



TISA Exchange Limited

CONTRACT TERMS AND CONDITIONS

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TISA EXCHANGE LIMITED

CONTRACT TERMS AND CONDITIONS ("Contract Terms")

1. GENERAL

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

2. SCOPE OF THE CONTRACT TERMS

2.1 Scope of dealing

- 2.1.1 No Member shall be required to transact with another Member under these Contract Terms simply by virtue of membership of TeX. Each Member remains responsible for undertaking, and shall not be prevented by anything in the Membership Agreement from undertaking, any additional due diligence on other Members that it may deem necessary to satisfy its internal risk and compliance requirements prior to participating in a Transfer under these Contract Terms.
- 2.1.2 In these Contract Terms, a reference to a Participant (whether a Non-Initiating Participant or Initiating Participant) assumes that all of the Members involved in the relevant Transfer have agreed to deal with each other under and in accordance with these Contract Terms. By way of illustration, if a Member (Member A) receives a request for data or a Transfer Instruction from a Member with whom it has no such prior agreement (Member B), then Member A will not have to comply with these Contract Terms in respect of that data request or Transfer Instruction unless and until its due diligence requirements have been satisfied and/or it has agreed to deal with Member B under these Contract Terms. If the due diligence requirements are not satisfied or Member A does not wish to deal with Member B under these Contract Terms, then the request for data or Transfer Instruction shall be dealt with between the relevant Members outside of the scope of TeX and the obligations in these Contract Terms relating to a Participant shall not apply.
- 2.1.3 Where Members have agreed to deal with each other under these Contract Terms and have an existing agreement in place between them that would apply to a Transfer, the provisions of Clause 3 (Order of Precedence) of the By-laws will apply.

2.2 Scope of Transfers

- 2.2.1 The SLA describes the portfolio transfer and re-registration scenarios to which the Service Levels apply from time to time. As such, the SLA determines the types of Transfers, and the transfer processes, to which these Contract Terms will apply.
- 2.2.2 Subject to Clause 2.1, these Contract Terms apply to a Transfer whether the Transfer is instructed and executed using Messages or using manual processes.

3. **COLLECTIVE OBLIGATIONS**

3.1 For each Transfer, each Participant will carry out the processes associated with its role or roles in the Transfer (whether Ceding Party, Acquiring Party, Intermediate Unitholder and/or Asset Manager (referred to as 'Fund Manager' in the SLA)) as set out in the SLA. Each Participant will be bound by and will be responsible for its obligations under these Contract Terms whenever a Message is created and sent by the Participant or by someone on its behalf. TeX will not be responsible for the performance of any obligation or duty owed by one Participant to another Participant under these Contract Terms.

3.2 Each Participant will:

3.2.1 ensure that all messages originating from it (which includes someone acting on its behalf) are created in accordance with the Standards, and that in addition all electronic messages are transmitted in accordance with the Standards;

3.2.2 ensure that there are no corruptions or failures in the content or structure of a Message originating from it (which includes someone acting on its behalf);

3.2.3 Authenticate each Participant from whom it receives a Message;

3.2.4 identify itself in accordance with the Standards to each Participant to whom it sends a Message; and

3.2.5 where it receives a Message and is not the intended recipient, reject the Message in accordance with the SLA and will not disclose or use any data within that Message for any purpose.

3.3 Once a Transfer has been initiated, if any Participant becomes aware that the Transfer has not been authorised by the Customer, it will notify the other Participants immediately of that.

3.4 Nothing in these Contract Terms is intended to affect any binding terms or guidelines that apply to the method of identification used by a Participant and from which the Participant is Authenticated.

3.5 **Manual Communication**

3.5.1 The provisions in these Contract Terms expressly relating to Messages will not apply to a Transfer where the Participants communicate manually (whether the Participants have agreed to communicate manually or it is noted on the Register of Members that a Participant has elected to communicate manually only) but, for the avoidance of doubt, where a Transfer is to be instructed and fulfilled using manual processes, this must be done both (whether by the Participant or someone acting on its behalf) in accordance with the Standards and in accordance with the Service Levels, subject to Clause 3.6.3.

3.5.2 A reference in the Membership Agreement to something being done "manually" is a reference to it being done other than by electronic means in accordance with the Standards (and all references to "manual" will be construed accordingly). Communication by electronic means does not include facsimile (fax) or e-mail communication.

3.6 Service Levels

- 3.6.1 Subject to Clause 6.3 (Exceptional Circumstance) and the other provisions of this Clause 3.6, each Participant will perform its obligations under these Contract Terms in accordance with the Service Levels and will be liable to each other Participant pursuant to Clause 8 (Liability) for Recoverable Losses incurred or suffered as a result of that Participant's failure to comply with the Service Levels.
- 3.6.2 Any service levels agreed in (or pursuant) to any bilateral agreement between the Participants will take precedence over the Service Levels if and to the extent the services levels agreed in or pursuant to the bilateral agreement are higher.
- 3.6.3 During the period up to and including 30 June 2013 or such later date as is determined by TeX and notified by TeX to the Members, the provisions of Clause 3.6.1 will not apply. This is without prejudice to any timescales under Applicable Law in accordance with which each Participant is required to carry out its relevant part of the Transfer. With effect from 1 July 2013 (or such later date as determined and notified by TeX) every Participant must comply with the Service Levels, whether that Participant is using manual or electronic methods of communication.
- 3.6.4 It is acknowledged that from time to time there will be certain Transfers which the Participants cannot undertake in accordance with the Service Levels and for which the Participants want to disapply the Service Levels. If:
- (a) the Transfer falls within one of the exceptional processes referred to in the SLA (such as bulk transfers), the exception handling process set out in the SLA will apply; and
 - (b) the Transfer does not fall within one of the exceptional processes referred to in the SLA, the Service Levels will be disapplied only if all of the Participants agree unequivocally that the Service Levels will not apply to the Transfer, and the provisions in Clause 3.6.5 will apply.
- 3.6.5 If all of the Participants agree unequivocally that the Service Levels will not apply to the Transfer, then:
- (a) the following provisions will apply to the Transfer:
 - (i) the Participants will not be required to undertake the Transfer in accordance with the Service Levels;
 - (ii) the Participants will not be required to communicate via electronic messaging and may revert to manual communication and processing to fulfil the Transfer; and
 - (iii) the Non-Initiating Participant will be able to request such additional information as it requires from the Initiating Participant, Customer and/or Adviser to give it sufficient comfort to enable it to carry out the Transfer; and
 - (b) the Initiating Participant undertakes to notify TeX of the agreement reached between the Participants in writing immediately, and in any event within two Business Days of the date when such agreement is reached, identifying the other affected Member or Members (being the other Participant or Participants to that

Transfer). If the Participants agree that a person other than the Initiating Participant will notify TeX, that person will be responsible for complying with this Clause 3.6.5(b). For the avoidance of doubt, the other affected Participant(s) will not also be required to notify TeX of the arrangement.

- 3.6.6 Any Dispute between Participants arising in relation to the application of Clause 3.6.5 will be resolved in accordance with the Accelerated DRP. If TeX has been notified pursuant to Clause 3.6.5(b) and it is agreed or determined subsequently that there was no unequivocal agreement between the Participants to disapply the Service Levels pursuant to Clause 3.6.4(b), the Initiating Participant will notify TeX of this within five Business Days of the date when such agreement is reached or determination is made, as applicable.

3.7 System Responsibilities

- 3.7.1 Each Member is responsible for ensuring that it has all it needs to create, transmit, receive and validate Messages in accordance with the SLA and to perform its obligations under the Membership Agreement.
- 3.7.2 Each Participant is responsible for the operation and security of its System and will:
- (a) take reasonable steps to prevent the introduction by its agents or personnel of any computer viruses (including worms, trojan horses or other contaminants, and any code which can be used to access, modify, delete or damage any data, files or other computer programs) into any Message sent to another Participant; and
 - (b) take its own precautions in line with best industry practice to ensure that all Messages, Data and files received from another Participant are free from computer viruses or other defects, to prevent the introduction of viruses or other defects into its System.
- 3.7.3 To the extent permitted by Applicable Law, and without prejudice to the Participant's obligations pursuant to Clause 3.7.2(a), no Participant gives any warranties or representations that any Message or Data sent by it is free from computer viruses or other defects.
- 3.7.4 Each Participant will:
- (a) ensure that its System is capable of measuring and recording the Participant's performance of its obligations under these Contract Terms against the Service Levels; and
 - (b) retain a record of its performance against the Service Levels and will make that record available to TeX on reasonable request. That record will be Confidential Information of the Participant and TeX will not be permitted, without the prior approval of the Participant, to disclose that record to any third party (including another Member) other than a Regulator or independent expert if required as part of any compliance process.

4. **STATUS OF MESSAGES**

4.1 A Message will be deemed to have been:

4.1.1 received at the time it enters the System of the intended recipient or, where both the sender and the intended recipient are using the same System, at the time it is made available to the intended recipient on the System, provided in each case that no message has been received by the sender indicating failure to deliver or indicating that the Message cannot or will not be opened (including where it is accompanied by a warning or caution that the Message could contain or be subject to a computer virus or other defect which could alter, damage or interfere with data or software); and

4.1.2 sent as soon as the Participant has created and sent the Message in accordance with the Standards.

4.2 Each Participant accepts the validity of, and is entitled to rely on, a Message and agrees to accord a Message the same status as would be applicable to a document or to Data sent otherwise than by electronic means. In particular, an instruction or request that is received in a Message will be accorded the same status as if that instruction or request was a paper copy.

4.3 No Participant will refuse to execute an instruction or to respond to any request or will contest the validity of any instruction or request, in each case where the instruction or request is contained in a Message, on the ground that it is in electronic form and not a signed paper copy.

4.4 Each Participant agrees that a Message will be admissible evidence in the Dispute Resolution Procedure and before any court or Regulator.

4.5 **Audit Trail**

4.5.1 Each Participant must retain its Audit Trail for a minimum period of six years from the date of creation of the Audit Trail. The date of creation is the date on which the Message to which the Audit Trail relates is sent. The obligation in this Clause 4.5.1 will survive the cessation of the Participant's membership of the Contract Club.

4.5.2 Each Participant may produce and rely on any part of its Audit Trail and any Message in its possession or control to facilitate the resolution of a Dispute which arises out of, or in connection with, the Membership Agreement.

4.5.3 Any Member may be required to produce its Audit Trail in the Dispute Resolution Procedure.

5. **SPECIFIC OBLIGATIONS OF THE INITIATING PARTICIPANT**

5.1 The Initiating Participant will (either itself or through another party on which it is entitled to rely under Applicable Law):

5.1.1 Authenticate the Customer. The Initiating Participant will be responsible for carrying out such background, identity and other checks which it is required to undertake by Applicable Law and any further checks which it considers are necessary for it to confirm the identity of the Customer. These checks as a minimum will include:

- (a) all anti-money laundering checks required by Applicable Law; and
 - (b) all background and identity checks that would be undertaken by an Initiating Participant acting in accordance with best industry practice from time to time ("best industry practice" being the use of the standards, practices and methods, and exercising the care, diligence and judgment, that would reasonably be expected from a regulated undertaking under similar circumstances); and
- 5.1.2 confirm whether there are, in the portfolios that are to be the subject of the Transfer, Units in a share class that is (or share classes that are) not made available by the Acquiring Party to investors and if there are any such Units, to ensure that the Instruction contains or incorporates instruction from the Customer or their Adviser for conversion of each of those Units into another share class (which must be a Conversion Share Class), or to redeem those Units; and
- 5.1.3 prior to sending a Transfer Instruction ensure that:
- (a) the Instruction is legitimate;
 - (b) the Initiating Participant, acting as agent for the Customer, is entitled to send the Instruction; and
 - (c) the Instruction is complete and accurate,
- in each case to the best of its knowledge and belief having made reasonable enquiry. Where the Instruction is received from the Adviser, this will include verifying that the Adviser has the authority to submit the Instruction on behalf of the Customer to the Initiating Participant.
- 5.1.4 prior to sending a Transfer Instruction in relation to a transfer of sums and assets in a Pension Scheme, ensure that the Customer has entered into an agreement containing the Common Transfer Declaration.
- 5.2 The Initiating Participant is responsible for confirming with the Customer or Adviser (as applicable) which assets of the Customer are to be transferred and, if relevant, which are to be redeemed or converted to a Conversion Share Class prior to the Transfer.
- 5.3 In issuing the Transfer Instruction, the Initiating Participant warrants and represents to each other Participant that it has the authority to do so and has undertaken the activities pursuant to Clauses 5.1 and 5.2 and where appropriate, in accordance with the terms of any legally binding agreement between a Pension Provider and a Pension Administrator appointed by it.
- 5.4 The Initiating Participant will be liable to each Non-Initiating Participant pursuant to Clause 8 for Recoverable Losses incurred as a result of:
- 5.4.1 the Initiating Participant's failure to Authenticate the Customer and, if applicable, the Adviser; and/or
 - 5.4.2 the Initiating Participant submitting a Transfer Instruction where the Instruction has not been authorised by the Customer, notwithstanding that it has carried out the checks under Clause 5.1.
- 5.5 **Legitimate Use of Discovery Messages**
- 5.5.1 Each Member undertakes to use Discovery Messages only to make legitimate requests for data about a Customer following the receipt of an

Instruction and not to use Discovery Messages for any other data collection purposes.

5.5.2 In creating and sending a Discovery Message to another Participant, the Initiating Participant warrants and represents to that Participant that:

- (a) it has the express authority from the Customer to request the data sought by the Discovery Message; and
- (b) the Customer has consented expressly to the disclosure of the requested data to the Initiating Participant.

6. **SPECIFIC RIGHTS AND OBLIGATIONS OF NON-INITIATING PARTICIPANTS**

6.1 Each Non-Initiating Participant:

6.1.1 (where an Asset Manager) will verify that the purported Unit holder to whom the proposed Transfer relates is entered on the fund's register of holders of Units as the Unit holder;

6.1.2 will ensure that Data provided to the Initiating Participant (including Data sent in response to a Discovery Message) is accurate and complete to the best of its knowledge and belief having made reasonable enquiry;

6.1.3 will not fulfil a Transfer Instruction if, prior to doing so, it has received written notice that the Transfer has not been authorised by the Customer; and

6.1.4 (where an Intermediate Unitholder) will:

- (a) Authenticate each Participant from whom it receives a Transfer Instruction; or
- (b) where it receives an Instruction for a Transfer from a third party which is not a Member, be responsible for carrying out such background and other checks which it is required to undertake by Applicable Law and any further checks which it considers are necessary for it to confirm the identity of the relevant third party. These checks at a minimum will include:
 - (i) all anti-money laundering checks required by Applicable Law; and
 - (ii) all background and verification checks that would be undertaken by an Intermediate Unitholder acting in accordance with best industry practice from time to time ("best industry practice" being the use of the standards, practices and methods, and exercising the care, diligence and judgment, that would reasonably be expected from a regulated undertaking under similar circumstances); and
- (c) confirm whether there are, in the portfolios that are to be the subject of the Transfer, Units in a share class that is (or share classes that are) not made available by the Acquiring Party to investors and if there are any such Units, to ensure that the Instruction contains or incorporates instruction from the Customer or their Adviser for conversion of each of those Units into another share class (which must be a Conversion Share Class), or to redeem those Units; and

- (d) prior to sending a Transfer Instruction ensure that:
 - (i) the Instruction is legitimate;
 - (ii) it is entitled to send the Instruction; and
 - (iii) the Instruction is complete and accurate,

in each case to the best of its knowledge and belief having made reasonable enquiry, including verifying that Participant or third party from whom it received the Instruction has the authority to submit the Instruction on behalf of the Customer to the Intermediate Unitholder; and
- (e) ensure that the Participant or third party from whom it received the Instruction has Authenticated the Customer and has confirmed with the Customer or Adviser (as applicable) which assets of the Customer are to be transferred and, if relevant, which are to be redeemed or converted to a Conversion Share Class prior to the Transfer; and
- (f) in issuing the Transfer Instruction, warrant and represent to each Participant that it has the authority to do so and has undertaken the activities pursuant to Clauses 6.1.4(a) to 6.1.4(e) (inclusive); and
- (g) will be liable to each Participant pursuant to Clause 8 for Recoverable Losses incurred as a result of:
 - (i) the Intermediate Unitholder's failure to carry out its obligations under Clauses 6.1.4(a) to 6.1.4(e) (inclusive);
 - (ii) a failure by the third party from whom the Intermediate Unitholder received the Instruction to Authenticate the Customer or to confirm with the Customer or Adviser (as applicable) which assets of the Customer are to be transferred and, if relevant, which are to be redeemed or converted to a Conversion Share Class prior to the Transfer; and
 - (iii) the Intermediate Unitholder submitting a Transfer Instruction where the Instruction has not been authorised by the Customer, notwithstanding that it has carried out the checks under Clauses 6.1.4(a) to 6.1.4(e) (inclusive); and
- (h) ensure there is no change or corruption in the content or structure of the Transfer Instruction that it transmits to a Participant.

6.2 **Reliance on instructions**

Subject to the provisions of Clauses 2, 6.1.3, 6.3 and 3.6.3, a Non-Initiating Participant will be required to fulfil a Transfer Instruction in accordance with the Service Levels where the Transfer Instruction is issued by the Initiating Participant in accordance with the Standards. This will not prevent a Non-Initiating Participant from requesting additional information in respect of a Transfer Instruction or the Customer's authorisation of a Transfer in an Exceptional Circumstance. For the avoidance of doubt, this does not require a Non-Initiating Participant to fulfil a Transfer Instruction in the circumstances referred to in Clause 2.1.2.

6.3 **Exceptional Circumstance**

6.3.1 An "**Exceptional Circumstance**" is one where:

- (a) the Initiating Participant's membership of the Contract Club has been suspended; or
- (b) the Non-Initiating Participant has legitimate reason to believe that the Initiating Participant has not been given a right by the Customer to act on its behalf and to give the Instruction; or
- (c) the Non-Initiating Participant becomes aware of an issue or event affecting or involving the Initiating Participant that gives rise to a legitimate concern:
 - (i) about the Non-Initiating Participant's ability to trust the Initiating Participant and rely on the veracity of the Instruction; and/or
 - (ii) that dealing with or continuing to deal with the Initiating Participant would have a negative impact on the reputation of the Non-Initiating Participant or that of its Group; and/or
 - (iii) that involves Potential Pensions Liberation; and/or
 - (iv) that dealing with or continuing to deal with the Initiating Participant is likely to put the Non-Initiating Participant in breach of Applicable Law and/or would give rise to a right for a Regulator to impose a regulatory fine or sanction on the Non-Initiating Participant.

An "Exceptional Circumstance" does not include any of the exceptional processes referred to in the SLA to which the exception handling process set out in the SLA will apply.

6.3.2 In an Exceptional Circumstance, the Non-Initiating Participant will be required to fulfil a Transfer Instruction but, for as long as the Exceptional Circumstance persists, will:

- (a) not be required to undertake this in accordance with the Service Levels;
- (b) not be required to communicate via electronic messaging, even where the Transfer Instruction is received in a Message, and may revert to manual communication and processing to fulfil the Transfer; and
- (c) be able to request such additional information as it requires from the Initiating Participant, Customer and/or Adviser to give it sufficient comfort to enable it to carry out the Transfer.

6.3.3 Any Dispute between Participants about an Exceptional Circumstance, including whether any Exceptional Circumstance has arisen or whether the concern giving rise to an Exceptional Circumstance is legitimate, will be determined in accordance with Clause 12.6 of the By-laws.

7. COMPLIANCE WITH LAWS AND REGULATIONS

7.1 Each Member is responsible for ensuring that it, its subcontractors, agents, nominees and anyone carrying out its obligations under these Contract Terms on its behalf, comply with any Applicable Law governing a Transfer in which it is involved.

7.2 Nothing in the Membership Agreement will require:

7.2.1 a Member to perform any obligation or to take or omit taking any action that would place it in breach of any Applicable Law; and/or

7.2.2 a Pension Administrator to complete a Transfer where it is no longer authorised to do so by the Pension Provider by which it was appointed.

7.3 Each Participant (Participant A) will promptly provide, at its own cost and expense, all information within its possession or control that is reasonably requested by another Participant (Participant B) to enable Participant B to comply with Applicable Law or to comply with an information request from a Regulator. All information disclosed by Participant A will be subject to the obligations of confidentiality under the Membership Agreement.

7.4 Encrypted Data

7.4.1 Each Participant will retain control at all times of the keys necessary to decrypt any Data encrypted by it (in this Clause 7.4 the "**Encrypting Party**"). Where the encrypted Data cannot be decrypted by a Participant who needs to view it, the Encrypting Party will securely provide the Participant with a readable copy of the Data or, at the request of the Participant, provide the necessary key for decrypting the encrypted Data.

7.4.2 If the Participant is required to provide the key necessary to decrypt any encrypted Data to any party who is legally authorised to receive the key, then the Encrypting Party will securely provide such key immediately to the Participant on receiving a request from the Participant to do so.

8. TERMS GOVERNING THE LIABILITY OF EACH PARTY

8.1 Nothing in the Membership Agreement will exclude or limit a Party's liability under or in connection with the Membership Agreement:

8.1.1 for death or personal injury resulting from the negligence of that Party or its officers, agents, employees or sub-contractors;

8.1.2 for fraud or fraudulent misrepresentation;

8.1.3 for any breach of confidentiality; or

8.1.4 for any other matter in respect of which liability cannot by Applicable Law be excluded or limited.

8.2 No Party will be liable to another Party (for negligence, breach of contract or otherwise) for any Loss except as provided in Clauses 8.1, 8.3, 8.4, 8.5, 8.7 and 10.3.5.

8.3 Subject to Clause 8.7, the liability of one Party ("**Liable Party**") to another Party ("**Claiming Party**") will be unlimited for any Recoverable Losses.

8.4 Subject to Clause 8.6, the "**Recoverable Losses**" will be:

8.4.1 any Losses which are not recoverable under Clause 8.4.2 but which are:

- (a) suffered by the Claiming Party as a direct result of the Liable Party being in breach of its obligations under the Membership Agreement; or
- (b) incurred by the Claiming Party to a third party (including a Customer or an Adviser) as a direct result of fraud or a Transfer Instruction having been submitted by the Liable Party (or by its sub-contractors or agents) where the Customer did not authorise the instruction to initiate the Transfer, whether or not the Liable Party is in breach of its obligations under the Membership Agreement; and

8.4.2 any of the Losses in Clause 8.5 which are:

- (a) suffered by the Claiming Party as a direct or indirect result of the Liable Party being in breach of its obligations under the Membership Agreement; or
- (b) incurred by the Claiming Party to a third party (including a Customer or an Adviser) as a direct or indirect result of fraud or a Transfer Instruction having been submitted by the Liable Party (or by its sub-contractors or agents) where the Customer did not authorise the instruction to initiate the Transfer, whether or not the Liable Party is in breach of its obligations under the Membership Agreement.

8.5 The following Losses (and no other Losses) will be recoverable by the Claiming Party pursuant to Clause 8.4.2:

- 8.5.1 the replacement value of assets that have been transferred, redeemed or converted in error;
- 8.5.2 the reasonable costs and expenses incurred by the Claiming Party in recovering its direct Losses;
- 8.5.3 any amount that the Claiming Party is directed by a Regulator to pay to a Customer, regardless of whether the award is for financial loss (including the value of any lost tax benefit) or distress, inconvenience or other non-financial loss;
- 8.5.4 any reasonable compensation payments made to a Customer, Adviser or other third party (including *ex gratia* payments), subject to the provisions of Clause 9;
- 8.5.5 the reasonable costs and expenses (including administrative costs and expenses) incurred by the Non-Initiating Participant in actioning a Transfer in an Exceptional Circumstance. This will not apply where there is a Dispute about an Exceptional Circumstance and it is agreed or determined in accordance with Clause 12.6 of the By-laws, as applicable, that no Exceptional Circumstance had arisen (including an agreement or determination that the Non-Initiating Participant's concerns were not legitimate);
- 8.5.6 the reasonable costs and expenses incurred in necessary communications with Customers and/or Advisers;
- 8.5.7 any fine that is imposed upon the Claiming Party by a Regulator and any reasonable costs and expenses incurred by the Claiming Party in dealing with the fine; and

- 8.5.8 any fee or charge that is payable by the Claiming Party to a Regulator (including a case fee payable to FOS or the Pensions Ombudsman) in relation to the Regulator's investigation of a complaint raised by a Customer.
- 8.6 The Liable Party will not be liable for any Loss to the extent that such Loss arises as a result of the Claiming Party being in breach of its obligations under the Membership Agreement or as a result of the negligence or fraud of the Claiming Party.
- 8.7 Subject to Clause 8.1, the total aggregate liability of TeX to all Members in respect of all claims arising out of or in connection with the Membership Agreement (for negligence, breach of contract or otherwise) in any calendar year will be limited to £5,000,000 (five million pounds sterling).
- 8.8 No Party will be obliged to pay more than once for the same Loss under the Membership Agreement.
- 8.9 Each Party will use its reasonable endeavours to minimise and mitigate any Loss for which it is entitled to bring a claim against another Party pursuant to the Membership Agreement.

9. **COMPENSATION PAYMENTS**

- 9.1 The Claiming Party will advise the Liable Party in advance of making any compensation payment referred to in Clause 8.5.4 and those parties will agree what is a reasonable compensation payment in the circumstances. In agreeing an amount those parties will take into account (to the extent applicable, and the following is not intended to be exhaustive):
- 9.1.1 what amount the Claiming Party reasonably considers would have been awarded to the Customer by FOS, the Pensions Ombudsman or any other relevant Regulator in the circumstances, had the matter had been referred to FOS, the Pensions Ombudsman or other relevant Regulator. The Claiming Party will be entitled to take into account compensation for both financial loss and non-financial loss which may have been awarded; and
- 9.1.2 the nature of the event giving rise to the compensation payment and whether the proposed amount is proportionate with regards to the Losses incurred by the Customer, Adviser or other third party or the potential quantum of Losses which the Customer, Adviser or other third party may have been able to claim against the Claiming Party. The provisions of Clause 9.1.1 will take precedence if the Claiming Party reasonably considers that the amount awarded by FOS, the Pensions Ombudsman or other relevant Regulator would have been higher.
- 9.2 If the relevant parties cannot agree under Clause 9.1 within ten Business Days the amount of compensation which should be paid to a Customer or Adviser or other third party, the Dispute will be determined in accordance with the Accelerated DRP. If the Dispute is referred to third party determination, the Referee will be entitled to take into account (amongst other things) the factors in Clause 9.1.
- 9.3 Each Party agrees that the provisions in Clauses 9.1 and 9.2 relate to the Losses which a Claiming Party is entitled to recover from a Liable Party, and nothing in Clause 9.1 or 9.2 will operate to:
- 9.3.1 prevent a Member from making compensation payments to a Customer, Adviser or other third party at a level which it considers to be appropriate. For the avoidance of doubt, if the Claiming Party makes a compensation payment to a Customer, Adviser or other third party that is greater than

the Settled Amount, that part of the compensation payment in excess of the Settled Amount will not be recoverable by the Claiming Party pursuant to Clause 8.4.2. The "**Settled Amount**" is the amount that is agreed by the Claiming Party and the Liable Party or determined (whether pursuant to Clause 9.1 or through the Accelerated DRP) to be a reasonable compensation payment in the circumstances; or

- 9.3.2 delay when any compensation payment is made by a Member to a Customer, Adviser or other third party.

10. **NOTIFICATION AND CONDUCT OF CLAIMS**

- 10.1 Where a Customer, Adviser or other third party raises an action or claim against a Member to recover Losses ("**Customer Claim**") and the basis of the Customer Claim may give rise to a claim by that Member ("**Defending Member**") against another Member ("**Responsible Member**") for recovery of Losses under the Membership Agreement, the Defending Member will inform the Responsible Member in writing of the Customer Claim (stating in reasonable detail the nature of the Customer Claim) unless and to the extent prevented from doing so by Applicable Law.
- 10.2 The Responsible Member will provide all such reasonable assistance as the Defending Member may request, including providing the Defending Member and its advisers with information and copies of relevant documents in its possession or control (including its Audit Trail), for the purposes of allowing the Defending Member to investigate, mitigate, defend or settle the Customer Claim. The documents and information may be used for those purposes only, and when the Customer Claim is concluded, all documentation provided by the Responsible Member for the purposes of the Customer Claim will be returned.
- 10.3 If the Responsible Member requests in writing to take over the conduct of the Customer Claim and the Defending Member agrees (in its absolute discretion) to this request, then the following provisions will apply:
- 10.3.1 The Defending Member will allow the Responsible Member to conduct all negotiations and litigation resulting from the Customer Claim, provided that:
- (a) at the Defending Member's written request, the Defending Member will be entitled to be represented at, and be consulted on, all of the negotiations and litigation; and
 - (b) prior to the Responsible Member assuming conduct under this Clause 10.3, the Defending Member will be entitled to take all reasonable action to deal with the matter to minimise the extent of any Loss and any damage to the relationship between the Defending Member and the Customer, Adviser or other third party.
- 10.3.2 The Responsible Member will keep the Defending Member fully informed of proceedings and will consult the Defending Member on any matter which is or is likely to (i) be material in relation to the Customer Claim or (ii) adversely impact on the relationship between the Defending Member and the Customer, Adviser or other third party. The Responsible Member will take account of all reasonable requirements of the Defending Member in relation to the defence or settlement of the Customer Claim.
- 10.3.3 At the Responsible Member's request, the Defending Member will provide reasonable assistance with the negotiations or litigation related to the Customer Claim, and will provide the Responsible Member and its advisers with information and copies of relevant documents in its possession or control for the purposes of allowing the Responsible

Member to conduct the Customer Claim. The documents and information may be used for those purposes only, and when the Customer Claim is concluded, all documentation provided by the Defending Member for the purposes of the Customer Claim will be returned.

10.3.4 The Responsible Member will not make any admissions relevant to the matter or purport to settle the Customer Claim without the prior approval of the Defending Member in writing, such approval not to be unreasonably withheld, delayed or conditioned. If the Defending Member refuses to approve any proposed settlement, the Responsible Member will have no liability to the Defending Member in respect of any claim under the Membership Agreement arising from the Customer Claim in excess of the figure at which the Customer Claim could have been settled under the proposed settlement.

10.3.5 The Responsible Member will indemnify and keep the Defending Member fully indemnified on written demand from and against any and all costs, charges and expenses reasonably and properly incurred by the Defending Member as a consequence of any actions taken by the Defending Member at the request of the Responsible Member.

10.4 The activities referred to in Clauses 10.3.1 to 10.3.3 will be at the Responsible Member's sole cost and expense. The activities in Clause 10.3 are subject always to any process that is specified by FOS, the Pensions Ombudsman or any other relevant Regulator for consumer claims and in accordance with which the Defending Member and Responsible Member must conduct the Customer Claim.

10.5 If the Defending Member does not agree to the Responsible Member's request under Clause 10.3 to take control of the Customer Claim, the Defending Member will keep the Responsible Member fully informed of the progress of the Customer Claim and will take account of all reasonable requirements of the Responsible Member that are notified to the Defending Member in writing in relation to the defence or settlement of the Customer Claim.