



**NBC**

**GLOBAL FINANCE**

**NBCGF**  
**TERMS OF BUSINESS**

September 2022 V3.0

**TERMS OF BUSINESS FOR ELIGIBLE COUNTERPARTIES AND PROFESSIONAL  
CLIENTS**

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## Section A: CLIENT CATEGORISATION

- For the purposes of EU Directive 2014/65/EU (“**MIFID II**”) and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 and any applicable implementing EU legislation, delegated acts (directives or regulations), and technical standards issued thereunder or in connection therewith including without limitation the European Union (Markets in Financial Instruments) Regulations 2017, SI No. 375 of 2017 as amended (the “**MiFID Regulation**”), we have, based on the information available to us, categorised you as either a Professional Client or an Eligible Counterparty and you will be treated as such in respect of all business we may conduct with or for you under these Terms of Business. You agree to your client classification as set out in your Client Classification Letter and agree to notify us immediately of any change that could affect your client classification. Please refer to your Client Classification Letter for further detail, including information on how to request a different client classification.
- Pursuant to the MiFID Regulation, and any associated codes, guidelines, or requirements issued by the Central Bank of Ireland (“**Central Bank**”) under or in relation to those regulations (together the “**Central Bank Rules**”) we are obliged to comply with certain rules of conduct. However, we assume no greater responsibility, nor do we owe you any fiduciary duty, other than those imposed by the MiFID Regulation, the Central Bank Rules or the express terms of these Terms of Business.
- If you are an Eligible Counterparty, we will proceed on the basis that there are no specific or general investment objectives to which we should have regard when dealing with you. In accordance with the MiFID Regulation, we are not obliged to assess the suitability of any transactions entered into with you, undertake an appropriateness assessment or comply with requirements relating to best execution. In accordance with the MiFID Regulation, Eligible Counterparties receive a lower level of protection than Professional Clients and Retail Clients. NBCGF does not provide services to Retail Clients. However, we will deal and communicate with Eligible Counterparties in an honest, fair, professional manner.
- As a Professional Client or an Eligible Counterparty, you may not be entitled to receive the protection and compensation afforded to investors pursuant to the provisions of the Investor Compensation Act 1998.

## Section B: TERMS OF BUSINESS

### 1. COMMENCEMENT

- 1.1 NBC Global Finance Limited, trading as NBC Global Finance (“NBCGF”), is an indirectly wholly owned subsidiary of the National Bank of Canada. NBCGF carries on investment business in Ireland and its registered office is at Embassy House, Herbert Park Lane, Ballsbridge, Dublin 4. NBCGF is authorised and regulated in Ireland by the Central Bank whose address is New Wapping Street, North Wall Quay, Dublin 1. Our Central Bank reference number is C129699.
- 1.2 References in these Terms of Business to "we" or "us" should be construed as references to NBCGF and references to “you” and “your” are references to you as the client (Professional Client or Eligible Counterparty) of NBCGF.
- 1.3 By providing instructions to or continuing to deal with us, you agree that these Terms of Business together with any schedules, supplemental terms and conditions for specific products or services, notices (including your Client Classification Letter) and any accompanying documents, as issued and amended by us from time to time, set out the terms of the contract between you and us concerning our investment services. These Terms of Business are legally binding and come into force immediately prior to you providing us with any instructions relating to the services described herein and shall continue unless and until terminated by either you or us in accordance with these Terms of Business.
- 1.4 This Section B (Terms of Business) should be read in conjunction with Section A (Client Categorization) which is an integral part of these Terms of Business, and which together form the basis on which we will transact business with you.
- 1.5 These Terms of Business shall apply to all services, investments and transactions between us. From time to time, we may enter into separate agreements governing specific services, transactions, investments or products including, but not limited to, derivative, stock-lending, and repurchase agreements ("**Specific Agreements**") with you. These Terms of Business supersede any previous agreement between us in relation to any services, transactions investments and products not specifically covered by a Specific Agreement (including where relevant, your terms of business). Where these Terms of Business conflict with any Specific Agreements, the terms of such Specific Agreements will prevail save for where these Terms of Business address applicable laws, regulations, rules, and/or binding requirements ("**Applicable Law**").
- 1.6 All transactions will be subject to the regulations and the rules, customs, orders and procedures of any Regulated Market, OTF, MTF (as such terms are defined in the MiFID Regulation) or any other exchange or clearing house as are in force from time to time through which the transactions are executed and/or cleared, and to all other Applicable Law as are in force from time to time so that if there is any conflict between the provisions of these Terms of Business and Applicable Law, the latter will prevail and we may take or omit to take any action we consider fit in order to comply with any of the Applicable Law. For the avoidance of doubt, we shall not be required by you to do anything that would, in our opinion, infringe any Applicable Law to which we are subject; and all Applicable Law and whatever we do or do not do in order to comply with them will be binding on you.
- 1.7 Any reference in these Terms of Business to “**Affiliate**” shall include any undertaking within such party’s group of companies as defined in Section 8 of the Companies Act 2014 (as amended).

### 2. OUR SERVICES

- 2.1 We will deal on own account in a principal capacity and enter into transactions with you, including dealing in the following MiFID Financial Instruments (as they appear in Schedule 1 of the MiFID Regulation):

- (1) Transferable securities;
- (2) Money-market instruments;
- (3) Units in collective investment undertakings
- (4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivative instruments, financial indices or financial measures which may be settled physically or in cash
- (8) Derivative instruments for the transfer of credit risk; and
- (10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Part, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, an OTF or an MTF.

2.2 The above is subject to change by us without notice, any limits or restrictions. The above may also be updated due to amendments with respect to the MiFID Regulation from time to time.

We may provide you with generic, factual information on our products and services and/or market information but we shall not provide you with any investment advice or recommendations.

We do not grant you any intellectual property rights in any software, documentation, data, design, materials or any other item except as specifically agreed in writing.

2.3 Provision of certain services, investments, products, instruments, and transactions may be subject to the rules, regulations, requirements, obligations, and policies of clearing bodies, exchanges, issuers, markets and/or regulatory bodies. Where such undertakings take any action which affects a service, investment, and transaction; we may take any action which we, in our reasonable discretion, consider desirable to correspond with such action or to mitigate any loss incurred as a result of such action.

2.4 We may be required to report to national competent authorities or make public in accordance with the Applicable Law including but not limited to the MIFIR Regulation and third country Applicable Law. You acknowledge and agree that we are required to disclose such transaction related information and that all such information is held by us shall be our sole and exclusive property. You agree to provide us with all information we may reasonably require for the purpose of complying with our obligations under Applicable Law and acknowledge that we reserve the right not to enter into any transactions with you until we are in receipt of such information.

2.5 Where you receive and transmit an order relating to a Financial Instrument to us, we shall be under no obligation (unless expressly agreed otherwise) to report the transaction resulting from the order concerned or transmit the order details to another investment firm in accordance with the MiFID Regulation

### 3. YOUR INSTRUCTIONS

3.1 We may rely and act on any instruction received without further enquiry as to the genuineness, authority or identity of the person giving or attempting to give such instructions (by whatever means transmitted, whether or not in writing) which purports, and which we believe in good faith, to come from you or to have been given on your behalf regardless of whether you have provided us with notice of a list of persons (including any individual or entity) authorised to act on your behalf and, where you have provided us with such a list, regardless of whether the person in question is named or not named on that list.

- 3.2 Any agreement, approval, confirmation, undertaking, or other commitment with respect to the purchase and/or sale of financial instruments shall be binding where accepted by us (subject to any conditions and contract where relevant) and you shall be responsible for such obligations. In the event that, as a result of your failure to fulfil such obligations, a "**buy-in**" or any fee, cost, penalty, fine, sanction, levy or analogous expense is exercised against us, provided that reasonable notice has been given to you of the likelihood of such occurrence, then you shall account to us for the total costs and expenses reasonably incurred by us as a result of such "**buy-in**" or fee, cost, penalty, fine, sanction, levy or analogous expense.
- 3.3 We will not be liable for any action we take in good faith, pursuant to receipt of instructions from you, nor will we be responsible for verifying the accuracy of instructions received from you. If any instructions are received by us by telephone, computer or other medium we may ask you to confirm such instructions in writing. We shall be authorised to follow instructions notwithstanding your failure to confirm them in writing.
- 3.4 Instructions or requests to make payments or transfers to a third party will only be carried out in certain circumstances, subject to our absolute discretion. In the event that we execute any such instruction, you will fully indemnify us against all costs, expenses, liabilities and losses which we may incur and against all claims which may be made against us as a result.
- 3.5 We will not be obliged to accept instructions to enter into any service, investment or transaction. If, acting in our sole absolute discretion, we do not enter into such service, investment or transaction, we shall not be required to give a reason.

#### 4. OUR RELATIONSHIP WITH YOU

- 4.1 In relation to these Terms of Business, only you will be our client. You undertake to us that you act as principal unless otherwise notified to us in writing, upon receipt of which we may require reasonable verification of your authority and your principal's identity and/or otherwise supplement these Terms of Business. You further agree that at the time you deal or enter into a transaction in any investments with us you will be, or will be acting on behalf of, the beneficial owner of the investments. If you act on behalf of a principal, you agree that whether or not you identify the principal to us, that principal will not be our client for the purposes of the MIFID Regulation and Central Bank Rules and will not have any rights under these Terms of Business.
- 4.2 Where you do act as agent on behalf of a principal, you warrant that you maintain an anti-money laundering program which includes reasonable measures designed to comply with all applicable money laundering, related fraudulent activity, and anti-terrorist laws and regulations in the countries in which you are regulated. You will not commence a relationship with any person or institution that you know to be involved in such criminal activities and/or subject to related economic sanctions. You will cease business with any existing customer if it becomes known to you that the customer is involved in such criminal activities and/or subject to related economic sanctions.
- 4.3 We may also provide you with specific or general risk warnings in relation to some products or transactions, or types of products or transactions. You undertake to read such risk warnings and take them into account when deciding whether or not to instruct us in relation to the relevant products or transactions.
- 4.4 You will be deemed to represent to us on the date on which you enter into a transaction that (absent a written agreement between you and us that expressly imposes affirmative obligations to the contrary for that transaction):
- (i) You are acting for your own account and have made your own independent decisions to enter into that transaction and as to whether that transaction is appropriate or proper for you based upon your

own judgment and upon advice from such advisers as you have deemed necessary. You are not relying on any communication (written or oral) from us as investment advice or as a recommendation to enter into that transaction, it being understood that information and explanations related to the terms and conditions of a transaction will not be considered investment advice or a recommendation to enter into that transaction. No communication (written or oral) received by you from us will be deemed to be an assurance or guarantee as to the expected results of a transaction.

- (ii) You are capable of assessing the merits of and understanding (on your own behalf or through independent professional advice), and understand and accept, the terms, conditions and risks of that transaction. You are also capable of assuming, and assume, the risk of that transaction.
- (iii) We are not acting as a fiduciary for or an adviser to you in respect of any transaction.

4.5 Each obligation of ours in respect of a transaction is subject to the condition precedent that (i) no Event of Default (as defined in Clause 16.2 ) or potential Event of Default with respect to you has occurred and is continuing and (2) we are satisfied based on reasonable grounds acting in good faith that you will perform your obligations toward us in respect of such transaction. We shall notify you in writing where such condition/s are not met, and we rely on same in respect of the withholding of our obligations. We reserve the right to terminate any affected transactions at our absolute discretion.

## 5. BEST EXECUTION

5.1 We do not owe the duty of best execution to an Eligible Counterparty, so this section 5 shall only apply to you if you are a Professional Client.

5.2 We deal with you as principal and do not act on your behalf in relation to the execution of your order, for example where we deal with you as principal on a request-for-quote basis in relation to any MiFID Financial Instrument, and so do not act on your behalf in relation to that order. In such cases we shall not be obliged to comply with the rules under the MiFID Regulation on best execution or act in accordance with our order execution policy as may be amended from time to time (the “**Execution Policy**”). The best execution requirements may only apply in our dealing with you in limited circumstances, as set out in our Execution Policy, a copy of which we will provide to you separately. You agree that by dealing with us you are consenting to the terms of our Execution Policy.

## 6. CONFLICTS OF INTEREST

6.1 We maintain arrangements, including but not limited to maintaining a Conflicts of Interest Policy and take reasonable steps in order to prevent conflicts of interests arising during the course of our business relationships. However, should we become engaged in an investment business which gives rise to a situation where we are unable to prevent or manage the conflict of interest from arising, we will disclose this conflict to you.

## 7. OUR CHARGES

7.1 You agree that, since we have classified you as either a Professional Client or an Eligible Counterparty, we may provide you with more limited information on costs and charges than would otherwise be required under the MiFID Regulation. Our charges will be subject to negotiation and agreement with you on a transaction-by-transaction basis. Any applicable taxes, duties, VAT, stamp duty, withholding tax, financial transaction tax, and other statutory and regulatory charges will be payable by you in addition.

7.2 We may share the charges with any third party. If we have shared our charges with any third party, that will be indicated on the relevant contract note.

7.3 When purchasing or selling certain financial instruments, the price agreed by us with you may include spreads and/or profits for the account of us which shall be disclosed to you where required by Applicable Law.

7.4 We may pay or receive any fees, commissions or non-monetary benefits to or from any other person, to the extent permitted by Applicable Law including the MiFID Regulation. We will separately provide you with information on the key terms of such arrangements on a service or product specific basis if and to the extent required by Applicable Law. Such information will include either the amount of the payment or benefit to be received or paid or the method of calculating that amount (or both).

## 8. YOUR FUNDS AND/OR ASSETS

8.1 We do not handle or hold any of your assets, funds or financial instruments. The MiFID Regulation and Central Bank Rules and requirements relating to Client Assets are therefore not applicable.

## 9. CUSTODY

9.1 We will not undertake or arrange for the safe keeping of your investments.

## 10. RIGHT TO RETAIN YOUR FUNDS

10.1 Your attention is drawn to the fact that we reserve the right to retain, or make deductions from, amounts, which we owe to you, as follows:

- (i) in the case of monies immediately due and payable to you or payable on demand, the right to set off sums immediately due and payable by you to us even though arising in a different transaction;
- (ii) in the case of monies which are not immediately due and payable to you and not payable on demand, the right to appropriate and set off such sums against monies immediately due and payable to us, even though arising out of a different transaction, provided that we shall not resort to monies paid to us by way of margin, deposit or collateral in respect of different transactions without first giving you reasonable notice of our intention to do so and/or;
- (iii) where debits and credits between us and you are expressed in different currencies, and we would have had a right of retention or set-off as per (a) or (b) above if the sums concerned had been in the same currency, we shall be entitled at your expense to convert any sums owing into the currency of your debt to us for the purpose of effecting the said retention or set-off but only in a case when your payment to us is or would otherwise be overdue.

10.2 You will not be entitled to exercise any right of set-off or counterclaim against amounts due to us or our associated companies.

## 11. TAPING AND MONITORING OF COMMUNICATIONS

11.1 All electronic communications (including telephone calls, emails, voicemail, third party systems, and paper correspondence such as envelopes or packages) will be recorded, monitored or inspected (as appropriate) using monitoring devices. Relevant face-to-face conversations will be recorded using written notes. Such recordings will include communications that result or are intended to result in transactions, even if those communications do not result in the conclusion of such transactions.

11.2 Telephone conversations with you or any of your agents or associated persons will be recorded with or without the use of an automatic tone-warning device and we hereby advise you that all telephone conversations will be recorded.

11.3 We will use such recordings and transcripts thereof for any purpose, which we deem desirable including, use as evidence in any dispute between us, you and any other party. In accordance with regulatory

requirements, we will retain all telephone records (including mobile), transcripts and electronic communications for a minimum period determined from time-to-time including, where requested by a regulator such as the Central Bank, and in any case, for a period up to seven years.

## 12. INDEMNITY AND LIABILITY

- 12.1 Notwithstanding any provision to the contrary in these Terms of Business, and to the maximum extent permitted by Applicable Law, neither we nor any Affiliate, nor any of our or their respective directors, officers, agents, or employees shall be liable for any loss suffered by you under or in connection with these Terms of Business unless directly caused by our gross negligence, wilful default or fraud.
- 12.2 You will indemnify us and/or each of our Affiliates and each of our and/or their respective directors, officers, agents, or employees on an after tax basis against any costs, loss, liability, tax, charge, fine, levy or expense (including legal expenses) whatsoever which may be suffered or incurred by us and/or any of them directly or indirectly in connection with or as a result of any service, investment or transaction performed or action permitted under these Terms of Business, unless directly caused by our wilful default or fraud. In particular, if we are required by you or any court or regulatory body to attend, provide information, or to produce documents, in any proceedings or forum in which we are not a party or participant, you shall pay the costs, fees and charges incurred by us in responding to any such requirement, together with outlays including all legal expenses, and any applicable tax thereon (where appropriate).
- 12.3 In no event shall we or any of our Affiliates, or any of our or their respective directors, officers or employees be liable to you for any consequential, indirect, punitive, special or incidental damages, liabilities, claims, losses (including, without limitation, loss of profit (or expectation of profit), loss or damage to business or reputation) expenses, awards, proceedings or costs howsoever caused.
- 12.4 If you are a partnership, or otherwise comprise more than one person, your liability under these Terms of Business shall be joint and several. In the event of the death, bankruptcy, winding-up or dissolution of any one or more of such persons, then (but without prejudice to the above or our rights in respect of such person and his successors) the obligations and rights of all other such persons under these Terms of Business shall continue in full force and effect.
- 12.5 If you fail to make any payment to us when it falls due, you shall pay interest (before and after judgment) on the outstanding amount at a rate equal to the relevant statutory or court rate, or if greater, 2% per annum above our cost of funding such amount from time to time. Such interest shall accrue and be calculated daily from the due date to the date of payment and shall be compounded monthly and you agree is a genuine pre estimate of our loss.
- 12.6 Nothing in these Terms of Business excludes or restricts any obligation or liability we or our associated companies may owe to you under the MiFID Regulation and Central Bank Rules.

## 13. COMPLAINTS AND COMPENSATION

- 13.1 If you wish to raise a complaint, please contact our Compliance department by email at [compliancedublin@nbcgf.ie](mailto:compliancedublin@nbcgf.ie). On receipt of the complaint, the Compliance department will acknowledge it by email and will provide you with a copy of the NBCGF Complaints Handling Procedure.

## 14. CHANGES TO THESE TERMS OF BUSINESS

- 14.1 We may amend these Terms of Business by sending you a written notice describing the relevant changes. Such changes will become effective on a date to be specified in the notice which must be at least two weeks after the notice is sent to you. Any other changes to these Terms of Business will become effective only once they have been agreed by us in writing.

## 15. ASSIGNMENT

- 15.1 To the extent permitted by Applicable Law, neither the agreement constituted by these Terms of Business, nor any interest or obligation hereunder may be transferred or assigned without prior written consent of the other party except that we may make such a transfer or assignment pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all our assets to, another entity without your consent. Any purported transfer that is not in compliance with this section will be void.

## 16. TERMINATION

- 16.1 Subject to Applicable Law, you are entitled to terminate these Terms of Business by giving us immediate written notice, as we may by giving you immediate written notice. Without prejudice to the terms herein, no penalty will become due from either you or us in respect of the termination of these Terms of Business; however, we may require you to pay fees, charges, costs, expenses, including any taxes or duties for transferring any investments. If these Terms of Business are terminated, that will not affect any outstanding order or transaction or accrued charges under these Terms of Business or any legal rights or obligations, which may already have arisen or any transactions between us under a Specific Agreement. Services, investments or transactions in progress at the time of termination will be completed in accordance with these Terms of Business.
- 16.2 If you are in material breach of these Terms of Business or a receiver, administrator (whether out of court or otherwise), administrative receiver, examiner, liquidator, trustee or analogous officer is appointed over you or over all or any material part of your property, or there is a declaration of a moratorium in respect of your indebtedness (other than where any of the foregoing events are pursuant to or in connection with a consolidation, reorganisation, amalgamation or merger or any analogous event), (each, an “**Event of Default**”) we shall be entitled upon written notice to terminate these Terms of Business with immediate effect specifying such Event of Default, whereupon we may treat the outstanding transactions between us (but, for the avoidance of doubt, not any transactions between us under a Specific Agreement) as cancelled and terminated and/or set-off and/or net the positions and liabilities between us in respect of any and all outstanding service, investment or transaction. For the purposes of exercising any set-off or netting right under these Terms of Business; the value of any assets, liabilities and amounts including obligations to deliver cash or securities in respect of these Terms of Business shall be calculated in good faith by us.
- 16.3 We shall not be obliged to make any further payments or deliveries under any service, investment or transaction which would, but for notice specifying **Event of Default** having been provided, have fallen due for performance on or after the effective delivery of such notice and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) pursuant to these Terms of Business.
- 16.4 If you are governed by a system of law that would not otherwise permit termination to take place following certain Events of Default, then termination will occur immediately upon the occurrence with respect to such **Event of Default** and as of the time immediately preceding the occurrence of such Event of Default.
- 16.5 Any termination under this section will not affect any provision of these Terms of Business intended to survive termination, including, without limitation, sections 3, 7, 10, 11, 12, 13, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 28.

## 17. SANCTIONS

- 17.1 You agree that no amounts received pursuant to these Terms of Business have been or shall be used directly or indirectly or will be used to lend, invest, contribute or otherwise make available such proceeds to any person: to fund or facilitate any activities or business of, with or related to (or otherwise make funds available to or for the benefit of) any person, who is a designated target of or who is otherwise the subject

of Sanctions; or in any manner or for any purpose that is prohibited by Sanctions applicable to any party or any of its Affiliates or that would result in a violation of sanctions by any party or any of its Affiliates.

**Sanctions** means: (i) United Nations sanctions imposed pursuant to any United Nations Security Council Resolution; (ii) U.S. sanctions administered by the Office of Foreign Assets Control of the 17.2 U.S. Department of the Treasury ("OFAC") or any other U.S. Government authority or department; (iii) EU restrictive measures implemented pursuant to any EU Council or Commission Regulation or Decision adopted pursuant to a Common Position in furtherance of the EU's Common Foreign and Security Policy; (iv) UK sanctions adopted by legislation including the Terrorist-Asset Freezing etc. Act and statutory instruments enacted pursuant to the United Nations Act 1946 or the European Communities Act 1972 or enacted by or pursuant to other laws; and (v) any other sanctions laws and regulations applicable to any party or any of its Affiliates.

## 18. NOTICES AND SERVICE

- 18.1 We shall be entitled to communicate with you by telephone, fax, e-mail or by post. You may communicate with us by post (at the address set out in the covering letter to these Terms of Business), telephone, or electronic mail, unless you are obliged to communicate in writing under these Terms of Business, in which case you may communicate with us by letter delivered by post or personal delivery to that address.
- 18.2 If you are situated outside Ireland, process by which any proceedings in Ireland are begun may be served on you by being delivered to your registered office or any other address that you have notified to us in writing. This does not affect our right to serve process in another manner permitted by law.
- 18.3 Without prejudice to the foregoing, you will notify us in writing of the person appointed to be your agent for service of process in Ireland. If you fail to appoint an agent for service of process or such agent for service of process is not or ceases to be effectively so appointed and in the event that we are required to serve process on you in connection with any proceedings and are not able or do not wish to serve such proceedings by way of delivery to your registered address, you agree to cooperate with us, our agents or employees, as the case may be, in the service of such process. You further agree that if an agent for service of process in Ireland has not been validly appointed within thirty (30) calendar days from notification by us, then we shall be entitled and empowered to appoint such agent on behalf of you on commercially reasonable terms at your expense.

## 19. FORCE MAJEURE

- 19.1 We shall not be liable to you for any losses suffered by you resulting directly or indirectly from our total or partial failure or delay in performing any of our obligations under these Terms of Business due to any act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, currency restrictions, devaluations and fluctuations, pandemic or contagious disease, acts of terrorism, market conditions affecting the execution of settlement or transactions, failures or breakdowns in communication not reasonably within our control (including, without limitation, settlement computer or accounting systems, or equipment, or any failure or interruption in the supply of data), the suspension of trading by or the failure of any regulated market or clearing house, prevention from or hindrance in obtaining energy or other supplies, labour disputes of whatever nature or late or mistaken delivery of payment by any bank or counterparty, natural disasters or any other reason which may be beyond our reasonable control.

## 20. ILLEGALITY AND SEVERANCE

- 20.1 If any provision or part-provision of these Terms of Business is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any

modification to or deletion of a provision or part-provision under this section shall not affect the validity and enforceability of the rest of these Terms of Business.

20.2 For the avoidance of doubt, if there is any conflict between these Terms of Business and any Applicable Law, the latter will prevail. Nothing herein shall exclude or restrict any obligation which we have to you under Applicable Law.

20.3 We may take or omit to take any action we consider fit in order to comply with any of Applicable Law, regulation, or mandatory requirement. For the avoidance of doubt, we shall not be required by you to do anything that would, in our opinion, infringe any Applicable Law, regulation, or mandatory requirement (including any rules, regulatory guidance, self-regulatory organisation, limits, prohibitions, direction of competent authority which in the opinion of us is necessary for us to follow) to which we are subject.

## 21. RIGHTS OF THIRD PARTIES

21.1 Nothing in these Terms of Business is intended to confer on any third party any right to enforce any term of these Terms of Business.

## 22. NBC FINANCIAL MARKETS ASIA LIMITED

22.1 Role of Agent: Each party agrees and acknowledges that (a) NBC Financial Markets Asia Limited; an Affiliate of us may act solely as agent and not as principal with respect to the entering into of a transaction and (b) NBC Financial Markets Asia Limited has no obligation or liability, by way of guarantee, endorsement or otherwise, in any manner in respect of such transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor or, where agreed in writing, a principal in respect thereof) for performance of such other party's obligations under any transaction. NBC Financial Markets Asia Limited will not enter into any Specific Agreement as agent or attorney of us. All delivery of funds, assets, notices, demands and communications of any kind relating to a transaction once entered into between NBC Financial Markets Asia Limited acting on our behalf with you shall be transmitted directly to us without prejudice to the discussion of transaction terms with NBC Financial Markets Asia Limited and you.

22.2 With respect to fees related to any transaction agreed upon between us and you where NBC Financial Markets Asia Limited has acted as our agent, NBC Financial Markets Asia Limited will receive from us, out of our own funds, an agreed percentage fee which is a function of trade notional amount and tenor of each transaction. For the avoidance of doubt, you will not pay any additional fee, or become subject to any additional costs or expenses, arising due to NBC Financial Markets Asia Limited acting as our agent. Where required pursuant to Applicable Law, the relevant amounts and/or basis of same will be provided to you (such disclosure may be in summary form only) otherwise such information shall be disclosed at our absolute discretion.

## 23. CONFIDENTIALITY

23.1 Each party agrees that all Confidential Information (as defined below) shall be kept strictly confidential and used solely for the purposes of carrying out its obligations hereunder (which may entail disclosure to its Affiliates, professional advisors, auditors, contractors, and agents as required); identification; credit analysis; and complying with all applicable financial and regulatory reporting requirements; and not for any other reason or purpose.

**"Confidential Information"** means:

- (i) any information, in any form whatsoever, belonging to or related to the other party which is confidential or proprietary or relates to the other party and whether or not the information is expressly stated to be confidential or marked as such, including, but not limited to, business, commercial, operational, management or financial information, customer lists, price lists, data, processes, models and any other data or know how;
- (ii) analyses, compilations and other material prepared by the other party which contain, reflect or are generated from the information described in (i), (ii) or (iii); and  
the existence and content of our relationship and any service, investment or transaction hereunder.

Notwithstanding the foregoing, Confidential Information shall not include any information that:

- (i) was in the possession of the party receiving the information (the “**Receiving Party**”) on a non-confidential basis before receipt from the other party (the “**Disclosing Party**”), provided that the source of such information was not known by the Receiving Party to be bound by any confidentiality obligation to the Disclosing Party with respect to such information;
- (ii) is, from such applicable date, generally available to the public other than as a result of a violation of these Terms of Business by the Receiving Party;
- (iii) is independently developed by the Receiving Party; or
- (iv) is subsequently received by the Receiving Party from a third party on a non- confidential basis, provided that such third party was not known by the Receiving Party to be bound by any confidentiality obligation to the Disclosing Party with respect to such information.

23.2 Noting herein shall be construed as preventing a party from disclosing Confidential Information as required pursuant to Applicable Law, regulation or competent authority subject to that party promptly notifying the Disclosing Party to the extent permissible.

23.3 You agree, undertake, and warrant to implement reasonable technical and operational measures to ensure that our information is stored securely. You will immediately inform us in the event that you become aware or reasonably suspect that our information has been accessed without authorisation.

## 24. REPORTING CONSENT

24.1 Notwithstanding anything to the contrary in these Terms of Business, Specific Agreement or in any non-disclosure, confidentiality or other agreement between the parties, you hereby consent to the disclosure of information:

- (i) to the extent required or permitted by any Applicable Law, rule or regulation (including without limitation Article 9 (1a) EMIR where we may have an obligation to report on behalf of other parties in certain circumstances) which mandates reporting and/or retention of transaction and similar information or to the extent required by any order or directive regarding reporting and/or retention of transaction and similar information issued by any authority or body or agency in accordance with which we are required or accustomed to act (“**Reporting Requirements**”); or
- (ii) to and between our head office, branches or Affiliates, or any persons or entities who provide services to such other party or its head office, branches or Affiliates, in each case, in connection with such Reporting Requirements.

24.2 You acknowledge that pursuant to global regulatory reform initiatives, regulators require reporting of trade data to increase market transparency and enable regulators to monitor systemic risk to ensure safeguards are implemented globally.

- 24.3 You further acknowledge that disclosures made pursuant hereto may include, without limitation, the disclosure of trade information including a party's identity (by name, address, corporate affiliation, identifier or otherwise) to any swap or trade data repository or one or more systems or services operated by any trade repository ("TR") and any relevant regulators (including without limitation, the U.S. Commodity Futures Trading Commission or other U.S. regulators in the case of trade reporting under applicable U.S. laws, and the European Securities and Markets Authority and national regulators in the E.U. under the E.U. Regulation No. 648/2012 on OTC derivatives, central counterparties and trade repositories in the case of trade reporting under applicable E.U. laws) and that such disclosures could result in certain anonymous swap transaction and pricing data becoming available to the public. You further acknowledge that, for purposes of complying with regulatory reporting obligations, we may use a third-party service provider to transfer trade information into a TR and that a TR may engage the services of a global trade repository regulated by one or more governmental regulators. You also acknowledge that disclosures made pursuant hereto may be made to recipients in a jurisdiction other than that of us or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for personal data as our home jurisdiction. For the avoidance of doubt, (i) to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by you for purposes of such law; (ii) any agreement between the parties to maintain confidentiality of information contained in a Specific Agreement or in any non-disclosure, confidentiality or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the Reporting Requirements as set out herein; and (iii) nothing herein is intended to limit the scope of any other consent to disclosure separately given by you to us.

## 25. DATA PROTECTION

- 25.1 Under these Terms of Business and otherwise in the course of our relationship with you, we, as a Data Controller, may gather, collect, use, store or otherwise process any personal data (within the meaning of the General Data Protection Regulation ("GDPR")) provided by or about you, your employees, contractors, agents or representatives ("**Data Subjects**").
- 25.2 We take every reasonable step to ensure that personal data is accurate and where necessary, kept up to date. The purposes and legal basis for processing personal data is set out in our Privacy Notice. A copy of the Privacy Notice can be found in the Terms of Business pack provided. Please note that our Privacy Notice and our Privacy Policy may change from time to time.
- 25.3 All Data Subjects have legal rights afforded to them under GDPR and the below sets out the rights that you have with respect to the personal data held and used by us.
- (i) Right to withdraw your consent previously provided to us to process your personal data. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.
  - (ii) Right to enquire as to whether we are processing your personal data and to request access to such personal data that we have collected, used, stored or otherwise processed.
  - (iii) Right to request the rectification of your personal data if it becomes inaccurate.
  - (iv) Right to request the erasure of your personal data. Please note that in certain circumstances where processing is necessary, we may not be required to meet this request.
  - (v) Right to request a restriction of processing of your personal data. When processing is restricted, we will not use your personal data however, we will continue to store it and use it in circumstances as prescribed in GDPR.

- (vi) Right to request data portability of your personal data.
- (vii) Right to object to processing of your personal data in certain circumstances.

- 25.4 In order to exercise your Data Subject rights, you are kindly requested to set out your request in writing to our Compliance Department. We will action requests received from Data Subjects without undue delay and will respond within one month of the receipt of the request. We retain the right to extend this period for complex and lengthy requests and will notify you of any required extensions. We may need to request additional information necessary to confirm the identity of the Data Subject.
- 25.5 We will provide the response to your request, including any and all information, communications and actions free of charge. In circumstances where the request is excessive or determined to be manifestly unfounded, we retain the right to charge a reasonable fee or refuse the request.
- 25.6 If you have any queries regarding our processing of personal data, if you wish to exercise your Data Subject rights or if you wish to raise a complaint to us with respect to the processing of your personal data, please contact our Compliance Department at:
- Email: [compliance@dublin@nbcgf.ie](mailto:compliance@dublin@nbcgf.ie)
- Postal Address: Embassy House, Herbert Park Lane, Ballsbridge, Dublin 4
- 25.7 In the event that you wish to raise a complaint with the Irish supervisory authority, please contact the Data Protection Commissioner's Office: [www.dataprotection.ie](http://www.dataprotection.ie)

## 26. REPRESENTATIONS AND WARRANTIES

- 26.1 You represent and warrant to us on the date these Terms of Business come into effect and as of the date of each provision of service, investment and transaction that:
- (i) if you are a corporation, you are duly incorporated and validly existing under the applicable laws of your country of incorporation;
  - (ii) you have and are in compliance with all necessary Applicable Law, authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully perform your obligations hereunder;
  - (iii) the persons entering into these Terms of Business and each service, investment and transaction on your behalf have been duly authorised to do so;
  - (iv) these Terms of Business, each service, investment and transaction and the obligations created under them are binding upon you and enforceable against you in accordance with their terms and do not and will not violate the terms of any regulation, order, charge or agreement by which you are bound;
  - (v) no Event of Default (as defined in section 16 above) or any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the above) an Event of Default (a potential Event of Default) has occurred and is continuing with respect to you;
  - (vi) unless otherwise notified in writing by you and agreed by us, you act as principal and sole beneficial owner with respect to these Terms of Business;
  - (vii) you are not a public sector body, local public authority, municipality or a private individual investor;
  - (viii) any information which you provide or have provided to us including in respect of your financial position, domicile or other matters is accurate and not misleading in any material respect;
  - (ix) you shall be fully responsible for payment of all taxes due and for the making of all related claims or submissions whether for exemption or relief from withholding taxes or otherwise, for filing any

tax forms and for providing any relevant tax authorities with all necessary information in relation to any services, investments or transactions for or with you;

- (x) you have obtained and will duly renew and maintain one or more LEI codes that pertain to you and, if you are acting on behalf of one or more principals, each principal on whose behalf you may be acting. You will immediately inform us in writing of any changes to such LEI codes and of any new LEI codes issued to you or any principals on behalf of which you act upon request from us, you will provide us with such information as is necessary for us to perform our obligations under applicable law or regulation.

“**LEI code**” means a validated and issued legal entity identifier code the length and construction of which are compliant with the ISO 17442 standard, and which is included in the Global LEI database maintained by the Central Operating Unit appointed by The Legal Entity Identifier Regulatory Oversight Committee; and

- (xi) except as otherwise agreed by us in writing, you hold full absolute title and are the sole legal and beneficial owner of all assets and instruments you transfer under these Terms of Business, free and clear of any security interest whatsoever.

26.2 In addition to the above representations and warranties, if you are an investment firm within the meaning of MiFID II or a credit institution authorised under Directive 2013/36/EU, and you are a systematic internaliser in a specific financial instrument you represent and warrant to us that:

- (i) in the event that you sell a financial instrument to us pursuant to a transaction which is concluded outside the rules of a trading venue a (i) share, depositary receipt, ETF, certificate or other similar financial instruments; and/or (ii) bond, structured finance product, emission allowance or derivative, in each case where such financial instrument is traded on a trading venue, you will make the transaction public through an Approved Publication Arrangement (“**APA**”) (as defined in the MiFID Regulation);
- (i) in the event that you buy from us pursuant to a transaction which is concluded outside the rules of a trading venue a (i) share, depositary receipt, ETF, certificate or other similar financial instruments; and/or (ii) bond, structured finance product, emission allowance or derivative, in case where such financial instrument is traded on a trading venue, you will make the transaction public through an APA;
- (ii) in addition, you undertake to notify us promptly from time to time of all financial instruments in which you are at any time a systematic internaliser.

## 27. WAIVER OF IMMUNITY

27.1 You hereby waive all immunity (whether on the basis of sovereignty or otherwise) from jurisdiction, attachment (both before and after judgement) and execution to which you might otherwise be entitled in any action or proceeding in any country or jurisdiction relating in any way to these Terms of Business and any service, investments or transaction, and agree that you will not raise, claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

## 28. RIGHTS AND REMEDIES

28.1 The rights and remedies provided to us under these Terms of Business are cumulative and not exclusive of those provided by law or any other agreement. We shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to you. No failure by us to exercise or delay by us in exercising any of our rights under these Terms of Business (including any service, investment or transaction) or otherwise shall operate as a waiver of those or any other rights or remedies. No single or

partial exercise of a right or remedy shall prevent further exercise of that right or remedy or the exercise of another right or remedy.

- 28.2 Without prejudice to any other rights or remedies that we may have, you acknowledge and agree that damages alone may not be an adequate remedy for any breach of these Terms of Business by you. Accordingly, we shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of these Terms of Business.

## 29. COMMUNICATIONS

- 29.1 Any agreement made between you and us in accordance with these Terms of Business and all communications from us will be in English.

## 30. GOVERNING LAW

- 30.1 These Terms of Business (and any pre-contractual negotiations between us) are governed by the laws of Ireland. You agree to submit to the exclusive jurisdiction of the Irish Courts in respect of any dispute (including any non-contractual dispute) arising out of these Terms of Business. Nothing in this section shall limit the right of us to take proceedings against you in any other court of competent jurisdiction for reasons including but limited to the nature of the transactions, the taking or provision of security and/or the location where acts or omissions may be considered to have occurred, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.