

KBR FOREIGN EXCHANGE LTD PRIVATE TRADING AGREEMENT

PARTIES:

A. KBRFX Ltd (herein after referred to as “KBRFX”) of Riverside Business Centre, Fort Road, Tilbury, RM18 7ND (registered number 05424125 “KBRFX”) provides facilities for the sale or purchase of currencies for non-speculative purposes only.
B. _____ (“the Client”)

RECITAL:

OPERATIVE PROVISIONS:

1 The Service

1.1 KBRFX agrees to supply, pursuant to and on the terms of individual contracts, facilities for the client to sell and buy currency for non speculative purposes only on the basis that the client agrees and warrants as follows : (each agreement, undertaking and warranty is deemed repeated on each day that this Agreement is in effect)

1.1.1 All orders are placed in pursuance of the client’s usual business or trade;

1.1.2 The client’s orders will be for non-speculative purposes only and not for Investment Business and not for currency speculation;

1.1.3 All information supplied by the client to KBRFX at any time is accurate, true and not misleading by omission;

1.1.4 The client is acting as principal and not on behalf of any third party whose identity has not been disclosed to KBRFX at the time of the service or Order.

1.1.5 The client is duly empowered and has all required authorisations and consents to enter into this Agreement and contracts under this Agreement;

1.1.6 That the client will take physical delivery of the purchased currency upon receipt of the full payment amount of the sold currency as directed by KBRFX on the occasion of each contract.

1.2 KBRFX has the absolute discretion to accept orders from an Authorised Person to buy and sell currency where the Authorised Person, on behalf of the client, agrees to take physical delivery of the purchased currency on the value date. Contracts may be made in writing or verbally, by post or electronic transmission and for the avoidance of doubt, will be made once terms are agreed and whether or not a contract note has been issued. KBRFX will issue a contract note by facsimile, post, or electronic mail to the client which shall be deemed to be conclusive evidence of the contract.

1.3 Once a contract has been entered into, irrespective of whether or not a contract note has been issued, such contract cannot be altered, cancelled or rescinded without the written consent of a director of KBRFX.

1.4 When entering into any contract or making an order the client relies solely on its own judgement. If KBRFX provides the client with information concerning any matters including (without limit) the foreign exchange markets, it does so on a voluntary basis and does not accept responsibility for the completeness or accuracy of such information or assume any duty of care in relation to it. KBRFX does not offer advice under this Agreement on any matters including (without limit) the merits or otherwise of any currency transactions, on taxation, or markets.

1.5 KBRFX may at its absolute discretion refuse any order without giving any reason and without liability for any loss or damage incurred by the client or any other third party.

1.6 Subject to clause 1.3, KBRFX will not transfer to the client funds representing the benefit of any fluctuation in currency arising after a contract has been entered

1.7 KBRFX does not offer or supply any services which would amount to Investment Business.

1.8 The Client acknowledges that KBRFX record any conversation with any Authorised Person with or without an automatic warning tone in relation to any actual or proposed transaction. KBRFX reserves the right to produce and store a transcript of the recording and use either the transcript or the recording of the telephone conversation for the purposes of verifying the details of an Order or to resolve any disputes between the Client and KBRFX in respect of the Services.

1.9 The client will from time to time supply any information regarding itself and its business and financial affairs, status and corporate identity which KBRFX may require including, without limitation, any information required for compliance with legislation governing, money laundering or other matters.

2 Payment and Delivery

2.1 In the event of a spot transaction, the client shall make full payment of the amount payable by it under the contract at the time required by the contract irrespective of whether or not specified by KBRFX on the contract note. Such payment is to be made into a nominated bank account specified by KBRFX.

2.2 In the event of a forward trade, the client shall on immediate entry into the contract, pay into an account specified by KBRFX an initial amount as specified by KBRFX in part payment of the full amount of the sold currency and will pay into such account or any other account specified by KBRFX the outstanding balance no later than one working day before the value date of the particular Forward Trade. KBRFX reserves the right to make a Margin Call to re-establish the Margin to the original percentage level agreed for the particular Trade if the Margin subsequently falls below that threshold. KBRFX reserves the right to make a Margin Call in excess of the original percentage level agreed for any particular Trade.

In the event of a Same Day Trade the client shall pay the sale currency into a nominated Account specified by KBRFX by no later than the relevant time stipulated by KBRFX.

2.3 All payments under this Agreement shall be made by the client, free from and without set-off, withholding, counterclaim or deduction whatsoever. KBRFX shall make all payments due to the client under this Agreement in full unless required by law to make deductions including, without limitation, de-

ductions or withholdings in respect of any taxation liabilities.

2.4 In the event of any adverse currency fluctuation between the date of the contract and the value date, KBRFX are entitled to require the client to provide additional funds (not exceeding the full amount of the sold currency). Such funds shall be paid by the client to an account specified by KBRFX no later than one business day after KBRFX’s request for such additional funds.

2.5 The client undertakes that all funds to be paid by the client in satisfaction of its obligations hereunder will at the time of payment be beneficially owned by the client and will not be subject to any charge, lien to KBRFX or other encumbrance and the client will not create any charge, lien or other encumbrance over any funds so paid.

2.6 Unless otherwise stated in these terms or expressly agreed between the client and KBRFX, all monies paid by the client to KBRFX will on such payment vest in and belong to KBRFX absolutely free of any lien or other interest in favour of the client or any other party.

2.7 All funds provided by the client under this Agreement (whether as security or otherwise) can be used by KBRFX in the performance of its own obligations to the client.

2.8 If so expressly agreed in the contract (but not otherwise), KBRFX will place all sums received from the client into a bank account held by KBRFX as agent for its clients (the “Transaction Account”). KBRFX confirms that all money standing to the credit of the Transaction account is held by KBRFX as agent and is not entitled to combine the account with any other account of KBRFX or to exercise any right of set-off or counterclaim against money in that account. Interest earned on the money in such account shall belong to KBRFX. KBRFX is entitled to apply the client’s monies from the Transaction account in accordance with the terms and the contract.

3 Charges

3.1 KBRFX’s agreed charges for sale or purchase of currency will be agreed in the contract and recorded in the contract Note. Unless otherwise stated, any amount agreed in a contract is exclusive of administrative charges, office disbursements and value added tax (if any), or other tax.

3.2 Any payment to be made by the client under these Terms which is not made when due shall bear interest (after as well as before judgement) at a rate of five per cent per annum over the base rate of Barclays Bank Ltd from time to time (or, if this cannot be ascertained, the base rate of such other financial institution, or such other rate, as KBRFX may determine). Such interest shall accrue and be calculated daily from the due date until the date of payment and shall be compounded at such intervals as KBRFX may determine.

3.3 In the event of the client failing to comply with the terms of any contract the client irrevocably agrees that KBRFX may:

- (a) forfeit the whole of any payment made under clause 2.2 or any other payment in the form of a deposit that the client has lodged with KBRFX on any matter; and
- (b) in the case of a Forward Transaction, sell any necessary covering currency to enable KBRFX to terminate the forward transaction.

4 Default and Termination

4.1 KBRFX shall have the right to without giving prior notice to the client close out all or any part of a contract, and to terminate this Agreement, without liability to the client for loss that may be sustained or otherwise, upon or at any time after the happening of any of the following events:

(a) The client (if an individual) dies or suffers from mental disorder [and either:

☐ they are admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960; or

☐ an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for their detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to their property or affairs;]

(b) The client convenes a meeting of its creditors or if a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 as amended or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the client shall be unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the client or if a petition is presented or a meeting is convened for the purpose of considering a resolution, or other steps are taken, for the winding up of the client or for making of an administration order (otherwise than for the purpose of a solvent amalgamation or reconstruction on terms approved in writing by KBRFX (acting reasonably));

(c) It becomes or may become, in KBRFX’s opinion, unlawful for KBRFX or for the client to maintain or give effect to all or any of the obligations under these terms or otherwise to carry on its business or if KBRFX or the client is requested to close out a contract (or any part thereof) by any regulatory authority whether or not that request is legally binding;

(d) The client fails in any respect to observe or perform in whole or in part any of the provisions of, or commits a breach of any of the representations, warranties or undertakings contained in, the terms or any contract;

(e) After the date of this Agreement there is any change in the identity of the persons who together have the right to appoint and remove a majority of the members of the governing body of the client; or

(f) Anything analogous to any of the events specified above occurs under the laws of any other jurisdiction; or

(g) KBRFX considers it necessary or desirable to do so for its own protection.

4.2 If the client becomes aware of the occurrence of any event referred to in clause 4.1(a) to (f) above, it shall immediately give KBRFX notice of such event.

4.3 After closing out a contract KBRFX will send to the client a settlement notice, showing the client's profit or loss arising from the closing out. Any such profit, after deducting any costs and expenses incurred by KBRFX in connection with such closing out and any other amount then due by the client to KBRFX or which KBRFX is authorised to deduct under any provision of this Agreement or under any contract, shall be paid to the client in accordance with the client's reasonable directions. If there is a loss, the client shall pay to KBRFX an amount equivalent to such loss within 5 business days of the settlement notice being given.

4.4 In the event that a client's cheque, transfer or payment by any other means is dishonoured, returned, not met on presentation or stopped for whatever reason KBRFX shall be entitled to levy an administrative charge of £25.00 in respect of each such cheque, transfer or payment. Such administrative charge will be payable by the client in addition to any other sums due under these terms.

5 Liability and Indemnity

5.1 Nothing in this Agreement or any contract note shall limit the liability of KBRFX to the client for death or personal injury resulting from KBRFX's negligence.

5.2 KBRFX shall not be liable to the client for any liability arising out of or incidental to this Agreement unless it arises from a breach of this Agreement, which is attributable to the negligence of KBRFX.

5.3 KBRFX's Liability in respect of any contract is limited to a sum not exceeding the amount payable by KBRFX under the contract in respect of any one claim or in aggregate.

5.4 KBRFX shall be under no liability to the client in respect of any indirect, special or consequential loss or damage. All warranties which, but for this provision, would or might be implied by law, including (without limitation) warranties as to due skill and care or fitness for purpose, are hereby excluded to the fullest extent permitted by law.

5.5 The client will indemnify and keep KBRFX indemnified against all Liabilities incurred by KBRFX in the performance of its obligations under this Agreement or the enforcement of its rights hereunder and, in particular, without prejudice to the generality of such indemnity, against all amounts which may be necessary to compensate KBRFX for all liabilities sustained or incurred by KBRFX (including but not limited to KBRFX's administrative costs and charges and loss of profits) as a result of:

5.5.1 Any default in payment of any sum when due or any other breach by the client under the Terms or under any contract;

5.5.2 KBRFX doing and taking all and any action and steps whatsoever to carry out the terms of any contract; or

5.5.3 KBRFX exercising its right under these terms to close out all or any part of any contract or this Agreement.

6 General

6.1 No party who is not a part of this Agreement shall have any rights under the contracts (Rights of Third Parties) Act 1999 to enforce any provisions of this Agreement.

6.2 The parties are independent contractors and this Agreement. The client agrees that nothing in this Agreement shall be deemed to create a partnership, joint venture or agency relationship between the parties.

6.3 Clauses 5.5 and 6.14 shall survive termination of this Agreement.

6.4 These terms (together with any contract) constitute the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersede all oral communications and prior writing with respect thereto. No other terms and conditions of business, whether of the client or of any other person, will govern this Agreement.

6.5 KBRFX may amend these Terms by notice in writing to the client at any time and such amendment shall be binding on the client in respect to all orders subsequently received. Any such amendment shall not be retrospective or affect any rights or obligations that may already exist in respect of any contract. No other variation of this Agreement will be valid unless in writing signed on behalf of KBRFX and by an Authorised Person.

6.6 Should any one or more provisions of this Agreement be held to be invalid, unenforceable or illegal, the remaining provisions will be construed independently of one another and those not so held will continue in full force and effect.

6.7 The benefit of this Agreement may not be assigned or transferred by the client without the prior written consent of KBRFX. KBRFX may without notice to the Client assign and/or novate its rights and/or obligations under the Conditions to any third party and the Client hereby consents without reservation to any such assignment or novation. Any failure by either party to exercise and any delay, forbearance or indulgence by any party in exercising any right, power or remedy under this agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time.

6.9 In the event of any of the terms being in conflict with any contract, these terms will prevail. In the event of any of the terms, or (as the case may be) any contract being in conflict with any other documentation produced pursuant to this Agreement then these terms or (as the case may be) the contract shall prevail.

6.9 Any reference in the terms to the singular shall where appropriate include the plural. References to any legislation include any amendment or re-enactment of the same and any secondary or derivative legislation, statutory instrument, order or directive.

6.10 Any notice or document to be given by either party to the other under this Agreement shall be in writing and shall be deemed to have been duly given, unless provided otherwise, if left or sent by first class pre-paid recorded delivery post or facsimile transmission or other electronic media to the recipient at the address set out in this Agreement, or using the relevant telecommunications

number of the recipient as at the date hereof, or to such other address or telecommunications number as the recipient may from time to time designate in writing for such purpose. Any notice or document shall be deemed to have been received by the recipient two working days after the date of dispatch of the same by post, or where this notice or document is sent by hand or given by facsimile or other electronic media simultaneously with the delivery or transmission (as appropriate). To prove the giving of notice it shall be sufficient to show that it was dispatched or delivered.

6.11 In this Agreement time shall be of the essence and references in any contract to time are to London time.

6.12 If either party is affected by Force Majeure it shall notify the other party of that fact as soon as possible. Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other party, by reason of any delay in performance, or non-performance, of any of its obligations hereunder, to the extent that such delay or nonperformance is due to an act of Force Majeure that is notified to the other party pursuant to this sub-clause. If any Force Majeure continues for more than 28 days then either party may terminate this Agreement by notice to the other.

6.13 The client shall take all necessary steps to ensure that the Terms, any contract and the terms offered by KBRFX in respect of any transaction or proposed transaction, are kept confidential except where disclosure is required by law and except in relation to information which has become public knowledge without any breach by the client of its obligations under this Agreement.

6.14 The client may not at any time during or within 12 months following termination of this Agreement offer to employ or to engage as a consultant or contractor any person who has during the term of this Agreement been an employee or consultant of KBRFX.

6.15 These Terms and this Agreement and each contract shall be governed and construed in accordance with English Law and the parties submit to the non-exclusive jurisdiction of the English courts.

7 Definitions

In this Agreement where the context admits

7.1 **"Agreement"** means the agreement constituted by the Terms and the client's written acceptance of the terms and, where the context allows, includes any contract entered into under the Agreement;

7.2 **"Authorised Person"** means a person authorised by the client to enter into contracts with KBRFX and in respect of whom KBRFX has been given notice by the client including a specimen signature or a person purporting to be so authorised;

7.3 **"Business Day"** means a day when the banks in the City of London are open for business excluding Saturdays, Sundays and public holidays;

7.4 **"Contract"** means a contract to carry out a currency transaction made on the Terms;

7.5 **"Contract Note"** is a note issued under clause 1.2 by KBRFX confirming the terms of a contract;

7.6 **"Force Majeure"** means any circumstances beyond the reasonable control of either party (including, without limitation, any failure of electronic transfer, computer equipment, communications systems or any form of industrial action or any war or terrorist act);

7.7 **"Forward Transaction"** means a transaction where the value date is two or more working days after the order;

7.8 **"Investment Business"** and **"Investment"** each has the meaning given to it by the Financial Services and Markets Act 2000;

7.9 **"Liability"** shall mean losses, costs (including legal and other professional costs), damages, expenses, taxes, duties, charges or any other liability whatsoever;

7.10 **"Order"** means an order or instruction issued by an Authorised Person to KBRFX in respect of the purchase or sale of currency;

7.11 **"Spot Transaction"** means a transaction where the value date is less than two working days after the order; and

7.12 **"Value Date"** means the date on which the currency transaction reaches value with the counter-party as specified by KBRFX in the contract note.