

EMSTRADEPOINT
CORE RULES
Version 8
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PART I: INTRODUCTION, DEFINITIONS AND INTERPRETATION

1. INTRODUCTION

1.1 Scope of Market Rules: The Market Rules (including these Core Rules and the Product Supplements) set out the terms under which emsTradepoint makes available and operates the Trading System for Participants to trade in the physical sale and purchase of Commodities.

1.2 Scope of Core Rules and Product Supplements:

- (a)** These Core Rules apply to every Product. Each rule in these Core Rules may be applied separately to each Product and the Trading System and Market for that Product, or to all or any combination of Products, Trading Systems and Markets.
- (b)** Each Product Supplement applies only to the particular Product(s) to which it relates and the Trading System and Market for those Product(s).

1.3 Conflict

If there is a conflict between these Core Rules and a Product Supplement, the Product Supplement will take precedence

2. DEFINITIONS AND INTERPRETATION

2.1 Defined Terms: In the Market Rules, unless the context indicates otherwise:

Alternative Communication means a Notice given in accordance with rule 25.6;

Applicant has the meaning given in rule 3.1;

Application means an application submitted under rule 3.1;

Associated Documents means a Participant's Participant Agreement and Prudential Assurance;

Bank means a bank registered in New Zealand under the Reserve Bank of New Zealand Act 1989;

Base Rate means:

- (a)** in respect of any day of a month, the average of the bid rates for 30 day bank accepted bills of exchange, expressed as a percentage per annum (to two decimal places) as quoted on Reuters page BKBM or any successor page displaying substantially the same information (subject to manifest error) at 10:45 am on the first Business Day of the month in respect of which the rate is to be calculated; or
- (b)** if this rate does not appear on that Reuters page on that Business Day, the average of the mean bid and offered rates of Westpac Banking Corporation for bank bills of exchange having a tenor of 30 days at 10:45 am on that Business Day;

Bid means a Trading Instruction by a Participant indicating a willingness to buy a Product;

Bidding Participant means a Participant designated as a Bidding Participant under its Participant Agreement;

Bulk Trading Instruction means a Trading Instruction containing a parcel of multiple Orders;

Business Day means any day other than a Saturday, Sunday or a statutory public holiday in Wellington, New Zealand;

Buyer means the Participant who made the Bid leading to the formation of the Trade and the Buyer Trade Leg;

Buyer-Created Tax Invoice means a document created in accordance with section 24(2) of the Goods and Services Tax Act 1985;

Buyer Trade Leg has the meaning given in rule 12.4(a)(i);

Buyer Trade Leg Obligation has the meaning given in the definition of Trade Leg Obligation;

Collateral Limit means a monetary amount agreed between the Participant and emsTradepoint from time to time as the maximum Net Payment Obligation that may be incurred by the Participant in any Collateral Period, less any amount demanded by emsTradepoint under rule 4.4 and not yet reinstated under rule 4.5;

Collateral Limit Breach means the Participant has incurred a Net Payment Obligation in any Collateral Period in excess of its Collateral Limit;

Collateral Period means, at any time, any period of three consecutive calendar months that includes that time;

Commodity means the underlying commodity for a Product, as specified in the relevant Product Supplement;

Confidential Information means any information disclosed by any Party to any other Party or obtained by a Party on the express basis that such information is confidential or which might reasonably be expected by any Party to be confidential in nature, including:

- (a) a Participant's Signatures and Log-in Codes; and
- (b) in relation to any Order, Trade or Trade Leg, the identity of the Participant,

provided that, where information relates exclusively to one Party, nothing in the Market Rules will require that Party to maintain confidentiality in respect of that information;

Connection Failure has the meaning given in rule 17.8;

Connection Requirements means the minimum hardware, software and telecommunications requirements that a Participant must satisfy to access and use the Trading System, as Published from time to time by emsTradepoint;

Contract Window means the time period in which a Product can be traded, as set out in the Product Specification;

Core Rules means these Core Rules, as may be amended, supplemented or replaced from time to time in accordance with these Core Rules;

Data means the information displayed to Participants through the Trading System or on the emsTradepoint Website in accordance with rule 10 or otherwise;

Day means a day beginning at 12.00:00 am and ending at 11.59:59 pm;

Default GST, in respect of any supply, means any penalty or interest levied against the relevant supplier under the Goods and Services Tax Act 1985 and/or the Tax Administration Act 1994 by reason of the non-payment or late payment of any of the GST payable in respect of that supply, but does not include any such penalty or interest levied against the supplier by reason of the non-payment or late payment of that GST to Inland Revenue by the supplier, in respect of any period commencing after the date of payment in full by the recipient of the supply to the supplier for that GST plus any such penalty or interest incurred in respect of any period up to and including that date;

Delivery, for a Commodity, has the meaning given in the relevant Product Supplement;

Delivery Period means, in relation to an Order, Trade or Trade Leg for a Product, a Day, Week or Month during which the Product is to be Received or Delivered (as the case may be), commencing on the Supply Commencement Date and ending on the Supply End Date;

Dishonest Conduct means conduct inconsistent with obligations under the Commerce Act 1986 or Fair Trading Act 1986, market manipulation or abuse, fraud, dishonest behaviour or criminal activity of a Participant, including:

- (a) making any Order with the intention of not performing its obligations under a resulting Trade Leg;
- (b) being reckless or negligent as to whether failure to perform its obligations under a Trade Leg might occur;
- (c) behaviour by that Participant that will, or is likely to, have the effect of creating a false or misleading appearance of:
 - (i) any active trading of a Commodity; or
 - (ii) the Price or other terms on which a Commodity is traded.

Effective Date has the meaning given in rule 20.3;

emsTradepoint means emsTradepoint Limited and its successors and/or permitted assigns;

emsTradepoint Force Majeure means the occurrence of an event:

- (a) outside the reasonable control of emsTradepoint;
- (b) that prevents emsTradepoint from performing one or more of its obligations under the Market Rules, an Associated Document or a Trade Leg;
- (c) where such event or the impact of such event on emsTradepoint's performance of the relevant obligation(s) could not reasonably have been overcome or have been prevented by emsTradepoint within the time allowed for performance of the relevant obligation(s); and
- (d) other than a lack of funds or authority or power on the part of emsTradepoint for any reason.

For the purposes of this definition, acts of God or the public enemy, acts of a civil or military authority, terrorist or other criminal action, civil unrest, embargoes, fire, flood, labour dispute, unavailability or restriction of computer or data processing facilities, or unavailability or restriction of settlement systems or of bank transfer systems, or Relevant Authority restraint or Legal Requirement coming into force, will normally be deemed to be outside the reasonable control of emsTradepoint, provided that emsTradepoint has otherwise acted as a Reasonable and Prudent Operator;

emsTradepoint Materials has the meaning given in rule 18.1;

emsTradepoint Website means the website maintained by emsTradepoint on the worldwide web for the purposes of the Market at <http://www.emsTradepoint.co.nz> or such other website address Notified to Participants by emsTradepoint;

Fees mean the fees payable by Participants as set out in the Statement of Charges;

First Order means the Order in a Match which, in accordance with the functionality of the Trading System, takes precedence in time;

GST means goods and services tax in terms of the GST Act, at the rate prevailing from time to time, including any tax levied in substitution for that tax;

GST Act means the Goods and Services Tax Act 1985;

Intellectual Property means trade marks, rights in domain names, copyright, patents, registered designs, rights in computer software, databases and lists, rights in inventions, confidential information, know-how and trade secrets, operating manuals, quality manuals and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world, including the goodwill associated with the foregoing and all rights of action, powers and benefits in respect of the same;

Last Order means the Order in a Match which, in accordance with the functionality of the Trading System, is the last in time;

Legal Requirement means any Act of Parliament, regulations or Network Code (and any bylaw, regulation, order, rule, statutory instrument, determination or subordinate legislation made under any of them or requirement arising out of any of them) in force at the relevant time;

Live has the meaning given in rule 11.7;

Log-in Code means a unique electronic identification assigned by the Participant (in a format approved by emsTradepoint) to a person authorised to access and use the Trading System on behalf of the Participant;

Loss means any direct, indirect, consequential or special loss, damage, cost or expense, or any loss of profits or savings, or any loss of productivity or any economic loss;

Lot Size means the minimum permitted increment in the Order Quantity of an Order, as specified in the relevant Product Specification;

Market means the market offered by emsTradepoint for trading in Products;

Market Access Criteria has the meaning given in rule 3.5;

Market Rules means these Core Rules, the Product Supplements and the Protocols, all as may be amended, supplemented or replaced from time to time in accordance with these Core Rules;

Match has the meaning given in rules 11.8 to 11.11;

Month means a period beginning at 12.00:00 am on the first day of a calendar month and ending at 11.59:59 pm on the last day of that calendar month;

Net Payment Obligation means, for a Collateral Period, the monetary amount that is:

$$A + B - C$$

Where:

A is the Participant's total potential payment obligation under the Participant's Live Bids in respect of potential Buyer Trade Legs with a Delivery Period in, or partially in, the Collateral Period (pro-rated as necessary where the Delivery Period is for more than one Day);

B is the Participant's total payment obligation under unsettled Buyer Trade Legs with a Delivery Period in, or partially in, the Collateral Period (pro-rated as necessary where the Delivery Period is for more than one Day); and

C is the total amount payable to the Participant under unsettled Seller Trade Legs with a Delivery Period in, or partially in, the Collateral Period (pro-rated as necessary where the Delivery Period is for more than one Day).

Network Code means any third party rules governing any physical or notional place where a Trade occurs or a Commodity is Delivered or Received;

Notice means a notice from emsTradepoint to a Participant, or vice versa, issued in accordance with rule 25, and **Notify** has a corresponding meaning;

Offer means a Trading Instruction by a Participant indicating a willingness to sell a Product;

Offering Participant means a Participant designated as an Offering Participant under its Participant Agreement;

Off-Exchange Notice means a notice in the form Published by emsTradepoint from time to time, to be used for Notifying emsTradepoint of Off-Exchange Trades under rule 13;

Off-Exchange Trade means an agreement by two Participants to trade a Product that is entered into outside of the Trading System, but which the Participants wish to settle as a Trade on the Market;

Order means a Bid or an Offer (as the context permits);

Order Expiry Time means the time, specified by the Participant making an Order, at which such Order is to be automatically Withdrawn (if it has not already been Matched);

Order Quantity means the quantity of Commodity per Day expressed in the relevant Order in whole number multiples of the Lot Size;

Order Terms means the Product Code, Price, Order Quantity, Supply Commencement Date and Supply End Date, Offered or Bid consistently with the Product Specification;

Outage means a situation where trading on the Trading Platform is unavailable to all Participants other than:

- (a) during a Planned Maintenance Period; and/or
- (b) due to an event of emsTradepoint Force Majeure;

Partial Matching means that the Order Quantity in an Order has been Matched in part;

Participant means a person who has become a Participant under rule 3.4 and whose Participant Agreement has not been terminated, and/or the successors and permitted assigns of such person;

Participant Agreement means, for a Commodity, an agreement in the form set out in the relevant Product Supplement or as otherwise Published by emsTradepoint from time to time, and in the context of a Participant, the Participant Agreement signed by emsTradepoint and that Participant;

Party means emsTradepoint or a Participant and **Parties** means both emsTradepoint and the Participant, or Participants, as the context requires;

Payment Default means the Participant:

- (a) has failed to make payment due to emsTradepoint in cleared funds;
- (b) is in Collateral Limit Breach;
- (c) goes into liquidation;
- (d) is removed from the New Zealand Companies Register (or equivalent in any other jurisdiction) other than as part of an amalgamation, in which the Second Party is one of the companies being amalgamated;
- (e) has a receiver or statutory manager appointed in respect of itself or any material part of its assets;
- (f) has an application made to a court for, or a resolution proposed for or any other step is taken in anticipation of, the appointment of an administrator or has an administrator appointed;
- (g) is the subject of any event analogous in nature to those listed in rules (c) – (f) (inclusive) of this definition under the laws of any relevant jurisdiction;
- (h) makes any assignment to, or enters into any arrangement for the benefit of, its creditors generally (other than for the purposes of a solvent restructuring which has previously been approved in writing by emsTradepoint, such approval not to be unreasonably withheld or delayed);
- (i) becomes unable to pay its debts as they fall due or is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts;
- (j) is an individual who:
 - (i) dies;

- (ii) is adjudicated bankrupt or commits any act of bankruptcy;
 - (iii) becomes, or whose property becomes, the subject of an order made under the Protection of Personal and Property Rights Act 1988; or
 - (iv) becomes a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment & Treatment) Act 1992; or
- (k) is a partnership or joint venture which is dissolved;

Permitted Use has the meaning given in rule 18;

Planned Maintenance Period means a period during which planned maintenance is conducted on the Trading System;

Posted has the meaning given in rule 11.6;

Price means the price in dollars per relevant unit, expressed in whole number multiples of the Tick Size;

Principal Trade has the meaning given in rule 12.4;

Product means a Commodity sold through the Market in a form conforming with the parameters in a Product Specification;

Product Supplement means a part of the Market Rules described as such and relating only to a particular Product(s), as may be amended, supplemented or replaced from time to time in accordance with these Core Rules;

Product Code means the name or code assigned to a Product or a category within a Product as identified in the Product Specification;

Product Specification means a product specification set out in a Product Supplement as amended and Published by emsTradepoint from time to time, including new product specifications Published by emsTradepoint, but excluding (during the relevant period) any product specification that emsTradepoint has Published as being closed or suspended for trading or withdrawn (any such Publication to apply prospectively only);

Protocols means procedures or instructions for utilising the Trading System (and amendments or replacements of them), Published by emsTradepoint from time to time, including protocols relating to security and communication;

Prudential Assurance has the meaning given in rule 4.1;

Publish means to display information to Participants through the Trading System or on the emsTradepoint Website;

Reasonable and Prudent Operator means:

- (a) for Participants, a person seeking in good faith to perform its contractual obligations, and in so doing in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced operator complying with the applicable law and engaged in the same type of undertaking in the same or similar circumstances or conditions; and

- (b) for emsTradepoint, a standard of performance equal to or better than international practice for the operation and management of commodity markets for physical delivery as determined by reference to proper and prudent practices recognised internationally as applying to such markets;

Receive, for a Commodity, has the meaning given in the relevant Product Supplement;
Relevant Authority means:

- (a) any government or any governmental, semi-governmental or judicial entity or authority, or legislative body, or any person or body charged with the administration or enforcement of any law; and
- (b) any person specified as a Relevant Authority in a relevant Product Supplement;

Residual Order means an Order with Order Terms residual to an Order that has been Partially Matched;

Seller means the Participant who made the Offer leading to the formation of the Trade and Seller Trade Leg;

Seller Trade Leg has the meaning given in rule 12.4(a)(ii);

Seller Trade Leg Obligation has the meaning given in the definition of Trade Leg Obligation;

Service means the functionality on the Trading System that allows Participants to view and Post Orders, receive Trade Confirmations, give and receive Notices, view View-Only Participant sections of the emsTradepoint Website, and other functionality of the Trading System and emsTradepoint Website that is made available by emsTradepoint to Participants to facilitate the operation of the Market;

Signature means in relation to any Participant, a unique electronic identification consisting of symbol(s) or code(s) assigned to the Participant by emsTradepoint;

Standard Annual Access Fee means an annual fixed fee for trading access to the Trading System set out in the Statement of Charges;

Statement of Charges means, for a Product, the statement of charges (and amendments or replacements of it) set out in the relevant Product Supplement or as otherwise Published by emsTradepoint from time to time;

Supply Commencement Date means the date of the Day on which the Product in an Order, Trade or Trade Leg is first to be Delivered or Received (as the case may be);

Supply End Date means the date of the Day which is the last Day on which Delivery or Receipt (as the case may be) of the Product in an Order, Trade or Trade Leg is to occur, and may be the same date as the Supply Commencement Date;

Support Desk means the manned telephone facility provided by emsTradepoint under Schedule 2;

Suspension means a suspension of a Participant's right to access and use the Trading System under rule 7.1;

Suspension Notice means a Notice given under rule 7.5;

Tax Invoice has the meaning given to that term in section 2 the Goods and Services Tax Act 1985;

Tick Size means the minimum permitted increment in the Price of an Order set out in the Product Specification;

Trade means a Trade formed as described in rule 12.2 and having the effect set out in rule 12.3;

Trade Confirmation means a Notice to a Participant under rule 12.1;

Trade I.D. means a unique identification code ascribed to a Trade or Trade Leg by emsTradepoint;

Trade Leg means a Buyer Trade Leg and/or a Seller Trade Leg as the context requires;

Trade Leg Obligation means:

- (a) when a Seller in a Trade Leg, the obligation to Deliver the Trade Quantity in accordance with the Trade Leg Terms (**Seller Trade Leg Obligation**); and
- (b) when a Buyer in a Trade Leg, the obligation to Receive the Trade Quantity in accordance with the Trade Leg Terms (**Buyer Trade Leg Obligation**);

Trade Leg Terms means:

- (a) in respect of a Buyer Trade Leg, the rights and obligations in the Principal Trade:
 - (i) of the Buyer; and
 - (ii) as assumed by emsTradepoint under rule 12.4(a)(i);
- (b) in respect of a Seller Trade Leg, the rights and obligations in the Principal Trade:
 - (i) of the Seller; and
 - (ii) as assumed by emsTradepoint under rule 12.4(a)(ii);

Trade Price means the Price in the First Order in a Match;

Trade Quantity means the lower of the Order Quantities in the First Order and the Last Order (and for the avoidance of doubt, is a quantity per Day);

Trade Quantity Sum means in respect of any Trade, the Trade Quantity multiplied by the number of Days in the Delivery Period;

Trade Terms means, in respect of any Trade, the Product, the Product Code, the Trade Quantity, the Trade Price, and the Delivery Period in the Matched Orders;

Trade Value means in respect of any Trade, the Trade Quantity Sum multiplied by the Trade Price;

Trading Hours means the hours in a day during which the Trading Platform is open for trading as Published by emsTradepoint from time to time;

Trading Instruction means in respect of any Participant, data transmitted electronically and received by emsTradepoint from the Participant through the Trading System and that

contains the Signature of the Participant and is in the form required by emsTradepoint for that type of Trading Instruction;

Trading System means the screen based real time electronic trading system operated by emsTradepoint for the purposes of the Market, including all relevant hardware, Service and Data, which, amongst other things, facilitates the Posting and Matching of Orders and the giving of electronic Notices or Trade Confirmations but only to the extent that such system relates to rights and obligations of emsTradepoint and Participants pursuant to the Market Rules, and excluding Participant hardware and software and the telecommunications system;

View-Only Annual Access Fee means an annual fixed fee for view-only access to the Trading System set out in the Statement of Charges;

View-Only Participant means a person who is party to a Participant Agreement as a View-Only Participant, and whose Participant Agreement has not been terminated, and/or the successors and permitted assigns of such person;

Void has the meaning given in rule 16.1;

Week means a period beginning at 12.00:00 am on a Monday and ending at 11.59:59 pm on the following Sunday;

Withdrawn has the meaning given in rule 11.14;

Year means a period from 1 September in a calendar year to 31 August in the following calendar year.

2.2 Interpretation: In the Market Rules, unless the context requires otherwise:

- (a) a capitalised term defined in these Core Rules has the same meaning in the Product Supplements;
- (b) a reference to rules, paragraphs, parts and schedules in these Core Rules or a Product Supplement are to rules and paragraphs in, parts of and schedules to these Core Rules or the Product Supplement (respectively);
- (c) rule and other headings are for ease of reference only and do not affect the interpretation of the Market Rules;
- (d) references to the singular include the plural and vice versa;
- (e) references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (f) the term “includes” or “including” (or any similar expression) is deemed to be followed by the words “without limitation”;
- (g) a derivative term of any defined term will be construed in accordance with the relevant definition;
- (h) all references to any time of day are to New Zealand statutory time (that is, including adjustments for New Zealand daylight savings time), and any reference to a month, shall be a calendar month;

- (i)** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision that amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (j)** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (k)** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form;
- (l)** all monetary amounts are stated in New Zealand currency, and all amounts payable by a Party under the Market Rules are to be paid in that currency;
- (m)** references to contractors are references to contractors and subcontractors of any tier; and
- (n)** references to formation of a Trade are references to that phrase as used in rule 12.2.

PART II: RULES GOVERNING ACCESS TO THE MARKET

3. PARTICIPANTS

- 3.1 Application Procedure:** A person (**Applicant**) may apply to be a Participant or to change their Participant rights under an existing Participant Agreement (within the parameters of a form of Participant Agreement offered by emsTradepoint from time to time) by submitting to emsTradepoint:
- (a) a Participant Agreement (or amendment) signed by the Applicant;
 - (b) documents evidencing compliance with the Prudential Assurance requirements in rule 4;
 - (c) evidence that the Applicant meets the Market Access Criteria (or will be able to meet the Market Access Criteria immediately upon becoming a Participant); and
 - (d) all other documentation or information required by emsTradepoint, including under the relevant Product Supplement.
- 3.2 Application Decision:** emsTradepoint will Notify the Applicant of its acceptance or non-acceptance of the Application. If emsTradepoint declines the Application it will give the Applicant its reasons for declining the Application and its decision is final and binding (provided that an Applicant may submit a new Application). emsTradepoint will only accept an Application if it is satisfied, at its discretion, with the documents and other information provided by the Participant under rule 3.1.
- 3.3 Failure to Supply Information:** emsTradepoint may decline an Application if information requested by it in relation to the Application is not provided within 15 Business Days of the request.
- 3.4 Becoming a Participant:** If emsTradepoint accepts an Applicant's Application, then as relevant:
- (a) emsTradepoint will provide the Applicant with a countersigned Participant Agreement and such other information emsTradepoint considers the Applicant requires to use the Service and access the Data and the Trading System as soon as reasonably practicable after acceptance; and
 - (b) the Applicant will become a Participant (or have its rights amended) from the date Notified by emsTradepoint (**Commencement Date**), which will be as soon as reasonably practicable, and emsTradepoint will notify any Relevant Authority of the Participant's Commencement Date if required to facilitate use of the Service.
- 3.5 Market Access Criteria:** The following are the **Market Access Criteria** which apply at all times:
- (a) the Participant has a place of business in New Zealand, unless emsTradepoint Notifies the Participant that this is not required for the Participant;
 - (b) if the Participant is a body corporate, the Participant is duly incorporated and validly exists under the laws of the jurisdiction in which it is established;

- (c) the Participant has obtained all authorisations and done all things necessary to enter into, and to perform its obligations under, these Market Rules, the Associated Documents, Trades and Trade Legs;
- (d) the Participant is not in breach of its Associated Documents, the Market Rules, or any applicable Legal Requirements that relate to or have an impact on a Participant's performance under the Market Rules;
- (e) the full amount of Prudential Assurance required for the Participant under rule 4 is in place (except to the extent permitted by emsTradepoint by Notice to the Participant from time to time);
- (f) emsTradepoint is satisfied that:
 - (i) the Participant is reasonably likely to continuously meet all the requirements of the Market Rules and Associated Documents; and
 - (ii) the persons in control of the Participant and the persons who will be responsible for managing the Participant's trading through the Trading System, will carry out the Participant's responsibilities under the Market Rules honestly, diligently and capably;
- (g) the Participant is not in Collateral Limit Breach;
- (h) the Participant does not have overdue payments owing to emsTradepoint; and
- (i) any other criteria specified in the relevant Product Supplement.

4. PRUDENTIAL ASSURANCE

4.1 Bidder Prudential Assurance: A Bidding Participant must have and maintain one of the following (**Prudential Assurance**):

- (a) a bank guarantee (in the form set out in Schedule 1), granted in favour of emsTradepoint by a Bank, or as otherwise accepted by emsTradepoint in its absolute discretion, guaranteeing payment of the amount determined under rule 4.2;
- (b) any other security or financial assurance approved by emsTradepoint in its sole discretion; or
- (c) any combination of (a) - (b) above in amounts approved by emsTradepoint in its sole discretion.

4.2 Amount of Prudential Assurance: The amount referred to in rule 4.1 is an amount equal to (or greater than) the greater of:

- (a) \$100,000; or
- (b) the Participant's Collateral Limit.

4.3 Offering Participant Prudential Assurance: If required at any time by emsTradepoint, an Offering Participant (who is not also a Bidding Participant) must have and maintain Prudential Assurance for an amount determined by emsTradepoint.

4.4 **Access to Prudential Assurance:** On Payment Default by a Participant:

- (a) emsTradepoint will have uncontested recourse to, and may make demand under, that Participant's guarantee or other Prudential Assurance in accordance with its terms; and
- (b) if the Participant has more than one type of Prudential Assurance, emsTradepoint may have recourse to any such Prudential Assurance at its discretion.

4.5 **Reinstatement:** A Participant must procure reinstatement of the Prudential Assurance to the level required under rule 4.2 or rule 4.3 (or as otherwise agreed under rule 4.1(b)) within 2 Business Days of emsTradepoint exercising its rights under rule 4.4.

4.6 **Return of Prudential Assurance:** If the Trading System is terminated under rule 9 or if the Participant ceases to be party to a Participant Agreement, emsTradepoint will promptly release any Prudential Assurance to the extent that the Participant has paid all amounts owed under the Market Rules or Participant Agreement.

5. **EMSTRADEPOINT'S OBLIGATIONS**

5.1 **emsTradepoint's Obligations:** Without prejudice to any other right or obligation in the Market Rules, emsTradepoint will:

- (a) monitor and maintain the Trading System to the standard of a Reasonable and Prudent Operator so as to provide the functionality required to implement the Market Rules (other than functionality that must of its nature be provided by Participants);
- (b) comply with the applicable Market Rules;
- (c) comply with all applicable Legal Requirements that relate to or have an impact on emsTradepoint's performance under the Market Rules;
- (d) obtain and maintain in force all authorisations and approvals from any Relevant Authority emsTradepoint reasonably considers to be necessary for it to operate the Market in accordance with the Market Rules; and
- (e) respond to any communication from a Participant or its representatives in a timely manner.

5.2 **emsTradepoint Trading:** emsTradepoint and its employees and directors are prohibited from buying or selling a Product for their own account or otherwise.

5.3 **Warranties Excluded:** Any warranty by emsTradepoint which is not expressly stated in the Market Rules is, to the fullest extent permitted by law, excluded.

6. **PARTICIPANT'S RIGHTS, OBLIGATIONS AND WARRANTIES**

6.1 **Market Access:** Subject to the other express provisions of the Market Rules, a Participant who is in compliance with the Market Access Criteria may access the Trading System and use the Service and the Data in accordance with its rights under its Participant Agreement.

6.2 **Termination of Access:** The Participant's right of access to, and use of, the Trading System, the Service and the Data will end on termination of the Participant Agreement.

emsTradepoint will remove all Live Orders of the Participant on termination of the Participant Agreement.

6.3 Participant's Positive Obligations: Without prejudice to any other obligation in the Market Rules, each Participant must at all times:

- (a) comply fully with the Market Access Criteria and all other applicable Market Rules and Associated Documents;
- (b) give Notice to emsTradepoint as soon as reasonably practicable if the Participant is of the opinion that it will, or may, fail to make any payment due under the Market Rules;
- (c) take all reasonable steps to ensure that the Participant's inputs into the Trading System are correct and that the Participant is able to perform its obligations in respect of any Trade and/or a Trade Leg entered into by the Participant in accordance with the Market Rules;
- (d) take all reasonable steps to prevent unauthorised use of the Participant's Log-in Codes and Signature by any person;
- (e) Notify emsTradepoint of persons authorised by the Participant to use the Trading System on behalf of the Participant and the Log-in Code for each such person;
- (f) Notify emsTradepoint immediately by telephone and email transmission in the event of the Participant withdrawing such authorisation from any person;
- (g) obtain and maintain in force all authorisations and approvals from any Relevant Authority necessary for it to comply with its obligations under the Market Rules, Associated Documents, Trades and Trade Legs, during the term of the Participant Agreement;
- (h) Notify emsTradepoint of (and keep emsTradepoint promptly Notified of changes to) any information emsTradepoint requests from the Participant for the purposes of emsTradepoint's compliance with any Legal Requirement; and
- (i) respond to any communication from emsTradepoint or its representatives in a timely manner.

6.4 Participant's Negative Obligations: Without prejudice to any other obligation in the Market Rules, the Participant must not intentionally take steps designed to procure Matching of its own Order with another Order placed by itself.

6.5 Participant to pay Fees: Each Participant must pay the Fees to emsTradepoint, when due and payable under the Market Rules.

6.6 Connection Requirements: The Participant will be responsible for upgrading or replacing its hardware, software and/or internet connection to ensure that it complies with any amendment to the minimum Connection Requirements.

6.7 Warranty: The Participant warrants that it is acquiring, or holds itself out as acquiring, the Services for the purposes of a business, in terms of section 43(2) of the Consumer Guarantees Act 1993, and the Participant will not assert or attempt to assert any rights or claims against emsTradepoint under the provisions of that Act.

7. SUSPENSION

- 7.1 Suspension of Participant Access:** emsTradepoint may, at emsTradepoint's sole discretion, give a Participant a Notice (**Suspension Notice**), if emsTradepoint reasonably believes that:
- (a) the Participant is unable or likely to become unable to meet its obligations in respect of one or more Trades or Trade Legs; or
 - (b) there has been a Payment Default; or
 - (c) the Participant fails to meet any of the Market Access Criteria.
- 7.2 Contents of Suspension Notice:** A Suspension Notice must specify the grounds for Suspension of the Participant.
- 7.3 Advance Notice:** Except where emsTradepoint determines that the circumstances giving rise to its determination to suspend the Participant are such that Suspension should take effect without delay, emsTradepoint will give the Participant advance Notice before giving the Participant a Suspension Notice under rule 7.1. The advance Notice must state:
- (a) that emsTradepoint has determined that a Suspension Notice may be warranted;
 - (b) the matters that have caused emsTradepoint to determine that a Suspension Notice may be warranted; and
 - (c) that, unless the Participant satisfies emsTradepoint within 5 Business Days of the date of the Notice that a Suspension Notice is not warranted, a Suspension Notice will be issued.
- 7.4 Consider Participant's Reasons:** emsTradepoint will consider any reasons given by a Participant in accordance with rule 7.3(c) as to why a Suspension Notice is not warranted before it makes a final determination as to whether or not it will issue a Suspension Notice.
- 7.5 Effect of Suspension Notice:** The Participant's right of access to, and use of, the Trading System, the Service and the Data is suspended as soon as the Suspension Notice is given. As soon as practicable after giving a Suspension Notice, emsTradepoint:
- (a) will remove all Live Orders of the Participant;
 - (b) will prevent any new Orders of the Participant from being Posted;
 - (c) may remove Trades involving the Participant and having Delivery Periods including any Day after the Day the Suspension Notice is given (and such Trades and resulting Trade Legs will be deemed to be Void (in whole or part, as described in rule 16.1); and
 - (d) will Notify all affected Participants of Void Trades and Trade Legs as soon as reasonably practicable.
- 7.6 Effect on Trades:** Subject to rule 7.5(c), Suspension does not affect rights and obligations under any Trades and Trade Legs that came into existence prior to the time of Suspension.

7.7 Resumption of Access: A Participant will cease to be Suspended when emsTradepoint gives Notice to this effect. emsTradepoint will only issue such a Notice if it determines that the Participant has provided evidence satisfactory to emsTradepoint that:

- (a) the Participant has addressed the matters specified in the Suspension Notice that gave rise to its Suspension; and
- (b) there are no other matters that cause emsTradepoint to consider that continued Suspension is warranted.

7.8 Obligations: Suspension does not affect any obligation of the Participant to pay Fees and does not exonerate or release any Party from any liabilities accrued or accruing under the Market Rules or the Associated Documents.

8. TERMINATION OF PARTICIPANT AGREEMENT

8.1 Termination by Either Party: A Participant or emsTradepoint may terminate the Participant's Participant Agreement with effect from the first day of any month, by giving no less than 20 Business Days' prior Notice of such termination to the other Party. The Participant may not serve such Notice earlier than the date six months after the date of effect of the Participant's Participant Agreement.

8.2 Termination by Participant if Trading System is Suspended: A Participant may terminate its Participant Agreement on Notice to emsTradepoint if emsTradepoint suspends operation of the Trading System for all Participants (other than due to an event of emsTradepoint Force Majeure), and operation of the Trading System has not recommenced within 30 Business Days of such suspension.

8.3 Termination by emsTradepoint on Default: emsTradepoint may terminate a Participant Agreement by Notice to the Participant if at any time:

- (a) the Participant is in Payment Default;
- (b) emsTradepoint determines that:
 - (i) it should terminate a Participant Agreement in accordance with rule 22.3;
 - (ii) circumstances exist that give rise to a right for emsTradepoint to issue a Suspension Notice in respect of a Participant and, taking into account the seriousness of such circumstances or the Participant's previous history of Suspensions, Suspension of the Participant is not considered to be a sufficient response; or
 - (iii) any existing Suspension of a Participant for an indefinite period has continued for such a time period as to mean that termination of that Participant's participation in the Trading System is warranted; or
- (c) an event or circumstance of emsTradepoint Force Majeure is reasonably likely to continue for more than six months.

8.4 Notice to Other Participants and Relevant Authorities: If a Participant's Participant Agreement has been terminated, emsTradepoint:

- (a) may Notify any other Participant who has entered into arrangements with that Participant under the Market Rules that the Participant's Participant Agreement has been terminated; and

- (b) will notify any Relevant Authority that the Participant's Participant Agreement has been terminated, where required to do so by Legal Requirement.

8.5 Termination if Prudential Assurance Terminated: emsTradepoint may terminate a Participant's Participant Agreement at any time by Notice to the Participant if the Participant's Prudential Assurance is terminated by any party.

8.6 Notice of Termination: Any Notice of termination given by emsTradepoint to a Participant must specify the date on and time at which the termination will take effect, and the termination will take effect accordingly. Any Notice of termination given by a Participant to emsTradepoint will take effect from the end of the Day that is the date of termination.

8.7 Consequences of Termination: The Market Rules will cease to apply to a Participant following termination of the Participant's Participant Agreement, provided that:

- (a) the provisions of the Market Rules concerning confidentiality, maintenance of records, settlement of accounts and any other provision which expressly or by their context survive or come into effect on termination will, as between the Participant and emsTradepoint, remain in full force and effect; and
- (b) the Participant and emsTradepoint will continue to be liable in respect of events occurring or arising out of actions prior to termination and the Associated Documents and Market Rules will continue to apply accordingly, including with respect to Trades and Trade Legs formed prior to the time of termination or arising out of Live Orders existing prior to termination (but subject to rule 8.8).

8.8 Termination of Orders: As soon as practicable after termination of the Participant's Participant Agreement, emsTradepoint:

- (a) will remove all Live Orders of the Participant; and
- (b) will prevent any new Orders of the Participant from being Posted.
- (c) may remove Trades involving the Participant and having Delivery Periods including any Day after the Day the termination takes effect (and such Trades and resulting Trade Legs will be deemed to be Void (in whole or part, as described in rule 16.1)); and
- (d) will Notify all affected Participants of Void Trades and Trade Legs as soon as reasonably practicable.

9. CESSATION OF THE TRADING SYSTEM

9.1 Termination: Subject to rule 9.2, emsTradepoint may terminate operation of the Trading System at any time.

9.2 Publication: emsTradepoint must Publish its decision to terminate the Trading System at least 20 Business Days before termination.

9.3 Market Rules Cease: The Market Rules and Associated Documents will cease to apply following termination under rule 9.1, except:

- (a) the provisions of the Market Rules concerning confidentiality, maintenance of records, settlement of accounts and any other provision which expressly or by

their context survive or come into effect on termination will, as between the Participant and emsTradepoint, remain in full force and effect; and

- (b) the Participant and emsTradepoint will continue to be liable in respect of events occurring prior to termination and the Associated Documents and Market Rules will continue to apply accordingly, including with respect to Trades and Trade Legs formed prior to the time of termination.

9.4 Fee Refund: If the Trading System is terminated by emsTradepoint under rule 9.1, then the Standard Annual Access Fee or the View-Only Annual Access Fee (as the case may be) for the Year will be refunded by the amount (if any) calculated in accordance with rule 9.5.

9.5 Calculating the Fee Refund: The refund will be:

$$B^* \frac{A}{365}$$

Where:

A is the number of Days between the effective date of termination of the Trading System and the end of the Year in question; and

B is the Standard Annual Access Fee or the View-Only Annual Access Fee (as the case may be) the Participant has paid in respect of the Year in which termination occurs.

PART III: RULES GOVERNING THE OPERATION OF THE MARKET

10. DISPLAY OF INFORMATION

10.1 Trades: Subject to rule 7, emsTradepoint will make the following information available to Participants on the Trading System in respect of any Trade:

- (a) the Product;
- (b) the Trade Quantity per Day;
- (c) the Trade Quantity Sum;
- (d) the Trade Price;
- (e) the Trade Value;
- (f) the time of formation of such Trade; and
- (g) the Delivery Period.

The information for each Trade will be available to Participants on the Trading System for a period of not less than twelve months after the relevant Delivery Period.

10.2 Orders: emsTradepoint will display Live Orders on the Trading System during Trading Hours.

10.3 Anonymity: emsTradepoint will not display the identity of a Participant in connection with any Order or Trade.

11. ORDERS

11.1 Making an Order: An Order for a Product is made by a Participant:

- (a) when a Trading Instruction is received by emsTradepoint that contains the following information:
 - (i) the Order Terms;
 - (ii) whether the Order is a Bid or an Offer; and
 - (iii) the Order Expiry Time of the Order; or
- (b) in accordance with rule 11.13.

11.2 Verification of Trading Instructions: The Participant agrees that the receipt by emsTradepoint of a Trading Instruction bearing the Signature of the Participant is sufficient to verify that the Participant authorised the Trading Instruction.

11.3 Orders Made During Trading Hours: Orders may only be made during Trading Hours.

11.4 Order Rejection: emsTradepoint must reject an Order if:

- (a) the Order is for a Product not designated in the Participant's Participant Agreement;

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- (b) the Order specifies a Price that is not a whole number increment of the Tick Size (including one Tick Size); or
 - (c) the Order is for a Trade Quantity that is not a whole number increment of the Lot Size (including one Lot Size); or
 - (d) the Order is made in a period during which the Participant is Suspended;
 - (e) the Order is for Delivery or Receipt in a Delivery Period that has passed or which is outside the Contract Window;
 - (f) the Order would Match another Order made by the same Participant;
 - (g) the Order is a Bid made by a Participant that is not a Bidding Participant;
 - (h) the Order is a Bid made by a Participant and the Participant would be in Collateral Limit Breach if the Bid were Matched (in whole or part);
 - (i) the Order is an Offer made by a Participant that is not an Offering Participant;
 - (j) emsTradepoint suspects for any reason that the Trading Instruction carrying the Order contains a virus or is otherwise corrupt;
 - (k) the Order is otherwise made in breach of the Market Rules or in a manner inconsistent with the Product Specification; or
 - (l) any Order submitted with it as part of a Bulk Trading Instruction is rejected under the grounds in (a) to (k), above.
- 11.5 Notification:** Where emsTradepoint rejects an Order made by the Participant, the Participant will be automatically Notified through the Trading System and if possible the Order will not be Posted. If it has been Posted, the Order will be removed as soon as possible and any Trades involving the Order will be Void.
- 11.6 Posted Order:** An Order is **Posted** when emsTradepoint makes such Order available for viewing by Participants on the Trading System. Except as otherwise provided in the Market Rules, emsTradepoint will during Trading Hours promptly Post all Orders made by the Participant under rules 11.1 or 11.13 that are not rejected under rule 11.4.
- 11.7 Live Order:** An Order becomes **Live** when, during Trading Hours for the Product to which the Order relates, it has been Posted. An Order remains Live until the earliest of:
- (a) the Order being Withdrawn;
 - (b) the Order otherwise being removed in accordance with the Market Rules; or
 - (c) the Order being Matched.
- 11.8 Matching Orders:** Subject to rules 11.9 to 11.12, a Bid and Offer **Match** when:
- (a) one is a Bid and the other is an Offer;
 - (b) the identities of the Participants are not the same;
 - (c) the Product and Delivery Period respectively are the same; and
 - (d) the Bid Price is equal to or greater than the Offer Price.
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- 11.9 Matching during Trading Hours:** Matching will only occur during Trading Hours.
- 11.10 Multiple Matching Offers:** Where under rule 11.8, a Live Bid would Match multiple Live Offers, the Offer (or Offers) **Matched** to the Bid will be:
- (a) in sequence of lowest to highest Price; and
 - (b) where the Price is common to two or more Live Offers, in sequence, in accordance with the functionality of the Trading System, earliest to latest in time.
- 11.11 Multiple Matching Bids:** Where under rule 11.8, a Live Offer would Match multiple Live Bids, the Bid (or Bids) **Matched** to the Offer will be:
- (a) in sequence of highest to lowest Price; and
 - (b) where, the Price is common to two or more Live Bids, in sequence, in accordance with the functionality of the Trading System, earliest to latest in time.
- 11.12 Matched Quantities:** All Orders may be Partially Matched unless the Participant has given a Trading Instruction otherwise when placing the Order. If an Order may not be Partially Matched, it must either be:
- (a) Matched to an Order with the same or greater Order Quantity; or
 - (b) Matched across multiple contemporaneous Matching Orders, provided that the Order Quantities across all such Matching Orders are equal or greater in total.
- 11.13 Residual Order:** When a Participant's Order is Partially Matched:
- (a) a Residual Order will be deemed to have been made by that Participant; and
 - (b) that Residual Order will be automatically Posted on behalf of that Participant.
- 11.14 Withdrawing Orders:** A Participant may **Withdraw** a Live Order of the Participant during Trading Hours by providing a Trading Instruction to emsTradepoint indicating to emsTradepoint that such Order is being withdrawn by the Participant (including, for the avoidance of doubt, any Notification by such Participant indicating that such Order should be modified or placed on hold). A Live Order is also **Withdrawn** when the specified Order Expiry Time for the Order is reached.

12. TRADE AND TRADE LEG FORMATION AND TERMS

- 12.1 Trade Confirmation:** As soon as reasonably practicable after two Orders are Matched, emsTradepoint will send a Notice to the Participant containing the following:
- (a) the Trade I.D.;
 - (b) whether the Participant is the Buyer or Seller;
 - (c) the time of Matching; and
 - (d) the Trade Terms.
- (Trade Confirmation).**

- 12.2 Trade Formation:** Matched Orders form a **Trade** when the Trade Confirmation is sent to the Buyer and the Seller.
- 12.3 Contract:** Formation of a Trade creates immediate and binding rights and obligations between the Buyer and the Seller to buy and sell the Commodity in accordance with the Trade Terms.
- 12.4 Trade Legs:** Immediately after a Trade is formed (**Principal Trade**):
- (a) the Principal Trade is novated into two **Trade Legs**:
 - (i) one between emsTradepoint and the Buyer (**Buyer Trade Leg**), whereby emsTradepoint assumes the rights and obligations to buy and sell the Commodity in accordance with the Trade Terms of the Principal Trade applying to the Seller; and
 - (ii) one between the Seller and emsTradepoint (**Seller Trade Leg**), whereby emsTradepoint assumes the rights and obligations to buy and sell the Commodity in accordance with the Trade Terms of the Principal Trade applying to the Buyer; and
 - (b) as a result of such novation the original corresponding rights and obligations arising from the Principal Trade are discharged and replaced with the rights and obligations under the Buyer Trade Leg and Seller Trade Leg.
- 12.5 Market Malfunction:** Any Trade formed between the Participant and another Participant or any resulting Trade Leg formed between a Participant and emsTradepoint as a result of a malfunction of the Trading System will be Void.
- 12.6 Malfunction of Trading System:** Where any Participant becomes aware, or is of the opinion, that a Trade has or has not been formed between a Participant and another Participant as a result of a malfunction of the Trading System, it will as soon as reasonably practicable Notify emsTradepoint by telephone and immediately confirm such telephone notification by electronic Notice.
- 12.7 Terms Final:** Subject to the express provisions of the Market Rules to the contrary, the Trade Terms and Trade Leg Terms cannot be varied by the parties.
- 12.8 No assignment:** Apart from as expressly provided in the Market Rules, a Participant may not transfer, assign or otherwise dispose of its rights and obligations under a Trade or Trade Leg.

13. OFF-EXCHANGE TRADES

- 13.1 Off-Exchange Trades Permitted:** Notwithstanding any other provision in this Part and subject to the approval of emsTradepoint, two Participants may enter into an Off-Exchange Trade by Notifying emsTradepoint with a completed Off-Exchange Notice.
- 13.2 emsTradepoint Obligations:** Subject to rule 13.1 and Participant compliance with other relevant Market Rules, emsTradepoint will enter the Off-Exchange Trade into the Trading System as soon as practicable during Trading Hours, and the Off-Exchange Trade will then be treated as any other Trade formed under rule 12.2.

14. FINANCIAL SETTLEMENT

- 14.1 Late Payment:** If a Participant fails to make payment due to emsTradepoint in cleared funds on or before the due date for payment, then without prejudice to emsTradepoint's other rights and remedies, the overdue amount will bear interest from the date on which payment of that amount falls due until the date on which payment of the overdue amount is made in full or the failure to pay is resolved by agreement. Interest will accrue regardless of whether or not emsTradepoint has given the Participant specific Notice of the failure to pay.
- 14.2 Interest:** Interest payable under rule 14.1 will accrue and be calculated on a daily basis (after as well as before judgment) and will be compounded monthly from the due date for payment until the day on which payment is received by emsTradepoint, at the rate of 3% per annum above the Base Rate.
- 14.3 emsTradepoint Deductions:** emsTradepoint may deduct, from amounts emsTradepoint owes to the Participant:
- (a) any amount payable by the Participant to emsTradepoint under rule 21.4; and
 - (b) any other amount payable by emsTradepoint by way of tax, withholding, levy, duty, charge or similar imposition relating to the Participant or a Trade or Trade Leg to which the Participant is a party,
- subject to such recovery being on a reasonable and transparent basis.
- 14.4 Exclusive of GST:** All amounts payable by the Participant or emsTradepoint under the Market Rules are, unless otherwise expressly stated, exclusive of any applicable GST. GST is payable at the same time and in the same manner as is any other amount payable under the Market Rules, where that amount is subject to GST.
- 14.5 Default GST:** If a Participant or emsTradepoint does not make payment in accordance with the Market Rules, they must also pay an amount equal to any Default GST charged in respect of the supply immediately upon demand being made by the relevant party.
- 14.6 Taxes and Levies Included in Price:** Except as provided in rules 14.4 and 14.5, all Prices and Trade Values include all taxes, levies, imposts, duties, royalties and costs imposed on the Seller or emsTradepoint by any Relevant Authority.

15. ORDERS IN ERROR

- 15.1 Error:** A Participant may apply to emsTradepoint to Void a Trade (and the resulting Trade Legs) if:
- (a) the Participant has become a party to a Trade and the resulting Trade Leg through an error by the Participant in making an Order;
 - (b) the Trade involves a Trade Value of more than the amount Published by emsTradepoint from time to time as the threshold for Trade Values that may be considered for Voiding or if no such amount has been Published, \$10,000;
 - (c) the Participant applies by telephone within ten minutes of the formation of such Trade, and confirms by email as soon as possible after the telephone call, and provides particulars of the error and the cause of the error.

- 15.2 emsTradepoint to Determine:** emsTradepoint may determine, acting reasonably, whether to Void a Trade (and resulting Trade Legs) pursuant to an application received under rule 15.1. emsTradepoint will use its reasonable endeavours to make such determination and Notify it to the applying Participant within 30 minutes of the application. All Participants will promptly provide any information and assistance requested by emsTradepoint in connection with any determination being made by emsTradepoint under this rule.
- 15.3 emsTradepoint Decision is Final:** emsTradepoint's determination under rule 15.2 is final and binding on the relevant Participants. emsTradepoint will not be liable for the consequences of such determination.
- 15.4 emsTradepoint to Notify Affected Participants of Decision:** emsTradepoint will Notify all affected Participants of its determination under rule 15.2 as soon as reasonably practicable after making its determination.

16. VOID TRADES

- 16.1 Consequences of a Trade being Void:** If a Trade or any resulting Trade Leg is described as or made **Void** under any provision of the Market Rules, it means that the Trade and any resulting Trade Leg is cancelled and of no legal effect whether in the past or the future, provided that if the Trade or any resulting Trade Leg has a Delivery Period that has already commenced, it means that the remaining Delivery or Receipt obligation under the Trade or Trade Leg is cancelled and of no legal effect, and such cancellation shall apply likewise to the reciprocal payment obligation under the Trade and Trade Legs.
- 16.2 Notification:** emsTradepoint must Notify each affected Participant through the Trading System as soon as reasonably practicable after a Trade and Trade Leg are made Void, Notification to include a description of the Trade I.D. and Trade Terms of each Trade Leg that is Void (or the relevant proportion of the Trade Terms, if a Trade Leg is Voided in part).

17. MARKET OPERATION

- 17.1 Market Availability:** emsTradepoint will use reasonable endeavours to:
- (a) make the Trading System and the Service available to Participants (in accordance with their rights under their Participant Agreements) during Trading Hours;
 - (b) make the Data available to Participants on the Trading System at any time; and
 - (c) provide the services described in Schedule 2, on the terms in Schedule 2.
- 17.2 Market Suspension:** emsTradepoint may at any time suspend access to the Trading System for all Participants:
- (a) where there is an event of emsTradepoint Force Majeure;
 - (b) where the Trading System is not fully available for any reason;
 - (c) where emsTradepoint becomes aware of material breaches of rule 22.1 by multiple or unidentifiable Participants; or
 - (d) as specified in a relevant Product Supplement.

- 17.3 Publish Notice:** As soon as possible after a suspension under rule 17.2, emsTradepoint will Publish details of the suspension, including the period of suspension where that is known (except to the extent already Notified under rule 17.7).
- 17.4 Effect:** The effect of any suspension of trading under rule 17.2 is that, during the period of suspension:
- (a) no new Orders may be Posted; and
 - (b) no Posted Orders may be Matched,
- provided that such suspension will not excuse the performance of any Trades and Trade Legs that came into existence prior to the period of such suspension.
- 17.5 Off-Exchange Trades:** emsTradepoint may accept Off-Exchange Trades during a period where the Trading System is suspended.
- 17.6 Re-opening:** emsTradepoint may at any time lift a suspension in place under rule 17.2 by Publication.
- 17.7 Planned Maintenance Periods:** Without prejudice to rule 17.2, emsTradepoint may from time to time conduct planned maintenance on the Trading System. emsTradepoint will give Participants as much notice as reasonably practicable of a Planned Maintenance Period by Publication. emsTradepoint will use all reasonable endeavours to conduct maintenance on the Trading System outside of Trading Hours or at other times when, in its reasonable opinion, the impact on Participants will be minimised.
- 17.8 Assistance by emsTradepoint in the event of Connection Failure:** If a Participant requests the assistance and/or advice of emsTradepoint in overcoming any failure on the part of the Participant to access and use the Trading System (**Connection Failure**):
- (a) the Participant must pay emsTradepoint's reasonable costs and expenses incurred by emsTradepoint in advising and/or assisting the Participant in overcoming or attempting to overcome the Connection Failure; and
 - (b) any such advice and/or assistance provided by emsTradepoint in response to such request must be undertaken in good faith but will not result in any liability by emsTradepoint arising out of its advice and/or assistance; and
 - (c) emsTradepoint is not obliged to provide such advice or assistance.
- 17.9 Trading on Behalf:** Where a Participant has a Connection Failure, emsTradepoint may Post and Withdraw Orders on behalf of the Participant in accordance with instructions given by the Participant to emsTradepoint in a format acceptable to emsTradepoint. If it does so:
- (a) emsTradepoint gives no warranty as to the time of such Posting and Withdrawal;
 - (b) the Participant indemnifies emsTradepoint from all Losses to emsTradepoint resulting from emsTradepoint Posting or Withdrawing Orders on the Participant's behalf; and
 - (c) emsTradepoint does not accept any liability for any Losses which may be the consequence or result of providing or not providing assistance under this rule.

18. PROTECTION OF SERVICE AND DATA

- 18.1 Ownership of Service and Data:** The Service, the Data, the Trading System, the emsTradepoint Website, the Market Rules, any operating instructions and material Published by emsTradepoint, and all associated Intellectual Property (**emsTradepoint Materials**), are and at all times remain, as between emsTradepoint and the Participant, the property of and Confidential Information of, emsTradepoint.
- 18.2 Permitted Use of Service and Data:** The emsTradepoint Materials may only be used by a Participant for the purpose of trading in the physical sale and purchase of Commodities and for the Participant's own internal management purposes (including related analysis and reporting), in accordance with the Market Rules (**Permitted Use**), and may not be used for any other purpose.
- 18.3 Limitations on Use of Service and Data:** The Participant must not:
- (a) sub-license the use of, or supply, any emsTradepoint Materials and/or any part of them to a third party;
 - (b) delete, modify, or damage any software program comprised in the Service and/or installed on any equipment operated by or on behalf of emsTradepoint in connection with the operation of the Trading System or any Data, or decompile, reverse engineer, disassemble or otherwise reduce, in whole or in part, any such software program or any Data to eye readable form or consent to any third party doing so;
 - (c) other than for the Permitted Use, download and/or access any software program comprised in the Service and/or installed on any equipment operated by or on behalf of emsTradepoint in connection with the operation of the Trading System or any Data;
 - (d) assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the emsTradepoint Materials for itself or on behalf of a third party or make the same available to any such third party, provided that the Participant is permitted to authorise any individual engaged by the Participant as an independent contractor to access and use the Trading System, in accordance with, and subject to, the Market Rules on behalf of, and in the name of, the Participant;
 - (e) delete, modify, remove or in any way obscure any copyright and proprietary notices of emsTradepoint or any third party on any copy of any emsTradepoint Materials;
 - (f) other than for the Permitted Use, download, modify, copy or adapt any emsTradepoint Materials, and nothing in the Market Rules permits or in any way entitles the Participant to create or make derivative works based on, or compilations of data derived from, any emsTradepoint Materials;
 - (g) sell or otherwise dispose of equipment on which any part of the Data, or a copy of it, is stored, kept or to be found without first ensuring that the Data and all such copies have been deleted; or
 - (h) use, duplicate or display any part of any emsTradepoint Materials in any manner not expressly permitted by the Market Rules (or permit any third party to do so).

18.4 Protection of Service and Data: The Participant:

- (a) must reproduce emsTradepoint's and any third party's copyright and proprietary notices on any copy made by it of any part of any emsTradepoint Materials;
- (b) without prejudice to the foregoing, must take all such other reasonable steps necessary in the reasonable opinion of emsTradepoint to protect the Confidential Information and Intellectual Property rights of emsTradepoint in the emsTradepoint Materials;
- (c) must inform all of its relevant employees, agents, independent contractors and sub-contractors (where applicable) that the emsTradepoint Materials constitute Confidential Information of emsTradepoint and that all Intellectual Property rights therein are the property of emsTradepoint (as between emsTradepoint and such persons). The Participant must take all steps necessary (to the standard of a Reasonable and Prudent Operator) to ensure such relevant employees, agents, independent contractors and sub-contractors act consistently with the provisions of this rule; and
- (d) is responsible for:
 - (i) any electronic communication originated by or on its behalf or deemed to be originated by it pursuant to the Market Rules, as applicable; and
 - (ii) its acts and the acts of its employees, agents, independent contractors and sub-contractors,

in connection with use of and access to the emsTradepoint Materials.

18.5 Infringing Service and Data: If emsTradepoint, in its reasonable opinion, considers there is a breach, or any risk of a breach, of any Intellectual Property rights owned or claimed by a third party, emsTradepoint may (without prejudice to any other action it may take in respect of such claimed infringement) take all reasonable actions which are necessary or desirable to:

- (a) avoid the infringement;
- (b) comply with the terms of any judgment or order; or
- (c) facilitate settlement of any such claim.

18.6 Copies: The Participant is entitled to make such transient electronic copies of screen displays generated by the Trading System as it reasonably requires in order to view Data and use the Service.**19. TRADING SYSTEM SERVICE LEVELS****19.1 Fee Reduction:** If there is an Outage during Trading Hours then the Participant's Standard Annual Access Fee for the Year in which the Outage occurred will be refunded in the amount (if any) calculated in accordance with rule 19.2. The total refund for a Year will not exceed the total Standard Annual Access Fee paid by the Participant for the Year.**19.2 Calculating the Fee Reduction:** The refund will be:

$$B^* \frac{A}{D}$$

Where:

A is the number of Trading Hours in a Year (rounded to the nearest whole number) for which the period of an Outage persists for a continuous period in excess of one hour;

B is the Standard Annual Access Fee paid by the Participant for that Year; and

D is the number of Trading Hours in that Year.

19.3 Fee Reduction as Sole Remedy: The refund of the Standard Annual Access Fees under rules 19.1 and 19.2 is the Participant's sole remedy against emsTradepoint in respect of Outages.

PART IV: GENERAL PROVISIONS

20. CHANGES TO THE MARKET RULES

- 20.1 emsTradepoint May Change Market Rules:** Without prejudice to other rights of amendment expressed in the Market Rules, emsTradepoint may, on its own initiative or following a suggestion from a Participant, review and amend the Market Rules from time to time in accordance with rule 20.3, 20.4 or 20.5(as the case may be).
- 20.2 Consultation:** emsTradepoint may consult with Participants on any proposed amendment of the Market Rules, at its discretion.
- 20.3 Publish Amendments:** Subject to rules 20.4 and 20.5, if emsTradepoint suggests a change to the Market Rules and, after any consultation with Participants, decides to make an amendment to the Market Rules, emsTradepoint must Publish:
- (a) the amended Market Rules; and
 - (b) the date on and from which the Market Rules will be amended (and will apply to all Trades formed on and from that date) (**Effective Date**) which must be at least 20 Business Days after the date of Publication (unless otherwise required to comply with a Legal Requirement), and
- the amended Market Rules will apply from the Effective Date.
- 20.4 Urgent Changes:** If an amendment to the Market Rules is considered by emsTradepoint in its absolute discretion to be urgent, emsTradepoint may Publish an Effective Date earlier than that required under rule 20.3(b), and in this case the amended Market Rules will apply from the date so Published.
- 20.5 New Product Supplement:** emsTradepoint may add a new Product Supplement to the Market Rules at any time. If emsTradepoint wishes to add a new Product Supplement, it may Publish an Effective Date earlier than that required under rule 20.3(b), and the new Product Supplement and any consequential changes to the rest of the Market Rules will apply from the date so Published.

21. LIABILITY

- 21.1 Liability of emsTradepoint:** Subject only to rules 9.4, 19, and 21.2, and the Associated Documents, and to the extent permitted by law, emsTradepoint will not have any liability to any Participant, whether in connection with the Market Rules, an Associated Document, a Trade or a Trade Leg, in respect of any Loss suffered or incurred by the Participant as a direct or indirect result of:
- (a) emsTradepoint's tortious default (including negligence), except to the extent that emsTradepoint has failed to act as a Reasonable and Prudent Operator;
 - (b) a breach by emsTradepoint of any of its obligations under the Market Rules, except in the event of emsTradepoint's fraud or wilful default;
 - (c) any act or omission by the Participant;
 - (d) any act or omission by another Participant;
 - (e) measures taken by a Relevant Authority;

- (f) the termination of the Market in accordance with rule 9.1;
- (g) emsTradepoint Force Majeure; or
- (h) any inability or limitation of the ability of the Participant to use the Trading System for any reason whatsoever.

21.2 Trade Leg Obligations: The grounds in rules 21.1(b) and 21.1(d) will not excuse emsTradepoint from carrying out its obligations under a Trade Leg.

21.3 Limitation of Liability: Notwithstanding any contrary provision in the Market Rules, the maximum liability of emsTradepoint to a Participant under or, in connection with, the Market Rules (whether in contract, tort or otherwise but excluding liability for fraud or wilful default) is:

- (a) where the liability is in connection with emsTradepoint's performance or non-performance of a Trade Leg, the Trade Value of that Trade Leg; or
- (b) \$10,000 in respect of any other single event or breach of the Market Rules and an aggregate of \$50,000 in respect of all such events or breaches occurring within any period of 12 consecutive months.

21.4 Liability of Participant: In addition to liability under the other provisions of the Market Rules, a Participant will be liable to indemnify emsTradepoint for any Loss that is direct loss, damage, costs or expenses suffered or incurred by emsTradepoint as a result of any breach by the Participant of the Market Rules, any Legal Requirements, or its obligations under any Trades or Trade Legs (including by any person for which the Participant is responsible).

21.5 Reasonable Assistance: Where any claim has been made against emsTradepoint on the basis of facts, events or circumstances which are, or may be, the subject of the indemnity given under rule 21.4 by the Participant, the Participant must, where requested to do so, provide reasonable assistance, not being financial assistance (but without prejudice to the indemnity itself), to emsTradepoint in defending the claim.

22. MARKET CONDUCT

22.1 Standard of Conduct: Each Participant must at all times in the reasonable opinion of emsTradepoint:

- (a) observe proper ethical standards and act with honesty, integrity, fairness, due diligence and care in relation to its participation in the Trading System;
- (b) refrain from any action, conduct, matter or thing that is, or is reasonably likely to:
 - (i) be detrimental to the proper conduct of the Trading System; or
 - (ii) discredit or generally bring the Trading System into disrepute;
- (c) deal with emsTradepoint in an open, honest and co-operative manner;
- (d) keep emsTradepoint promptly informed of anything that a reasonable person may be reasonably expected to disclose to emsTradepoint as the administrator and operator of the Trading System; and
- (e) refrain from any actual or attempted Dishonest Conduct.

22.2 Information: Each Participant must provide information and assistance reasonably requested by emsTradepoint to assist emsTradepoint with investigating any conduct or activity referred to in rule 22.1.

22.3 Sanctions: If emsTradepoint determines that a Participant has breached rule 22.1, this will be deemed to be a breach of the Market Access Criteria by the Participant, and may give rise to a Suspension (in which case rule 7 will apply). emsTradepoint may also apply the following sanctions to a Participant which it determines has breached rule 22.1:

- (a) where emsTradepoint considers that such activity is not sufficiently serious for any further action to be taken, Notify the Participant; and/or
- (b) issue a written warning to the Participant by Notice; and/or
- (c) report emsTradepoint's determination in relation to such activity to any Relevant Authority; and/or
- (d) refuse to permit individual employees or agents of the Participant to access and use the Trading System on behalf of the Participant; and/or
- (e) restrict the Participant's right to use the Service and access the Trading System to activities determined by emsTradepoint; and/or
- (f) terminate the Participant's Participant Agreement; and/or
- (g) deem any Trades or Trade Legs of the Participant that have not been settled to be Void. emsTradepoint will Notify all affected Participants of Void Trades and Trade Legs as soon as reasonably practicable.

23. DISPUTE RESOLUTION

23.1 Dispute Notice: A Party may, at any time while there is a genuine dispute relating in any way to the Market (**Dispute**), give Notice (**Dispute Notice**) to the other Party specifying the subject matter of the Dispute and requiring that the Parties meet within 10 Business Days after delivery of the Dispute Notice, to attempt to resolve the Dispute (**Dispute Resolution Meeting**).

23.2 Mediation: If the Parties fail to resolve the Dispute at the Dispute Resolution Meeting, or if a Party fails or refuses to attend the Dispute Resolution Meeting within the 10 Business Day period referred to in rule 23.1, or at the time and venue agreed in writing between the Parties, the Parties will immediately be deemed to have submitted the Dispute to mediation by a single mediator agreed upon in writing by them or (if they are unable to agree on a mediator within 5 Business Days after the submission to mediation) nominated by the President for the time being of the New Zealand Law Society. In the event of any submission to mediation:

- (a) the mediator will not be acting as an expert or as an arbitrator;
- (b) the mediator will determine the procedure for the mediation;
- (c) the mediator will be given a maximum period of 15 Business Days in which to resolve the dispute; and
- (d) the Parties will share equally the cost of the mediation.

23.3 Legal Proceedings: No Party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any Dispute, unless that Party has first taken all reasonable steps to comply with rules 23.1 and 23.2.

24. CONFIDENTIALITY

24.1 Confidentiality: Subject to rule 24.2, each Party will maintain as confidential at all times, and will not at any time, directly or indirectly:

- (a) disclose or permit to be disclosed to any person;
- (b) use for itself; or
- (c) use to the detriment of another Party,

any Confidential Information.

24.2 Exceptions: Rule 24.1 does not apply to disclosure of Confidential Information:

- (a) required by law or by the listing rules of any relevant stock exchange;
- (b) to the extent required or expressly permitted by the Market Rules;
- (c) that is already or becomes public knowledge, otherwise than as a result of a breach, by the Party disclosing or using that Confidential Information, of any provision of the Market Rules;
- (d) to the extent reasonably required for the implementation of the Market Rules and the Associated Documents (and, without limiting the effect of this rule, a Party may disclose Confidential Information only to those of its officers, employees or professional advisers, on a "need to know" basis, as is reasonably required for the implementation of the Market Rules);
- (e) authorised in writing by the other Party; or
- (f) to a Relevant Authority (acting solely in its capacity as a Relevant Authority and not disclosing or using the Confidential Information in any other capacity, including its capacity as a Participant) or Court pursuant to a request from that body made within the apparent scope of its authority provided that the Party who receives the request has used its best endeavours to advise the other Parties of such request at least two Business Days prior to such disclosure.

24.3 Disclosure of Confidential Information: Any disclosure of Confidential Information to a Relevant Authority or Court under rule 24.2 will be made in such a manner as to protect and preserve the confidential nature of that Confidential Information so far as possible and permissible and such Confidential Information will not be deemed to have lost its confidential nature by reason of such disclosure.

24.4 Notification of Breach: Each Participant must immediately notify emsTradepoint, and emsTradepoint must immediately Notify any affected Participants, of any breach, suspected breach or anticipated breach of any provision of rule 24.1 of which that Party becomes aware.

24.5 Survival of Obligations: The obligations of this rule 24 will survive termination of the Market Rules.

25. NOTICES

25.1 General: All documents, notices or other communications given under the Market Rules will be given electronically, subject to:

- (a) any specific requirements in the Market Rules for documents, notices or other communications to be given in writing or by telephone; and
- (b) the inability of the Party to give the document, notice or communication through the Trading System (in which case it must be given by Alternative Communication in accordance with rule 25.6).

25.2 Electronic Communications: Any document, notice or communication to be delivered or made electronically will be transmitted via the Trading System unless otherwise specified or permitted in the Market Rules.

25.3 Automatic Communications: Any communications to the Participant automatically generated by the Trading System will be deemed to be communications from emsTradepoint.

25.4 Effective Time of Electronic Communications: Any document, notice or communication delivered or made electronically will be effective at the time of transmission save where it confirms an earlier document, notice or communication delivered or made in accordance with the Market Rules by some other means of communication.

25.5 Email Addresses: The address of a Party and the name of the principal representative for whose attention communications to be transmitted electronically other than by means of the Trading System are to be marked, will be:

- (a) in respect of the Participant, as Notified by the Participant in the Participant Agreement;
- (b) in respect of emsTradepoint:
Address: supportdesk@emstradepoint.co.nz

or the address and representative as the Parties may Notify in writing to each other.

25.6 Alternative Communication: Any document to be given by Alternative Communication must be addressed to the recipient at the recipient's address determined in accordance with rule 25.7, and marked for the attention of the representative (identified by name or title) referred to in that rule, and will be deemed to have been received:

- (a) in the case of delivery by hand, when delivered; or
- (b) in the case of delivery by first class prepaid post, on the second Business Day following the day of posting or (if sent airmail from overseas) on the fifth Business Day following the day of posting.

25.7 Address for Alternative Communications: The address of a Party, and the representative for whose attention Notices by Alternative Communication are to be marked are:

- (a) in respect of the Participant, as Notified by the Participant in the Participant Agreement;

- (b) in respect of emsTradepoint:

emsTradepoint Limited
Waikoukou
22 Boulcott Street
Wellington 6011
New Zealand

Notices to be marked for the attention of:
General Manager, emsTradepoint

or such other address and representative as such Party may Notify to the other.

25.8 Telephone Communications: For the purposes of enabling telephone communications to be made pursuant to the Market Rules:

- (a) emsTradepoint and the Participant will provide each other not more than three telephone numbers and details of the representative to whom the Party giving a communication should speak;
- (b) each Party will use reasonable endeavours to ensure that the other will at any time be able to contact a representative by means of one of such telephone numbers;
- (c) each Party consents to the recording by the other of telephone communications made pursuant to the Market Rules and warrants that it has obtained the consent of each of its representatives authorised to make such communications by telephone to such recording; and
- (d) each Party agrees that any representative for the purposes of making telephone communications will on request of the other Party in the course of a telephone communication identify himself or herself to the reasonable satisfaction of the other Party.

25.9 Telephone Answering Machines: Unless otherwise agreed by the Parties, a message recorded on a telephone answering device is not a valid method of telephone communication.

26. FORCE MAJEURE AFFECTING EMSTRADEPOINT

26.1 Obligations Suspended During emsTradepoint Force Majeure: Subject to compliance with rule 26.2, emsTradepoint's obligations under the Market Rules, an Associated Document or a Trade Leg will be suspended during the period and to the extent that an emsTradepoint Force Majeure event prevents or hinders emsTradepoint from complying with the Market Rules or the Associated Document or its obligations under the Trade Leg.

26.2 Effect of emsTradepoint Force Majeure: If emsTradepoint relies on the occurrence of an event or circumstance of emsTradepoint Force Majeure as a basis for being excused from performance of any of its obligations under the Market Rules, an Associated Document, or a Trade Leg, then it will:

- (a) provide prompt written Notice to affected Participants of the occurrence of the event or circumstance, giving an estimate of its expected duration and the probable impact on the performance of emsTradepoint's obligations;

- (b) use its reasonable endeavours to remove or overcome the event or circumstance of emsTradepoint Force Majeure;
- (c) provide Notice to affected Participants of the cessation of the event or circumstance giving rise to the emsTradepoint Force Majeure; and
- (d) resume the performance of the obligations it was unable to fulfil as a result of the emsTradepoint Force Majeure as soon as reasonably practicable after the removal of the event or circumstance giving rise to the emsTradepoint Force Majeure.

26.3 Limits on Resolving a emsTradepoint Force Majeure: Notwithstanding rule 26.2, emsTradepoint is not required to settle any strike, lockout, or labour dispute constituting an event or circumstance of emsTradepoint Force Majeure or use commercially reasonable efforts to resolve or remedy any event or circumstance of emsTradepoint Force Majeure.

27. RETENTION OF RECORDS

27.1 Records: emsTradepoint will retain an electronic record of each Trade to which the Participant is a Party for seven years following the expiry of the Delivery Period(s) of such Trade.

27.2 Access to emsTradepoint Records: At the request of the Participant, and subject to payment by the Participant of emsTradepoint's reasonable costs, emsTradepoint will provide the Participant with a copy of information retained by emsTradepoint under rule 27.1.

27.3 Official Information Act: The Participants acknowledge that emsTradepoint is subject to the Official Information Act 1982 and that emsTradepoint may be required to release information connected to the Trading System, the Market Rules, the Associated Documents, Trades and Trade Legs. emsTradepoint will normally consult with affected Participants when considering a request under the Official Information Act 1982.

28. GENERAL PROVISIONS

28.1 Participant Assignment: A Participant may not assign or transfer, nor purport to assign or transfer, its rights or obligations under the Market Rules, an Associated Document, a Trade or Trade Leg without the prior written consent of emsTradepoint which consent must not be unreasonably withheld or delayed.

28.2 emsTradepoint Assignment: emsTradepoint may at its sole discretion assign or transfer its rights or obligations under the Market Rules, an Associated Document, or a Trade Leg.

28.3 emsTradepoint Sub-Contracting: emsTradepoint may at its sole discretion sub-contract the performance of all or any part of its obligations under the Market Rules. emsTradepoint will be responsible for any, and all, acts or omissions of any contractor and its servants or agents in the performance of emsTradepoint's obligations pursuant to the Market Rules or any part thereof, as if they were the acts or omissions of emsTradepoint.

28.4 Partial Invalidity/Severance: If any provision of the Market Rules, an Associated Document, Trade or Trade Leg is or becomes invalid or unenforceable, that provision will be deemed deleted from the Market Rules, Associated Document, Trade or Trade Leg (as the case may be). The invalidity or unenforceability of that provision will not affect

the other provisions of Market Rules, Associated Document, Trade or Trade Leg (as the case may be), all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

- 28.5 Waiver:** Any waiver by a Party of any of its rights or remedies under the Market Rules, an Associated Document, Trade or Trade Leg will be effective only if it is recorded in writing and signed by a duly authorised senior representative of that Party. If the waiver relates to a breach of any provision of the Market Rules, an Associated Document, Trade or Trade Leg, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of the Market Rules, an Associated Document, Trade or Trade Leg at any time by any Party will in any way affect limit or waive that Party's right to subsequently require strict compliance with the Market Rules, Associated Document, Trade or Trade Leg.
- 28.6 Exemptions:** emsTradepoint may, by Notice to a Participant, exempt the Participant from the application of any provision of the Market Rules for such period (whether commencing before or after the date of the Notice) and on such terms and conditions as emsTradepoint determines, acting as a Reasonable and Prudent Operator. Any exemption granted under this rule may be revoked at any time by emsTradepoint giving Notice to the Participant and such revocation shall have effect from the date stated in the Notice of revocation (which may be a date prior to the date of the Notice of revocation if emsTradepoint considers the exemption was given on the basis of incorrect or incomplete information).
- 28.7 Governing Law and Jurisdiction:** The Market Rules are governed by the laws of New Zealand. The Parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to the Market Rules.

SCHEDULE 1 – BANK GUARANTEE

FORM OF BANK GUARANTEE**TO: EMSTRADEPOINT LIMITED (emsTradepoint)****FOR: [] (Participant)**

1. [] (**Bank**) refers to each and every obligation of the Participant under, or in connection with, the Participant Agreement dated [] between the Participant and emsTradepoint (**Agreement**) to pay amounts the Participant, now or at any time, owes to emsTradepoint (whether as principal or agent) (**Obligations**).
2. The Bank hereby unconditionally guarantees the due and punctual payment to emsTradepoint of the Obligations and undertakes that it shall, on demand, pay to emsTradepoint an amount specified in each such demand, provided that:
 - (a) the aggregate liability of the Bank under this guarantee shall not exceed NZ\$ [] (**Aggregate Amount**);
 - (b) emsTradepoint's demand is made in writing and is purported to be signed by an authorised signatory; and
 - (c) a certificate purported to be signed by emsTradepoint's authorised signatory and certifying that the Participant has failed, in whole or in part, to fulfil the Obligations accompanies emsTradepoint's demand, which certificate will be conclusive proof of such failure.
3. The Bank will pay the Aggregate Amount or any parts of it to emsTradepoint on demand without reference to the Participant and even if the Participant has given the Bank notice not to pay the Aggregate Amount or any parts of it and without regard to the performance or non-performance of the Participant or emsTradepoint under the terms of the Agreement.
4. This Guarantee will not be affected, discharged or diminished by any act or omission which would, but for this provision, have exonerated a guarantor but would not have affected or discharged the Bank's liability had it been a principal debtor.
5. This Guarantee remains in force until one of the following events occurs:
 - (a) emsTradepoint notifies the Bank in writing that this Guarantee is no longer required; or
 - (b) the Bank has paid the Aggregate Amount to emsTradepoint.
6. Notwithstanding anything else in this guarantee, the Bank may cancel this guarantee as to liability in respect of Obligations arising after a date (**cancellation date**) by giving notice in writing to emsTradepoint (at least 90 days' prior to the proposed cancellation date) at emsTradepoint Limited, Waikoukou, 22 Boulcott Street, Wellington 6011, New Zealand (notices to be marked for the attention of: Manager, emsTradepoint); however, the Bank will remain liable with respect to the Obligations which arise prior to the cancellation date (including, for the avoidance of doubt, any Obligations which may have been satisfied but in respect of which any relevant payments or transactions are subsequently, whether before or after the cancellation date, claimed to be void or voidable under any law and such claim is upheld, conceded or compromised).

7. This Guarantee may not be assigned by emsTradepoint without the Bank's prior written consent. This Guarantee will bind the successors and assigns of the Bank as well as any entity with which the Bank may amalgamate.
8. This Guarantee is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Guarantee.

EXECUTED AND DELIVERED AS A DEED

Dated at this day of

[SIGNED on behalf of **[INSERT FULL
NAME]** as Bank by its authorised attorney:

Signature of attorney

Name of attorney

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness]

SCHEDULE 2 – EMSTRADEPOINT SUPPORT DESK

1. **Provision of Support Desk:** emsTradepoint will operate a Support Desk that will provide the following services between 9 am and 5 pm on Business Days (or such other times Published by emsTradepoint from time to time):
 - (a) the receipt, logging and escalation of incidents and faults including Outages during Trading Hours (**Problem Calls**); and
 - (b) information via telephone, including support on the use and operation of the Trading System and advice and assistance on user procedures.
2. **Support Desk:** The Support Desk can be contacted on the telephone number Published by emsTradepoint.
3. **Support Desk Service Levels:** All Problem Calls will be answered by a suitably trained operator unless all available operators are busy on other calls in which case the Participant will be put through to an answering machine and emsTradepoint will respond to Problem Calls as soon as reasonably practicable.
4. **Participant to Provide Information to Support Desk:** The Participant will provide the following information, as applicable, to the Support Desk personnel:
 - (a) Participant name, trader name, location and telephone number;
 - (b) date and time of problem;
 - (c) error message number and text (if applicable);
 - (d) description of problem; and
 - (e) where known, events that led to problem.
5. **Support Desk to Assign Call:** emsTradepoint will allocate the reported problem to the appropriate expert within emsTradepoint. emsTradepoint will diagnose the reported problem (which with the co-operation of the Participant may be by remote fault diagnosis) and Notify the Participant of its determination of the nature and cause of the reported problem.
6. **Visits by emsTradepoint to Participant's Premises:** Diagnosis and rectification (where applicable) of reported problems will generally be carried out by emsTradepoint remotely. It may be necessary for emsTradepoint to visit the Participant's premises. Visits will be at emsTradepoint's discretion. emsTradepoint will not visit the Participant's premises without the prior agreement of the Participant (not to be unreasonably withheld or delayed).
7. **Access to Participant Premises:** If requested to do so by emsTradepoint, the Participant will allow emsTradepoint such reasonable access to its premises and its systems or hardware used to access and use the Trading System. emsTradepoint will, or will procure that its representatives, comply with the Participant's instructions with respect to the safety and security of its premises and data. emsTradepoint will sign an undertaking of confidentiality where reasonably requested by the Participant. emsTradepoint will have no liability for any acts or omissions occurring by it in connection with this Schedule.

