

# All to All User Agreement

August 2016



## User Agreement

Dated **2016**

### Between

- (1) **LMAX Limited**, a company incorporated in England and Wales, acting in its capacity as operator of LMAX Exchange (as defined in the LMAX Rulebook), with registered number 6505809 and having its registered address at Yellow Building, 1A Nicholas Road, London W11 4AN (**LMAX**); and
- (2) \_\_\_\_\_ a company incorporated in \_\_\_\_\_ with registered number \_\_\_\_\_ and having its registered address at \_\_\_\_\_ (the **User**),
- each a **Party**, and collectively the **Parties**.

### Recitals

- A LMAX is authorised by the Financial Conduct Authority (**FCA**) to operate a multilateral trading facility (**MTF**). LMAX offers three LMAX Exchange Services: LMAX London Exchange Service, a MTF on which Spot FX, CFDs and Spot Bullion may be traded, and LMAX New York Exchange Service and LMAX Tokyo Exchange Service which are not MTFs on which Spot FX and Spot Bullion may be traded. LMAX also offers another service, called the LMAX InterBank Service, which is not an MTF on which Bank Members may trade and enter into Spot FX Transactions and Spot Bullion Transactions which are settled through a Settlement Bank.
- B The User has entered into an agreement with a Bank Member of LMAX whereby the Bank Member will provide Direct Market Access to the User to access and use an LMAX Exchange Service and, if selected in Schedule 1, the Proximity Services (together, the **Services**).

## 1 Definitions and interpretation

- 1.1 Capitalised terms used in this Agreement (including the Recitals) have the meanings given to them in the LMAX Rulebook, unless the context requires otherwise or unless separately defined in this Agreement. The same rules of interpretation set out in the LMAX Rulebook apply in this Agreement.
- 1.2 In this Agreement, the following definitions apply.

**API** means application programme interface, including JAVA API and FIX Gateway.

**Authorised Person** has the meaning set out in Clause 2.2.

**Bank Member** means a Bank Member of LMAX Exchange providing the User Direct Market Access.

**Confidential Information** means any information of whatever nature (whether commercial, financial, technical or otherwise) relating to any User or LMAX or its respective sub-contractors, clients or suppliers, including all non-public information or data in connection with LMAX Exchange and while a User is a User or otherwise and which is designated as being confidential or is by its nature clearly confidential.

**Contractor** means any contractor (including an adviser) engaged under a contract for service by the User.

**Derivative Materials** means Materials that are created out of or by using or incorporating the Information.

**Governmental Authority** means any governmental or administrative authority, regulatory or self-regulatory body or judicial or arbitral body anywhere in the world with jurisdiction over the relevant affairs of LMAX or a User, including any person which exercises a regulatory or supervisory function or otherwise with competent jurisdiction under the Applicable Laws of any jurisdiction in relation to financial services, the financial markets, exchanges, MTFs or central counterparties.

**Information** means any real time or non-real time information, provided by LMAX or its nominees, relating to LMAX Exchange, including bids, offers, prices, executions and volumes of Transactions on LMAX Exchange (excluding Information about Members and Users) under the Information Licence.

**Information Licence** means the licence granted under this Agreement.

**Intellectual Property Rights** means any and all design rights, trademarks (whether registered or not), patents, inventions (whether patentable or not), patentable material, registered designs, trade secrets, copyrights (whether registered or not) including trade data, settlement prices, data files and any part of the data thereof, moral rights, rights in databases, utility models, and all other intellectual property rights, whether registrable or not, including those subsisting (in any part of the world) in inventions, designs, drawings, performances, computer programs, know-how, improvements, business or brand names, domain names, database rights, metatags, goodwill or the style of presentation of goods or services, including applications for the protection of any such rights and all other intellectual property rights of any kind that may be available in any jurisdiction, whether arising under legislation, common law or otherwise.

**Losses** means all losses, liabilities, judgments, suits, actions, proceedings, claims, penalties, injuries, delays, damages, costs and expenses (including legal and other professional fees and disbursements).

**Materials** means any data, information and material in whatsoever form (including specifications, plans, methodologies, software, databases, reports, processes, designs, documentation, information and know-how).

**Permitted Parties** means those of the User's Affiliates, Contractors and/or Representatives who may receive the Information in accordance with paragraph 1.1(b) and 1.1(c) of Schedule 2 (Information Licence).

**Reference Factor** means the prices and indices listed by LMAX.

**Representative** means, in relation to a person, any of that person's directors, partners, officers, executives, employees or agents.

**Software** means all software we make available to you under this Agreement.

**User Information** means any real time or non-real time information, including bids, offers, prices, executions and volumes of Transactions on LMAX Exchange relating to a User.

- 1.3 In this Agreement, references to the "rights" of any person (including of either Party) mean the rights and remedies available to that person under this Agreement or otherwise.

## 2 Use of the LMAX System

- 2.1 Subject to this Agreement and the LMAX Rulebook, LMAX grants the User a non-exclusive, non-transferable, revocable right to access and use LMAX Exchange for the purpose of submitting, in the name

of a Bank Member, orders to buy and sell Spot FX and/or Spot Bullion. You may not sub-licence any rights under this Agreement.

2.2 You must ensure that each Representative you authorise to:

- (a) use and access LMAX Exchange and the Information on your behalf; and
- (b) enter into Transactions on behalf of the Bank Member;

is trained by LMAX to, and therefore qualified to, access and use LMAX Exchange and the Information (each such person, an **Authorised Person**). Authorised Persons may only access LMAX Exchange and use the Information solely for the User's use and in the course of the User's business (including trading).

2.3 You must ensure that Authorised Persons only access LMAX Exchange using the unique password and username issued to you for that Authorised Person and from those systems which are under your custody and control and which has an internet protocol address which has been notified by you (or the Bank Member) to LMAX.

2.4 LMAX may, at any time and for any reason and without notice, terminate, suspend or change the username and/or password of any Authorised Person.

2.5 LMAX is not responsible for ensuring that, and is not obliged to enquire whether, an Authorised Person and/or a person using a username and password supplied to the User has satisfied its obligations under this Agreement.

### 3 DMA Agreement

Your licence to access and use LMAX Exchange is subject to your having in place a binding agreement with a Bank Member to provide you DMA Access to access and use LMAX Exchange Service to trade Spot FX and/or Spot Bullion. Accordingly, the Bank Member may:

- (a) apply Settlement Limits on your entering into Transactions;
- (b) impose restrictions on the Currency Pairs or type of Bullion in respect of which you may submit Orders; and
- (c) otherwise suspend or limit your use or access to LMAX Exchange.

LMAX Exchange may implement any directions of the Bank Member and shall have no responsibility for any Losses you may suffer as a result of doing so.

### 4 Trading and Liquidity

4.1 You may access and use LMAX Exchange Service for the purpose of trading.

4.2 When accessing and using an LMAX Service, you must indicate to the Bank Member whether you are doing so as liquidity provider or liquidity taker. When providing liquidity, you must submit the Order in the name of the Bank Member in its capacity as General Member. You agree and acknowledge that on LMAX London Exchange Service and LMAX Tokyo Exchange Service, Orders in the name of the Bank Member acting as General Member on LMAX Exchange Service are subject to Rule 28 (Blocking Rule for LMAX Exchange Service). This blocking rule does not apply to Orders entered on LMAX New York Exchange Service.

## 5 Systems

- 5.1 We may make available software to you from time to time for you to install as part of the API or otherwise to provide access to LMAX Exchange.
- 5.2 You must:
- (a) at your own cost and expense, obtain, operate and maintain all equipment, operating platforms, and software (other than any software provided by LMAX) to connect to and use LMAX Exchange and to access the Information;
  - (b) ensure that your computer systems will not be used in a manner likely to disrupt the provision of the Services or to disrupt the operation of LMAX Exchange or the provision of services similar to the Services to other Members and have adequate and appropriate measures in place to protect LMAX Exchange against network or systems attacks;
  - (c) have adequate order management systems and controls in place to avoid errors in Order submission;
  - (d) not attempt to gain, and have suitable protection in place to prevent, unauthorised access to LMAX Exchange, the server on which LMAX Exchange is stored or any server, computer or database connected to LMAX Exchange (including the Information); and
  - (e) immediately notify LMAX and cease trading on LMAX Exchange if it becomes aware of, or suspects, a technical failure, malfunction or security breach of LMAX Exchange.

## 6 Undertakings and acknowledgement

The User agrees and acknowledges that LMAX in its capacity as operator of an MTF, is required to comply with various Applicable Laws (including any rules, regulations and guidance issued by the FCA), and that, notwithstanding this Agreement and the LMAX Rulebook, LMAX may take any reasonable action it considers necessary to comply with such Applicable Laws.

## 7 Effectiveness

- 7.1 Either party may terminate this Agreement immediately on written notice to the other party.
- 7.2 On termination of this Agreement the licence granted under this Agreement ends and you must stop all use of the LMAX Exchange. Within 7 days of such termination you must uninstall and destroy all Software and destroy all copies of the Documents in your possession or control, other than as the User may be required to retain in order to comply with any Applicable Laws and, if so asked, one of your directors must certify to LMAX in writing that you have complied with this obligation. Clause 13 (Indemnity and liability) will continue to apply after you stop using our Services.

## 8 The Services

The User acknowledges and agrees that, notwithstanding anything to the contrary in this Agreement:

- (a) LMAX does not guarantee the overall availability or functionality of the Services at any given time and the User should ensure that it has alternative means to effect Spot FX trades and is not responsible for, nor does it guarantee performance of, any Transaction, and the User agrees that it

has no rights against LMAX and must not proceed against LMAX to collect or recover sums or to enforce any rights in connection with, or as a result of, such Transaction;

- (b) LMAX owes no fiduciary or equitable duties to the User and nothing in the LMAX Documents or the provision of the Services shall give rise to such duties; and
- (c) the submitting of any information on LMAX Exchange by LMAX or Users of LMAX Exchange is not a recommendation on their part that any particular Transaction is suitable or appropriate for the User.

## 9 Proximity

If the User so requests by ticking the relevant box, LMAX will provide the Proximity Services subject to, and in accordance with, Schedule 3 (Proximity Services).

## 10 Intellectual Property Rights

- 10.1 LMAX hereby grants to the User a non-exclusive, non-transferable, worldwide, revocable licence to use the Information subject to and in accordance with Schedule 2 (Information Licence). LMAX grants the User the full power to sub-licence or assign the rights granted under this Clause to the Permitted Parties.
- 10.2 The User hereby grants and must procure that its Representatives, Contractors and/or Affiliates also grant LMAX a non-exclusive, non-transferable, perpetual, worldwide, royalty-free licence to use, distribute, sub-licence, disclose and sell for LMAX's own benefit the User Information, provided that LMAX only discloses User Information:
  - (a) for the purposes of complying with Applicable Laws or any order or request of any Governmental Authority;
  - (b) to operate LMAX Exchange and to exercise any right or fulfil any obligation in the LMAX Documents, provided such User Information has been aggregated with the same type of information of other Users or Members (including in disclosing Transaction volumes for a particular Reference Factor); or
  - (c) in describing the use of LMAX generally by all Users and Members (including in disclosing the best bid or offer for a Reference Factor).
- 10.3 Nothing in this Agreement has the effect of assigning to either Party any Intellectual Property Rights vested in the other Party.
- 10.4 Each Party hereby agrees that it shall not use the name, trademark or proprietary indicia of the other Party in any advertising, announcement, press release or promotional materials without such other Party's prior written consent.

## 11 Confidentiality

- 11.1 Each of the Parties hereto acknowledges and agrees that the other Party will receive or have access to Confidential Information.
- 11.2 Both the User and LMAX (each a Party for the purpose of this Rule) undertake in respect of Confidential Information of which it is the recipient:
  - (a) to treat such information as confidential;

- (b) not, without the disclosing party's prior written consent, which is not to be unreasonably withheld, to communicate or disclose any part of such information to any person except to:
  - (i) those of its Representatives, the Bank Member, any CCP, any Settlement Bank or CLS and other suppliers on a need to know basis who are directly involved in using or providing or facilitating the provision or use of the Services; or
  - (ii) the recipient's auditors, professional advisors and any other persons or bodies having a legal right or duty to have access to, or knowledge of, the Confidential Information in connection with the business of the recipient;
- (c) to ensure that all recipients mentioned in paragraph (b)(i) above are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the disclosing party and to ensure that such recipient's comply with this Clause 11 (Confidentiality); and
- (d) not to use or circulate such information within its own organisation except to the extent necessary for the purposes of, and in compliance with, the restrictions in this Clause.

11.3 The obligations in Clause 11.1 will not apply to any Confidential Information which is:

11.4 in the recipient's possession (with full right to disclose) before receiving it; or

11.5 becomes public knowledge other than by breach of this Clause 11 (Confidentiality); or

- (a) independently developed by the recipient without access to or use of the Confidential Information; or
- (b) lawfully received from a third party (with full right to disclose); or
- (c) trade data and which has to be disclosed to regulators under EMIR.

11.4 Either party may disclose any Confidential Information (including all or any part of this Agreement) if obliged to do so in order to comply with Applicable Laws, including following the request from any competent court, regulator or similar Governmental Authority. To the extent it is legally permissible to do so, such party will promptly notify the other party in writing of such obligation on request.

11.5 Upon termination of this Agreement, each receiving Party will, within a reasonable period of time thereafter, return all Confidential Information received from the other Party and copies made thereof by the receiving Party, or certify in writing that, to the best of its knowledge and belief, all such Confidential Information has been destroyed; provided, however, that each Party may retain an archival copy of the disclosing Party's Confidential Information to be used only in the event of a dispute regarding this Agreement or as may be required in connection with legal or regulatory matters involving the LMAX Exchange or this Agreement; and provided, further, that each Party may retain Confidential Information as required by its record retention policies.

## 12 Fees and/or Charges

12.1 The User must pay to LMAX all Fees and/or Charges as set out in Schedule 4 of this agreement, including any taxes and duties thereon, within 30 days of the receipt by the User of the relevant invoice.

12.2 The User must pay the amount stated in the invoice in full without any withholding, deduction or set-off.

## 13 Indemnity and liability

- 13.1 The User agrees and acknowledges that the Services and Information Licence are provided AS IS, without warranties of any kind (except as expressly stated herein or in the LMAX Documents).
- 13.2 Subject to Clause 13.9, all warranties, conditions, terms and undertakings, express or implied, statutory or otherwise, in relation to LMAX Exchange or any software or other materials made available to the User are hereby excluded to the maximum extent permitted by law.
- 13.3 LMAX expressly excludes all liability (including in respect of negligence) in respect of loss or damage arising from, or in connection with, an act or omission in the course of, or relating to, the activities to which this Agreement applies, any failed Transaction or any inability to effect a Transaction except to the extent such loss or damage is caused by gross negligence or willful misconduct or an action or omission deliberately undertaken by LMAX with the primary intention of breaching this Agreement or fraud on the part of LMAX.
- 13.4 The User acknowledges that the limitations and exclusions in this Clause 13 are based on the fact that some of the Services are provided free of charge and the User is therefore to use the Services at its own risk and on an as-is basis. The User acknowledges that, in light of the foregoing, the limitations and exclusions in this Clause 13 are reasonable and fair.
- 13.5 Subject to Clause 13.9, LMAX's aggregate liability under or in connection with this Agreement is not to exceed £50,000 in respect of any one incident or in respect of a series of incidents attributable to the same cause, and to a maximum of £250,000 in aggregate whilst this Agreement or any part of it is in force. LMAX is not to be liable for any (a) loss of profit (or expectation of profit), business revenue or anticipated savings; (b) loss of information, interruption to business or damage to goodwill; or (c) indirect, consequential or special loss, howsoever arising.
- 13.6 The User must indemnify and hold harmless LMAX and its Representatives against any and all Losses incurred or suffered by any of them arising out of, or in connection with:
- (a) a breach by the User of any of its obligations under this Agreement or any other part of the LMAX Documents;
  - (b) a breach by the User of any Applicable Laws; and
  - (c) a breach or infringement by the User of any Intellectual Property Rights of LMAX or a third party.
- 13.7 The User must indemnify, protect and hold harmless LMAX, its Affiliates, and their respective Representatives from and against any and all Losses resulting from or arising out of any claim asserted against LMAX by any party for whom the User acts or purports to act (including any asserted breach of fiduciary duty) in relation to the Services provided to the User in accordance with this Agreement.
- 13.8 With respect to the indemnity in Clause 13.6, LMAX shall:
- (a) notify the User promptly in writing of any claim under Clause 13.6;
  - (b) permit the User, at its expense, to conduct any litigation and negotiations for a settlement of the claim (unless its handling of the litigation or negotiations threatens to adversely affect LMAX's interests) provided, that any settlement imposing any monetary or injunctive obligation upon LMAX shall be subject to LMAX's prior written approval, and provided, further, that the User shall reasonably consult with LMAX prior to the retention of any legal counsel; and



- (c) provide reasonable assistance (at the sole cost and expense of the User), information and authority, as reasonably required by the User.

13.9 Nothing in this Agreement excludes or limits liability on the part of either Party in respect of:

- (a) death or personal injury resulting from negligence or any liability which cannot be excluded or limited under Applicable Laws; or
- (b) any claim which is directly attributable to the Party's fraud.

## 14 Representations and warranties

14.1 LMAX warrants that:

- (a) it has all rights, authority and licences necessary to enable it to provide the Services to the User in accordance with this Agreement;
- (b) the provision of the Services, in accordance with the terms of this Agreement shall be in compliance with all Applicable Laws;
- (c) the provision of the Services, in accordance with the terms of this Agreement shall not infringe any third party interest or rights, including, without limitation, Intellectual Property Rights;
- (d) LMAX uses and maintains at least industry standard security measures to protect the integrity and security of the Services; and
- (e) LMAX Exchange is not a "Swap Execution Facility" as defined in Section 1a(50) of the Commodity Exchange Act and Commodity Futures Trading Commission's Part 37 rules, including any related regulations and guidance. LMAX shall neither permit the execution of Swaps nor support or facilitate, in any manner whatsoever, any activity regarding Swaps.
- (f) For the purposes of this Clause 14.1 only, Swap means a "swap" as defined in Section 1a(47) of the Commodity Exchange Act and Commodity Futures Trading Commission Regulation 1.3(xxx), including any related rules, regulations or guidance. The term "Swap" also includes any foreign exchange swaps and foreign exchange forwards that may be exempted from regulation as "swaps" by the United States' Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the Commodity Exchange Act.

14.2 The User represents and warrants that:

- (a) it has such personnel, facilities, equipment, operational capability, hardware and software systems, adequate execution, order management, order routing and settlement systems or arrangements in place as are required to conduct its business as a User of LMAX Exchange;
- (b) it has all necessary rights and licences to submit Orders into LMAX Exchange in the name of the Bank Member and enter into Transactions as contemplated in the LMAX Documents, and it has taken all reasonable steps to ensure that its use of any software or equipment (other than those provided by LMAX) to access LMAX Exchange does not violate any third party's Intellectual Property Rights;
- (c) it is authorised to enter into Transactions;

- (d) all Transactions to which the User is a party are the legal, valid and binding obligations of the User, enforceable against the User in accordance with their terms; and
  - (e) it has read and understood the LMAX Rulebook.
- 14.3 The representations and warranties set out in this Clause 14 are deemed to be repeated by the User each time it accesses LMAX Exchange or enters into a Transaction.
- 14.4 Each Party warrants to the other:
- (a) that it is duly constituted, organised and validly existing under the laws of the country of its incorporation;
  - (b) it has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under, this Agreement and all the documents which are to be executed by it as envisaged by this Agreement;
  - (c) nothing contained in this Agreement will result in a breach of any provision of its constitutional documents or result in a breach of any agreement, licence or other instrument, order, judgment or decree of any court, governmental agency or regulatory body to which it is bound; and
  - (d) upon due execution and delivery, this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

## 15 Assignment

This Agreement may not be assigned or otherwise transferred by either Party without first obtaining the written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that notwithstanding the foregoing, either Party (the **Assigning Party**) may, without the other Party's consent, assign or otherwise transfer this Agreement: (i) to any of its Affiliates or (ii) in connection with a merger, consolidation, sale of all or substantially all assets, sale of equity interests or other change of control transaction involving the Assigning Party or its business to which this Agreement relates. The Assigning Party will provide prompt, written notice to the other Party in the event of any merger, consolidation, sale of all or substantially all assets, sale of equity interests or other change of control transaction involving the Assigning Party, and the other Party shall have the right to terminate this Agreement immediately upon written notice to the Assigning Party. This Agreement is binding upon and shall inure to the benefit of each Party and its successors and permitted assigns. Any attempted assignment or other transfer in violation of this Section shall be null and void.

## 16 Amendments

- 16.1 No modification, amendment or variation of this Agreement is effective or binding on the Parties unless it is in writing and signed by the authorised signatories of each Party.
- 16.2 This Clause is without prejudice to LMAX's rights under the LMAX Rulebook to make amendments to the Rules.

## 17 Miscellaneous

- 17.1 If any provision of this Agreement is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality does not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.
- 17.2 The rights and remedies of the Parties in connection with this Agreement are cumulative and, except as expressly stated in this Agreement, are not exclusive of any other rights or remedies whether provided by this Agreement, law, equity or otherwise. Except as expressly stated in this Agreement (or in law or in equity in the case of rights and remedies provided by law or equity), any right or remedy may be exercised wholly or partially from time to time.
- 17.3 Any relaxation, forbearance, indulgence or delay of any Party in exercising any right under this Agreement is not to be construed as a waiver of the right and does not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that Party or any other person).
- 17.4 Except where expressly provided otherwise, this Agreement constitutes the entire agreement between the Parties in connection with their subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter they cover.
- 17.5 Each Party acknowledges that:
- (a) it does not enter into this Agreement on the basis of, and does not rely and has not relied upon, any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral or written, express or implied) made or agreed to by any person (whether a Party or not) and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it are any remedies available under this Agreement; and
  - (b) this Clause does not apply to any statement, representation or warranty made fraudulently, for which the remedies available are all those available under the law governing this Agreement.
- 17.6 Each Party must promptly execute and deliver all such documents, and do all such things, as the other Party may from time to time reasonably require for the purpose of giving full force and effect to the provisions of this Agreement.
- 17.7 Nothing in this Agreement is to be construed as creating any agency, partnership or other form of joint enterprise between the Parties.

## 18 Communications

- 18.1 All notices, requests, demands or consents under this Agreement must be in writing to the addresses of the Parties set forth in this Agreement or to such other address as may be furnished by one Party to the other Parties.
- 18.2 Users may contact LMAX:
- (a) in writing to LMAX at:  
  
Address: LMAX, Yellow Building, 1A Nicholas Road, London W11 4AN.  
  
Attention: Campbell Millar (Chief Risk Officer); or

- (b) by email to [cld@lmax.com](mailto:cld@lmax.com). An email sent to this address is not effective until an acknowledgement of receipt is sent by the recipient and an automatic out of office response is not an acknowledgement of receipt.

18.3 A written communication (other than email) is effective:

- (a) on delivery, if it is delivered by hand at 17:00 or earlier on a Business Day;
- (b) at 9:30 on the next Business Day if it is delivered by hand after 17:00 or on a day which is not a Business Day;
- (c) on the second Business Day after posting (for national mail) or the fifth Business Day after posting (for international mail), if it is sent by post. Proof that the notice was properly addressed, prepaid and posted is enough to show the notice has been duly served.

## 19 Third parties

A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce, directly or indirectly, any of its terms. This Agreement is not intended to confer any benefit on any third party.

## 20 Counterparts

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by both Parties constitutes a full original of this Agreement for all purposes.

## 21 Governing law and jurisdiction

The laws of England and Wales govern this Agreement, and any non-contractual obligations arising out of or in connection with it, and its interpretation. The Parties irrevocably agree that the English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute or claim relating to any non-contractual obligation arising out of or in connection with this Agreement). Each Party agrees to waive any objection to the English courts, whether on the grounds of venue or that the forum is not appropriate.

**Signed** by the Parties or their authorised representatives

**LMAX**

Signed by \*\* )  
 for and on behalf of )  
 LMAX Limited )

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**The User**

**Signed by**  
for and on behalf of

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## Schedule 1 – LMAX Services Required

Tick as applicable:

- The User will trade on the following LMAX Exchange Services:
  - London
    - Spot FX
    - Spot Bullion
  - Tokyo
    - Spot FX
    - Spot Bullion
  - New York
    - Spot FX
    - Spot Bullion
- The User requires Proximity Services.

## Schedule 2 - Information Licence

### 1 Scope of Information Licence and use of Information

1.1 Subject to paragraph 1.2 below, the Information Licence entitles the User to:

- (a) *use, copy, store, process, and display the Information only for its own internal purposes including:*
  - (i) trading on LMAX Exchange;
  - (ii) recording Transactions;
  - (iii) creating Derivative Materials (within two hours of receipt of the Information for internal use and purposes only, or for any purposes thereafter) provided in each case that the Information is not directly or indirectly identifiable as part of the Derivative Materials, the Derivative Materials are not in any way a substitute for the Information or any part of it, and the Information cannot be reverse-engineered or otherwise ascertainable directly or indirectly as a result or receipt of the Derivative Materials; and
  - (iv) internal valuation, analysis, report preparation, benchmarking or assessments;
- (b) *distribute such elements of the Information to any Clients and Contractors as may be agreed in writing in advance with LMAX from time to time; and*
- (c) *provide access to any and/or all Information to its Representatives that are employed by the User or to its Affiliates solely for the purposes set out in paragraphs (a), and (b) above.*

1.2 The User:

- (a) must not (and must procure that its Permitted Parties do not) sell, lease, licence, transfer, provide, distribute or otherwise make available to any third party any form of access to or use of the Information (whether through written, electronic or other means and whether as a demonstration or otherwise), other than in accordance with the Information Licence;
- (b) must stop all distribution of Information to any recipient upon receipt of a written notice to that effect from LMAX from the date specified in such written notice or, if no date is specified, as soon as practicable after receipt of such written notice, where LMAX has reasonable cause to suspect the infringement or misappropriation of its Intellectual Property Rights or where LMAX reasonably suspects that the recipient of Information is responsible for distribution or use of the Information which is not authorised by LMAX or any breaches of this Agreement; and
- (c) must comply with all Applicable Laws relating to its access, use, storage, transmission and dealings with the Information. The User must promptly bring to the attention of LMAX any provision of this Agreement that may conflict with any such Applicable Laws. The User must not alter the Information in any way that may make it inaccurate or misleading.

- 1.3 Nothing in this Agreement limits or otherwise affects any rights the User may acquire with respect to the Information under a separate agreement that may be entered into (i) between the User and LMAX or (ii) between the User and any third party distributing Information pursuant to a licence or sub-licence granted by LMAX, provided in the case of (ii), such rights and any such agreement are consistent with, and do not conflict with or contravene, the terms of any licence or sub-licence granted by LMAX to the third party of which the User is aware.
- 1.4 LMAX expressly reserves any and all other rights in and to the Information other than the limited rights granted in accordance with this Agreement.
- 1.5 Where the User provides its Permitted Parties with access to the Information the User must ensure that such Permitted Parties comply with all applicable provisions of this Agreement. The User is liable and responsible for each and every Permitted Party's conduct in respect of the Information and its compliance with the Information Licence and every act or omission of a User's Permitted Party in relation to Information is deemed to be an act or omission of the User. LMAX may, in its reasonable direction, remove any one or more of the Permitted Parties from the scope of the permission granted under any of paragraphs 1.1(b) and 1.1(c).
- 1.6 LMAX must comply with the rules of any Governmental Authority that apply to the provision of the Information. The User must promptly bring to the attention of LMAX any provision of this Agreement that may conflict with any rules of such Governmental Authority.
- 1.7 The User must (and is to procure that its Permitted Parties must):
- (a) protect and safeguard LMAX's Intellectual Property Rights in and to LMAX Exchange, the Information, and any Materials provided by or to LMAX, by using the same degree of care that the User (or each Permitted Party) generally uses to protect its Confidential Information and its own Intellectual Property Rights, but in any event with no less than a reasonable degree of care;
  - (b) promptly notify LMAX upon becoming aware of any infringement or misappropriation, or threatened infringement or misappropriation, of any Intellectual Property Rights of LMAX; and/or
  - (c) comply with all reasonable requests made by LMAX to protect and enforce LMAX's Intellectual Property Rights in LMAX Exchange, the Information and any Materials belonging to LMAX or to prevent any unauthorised receipt, access to or use of the Information by any third party.
- 1.8 The User must not (and is to procure that its Permitted Parties must not) alter, enhance, make Derivative Materials from, reverse engineer or decompile LMAX Exchange, the Information, or any Materials belonging to LMAX, or any part thereof, in each case except to the extent explicitly permitted hereunder or required or specifically permitted by Applicable Laws.

## 2 Record keeping

During this Agreement and for a minimum of three years, the User must maintain complete, accurate and up-to-date records, which must set out details of the use and distribution of the Information and identify all sums payable to LMAX in respect of such Information.



## Schedule 3 - Proximity Services

### 1 Definitions

In this Schedule (*Proximity Services*), the following words and expressions have the following meanings, unless the context otherwise requires.

**Agreed Bandwidth** means 100 megabits per second or the number of megabits per second that LMAX may notify to the User from time to time.

**Commencement Date** means the date on which this Agreement is executed.

**Network** means all circuits and devices managed by LMAX between the PE at an LMAX PoP and the PE located at LMAX Exchange, otherwise known as “LMAX Proximity”.

**PE** means a provider edge, which is an MPLS router at the edge of the Network.

**PoP** means a point of presence, which is an access point that physically houses routers, switches or servers which are managed by LMAX.

**Proximity Services** means all services provided to the User in relation to the Network as set out in the Proximity Service Description.

**Security Breach** means anything that compromises the confidentiality, availability and integrity of the information on the Network.

- 1.1 LMAX is to provide the Proximity Services to the User from the point in time when the User has successfully connected to the Network and the Parties agree that the Proximity Services are ready.

### 2 User's obligations

- 2.1 The User will not use the Network for any purpose other than to connect to LMAX Exchange.
- 2.2 The User will use its best endeavours to avoid Security Breaches.
- 2.3 It is the User's responsibility to set up a back-up connection to LMAX Exchange should the Network connection fail.

### 3 Representations and warranties

- 3.1 LMAX warrants that it will make the Proximity Services available to the User via the Agreed Bandwidth exercising reasonable care and skill, and in accordance with this Agreement and in all material aspects in accordance with all Applicable Laws and Regulations. Except as otherwise expressly provided in this Agreement, LMAX does not make, and hereby disclaims, any warranties or conditions, express or implied, including any warranties or conditions (a) satisfactory quality or fitness for a particular purpose; (b) that the Network or the Proximity Services are to be continuously available, properly transmit data or are free from errors, inaccuracies or delays in transmission; or (c) that the Network is free from unauthorised intrusions.
- 3.2 LMAX shall take reasonable steps to secure the Network and provide uptime of 99.9 per cent, excluding scheduled downtime.

- 3.3 Each Party represents and warrants to the other Party that (i) it will comply with all Applicable Laws and Regulations in connection with the provision and use of the Proximity Services and (ii) this Agreement when executed is the legal, valid and binding obligation of such Party to do so.

## **4 Term, termination and suspension**

- 4.1 The provision of Proximity Services commences on the Commencement Date and, unless suspended or terminated in accordance with this Clause 4, terminates or is suspended on the date the Usership of the User terminates or is suspended in accordance with the LMAX Rulebook.
- 4.2 Without limiting its other rights or remedies, LMAX has the right immediately to suspend provision of the Proximity Services by giving written notice to the User if the User:
- (a) in LMAX's reasonable opinion uses the Network for purposes other than order management and receiving market data;
  - (b) causes a Security Breach or causes a Security Breach to persist.
- 4.3 Without limiting its other rights or remedies, either Party may terminate the arrangements for the provision of Proximity Services, without cause, by giving the other Party one month's prior written notice.

## Schedule 4 – Fees and Charges

### 1 Commission

The user shall be charged USD per USD1 million of notional traded.

Please see website for applicable connectivity and market data charges.

<https://www.lmax.com/professional/lmax-exchange-fee-schedule>

## Schedule 5 - All to All User Application Form

Please complete all sections in full, using BLOCK CAPITALS.

Company Details	
Registered company name:	
Registered company number:	
Other trading names (if applicable):	
Other trading addresses (if applicable):	

Primary Contact At Company	
Title: Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Miss <input type="checkbox"/> Dr <input type="checkbox"/> Other <input type="checkbox"/> Please specify:	
First name:	
Surname:	
Mobile tel. no:	Email address:

Registered Company Address	
Address Line 1:	Town:
Address Line 2:	County:
Address Line 3:	Post code:
Country:	Business tel. no:

Correspondence Address	
Same as registered address (tick) <input type="checkbox"/>	
Address Line 1:	Town:
Address Line 2:	County:
Address Line 3:	Post code:
Country:	Business tel. no:

Prime Broker Details	
Bank Name:	
Bank Address:	

Prime Broker Relationship Manager Contact	
Title: Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Miss <input type="checkbox"/> Dr <input type="checkbox"/> Other <input type="checkbox"/> Please specify:	
First name:	
Surname:	
Mobile tel. no:	Email address:

More Information on your Prime Broker

**In which Jurisdiction is the Prime Broker Regulated?**

**Please confirm you have provided all “know your client” (KYC) documentation to your Prime Broker when requested.**