

CLIENT AGREEMENT / TERMS AND CONDITIONS

Aug 2019

BPS Capital Limited

Website: www.Bpscap.com

CLIENT AGREEMENT / TERMS AND CONDITIONS

1. TERMS

This agreement will take effect on the date that we ("BPS Capital Limited. ") send to you ("the Client") a copy of the Agreement signed by you or if earlier, on the date when we first provide you with the Services.

2. DEFINITIONS

2.1 Save where provided in clause 2.2 or the context otherwise requires words and phrases defined in the rules of the FISD, shall have the same meanings when used in this Agreement.

2.2 The following words and phrases shall have the following meanings:

| | |
|--------------------------------|--|
| Account | One or more accounts maintained by us in respect of your assets and liabilities arising in connection with your dealings with us; |
| Act | The Financial Services and Markets Act 2000 as amended by the Financial Services Act 2012; |
| Agreement | The terms of this agreement together with any Risk Disclosure Notice, Execution Policy and / or Conflict of Interest Policy provided to you by us or notified to you as appearing on our website and as periodically amended by us; |
| Assets | All your cash balances, derivatives positions, investments, rights to the payment of cash or the delivery of investments or commodities and all and any other assets of yours which may at any time be represented by an entry on or standing to the credit of your Account including without limitation assets held by us or any Associate of ours or in our or such Associate's possession or control and assets held with or rights or claims arising in relation to or against any intermediate broker, exchange, market operator, clearing house or depositary through or with which transactions on your behalf are executed or cleared; |
| Associate | Has the meaning ascribed to it in the FISD Rules; |
| Business Day | Any day which is not a Saturday, Sunday or a bank holiday in London, England United Kingdom; |
| Charged Assets | Has the meaning given in clause 13; |
| Client Application Form | The Client Application Form to be completed and signed by you in accordance with this Agreement; |
| Client Money Rules | The rules set out in the FISD's Client Assets Sourcebook, forming part of the FISD Rules; |
| Collateral | Shall mean Collateral for the purposes of the FISD Rules; |
| Derivatives | Futures, options, contracts for differences and warrants; |
| EEA | The European Economic Area; |

CLIENT AGREEMENT / TERMS AND CONDITIONS

| | |
|------------------------------------|---|
| Eligible Counterparty | Shall mean an Eligible Counterparty for the purposes of the FISD Rules, which for example, may include investment firms, credit institutions, insurance companies, authorised collective investment schemes, pension funds, national governments, central banks supranational institutions; |
| Event of Default | Has the meaning given in clause 11; |
| ESMA | European Securities and Markets Authority |
| FISD | The Financial Institution Supervision Division; |
| FISD Rules | The rules, requirements, directions and guidance of the FISD of Marshall Islands or any successor body as amended from time to time; |
| Leverage | Shall mean Leverage for the purpose of the FISD Rules and definition under ESMA. |
| Margin | Shall mean Margin for the purposes of the FISD Rules; |
| Margin Close-Out | The 'Margin Close out Level (MCO) is the percentage of total Margin that the Client must maintain in their Account to prevent their working order and/or open trades from being closed as agreed upon or required by FISD. |
| Negative Balance Protection | A protection offered to the Retail Client which limits the maximum losses as as a result of their trading activity. The protected party will not lose more money than deposited if the account goes into negative valuation. |
| Obligations | All your costs, expenses, losses, liabilities and other obligations owed to us to make payment, deliver assets or perform any other legally binding obligation whether arising under this Agreement or otherwise, and whether actual or contingent including but not limited to costs, expenses, losses, liabilities and other obligations incurred by us as a result of the performance by us of our duties or the exercise by us of our rights, powers and / or privileges hereunder; |
| Professional Client | Shall mean a Professional Client for the purposes of the FISD Rules, which for example, may include credit institutions, investment firms, insurance companies, collective investment schemes, pension funds, commodity dealers, institutional investors. (Please refer to Clauses 12.2.1 to 12.2.4 regarding the treatment of Client Money for Professional Clients.); |
| Retail Client | Shall mean a Retail Client for the purposes of the FISD Rules defined as client who is neither a Professional Client or an Eligible Counterparty as defined above which for example may include individuals; |
| Services | The services more specifically referred to in clause 3 below; |
| Security | The security created by clause 13. |

2.3 References in this Agreement to statutes, the FISD Rules and any other rules, regulations or laws shall be to such statutes, FISD Rules, rules, regulations and laws as modified, amended, restated or replaced periodically. References to clauses are to the clauses of this Agreement. Headings are included for convenience only and shall not affect the interpretation of this

CLIENT AGREEMENT / TERMS AND CONDITIONS

Agreement. This Agreement, the Client Application Form and any supplemental documentation are to be construed as one agreement.

- 2.4 Nothing in this Agreement shall exclude any duty or liability which we have to you or vice versa under the FISD Rules or the Act. In the event of a conflict between this Agreement and the FISD Rules, the FISD Rules shall apply.
- 2.5 We reserve the right to periodically vary and / or amend this Agreement in part or in whole and to publish the latest version on our website: www.BPSCapital.co.uk. You agree to be bound by subsequent new versions of the Client Agreement which will supersede all earlier versions. A paper copy of this Agreement, and any updated versions will be available upon request.

3. CONSTRUCTION

- 3.1 We will provide such Services as may be agreed in writing which will consist of execution only broking services as specified in the Client Application Form and / or such other services as may be specifically agreed in writing between us.
- 3.2 The Services and Leverage offered will be subject to any limits or restrictions which you may specify in the Client Application Form, to the terms of this Agreement, and any statutory, regulatory, legal or market requirements as amend from time to time.
- 3.3 We may provide the Services in relation to:
 - 3.3.1 Futures;
 - 3.3.2 Options;
 - 3.3.3 Contracts For Differences;
 - 3.3.4 Warrants;
 - 3.3.5 Any assets underlying a derivatives contract;
 - 3.3.6 Any associated or ancillary business to the above;
 - 3.3.7 Foreign exchange; and
 - 3.3.8 Certain commodities periodically identified by us.
- 3.4 Clause 3.3 is subject to any limits or restrictions you or we may specify in writing. Please list in the Client Application Form any investment, or type of instrument or exchange or geographic area in which you do not wish to trade.
- 3.5 Unless otherwise specified in the Client Application Form the full amount standing to the credit of your Account will be available for investment in Derivatives.
- 3.6 Save as specified in this clause and / or the Client Application Form there are no other restrictions on the type of investments in relation to which we may provide our Services.
- 3.7 We are authorised by you to take any action we consider reasonably necessary or appropriate either to provide the Services (including but not limited to acting as your agent and delegating our authority as your agent to another) or to comply with any applicable laws

CLIENT AGREEMENT / TERMS AND CONDITIONS

or regulations as may reasonably be appropriate. You agree to ratify and confirm everything lawfully done in the exercise of such discretion.

- 3.8 Except where expressly agreed in writing we will not be responsible for the provision of any tax, accounting or legal advice in relation to the Services.
- 3.9 We will treat you as our client and we have no obligation and accept no liability to any other person for whom you may be acting as an agent, intermediary or fiduciary (whether or not the existence or identity of such person has been disclosed to us) and your obligations to us shall not be diminished in any way by reason of your so acting.
- 3.10 We will not be obliged to effect any transaction nor do anything else which we believe would breach any statute, law or regulation.
- 3.11 If your Account comprises more than one account with us, we will have the right without prejudice to any other right we may have to combine all or any such accounts and set off any amount at any time owing from you to us or any Associate on any account against any amount owing by us or any Associate of ours to you for any purpose.
- 3.12 We may, at our discretion, at any time convert any sums of money held in a currency other than the currency of the relevant Obligation into the currency of the Obligation at our current exchange rates (or other reasonable rate) and the proceeds of such conversion will be automatically applied in reduction of the Obligation.
- 3.13 We are required by the FISD Rules to categorise you as a Retail Client, Professional Client or an Eligible Counterparty. We will treat you as a Retail Client, Professional Client or an Eligible Counterparty, depending on how you complete the Client Application Form. If at any time you believe that the category that you have selected is no longer appropriate or you wish to request a higher level of protection, please contact us immediately.
- 3.14 When assessing your classification and thereafter dealing with you, we will rely upon the truth, accuracy and completeness of the information provided by you in the Client Application Form. You expressly consent to us using and relying on all such information in making our assessment and its dealings with you.
- 3.15 If there is a change in your personal or other relevant circumstances, you must immediately notify us of the change in writing.
- 3.16 We may periodically review your classification (subject to complying with regulatory requirements) and re-classify you if necessary

4. ADVICE

- 4.1 You must advise us as soon as possible of your investment objectives and any relevant restrictions by completing the Client Application Form. Any such restrictions shall not be treated as breached solely as a result of subsequent variations in the value or price of any investment(s) or other Asset(s) credited to the Account.
- 4.2 We do not provide any advisory service and any investment decision is taken exclusively by you alone and should you require any advisory services you must rely upon your own financial advisors.

CLIENT AGREEMENT / TERMS AND CONDITIONS

5. INSTRUCTIONS

- 5.1 If you wish to authorise anyone else to give instructions on your behalf you must notify us in writing on the Client Application Form and have that other person provide a specimen signature and any other due diligence material the firm may reasonably request. Unless and until we are informed in writing that such authority has been withdrawn, any action taken by us in conforming to any instructions given under such authority will be binding on you.
- 5.2 We shall be entitled to act upon any oral or written instructions which we reasonably believe to be from you or from any other person authorised to act on your behalf. Once given instructions may only be withdrawn or amended with our consent.
- 5.3 We may at our absolute discretion refuse to accept or act in accordance with any instructions, without being under any obligation to give any reasons there for. If we decline an instruction we will take reasonable steps to notify you promptly of this but subject to this will not be liable for any failure to accept or act on such instructions.

6. DEALING INSTRUCTIONS

- 6.1 You will be dealing with us on an execution-only basis in reliance solely on your own judgment. In this regard you should bear in mind that if we merely explain the terms of an investment or its performance characteristics this does not of itself amount to advice on the merits of a transaction in the investment or on the legal, accounting or tax status or consequences.
- 6.2 You acknowledge that we may at our discretion, decide to require your Instructions to be submitted via our online system. We cannot be expected to act upon instructions until receipt thereof - it is your responsibility to ensure proper receipt of clear and unambiguous instructions.
- 6.3 We may acknowledge your instructions by such means as we consider appropriate whether orally, in writing, by actual performance or otherwise.
- 6.4 You shall promptly (and in any event within any reasonable time limit imposed by us) give any instructions we may reasonably request from you in respect of any transactions or other matters in relation to which we have accepted your instructions to act. If you do not do so, we may in our sole, but reasonable, discretion take any steps at your cost which we consider appropriate for our or for your protection.

7. DEALING

- 7.1 We may execute your dealing instructions upon or in accordance with the rules of any market or exchange and through any clearing house selected by us. We may enter into transactions for or with you which are not on or in accordance with the rules of any exchange for example, off-exchange transactions in foreign currencies, or in other non-readily realisable investments.

CLIENT AGREEMENT / TERMS AND CONDITIONS

- 7.2 Assets and profits arising on closing a position, settlement or liquidation will be credited to your Account and losses will be debited from your Account. Any debit balance arising as a result of any close-out, settlement or liquidation will be payable by you forthwith whether or not demanded by us.
- 7.3 We shall be entitled to carry out all transactions in accordance with the rules, regulations, customs or practices of the relevant market, exchange and / or clearing house and all applicable laws whether imposed on you or us. We may take all such steps as may be required or permitted by such laws, rules, regulations, customs and / or market practice. We will be entitled to take or not take any reasonable action we consider fit in order to ensure compliance with the same and all such actions so taken will be binding upon you.
- 7.4 You agree that any transactions we effect for you will be subject to the rules, regulations, customs and practices of each relevant market, exchange, or clearing house on, through or with which we deal.
- 7.5 In order to give effect to your dealing instructions, we may at our discretion instruct an intermediate broker selected by us (which may be an Associate of ours). We accept full liability for any default by an intermediate broker which is our Associate, and undertake to use reasonable care and skill in the appointment and supervision of any intermediate broker and to make available to you and take, at your cost and expense, such action on your behalf as you may reasonably request in relation to any rights we have against such intermediate broker. Subject to this we accept no liability for any default of any intermediate broker nor do we accept any liability in relation to the default of any market, exchange or clearing house.
- 7.6 In executing transactions for or with you we will always deal with you as principal. While we will take reasonable steps to obtain the best price available you agree and acknowledge that save as required by the FISD Rules we are under no obligation to provide you with best execution in accordance with the FISD Rules and you hereby waive any such requirements.
- 7.7 We may at our discretion aggregate your orders with our own orders or those of other clients of ours or our Associates. We will allocate the proceeds of such orders among the participating accounts in a manner which we believe to be fair and equitable. If the combined order is not executed at the same price we may average the prices paid or received and debit or credit your Account with the average net price. Details of average price will be furnished on request. Such allocation must take place within five business days of execution. In aggregating your orders in this way we must reasonably believe this will be to your advantage, for instance to obtain better execution or reduced foreign exchange or other dealing costs by being part of a larger transaction. However, on occasion, aggregation and allocation may result in you obtaining a less favourable price.
- 7.8 Where we are unable or consider it undesirable or inappropriate to execute your order at once or in a single transaction we may execute it over such period as we deem appropriate and we may report to you an average price for a series of transactions so executed instead of the actual price of each transaction.
- 7.9 We may undertake a program trade or trades comprising a single transaction or series of transactions on your behalf. In doing so we will always act as principal.

CLIENT AGREEMENT / TERMS AND CONDITIONS

- 7.10 We reserve the right to refuse any trades placed by you that we judge to be clearly outside the prevailing market price such that they may be deemed non-market price transactions, whether due to manifest human error or stale, incorrect or broken price feeds. Where we have opened or closed a trade before becoming aware of the price disparity, we may at our absolute discretion either treat that trade as void or accept that trade at the prevailing market price.
- 7.11 As a client of ours you hereby accept that the prices quoted by other companies may not be relied upon by you in respect of your account with us and that we reserve the right to decline any quote or refuse to be bound to any contract, including those arising from any manipulation of the quoting mechanism or our services generally, notwithstanding our undertaking to provide a clear and fair service to you at all times.

8. REPORTING TRANSACTIONS

- 8.1 We will send out an electronic confirmation in respect of each transaction as soon as reasonably practicable and in any event within the time required by the FISD Rules.
- 8.2 After executing a trade which closes out an open position your confirmation will include a difference account, showing your profit or loss arising from the closing out which will be credited to or debited from your Account and due for immediate settlement.
- 8.3 If we have instructed an intermediate broker on your behalf, the confirmation may be a copy of the confirmation sent to us by the intermediate broker. Confirmations posted, electronically transmitted or otherwise sent to you at your last known address, email address or fax number in our records will be deemed to have been received by you when sent to the relevant address.
- 8.4 Unless otherwise agreed we will send you a monthly statement of every account comprised in your Account which includes or may include uncovered open positions. Performance measurement will not be provided other than by special arrangement. The statement shall include details of the contents and value of your Account and open positions and such other information as may be agreed from time to time by us or as is required to be disclosed under the FISD Rules.
- 8.5 Any confirmation, statement of account, report or certificate issued by us in respect of any transaction or other matter shall be conclusive and binding on you unless objection in writing is received by us within two Business Days of the actual or deemed delivery date. Occasionally (whether due to human or technical errors), discrepancies may occur in our confirmations, statements of account, reports or certificates. Provided that we advise you of such errors and / or discrepancies as soon as practical you will be bound by the relevant confirmation, statement of account, report or certificate (as so corrected) irrespective of when the relevant error or discrepancy is discovered by us.

9. MARGIN

- 9.1 You will provide to us on demand such sums by way of margin as we may in our discretion require for the purpose of protecting ourselves against loss or risk of loss on present, future or contemplated transactions under this Agreement. Different margin requirements may

CLIENT AGREEMENT / TERMS AND CONDITIONS

apply to different accounts and / or investments traded. You may be required by us to supplement such margin at any time when your Account shows a debit balance or an increase in your margin requirement. You will pay or transfer margin within the minimum period specified by us (which may be within the same Business Day).

- 9.2 Margin in relation to a particular type of transaction will be provided in cash or in the form of such investments or other assets (if any) we may in our absolute discretion agree. Where we agree to accept margin in the form of securities this is subject to the Security and custody arrangements described in clauses 13 and 14.
- 9.3 Unless the terms applying to a particular type of transaction otherwise specify, margin will be valued by us on such basis as we shall in our absolute discretion determine and may reflect, without limitation, our view as to the extent that the relevant assets are fully available to us or such discount to the current market value of any margin as reflects our perception of the market risk of that margin.
- 9.4 While failure to pay margin when required will entitle us to close out some or all of your positions and / or call an Event of Default, we are under no obligation to close out any transactions or take any other action in respect of positions opened or acquired on your instructions and in particular, no failure by you to pay margin when demanded will require us to close out any such transaction unless you are classified as Retail Client subject to the Negative Balance Protection. As required by the FISD and ESMA, the MCO level for the Retail Client is Fifty Percent (50%).
- 9.5 All cash margin and other payments due by you to us pursuant to this Agreement shall be made in freely transferable funds in such currency and to such bank account(s) as we specify. If you are by law required to make any deduction or withholding in respect of taxes or otherwise, then you will be liable to pay such amount to us as will result in our receiving a net amount equal to the full amount which would have been received had no such deduction or withholding been required.
- 9.6 Any sums due to us from you pursuant to this Agreement (plus any applicable VAT) may be deducted without prior notice to you from any Assets and we may have recourse against and sell realise or dispose of the Assets (including any margin collateral and safe custody assets) in order to realise proceeds which may be applied in the discharge of such sums.

10. SETTLEMENT

- 10.1 In relation to your open positions you will promptly take all actions on or prior to maturity, which are necessary either:

10.1.1 To close out or otherwise liquidate such contracts by giving proper instructions in good time to enable us to carry out those instructions in accordance with their terms and the requirements of the relevant contract and of any relevant market, exchange, clearing house or intermediate broker; or

10.1.2 To enable us to effect due exercise, settlement and / or delivery of such contracts as they fall due in accordance with the requirements of the contract and of any relevant market exchange clearing house or intermediate broker including but not limited to making

CLIENT AGREEMENT / TERMS AND CONDITIONS

any appropriate payment or delivering any underlying asset to us in good time for us to complete due settlement and delivery.

- 10.2 You will take all action necessary to enable us to effect performance of transactions as they fall due in accordance with the requirements of the relevant market, exchange, clearing house or intermediate broker.
- 10.3 If you do not give us notice of your intention to exercise an option together with any monies or property or documents required therewith by the time stipulated by us we may treat the option as abandoned by you and notify you accordingly. We will endeavour to give you reasonable advance notice of the time for exercise of such option and / or any arrangements for automatic exercise.
- 10.4 If any payment, instruction, documents or delivery is not received or is incomplete or incorrect when received we may without notice close out or liquidate the transaction or buy in on the market or make or receive payment or delivery in order to meet our or your performance obligations or take such other action as we in our absolute discretion may consider appropriate.
- 10.5 Profits arising from the granting, closing out, liquidation, settlement or exercise of contracts or from similar transactions will be credited to your Account. Losses arising from the granting, closing out, liquidation, settlement or exercise of contracts or from similar transactions will be debited from your Account. Any debit balance on your Account or arising as a result of the liquidation of your Account will be payable by you forthwith whether or not demanded by us. If accounts within your Account are expressed in different currencies they shall be translated to sterling at the prevailing rate of exchange.
- 10.6 Any crediting to your Account of cash investments or other Assets is subject to reversal if, in accordance with local laws and practice, the delivery of investments or cash giving rise to the credit is reversed.

11. DEFAULT AND REALISATION OF CLIENT'S ASSETS

- 11.1 The occurrence of any of the following events shall constitute an event of default ('Event of Default') subject to the Negative Balance Protection if applicable:
 - 11.1.1 You fail to comply fully and immediately with any Obligation to make any payment when due to or required by us (including any Obligation to pay margin); or
 - 11.1.2 You make default in any other Obligation owed to us (including any transaction governed by this Agreement); or
 - 11.1.3 Any declaration, representation or warranty made by you was or has become or subsequently would if repeated at any time be incorrect; or
 - 11.1.4 We acting in our absolute discretion determine that there is or has been an adverse change in the creditworthiness of your or any party providing a guarantee and / or indemnity in respect any Obligation; or
 - 11.1.5 You commence a voluntary case or other procedure seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium,

CLIENT AGREEMENT / TERMS AND CONDITIONS

or other similar relief with respect to yourself or to your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law, or seeking the appointment of a trustee in bankruptcy, receiver, liquidator, administrator or other similar official (each an 'Insolvency Official') of yourself or any part of your undertaking or assets; or 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; or

- 11.1.6 An involuntary case or other procedure is commenced against you seeking or proposing reorganisation or an administration order, liquidation, 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 yourself if insolvent) or seeking the appointment of an insolvency official of yourself or any part of your undertaking or assets; or
 - 11.1.7 You die, become incapacitated or of unsound mind, are unable to pay your debts as they fall due (or where you are the trustee of a trust you are unable to pay your debts incurred in that capacity out of the assets of the trust), or you are bankrupt or insolvent as defined under any bankruptcy or insolvency law applicable to you; or any of your indebtedness is not paid on the due date therefor 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 proceedings are commenced for any execution, any attachment or garnishment, or any distress against, or an encumbrancer takes possession of, the whole or any part of your property, undertaking or assets; or
 - 11.1.8 At any time due to market fluctuations or for any other reason we shall in good faith but otherwise in our reasonable discretion consider it necessary for our own, or for your own, protection.
- 11.2 Upon or at any time following an Event of Default we may on notice to you and without prejudice to any other rights hereunder or under any transaction, contract or law, take any and all actions that we consider to be necessary or desirable in the circumstances, including, but not limited to the following:
- 11.2.1 Treat any or all transactions then outstanding under this Agreement or any other agreement between us as having been repudiated by you and such repudiation as having been accepted by us, whereupon our obligations under such transactions will thereupon be cancelled and terminated;
 - 11.2.2 Liquidate, sell, close out, replace, reverse, hedge or off-set all or any transactions, buy, 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 under or in respect of any of your transactions or other commitments or Obligations. In liquidating any long or short positions we may, at our sole discretion and without limitation, sell or purchase for the same contract month, prompt date or other relevant contractual maturity, or initiate new long or short positions in

CLIENT AGREEMENT / TERMS AND CONDITIONS

order to establish a spread or straddle with a view to protecting existing positions;
and / or

- 11.2.3 Sell, charge, deposit, deal with or otherwise dispose of any cash, securities, margin, Charged Assets or Assets 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 your Obligations and apply such proceeds in or towards satisfaction of your Obligations in such order and generally in such manner as we may, in our sole and absolute discretion, determine.
- 11.3 You will at all times remain liable for the payment of any and all outstanding Obligations and if the proceeds realised pursuant to clause 11.2 are insufficient for the discharge of all such Obligations, you will promptly pay on demand the deficit and all unpaid liabilities together with interest at a rate of 3% per annum above the base rate from time to time of Barclays Bank Plc whether before or after judgment compounded daily.

12. CLIENT MONEY AND ASSETS

12.1 Retail Clients only

- 12.1.1 This clause applies to Retail Clients only.
- 12.1.2 Any money received by us in respect of your Account shall be treated as Client Money in accordance with the FISD's Client Money Rules.
- 12.1.3 Any money you transfer to us or which is transferred to us on your behalf being Client Money will be held with a bank or third party nominated by us in our sole discretion, acting reasonably and considering the relevant provisions in Rules 7.4.7 and 7.4.8 of the Client Money Rules, which may from time to time be an authorised bank registered outside of the UK or the EEA. Your money will be segregated from our own money in accordance with the requirements of the Client Money Rules and in the event of our insolvency, it will be excluded from our assets subject at all times to the relevant legislation and regulatory provisions.
- 12.1.4 Where monies are held outside of the UK, the legal and regulatory regime applying to any such bank or third party may be different from that of the UK and in the event of the insolvency or any other equivalent failure of that bank or third party, your money may not be as effectively protected as if your money is held with an equivalent bank or third party in the UK.
- 12.1.5 We will not be liable for the failure or insolvency of any bank or third party holding Client Money however, if your money is held within an EEA country, a proportion of your cash balance may qualify for compensation arrangements in that jurisdiction, subject to the rules of that jurisdiction.
- 12.1.6 Your money may be held in a different currency from that of its receipt and will be adjusted each day to an amount at least equal to the original currency amount, translated at the previous day's closing spot exchange rate.

CLIENT AGREEMENT / TERMS AND CONDITIONS

- 12.1.7 You will not be entitled to interest on any Client Money held with us, unless we expressly agree otherwise with you in writing.
- 12.1.8 Unless you notify us in writing or otherwise, we may pass on Client Money or allow another person such as an exchange, a clearing house or an intermediate broker, to hold or control Client Money where we transfer the Client Money:
- (a) For the purposes of a transaction for you through or with that person; or
 - (b) To meet your obligations to provide Margin for a transaction.
- 12.1.9 You hereby agree to us releasing any Client Money balances, for or on your behalf, from client bank accounts and to us ceasing to treat any unclaimed Client Money in your Account as Client Money where:
- (a) We have determined, acting in our reasonable sole discretion, that there has been no movement on your balance for a period of six years (notwithstanding any payments or receipts of charges, interest or similar items); and
 - (b) We have written to you at your last known address informing you of our intention of no longer treating that balance as Client Money, giving you 28 days to make a claim, provided we:
 - (i) Shall make and retain records of all balances released from your client bank account; and
 - (ii) Undertake to make good any valid claims against any released balances.
- 12.1.10 Your money will cease to be Client Money when it is paid:
- (a) To you or to one of your duly authorised representatives;
 - (b) To a third party on your instructions; and
 - (c) To us when money is due and payable to us.

12.2 Elective, Per Se Professional Clients and Eligible Counterparties

- 12.2.1 This clause applies only if you have been classified by us as a Per Se Professional Client or Eligible Counterparty following the completion by you of the Personal Trading Account Application Form. Please note that Elective Professional Clients are captured by the Client Money Rules in the same way as Retail Clients, subject to status and 'opting up' requirements.
- 12.2.2 As a Per Se Professional Client or Eligible Counterparty, our services to you under this Agreement are provided on the understanding that you do not require money which is transferred by you to us to be held in accordance with the Client Money Rules. Accordingly, the protections conferred by the Client Money Rules will not apply to you. Where you transfer money to us, we will treat this as a transfer of full ownership of money to us for the purpose of securing or covering your present, future, actual, contingent or prospective obligations, and we will not hold such

CLIENT AGREEMENT / TERMS AND CONDITIONS

money in accordance with the Client Money Rules. Any money received by us from you or a third party for your Account will be owed by us to you and you will rank only as a general creditor of BPS Capital Limited.

- 12.2.3 As a Per Se Professional Client or Eligible Counterparty, you will therefore not have a proprietary claim over money transferred to us, and we can deal with it in our own right. Your money will not be segregated from our money and it may be used by us in the course of our business. We will transfer an equivalent amount of money back to you where, in our discretion, we consider that the amount of money you have transferred to us is more than is necessary to cover your present and future obligations to us. In determining the amount of Collateral and the amount of 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 the FISD Rules and the Client Money Rules.
- 12.2.4 By completing the Personal Trading Account Application Form, you are providing us with written acknowledgement that you understand the information above and that you consent to your monies not being conferred the protections of the Client Money Rules.

13. CHARGED ASSETS

- 13.1 Your securities and any other Assets shall at all times be held by us subject to a general lien and right of set off against your Obligations whether or not we have provided credit, loans or other financial facilities to you in connection with such assets and irrespective of the number of accounts which you may have with us.
- 13.2 As security for the performance of all your Obligations you hereby charge to us by way of first fixed security interest with full title guarantee and as a continuing security:
- 13.2.1 All your rights, title and interest in respect of the securities, investments, cash and any other Assets from time to time credited to your Account;
- 13.2.2 All securities or other investments which, or the certificates or documents of title to which, are for the time being deposited with or held by us or an Associate of ours;
- 13.2.3 All your rights under this Agreement including, without limitation, all your rights to delivery of cash, securities or other investments;
- 13.2.4 All sums of money held by us or any Associate for you, the benefit of all accounts in which any such money may from time to time be held and all your right, title and interest under any trust relating to such money or to such accounts as aforesaid;
- 13.2.5 All and any property and other rights in respect of or derived from the assets referred to in sub- paragraphs 13.2.1 to 13.2.4 above including, without limitation, any rights against any custodian, banker or other person; (the assets referred to in 13.2.1 to 13.2.5 together the 'Charged Assets').
- 13.3 We shall hold all Charged Assets for the purpose of satisfying all and any of your Obligations under this Agreement and may without prior notice to you free of any interest of yours therein:

CLIENT AGREEMENT / TERMS AND CONDITIONS

- 13.3.1 Deposit, charge or pledge Charged Assets with or to the order of any exchange, market operator, clearing house, intermediate broker or other third party and on terms that such third party may enforce such deposit, charge or pledge in satisfaction of all or any Obligations, and all or any obligations of ours or of any other Client of ours, to such third party which may include the creation of a security interest over Charged Assets ranking prior to any security interest in Charged Assets from time to time granted by you to us; and
- 13.3.2 Register, sell, realise, charge or borrow against the same upon such terms (including as to the consideration received therefore) as we may in our absolute discretion think fit (without being responsible for any loss or diminution in price) and apply the proceeds in or towards satisfying any such Obligations.
- 13.4 Until you have paid or discharged in full all your Obligations we shall be entitled to retain all your Charged Assets and you may not (without our prior consent) withdraw or substitute any Charged Assets. We may in our absolute discretion make payments or deliveries to you from Charged Assets, or otherwise exercise our rights of set-off, combination and / or consolidation.
- 13.5 No purchaser from, or other person dealing with us, shall be concerned to enquire whether any of the powers exercised or purported to be exercised has arisen or become exercisable, whether the Obligations remain outstanding or as to the propriety or validity of the exercise or purported exercise of any power; and the title of such a purchaser and the position of any such person shall not be impeachable by reference to any of those matters and the protections contained in Sections 104 to 107 of the Law of Property Act 1925 shall apply to any person purchasing from or dealing with us.
- 13.6 A certificate in writing by our officer or agent that any power of sale or other disposal has arisen and is exercisable shall be conclusive evidence of the fact in favour of a purchaser of the whole or any part of the Charged Assets.
- 13.7 You agree you shall (at your cost) from time to time on request execute documents and take such other acts and steps as we may require to perfect or preserve the Security and to create new or further security interests over the same, to facilitate the enforcement of any such security.
- 13.8 You hereby irrevocably appoint by way of security, us and any person from time to time nominated by us, as your attorney with full power of substitution for you and in your name and on your behalf and as your act and deed to execute documents and take such other acts and steps as may be required to facilitate the enforcement of the Security.
- 13.9 The Security is continuing and will extend to the ultimate balance of all the Obligations, regardless of any intermediate payment or discharge in whole or in part. The Security is additional to any other security, guarantee or indemnity now or subsequently held by us in respect of the Obligations and the Security is not in any way prejudiced by any other such security, guarantee or indemnity and shall remain in full force and effect until discharged by us.
- 13.10 Sections 93 (restriction of right of consolidation) and 103 (restriction of right of sale) of the Law of Property Act 1925 will not apply to this Agreement. The Obligations will become due for the purposes of Section 101 of the Law of Property Act 1925, and the statutory power of

CLIENT AGREEMENT / TERMS AND CONDITIONS

sale and of appointing a receiver which are conferred on us under such Act (as varied or extended by this Agreement) and all other powers shall be deemed to arise immediately after execution of this Agreement.

- 13.11 If we reasonably determine that any payment received or recovered by us may be avoided or invalidated after the Obligations have been discharged in full this Agreement (and the Security) will remain in full force and effect and we will not be obliged to release Charged Assets until the expiry of such period as we shall reasonably determine.
- 13.12 No payment which may be avoided or adjusted under any law, including any enactment relating to bankruptcy or insolvency, and no release, settlement or discharge given or made by us on the faith of any such assurance, security or payment, shall prejudice or affect our right to recover the Obligations from you or to enforce the Security to the full extent of the Obligations.
- 13.13 You will not create or have outstanding any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance, or any other agreement or arrangement having the same economic effect, over or in respect of the present or future Charged Assets other than the Security or any other security contemplated under this clause 13.

14. CUSTODY

- 14.1 We will provide you with a safe custody service in relation to any securities in accordance with the FISD Rules (which securities will for the avoidance of doubt also be subject to the Security). This safe custody service will not apply to securities credited to your Account where full legal and beneficial ownership has passed to us and we owe you only a contractual right to the return of equivalent securities in accordance with clause 14.14, including but not limited to any assets disposed of by us in whole or part under clause 13.3.
- 14.2 The following provisions of this clause 14 will apply to securities held by us in safe custody.
- 14.3 All securities purchased through us will be registered (except for bearer stocks) in the name of our nominee or the name of another custodian appointed by us unless otherwise required by you and indicated on the Client Application Form. We will account to you for all dividends, interest payments and other rights accruing to you. Bearer or other non-registered securities may not always be held by us directly but may be held by one or more third parties (including clearing systems; custodians and overseas agents) directly or indirectly, and may be held for its or their account.
- 14.4 You should note that nominee account holders may not receive certain entitlements, such as annual report and accounts, nor attend annual (or other) meetings and vote at such meetings.
- 14.5 Overseas securities may be registered or recorded in the name of a custodian or in our name (subject to your prior written consent) in one or more jurisdictions outside Marshall Islands where we determine that, due to legal requirements or the nature of market practice in the jurisdictions concerned, it is in your best interests or it is not feasible to do otherwise. As a consequence of this your securities may not be segregated from securities belonging to us and therefore your protection may be less should a default occur on the part of the person in whose name the investments are registered or recorded. Securities belonging to you

CLIENT AGREEMENT / TERMS AND CONDITIONS

which are held overseas may be subject to different settlement, legal and regulatory requirements from those which apply within Marshall Islands.

- 14.6 We are responsible for the acts of our nominee to the same extent as for our own acts. We accept no liability for the default of any other nominees, custodians or third parties.
- 14.7 Securities purchased through us may only be registered in the name of some other person whom you specify with our prior written consent. Where we consent to such an arrangement the consequences of such registration carried out in accordance with your instructions are entirely at your risk.
- 14.8 Securities registered or recorded in the name of a nominee may be pooled with those of one or more of our other Clients. Accordingly your individual entitlements may not be identifiable by separate certificates, physical documents or entries on the register or equivalent electronic records. If there is an irreconcilable shortfall following any default or failure by the custodian responsible for pooled investments, you may not receive your full entitlement and may share in that shortfall pro-rata to your original share of the assets in the pool. When corporate events (such as partial redemptions) affect some but not all of the securities held in a pooled account we will allocate the securities so affected to particular Clients in such fair and equitable manner as we consider appropriate (which may without limitation involve pro rata allocation or an impartial lottery).
- 14.9 We will provide you with information relating to your securities held by us by sending periodic statements no less often than every 6 months. Assets will be valued in accordance with general market practice or, subject to our prior agreement, in accordance with your instructions.
- 14.10 We will collect any dividends, interest, payments or other entitlements to which you may be entitled in respect of safe custody securities and of which we are notified and will remit to you such dividends or interest as soon as possible after deduction of any taxes and duties payable or credit them to your account.
- 14.11 Provided it is practical and expedient, we will endeavour to obtain your instructions for exercising or dealing with any of the following matters in relation to your securities of which we receive notice:
- 14.11.1 Conversion or subscription rights;
 - 14.11.2 Takeovers or other offers or capital reorganisations; and
 - 14.11.3 Voting rights.
- 14.12 The consequences of a failure on your part to provide instructions to us by any required time once notification of an event mentioned in clause 14.11 has been sent to you are your sole responsibility. If we are unable to obtain your instructions we will be under no obligation to take any action but may, in good faith and at our discretion and without any liability therefor, use our judgment and act as we think fit in relation to any rights and / or privileges attaching to any investments held on your behalf.
- 14.13 Where we appoint a custodian for holding your investments it may be an Associate.
- 14.14 Where you have a right to the return of any securities or other assets credited to your Account (whether or not they are subject to safe custody under the other provisions of this

CLIENT AGREEMENT / TERMS AND CONDITIONS

clause 14) we shall not be obliged to return the original securities or other assets delivered to us but merely to redeliver securities or other assets of the same type and nominal value and in case of securities of the same issuer.

15. RISKS ASSOCIATED WITH THE SERVICES

- 15.1 All investment is subject to risk and the degree of risk is a matter of judgement and cannot be accurately pre-determined.
- 15.2 Trading in derivatives is generally regarded as involving a high degree of risk compared with other common forms of investment such as recognised collective investment schemes and debt and equity securities.
- 15.3 We give no warranty, representation or promise as to the performance or profitability of your Account with us or your investments or any part thereof.
- 15.4 The value of investments and the income derived from them can fall as well as rise and is not guaranteed.

16. CONFLICTS OF INTEREST AND DISCLOSURES

- 16.1 In relation to any advice we give or transaction we execute or arrange with or for you, we or an Associate may have an interest, relationship, arrangement, or duty which is material or which gives or may give rise to a conflict of interest with your interest(s) in relation to the investment or transaction concerned or investments or assets underlying, derived from or otherwise directly or indirectly related to such investments (a 'material interest'). We will take reasonable steps to ensure fair treatment for you in relation to any such transactions.
- 16.2 A material interest may include but is not limited to:
 - 16.2.1 We or an Associate of yours dealing as principal for our or its own account by selling the investment concerned to you or buying it from you, or being a market-maker or otherwise having a holding or dealing position in the investment concerned or an associated investment;
 - 16.2.2 Providing services similar to the Services provided to you to other clients;
 - 16.2.3 Any of our or an Associate's directors or employees being a director of, holding or dealing in investments of or otherwise being interested in any company whose investments are held or dealt in on your behalf;
 - 16.2.4 Being in receipt of instructions from another client to buy or sell the same derivatives contracts, underlying assets or other investments;
 - 16.2.5 Matching your transaction with that of another Client by acting on his behalf as well as yours where we are acting or seeking to act as agent for (and to receive and retain commission or other charges from) both parties;
 - 16.2.6 Acting as a financial adviser or lending banker to the issuer of the investment concerned (or any of its Associates);

CLIENT AGREEMENT / TERMS AND CONDITIONS

- 16.2.7 Being involved as financial adviser, broker, sponsor, underwriter or otherwise in a new issue, underwriting, rights issue, takeover or similar transaction concerning the investment, or the issuer of the investment or a related investment;
- 16.2.8 Receiving payments or other benefits for giving business to a firm with or through which your order is placed or executed;
- 16.2.9 Being the trustee, operator or manager of an investment fund, units in which we are buying or selling to or from you or on your behalf; or
- 16.2.10 Providing or having provided venture capital and / or related advice to the company whose securities are the subject of the transaction.
- 16.3 We and / or our Associate shall be entitled to provide services to you or enter into a transaction for or with you or retain your investments or act as your agents or provide any other service notwithstanding any such material interest and shall not be under a duty to disclose to you any profit arising therefrom without further reference to you. However, in such cases we or our Associate may in our absolute discretion decline to carry out a transaction for or with you or to give advice or make a recommendation to you. A material interest may include but is not limited to:
- 16.4 Neither we nor any Associate shall be liable to account to you for or (save in respect of fees or commissions charged to you) to disclose to you any profit, commission or remuneration made or received (whether from any client or by reason of any material interest or otherwise) by us by reason of any Services provided or transaction executed with or for you.
- 16.5 Before publishing a research recommendation, we or our Associates may have acted upon it or made use of information on which it is based. Recommendations and comment in our research publications may be affected by subsequent changes in market conditions, particularly in share prices. Unless expressly acknowledged by us in writing, these publications are not personalised or tailored in any way to your individual circumstances. Any recommendations made will not necessarily be suitable for you and should not be treated as a recommendation to you to engage in a particular strategy or course of action.
- 17. CHARGES**
- 17.1 You will pay our charges, details of which are set out in the Client Application Form and may be amended from time to time by written notice from us to you. Charges will be recorded and indicated on confirmations and monthly statements. Any charges paid by you may be shared with one or more third parties. Details of such arrangements are available on written request.
- 17.2 You will be responsible for the payment of any commissions, transfer fees, registration fees, taxes, duties and other fiscal liabilities and all other liabilities and costs properly payable or incurred by us under this Agreement.
- 18.1 We shall not be liable for any breach of obligation or default of any counterparty, intermediate broker, bank, custodian, and sub-custodian, market or market operator, exchange, clearing house, depositary or other third party with whom you do business.

CLIENT AGREEMENT / TERMS AND CONDITIONS

18. LIABILITY AND INDEMNITY

- 18.2 We will not be liable for loss suffered by you in connection with the Services unless such loss directly arises from our negligence, wilful default or fraud.
- 18.3 You will pay us on demand all commissions and other charges due to us, premiums on any option purchased on your instructions, such sums as we may at any time require in or towards satisfaction of any debit balance on your Account or any account comprised therein, and the amount of any trading loss that may result from any transaction hereunder, interest and service charges due to us on the Account and our reasonable costs and legal fees incurred in collecting any such amounts. All payments shall be made in same day (or immediately available) and freely transferable funds in such currency and to such bank as we may from time to time specify.
- 18.4 You undertake to keep us and our agents and employees fully and effectively indemnified against all costs, charges, liabilities and expenses whatsoever incurred by us and them pursuant to or in connection with the Services unless due to our or their negligence, wilful default or fraud.

19. CLIENT'S WARRANTIES

- 19.1 You hereby represent and warrant (which representations and warranties shall be deemed to be repeated by you on each date on which a transaction is entered into under this Agreement) that:
- 19.1.1 You have full power and authority to execute and deliver this Agreement, each transaction and any other documentation relating thereto, and to perform your obligations under this Agreement and each transaction and have taken all necessary action to authorise such execution, delivery and performance;
- 19.1.2 Any such execution, delivery and performance will not violate or conflict with any law applicable to you, any provision of any constitutional documents or any charge, trust deed, contract or other instrument or any contractual restrictions applicable to, binding on or affecting you or any of your assets or oblige you to create any lien, security interest or encumbrance;
- 19.1.3 All governmental, regulatory and other consents that are required to have been obtained by you in relation to this Agreement have been so obtained and are in full force and effect and all conditions of any such consents have been complied with;
- 19.1.4 Your obligations under this Agreement constitute your legal, valid and binding obligations, enforceable in accordance with their respective terms;
- 19.1.5 You will comply with all laws, rules, regulations and disclosure requirements of any relevant jurisdiction, exchange, market or regulatory authority which apply in respect of us, you or your investments from time to time;
- 19.1.6 You will promptly give (or procure to be given) to us such information and assistance as we may reasonably require to enable us to assist or achieve compliance with any of the obligations mentioned in 19.4 in relation to your Account or the Services;

CLIENT AGREEMENT / TERMS AND CONDITIONS

- 19.1.7 Where we provide you with an execution-only service you have the capacity to evaluate and understand the terms, condition and risks of each transaction (whether or not recommended by us) entered into hereunder and you are willing and able to accept those terms and conditions and to assume (financially and otherwise) those risks;
- 19.1.8 You are acting as principal in entering into this Agreement and each transaction hereunder;
- 19.1.9 Where an Event of Default occurs, you will give us notice as soon as you become aware of such occurrence; and
- 19.1.10 You will not pay to or provide us with any Assets which are subject to any security or lien other than the Security and liens created in our favour or otherwise contemplated under clause 13 and will not charge, assign or otherwise dispose of or create any interest in any of your rights or interest in any transaction or in any sum or other payment or assets held by us on your behalf.

20. DELEGATION AND USE OF AGENTS

Without prejudice to the powers and terms of delegation specified in clauses 7.5 (intermediate brokers) and 14 (custodians) we may delegate any of our functions in respect of the Services to an Associate of ours and provide information about you and the Services to any such associate on such terms as we may determine without your further consent but our liability to you for all matters so delegated shall not be affected thereby. We will act in good faith and with due diligence in our choice and use of such agents.

21. ASSIGNMENT AND THIRD PARTY RIGHTS

- 21.1 This Agreement is personal to you and shall not be capable of assignment by you or of being transferred by you. We may, on giving you written notice, appoint any appropriate Associate to provide the Services in our place and shall then transfer to such appointee all of our rights and obligations under this Agreement. We may on giving notice to you appoint any other appropriate third party to provide any or all of the services to you in our place, and shall then transfer to such appointee any or all consents, rights and obligations under, relating to or in connection with this Agreement and the services provided.
- 21.2 A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available other than under such Act.

22. COMPLAINTS AND COMPENSATION

All formal complaints should in the first instance be made in writing to us for the attention of the Compliance Officer, at our stated address stated address. Complaints will be dealt with in accordance with the FISD Rules. An explanation of the compensation arrangements available to you

CLIENT AGREEMENT / TERMS AND CONDITIONS

under the Financial Services Compensation Scheme, if any, established under Section 213 of the Act for compensating persons in cases where we are unable, or are likely to be unable, to satisfy any claims against us, is available on request.

23. NOTICES, INSTRUCTIONS AND OTHER COMMUNICATIONS

- 23.1 Without prejudice to the provisions of clauses 5 and 6 relating to the giving of dealing and similar instructions, any notification given to us under this Agreement shall be in writing and sent to our stated address or such other address as may be notified by us to you and such notice to us shall take effect upon its actual receipt by us.
- 23.2 All written communications by us to you under this Agreement may be sent to the last postal address notified to us by you.
- 23.3 We may record telephone conversations with you without the use of a warning tone, and may use the recordings as evidence in the event of a dispute

24. AMENDMENTS

Any amendment to this Agreement shall be notified in writing and if made by us shall take effect on such date as we shall specify

(being not less than 10 Business Days after the issue of the notice unless it is impracticable to do so). Any amendment proposed by you shall take effect when accepted in writing by us.

25. TERMINATION

- 25.1 Either party may terminate this Agreement at any time by written notice to the other to take effect immediately or on such date as may be specified in such notice.
- 25.2 Termination of this Agreement pursuant to clause 25.1 shall be:
- 25.2.1 Without prejudice to the completion of any transaction or transactions already initiated and any transaction or all transactions outstanding at the time of termination will be settled and delivery made;
- 25.2.2 Without prejudice to and shall not affect any accrued rights, or outstanding Obligations or any contractual provision intended to survive termination (including without limitation rights existing in our favour on an Event of Default, the Security, and any indemnity in our favour); and
- 25.2.3 Without penalty or other additional payment save that you will pay:
- (a) Our outstanding fees and charges pro-rated where appropriate to the date of termination;
 - (b) Any expenses incurred by us in the provision of the Services or under this Agreement payable by you;
 - (c) Any additional expenses incurred by us in terminating this Agreement;

CLIENT AGREEMENT / TERMS AND CONDITIONS

- (d) Any losses necessarily realised in settling or concluding outstanding obligations; and
- (e) Any other outstanding Obligations.

25.3 INACTIVE ACCOUNTS

- 25.3.1 Should your account remain dormant for a period of six [6] months, BPS Capital Limited reserve the right to close the account;
- 25.3.2 BPS Capital Limited will notify you in writing of the account closure. An email to the email address provided at the time of application will suffice for this purpose;
- 25.3.3 Should there be a residual balance on the closed account of US\$25.00 or less, or any local currency equivalent, BPS Capital Limited reserve the right to use these funds to meet any administrative costs incurred during the closure of the account.
- 25.3.4 Should there be a residual balance on the closed account greater than US\$25.00, or any local currency equivalent, BPS Capital Limited will transfer such funds back to the account from which your initial deposit was made or to an account updated by you and advised to BPS Capital Limited during the normal operation of the account.
- 25.3.5 With regard to Clause 25.3.4 above, BPS Capital Limited reserve the right to deduct US\$25.00, or any local currency equivalent, from any residual balance on the closed account greater than US\$25.00, or any local currency equivalent, to meet any administrative costs incurred during the closure of the account.

26. **CONFIDENTIALITY**

- 26.1 We shall be under no duty to disclose to you or in making any decision or taking any action in connection with the provision of the Services to take into account any information or other matters which come to our notice or the notice of any of our employees, officers, directors, agents or Associates:
 - 26.1.1 Where this would or we reasonably believe that it would be a breach of any duty of fidelity or confidence to any other person; or
 - 26.1.2 Which comes to the notice of an employee, officer director, agent or Associate of ours, but does not come to the actual notice of the account executive or other individual providing you with the Service in question.
- 26.2 The parties to this Agreement will at all times keep confidential any information of a confidential nature acquired in connection with this Agreement or the Services, except for information which they are bound to disclose under compulsion of law or by request of regulatory agencies or to their professional advisers or in our case in the proper performance of the Services.
- 26.3 We will act as data controller (and in certain circumstances, data processor) within the meaning of the Data Protection Act 1998 (the 'Data Protection Act'). You hereby consent to the processing and use by us and our agents and Associates of personal data (as defined in the Data Protection Act) given by you under this Agreement for the provision of the Services, which may include the transfer of such data out of the European Economic Area (as defined

CLIENT AGREEMENT / TERMS AND CONDITIONS

in the Data Protection Act). Such data may also be used by us and our agents and Associates to update Client records and to advise you of other products and services unless you have indicated otherwise in the Client Application Form.

27. FORCE MAJEURE

Whilst we will endeavour to comply with our obligations in a timely manner we will incur no liability whatsoever for any partial or non-performance of our obligations by reason of any cause beyond our reasonable control including but not limited to any communications, systems or computer failure, market default, suspension, failure or closure, or the imposition or change (including a change of interpretation) of any law or governmental or regulatory requirement and we shall not be held liable for any loss you may incur as a result thereof.

28. JOINT ACCOUNTS

- 28.1 This clause 28 applies only where you consist of more than one person such as joint accountholders, trustees or personal representatives.
- 28.2 You shall be jointly and severally liable for the obligations of all and any of you under this Agreement or in any other dealings between you and us.
- 28.3 Unless and until we receive written notice signed by all of you withdrawing or varying the same so as to limit such authority to a specific named individual:
- 28.3.1 Each joint holder will have authority on behalf of all the joint holders to deal with us as fully and completely as if it were the sole owner of the account without any notice to the other joint holders;
- 28.3.2 Any of the joint holders may give us an effective and final discharge in respect of any of their obligations; and
- 28.3.3 Any notice or communication given to one joint holder shall be deemed to be given to all.
- 28.4 On the death of any of you, our Agreement will not terminate but remain binding on the other person(s) constituting our client and we may treat such survivor(s) as the only person's party to this Agreement with us.
- 28.5 Where you are trustees of a trust or personal representative of an estate, you undertake to give us notice forthwith of any change in trustees or personal representatives.
- 28.6 Where you are trustees of a trust, you undertake to supply us with copies of any documents now existing (or hereafter executed) limiting, extending or varying the powers of the trustees or amending the objects of the trust and any other documents or information we may reasonably require in connection therewith.
- 28.7 Notwithstanding the foregoing we reserve the right at our sole discretion:

CLIENT AGREEMENT / TERMS AND CONDITIONS

28.7.1 To require joint instructions from some or all of the joint holders before taking any action under this Agreement; and

28.7.2 If we receive instructions from a joint holder which in our opinion conflict or are inconsistent with other instructions, advise one or more joint holders of such conflict or inconsistency and / or take no action on any such instructions until we receive further instructions satisfactory to us.

29. MISCELLANEOUS

- 29.1 Our appointment under this Agreement is given by you on behalf of your successors in title as well as yourself. Accordingly, if you being an individual should die and are not one of a number of joint holders as contemplated in clause 28 this Agreement will continue in effect until terminated by us or your personal representatives in accordance with clause 11 or 25. We may (but prior to any grant of representation are not bound to) act on the instructions of your personal representatives.
- 29.2 This Agreement supersedes any previous agreement between the parties relating to the subject matter of this Agreement.
- 29.3 Each of the parties shall execute all deeds or documents (including any power of attorney) and do all such other things that may be required from time to time for the purpose of giving effect to this Agreement and the transactions contemplated hereby.
- 29.4 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.
- 29.5 Nothing in this Agreement (or any of the arrangements contemplated hereby) shall be deemed to create a partnership between the parties.
- 29.6 Each of the parties shall pay the costs and expenses incurred by it in connection with negotiating and entering into this Agreement.
- 29.7 No failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof and no single or partial exercise of any right or remedy under this Agreement shall preclude or restrict any further exercise of such right or remedy. The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 29.8 You agree to pay any amount payable in respect of any transaction executed with or through us on the due date regardless of any right of equity, set-off or counterclaim which you may have or allege against any of us or any Associate of ours or other person connected with us.
- 29.9 If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected thereby.

CLIENT AGREEMENT / TERMS AND CONDITIONS

- 29.10 To the extent that you are deemed to be a consumer as defined by the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1999, this Agreement will not affect your rights and will only apply to the extent permitted by law.
- 29.11 This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably submit to the non-exclusive jurisdiction of the English courts.
- 29.12 All communications and any agreement between you and us under this Agreement, information, notices, requests and documents published on our website will be in the English language.
- 29.13 By providing us with your email address, you consent and agree to all information, notices and requests we are required to provide you will be provided to you electronically by email.

30. GENERAL DETAILS

Client Title: _____

Client Family Name: _____

Client Given Names: _____

Client Date of Birth (dd/mm/yy): ____ / ____ / ____

Permanent Residential Address: _____

City / Town: _____

Country: _____

Postcode: _____

Agreement Date (dd/mm/yy): ____ / ____ / ____

This Agreement sets out the terms and conditions on which we will provide you with services from time to time.

This Agreement together with the Client Application Form and other related agreements and notices that we may provide you with from time to time together constitute the terms of your agreement with us.

This is our standard Client agreement upon which we intend to rely. For your own benefit and protection you should read these terms carefully before signing this Agreement. If you do not

CLIENT AGREEMENT / TERMS AND CONDITIONS

understand any point contained within this Agreement, please ask for further information before signing this Agreement.

Please indicate in the Client Application Form whether you are a Retail Client, Professional Client or Eligible Counterparty for the purposes of the FISD Rules, as defined in clause 2.2.

Also please complete and return the attached Client Application Form.

31. AUTHORISATIONS

I / We have read and accept the terms of the Agreement set out above:

Signed: _____

Name (client): _____

Date: ____ / ____ / ____

Signed (Joint (2nd) Signatory): _____

Name (client – joint (2nd) Signatory): _____

Date: ____ / ____ / ____