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RESEARCH CHARGE COLLECTION AGREEMENT – FINAL VERSION

This Agreement (the “**Agreement**”) will take effect on [insert date] and is between:

1. [Counterparty] a firm authorised by [insert] whose registered office is at [address] [insert wording relating to role of affiliates if any] (the “**Counterparty**”); and
2. [Client] whose registered office is at [address] (the “**Client**”)

(The Counterparty [each Affiliate] and the Client together the “**Parties**” each a “**Party**”).

**Whereas:**

1. The Client’s business consists of managing investments for certain underlying clients.
2. Acting on behalf of such underlying clients, the Client from time to time wishes to: (a) procure from the Counterparty the execution of orders for the purchase and sale of securities and other instruments; and (b) enter into derivatives transactions with the Counterparty ((a) and (b) collectively the **“Transactions”**).
3. The Client from time to time wishes to procure the provision of research services as permitted under applicable rules and regulations (the “**Research** **Services**”) from various research providers, which may include the Counterparty (the “**Research** **Service Providers**”).
4. The Parties intend that a research charge shall be charged by the Counterparty (and used by the Client as payment for Research Services it purchases from the Counterparty and/or Research Service Providers), in some cases alongside a brokerage commission (or other equivalent amounts received by the Counterparty in relation to a Transaction). The Counterparty shall subsequently pay that research charge (**“the Research Charge”**) into the Research Payment Account (**“RPA”**) being maintained by the Client that shall be used to pay for the provision of Research Services from the Research Service Providers in accordance with applicable rules and regulations. The amount of the Research Charge shall be agreed between the Client and the Counterparty from time to time.
5. The Parties agree that the Client may appoint an RPA administrator (the “**RPA Administrator**”), which can be the Counterparty or a third party, to provide the Client with services in connection with the administration of the RPA.
6. This Agreement is supplemental to the agreed terms and condition of business (as amended from time to time) (the “**Terms of Business**”). The Terms of Business and this Agreement shall be read together and form a single agreement. To the extent that any inconsistency arises between this Agreement and the Terms of Business, this Agreement shall prevail. The Agreement is also separate from any terms of administration with the RPA Administrator.

**It is agreed** as follows:

1. Execution of Research Charge Orders
	1. The Counterparty and the Client shall from time to time agree the Transactions alongside which a Research Charge shall be levied and to which the arrangements contained in this Agreement apply (the “**Research Charge Orders**”).
	2. The Parties each undertake to keep and maintain all relevant books and records in relation to the Transactions and Research Charge Orders, as required by applicable domestic and international legislative and regulatory requirements.
	3. It is acknowledged that the Client is under no obligation to execute any Transactions or Research Charge Orders with the Counterparty and nothing in this Agreement implies any expectation that the Client will execute orders with the Counterparty.
2. Research Charges
	1. The Counterparty will collect from the underlying client a Research Charge when executing Research Charge Orders.
	2. The Client requests the Counterparty and the Counterparty agrees (for itself [and each Affiliate]) to pay such Research Charge into the RPA in accordance with the instructions and account details provided by the Client to the Counterparty from time to time.
	3. The Parties acknowledge that, for the period between collecting Research Charges relating to Research Charge Orders and the payment of such Research Charges into the RPA, and unless otherwise agreed between the Parties the Research Charges shall [not be held on trust by the Counterparty]/[shall be held in a segregated account as agreed by the parties][[1]](#footnote-1). Any payments by the Counterparty to the RPA shall be without interest. The Counterparty will not have any right of set-off over Research Charges in relation to any services that the Counterparty may provide to the Client.
	4. Each reconciliation process shall cover a period of [insert number of] days and each party shall provide the other with its initial reconciliation calculations, including a list of transactions undertaken and Research Charges due, within a further [insert number of] days. The parties shall co-operate with each other, on a bona fide basis, to achieve a reconciliation of the amounts due to be paid, or paid, by the Counterparty into the RPA, and the amount that the Client expects to be paid into the RPA, prior to one day before the expiry of the [30 day][[2]](#footnote-2) period permitted under FCA COBS 2.3B.19G(1)(a), and in any event without undue delay. The Parties may agree to provide and receive periodic updates on the sums due to be paid as Research Charges. The periods in this clause 2.4 may be varied with the agreement of each party.
3. Use of an RPA Administrator or Other Third Party
	1. Where the Client has appointed an RPA Administrator, it shall notify the Counterparty of the identity of such RPA Administrator or any change of RPA Administrator in writing in a reasonably prompt manner (which may be by email). In such instances, the Client agrees that the Counterparty may share the Client’s and the Counterparty’s trade data where necessary with third parties such as the RPA Administrator, and the Client shall use reasonable efforts to ensure that any data shared with such an RPA Administrator in such an arrangement is used by the RPA Administrator only in connection with the provision of RPA administration services. For the avoidance of doubt, it is agreed that the Client shall have no liability whatsoever for any use of the data by the RPA Administrator.
4. Representations and Warranties
	1. The Client represents and warrants to the Counterparty, and (in respect of 4.1.1 and 4.1.2 only) the Counterparty represents and warrants to the Client, that as of the date of this Agreement and on each day that the arrangements continue, that:
		1. it is duly organised, validly existing and in good standing under the laws of its relevant jurisdiction and has power to own all of its property and assets (as applicable) and to carry on its business as it is now being conducted and to carry out its obligations under this Agreement;
		2. in entering into and acting in accordance with this Agreement it will act in compliance with relevant legal, regulatory and contractual obligations;
		3. where relevant, it will make and has made all necessary disclosures to and will obtain and has obtained all required consents from its underlying clients in order to enter into the arrangements set out in this agreement; and
		4. it is satisfied that the Research Services comprise the provision of research (within the meaning of all and any applicable regulations and rules and guidance on such regulations and rules) which may be acquired using monies held in an RPA.
	2. If at any time the representations and warranties contained in this Agreement, cease to be correct in any respect, the relevant Party will immediately notify the other Party of such fact.
5. Confidential Information
	1. The Parties agree that this Agreement, and the general nature of the Parties’ relationship (including the fact that the Parties have entered into the arrangements described in this Agreement), shall be treated as confidential (the “**Confidential Information**”) and neither Party shall disclose the Confidential Information to third parties or publicly without the prior written consent of the other Party except:
6. as required by law and/or applicable regulations;
7. to the extent that such Party (or any of its affiliates providing services under this Agreement) is required or requested to do so by any court, regulatory agency, or government authority with competent jurisdiction over it;
8. to such employees, directors, officers and affiliates of the Parties who are required to have such information in order to fulfil their obligations under this Agreement;
9. in the ordinary course of the Client’s communications with investors, prospective investors and other due diligence counterparties, in which case the existence of the Agreement may be disclosed; and
10. to the Parties’ legal counsel or accountants or similar advisors, provided that any such entity is subject to an obligation of confidentiality similar to that set out in this Clause 5.
	1. If a Party discloses Confidential Information in accordance with Clauses 5.1(i) to (ii), that Party will use reasonable efforts to give prior notice of such disclosure to the other Party to the extent that it is:
11. legally permissible to do so; and
12. permissible under the terms of any request in the case of Clause 5.1(ii) above.
	1. The terms of this Agreement may be disclosed by either Party to the RPA Administrator provided that the RPA Administrator is subject to an obligation of confidentiality similar to that set out in this clause.
13. Limitations of Liability
	1. The Counterparty shall not be liable for any liabilities, damages, losses, judgments, claims and costs (including, without limitation, legal fees and costs) incurred by the Client, its underlying clients or by any third party, of any nature, or from any cause whatsoever, [whether direct, special, incidental or consequential, arising out of or relating to such an act], save for any act or omission by the Counterparty that constitutes negligence, fraud or wilful default. The Counterparty shall not be liable when it accurately follows any instructions provided by the Client or its RPA Administrator [unless in carrying out such instructions the Counterparty acts negligently, fraudulently or is wilfully in default].
14. Termination
	1. This Agreement may be terminated by either Party:
		1. upon [x] days’ prior written notice to the other Party;
		2. immediately if agreed by both Parties; or
		3. immediately by written notice if any of the arrangements contemplated by this Agreement violate any applicable law or regulation in the good faith judgment of a Party that is communicated to the other Party.
	2. Any termination pursuant to Clause 7.1 shall not affect the Parties’ accrued rights and obligations up to the date of termination, including, without limitation, the settlement of outstanding Transactions and the payment of outstanding Research Charges.
	3. Following termination, the Counterparty will pay any Research Charge which it still owes to the RPA in accordance with the payment terms set out in clause 2.4 of this Agreement.
15. Variation

This Agreement shall not be amended or modified in any way except with the prior written agreement of both Parties.

1. Assignment

The Counterparty may, subject to prior notification to the Client, assign its rights under this Agreement, without the Client’s prior consent, to any Affiliate or to a successor pursuant to a merger, consolidation, sale or reorganisation of some or all of the business to which this Agreement relates.

1. Miscellaneous
	1. This Agreement is supplemental to, and in the case of inconsistency shall prevail over, the agreed Terms of Business to the extent of such inconsistency. The Terms of Business and this Agreement shall be read together and form a single agreement.
	2. By signing this Agreement the Parties irrevocably agree that this Agreement supersedes and terminates any existing commission sharing arrangements between the Client and the Counterparty in force or applicable at the time of execution of this Agreement, unless otherwise agreed in writing by the Parties prior to the signing of this Agreement.
	3. Nothing in this Agreement or in any operation or transaction in relation to this Agreement shall be considered as the formation or consolidation of a partnership or joint venture between the Counterparty and the Client and/or a partnership, joint venture or an agency between the Counterparty and any RPA Administrator.
	4. The Client acknowledges that any money which the Counterparty holds pursuant to the arrangements set out in this Agreement will not be treated as client money for the purposes of the FCA's Client Money Rules and will not be subject to the protections conferred by those rules. As a consequence, any such money will not be segregated from the Counterparty’s money in accordance with the Client Money Rules.
	5. Each Party agrees to act reasonably in co-operation with the other Party to provide any information that may reasonably be requested for the purposes of that Party’s compliance with any applicable laws or regulations. Nothing in this clause shall require either Party to keep or maintain any books or records beyond those contemplated by Clause 1.2.
	6. Nothing within this Agreement is intended to limit or prohibit the Client, any underlying client or any of their respective affiliates from trading any financial instrument or product, including specifically those regulated by the Financial Conduct Authority or any other national securities commissions or governmental bodies with authority over financial instruments or products in their respective jurisdictions.
	7. This Agreement may be executed in one or more counterparts, each of which where so executed will constitute an original, but which together will constitute one and the same instrument.
	8. This Agreement and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and the Parties to it submit to the exclusive jurisdiction of the English courts in relation to any disputes or claims, including as to non-contractual obligations, arising out of or in connection with it. [Parties to consider replacement with arbitration provision.]
	9. This Agreement does not create any right under the Contracts (Rights of Third Parties) Act 1999 (including, for the avoidance of doubt, an RPA Administrator) which is enforceable by any person who is not a party to it.
	10. Notices and other communications from the Counterparty or the Client under this Agreement shall be in writing and delivered to the Party receiving such communication at the address specified below:
2. If to the Counterparty:

Attention : [●]

Email : [●]

Telephone: [●]

1. If to the Client:

 Address: [Client Name]

 [Address]

Attention: [●]

Email: [●]

Telephone: [●]

**In witness** whereof this Agreement has been duly executed.

For and on behalf of [Counterparty]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

Date

For and on behalf of [Client]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

Date:

Version 1

Date: 31 October 2017

1. Parties to determine approach [↑](#footnote-ref-1)
2. [subject to further discussion with the FCA] [↑](#footnote-ref-2)