

## TERMS AND CONDITIONS FOR COUNTERPARTIES IN THE BANK OF ENGLAND'S ASSET PURCHASE FACILITY

### 1. INTRODUCTION, SCOPE AND APPLICATION

1.1 These Terms and Conditions together with the other Documentation issued by the Bank:

- (a) set out the terms and conditions for Counterparties in the APF; and
- (b) govern all Transactions entered into between the Bank, as agent for BEAPFF, and the Counterparty.

1.2 The Bank enters into the Documentation on its own behalf and as agent for BEAPFF.

1.3 These Terms and Conditions will be published on the Bank's website at [www.bankofengland.co.uk/markets/apf/index.htm](http://www.bankofengland.co.uk/markets/apf/index.htm).

### 2. INTERPRETATION

2.1 In these Terms and Conditions the following terms have the following meanings:

**Admission Letter** means the letter or letters from the Bank by which the Counterparty is admitted as a counterparty in one or more of the facilities that form part of the APF;

**APF** means the Bank of England's Asset Purchase Facility and each of the facilities forming part thereof, as described in the Market Notice;

**APF Btender Terms** means the terms and conditions for use by Counterparties of the Bank's electronic tendering system known as "Btender" in the APF;

**Application Form** means each of the application forms and questionnaires for applicants wishing to become a Counterparty in one or more of the facilities that form part of the APF;

**Bank** means The Governor and Company of the Bank of England and, save as the context otherwise requires, a reference to the Bank includes a reference to the Bank acting on its own behalf and as agent for BEAPFF;

**BEAPFF** means Bank of England Asset Purchase Facility Fund Limited;

**Business Day** means a day (other than a Saturday or a Sunday) on which banks are open for business in London;

**Counterparty** means the institution identified as such in the Admission Letter;

**Documentation** means these Terms and Conditions, the Market Notice, the APF Btender Terms, the Settlement Procedures, the Application Form, the Admission

Letter and any other documentation or procedures issued by the Bank in connection with the APF, each as supplemented and amended from time to time;

**Eligibility Criteria** means the criteria specified by the Bank in the Market Notice for eligible counterparties in the APF, including the criteria specified for eligible counterparties in each of the facilities forming part thereof, as applicable;

**Group** means a group as defined in section 421 of the Financial Services and Markets Act 2000;

**Market Notice** means a notice or notices published by the Bank relating to the APF;

**Parent** in relation to the Counterparty means a parent undertaking as defined in section 1162 of the Companies Act 2006;

**Party** means each of the Bank, BEAPFF and the Counterparty;

**Settlement Procedures** means the settlement procedures published by the Bank relating to the APF;

**Terms and Conditions** means these Terms and Conditions for participation in the APF;

**Transaction** means any and all transactions entered into between Bank, as agent for BEAPFF, and the Counterparty whereby the Bank, as agent for BEAPFF, purchases assets from, or sells assets to, the Counterparty.

2.2 Except where the context otherwise requires:

- (a) any reference to an agreement or document or any enactment or statutory provision or a Council Directive or Regulation or international convention or any other legislative provision (whether primary or secondary) or any document is a reference to it as it may have been, or may from time to time be amended, supplemented, modified, replaced, extended, consolidated or re-enacted; and
- (b) any reference to time is to London time.

### **3. INITIATION AND SETTLEMENT OF TRANSACTIONS**

3.1 A Transaction shall be entered into, and settlement shall be effected, in accordance with the procedures set out in the Market Notice and the Settlement Procedures.

3.2 The Bank's obligation to make any payment or to transfer any assets in connection with any Transaction or otherwise under the Documentation shall be subject to the conditions precedent that the Bank shall have received from the Counterparty the relevant assets purchased or the payment for the relevant assets sold, as the case may be, pursuant to that Transaction, that no obligation owed by the

Counterparty under the Documentation is outstanding and that none of the following events shall have occurred and be continuing:

- (a) the court making a winding-up order in respect of the Counterparty under Chapter VI of Part IV or Part V of the Insolvency Act 1986;
- (b) the appointment of a liquidator in respect of the Counterparty or over all or any material part of the Counterparty's property;
- (c) the Counterparty admitting to the Bank its inability to, or its intention not to, perform any of its obligations under the Documentation or under any Transaction;
- (d) the Counterparty ceasing or threatening to cease to carry on its business or any substantial part thereof or compounding, or making a general assignment for the benefit of, or entering into any reorganisation or other special arrangement with, its creditors or any class thereof or being deemed unable, or admitting in writing its inability, to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or otherwise becoming insolvent;
- (e) the filing or presentation or making of a petition or application or the commencement of any other proceeding in respect of the Counterparty (other than by the Bank in respect of any obligation under these Terms and Conditions) in any court or before any agency or out of court or otherwise alleging or for the bankruptcy, winding-up or other insolvency of the Counterparty or seeking any reorganisation, arrangement, moratorium, composition, readjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition, application or proceeding not having been stayed or dismissed within 30 days of its filing or commencement (other than a petition, application or proceeding for the winding up of the Counterparty or the appointment of an administrator, whether out of court or otherwise in relation to the Counterparty or any analogous proceeding in which case no such 30 day period shall apply);
- (f) the giving of notice of a proposal to appoint, or the taking of any step with a view to appointing, or the appointment of a receiver or trustee or administrator (whether out of court or otherwise) or analogous officer in respect of the Counterparty or over all or any material part of the Counterparty's property;
- (g) the convening of any meeting of creditors of the Counterparty for the purposes of considering a voluntary arrangement as referred to in section 3 of the Insolvency Act 1986;
- (h) the making of a winding-up order by a court in respect of any Parent of the Counterparty under Chapter VI of Part IV or Part V of the Insolvency Act 1986;
- (i) the appointment of a liquidator or an administrator (whether out of court or otherwise) in respect of the Parent of the Counterparty, or over all or any material part of the property of the Parent of the Counterparty;

- (j) the occurrence of any event analogous to any of the foregoing in any jurisdiction in relation to the Counterparty or any Parent of the Counterparty;
- (k) the Counterparty ceasing to meet the applicable Eligibility Criteria;
- (l) the occurrence in relation to an issuer of, or borrower under, or any guarantor of any asset purchased under any Transaction of (i) any event described in sub-paragraphs (a) to (j) above or (ii) any event of default, default termination, acceleration event or termination event, howsoever described.

3.3 The Bank reserves the right to waive any of the conditions described in clause 3.2 above in respect of any particular Transaction or generally. No waiver of any such condition in respect of any particular Transaction shall constitute a waiver in respect of any other Transaction.

3.4 The Counterparty shall immediately notify the Bank if any of the events described in clause 3.2 above occurs.

#### **4. REPRESENTATIONS, WARRANTIES, UNDERTAKINGS AND ACKNOWLEDGEMENTS**

4.1 The Counterparty represents and warrants to the Bank that:

- (a) it is a body corporate duly incorporated and validly existing under the laws of the United Kingdom or such other jurisdiction in which it is incorporated;
- (b) it has the power and is duly authorised to enter into, perform and deliver the Documentation and to enter into and perform all obligations thereunder and the Transactions contemplated by the Documentation;
- (c) it complies with the applicable Eligibility Criteria;
- (d) the person entering into these Terms and Conditions and entering into any Transaction on its behalf is or, in the case of any Transaction, will at the time such Transaction is entered into be duly authorised so to act;
- (e) it has obtained all authorisations of any governmental authority or regulatory body required by it in connection with the Documentation and the Transactions to be effected under it and such authorisations remain in full force and effect;
- (f) the execution, delivery and performance of the Documentation and the Transactions to be effected under the Documentation do not and will not conflict with or violate:
  - (i) any law, regulation, by-law or rule applicable to the Counterparty;
  - (ii) its constitutional documents; or
  - (iii) any agreement or instrument binding upon it or any of its assets;

- (g) the obligations expressed to be assumed by it in the Documentation are legal, valid, binding and enforceable obligations;
- (h) it is entering into, and will duly perform its obligations under, the Documentation and all Transactions as principal;
- (i) no transfer taxes, value added tax, registration charges or other similar taxes or charges have arisen or will arise in respect of any assets transferred to or by the Counterparty or the Bank in connection with any Transaction and the Counterparty is not required to make any deduction for or on account of tax from any payment it may make under the Documentation or any Transaction;
- (j) at the time of sale or transfer to the Bank of any assets or payment or transfer to the Bank of any cash, it will have the full and unqualified right to make such sale, payment or transfer and that upon such sale, payment or transfer the Bank will receive the same free and clear of any lien, claim, charge or encumbrance; and
- (k) at the time of any purchase by the Counterparty of any assets it will have the full and unqualified right to make such purchase.

4.2 The Bank represents and warrants to the Counterparty that:

- (a) BEAPFF is a company duly incorporated and validly existing under the laws of the United Kingdom;
- (b) BEAPFF has the power and is duly authorised to enter into, perform and deliver the Documentation and to enter into and perform all obligations thereunder and the Transactions contemplated by the Documentation;
- (c) it is duly authorised by BEAPFF to enter into, perform and deliver the Documentation and to enter into and perform all obligations thereunder and the Transactions contemplated by the Documentation; and
- (d) at the time of sale or transfer to the Counterparty of any assets or payment or transfer to the Counterparty of any cash, BEAPFF will have the full and unqualified right to make such sale, payment or transfer and that upon such sale, payment or transfer the Counterparty will receive the same free and clear of any lien, claim, charge or encumbrance.

4.3 All representations and warranties made and given under these Terms and Conditions shall be deemed to be made upon the receipt by the Counterparty of the Admission Letter and repeated on each occasion on which a Transaction is entered into.

4.4 The Counterparty undertakes to the Bank that:

- (a) it will, to the extent permitted by applicable law, inform the Bank in advance of any proposed change relating to it that may result in the applicable Eligibility Criteria no longer being complied with; and

(b) it will comply with the provisions of the Documentation.

4.5 The Counterparty acknowledges and agrees that the Bank:

(a) will enter into any Transactions on an execution only basis and will not be providing any investment or other advice to the Counterparty in connection with such Transactions; and

(b) will not be subject to any regulatory obligations in connection with its activities under the APF.

## **5. NO WAIVERS**

No indulgence or concession granted by the Bank and no omission or delay on the part of the Bank in exercising any right, power or privilege under the Documentation or under any Transaction shall act as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Bank provided in these Terms and Conditions, the remainder of the Documentation and any Transaction are cumulative with and not exclusive of any rights of lien, sale, set off or retention or other rights or remedies which the Bank may have at common law, by statute or otherwise howsoever.

## **6. ENTIRE AGREEMENT**

6.1 The Documentation sets out the entire terms and conditions and understanding between the Parties in respect of the subject matter thereof. It is agreed that:

(a) the Counterparty has not entered into the Documentation or any Transaction in reliance upon any representation, warranty or undertaking of the Bank which is not expressly set out or referred to in the Documentation;

(b) the Counterparty shall not have any remedy in respect of misrepresentation or untrue statement made by the Bank which is not contained in the Documentation nor for any breach of warranty which is not contained in the Documentation; and

(c) this clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

6.2 The provisions of the Documentation and of each Transaction shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in title and permitted assigns.

6.3 The rights and obligations of the Counterparty under the Documentation and under each Transaction shall not be capable of assignment by the Counterparty without the prior written consent of the Bank.

## **7. COMMUNICATIONS**

7.1 Communications shall be made by any method that the Bank may specify in the Market Notice, the Settlement Procedures or otherwise.

7.2 The Bank shall be entitled without further enquiry to accept and act on any request, instruction or other communication or purported request, instruction or other communication received by the Bank notwithstanding that it may afterwards be discovered that that request, instruction or other communication was made in error, was not genuine or was not authorised by the Counterparty or (if sent electronically) was not initiated through the terminal and associated equipment from which it was purported to have been sent. Any such request, instruction or other communication on which the Bank so acts shall for all purposes of the Documentation be treated as effective and binding on the Counterparty in accordance with its terms and, accordingly, neither the Bank nor any of its servants or agents, shall incur any liability or be responsible for any loss, damage, expense or claim whatsoever by reason of so acting except to the extent that such loss, claim or expense is shown to be attributable to wilful default or reckless disregard of the Bank's obligations on the part of the Bank or its servants or agents. Neither the Bank nor any of its servants or agents shall be liable for any loss of business, loss of profit or consequential damage of any kind whatsoever.

7.3 The Counterparty undertakes at all times:

- (a) to procure that all requests, instructions and other communications are made or given by persons who are duly authorised to make or give them on its behalf and are within the scope of the authority of the person making or giving them;
- (b) to provide the Bank upon request with a list of all persons who are for the time being authorised to send requests, instructions and other communications by electronic mail or sign facsimile transmissions relating to Transactions or otherwise relating to the matters to which the Documentation relates and with such particulars with respect to such persons as may from time to time be specified by the Bank in the Market Notice, the Settlement Procedures or otherwise;
- (c) promptly to provide the Bank with particulars of any change in the persons and particulars referred to in clause 7.3(b);
- (d) to comply with any procedures set out in the Market Notice, the Settlement Procedures or otherwise agreed between the Counterparty and the Bank with respect to the identification, confirmation or authentication of requests, instructions or other communications by the Counterparty or with the maintenance of security with respect to or in connection with such requests, instructions or other communications.

## **8. NOTICES**

8.1 Subject to clause 8.1(a), any notice required to be given under the Documentation shall be deemed to be duly served if left at or sent by registered or

recorded delivery post or by electronic mail or other electronic means or facsimile transmission, in the case of a notice to the Bank at the Bank of England, Threadneedle Street, London EC2R 8AH, e-mail address APF\_Notice@bankofengland.co.uk, fax number 020 7601 5810, marked for the attention of Head of Sterling Markets Division, or to such other address or fax number as the Bank may notify to the Counterparty in writing, and in the case of notice to the Counterparty at the address, e-mail address and fax number notified by the Counterparty to the Bank in writing from time to time. Any such notice shall be deemed to be duly served:

- (a) if left at the address of the Party to be served, at the time when it is so left (or, if it is left on a day that is not a Business Day, at 8.15 a.m. on the next following Business Day);
- (b) if sent by post, on the second Business Day following the day of posting;
- (c) if sent by electronic mail, when the message is received; and
- (d) if sent by facsimile transmission, when confirmation of receipt is received.

8.2 In proving the giving of a notice under clause 8.1 it shall be sufficient to prove that the notice was delivered at the address for service or that the envelope containing such notice was properly addressed and posted (as the case may be).

8.3 The Market Notice or the Settlement Procedures may provide for any notice to be given orally, including by telephone; any such notice shall be deemed to be served when it is actually given.

8.4 Where in these Terms and Conditions any matter may be specified or prescribed by the Bank, then the Bank may (but shall not be obliged to) do so by way of a Market Notice.

## **9. COSTS, EXPENSES AND INDEMNITY**

9.1 Each Party agrees to pay and bear its own costs and expenses incurred in connection with the preparation and execution of the Documentation and the entering into of each Transaction.

9.2 The Counterparty agrees to pay or reimburse to the Bank and BEAPFF all of their costs, charges, fees and expenses (including legal expenses) together with any value added tax thereon, incurred in connection with the enforcement of any of its rights under the Documentation or any Transaction.

9.3 The Counterparty agrees to indemnify the Bank and BEAPFF on demand for any and all losses, claims, costs, liabilities and expenses each of them may suffer or incur as a result of or in connection with a failure by the Counterparty to perform any of its obligations under the Documentation or a Transaction.



## **10. MARKET NOTICE, APF BTENDER TERMS AND SETTLEMENT PROCEDURES**

10.1 These Terms and Conditions are supplemented by the Market Notice, the APF Btender Terms and the Settlement Procedures, which set out further terms governing the Transactions and explain the procedures involved.

10.2 In the event of any conflict between the terms of these Terms and Conditions and the terms of the Market Notice, the APF Btender Terms or the Settlement Procedures, these Terms and Conditions shall prevail.

## **11. AMENDMENTS**

The Bank may amend these Terms and Conditions and any other part of the Documentation either generally or in particular circumstances, from time to time. Any such amendment shall apply with effect from such time as may be specified by the Bank and shall unless otherwise specified apply to any Transaction which is outstanding at the time that such amendment is made.

## **12. COMMENCEMENT, SUSPENSION AND TERMINATION**

12.1 These Terms and Conditions commence on the date of receipt by the Counterparty of the Admission Letter.

12.2 A Counterparty may terminate its status as a counterparty in the APF at any time by giving to the Bank not less than ten Business Days' prior notice in writing (such termination becoming effective upon expiry of such notice).

12.3 The Bank may suspend for such period as the Bank thinks fit or terminate the Counterparty's status as a counterparty in the APF at any time at its absolute discretion.

12.4 Any termination under clause 12.2 or 12.3 shall not affect any Transaction which is then outstanding, and the provisions of the Documentation shall continue to apply to each such Transaction until all the obligations of each Party to the others under the Documentation and each such Transaction have been fully performed.

## **13. PAYMENTS AND DELIVERIES**

13.1 Save as otherwise provided in the Documentation, all payments under or in connection with these Terms and Conditions shall be in immediately available freely convertible funds and made in sterling and, save as otherwise provided or specified by the Bank, all payments shall be made on the due date for payment thereof free from set-off or counterclaim and without deduction or withholding for or on account of any taxes of whatsoever nature imposed, levied collected, withheld or assessed, unless such a deduction or withholding is required by law.

13.2 In the event of such a deduction or withholding, the amount of any payment due from the Counterparty shall be increased to an amount which (after making any such deduction or withholding) leaves the Bank with a net amount equal to the

amount which would have been due if no such deduction or withholding had been required to be made.

13.3 The Counterparty shall (within three Business Days of demand by the Bank) indemnify the Bank and BEAPFF against any loss, liability or cost which the Bank (in its absolute discretion) determines will be or has been (directly or indirectly) suffered by the Bank or BEAPFF for or on account of tax in relation to a payment received or receivable (or any payment deemed to be received or receivable) under or in connection with any Transaction, except to the extent that the loss, liability or cost has been compensated for by an increased payment under clause 13.2.

13.4 Save as otherwise provided in these Terms and Conditions, if any amount payable or any securities deliverable under these Terms and Conditions would, but for this clause, be payable or deliverable on a day which is not a Business Day, then such payment or transfer shall be made on the next following Business Day.

13.5 All right, title and interest in any purchased assets shall pass from one Party to the other on transfer in accordance with the terms of the Documentation free from all liens, claims, charges and encumbrances. The Parties shall execute and deliver all documents, give all instructions and do all things necessary to ensure that title passes in accordance with this clause.

13.6 A transfer of assets by the Counterparty under any Transaction shall be effected by transfer to such account as the Bank may specify, being an account at the Bank or at a sub-custodian of the Bank.

#### **14. SET-OFF**

Without prejudice to any other rights, powers or remedies (whether provided by contract, law or otherwise), the Bank may without prior notice to the Counterparty set off any monies due and payable (but not paid) from the Counterparty and any other obligation (whether or not matured or contingent and whether or not arising under these Terms and Conditions) to BEAPFF or to the Bank against any obligation owed by BEAPFF or, as the case may be, the Bank to the Counterparty, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

#### **15. CONFIDENTIALITY**

15.1 Each Party (the *Recipient*) undertakes to keep confidential all information given to it by the other Party (the *Disclosing Party*) or otherwise in the possession of the Recipient relating to or otherwise concerning the Disclosing Party or the APF (which shall include, without limitation, access to and participation in the APF, details of any Transaction and any decision by either Party to enter into or not to enter into any Transaction or to terminate any Transaction or any part of any Transaction).

15.2 The undertakings in clause 15 above will not apply to information which:

- (a) is disclosed with the prior written consent of the Disclosing Party;

- (b) at the time of supply is in the public domain;
- (c) subsequently comes into the public domain, except through breach of the undertakings set out in clause 15.1;
- (d) is already in the lawful possession of the Recipient;
- (e) subsequently comes lawfully into the possession of the Recipient from a third party who does not owe the Disclosing Party an obligation of confidence in relation to it;
- (f) is disclosed in confidence to the Recipient's professional advisers or auditors where such disclosure is considered necessary by the Recipient, acting reasonably, and provided that, where reasonably practicable, the Recipient making such disclosure has notified the Disclosing Party in advance of the proposed form, timing, nature and purpose of the disclosure;
- (g) is disclosed in confidence to a member of the same Group as the Recipient and provided that, where reasonably practicable, the Recipient making such disclosure has notified the Disclosing Party in advance of the proposed form, timing, nature and purpose of the disclosure; or
- (h) is required to be disclosed by law, regulation or any governmental or competent regulatory authority, whether in the United Kingdom or elsewhere, provided that, save in the case of a disclosure made by the Bank which falls within clause 15.3, the Recipient making such disclosure has promptly notified the Disclosing Party in advance of the proposed form, timing, nature and purpose of the disclosure.

15.3 Nothing in clause 15 shall preclude the disclosure of information in any case in which disclosure is made by the Bank or any of its officers or employees:

- (a) in the course of any disclosure relating to the APF; provided that such disclosure does not identify or name (i) the Counterparty and, (ii) in circumstances where the Counterparty acts as dealer in commercial paper for an underlying issuer, that issuer;
- (b) to the Financial Services Authority, Her Majesty's Treasury, HM Revenue & Customs or any other governmental body or competent regulatory authority, whether in the United Kingdom or elsewhere;
- (c) for the purposes of any criminal investigation whatever which is being or may be carried out or of any criminal proceedings whatever which have been or may be initiated, in either case whether in the United Kingdom or elsewhere; or
- (d) for the purpose of enabling or assisting the Bank to discharge its functions as a monetary authority.

## **16. TIME OF THE ESSENCE**

Time shall be of the essence in the Documentation.

## **17. LEGAL RELATIONSHIP**

No provision of the Documentation shall be deemed to create or evidence a partnership between any of the Parties or, save in relation to BEAPFF and the Bank, make any Party the agent of another Party for any purpose.

## **18. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to the Documentation shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

## **19. GOVERNING LAW**

The Documentation and each Transaction and any non-contractual obligations arising out of or in relation to the Documentation and any Transaction shall be governed by and construed in accordance with English law.

## **20. JURISDICTION**

20.1 The Parties agree that the courts of England are (subject to clauses 20.2 and 20.3 below) to have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims and disputes relating to any non-contractual obligations) which may arise out of or in connection with the Documentation or any Transaction and for such purposes irrevocably submit to the jurisdiction of the English courts.

20.2 The provision contained in clause 20.1 above, is included for the benefit of the Bank and BEAPFF. Accordingly, notwithstanding the exclusive agreement in clause 20.1 above the Bank and BEAPFF shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of Council Regulation EC No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the Convention on Jurisdiction and the Enforcement of Judgments signed on 27 September 1968, or the Convention on Jurisdiction and Enforcement of Judgments signed on 16 September 1988.

20.3 The Bank and BEAPFF may in their absolute discretion take proceedings in the courts of any other country which may have jurisdiction, to whose jurisdiction the Counterparty irrevocably submits.

20.4 The Counterparty irrevocably waives any objections to the jurisdiction of any court referred to in this clause 20.

20.5 The Counterparty irrevocably agrees that a judgment or order of any court referred to in this clause 20 in connection with the Documentation, any Transaction or any non-contractual obligations arising out of or in relation to the Documentation or any Transaction is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

## **21. AGENT FOR SERVICE OF PROCESS**

If the Counterparty has no registered office or place of business in England, it shall appoint and maintain to act as its agent for service of process a person with an address for service in England and shall notify the Bank of the name and address of such person. If the agent at any time ceases to act as such, the Counterparty shall appoint a replacement agent having an address for service in England and shall notify the Bank of the name and address of the replacement agent. In the absence of such appointment and notification, the Bank shall be entitled by notice to the Counterparty to appoint a replacement agent on the Counterparty's behalf and at the Counterparty's expense.