become unable, to meet its obligations in respect of the Clearing Documentation and/or one or more Contracts to which it is party, such that an Event of Default occurs with respect to the Non-delivering Clearing Member pursuant to Clearing Rule 1301 (an “**Event of Default Determination**”); and
- (ii) irrespective of whether OTC Clear makes an Event of Default Determination in respect of that Notional Exchange Failure:
 - (a) subject to sub-paragraph (d) below, OTC Clear will continue the settlement of Initial Exchange Amounts and Final Exchange Amounts of Standard Cross-currency Rates Derivatives Contracts and the settlement of Notional Amounts of Deliverable FX Derivatives Contracts with other Clearing Members. Such settlement may be processed by means of Bulk Settlement Run(s) and/or any other methods as determined by OTC Clear;
 - (b) OTC Clear may, in its sole discretion, obtain one or more short term loans and/or enter into one or more FX Transactions in order to fulfil OTC Clear’s outstanding obligations with other Clearing Members under Standard Cross-currency Rates Derivatives Contracts or Deliverable FX Derivatives Contracts;
 - (c) if the relevant Initial Exchange Amount or Final Exchange Amount under a Standard Cross-currency Rates Derivatives Contract or the relevant Notional Amount under a Deliverable FX Derivatives Contract, as the case may be (the “**Unpaid Exchange Amount**”), remains unpaid: (a) in respect of a Bulk Settlement Run process for the Currency Pair (swap and FX) of USD and HKD, 15 minutes after the Commencement Time of such Bulk Settlement Run process; or (b) in respect of a Bulk Settlement Run process for the Currency Pair (swap and FX) of USD and CNY (offshore), 15 minutes after the Commencement Time of such Bulk Settlement Run process, on the relevant Initial Exchange Date or Final Exchange Date or Settlement Date, as the case may be, OTC Clear may, in its sole discretion, elect to satisfy its obligation to pay the Corresponding Exchange Amount in the following manner:
 - (A) the obligation of the Non-delivering Clearing Member, or of the Sponsored Settlement Member (where applicable), to pay the Unpaid Exchange Amount shall be replaced by an obligation to pay an amount (the “**Substitute Exchange Amount**”) equal to (and payable in the same currency and on the same date as) the Corresponding Exchange Amount. The obligation of OTC Clear to pay the Corresponding Exchange Amount shall be immediately and automatically set-off against the obligation of the Non-delivering Clearing Member, or the relevant Sponsored Settlement Member (where applicable), to pay the Substitute Exchange Amount such that each such obligation is discharged in full;
 - (B) OTC Clear shall determine the Notional Exchange Failure Adjustment Amount in respect of the Unpaid Exchange Amount; and

- (C) if that Notional Exchange Failure Adjustment Amount is a positive number, the Non-delivering Clearing Member, or the Sponsored Settlement Member (where applicable), shall pay it to OTC Clear immediately upon demand and if that Notional Exchange Failure Adjustment Amount is a negative number, OTC Clear shall pay the absolute value of such amount to the Non-delivering Clearing Member (subject to any rights of set-off against amounts owed by the Non-delivering Clearing Member to OTC Clear, including, without limitation, amounts owed by the Non-delivering Clearing Member pursuant to Clearing Rule 1002A) or the relevant Sponsored Settlement Member (where applicable), as soon as practicable;
- (d) in the event that OTC Clear is unable, as a result of that Notional Exchange Failure, to satisfy its obligation to pay any part or the whole of an Initial Exchange Amount or Final Exchange Amount under a Standard Cross-currency Rates Derivatives Contract and/or any part or the whole of a Notional Amount under a Deliverable FX Derivatives Contract (each such amount the “**Affected Amount**”) with any other Clearing Member (the “**Affected Clearing Member**”), or the Sponsored Settlement Member (where applicable) (the “**Affected SSM**”), in the currency in which the Affected Amount is denominated by 16:00 hours Hong Kong time on the relevant Initial Exchange Date or Final Exchange Date or Settlement Date, as the case may be:
 - (A) OTC Clear shall promptly notify the Affected Clearing Member or Affected SSM of OTC Clear’s inability to do so; and
 - (B) OTC Clear may, in its sole discretion, elect to satisfy its obligation to pay that Affected Amount in the following manner:
 - (i) the obligation of OTC Clear to pay the Affected Amount shall be replaced by an obligation to pay an amount (the “**Substitute Affected Amount**”) equal to (and payable in the same currency and on the same date as) the Corresponding Affected Amount. The obligation of the Affected Clearing Member or the Affected SSM (where applicable) to pay the Corresponding Affected Amount shall be immediately and automatically set-off against the obligation of OTC Clear to pay the Substitute Affected Amount such that each such obligation is discharged in full;
 - (ii) OTC Clear shall determine the Notional Exchange Failure Adjustment Amount in respect of the Unpaid Exchange Amount (if not already calculated pursuant to sub-paragraph (c) above); and
 - (iii) if that Notional Exchange Failure Adjustment Amount is a positive number, OTC Clear shall pay an amount equal to that amount to the Affected Clearing Member or the Affected SSM (where applicable) and if it is a negative number, the Affected Clearing Member or the Affected SSM (where applicable) shall pay an amount equal to the absolute value of such amount to OTC Clear, in each case as soon as practicable, but in no event later than 2 OTC Clear Business Days after the relevant Initial Exchange Date

or Final Exchange Date or Settlement Date, as the case may be;
and

- (e) unless and until the Non-delivering Clearing Member or Sponsored Settlement Member (where applicable) fails to pay or deliver any amounts (excluding Notional Amounts of Deliverable FX Derivatives Contracts and/or Initial Exchange Amounts and Final Exchange Amounts of Standard Cross-currency Rates Derivatives Contracts) when due under the Clearing Documentation or an Event of Default occurs with respect to the Non-delivering Clearing Member, OTC Clear will continue the settlement of cash settlements (other than Notional Amounts of Deliverable FX Derivatives Contracts and/or Initial Exchange Amounts and Final Exchange Amounts of Standard Cross-currency Rates Derivatives Contracts) with the Non-defaulting Clearing Member, or the Sponsored Settlement Member (where applicable), in accordance with section 3.11 of these Clearing Procedures.

For the purpose of this section 3.19:

“Corresponding Affected Amount” means, in respect of an Affected Amount, the corresponding Notional Amount of a Deliverable FX Derivatives Contract and/or Initial Exchange Amount or Final Exchange Amount of a Standard Cross-currency Rates Derivatives Contract (as the case may be) payable by the relevant Affected Clearing Member, or the Affected SSM (where applicable), to OTC Clear on the Settlement Date and/or on the Initial Exchange Date or Final Exchange Date (as the case may be) for that Affected Amount;

“Corresponding Exchange Amount” means, in respect of an Unpaid Exchange Amount, the corresponding Notional Amount of a Deliverable FX Derivatives Contract and/or Initial Exchange Amount or Final Exchange Amount of a Standard Cross-currency Rates Derivatives Contract (as the case may be) payable by OTC Clear to the Non-delivering Clearing Member, or to the Sponsored Settlement Member (where applicable) on the Settlement Date and/or the Initial Exchange Date or Final Exchange Date (as the case may be) for that Unpaid Exchange Amount;

Chapter 4

Margin and Valuation

4.7.3 Settlement of SSM Payment Amounts

A Clearing Member's obligations to pay SSM Payment Amounts to OTC Clear and OTC Clear's obligations to pay SSM Payment Amounts to a Clearing Member shall be extinguished, reduced or discharged in accordance with (i) the terms of Clearing Rule 7A01 (in the case of any sponsoring Clearing Member which is incorporated in Hong Kong) or (ii) the terms of the applicable SSM Tripartite Agreement (in the case of any sponsoring Clearing Member which is incorporated in England or France).

Appendix VII

Template SSM Tripartite Agreement – sponsoring Clearing Member incorporated in England

SSM TRIPARTITE AGREEMENT

dated [_____]

BETWEEN

OTC CLEARING HONG KONG LIMITED,

[CLEARING MEMBER]

(Registered No. [_____])

and

[SPONSORED SETTLEMENT MEMBER]

(Registered No. [_____])

THIS AGREEMENT is dated [●] and made between:

- (1) **OTC Clearing Hong Kong Limited**, a company incorporated under the laws of Hong Kong (registration number: 1745273) and having its registered office at 8/F, Two Exchange Square, 8 Connaught Place, Central, Hong Kong ("**OTC Clear**");
- (2) [●], incorporated in [England] and having its registered office at [●] (the "**Clearing Member**"); and
- (3) [●], incorporated in [England] and having its registered office at [●] (the "**Sponsored Settlement Member**").

BACKGROUND

- (A) The Parties are entering into this Agreement to simplify the payments between OTC Clear and the Clearing Member in respect of Contracts and between such Clearing Member and its Client under the Corresponding Client Transactions.
- (B) This Agreement sets out the contractual terms on which Sponsored Settlement Members may make direct payments of SSM Payment Amounts to OTC Clear, and vice versa.

IT IS AGREED as follows:

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

"**Clearing Procedures**" means the OTC Clearing Hong Kong Limited Clearing Procedures, as amended from time to time.

"**Clearing Rules**" means the OTC Clear Rates and FX Derivatives Clearing Rules, as amended from time to time, and shall include the Clearing Procedures.

"**CM Corresponding Client Transaction Debt**" has the meaning given to that term in paragraph (b)(i) of Clause 2.1 (*OTC Clear Direct Payment Obligations*).

"**CM Corresponding Debt**" has the meaning given to that term in paragraph (b) of Clause 2.2 (*Sponsored Settlement Member Direct Payment Obligations*).

"**OTC Clear Corresponding Debt**" has the meaning given to that term in paragraph (b) of Clause 2.1 (*OTC Clear Direct Payment Obligations*).

"**OTC Clear Parallel Debt**" has the meaning given to that term in paragraph (b) of Clause 2.1 (*OTC Clear Direct Payment Obligations*).

"**Party**" means a party to this Agreement.

"**SSM Corresponding Client Transaction Debt**" has the meaning given to that term in paragraph (b)(i) of Clause 2.2 (*Sponsored Settlement Member Direct Payment Obligations*).

"**SSM Parallel Debt**" has the meaning given to that term in paragraph (b) of Clause 2.2 (*Sponsored Settlement Member Direct Payment Obligations*).

1.2 Incorporation of defined terms

Unless a contrary indication appears, terms defined in the Clearing Rules or the Clearing Procedures have the same meanings when used in this Agreement.

1.3 Primacy of this Agreement

In the event of any inconsistency or conflict between the provisions of:

- (a) this Agreement; and
- (b) the provisions of the Clearing Rules, the Clearing Procedures, the Client Clearing Agreement between the Clearing Member and the Sponsored Settlement Member or any other agreement entered into between all or any of the Parties,

the provisions of this Agreement shall prevail.

2 Direct Payment Obligations

2.1 OTC Clear Direct Payment Obligations

- (a) OTC Clear shall, subject to paragraph (b) of this Clause 2.1 and to Clause 2.4 (*Termination of Direct Payment Obligations*), pay to the Sponsored Settlement Member amounts equal to (and in the same currency as) any SSM Payment Amounts which are payable from time to time by OTC Clear to the Clearing Member if and when those SSM Payment Amounts are due and payable by OTC Clear to the Clearing Member in accordance with the terms of the Contracts governing those SSM Payment Amounts, the Clearing Rules and the Clearing Procedures.
- (b) Each Party acknowledges and agrees that the obligations of OTC Clear to pay amounts under paragraph (a) of this Clause 2.1 (each amount payable pursuant to those obligations being an **"OTC Clear Parallel Debt"**) are separate and independent from, and shall not in any way limit or affect, any obligations of OTC Clear to pay SSM Payment Amounts to the Clearing Member (each amount payable pursuant to those obligations being an **"OTC Clear Corresponding Debt"**) nor shall any OTC Clear Parallel Debt be limited or affected in any way by any OTC Clear Corresponding Debt provided that:
 - (i) an OTC Clear Parallel Debt shall be automatically and irrevocably discharged to the extent that the corresponding OTC Clear Corresponding Debt (or the Clearing Member's obligations under a Corresponding Client Transaction to pay to the Sponsored Settlement Member amounts which correspond to that OTC Clear Corresponding Debt (each amount payable pursuant to those obligations being a **"CM Corresponding Client Transaction Debt"**)) has or have been irrevocably paid or discharged upon such payment or discharge;
 - (ii) an OTC Clear Corresponding Debt shall be automatically and irrevocably discharged to the extent that the corresponding OTC Clear Parallel Debt has been irrevocably paid or discharged upon such payment or discharge; and
 - (iii) subject to Clause 2.4 (*Termination of Direct Payment Obligations*), OTC Clear may in its sole and absolute discretion elect to make payment in respect of:
 - (A) an OTC Clear Corresponding Debt, which shall have the effect set out in paragraph (b)(i) of this Clause 2.1; or

- (B) an OTC Clear Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of this Clause 2.1.

2.2 Sponsored Settlement Member Direct Payment Obligations

- (a) The Sponsored Settlement Member shall, subject to paragraph (b) of this Clause 2.2 and to Clause 2.4 (*Termination of Direct Payment Obligations*), pay to OTC Clear amounts equal to (and in the same currency as) any SSM Payment Amounts which are payable from time to time by the Clearing Member to OTC Clear if and when those SSM Payment Amounts are due and payable by the Clearing Member to OTC Clear in accordance with the terms of the Contracts governing those SSM Payment Amounts, the Clearing Rules and the Clearing Procedures.
- (b) Each Party acknowledges and agrees that the obligations of the Sponsored Settlement Member to pay amounts under paragraph (a) of this Clause 2.2 (each amount payable pursuant to those obligations being an "**SSM Parallel Debt**") are separate and independent from, and shall not in any way limit or affect, any obligations of the Clearing Member to pay SSM Payment Amounts to OTC Clear (each amount payable pursuant to those obligations being a "**CM Corresponding Debt**") nor shall any SSM Parallel Debt be limited or affected in any way by any CM Corresponding Debt provided that:
 - (i) an SSM Parallel Debt shall be automatically and irrevocably discharged to the extent that the corresponding CM Corresponding Debt (or the Sponsored Settlement Member's obligations under a Corresponding Client Transaction to pay to the Clearing Member amounts which correspond to that CM Corresponding Debt (each amount payable pursuant to those obligations being an "**SSM Corresponding Client Transaction Debt**")) has or have been irrevocably paid or discharged upon such payment or discharge;
 - (ii) a CM Corresponding Debt shall be automatically and irrevocably discharged to the extent that the corresponding SSM Parallel Debt has been irrevocably paid or discharged upon such payment or discharge; and
 - (iii) unless specified to the contrary in the Client Clearing Agreement between the Clearing Member and the Sponsored Settlement Member and subject to Clause 2.4 (*Termination of Direct Payment Obligations*), the Sponsored Settlement Member may in its sole and absolute discretion elect to make payment in respect of:
 - (A) an SSM Corresponding Client Transaction Debt, which shall have the effect set out in paragraph (b)(i) of this Clause 2.2; or
 - (B) an SSM Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of this Clause 2.2.

2.3 Nature of arrangements

- (a) Each Party acts in its own name and as principal (and not as trustee or agent of any person) for the purposes of this Clause 2 (*Direct Payment Obligations*), and no claims in respect of any OTC Clear Corresponding Debt, OTC Clear Parallel Debt, CM Corresponding Debt, SSM Parallel Debt, CM Corresponding Client Transaction Debt or SSM Corresponding Client Transaction Debt shall be held on trust or as agent for any person pursuant to this Clause 2 (*Direct Payment Obligations*).

- (b) Nothing in this Clause 2 (*Direct Payment Obligations*) is intended to, or does, operate to discharge any obligation of any Party other than as, and only to the extent, expressly stated in this Clause 2 (*Direct Payment Obligations*).
- (c) Nothing in this Clause 2 (*Direct Payment Obligations*) is intended to, or does, create in favour of any person any mortgage, charge, lien, pledge, encumbrance or other security interest.

2.4 Termination of Direct Payment Obligations

- (a) If any Contract giving rise to any SSM Payment Amounts to which this Agreement applies (or any Corresponding Client Transaction relating to that Contract) is transferred or terminated (including, without limitation, by means of that Contract being transferred between Client Accounts and House Accounts of the Clearing Member or that Contract being ported to a Replacement Clearing Member (or its termination if porting does not occur)), no amounts shall be payable by OTC Clear under paragraph (a) of Clause 2.1 (*OTC Clear Direct Payment Obligations*) or by the SSM under paragraph (a) of Clause 2.2 (*Sponsored Settlement Member Direct Payment Obligations*) in respect of the SSM Payment Amounts governed by that Contract following the time at which such transfer or termination occurs.
- (b) If the Sponsored Settlement Member ceases to be a Sponsored Settlement Member (as defined in, and for the purposes of, the Clearing Rules), no amounts shall be payable by OTC Clear under paragraph (a) of Clause 2.1 (*OTC Clear Direct Payment Obligations*) or by the Sponsored Settlement Member under paragraph (a) of Clause 2.2 (*Sponsored Settlement Member Direct Payment Obligations*) following the time at which such event occurs.
- (c) This Clause 2.4 shall not have the effect of reducing the amount of any OTC Clear Corresponding Debt, any CM Corresponding Debt, any CM Corresponding Client Transaction Debt or any SSM Corresponding Client Transaction Debt.

3 Representations

The Sponsored Settlement Member represents and warrants, on a continuing basis, that it will satisfy the SSM Eligibility Criteria, and acknowledges and agrees that satisfaction of the SSM Eligibility Criteria is a condition precedent to this Agreement.

4 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

5 Governing law

This Agreement is governed by Hong Kong law.

6 Enforcement

- (a) The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) (a "**Dispute**").

- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) [Without prejudice to any other mode of service allowed under any relevant law, [●]:
 - (i) irrevocably appoints [●] as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with this Agreement; and
 - (ii) agrees that failure by a process agent to notify [●] of the process will not invalidate the proceedings concerned.]

7 Third Party Rights

- (a) A person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) (the “**Third Parties Ordinance**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Signed for and on behalf of **OTC Clearing Hong Kong Limited**

Name:

Title:

Date:

Signed for and on behalf of [●]

Name:

Title:

Date:

Signed for and on behalf of [●]

Name:

Title:

Date:

Appendix VIII

Template SSM Tripartite Agreement – sponsoring Clearing Member incorporated in France

SSM TRIPARTITE AGREEMENT

dated [_____]

BETWEEN

OTC CLEARING HONG KONG LIMITED,

[CLEARING MEMBER]

(Registered No. [_____])

and

[SPONSORED SETTLEMENT MEMBER]

(Registered No. [_____])

THIS AGREEMENT is dated [●] and made between:

- (1) **OTC Clearing Hong Kong Limited**, a company incorporated under the laws of Hong Kong (registration number: 1745273) and having its registered office at 8/F, Two Exchange Square, 8 Connaught Place, Central, Hong Kong ("**OTC Clear**");
- (2) [●], incorporated in [France] and having its registered office at [●] (the "**Clearing Member**"); and
- (3) [●], incorporated in [France] and having its registered office at [●] (the "**Sponsored Settlement Member**").

BACKGROUND

- (A) The Parties are entering into this Agreement to simplify the payments between OTC Clear and the Clearing Member in respect of Contracts and between such Clearing Member and its Client under the Corresponding Client Transactions.
- (B) This Agreement sets out the contractual terms on which Sponsored Settlement Members may make direct payments of SSM Payment Amounts to OTC Clear, and vice versa.

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"**CM Corresponding Client Transaction Debt**" has the meaning given to that term in paragraph (b)(i)(i) of Clause 3.1 (*OTC Clear Direct Payment Obligations*).

"**CM Corresponding Debt**" has the meaning given to that term in paragraph (b) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*).

"**OTC Clear Corresponding Debt**" has the meaning given to that term in paragraph (b) of Clause 3.1 (*OTC Clear Direct Payment Obligations*).

"**OTC Clear Parallel Debt**" has the meaning given to that term in paragraph (b) of Clause 3.1 (*OTC Clear Direct Payment Obligations*).

"**Party**" means a party to this Agreement.

"**SSM Corresponding Client Transaction Debt**" has the meaning given to that term in paragraph (b) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*).

"**SSM Parallel Debt**" has the meaning given to that term in paragraph (b) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*).

1.2 Incorporation of defined terms

Unless a contrary indication appears, terms defined in the Clearing Rules or the Clearing Procedures have the same meanings when used in this Agreement.

1.3 Primacy of this Agreement

In the event of any inconsistency or conflict between the provisions of:

- (a) this Agreement; and
- (b) the provisions of the Clearing Rules, the Clearing Procedures, the Client Clearing Agreement between the Clearing Member and the Sponsored Settlement Member or any other agreement entered into between all or any of the Parties,

the provisions of this Agreement shall prevail.

2 Delegations

2.1 In accordance with, and subject to, the provisions of Articles 1336 and *seq.* of the French Civil Code:

- (a) the Clearing Member (as delegating entity, *délégant*) hereby irrevocably and unconditionally delegates OTC Clear (as delegated debtor, *délegué*) to the Sponsored Settlement Member (as beneficiary, *délégataire*) (the "**First Delegation**"). OTC Clear (as delegated debtor) hereby irrevocably and unconditionally accepts such First Delegation. As a result of the First Delegation, OTC Clear shall pay, as primary obligor and not as a surety, directly to the Sponsored Settlement Member the SSM Payment Amounts due by OTC Clear pursuant to, and in accordance with the conditions set out in, Clause 3.1 below. The Sponsored Settlement Member (as beneficiary) hereby expressly accepts: (i) the conditions of the First Delegation; and (ii) OTC Clear as delegated debtor (*délegué*); and
- (b) the Clearing Member (the delegating entity, *délégant*) hereby irrevocably and unconditionally delegates the Sponsored Settlement Member (the delegated debtor, *délegué*) to OTC Clear (as beneficiary, *délégataire*) (the "**Second Delegation**" and, together with the First Delegation, the "**Delegations**"). The Sponsored Settlement Member (as delegated debtor) hereby irrevocably and unconditionally accepts such Second Delegation. As a result of the Second delegation, the Sponsored Settlement Member shall pay, as primary obligor and not as a surety, directly to OTC Clear the SSM Payment Amounts due by the Sponsored Settlement Member pursuant to, and in accordance with the conditions set out in, Clause 3.2 below. OTC Clear (as beneficiary) hereby expressly accepts: (i) the conditions of the Second Delegation; and (ii) the Sponsored Settlement Member as delegated debtor (*délegué*).

2.2 Each of the Delegations constitutes a "*délégation imparfaite*" within the meaning of Article 1338 of the French Civil Code. It is expressly agreed that the Delegations shall not constitute a waiver or release of the Clearing Member's obligations under either of the Clearing Rules, the Clearing Procedures or the Client Clearing Agreement. As a consequence, the Clearing Member, as *délégant*, remains liable: (i) vis-à-vis OTC Clear of any SSM Payment Amounts referred to in Clause 3.2(a) below to the extent set out in Clause 3.2(b); and (ii) vis-à-vis the Sponsored Settlement Member of SSM Payment Amounts referred to in Clause 3.1(a) below, to the extent set out in Clause 3.1(b).

- 2.3** The First Delegation shall automatically terminate when the Clearing Member's obligations under the Corresponding Client Transactions are satisfied in full and/or upon the termination of Direct Payment Obligations referred to in Clause 3.4 below. The second Delegation will terminate when the Clearing Member's obligations under the Contracts are satisfied in full and/or upon the termination of Direct Payment Obligations referred to in Clause 3.4 below.

3 Direct Payment Obligations

3.1 OTC Clear Direct Payment Obligations

- (a) OTC Clear shall, subject to paragraph (b) of this Clause 3.1 and to Clause 3.4 (*Termination of Direct Payment Obligations*), pay to the Sponsored Settlement Member amounts equal to (and in the same currency as) any SSM Payment Amounts which are payable from time to time by OTC Clear to the Clearing Member if and when those SSM Payment Amounts are due and payable by OTC Clear to the Clearing Member in accordance with the terms of the Contracts governing those SSM Payment Amounts, the Clearing Rules and the Clearing Procedures.
- (b) Each Party acknowledges and agrees that the obligations of OTC Clear to pay amounts under paragraph (a) of this Clause 3.1 (each amount payable pursuant to those obligations being an **"OTC Clear Parallel Debt"**) are separate and independent from, and shall not in any way limit or affect, any obligations of OTC Clear to pay SSM Payment Amounts to the Clearing Member (each amount payable pursuant to those obligations being an **"OTC Clear Corresponding Debt"**) nor shall any OTC Clear Parallel Debt be limited or affected in any way by any OTC Clear Corresponding Debt provided that:
- (i) an OTC Clear Parallel Debt shall be automatically and irrevocably discharged to the extent that the Clearing Member's obligations under a Corresponding Client Transaction to pay to the Sponsored Settlement Member amounts which correspond to that OTC Clear Corresponding Debt (each amount payable pursuant to those obligations being a **"CM Corresponding Client Transaction Debt"**) has or have been irrevocably paid or discharged upon such payment or discharge;
 - (ii) an OTC Clear Corresponding Debt shall be automatically and irrevocably discharged to the extent that the corresponding OTC Clear Parallel Debt has been irrevocably paid or discharged upon such payment or discharge; and
 - (iii) subject to Clause 3.4 (*Termination of Direct Payment Obligations*), OTC Clear shall:
 - (A) be required to make payment to the Sponsored Settlement Member in respect of OTC Clear Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of this Clause 3.1 and shall have no discretion to pay the corresponding OTC Clear Corresponding Debt instead; and
 - (B) have the right to receive payment from the Sponsored Settlement Member in respect of SSM Parallel Debt, which shall have the effect set out in paragraph (b)(i)(ii) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*) below.

3.2 Sponsored Settlement Member Direct Payment Obligations

- (a) The Sponsored Settlement Member shall, subject to paragraph (b) of this Clause 3.2 and to Clause 3.4 (*Termination of Direct Payment Obligations*), pay to OTC Clear amounts equal to (and in the same currency as) any SSM Payment Amounts which are payable from time

to time by the Clearing Member to OTC Clear if and when those SSM Payment Amounts are due and payable by the Clearing Member to OTC Clear in accordance with the terms of the Contracts governing those SSM Payment Amounts, the Clearing Rules and the Clearing Procedures.

- (b) Each Party acknowledges and agrees that the obligations of the Sponsored Settlement Member to pay amounts under paragraph (a) of this Clause 3.2 (each amount payable pursuant to those obligations being an "**SSM Parallel Debt**") are separate and independent from, and shall not in any way limit or affect, any obligations of the Clearing Member to pay SSM Payment Amounts to OTC Clear (each amount payable pursuant to those obligations being a "**CM Corresponding Debt**"), nor shall any SSM Parallel Debt be limited or affected in any way by any CM Corresponding Debt (or the obligations of the Sponsored Settlement Member to pay to the Clearing Member amounts which correspond to that CM Corresponding Debt under a Corresponding Client Transaction (each amount payable pursuant to those obligations being an "**SSM Corresponding Client Transaction Debt**")), provided that:
- (i) an SSM Parallel Debt shall be automatically and irrevocably discharged to the extent that the corresponding CM Corresponding Debt has or have been irrevocably paid or discharged upon such payment or discharge; and
 - (ii) a CM Corresponding Debt shall be automatically and irrevocably discharged to the extent that the corresponding SSM Parallel Debt has been irrevocably paid or discharged upon such payment or discharge; and
 - (iii) notwithstanding anything to the contrary in the Client Clearing Agreement between the Clearing Member and the Sponsored Settlement Member and subject to Clause 3.4 (*Termination of Direct Payment Obligations*), the Sponsored Settlement Member shall:
 - (A) be required to make payment to OTC Clear in respect of SSM Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of this Clause 3.2; and
 - (B) have the right to receive payment from OTC Clear in respect of OTC Clear Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of Clause 3.1 (*OTC Clear Direct Payment Obligations*).

The Sponsored Settlement Member acknowledges and agrees that it shall not have the discretion to make payment in respect of an SSM Corresponding Client Transaction Debt, in lieu of its obligation to make payment in respect of the corresponding SSM Parallel Debt.

3.3 Nature of arrangements

- (a) Each Party acts in its own name and as principal (and not as trustee or agent of any person) for the purposes of this Clause 3 (*Direct Payment Obligations*), and no claims in respect of any OTC Clear Corresponding Debt, OTC Clear Parallel Debt, CM Corresponding Debt, SSM Parallel Debt, CM Corresponding Client Transaction Debt or SSM Corresponding Client Transaction Debt shall be held on trust or as agent for any person pursuant to this Clause 3 (*Direct Payment Obligations*).
- (b) Nothing in this Clause 3 (*Direct Payment Obligations*) is intended to, or does, operate to discharge any obligation of any Party other than as, and only to the extent, expressly stated in this Clause 3 (*Direct Payment Obligations*).

- (c) Nothing in this Clause 3 (*Direct Payment Obligations*) is intended to, or does, create in favour of any person any mortgage, charge, lien, pledge, encumbrance or other security interest.

3.4 Termination of Direct Payment Obligations

- (a) If any Contract giving rise to any SSM Payment Amounts to which this Agreement applies (or any Corresponding Client Transaction relating to that Contract) is transferred or terminated (including, without limitation, by means of that Contract being transferred between Client Accounts and House Accounts of the Clearing Member or that Contract being ported to a Replacement Clearing Member (or its termination if porting does not occur)), no amounts shall be payable by OTC Clear under paragraph (a) of Clause 3.1 (*OTC Clear Direct Payment Obligations*) or by the SSM under paragraph (a) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*) in respect of the SSM Payment Amounts governed by that Contract following the time at which such transfer or termination occurs.
- (b) If the Sponsored Settlement Member ceases to be a Sponsored Settlement Member (as defined in, and for the purposes of, the Clearing Rules), no amounts shall be payable by OTC Clear under paragraph (a) of Clause 3.1 (*OTC Clear Direct Payment Obligations*) or by the Sponsored Settlement Member under paragraph (a) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*) following the time at which such event occurs.
- (c) This Clause 3.4 shall not have the effect of reducing the amount of any OTC Clear Corresponding Debt, any CM Corresponding Debt, any CM Corresponding Client Transaction Debt or any SSM Corresponding Client Transaction Debt.

4 Representations

The Sponsored Settlement Member represents and warrants, on a continuing basis, that it will satisfy the SSM Eligibility Criteria, and acknowledges and agrees that satisfaction of the SSM Eligibility Criteria is a condition precedent to this Agreement.

5 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

6 Governing law

This Agreement is governed by Hong Kong law, save for Clause 2 (*Delegation*), which will be governed by French law.

7 Enforcement

- (a) The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) (a "**Dispute**"), provided that the courts of Hong Kong will apply French law in order to interpret Clause 2 and/or assess the validity and enforceability of the Delegations created pursuant to this Agreement.
- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

- (c) Without prejudice to any other mode of service allowed under any relevant law, [●]:
 - (i) irrevocably appoints [●] as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with this Agreement; and
 - (ii) agrees that failure by a process agent to notify [●] of the process will not invalidate the proceedings concerned.

8 Third Party Rights

- (a) A person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) (the “**Third Parties Ordinance**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Signed for and on behalf of **OTC Clearing Hong Kong Limited**

Name:

Title:

Date:

Signed for and on behalf of [●]

Name:

Title:

Date:

Signed for and on behalf of [●]

Name:

Title:

Date: