

**Amias Berman & Co LLP**

**Terms of Business**

Version effective from September 2010

**Amias Berman & Co LLP provides execution broking, advisory services and research to professional investors in the debt markets.**

For more information see [www.amiasberman.com](http://www.amiasberman.com)

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## **Amias Berman & Co LLP Terms of Business**

This terms of business document together with its three Appendices and the Schedules (as amended or supplemented from time to time) (the “**Terms**”) contain the terms on which Amias Berman & Co LLP (“**ABC**”, “**we**”, and “**us**”) will provide you with certain services. These Terms incorporate our Execution and Order Policy (“**Execution Policy**”), as amended from time to time. The current version of our Execution Policy is available on our website at [www.amiasberman.com](http://www.amiasberman.com).

These Terms create a contractual relationship between you and ABC and are legally binding. These Terms will take effect when you first undertake business with ABC after having received them and you will be deemed to accept these Terms and to consent to our Execution Policy every time you enter into a transaction with us.

Any reference in any documentation between you and us to an earlier version of these Terms shall, from the date these Terms take effect, be read as a reference to these Terms or to the relevant or corresponding part thereof.

The Terms shall apply to you regardless of your jurisdiction.

### **1. SERVICES**

- 1.1 We may provide you with dealing services on a matched principal basis in respect of any of the investments listed in Appendix 1. As set out in Clause 5.2, ABC has in place arrangements with Pershing Securities Limited (“**PSL**”) a third party clearer to clear and settle transactions entered into by ABC.
- 1.2 We may also provide research and investment advice in relation to any of the investments listed in Appendix 1 if you have requested us to provide you with such services and we have agreed such request in writing. If this is the case, Schedule 1 shall apply to the provision by us of investment research to you. Schedule 2 shall apply to the provision by us of general advisory services to you.
- 1.3 We may on request provide you with Revaluation Data. This service is governed by Schedule 3.
- 1.4 These Terms apply to all methods or mechanisms used to provide our services to you, including, where applicable, electronic mechanisms and systems.
- 1.5 In the event of a conflict between the provisions of these Terms and any Applicable Rules, the latter will prevail. In addition, we may omit to take any action required under these Terms where we consider this necessary, in order to ensure compliance with any Applicable Rules. All Applicable Rules and whatever we do or do not do in order to comply with them will be binding on you. For the purposes of these Terms, “**Applicable Rules**” shall mean the rules of the Financial Services Authority (the “**FSA Rules**”), the rules and customs of the exchange, market, multilateral trading facility and/or any clearing house through which your transactions are executed and/or cleared and any other applicable law, rules, regulations and codes of conduct of any relevant jurisdiction.

- 1.6 If you are domiciled or resident in the United States of America or are a US person additional US terms of business may apply to you.

## 2. OUR CAPACITY

ABC is authorised and regulated by the Financial Services Authority (the “FSA”). The address of ABC’s registered office is 21 Great Winchester Street, London, EC2N 2JA.

## 3. YOUR CAPACITY

- 3.1 For the purpose of the FSA Rules, we will treat you as a “**Professional Client**” (as defined by those rules). You shall notify us immediately if, at any point, you cease to fall within such definition.
- 3.2 Where we have classified you as a Professional Client, you may also request that you be reclassified as an Eligible Counterparty (as defined in Appendix 2), in relation to the services described in Paragraph 1 of Appendix 2. You understand that a request to be reclassified as an Eligible Counterparty will result in a lesser degree of protection under the FSA Rules for you. For information regarding the main differences in the FSA protections afforded to different client types, please see Appendix 3.
- 3.3 You are entitled to request a different client classification. The FSA Rules allow you to request classification as a Retail Client (as defined by the FSA Rules) when we have classified you as either an Eligible Counterparty or a Professional Client, but ABC shall not be obliged to continue to deal with you if you request such treatment, and ABC in its absolute discretion reserves all rights to decline to deal with you or to charge you a fee or increase the amount of any fee you would otherwise be required to pay under these Terms if you request such treatment.
- 3.4 Unless we agree otherwise in writing, we shall treat you alone as our client for the purposes of the FSA Rules and you will be liable as such. Subject to any notification to the contrary, you agree that no other person (whether disclosed to us or not) shall be our client nor have any rights hereunder, unless we expressly agree otherwise.
- 3.5 Unless otherwise indicated in writing by you, we shall assume that there are no restrictions to the type of transaction we may enter into with or for you or the markets upon which or counterparties with whom transactions may be effected.
- 3.6 You represent, warrant and undertake to us that, both at the date of these Terms and at the time of any transaction we may enter into with or for you:
- (i) you have full power and authority, as well as all necessary licences, authorisations, consents and approvals to agree to these Terms and to instruct us to execute or arrange any transaction in investments specified in Appendix 1 and to perform all your obligations hereunder;
  - (ii) you have adequate resources to enter into and perform any such transaction which you decide to undertake;

- (iii) these Terms and any transactions entered into hereunder are your valid and binding obligations enforceable against you in accordance with these Terms, subject to bankruptcy or other applicable laws;
- (iv) by entering into these Terms and any transactions hereunder, you will not contravene any Applicable Rule;
- (v) all information you have given to us is true and complete and any changes to the information given to us will be promptly notified to us;
- (vi) you will ensure that all relevant investments or any documents of title and/or transfer forms and/or any relevant payments are delivered, paid or transferred to us, to PSL or to whomever we may direct, as applicable, in sufficient time on or before the contractual settlement date to enable the transaction to settle in accordance with market requirements; and
- (vii) unless otherwise agreed in writing, you will always contract as principal only and no person other than yourself has or will have any interest in any transaction that we or PSL undertake or in any account that we or PSL hold on your behalf.

3.7 Where you act as agent for your client(s), you represent, warrant and undertake to us that, both at the date of these Terms and at the time of any transaction we may enter into with or for you:

- (i) your client(s) have adequate resources, to enter into and perform any transaction we execute pursuant to these Terms;
- (ii) any transactions entered into hereunder are valid and binding obligations enforceable against your clients in accordance with these Terms;
- (iii) you have no reason to believe that your client(s) will not be able to meet, or in the foreseeable future will not be able to meet, any settlement or payment obligations or are likely to become insolvent; and
- (iv) you have in place adequate anti-money laundering and "know your customer" policies and procedures and have obtained and recorded evidence of the identity of your client(s) in accordance with applicable laws and regulations (including, without limitation, anti-money laundering regulations).

3.8 You shall provide us with such information as we require in relation to these Terms, including all information required to comply with all FSA Rules and all applicable anti-money laundering rules and regulations. You represent and warrant to us at all times that, to the best of your knowledge, any information provided to us by you is complete, accurate and not misleading in any material respect and you agree to notify us should such information change in any material respect.

#### **4. DEALING**

- 4.1 We shall not be obliged to accept a dealing instruction from you nor need we give any reasons for declining to do so. We will make all reasonable efforts to notify you promptly of such refusal, but shall not be responsible for any losses, costs, damages or expenses incurred by you as a result of our refusal to effect a transaction.
- 4.2 When we accept a dealing instruction from you we will seek to action it as soon as reasonably practicable in the circumstances. We shall not be responsible for any losses, costs, damages or expenses incurred by you as a result of any delay or any change in market conditions before the transaction is effected.
- 4.3 We may take or omit to take any action we think appropriate to ensure compliance with Applicable Rules and we shall not be required to do anything which would in our opinion infringe any such Applicable Rule. We are not required to give prior notice to you of any such action or inaction, and each such action or inaction will be binding upon you.
- 4.4 Unless we have classified you as an Eligible Counterparty your orders will be executed in accordance with our Execution Policy (as amended from time to time). Where necessary, we have separately sought your consent to execute your orders outside of a regulated market or multilateral trading facility (as defined in the FSA Rules).
- 4.5 Subject to Applicable Rules and in accordance with our Order Execution Policy, we may combine your order with our own orders, orders of persons connected with us and orders of other customers. Such aggregation may on some occasions operate to your advantage and on others to your disadvantage.
- 4.6 We may, when you have instructed us to do so, deal for you in non-readily realisable investments. These are investments in which the market is limited or could become so, they can be difficult to deal in and it can be difficult to assess what would be a proper market price or value for them.

#### **5. SETTLEMENT**

- 5.1 Save as provided for in Clause 5.2 and unless otherwise specifically agreed with you, settlement of all transactions with or for you will be made in accordance with the usual terms for settlement of the appropriate exchange, market or clearing house where applicable and/or market convention.
- 5.2 When ABC enters into transactions for you on a matched principal basis, ABC will execute that transaction and immediately thereafter take steps to pass that contract to PSL for clearing and settlement, in accordance with the Letter of Introduction issued to you by PSL. Under the terms of the Letter of Introduction PSL will stand as surety for that transaction as long as the transaction complies with the provisions of PSL's agreement with Amias Berman & Co LLP

## 6. CUSTODY OF YOUR INVESTMENTS

Under no circumstances will ABC provide a custody service for you. It is your sole responsibility to arrange the provision of custody services for your investments.

## 7. CLIENT MONEY

ABC does not hold client money (as defined by the FSA Rules). Consequently, none of the money we receive from you will be treated by us as client money for the purposes of the FSA Rules.

## 8. ADVICE, SUITABILITY AND APPROPRIATENESS

8.1 Except in circumstances where we expressly agree otherwise in writing, we will not provide you with any investment advice and all dealing will be on an execution-only (i.e. non-advised) basis.

8.2 Where we have expressly agreed to provide you with investment advice in accordance with Clause 8.1, we will provide you with specific advice or a personal recommendation (i.e. advice on investments, which is presented as suitable for you, or is based on a consideration of your particular circumstances and risk profile, referred to in these Terms as a "**Personal Recommendation**"). Where we have agreed to provide specific advice or a Personal Recommendation then Schedule 2 of these Terms will apply to you.

8.3 Where we have not agreed in writing to provide investment advice to you in accordance with Clause 8.1, trade ideas, research, other communications, market information, advice or recommendations that you may receive from us from time to time are not, unless it is clearly stated to the contrary, presented as being suitable to your specific circumstances and will not have been prepared or distributed in consideration of your particular circumstances and risk profile. You therefore acknowledge and agree that, in those circumstances, you enter into any transaction solely on the basis of your own judgement and have not relied on any investment research, advice or recommendations provided by us.

8.4 Unless Schedule 2 applies, ABC is not required to assess the suitability of any investment or service provided or offered to you under these Terms and you will therefore not benefit from the protection of the FSA Rules on assessing suitability.

8.5 Where we deal with you on an execution-only basis, as a Professional Client we are entitled to assume that you have the necessary knowledge and experience to understand the risks involved in any investment or service provided or offered to you under these Terms. Where we are required by FSA Rules to assess the appropriateness of any investment or service provided or offered to you under these Terms, unless you advise us that you do not consider that you have the necessary knowledge and experience prior to the provision by us of such investment or service, we will assume that you have the necessary knowledge and experience to understand the risks involved in that investment or service.

- 8.6 When making a decision to deal in investments, you should consider the risk inherent in those products, and in any services and strategies related to them. Your assessment should include a consideration of a variety of potential risks including those relating to credit, the market, liquidity, interest rate, insolvency, foreign exchange, contingent liabilities, execution venue, legal and tax issues.

## **9. INSTRUCTIONS**

- 9.1 You may communicate your dealing instructions to us verbally or in writing (for example by letter or fax or electronically). If you give us instructions in writing, such instructions must be received by us during normal London business hours allowing sufficient time for us to act upon them. Any instruction is transmitted at your own risk. We shall not be liable for any loss suffered on account of any instruction not being received by us.
- 9.2 You agree that acceptance of an instruction to withdraw or amend an existing instruction is always subject to our receiving the instruction in time for the appropriate action to be taken. You agree that we may, in our reasonable discretion, refuse to accept an order or any other instruction for your account and not give you reasons for such refusal. If we refuse to accept an order or any other instruction we will notify you as soon as reasonably practicable, but shall not be responsible for any losses, costs, damages or expenses incurred by you as a result of such refusal.
- 9.3 We shall be entitled to rely on and treat as binding upon you any instructions which we believe to be from you or from your agent(s) (whether received by telephone, electronically, telex, facsimile or otherwise in writing) which we have accepted in good faith. No liability shall attach to us if an instruction which we have accepted and acted upon bona fide is subsequently discovered to have been given forged, falsified or amended without your authority.
- 9.4 Where these Terms are addressed to more than one person, any instruction, notice, demand, acknowledgement or request to be given by or to you under these Terms may be given by or to any one of you. We need not enquire as to the authority of that person.
- 9.5 All telephone conversations between us may be recorded by either or both of us. We may use the telephone recordings in connection with any communications directly or indirectly relating to transactions effected pursuant to these Terms, and our recordings will be accepted by you as conclusive evidence of the instructions, orders or conversations recorded. Our recordings will be, and, will remain, the recording party's sole property and such recordings may be used as evidence in the event of a dispute. Each party may deliver copies or transcripts of such recordings to any court of law or regulatory authority. Subject to our confidentiality obligations and in our discretion, we may, on reasonable request, provide you with such recordings.
- 9.6 Any information or advice (whether oral or written) given by us, or any director, officer, employee or agent of ours to you shall be given in good faith. Where information prepared by our sales personnel, such as sales notes, is provided to you, it will not necessarily reflect our "house view" and its accuracy is not guaranteed. Such information will not have been reviewed or approved by or in conjunction with our

research departments and is not a substitute for the research produced by us and to which Schedule 1 applies. Therefore it may not be relied upon as such.

## **10. RISK WARNING**

Any investment involves a degree of risk and some investments are more risky than others. Prices can fall as well as rise and there is a risk that you may lose some or all of your money. Therefore, when you make a decision to deal in any product, you should consider the risks inherent in such product, including but not limited to credit risk, market risk, liquidity risk, interest rate risk, tax risk, foreign exchange risk, operational risk, insolvency risk, regulatory risk, legal risk and the risks of “over the counter” (as opposed to on-exchange) trading such as the nature of clearing house “guarantees”. You should also read any relevant documentation, for example, term sheets and offering memoranda.

## **11. OUR CHARGES**

- 11.1 When executing trades or providing any other service specified in Clause 1, excluding investment advice, we will not charge you a fee or commission (although you will remain responsible for any other costs or charges in accordance with Clause 11.4), but the price at which investments are bought and sold is likely to be different and you agree that we are entitled to and may retain the difference between the buy and sell price for our sole benefit.
- 11.2 In respect of investment advice provided to you, unless otherwise agreed, you will be responsible for our charges, which will be levied in accordance with our rates in effect at the time the charges are incurred or as otherwise notified to you, verbally or in writing prior to receiving any investment advice. Any alteration to these charges will be notified to you at or before the time of the alteration.
- 11.3 We may, to the extent permitted by the FSA Rules, share our charges or commission with, or receive remuneration from, intermediaries introducing business to us, associated companies or other third parties and will, unless we have classified you as an Eligible Counterparty, provide details to you on request.
- 11.4 Unless otherwise agreed in writing, you will be responsible for the payment of any brokerage fees, transfer fees, registration fees, stamp duty and any other applicable taxes, and all other liabilities, charges, costs and expenses payable in connection with transactions effected or services provided by us on your behalf.
- 11.5 All amounts (including, without limitation, all fees and charges) payable by you shall be due on demand without set-off, counterclaim or deduction.

## **12. REPORTING TO YOU**

- 12.1 Trade confirmations, statements of account and any other notices sent from us to you shall be deemed to have been received by you:

- (i) on the same day as transmission if such communication is by facsimile or other electronic means; or
- (ii) in respect of all other types of communication, three (or, in the case of an overseas client, seven) Business Days from the date of dispatch of the communication.

For the purposes of these Terms, a “**Business Day**” is any day when investment business is generally conducted in London.

- 12.2 You will notify us immediately upon receipt if you are not in agreement with any trade confirmation or other notification from us. In the absence of such immediate notification by you, the trade confirmation or notification will (in the absence of manifest error) be binding upon you.

### **13. TIME OF THE ESSENCE**

Time shall be of the essence with respect to any payment, delivery or other obligation you may have to us under these Terms.

### **14. CONFLICTS OF INTEREST**

- 14.1 In accordance with the FSA Rules and our own Conflicts of Interest Policy (available on request or on our website [www.amiasberman.com](http://www.amiasberman.com)), we have in place arrangements to manage conflicts of interest that may arise between ourselves and our clients and between our different clients.

- 14.2 Where we do not consider that the arrangements under our Conflicts of Interest Policy are sufficient to manage a particular conflict and where we consider that we may still be able to provide the service requested, we will inform you of the nature of the conflict so that you can decide how to proceed. However, where a conflict of interest arises that we are unable to manage, we may, in our absolute discretion, decline to act and in such circumstances we shall not be obliged to disclose the reason why or any further information relating to that conflict of interest.

- 14.3 Your attention is drawn to the fact that when we enter into or arrange a transaction for you we, an associated company or some other person connected with us may have an interest, relationship or arrangement that is material and potentially conflicting with the transactions, investments or service that we provide to you. The circumstances where this may occur are set out in our Conflicts of Interest Policy (as amended from time to time).

### **15. POWER TO SELL, BUY IN OR CLOSE OUT**

- 15.1 If, at any time, we have any reason to believe that you may be unable or unwilling to meet any liabilities which you have incurred to us or which we may have incurred on your behalf or to comply with any other obligations under these Terms, we shall be

entitled (and are irrevocably authorised by you) to take all or any of the following actions without giving prior notice to you:

- (i) sell any investments bought on your behalf but for which you have not paid in full on or before the relevant settlement day;
- (ii) close or rescind open positions on your account. We may do so, for example, if any cash or investments have not been delivered by you on or before the relevant settlement day; and
- (iii) take any other steps (whether or not similar to the above) we may consider to be necessary to meet any obligations with which you have to comply under these Terms or otherwise to protect our position. Any costs, expenses or losses incurred by us in taking any of the steps set out in any or all of this Clause 15.1(i), (ii) or (iii) will be paid by you to us on an indemnity basis.

15.2 Any restrictions on our power to sell or otherwise to deal with assets of yours charged to us or held by us, contained in the Law of Property Act 1925 or any other applicable law, are, to the extent permitted by law, excluded.

## **16. RIGHTS OF SET-OFF**

We shall be entitled at any time to retain or make deductions from, or to set off, amounts which we owe to you (whether absolute or contingent and whether matured or unmatured, and including without limitation the proceeds of any sale) from or against any liability you have to us, whether such liability is absolute or contingent and whether matured or unmatured, under these Terms including, without limitation, when appropriate:

- (i) sums to be paid in settlement of transactions;
- (ii) settlement of our fees, commissions or charges or any other amounts referred to in Clause 11 (Our Charges) or any liabilities or costs incurred when exercising rights under Clause 15 (Power to Sell, Buy-In or Close Out) or any other provision of these Terms;
- (iii) any interest payable to us; and
- (iv) payments due to us pursuant to any indemnity or other payment obligation.

## **17. DEFAULT REMEDIES**

17.1 If any of the following happens:

- (i) you fail to make any payment due to us or to deliver any securities due to us or to our agents, in each case when due; or
- (ii) you fail to perform any other obligation owed to us under these Terms; or

(iii) any representation or warranty you make to us proves false or misleading;

either under these Terms or under any other agreement between you and us; or

(iv) you become unable to pay your debts as they fall due or become insolvent or bankrupt or become the subject of any insolvency, bankruptcy, administration or similar proceedings; or

(v) a winding-up resolution is passed or a winding-up or administration order is made in respect of you or a receiver, liquidator, administrator or similar official is appointed in respect of you or any of your property;

we shall be entitled, without prior notice to you, to take any or all of the following actions and in all cases you will immediately indemnify us on demand for any losses, costs or expenses which we suffer or incur as a result:

(a) to treat any or all outstanding transactions between you and us as having been cancelled or terminated;

(b) to sell any or all of the investments or other property which we or our associated companies are holding or are entitled to receive on your behalf and to apply the proceeds in or towards satisfaction of any obligation or liability you may have to us or our associated companies (including any contingent or prospective liability);

(c) to set off (as described in Clause 16) any amount we owe to you, against any liability you may have to us (including any contingent or prospective liability);

(d) to close out, replace or reverse any transaction, 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 contracts, positions or commitments; or

(e) on notice to you, to terminate this Agreement.

17.2 Where you act as agent, if any of the following happens in respect of any principal of yours (a "**Defaulting Client**"):

(i) you fail to make any payment due to us or to deliver any securities due to us (or to our agents) on behalf of a Defaulting Client; or

(ii) any representation or warranty you make to us on behalf of a Defaulting Client proves false or misleading either under these Terms or under any other agreement between you and us;

we shall be entitled, without prior notice to you, to take any of the actions set out in Clause 17.1 in respect of such Defaulting Client.

17.3 Where you act as agent you will notify us as soon as reasonably practicable if, at any time, you have any reason to believe that any warranty or representation you have provided in respect of your principals or any of them under these Terms is, or with the passage of time shall prove, false or misleading.

## 18. LIABILITY

18.1 We shall not be liable for any loss of opportunity whereby the value of your account may have been increased nor for any reduction in the value of your account as a result of market movements. We shall not be liable for the taxation consequences of any transaction nor shall we be liable for taxation charges arising for any reason.

18.2 Neither we nor any of our directors, officers, employees, agents, or members shall be liable for any loss, cost, expense or damage sustained by you as a result of or in connection with the services to which these Terms apply and the provisions contained in these Terms except insofar as, and then only to the extent that, such loss or damage is caused by wilful default, or fraud, or any failure to comply with the FSA Rules or the provisions of the Financial Services and Markets Act 2000 (as amended) ("**FSMA**").

18.3 Neither we nor any of our directors, officers, employees, agents, or members shall be liable for any loss, cost, expense or damage arising from any act or omission of any agent or third party who performs services pursuant to these Terms except to the extent that such loss is caused by wilful default or fraud in the selection of such agents or third parties on the part of us or our directors, officers, employees, agents or members.

18.4 Neither we nor any of our directors, officers, employees, agents, or members shall be liable for any loss, cost, expense or damage arising from, or accept any responsibility for, the acts or omissions of PSL and its agents where PSL has assumed responsibility for your transaction in accordance with clause 5.2.

18.5 Nothing in these Terms will:

- (i) exclude or restrict any obligation we may have to you, nor any liability we may incur to you, in respect of a breach by us of the FSA Rules; or
- (ii) exclude or restrict to an extent prohibited by law any duty or liability we may have to you.

18.6 You irrevocably and unconditionally agree to indemnify us, our directors, officers, employees, agents and members on demand and keep us fully and effectively indemnified (whether before or after termination of these Terms) against any claims, liabilities or expenses of any kind which may be incurred by us as a direct or indirect result of our acting under these Terms. However, this indemnity shall not apply to any loss or liability to the extent it arises or results from our wilful default or fraud or any contravention by us of the FSA Rules or the provisions of FSMA.

**19. FORCE MAJEURE**

We shall not be in breach of our obligations under these Terms if there is any total or partial failure of performance of our duties and obligations occasioned by any act of God, fire, act of government or state, terrorist act, war, civil commotion, insurrection, embargo, inability to communicate with market makers for whatever reason, failure of any computer dealing or settlement system, prevention from or hindrance in obtaining any energy or other supplies, labour disputes of whatever nature or late or mistaken delivery or payment by any bank or counterparty or any other reason (whether or not similar in kind to any of the above) beyond our reasonable control.

**20. COMPLAINTS**

- 20.1 If you have a complaint about us you should raise it in the first instance with the ABC representative with whom you are dealing. We will endeavour to resolve it informally. If, however, you are not satisfied with the response (or if you prefer not to raise the matter with your ABC representative) you may raise the matter with our Compliance Officer.
- 20.2 If you wish to make a formal complaint this should be made in writing and addressed to ABC's Compliance Officer. Your formal complaint will then be investigated internally by employees of ABC who were not involved with the subject matter of your complaint and have been trained in complaints handling.

**21. COMPENSATION**

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 (e.g. deposits or investments) the claimants hold with respect to the relevant institution. Until 31 December 2009, claims under the Scheme in respect of investment businesses are subject to a maximum compensation limit for each eligible investor of GBP 48,000, made up of 100% of the first GBP 30,000 and 90% of the next GBP 20,000. From 1 January 2010, claims under the Scheme in respect of investment businesses will be subject to a maximum compensation limit for each eligible investor of GBP 50,000, made up of 100% of the first GBP 50,000. 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).

**22. VARIATION AND INFORMATION**

- 22.1 We may, from time to time, make such modifications, amendments and additions to these Terms as we consider necessary or desirable, including those required in order to comply with any Applicable Rule.
- 22.2 You confirm that you have regular access to the internet and consent to us providing you with information, including, without limitation, information about amendments to these Terms or our Execution Policy, by posting such information on our website at [www.amiasberman.com](http://www.amiasberman.com) (or such other website as we may from time to time notify to you.)

- 22.3 We shall notify you by e-mail of any material modifications, amendments or additions to these Terms as soon as reasonably practicable. Such changes will become effective on a date to be specified in such notice using our reasonable endeavours given prevailing market circumstances and changes to Applicable Rules to provide you with as much advance notice as possible.

## **23. TERMINATION**

- 23.1 You may terminate these Terms, and thereby your business relationship with ABC, at any time by written notice to us subject to you having no outstanding obligation to us. We may terminate these Terms at any time by written notice to you.
- 23.2 Termination shall not affect your obligations to settle transactions effected prior to the date of termination and shall not prejudice any right or obligation that may already have arisen. We shall also continue to have the right to disclose information where required to a UK or overseas regulator.

## **24. ASSIGNMENT**

You may not assign any of your rights or obligations under these Terms to any other person without our prior written agreement. We may assign our rights or obligations to any associated companies or to any person or entity who may acquire the whole or any part of our business or assets.

## **25. DATA PROTECTION**

- 25.1 We and you will each treat as confidential (both during and after the termination of the relationship between you and us) any information learned about the other, its investment strategy or holdings or products or services in the course of the relationship pursuant to these Terms and, except as otherwise agreed, shall not disclose the same to any third party without the other's consent.
- 25.2 You acknowledge that we may collect and hold information (including personal data and sensitive personal data, each as defined in the Data Protection Act 1998 (as amended)) relating to you or, if you are a firm, your directors and employees. You consent to disclosure by us to PSL, the FSA (or any successor to the FSA), any relevant exchange, or any other regulatory body or authority in the United Kingdom or elsewhere of such information (including, without limitation, information relating to your transactions and accounts) relating to services provided to you pursuant to these Terms as may be requested by them or that we may otherwise be required to disclose.
- 25.3 You also specifically authorise us to use, store or otherwise process any such information (whether provided electronically or otherwise) to administer these Terms, and to provide services to you, including, without limitation, monitoring and analysing the conduct of your account, assessing any credit limit or other credit decision (as well as the fees and other charges to be applied to your account) and enabling us to carry out statistical and other analysis, and otherwise to market services and products to you.

- 25.4 You acknowledge and agree that, in doing so, we may transfer or disclose such information to third parties, including third parties located outside the EEA. Such parties may include those who provide services to us or act as our agents, those to whom we transfer or propose to transfer any of our rights or duties under these Terms and those licensed 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.
- 25.5 If any personal data or sensitive personal data relating to any of your directors, employees, officers, agents or clients is provided to us, you represent to us that each such person is aware of and consents to the use of such data as set out in this Clause 25 and you agree to indemnify us against any loss, liability, damage, costs or expenses arising out of any breach of this representation.

## **26. NOTICES**

- 26.1 All notices between us shall be in writing and may be served personally or by facsimile, or by other electronic means or by first class post to us at the address we may provide in writing from time to time.
- 26.2 With the exception of dealing instructions to us (which must be communicated in accordance with Clause 9) notices shall be deemed to have been served on us three (or, in the case of overseas clients, seven) Business Days after having been posted, or if sent by facsimile or other electronic means, one Business Day after transmission.

## **27. RIGHTS AND REMEDIES**

The rights and remedies provided under these Terms shall be 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. We may waive any right, power or privilege under these Terms only by (and to the extent of) an express statement in writing. No failure by us to exercise, or delay by us in exercising, any of our rights under these Terms 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.

## **28. ILLEGALITY**

If any provision or term of these Terms or any part of them shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such term or provision shall be divisible from these Terms and shall be deemed to be deleted from these Terms provided always that, if any such deletion substantially affects or alters the commercial basis of these Terms, we reserve the right to amend and modify these Terms in such fashion as may be necessary or desirable in the circumstances. Any such deemed deletion shall not affect the validity of the remaining provisions of these Terms.

**29. RIGHTS OF THIRD PARTIES**

The parties to these terms do not intend that any provision of these Terms should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not party to these Terms.

**30. EXCLUSIVE JURISDICTION**

You agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes, which may arise out of or in connection with these Terms. Notwithstanding the foregoing, nothing contained in this Clause shall limit our right to take proceedings against you in any other court of competent jurisdiction.

**31. GOVERNING LAW**

The provisions of these Terms are governed by, and shall be construed in accordance with, the laws of England and Wales.

**APPENDIX 1**

**Financial investments in respect of which we provide our services**

- 1 Shares in UK and overseas companies.
- 2 Units in regulated and unregulated collective investment schemes, mutual funds and similar schemes in the UK and overseas.
- 3 Warrants, futures (excluding commodity futures), options (excluding commodity options) and contracts for differences.
- 4 Debenture stock, loan stock, bonds, notes, certificates of deposit, commercial paper or other debt instruments, including government, public agency, municipal and other corporate issues.
- 5 Depositary receipts or other types of instruments relating to investments.
- 6 Any other investment which ABC is willing and able to provide its services in relation to.

**APPENDIX 2**  
**Definition of Eligible Counterparty**

1. In accordance with the FSA Rules, where we:

- (i) deal on our own account; or
- (ii) execute orders on your behalf; or
- (iii) receive and transmit orders; or
- (iv) provide you with an ancillary service in connection with any of (i), (ii) or (iii);

then you will be treated as an Eligible Counterparty, if you fall into one of the categories listed in Paragraph 2 below (whether you are from an EEA state or not).

2. The categories referred to in Paragraph 1 above are:

- (i) an investment firm;
- (ii) a credit institution;
- (iii) an insurance company;
- (iv) a collective investment scheme authorised under the UCITS Directive or its management company;
- (v) a pension fund or its management company;
- (vi) another financial institution authorised or regulated under European Community legislation or the national law of an EEA State;
- (vii) an own account commodities or commodity derivatives dealer, where, if it is part of a group, the main business of that group is not the provision of other investment services, or a local;
- (viii) a national government or its corresponding office, including a public body that deals with the public debt;
- (ix) a central bank;
- (x) a supranational organisation; or
- (xi) a firm exempted from the application of MiFID under Article 2(1)(l) of that Directive.

3. Additionally, you will be treated as an Eligible Counterparty where we separately agree to such a classification with you. In such cases you will be deemed an "Elective Eligible Counterparty" for the purposes of the FSA Rules.

**APPENDIX 3****Types of client classification and the differences in FSA protections**

Where we treat you as a Professional Client, you will be entitled to fewer protections under the FSA Rules than you would be entitled to as a Retail Client. In particular:

- (a) you will be given fewer information disclosures with regard to ABC, its services and any investments (for example on costs, commissions, fees and charges);
- (b) where we assess whether a product or service is appropriate for you, we can assume that you have the necessary level of knowledge and experience to understand the risks involved in it;
- (c) if we are ever required to assess the suitability of a Personal Recommendation made to you, we can assume that you have the necessary experience and knowledge to understand the risks involved, and can sometimes assume that you are able financially to bear any investment risks consistent with your investment objectives;
- (d) when providing you with best execution we are not required to prioritise the overall costs of the transaction as being the most important factor in achieving best execution for you;
- (e) we do not need to inform you of material difficulties relevant to the proper carrying out of your order(s) promptly; and
- (f) should we provide you with periodic statements, we are not required to provide them as frequently as for Retail Clients.

Where we treat you as an Eligible Counterparty, you will be entitled to fewer protections under the FSA Rules than you would be entitled to as a Professional Client. In particular, and in addition to the matters noted above, where we treat you an Eligible Counterparty:

- (a) we are not required to provide you with best execution in executing your orders;
- (b) we are not required to disclose to you information regarding any fees or commissions that we pay or receive;
- (c) we are not required to assess the appropriateness of a product or service that we provide to you but can assume that you have the expertise to choose the most appropriate product or service for yourself;
- (d) we are not required to provide you with information about ourselves, our services and the arrangements through which we will be remunerated;
- (e) we are not required to provide you with risk disclosures on the products or services that you select from us; and
- (f) we are not required to provide reports to you on the execution of your orders.

**SCHEDULE 1****Investment Research**

- 1 Any research, recommendation or information we give to you is provided solely for information purposes and to enable you to make your own investment decisions and is not otherwise to be relied upon by you.
- 2 None of our research reports, recommendations and information should be construed as a solicitation or an offer to buy or sell any financial instruments in any jurisdiction and they do not amount to advice or a Personal Recommendation.
- 3 Whilst we will take reasonable care in the preparation of research reports, recommendations and information, we give no representation, warranty, undertaking or guarantee, express or implied, as to the accuracy, completeness or reliability of such information or as to the legal, regulatory or tax consequences of any transaction effected on the basis of our research reports, recommendations or information. We are under no obligation to update or keep current the information contained in any such document.
- 4 Any opinions expressed in our research reports, recommendations and information are subject to change without notice and may differ or be contrary to opinions expressed by other business areas as a result of using different assumptions and criteria.
- 5 The analysis contained in our research reports, recommendations and information is based on numerous assumptions and different assumptions could result in materially different results.
- 6 We shall not be obliged to ensure that any research reports, recommendations or information that we provide to you, or any information on which it is based, will be given to you before or at the same time as it is made available to any other person, including, without limitation, other clients.
- 7 You should read and consider carefully any disclosures or disclaimers made in our research reports, recommendations and information. We shall not be under any obligation when we deal in investments for or with you to take account of any such research reports, recommendations or information.
- 8 Our research reports, recommendations and information may appear in one or more screen information services.
- 9 No research report, recommendation nor any information contained in such document issued by us may be reproduced by you for any purpose except with our written permission.

- 10 Where our research reports, recommendations or information contain a restriction on the person or category of person for whom that document is intended or to whom it may be distributed, you agree that you will not pass it on to any such person or category of persons.

## SCHEDULE 2

### General Advisory Services

This Schedule 2 only applies to you if we have expressly agreed in writing to provide you with specific advice or a Personal Recommendation in accordance with Clause 8.2 of these Terms.

#### 1. SERVICES

- 1.1 Where we have agreed to provide advisory services to you and where you have requested such services, we will provide you with a Personal Recommendation (i.e. advice on investments, which is suitable for you or is based on a consideration of your particular circumstances) either:
- (i) by contacting you periodically by telephone, post, fax or email with details of new investments and/or suggested changes to your investment that we believe are suitable for you; or
  - (ii) by replying to your request for advice.
- 1.2 Where we provide you with a Personal Recommendation it is valid only at the time it is made and may be relied on as being accurate and suitable only at the time that we make it, unless we expressly state otherwise when we make it.
- 1.3 We will not review your investments at regular intervals or otherwise and this therefore remains your responsibility. We will not manage your investments for you on a discretionary basis.
- 1.4 We will not provide or be responsible for the provision of any tax, accounting or legal advice in respect of your investments.

#### 2. SUITABILITY

- 2.1 Where we make a Personal Recommendation to you, FSA Rules require us to take reasonable steps to assess whether such Personal Recommendation is suitable for you based on information provided by you regarding your knowledge and experience in the relevant investment field, your financial situation, your investment objectives and your risk profile.
- 2.2 As we have classified you as a Professional Client, we are entitled to assume and have assumed that you have the requisite knowledge and experience in the relevant investment field. We are also entitled to assume and have assumed that you are able financially to bear any related investment risks consistent with your investment objectives, either because you are a "Per-se Professional Client" as defined in the FSA Rules or because we have carried out the assessment required by the FSA when we classified you as a Professional Client. If you do not consider this to be the case, you must make us aware of this prior to the provision any Personal Recommendation and provide us with any available information as to the level of your knowledge and

experience and/or as to your financial situation as appropriate. We will then rely on the information that you have supplied to us.

- 2.3 Unless otherwise confirmed to us in writing, you confirm that your objectives are based upon either:
- (i) hedging current exposures;
  - (ii) maximising income; or
  - (iii) long-term capital growth.
- 2.4 Where we have requested that you provide us with information regarding your: (i) investment objectives; (ii) financial status (in other words, evidence that you would be able financially to bear any investment risks which may be related to your investment objectives); and (iii) knowledge and experience in the investment field relevant to the Personal Recommendation provided to you for the purposes of assessing suitability, we shall assume that the information you provide is accurate. We will not have responsibility or liability to you if such information changes or becomes inaccurate unless and until you have informed us in writing of such change.

### **3. LIMITATION OF LIABILITY**

- 3.1. Whilst we will take all reasonable care in the preparation of the Personal Recommendations we provide to you, we give no representation, warranty, undertaking or guarantee as to their accuracy or completeness or as to any tax or other consequences. Further, you acknowledge that a Personal Recommendation provided to other clients may differ from a Personal Recommendation provided to you and that any Personal Recommendation that we give to any person may not be consistent with and/or may conflict with any proprietary investments of our directors, officers, employees, agents or members.
- 3.2. We shall not be liable for any costs, claims, liabilities, expenses or losses which you may suffer as a result of relying on any Personal Recommendation provided to you unless we have acted in bad faith.

### **4. RISK WARNINGS**

Any investment involves a degree of risk and some investments are more risky than others. Prices can fall as well as rise and there is a risk that you may lose some or all of the money that you have invested by following a Personal Recommendation that we provide to you. Past performance is no indicator of future performance. Income can fluctuate and is not guaranteed. Movement of exchange rates may be favourable or unfavourable on the gain or loss otherwise accruing to the value of an asset.

### SCHEDULE 3

#### Supply of data by ABC

In the event that we supply you or your group companies, through whatever medium, with non-live pricing data (the “**Data**”) which you may use for revaluation purposes, you agree that the Data will be supplied on the following Terms:

- 1 ABC shall send or make available the Data to you and/or your group companies by such method(s) from time to time and at such times as ABC in its sole discretion decides or as ABC from time to time otherwise agrees with you and/or your group companies.
- 2 Save as provided in Paragraph 8 below, you undertake to keep the Data confidential and not to disclose the Data or any part of it to any person (and for the purposes of these Terms “**person**” shall include, without limitation, any individual, partnership, company or corporation), except that you may disclose the Data to your officers and employees and those of your group companies provided in each case that (i) you inform them of the confidential nature of the Data; and (ii) you procure that they comply with this Schedule 4 as if they were a party to these Terms.
- 3 You and your group companies undertake not to use the Data or permit or suffer the same to be used for any purpose other than your or your group companies’ internal use. You undertake not to, and shall procure that your group companies shall not, sell, transfer or sub-license the Data to any third party or permit or suffer the same to be sold, transferred or sub-licensed.
- 4 You undertake not to, and shall procure that your group companies shall not, disclose to any person the fact that ABC is supplying the Data to you and/or your group companies without ABC’s prior written consent.
- 5 You agree that the Data belongs to, and is the intellectual property of, ABC, its group companies and/or its and their respective licensors.
- 6 You acknowledge that the Data is not intended to be relied upon as authoritative or taken in substitution for the exercise of judgement and that it is not, and should not be construed as, an offer, bid or solicitation in relation to any financial instrument. You further acknowledge that the Data is obtained from sources believed to be reliable and may also be based on opinions, estimates, projections and extrapolations constituting ABC’s judgement (including that of its relevant group companies and/or their respective licensors). ABC and its group companies do not guarantee, and expressly disclaim liability for, and make no representations or warranties, whether express or implied, as to the Data’s currency, accuracy, timeliness, completeness or fitness for any particular purpose. ABC and its group companies accept no liability whatsoever for any loss (including, but not limited to, any direct, indirect or consequential loss, whether or not such loss is foreseeable and whether or not ABC has been appraised of the use to which the Data will be put) howsoever arising from the Data’s use, the timeliness of its delivery or its failure to be delivered at all.

- 7 You agree that damages would not be adequate remedy for any breach of the terms of this Schedule 3 and that ABC may be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Schedule 3. ABC shall be entitled to enforce this Schedule 3 against you and/or your group companies.
  
- 8 Your obligations under Paragraph 3 of this Schedule 3 (and those of your group companies) shall not apply to the extent that disclosure of the Data is required to be made as a result of a subpoena, requirement or official request from any competent judicial, administrative, legislative or regulatory or self-regulatory authority or body; provided, however, that unless prohibited by court order you shall provide advance notice to ABC of the intended disclosure of the Data in order to allow ABC an opportunity to object to the disclosure of the Data.

For the purposes of this Schedule 3, “you” shall include a reference to yourself as well as to all or any of your group companies who directly or indirectly receive Data from time to time (on whose behalf you shall be deemed to contract).