

Turquoise Europe Member Agreement

VERSION 1.0

October 2018

This agreement ("**Agreement**") sets out the terms and conditions that will govern the use and access by a firm using the trading platform(s) ("**Turquoise Europe**") operated by Turquoise Global Holdings Europe B.V. ("**TGHE**") in the event that the firm's application to become a member ("**Member**") of Turquoise Europe is accepted by TGHE, following completion and submission of the Turquoise Membership Application Form ("**Application Form**"). This Agreement will come into effect when TGHE accepts the firm's application to become a Member.

By signing and returning the Turquoise Europe Member Agreement Order Form, the Member agrees to the terms set out below.

The Member's access to Turquoise Europe is at all times subject to and governed by the rules of Turquoise Europe (the "**Turquoise Europe Rules**"). Capitalised terms used but not defined in this Agreement are as defined in the Turquoise Europe Rules.

Both the Member and TGHE are also referred to herein individually as a "Party" and together as "Parties".

1 Capacity

- 1.1 TGHE is authorised and regulated by the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten* (the "**AFM**") and the Dutch Central Bank (*De Nederlandsche Bank* ("the **DNB**")) to operate Turquoise Europe.
- 1.2 The Member acknowledges that access to Turquoise Europe is provided equally to each other member of Turquoise Europe and TGHE has no level of responsibility to any one person (including the Member) over any other Member.

2 Licence

- 2.1 TGHE hereby grants the Member a revocable, non-exclusive, non-transferable licence to access and use Turquoise Europe during the term of the Member's participation for its own business solely in accordance with the provisions of this Agreement and the Turquoise Europe Rules.

3 System requirements and maintenance

- 3.1 The Member will, at its own cost and expense, provide all equipment, operating platforms, and software (other than the software provided by TGHE) to use Turquoise Europe. Any minimum standards and requirements for such equipment, operating platforms, and software will be communicated to the Member prior to the Member being activated on Turquoise Europe. The Member will also provide, at its own cost and expense, all connections from its own computer systems to Turquoise Europe, and subject to paragraph 6, TGHE will have no liability for any

such equipment or connections, nor any liability for any damage thereto.

- 3.2 Subject to the terms of this Agreement and the Turquoise Europe Rules, TGHE shall use reasonable efforts to make available, operate and maintain Turquoise Europe during the term of this Agreement and to permit the Member to access and use Turquoise Europe in accordance with this Agreement and the Turquoise Europe Rules. TGHE shall use reasonable efforts promptly to notify the Member of any difficulties experienced by TGHE or other Members with respect to their access to or use of Turquoise Europe, but only to the extent that TGHE is aware of such difficulties and reasonably determines that they are material to the Member's access to or use of Turquoise Europe. TGHE shall have no obligation to verify, correct, complete or update any information displayed on Turquoise Europe from time to time except where TGHE is the author of such information as set out in paragraph 4.1 below.
- 3.3 TGHE shall have no obligations to provide access to Turquoise Europe, unless the Member has in place satisfactory communications facilities with Turquoise Europe as approved in advance by TGHE.
- 3.4 The Member shall access and use Turquoise Europe solely for its own internal purposes (including, without limitation, trading) and such access and use is conditional upon the Member's compliance with this Agreement and with the applicable terms of the Turquoise Information Licence Agreement ("**ILA**"). The Member shall ensure that persons authorised to use and access Turquoise Europe on the Member's behalf are suitably trained and qualified to access and use Turquoise Europe and, where applicable, have the appropriate authorisation to enter into a legally binding Transaction ("**Transaction**" means the execution of the binding contract when the Order is crossed) on behalf of the Member. The Member shall as soon as reasonably practicable notify TGHE if it becomes aware of any material technical failures of or difficulties with Turquoise Europe or upon becoming aware of any material breach (or any event which, with the giving of notice or the lapse of time or both, would constitute a material breach) by it of this Agreement.
- 3.5 In the event that TGHE considers that the Member's access to Turquoise Europe is causing, or is likely to cause, technical problems for Turquoise Europe or interference with the access to Turquoise Europe of other Members, then TGHE may suspend the Member's access to Turquoise Europe without notice.

4 Intellectual Property Rights and Member information

4.1 Intellectual Property Rights

All Intellectual Property Rights (as defined in the Annex to this Agreement) in and related to (i) Turquoise Europe and (ii) any data (including without limitation bids, offers, prices, executions and volumes of Transactions on Turquoise Europe, but excluding Member Information as defined in paragraph 4.2, below), analytics, research or other information contained in, displayed on or generated by the operation of Turquoise Europe

(collectively the "**Information**") shall be or remain, as between the Parties, the exclusive property of TGHE, and the Member shall not obtain any Intellectual Property Rights in or to Turquoise Europe or the Information except as expressly set out in this Agreement.

4.2 Member Information

Without limiting the scope of paragraph 4.1 the Member acknowledges and agrees that TGHE shall be permitted, and the Member grants TGHE a non-exclusive, perpetual, royalty-free licence (without warranties of any kind, express or implied), directly and through agents or contractors, to use, distribute, sub-license, disclose and sell for TGHE's own benefit all order data, price, volume and other information regarding the Member's Transactions ("**Member Information**"). Subject to the foregoing licence, as between TGHE and the Member, the Member retains all ownership and Intellectual Property Rights with respect to the Member Information.

TGHE agrees that it will not, without the prior written consent of the relevant Member in each instance, and except as reasonably necessary to operate Turquoise Europe as contemplated in this Agreement, (i) use in advertising, publicity, marketing or other promotional materials or activities, the name, trade name, trademark, trade device, service mark or symbol, or any abbreviation, contraction or simulation thereof, of the relevant Member, its affiliates or their respective partners or employees, or (ii) represent, directly or indirectly, that any product or any service provided by TGHE has been approved or endorsed by the relevant Member. This provision shall survive termination of the Agreement.

4.3 Use of Information and Intellectual Property Rights

The Member shall not sell, lease, license, transfer, provide or otherwise make available to any third party any form of access to or the use of the Information (whether through written, electronic or other means) of Turquoise Europe (whether as a demonstration or otherwise) other than as described in this Agreement. The Member shall permit access to the Information only by those of its employees, affiliates, clients or agents that have been authorised by the Member to access and use Turquoise Europe on the Member's behalf for the purposes of entering into Transactions or for performing related support functions ("**Authorised Persons**") and that are using the Information solely for such purposes. Nothing in this Agreement shall limit any rights the Member may acquire with respect to Information under a separate agreement between the Member and TGHE or any third party distributing information pursuant to a licence or sub-licence granted by TGHE. The Member shall protect and safeguard TGHE's Intellectual Property Rights in and to the Information by using the same degree of care that the Member generally uses to protect its own confidential information and Intellectual Property Rights, but in any event with no less than a reasonable degree of care. The Member shall promptly notify TGHE upon becoming aware of any infringement or misappropriation, or threatened infringement or misappropriation, of any Intellectual Property Rights of TGHE. The Member shall comply with all reasonable requests made by TGHE to protect and enforce TGHE's Intellectual

Property Rights in Turquoise and the Information. The Member shall not alter, enhance, make derivative works of, reverse engineer or decompile Turquoise Europe or the Information, except to the extent explicitly permitted hereunder or required by the applicable law.

5 The role of TGHE

- 5.1 The Member acknowledges and agrees that, notwithstanding anything to the contrary herein:
 - 5.1.1 TGHE shall not, directly or indirectly, be a principal to any Transaction or be responsible for, or otherwise guarantee performance of any Transaction entered into by the Member, and the Member shall not proceed against TGHE, to collect or recover any amounts owed to it or to enforce any of its rights in connection with, or as a result of, such Transaction except where TGHE is acting in its capacity as a Member of the trading platform(s) and such Transaction is the result of an order received from customers of any of the brokerage services operated by TGHE;
 - 5.1.2 neither the relationship between the parties, nor the services provided by TGHE, nor any other aspect of this Agreement shall give rise to any fiduciary or equitable duties on the part of TGHE;
 - 5.1.3 TGHE may receive fees from both the Member and another Member in respect of a Transaction effected through Turquoise Europe and TGHE shall have no duty to account to either the Member or that other Member for such fees; and
 - 5.1.4 the submission of any Information on Turquoise Europe by TGHE or any Member shall not be deemed a recommendation by TGHE or such Member that the Member enter into any particular Transaction or that any particular Transaction is suitable or appropriate for the Member.

6 Indemnity and exclusion of liability

- 6.1 The Member will indemnify, protect and hold harmless TGHE, its affiliates, and their respective directors, officers, employees and agents from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, penalties, damages or costs (including reasonable legal fees as incurred) resulting from or arising out of (i) the Member's breach of this Agreement and (ii) any claim asserted against TGHE by any party for whom the Member acts or purports to act (including, without limitation, any asserted breach of fiduciary duty) in relation to the services provided to the Member in accordance with this Agreement. TGHE shall provide the Member with: (i) prompt written notice of each such claim received by TGHE; (ii) control over the defence and settlement of such claim; and (iii) full information and reasonable assistance to settle or defend any such claim. Notwithstanding the foregoing, the Member shall not settle any such claim without TGHE's prior written approval if such settlement requires TGHE to take any action, refrain from taking any action or admit any liability.
- 6.2 TGHE warrants that it has all rights, authorisations and licences necessary to provide Turquoise Europe to

Members as contemplated in this Agreement.

- 6.3 Subject to paragraph 6.8, TGHE and its affiliates will not be liable for any loss incurred by the Member arising from or related to a loss of connectivity to Turquoise Europe or any other systems failure on behalf of the Member or TGHE nor any loss arising, in whole or in part, from a failure in the systems and controls of the Member or TGHE governing access to Turquoise Europe, including but not limited to the unauthorised use of the Member's user account.
- 6.4 Subject to paragraph 6.8, neither TGHE nor its affiliates, or any network provider under contract with TGHE will be responsible to any party for any losses however caused by the use of Turquoise Europe or by any errors, delays or interruptions in the transmission or confirmation of transactions or information, or from the failure of TGHE or its affiliates to process or confirm any Transaction initiated by the Member. Each party hereby acknowledges that it has not relied upon any warranty, condition, guarantee or representation made by the other, except as specifically set forth in this agreement or in any of the supplemental fee documents ("the **Turquoise Tariff Schedule**") or Application Form.
- 6.5 Subject to paragraph 6.8, in no circumstances will TGHE or its directors, officers, employees, affiliates or agents be liable to the Member or any person for whom the Member purports to act for any direct or indirect loss of revenues or profits, loss of goodwill, loss of opportunity, anticipated savings, wasted expenditure, or incidental, special or consequential damages, resulting from or arising out of, in whole or in part, the provision of access to Turquoise Europe, regardless of whether such damages could have been foreseen or prevented.
- 6.6 Subject to clauses 6.3, 6.5 and 6.8, TGHE's aggregate liability (whether for breach of contract, negligence or for any other reason) arising from TGHE's failure to perform any obligation under this Agreement, shall, in respect of any one incident or series of incidents attributable to the same cause, be limited in aggregate to €50,000 (fifty thousand pounds Euro)
- 6.7 Subject to the implementation of disaster recovery and business continuity measures by both parties, neither TGHE nor the Member shall be liable for any failure or delay in the performance of any of their respective obligations hereunder (other than the payment by the Member of Member Fees) due to causes beyond their reasonable control, including but not limited to industrial disputes of any nature, work stoppages, civil disobedience, riots, rebellions, accidents, explosions, acts of God, acts of a public enemy, acts of government, interruptions or imperfections of telecommunications, sabotage, pestilence, terrorism, lightning or electromagnetic disturbances, brown-outs or black-outs, earthquakes, storms, floods, fires or other casualty. During the time that any of the events specified above continue to exist, the obligations of each party hereunder, other than those affected by the events listed above, shall remain in full force and effect and each Party shall continue to perform such obligations. Notwithstanding the foregoing, nothing in this paragraph shall affect the Member's settlement obligations with

respect to any Transaction.

- 6.8 Nothing in this Agreement will:
- 6.8.1 exclude or restrict to an extent prohibited by law any duty or liability TGHE may have to the Member; or
- 6.8.2 exclude or restrict any claim which can be directly attributable to the Parties' wilful default or fraud.

7 Fees

- 7.1 TGHE will invoice the Member, where applicable, for, and the Member will pay to TGHE, the aggregate of all the fees specified in the Turquoise Tariff Schedule, as applicable ("**Member Fees**").
- 7.2 Member Fees shall be net of all taxes and duties and, in all cases; the Member shall pay the amount thereof to TGHE in full without any deduction. In addition to the Member Fees, the Member will pay any sales, use, goods and services, value added, transfer, property or other taxes, any tax in the nature of withholding tax, and any duty or duties payable in respect of Member Fees or any part thereof and/or the provision of Turquoise Europe or otherwise arising in respect of this Agreement, (excluding any taxes imposed on the income of TGHE capital gains of TGHE, net profits of TGHE or any other similar taxes).
- 7.3 Where a Member fails to pay in accordance with these rules other than in the case of legitimate dispute, TGHE may suspend or terminate its membership with immediate effects, without prejudice to any other action which TGHE may take. Turquoise Europe relies on the data submitted to it to calculate charges. Trades submitted in error may incur a charge. Any invoice queries including, without limitation, any request by a Member for repayment of overpaid charges must be made within six months of the end of the month to which the relevant invoice relates. The Member shall not be entitled to query an invoice and/or claim repayment of any overpaid charges after this period.

8 Term and termination

- 8.1 This Agreement will remain in effect until the Member resigns membership under rule 3.3.1 of the Turquoise Europe Rules or the Member's membership is terminated under rule 3.2.1 of the Turquoise Europe Rules.
- 8.2 TGHE may terminate this Agreement or suspend its performance of all or any obligations under it immediately and without liability for compensation or damages if the Member fails to comply with any of the conditions set out in the Turquoise Europe Rules or fails to comply in all material respects with any of its obligations under this Agreement.

9 Miscellaneous

- 9.1 TGHE may amend this Agreement in any respect at any time on two months' written notice. In the event that the Member considers any such amendment to be unfavourable, it may terminate this Agreement on the date the amendment comes into effect, provided that, in the case of amendments other than those to the Fees, it

gives TGHE notice in writing within one month of the date of TGHE's original notice.

- 9.2 This Agreement shall not be assigned or transferred by the Member, in whole or in part, without the prior written consent of TGHE, provided, that TGHE shall not unreasonably withhold its consent to an assignment of a Member's rights hereunder to an affiliate of it that would fulfil the entry criteria established by TGHE from time to time to allow access to Turquoise Europe and that agrees to be bound by this Agreement.
- 9.3 TGHE may assign part or all of its rights, or transfer part or all of its obligations under this Agreement, upon the provision of written notice to the Members, to (i) any of its affiliates, provided that any such affiliate has regulatory approval, where necessary, and is permitted to provide and operate Turquoise Europe, or (ii) a successor to substantially all of TGHE's relevant assets or business, or to its corporate successor as a result of any merger, spin-off, consolidation, initial public offering or any similar corporate reorganisation, provided that any such entity has regulatory approval, where necessary, and is permitted to provide and operate Turquoise Europe.
- 9.4 Any proposed assignment not in compliance with this paragraph shall be null and void.
- 9.5 The obligations under this Agreement bind and the rights will be enforceable by, the parties and their respective successors and permitted assignees.
- 9.6 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 9.7 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of all other provisions (and, if applicable, the remainder of the provision in question) shall not be affected.

10 Confidentiality

The parties shall keep confidential all information relating to this Agreement unless such information has become public knowledge otherwise than in breach of this clause or disclosure is required by law or a party's regulatory body or disclosure is made in confidence to their professional adviser.

The Member agrees that TGHE may share confidential information with any of its Affiliates and for the purposes of this Agreement, "affiliate" means any group undertaking of TGHE and "group undertaking" shall be construed in accordance with section 1161 of the Companies Act 2006. TGHE shall ensure the compliance of such Affiliate with Clause 10 of this Agreement, and shall remain liable for any breach of Clause 10 by such Affiliate.

11 Data Protection¹

- 11.1 For the purposes of the "EU General Data Protection Regulation 2016/679 ("Data Protection Legislation"), the information provided pursuant to this Agreement will be used by TGHE and/or any of its

group undertakings, as construed in accordance with Section 1161 of the Companies Act 2006 (together with TGHE, the "Group") for the purposes of providing the Member with products, services and data pursuant to this Agreement and enabling the Group to perform its business activities.

- 11.2 The Member acknowledges and agrees that any entity within the Group may disclose the Member's data, including Personal Data and Sensitive Personal Data as defined under the Data Protection Legislation ("Member Data") to organisations within and outside of the Group for the purpose of providing products, services and data to the Member, performing its business activities and any other activities set out in the relevant Group Privacy Policy.
- 11.3 The Member expressly acknowledges that the Member Data may be exported to a location outside the European Economic Area including to third parties outside the Group.

12 Governing Law

This Agreement and its enforcement shall be governed by and construed in accordance with the laws of England and Wales. The Parties consent to the exclusive jurisdiction of the courts of England and Wales for the purpose of any action or proceeding hereunder.

13 Representations of the Member

- 13.1 The Member represents and warrants that:
- 13.1.1 the information it has provided to support the Application Form is complete and accurate and agrees to inform Turquoise Europe of any material changes to the information in between now and approval of this application. The Member understands that a failure to provide complete and accurate information is a breach of the Turquoise Europe Rules. The Member agrees to comply with, and be bound by, the Turquoise Europe Rules which are, or may be in force, and may be amended from time to time;
- 13.1.2 it complies with the eligibility criteria set out in the Turquoise Europe Rules;
- 13.1.3 it is a General Clearing Member ("GCM") of a Central Counterparty (CCP) or it will clear its business through a GCM named in the Application Form;
- 13.1.4 its systems relevant to trading on Turquoise Europe have been adequately tested and that they conform with TGHE's own systems;
- 13.1.5 it has the power and authority to execute, deliver and perform this Agreement;
- 13.1.6 it has all necessary rights and licences to submit the Member Information to TGHE as contemplated herein, and its use of any software or equipment (other than those provided by TGHE) to access Turquoise Europe shall not violate any third party's Intellectual Property Rights; and
- 13.1.7 it is authorised to enter into the Transactions entered

into by it through Turquoise Europe and each of such Transactions, as confirmed by Turquoise Europe, is the legal, valid and binding obligation of the Member, enforceable against the Member in accordance with its terms and the terms of this Agreement.

14 Survival

14.1.1 The terms and conditions of paragraphs 6, 9.5, 9.6, 10, 12, and 14 shall survive any termination, cancellation, replacement, expiration, modification, rejection or cessation of the effectiveness of this Agreement.

Annex I Intellectual Property Rights

"Intellectual Property Rights" means all title, interests and other proprietary rights in and to:

- (i) trademarks, service marks, brand names, certification marks, trade dress, trade names and other indications of origin, and the goodwill associated with the foregoing;
- (ii) inventions, discoveries and ideas, whether patentable or not;
- (iii) patents and all reissues, divisions, continuations-in-part, renewals and extensions thereof;
- (iv) trade secrets;
- (v) writings and other works, whether or not protectable by copyright or other law;
- (vi) copyrights, database rights, or mask works;
- (vii) know-how, technical information, processes, practices and systems, whether protectable by patent, copyright, trade secret or other law; and
- (viii) any other intellectual property or similar proprietary rights or interests which may exist in any jurisdiction

in each case, including all registrations thereof, applications therefor and renewals, modifications, translations and extensions thereof, in any jurisdiction, and any claims or causes of action arising out of or related to any infringement or misappropriation of any of the foregoing as described in paragraph 4 of this Agreement.