

## Member Client Agreement

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**Note:** To be printed off by respective Broker Members and maintained along with requisite documentation for a given Client.

Agreement made this day of \_\_\_\_\_, 2005

### **BETWEEN:**

- (1) [\_\_\_\_\_] of [\_\_\_\_\_] (the "**Client**"); and
- (2) [\_\_\_\_\_] of [\_\_\_\_\_] (the "**Broker Member**").

### **1. Application and Scope of this Agreement**

1.1 **Services:** The Broker Member will provide the following services to the Client:

- (a) the sale, purchase and/or clearing of (i) Commodities Contracts (as defined in the Emirates Securities and Commodities Authority ("**ESCA**") Regulations) and/or (ii) options on Commodities Contracts) approved by ESCA for trading on the Dubai Gold and Commodities Exchange ("**DGCX**") (each a "**Transaction**") and the keeping of one or more accounts for such Transactions; and
- (b) such other services as may be agreed in writing between the Broker Member and the Client.

1.2 **Capacity:** In entering into this Agreement and each Transaction, the Broker Member and the Client shall each act as principal. The Broker Member shall not act as agent on the Client's behalf.

1.3 **Application to Transactions:** Unless otherwise agreed in writing between the Broker Member and the Client, this Agreement shall govern each Transaction entered into or outstanding on or after the date this Agreement takes effect.

### **2. Governmental and DGCX Rules and Requirements**

2.1 **Regulations:** The Client acknowledges that the Broker Member shall be required to comply with (i) the By-Laws of the DGCX and the Rules of its clearing corporation (hereafter the "**DCCC**"); and (ii) all applicable federal laws and regulations of the United Arab Emirates and other laws applicable in the Emirate of Dubai, ((i) and (ii) together, the "**Applicable Regulations**") in entering into or performing obligations under a Transaction governed by this Agreement. The Client will use all reasonable steps to comply with all relevant Applicable Regulations in relation to this Agreement and any Transaction.

2.2 **Conflict between this Agreement and Applicable Regulations:** If there is any conflict between a provision of this Agreement and any Applicable Regulation, the Broker Member shall be entitled to comply with such Applicable Regulation and shall not be in breach of its obligations under this Agreement. The Client agrees that the Broker Member may take or omit to take any action it considers necessary to comply with any Applicable Regulations and any action which the Broker Member takes or omits to take for the purpose of compliance with an Applicable Regulation including, without limitation, any liquidation, in whole or in part, of the Client's positions shall not render the Broker Member or any of its directors, officers, employees or agents liable.

2.3 **Contracts subject to DGCX By-Laws and DCCC Rules:** All Transactions executed on DGCX in accordance with the terms of this Agreement are subject to the DGCX By-Laws and DCCC Rules as amended from time to time.

- 2.4 **Compliance by the Client:** The Broker Member shall have no responsibility for the Client's compliance with any Applicable Regulations governing or affecting the Client's conduct or for the Client's compliance with any Applicable Regulations governing or affecting Transactions.
- 2.5 **Action taken by the DGCX/DCCC or a Clearing Member:** The Client acknowledges that the By-Laws of the DGCX and the Rules of DCCC may afford DGCX/DCCC wide powers in various situations, including (without limitation) in an emergency or otherwise undesirable situation, or in the event of a default (not necessarily on the part of either the Broker Member or the Client), to close out a Transaction, to require the exercise of rights of set-off or to take such other steps or combination of steps as the DGCX or DCCC thinks fit. The Client agrees that if the DGCX (or DCCC or Clearing Member, acting at the direction of, or as a result of action taken by DGCX or DCCC) takes any action which affects a Transaction, then the Broker Member may take any action which it, in its absolute discretion, considers desirable to correspond with such action or to mitigate any loss incurred as a result of such action. Any such action taken by the Broker Member will be binding on the Client.
- 2.6 **Closing-Out:** Unless the Broker Member and the Client otherwise agree in writing, or the Applicable Regulations provide otherwise, if the Broker Member enters into any Transaction to close out any existing Transaction between the Broker Member and the Client, then each party's obligations under both such Transactions shall automatically and immediately be terminated upon entering into the second Transaction, except for any settlement payment due from one party to the other in respect of such closed out Transactions.

### 3. **Advice and Recommendations**

#### 3.1 **\*Non-discretionary Trading:**

- (a) Advice, recommendations and market or other information ("**Advice**") may be given to the Client by the Broker Member at its discretion and on its own initiative in accordance with the Broker Member's standard terms and conditions as to investment business (the "**Terms and Conditions**").
- (b) The Client retains full responsibility for making all trading decisions with respect to the Client's account. Unless otherwise agreed in writing, the Broker Member will not owe the Client any duty to advise it on the merits or suitability of any Transaction nor be under any obligation to provide Advice on an on-going basis in relation to any investments of the Client.
- (c) Any Advice communicated to the Client is incidental to the provision of services by the Broker Member to the Client under this Agreement and does not constitute an offer to sell, or the solicitation of an offer to buy, any futures contracts or options or any commodity underlying any futures contracts or options.
- (d) The Client acknowledges that any Advice is provided solely to enable the Client to make its own investment decisions and may be different from Advice given to other customers due to individual analysis of fundamental and technical factors by different personnel. Such Advice may not be consistent with any proprietary investments of the Broker Member or its associates, directors, employees or agents.
- (e) No representation, warranty or guarantee is made or given to the Client as to the accuracy or completeness of any Advice furnished to the Client or as to the tax consequences of the Client's Transactions.
- (f) The Broker Member has no discretionary authority or control with respect to purchasing or selling futures contracts or options relating to commodities for the Client, except as provided in Sections 4.1, 4.2, 4.3, 11 and 12.

#### 3.2 **\*\*Discretionary Trading:**

- (a) The Client hereby grants the Broker Member authority to act on its behalf to purchase or sell futures contracts or options on DGCX for the account of the Client, subject to any conditions that may be agreed to in writing and attached to this Agreement;

- (b) Provided that the Broker member acts in accordance with any conditions specified in accordance with Section 3.2(a) and subject to Section 14 the Broker Member shall have no liability for the results of discretionary trading undertaken for the Client;
- (c) Clauses 4.1, 4.2 and 4.3 shall cease to apply.

\* Please delete section 3.1 if the Broker Member is to be given discretion when trading for the Client.

\*\* Please delete section 3.2 if the Broker Member is not to be given discretion when trading for the Client.

## 4. Instructions and Communications

### 4.1 **Instructions and Authorisation:**

- (a) In entering into a Transaction, the Broker Member shall be entitled to rely upon any oral or written instructions given by the Client or by any person authorised in writing by the Client to give instructions on its behalf. The Client may revoke this authorisation by delivering to the Broker Member a signed written notice to this effect.
- (b) In giving instructions, the Client may give the Broker Member discretion with regard to the timing and/or the price at which such instructions are to be executed. In such cases the Broker Member shall, subject to Section 14, not be liable for the results of the discretion exercised by the Broker Member provided such Broker has not been negligent.
- (c) Once given, instructions may only be withdrawn or amended with the Broker Member's consent.

4.2 **Acceptance of orders:** The Broker Member shall have the discretion, to be exercised reasonably, to refuse to accept instructions to enter into a Transaction and/or to refuse to comply with any direction from the Client, provided it informs the Client promptly of such decision and in any event not later than two business hours from receipt of instructions.

### 4.3 **Exercise of options:**

- (a) The Client acknowledges that: (i) the DGCX and DCCC have established exercise cut-off times ("**DGCX/DCCC Cut-Off Times**") for the submission of exercise instructions in relation to options; and (ii) the Broker Member may set its own exercise cut-off times (a "**Broker Member Cut-Off Time**") which may be earlier than the DGCX/DCCC Cut-Off Times.
- (b) The Client agrees that, in respect of any option which remains open and is in-the-money at the DGCX/DCCC Cut-Off Times, the Broker Member will, at such time, automatically exercise such option for the account of the Client unless it has received from the Client, by the Broker Member Cut-Off Time, instructions to refrain from exercising the option (and, for the purposes of this paragraph (b), where, in respect of such option, the Broker Member has not set its own exercise cut-off time, the Broker Member Cut-Off Time shall be deemed to be the DGCX/DCCC Cut-Off Times).
- (c) The Client agrees that, in respect of any option which remains open and is at-the-money or out-of-the-money at the DGCX/DCCC Cut-Off Times, the Broker Member will not exercise such option unless it has received from the Client, by the Broker Member Cut-Off Time, instructions to exercise the option (and, for the purposes of this paragraph (c), where, in respect of such option, the Broker Member has not set its own exercise cut-off time, the Broker Member Cut-Off Time shall be deemed to be the DGCX/DCCC Cut-Off Time).
- (d) The Client understands that all short option positions are subject to assignment at any time at the discretion of DGCX/DCCC, including positions established on the same day that exercises are assigned.
- (e) The Client acknowledges and agrees that it is the Client's responsibility to make itself aware of any exercise cut-off time set by the Broker Member or the DGCX/DCCC in respect of an option and that the Client shall not have any claim against the Broker Member arising from the exercise or non-exercise of an option, save in circumstances where the Broker Member has failed to act in accordance with the Client's instructions to exercise or, as the case may

be, refrain from exercising an option where such instructions have been duly given in accordance with the time limits specified in paragraphs (b) or, as the case may be, (c) above.

- 4.4 **Deposit:** The Client must deposit sufficient funds and/or the necessary documents for exercise of an option by any time specified by the Broker Member, and if none, prior to the close of the relevant market on the day of exercise.
- 4.5 **Prompt delivery:** The Client will promptly deliver any instructions, money, documents or commodity deliverable under a Transaction in accordance with that Transaction as modified by any provision of this Agreement or by any instructions given by the Broker Member for the purpose of enabling the Broker Member to perform any obligations it may have under a relevant matching Transaction on the DGCX or with a Clearing Member. Without prejudice to any of the Broker Member's other rights under this Agreement, if the Client fails to comply with any obligation under this Section 4.4, the Broker Member will be entitled, in its absolute discretion, to close out all or any of the Client's Transactions.
- 4.6 **Confirmations:** All confirmations of trades, statements of account, margin calls and any other notices shall be sent by the Broker Member to the Client promptly and within any period of time stipulated by the Applicable Regulations and, except as otherwise provided in this Agreement, shall be conclusive and binding on the Client unless: (a) the Client objects to it in writing within two (2) Business Days ("**Business Day**" as defined in the DGCX By-Laws) from the date on which such notice is sent to it; or (b) the Broker Member at any time notifies the Client of an error in such notice.
- 4.7 **Notices:** Unless the Broker Member and the Client otherwise agree, all notices, instructions and other communications to be given by either party under this Agreement or any Transaction (a) to the Client, shall be given to the address, facsimile number (confirmed if requested) and to the individual or (if a corporation) the department specified on the front page of this Agreement or as subsequently specified by notice in writing from the Client to the Broker Member; and (b) to the Broker Member, shall be given to the address, facsimile number (confirmed if requested) and to the individual or department specified by notice in writing from the Broker Member to the Client. Unless otherwise specified therein, the relevant notice, instruction or communication, shall be effective upon receipt. Notices, instructions and other communications made pursuant to this Agreement or any Transaction shall not be effective if given by electronic mail.

## 5. **Protection and Confidentiality of Client Information**

The Broker Member shall keep confidential the details or patterns of trading undertaken by the Client as if such information were that of the Broker Member. The Client may expressly consent in writing to the Broker Member sharing such information, other than to regulatory, statutory or governmental authorities, but such passing of information shall not be done otherwise.

## 6. **Fees**

- 6.1 **Fees:** The Client agrees to pay to the Broker Member on demand:
- (a) brokerage and commission as set out in Schedule 1 as amended from time to time;
  - (b) premiums on any option purchased by the Broker Member on the Client's instructions;
  - (c) such sums as the Broker Member may at any time require in or towards satisfaction of any debit balance on any of the Client's accounts with the Broker Member;
  - (d) the amount of any trading loss that may result from a Transaction governed by this Agreement executed by the Broker Member;
  - (e) where the Broker Member is not a Clearing Member and uses such Clearing Member to clear a Transaction, any sums required to reimburse the Broker Member for any fees paid to a Clearing Member; and
  - (f) interest and service charges on any debit balances in the Client's account with the Broker Member at the rates agreed from time to time by the Broker Member and the Client, together with the Broker Member's costs and reasonable legal fees incurred in collecting any such deficit.

- 6.2 **Payment:** All payments to the Broker Member shall be made in same day (or immediately available) and freely transferable funds in such Currency and to such bank as the Broker Member may from time to time specify. All such payments shall be made by the Client without any deduction or withholding.

## 7. Representations and Warranties

The Client represents and warrants to the Broker Member as at the date of this Agreement and each time it enters into a Transaction that:

- (a) in the case of a corporation, it is duly organised and validly existing under the laws of its place of organisation or incorporation;
- (b) it has, and will have, the power and authority to enter into, exercise its rights and perform or comply with its obligations under this Agreement and each Transaction and has, and will have, taken all necessary action to authorise such exercise, performance and execution of this Agreement and any other documentation relating to this Agreement to which the Client is a party;
- (c) its obligations under this Agreement are valid, binding and enforceable and do not and will not violate the terms of any regulation, order, charge or agreement by which the Client is bound;
- (d) any financial statement and any other information furnished at any time by or on behalf of the Client to the Broker Member is true and correct to the best of the Client's knowledge and not misleading in any material respect and the Broker Member shall be entitled to rely on any such financial statement and information;
- (e) it has obtained all consents, licences and authorisations required: (i) to enable the Client to enter into, exercise its respective rights and perform and comply with its respective obligations under this Agreement and each Transaction; and (ii) to ensure that those obligations are valid, binding and enforceable, and that it will maintain in full force and effect all such consents, licences and authorisations;
- (f) no Event of Default (as defined in Section 10.1) or Potential Event of Default (where "**Potential Event of Default**" means any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the above) an Event of Default) has occurred and is continuing with respect to the Client;
- (g) it owns, with full title guarantee, all margin and collateral deposited with or transferred to the Broker Member (including any Transaction) free and clear of any prior security interest whatsoever other than a lien routinely imposed on all securities in a clearing system in which such securities are held; and
- (h) it is aware that in the event a Transaction is not closed-out, the delivery obligations under such Transaction will have to be complied with in accordance with the terms of the Transaction, any Applicable Regulations and this Agreement.

The Client will promptly notify the Broker Member in writing if any of the above representations and warranties shall materially change or cease to be true and correct.

## 8. Margin Requirement

- 8.1 **Margin Payments:** The Client agrees to pay to the Broker Member from time to time on demand by way of margin such sums and in such form as the Broker Member may in its discretion reasonably require. Such margin requirements established by the Broker Member may exceed the margin required of the Broker Member by the DGCX or DCCC or the Clearing Member.

- 8.2 **Supplemental Margin:** The Client will be required to supplement the margin at any time when the Client's account with the Broker Member shows a debit balance or an increase in the Client's margin requirement.

### 8.3 Application of Margin:

All margin in the form of cash shall be held for the following purposes:

- (i) for application in respect of any margin paid by the Broker Member to the DCCC or a Clearing Member;

- (ii) to apply in or towards satisfaction of, or in reimbursement to the Broker Member of, all costs, damages, losses, liabilities and expenses incurred under or in respect of all and any Transactions and all liabilities and expenses (including dealing turns, charges and taxes) incurred as a result of the performance by the Broker Member of its duties or the exercise by the Broker Member of its rights, powers and/or privileges under this Agreement (irrespective of the denominated Currency), other than where such costs, charges, losses, liabilities and expenses are directly incurred as a result of the default, negligence, wilful misconduct or fraud of a Clearing Member selected by the Broker Member or the default of a Clearing Member selected by the Broker Member.

Subject to the Broker Member being satisfied that all such costs, damages, losses, liabilities and expenses attributable to any Transaction have been satisfied, discharged or otherwise released and subject always to the Broker Member's rights under Sections 11 and 12, the Broker Member will repay to the Client any surplus which is, in the Broker Member's reasonable opinion, attributable to such Transaction.

- 8.4 **Failure to pay Margin:** Failure by the Client to meet a call for margin may give rise to default action being taken by the Broker Member under Section 10 (or by the DGCX or DCCC or the Clearing Member) which may include the closing out of all or some of the Client's open positions.

## 9. Treatment of Client Monies

- 9.1 **Use of Client funds:** The Broker Member will not pass any money belonging to the Client to the DGCX, Clearing Member or DCCC but may use such money to off-set, at any time, any amounts owed to it by the Client under the terms of this Agreement or any Transaction entered into hereunder.

- 9.2 **Segregation and Application of Client funds:** All monies, securities or collateral ("**assets**") held for the Client by the Broker Member shall be segregated as required by DGCX By-Laws. The Broker Member may not pledge, re-pledge, hypothecate, re-hypothecate or invest, either separately or with the assets of other customers, any assets held by the Broker Member for the accounts of the Client.

- 9.3 **Pay-out:** The pay-out of monies to the Client shall be made in accordance with the Applicable Regulations, however the Broker Member and the Client may agree from time to time on the provision of periodical margins to address operational and practical constraints.

## 10. Liquidation

For the purposes of this clause "**Proceedings**" means any suit, action or other proceedings relating to this Agreement (including any Transaction governed by this Agreement) and "**Indebtedness**" includes any obligation (whether present or future, actual or contingent, as principal or surety or otherwise) for the payment or repayment of money.

For the purposes of clauses 10 and 11, "**Liquidation Date**" means a day on which the Broker Member commences the termination and liquidation of Transactions or such a termination and liquidation commences automatically.

- 10.1 **Events of Default:** It is an Event of Default (an "**Event of Default**") if at any time:
- (i) in the case of a corporation, any of events (a) to (j) below occur; and
  - (ii) in the case of an individual, any of events (a), (b), (e) or (g) to (k) below occur.
- (a) the Client fails to deposit or maintain margin or make payment of any other amount due or make or take delivery of any commodity when due under this Agreement or any Transaction or the Client's account incurs a debit balance beyond any amount agreed to by the Broker Member;
  - (b) the Client fails to observe or perform any of the Client's obligations under the terms of this Agreement or any Transaction and/or the Terms and Conditions;

- (c) the Client commences a voluntary case or other procedure seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium or other similar relief with respect to the Client or its debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to the Client, if insolvent), or seeking the appointment of a receiver, liquidator, conservator, administrator, custodian, examiner, trustee or other similar official (each a "**Custodian**") of the Client or any part of the Client's assets; or if the Client takes any corporate action to authorise any of the foregoing; and, in the case of a reorganisation, arrangement or composition, the Broker Member does not consent to the proposals;
- (d) an involuntary case or other procedure is commenced against the Client seeking or proposing reorganisation, or an administration order, liquidation, an arrangement or composition, a freeze or moratorium or other similar relief with respect to the Client or its debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to the Client if insolvent) or for the appointment of a Custodian of the Client or any part of its assets;
- (e) the Client is unable to pay its debts as they fall due or is bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to the Client; or any Indebtedness of the Client is not paid on the due date 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 the Client's assets, undertaking or assets (tangible and intangible) or, in the case of an individual, the Client has a bankruptcy petition presented against him which is not dismissed, discharged, stayed or restrained within 30 days of the petition;
- (f) the Client is dissolved, or, if its existence is dependent upon a form of registration, such a registration is removed or ends, or any procedure is commenced seeking or proposing its dissolution or the removal or ending of such a registration;
- (g) the Broker Member considers it necessary or desirable for its own protection or to prevent (what the Broker Member may in its absolute discretion consider to be) a violation of any applicable law, regulation or good standards of market practice;
- (h) any representation or warranty made or given or deemed made or given by the Client under this Agreement or any Transaction proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given;
- (i) any action is taken or event occurs which the Broker Member considers might have a material adverse effect upon the Client's ability to perform any of its obligations under this Agreement or any Transaction; or
- (j) there occurs or exists (1) an event as described in sub-paragraphs (a) – (i) (if the Client is a corporation) or (a), (b), (e) or (g) to (i) (if the Client is an individual) above under one or more agreements or instruments entered into by the Client with any party (including the Broker Member) ("**Other Agreement**"), or (2) there occurs or exists an event which constitutes an event of default (howsoever defined or described) under any Other Agreement; or
- (k) if the Client is an individual, the death of the Client or the Client being declared by a court order to have limited or no legal capacity or any other event having a similar effect.

Without prejudice to the Broker Member's rights in this Section 10 the Client shall give the Broker Member notice as soon as it becomes aware of the occurrence of any of the events referred to above.

- 10.2 **Default Action:** If an Event of Default occurs in respect of the Client, the Broker Member may exercise its rights under Section 10.3, except that in the case of the occurrence of any Event of Default specified in Section 10.1(c) or 10.1(d), the provisions of Section 10.4 shall apply.
- 10.3 **Termination on Notice:** Subject to Section 10.4, at any time following the occurrence of an Event of Default, the Broker Member may, by notice to the Client, specify a Liquidation Date for the termination and liquidation of Transactions in accordance with the provisions of Section 10.5.

- 10.4 **Automatic Termination:** The date of the occurrence of an Event of Default specified in Section 10.1(c) or 10.1(d) shall automatically constitute a Liquidation Date, without the need for any notice by the Broker Member and the provisions of Section 10.5 shall then apply.
- 10.5 **Calculation of Liquidation Amount:** Upon the occurrence of a Liquidation Date:
- (a) neither the Broker Member nor the Client shall be obliged to make any further payments or deliveries under any Transaction which would, but for this Section, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount;
  - (b) the Broker Member shall (on, or as soon as reasonably practicable after, the Liquidation Date) determine (discounting if appropriate), in respect of each Transaction referred to in Section 10.5(a), its total cost, loss or, as the case may be, gain, in each case expressed in US Dollars (and, if appropriate, including any loss of bargain, cost of funding or, without duplication, cost, loss or, as the case may be, gain as a result of the termination, liquidation, obtaining, performing or re-establishing of any hedge or related trading position) as a result of the termination, pursuant to this Agreement, of each payment or delivery which would otherwise have been required to be made under such Transaction (assuming satisfaction of each applicable condition precedent and having due regard, if appropriate, to such market quotations published on, or official settlement prices set by the DGEX as may be available on, or immediately preceding, the date of calculation); and
  - (c) the Broker Member shall treat each cost or loss to it, determined as above, as a positive amount and each gain by the Broker Member, so determined, as a negative amount and aggregate all of such amounts to produce a single, net positive or negative amount, denominated in US Dollars (the "**Liquidation Amount**").
- 10.6 **Payer:** If the Liquidation Amount determined pursuant to Section 10.5 is a positive amount, the Client shall pay it to the Broker Member and if it is a negative amount, the Broker Member shall pay such amount to the Client. The Broker Member shall notify the Client of the Liquidation Amount, and by whom it is payable, immediately after the calculation of such amount.
- 10.7 **Payment:** The amount payable by either party to the other pursuant to the provisions of Section 10.6 or any Applicable Regulation shall be paid in US Dollars by the close of business on the Business Day following the completion of the termination and liquidation under Section 10.5, or any laws or regulations having a similar effect. Any such amount which is not paid on the due date shall bear interest at such reasonable rate as the Broker Member may select.
- 10.8 **Base Currency:** For the purposes of any calculation made under this Agreement, the Broker Member may convert amounts denominated in any other Currency into US Dollars at such rate prevailing at the time of the calculation as the Broker Member shall reasonably select.
- 10.9 **Termination Rights:** At any time following the occurrence of an Event of Default, the Broker Member shall be entitled at its sole discretion to take one or more of the following actions:
- (a) liquidate, sell or close out any or all of the Transactions, open positions, cash, securities and other assets in the Client's accounts;
  - (b) hedge and/or offset such Transactions, open positions, cash, securities and other assets in the cash or other market, including a related but separate market;
  - (c) cancel any open orders for the purchase of any Transactions;
  - (d) borrow and/or buy any commodity required to make delivery against any sales, including short sales, effected for the Client; or
  - (e) exercise any or all option contracts to which the Client is a party.
- 10.10 **Additional Rights:** The rights under this Section 10 shall be in addition to, and not in limitation or exclusion of, any set-off and other rights, which the Broker Member may have (whether by agreement, operation of law or otherwise).

## 11. **Set-off**

11.1 **Set-off and other rights:** In addition and without prejudice to any other rights to which the Broker Member may be entitled under this Agreement or any applicable law, the Broker Member shall be entitled at any time at its discretion and without notice to the Client to debit any sums due to the Broker Member under this Agreement (including any Transaction) to any of the Client's accounts and sub-accounts and which are held in the books of the Broker Member, to convert any sums at such current rate as the Broker Member considers appropriate into such currencies as the Broker Member may consider appropriate, and to merge, consolidate or combine all or any such accounts and sub-accounts and set off any amount (whether actual or contingent, present or future and including, if applicable and without limitation, the Liquidation Amount and any amount due and payable before the Liquidation Date but remaining unpaid) at any time owing by the Broker Member to the Client or standing to the credit of the Client on any account against any amount (whether actual or contingent, present or future and including, if applicable and without limitation, the Liquidation Amount and any amount due and payable before the Liquidation Date but remaining unpaid) owing by the Client to the Broker Member and any security given to the Broker Member by or in respect of the Client for any purpose shall extend to any amount owing from the Client after such exercise of such right of set-off. Within a reasonable time after any such transfer the Broker Member shall confirm the transfer in writing to the Client.

11.2 **Currency Indemnity:** If the Broker Member receives or recovers any amount in respect of an obligation of the Client in a Currency other than that in which such amount was payable, whether pursuant to a judgement of any court or otherwise, the Client shall indemnify the Broker Member and hold the Broker Member harmless from and against any cost (including cost of conversion) and loss suffered by the Broker Member as a result of receiving such amount in a Currency other than the Currency in which it was due.

## 12. **Delivery**

12.1 The Client must perform any delivery obligations under any Transaction entered into by the Broker Member on the instructions of the Client. If the Client fails to deliver the relevant commodity by the date specified by the Broker Member, the Broker Member shall take such action as it deems necessary or desirable, including, without limitation, closing the Client's deliverable position(s).

12.2 **Indemnity:** The Client shall indemnify the Broker Member and keep the Broker Member fully indemnified in accordance with Section 14.3 in respect of any action taken by the Broker Member under Section 12.1 or in respect of any costs, losses and damages (including consequential costs, losses, penalties, fines and damages) which the Broker Member may sustain from the Broker Member's inability to borrow or buy any such commodity.

## 13. **Foreign Currency Transactions**

If the Broker Member enters into a Transaction which is effected in a Currency ("**foreign Currency**") other than the Currency provided by the Client to the Broker Member then, any profit or loss arising from a fluctuation in the exchange rate affecting the foreign Currency will be for the Client's account and risk. Unless the Client gives the Broker Member specific written instruction to the contrary, upon liquidation of such Transaction the Broker Member shall, at its option, debit or credit the Client's account, in such foreign Currency or other Currency as the Broker Member shall reasonably select at the rate prevailing at the time of the liquidation.

## 14. **Liability, Limitation and Indemnity**

14.1 **Liability:** The Broker Member shall have no responsibility for compliance by the Client with any law or regulation governing the Client's conduct as a fiduciary, if applicable. Neither the Broker Member nor its directors, officers or employees shall be liable to the Client for any direct or indirect losses, consequential damages (including without limitation special damages), costs or expenses incurred or suffered by the Client under this Agreement (or any Transaction) unless arising directly from the Broker Member's negligence, wilful misconduct or fraud or from the

negligence, wilful misconduct or fraud of a Clearing Member selected by the Broker Member or the default of a Clearing Member selected by the Broker Member.

- 14.2 **Electronic trading liability:** The Broker Member shall not be liable to the Client for loss (including any indirect or consequential loss including, without limitation, loss of profit), damages, injury or delay, whether direct or indirect due to any action or inaction of the DGCX or DCCC, their officers, employees, agents or representatives with regard to an electronic trading or order routing system or as a result of system or component failure.
- 14.3 **Force Majeure:** Without limiting the generality of the foregoing, the Broker Member shall not be liable for any partial or non-performance of the Broker Member's obligations hereunder by reason of any cause beyond the Broker Member's control and provided that the Broker Member has not acted negligently or in bad faith.
- 14.4 **Indemnity:** The Client shall pay to the Broker Member on demand such sums as the Broker Member may at any time require in or towards satisfaction of any debit balance on any of the Client's accounts with the Broker Member. The Client shall indemnify and keep the Broker Member fully indemnified against any liabilities, costs or expenses, (including legal fees), taxes, imposts and levies which the Broker Member may incur or be subjected to either directly or indirectly in connection with or as a result of any service provided or action taken with respect to any of the Client's accounts or any Transaction governed by this Agreement or any matching Transaction on the DGCX or with a Clearing Member or as a result of any misrepresentation by the Client or any violation by the Client of its obligations under this Agreement (including any Transaction) or by the enforcement of the Broker Member's rights, or if the Broker Member is precluded by the DGCX or DCCC or governmental or regulatory authority or agency from taking action under this Agreement, except to the extent that such liabilities are due directly to the Broker Member's negligence, wilful misconduct or fraud or to the negligence, wilful misconduct or fraud of a Clearing Member selected by the Broker Member or the default of a Clearing Member selected by the Broker Member[ which is not directly or indirectly caused by the default of the DGCX].

## 15. Default of a Broker Member on his own account

- 15.1 The Broker Member may not utilise the Client's money to meet its own liabilities towards any party including DGCX and DCCC.
- 15.2 The Broker Member shall indemnify the Client against any losses caused to the Client and resulting from such utilisation of the Client's money to meet the Broker Member's liability.

## 16. Objections and Complaints

Where a Client has a complaint or objection about the action or inaction of a Broker Member or there is a disagreement between the parties where the client wishes to refer the matter to DGCX, the client shall in the first instance contact the Compliance Department of the DGCX. If, after notifying the DGCX Compliance Department and after a reasonable period of time there has not been a satisfactory resolution, the Client may contact Executive Director - ESCA for further consideration of this matter. The Client's statutory right to grievance procedure channels is not affected by this Clause 16.

## 17. Term and Termination

- 17.1 This Agreement commences on the date set out above, or on such other date as agreed in writing between the parties.
- 17.2 **Method of Termination:** This Agreement, and the relationship between the Client and the Broker Member, may be terminated by either party by prior written notice in accordance with the Terms and Conditions. Termination shall be effective upon receipt by the other party of such notice.

- 17.3 **Existing Rights:** Termination will not affect any outstanding rights and obligations under this Agreement or any Transaction and such rights and obligations shall continue to be governed by this Agreement and the particular terms agreed between the Broker Member and the Client in relation to such Transactions until all obligations have been fully performed.
- 17.4 **Payments:** The Broker Member may require the Client to pay any amounts arising under this Agreement that may have accrued up to and including the date of termination and any charges for transferring the Client's positions.
- 18. General**
- 18.1 **Amendment:** This Agreement may only be amended upon the prior written consent of both the Broker Member and the Client, provided that the Broker Member may amend this Agreement by notice in writing to the Client where the Broker Member considers that amendment is necessary to comply with Applicable Regulations, DGCX or DCCC rules or requirements of any other competent body. In the case of an amendment with the prior consent of both the Broker Member and the Client, such amendment shall become effective on the date agreed between the Broker Member and the Client. In the case of an amendment by notice in writing to the Client from the Broker Member, such amendment shall become effective on the date specified in the notice.
- 18.2 **Benefit of Agreement:** This Agreement and any Transaction shall be for the benefit of and binding upon both the Broker Member and the Client and their respective successors and assigns, whether by merger, consolidation or otherwise.
- 18.3 **Consent to Assignment:** The Client shall not be entitled to assign, charge, transfer or part with any interest in or right under this Agreement or any margin provided by the Client without the Broker Member's prior written consent and no such interest or right shall be capable of assignment. Any purported assignment, charge or transfer in violation of this term shall be void.
- 18.4 **Time of the Essence:** In respect of the Client's obligations under this Agreement and any Transaction time shall be of the essence.
- 18.5 **Terms and Conditions:** This Agreement is supplemental to the Terms and Conditions and references in the Terms and Conditions to "Terms" shall be construed as if they included references to the provisions of this Agreement. To the extent that there is any conflict between the terms of this Agreement and the Terms and Conditions, the terms of this Agreement shall prevail.
- 18.6 **Invalidity:** If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining terms of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.
- 18.7 **Single Agreement:** This Agreement, the particular terms of, and applicable to, each and every Transaction, and the Schedules shall together constitute a single agreement between the Broker Member and the Client. The Broker Member and the Client both acknowledge that all Transactions which are entered into on or after the date this Agreement takes effect are entered into in reliance upon the fact that all such items constitute a single agreement between the Broker Member and the Client.
- 18.8 **Rights and Remedies:** The rights and remedies of the Broker Member and the Client under this Agreement and any Transaction shall be cumulative and not exclusive of those provided by law and the exercise or waiver of any right or remedy shall not preclude or inhibit the exercise of any additional rights and remedies. The Broker Member shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to the Client. The Broker Member may waive any right, power or privilege under this Agreement (and any Transaction) only by (and to the extent of) an express statement in writing. No failure by the Broker Member to

exercise or delay in exercising any of the Broker Member's rights under this Agreement (and any Transaction) or otherwise shall operate as a waiver of those or any other rights or remedies.

- 18.9 **Third Party Rights:** Save as provided in this Clause, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not effect any right or remedy of a third party which exists or is available apart from that Act.

**19 Dispute resolution and arbitration**

- (a) The parties hereto agree to negotiate in good faith to resolve any dispute arising between them under or in connection with this Agreement. If any dispute continues unresolved it shall be referred to arbitration in Dubai under the auspices and in accordance with the Rules of Arbitration of the Dubai International Arbitration Centre (the "DIAC Rules"), the DIAC Rules being incorporated into this clause by reference.
- (b) The number of arbitrators shall be three. Each party shall appoint one arbitrator of its choice from the list of arbitrators maintained by the DGCX. The two arbitrators shall within one week of the appointment of the second arbitrator appoint a third arbitrator.
- (c) The arbitration shall be conducted in English.
- (d) In the event of any inconsistency between the DIAC Rules and applicable law and procedure in the Emirate of Dubai, the inconsistency shall be resolved by reference to applicable law and procedure in the Emirate of Dubai.

**20. Governing Law**

The laws of the Emirate of Dubai and all applicable laws of the United Arab Emirates shall govern all disputes arising under this Agreement.

**SCHEDULE 1 - Fees and Charges**

**EXECUTED** by the parties by their duly authorised representatives.

**[Client]**  
(Client)

[By: ].....  
(Signature)

.....  
(Print)

Title: .....

Date: .....

[By: .....  
(Signature)

.....  
(Print)

Title: .....

Date: .....]<sup>1</sup>

**[Broker Member]**  
(Broker Member)

By: .....  
(Signature)

.....  
(Print)

Title: .....

Date: .....

By: .....  
(Signature)

.....  
(Print)

Title: .....

Date: .....

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<sup>1</sup> Delete text in square brackets if Client is an individual.