

Winner - Electronic Dealing System

This AGREEMENT (the "Agreement") dated ****Date**** is made between **Winterflood Securities Limited** ("WINS"), and ****Template**** (the "Client").

WINS agrees to supply to the Client the Winner automatic dealing and information service ("the Service") subject to the following terms and conditions:

General Terms and Conditions

1. Definitions

- 1.1 **Agreement** means the agreement between the Client and WINS to use the Service in accordance with these Terms and Conditions.
- 1.2 **Associated Companies** means any direct or indirect subsidiary from time to time of WINS or the Client whether carrying on business in the United Kingdom or elsewhere and includes Close Brothers Group Plc.
- 1.3 **Client** means the counterparty that uses the Service.
- 1.4 **End User** means the party (-ies) on whose behalf the Client is executing the trade.
- 1.5 **Intellectual Property Rights** means copyrights, patents, utility models, trademarks, service marks, design rights, (whether registered or unregistered), database rights, semiconductor topography rights, proprietary information rights and all other similar proprietary rights as may exist anywhere in the world.
- 1.6 **Interface** means a service or system (including without limitation the Internet) which provides a means of connection between a Client's computer and the Winner System and through which that Client receives the Service, including any integrated network applications, virtual private digital networks, telecommunications routing equipment, interfaces and related programs or other systems provided by a third party services provider (as set out in Clause 3) to enable or facilitate automated order execution under this Agreement.
- 1.7 **Service** means the Winner automatic dealing, order routing and information service.
- 1.8 **Winterflood Securities** means those securities offered for dealing by WINS from time to time by means of the Winner System.
- 1.9 **Winner System** means the automated order execution and information system offered by WINS in relation to Winterflood Securities.
- 1.10 **Winterflood Securities Limited** ("WINS") means Winterflood Securities Limited and any subsidiary of it from time to time.

2. Services

- 2.1 The Service shall enable the Client to receive information and to execute trades in Winterflood Securities via an Interface.
- 2.2 WINS will be responsible for price quotation, order execution and bargain settlement in relation to the Winterflood Securities where the Client deals with WINS.
- 2.3 WINS will use reasonable endeavours to provide a list of Winterflood Securities on its website and/or in any other manner it considers appropriate, but cannot guarantee that the information is up to date.
- 2.4 WINS may immediately cancel access to the Winner System by the Client upon WINS becoming aware of any actual or suspected persistent error in the Winner System.
- 2.5 Where a Service is an order routing service (where the Client places orders with WINS or gives WINS instructions which are to be executed or carried out by WINS) then, unless indicated otherwise in any applicable user manual, handbook or instructions, the Client acknowledges that:
 - (a) where the Client has given an instruction via the Internet or by other electronic means it shall be irrevocable and WINS shall be under no obligation to take steps to reverse it;
 - (b) unless otherwise indicated or agreed at the time the order is placed:
 - i. an instruction by the Client to execute an order for it will only be effective when the Client receives a confirmation of receipt thereof from the Winner system;
 - ii. neither the receipt by the Winner system nor any confirmation of the receipt of an instruction to execute an order shall impose any obligation upon WINS to execute that order within a particular time or at all;
 - (c) in the event that an erroneous price is used as the basis of any transaction WINS reserves the right to amend or revoke the details of the transaction(s) in question.

- 2.6 If the Services feature a dealing or trading service at a held price or on stated terms for a specified time period WINS shall endeavour to meet that price and those terms provided that the Client accepts the price or terms shown and the Client's acceptance is received within the relevant time period and in accordance with this Agreement and any applicable user manual, handbook or instructions.
- 2.7 WINS reserves the right, in its sole discretion, to withdraw or suspend the Service or any part thereof at any time without notice.
- 2.8 The WINS Website (www.wins.co.uk) features guidance notes within the Client Area, which are intended to aid the Client's use of the System. The Client shall familiarize itself with such guidance notes and use the System in accordance with such guidance.

3 Third Party Providers' Services

- 3.1 The Client acknowledges that orders routed by means of the Service may be routed via the Interface over third party systems and networks that are outside the control of WINS.
- 3.2 WINS shall not be liable for any loss or damage suffered as a result of:
 - (a) orders entered by or sent to the Client becoming corrupted, lost or wrongly communicated in transmission; or
 - (b) any delay in the transmission and/or receipt of orders, instructions, enquiries, messages or other information transmitted by means of the Service,which arises in connection with the failure or provision of any third party providers' services.
- 3.3 If the Client subscribes to or makes use of any third party providers' services, the Client will observe any special conditions for use of such third party providers' services that WINS or the third party providers may bring to the Client's attention in writing. If required, the Client will enter into a separate agreement with the third party providers' services.
- 3.4 The Client acknowledges that a third party provider may, at its discretion, suspend or block the Client's access to any third party providers' services for any period of time whatsoever. WINS shall notify the Client as soon as reasonably practicable after receiving notice from any third party provider of any suspension of, or restriction of the Client's access to, such third party providers' services. However, the Client acknowledges that third party providers' services may be suspended or restricted without notice.

4 Confidentiality

- 4.1 All business, financial, operational and other information or data of whatever kind and in whatever form relating to WINS given or received from WINS will be held by the Client in complete confidence and will not be used for any purpose other than for the appraisal and use of the Service.
- 4.2 Except to the extent permitted by law, the Client shall not disclose any information, including but not limited to all business, financial, operational and other information or data of whatever kind relating to WINS and information referred to in clause 4.1 above ("Confidential Information") to any party including Associated Companies of the Client without the prior written consent of WINS.
- 4.3 The Client shall deliver up any Confidential Information belonging to WINS, including all copies, to WINS upon the termination of this Agreement or at any time on demand.
- 4.4 The Client shall immediately inform WINS, if the Client becomes aware of the possession, use or knowledge of any Confidential Information by any unauthorised person, whether during or after the term of this Agreement and shall provide such reasonable assistance as WINS may require to deal with such event.
- 4.5 The Client accepts that damages may not provide a sufficient remedy for WINS in the event of a breach of the terms of this clause and the Client acknowledges the right of WINS to apply for an injunction to prevent further disclosure of the Confidential Information, which right shall be without prejudice to any further rights which may be available to WINS.
- 4.6 This condition shall survive the termination of this Agreement (howsoever occurring).

5 Supply of Hardware and Software

- 5.1 WINS may make available to the Client software and/or equipment ("Winner Facilities") under this Agreement which shall at all times remain the property of WINS. Upon termination of this Agreement the Client undertakes to make arrangements for the prompt return of the Winner Facilities to WINS.

- 5.2 The Client accepts responsibility for the safe custody of the Winner Facilities and subject to 5.3 below, undertakes to meet the cost of their replacement or repair following loss or damage whilst in the Client's possession.
- 5.3 WINS shall be responsible for and meet the full costs of any maintenance of the Winner Facilities that WINS deems necessary and any replacement or repair attributable to normal wear and tear, obsolescence or technical defects.

6 Liability

- 6.1 WINS shall use its reasonable endeavours to ensure continuous availability of the Service during trading hours but in the event that the Service becomes inaccessible for any period as a result of communication failure, breakdown or other malfunction, inadequacy of or defect in or otherwise in connection with the Service, the Interface or the internet, WINS shall not be liable for such failure nor will it be liable to the Client and/or any End User(s) for any losses, costs, expenses or damages which have occurred during such period and which the Client and/or any End User(s) may suffer or incur. WINS shall use all reasonable endeavours to rectify any such connectivity failure and the Client acknowledges that this shall be its sole remedy for such failure.
- 6.2 The Client shall be solely responsible for the settlement and delivery of all transactions submitted to the Service from the Client or appearing to originate from the Client whether or not such transactions were entered by a person or persons properly authorised by the Client and the Client agrees to unconditionally indemnify WINS accordingly.
- 6.3 Except as expressly stated herein, the Service, Winner System together with any software are provided on an "AS IS" basis only. Accordingly and to the maximum extent permitted by applicable law, WINS hereby disclaims all warranties and conditions, whether express, implied or statutory, regarding the Service, Winner System, and software, including, but not limited to, any warranty of merchantability, satisfactory quality or fitness for a particular purpose and non-infringement of third party rights.
- 6.4 The Client acknowledges that WINS is not responsible for the accuracy, quality, content or timeliness of the information passing through the Service and/or the Interface. Accordingly, to the maximum extent permitted by applicable law, WINS expressly disclaims all warranties and conditions, whether express, implied or statutory relating to the accuracy, quality, content, processing, fulfilment, reviewing, controlling, or timeliness of transactions transmitted via WINS, the Service or the Interface.
- 6.5 To the extent permitted by law, WINS shall not be liable to the Client in connection with the exercise of its rights or the performance of its obligations under this Agreement for any loss of profits, opportunity, business revenue or data or any indirect or consequential loss whether arising from negligence, breach of contract or otherwise.
- 6.6 The Client shall indemnify WINS on a full indemnity basis for any liabilities, loss (including loss of profits, opportunity or goodwill and loss or corruption of data), damage, expense, cost, claim or fees whatsoever which WINS may incur arising out of the Client's improper or unauthorised use of the Service and/or the Interface.

7 Infringement Indemnity

- 7.1 WINS shall fully indemnify the Client against all losses, costs, charges and expenses arising from or incurred by reason of any claim, demand or action against the Client, arising from as incurred by reason of any infringement or alleged infringement of any Intellectual Property Right by the provision or use of the Service, or any part thereof.
- 7.2 Subject to the following provisions of this Clause in the event of any claim, demand or action being made to which Clause 7.1 applies WINS shall, at its own expense, take one or more of the following actions:
 - a. use all reasonable efforts to procure for the benefit of the Client the right to continue to use the Service; or
 - b. modify or replace the Service so that there is no further infringement, provided that such modification or replacement shall be effected by WINS with the minimum of interruption to the use of the Service or impairment of its performance in accordance with the Agreement.
- 7.3 The Client shall promptly notify WINS if any claim or demand is made or action brought against the Client to which Clause 7.1 may apply. WINS shall at its own expense conduct any litigation arising there from and all negotiations in connection therewith and the Client hereby agrees to grant to WINS exclusive control of any such litigation and such negotiations.

- 7.4 The Client shall at the request of WINS afford to WINS all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Client to which Clause 7.1 may apply or any claim or demand made.
- 7.5 The Client shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 7.1 may apply.
- 7.6 The foregoing provisions of this Clause 7 shall not apply insofar as any such claim or demand or action is in respect of:
- a. any use by or on behalf of the Client of the Service in combination with any item not supplied by WINS where such use of the Service directly gives rise to the claim, demand or action; or
 - b. any modification carried out by or on behalf of the Client to any item supplied by WINS under this Agreement if such modification is not authorised by WINS in writing.
- 7.7 If WINS has availed itself of its rights to modify the Service or to supply a substitute system or services or to procure a license pursuant to Clause 7.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then WINS shall have no further liability thereafter under this Clause 7 in respect of the said claim, demand or action.
- 7.8 The Client agrees to indemnify and keep indemnified WINS from and against any third party claims against WINS arising from or relating to the Client's use of the Service.

8 Security and virus control

- 8.1 The Client shall at all times be solely responsible to ensure that only authorised users are permitted access to the Service and any passwords issued are kept secure and not disclosed or otherwise made available to any other person.
- 8.2 The Client shall be solely responsible for all instructions communicated by a person using a password of an authorised user.
- 8.3 The Client agrees to indemnify WINS on a full indemnity basis for any liabilities, loss (including loss of profits, opportunity or goodwill and loss or corruption of data), damage, expense, cost, claim or fees whatsoever which WINS may incur in respect of any such instruction.
- 8.4 The Client shall use an industry standard, commercially available worm and virus detection and scanning program (updated with latest worm signatures and definitions) as part of its regular operating procedures. Upon detecting a worm or virus, or upon notification by any third party services provider involved in providing the Service or the Interface of the presence of such a worm or virus, WINS shall notify the Client who shall immediately cease use of the Services and/or the Interface until any such worm or virus has been eliminated.

9 Termination

- 9.1 WINS may at any time and for whatever reason terminate this Agreement on giving the Client seven (7) days prior written notice.
- 9.2 WINS may terminate this Agreement forthwith where there is a breach by the Client of any provision of this Agreement.
- 9.3 WINS may immediately terminate this Agreement on notice to the Client if at any time the Client becomes bankrupt or passes a resolution or a petition is presented for its winding up or shall have a receiving order or administration order made against it or shall make any composition with or for the benefit of the Client's creditors, or is or appears to be unable to pay or to have a reasonable prospect of being able to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- 9.4 Following the termination of this Agreement as provided herein, neither party shall have any further obligation or right with respect to the other party except as set forth in Clauses 3, 5 and 9 and obligations arising in respect of any transactions entered into prior to termination.

10 Force Majeure

- 10.1 No party shall be liable for delay or failure to perform any of its obligations under this Agreement insofar as the performance of such obligation is prevented by any event which is beyond its reasonable control.

11 General

- 11.1 The Client may not assign or transfer its rights and obligations under this Agreement in whole or in part without the prior written consent of WINS, such consent not to be unreasonably withheld. WINS may assign and transfer this Agreement and/or any of its rights or obligations to any of its Associated Companies or to any other third party.
- 11.2 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid provision eliminated.
- 11.3 Except where provided to the contrary, this Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person who is not named at the date of this Agreement as a party to it or any person who claims rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither party can declare itself a trustee of any rights under it for the benefit of any such third party.
- 11.4 This Agreement supersedes all previous conditions, understandings, commitments, agreements or representations (other than fraudulent misrepresentations) whatsoever whether oral or written relating to the subject matter hereof and together with the WINS standard Terms of Business (where appropriate) constitutes the entire agreement between the parties relating to the subject matter hereof.
- 11.5 The headings in this Agreement are for the convenience of the parties only and are in no way intended to affect, describe, interpret, define or limit the scope, extent, intent or interpretation of this Agreement or any provision hereof.
- 11.6 WINS reserve the right to amend this Agreement from time to time by giving not less than 7 days prior notice to the Client.
- 11.7 For the avoidance of doubt this Agreement shall only apply to the Service and not to any other services offered from time to time by WINS.
- 11.8 This Agreement shall be governed, construed and shall take effect in accordance with the laws of England and Wales, subject to the exclusive jurisdiction of the English courts for the benefit of WINS.
- 11.9 In the case of conflict between the terms of this Agreement and the terms within any guidance documentation within the Client Area of the WINS Website, the former shall prevail.

AS WITNESS the hands of the authorised representatives of the parties the day and year first above written.

For and on behalf of
Winterflood Securities Limited

Signature	Print Name	Title
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For and on behalf of
****Template****

Signature	Print Name	Title
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