

TERMS AND CONDITIONS FOR COUNTERPARTIES IN THE BANK OF ENGLAND'S ASSET PURCHASE FACILITY

1. INTRODUCTION, SCOPE AND APPLICATION

1.1 These Terms and Conditions together with the other Documentation issued by the Bank:

- (a) set out the terms and conditions for Counterparties in the APF; and
- (b) govern all Transactions entered into between the Bank, as agent for BEAPFF, and the Counterparty.

1.2 The Bank enters into the Documentation on its own behalf and as agent for BEAPFF.

1.3 These Terms and Conditions will be published on the Bank's website at <http://www.bankofengland.co.uk/markets/Pages/apf/documentation.aspx>.

1.4 For the avoidance of doubt, these Terms and Conditions do not set out the terms and conditions for participants in the Bank's Term Funding Scheme and do not cover any transactions thereunder in any respect. The terms and conditions for the Bank's Term Funding Scheme are published on the Bank's website at <http://www.bankofengland.co.uk/markets/Pages/apf/termfunding/documentation.aspx>.

2. INTERPRETATION

2.1 In these Terms and Conditions the following terms have the following meanings:

Admission Letter means the letter or letters from the Bank by which the Counterparty is admitted as a counterparty in one or more of the facilities that form part of the APF;

APF means the Bank of England's Asset Purchase Facility and each of the facilities forming part thereof, as described in the Market Notice;

Application Form means each of the application forms and questionnaires for applicants wishing to become a Counterparty in one or more of the facilities that form part of the APF;

Bank means The Governor and Company of the Bank of England and, save as the context otherwise requires, a reference to the Bank includes a reference to the Bank acting on its own behalf and as agent or custodian for BEAPFF;

BEAPFF means Bank of England Asset Purchase Facility Fund Limited;

Business Day means a day (other than a Saturday or a Sunday) on which banks are open for business in London;

CBPS Trade Details means the following details, provided by the Bank to the Counterparty: the ISIN of any bond purchased by the Bank from the Counterparty, allocated quantity (in nominal and cash proceeds), allocated spread, yield and clean price.

Counterparty means the institution identified as such in the Admission Letter;

Documentation means these Terms and Conditions, the Market Notice, the Operating Procedures, the Application Form, the Admission Letter and any other documentation or procedures issued by the Bank in connection with the APF, each as supplemented and amended from time to time. For the avoidance of doubt, this definition shall not include any documentation whatsoever relating to the Bank's Term Funding Scheme;

Electronic Tendering System means the Bank's electronic tendering system which is made available to Counterparties, also known as Btender;

Electronic Tendering System User Guide means the external users' guide for the Electronic Tendering System published by the Bank and available at <http://www.bankofengland.co.uk/markets/Pages/apf/documentation.aspx>;

Eligibility Criteria means the criteria specified by the Bank in the Market Notice for eligible counterparties in the APF, including the criteria specified for eligible counterparties in each of the facilities forming part thereof, as applicable;

Group means a group as defined in section 421 of the Financial Services and Markets Act 2000;

Loss means any liability, loss, damage, claim, cost, charge or expense of any nature whatsoever, whether direct or indirect;

Market Notice means a notice or notices published by the Bank from time to time relating to the APF. For the avoidance of doubt, this definition shall not include any notices whatsoever relating to the Term Funding Scheme;

Open Market Operations means the Bank's open market operations as described in the operating procedures for the Bank's Sterling Monetary Framework;

Operating Procedures means the procedures published by the Bank relating to the Bank's operations under the APF;

Parent in relation to the Counterparty means a parent undertaking as defined in section 1162 of the Companies Act 2006;

Party means each of the Bank, BEAPFF and the Counterparty;

SWIFT Equipment means equipment and software used by the Counterparty for the purposes of sending and receiving SWIFT messages;

SWIFT Keys means the secret cryptographic information which controls the operation of the SWIFT cryptographic algorithms, used by SWIFT Equipment for sending and receiving SWIFT messages;

Terms and Conditions means these Terms and Conditions for participation in the APF;

Transaction means any and all transactions entered into between the Bank, as agent for BEAPFF, and the Counterparty whereby the Bank, as agent for BEAPFF, purchases assets from, or sells assets to, the Counterparty.

2.2 Except where the context otherwise requires:

- (a) any reference to an agreement or document or any enactment or statutory provision or a Council Directive or Regulation or international convention or any other legislative provision (whether primary or secondary) or any document is a reference to it as it may have been, or may from time to time be amended, supplemented, modified, replaced, extended, consolidated or re-enacted; and
- (b) any reference to time is to London time.

3. INITIATION AND SETTLEMENT OF TRANSACTIONS

3.1 A Transaction shall be entered into, and settlement shall be effected, in accordance with the procedures set out in the Market Notice and the Operating Procedures.

3.2 The Bank's obligation to make any payment or to transfer any assets in connection with any Transaction or otherwise under the Documentation shall be subject to the conditions precedent that the Bank shall have received from the Counterparty the relevant assets purchased or the payment for the relevant assets sold, as the case may be, pursuant to that Transaction, that no obligation owed by the Counterparty under the Documentation is outstanding and that none of the following events shall have occurred and be continuing:

- (a) the court making a winding-up order in respect of the Counterparty under Chapter VI of Part IV or Part V of the Insolvency Act 1986;
- (b) the appointment of a liquidator in respect of the Counterparty or over all or any material part of the Counterparty's property;
- (c) the Counterparty admitting to the Bank its inability to, or its intention not to, perform any of its obligations under the Documentation or under any Transaction;
- (d) the Counterparty ceasing or threatening to cease to carry on its business or any substantial part thereof or compounding, or making a general assignment for the benefit of, or entering into any reorganisation or other special arrangement with, its creditors or any class thereof or being deemed unable, or admitting in

writing its inability, to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or otherwise becoming insolvent;

- (e) the filing or presentation or making of a petition or application or the commencement of any other proceeding in respect of the Counterparty (other than by the Bank in respect of any obligation under these Terms and Conditions) in any court or before any agency or out of court or otherwise alleging or for the bankruptcy, winding-up or other insolvency of the Counterparty or seeking any reorganisation, arrangement, moratorium, composition, readjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition, application or proceeding not having been stayed or dismissed within 30 days of its filing or commencement (other than a petition, application or proceeding for the winding up of the Counterparty or the appointment of an administrator, whether out of court or otherwise in relation to the Counterparty or any analogous proceeding in which case no such 30 day period shall apply);
- (f) the giving of notice of a proposal to appoint, or the taking of any step with a view to appointing, or the appointment of a receiver or trustee or administrator (whether out of court or otherwise) or analogous officer in respect of the Counterparty or over all or any material part of the Counterparty's property;
- (g) the convening of any meeting of creditors of the Counterparty for the purposes of considering a voluntary arrangement as referred to in section 3 of the Insolvency Act 1986;
- (h) the making of a winding-up order by a court in respect of any Parent of the Counterparty under Chapter VI of Part IV or Part V of the Insolvency Act 1986;
- (i) the appointment of a liquidator or an administrator (whether out of court or otherwise) in respect of the Parent of the Counterparty, or over all or any material part of the property of the Parent of the Counterparty;
- (j) the occurrence of any event analogous to any of the foregoing in any jurisdiction in relation to the Counterparty or any Parent of the Counterparty;
- (k) the Counterparty ceasing to meet the applicable Eligibility Criteria;
- (l) the occurrence in relation to an issuer of, or borrower under, or any guarantor of any asset purchased under any Transaction of (i) any event described in sub-paragraphs (a) to (j) above or (ii) any event of default, default termination, acceleration event or termination event, howsoever described.

3.3 The Bank reserves the right to waive any of the conditions described in clause 3.2 above in respect of any particular Transaction or generally. No waiver of any such condition in respect of any particular Transaction shall constitute a waiver in respect of any other Transaction.

3.4 The Counterparty shall immediately notify the Bank if any of the events described in clause 3.2 above occurs.

4. REPRESENTATIONS, WARRANTIES, UNDERTAKINGS AND ACKNOWLEDGEMENTS

4.1 The Counterparty represents and warrants to the Bank that:

- (a) it is a body corporate duly incorporated and validly existing under the laws of the United Kingdom or such other jurisdiction in which it is incorporated;
- (b) it has the power and is duly authorised to enter into, perform and deliver the Documentation and to enter into and perform all obligations thereunder and the Transactions contemplated by the Documentation;
- (c) it complies with the applicable Eligibility Criteria;
- (d) the person entering into these Terms and Conditions and entering into any Transaction on its behalf is or, in the case of any Transaction, will at the time such Transaction is entered into be duly authorised so to act;
- (e) it has obtained all authorisations of any governmental authority or regulatory body required by it in connection with the Documentation and the Transactions to be effected under it and such authorisations remain in full force and effect;
- (f) the execution, delivery and performance of the Documentation and the Transactions to be effected under the Documentation do not and will not conflict with or violate:
 - (i) any law, regulation, by-law or rule applicable to the Counterparty;
 - (ii) its constitutional documents; or
 - (iii) any agreement or instrument binding upon it or any of its assets;
- (g) the obligations expressed to be assumed by it in the Documentation are legal, valid, binding and enforceable obligations;
- (h) it is entering into, and will duly perform its obligations under, the Documentation and all Transactions as principal;
- (i) no transfer taxes, value added tax, registration charges or other similar taxes or charges have arisen or will arise in respect of any assets transferred to or by the Counterparty or the Bank in connection with any Transaction and the Counterparty is not required to make any deduction for or on account of tax from any payment it may make under the Documentation or any Transaction;
- (j) no withholding or deduction for or on account of tax will be required to be made by the issuer from any interest, dividend or other distribution paid to the

Bank or any other person in respect of any assets transferred by the Counterparty to the Bank in connection with any Transaction;

- (k) at the time of sale or transfer to the Bank of any assets or payment or transfer to the Bank of any cash, it will have the full and unqualified right to make such sale, payment or transfer and that upon such sale, payment or transfer the Bank will receive the same free and clear of any lien, claim, charge or encumbrance; and
- (l) at the time of any purchase by the Counterparty of any assets it will have the full and unqualified right to make such purchase.

4.2 The Bank represents and warrants to the Counterparty that:

- (a) BEAPFF is a company duly incorporated and validly existing under the laws of the United Kingdom;
- (b) BEAPFF has the power and is duly authorised to enter into, perform and deliver the Documentation and to enter into and perform all obligations thereunder and the Transactions contemplated by the Documentation;
- (c) it is duly authorised by BEAPFF to enter into, perform and deliver the Documentation and to enter into and perform all obligations thereunder and the Transactions contemplated by the Documentation; and
- (d) at the time of sale or transfer to the Counterparty of any assets or payment or transfer to the Counterparty of any cash, BEAPFF will have the full and unqualified right to make such sale, payment or transfer and that upon such sale, payment or transfer the Counterparty will receive the same free and clear of any lien, claim, charge or encumbrance.

4.3 All representations and warranties made and given under these Terms and Conditions shall be deemed to be made upon the signature and return to the Bank by the Counterparty of its copy of the Admission Letter and repeated on each occasion on which a Transaction is entered into.

4.4 The Counterparty undertakes to the Bank that:

- (a) it will, to the extent permitted by applicable law, inform the Bank in advance of any proposed change relating to it that may result in the applicable Eligibility Criteria no longer being complied with;
- (b) it will comply with the provisions of the Documentation;
- (c) it will promptly take all such steps and execute all such documents (and in such form as the Bank may require) required to give effect to any provision of the Documentation or a Transaction;

- (d) it will comply in all respects with all laws and regulations to which it may be subject, if failure so to comply would impair its ability to perform its obligations under these Terms and Conditions;
- (e) (without prejudice to 4.1(e) above) it will comply at all times with and perform any measures, directions or other requirements (including any variations or waivers) imposed on it by or agreed by it with the Prudential Regulation Authority or the Financial Conduct Authority under the Financial Services and Markets Act 2000 or otherwise, and any similar measures, directions or other requirements imposed on it by any regulatory or supervisory authority whether in the United Kingdom or elsewhere where any failure to comply could reasonably be expected to have a material adverse effect on the business of the Counterparty or on its ability to comply with its obligations under these Terms and Conditions; and
- (f) on request from the Bank, it will promptly provide any and all information that may help the Bank to assess the ability of the Counterparty to fulfil its obligations under the Documentation.

4.5 The Counterparty acknowledges and agrees that the Bank:

- (a) will enter into any Transactions on an execution only basis and will not be providing any investment or other advice to the Counterparty in connection with such Transactions; and
- (b) will not be subject to any regulatory obligations in connection with its activities under the APF.

5. NO WAIVERS

No indulgence or concession granted by the Bank and no omission or delay on the part of the Bank in exercising any right, power or privilege under the Documentation or under any Transaction shall act as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Bank provided in these Terms and Conditions, the remainder of the Documentation and any Transaction are cumulative with and not exclusive of any rights of lien, sale, set off or retention or other rights or remedies which the Bank may have at common law, by statute or otherwise howsoever.

6. ENTIRE AGREEMENT; ASSIGNMENT

6.1 The Documentation sets out the entire terms and conditions and understanding between the Parties in respect of the subject matter thereof. It is agreed that:

- (a) the Counterparty has not entered into the Documentation or any Transaction in reliance upon any representation, warranty or undertaking of the Bank which is not expressly set out or referred to in the Documentation;

- (b) the Counterparty shall not have any remedy in respect of misrepresentation or untrue statement made by the Bank which is not contained in the Documentation nor for any breach of warranty which is not contained in the Documentation; and
- (c) this clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

6.2 The provisions of the Documentation and of each Transaction shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in title and permitted assigns.

6.3 The rights and obligations of the Counterparty under the Documentation and under each Transaction shall not be capable of assignment by the Counterparty without the prior written consent of the Bank.

7. COMMUNICATIONS; THE ELECTRONIC TENDERING SYSTEM

7.1 Communications shall be made by any method that the Bank may specify in the Market Notice, the Operating Procedures or otherwise.

7.2 The Bank shall be entitled without further enquiry to accept and act on any request, instruction or other communication or purported request, instruction or other communication received by the Bank notwithstanding that it may afterwards be discovered that that request, instruction or other communication was made in error, was not genuine or was not authorised by the Counterparty or (if sent electronically) was not initiated through the terminal and associated equipment from which it was purported to have been sent. Any such request, instruction or other communication on which the Bank so acts shall for all purposes of the Documentation be treated as effective and binding on the Counterparty in accordance with its terms and, accordingly, neither the Bank nor any of its servants or agents, shall incur any liability or be responsible for any Loss, damage, expense or claim whatsoever by reason of so acting except to the extent that such Loss, claim or expense is shown to be attributable to wilful default or reckless disregard of the Bank's obligations on the part of the Bank or its servants or agents. Neither the Bank nor any of its servants or agents shall be liable for any loss of business, loss of profit or consequential damage of any kind whatsoever.

7.3 The Counterparty understands that email (whether encrypted or unencrypted) is not a secure method of communication and that messages so delivered may be intercepted, lost, destroyed, corrupted or delayed in transmission.

7.4 The Counterparty hereby agrees that:

- (a) neither the Bank, nor any of its representatives or agents shall incur any liability or be responsible for any Loss, that may arise in connection with the Bank sending or receiving any email (encrypted or unencrypted), except to the extent that such Loss is shown to be attributable to wilful default or reckless disregard of the Bank's obligations on the part of the Bank or its representatives and agents; and

- (b) it shall on demand indemnify the Bank and keep the Bank indemnified against any Loss suffered or incurred by the Bank as a result of any email (encrypted or unencrypted) which is intercepted, lost, destroyed, corrupted or delayed or otherwise distorted or altered during the course of transmission except to the extent that such Loss is shown to be attributable to wilful default or reckless disregard of the Bank's obligations on the part of the Bank or its representatives and agents.

7.5 The Counterparty undertakes at all times:

- (a) to procure that all requests, instructions and other communications are made or given by persons who are duly authorised to make or give them on its behalf and are within the scope of the authority of the person making or giving them;
- (b) to provide the Bank upon request with a list of all persons who are for the time being authorised to send requests, instructions and other communications by the Electronic Tendering System or email transmission relating to Transactions or otherwise relating to the matters to which the Documentation relates and with such particulars with respect to such persons as may from time to time be specified by the Bank in the Market Notice, the Operating Procedures or otherwise;
- (c) promptly to provide the Bank with particulars of any change in the persons and particulars referred to in clause 7.5(b);
- (d) to comply with any procedures set out in the Market Notice, the Operating Procedures or otherwise agreed between the Counterparty and the Bank with respect to the identification, confirmation or authentication of requests, instructions or other communications by the Counterparty or with the maintenance of security with respect to or in connection with such requests, instructions or other communications;
- (e) to ensure that all passwords and other activation data relating to the Electronic Tendering System are not easily guessed or predictable and are kept confidential and secure in order to prevent their unauthorised use;
- (f) not to use the Electronic Tendering System upon and after becoming aware of the occurrence of any significant breach by the Counterparty of its obligations, or of any warranty or representation, under these Terms and Conditions unless and until the Bank has expressly consented to the Counterparty so doing;
- (g) to be responsible for the maintenance of security over the SWIFT Equipment acquired or used by the Counterparty for the purposes of sending and receiving SWIFT messages to and from the Electronic Tendering System and, in the case of any such equipment used or available for use by the Counterparty and any other participant, to be jointly and severally responsible with such other participant for the maintenance of security over all such equipment;

- (h) to keep its SWIFT Keys secure and protect them against loss, damage, modification and unauthorised use; and
- (i) to comply in all respects with the Electronic Tendering System User Guide in so far as its provisions are applicable to the Counterparty.

7.6 The Bank reserves the right to suspend the operation of the Electronic Tendering System, wholly or partially, or to vary the operational timetable, by reason of any circumstances whatever beyond the Bank's reasonable control, including without limitation partial or total failure, malfunction or overload of the Electronic Tendering System, or any other emergency.

7.7 The Counterparty acknowledges and agrees that the timer facility in the Electronic Tendering System is provided for the Counterparty's convenience and the Bank shall not be liable for the Counterparty's failure to submit any bid or make any other communication through the Electronic Tendering System within any deadline prescribed by the Bank. The time stamp applied to any bid in accordance with the Operating Procedures shall be final and binding.

7.8 The Bank and its representatives and agents shall not be liable, save in the case of wilful default or reckless disregard of the Bank's obligations, for Loss arising from the operation by the Bank of the Electronic Tendering System or any part thereof or any inadequacy thereof for any purposes or any deficiency or defect therein or any delay in providing or failure to provide the Electronic Tendering System or any interruption or loss of the Electronic Tendering System or loss of business, loss of profit or other consequential damage or any damage whatsoever and howsoever caused (including but without prejudice to the foregoing by reason of machine or computer malfunction or error and also any suspension or variation pursuant to clause 7.6).

8. NOTICES

8.1 Subject to clause 8.1(a), any notice required to be given under the Documentation shall be deemed to be duly served if left at or sent by registered or recorded delivery post or by electronic mail or other electronic means, in the case of a notice to the Bank at the Bank of England, Threadneedle Street, London EC2R 8AH, e-mail address APFNotice@bankofengland.co.uk, marked for the attention of Head of Sterling Markets Division, or to such other address as the Bank may notify to the Counterparty in writing, and in the case of notice to the Counterparty at the address or e-mail address notified by the Counterparty to the Bank in writing from time to time. Any such notice shall be deemed to be duly served:

- (a) if left at the address of the Party to be served, at the time when it is so left (or, if it is left on a day that is not a Business Day, at 8.15 a.m. on the next following Business Day);
- (b) if sent by post, on the second Business Day following the day of posting; and
- (c) if sent by electronic mail, when the message is received.

8.2 In proving the giving of a notice under clause 8.1 it shall be sufficient to prove that the notice was delivered at the address for service or that the envelope containing such notice was properly addressed and posted (as the case may be).

8.3 The Market Notice or the Operating Procedures may provide for any notice to be given orally, including by telephone; any such notice shall be deemed to be served when it is actually given.

8.4 Where in these Terms and Conditions any matter may be specified or prescribed by the Bank, then the Bank may (but shall not be obliged to) do so by way of a Market Notice.

9. COSTS, EXPENSES AND INDEMNITY

9.1 Each Party agrees to pay and bear its own costs and expenses incurred in connection with the preparation and execution of the Documentation and the entering into of each Transaction.

9.2 The Counterparty agrees on demand to pay the Bank's charges and reimburse the Bank and BEAPFF for all of their costs, charges, fees and expenses (including, without limitation, costs incurred in connection with checking that assets are eligible for the APF, legal expenses, transfer taxes, value added tax, registration charges and other similar taxes and charges) incurred in connection with the operation of the APF or the enforcement of any of their rights under the Documentation or any Transaction.

9.3 The Counterparty agrees to indemnify the Bank and BEAPFF on demand for any and all Losses, claims, costs, liabilities and expenses each of them may suffer or incur as a result of or in connection with a failure by the Counterparty to perform any of its obligations under the Documentation or a Transaction.

10. OPERATING PROCEDURES AND MARKET NOTICE

10.1 These Terms and Conditions are supplemented by the Operating Procedures, which set out further terms governing the Transactions and explain the procedures involved and may also be supplemented by one or more Market Notices.

10.2 In the event of any conflict between the terms of these Terms and Conditions and the terms of the Operating Procedures, these Terms and Conditions shall prevail.

10.3 In the event of any conflict between the terms of the Operating Procedures or these Terms and Conditions and any Market Notice, the Market Notice shall prevail.

11. AMENDMENTS

The Bank may amend these Terms and Conditions and any other part of the Documentation either generally or in particular circumstances, from time to time. Any such amendment shall apply with effect from such time as may be specified by the Bank and shall unless otherwise specified apply to any Transaction which is outstanding at the time that such amendment is made. The Bank may also vary the

operational timetable or vary or omit any of the procedures described on any particular day. The Bank will endeavour to give reasonable notice of any amendment, but reserves the right to introduce any amendment with immediate effect, if the Bank considers it necessary to do so.

12. COMMENCEMENT, SUSPENSION AND TERMINATION

12.1 These Terms and Conditions commence on the date of receipt by the Counterparty of the Admission Letter.

12.2 A Counterparty may terminate its status as a counterparty in the APF at any time by giving to the Bank not less than ten Business Days' prior notice in writing (such termination becoming effective upon expiry of such notice).

12.3 The Bank may suspend for such period as the Bank thinks fit or terminate the Counterparty's status as a counterparty in the APF at any time at its absolute discretion.

12.4 Any termination under clause 12.2 or 12.3 shall not affect any Transaction which is then outstanding, and the provisions of the Documentation shall continue to apply to each such Transaction until all the obligations of each Party to the others under the Documentation and each such Transaction have been fully performed.

13. PAYMENTS AND DELIVERIES

13.1 Save as otherwise provided in the Documentation, all payments under or in connection with these Terms and Conditions shall be in immediately available freely convertible funds and made in sterling and, save as otherwise provided or specified by the Bank, all payments shall be made on the due date for payment thereof free from set-off or counterclaim and without deduction or withholding for or on account of any taxes of whatsoever nature imposed, levied collected, withheld or assessed, unless such a deduction or withholding is required by law.

13.2 In the event of such a deduction or withholding, the amount of any payment due from the Counterparty shall be increased to an amount which (after making any such deduction or withholding) leaves the Bank with a net amount equal to the amount which would have been due if no such deduction or withholding had been required to be made.

13.3 The Counterparty shall (within three Business Days of demand by the Bank) indemnify the Bank and BEAPFF against any Loss, liability or cost which the Bank (in its absolute discretion) determines will be or has been (directly or indirectly) suffered by the Bank or BEAPFF for or on account of tax in relation to a payment received or receivable (or any payment deemed to be received or receivable) under or in connection with any Transaction, including for the avoidance of doubt in relation to any interest, dividend or other distribution paid by an issuer in respect of any assets transferred by the Counterparty to the Bank in connection with any Transaction, except to the extent that the Loss, liability or cost has been compensated for by an increased payment under clause 13.2.

13.4 Save as otherwise provided in these Terms and Conditions, if any amount payable or any securities deliverable under these Terms and Conditions would, but for this clause, be payable or deliverable on a day which is not a Business Day, then such payment or transfer shall be made on the next following Business Day.

13.5 All right, title and interest in any purchased assets shall pass from one Party to the other on transfer in accordance with the terms of the Documentation free from all liens, claims, charges and encumbrances. The Parties shall execute and deliver all documents, give all instructions and do all things necessary to ensure that title passes in accordance with this clause.

13.6 A transfer of assets by the Counterparty under any Transaction shall be effected by transfer to such account as the Bank may specify, being an account at the Bank or at a sub-custodian of the Bank.

14. SET-OFF

Without prejudice to any other rights, powers or remedies (whether provided by contract, law or otherwise), the Bank may without prior notice to the Counterparty set off any monies due and payable (but not paid) from the Counterparty and any other obligation to BEAPFF or to the Bank against any obligation owed by BEAPFF or, as the case may be, the Bank to the Counterparty (in either case, whether or not matured or contingent and whether or not arising under these Terms and Conditions), regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

15. CONFIDENTIALITY

15.1 Each Party (the *Recipient*) undertakes to keep confidential all information given to it by the other Party (the *Disclosing Party*) or otherwise in the possession of the Recipient relating to or otherwise concerning the Disclosing Party or the APF (which shall include, without limitation, access to and participation in the APF, details of any Transaction and any decision by either Party to enter into or not to enter into any Transaction or to terminate any Transaction or any part of any Transaction).

15.2 The undertakings in clause 15.1 above will not apply to information which:

- (a) is disclosed with the prior written consent of the Disclosing Party;
- (b) at the time of supply is in the public domain;
- (c) subsequently comes into the public domain, except through breach of the undertakings set out in clause 15.1;
- (d) is already in the lawful possession of the Recipient;

- (e) subsequently comes lawfully into the possession of the Recipient from a third party who does not owe the Disclosing Party an obligation of confidence in relation to it;
- (f) is disclosed in confidence to the Recipient's professional advisers or auditors where such disclosure is considered necessary by the Recipient, acting reasonably, and provided that, where reasonably practicable, the Recipient making such disclosure has notified the Disclosing Party in advance of the proposed form, timing, nature and purpose of the disclosure;
- (g) is disclosed in confidence to a member of the same Group as the Recipient and provided that, where reasonably practicable, the Recipient making such disclosure has notified the Disclosing Party in advance of the proposed form, timing, nature and purpose of the disclosure;
- (h) is required to be disclosed by law, regulation or any governmental or competent regulatory authority, whether in the United Kingdom or elsewhere, provided that, save in the case of a disclosure made by the Bank which falls within clause 15.4, the Recipient making such disclosure has promptly notified the Disclosing Party in advance of the proposed form, timing, nature and purpose of the disclosure. The Recipient shall not be required to make such a notification to the Disclosing Party where such notification would cause the Recipient to be in breach of applicable law or regulation, *provided that* the Recipient makes a notification to the Disclosing Party as soon as such notification would no longer result in a breach of law or regulation; or
- (i) is disclosed to any third party service provider which the Recipient has engaged to provide storage, recovery and back up services in relation to data and systems, provided that (i) the disclosure is for the sole purpose of that third party service provider providing such storage, recovery and back up services; (ii) each such third party service provider agrees to maintain the confidentiality of such information; and (iii) the Recipient remains liable to the Disclosing Party for the confidentiality of all such information in accordance with the Terms and Conditions.

15.3 The undertakings in clause 15.1 above will not apply where the Counterparty is acting, or it is proposed that a Counterparty will act, as agent or risk free principal for a client in an auction, and the Counterparty discloses (i) its participation in the APF to that client and (ii) that client's CBPS Trade Details to that client, provided that such client agrees to keep confidential the Counterparty's participation in the APF and all such CBPS Trade Details.

15.4 Nothing in clause 15 shall preclude the disclosure of information in any case in which disclosure is made by the Bank, BEAPFF or any of their respective officers or employees:

- (a) in the course of any disclosure relating to the APF; provided that such disclosure does not identify or name (i) the Counterparty and, (ii) in

circumstances where the Counterparty acts as dealer for an underlying issuer, that issuer;

- (b) to BEAPFF, the Bank, Her Majesty's Treasury, the Prudential Regulation Authority, the Financial Conduct Authority, HM Revenue & Customs or any other governmental body, monetary authority, competent regulatory or resolution authority or the operator of any deposit guarantee or investor protection scheme, whether in the United Kingdom or elsewhere;
- (c) for the purposes of any criminal investigation whatever which is being or may be carried out or of any criminal proceedings whatever which have been or may be initiated, in either case whether in the United Kingdom or elsewhere; or
- (d) for the purpose of enabling or assisting the Bank to discharge its functions as a monetary authority.

15.5 The Parties agree that damages may not be an adequate remedy for any breach of this Clause 15.5 by any Party or any of its directors, officers, employees, agents, sub-contractors, affiliates, professional advisers or auditors and the Parties shall be entitled to seek any legal or equitable relief, including injunction, in the event of any breach of the provisions of this Clause 15.5.

16. TIME OF THE ESSENCE

Time shall be of the essence in the Documentation.

17. LEGAL RELATIONSHIP

No provision of the Documentation shall be deemed to create or evidence a partnership between any of the Parties or, save in relation to BEAPFF and the Bank, make any Party the agent of another Party for any purpose.

18. THE BANK'S DISCRETIONS

Subject to the express terms thereof, any liberty or power which may be exercised or any determination which may be made under the Documentation by the Bank (including without limitation, any act, matter or thing as agreed, specified, determined, decided or notified by the Bank to the Counterparty) may be exercised or made generally or in relation to one or more Counterparties and in the absolute and unfettered discretion of the Bank from time to time, which shall not be under any obligation to give reasons therefor.

19. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to the Documentation shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

20. GOVERNING LAW

The Documentation and each Transaction and any non-contractual obligations arising out of or in relation to the Documentation and any Transaction shall be governed by and construed in accordance with English law.

21. JURISDICTION

21.1 The Parties agree that the courts of England are (subject to clauses 21.2 and 21.3 below) to have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims and disputes relating to any non-contractual obligations) which may arise out of or in connection with the Documentation or any Transaction and for such purposes irrevocably submit to the jurisdiction of the English courts.

21.2 The provision contained in clause 21.1 above, is included for the benefit of the Bank and BEAPFF. Accordingly, notwithstanding the exclusive agreement in clause 21.1 above the Bank and BEAPFF shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of Council Regulation EC No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the Convention on Jurisdiction and the Enforcement of Judgments signed on 27 September 1968, or the Convention on Jurisdiction and Enforcement of Judgments signed on 16 September 1988.

21.3 The Bank and BEAPFF may in their absolute discretion take proceedings in the courts of any other country which may have jurisdiction, to whose jurisdiction the Counterparty irrevocably submits.

21.4 The Counterparty irrevocably waives any objections to the jurisdiction of any court referred to in this clause 21.

21.5 The Counterparty irrevocably agrees that a judgment or order of any court referred to in this clause 21 in connection with the Documentation, any Transaction or any non-contractual obligations arising out of or in relation to the Documentation or any Transaction is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

22. AGENT FOR SERVICE OF PROCESS

If the Counterparty has no registered office or place of business in England, it shall appoint and maintain to act as its agent for service of process a person with an address for service in England and shall notify the Bank of the name and address of such person. If the agent at any time ceases to act as such, the Counterparty shall appoint a replacement agent having an address for service in England and shall notify the Bank of the name and address of the replacement agent. In the absence of such appointment and notification, the Bank shall be entitled by notice to the Counterparty to appoint a replacement agent on the Counterparty's behalf and at the Counterparty's expense.