

# BERKELEY FUTURES LIMITED

Authorised and Regulated by the Financial Conduct Authority



Version: July 2011

## RETAIL CLIENT AGREEMENT (NO ADVICE)

*This client agreement, together with any Schedule(s), and accompanying documents (including the cover letter and the account opening form as amended from time to time) (this "Agreement") sets out the terms of the contract between you and us. It is, therefore, very much in your interests to read it carefully. Please let us know as soon as possible if there is anything which you do not understand.*

### MODULE A – INTRODUCTION

#### 1. GENERAL INFORMATION

- 1.1 **Information about us:** We, Berkeley Futures Limited, are authorised and regulated by the Financial Conduct Authority ("FCA"). Our principal place of business is 18 Savile Row, London W1S 3PW. The FCA's registered office is 25 The North Colonnade, London, E14 5HS.
- 1.2 **Communication with us:** You may communicate with us in writing (including fax), by email or other electronic means, or orally (including by telephone). The language of communication shall be English, and you will receive documents and other information from us in English. Our website at [www.bfl.co.uk](http://www.bfl.co.uk) contains further details about us and our services, and other information relevant to this Agreement.
- 1.3 **Capacity:** We act as principal and not as agent on your behalf. We shall treat you as a retail client for the purposes of the FCA Rules. You have the right to request a different client categorisation. However, if you do so and we agree to such categorisation, you will lose the protection afforded by certain FCA Rules. This may include, but is not limited to: (a) the requirement for us to act in accordance with your best interests; (b) our obligation to provide appropriate information to you before providing the services; (c) the restriction on the payment or receipt by us of any inducements; (d) our obligation to achieve best execution in respect of your orders; (e) the requirement to implement procedures and arrangements which provide for the prompt, fair and expeditious execution of your orders; (f) our obligation to ensure that all information we provide to you is fair, clear and not misleading; and (g) the requirement that you receive from us adequate reports on the services provided to you. You act as principal and not as agent (or trustee) on behalf of someone else.
- 1.4 **Commencement:** This Agreement supersedes any previous agreement between you and us on the same subject matter. This Agreement shall apply to all Transactions contemplated under this Agreement.
- 1.5 **Subject to Applicable Regulations:** This Agreement and all Transactions are subject to Applicable Regulations so that: (i) if there is any conflict between this Agreement and any Applicable Regulations, the latter will prevail; (ii) nothing in this Agreement shall exclude or restrict any obligation which we have to you under Applicable Regulations; (iii) we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Regulations; (iv) all Applicable Regulations

and whatever we do or fail to do in order to comply with them will be binding on you; and (v) such actions that we take or fail to take for the purpose of compliance with any Applicable Regulations shall not render us or any of our directors, officers, employees or agents liable.

- 1.6 **Market action:** If a Market (or intermediate broker or agent, acting at the direction of, or as a result of action taken by, a Market) or regulatory body takes any action which affects a Transaction, or becomes insolvent or is suspended from operating, then we may take any action which we, in our reasonable discretion, consider desirable to correspond with such action or event or to mitigate any loss incurred as a result of such action or event. Any such action shall be binding on you. If a Market or regulatory body makes an enquiry in respect of any of your Transactions, you agree to co-operate with us and to promptly supply information requested in connection with the enquiry and you agree to share any such information with our group companies and/or with regulatory bodies.
- 1.7 **Scope of this Agreement:** This Agreement sets out the basis on which we will provide services to you. This Agreement governs each Transaction entered into or outstanding between us on or after the execution of this Agreement.
- 1.8 **Charges:** You shall pay our charges as agreed with you from time to time, any taxes imposed by any competent authority on any account opened or Transaction effected by or cleared for you; any fees or other charges imposed by a Market or any clearing organisation; interest on any amount due to us at the rates then charged by us (and which are available on request); any fines imposed by any competent authority where attributable to your conduct; and any other value added or other applicable taxes of any of the foregoing, including any withholding tax. A copy of our current charges *will be provided to you when your account is opened*. Any alteration to charges will be notified to you before the time of the change.
- 1.9 **Additional costs:** You should be aware of the possibility that other taxes or costs may exist that are not paid through or imposed by us.
- 1.10 **Payments:** All payments to us under this Agreement shall be made in same day funds in such currency as we may from time to time specify to the bank account designated by us for such purposes. All such payments shall be made by you without any deduction or withholding.
- 1.11 **Base Currency:** For the purposes of any calculation hereunder, we may convert amounts denominated in any currency into such other currency as we may from time to time specify, at such rate prevailing at the time of the calculation as we shall reasonably select.
- 1.12 **Remuneration and sharing of charges:** We may receive remuneration from, or share charges with, an Associate or other third party in connection with Transactions carried out on your behalf. Details of such remuneration or sharing arrangements are available on request.
- 1.13 **Description of Service:** A description of the main characteristics of the service we will provide is enclosed.
- 1.14 **Language:** This Agreement is supplied to you in English and we will continue to communicate with you in English for the duration of this Agreement.

1.15 **Conflicts:** In the event of any conflict between the terms of this Agreement and our website this Agreement will prevail. In the event of any conflict between the terms of this Agreement and the terms of other documentation that has been signed between you and us, the terms of this Agreement shall prevail.

## 2. **RIGHT TO CANCEL**

2.1 **Right to Cancel:** You should note that you are not entitled to cancel this Agreement (but you can terminate it as set out in the Termination clause).

## MODULE B – ADVICE

### 3. **NO ADVICE**

3.1 **Execution only business:** We deal on an execution-only basis and do not advise on the merits of particular Transactions, or their taxation consequences.

3.2 **Own judgement and suitability:** In asking us to enter into any Transaction, you represent that you have been solely responsible for making your own independent appraisal and investigations into the risks of the Transaction. You represent that you have sufficient knowledge, market sophistication, professional advice and experience to make your own evaluation of the merits and risks of any Transaction. We give you no warranty as to the suitability of the products traded under this Agreement and assume no fiduciary duty in our relations with you.

3.3 **Incidental information and investment research:** Where we do provide trading recommendations, market commentary or other information:

- (a) this is incidental to your dealing relationship with us. It is provided solely to enable you to make your own investment decisions and does not amount to advice;
- (b) if the document contains a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on to any such person or category of persons;
- (c) we give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the tax consequences of any Transaction;
- (d) where information is in the form of a document containing a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on contrary to that restriction;
- (e) you accept that prior to despatch, we may have acted upon it ourselves or made use of the information on which it is based. We do not make representations as to the time of receipt by you and cannot guarantee that you will receive such information at the same time as other clients. Any published research reports or recommendations may appear in one or more screen information service.

Please refer to our Conflicts of Interest Policy for further information on how we manage conflicts which would affect the impartiality of investment research we provide to you.

- 3.4 **Information from you:** We are obliged under Applicable Regulations to obtain information about your knowledge and experience in the investment field so that we can assess whether the service or product envisaged is appropriate for you. If you elect not to provide such information to us, or if you provide insufficient information, we will not be able to determine whether the service or product envisaged is appropriate for you. We shall assume that information about your knowledge and experience provided from you to us or provided by another firm through which we receive an instruction to perform a service for you, is accurate and we will have no responsibility to you if such information changes or becomes inaccurate unless you have informed us of such changes .

## MODULE C – OUR RELATIONSHIP WITH YOU

### 4. YOUR INFORMATION

- 4.1 **Confidentiality and data protection:** We will treat all information we hold about you as private and confidential, even when you are no longer a client. You agree, however, that we and other companies in our group may:

- (a) use your information to administer and operate your account and monitor and analyse its conduct, provide services to you, assess any credit limit or other credit decision (and the interest rate, fees and other charges to be applied to your account) and enable us to carry out statistical and other analysis;
- (b) disclose your information to other companies in our group; those who provide services to us or act as our agents; anyone to whom we transfer or propose to transfer any of our rights or duties under this Agreement; credit reference agencies or other organisations that help us and others make credit decisions and reduce the incidence of fraud or in the course of carrying out identity, fraud prevention or credit control checks; where we are required to do so by Applicable Regulations, where there is a public duty to disclose or where our interests require disclosure; at your request; or with your consent (and in the case of a joint account, we may disclose to any of you information obtained by us from any of you in relation to the account);
- (c) use your information, unless you have told us that you do not wish us to do so, to inform you (by post, telephone, email or other medium, using the contact details you have given us) about products and services offered by us, other companies in our group or selected third parties which we believe may be of interest to you; and
- (d) transfer your information to any country, including countries outside the European Economic Area which may not have strong data protection laws, for any of the purposes described in this clause.

- 4.2 **Your rights:** You may have rights of access to some or all of the information we hold about you, to have inaccurate information corrected and to tell us that you do not wish to receive marketing information, under data protection law. If you wish to exercise any of these rights, please contact us in writing.

## MODULE D – ORDER PLACEMENT

### 5. INSTRUCTIONS AND BASIS OF DEALING

- 5.1 ***Placing of instructions:*** You may give us instructions in writing (including fax), by email or other electronic means or orally (including by telephone), unless we tell you that instructions can only be given in a particular way. If you give instructions by telephone, your conversation will be recorded. If any instructions are received by us by telephone, computer or other medium we may ask you to confirm such instructions in writing. We shall be authorised to follow instructions notwithstanding your failure to confirm them in writing. Instructions for the simultaneous sale and purchase of a financial instrument on behalf of the same beneficial owner may not be given under this Agreement. In this Agreement "instructions" and "orders" have the same meaning.
- 5.2 ***Authority and Authorised Persons:*** You shall provide us with a list of the officers, employees or agents who are authorised, either alone or with others, to act on your behalf in the giving of instructions and performance of any other acts, discretions or duties under this Agreement ("**Authorised Person(s)**") together with specimens of their signatures if written instructions are to be given. We shall be entitled to rely upon the continued authority of an Authorised Person for those purposes until we receive notice from you to the contrary. Any communications purporting to limit your or such Authorised Person's authority (such as, for example, authorised signatories lists) will not be accepted and will not be binding on us.
- 5.3 ***Cancellation/withdrawal of instructions:*** We can only cancel your instructions if we have not acted upon those instructions. Instructions may only be withdrawn or amended by you with our consent.
- 5.4 ***Right not to accept orders:*** We may, but shall not be obliged to, accept instructions to enter into a Transaction. If we decline to enter into a proposed Transaction, we shall not be obliged to give a reason but we shall promptly notify you accordingly.
- 5.5 ***Control of orders prior to execution:*** We have the right (but no obligation) to set limits and/or parameters to control your ability to place orders at our absolute discretion. Such limits and/or parameters may be amended, increased, decreased, removed or added to by us at our absolute discretion and may include (without limitation): (i) controls over maximum order amounts and maximum order sizes; (ii) controls over our total exposure to you; (iii) controls over prices at which orders may be submitted (to include (without limitation) controls over orders which are at a price which differs greatly from the market price at the time the order is submitted to the order book); (iv) controls over the Electronic Services (to include (without limitation) any verification procedures to ensure that any particular order or orders has come from you); or (v) any other limits, parameters or controls which we may be required to implement in accordance with Applicable Regulations.
- 5.6 ***Execution of orders:*** We shall use our reasonable endeavours to execute any order promptly, but in accepting your orders we do not represent or warrant that it will be possible to execute such order or that execution will be possible according to your instructions. If we encounter any material difficulty relevant to the proper carrying out of an order on your behalf we shall notify you promptly. We shall carry out an order on your behalf only when the relevant Market is open for dealings, and we shall deal with any instructions received outside Market hours as soon as possible when that relevant Market is next open for business (in accordance with the rules of that Market). You agree that we may execute an order on your behalf outside a Market.

When you give us a specific instruction, our order execution policy will not apply, and we may be unable to take the steps described in such policy to obtain the best possible result in executing your order. You confirm that you have read and agree to our order execution policy. We will notify you of any material changes to our order execution policy, but it is your responsibility to check for any other changes to our order execution policy as published from time to time at [www.bfl.co.uk](http://www.bfl.co.uk). We will consider the continued placement of orders by you to constitute your continued consent to our order execution policy as in effect from time to time.

- 5.7 **Crossing of orders:** We may arrange for a Transaction to be executed, either in whole or in part, by selling an investment to you from another client, or a client of an Associate of ours, or vice-versa. We shall not give you prior notice if we arrange for a Transaction to be executed in this manner.
- 5.8 **Aggregation of orders:** We may combine your order with our own orders and orders of other clients. By combining your orders with those of other clients we must reasonably believe that this is in the overall best interests of our clients. However, aggregation may result in you obtaining a less favourable price in relation to a particular order. Please refer to our order allocation policy on our website at [www.bfl.co.uk](http://www.bfl.co.uk) for more information.
- 5.9 **Confirmations:** We shall send you confirmations at the end of the trading day for any Transactions that we have executed on your behalf on that trading day, by electronic mail to the e-mail address on record for you. It is your responsibility to inform us of any change to your e-mail address, the non-receipt of a confirmation, or whether any confirmations are incorrect before settlement. Confirmations shall, in the absence of manifest error, be conclusive and binding on you, unless we receive from you objection in writing within two Business Days of despatch to you or we notify you of an error in the confirmation within the same period.
- 5.10 **Performance and settlement:** You may promptly deliver any instructions, money, documents or property deliverable by you under a Transaction in accordance with that Transaction as modified by any instructions given by us for the purpose of enabling us to perform our obligations under the relevant matching Transaction on a Market or with an intermediate broker. We may also, at our discretion, take actions to facilitate the performance of a Transaction where you have been unable to do so (for example, to enable 'buy in' before an applicable deadline).
- 5.11 **Intermediate brokers and other agents:** We may, at our entire discretion, arrange for any Transaction to be effected with or through the agency of an intermediate broker, who may be an Associate of ours, and may not be in the United Kingdom. Neither we nor our respective directors, officers, employees or agents will be liable to you for any act or omission of an intermediate broker or agent. No responsibility will be accepted for intermediate brokers or agents selected by you.
- 5.12 **Position limits:** Position limits may be imposed by a Market and we may require you to limit the number of open positions which you may have with us at any time and we may in our sole discretion close out any one or more Transactions in order to ensure that such position limits are maintained.
- 5.13 **Regulatory Reporting:** Under Applicable Regulations, we may be obliged to make information about certain Transactions public. You agree and acknowledge that any and all proprietary rights in such Transaction information are owned by us and you

waive any duty of confidentiality attaching to the information which we reasonably disclose.

## MODULE E – ELECTRONIC TRADING TERMS

### 6. ELECTRONIC TRADING TERMS

- 6.1 **Scope:** These clauses apply to your use of any Electronic Services.
- 6.2 **Access:** Once you have gone through the security procedures associated with an Electronic Service provided by us, you will get access to such service, unless agreed otherwise or stated on our website. Our Electronic Services will normally be available between 11.00 p.m. and 10.15 p.m. London time on Business Days. We may change our security procedures at any time and we will tell you of any new procedures that apply to you as soon as possible.
- 6.3 **Restrictions on services provided:** There may be restrictions on the number of Transactions that you can enter into on any one day and also in terms of the total value of those Transactions when using an Electronic Service. You acknowledge that some Markets place restrictions on the types of orders that can be directly transmitted to their electronic trading systems and the transmission of such orders to the Market is dependent upon the accurate and timely receipt of prices or quotes from the relevant Market or market data provider. You acknowledge that a Market may cancel such an order when upgrading its systems, trading screens may drop the record of such an order, and you enter such orders at your own risk.
- 6.4 **Right Of Access:** In respect of any Market to which we allow you to receive information or data using Electronic Services, we may at any time or times, on reasonable notice (which, in certain circumstances, may be immediate) enter (or instruct our or the Market's subcontractors to enter) your (or, in a co-hosting situation, third parties') premises and/or servers and inspect your (or, in a co-hosting situation, third parties') System to ensure that it complies with the requirements notified by us to you from time to time and that you are using Electronic Services in accordance with this Agreement and any requirements of any relevant Market or Applicable Regulations.
- 6.5 **Access requirements:** You will be responsible for providing the System to enable you to use an Electronic Service.
- 6.6 **Virus detection:** You will be responsible for the installation and proper use of any virus detection/scanning program we require from time to time.
- 6.7 **Maintaining standards:** When using an Electronic Service you must:
- (a) ensure that the System is maintained in good order and is suitable for use with such Electronic Service;
  - (b) run such tests and provide such information to us as we shall reasonably consider necessary to establish that the System satisfies the requirements notified by us to you from time to time;
  - (c) carry out virus checks on a regular basis;

- (d) inform us immediately of any unauthorised access to an Electronic Service or any unauthorised Transaction or instruction which you know of or suspect and, if within your control, cause such unauthorised use to cease; and
  - (e) not at any time leave the terminal from which you have accessed such Electronic Service or let anyone else use the terminal until you have logged off such Electronic Service.
- 6.8 **System defects:** In the event you become aware of a material defect, malfunction or virus in the System or in an Electronic Service, you will immediately notify us of such defect, malfunction or virus and cease all use of such Electronic Service until you have received permission from us to resume use.
- 6.9 **Intellectual Property:** All rights in patents, copyrights, design rights, trade marks and any other intellectual property rights (whether registered or unregistered) relating to the Electronic Services remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify the Electronic Services or any part or parts thereof unless expressly permitted by us in writing, reverse compile or disassemble the Electronic Services, nor purport to do any of the same or permit any of the same to be done, except in so far as such acts are expressly permitted by law. Any copies of the Electronic Services made in accordance with law are subject to the terms and conditions of this Agreement. You shall ensure that all the licensors' trademarks and copyright and restricted rights notices are reproduced on these copies. You shall maintain an up-to-date written record of the number of copies of the Electronic Services made by you. If we so request, you shall as soon as reasonably practical, provide to us a statement of the number and whereabouts of copies of the Electronic Services. In the event that you receive any data, information or software via an Electronic Service other than that which you are entitled to receive pursuant to this Agreement, you will immediately notify us and will not use, in any way whatsoever, such data, information or software.
- 6.10 **Liability And Indemnity:** Without prejudice to any other terms of this Agreement, relating to the limitation of liability and provision of indemnities, the following clauses shall apply to our Electronic Services.
- (a) **System errors:** We shall have no liability to you for damage which you may suffer as a result of transmission errors, technical faults, malfunctions, illegal intervention in network equipment, network overloads, malicious blocking of access by third parties, internet malfunctions, interruptions or other deficiencies on the part of internet service providers. You will be responsible for all orders entered on your behalf via the Electronic Services and you will be fully liable to us for the settlement of any Transaction arising from them. You acknowledge that access to Electronic Services may be limited or unavailable due to such system errors, and that we reserve the right upon notice to suspend access to Electronic Services for this reason.
  - (b) **Delays:** Neither we nor any third party software provider accept any liability in respect of any delays, inaccuracies, errors or omissions in any data provided to you in connection with an Electronic Service. For the avoidance of doubt, Electronic Services may not be provided on a continuous basis and neither we nor any third party provider accept any liability in this respect.
  - (c) **Viruses from an Electronic Service:** We shall have no liability to you (whether in contract or in tort, including negligence) in the event that any

viruses, worms, software bombs or similar items are introduced into the System via an Electronic Service or any software provided by us to you in order to enable you to use the Electronic Service, **provided that** we have taken reasonable steps to prevent any such introduction.

- (d) **Viruses from your System:** You will ensure that no computer viruses, worms, software bombs or similar items are introduced into our computer system or network and you will indemnify us on demand for any loss that we suffer arising as a result of any such introduction.
- (e) **Unauthorised use:** We shall not be liable for any loss, liability or cost whatsoever arising from any unauthorised use of the Electronic Service. You shall on demand indemnify, protect and hold us harmless from and against all losses, liabilities, judgements, suits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using an Electronic Service by using your designated passwords, whether or not you authorised such use.
- (f) **Markets:** We shall not be liable for any act taken by or on the instruction of a Market, clearing house or regulatory body.

6.11 **Suspension or permanent withdrawal with notice:** We may permanently withdraw an Electronic Service, by giving you 10 days written notice.

6.12 **Immediate suspension or permanent withdrawal:** We have the right, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to use any Electronic Service, or any part thereof, without notice, where we consider it necessary or advisable to do so, in our discretion and in good faith, for example due to your non-compliance with the Applicable Regulations, breach of any provisions of this Agreement, on the occurrence of an Event of Default, network problems, failure of power supply, for maintenance, or to protect you when there has been a breach of security or for other reasons (including reasons not related to electronic trading and/or use of the Electronic Services). In addition, the use of an Electronic Service may be terminated automatically upon the termination (for whatever reason) of (i) any licence granted to us which relates to the Electronic Service; or (ii) this Agreement. The use of an Electronic Service may be terminated immediately if an Electronic Service is withdrawn by any Market or we are required to withdraw the facility to comply with Applicable Regulations.

6.13 **Effects of termination:** In the event of a termination of the use of an Electronic Service for any reason, upon request by us, you shall, at our option, return to us or destroy all hardware, software and documentation we have provided you in connection with such Electronic Service and any copies thereof.

## **MODULE F – CLIENT MONEY**

### **7. CLIENT MONEY**

7.1 **Client money:** We treat money received from you or held by us on your behalf in accordance with the Client Money Rules.

7.2 **Deposit with approved bank and passing money to other third parties:** Subject to the following provisions, we will deposit money received from you with an approved bank. We may also pass money received from you to a third party (for example, a

market, intermediate broker, OTC counterparty or clearing house) to hold or control in order to effect a Transaction through or with that person or to satisfy your obligation to provide collateral in respect of a Transaction. We have no responsibility for any acts or omissions of any third party to whom we pass money received from you. The third party to whom we pass money may hold it in an omnibus account [and it may not be possible to separate such money from our money, or the third party's money]. In the event of the insolvency or any other analogous proceedings in relation to that third party, we will only have an unsecured claim against the third party on behalf of you and our other clients, and you will be exposed to the risk that the money received by us from the third party is insufficient to satisfy the claims of you and all other clients with claims in respect of the relevant account.

- 7.3 ***Placing money in a qualifying money market fund:*** We may place money received from you in a qualifying money market fund, as defined in the Client Money Rules. As a result, any money will not be held in accordance with the Client Money Rules and the units in the relevant fund will be held in accordance with the Custody Rules. Please let us know if you do not wish your money to be placed in a qualifying money market fund.
- 7.4 ***Interest:*** We shall not pay you interest, nor account to you for profits earned, on client money *other than as expressly confirmed by us to you in writing.*<sup>1</sup>
- 7.5 ***Overseas banks, intermediate broker, settlement agent or OTC counterparty:*** We may hold client money on your behalf outside the EEA. The legal and regulatory regime applying to any such bank or person will be different from that of the United Kingdom and in the event of the insolvency or any other analogous proceedings in relation to that bank or person, your money may be treated differently from the treatment which would apply if the money was held with a bank in an account in the United Kingdom. We will not be liable for the insolvency, acts or omissions of any third party referred to in this sub-clause.
- 7.6 ***Right of application of client money:*** Where any Obligations owing to us from you are due and payable to us, we may cease to treat as client money so much of the money held on your behalf as equals the amount of those Obligations in accordance with the Client Money Rules. You agree that we may apply that money in or towards satisfaction of all or part of those Obligations due and payable to us. For the purposes of these client money terms, any such obligations become immediately due and payable, without notice or demand by us, when incurred by you or on your behalf.
- 7.7 ***Additional security:*** As a continuing security for the payment and discharge of the Secured Obligations you grant to us, with full title guarantee, a first fixed security interest in all your money that we may cease to treat as client money in accordance with the Client Money Rules. You agree that we shall be entitled to apply that money in or towards satisfaction of all or any part of the Secured Obligations which are due and payable to us but unpaid.
- 7.8 ***Unclaimed client money:*** You agree that we may cease to treat your money as client money if there has been no movement on your balance for six years. We shall write to you at your last known address informing you of our intention of no longer treating your balance as client money and giving you 28 days to make a claim.

## MODULE G – MARGIN AND COLLATERAL

### 8. MARGINING ARRANGEMENTS

- 8.1 **Contingent liability:** Where we effect or arrange a Transaction involving an option, future or contract for differences you should note that, depending upon the nature of the Transaction, you may be liable to make further payments when the Transaction fails to be completed or upon the earlier settlement or closing out of your position. You will be required to make further variable payments by way of margin against the purchase price of the investment, instead of paying (or receiving) the whole purchase (or sale) price immediately. The movement in the market price of your investment will affect the amount of margin payment you will be required to make. We will monitor your margin requirements on a daily basis and we will inform you as soon as it is reasonably practicable of the amount of any margin payment required under this clause.
- 8.2 **Margin call:** You agree to pay us on demand such sums by way of margin as are required from time to time under the Rules of any relevant Market (if applicable) or as we may in our discretion reasonably require for the purpose of protecting ourselves against loss or risk of loss on present, future or contemplated Transactions under this Agreement.
- 8.3 **Failure to meet margin call:** Please note that in the event that you fail to meet a margin call, we may (and after five Business Days will) close out the position unless we have previously granted you a loan or credit in accordance with Applicable Regulations.
- 8.4 **Form of margin:** Unless otherwise agreed, margin must be paid in cash. The currency of the cash margin you pay to us shall be the currency of the relevant underlying Transaction (if applicable), although we may in our discretion decide to accept payments of cash margin in other currencies from time to time.
- 8.5 **Right of Retention:** If there is an Event of Default or this Agreement terminates, we will not be obliged to repay any cash margin for so long as it is required under the Rules of any relevant Market or to the extent that you owe, or may owe, Obligations to us. In determining the amounts of cash margin, your Obligations, and our obligations to you, we may apply such methodology (including judgements as to the future movement of markets and values) as we consider appropriate, consistent with Applicable Regulations.
- 8.6 **Set-off upon default or termination:** If there is an Event of Default or this Agreement terminates, we may set off the balance of cash margin owed by us to you against your Obligations (as reasonably valued by us) as they become due and payable to us and we shall be obliged to pay to you (or entitled to claim from you, as appropriate) only the net balance after all Obligations have been taken into account.
- 8.7 **Negative pledge:** You undertake neither to create nor to have outstanding any security interest whatsoever over, nor to agree to assign or transfer, any of the cash [or non-cash margin] transferred to us, except a lien routinely imposed on all securities in a clearing system in which such securities may be held.
- 8.8 **Non-cash margin:** Where we agree to accept non-cash collateral, it must be in a form acceptable to us. The value of the non-cash collateral and the proportion of that value

to be taken into account for margin purposes shall be determined by us in our absolute discretion.

- 8.9 **Security interest:** As a continuing security for the performance of the Secured Obligations under or pursuant to this Agreement, you grant to us, with full title guarantee, a first fixed security interest in all non-cash margin now or in the future provided by you to us or to our order or under our direction or control or that of a Market or otherwise standing to the credit of your account under this Agreement or otherwise held by us or our Associates or our nominees on your behalf.
- 8.10 **Further assurance:** You agree to execute such further documents and to take such further steps as we may reasonably require to perfect our security interest over, be registered as owner of or obtain legal title to the margin, secure further the Secured Obligations, enable us to exercise our rights or to satisfy any market requirement.
- 8.11 **Substitution:** You may not withdraw or substitute any property subject to our security interest without our consent.
- 8.12 **Power to charge:** You agree that we may, to the extent that any of the margin constitutes "financial collateral" and this Agreement and your obligations hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "**Regulations**")), free of any adverse interest of yours or any other person, grant a security interest over margin provided by you to cover any of our obligations to an intermediate broker or Market, including obligations owed by virtue of the positions held by us or other of our clients.
- 8.13 **Power of sale:** If an Event of Default occurs, we may exercise the power to sell all or any part of the margin. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to any exercise by us of our rights to consolidate mortgages or our power of sale. We shall be entitled to apply the proceeds of sale or other disposal in paying the costs of such sale or other disposal and in or towards satisfaction of the Secured Obligations.
- 8.14 **Power of appropriation:** To the extent that any of the margin constitutes "financial collateral" and this Agreement and your obligations hereunder constitute a "security financial collateral arrangement" under the Regulations, we shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations. For this purpose, you agree that the value of such financial collateral so appropriated shall be the amount of the margin, together with any accrued but unposted interest, at the time the right of appropriation is exercised. The parties further agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.
- 8.15 **Lien:** In addition and without prejudice to any rights to which we may be entitled under this Agreement or any Applicable Regulations, we shall have a general lien on all property held by us or our Associates or our nominees on your behalf until the satisfaction of the Secured Obligations.

## MODULE H – REPRESENTATIONS

### 9. REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 **Representations and warranties:** You represent and warrant to us on the date this Agreement comes into effect and as of the date of each Transaction that:

- (a) If you are an individual, you have reached the age of 18 years or over and have full capacity to enter into this Agreement;
- (b) you have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully to enter into and perform this Agreement and each Transaction and to grant the security interests and powers referred to in this Agreement;
- (c) the persons entering into this Agreement and each Transaction on your behalf have been duly authorised to do so;
- (d) this Agreement, each Transaction and the obligations created under them both are binding upon you and enforceable against you in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, order, charge or agreement by which you are bound;
- (e) you act as principal and sole beneficial owner (but not as trustee) in entering into this Agreement and each Transaction;
- (f) any information which you provide or have provided to us in respect of your financial position, domicile or other matters is accurate and not misleading in any material respect;
- (g) you are willing and financially able to sustain a total loss of funds resulting from Transactions and trading in such Transactions is a suitable investment vehicle for you; and
- (h) except as otherwise agreed by us, you are the sole beneficial owner of all margin you transfer under this Agreement, free and clear of any security interest whatsoever other than a lien routinely imposed on all securities in a clearing system in which such securities may be held.

9.2 **Covenants:** You covenant to us that:

- (a) you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in this clause;
- (b) you are willing and able, upon request, to provide us with information in respect of your financial position, domicile or other matters;
- (c) you will promptly notify us of the occurrence of any Event of Default or of any event that may become an Event of Default with respect to yourself or any Credit Support Provider;
- (d) you will (i) comply with all Applicable Regulations in relation to this Agreement and any Transaction, so far as they are applicable to you; and (ii)

use all reasonable steps to comply with all Applicable Regulations in relation to this Agreement and each Transaction, where such Applicable Regulations do not apply to you but your cooperation is needed to help us comply with our obligations;

- (e) you will not send orders or otherwise take any action that could create a false impression of the demand or value for a [security] [financial instrument], or send orders which you have reason to believe are in breach of Applicable Regulations. You shall observe the standard of behaviour reasonably expected of persons in your position and not take any step which would cause us to fail to observe the standard of behaviour reasonably expected of persons in our position; and
- (f) upon demand, you will provide us with such information as we may reasonably require to evidence the matters referred to in this clause or to comply with any Applicable Regulations.

## **MODULE I – DEFAULT, NETTING AND TERMINATION**

### **10. EVENTS OF DEFAULT**

10.1 *Events of Default:* The following shall constitute Events of Default:

- (a) you fail to make any payment when due under this Agreement or to make or take delivery of any property when due under, or to observe or perform any other provision of this Agreement;
- (b) you commence a voluntary case or other procedure seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official (each a "**Custodian**") of you or any substantial part of your assets, or if you take any corporate action to authorise any of the foregoing, and in the case of a reorganisation, arrangement or composition, we do not consent to the proposals;
- (c) an involuntary case or other procedure is commenced against you seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent) or seeking the appointment of a Custodian of you or any substantial part of your assets and such involuntary case or other procedure either (a) has not been dismissed within five days of its institution or presentation or (b) has been dismissed within such period but solely on the grounds of an insufficiency of assets to cover the costs of such case or other procedure;
- (d) you die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefore, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness

before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of your property, undertaking or assets (tangible and intangible);

- (e) you or any Credit Support Provider (or any Custodian acting on behalf of either of you or a Credit Support Provider) disaffirms, disclaims or repudiates any obligation under this Agreement or any guarantee, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party ("**Credit Support Provider**"), or of you, in favour of us supporting any of your obligations under this Agreement (each a "**Credit Support Document**");
- (f) any representation or warranty made or given or deemed made or given by you under this Agreement or any Credit Support Document proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given;
- (g) (i) any Credit Support Provider fails, or you yourself fail to comply with or perform any agreement or obligation to be complied with or performed by you or it in accordance with the applicable Credit Support Document; (ii) any Credit Support Document expires or ceases to be in full force and effect prior to the satisfaction of all your obligations under this Agreement, unless we have agreed in writing that this shall not be an Event of Default; (iii) any representation or warranty made or given or deemed made or given by any Credit Support Provider pursuant to any Credit Support Document proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given; or (iv) any event referred to in paragraphs (b) to (d) or (h) of this sub-clause occurs in respect of any Credit Support Provider;
- (h) you are dissolved, or, if your capacity or existence is dependent upon a record in a formal register, the registration is removed or ends, or any procedure is commenced seeking or proposing your dissolution, removal from such a register, or the ending of such a registration;
- (i) where you or your Credit Support Provider is a partnership, any of the events referred to in paragraphs (b) to (d) or (h) of sub-clause 1 of this clause occurs in respect of one or more of your or its partners;
- (j) we consider it necessary or desirable to prevent what we consider is or might be a violation of any Applicable Regulation or good standard of market practice;
- (k) we consider it necessary or desirable for our own protection or any action is taken or event occurs which we consider might have a material adverse effect upon your ability to perform any of your obligations under this Agreement;

## 11. **NETTING**

- 11.1 ***Rights on Default:*** On the occurrence of an Event of Default, we may exercise our rights under this clause, except that , if so specified by us in the Individually Agreed Terms Schedule attached to these Terms of Business or otherwise, in the case of the

occurrence of any Event of Default specified in paragraphs (b) or (c) of the definition of Events of Default (each a "**Bankruptcy Default**"), the automatic termination provision of this clause shall apply.

- 11.2 **Liquidation Date:** Subject to the following sub-clause, at any time following the occurrence of an Event of Default, we may, by notice to you, specify a date (the "**Liquidation Date**") for the termination and liquidation of Netting Transactions in accordance with this clause.
- 11.3 **Automatic termination:** Where so specified in the Individually Agreed Terms Schedule, the date of the occurrence of any Bankruptcy Default shall automatically constitute a Liquidation Date, without the need for any notice by us and the provisions of the following sub-clauses shall then apply.
- 11.4 **Calculation of Liquidation Amount:** Upon the occurrence of a Liquidation Date:
- (a) neither of us shall be obliged to make any further payments or deliveries under any Netting Transactions which would, but for this clause, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount;
  - (b) we shall (on, or as soon as reasonably practicable after, the Liquidation Date) determine (discounting if appropriate), in respect of each Netting Transaction referred to in paragraph (a), the total cost, loss or, as the case may be, gain, in each case expressed in the Base Currency specified by us as such in the Individually Agreed Terms Schedule or otherwise in writing or, failing any such specification, the lawful Currency of the United Kingdom (and, if appropriate, including any loss of bargain, cost of funding or, without duplication, cost, loss or, as the case may be, gain, as a result of the termination, liquidation, obtaining, performing or re-establishing of any hedge or related trading position) as a result of the termination, pursuant to this Agreement, of each payment or delivery which would otherwise have been required to be made under such Netting Transaction (assuming satisfaction of each applicable condition precedent and having due regard, if appropriate, to such market quotations published on, or official settlement prices set by the relevant Market as may be available on, or immediately preceding, the date of calculation); and
  - (c) we shall treat each cost or loss to us, determined as above, as a positive amount and each gain by us, so determined, as a negative amount and aggregate all of such amounts to produce a single, net positive or negative amount, denominated in the Base Currency (the "**Liquidation Amount**").
- 11.5 **Payer:** If the Liquidation Amount determined pursuant to this clause is a positive amount, you shall pay it to us and if it is a negative amount, we shall pay it to you. We shall notify you of the Liquidation Amount, and by whom it is payable, immediately after the calculation of such amount.
- 11.6 **Other transactions:** Where termination and liquidation occurs in accordance with this clause, we shall also be entitled, at our discretion, to terminate and liquidate, in accordance with the provisions of this clause, any other transactions entered into between us which are then outstanding.

- 11.7 **Payment:** The Liquidation Amount shall be paid in the Base Currency by the close of business on the Business Day following the completion of the termination and liquidation under this clause (converted as required by applicable law into any other currency, any costs of such conversion to be borne by you, and (if applicable) deducted from any payment to you). Any Liquidation Amount not paid on the due date shall be treated as an unpaid such amount and bear interest, at the average rate at which overnight deposits in the currency of such payment are offered by major banks in the London interbank market as of 11.00 am (London time) (or, if no such rate is available, at such reasonable rate as we may select) *plus 4%* per annum for each day for which such amount remains unpaid.
- 11.8 **Payments:** Unless a Liquidation Date has occurred or has been effectively set, we shall not be obliged to make any payment or delivery scheduled to be made by us under a Netting Transaction for as long as an Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination hereunder, or any combination thereof) an Event of Default with respect to you has occurred and is continuing.
- 11.9 **Additional rights:** Our rights under this clause shall be in addition to, and not in limitation or exclusion of, any other rights which we may have (whether by agreement, operation of law or otherwise).
- 11.10 **Application of netting to Netting Transactions:** Subject to the Individually Agreed Terms Schedule, this clause applies to each Netting Transaction entered into or outstanding between us on or after the date this Agreement takes effect.
- 11.11 **Single agreement:** This Agreement, the particular terms applicable to each Netting Transaction, and all amendments to any of them shall together constitute a single agreement between us. We both acknowledge that all Netting Transactions entered into on or after the date this Agreement takes effect are entered into in reliance upon the fact that the Agreement and all such terms constitute a single agreement between us.
- 11.12 **Other agreements:** Subject to sub-clause 6 of this clause, the provisions of this clause shall not apply to any Transaction which is subject to liquidation and termination under another agreement. However, any sum resulting from a liquidation and termination under another agreement, may be set-off against the Liquidation Amount.

## 12. RIGHTS ON DEFAULT

- 12.1 **Default:** On an Event of Default or at any time after we have determined, in our absolute discretion, that you have not performed (or we reasonably believe that you will not be able or willing in the future to perform) any of your obligations to us, in addition to any rights under the Netting Clause we shall be entitled without prior notice to you:
- (a) instead of returning to you investments equivalent to those credited to your account, to pay to you the fair market value of such investments at the time we exercise such right, and/or
  - (b) to sell such of your investments as are in our possession or in the possession of any nominee or third party appointed under or pursuant to this Agreement, in each case as we may in our absolute discretion select or and upon such terms as we may in our absolute discretion think fit (without being responsible for

any loss or diminution in price) in order to realise funds sufficient to cover any amount due by you hereunder, and/or

- (c) to close out, replace or reverse any Transaction, buy, sell, borrow or lend or enter into any other Transaction or take, or refrain from taking, such other action at such time or times and in such manner as, at our sole discretion, we consider necessary or appropriate to cover, reduce or eliminate our loss or liability under or in respect of any of your contracts, positions or commitments, and/or
- (d) to terminate this Agreement immediately.

### 13. **TERMINATION WITHOUT DEFAULT**

13.1 **Termination:** Unless required by Applicable Regulations, either party may terminate this Agreement (and the relationship between us) by giving ten days written notice of termination to the other.

Upon terminating this Agreement, all amounts payable by you to us will become immediately due and payable including (but without limitation):

- (a) all outstanding fees, charges and commissions; and
- (b) any dealing expenses incurred by terminating this Agreement; and
- (c) any losses and expenses realised in closing out any Transactions or settling or concluding outstanding obligations incurred by us on your behalf.

## **MODULE J – INDEMNITIES AND LIMITATION OF LIABILITY**

### 14. **EXCLUSIONS, LIMITATIONS AND INDEMNITY**

14.1 **General Exclusion:** Neither we nor our directors, officers, employees, or agents shall be liable for any losses, damages, costs or expenses, whether arising out of negligence, breach of contract, misrepresentation or otherwise, incurred or suffered by you under this Agreement (including any Transaction or where we have declined to enter into a proposed Transaction) unless such loss is a reasonably foreseeable consequence and arises directly from our or their respective gross negligence, wilful default or fraud. In no circumstance, shall we have liability for losses suffered by you or any third party for any special or consequential damage, loss of profits, loss of goodwill or loss of business opportunity arising under or in connection with this Agreement, whether arising out of negligence, breach of contract, misrepresentation or otherwise. Nothing in this Agreement will limit our liability for death or personal injury resulting from our negligence.

14.2 **Adverse implications of Transactions:** Without limitation, we do not accept liability for any adverse tax, accounting or other implications of any Transaction whatsoever.

14.3 **Changes in the market:** Without limitation, we do not accept any liability by reason of any delay or change in market conditions before any particular Transaction is effected.

14.4 **Limitation of Liability:** We shall not be liable to you for any partial or non-performance of our obligations hereunder by reason of any cause beyond our

reasonable control, including without limitation any breakdown, delay, malfunction or failure of transmission, communication or computer facilities, industrial action, act of terrorism, act of God, acts and regulations of any governmental or supra national bodies or authorities or the failure by the relevant intermediate broker or agent, agent or principal of our custodian, sub-custodian, dealer, Market, clearing house or regulatory or self-regulatory organisation, for any reason, to perform its obligations. Nothing in this Agreement will exclude or restrict any duty or liability we may have to you under the regulatory system (as defined in the FCA Rules), which may not be excluded or restricted thereunder.

- 14.5 **Entire Agreement:** You acknowledge that you have not relied on or been induced to enter into this Agreement by a representation other than those expressly set out in this Agreement. We will not be liable to you (in equity, contract or tort under the Misrepresentation Act 1967) for a representation that is not set out in this Agreement and that is not fraudulent.
- 14.6 **Indemnity:** You shall pay to us such sums as we may from time to time require in or towards satisfaction of any debit balance on any of your accounts with us and, on a full indemnity basis, any losses, liabilities, costs or expenses (including legal fees), taxes, imposts and levies which we may incur or be subjected to with respect to any of your accounts or any Transaction or any matching Transaction on a Market or with an intermediate broker or as a result of any misrepresentation by you or any violation by you of your obligations under this Agreement (including any Transaction) or by the enforcement of our rights.

## MODULE K – MISCELLANEOUS AND GOVERNING LAW

### 15. MISCELLANEOUS

- 15.1 **Amendments:** We have the right to amend the terms of this Agreement. If we make any change to this Agreement, we will give at least ten Business Days written notice to you. Such amendment will become effective on the date specified in the notice. Unless otherwise agreed, an amendment will not affect any outstanding order or Transaction or any legal rights or obligations which may already have arisen.
- 15.2 **Surviving Terms:** Outstanding rights and obligations (in particular relating to the Netting Module, the Indemnities and Limitation of Liability Module and the Miscellaneous and Governing Law Module) and Transactions shall survive the termination of this Agreement, and shall continue to be governed by its provisions and the particular clauses agreed between us in relation to such Transactions until all obligations have been fully performed.
- 15.3 **Notices:** Unless otherwise agreed, all notices, instructions and other communications to be given by us under this Agreement shall be given to the address or fax number provided by you to us. Likewise, all notices, instructions and other communications to be given by you under this Agreement shall be given to the address or fax number (in the Individually Agreed Terms Schedule) and/or by notice in writing by either party. You will notify us of any change of your address in accordance with this clause.
- 15.4 **Electronic Communications:** Subject to Applicable Regulations, any communication between us using electronic signatures shall be binding as if it were in writing. Orders or instructions given to you via e-mail or other electronic means will constitute evidence of the orders or instructions given.

- 15.5 **Recording of calls:** If you give instructions by telephone, your conversation will be recorded. We may record telephone conversations without use of a warning tone to ensure that the material terms of the Transaction, and any other material information relating to the Transaction is promptly and accurately recorded. Such records will be our sole property and accepted by you as evidence of the orders or instructions given.
- 15.6 **Our records:** Our records, unless shown to be wrong, will be evidence of your dealings with us in connection with our services. You will not object to the admission of our records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer. You will not rely on us to comply with your record keeping obligations, although records may be made available to you on request at our absolute discretion.
- 15.7 **Your records:** You agree to keep adequate records in accordance with Applicable Regulations to demonstrate the nature of orders submitted and the time at which such orders are submitted.
- 15.8 **Investor Protection Schemes:** We are a member of the Financial Services Compensation Scheme (the "**Scheme**") in the United Kingdom. The Scheme is only available to certain types of claimants and claims. Payments to eligible claimants under the Scheme will vary depending on the type of protected claim (for example deposits or investments) the claimants hold with respect to the relevant institution. Payments under the Scheme in respect of investments are subject to a maximum payment to any eligible investor of GBP 50,000. Payments under the scheme in respect of deposits are subject to a maximum payment to any eligible depositor of GBP 85,000. Further details of the Scheme are available on request or at the Scheme's official website at [www.fscs.org.uk](http://www.fscs.org.uk).
- 15.9 **Complaints procedure:** We are obliged to put in place internal procedures for handling complaints fairly and promptly. You may submit a complaint to us, for example by letter, telephone, e-mail, or in person. We will send you a written acknowledgement of your complaint promptly following receipt, enclosing details of our complaints procedures, including when and how you may be able to refer your complaint to the Financial Ombudsman Service. Please contact us if you would like further details regarding our complaints procedures.
- 15.10 **Third Party Rights:** This Agreement shall be for the benefit of and binding upon us both and our respective successors and assigns. You shall not assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer your rights or obligations under this Agreement or any interest in this Agreement, without our prior written consent, and any purported assignment, charge or transfer in violation of this clause shall be void. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999.
- 15.11 **Time of essence:** Time shall be of the essence in respect of all obligations of yours under this Agreement (including any Transaction).
- 15.12 **Rights and remedies:** The rights and remedies provided under this Agreement are cumulative and not exclusive of those provided by law. We shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to you. No failure by us to exercise or delay by us in exercising any of our rights under this Agreement (including any Transaction) or otherwise shall operate as a waiver of those or any other rights or remedies. No single or partial exercise of a

right or remedy shall prevent further exercise of that right or remedy or the exercise of another right or remedy.

15.13 **Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained.

15.14 **Partial invalidity:** If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

## 16. GOVERNING LAW AND JURISDICTION

16.1 **Governing law:** A Transaction which is subject to the Rules of a Market shall be governed by the law applicable to it under those Rules. Subject thereto, this Agreement and all non-contractual obligations and other matters arising from it or in connection with it shall be governed by and construed in accordance with English law.

16.2 **Law applicable to relationship prior to the conclusion of the Agreement:** The law applicable to the relationship between us prior to the conclusion of this Agreement is English law.

16.3 **Jurisdiction:** Each of the parties irrevocably:

(a) agrees for our benefit that the courts of England shall have jurisdiction to settle any suit, action or other proceedings relating to this Agreement ("**Proceedings**") and irrevocably submits to the jurisdiction of such courts (**provided that** this shall not prevent us from bringing an action in the courts of any other jurisdiction); and

(b) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court and agrees not to claim that such Proceedings have been brought in an inconvenient forum or that such court does not have jurisdiction over it.

16.4 **Waiver of immunity and consent to enforcement:** You irrevocably waive to the fullest extent permitted by applicable law, with respect to yourself and your revenue and assets (irrespective of their use or intended use) all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any courts, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which you or your revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agree that you will not claim any immunity in any Proceedings. You consent generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings, including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.

- 16.5 **Service of process:** If you are situated outside England and Wales, process by which any Proceedings in England are begun may be served on you by being delivered to the address in England or Wales nominated by you for this purpose in the Individually Agreed Terms Schedule. This does not affect our right to serve process in another manner permitted by law.

## MODULE L – INTERPRETATION

### 17. INTERPRETATION

- 17.1 **Interpretation:** In this Agreement:

**"Applicable Regulations"** means:

- (a) FCA Rules or any other rules of a relevant regulatory authority;
- (b) the Rules of the relevant Market; and
- (c) all other applicable laws, rules, procedures, guidance and regulations (including, without limitation, accounting rules and anti-money laundering/sanctions legislation);

**"Associate"** means an undertaking in the same group as us, a representative whom we or an undertaking in the same group as us appoint, or any other person with whom we have a relationship that might reasonably be expected to give rise to a community of interest between us and them;

**"Business Day"** means a day which is not a Saturday or a Sunday and upon which banks are open for business in London;

**"Client Money Rules"** means the provisions of the FCA's Client Assets Sourcebook relating to client money;

**"Credit Support Provider"** means any person who has entered into any guarantee, hypothecation, agreement, margin or security agreement in our favour in respect of your obligations under this Agreement;

**"Electronic Services"** means a service provided by us, for example an internet trading service offering clients access to information and trading facilities, via an internet service, a WAP service and/or an electronic order routing system;

**"Event of Default"** means any of the events of default as listed in paragraphs (a) to (l) of sub-clause 1 of the Clause headed "Default, Netting and Termination";

**"Market"** means any regulated market, clearing house, central clearing counterparty or multilateral trading facility (as such terms are defined in the FCA Rules);

**"Netting Transaction"** means a Transaction which is intended to be subject to the clause entitled "Netting" and for such purposes is identified as a "Netting Transaction" in the Individually Agreed Terms Schedule or by its own terms.

**"Obligations"** means obligations present or future, actual or contingent or prospective, owing or which may become owing by you to us under any Transaction or designated by us for these purposes in writing (including in the Individually Agreed Terms Schedule).

"**Rules**" means articles, rules, regulations, guidance, procedures and customs, as in force from time to time.

"**Secured Obligations**" mean all Obligations owing by you to us after the application of any rights of set-off arising under this Agreement or by operation of law.

"**System**" means all computer hardware and software, equipment, network facilities and other resources and facilities needed to enable you to use an Electronic Service;

"**Transaction**" means any transaction subject to this Agreement, and includes:

- (i) a contract made on a Market or pursuant to the Rules of a Market;
- (ii) contract which is subject to the Rules of a Market;
- (iii) a contract which would (but for its term to maturity only) be a contract made on, or subject to the Rules of a Market and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the Rules of a Market;

in any of cases (i), (ii) and (iii) being a future, option, contract for differences, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof;

- (iv) a transaction which is matched with any transaction within paragraph (i), (ii) or (iii) of this definition; or
- (v) any other transaction which we both agree, in any specific Module, the Individually Agreed Terms Schedule or otherwise, shall be a Transaction.

17.2 **General interpretation:** A reference in this Agreement to a "clause" or "Schedule" shall be construed as a reference to, respectively, a clause or Schedule of this Agreement, unless the context requires otherwise. References in this Agreement to any statute or statutory instrument or Applicable Regulations include any modification, amendment, extension or re-enactment thereof, as in force from time to time. A reference in this Agreement to "document" shall be construed to include any electronic document. The masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires. Words and phrases defined in the FCA's Rules have the same meaning in this Agreement unless expressly defined in this Agreement.

17.3 **Schedules:** The clauses contained in the [attached] Schedule(s) (as amended from time to time) shall apply. We may from time to time send to you further Schedules in respect of Markets or Transactions. In the event of any conflict between the clauses of any Schedule and this Agreement, the clauses of the Schedule shall prevail. The fact that a clause is specifically included in a Schedule in respect of one Market or Transaction shall not preclude a similar clause being expressed or implied in relation to any other Market or Transaction. So far as applicable, paragraph 1 of Part 1 of the LIFFE Schedule shall be construed as also applying to and having effect in relation to all other Markets.

17.4 **Headings:** Headings are for ease of reference only and do not form part of this Agreement.



## PRODUCT INFORMATION SCHEDULE

### FUTURES AND OPTIONS PRODUCT INFORMATION

Version: September 2007

1. UNDERSTANDING THE RISK OF DERIVATIVE PRODUCTS
  - 1.1 You should not deal in derivative products unless you understand the nature of the contract you are entering into and the extent of your exposure to risk. You should also be satisfied that the contract is suitable for you in the light of your circumstances and financial position.
  - 1.2 Although futures and options can be utilised for the management of investment risk, some of these products are unsuitable for many investors. Derivative products will not always act in the same way. Relationships with the broker may differ depending on the product and style of the transaction, and clearing houses may not always owe you a direct commitment. Different products involve different levels of exposure to risk and in deciding whether to trade in such products you should be aware of the following points.
  - 1.3 You should be aware that the product information and advice contained in this Module is not necessarily a comprehensive description of all aspects of the product.
2. Futures
  - 2.1 Transactions in futures involve the obligation to make, or to take, delivery of the underlying asset of the contract at a future date, or in some cases to settle the position with cash.
  - 2.2 The risk of loss in trading commodity futures contracts can be substantial. You should, therefore, carefully consider whether such trading is suitable for you in light of your circumstances and financial resources. Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit your losses to the intended amounts, since market conditions on the exchange where the order is placed may make it impossible to execute such orders.
  - 2.3 Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market reaches a daily price fluctuation limit ("limit move").
  - 2.4 The 'gearing' or 'leverage' often obtainable in futures trading means that a small deposit or down payment can lead to large losses as well as gains. It also means that a relatively small movement can lead to a proportionately much larger movement in the value of your investment, and this can work against you as well as for you.
  - 2.5 Futures transactions have a contingent liability, and you should be aware of the implications of this, in particular the margining requirements. You may sustain a total loss of the funds that you deposit with your broker to establish or maintain a position in the commodity futures market, and you may incur losses beyond these amounts. If the market moves against your position, you may be called upon by your broker to deposit a substantial amount of additional margin funds, on short notice, in order to maintain your position. If you do not provide the required funds within the time required by your broker, your position may be liquidated at a loss, and you will be liable for any resulting deficit in your account.
  - 2.6 You should consult your broker concerning the nature of the protections available to safeguard funds or property deposited for your account.
3. Options
  - 3.1 There are many different types of options with different characteristics subject to the following conditions.
    - 3.1.1 **Buying options:** Buying options involves less risk than selling options because, if the price of the underlying asset moves against you, you can simply allow the option to lapse. The maximum loss is limited to the premium, plus any commission or other transaction charges. However, if you buy a call option on a futures contract and you later exercise the option, you will acquire the future. This will expose you to the risks described under 'futures' and 'contingent liability investment transactions'.

- 3.1.2 Writing options: If you write an option, the risk involved is considerably greater than buying options. You may be liable for margin to maintain your position and a loss may be sustained well in excess of the premium received. By writing an option, you accept a legal obligation to purchase or sell the underlying asset if the option is exercised against you, however far the market price has moved away from the exercise price. If you already own the underlying asset which you have contracted to sell (when the options will be known as 'covered call options') the risk is reduced. If you do not own the underlying asset ('uncovered call options') the risk can be unlimited. Only experienced persons should contemplate writing uncovered options, and then only after securing full details of the applicable conditions and potential risk exposure.
- 3.1.3 Traditional options: Certain London Stock Exchange ("LSE") member firms under special LSE rules write a particular type of option called a 'traditional option'. These may involve greater risk than other options. Two-way prices are not usually quoted and there is no access to a market via a Market on which to close out an open position or to effect an equal and opposite transaction to reverse an open position. It may be difficult to assess its value or for the seller of such an option to manage his exposure to risk.
- 3.2 Certain options Markets operate on a margined basis, under which buyers do not pay the full premium on their option at the time they purchase it. In this situation you may subsequently be called upon to pay margin on the option up to the level of your premium. If you fail to do so as required, your position may be closed or liquidated in the same way as a futures position.
- 4. Contracts for differences
  - 4.1 Futures and options contracts can also be referred to as a contract for differences. These can be options and futures on the FTSE 100 index or any other index, as well as currency and interest rate swaps. However, unlike other futures and options, these contracts can only be settled in cash. Investing in a contract for differences carries the same risks as investing in a future or an option. Transactions in contracts for differences may also have a contingent liability and you should be aware of the implications of this.
- 5. Foreign markets
  - 5.1 Foreign markets will involve different risks from the UK markets. In some cases the risks will be greater. On request, your firm must provide an explanation of the relevant risks and protections (if any) which will operate in any foreign markets, including the extent to which it will accept liability for any default of a foreign firm through whom it deals. The potential for profit or loss from transactions on foreign markets or in foreign denominated contracts will be affected by fluctuations in foreign exchange rates. Such transactions may also be affected by exchange controls that could prevent or delay performance.
- 6. Contingent liability transactions
  - 6.1 Contingent liability transactions, which are margined, require you to make a series of payments against the purchase price, instead of paying the whole purchase price immediately.
  - 6.2 If you trade in futures, contracts for differences or sell options you may sustain a total loss of the margin you deposit with your firm to establish or maintain a position. If the market moves against you, you may be called upon to pay substantial additional margin at short notice to maintain the position. If you fail to do so within the time required, your position may be liquidated at a loss and you will be responsible for the resulting deficit.
  - 6.3 Even if a transaction is not margined, it may still carry an obligation to make further payments in certain circumstances over and above any amount paid when you entered the contract.
- 7. Limited liability transactions
  - 7.1 Before entering into a limited liability transaction, you should obtain from your firm, or the firm with whom you are dealing, a formal written statement confirming that the extent of your loss liability on each transaction will be limited to an amount agreed by you before you enter into the transaction.
  - 7.2 The amount you can lose in limited liability transactions will be less than in other margined transactions, which have no predetermined loss limit. Nevertheless, even though the extent of loss will be subject to

the agreed limit, you may sustain the loss in a relatively short time. Your loss may be limited, but the risk of sustaining a total loss to the amount agreed is substantial.

## 8. Suspensions of trading

8.1 Under certain trading conditions it may be difficult or impossible to liquidate a position. This may occur, for example, at times of rapid price movement if the price rises or falls in one trading session to such an extent that under the rules of the relevant Market trading is suspended or restricted or if the systems of the relevant Market cannot function for any reason. Placing a stop-loss order will not necessarily limit your losses to the intended amounts, because market conditions may make it impossible to execute such an order at the stipulated price.

## 9. Clearing house protections

9.1 On many Markets, the performance of a transaction by your firm (or third party with whom he is dealing on your behalf) is 'guaranteed' by the Market or clearing house. However, this guarantee is unlikely in most circumstances to cover you, the client, and may not protect you if your firm or another party defaults on its obligations to you. Not all Markets act in the same way. Further specific information about trading on the London Metal Exchange ("LME") can be found at [www.lme.co.uk](http://www.lme.co.uk). Further specific information about trading derivative products on Euronext.liffe can be found at [http://www.euronext.com/home\\_derivatives-2153-EN.html](http://www.euronext.com/home_derivatives-2153-EN.html).

## 10. Insolvency

10.1 Your firm's insolvency or default, or that of any other brokers involved with your transaction, may lead to positions being liquidated or closed out without your consent. In certain circumstances, you may not get back the actual assets which you lodged as collateral and you may have to accept any available payments in cash. On request, your firm must provide an explanation of the extent to which it will accept liability for any insolvency of, or default by, other firms involved with your transactions.

## 11. Warrants

11.1 A warrant is a time-limited right to subscribe for shares, debentures, loan stock or government securities and is exercisable against the original issuer of the underlying securities. Warrants often involve a high degree of gearing, so that a relatively small movement in the price of the underlying security results in a disproportionately large movement, unfavourable or favourable, in the price of the warrant. The prices of warrants can therefore be volatile.

11.2 It is essential for anyone who is considering purchasing warrants to understand that the right to subscribe which a warrant confers is invariably limited in time with the consequence that if the investor fails to exercise this right within the pre-determined timescale then the investment becomes worthless.

11.3 You should not buy a warrant unless you are prepared to sustain a total loss of the money you have invested plus any commission or other transaction charges.

11.4 Transactions in off-Market warrants may involve greater risk than dealing in Market traded warrants because there is no access to a market through which to liquidate your position, or to assess the value of the warrant or the exposure to risk. Bid and offer prices need not be quoted, and even where they are, they will be established by dealers in these instruments and consequently it may be difficult to establish what is a fair price.

## 12. Securitised derivatives

12.1 These instruments may give you a [time-limited right/absolute right/right] to acquire or sell one or more types of investment which is normally exercisable against someone other than the issuer of that investment, or they may give you rights under a contract for differences which allow for speculation on fluctuations in the value of the property of any description or an index, such as the FTSE 100 index. In both cases, the investment or property may be referred to as the "underlying instrument".

12.2 These instruments often involve a high degree of gearing or leverage, so that a relatively small movement in the price of the underlying investment results in a much larger movement, unfavourable or favourable, in the price of the instrument. The price of these instruments can therefore be volatile.

- 12.3 These instruments have a limited life, and may (unless there is some form of guaranteed return of the amount you are investing in the product) expire worthless if the underlying instrument does not perform as expected.
- 12.4 You should only buy this product if you are prepared to sustain a [total loss/substantial loss/loss] of the money you have invested plus any commission or other transaction charges.
- 12.5 You should consider carefully whether or not this product is suitable for you in light of your circumstances and financial position, and if in any doubt please seek professional advice.
13. General Information
- 13.1 Exchange-traded futures and options are not subject to a prospectus.
- 13.2 Exchange-traded futures and options may give rise to liabilities for the investor, calculated in accordance with Market or clearing house rules.
- 13.3 Your firm may not deal directly in the relevant Market but may act through one or more brokers or intermediaries. In such cases, your positions may be affected by the performance of those third parties in addition to the performance of your firm. In addition, settlement of such transactions may not be effected via the Market itself but may be effected on the books of your firm or of a broker or intermediary if such transactions can be crossed with equal but opposite orders of another participant transacting through the same firm, broker or intermediary. Your rights in such circumstances differ from those you would enjoy if your transaction was effected in the Market.
- 13.4 The price and liquidity of any investment depends upon the availability and value of the underlying asset, which can be affected by a number of extrinsic factors including, but not limited to, political, environmental and technical. Such factors can also affect the ability to settle or perform on time or at all.
- 13.5 Any payments made or received in relation to any investment may be subject to tax and you should seek professional advice in this respect.
- 13.6 Where you are unable to transfer a particular instrument which you hold, to exit your commitment under that instrument, you may have to offset your position by either buying back a short position or selling a long position. Such an offsetting transaction may have to be over the counter and the terms of such a contract may not match entirely those of the initial instrument. For example, the price of such a contract may be more or less than you received or paid for the sale or purchase of the initial instrument.

**INDIVIDUALLY AGREED TERMS SCHEDULE**

1. Transaction

1.1 Any order executed, whether OTC or exchange-traded, by us on your behalf shall be a Transaction for the purpose of paragraph (v) of the definition of "Transaction".

1.2 All Transactions shall be Netting Transactions and subject to termination and liquidation under the clause headed "Netting" following an Event of Default.

2. Markets

Each of the following shall be a Market for the purposes of this Agreement:

All Markets agreed between the Parties from time to time. For these purposes, unless the Parties agree to the contrary, a Market will be deemed to have been agreed between the Parties where an order is placed by you and accepted by us, or a Transaction is otherwise effected between us on that Market.

3. Automatic Termination

Upon the occurrence of a Bankruptcy Default, Automatic Termination shall apply.

4. Base Currency

GBP will be the base currency unless otherwise specified below.

Other..... (please specify)

5. Capacity

You will only contract with us in a principal capacity and you will accordingly be liable and remain liable to us on, and beneficially entitled to, each Transaction entered under this Agreement.

6. Conditions on Payment

Our obligation to make payments on your behalf under this Agreement, whether acting as principal, agent or in any other capacity, is conditional upon receipt by us, on or before the due date (or reasonably satisfactory confirmation of such receipt by our settlement agents) of all necessary cleared funds, property and/or documents due to be paid or delivered by you in accordance with this Agreement.

7. Address for Notices and Service of Process

Our respective details for notices are as follows:

Our Details

Your Details:

Name: **Berkeley Futures Limited**  
Address: **18 Savile Row,  
London  
W1S 3PW, England**  
Telephone No: **+44 (0)20 7758 4777**  
Fax No: **+44 (0)20 7287 5292**  
Contact Name: **Chris Thompson**

Name:  
Address:  
  
Telephone No:  
Fax No:  
Contact Name:

**ACKNOWLEDGEMENTS SCHEDULE**

If there is anything you wish to query, please contact us as soon as possible.

**You should complete this Schedule and read the Product Information Schedule. Please sign this Schedule and return one signed copy to us.**

All joint account holders must sign. All trustees must sign. A company should arrange for this Agreement to be executed by the company by two directors or a director and the company secretary.

**A. Agreement (all customers)**

I/We have read, understood and agree to the clauses set out in this Retail Client Agreement (No Advice) version July 2011. Where I/we sign in a representative capacity, I/we confirm that I/we have full power and authority to enter into this Agreement

(1) Signed:

**Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(2) Signed:

**Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(3) Executed by .....[**name of company**]  
in the presence of:-

Signed:

**Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Director

Signed:

**Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Director/Secretary (**delete as appropriate**)

**B. Please complete this Schedule by ticking the boxes below to indicate your acknowledgement.**

- You agree and acknowledge that we may execute an order on your behalf outside a Market.
- You confirm that the information that you have provided to us to allow us to assess the suitability of each Transaction for you is accurate and complete.
- You confirm that the information that you have provided to us to allow us to assess the appropriateness of the activities and services we are providing to you is accurate and complete.
- You agree and acknowledge that in the case of a limit order in shares admitted to trading on a regulated market which are not immediately executed, we are not bound to facilitate the earliest possible execution of that order by making it public in an easily accessible manner.
- You agree and acknowledge that we may enter into arrangements for securities financing transactions in respect of safe custody assets held by us on your behalf.
- You agree that we may enter into arrangements for securities financing transactions in respect of safe custody assets held by us on your behalf in an omnibus account held by a third party, or otherwise use safe custody assets held in such an account for the account of another client.
- You agree that your safe custody assets may be recognised in our name.