

## Terms of Participation

The purpose of these Terms of Participation (“Terms”) is to define your rights and obligations as an Institute Participant (as defined below) in Derivatives Market Institute for Standards (“DMIST” or “Institute”). As an Institute Participant, you agree to abide by and be bound by these Terms, which will constitute a binding legal agreement between you and DMIST. If you are acting in the name and on behalf of an Institute Participant, you represent and warrant to DMIST that you have the power and authority to bind the Institute Participant to these Terms.

### 1. Institute Participation.

Individuals and entities admitted as “Sponsors”, “Ambassadors” or other roles denoting membership or other participation in DMIST (“Institute Participants,” and such participation, “Institute Participation”) agree to abide by these Terms. Institute Participants will not be members of DMIST within the meaning of the Delaware General Corporation Law or other applicable law and will not have any of the rights and privileges of members under any such law. In addition to these Terms, each Institute Participant agrees to abide by the guidelines, policies and procedures (collectively, “Policies”) adopted, issued or published by the Institute from time to time and notified to the Institute Participants, including, without limitation, those relating to (i) Institute Participant classification and categorization; (ii) Institute Participation conditions, standards, qualifications, applications and issuance; (iii) Institute Participant dues, fees and other obligations, responsibilities, requirements, restrictions and guidelines; (iv) Institute Participant voting and other benefits, rights, privileges and preferences; (v) mediating, resolving or otherwise addressing Institute Participant disputes and grievances; (vi) participation duration, lapse, forfeiture, suspension, resignation, termination, expulsion, revocation and readmission or reinstatement; and (vii) processes and procedures for Standards submission, vetting, review, evaluation, development, revision, publication for public review and comment (“Publication”), adoption, and implementation for use by the industry. In the event of a conflict between these Terms of Participation and any Policies, these Terms of Participation shall govern.

### 2. Confidentiality.

In the course of conducting the Institute, it is anticipated that the Institute, its affiliates, and each Institute Participant may share, receive and exchange a wide variety of information, some of which may be confidential, which information sharing will be critical to achieving the Institute’s mission.

#### 2.1. Confidential Information.

2.1.1. “**Institute Confidential Information**” means all non-public business, financial and technical records, contracts, reports, instruments, materials, computer data and other data and information originated by the Institute and/or its affiliates, furnished or made available to an Institute Participant in connection with Institute Participation, in each case, that is marked as confidential, that the Institute informs the Institute Participant at or prior to the time of disclosure is confidential or that should be reasonably understood by the Institute Participant to be confidential (in each case including such information that belongs to third parties and is provided by the Institute and/or its affiliates to the Institute Participant), except in any such case to the extent that the same can be shown through records of the recipient to have been (i) previously known by the Institute Participant on a non-confidential basis, (ii) available to the Institute Participant on a non-confidential basis from a source other than the Institute that was not prohibited from disclosing such information by a legal, fiduciary or contractual obligation, (iii) in the public domain through no fault of the Institute Participant, (iv) later lawfully acquired by the Institute Participant from sources other than the Institute and not subject to a confidentiality or other legal, fiduciary or contractual obligation, or (v) independently developed by the Institute Participant without the use of or reliance on the Institute Confidential Information.

2.1.2. **“Participant Confidential Information”** means all non-public business, financial and technical records, contracts, reports, instruments, materials, computer data and other data and information originated by an Institute Participant, furnished or made available to the Institute, its affiliates, and/or another Institute Participant in connection with Institute Participation, in each case, that is marked as confidential or that the disclosing Institute Participant informs the recipient at or prior to the time of disclosure is confidential (in each case including such information that belongs to third parties and is provided by the disclosing Institute Participant to the Institute, its affiliates, and/or another Institute Participant), except in any such case to the extent that the same can be shown through records of the recipient to have been (i) previously known by the recipient on a non-confidential basis, (ii) available to the recipient on a non-confidential basis from a source other than the disclosing Institute Participant that was not prohibited from disclosing such information by a legal, fiduciary or contractual obligation, (iii) in the public domain through no fault of the recipient, (iv) later lawfully acquired by the recipient from sources other than the disclosing Institute Participant and not subject to a confidentiality or other legal, fiduciary or contractual obligation, or (v) independently developed by the recipient without the use of or reliance on the Participant Confidential Information.

2.1.3. **“Confidential Information”** means Institute Confidential Information and/or Participant Confidential Information.

## 2.2. Protection of Confidential Information.

2.2.1. Each Institute Participant agrees to use Institute Confidential Information solely for the purposes of developing, evaluating and adopting derivatives clearing operations standards (“Standards”) in connection with its Institute Participation. Each Institute Participant agrees not to disclose any Institute Confidential Information to any individual or entity, including such receiving Institute Participant’s or any other individual or entity’s employees, representatives, affiliates or outside advisors, except to those individuals who (i) have been advised of the confidentiality of the information, (ii) are or represent an Institute Participant or represent the Institute in participating in the Institute, and (iii) are subject to these Terms. No Institute Participant will reverse engineer, disassemble or de-compile any Institute Confidential Information.

2.2.2. Each Institute Participant agrees to use each other Institute Participant’s Participant Confidential Information solely for the purposes of developing, evaluating, and adopting Standards in connection with its Institute Participation. Each Institute Participant agrees not to disclose any other Institute Participant’s Participant Confidential Information to any individual or entity, including such receiving Institute Participant’s or any other individual or entity’s employees, representatives, affiliates or outside advisors, except to those individuals who (i) have been advised of the confidentiality of the information, (ii) are or represent an Institute Participant or represent the Institute in participating in the Institute, and (iii) are subject to these Terms. No Institute Participant will reverse engineer, disassemble or de-compile any other Institute Participant’s Participant Confidential Information, and no Institute Participant will use any other Institute Participant’s Participant Confidential Information in the receiving Institute Participant’s business.

2.2.3. The Institute agrees to use Participant Confidential Information solely for the purposes of developing, evaluating, and adopting Standards, and publishing Standards as provided herein and in any Policies, in connection with Institute Participation. The Institute agrees not to disclose any Participant Confidential Information to any individual or entity, including any other individual or entity’s employees, representatives, affiliates or outside advisors, except to those individuals who (i) have been advised of the confidentiality of the information, (ii) are or represent an Institute Participant or represent the Institute in participating in the Institute, and (iii) are subject to these Terms. The Institute may compile

and aggregate Participant Confidential Information, which compilations and/or aggregations may constitute Institute Confidential Information.

2.2.4. Each party's obligations under this Section 2.2 will continue during the Institute Participant's Institute Participation and for two (2) years thereafter.

2.3. **Exceptions.** Notwithstanding anything to the contrary in these Terms, a recipient may disclose, without any liability hereunder, that portion (and only that portion) of the Confidential Information (i) that is requested or required by any Governmental authority (including any requirement of any stock exchange on which the shares or stock of the recipient are listed), or that such recipient deems is advisable to provide to such a Governmental authority, in each case whether in connection with an audit, examination or otherwise, (ii) that the recipient determines in its sole discretion is necessary or appropriate to disclose to a Governmental authority, (iii) that is reasonably necessary to defend itself against any proceeding brought against such recipient or its affiliates or its or their representatives by any Governmental authority, or (iv) that is required by subpoena, court order or similar process to be disclosed, and/or (v) that is otherwise required to be disclosed by applicable law. If any recipient is requested or required to disclose any Confidential Information as provided in this Section 2.3, the recipient will provide the party to whom such Confidential Information belongs with prompt written notice of such request or requirement, to the extent practicable and permitted by applicable law, and make reasonable efforts to cooperate with such party so that such party may seek a protective order or other appropriate remedy or protection. If such protective order or other remedy or protection is not obtained, or such party waives compliance with the provisions of this Agreement, the recipient will use reasonable efforts to disclose only that portion of the Confidential Information that is legally requested or required to be disclosed.

2.4. **Destruction of Confidential Information.** Upon termination of an Institute Participant's Institute Participation, or upon any request by the disclosing party at any time as to any portion of the Confidential Information, the receiving party will destroy any specified Confidential Information and copies thereof. Notwithstanding the foregoing, a party may retain backup and archival copies of Confidential Information made in the ordinary course of business (provided that no effort is made to access or reconstruct such stored Confidential Information) or Confidential Information that such party is required to retain pursuant to any applicable law, or under any internal data retention policy.

2.5. **Information Restricted by Law.** Institute Participants will not disclose to other Institute Participants, the Institute or its affiliates, any information the disclosure or use of which may be restricted by privacy, security or other similar laws.

2.6. **Review of Standards.** Each Institute Participant must notify the Institute prior to Publication of any Standard if such Standard contains the Institute Participant's Participant Confidential Information, and/or if the development, evaluation, adoption, publication, implementation, utilization, practice, or any other use of such Standard would require the access, use, or disclosure of such Institute Participant's Participant Confidential Information (collectively, "Unauthorized PCI"). Institute Participants will be given a reasonable opportunity to review proposed Standards for any Unauthorized PCI prior to Publication. Failure to notify the Institute of any Unauthorized PCI prior to Publication of a Standard constitutes each Institute Participant's representation and warranty that the Standard as Published does not contain any Unauthorized PCI.

### 3. **Intellectual Property.**

In the course of conducting the activities of the Institute, it is anticipated that the Institute and each Institute Participant may contribute certain of their respective information, ideas, methods, know-how, inventions, works of authorship, software, or other intellectual property (collectively, "Intellectual Property") in the development of Standards, and that the review, evaluation, revision, adoption,

implementation, utilization or practice of such Standards may require the use of such Intellectual Property. Such contributed Intellectual Property is hereafter referred to as "Contributions." The Institute and Institute Participants will not be required to contribute pre-existing Intellectual Property, and Institute Participants should not share and/or incorporate pre-existing Intellectual Property in connection with their Institute Participation if they do not wish to grant a license to such Intellectual Property as provided in these Terms.

### **3.1. Grant of License to Use Contributions.**

3.1.1. Subject to these Terms, prior to the approval for Publication of any Standard, each Institute Participant hereby grants to the Institute, its affiliates, and each other Institute Participant, a worldwide, perpetual, non-exclusive, royalty-free, irrevocable license to reproduce, prepare derivative works based on, publicly display, publicly perform, sublicense, distribute, make, have made, use, offer to sell, sell, import, and otherwise utilize such Institute Participant's Contributions, solely for use in developing, evaluating, improving, and approving any such Standards.

3.1.2. Subject to these Terms, upon the approval for Publication of any Standard, each Institute Participant hereby grants to the Institute, its affiliates, Institute Participants, industry users, and the public, a worldwide, perpetual, non-exclusive, royalty-free, irrevocable license to reproduce, prepare derivative works based on, publicly display, publicly perform, sublicense, distribute, make, have made, use, offer to sell, sell, import, and otherwise utilize such Institute Participant's Contributions, for use in developing, evaluating, approving, adopting, publishing, implementing, utilizing, practicing, advocating, and improving any such Standards.

### **3.2. Ownership of Institute Intellectual Property.**

3.2.1. The Institute will own, and will continue to own, all right, title and interest in and to all Intellectual Property that is developed, conceived, created, made, discovered, learned, produced, reduced to practice, and fixed in a tangible medium of expression by the Institute and/or its affiliates.

3.2.2. Except for any pre-existing Intellectual Property that is subject to the licenses set forth in Section 3.1, the Institute will own all right, title and interest in and to all Intellectual Property in any Standards, including without limitation any Intellectual Property that is developed, conceived, created, made, discovered, learned, produced, reduced to practice, and fixed in a tangible medium of expression by the Institute, its affiliates, and/or any Institute Participant, whether acting individually or jointly with others, in connection with its or their Institute Participation, and each Institute Participant hereby assigns to the Institute all right, title and interest in and to all such Intellectual Property such Institute Participant may have.

3.3. **Representations and Warranties.** Each Institute Participant represents and warrants that it owns or otherwise controls all of the Intellectual Property rights in and to any Contributions, including without limitation all rights necessary to grant the license set forth in Section 3.1. Each Institute Participant represents and warrants that any Intellectual Property such Institute Participant develops in connection with its Institute Participation will be such Institute Participant's original work and will not infringe upon the Intellectual Property of any third party.

3.4. **Review of Standards.** Each Institute Participant must notify the Institute prior to Publication of any Standard if such Standard contains the Institute Participant's pre-existing Intellectual Property that does not constitute a Contribution, and/or if the development, evaluation, adoption, publication, implementation, utilization, practice, or any other use of such Standard would require reproducing, preparing derivative works based on, publicly displaying, publicly performing, sublicensing, distributing, making, having made, using, offering to sell, selling, importing, or

otherwise utilizing such Institute Participant's Intellectual Property that does not constitute a Contribution (collectively, "Unauthorized PIP"). Institute Participants will be given a reasonable opportunity to review proposed Standards for any Unauthorized PIP prior to Publication. Failure to notify the Institute of any Unauthorized PIP prior to Publication of a Standard constitutes each Institute Participant's representation and warranty that the Standard as Published does not contain any Unauthorized PIP.

#### **4. Public Disclosures.**

- 4.1. The Institute may disclose and/or publish the name and role (e.g., "Sponsor," "Ambassador," etc.) of each Institute Participant for any purpose, including without limitation for public transparency, administrative, and/or promotional purposes. Each Institute Participant hereby consents to such disclosure, publication and use during the term of its Institute Participation.
- 4.2. Except as provided in Section 4.1, the Institute will not, without the express consent of the Institute Participant, use any trademark, logo or other indicia of source of the Institute Participant. Nothing in these Terms will be construed as an assignment of any right, title or interest in or to any Institute Participant's trademarks, logos, or other indicia of source.

#### **5. Withdrawal and Termination.**

- 5.1. Any Institute Participant may withdraw from its Institute Participation at any time upon thirty (30) days' written notice to the Institute.
- 5.2. The Institute may terminate any Institute Participant's Institute Participation immediately upon notice if the Institute Participant breaches these Terms.
- 5.3. The Institute may terminate any or all Institute Participant's Institute Participation upon thirty (30) days' written notice if the Institute determines, in its sole discretion, to reconstitute, wind-down, and/or terminate the Institute.
- 5.4. The Institute will not be required to refund any portion of a withdrawing or terminated Institute Participant's annual or other fees. The Institute may refund a prorated portion of such Institute Participant's annual or other fees in the Institute's sole discretion.

#### **6. Disclaimer of Warranties and Limitation of Liability.**

- 6.1. INSTITUTE PARTICIPATION AND ANY STANDARDS PROPOSED OR ADOPTED BY THE INSTITUTE ARE PROVIDED "AS IS" AND "AS AVAILABLE." THE INSTITUTE, ITS AFFILIATES, AND INSTITUTE PARTICIPANTS DO NOT WARRANT OR GUARANTEE THE ACCURACY, COMPLETENESS, OR ADEQUACY OF INSTITUTE PARTICIPATION OR ANY STANDARDS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE INSTITUTE, ITS AFFILIATES, AND INSTITUTE PARTICIPANTS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO THE INSTITUTE, STANDARDS, WEBSITES, CONTENT, COMMENTS, SERVICES AND OTHER SUBJECT MATTER OF THESE TERMS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, OR NON-INFRINGEMENT.
- 6.2. THE INSTITUTE, ITS AFFILIATES, AND INSTITUTE PARTICIPANTS WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE), ARISING IN CONNECTION WITH OR OUT OF INSTITUTE PARTICIPATION, STANDARDS, WEBSITES, CONTENT, COMMENTS, OR SERVICES. IN JURISDICTIONS WHERE

LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS NOT PERMITTED, THE INSTITUTE'S, ITS AFFILIATES', AND INSTITUTE PARTICIPANTS' LIABILITY ARE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE INSTITUTE, ITS AFFILIATES, AND EACH INSTITUTE PARTICIPANT EXPRESSLY AGREES THAT ITS INSTITUTE PARTICIPATION, SUBMISSION OF ANY STANDARDS AND/OR COMMENTS, AND USE OF ANY STANDARDS ARE SOLELY AT ITS OWN RISK.

**7. Miscellaneous.**

- 7.1. Assignment.** The Institute may assign its rights and obligations under these Terms to an affiliate of the Institute upon prior written notice to each Institute Participant. Each Institute Participant may assign its rights and obligations under these Terms to an affiliate, or to a purchaser of all or substantially all of its business or assets to which its Institute Participation pertains, whether by merger, reorganization, or asset sale, subject to the Institute's prior written consent, which will not be unreasonably withheld.
- 7.2. Governing Law.** These Terms are governed by the laws of the State of Delaware without regard to its conflict of law provisions.
- 7.3. Enforcement.** The failure of a party to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms will remain in full force and effect. A printed copy of these Terms and of any notice given in electronic form will be admissible in judicial or administrative proceedings relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form, and shall be deemed an original for all purposes. The section titles in these Terms are for convenience only and have no legal or contractual effect.
- 7.4. Notices.** Any notices required or allowed under these Terms will be provided to the Institute by email to [staskforce@fia.org](mailto:staskforce@fia.org). Any notices required or allowed under these Terms will be provided to Institute Participants by email to any email address provided to the Institute during the application process or subsequently updated by notice to the Institute. Notices will be effective upon receipt by the receiving party, and shall be deemed received upon sending via email unless the sender is notified of delivery failure.
- 7.5. Successors and Assigns.** These Terms are binding on and will inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.
- 7.6. Amendments.** The Institute expressly reserves the right to update or amend these Terms from time to time. The Institute will provide each Institute Participant with notice of any amendments/updates by any reasonable means, which may include providing notice pursuant to Section 7.4, and/or displaying a revised version of the Terms online. Continued Institute Participation signifies each Institute Participant's continuing consent to be bound by these Terms.