



# TISA Exchange Limited

## GLOSSARY OF DEFINED TERMS

Version Number	Date
1.0	4 April 2012
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2.3	PM 6 May 2016
4.0	6 April 2017
5.0	8 August 2018

**TISA EXCHANGE LIMITED**

**GLOSSARY OF DEFINED TERMS ("Glossary")**

<b>75% Membership Approval</b>	(subject to Clauses 14.9.1(a) (10% "quorum" requirement) and 14.9.4 (applicable where not all categories of Member are eligible to approve or reject a proposal) of the By-laws) in relation to any proposal, means at least 75% (by number) of the Responding Members in each of a majority of the categories of Member consent to such proposal
<b>Accelerated DRP</b>	means the accelerated dispute resolution procedure described in Clause 13.8 of the By-laws
<b>Acquiring Party</b>	means the party who receives the portfolio that is the subject of the Transfer, whether the Customer or a third party on its behalf
<b>Adviser</b>	means anyone who is authorised to conduct investment business under the Financial Services and Markets Act 2000 and has been authorised by the Customer to act on his behalf
<b>Advisory Council</b>	has the meaning given in Paragraph 1.1 of the Articles of Association
<b>Affected Member</b>	has the meaning given in Clause 12.4 of the By-laws
<b>Applicable Law</b>	means all applicable laws, rules, regulations, orders, regulatory policies, guidelines, industry codes of practice (including statements of good practice from trade bodies such as the Association of British Insurers), regulatory permits and licences, and any mandatory instructions or requests by a Regulator, in each case which are in force from time to time
<b>Application Form</b>	means the documents entitled:  (a) "TISA Exchange Limited Contract Club Joining Fee Form" and  (b) "TISA Exchange Limited Registration Form" (the " <b>TeX Registration Form</b> "),  being together the application to participate in the Contract Club pursuant to which each Member provides certain information to TeX and agrees to comply with the Membership Agreement
<b>Articles of Association</b>	means the articles of association of TeX
<b>Asset Manager</b>	means the Member who is ultimately responsible for the maintenance of a fund's register of holders of Units and for the repurchasing of Units that are to be redeemed and for the conversion of Units that are to be converted to a Conversion Share Class
<b>Associate</b>	means any entity appointed, in TeX's discretion, as an associate of TeX on terms substantially the same as those set out in the template appointment letter available on the TeX Website from time to time

<b>Associate Confidential Information</b>	<p>in relation to any Associate, means:</p> <p>(a) all information which is used in or otherwise relates to that Associate's business, customers or financial or other affairs, whether or not marked "Confidential"; and</p> <p>(b) any and all other information clearly designated as "Confidential" by the disclosing Associate,</p> <p>in each case existing in any form</p>
<b>Audit Trail</b>	means a full and unaltered transactional record of each Message sent or received by a Participant, and all associated Transfer Data
<b>Authenticate</b>	<p>means to confirm:</p> <p>(a) the identity of the relevant Participant in accordance with the Standards; or</p> <p>(b) the identity of the Customer,</p> <p>and "<b>Authenticated</b>" will be construed accordingly</p>
<b>best industry practice</b>	means the use of the standards, practices and methods, and exercising the care, diligence and judgment, that would reasonably be expected from a regulated undertaking under similar circumstances
<b>Board</b>	means the board of directors from time to time of TeX
<b>Business Day</b>	means any day on which the London Stock Exchange is open for business
<b>By-laws</b>	means the document entitled "TISA Exchange Limited By-laws" (version 4.0) being the standard terms and conditions of the Contract Club applicable to all Members and TeX
<b>Ceding Party</b>	means the Member who is required to fulfil the Transfer
<b>CEDR</b>	means the Centre for Effective Dispute Resolution in England (or any successor body or organisation)
<b>Change</b>	has the meaning given in Clause 14.1.3 of the By-laws
<b>Claiming Party</b>	has the meaning given in Clause 8.3 of the Contract Terms
<b>Competition Policy</b>	means the document entitled "TISA Exchange Limited Competition Policy" (version 3.0), being the terms and conditions of the Contract Club ensuring that operation of the Contract Club in accordance with the Membership Agreement does not constitute anti-competitive behaviour by any Party
<b>Common Transfer Declaration</b>	means the most up to date version of the common transfer declaration prepared by Origo from time to time.
<b>Confidential Information</b>	<p>in relation to any Party, means all information which is used in or otherwise relates to that Party's business, customers or financial or other affairs, including:</p> <p>(a) information relating to any Member's eligibility to participate in the Contract Club;</p> <p>(b) information provided by any Notifying Member to TeX, or by TeX to</p>

	<p>any Member, in relation to any Relevant Circumstance relating to any Member;</p> <p>(c) data relating to Customers;</p> <p>(d) the content of any messages transmitted between Members in the operation of the Contract Club;</p> <p>(e) performance against Service Levels;</p> <p>(f) Audit Trails and other information provided for the purposes of investigation, mitigation, defence and/or settlement of any Customer Claim, and any information otherwise disclosed in relation to the conduct of any Customer Claim; and</p> <p>(g) any information provided in relation to the application to participate in the Contract Club by any Unsuccessful Applicant,</p> <p>in each case whether or not marked "Confidential", and any and all other information clearly designated as "Confidential" by the disclosing person, in each case existing in any form</p>
<b>Consenting Category</b>	has the meaning given in Clause 14.9.1(a) of the By-laws
<b>Continuing Capacities</b>	has the meaning given in Clause 15.5.1 of the By-laws
<b>Continuing Category</b>	has the meaning given in Clause 15.5.1 of the By-laws
<b>Contract Club</b>	means the contract club established by the Membership Agreement to deliver and administer an industry standard contract to simplify and expedite Transfers
<b>Contract Terms</b>	means the document entitled "TISA Exchange Limited Contract Terms and Conditions" (version 4.0), being the key terms in relation to Transfer obligations and liability
<b>CPI</b>	has the meaning given in the definition of "Indexed Increase"
<b>Customer</b>	means the client (as defined in the FCA Handbook) and the beneficial owner of any Unit which is the subject of a Transfer
<b>Customer Claim</b>	has the meaning given in Clause 10.1 of the Contract Terms
<b>Customer Personal Data</b>	means Personal Data relating to a Customer which is Processed by, or on behalf of, a Member
<b>Conversion Share Class</b>	means a share class in respect of Units in a particular investment that is either (i) the only share class in respect of such Units that is made available by both the Ceding Party and the Acquiring Party; or (ii) the share class agreed in respect of such Units between the Ceding Party and the Acquiring Party as the share class into which such Units are to be converted by the Ceding Party prior to a Transfer
<b>Data</b>	<p>means:</p> <p>(a) all data relating to, or otherwise provided by or on behalf of, any Customer (including Customer Personal Data and Member Personal Data); and</p>

	(b) any other data and/or information transferred by (or on behalf of) any Party to any other Party pursuant to the operation of the Contract Club, in each case whether as images, text or otherwise
<b>Data Protection Laws</b>	means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of personal data to which a Party is subject, including the Data Protection Act 1998 (" <b>DPA</b> ") and EC Directive 95/46/EC (the " <b>DP Directive</b> ") (up to and including 24 May 2018), the Data Protection Act 2018 (subject to royal assent), and the GDPR (on and from 25 May 2018); and (b) any code of practice or guidance published by the ICO and/or European Data Protection Board from time to time
<b>Data Subject Request</b>	means an actual or purported request, notice or complaint from (or on behalf of) a data subject exercising his rights under the Data Protection Laws
<b>Defaulting Party</b>	has the meaning given in Clause 19.1 of the By-laws
<b>Defending Member</b>	has the meaning given in Clause 10.1 of the Contract Terms
<b>Disclosing Party</b>	has the meaning given in Clauses 8.2 and 8.3 of the By-laws
<b>Discovery Message</b>	means a request for data about a Customer made by the Initiating Participant
<b>Dispute</b>	has the meaning given in Clause 13.1 of the By-laws
<b>Dispute Resolution Procedure</b>	means the procedures described in Clause 13 of the By-laws
<b>Disputing Parties</b>	has the meaning given in Clause 13.2.1 of the By-laws
<b>DPA</b>	means the Data Protection Act 1998
<b>EEA</b>	means the European Economic Area (as varied from time to time)
<b>Eligible Category</b>	in relation to any Proposed Change, means each of the categories of Member eligible (in accordance with Clause 14.7 of the By-laws) to approve or reject such Proposed Change
<b>Encrypting Party</b>	has the meaning given in Clause 7.4.1 of the Contract Terms
<b>Event of Force Majeure</b>	has the meaning given in Clause 16.2 of the By-laws
<b>Exceptional Circumstance</b>	has the meaning given in Clause 6.3.1 of the Contract Terms
<b>Fees</b>	means the fees referred to in Clause 4.1 of the By-laws
<b>First Tier Escalation Period</b>	has the meaning given in Clause 13.5.4 of the By-laws (subject to acceleration pursuant to Clause 13.8.2(a) of the By-laws)
<b>FCA</b>	means the Financial Conduct Authority or any successor or replacement body from time to time
<b>FCA Handbook</b>	means the Handbook of Rules and Guidance of the FCA, which includes the

	FCA's Principles for Businesses (including the principle of Treating Customers Fairly), in each case as amended from time to time
<b>FOS</b>	means the Financial Ombudsman Service or any successor or replacement body from time to time
<b>GDPR</b>	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016
<b>Glossary</b>	means this document entitled "TISA Exchange Limited Glossary of Defined Terms" (version 4.0), defining terms used in the Membership Agreement
<b>Group</b>	has the meaning given in section 474(1) of the Companies Act 2006
<b>HMRC</b>	means the Commissioners or officers of Revenue and Customs or both of them, as the context may require
<b>ICO</b>	means the UK Information Commissioner's Office, or any successor or replacement body from time to time
<b>ICO Correspondence</b>	means any correspondence or communication (whether written or verbal) from the ICO in relation to the Processing of the Customer Personal Data or Member Personal Data
<b>Indexed Increase</b>	<p>for any twelve month period means 10% more than the percentage increase (if any) in the CPI for such twelve month period, where:</p> <p>(a) "CPI" means the Consumer Prices Index published by the Office for National Statistics (or other government department or executive agency responsible from time to time for its publication) or, if such index ceases to be published or is not published in any month, such alternative index which produces as nearly as possible the same result; if the reference base used to compile the CPI changes, the figure taken to be shown in the CPI after the change will be the figure which would have been shown in the CPI if the reference base current at the date on which TeX first entered into the Membership Agreement had been retained; and</p> <p>(b) change in the CPI in any twelve month period will be measured by comparing the CPI figure issued during the calendar month immediately preceding such twelve month period with the CPI figure issued during the last calendar month of such twelve month period</p>
<b>Ineligible Member</b>	has the meaning given in Clause 12.1.2 of the By-laws
<b>Information Commissioner</b>	<p>means in relation to the Processing of Personal Data that is subject to:</p> <p>(a) the United Kingdom Data Protection Laws, the office of the United Kingdom's Information Commissioner; and</p> <p>(b) any other Data Protection Laws, the relevant regulator</p> <p>which in each case is responsible for supervision of compliance with, and promotion of good practice in relation to, the Data Protection Laws in its respective jurisdiction (and in each case includes any successor or replacement body from time to time)</p>

<b>Initiating Participant</b>	means the Participant to whom the Instruction is given and who initiates the Transfer (but which in no circumstance will be the Ceding Party)
<b>Instruction</b>	means the instruction to initiate the Transfer on behalf of the Customer
<b>Intellectual Property Rights</b>	means all patents, rights to inventions, copyright and related rights, moral rights, database rights, trade marks and trade names, rights in goodwill or to sue for passing off, rights in designs, semi-conductor topography rights, rights in confidential information (including know-how), domain names and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world
<b>Intermediate Unitholder</b>	has the meaning given in Paragraph 1.1 of the Articles of Association
<b>Liabe Party</b>	has the meaning given in Clause 8.3 of the Contract Terms
<b>Licensed Data</b>	has the meaning given in Clause 7.4.2 of the By-laws
<b>Licensee</b>	has the meaning given in Clause 7.4.2 of the By-laws
<b>Licensor</b>	has the meaning given in Clause 7.4.2 of the By-laws
<b>Loss</b>	means a loss, damage, account of profits, cost (including reasonable legal and other professional costs and expenses), expense, award, charge, fine and/or other liability (as the case may be), and " <b>Losses</b> " will be interpreted accordingly
<b>manual</b>	has the meaning given in Clause 3.5.2 of the Contract Terms, and " <b>manually</b> " will be construed accordingly
<b>Marketing Group</b>	has the meaning given in the FCA Handbook
<b>Mediation Period</b>	has the meaning given in Clause 13.6.3 of the By-laws (subject to acceleration pursuant to Clause 13.8.2(e) of the By-laws)
<b>Mediation Summary Period</b>	has the meaning given in Clause 13.6.2 of the By-laws (subject to acceleration pursuant to Clause 13.8.2(d) of the By-laws)
<b>Mediator</b>	has the meaning given in Clause 13.6.1 of the By-laws
<b>Mediator Appointment Period</b>	has the meaning given in Clause 13.6.1 of the By-laws (subject to acceleration pursuant to Clause 13.8.2(c) of the By-laws)
<b>Member</b>	means any member of TeX, of whatever category
<b>Membership Agreement</b>	means the agreement between TeX and the Members comprising: <ul style="list-style-type: none"> <li>(a) the Competition Policy;</li> <li>(b) the Articles of Association;</li> <li>(c) the Contract Terms;</li> <li>(d) the By-laws;</li> </ul>

	<p>(e) the Glossary;</p> <p>(f) the SLA;</p> <p>(g) the Whistle-Blowing Policy;</p> <p>(h) the Privacy Policy; and</p> <p>(i) the Application Form</p>
<b>Membership Approval Process</b>	means the process set out in Clause 14.9 of the By-laws
<b>Membership Notification Process</b>	means the process set out in Clause 14.10 of the By-laws
<b>Member Personal Data</b>	means Personal Data relating to each Member's Member Representatives
<b>Member Representative</b>	has the meaning given to the term in paragraph 1.4 of the Privacy Policy
<b>Membership Year</b>	means the period from 1 July in any year until (and including) 30 June in the following year
<b>Message</b>	means an electronic transmission of data between Participants made in accordance with the Standards
<b>Multi-Role Member</b>	means a Member who fulfils the criteria for membership in more than one of the member categories set out in Paragraph 19.2 of the Articles of Association
<b>Non-Initiating Participant</b>	means a Participant other than the Initiating Participant
<b>Notifying Member</b>	has the meaning given in Clause 12.3 of the By-laws
<b>Participant</b>	means each Member who participates in a particular Transfer, whether acting in the role of the Ceding Party, Acquiring Party, Intermediate Unitholder or Asset Manager as applicable depending on the nature of that Transfer
<b>Party</b>	means any Member or TeX
<b>Pension Administrator</b>	means, in relation to a Pension Scheme, a party that performs the function of pensions administration under the terms of a legally binding agreement in respect of that Pension Scheme
<b>Pension Provider</b>	<p>means, as appropriate:</p> <p>(a) the party who is responsible for the provision and administration of a Pension Scheme; or</p> <p>(b) if one is appointed for the relevant Pension Scheme, the Pension Administrator</p>
<b>Pension Scheme</b>	means a pension scheme (as defined at Section 150 of the Finance Act 2004) established in the United Kingdom that is registered under Chapter 2 of the Finance Act 2004
<b>Pensions</b>	means the Office of the Pensions Ombudsman or any successor or



<b>Ombudsman</b>	replacement body from time to time
<b>Pensions Regulator</b>	means the Pensions Regulator and any successor or replacement body from time to time
<b>Personal Data</b>	has the meaning given in the GDPR
<b>Potential Pensions Liberation</b>	means the transfer of some or all of an individual's pension savings the circumstances of which indicate a pensions scam by reference to (a) guidance published by the Pensions Regulator (b) Combating Pension Scams: the Code of Good Practice, both as amended from time to time
<b>Privacy Policy</b>	means the document entitled "TISA Exchange Limited Privacy Policy" (version 1.0), setting out how Personal Data relating to Members may be Processed by TeX
<b>PRA</b>	means the Prudential Regulation Authority or any successor or replacement body from time to time
<b>Processing</b>	has the meaning given to it in the GDPR, and " <b>Process</b> " and " <b>Processed</b> ", when used in relation to the Processing of Personal Data, will be construed accordingly
<b>Proposed Change</b>	has the meaning given in Clause 14.2 of the By-laws
<b>Proposed Urgent Change</b>	has the meaning given in Clause 14.11.2(b) of the By-laws
<b>Recipient</b>	has the meaning given in Clauses 8.2 and 8.4 of the By-laws
<b>Recoverable Losses</b>	has the meaning given in Clause 8.4 of the Contract Terms
<b>Referee</b>	has the meaning given in Clause 13.7.1 of the By-laws
<b>Referee Appointment Period</b>	has the meaning given in Clause 13.7.1 of the By-laws (subject to acceleration pursuant to Clause 13.8.2(f) of the By-laws)
<b>Referee Determination Period</b>	has the meaning given in Clause 13.7.3 of the By-laws (subject to acceleration pursuant to Clause 13.8.2(h) of the By-laws)
<b>Referee Report Period</b>	has the meaning given in Clause 13.7.4 of the By-laws (subject to acceleration pursuant to Clause 13.8.2(g) of the By-laws)
<b>Register of Members</b>	means the register of Members to be maintained by TeX pursuant to Clause 6 of the By-laws
<b>Regulator</b>	means any governmental body or regulatory or supervisory authority having responsibility for the regulation or supervision of all or any part of the subject matter of the Contract Club or the business of a Party, including the FCA, PRA, FOS, Pensions Ombudsman, Her Majesty's Revenue and Customs, ICO and the Pensions Regulator (and in each case includes any successor or replacement body from time to time) and, in respect of a Member established in any country in the EEA other than the United Kingdom, any analogous body or authority having responsibility for regulation or supervision of the business of the Member in that country

<b>Relationship Manager</b>	means the person nominated by each Member to act on its behalf
<b>Relevant Circumstance</b>	has the meaning given in Clause 12.3 of the By-laws
<b>Resigning Member</b>	has the meaning given in Clause 15.2 of the By-laws
<b>Responding Members</b>	in relation to any request for consent of the Members (or any category of Members) to any proposal, means the Members who respond to such request by formally approving or formally rejecting such proposal
<b>Responsible Member</b>	has the meaning given in Clause 10.1 of the Contract Terms
<b>Retail Investment Product</b>	has the meaning given in the FCA Handbook
<b>Second Tier Escalation Period</b>	has the meaning given in Clause 13.5.5 of the By-laws (subject to acceleration pursuant to Clause 13.8.2(b) of the By-laws)
<b>Service Levels</b>	means the response and turnaround times for Transfers as set out in the SLA
<b>Service Provider</b>	has the meaning given in Paragraph 1.1 of the Articles of Association
<b>Settled Amount</b>	has the meaning given in Clause 9.3.1 of the Contract Terms
<b>SLA</b>	means the version of the document entitled "TeX Re-Registration Service Level Agreement" that is in force from time to time
<b>Standards</b>	<p>means the standards in accordance with which Participants will communicate in relation to the various processes in a Transfer. Where the Participants communicate:</p> <p>(a) electronically, the "Standards" will be the electronic messaging and technical and security standards from time to time, as specified in the SLA, in accordance with which Participants will create, transmit, receive and validate Messages; and</p> <p>(b) other than by electronic means, the "Standards" will be the standards from time to time, as specified in the SLA, in accordance with which the content of non-electronic communications (including fax and email) must comply</p>
<b>Suspended Member</b>	has the meaning given in Clause 15.3.1 of the By-laws
<b>Suspension Board Meeting</b>	has the meaning given in Clause 15.6.2(a)(ii) of the By-laws
<b>System</b>	means the system (including any hardware, software and other infrastructure) and processes operated by or on behalf of a Participant that is used to send and receive Messages
<b>Terminated Capacities</b>	has the meaning given in Clause 15.5.1 of the By-laws
<b>Terminated Member</b>	has the meaning given in Clause 15.4 of the By-laws

<b>TeX</b>	means TISA Exchange Limited (registered with number 07742375)
<b>TeX Brand</b>	the unregistered trade mark "TeX", and the associated logo (as set out in Part B of the Appendix to the By-laws) and any other (registered or unregistered) trade mark licensed by TeX to any Member from time to time to use for the purposes of the Contract Club, in accordance with the By-laws
<b>TeX Registration Form</b>	has the meaning given in the definition of Application Form
<b>TeX Services</b>	means the administrative and other functions to be carried out by TeX from time to time, including: <ul style="list-style-type: none"> <li>(a) creating and maintaining the Register of Members;</li> <li>(b) establishing and maintaining a website (the "<b>TeX Website</b>"), including a secure area accessible only by Members and/or Associates, in each case by user name and password; and</li> <li>(c) making the Register of Members available to all Members and Associates in the secure area of the TeX Website</li> </ul>
<b>TeX Website</b>	has the meaning given in Paragraph (b) of the definition of TeX Services
<b>TISA</b>	means the Tax Incentivised Savings Association (registered with number 03548792)
<b>TISA Agreement</b>	means any agreement between TISA and TeX pursuant to which TISA licenses its brand and agrees to provide certain services to TeX for the purposes of the day-to-day processing of the Contract Club
<b>TISA Brand</b>	the unregistered trade mark "TISA", the "leading on investments and savings" strapline, and the associated logos (as set out in Part A of the Appendix to the By-laws) and any other (registered or unregistered) trade mark licensed by TISA to TeX from time to time to use and sub-license to Members for the purposes of the Contract Club, in accordance with the TISA Agreement
<b>Transfer</b>	means the transfer of any: i) Retail Investment Product; ii) cash; and/or iii) portfolios of one or more investment fund holdings and, in respect of iii), and (to extent that a Retail Investment Product is an investment fund) in respect of i), which involves the alteration of the fund's register of Unit holders to reflect the transfer of legal ownership, and which may include the redemption of specified assets within the portfolio and/or conversion of Units in specified assets within the portfolio, or of a specified Retail Investment Product, into a Conversion Share Class or Conversion Share Classes
<b>Transfer Data</b>	in relation to a Transfer, means the financial and transaction information and records relating to the Transfer and fulfilment of the Instruction and includes instructions from the relevant Customer or Adviser and (where assets are to be redeemed or converted) records relating to the redemption or conversion of those assets
<b>Transfer Instruction</b>	means an instruction from the Initiating Participant to a Non-Initiating Participant (whether issued in paper form or in the form of a Message) to carry out a Transfer
<b>Unit</b>	has the meaning given in the FCA Handbook
<b>Unsuccessful</b>	means any person who applies to become a Member of the Contract Club

<b>Applicant</b>	but whose application is unsuccessful
<b>Urgent Change</b>	has the meaning given in Clause 14.11.1 of the By-laws
<b>Urgent Change Process</b>	means the process for dealing with Urgent Changes set out in Clause 14.11 of the By-laws
<b>Whistle-Blowing Policy</b>	means the document entitled "TISA Exchange Limited Whistle-Blowing Policy" (version 4.0), being the terms and conditions of the Contract Club relating to the disclosure by any Member to TeX of information about another Member's status, performance or other circumstances and the subsequent use and/or disclosure of such information
<b>Working Group</b>	means an <i>ad hoc</i> group of Members' representatives established by the Board for such purposes as the Board may specify



# TISA Exchange Limited

## BY-LAWS

Version Number	Date
1.0	4 April 2012
2.0	3 February 2014
2.1	PM 6 May 2016
2.2	PM 24 May 2016
2.3	PM 10 June 2016 (TISA Logo updated in Appendix)
5.0	8 August 2018

## TISA EXCHANGE LIMITED

### BY-LAWS ("By-laws")

#### 1. GENERAL

- 1.1 These By-laws are to be read in conjunction with the rest of the Membership Agreement.
- 1.2 In these By-laws, capitalised terms have the meanings given to them in the Glossary.

#### 2. INTERPRETATION

- 2.1 In the Membership Agreement (except where the context otherwise requires):
  - 2.1.1 use of the singular includes the plural (and *vice versa*) and use of any gender includes the other genders;
  - 2.1.2 except in relation to the Articles of Association and the SLA, in counting any period of days or longer period:
    - (a) the day on which such period begins will be included in such period; but
    - (b) if the end of such period is defined by reference to an event, the day on which that event occurs will not be included in such period,  
  
so if two Business Days' notice of any event is given (or is deemed in accordance with Clause 24.2 to be given) on a Monday, the relevant event will take place on the immediately following Wednesday (assuming the Monday, Wednesday and intervening Tuesday are all Business Days);
  - 2.1.3 any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted;
  - 2.1.4 any reference to any constituent part of the Membership Agreement is a reference to that constituent part of the Membership Agreement as amended from time to time in accordance with Clause 14;
  - 2.1.5 a reference to a Party includes that Party's personal representatives, successors or permitted assignees;
  - 2.1.6 a reference to persons includes individuals, firms, partnerships, bodies corporate and corporations, and associations, organisations, foundations, trusts and other unincorporated bodies (in each case whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence);
  - 2.1.7 "in writing" or any similar expression will include any document which is recorded in manuscript or typescript and any electronic communication as defined in s15 of the Electronic Communications Act 2000 (but excluding mobile telephone text messages);
  - 2.1.8 a reference to a Clause (in the case of the Contract Terms and/or By-laws) or a Paragraph (in the case of every other constituent part of the Membership Agreement) in any constituent part of the Membership Agreement is a reference to a clause or paragraph (as appropriate) of the constituent part of the Membership Agreement in which it appears; and

2.1.9 a reference to any constituent part of the Membership Agreement includes any appendix to that constituent part.

2.2 In the Membership Agreement:

2.2.1 general words are not to be given a restrictive meaning because they are followed by particular examples, and any words introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms; and

2.2.2 the headings are included for convenience only and will not affect the construction or interpretation of the Membership Agreement.

### 3. **ORDER OF PRECEDENCE**

3.1 Except as provided in Clause 3.2 and notwithstanding any entire agreement provisions in any (current or future) agreement between any two or more of the Parties, in relation to the subject matter of the Membership Agreement the Membership Agreement takes precedence over any bilateral agreement between any Parties. All other aspects of any bilateral agreement between Parties (including in relation to any fees payable) will be unaffected by the Membership Agreement.

3.2 Any service levels agreed in (or pursuant to) any bilateral agreement between any Parties will, between such Parties but not further or otherwise, take precedence over the service levels in relation to the same subject matter in the Membership Agreement if and to the extent the service levels agreed in (or pursuant to) such bilateral agreement are higher.

3.3 If there is any conflict or inconsistency between the constituent parts of the Membership Agreement, the order of precedence for the constituent parts of the Membership Agreement will be as follows:

3.3.1 the Competition Policy;

3.3.2 the Articles of Association;

3.3.3 the Contract Terms;

3.3.4 the By-laws;

3.3.5 the Glossary;

3.3.6 the SLA;

3.3.7 the Whistle-Blowing Policy;

3.3.8 the Privacy Policy; and

3.3.9 the Application Form.

### 4. **FEES**

4.1 Each Member will pay TeX, or procure that TeX is paid:

4.1.1 (subject to Clause 4.2) a joining fee, which will be due and payable within 30 days of receipt (by the entity nominated to receive the invoice on the relevant Contract Club Joining Fee Form) of the invoice for such fee or, if earlier, the date when such Member submits its TeX Registration Form to TeX;

- 4.1.2 (subject to Clause 4.3) an annual membership fee, which will be due and payable:
- (a) in respect of the period from such date of admission until (and including) the next following 30 June, on the date when it is admitted to the Contract Club; and
  - (b) in respect of each subsequent Membership Year, not later than 1 July at the start of such Membership Year; and
- 4.1.3 (subject to Clause 4.5) any other fee determined from time to time by TeX and notified to the Members.
- 4.2 A Member will not be required to pay TeX a joining fee if a joining fee has already been paid to TeX in respect of another member of such Member's Group.
- 4.3 If a Member is part of a Marketing Group and the annual membership fee in respect of a Membership Year has already been paid to TeX in respect of another member of that Marketing Group which is a Member of TeX of the same category, then no annual membership fee will be due and payable by the Member pursuant to Clause 4.1.2(b) in respect of the same Membership Year.
- 4.4 The Fees are exclusive of Value Added Tax which, if applicable, will be added to the fees and paid by Members at the rate and in the manner prescribed by law from time to time.
- 4.5 The Fees will be notified by TeX to Members from time to time, provided always that each of the following will be subject to 75% Membership Approval in accordance with Clause 14:
- 4.5.1 any increase in any twelve month period in the joining fee, the annual membership fee or any other fee payable pursuant to this Clause 4 which in each such case is more than the Indexed Increase for such twelve month period;
  - 4.5.2 any change in the basis of calculation of the joining fee or the annual membership fee (it being acknowledged and agreed by each Party that the initial basis of calculation of the joining fee and the annual membership fee are as flat rate fees payable by each category of Member in the same amount being such amount as is estimated by TeX (on the basis of limited information available at the date of estimation and without liability for the accuracy of such estimate) to enable TeX to discharge its obligations in relation to the establishment and initial processing of the Contract Club; and
  - 4.5.3 the introduction of any other fee payable by Members in relation to participation in the Contract Club.

## 5. **DEFAULT INTEREST**

- 5.1 If any Fees, or any other moneys payable by one Party to another Party under the Membership Agreement, are not paid within 30 days following the due date, then (without prejudice to any other rights and remedies available to any Party), the Party to whom such Fees or other moneys are owed may charge interest on the unpaid amount (after as well as before any judgment) from the due date until payment is received in full (both dates inclusive) at an annual rate to be determined by the Party to whom such interest is payable not exceeding 4% above the base rate of the Bank of England from time to time in force, such interest to be calculated on a daily basis and payable on demand.



6. **REGISTER OF MEMBERS**

6.1 TeX will maintain a register of Members including in respect of each Member:

6.1.1 (to the extent such information is provided by the relevant Member to TeX):

- (a) the name, address, facsimile and email contact details for such Member;
- (b) the Value Added Tax registration number for such Member;
- (c) the FCA and any other Regulator's authorisation or registration number and permissions for such Member as required for the category of membership to which it has been admitted;
- (d) the electronic systems address (BIC number, SWIFT address or equivalent) for such Member;
- (e) if such Member's registered office is not in the United Kingdom, the name and United Kingdom address of its agent for service of process appointed pursuant to Clause 24.3;
- (f) the details of such Member's Relationship Manager;
- (g) the details of such Member's representatives to whom Disputes should be referred pursuant to Clause 13;
- (h) if such Member requires:
  - (i) copies of any or all communications to be sent to a second contact, the identity and contact details of that second contact and details of the types of communications to be copied to that second contact;
  - (ii) someone other than the Relationship Manager to be responsible for day-to-day technical or other issues in relation to the Contract Club, the identity and contact details of that contact and details of the types of matter to be referred to that contact;
- (i) details (including name, address and contact details) of any agent for such Member with whom TeX or any other Member is expected to deal, and details of any limitations on the scope of such agent's authority;
- (j) the date on which such Member is admitted to the Contract Club and the category of membership to which it has been admitted; and

- (k) if relevant, the date on which such Member is suspended from the Contract Club, the period of such suspension (and if such Member is a Multi-Role Member, each capacity in which such Member is suspended and each capacity in which such Member is not suspended), and (if the suspension is, subject to a maximum 90 day period in accordance with Clause 15.3.2(c), for a period until such Member's breach of the Membership Agreement is remedied or any other reason for such suspension ceases to apply, rather than for a pre-determined period) the time and date when such suspension ends; TeX will remove details of any suspension from the Register of Members when such suspension has expired;

6.1.2 whether such Member has elected to communicate and process Transfers:

- (a) manually only; or
- (b) manually and electronically; and

6.1.3 such other information as TeX considers appropriate (which may include any information relating to any Relevant Circumstance in relation to such Member and any action which is recommended by TeX pursuant to Clause 12.4.3, and any Event of Force Majeure from time to time affecting such Member's ability to perform any of its obligations under the Membership Agreement of which TeX has been notified by such Member pursuant to Clause 16.4).

6.2 Any Member will notify TeX of any changes to any of the details listed in Clause 6.1 promptly and in any event within two Business Days following the date of the relevant change, and TeX will update the Register of Members to reflect such updated details promptly and in any event within two Business Days following receipt of the relevant Member's notification.

## 7. **INTELLECTUAL PROPERTY RIGHTS**

### 7.1 **No transfer of Intellectual Property Rights**

Except as expressly provided in the Membership Agreement, no Party will acquire any proprietary rights, title or interest in or to any Intellectual Property Rights of another Party pursuant to the Membership Agreement.

### 7.2 **Sub-licence of the TISA Brand**

For so long as TISA licenses TeX to use and sub-licence to Members the TISA Brand for the purposes of the Contract Club, TeX grants a non-exclusive, non-transferable royalty-free sub-licence to each Member, with the exception of TISA, to use and reproduce the TISA Brand for the purposes of fulfilling the Members' obligations and exercising its rights as part of the Contract Club.

### 7.3 **Licence of the TeX Brand**

TeX grants a non-exclusive, non-transferable royalty-free licence to each Member to use and reproduce the TeX Brand for the purposes of fulfilling the Members' obligations and exercising its rights as part of the Contract Club, and publicising its membership of TeX and the Contract Club.

#### 7.4 **Ownership and use of Audit Trail, Messages and other Data**

- 7.4.1 Each of the Parties acknowledges and agrees that all Intellectual Property Rights in any Audit Trail, Message or other Data will at all times remain with the Party from which such Audit Trail, Message or other Data originated (or its licensors), whether the Audit Trail, Message or other Data is in human or machine readable form.
- 7.4.2 Subject to Clauses 7.4.3 and 13.4, each Party ("**Licensor**") grants to each other Party ("**Licensee**") a non-exclusive, non-transferable, royalty-free licence in respect of all Audit Trails, Messages and/or Data which is owned by (or licensed to) the Licensor and provided to the Licensee (such Audit Trails, Messages and Data being "**Licensed Data**") to access, use, reproduce (in whole or in part), store, electronically distribute, and display the Licensed Data (in paper, electronic or any other form) as required or permitted to carry out the Licensee's obligations, or to exercise the Licensee's rights, under the Membership Agreement.
- 7.4.3 With respect to SEDOL codes and any other security identifiers contained in the Licensed Data, each Member is responsible for obtaining any licences from (in respect of SEDOL codes) the London Stock Exchange or from the relevant licensor that are required to allow it to store, extract and/or reproduce those codes or other identifiers.

#### 7.5 **Use of data in the Register of Members**

Each Member and TeX acknowledges and agrees that:

- 7.5.1 the data relating to such Member referred to in Clause 6.1 may be published in the Register of Members; and
- 7.5.2 each other Member and TeX will have the right to access and use for the purposes of the operation of the Contract Club any and all data relating to any Member which is contained in the Register of Members.

#### 7.6 **Sub-licence to Parties' agents**

Each Party agrees that any other Party is entitled to appoint an agent to exercise any or all of that Party's rights under Clauses 7.4.2 and/or 7.5.2 on behalf of that Party provided that such agent is appointed on terms providing protection in relation to the Licensed Data to which such agent may have access at least equivalent to the protection contained in the Membership Agreement.

### 8. **CONFIDENTIAL INFORMATION**

- 8.1 Each Party acknowledges and agrees that pursuant to the operation of the Contract Club it may receive Confidential Information in relation to another Party.
- 8.2 In relation to the Confidential Information accessed by or disclosed to any Party ("**Recipient**") by or on behalf of another Party ("**Disclosing Party**"), the Recipient undertakes to the Disclosing Party:
- 8.2.1 to keep all such Confidential Information confidential;
- 8.2.2 not to use any such Confidential Information for any purpose other than the purpose for which it is supplied under the Membership Agreement;

- 8.2.3 not to disclose any such Confidential Information except:
- (a) to its employees, agents or sub-contractors if and to the extent they need to know such Confidential Information to perform the Recipient's obligations under the Membership Agreement or in connection with the proper operation of the Contract Club in accordance with the Membership Agreement and provided always that they will not use any such Confidential Information for any purpose other than the purpose for which it is supplied under the Membership Agreement; and/or
  - (b) (in the case of disclosure by TeX) to any Associates if and to the extent they need to know such Confidential Information in connection with the proper operation of the Contract Club in accordance with the Membership Agreement and the appointment of such Associate, and provided always that they will not use any such Confidential Information for any purpose other than the purpose for which it is supplied to such Associate;
- 8.2.4 to use its best endeavours to prevent the disclosure of any such Confidential Information to, or access to any such Confidential Information by, any third party without the prior written consent of the Disclosing Party except for disclosure to or access by the Recipient's professional advisers or as may be required by law or any legal or regulatory authority; and
- 8.2.5 to use a reasonable degree of care to protect all such Confidential Information and in any event not less than the degree of care which the Recipient uses to protect its own Confidential Information.
- 8.3 In relation to the Confidential Information accessed by or disclosed to any Associate by or on behalf of any Member (also the "**Disclosing Party**"), TeX undertakes to the Disclosing Party that:
- 8.3.1 such Associate will give undertakings to TeX equivalent to those in Clause 8.2; and
  - 8.3.2 TeX will take all reasonable steps to enforce those undertakings against such Associate.
- 8.4 In relation to any Associate Confidential Information accessed by or disclosed to any Member (also a "**Recipient**") by or on behalf of any Associate, the Recipient undertakes to TeX and acknowledges and agrees that TeX shall be entitled to enforce such undertakings on behalf of the relevant Associate:
- 8.4.1 to keep all such Associate Confidential Information confidential;
  - 8.4.2 not to use any such Associate Confidential Information for any purpose other than the purpose for which it is supplied;
  - 8.4.3 not to disclose any such Associate Confidential Information except to its employees, agents or sub-contractors if and to the extent they need to know such Associate Confidential Information to perform the Recipient's obligations under the Membership Agreement or in connection with the proper operation of the Contract Club in accordance with the Membership Agreement and provided always that they will not use any such Associate Confidential Information for any purpose other than the purpose for which it is supplied by or on behalf of such Associate;
  - 8.4.4 to use its best endeavours to prevent the disclosure of any such Associate Confidential Information to, or access to any such Associate Confidential

Information by, any third party without the prior written consent of the relevant Associate or TeX except for disclosure to or access by the Recipient's professional advisers or as may be required by law or any legal or regulatory authority; and

- 8.4.5 to use a reasonable degree of care to protect all such Associate Confidential Information and in any event not less than the degree of care which the Recipient uses to protect its own Confidential Information.
- 8.5 The obligations of confidentiality in this Clause 8 will not apply to any Confidential Information or Associate Confidential Information to the extent that the information:
- 8.5.1 concerns the Member's participation in the Contract Club and each Member consents to the publication of the fact that it is a Member of the Contract Club in accordance with Clause 6 or otherwise;
  - 8.5.2 concerns the Associate's participation as an Associate of the Contract Club;
  - 8.5.3 is in, or comes into, the public domain other than as a result of a breach of this Clause 8 or any other duty of confidentiality relating to such information;
  - 8.5.4 was, is or becomes available to the Recipient on a non-confidential basis from a person who is not bound by any obligation of confidence in respect of, or otherwise prohibited from disclosing, such information to the Recipient;
  - 8.5.5 was known to the Recipient before its disclosure by the Disclosing Party; or
  - 8.5.6 is developed by or for the Recipient independently of the information disclosed by the Disclosing Party.
- 8.6 Each Party will be permitted to disclose any Confidential Information and/or Associate Confidential Information to the extent it is required to do so:
- 8.6.1 to enable the Recipient to perform its obligations, or exercise its rights, under the Membership Agreement;
  - 8.6.2 by any Applicable Law or by any court, arbitral or administrative tribunal in the course of proceedings before it, any Government agency or regulatory body lawfully requesting the same or by the regulations of any stock exchange provided that (to the extent not prohibited by law or order of court, arbitral or administrative tribunal, Government agency or regulatory body, or stock exchange regulation) the Recipient promptly notifies and consults with the Disclosing Party (or, in the case of disclosure of Associate Confidential Information, with TeX) in advance in relation to the timing and content of such disclosure; or
  - 8.6.3 in order to give proper instructions to any professional adviser of the Recipient who has an obligation to keep such Confidential Information and/or Associate Confidential Information confidential.
- 8.7 Each Party acknowledges and agrees that each Associate will be permitted to disclose any Confidential Information to the extent it is required to do so:
- 8.7.1 to enable the Associate to perform its obligations, or exercise its rights, under the terms of its appointment as an Associate;

- 8.7.2 by any Applicable Law or by any court, arbitral or administrative tribunal in the course of proceedings before it, any Government agency or regulatory body lawfully requesting the same or by the regulations of any stock exchange provided that (to the extent not prohibited by law or order of court, arbitral or administrative tribunal, Government agency or regulatory body, or stock exchange regulation) the Associate promptly notifies and consults with the Disclosing Party (where appropriate, through TeX) in advance in relation to the timing and content of such disclosure; or
- 8.7.3 in order to give proper instructions to any professional adviser of the Associate who has an obligation to keep such Confidential Information confidential.
- 8.8 The Recipient will comply promptly with any and all reasonable instructions given:
  - 8.8.1 by the Disclosing Party, from time to time, in connection with the use of all or any of the Confidential Information of or relating to the Disclosing Party; and/or
  - 8.8.2 by TeX, from time to time, in connection with the use of all or any of the Associate Confidential Information.
- 8.9 The Recipient will not acquire any right in, or title to, any Confidential Information belonging or relating to the Disclosing Party. No Member will acquire any right in, or title to, any Associate Confidential Information.
- 8.10 The obligations in this Clause 8 will survive the cessation of the Disclosing Party's and/or the Recipient's participation in, and/or the Associate's association with, the Contract Club.

9. **DATA PROTECTION**

- 9.1 In this Clause 9 the terms "**controller**", "**processor**" and "**data subject**" will have the meanings given in the GDPR.
- 9.2 Each Member acknowledges to, and agrees with, each other Member and TeX that it acts as a controller in respect of any Customer Personal Data Processed by that Member (or its processors on its behalf) irrespective of ownership of the Intellectual Property Rights in that Customer Personal Data. Each Member agrees that it is separately responsible for compliance with Data Protection Laws in respect of Customer Personal Data.
- 9.3 Each Party warrants and represents to each other Party that it has in place all necessary notifications, including notification to the ICO and notifications to data subjects in respect of its Processing of Personal Data, in each case as required by Data Protection Laws.
- 9.4 The Parties each acknowledge and agree that they may need to Process Member Personal Data for such purposes as set out in the Privacy Policy.
- 9.5 In addition to the Privacy Policy, each Party shall Process such Member Personal Data in accordance with their respective privacy policies and, in the case of TeX, TeX shall collect and Process the Member Personal Data in accordance with the Privacy Policy.
- 9.6 The Parties acknowledge that they may be required to share such Member Personal Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in the Privacy Policy, and in doing so each Party will ensure that the sharing and use of this Member Personal Data complies with applicable Data Protection Laws.

9.7 Each Party will bear responsibility for the back-up of its Data and protection against loss of Data, including any Data provided to it by another Party.

9.8 Each Party will promptly and properly assist each other Party with all Data Subject Requests, any request, compliance or communication from a third party or ICO Correspondence, which may be received by another Party and will deal promptly and properly (at no charge) with all enquiries from another Party relating to the Processing of the Customer Personal Data and Member Personal Data unless prohibited by Applicable Law.

## 10. **WARRANTIES**

10.1 Each of the Members warrants, represents and undertakes to each other Party that:

10.1.1 it has the necessary rights to perform its obligations under the Membership Agreement;

10.1.2 it has full legal authority to enter into the Membership Agreement, including to appoint TeX as its agent for the purpose, and on the basis, set out in Clauses 18.1 and 18.2;

10.1.3 all information provided by or on behalf of such Member to TeX as part of such Member's application to join the Contract Club is accurate and complete; and

10.1.4 each representative of its operational team, and each representative of its senior management, to whom Disputes are to be referred pursuant to Clause 13 has full authority to bind such Member in relation to any Dispute referred to such representative.

10.2 TeX warrants, represents and undertakes to each Member that:

10.2.1 it has the necessary rights to perform its obligations under the Membership Agreement; and

10.2.2 it has full legal authority to enter into the Membership Agreement.

## 11. **TEX OBLIGATIONS**

11.1 TeX will provide the TeX Services and perform all its other obligations under the Membership Agreement with reasonable skill and care and in accordance with Applicable Law and best industry practice (including appropriate business continuity arrangements).

11.2 Without prejudice to TeX's ongoing responsibility for the acts and omissions of such third party in accordance with Clause 17.2, TeX will use reasonable skill and care in the selection and appointment of any third party to whom it outsources all or any part of the day-to-day processing of the Contract Club.

11.3 In relation to each application to participate in the Contract Club, TeX will check that the applicant:

11.3.1 is established in the EEA;

11.3.2 is:

(a) if established in the United Kingdom, authorised by the FCA, or

(b) if the applicant is established in the EEA but outside the United Kingdom, recognised by the FCA;

- 11.3.3 is authorised or recognised (as appropriate in accordance with Clause 11.3.2) by the FCA for all activities required for participation in the Contract Club in the category of membership for which such applicant has applied; and
- 11.3.4 in the case of a Pension Provider, provides such further information as required by TeX to the satisfaction of the Board acting in its sole discretion.
- 11.4 TeX shall only be responsible for conducting the checks set out in Clause 11.3 and each Party shall be responsible for conducting additional due diligence on other Members that it may deem necessary to satisfy its internal risk and compliance requirements.

## 12. **CHANGES IN MEMBERS' CIRCUMSTANCES**

### 12.1 **Cessation of Eligibility**

12.1.1 Each Member (other than TISA) undertakes to each other Party that if it:

- (a) ceases to be authorised or (if established in the EEA but outside the United Kingdom) recognised by the FCA, for any and/or all of the activities required for such Member's then-current participation in the Contract Club; or
- (b) otherwise ceases to satisfy any and/or all of the criteria for participation in the Contract Club as may be varied from time to time,

it will notify TeX in writing immediately and in any event within two Business Days of the date on which such Member ceases to be so authorised or recognised (as appropriate) or otherwise ceases to satisfy any and/or all of the criteria for participation in the Contract Club as may be varied from time to time.

12.1.2 Within one Business Day of the date when TeX becomes aware that any Member other than TISA (such Member being the "**Ineligible Member**") has ceased to be authorised or recognised by the FCA, for any and/or all activities required for such Member's then current participation in the Contract Club or otherwise ceases to satisfy all criteria for participation in the Contract Club as may be varied from time to time, TeX will terminate the Ineligible Member's participation in the Contract Club with effect from close of business on the second Business Day after the date on which such termination notice is given to the Ineligible Member. If the Ineligible Member is a Multi-Role Member and has ceased to be authorised or recognised by the FCA, for any and/or all of the activities required for one (or more), but not all, of the capacities of that Multi-Role Member, then in accordance with Clause 15.5 TeX will terminate the Ineligible Member's participation in the Contract Club only in respect of the capacity for which the Ineligible Member has ceased to be authorised or recognised (as appropriate) for all required activities.

12.2 Without prejudice to its obligations under Clause 12.1.1, each Member (other than TISA) further undertakes to each other Party that it will notify TeX in writing immediately, and in any event within two Business Days of the date when such Member becomes aware (or should first reasonably have been aware) of any suspension or termination of, or condition imposed on, or other change in relation to, any authorisation, recognition, permission and/or approval granted to such Member by the FCA or any other Regulator which in each case is not required to be notified pursuant to Clause 12.1.1.



12.3 Each Member (other than TISA) (each such Member being the "**Notifying Member**") will notify TeX immediately in writing on a confidential basis if:

12.3.1 such Member becomes aware of any suspension or termination of, or condition imposed on, or other change in relation to, any authorisation, recognition, permission and/or approval granted to another Member (other than TISA) by the FCA or any other Regulator which in each case is not required to be notified pursuant to Clause 12.1.1 and is not reflected in the Register of Members; or

12.3.2 an Exceptional Circumstance, other than the circumstances referred to in Clause 6.3.1(a) of the Contract Terms, exists (the Notifying Member being the Non-Initiating Participant in relation to such Exceptional Circumstance),

(each a "**Relevant Circumstance**").

12.4 If TeX:

(i) receives any notice pursuant to Clause 12.2 or 12.3 in relation to any Member (the "**Affected Member**"); or

(ii) otherwise becomes aware of any suspension or termination of, or condition imposed on, or other change in relation to, any authorisation, recognition, permission and/or approval granted by the FCA or any other Regulator to any Member (also the "**Affected Member**") which in each case is not required to be notified pursuant to Clause 12.1.1,

then:

12.4.1 TeX will promptly investigate the Relevant Circumstance including discussing this with the Affected Member or the Notifying Member where TeX in its absolute discretion considers this appropriate, and may suspend the Affected Member from the Contract Club during such investigation in accordance with Clause 15.3; each Member will co-operate fully with TeX in any such investigation;

12.4.2 if the Relevant Circumstance means that the Affected Member no longer satisfies any and/or all of the criteria for participation in the Contract Club as may be varied from time to time:

(a) TeX will give written notice to the Affected Member terminating the Affected Member's participation in the Contract Club with effect from close of business on the second Business Day after the date on which such termination notice is given to the Affected Member; TeX may suspend the Affected Member in accordance with Clause 15.3 pending such termination taking effect;

(b) if the Affected Member is a Multi-Role Member and the Relevant Circumstance relates to one (or more), but not all, of the capacities of that Multi-Role Member, then in accordance with Clause 15.5 TeX will terminate the Affected Member's participation in the Contract Club only in respect of the capacity to which the Relevant Circumstance relates; and

(c) TeX will give the notice required by Clause 12.4.2(a) within one Business Day of the date when TeX becomes aware that the Affected Member has ceased to satisfy any and/or all of the criteria for participation in the Contract Club as may be varied from time to time;

- 12.4.3 TeX will promptly notify all Members in writing if TeX reasonably considers that the Relevant Circumstance constitutes an Exceptional Circumstance but does not mean that the Affected Member no longer satisfies any and/or all of the criteria for participation in the Contract Club as may be varied from time to time (in one or more capacities). Such notice may include any action which TeX recommends that other Members may wish to take in respect of the Affected Member;
- 12.4.4 TeX will promptly notify the Notifying Member if TeX reasonably considers that the circumstances notified by the Notifying Member do not constitute a Relevant Circumstance.
- 12.5 Except as provided in Clause 12.4, TeX has no obligations in relation to any Relevant Circumstances relating to any Member.
- 12.6 If:
- 12.6.1 the Affected Member disputes the existence or impact of any Relevant Circumstance (including whether the concern giving rise to an Exceptional Circumstance is legitimate); or
- 12.6.2 any Member (including the relevant Notifying Member and/or the relevant Affected Member) considers that the action recommended by TeX to be taken in respect of any Relevant Circumstance in relation to any Affected Member is inappropriate,

it will immediately notify TeX in writing giving details of the reasons for its view, and if such dispute or disagreement is not resolved by agreement between the relevant Parties within two Business Days, it will be resolved in accordance with the Accelerated DRP.

## 13. **DISPUTE RESOLUTION PROCEDURES**

### 13.1 **Mandatory Nature of Procedure**

Except where the Membership Agreement expressly provides to the contrary, any question or difference which may arise concerning the creation, construction, meaning, validity or effect of any part of the Membership Agreement or breach of it, or any other matter arising out of or in connection with the Membership Agreement or the proper operation of the Contract Club (a "**Dispute**") will be dealt with in accordance with the provisions of this Clause 13. Nothing in this Clause 13 will prevent a Party from initiating legal proceedings for injunctive relief.

### 13.2 **Outline of procedures**

13.2.1 The Parties to that Dispute (the "**Disputing Parties**") will make a good faith effort to resolve any Dispute by referring it to escalation in accordance with Clause 13.5. If and to the extent that the Disputing Parties fail to resolve the Dispute in accordance with the escalation procedure in Clause 13.5:

- (a) if the Disputing Parties so agree, the Dispute will be referred to mediation in accordance with Clause 13.6;
- (b) unless the Dispute has been resolved by mediation in accordance with Clause 13.6:
  - (i) any Dispute which concerns a claim for (or otherwise relates to a sum of) £1,000,000 or less will be referred to third party determination in accordance with Clause 13.7; and

- (ii) any Dispute which concerns a claim for (or otherwise relates to a sum of) more than £1,000,000 will be:
  - (1) referred to third party determination in accordance with Clause 13.7 if the Disputing Parties so agree and agree that such third party determination will be binding; or
  - (2) resolved by litigation before the courts of England and Wales.

In determining the value of any claim for the purposes of this Clause 13.2.1(b) account will be taken only of the amount of such claim which is disputed.

13.2.2 An accelerated procedure applies to certain Disputes in accordance with Clause 13.8.

13.3 On the occurrence of a Dispute, each relevant Party will at the request of any Disputing Party, any Mediator or any Referee promptly:

13.3.1 disclose to the Disputing Parties and any Mediator and/or Referee its full Audit Trail, service level performance records and any other information relevant to the resolution of the Dispute (provided always that each Party acknowledges and agrees that TeX will not have an Audit Trail to be disclosed pursuant to this Clause 13.3.1 but will be entitled to produce and rely on any audit trail relating to communications sent by TeX to, or received by TeX from, any other Party); and

13.3.2 otherwise co-operate fully with the Disputing Parties and any Mediator and/or Referee as reasonably required for the prompt resolution of the Dispute.

The costs of any Party in complying with this Clause 13.3:

- (a) will be borne as directed by any Mediator or Referee; or
- (b) in the absence of any direction by any Mediator or Referee, will be:
  - (i) shared equally by the Disputing Parties if the request is made by any Mediator or Referee; or
  - (ii) borne by the Disputing Party making the request.

#### 13.4 **Use of information disclosed in relation to any Dispute**

Each Party acknowledges and agrees that any Audit Trail, service level performance records and other information disclosed by or on behalf of any Party pursuant to Clause 13.3 may be used only for the purposes of assisting in the resolution of the relevant Dispute, and no Party may use or permit the use of any Audit Trail of, or any other such information relating to, any other Party for any other purpose.

#### 13.5 **Escalation of Disputes**

13.5.1 Each Member will notify TeX in writing of contact details (by name or role) for the representatives of:

- (a) its operational team; and
- (b) its senior management

to whom Disputes will be referred under this Clause 13.5. Unless otherwise notified in writing to TeX by the relevant Member, each Member's Relationship Manager will be the nominated representative of such Member's operational team.

- 13.5.2 TeX will notify each Member (by notice posted on the TeX Website or otherwise) of contact details (by name or role) for the representatives of:
- (a) its operational team; and
  - (b) its senior management

to whom Disputes will be referred under this Clause 13.5.

- 13.5.3 Each Party may at any time by written notice given in accordance with Clause 24 replace any representative of that Member with another person holding a position of equivalent seniority to the person he replaces and must immediately make a replacement appointment if any of the representative positions would otherwise be vacant (whether because a nominated representative has ceased to be a member of the operational team or senior management (as appropriate) of the relevant Party, or because there is no person then appointed to or acting in the nominated representative role in respect of the relevant Party, or for any other reason).
- 13.5.4 Any Dispute will in the first instance be referred to the nominated representative of each Disputing Party's operational team for discussion and resolution as soon as reasonably possible and, in any event, within five Business Days of such referral ("**First Tier Escalation Period**").
- 13.5.5 If the Dispute is not resolved by the operational team representatives of the Disputing Parties pursuant to Clause 13.5.4, it will be escalated to the nominated representative within senior management of each Disputing Party for discussion and resolution as soon as reasonably possible and in any event within a further ten Business Days from such referral ("**Second Tier Escalation Period**").
- 13.5.6 Any Dispute may be referred directly to the nominated representatives within senior management under Clause 13.5.5 if the Disputing Parties so agree.

## 13.6 **Mediation**

- 13.6.1 If any Dispute is not resolved in accordance with the escalation procedure in Clause 13.5, the Disputing Parties will within five Business Days of the end of the Second Tier Escalation Period ("**Mediator Appointment Period**") agree whether to refer the Dispute to mediation and (if they do so agree) the identity of a suitably qualified independent third party with appropriate expertise relevant to the Dispute (the "**Mediator**") and the terms of reference for the mediation. If the Disputing Parties are unable to agree a Mediator and/or the terms of reference for the mediation within the Mediator Appointment Period, the Disputing Parties will (and any Disputing Party may) within two Business Days of expiry of the Mediator Appointment Period apply to CEDR to appoint a Mediator and/or (as appropriate) to determine the terms of reference for the mediation. If the chosen Mediator does not accept his appointment within two Business Days of request, the Disputing Parties will agree the identity of an alternative Mediator; if the Disputing Parties fail to agree the identity of an alternative Mediator within a further two Business Days, the Disputing Parties will (and any Disputing Party may) within a further two Business Days apply to CEDR to appoint an alternative Mediator; if the Mediator has not been appointed and the terms of reference for the mediation agreed within sixteen Business Days of the end of the

Second Tier Escalation Period the Dispute will be referred to third party determination in accordance with Clause 13.7.

- 13.6.2 Within five Business Days of the Mediator accepting his appointment ("**Mediation Summary Period**") each Disputing Party will submit a written summary of the Dispute to the Mediator and to each other Disputing Party.
- 13.6.3 The mediation will take place within ten Business Days of the submission of the Dispute summaries to the Mediator ("**Mediation Period**").
- 13.6.4 The Disputing Parties may agree to extend any of the time periods in this Clause 13.6.
- 13.6.5 Unless concluded with a written legally binding agreement all discussions connected with the Dispute will be conducted in confidence and without prejudice to the rights of the Disputing Parties (or any other Party) in any future proceedings.
- 13.6.6 The costs of the mediation (including the Mediator's fees and expenses) (but excluding the Disputing Parties' own costs, which will be borne by the Disputing Party incurring those costs) will be borne equally by the Disputing Parties except (and to the extent) otherwise agreed in writing in the settlement agreement.

### 13.7 **Third party determination**

- 13.7.1 Where a Dispute is to be referred to third party determination the Disputing Parties will agree a suitably qualified third party with appropriate expertise relevant to the Dispute (or, if the Disputing Parties so agree, a panel of three suitably qualified third parties with appropriate expertise relevant to the Dispute) (such third party or such panel of third parties, as appropriate, being the "**Referee**") within ten Business Days of either the conclusion of the escalation procedure or, where applicable, the conclusion of the mediation process without settlement ("**Referee Appointment Period**"). No Disputing Party will be entitled to withhold its agreement to the appointment of a Referee who is not a competitor of that Party and is independent and free of any conflicts of interest with respect to each Disputing Party and the subject matter of the Dispute. If the chosen Referee does not accept his appointment within two Business Days of request, the Disputing Parties will agree the identity of an alternative Referee within a further five Business Days.
- 13.7.2 If the Disputing Parties fail to agree the identity of:
  - (a) the Referee within the Referee Appointment Period; or
  - (b) (if relevant) an alternative Referee within the further five Business Days referred to in Clause 13.7.1,any Disputing Party may apply to CEDR to select a Referee.
- 13.7.3 The Disputing Parties will jointly appoint the Referee and will during the Referee Appointment Period agree in good faith and acting reasonably his terms of reference including whether the Referee will act as expert or arbitrator. The terms of reference to the Referee will direct the Referee to deliver his determination within forty Business Days after the submission of the written reports referred to in Clause 13.7.4 ("**Referee Determination Period**") and will state that the decision of the Referee will, in the absence of fraud or manifest error, be final and binding on the Disputing Parties.

- 13.7.4 Within ten Business Days of the Referee accepting his appointment ("**Referee Report Period**"), each Disputing Party will submit a written report on the Dispute to the Referee and to each other Disputing Party. Each Disputing Party will afford the Referee all assistance and additional information as the Referee reasonably requires to enable the Referee to consider the Dispute. The Parties acknowledge and agree that the Referee may conduct the resolution of the Dispute as the Referee sees fit, including examination of records, interviewing personnel and/or hearing oral evidence.
- 13.7.5 The Disputing Parties may agree to extend any of the time periods in this Clause 13.7.
- 13.7.6 The costs of the Referee's determination (including the Referee's fees and expenses and the Disputing Parties' own costs and expenses) will be borne as the Referee directs (having regard to the actions of the Disputing Parties); in the absence of such direction, the Referee's fees and expenses will be borne equally by the Disputing Parties and each Disputing Party will otherwise bear its own costs.

### 13.8 **Accelerated DRP**

- 13.8.1 The following Disputes will be determined in accordance with the Accelerated DRP:
- (a) any Dispute in relation to any Relevant Circumstance which is not resolved within two Business Days, as referred to in Clause 12.6;
  - (b) any Dispute as to the amount of compensation which should be paid to a Customer or an Adviser or other third party which the Claiming Party wishes to claim as a Recoverable Loss pursuant to Clause 8.5.4 of the Contract Terms;
  - (c) any Dispute arising in relation to the application of Clause 3.6.5 of the Contract Terms;
  - (d) any Dispute as to whether a matter should be referred to the Accelerated DRP; and
  - (e) any other matter which the Disputing Parties agree should be determined in accordance with the Accelerated DRP.
- 13.8.2 Where a Dispute is to be determined in accordance with the Accelerated DRP, the provisions of Clauses 13.1 to 13.7 inclusive will apply in relation to resolution of that Dispute except that:
- (a) the First Tier Escalation Period will be reduced to two Business Days;
  - (b) the Second Tier Escalation Period will be reduced to three Business Days;
  - (c) the Mediator Appointment Period will be reduced to two Business Days;
  - (d) the Mediation Summary Period will be reduced to two Business Days;
  - (e) the Mediation Period will be reduced to five Business Days;

- (f) the Referee Appointment Period will be reduced to five Business Days;
- (g) the Referee Report Period will be reduced to five Business Days;
- (h) the Referee Determination Period will be reduced to ten Business Days; and
- (i) the Disputing Parties will not be entitled to extend any of the time periods.

### 13.9 **Mediators and Referees**

13.9.1 TeX will maintain a list of persons who may act as Mediators and/or Referees (including details of each potential Mediator or Referee's expertise, costs and contact details) and the Disputing Parties may agree to appoint a person from this list or another person (or, in the case of a panel appointed as Referee, one or more persons from this list and/or one or more other persons) as Mediator or Referee.

13.9.2 TeX:

- (a) will have no liability to any Member or any third party in relation to the inclusion or exclusion of any person from its list of potential Mediators or Referees or the information included in such list, or for any decision of any person selected from such list to act as Mediator or Referee; and
- (b) gives no representation, warranty or undertaking in relation to the competence, qualifications, expertise and/or independence of any person included in (or omitted from) such list.

### 13.10 **Continued performance**

Except where and to the extent clearly prevented by the area in dispute, the Parties agree to continue performing their respective obligations under the Membership Agreement while any Dispute is being resolved.

## 14. **CHANGE CONTROL**

14.1 Any change to:

14.1.1 the Articles of Association will be made by special resolution of the Members (or in the case of rights and/or obligations of any particular category of Members, by special resolution of the Members of the relevant category) in accordance with the Companies Act 2006;

14.1.2 the Privacy Policy will be made by TeX in accordance with the terms of the Privacy Policy;

14.1.3 the Contract Terms, the By-laws, the SLA, the Competition Policy, the Whistle-Blowing Policy and/or the Glossary (each a "**Change**") will be made in accordance with the change control process set out in this Clause 14.

14.2 A Working Group or a Member may from time to time propose to the Board a Change together with reasonable details of the proposed Change and the reasons for it. The Board may approve, vary or reject any proposed Change in its absolute discretion. Except as provided in:

14.2.1 Clause 14.8 in relation to Changes to the Standards and/or Service Levels;  
and

14.2.2 Clause 14.11 in relation to Urgent Changes,

the Board will aggregate any Changes which it approves (each a "**Proposed Change**") and submit these to the Members once a year for implementation.

14.3 Any Proposed Change which is required in order to comply with Applicable Law and about which the Board reasonably considers there can be no debate as to the nature of the Change required to comply with such Applicable Law will be implemented in accordance with the Membership Notification Process (and in accordance with the Urgent Change Process if appropriate).

14.4 Subject to Clause 14.3, the following Proposed Changes require 75% Membership Approval before implementation and will be implemented subject to and in accordance with the Membership Approval Process (and in accordance with the Urgent Change Process if appropriate):

14.4.1 any change to any of the Contract Terms;

14.4.2 any change to any of the Standards (being a change from one Standard to another, and not including the updating of an applicable Standard) and/or any change to any of the Service Levels;

14.4.3 any increase in any twelve month period in the joining fee, the annual membership fee or any other fee payable pursuant to Clause 4 which in each case is more than the Indexed Increase for such twelve month period;

14.4.4 any change in the basis of calculation of the joining fee or the annual membership fee, or the introduction of any other fee payable by Members in relation to participation in the Contract Club, pursuant to Clause 4;

14.4.5 any Proposed Change which is rejected by the Members in accordance with the Membership Notification Process and which, following consultation, the Board considers should (in its original form or in an amended form) be subject to 75% Membership Approval (as provided in Clause 14.10.2(c));  
and

14.4.6 any other Proposed Change which the Board in its absolute discretion considers should be subject to 75% Membership Approval.

14.5 All other Proposed Changes will be implemented in accordance with the Membership Notification Process (and in accordance with the Urgent Change Process if appropriate).

14.6 Consent for the purposes of the Membership Approval Process and the Membership Notification Process will be given or withheld in accordance with the Articles of Association, provided always that any Proposed Change will be approved (or rejected) by the Members by way of written consent from the requisite majority of Members.

14.7 Where a Proposed Change to any part of the Membership Agreement (other than the Articles of Association) affects one or more, but not all, of the categories of Member, the Members of any category which is not affected by the Proposed Change will not be eligible to approve or reject such Proposed Change. Whether any category of Member is affected by any Proposed Change will be determined by the Board on an objective basis at the time such Proposed Change is put to the Members for implementation in accordance with the Membership Approval Process or the Membership Notification Process, as appropriate. Unless otherwise determined by the



Board pursuant to this Clause 14.7, all categories of Member will be eligible to approve or reject any Proposed Change.

14.8 The Board may in its absolute discretion consider any proposed Change to the SLA (including any proposed Change to any of the Standards and/or Service Levels) separately from other proposed Changes, with whatever degree of urgency is appropriate to the proposed Change.

#### 14.9 **Membership Approval Process**

14.9.1 Subject to Clause 14.9.4 (which applies if one or more, but not all, of the categories of Member are eligible in accordance with Clause 14.7 to approve or reject any Proposed Change) any Proposed Change which is to be implemented subject to 75% Membership Approval will be implemented only if:

- (a) at least 75% (by number) of the Responding Members in each of a majority of the categories of Member consent to that Proposed Change (each category of Member 75% of whose Responding Members consent to such Proposed Change being a "**Consenting Category**") within twelve weeks following the date on which the Board notifies the Members in writing of that Proposed Change; and
- (b) at least 10% (by number) of the Members in each Consenting Category responded to the request for consent by formally approving or formally rejecting such proposal within the twelve week response period referred to in Clause 14.9.1(a),

in which case that Proposed Change will take effect from the expiry of the twelve week response period referred to in Clause 14.9.1(a) or such later date as is determined by the Board and notified by the Board to the Members.

14.9.2 Following the expiry of the twelve week response period referred to in Clause 14.9.1(a) or 14.9.4(a) (as appropriate), the Board will promptly notify all Members whether or not any Proposed Change has been approved in accordance with the Membership Approval Process.

14.9.3 If a Proposed Change is not formally approved or formally rejected within the twelve week response period referred to in Clause 14.9.1(a) or 14.9.4(a) (as appropriate) by at least 10% (by number) of the Members in each Consenting Category, the Proposed Change will be treated as rejected and may (at the absolute discretion of the Board) be re-submitted to the Members for implementation by the Membership Notification Process.

14.9.4 If one or more, but not all, of the categories of Member are eligible (in accordance with Clause 14.7) to approve or reject any Proposed Change which is to be implemented subject to 75% Membership Approval, such Proposed Change will be implemented only if:

- (a) at least 75% (by number) of the Responding Members in each Eligible Category consent to that Proposed Change within twelve weeks following the date on which the Board notifies the Members in each Eligible Category in writing of that Proposed Change; and
- (b) at least 10% (by number) of the Members in each Eligible Category responded to the request for consent by formally approving or formally rejecting such proposal within the twelve week response period referred to in Clause 14.9.4(a),

in which case that Proposed Change will take effect from the expiry of the twelve week response period referred to in Clause 14.9.4(a) or such later date as is determined by the Board and notified by the Board to the Members in each Eligible Category.

#### **14.10 Membership Notification Process**

14.10.1 Any Proposed Change which is to be implemented in accordance with the Membership Notification Process will take effect from the expiry of a twelve week period following the date on which the Board notifies the Members in writing of that Proposed Change (or such later date as is notified by the Board to the Members) unless more than 25% of the Responding Members in each of a majority of the categories of Member notify the Board that they reject the Proposed Change within such twelve week period, in which case the Board will submit the Change to the Members for consultation. The consultation will take whatever form the Board thinks fit.

14.10.2 On the expiry of any consultation the Board will either:

- (a) withdraw the Proposed Change;
- (b) amend the Proposed Change and notify the Members in writing of the amended Proposed Change, in which case the Proposed Change as amended will take effect from the expiry of the twelve week period following the date on which the Board notifies the Members in writing of such amended Proposed Change (or such later date as is notified by the Board to the Members); or
- (c) designate the Proposed Change (in its original form or in an amended form) as one requiring 75% Membership Approval, in which case the Proposed Change (in its original form or in an amended form as appropriate) will be implemented in accordance with the Membership Approval Process.

14.10.3 Following the expiry of the twelve week period referred to in Clause 14.10.1 or 14.10.2(b) as appropriate, the Board will promptly notify all Members whether or not any Proposed Change has been approved in accordance with the Membership Notification Process.

#### **14.11 Urgent Change Process**

14.11.1 The following Changes will be Urgent Changes:

- (a) any Change required to comply with Applicable Law by a date which does not permit implementation of such Change to be deferred until the annual consideration of other Changes or does not permit the Board to give twelve weeks' notice of its implementation;
- (b) any Change proposed to achieve to the greatest extent possible the same effect as would have been achieved by any provision which has been held to be invalid or unenforceable in accordance with Clause 20; and
- (c) any other Change which the Board considers requires urgent implementation.

14.11.2 If a proposed Change is an Urgent Change:

- (a) the Board will consider the proposed Urgent Change separately from other proposed Changes, with whatever degree of urgency is appropriate taking into account the date by which the issue to which such Urgent Change relates must (to comply with Applicable Law or best industry practice) be addressed;
- (b) if any proposed Urgent Change (varied as the Board considers appropriate) is approved by the Board (a "**Proposed Urgent Change**"), the Board will submit it to the Members for implementation (in accordance with the Membership Approval Process or the Membership Notification Process, as appropriate) on a one-off basis;
- (c) the Board will give the Members such notice of any Proposed Urgent Change as is reasonably practicable in all the circumstances, and references to a twelve week period in Clauses 14.9 and 14.10 will be deemed to be references to such shorter period as the Board considers reasonably practicable in all the circumstances; and
- (d) any Proposed Urgent Change implemented in accordance with the Membership Approval Process or the Membership Notification Process will take effect on the date notified by the Board to the Members in writing.

14.12 Unless expressly agreed otherwise by relevant Parties, each Member will be responsible for its own costs and expenses incurred in the proposal, assessment, approval, consultation and/or implementation of or in relation to any Change or proposed Change.

## 15. **TERMINATION AND SUSPENSION**

15.1 Each Member is entitled to participate in the Contract Club only for so long as such Member is a member of TeX.

### 15.2 **Resignation by a Member**

Without prejudice to each Member's right to withdraw from membership of TeX pursuant to the Articles of Association, any Member (the "**Resigning Member**"):

- 15.2.1 may terminate its participation in the Contract Club at will by giving TeX not less than five Business Days' written notice;
- 15.2.2 may terminate its participation in the Contract Club by giving TeX not less than two Business Days' written notice if TeX has committed a material breach of the Membership Agreement and, if such breach is capable of remedy, has failed to remedy the same within five Business Days of receipt of notice of the breach;
- 15.2.3 may terminate its participation in the Contract Club by giving TeX not less than two Business Days' written notice in accordance with Clause 16.6.3; and
- 15.2.4 which is a Multi-Role Member may terminate its participation in the Contract Club pursuant to any of Clauses 15.2.1 to 15.2.3 inclusive in respect of one or more, or all, of its capacities as a Multi-Role Member.

### 15.3 **Suspension by TeX**

- 15.3.1 By giving the relevant Member (the "**Suspended Member**") written notice, TeX may suspend any Member from the Contract Club, and may suspend a Multi-Role Member in respect of all or any one or more of its capacities as a Multi-Role Member:
- (a) during any investigation of any Relevant Circumstance in relation to such Member, as referred to in Clause 12.4.1;
  - (b) if TeX would be entitled to terminate such Member's participation (in the case of a Multi-Role Member, in respect of the capacity in which such Member could be terminated) in the Contract Club pursuant to Clause 15.4; or
  - (c) if TeX has given such Member notice to terminate its participation (in the case of a Multi-Role Member, in respect of any capacity) in the Contract Club pursuant to Clause 15.4, in respect of all or any part of the period until such termination notice takes effect.
- 15.3.2 Any suspension may take effect on receipt of the suspension notice by the Suspended Member (or such later date as is specified in the suspension notice) and will continue:
- (a) in the case of suspension pursuant to Clause 15.3.1(b) for non-payment in accordance with Clause 15.4.3, for the period for which such payment remains outstanding;
  - (b) in the case of suspension pursuant to Clause 15.3.1(c), for the period until the effective date of termination of the Suspended Member's participation in the Contract Club; and
  - (c) in the case of any other suspension, for the period specified in the suspension notice, which will not exceed 90 days.
- 15.3.3 At the end of any period of suspension the Suspended Member will be reinstated to full participation in the Contract Club unless such Member's membership is terminated in accordance with Clause 15.4 or such Member resigns in accordance with Clause 15.2.
- 15.3.4 Any suspension will be without prejudice to TeX's right to terminate such Member's participation in the Contract Club on the same or other grounds pursuant to Clause 15.4.

### 15.4 **Termination by TeX**

Without prejudice to the provisions of the Articles of Association relating to cessation of a Member's right to be a member of TeX, TeX may terminate any Member's participation in the Contract Club by giving such Member (the "**Terminated Member**") not less than two Business Days' written notice:

- 15.4.1 in accordance with Clause 12.1.2 if such Member ceases to satisfy in any respect whatsoever the eligibility criteria for participation in the Contract Club;
- 15.4.2 in accordance with Clause 12.4.2 if a Relevant Circumstance means that such Member no longer satisfies any and/or all of the criteria for participation in the Contract Club as may be varied from time to time;
- 15.4.3 if such Member fails to pay any fees due to TeX by the due date;

- 15.4.4 if such Member has committed any breach whatsoever of Clause 12.1.1 (and for the avoidance of doubt such breach will not be capable of remedy):
- 15.4.5 (without prejudice to Clauses 15.4.1 to 15.4.4 inclusive and Clause 15.4.6) if such Member has committed a material breach of the Membership Agreement and, if such breach is capable of remedy, has failed to remedy the same within five Business Days of receipt of notice of the breach;
- 15.4.6 (without prejudice to Clauses 15.4.1 to 15.4.5 inclusive) if such Member has committed a serious and persistent breach of the Membership Agreement; for these purposes a Member commits a "serious and persistent" breach if the relevant Member:
  - (a) commits the same or a substantially similar breach of the Membership Agreement on more than three occasions during any four week period (even if such Member remedies such breaches) and the cumulative effect of such breaches is material; or
  - (b) commits a breach or series of the same or substantially similar breaches of the Membership Agreement which TeX reasonably considers:
    - (i) gives rise to a risk of a regulatory fine or sanction against any other Member or TeX by the FCA or any other Regulator;
    - (ii) gives rise to a risk of a material adverse impact on the reputation of any other Member or TeX in the eyes of the FCA or any other Regulator; or
    - (iii) causes a threat that any other Member or TeX would be in breach of Applicable Law;
- 15.4.7 if such Member:
  - (a) being incorporated:
    - (i) is for any reason dissolved;
    - (ii) goes into liquidation or passes a resolution for voluntary winding up or its directors convene a meeting of shareholders to consider passing such a resolution (except for the exclusive purpose of a *bona fide* reconstruction or amalgamation in each case not involving insolvency and in such manner that the entity resulting therefrom effectively agrees to be bound by or assumes the obligations imposed on that Member under the Membership Agreement);
    - (iii) has an encumbrancer take possession of or an administrative receiver or receiver or similar officer appointed over all or any part of its assets or undertaking, or an application is made for the appointment of an administrative receiver, receiver or similar officer over all or any part of its assets or undertaking;
    - (iv) has an administrator appointed (by court order or otherwise including by its directors or by a floating charge holder), or has an application made either for the appointment of an administrator or for an administration

order, or has a notice of intention to appoint an administrator given;

- (v) is the subject of any judgment or order made against it which is not complied with or discharged within 30 days or is the subject of any execution, distress, sequestration or other process levied upon or enforced against any of its assets;
  - (vi) has proposed in respect of it a company voluntary arrangement pursuant to the Insolvency Act 1986 or any other composition, scheme or arrangement with, or assignment for the benefit of, any of its creditors;
  - (vii) has a petition presented for its winding up (which is not dismissed within 14 days of its service) or has an application made for the appointment of a provisional liquidator or has a creditors' meeting convened pursuant to s98 Insolvency Act 1986;
  - (viii) is or becomes deemed to be unable to pay its debts within the meaning of s123 Insolvency Act 1986; or
  - (ix) has a moratorium come into force in respect of it pursuant to Schedule A1 Insolvency Act 1986; or
- (b) being a partnership:
- (i) is for any reason dissolved;
  - (ii) has an encumbrancer take possession of or a receiver or similar officer appointed over all or any part of its assets or undertaking, or an application is made for the appointment of a receiver or similar officer over all or any part of its assets or undertaking;
  - (iii) has an administrator appointed (by court order or otherwise including by its members or by a floating charge holder), or has an application made either for the appointment of an administrator or for an administration order, or has a notice of intention to appoint an administrator given;
  - (iv) is the subject of any judgment or order made against it which is not complied with or discharged within 30 days or is the subject of any execution, distress, sequestration or other process levied upon or enforced against any of its assets;
  - (v) has proposed in respect of it a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or any other composition, scheme or arrangement with, or assignment for the benefit of, any of its creditors;
  - (vi) has a petition presented for its winding up (which is not dismissed within 14 days of its service), or has an application made for the appointment of a provisional liquidator;

- (vii) is or becomes deemed to be unable to pay its debts within the meaning of s222 to 224 (inclusive) Insolvency Act 1986 as applied and modified by the Insolvency Partnerships Order 1994; or
- (viii) has any of the following events occur in relation to any of its partners:
  - (1) an application to the court for an interim order is made pursuant to s252 to s253 Insolvency Act 1986 is made in respect of him;
  - (2) a receiver or similar officer is appointed over all or any part of his assets;
  - (3) a proposal is made for an individual voluntary arrangement pursuant to the Insolvency Act 1986 or any other composition, scheme or arrangement with, or assignment for the benefit of, any of his creditors;
  - (4) a statutory demand or bankruptcy petition is issued against him; or
  - (5) he is declared bankrupt; or
- (c) being a limited liability partnership:
  - (i) is for any reason dissolved;
  - (ii) has any step taken in respect of it with a view to it being determined that it be wound up (except for the exclusive purpose of a *bona fide* reconstruction or amalgamation in each case not involving insolvency and in such manner that the entity resulting therefrom effectively agrees to be bound by or assumes the obligations imposed on that Member under the Membership Agreement) within Part IV Insolvency Act 1986;
  - (iii) has an encumbrancer take possession of or a receiver or similar officer appointed over all or any part of its assets or undertaking, or an application is made for the appointment of a receiver or similar officer over all or any part of its assets or undertaking;
  - (iv) has an administrator appointed (by court order or otherwise including by its members or by a floating charge holder), or has an application made either for the appointment of an administrator or for an administration order, or has a notice of intention to appoint an administrator given within Part II Insolvency Act 1986;
  - (v) is the subject of any judgment or order made against it which is not complied with or discharged within 30 days or is the subject of any execution, distress, sequestration or other process levied upon or enforced against any of its assets;
  - (vi) has proposed in respect of it a voluntary arrangement pursuant to Part I Insolvency Act 1986 or any other

composition, scheme or arrangement with, or assignment for the benefit of, any of its creditors;

- (vii) has a petition presented for its winding up (which is not dismissed within 14 days of its service) or has an application made for the appointment of a provisional liquidator within Part IV Insolvency Act 1986;
- (viii) is or becomes deemed to be unable to pay its debts within the meaning of s123 Insolvency Act 1986; or
- (ix) has a moratorium come into force in respect of it pursuant to Schedule A1 Insolvency Act 1986,

and references to the Insolvency Act 1986 in this Clause 15.4.7(c) will be construed as references to the Insolvency Act 1986 as applied under the Limited Liability Partnerships Act 2000 and subordinate legislation; or

- (d) being an individual:
  - (i) an application to the court for an interim order pursuant to s252 to s253 Insolvency Act 1986 is made in respect of him;
  - (ii) a receiver or similar officer is appointed over all or any part of his assets;
  - (iii) a proposal is made for an individual voluntary arrangement pursuant to the Insolvency Act 1986 or any other composition, scheme or arrangement with, or assignment for the benefit of, any of his creditors;
  - (iv) a statutory demand or bankruptcy petition is issued against him; or
  - (v) he is declared bankrupt; or
- (e) anything analogous to any of the events in Clauses 15.4.7(a) to 15.4.7(d) inclusive occurs in relation to such Member under the law of any jurisdiction to which such Member is subject; or

15.4.8 if it appears to HMRC that that Member is not a fit and proper person to be a scheme administrator and the registration of a Pension Scheme is withdrawn under the Finance Act 2004 on that basis (along with any other reasons);

15.4.9 ceases or threatens to cease to carry on business; or

15.4.10 in accordance with Clause 16.6.2.

For the purposes of this Clause 15.4 and subject to Clause 15.4.4, a breach will be considered capable of remedy for these purposes if the Member can comply with the relevant provision in all respects other than time of performance (provided time of performance is not of the essence).



## 15.5 Multi-Role Members

### 15.5.1 If a Multi-Role Member:

- (a) terminates its participation in the Contract Club in respect of one or more, but not all, of its capacities as a Multi-Role Member pursuant to Clause 15.2;
- (b) ceases to satisfy the eligibility criteria for one or more, but not all, of its capacities as a Multi-Role Member;
- (c) commits any breach of the terms of the Membership Agreement which justifies termination pursuant to any of Clauses 15.4.3 to 15.4.6 inclusive and relates only to one or more, but not all, of its capacities as a Multi-Role Member;
- (d) ceases or threatens to cease to carry on business in relation to one or more, but not all, of its capacities as a Multi-Role Member; or
- (e) is prevented from or delayed in performing any of its obligations under the Membership Agreement in relation to one or more, but not all, of its capacities as a Multi-Role Member by an Event of Force Majeure which continues for more than six months,

(the capacities of Member from which the Multi-Role Member has resigned or in respect of which it ceases to satisfy the eligibility criteria or has committed any breach justifying termination or ceases or threatens to cease to carry on business or is affected by an Event of Force Majeure continuing for more than six months being the "**Terminated Capacities**", and any other capacities of Member from which the Multi-Role Member has not resigned and in respect of which it continues to satisfy the eligibility criteria and has not committed any breach justifying termination and has not ceased or threatened to cease to carry on business and is not affected by an Event of Force Majeure continuing for more than six months being the "**Continuing Capacities**"),

then:

- (i) any termination of such Multi-Role Member's membership will be effective only in respect of the Terminated Capacities; and
- (ii) if there is only one Continuing Capacity, such Member will automatically cease to be a Multi-Role Member and instead become a Member of the same category as the Continuing Capacity (the "**Continuing Category**"). For the avoidance of doubt, if there is more than one Continuing Capacity, such Member will continue to be a Multi-Role Member (acting in each of the Continuing Capacities, but not in the Terminated Capacity).

### 15.5.2 If the Resigning Member or Terminated Member is a Multi-Role Member who resigns from the Contract Club, or whose participation in the Contract Club is terminated, in respect of some but not all of its capacities as a Multi-Role Member, then:

- (a) if the Resigning Member or Terminated Member remains a Multi-Role Member, any TeX director appointed by the Multi-Role Members and employed or engaged by (or a director of) such Resigning Member or Terminated Member will continue to be a TeX director appointed by the Multi-Role Members; but

- (b) if the Resigning Member or Terminated Member continues to participate in the Contract Club in only one capacity and so ceases to be a Multi-Role Member and becomes a Member of the relevant Continuing Category, any TeX director appointed by the Multi-Role Members and employed or engaged by (or a director of) such Resigning Member or Terminated Member will cease to be a TeX director appointed by the Multi-Role Members.

## 15.6 Process for suspension or termination by TeX

15.6.1 Any decision to terminate or suspend any Member's participation in the Contract Club will be taken by the Board, and will not be delegated to any Working Group. However if any Advisory Council or Working Group considers that TeX is entitled to suspend or terminate any Member's participation in the Contract Club pursuant to Clause 15.3 or 15.4 and should exercise such right, it will submit to the Board for consideration:

- (a) the relevant Advisory Council or Working Group's written recommendation for suspension or termination of such Member's participation; and
- (b) any evidence relating to the behaviour giving rise to such recommendation compiled by the relevant Advisory Council or Working Group.

The Board may approve, vary or reject any Advisory Council or Working Group's recommendation for suspension or termination (including terminating participation where an Advisory Council or Working Group has recommended suspension, and suspending participation where an Advisory Council or Working Group has recommended termination).

15.6.2 Unless the Suspended Member is suspended pursuant to Clause 15.3.1(c) pending the date on which a termination notice served on such Suspended Member takes effect:

- (a) on or before the Business Day when TeX gives a suspension notice to any Member pursuant to Clause 15.3, the Board will give the Member to which such suspension notice relates:
  - (i) a summary of the reasons why such Member's participation in the Contract Club has been (or is proposed to be) suspended; and
  - (ii) the date of the meeting of the Board at which such suspension will be considered (the "**Suspension Board Meeting**"); the Suspension Board Meeting must be held within ten Business Days following the date on which the suspension notice is received by the relevant Member;
- (b) the Member to which any suspension notice relates will be entitled to:
  - (i) submit written representations and supporting evidence to the Board, and any such representations and supporting evidence will be considered by the Board at the Suspension Board Meeting at which its suspension will be considered; and
  - (ii) attend (with or without a professional adviser) and speak (itself or through its professional adviser) at such

Suspension Board Meeting in relation to its suspension;  
and

- (c) the Board will notify the Suspended Member in writing within one Business Day after the date of the Suspension Board Meeting whether its suspension (or proposed suspension, as appropriate) is confirmed (and the period of such suspension and the reasons for it) or lifted.

## 15.7 **Notice of resignation, suspension or termination to other Members**

15.7.1 Within one Business Day of the date when TeX receives notice of termination pursuant to Clause 15.2 from a Resigning Member, TeX will give all other Members written notice stating:

- (a) that the Resigning Member will cease to be a member of the Contract Club because it has resigned (including whether the reason for such cessation is resignation for convenience pursuant to Clause 15.2.1, material unremedied breach by TeX pursuant to Clause 15.2.2 or force majeure pursuant to Clause 15.2.3);
- (b) the time and date when such cessation will take effect; and
- (c) if the Resigning Member is a Multi-Role Member, each capacity in which the Resigning Member will cease to participate in the Contract Club and each capacity in which the Resigning Member will continue to participate in the Contract Club,

and will update the Register of Members accordingly.

15.7.2 On the same Business Day that TeX gives a suspension notice to any Member pursuant to Clause 15.3, TeX will give all other Members written notice stating:

- (a) that notice has been given to suspend the Suspended Member from participation in the Contract Club;
- (b) subject to Clause 15.7.3, the reason for such suspension;
- (c) the time and date when such suspension will take effect and the period of such suspension; and
- (d) if the Suspended Member is a Multi-Role Member, each capacity in which the Suspended Member will be suspended and each capacity in which the Suspended Member will not be suspended,

and will update the Register of Members accordingly. TeX will promptly notify all other Members of the time and date when any Member's suspension ends if such Member is not suspended:

- (i) pursuant to Clause 15.3.1(c), pending the effective date of termination of its participation in the Contract Club; or
- (ii) for a pre-determined period,

but instead is suspended (subject to a maximum 90 day period in accordance with Clause 15.3.2(c)) until its breach of the Membership Agreement is remedied (or until any other reason for such suspension ceases to apply).

- 15.7.3 If a Member is suspended with effect from a date before the Suspension Board Meeting then (unless such Member is suspended pursuant to Clause 15.3.1(c) pending the effective date of termination of its participation in the Contract Club, in which case this Clause 15.7.3 will not apply), TeX:
- (a) will not disclose to the other Members the reasons for such suspension when notifying the other Members of such suspension pursuant to Clause 15.7.2 or (subject to Clause 15.7.3(b)) otherwise; and
  - (b) will within one Business Day after the date of the Suspension Board Meeting notify all the other Members:
    - (i) whether the Suspended Member's suspension has been confirmed or lifted; and
    - (ii) if the Suspended Member's suspension has been confirmed, the period of such suspension and the reasons for it.

15.7.4 On the same Business Day that TeX gives a termination notice to any Member pursuant to Clause 15.4, TeX will give all other Members written notice stating:

- (a) that notice has been given to terminate the Terminated Member's participation in the Contract Club;
- (b) whether such termination is the result of such Member ceasing to satisfy the eligibility criteria for Membership pursuant to Clause 15.4.1 or 15.4.2, failing to pay fees due to TeX pursuant to Clause 15.4.3, breach of the Membership Agreement pursuant to Clauses 15.4.4, 15.4.5 or 15.4.6, an insolvency-related event pursuant to Clause 15.4.7, as a result of the circumstances referred to in Clause 15.4.8, or cessation (or threatened cessation) of business pursuant to Clause 15.4.9, or force majeure pursuant to Clause 15.4.10;
- (c) the time and date when such termination will take effect; and
- (d) if the Terminated Member is a Multi-Role Member, each capacity in which the Terminated Member's participation in the Contract Club will be terminated and each capacity in which the Terminated Member's participation in the Contract Club will not be terminated,

and TeX will update the Register of Members accordingly.

## 15.8 **Consequences of termination or suspension**

### 15.8.1 Membership Agreement

Termination of any Member's participation in the Contract Club will terminate the Membership Agreement between such Member and the other Parties, but will not affect the Membership Agreement between the other Parties.

### 15.8.2 Rights of Suspended Members and dealing with Suspended Members

For so long as any Member is suspended from the Contract Club:

- (a) subject to Clause 15.8.2(b), such Suspended Member will not be entitled to vote on any resolution (or to count in any quorum) or to

approve or reject any Proposed Change or to exercise any of its other rights under the Membership Agreement (and any vote, approval or rejection by such Member during any period of suspension will be disregarded for all purposes including calculating the percentages referred to in Clause 14.9);

- (b) if the Suspended Member is a Multi-Role Member whose participation in the Contract Club is suspended in some but not all capacities, the Suspended Member will continue to have the rights and obligations of a Member of the same category as each capacity in respect of which such Member has not been suspended except that such Suspended Member will not be entitled to vote on any resolution (or to count in any quorum), or to approve or reject any Proposed Change, either as a Multi-Role Member or as a Member of the same category as any capacity in respect of which such Member has not been suspended or any other category (and any vote, approval or rejection by such Member during any period of suspension will be disregarded for all purposes including calculating the percentages referred to in Clause 14.9); and
- (c) any other Member who deals or communicates with the Suspended Member (in the case of a Multi-Role Member, in a capacity in respect of which such Multi-Role Member has been suspended) does so at its own risk without the benefit of such Suspended Member's participation in the Contract Club.

#### 15.8.3 In-flight Transfers

- (a) Termination or suspension of any Member's participation in the Contract Club for any reason will not affect any rights and/or obligations of that Member or any other Party in relation to any Transfer in respect of which a Transfer Instruction has been sent before the effective time and date of such termination or suspension.
- (b) No Member will be entitled, after the effective time and date of termination of its participation in the Contract Club or whilst it is suspended from the Contract Club, to initiate a Transfer for processing pursuant to the Membership Agreement.

#### 15.8.4 Directors

- (a) Subject to Clause 15.5.2, any TeX director appointed by the same category of Members as the Resigning Member or Terminated Member and employed or engaged by (or a director of) the Resigning Member or Terminated Member will cease to be a director of TeX appointed by the Members of the same category as the Resigning Member or Terminated Member (as appropriate), and will also cease to be a member of any Advisory Council or Working Group or other sub-committee of the Board.
- (b) Any director of TeX who is employed or engaged by (or a director of) a Suspended Member will not be required to resign from the Board by reason of such Member's suspension.

#### 15.8.5 Fees

- (a) Except as provided in Clause 15.8.5(b), any fees paid by any Member who terminates its participation in the Contract Club, or

whose participation in the Contract Club is terminated or suspended by TeX, will not be refunded to the Member.

- (b) Subject to Clause 15.8.5(c), if any Member terminates its participation in the Contract Club in accordance with Clause 15.2.2, TeX will refund to such Member the proportion of the annual membership fee paid to TeX by such Member which relates to the period from the date when such Member ceases to participate in the Contract Club until the next anniversary of the first day of the calendar month of such Member's admission to the Contract Club (and for these purposes the annual membership fee will be apportioned equally throughout the year to which such membership fee relates).
- (c) If in accordance with Clause 4.3 one annual membership fee has been paid in respect of several Members of TeX who are members of the same Marketing Group, TeX will not be obliged to refund any proportion of the annual membership fee to any Member who terminates its participation in the Contract Club if any other member of the same Marketing Group continues to be a Member of TeX of the same category as the Member who has terminated its participation in the Contract Club.

#### 15.8.6 Other

Termination or suspension of the Membership Agreement in respect of any Member for any reason will not affect any rights and/or obligations of any Member which have accrued before such termination or suspension, or any provision of the Membership Agreement which expressly or by implication is intended to come into effect or to continue in effect on or after such termination or suspension.

## 16. RELIEF EVENTS AND FORCE MAJEURE

- 16.1 A Party will not be responsible for any delay in performing or failure to perform any of its obligations under the Membership Agreement if and to the extent that the delay or failure directly results from a failure of another Party to perform its obligations in accordance with the Membership Agreement.
- 16.2 "**Event of Force Majeure**" means an event which falls within one or more of the following categories:
  - 16.2.1 riot, civil unrest, military action or terrorism;
  - 16.2.2 damage to or destruction of premises or equipment;
  - 16.2.3 fire, flood, storm, earthquake or other natural disaster;
  - 16.2.4 industrial action, strikes or lock-outs by employees of third parties (excluding suppliers, agents or sub-contractors of the affected Party except where no substitute is reasonably available); or
  - 16.2.5 exercise of emergency powers by any governmental authority whether national, regional or local,

and which in each case was beyond the affected Party's reasonable power to control.

- 16.3 Subject to Clauses 16.4 and 16.5, to the extent that any Party is prevented from performing any of its obligations under the Membership Agreement by an Event of Force Majeure, then that Party's obligation to perform such obligations under the

Membership Agreement will during the continuation of the relevant Event of Force Majeure be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances of the Event of Force Majeure.

16.4 Any Member claiming to be affected by an Event of Force Majeure will not be entitled to invoke the provisions of Clause 16.3 unless the affected Party:

16.4.1 on becoming aware of any Event of Force Majeure which gives rise, or which is likely to give rise, to any failure or delay in the performance of any of its obligations under the Membership Agreement, promptly notifies TeX, giving details of the Event of Force Majeure, the obligations on its part which are affected and its reasonable estimate of the period for which such failure or delay will continue;

16.4.2 provides to TeX written confirmation and reasonable evidence of such Event of Force Majeure within five Business Days following notification pursuant to Clause 16.4.1; and

16.4.3 takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Event of Force Majeure.

16.5 If any Member notifies TeX of any Event of Force Majeure pursuant to Clause 16.4, TeX will promptly:

16.5.1 notify each other Member who is (or is likely to be) impacted by such Event of Force Majeure; and

16.5.2 update the Register of Members to record the relevant Event of Force Majeure against the Party claiming to be affected by such Event of Force Majeure (and will promptly update the Register of Members to delete reference to such Event of Force Majeure if TeX is notified (or otherwise becomes aware) that such Event of Force Majeure has ceased to apply).

16.6 If a Member is prevented from, or delayed in, performing any of its obligations under the Membership Agreement by an Event of Force Majeure which continues for more than six months, then:

16.6.1 any other Member may propose to TeX that the affected Member's participation in the Contract Club be terminated;

16.6.2 TeX may terminate the affected Member's participation in the Contract Club by giving not less than two Business Days' written notice of such termination to the affected Member; or

16.6.3 the affected Member may terminate its own participation in the Contract Club by giving not less than two Business Days' written notice of such termination to TeX.

16.7 TeX will not be entitled to invoke the provisions of Clause 16.3 unless TeX:

16.7.1 on becoming aware of any Event of Force Majeure which gives rise, or which is likely to give rise, to any failure or delay in the performance of any of its obligations under the Membership Agreement, promptly notifies each Member who is (or is likely to be) impacted by such failure or delay, giving details of the Event of Force Majeure, the obligations on its part which are affected and its reasonable estimate of the period for which such failure or delay will continue, and posts the same information on the secure Members-only area of the TeX Website; and

16.7.2 takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Event of Force Majeure.

16.8 No Party will be entitled to terminate TeX's participation in the Contract Club because TeX is affected by any Event of Force Majeure.

## 17. **ASSIGNMENT AND SUB-CONTRACTING**

17.1 The Membership Agreement is personal to each of the Parties. No Party may assign, novate or transfer in any way, or charge the benefit of, any of its rights, liabilities or obligations under the Membership Agreement on a temporary or permanent basis to any third party.

17.2 Any Party may sub-contract the performance of any of its obligations and/or the exercise of any of its rights under the Membership Agreement to any third party, and may sub-license the TISA Brand and/or TeX Brand to such third party to the extent required to enable such third party to fulfil such Party's obligations, and exercise such Party's rights, in relation to the Contract Club. Each Party will be responsible for all acts and omissions of its sub-contractors (including any sub-sub-contractors) as if they were its own.

## 18. **RELATIONSHIP OF THE PARTIES**

18.1 In its application to participate in the Contract Club, each Member appoints TeX as its agent for the limited purpose of agreeing the terms of the Membership Agreement with each other Member from time to time. This appointment is irrevocable for so long as the appointing Member participates in the Contract Club.

18.2 Each Member waives and releases TeX from any and all rights, claims, actions and/or causes of action (whether in contract, tort or otherwise) arising out of or in any way related to such Member's agreement to the terms of the Membership Agreement and/or such Member's performance of its obligations under the Membership Agreement.

18.3 Nothing in the Membership Agreement is intended to create, or will be construed as constituting or evidencing, a partnership or joint venture or relationship of employer and employee between any of the Parties or (except as provided in Clause 18.1) to authorise, or will be construed as authorising, any Party to act as agent for any other Party. Except where expressly so stated in the Membership Agreement, no Party has authority to make any representation for, act in the name or on behalf of or otherwise to bind any other Party.

## 19. **WAIVER**

19.1 Any failure to exercise or any delay in exercising a right or remedy provided by the Membership Agreement or at law or in equity (and/or the continued performance of the Membership Agreement) will not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. If any Party waives a breach of any term of the Membership Agreement committed by any other Party (the "**Defaulting Party**") such waiver will not constitute:

19.1.1 a waiver of any other breach (of the same term or any other term) committed by the Defaulting Party; or

19.1.2 a waiver of the same or any other breach by any Party other than the Defaulting Party,

and will not affect the other terms of the Membership Agreement.



19.2 The rights and remedies provided by the Membership Agreement are cumulative and (except as otherwise provided in the Membership Agreement) are not exclusive of any rights or remedies provided at law or in equity. To the extent that any right or remedy provided by the Membership Agreement or in law or equity can be exercised more than once and/or in combination with other rights and/or remedies provided by the Membership Agreement or in law or equity, no single or partial exercise of such right or remedy prevents the further exercise of that right or remedy or the exercise of any other right or remedy.

20. **SEVERABILITY**

20.1 If at any time a provision of the Membership Agreement is held by any court or administrative body of competent jurisdiction to be (in whole or in part) invalid or unenforceable, such invalidity or unenforceability will not prejudice the other provisions of the Membership Agreement (or the other parts of any provision which is found to be partially invalid or unenforceable) which will remain in full force and effect.

20.2 If any provision of the Membership Agreement is found to be invalid or unenforceable in accordance with Clause 20.1 but would be valid and enforceable if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it valid and enforceable.

21. **FURTHER ASSURANCE**

Each Party will at the request of any other Party at its own cost do (or procure others to do) everything necessary to give any other Party the full benefit of the Membership Agreement.

22. **RIGHTS OF THIRD PARTIES**

22.1 An Unsuccessful Applicant may enforce the provisions of Clause 8 in relation to any Confidential Information relating to such Unsuccessful Applicant, subject to and in accordance with the relevant provisions of the Membership Agreement and the Contracts (Rights of Third Parties) Act 1999.

22.2 Except as provided in Clause 22.1, nothing in the Membership Agreement confers any benefit on, or is enforceable by, any person who is not a Party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

22.3 Notwithstanding Clause 22.1, it is expressly agreed that the Parties may rescind or vary the Membership Agreement or any of its terms (including Clause 8) in accordance with Clause 14 without the consent of any Unsuccessful Applicant, even if that rescission or variation may extinguish or alter that person's rights pursuant to Clause 22.1.

23. **ENTIRE AGREEMENT**

23.1 Except as provided in Clause 3.2 and notwithstanding any entire agreement provisions in any (current or future) agreement between any two or more of the Parties, the Membership Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes any previous agreement between the Parties or any of them relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

23.2 Each of the Parties represents and agrees that in entering into the Membership Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a Party or not) except as expressly set out in the Membership Agreement. The only remedy available to any Party for breach of the warranties will be

for breach of contract under the terms of the Membership Agreement. No Party will be entitled to rescind the Membership Agreement (except for fraudulent misrepresentation).

## 24. NOTICES

24.1 All notices to be given under the Membership Agreement must be in writing and may be given personally, by prepaid first class post, prepaid international airmail, by facsimile or in electronic form. Unless impracticable for technological reasons or otherwise required by Applicable Law, all notices given under the Membership Agreement (other than the Articles of Association) will be given by email, but this will not affect the validity of any notice given in accordance with this Clause 24 by any other means. Notices given to Members must be sent to the address, facsimile number or email address of each Member as specified from time to time in the Register of Members; notices to any Member must be marked for the attention of the recipient Member's Relationship Manager from time to time. Notices given to TeX must be sent to its registered office from time to time or to the facsimile number or email address expressly stated on the TeX Website from time to time to be the facsimile number or email address for receipt of notices from Members; notices to TeX must be marked for the attention of the 'TeX Administrator'.

24.2 Any notice will be deemed to have been received:

24.2.1 if sent by e-mail, at the time the e-mail enters the intended recipient's information system (being the recipient's system for generating, sending, receiving, storing or otherwise processing electronic communications) provided that:

- (a) no error message indicating failure to deliver has been received by the sender; and
- (b) an email will not be deemed to have been received if the recipient notifies the sender that it has not been opened because it contains, or is accompanied by a warning or caution that it could contain or be subject to, a virus or other computer programme which could alter, damage or interfere with any computer software or email;

24.2.2 if delivered personally, at the time of delivery;

24.2.3 if sent by prepaid first class post or prepaid international airmail, on the expiry of 48 hours after posting if sent from and to an address in the United Kingdom (and on the expiry of 120 hours after posting if sent from or to an address outside the United Kingdom); and

24.2.4 if sent by facsimile, 2 hours after the time of transmission provided that an error-free transmission has been received by the sender,

in each case provided that if deemed receipt occurs before 9 am on a Business Day, the notice will be deemed to have been received at 9 am on that Business Day, and if deemed receipt occurs after 5.30 pm on a Business Day or on a day which is not a Business Day, the notice will be deemed to have been received at 9 am on the next following Business Day.

24.3 Each Member whose registered office is not in the United Kingdom:

24.3.1 irrevocably appoints the person named in its Application Form as its agent to receive for and on its behalf any service of process in the United Kingdom in any action, proceeding or dispute resolution procedure with respect to the Membership Agreement;

- 24.3.2 agrees that any failure by such agent (or any successor agent) to inform such Member of any such service will not impair or affect the validity of such service or of any judgment or determination rendered in any action, proceeding or dispute resolution procedure based thereon;
- 24.3.3 will, if such agent (or any successor agent) ceases to exist or ceases to have an address for service in the United Kingdom, promptly replace such agent with a new agent whose address for service is in the United Kingdom, by giving TeX written notice of the replacement agent and its contact details; and
- 24.3.4 confirms that such agent is (and any successor agent will be) instructed to accept service of process as its agent and undertakes that it will not withdraw such instructions.

## 25. **COUNTERPARTS**

- 25.1 The Membership Agreement will be executed in any number of counterparts and by different Parties on separate counterparts, each of which when executed and delivered will be an original and all of which together will constitute a single agreement.
- 25.2 The Membership Agreement (other than the Articles of Association, which will be effective in respect of any Member when it becomes a member of TeX) will not be effective in respect of any Member until:
  - 25.2.1 such Member has executed and delivered to TeX a signed Application Form including its agreement to all the terms comprised in the Membership Agreement; and
  - 25.2.2 such Member's application to participate in the Contract Club has been approved in writing by the Board.

Any signed Application Form transmitted by facsimile transmission or email will constitute an original and will be deemed to be binding when delivered.

- 25.3 The Membership Agreement (other than the Articles of Association, which will be effective in respect of TeX when adopted) will not be effective in respect of TeX until the Board has approved in writing an application to participate in the Contract Club from at least one Member.
- 25.4 In applying to participate in the Contract Club, no Member may specify any additional provisions, conditions or limitations in its Application Form or otherwise and any additional provisions, conditions and/or limitations which are specified by any Member will be void and of no effect.

## 26. **GOVERNING LAW AND JURISDICTION**

Each Party agrees that the Membership Agreement and the relationship between the Parties will be exclusively governed by and interpreted in accordance with English law and that all disputes arising out of or in connection with the Membership Agreement and/or the Contract Club, and/or with the negotiation, validity or enforceability of any provision of the Membership Agreement, and/or the relationship between the Parties in relation to the subject matter of the Membership Agreement and/or the Contract Club, (in each case whether or not regarded as contractual claims) will be exclusively governed by and determined in accordance with English law and (subject to Clause 13) each Party expressly and irrevocably submits to the exclusive jurisdiction of the English Courts in relation to all such disputes and any other claim or matter arising under or in connection with the Membership Agreement.

**APPENDIX**

**PART A: TISA TRADE MARK**



**PART B: TeX TRADE MARK**

