



**Registration of a Charge**

Company Name: **CZARNIKOW GROUP LIMITED**

Company Number: **02650590**



XC773LSP

Received for filing in Electronic Format on the: **06/07/2023**

**Details of Charge**

Date of creation: **23/06/2023**

Charge code: **0265 0590 0111**

Persons entitled: **NATIXIS**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) .**

**Contains negative pledge.**

**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **LILY LIU**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 2650590

Charge code: 0265 0590 0111

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd June 2023 and created by CZARNIKOW GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 6th July 2023 .

Given at Companies House, Cardiff on 7th July 2023

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

MACQUARIE BANK LIMITED (LONDON BRANCH)

NATIXIS

CZARNIKOW GROUP LIMITED

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TRIPARTITE ACCOUNT SECURITY AGREEMENT

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**THIS AGREEMENT** is entered into as a deed, dated 23 June 2023 and made between:

- (1) **MACQUARIE BANK LIMITED (LONDON BRANCH)** of 28 Ropemaker Street, London, EC2Y 9HD ("**Broker**");
- (2) **NATIXIS** of 30 Avenue Pierre Mendes, Paris 75013, France acting as Security Agent for the Secured Parties ("**Security Agent**"); and
- (3) **CZARNIKOW GROUP LIMITED** of Paternoster House, 65 St. Paul's Churchyard, London, EC4M 8AB (the "**Client**").

**WHEREAS**

- (A) The Client has opened an account with the Broker for the purpose of dealing in certain financial and other instruments subject to the Broker's Terms of Business.
- (B) Certain financial institutions (the "**Lenders**") have separately agreed to make a facility available to the Client partly for the purpose of meeting any obligation which the Client may incur to pay Initial Margin or Variation Margin or any other amount to the Broker in respect of any such dealings.
- (C) The Client has agreed to grant a security interest to the Security Agent over the Charged Property as more fully described in this Agreement.

**NOW THIS AGREEMENT WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

"**Account**" means the account with account reference number [REDACTED] 02 opened or to be opened by the Client with the Broker in accordance with the Terms of Business subject to the terms of this Agreement (and includes any sub-account or replacement, re-designation or successor account that may be opened from time to time);

"**Bank Facility**" means any agreement(s) and/or arrangement(s) entered into by, among others, the Lenders, the Security Agent and the Client (as from time to time amended, supplemented or novated), pursuant to which the lenders has made or may make available to the Client facilities partly for the purposes of or in connection with the transactions contemplated by this Agreement or otherwise;

"**Broker Liabilities**" means, in respect of the Account only, all liabilities (whether direct or indirect, present or future, actual or contingent) owing by the Client to the Broker under or pursuant to the Terms of Business (including, but not limited to (i) any value added or other taxes or charges, (ii) all legal fees incurred as previously agreed with the Client (iii) any margining requirements and (iv) any other fees, commissions or expenses previously agreed with the Client), all incurred solely in relation to the Account and/or Financial Instruments entered into the Account pursuant to the terms of this Agreement;

**"Business Day"** means a day which is not a Saturday or Sunday and upon which Security Agent is open for business in London and Paris;

**"Charged Property"** means the net balance due to the Client in respect of the Account from time to time, in particular taking into account the following:

- (a) the Liquidation Amount, where owed by the Broker to the Client under the Terms of Business;
- (b) any cash credited to the Account, and the value of any cash or other collateral provided in respect of the Account not taken into account in calculating the Liquidation Amount;
- (c) any other non-capitalised liabilities owing by the Broker to the Client not taken into account in calculating the Liquidation Amount;
- (d) all Financial Instruments held on, or credited or transferred to, the Account; and
- (e) all warehouse receipts, mercantile and other documents of title to commodities or other goods held or received upon physical settlement in respect of any Financial Instrument described in (d) above, or any negotiable instrument held or received in respect of any of the foregoing;

**"Effective Date"** means the date on which all Security created under the Original Tripartite Account Security Agreement and the Second Ranking Tripartite Account Security Agreement is irrevocably and unconditionally released;

**"Event of Default"** has the meaning given in the FTCA;

**"FCA"** means the UK's Financial Conduct Authority;

**"Finance Documents"** has the meaning given to that term in the Bank Facility;

**"Financial Instruments"** means any financial instrument in relation to hedging the price fluctuation in value terms of raw sugar or white sugar;

**"FTCA"** means the Futures Trading and Clearing Agreement for Professional Clients and Eligible Counterparties between the Broker and the Client as amended;

**"Initial Margin"** means:

- (a) an amount at least equal to any deposit which, at the time an Order is executed, the Broker may be required to pay to a central clearing counterparty in respect of a Financial Instrument traded on the exchange on which the relevant Financial Instrument is traded in accordance with the rules and regulations of that exchange; and
- (b) any further amounts that the Broker may require from the Client by way of deposit or security in accordance with the Terms of Business;

**“Liquidation Amount”** has the meaning given in Clause 19.4(c) of the FTCA provided that any calculation of a Liquidation Amount shall be limited to positions on the Account defined herein;

**"Order"** means an order from the Client to the Broker in respect of the purchase or sale or proposed purchase or sale of a Financial Instrument;

**"Original Tripartite Account Security Agreement"** means the tripartite account security agreement dated 1 July 2021 and made between the Broker, the Security Agent and the Client;

**"Parties"** means the parties to this Agreement (being the Broker, the Security Agent and the Client);

**"Second Ranking Tripartite Account Security Agreement"** means the tripartite account security agreement dated 27 June 2022 and made between the Broker, the Security Agent and the Client;

**"Secured Liabilities"** means all monies and liabilities (whether direct or indirect, present or future, actual or contingent) owing by the Client to the Secured Parties under or in connection with the Finance Documents;

**“Secured Parties”** means each Finance Party (as defined in the Bank Facility, and including the Lenders) from time to time party to the Bank Facility and any Receiver or Delegate (each as defined in the Bank Facility);

**"Security"** means a mortgage, charge, pledge, lien, fiduciary transfer or assignment or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**"Terms of Business"** means the FTCA and any agreement(s) and/or arrangement(s) entered into by the Broker and the Client, under which the Broker has agreed to open and operate the Account; and

**"Variation Margin"** means:

- (a) amounts equal to any variation margin which, while a Financial Instrument is outstanding, the Broker is required to pay to a central clearing counterparty in respect of a Financial Instrument traded on the exchange on which the relevant Financial Instrument is traded in accordance with the rules and regulations of that exchange in order to reflect changes in the value of that Financial Instrument on a mark-to-market basis; and
- (b) any further amounts that the Broker may from time to time require from the Client by way of deposit or security in accordance with the Terms of Business.

## **1.2 Interpretation**

- 1.2.1 Clause headings are for convenience only and shall not affect the interpretation of this Agreement.

- 1.2.2 The terms of this Agreement shall prevail in case of conflict between this Agreement and the Terms of Business.
- 1.2.3 This Agreement shall take effect as a Deed regardless of the manner of its execution.
- 1.2.4 Any covenant of the Broker or the Client under this Agreement (other than a payment obligation which has been discharged) remains in force until the date on which the Security Agent notifies the Broker that the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full, unless otherwise agreed by the Security Agent.

## **2. EFFECTIVE DATE**

### **2.1 Operative Clauses upon the Effective Date**

The following clauses of this Agreement shall only become effective upon the Effective Date:

- (a) Clause 3 (*Nature of the Account*); and
- (b) Clause 4 (*Operation of the Account*).

Until the Effective Date, the equivalent clauses in the Original Tripartite Account Security Agreement and the Second Ranking Tripartite Account Security Agreement shall remain in full force and effect.

## **3. NATURE OF THE ACCOUNT**

### **3.1 Separate Account**

The Client will open the Account which will be a separate account with the Broker solely for the purposes of the transactions contemplated by this Agreement. The Account will be "segregated" from the Broker's accounts and other accounts of the Client. In this Agreement, the term "segregated" requires that the Account and assets and positions relating to the Account (which may include, without limitation, the Charged Property) are distinguished and segregated on the books and records of the Broker from the assets of the Broker and the other clients of the Broker.

### **3.2 Consequences of Separation**

In order to give effect to Clause 3:

- 3.2.1 the Broker shall (i) credit to the Account all monies received by it in respect of any Financial Instrument relating to the Account and (ii) debit to the Account all Broker Liabilities;
- 3.2.2 the Account balance will be separately identifiable at all times and will be kept separate from any other account of the Client or any other person;

- 3.2.3 except in relation to Broker Liabilities, the Broker will not claim or exercise any right of set-off, lien or similar right (individually and collectively, "**Broker's Rights**") in respect of the Account;
- 3.2.4 the Broker will only make payments out of the Account by way of direct credit to the Client (and not by way of credit to any third party) except for any deductions that may be required to satisfy any Broker Liabilities, until the Broker receives notice from the Security Agent that an Event of Default (as defined in the Bank Facility) has occurred and is continuing, following which the Broker will only make payments out of the Account by way of direct credit to the Security Agent (and not by way of credit to the Client or any third party) except for any deductions that may be required to satisfy any Broker Liabilities; and
- 3.2.5 the Client will promptly notify the Security Agent in writing of any proposed amendment(s) to the Terms of Business between the Client and the Broker.

### 3.3 **Broker's Undertaking**

The Broker will not extend credit to the Client in or for the Account, or guarantee any obligations of the Client to any person or entity, or exercise any right of setoff or other similar right against the Account or any payments due to the Client, except (in each of the foregoing instances) for purposes of effecting payment of Broker Liabilities solely to the extent arising out of transactions in or for the Account (and, for avoidance of doubt, excluding any right of setoff or other similar right against the Account for obligations of the Client with respect to any other accounts) or as permitted pursuant to Clause 4.4 (*Threshold*); provided that the foregoing restriction shall not restrict the Broker from extending credit to the Client with respect to any other accounts (provided that there shall be no right of setoff or other similar right against the Account for obligations of the Client with respect to any other accounts). The Broker hereby subordinates any security interest, lien or right of setoff it may have now or in the future against the Account to the security interest and lien of the Security Agent, except that the Broker will retain its Broker's Rights thereon to secure payment of the Broker Liabilities to the extent provided in the Terms of Business.

## 4. **OPERATION OF THE ACCOUNT**

### 4.1 **Instructions**

The Broker recognises only the Client as its client and has no client relationship with the Security Agent. The Client may at any time in accordance with the Terms of Business place Orders with the Broker which may be executed by the Broker.

### 4.2 **Errors**

Any transaction entered in error by the Broker in the Account will be deleted without affecting the obligations of the Parties with respect to the Account.

### 4.3 **Statements, Information**

The Broker will make available to the Security Agent and the Client daily statements relating to the Account. Each statement prepared by the Broker shall (save for manifest

errors) be a conclusive record, as at the time of its preparation, of the entries in the Account and of all liabilities of the Parties hereto. The Broker will provide to the Security Agent all other information that the Security Agent may request in relation to the Account at any time.

#### **4.4 Threshold**

Pursuant to the Terms of Business, the Broker requires payment be made to the Account by the Client if the aggregate of all Initial Margin and Variation Margin in connection with all Financial Instruments relating to the Account exceeds the amount in the Account by at least USD 30,000 (or such other amount as agreed from time to time between the Broker and the Client, or set by the Broker in accordance with the Terms of Business). The Client shall notify the Security Agent promptly following any change to such threshold.

### **5. CLOSE-OUT**

#### **5.1 Partial or Total Close Out by the Security Agent**

If the Security Agent notifies the Broker in writing either that sums are due under the Bank Facility which have not been paid, or that the Security Agent deems it necessary for its own protection, in each case following the occurrence of an Event of Default (as defined in the Bank Facility) which is continuing, it may instruct the Broker to:

- i. close out and liquidate any or all positions on the Account; and
- ii. cancel any Order that has been given by the Client for the Account but has not yet been executed, if it is practicable for the Broker to so do.

The Broker shall act on instructions promptly without enquiring as to the validity of the Security Agent's instruction or the circumstances underlying the Security Agent's certificate.

#### **4.2 Close Out by the Broker**

The Broker may at any time permitted under the Terms of Business (including, without limitation, following an Event of Default) or upon the Security Agent assigning or transferring all or any part of its rights or benefits under this Agreement in accordance with Clause 13.6, close out and liquidate any or all outstanding positions in the Account in accordance with the Terms of Business. The Broker shall where possible, consult with the Security Agent as to its requirements as soon as reasonably practicable beforehand and if not reasonably practicable to, provide the Security Agent with notice of such close out as soon as practicable thereafter. The Broker shall not be bound by any request made by the Security Agent in the context of such consultation. Without limitation, the Broker may determine that it is not reasonably practicable to consult with the Security Agent in advance of closing out or liquidating any positions in the Account where the Broker, in its good faith and commercially reasonable judgment, believes that this would expose the Broker to the risk of incurring losses with respect to the Account (for example, without limitation, by reason of market volatility and/or the Broker's expectations with respect to the Client's ability and/or willingness to discharge its obligations in full with respect to the Account).

### **5.3 Notice of Close Out**

The Security Agent shall give notice to the Client of any action taken by it pursuant to Clause 5.1 as soon as practicable thereafter. The Broker shall give notice to the Client of any action taken by it pursuant to Clause 5.2 as soon as practicable thereafter. For the avoidance of doubt, the Client's further consent shall not be required for any action taken by the Security Agent or the Broker pursuant to this Clause 5 and the Broker shall have no liability to the Client for any action taken or not taken at the instruction of the Security Agent.

### **5.4 Liquidation Amount**

Following termination and liquidation of all positions in the Account following a close out initiated under Clause 5.1 or Clause 5.2, the Broker shall promptly calculate a Liquidation Amount in respect of such positions in accordance with the FTCA as if an Event of Default has occurred, and apply any collateral balance held in respect of the Account in order to discharge or reduce as far as possible any Liquidation Amount due to the Broker and any other outstanding Broker Liabilities. The Broker's powers shall be those applicable in relation to an Event of Default, whether or not an Event of Default shall have occurred.

### **5.5 Proceeds on Close Out**

If the Broker receives any payment in consequence of the close out and liquidation of any position in the Account, the relevant amount shall, if the close out was initiated under Clause 5.1 be credited to and form a part of the Account balance in accordance with the other provisions of this Agreement, provided always that the amount credited to the Account will be firstly applied to satisfy the Broker Liabilities or, if the close out was initiated under Clause 5.2, shall (subject to the payment of the Broker Liabilities) be promptly paid to the Security Agent or as the Security Agent may direct.

## **6. TERMINATION**

### **6.1 Termination Notice**

The Security Agent or the Broker may at any time give written notice to the other party to terminate this Agreement. Any such notice shall be effective two (2) Business Days after its actual receipt and a copy of such notice shall be sent to the Client.

### **6.2 Action on Termination**

Upon receipt of a termination notice by the Broker pursuant to Clause 6.1 (*Termination Notice*) (but subject always to the Broker's obligations to the Client under the Terms of Business, applicable law and the rules of the FCA and any relevant exchange or clearing house):

- 6.2.1 the Broker may not accept any further Orders from the Client for the Account;
- 6.2.2 if so requested by the Security Agent, the Broker may cancel any Orders from the Client for the Account which then remain unexecuted;

6.2.3 the Broker may take such action with respect to the Account as the Security Agent may direct including, but not limited to, closing out and liquidating of any positions on the Account; and

6.2.4 in the absence of any instructions from the Security Agent, the Broker may take such action in relation to any outstanding positions on the Account as it may in its discretion deem appropriate.

### **6.3 Final Account Balance**

6.3.1 If this Agreement has been terminated and the Broker Liabilities have been paid and discharged in full, the Broker shall pay to the Security Agent the outstanding amount which remains on the Account.

6.3.2 If, following any payment made pursuant to Clause 6.3.1, it transpires that the Broker Liabilities have not in fact been discharged in full (whether on account of any liability for any value added or other taxes or charges or any other costs or expenses levied or incurred), the Client shall on demand pay the Broker such additional amounts as may be necessary to reduce the Broker Liabilities to zero.

## **7. OBLIGATIONS OF THE BROKER AND THE SECURITY AGENT**

### **7.1 Conditions**

The obligations of the Broker to make the payments required pursuant to this Agreement are subject only to the conditions set out in this Agreement.

### **7.2 Effect of other Agreements**

Without limiting the generality of Clause 7.1 (*Conditions*), the Security Agent shall only be responsible for such obligations as the Security Agent expressly agrees to assume in this Agreement. For the avoidance of doubt, the Security Agent shall not be liable for any action or failure to take action in relation to any Charged Property, save as expressly provided for in this Agreement. Except as provided in the Deed, under no circumstances shall the Security Agent have any liability, to the Broker, to the Client or any third party, for any margin shortfall, hedging losses or other amounts owing by the Client to the Broker or for any act or omission of the Client, the Broker or any third party.

### **7.3 Limitations**

Each of the Security Agent and the Broker shall only be responsible for such obligations as they expressly agree to in this Agreement. For the avoidance of doubt, neither the Security Agent nor the Broker shall be liable for any action or failure to take action in relation to any Charged Property, save as expressly provided for in this Agreement.

## **8. POSITION OF THE CLIENT**

### **8.1 Authority**

The Client consents to the arrangements contemplated by this Agreement and authorises the Broker to make the payments and to take all other actions required or permitted pursuant to the terms of this Agreement.

### **8.2 Waiver by Client**

The Client acknowledges that neither the Security Agent nor the Broker shall incur any liability to it in consequence of any action taken or omitted by either of them under or pursuant to the terms of this Agreement.

### **8.3 Client's Representations and Warranties**

The Client represents and warrants to the Security Agent (on behalf of each Finance Party (as defined in the Bank Facility)) and the Broker that:

- 8.3.1 it is the beneficial owner of the Account and the credit balance from time to time maintained in the Account, and the Account and/or Charged Property and/or any of its rights, title and interest therein or any monies payable in respect thereof have not in any way been encumbered, charged, pledged, transferred, alienated or assigned except as contemplated in the Terms of Business (to the extent related to the Broker's Rights in relation to Broker Liabilities only), under the Original Tripartite Account Security Agreement and the Second Ranking Tripartite Account Security Agreement and under this Agreement;
- 8.3.2 it is a limited liability company duly authorised and validly existing under the laws of the jurisdiction in which it is incorporated and has the full corporate power and authority to enter into and perform its obligations under this Agreement;
- 8.3.3 it will not breach or cause to be breached any undertaking, agreement, contract, statute, law, rule or regulation to which it is a party or by which it is bound which would materially limit or affect the performance of its duties under this Agreement;
- 8.3.4 this Agreement and all transactions contemplated by it have been duly authorised and that it has legal power and capacity to grant the security interest set out in Clause 10 (*Security*), which shall constitute a legal, valid and binding obligation enforceable against it in accordance with its terms; and
- 8.3.5 this Agreement constitutes its legal, valid, binding and enforceable obligations, creates security over the Account effective in accordance with its terms and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Client or otherwise.

#### **8.4 Client Undertaking**

The Client hereby warrants and undertakes that to the extent that it receives any funds resulting from any rights or interests in any Financial Instrument (whether recorded in the Account or not) or any other transaction recorded in the Account, it will immediately pay such funds into the Account and until such time it will hold the same on trust for the Security Agent and further agrees that if any actions or proceedings are deemed necessary to realise any funds or enforce the rights and interest aforesaid, but only with respect to Financial Instrument or otherwise with respect to the Account, it will as necessary and will if requested to do so by the Security Agent, act on the Security Agent 's behalf in enforcing or pursuing the same.

#### **9. ORDERS**

Nothing in this Agreement shall be construed so as to prevent the Client from having to comply with all obligations arising under or in relation to Financial Instruments, the rights and interests in the Account and all other Charged Property, in particular in relation to margin calls.

#### **10. SECURITY**

##### **10.1 Creation of Security**

10.1.1 The Client shall pay or discharge the Secured Liabilities in the manner provided for in the Finance Documents.

10.1.2 The Client with full title guarantee, but subject to the Broker's Rights:

- (a) assigns and transfers by way of security and charges by way of first fixed charge all of its rights (existing and hereafter acquired) in the Charged Property to the Security Agent for the payment and discharge of the Secured Liabilities; and
- (b) charges by way of first floating charge all of its rights (existing and hereafter acquired), to the extent not otherwise validly charged or assigned under this Clause 10.1.2 in the Charged Property to the Security Agent for the payment and discharge of the Secured Liabilities.

10.1.3 The Security Agent holds the benefit of this Agreement on trust for the Secured Parties.

##### **10.2 Original Tripartite Account Security Agreement and Second Ranking Tripartite Account Security Agreement**

10.2.1 Where this Agreement purports to create first fixed Security, that Security will be second or third ranking Security ranking subject to the equivalent Security created by the Original Tripartite Account Security Agreement and the Second Ranking Tripartite Account Security Agreement until such time as the Security created by the Original Tripartite Account Security Agreement and the Second Ranking Tripartite Account Security Agreement ceases to have effect.

10.2.2 Where a right or asset has been assigned (subject to a proviso for re-assignment on redemption) under the Original Tripartite Account Security Agreement or the Second Ranking Tripartite Account Security Agreement and the same asset or right is expressed to be assigned again under this Agreement, that second or third assignment will take effect as a fixed charge over the right or asset and will only take effect as an assignment if the relevant security interest created by the Original Tripartite Account Security Agreement and the Second Ranking Tripartite Account Security Agreement ceases to have effect at a time when this Agreement still has effect.

### **10.3 Client's Negative Pledge**

Other than as contemplated by to the Original Tripartite Security Agreement and the Second Tripartite Security Agreement, the Client undertakes to the Security Agent and the Broker not to assign, transfer, charge, mortgage or dispose of any of the Charged Property or otherwise deal with it in a manner inconsistent with its obligations under this Agreement and its obligations to the Broker under the Terms of Business, provided that the extent of the Broker's Rights under the Terms of Business are limited to Broker Liabilities.

### **10.4 Broker Acknowledgement and Undertaking**

10.4.1 The Broker acknowledges notice of the security created by Clause 10.1 (*Creation of Security*), and acknowledges that, until the Security Agent has confirmed that the Bank Facility has been cancelled and repaid in full and that no Secured Liabilities remain outstanding, the Broker will not assign, transfer, charge, mortgage or dispose of any of the Charged Property, save for as necessary in the ordinary course of the Broker's business, or otherwise deal with it in a manner inconsistent with the Broker's obligations to the Security Agent under this Agreement.

10.4.2 The Broker shall promptly notify the Security Agent if:

- (a) it becomes aware of the assertion of any claim or competing security interest on the Account or Charged Property by a third party, save for those arising in the ordinary course of the Broker's business;
- (b) it gives or receives from the Client notice of termination of the Terms of Business; or
- (c) it ceases to maintain any necessary authorisations, permissions, licences and/or exchange or market memberships in respect of executing or carrying Financial Instruments for the Account.

10.4.3 The Broker hereby represents and warrants to the Security Agent and the Client that:

- (a) this Agreement constitutes its legal, valid, binding and enforceable obligations;

- (b) it has received no notice of any other encumbrance or other third party interest over the Charged Property (other than pursuant to the Original Tripartite Account Security Agreement and the Second Ranking Tripartite Account Security Agreement);
- (c) it has neither claimed nor exercised, nor will claim or exercise, any security interest, set-off, counter-claim or other such right in respect of the Account, other than the Broker's Rights in connection with any Broker Liabilities and its right of foreclosure thereof in connection with any Broker Liabilities;
- (d) it has and will at all times have the necessary power to enter into and perform its obligations under this Agreement; and
- (e) it will comply with any instructions received from the Security Agent pursuant to Clause 10.4.4 below.

10.4.4 Following notification from the Security Agent that the Security Agent is enforcing security over the Charged Property created pursuant to this Agreement, the Broker shall (subject to Broker's Rights to secure payment of the Broker Liabilities to the extent provided in the Terms of Business):

- (a) comply with the terms of any written notice or instruction relating to the Account received by the Broker from the Security Agent;
- (b) hold all sums standing to the credit of the Account to the order of the Security Agent; and
- (c) pay or release any sum standing to the credit of the Account in accordance with the written instructions of the Security Agent.

10.4.5 The Broker shall not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with any instructions given to it by Security Agent.

## 10.5 **Enforcement of Security**

10.5.1 The security created by this Agreement in favour of the Security Agent shall become enforceable upon termination of this Agreement in accordance with Clause 6 (*Termination*) or otherwise, following an Event of Default (as defined in the Bank Facility) which is continuing, when the Security Agent gives notice to the Client and the Broker. The Broker shall not be obliged to enquire into the validity of, or the circumstances underlying, the Security Agent's certificate.

10.5.2 After the security created under this Agreement has become enforceable, the Security Agent may enforce all or any part of this security in any manner it sees fit or as instructed in accordance with the Bank Facility.

10.5.3 The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 (the "**Act**"), as amended by this Agreement, shall be immediately exercisable at any time after this security has become

enforceable. Section 103 of the Act (restricting the power of sale) and section 93 of the Act (restricting the right of consolidation) do not apply to the security created under this Agreement.

10.5.4 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Agreement.

## **10.6 Powers on Enforcement**

10.6.1 The Security Agent may at any time after the security created under this Agreement has become enforceable require the Broker (subject to the satisfaction and discharge of the Broker Liabilities) to pay any moneys standing to the credit of the Account to the Security Agent or as the Security Agent may direct and the Security Agent may apply all or any part of those moneys against all or any part of the Secured Liabilities.

10.6.2 At any time after the security created by this Agreement has become enforceable, the Security Agent may (subject to prior satisfaction of the Broker Liabilities) apply the Charged Property in or towards the discharge of the Secured Liabilities in such order as it may deem appropriate, and may exercise any other powers which may be available by law.

10.6.3 All amounts from time to time received or recovered by the Security Agent or any receiver pursuant to the terms of this Agreement or in connection with the realisation or enforcement of all or any part of this security shall be held by the Security Agent and applied in the following order of priority:

- i. in or towards payment of or provision for the Secured Liabilities in accordance with the terms of the Bank Facility; and
- ii. in payment of the surplus (if any) to the Client or other person entitled to it.

This Clause 10.6.3 is subject to the payment of any claims having priority over this security, in particular the Broker's Rights with respect to Broker Liabilities. This Clause 10.6.3 does not prejudice the right of any Secured Party to recover any shortfall from the Client.

## **10.7 Preservation of Security**

The security created by this Clause 10 shall be continuing security for all Secured Liabilities from time to time owing and will remain in full force and effect notwithstanding any act or omission on the part of any Party or any other matter which (but for this provision) would or might have the effect of releasing or prejudicing that security.

## **11. INFORMATION**

### **11.1 Delivery of notices, etc.**

The Security Agent is authorised to receive from the Broker (as the Client's agent), and the Broker is authorised and directed to deliver to the Security Agent, copies

of all confirmations and notices of contracts recorded in the Account or otherwise relating to Financial Instruments, duplicates of all daily statements and other periodic statements relating to the Account and such Financial Instruments (including all movements in respect of margin) and details of all such matters.

## **11.2 Registration**

The Parties acknowledge that the particulars of this Agreement will be registered at Companies House in England and Wales under section 859A of the Companies Act 2006.

## **11.3 Power of Attorney**

The Client, by way of security, irrevocably appoints the Security Agent and any receiver severally as its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

(A) to demand, receive and enforce payments and to endorse instruments, give receipts, releases, satisfactions for, and to sue for monies payable under this Agreement to the Client from the Broker and generally do all things in relation to the Account as may be done by the Client and this may be done in the name of the Security Agent with the same force and effect as the Client could do had this Agreement not been made;

(B) prior to the delivery of an enforcement notice, to do anything which, at any time after the security created by this Agreement has become enforceable, the Client is obliged to do pursuant to this Agreement (but has not done);

(C) on and after the delivery of an enforcement notice, to do anything which the Client is obliged to do under this Agreement; and

(D) and to exercise any of the rights conferred on the Security Agent or any receiver in relation to the Charged Property or under any Bank Facility, the Law of Property Act 1925 or the Insolvency Act 1986.

## **12. NOTICES**

### **12.1 Notices in Writing**

Notices and communications under this Agreement shall be in English and in writing:

12.1.1 by letter or (except for notices under Clause 5 (Close Out), Clause 6 (Termination) and Clause 10 (Security)) email; or

12.1.2 in the case of a notice by the Broker to the Client only, by posting on any secure website maintained by the Broker and to which the Client has access.

### **12.2 Contact Details**

Any notice or communication to be given or made by letter, fax or email must be given or made to the relevant party in accordance with that Party's notice details set out on

the execution pages of this Agreement or to such substitute address, fax or email as the intended recipient may have notified to the sender.

### **12.3 Service of Notices**

Any notice or communications shall be deemed to have been served:

12.3.1 if delivered by hand, at the time of delivery;

12.3.2 if sent by email, at the time of dispatch (provided that delivery is not subsequently rejected); and

12.3.3 if posted on a secure website in the case of a notice by the Broker to the Client only, at the time when it is first available to be viewed on that site.

12.4 Notwithstanding the foregoing provisions of this Clause 12, a notice given to the Broker under Clause 5 (*Close Out*) or Clause 6 (*Termination*) shall only be effective on actual receipt.

## **13. MISCELLANEOUS**

### **13.1 Variations in Writing**

No variation of this Agreement shall be effective unless made in writing and signed by the Parties.

### **13.2 Remedies Cumulative**

The rights, powers and remedies provided for in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

### **13.3 No Partnership**

Nothing in this Agreement shall constitute a partnership, a joint venture or create a relationship of principal or agent or any other fiduciary relationship between the Parties.

### **13.4 No Waiver**

No failure or delay of either Party hereto to exercise any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege as herein provided.

### **13.5 Counterparts**

This Agreement may be executed by the Parties in any number of counterparts which shall together constitute one and the same instrument.

### **13.6 Successors and assignees**

Subject as specified in this Clause 13.6, the rights and obligations of the Parties under this Agreement shall not be assigned, charged or otherwise dealt with by either Party without the prior written consent of the other Party (including, for the avoidance of

doubt, the Client). This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees. The Security Agent may, without any prior written consent of any other Party, assign or transfer all or any part of its rights or benefits under this Agreement to, or any successor to the Security Agent appointed in accordance with the terms of the Bank Facility.

### **13.7 Entire Agreement**

This Agreement constitutes the entire arrangement and understanding of the Parties with respect to its subject matter. Each of the Parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a Party for fraud.

### **13.8 Invalidity of any Provision**

In the event that any provision of this Agreement becomes invalid, illegal or incapable of being enforced by any rule of law or public policy, the validity, legality and enforceability of the remaining provisions shall nevertheless remain in full force and effect.

### **13.9 Bail-In**

Notwithstanding any other term of any agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Agreement may be subject to Bail-in Action by the relevant Resolution Authority and acknowledges and accepts to be bound by:

- (a) any Bail-in Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of this Agreement to the extent necessary to give effect to any Bail-in Action in relation to any such liability.

For purposes of this Clause 13.9:

**"Article 55 BRRD"** means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

**"Bail-in Action"** means the exercise of any Write-down and Conversion Powers.

**"Bail-In Legislation"** means:

- (i) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (ii) in relation to the United Kingdom, the UK Bail-In Legislation; and
- (iii) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

**"EEA Member Country"** means any member state of the European Union, Iceland, Liechtenstein and Norway.

**"EU Bail-in Legislation Schedule"** means the document identified as such and published by the Loan Market Association (or any successor person) from time to time.

**"Resolution Authority"** means any body which has authority to exercise any Write-down and Conversion Powers.

**"UK Bail-In Legislation"** means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**"Write-down and Conversion Powers"** means:

- (i) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (ii) in relation to the UK Bail-In Legislation, any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers; and
- (iii) in relation to any other applicable Bail-In Legislation:
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a

liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and

(ii) any similar or analogous powers under that Bail-In Legislation.

#### **13.10 Third Party Rights**

Nothing in this Agreement shall be construed to give any rights whatever against any Party to any person who is not a party hereto, nor shall any such person be considered a “third party beneficiary” of this Agreement and accordingly, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999, or any other foreign statute of similar effect, to enforce any term of this Agreement.


#### **14. LAW AND JURISDICTION**

This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed, construed and interpreted in all respects in accordance with the laws of England and Wales.

The Parties agree to submit to the exclusive jurisdiction of the English courts to settle any dispute arising from or connected with this Agreement (including claims for set-off and counterclaims and a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity).


**EXECUTED AND DELIVERED** by the Parties on the date appearing at the beginning of this Agreement.

MACQUARIE BANK LIMITED  
(LONDON BRANCH)

By: 

Name: Ian Steedon  
Division Director

Title: \_\_\_\_\_

By: 

Name: John Robbie  
Associate Director

Title: \_\_\_\_\_

*POA #3321 SIGNED IN LONDON*

Macquarie Group Limited

Ropemaker Place,

28 Ropemaker St,

London

EC2Y 9HD

*WITNESSED BY:*



*EMILY HOWE*

Email: [FuturesClearingSalesLondon@macquarie.com](mailto:FuturesClearingSalesLondon@macquarie.com)

Phone: +442030371395

NATIXIS

By:

Name: Katia Kirouani

Title: Authorized Signatory

By:

Name: Véronique MAGNILLAT-JACQUES


Title: Authorized Signatory


7 promenade Germaine Sablon – 75013 Paris

Katia KIROUANI / Véronique MAGNILLAT-JACQUES / Ali ASSAL

Email: [REDACTED]@natixis.com / [REDACTED]@natixis.com /  
[REDACTED]@natixis.com

**EXECUTED AS A DEED BY**  
**CZARNIKOW GROUP LIMITED**

By   
Name: Robin Cave  
C.E.O.  
Title: \_\_\_\_\_

By   
Name: Julian Randles  
C.F.O.  
Title: \_\_\_\_\_

Address: Paternoster House, 65 St. Paul's Churchyard, London, United Kingdom, EC4M  
8AB

Email: @czarnikow.com; @czarnikow.com;

@czarnikow.com; @czarnikow.com

Attention: Julian Randles, Tanya Epshteyn, and Rodrigo Martins