

Dated: \_\_\_\_\_ 20\_\_\_\_\_

**ETFS Commodity Securities Limited**

**ETFS Management Company (Jersey) Limited**

and

***[name of Authorised Participant]***

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**Authorised Participant Agreement**

**relating to**

**Short and Leveraged Commodity Securities**

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**Agreed Form  
Initialed on behalf of**

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**CSL**

**Date: 2018**

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**The Counterparty**

**Date: 2018**

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This AGREEMENT is dated the \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_

**BETWEEN**

**ETFS Commodity Securities Limited**, a company incorporated and registered in Jersey with registered number 90959, of Ordnance House, 31 Pier Road, St Helier, Jersey JE4 8PW, Channel Islands (“**CSL**” or the “**Issuer**”);

**ETFS Management Company (Jersey) Limited**, a company incorporated and registered in Jersey with registered number 106921, of Ordnance House, 31 Pier Road, St Helier, Jersey JE4 8PW, Channel Islands (“**ManJer**”); and

[*name of Authorised Participant*], a company incorporated and registered in [*England*] with registered number [], of [*address of Authorised Participant*], [*London*] [*postcode*] (“**AP**”).

**WHEREAS**

- A. CSL has established a programme for the issuance of Short and Leveraged Commodity Securities to be admitted to trading on the Main Market of the London Stock Exchange plc; and
- B. CSL wishes to appoint AP as one of the Authorised Participants in relation to the Short and Leveraged Commodity Securities.

**IT IS AGREED** as follows:

**1. Definitions**

- (a) Words and expressions used in this Agreement (including the Schedules hereto) and not otherwise defined bear the same meanings as where used in the Prospectus (as defined below) or, if not defined in such Prospectus, in the Conditions or if not defined in the Conditions in the Facility Agreement (as defined below).
- (b) In addition, the following terms have the following meanings herein unless the context otherwise requires:

**Administrator** means R&H Fund Services (Jersey) Limited or such other person as may be appointed by CSL from time to time to perform administration services;

**Agreed Application Order** means an application for the issue of a number of Short or Leveraged Commodity Securities given through the System in accordance with the Internet Order Procedures in respect of which the order type “Agreed Price” or “Agreed Price at Set. Index” has been selected and as described in paragraph 9 of Part A of Schedule 5;

**Agreed Redemption Order** means a request for the redemption of a number of Short or Leveraged Commodity Securities given through the System in accordance with the Internet Order Procedures in respect of which the order type “Agreed Price” or “Agreed Price at Set. Index” has been selected and as described in paragraph 9 of Part B of Schedule 5;

**Agreements** means each of the Trust Instrument, the Security Deeds, the Security

Assignments, the Facility Agreements, all Commodity Contracts, the Capital Adjustment Agreements, the Licence Agreement, this and all other Authorised Participant Agreements, the Registrar Agreement and the Services Agreement;

**Application** means the making of an application for the issue of Short or Leveraged Commodity Securities by the giving of a Settlement Application or an Agreed Creation Notice in accordance with Schedule 4 or the making of a Settlement Application Order or an Agreed Application Order in accordance with Clause 7 and Schedule 5;

**Application Amount** means the amount determined in accordance with paragraph 12 of Schedule 4;

**Approved Person** has the meaning set out in Clause 7(a);

**AP Bank Account** means the bank account established by AP in accordance with Clause 19(a), or any substitute account duly notified by AP in accordance with Clause 19(c);

**AP Settlement Failure** means, in relation to any Short or Leveraged Commodity Securities, any failure by AP to comply with its obligations in respect of the Application for those Short or Leveraged Commodity Securities under this Agreement (including without limitation a failure to pay the Application Amount in respect of those Short or Leveraged Commodity Securities on the due date therefor in full cleared and immediately available US Dollar funds into the Commodity Contract Counterparty Account in accordance with this Agreement), other than any such failure which has occurred as a result of (i) the failure of CSL to comply with its obligations in respect of the issue of those Short or Leveraged Commodity Securities under this Agreement or (ii) the failure of the relevant Commodity Contract Counterparty to comply with its obligations in respect of the Creation of the corresponding Commodity Contracts under the applicable Facility Agreement;

**AP User Guide** means the Authorised Participant User Guide issued by or on behalf of CSL on or about ● ● 20●● [*insert date of latest version*];

**Authorised Participant** a person which has entered into an Authorised Participant Agreement with CSL in accordance with the Facility Agreement in relation to Short and Leveraged Commodity Securities and has entered into a corresponding Direct Agreement with at least one Commodity Contract Counterparty, and which is not an Unacceptable Authorised Participant in respect of that Commodity Contract Counterparty provided that no person shall be an Authorised Participant in respect of a Commodity Contract Counterparty unless and until the Security Conditions with respect to the Authorised Participant and that Commodity Contract Counterparty shall have been satisfied and provided further that a person can be an Authorised Participant in respect of one Commodity Contract Counterparty but not another;

**Authorised Person** means a person who is authorised for the purposes of FSMA;

**Commodity Contract Counterparty Account** means, in relation to any Commodity Contract Counterparty, the bank account established by that Commodity Contract Counterparty in accordance with the Facility Agreement or any substitute account

duly notified by the Commodity Contract Counterparty in accordance with the Facility Agreement;

**Creation Limit** has the meaning given to it in the Facility Agreement;

**Confidential Information** means (subject as provided in Clause 15):

- (i) with respect to AP only:
  - (A) the business rules dated on or about [ ] [*insert date of latest version*] produced by ManJer relating to Commodity Securities as the same may be amended from time to time; and
  - (B) any daily spreadsheet forwarded by ManJer and/or CSL to AP which details the methodology for pricing of or valuing Commodity Securities;
- (ii) with respect to AP, CSL and ManJer, any documentation or other materials sent by such party (the **Sending Party**) to another party (the **Receiving Party**) in connection with this Agreement marked as “Confidential” and which the Receiving Party has prior to such materials being sent, agreed in writing to treat as Confidential Information for the purposes of this Agreement;

**Direct Agreement** means a separate agreement between the Commodity Contract Counterparty and AP relating to Short and Leveraged Commodity Securities substantially in the form of the agreed form;

**Facility Agreement** means any agreement which is a Facility Agreement as defined in the Prospectus;

**General Notice** means any notice given in accordance with this Agreement other than a Pricing Notice;

**Internet Order Procedures** means the procedures for Applications for and Redemptions of Commodity Securities set out in Schedule 5;

**Party** means a party to this Authorised Participant Agreement including that party's successors in title and assignees or transferees permitted in accordance with the terms of this Authorised Participant Agreement;

**Pricing Notice** means a Settlement Application (other than a Settlement Application Order), an Agreed Creation Notice (other than an Agreed Application Order), a Redemption Form, a Withdrawal Notice, or any other notice required to be given or sent in accordance with Clause 10(a);

**Primary Email Address** means an email address set out in Clause 11(a), or any replacement thereof notified in accordance with Clause 11(d);

**Primary Fax Number** means a fax number set out in Clause 11(a), or any replacement thereof notified in accordance with Clause 11(d);

**Programme** means the programme for the issuance of Short and Leveraged Commodity Securities as described in the Prospectus and any subsequent

prospectuses or other documents issued by CSL relating to Short and Leveraged Commodity Securities;

**Programme Limit** means the maximum numbers of Short Commodity Securities and Leveraged Commodity Securities that are permitted to be issued whether due to the maximum Programme size filed with the UK Listing Authority or the maximum number of Commodity Contracts available for purchase by CSL;

**Prospectus** means the prospectus dated [ ], relating to a programme for the issuance from time to time of Short and Leveraged Commodity Securities by CSL, application to the UK Listing Authority for the Short and Leveraged Commodity Securities to be admitted to the Official List maintained by the UK Listing Authority for the purpose of Part VI of the Financial Services and Markets Act 2000 and application to the London Stock Exchange plc for such Short and Leveraged Commodity Securities to be admitted to trading on the domestic market of the London Stock Exchange plc, as the same may be amended or supplemented from time to time, and includes any further or supplementary prospectus or listing particulars published from time to time in connection with the admission to listing, admission to trading or quotation or offering of Short and Leveraged Commodity Securities on such official list or such market or any other market of the London Stock Exchange plc;

**Redemption Amount** means, in respect of a Redemption, the amount determined in accordance with the Conditions;

**Redemption Notice** means a Redemption Form, a Settlement Redemption Order or an Agreed Redemption Order;

**Selling Restrictions** has the meaning given in Clause 4(c);

**Settlement Application** means a notice in the form prescribed from time to time by the Issuer for the purposes of paragraph 1 of Schedule 4 and includes a Settlement Application Order;

**Settlement Application Order** means an application for the issue of Short or Leveraged Commodity Securities given through the System in accordance with the Internet Order Procedures in respect of which the order type "Settlement Price" has been selected and as described in paragraph 2 of Part A of Schedule 5;

**Settlement Failure** means either an AP Settlement Failure or a CSL Settlement Failure;

**Settlement Redemption Order** means a request for the redemption of a number of Short or Leveraged Commodity Securities given through the System in accordance with the Internet Order Procedures in respect of which the order type "Settlement Price" has been selected and as described in paragraph 2 of Part B of Schedule 5;

**Short and Leveraged Commodity Securities** or **Commodity Securities** means Short and Leveraged Index Securities and Short and Leveraged Individual Securities and **Short or Leveraged Commodity Securities** means any of them;

**Short and Leveraged Index Securities** and **Short or Leveraged Index Securities**

have the meanings given in the Trust Instrument;

**Short and Leveraged Individual Securities and Short or Leveraged Individual Securities** have the meanings given in the Trust Instrument;

**System** means the system for requesting the issue and Redemption of Short and Leveraged Commodity Securities and the Creation and Cancellation of Short and Leveraged Commodity Contracts via the Website;

**Trust Instrument** means a trust instrument dated 8 February 2008 and made between CSL and The Law Debenture Trust Corporation p.l.c. constituting the Short and Leveraged Commodity Securities including the Conditions (as defined in the Trust Instrument) and other schedules thereto; and

**Website** means the secure website maintained by the Issuer at <https://www.etfsecuritiesorders.co.je> or at such other internet address as may be notified from time to time by the Issuer to AP in the manner provided for Pricing Notices in Clause 10(a).

- (c) The following rules shall apply to the interpretation of this Agreement unless the context otherwise requires:
- (i) headings to Clauses, paragraphs, and other provisions of this Agreement are inserted for ease of reference only and shall not affect the interpretation of this Agreement;
  - (ii) any reference to a person or persons includes reference to any individual, corporation, partnership, joint venture, association, public body, governmental authority or other entity;
  - (iii) words in the singular shall also include the plural and vice versa;
  - (iv) any reference to a Clause or Schedule is a reference to a clause or Schedule of this Agreement;
  - (v) any reference in a Schedule to a paragraph is (unless otherwise specified) a reference to a paragraph of that Schedule;
  - (vi) any reference to this Agreement or to any other agreement or document includes a reference to this Agreement, or, as the case may be, such other agreement or document, as amended, varied, novated, supplemented or replaced from time to time;
  - (vii) references to a document or agreement being in the agreed form are to that document or agreement (or a draft thereof) being in the form agreed for the purposes of the Facility Agreement;
  - (viii) any reference in this Agreement to any statute or any provision of any statute includes a reference to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under any such modification or re-enactment, and in relation to any provision of European Union law, includes such provision as [incorporated or

reincorporated] into English law and any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under any such modification or re-enactment; and

- (ix) unless otherwise indicated, any reference in this Agreement to a time is a reference to local time in London, England.

## **2. Appointment of AP as Authorised Participant**

- (a) This agreement is an Authorised Participant Agreement as defined in the Prospectus.
- (b) For the purposes of the definition of an Authorised Participant, CSL hereby approves AP as an Authorised Participant in relation to the Short and Leveraged Commodity Securities.
- (c) AP is hereby appointed as an Authorised Participant and is authorised to create and redeem Short and Leveraged Commodity Securities in accordance with the terms thereof.

## **3. New Commodity Contract Counterparties**

- (a) This Agreement constitutes not a single agreement, but a series of separate, distinct and independent authorised participant agreements relating to Short and Leveraged Commodity Securities on the terms set out in this Agreement (other than this Clause 3) with respect to each Commodity Contract Counterparty and each Facility Agreement and accordingly:
  - (i) as at the date on which this Agreement is entered into between the Issuer and AP, this Agreement comprises a number of such separate, distinct and independent authorised participant agreements equal to the number of Facility Agreements in existence as at the date of this Agreement, each corresponding to one Facility Agreement and the Commodity Contract Counterparty with which such Facility Agreement is entered into; and
  - (ii) on each occasion, after the date on which this Agreement is entered into between the Issuer and AP, that CSL enters into a new Facility Agreement (the “**New Commodity Contract Counterparty Facility Agreement**”) with a Commodity Contract Counterparty (the “**New Commodity Contract Counterparty**”), CSL and AP will be deemed (without any further action being required to be taken by either of them) to have entered into a further corresponding authorised participant agreement relating to Short and Leveraged Commodity Securities on the terms set out in this Agreement (other than this Clause 3) with respect to the New Commodity Contract Counterparty and the New Commodity Contract Counterparty Facility Agreement, as construed in accordance with Clause 3(b).
- (b) For the purposes of determining the terms of each authorised participant agreement deemed to have been entered into between CSL and AP pursuant to Clause 3(a), this Agreement (other than Clauses 3, 6 and 14(e)) shall be construed as if references to “this Agreement” were references to such deemed authorised participant agreement, references to the Commodity Contract Counterparty and the Facility Agreement were references only to respectively the New Commodity Contract Counterparty



and the New Commodity Contract Counterparty Facility Agreement (or, in the case of each such deemed authorised participant agreement at the date hereof, respectively the Commodity Contract Counterparty (the “**Applicable Commodity Contract Counterparty**”) with which CSL has Commodity Contracts corresponding to the Commodity Securities to which such deemed authorised participant agreement relates and the Facility Agreement (the “**Applicable Facility Agreement**”) between CSL and the Applicable Commodity Contract Counterparty), references to Commodity Contracts were references only to Commodity Contracts between CSL and the New Commodity Contract Counterparty (or, in the case of each such deemed authorised participant agreement at the date hereof, Commodity Contracts between CSL and the Applicable Commodity Contract Counterparty) and references to Short and Leveraged Commodity Securities were references only to Short and Leveraged Commodity Securities corresponding to such Commodity Contracts.

- (c) CSL shall give to AP not less than 30 days’ notice prior to entering into any New Commodity Contract Counterparty Facility Agreement.

#### **4. Undertakings by AP; Acknowledgment**

AP represents, warrants and covenants that:

- (a) it is an Authorised Person, an Exempt Person or an Overseas Person and is a participant of CREST and will maintain any such registrations, qualifications and membership in good standing and in full force and effect throughout the term of this Agreement;
- (b) (save in the case where AP is the Commodity Contract Counterparty) it will enter into a Direct Agreement with the Commodity Contract Counterparty substantially in the agreed form;
- (c) it will comply with the agreements and undertakings set out in Schedule 1 (the Selling Restrictions) when making any offers, selling efforts, promotions or similar activities with respect to the Short and Leveraged Commodity Securities;
- (d) at any time when payment is required to be made to it pursuant to a Redemption Notice in relation to any Short or Leveraged Commodity Securities, it will be the only person who is a beneficial owner of such Short or Leveraged Commodity Securities; and
- (e) if any payment made by AP on behalf of CSL in respect of an Application Amount due from CSL under the Facility Agreement is received into the Commodity Contract Counterparty Account after a withholding or deduction of any amount, AP shall, on behalf of CSL, pay into the Commodity Contract Counterparty Account, such additional amounts as will result in receipt by the Commodity Contract Counterparty after such withholding or deduction of the amount which would have been received by the Commodity Contract Counterparty had no such withholding or deduction been made.

AP acknowledges that it has been notified by CSL of the provisions of the Facility Agreement pursuant to which AP may be designated as an Unacceptable Authorised Participant (and so cease to be an Authorised Participant for the purposes of the Facility Agreement).

## **5. Representations, Warranties and Covenants by CSL and ManJer**

CSL and ManJer represent, warrant and covenant that:

- (a) CSL will comply with the Listing Rules and the Prospectus Rules of the UK Listing Authority made under section 74 of the Financial Services and Markets Act 2000 and any rules of the London Stock Exchange;
- (b) they will conduct their operations and marketing activities in a professional manner and comply with all applicable laws and regulations in any jurisdiction in which they carry on business or undertake any other activities;
- (c) they will develop and maintain a web-site and marketing materials of a high standard and comparable to those used by other exchange traded funds that are true, accurate and not misleading and are distributed, maintained and operated in accordance with, and conform with, all applicable laws and regulations and, if required, approved for the purposes of section 21 of the Financial Services and Markets Act 2000;
- (d) they will promptly inform AP of any significant developments with respect to CSL and Short and Leveraged Commodity Securities and on becoming aware of any significant developments with respect to any Commodity Contract Counterparty or Guarantor, and in particular will promptly notify AP in the event that either a Commodity Contract Counterparty or CSL gives notice to the other under clause 9.1 or clause 9.2 of the relevant Facility Agreement;
- (e) where AP notifies CSL that demand exists for Short and Leveraged Commodity Securities in a jurisdiction where Short and Leveraged Commodity Securities are not issued or sold at such time, they will at their own cost use reasonable endeavours to obtain legal and tax advice in such jurisdiction, provided that the anticipated demand for Short and Leveraged Commodity Securities is sufficient to cover the anticipated cost of the advice and in accessing the demand;
- (f) the representations and warranties contained in Schedule 2 are true and accurate and shall remain so throughout the term of this Agreement;
- (g) they will comply with the undertakings in Schedule 2;
- (h) CSL will make all payments due to AP on Redemption of Short and Leveraged Commodity Securities in respect of which it is the Security Holder in accordance with the Trust Instrument and the Conditions;
- (i) CSL will not amend or agree to amend any of the provisions of a Facility Agreement without first having given to AP prior written notice of the amendments and of the date on which such amendments are to become effective, nor will CSL consent to an assignment of a Facility Agreement by the Contract Commodity Counterparty pursuant to clause 21.1 thereof without having first given to AP prior written notice of the proposed assignment and the identity of the proposed assignee;
- (j) they will not amend or agree to amend any of the provisions of any Authorised Participant Agreement without first having given to all other Authorised Participants

prior written notice of the amendments and of the date on which such amendments are to become effective; and

- (k) they will appoint any further or additional Authorised Participants only on substantially the same terms as are set out herein, save that the omission or inclusion in the terms agreed with any such Authorised Participants of the provisions of paragraphs (a) to (c) (inclusive) of clause 8 of the form of Authorised Participant Agreement in the agreed form shall not be considered a breach of this sub-clause.

## **6. Availability of Commodity Contracts**

- (a) CSL will use its reasonable endeavours to ensure that there is a sufficient number of Commodity Contracts of each class as is required to meet the demand for corresponding Short and Leveraged Commodity Securities of each type.
- (b) If, on any Pricing Day, Applications or Redemption Notices are received from more than one Authorised Participant for Short and Leveraged Commodity Securities in number exceeding the number of that class which can be accepted on that Pricing Day (due to CSL having insufficient Commodity Contracts of that class available for purchase or redemption or AP not being an Authorised Participant with respect to one or more Commodity Contract Counterparties) then the number of Short or Leveraged Commodity Securities of that class to be allocated to each Authorised Participant for creation will be determined in accordance with Schedule 4 and for redemption will be determined in accordance with Condition 7.6.
- (c) CSL agrees that each Short or Leveraged Commodity Security it issues will be secured by corresponding Commodity Contracts from a Commodity Contract Counterparty with corresponding terms and each time a Short or Leveraged Commodity Security is issued or redeemed, corresponding Commodity Contracts with corresponding terms will be Created or Cancelled (as the case may be) with a Commodity Contract Counterparty in accordance with the provisions set out in the relevant Facility Agreement(s).

*[Note: paragraph (d) may be omitted in the case of any AP being a Commodity Contract Counterparty or an Affiliate of a Commodity Contract Counterparty]*

- (d) Upon receipt of an Application, CSL may choose to create corresponding Commodity Contracts with such Commodity Contract Counterparty as it shall determine and CSL shall incur no Liability in respect of such determination.

## **7. Creation and Redemption Procedures**

- (a) Concurrent with the execution of this Agreement and from time to time thereafter, AP shall deliver to the Administrator and CSL, and CSL shall deliver to AP, duly certified as appropriate by its secretary or other duly authorised official, a certificate in the form of Schedule 3 setting forth the names and signatures of all persons approved to give instructions relating to activity contemplated hereby or by any other notice, request or instruction given on behalf of AP or CSL (each such person an "Approved Person").
- (b) Each of AP and CSL will comply with the creation procedures set out in Schedule 4 and the redemption procedures set out in the Trust Instrument and the Conditions

and, in relation to Settlement Application Orders, Agreed Application Orders, Settlement Redemption Orders and Agreed Redemption Orders, the provisions of Schedule 5, and any payment to be made pursuant to any Application or Redemption Notice will be made in accordance with those procedures and the Conditions.

- (c) To the extent that in relation to Settlement Application Orders, Agreed Application Orders, Settlement Redemption Orders and Agreed Redemption Orders certain provisions of Schedule 4 or the Trust Instrument and the Conditions are expressed in Schedule 5 not to apply, such provisions shall not apply thereto but subject thereto Schedule 4 and the Trust Instrument and the Conditions (respectively) apply to Settlement Application Orders, Agreed Application Orders, Settlement Redemption Orders and Agreed Redemption Orders as they do to other Applications and Redemption Notices. CSL will use its reasonable endeavours to make the System available on each Business Day but shall not have any liability to AP for any failure by CSL or its agents to maintain the availability or utility of the System. AP agrees to comply with its obligations under the AP User Guide and to operate the System in accordance with the AP User Guide. In the event of any conflict between the AP User Guide and the provisions of this Agreement, the provisions of this Agreement shall prevail.
- (d) The following provisions relating to the System shall apply:
- (i) AP shall following execution hereof notify CSL by means of a duly executed authorisation letter in the form from time to time prescribed by CSL or otherwise in a form reasonably satisfactory to CSL and in each case completed to the reasonable satisfaction of CSL, of the names of its employees ("**Authorised Users**") who are to have access to the Website, the authorisation level applicable to that Authorised User (as described in the AP User Guide), each internet protocol (IPv4 or IPv6) address (*IP Address*) from which such Authorised Users may access the Website and the means of communication of usernames and passwords to them and shall be responsible for the security of such usernames and passwords provided by such means;
  - (ii) AP agrees that each Authorised User shall be deemed to be duly authorised to act for and on behalf of AP for the purpose of the System with the authority applicable to his authorisation level as described in the AP User Guide;
  - (iii) AP shall notify CSL in writing by means of a Revocation of Access Form in the form from time to time prescribed by CSL or otherwise in a form reasonably satisfactory to CSL and in each case completed to the reasonable satisfaction of CSL, in the event that any person's status as an Authorised User is to be revoked or terminated, if any such Authorised User's authorisation level is to be changed to a lower level or if the Authorised User(s) should no longer be able to access the System from any IP Address (specifying the relevant IP Address) as soon as possible, in order to give CSL a reasonable opportunity to terminate such Authorised User's access to the System, to amend the authorisation level applicable to such Authorised User or to amend the IP Addresses from which such Authorised Users may access

the Website. AP shall from time to time notify CSL in such form as CSL may reasonably require if any additional or alternative Authorised Users are to have access to the Website, if any such Authorised User's authorisation level is to be changed to a higher level or if the IP address(es) applicable to any Authorised User changes;

- (iv) CSL reserves the right to terminate the Authorised User's access to the System immediately and without notice upon any breach by AP of this Agreement or any breach by the Authorised User of the conditions referred to in paragraph (g) or otherwise as CSL may determine;
  - (v) CSL shall provide AP with or procure the provision to AP of a username and initial password for access to the Website for each of such Authorised Users. It shall be the responsibility of AP to ensure that each Authorised User logs into the System through the website as soon as practicable on receipt of such username and initial password and changes his or her password. Passwords may not be shared and are to be used for access to the Website only by employees of AP who are authorised to do so. AP shall ensure that all usernames and passwords (including all replacement passwords) are kept confidential and not divulged to any person except to the relevant Authorised User. As soon as is practicable after becoming aware, or having a reasonable suspicion of the occurrence, of the unauthorised disclosure of a username or password, or of circumstances in which a username or password may be so disclosed, AP shall notify CSL and the Administrator of the same;
  - (vi) AP will limit access to the Website using its usernames and passwords to those persons authorised by it for the purposes of this Agreement and will implement procedures to monitor, and will monitor, such access to ensure compliance with the terms of this Agreement; and
  - (vii) in the event of a dispute between AP and any Commodity Contract Counterparty in connection with activities conducted through the Website, CSL may make available to the Commodity Contract Counterparty any records of the System to the extent available to CSL, reasonably requested by the Commodity Contract Counterparty and relevant to such dispute.
- (e) Subject to compliance by AP with paragraphs (b) to (d) (inclusive), AP shall not be responsible for any unauthorised use of its passwords by any person, other than its officers, employees or agents or those of its Affiliates, who has obtained such passwords due to a failure by CSL or the Administrator to maintain the security of those passwords.
- (f) AP acknowledges that the AP User Guide and any other user manuals or other documentation marked confidential (whether in hard copy or electronic form) (collectively, the "**Material**") which is delivered or made available to AP or any Authorised User regarding the System is the exclusive and confidential property of ManJer and its suppliers. AP shall keep the Material confidential by using the same care and discretion that AP uses with respect to its own confidential property and trade secrets. AP may make such copies of the Material as are reasonably necessary for the Authorised Users to use the System and shall reproduce the proprietary markings of ManJer and/or its suppliers on any such copy (if applicable). The

foregoing shall not in any way be deemed to affect the copyright status of any of the Material which may be copyrighted and shall apply to all Material whether or not copyrighted. CSL, ManJer AND ITS SUPPLIERS MAKE NO WARRANTIES (EXPRESS OR IMPLIED) CONCERNING THE MATERIAL OR ANY PRODUCT OR SERVICE INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Upon termination of this Agreement for any reason, AP shall, provided that such documents and Materials are in a form which is capable of delivery, return to CSL all copies of the Material which are in AP's possession or under its control, *provided that* AP may retain any automatically generated back-up copies and any back-up copy required for the purpose of, and for so long as required by, any law, court or regulatory agency or authority or stock exchange or its internal compliance and diligence procedures and policies, such back-up copies to be subject to the confidentiality requirements set out in this paragraph (f).

- (g) AP acknowledges that in using the System each Authorised User will be required to accept certain conditions including:
- (i) that he represents warrants and undertakes to CSL and to ManJer that he is authorised on behalf of his employer to access the System with the authority applicable to his authorisation level as described in the AP User Guide;
  - (ii) that he represents warrants and undertakes to CSL and to ManJer that he is the person to whom the username and password used to access the System were properly issued;
  - (iii) that he acknowledges that his access to the System may be terminated at any time without notice in the event that his employer breaches its agreement with CSL or he breaches any of the conditions of his access to the System or otherwise as CSL may determine;
  - (iv) that he agrees to use reasonable efforts to prevent the transmission by him through the System of any software or file which contains any viruses, worms, harmful component or corrupted data and agrees not to use any device, software, or routine to interfere or attempt to interfere with the proper working of the System; and
  - (v) that he acknowledges that any Material which is delivered or made available to AP or any Authorised User regarding the System is the exclusive and confidential property of ManJer and its suppliers and that he shall keep the Material confidential by using the same care and discretion that he uses with respect to his employer's confidential property and trade secrets; *provided that* AP may disclose the Material if and to the extent required to do so by any law, court or regulatory agency or authority or stock exchange or in connection with any legal proceedings. Upon termination of his access to the System for any reason, he shall, provided that such documents and Materials are in a form which is capable of delivery, return to CSL all copies of the Material which are in his possession or under his control, *provided that* AP may retain any automatically generated back-up copies and any back-up copy required for the purpose of, and for so long as required by, any law, court or regulatory agency or authority or stock exchange or its internal

compliance and diligence procedures and policies, such back-up copies to be subject to the confidentiality requirements set out in this paragraph (v),

and such other conditions as CSL shall reasonably determine from time to time; *provided that* CSL shall provide AP with not less than thirty Business Days notice of any additional conditions to be imposed under this paragraph (g).

- (h) AP agrees that for every Settlement Application, Agreed Application Order or Agreed Creation Notice it gives to CSL as provided in Schedule 4 or Schedule 5, it will pay to the Issuer a fee, in such manner as the Issuer may direct, of an amount equal to £500 or such lesser amount as may be accepted by CSL either generally or on any particular occasion. AP further agrees that for the purposes of Condition 10.2, the Redemption Fee shall be £500 or such lesser amount as may be accepted by CSL either generally or on any particular occasion and shall be payable in such manner as the Issuer may direct.

## **8. Indemnification**

*[Note: paragraphs (a) to (c) inclusive may be omitted if agreed between CSL and AP]*

- (a) AP hereby agrees to indemnify and hold ManJer and CSL harmless if they, or any of their respective direct or indirect Affiliates, and their respective directors, officers, employees and agents (each, an “**AP Indemnified Party**”) suffers any loss, liability, damages, costs and expenses (including legal fees) incurred by such AP Indemnified Party as a result of or in connection with any breach by AP of any of the Selling Restrictions.
- (b) CSL and ManJer, jointly and severally hereby agree to indemnify and hold harmless AP, if AP, each holding company and subsidiary of AP (as defined in section 1159 of the Companies Act 2006), or any of their respective direct or indirect Affiliates, and their respective directors, officers, employees, agents or any person who controls AP for the purpose of Section 15 of the Securities Act of 1933 of the United States (each a “**ManJer Indemnified Party**”) suffers any loss, liability, damages, cost and expense (including legal fees) as a result of any:
  - (i) breach or alleged breach by ManJer or CSL of any provision of this Agreement that relates to ManJer or CSL;
  - (ii) failure or alleged failure on the part of ManJer or CSL to perform any of their obligations set forth in this Agreement; or
  - (iii) failure or alleged failure by ManJer or CSL to comply with applicable laws.
- (c) This Clause 8 shall not apply to the extent that any such loss, liability, damages, costs and expenses are incurred as a result or in connection with any gross negligence, bad faith or wilful misconduct on the part of the AP Indemnified Party or the ManJer Indemnified Party, as the case may be.
- (d) Save in respect of the provisions set out in (i) Schedules 4 and 5 hereto and (ii) the clauses and schedules in the Facility Agreement dealing with procedures for creations and redemptions of Commodity Contracts thereunder, none of ManJer, CSL and AP shall be liable to each other or to any other person, including any party

claiming by, through or on behalf of AP, for any loss, liability, damages, costs or expenses arising out of any mistake or error in data or other information provided to any of them by each other or any other person or out of any interruption or delay in the electronic means of communications used by them.

## **9. Termination**

This Agreement may be terminated at any time by any party upon thirty days' prior written notice to the other parties *provided that* in each case Clauses 8 and 10 shall survive such termination.

## **10. Notices**

### ***Pricing Notices***

- (a) Any Pricing Notice shall be in writing in English and shall be signed by or on behalf of the Party giving it (or its duly authorised representative). Any Pricing Notice shall be sent as an attachment by email to the recipient's Primary Email Address or sent by fax to the recipient's Primary Fax Number.
- (b) Any Pricing Notice:
  - (i) sent by email to CSL to its Primary Email Address shall be deemed to be received upon acknowledgment of receipt (by email or telephone but not by means of an automatically generated "received" or "read" receipt (which will therefore not constitute acknowledgement)) or, in the case of a Settlement Application, if it is confirmed in accordance with paragraph 5 of Schedule 4. CSL agrees to use reasonable endeavours to so acknowledge receipt of any Pricing Notice sent by email promptly after receipt thereof;
  - (ii) sent by email to AP to its Primary Email Address shall be deemed to have been received when it is sent; and
  - (iii) sent by fax shall be deemed to have been received upon sending, subject to confirmation of uninterrupted and error-free transmission by a transmission report.
- (c) CSL will be entitled to assume that each Pricing Notice is genuine and will not be required to make any investigation or enquiry into the authenticity of any such notice.

### ***General Notices***

- (d) Any General Notice shall be in writing in English and shall be signed by or on behalf of the Party giving it (or its duly authorised representative). Any General Notice shall be delivered by hand, sent by prepaid recorded delivery or registered post (or registered airmail in the case of an address outside the United Kingdom), to the address given in Clause 10(f) (or such other address as the receiving Party has specified to the sending Party on at least five Business Days' notice) or sent as an attachment by email to the recipient's Primary Email Address or sent by fax to the recipient's Primary Fax Number.



- (e) Any General Notice shall, in the absence of earlier receipt, be deemed to have been received as follows:
- (i) if delivered by hand, at the time of actual delivery;
  - (ii) if sent by prepaid recorded delivery or registered post (or registered airmail in the case of an address outside the United Kingdom), on the date it is delivered or its delivery is attempted;
  - (iii) if sent by email, upon acknowledgment of receipt (by email or telephone but not by means of an automatically generated "received" or "read" receipt (which will therefore not constitute acknowledgement)). The parties agree to use reasonable endeavours to so acknowledge receipt of any General Notice sent by email promptly after receipt thereof; or
  - (iv) if sent by fax, upon sending, subject to confirmation of uninterrupted and error-free transmission by a transmission report.
- (f) The addresses of the parties for the purposes of Clause 10(d) are:

<b>Name of party</b>	<b>Address</b>	<b>Marked for the attention of</b>
<b>CSL and ManJer</b>	Ordnance House 31 Pier Road St Helier Jersey JE4 8PW	ETFs Team
<b>AP</b>	[Address of AP]	[name and title]
	with a copy to	[name and title]

## **11. Contact Details**

### *Primary Email Addresses and Primary Fax Numbers*

- (a) The Primary Email Addresses and Primary Fax Numbers of CSL, ManJer and AP for the purpose of this Agreement are as follows:

CSL:

Email: [REDACTED]

Fax: [REDACTED]

ManJer:

Email: [REDACTED]

Fax: [REDACTED]

AP:

Email: [to be inserted]

Fax: [to be inserted]

Administrator:

Email: [REDACTED]

Fax: [REDACTED]

- (b) CSL shall notify the Commodity Contract Counterparty of the Primary Email Address and Primary Fax Number of AP as required by the Facility Agreement.
- (c) Each Party shall at all times maintain for the purposes of this Agreement a working email account as its Primary Email Address and a working fax number as its Primary Fax Number, with a working fax machine attached thereto.

*Change of Primary Email Addresses and Primary Fax Numbers*

- (d) AP may notify a change to its Primary Email Address or Primary Fax Number, and CSL may notify a change to its or to the Administrator's Primary Email Address or Primary Fax Number, by giving notice thereof to the other Party, provided that such notice shall only be effective on the later to occur of:
  - (i) the date specified in the notice as the date on which such change is to take place; or
  - (ii) the day which is five Business Days following the day on which notice of such change was given.

*Alternate Means of Communication*

- (e) Where this Agreement or the Conditions provide that a Notice must or may be sent to the Primary Email Address or Primary Fax Number of a Party or the Administrator, the notice may be sent in such other manner as the Parties or their duly authorised representatives may agree in writing from time to time, in lieu of or in addition to sending it to the Primary Email Address and/or the Primary Fax Number as provided herein.

**12. Third Party Beneficiaries**

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.

**13. Governing law and Jurisdiction**

- (a) This Agreement and any non-contractual obligations arising out of or in relation to this Agreement shall be governed by and construed in accordance with the laws of England.

- (b) Each party hereby irrevocably agrees that the courts of England shall have non-exclusive jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement (including, without limitation, disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Agreement and (ii) any non-contractual obligations arising out of or in connection with this Agreement) (respectively, “**Proceedings**” and “**Disputes**”) and, for such purposes, irrevocably submit to the jurisdiction of such courts.
- (c) Each party hereto, other than AP, agrees that the documents which start any Proceedings and any other documents required to be served in relation to those Proceedings may be served on it by being delivered on its behalf to its agent (“**Process Agent**”) as notified to the other party in writing from time to time. At the date hereof the Process Agent of each of ManJer and CSL is ETF Securities (UK) Limited, whose address is currently at 3 Lombard Street, London EC3V 9AA. If for any reason the Process Agent of any party ceases to be able to act as such or no longer has an address in London, that party irrevocably agrees to appoint a substitute process agent acceptable to the other party and shall immediately notify the other party of such appointment. Nothing contained in this Clause 13(c) affects the right to serve documents and process in any other matter permitted by law. This Clause applies to Proceedings in England and to Proceedings elsewhere.
- (d) Each party hereto irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and determine any Proceedings, and to settle any Disputes, which may arise out of or in connection with this Agreement and agrees not to claim that the courts of England are an inconvenient or inappropriate forum.

#### **14. Miscellaneous**

- (a) The development rights and property in existing and all new products developed by ManJer and CSL remain the exclusive property of ManJer.
- (b) A variation of this Agreement is valid only if it is in writing and signed by and on behalf of each party.
- (c) A party may not assign, transfer or create any trust in respect of, or purport to assign, transfer or create any trust in respect of, a right or obligation under this Agreement provided that AP may assign or transfer its rights and/or obligations hereunder to an Affiliate of AP, ManJer may assign or transfer its rights and/or obligations hereunder to an Affiliate of ManJer and CSL may enter into a Security Assignment in accordance with paragraph (f).
- (d) Nothing in this Agreement shall make any Party a partner or an agent of another Party.
- (e) This Agreement may be executed in any number of counterparts, which may be evidenced by facsimile transmission. All counterparts will be taken to constitute one instrument.

- (f) AP hereby acknowledges and consents:
- (i) to CSL entering into a Security Assignment in favour of the Commodity Contract Counterparty in respect of this Agreement; and
  - (ii) to the assignment by CSL under such Security Assignment to the Commodity Contract Counterparty by way of first fixed security for the performance and discharge of certain of its obligations under the Facility Agreement of all its right, title, interest and benefit, existing now or in the future, in, to, under or in respect of this Agreement and all other rights, moneys and property whatsoever which may from time to time at any time be derived from or accrue with respect to this Agreement, subject to the provisions of the Security Assignment;

and further acknowledges that under the terms of the Security Assignment, the Commodity Contract Counterparty shall be entitled to exercise the rights of CSL under this Agreement.

**15. Confidentiality**

- (a) Each of AP, CSL and ManJer shall treat as confidential and shall not disclose or transmit to any third party except to their professional advisers Confidential Information. Confidential Information shall not include (i) any information that is available to the public or to the receiving party hereunder from sources other than the providing party; (ii) any information that becomes public other than by a breach of this provision by the receiving party; or (iii) any information that is independently developed by the receiving party without knowingly using or referencing Confidential Information received from the providing party.
- (b) Notwithstanding the foregoing, either party may disclose Confidential Information if such disclosure is (i) requested by any regulatory authority or court or (ii) required by law or court order to be disclosed by the receiving party, provided, if permitted by law, that the receiving party makes its best commercial effort to inform the providing party of such disclosure.

**16. Limited Recourse and Non-Petition**

AP hereby agrees that it shall have recourse in respect of any claim under this Agreement only to sums derived from the Secured Property relating to the relevant Pool, subject always to the Security (as defined in the relevant Security Deed) and any such claim by AP shall be reduced pro rata so that the total of all such claims does not exceed the aggregate value of the Secured Property relating to the relevant Pool after meeting claims secured on it. The Trustee (or any other secured party) having realised the same, neither AP nor any person acting on its behalf shall be entitled to take any further steps against CSL to recover any further sums and no debt shall be owed by CSL to such person in respect of any such further sum. In particular, AP shall not be entitled to institute, or join with any other person in bringing, instituting or joining, insolvency proceedings (whether court based or otherwise) in relation to CSL, nor shall it have any claim in respect of any sum arising in respect of the Secured Property for any other Pool or any other assets of CSL including, but not limited to, any sums derived from or in connection with any Classic and Forward Securities.

**17. Publication of Prospectus**

- (a) Subject to Clause 17(b) below, AP will during the term of this Agreement make available, free of charge, printed copies of the Prospectus and any pricing supplement or supplementary prospectus in accordance with PR3.2.2, PR3.2.4(2), PR3.2.5 and PR3.2.8 of the Prospectus Rules and/or Article 14(2)(b) of the Prospectus Directive.
- (b) For the purposes of the foregoing, CSL will during the term of this Agreement deliver to AP, free of charge, such number of copies of the Prospectus as AP may from time to time reasonably request, including any pricing supplement or supplementary prospectus.

**18. General Payment Provisions**

*Currency*

- (a) All monies payable under this Agreement shall be paid in US Dollars in cleared and immediately available funds and without set-off or counterclaim (other than any set-off expressly contemplated by this Agreement).

*Interest*

- (b) Following the occurrence of an AP Settlement Failure, interest shall accrue on any balance of the Application Amount not paid or otherwise discharged by way of set-off in accordance with this Agreement by or on behalf of AP from the Settlement Failure Date. Such interest shall:
  - (1) accrue at the Funding Rate from and including the Settlement Failure Date to but excluding the date falling two Business Days after the Settlement Failure Date, and thereafter at the Default Rate; and
  - (2) cease to accrue in relation to the balance of the Application Amount, (A) on the date on which the Short or Leveraged Commodity Securities relating to such balance are Redeemed by CSL in accordance with the terms of this Agreement, or (B) if such Short or Leveraged Commodity Securities are not so Redeemed, on the date on which such balance is paid by or on behalf of AP into the Commodity Contract Counterparty Account.
- (c) Interest determined pursuant to paragraph (b) above shall be payable to CSL within 2 Business Days of written demand being made by the Commodity Contract Counterparty.
- (d) The Parties acknowledge and agree that, other than as set out in paragraph (b), no interest or any amount in respect of or in the nature of interest is due or payable by or on behalf of either Party.

*No double recovery*

- (e) A Party may satisfy any of its payment obligations under this Agreement by procuring the payment of the outstanding amount into the relevant account on its behalf by another person.

*Payments due on Days other than Business Days*

- (f) Where a day on which a payment would otherwise be due and payable is not a Business Day, such payment shall be due and payable by the payer on the next following Business Day.

**19. Bank accounts**

- (a) AP shall establish and at all times maintain a bank account (the “**AP Bank Account**”) to receive payments of Redemption Amounts, into which AP shall pay (or procure payment of) Creation Amounts. Such account shall be linked to the CREST Graphical User Interface access of the Administrator and shall be used to effect settlement of issues, Redemptions and cancellations of Short and Leveraged Commodity Securities through CREST and AP shall notify CSL, the Trustee and each Commodity Contract Counterparty of the details of such account from time to time.
- (b) AP shall as soon as possible after the date hereof notify CSL, the Trustee and each Commodity Contract Counterparty of the account details of the AP Bank Account.
- (c) AP may change the bank account which constitutes the AP Bank Account by giving notice thereof to CSL, the Trustee and each Commodity Contract Counterparty.
- (d) A change of bank account notified in accordance with paragraph (c) shall take effect on the later to occur of:
  - (i) the date specified in the notice as the date on which the change is to take place; or
  - (ii) the day which is five Business Days following the day on which notice of the change was deemed received by each of the persons to which it was sent.

**EXECUTED** by the parties:

SIGNED by )  
for and on behalf of )  
**ETFS COMMODITY SECURITIES** )  
**LIMITED** )

SIGNED by )  
for and on behalf of )  
**ETFS MANAGEMENT COMPANY** )  
**(JERSEY) LIMITED** )

SIGNED by )  
for and on behalf of )  
**[insert name of authorised participant]** )

## Schedule 1

### Selling Restrictions

*Pursuant to Clause 4(c), the Selling Restrictions are as follows:*

#### 1 General

##### **No action to permit public offering**

- 1.1 AP acknowledges that, save for the approval of the Prospectus by the UK Listing Authority in accordance with Part VI of the Financial Services and Markets Act 2000 (the "FSMA") having been obtained and certificates of approval in respect thereof having been requested as described in the Prospectus, no action has been or will be taken (without the prior written consent of CSL) in any jurisdiction by it that would permit a public offering of Short or Leveraged Commodity Securities, or possession or distribution of any offering material in relation thereto, in any country or jurisdiction where action for that purpose is required.

AP acknowledges that CSL does not (i) represent that Short or Leveraged Commodity Securities may at any time lawfully be sold in compliance with any applicable registration or other requirements in any jurisdiction other than the United Kingdom, or pursuant to any exemption available thereunder, nor (ii) assume any responsibility for facilitating such sale.

The Authorised Person will not offer or sell any Short or Leveraged Commodity Securities in any jurisdiction other than the United Kingdom in circumstances that would result in any legal or regulatory requirement being imposed on CSL save as expressly provided for in this Agreement.

##### 1.2 **AP's compliance with applicable laws**

AP undertakes to CSL that it will comply (and procure compliance) with all applicable laws and regulations in each country or jurisdiction in which it purchases, offers, sells or delivers Short or Leveraged Commodity Securities or has in its possession or distributes offering material, in all cases at its own expense.

##### 1.3 **Selling and Listing Restrictions and Prohibited Investors:**

AP will not offer or sell any Short and Leveraged Commodity Securities to, and will not conduct any offers, selling efforts, promotions, marketing, advertising or other related activities in respect of any Short and Leveraged Commodity Securities in a manner that could denote, hold out or suggest that Short and Leveraged Commodity Securities may be aimed at any persons other than sophisticated, professional or institutional investors (it being agreed that the publication of the Prospectus in accordance with the provisions of Clause 17, and acts done for the purpose of compliance with listing rules, prospectus rules or disclosure and transparency rules in respect thereof, shall not of themselves be regarded as a breach of this undertaking).



## 2 **United States**

In relation to the Short and Leveraged Commodity Securities AP represents, warrants and undertakes to CSL that neither it nor any of its Affiliates (including any person acting on behalf of AP or any of its Affiliates):

- (a) has knowingly offered or sold or will knowingly offer or sell Short or Leveraged Commodity Securities within the United States or to U.S. Persons, whether before, on or after the relevant Application date;
- (b) has knowingly offered or sold or will knowingly offer or sell Short or Leveraged Commodity Securities to a Prohibited US Person or a Prohibited Benefit Plan Investor, whether before, on or after the relevant Application date; or
- (c) has engaged or will engage in any "directed selling efforts" with respect to Short or Leveraged Commodity Securities.

Terms used in this paragraph 2 and not otherwise defined in this Agreement have the meanings given to them by Regulation S under the Securities Act of 1933 of the United States.

## 3 **European Economic Area**

### 3.1 AP represents, warrants and undertakes to CSL:

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a **Relevant Member State**), that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the **Relevant Implementation Date**) it has not made and will not make an offer of Short or Leveraged Commodity Securities to the public in that Relevant Member State, except that it may, with effect from and including the Relevant Implementation Date, make an offer of Short or Leveraged Commodity Securities to the public in that Relevant Member State:

- (a) in the period beginning on the date of publication of a prospectus in relation to those Short or Leveraged Commodity Securities which has been approved by the competent authority in that Relevant Member State in accordance with the Prospectus Directive or, where appropriate, published in another Relevant Member State and notified to the competent authority in that Relevant Member State in accordance with Article 18 of the Prospectus Directive and ending on the date which is 12 months after the date of such publication;
- (b) at any time to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (c) at any time to any legal entity which has two or more of
  - (1) an average of at least 250 employees during the last financial year;

- (2) a total balance sheet of more than €43,000,000 and
  - (3) an annual net turnover of more than €50,000,000,
- each as shown in its last annual or consolidated accounts; or
- (d) at any time in any other circumstances which do not require the publication by CSL of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this paragraph 3, the expression an “**offer of Short or Leveraged Commodity Securities to the public**” in relation to any Short or Leveraged Commodity Securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Short or Leveraged Commodity Securities to be offered so as to enable an investor to decide to purchase or subscribe for Short or Leveraged Commodity Securities, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State and the expression “**Prospectus Directive**” means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

#### 4 **United Kingdom**

- 4.1.1 *Financial promotion:* it has only communicated or caused to be communicated, and will only communicate or cause to be communicated, any invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) received by it in connection with the issue or sale of any Short or Leveraged Commodity Securities in circumstances in which section 21(1) of the FSMA does not apply to CSL or any Affiliate of CSL.
- 4.1.2 *General compliance:* it has complied and will comply with all applicable provisions of the FSMA and the United Kingdom financial services regime (including, without limitation, the obligation to treat customers fairly) with respect to anything done by it in relation to any Short or Leveraged Commodity Securities in, from or otherwise involving the United Kingdom.

#### 5 **Jersey**

AP undertakes to CSL that it will not permit Short or Leveraged Commodity Securities to be offered to, sold to, or purchased by persons resident for income tax purposes in Jersey (other than financial institutions in the normal course of business).

## Schedule 2

### Representations, Warranties and Undertakings

*Pursuant to clauses 5(f) and 5(g), the Representations, Warranties and Undertakings of CSL and ManJer are as follows:*

#### 1 Representations and Warranties of CSL and ManJer

CSL and ManJer do, on the date of this Agreement, and shall on each date on which AP makes an Application and on each date on which the Application Amount is paid in respect of Short and Leveraged Commodity Securities be deemed, jointly and severally, to represent to, warrant to and agree with AP that:

- 1.1 **Due Incorporation:** CSL is duly incorporated and validly existing under the laws of Jersey, with full power and authority to conduct its activities as described in the Prospectus
- 1.2 **Residence:** CSL has complied and is in compliance with clause 20(W) of the Trust Instrument
- 1.3 **Validity of Agreements:** the execution and delivery of the Agreements by CSL has been duly authorised by CSL and the Agreements constitute, and upon due execution, authentication, issue and delivery, the Short and Leveraged Commodity Securities will constitute valid and legally binding obligations of CSL
- 1.4 **Consents:** all actions or things required to be taken, fulfilled or done (including without limitation the obtaining of any consent or licence or the making of any filing or registration) for the issue of the Short and Leveraged Commodity Securities, the carrying out of the other transactions contemplated by the Agreements or the compliance by CSL and/or ManJer (as the case may be) with the terms of the Short and Leveraged Commodity Securities and the Agreements, as the case may be, have been obtained and are in full force and effect
- 1.5 **Compliance:** the execution and delivery of the Agreements, the issue of the Short and Leveraged Commodity Securities, the carrying out of the other transactions contemplated by the Agreements and compliance with their terms do not and will not (i) conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, the documents constituting CSL or any agreement or instrument to which CSL is a party or by which it or any of its properties is bound, or (ii) infringe any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental body or court, domestic or foreign, having jurisdiction over CSL, or any of its properties
- 1.6 **Prospectus:** (i) the Prospectus contains all information with respect to CSL, the Short and Leveraged Commodity Securities and any related contract entered into by CSL that is material in the context of the issue and offering of the Short and Leveraged Commodity Securities (including all information required by applicable laws of Jersey and English law and the information that is necessary to enable investors and their professional advisers to make an informed

assessment of the condition of CSL and the rights attaching to the Short and Leveraged Commodity Securities), (ii) the statements contained in it relating to CSL are in every material particular true and accurate and not misleading, (iii) there are no other facts in relation to CSL or the Short and Leveraged Commodity Securities the omission of which would, in the context of the issue and offering of the Short and Leveraged Commodity Securities, make any statement in the Prospectus misleading in any material respect, and (iv) all reasonable enquiries have been made by CSL to ascertain such facts and to verify the accuracy of all such information and statements

- 1.7 **Litigation:** there are no pending actions, suits or proceedings against or affecting CSL or any of its properties
- 1.8 **Events of Default:** no event has occurred or circumstance arisen that might (whether or not with the giving of notice, lapse of time and/or issue of a certificate) constitute an event described under the definitions of "Counterparty Event of Default", "Insolvency Event" and "Defaulted Obligation" in the Conditions
- 1.9 **Substantial U.S. Market Interest:** CSL reasonably believes that there is no substantial U.S. market interest (as defined in Regulation S under the Securities Act) in its debt securities
- 1.10 **Directed Selling Efforts:** neither CSL nor any of its affiliates nor any persons acting on their behalf have engaged or will engage in any directed selling efforts (as defined in Regulation S under the Securities Act) with respect to the Short and Leveraged Commodity Securities and each of them has complied and will comply with the offering restrictions requirement of such Regulation
- 1.11 **Collective Investment Scheme:** to the best of CSL's knowledge and belief, and on the basis of appropriate legal advice and in the absence of any contradictory notices from the Financial Services Authority, CSL does not constitute a "collective investment scheme" or an "open-ended investment company" for the purposes of the Financial Services and Markets Act 2000 and any applicable secondary legislation made under it
- 1.12 **SETS and CREST:** the Short and Leveraged Commodity Securities qualify for settlement and trading within the SETS and CREST settlement and trading systems.

## 2 Undertakings of CSL and ManJer

Each of CSL and ManJer jointly and severally agree with AP that:

- 2.1 **Representations and Warranties:** it shall notify the AP promptly of any change affecting any of its representations, warranties and agreements in this Agreement at any time and take such steps as may be reasonably requested by the AP, to remedy and/or publicise the same
- 2.2 **Restrictions:** it shall at all times comply with clause 20 of the Trust Instrument
- 2.3 **Information:** it shall furnish to AP such information concerning CSL as AP may

from time to time reasonably request or as would be required to be disclosed in the Prospectus

- 2.4 **Prospectus:** it shall not amend, supplement or replace the Prospectus without first discussing the proposed amendment, supplement or replacement with AP and shall furnish to AP copies of the Prospectus, each amendment to, supplement to or replacement thereof, each Supplementary Prospectus and, upon request, each document incorporated by reference and any additional marketing information
- 2.5 **CREST:** it will ensure that the Short and Leveraged Commodity Securities are at all times eligible for settlement in CREST and will comply with the rules of CREST from time to time
- 2.6 **Maximum Aggregate Amount:** it will ensure that as of (i) each date on which AP makes an Application and (ii) each date on which the Application Amount is paid in respect of Short and Leveraged Commodity Securities, the aggregate number of Short and Leveraged Commodity Securities outstanding will not exceed the Programme Limit (after giving effect to the issuance of such Short and Leveraged Commodity Securities and of any other Short and Leveraged Commodity Securities to be issued, and to the redemption of Short and Leveraged Commodity Securities to be redeemed on or prior to such date)
- 2.7 **Monitoring:** it shall deliver, register and furnish such documents, instruments, information and undertakings to, and obtain any consent from, any relevant agency, authority, central bank, department, government, minister, official, public or statutory corporation, or self-regulating organisation or Stock Exchange as may be necessary or advisable from time to time to comply with all relevant laws and directives that are relevant to any Short or Leveraged Commodity Securities or the Agreements
- 2.8 **Authorised Representative:** it shall notify AP immediately in writing if any of the persons so named in Schedule 3 hereto shall cease to be authorised to take action on behalf of CSL or if any additional person shall be so authorised and, unless and until notified of any such change, AP shall be entitled to rely upon the certificate[s] delivered to them most recently and all instructions given in accordance with such certificate[s] shall be binding upon CSL
- 2.9 **Securities Act:** it shall not issue, offer or sell any securities under circumstances that would require the registration of any of the Short or Leveraged Commodity Securities under the Securities Act
- 2.10 **Meetings of Security Holders:** it shall give AP notice of any meeting of Security Holders (as defined in the Trust Instrument) as soon as reasonable practicable, and in any event, no later than the date on which notice is provided to the Security Holders and shall permit AP and its advisers to attend and speak at any such meeting

### **3 Future undertakings of CSL**

- 3.1** CSL undertakes to AP to notify AP (in accordance with Clause 10(a)) upon either CSL or the Commodity Contract Counterparty giving a Material Adverse Change Notice to the other pursuant to the Facility Agreement.

### Schedule 3

#### Signature Verification

*Pursuant to Clause 7(a), the names and signatures of all persons approved to give instructions relating to activity contemplated hereby, by the Business Rules or by any other notice, request or instruction given on behalf of CSL or AP (each, an "Approved Person") are as follows:*

**Signature verification for [ETFS Commodity Securities Limited or name of AP] in relation to Short and Leveraged Commodity Securities**

I, [name of person], [title] for the above mentioned, confirm that the persons specified below are authorised signatories of [name of Authorised Participant] and that the signatures set out beside the names below are their true and exact signatures:

\_\_\_\_\_  
[name]  
[title]

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[name]  
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\_\_\_\_\_  
[name]  
[title]

Signed: \_\_\_\_\_  
[name]  
[title]

## Schedule 4

### Creation Procedures

*Pursuant to Clause 7(b), the creation procedures and the applicable provisions of the Programme and any payment to be made pursuant to any Application or Redemption Notice are as follows:*

#### **Settlement Application**

1. AP may on any Issuer Business Day between 8.00 am and 6.30 pm give (or cause to be given on its behalf) to CSL a notice in the form prescribed from time to time by the Issuer for the purposes of this paragraph (a “**Settlement Application**”) for the issue by CSL of Short or Leveraged Commodity Securities. The giving of such application shall constitute an Application.
2. A Settlement Application shall be invalid:
  - (a) if it does not specify a number and class of Short or Leveraged Commodity Securities to be issued by CSL;
  - (b) if it is lodged or deemed received on an Issuer Business Day when the right to Redeem Commodity Securities of the relevant class is suspended pursuant to Condition 7.19;
  - (c) if it is received by CSL at any time other than between 8.00 am and 7.00 pm on an Issuer Business Day;
  - (d) if the Creation of Commodity Contracts which would result from that Settlement Application would result in any Creation Limit being exceeded, and the Commodity Contract Counterparty does not pursuant to the Facility Agreement agree to that Creation Limit being exceeded (in which event such Settlement Application will not be capable of being invalidated under this sub-paragraph (d) in respect of the greatest number of Short or Leveraged Commodity Securities of the relevant class or classes that would not result in such Creation Limit being exceeded);
  - (e) if the Creation of Commodity Contracts which would result from that Settlement Application would not equal or exceed the Minimum Creation Amount for the class of Short or Leveraged Commodity Security to which the Settlement Application relates and the Commodity Contract Counterparty does not pursuant to the Facility Agreement agree to the Creation notwithstanding such shortfall;
  - (f) if the Commodity Contract Counterparty pursuant to the terms of the Facility Agreement determines that the sum of the Prices of the Commodity Contracts which would thereby be Created, plus all other Creation Amount(s) not yet paid by AP, less all Cancellation Amounts not yet paid by the Commodity Contract Counterparty to CSL in respect of Cancellations corresponding with Redemptions of Short and Leveraged Commodity Securities by AP would (after taking account of any collateral and/or set-off arrangements in favour of the Commodity Contract Counterparty in respect of AP) exceed the Notified Credit Limit with respect to AP (if any) applicable on that day, and the Commodity Contract Counterparty does not pursuant to the Facility Agreement agree to the Creation notwithstanding such excess;



- (g) if at the time the relevant Settlement Creation Notice is deemed received by the Commodity Contract Counterparty pursuant to the Facility Agreement a CSL Event of Default or Potential CSL Event of Default has occurred and is continuing, and the Commodity Contract Counterparty does not pursuant to the Facility Agreement agree to the Creation of Commodity Contracts which would result from that Settlement Application notwithstanding such CSL Event of Default or Potential CSL Event of Default;
- (h) if it is not confirmed in accordance with paragraph 5 below;
- (i) if it is for Short or Leveraged Commodity Securities of a class for which notice is still effective of a Compulsory Pricing Date for that class of Commodity Contracts under the Facility Agreement and the Settlement Application is received or deemed received on or after: (i) where notice of a Compulsory Pricing Date has been given in accordance with clause 9 of the Facility Agreement (other than clause 9.1(a) thereof), the date of such notice; and (ii) where a Compulsory Pricing Date has been notified in accordance with clauses 9.1(a) or 15.4 of the Facility Agreement, the date which is three Business Days prior to the Compulsory Pricing Date;
- (j) if a Hedging Disruption Event has occurred and is continuing in respect of the Relevant Market for one or more commodities by reference to the Settlement Prices for which the Commodity Index to which the Settlement Application relates (in whole or in part), and the Commodity Contract Counterparty has given notice to CSL of that Hedging Disruption Event, and has not given notice of its cessation, in each case in accordance with clause 16.1 of the Facility Agreement, and the Commodity Contract Counterparty does not agree pursuant to the Facility Agreement to the Creation of Commodity Contracts which would result from that Settlement Application notwithstanding such Hedging Disruption Event; or
- (k) the Commodity Contract Counterparty has given notice to CSL pursuant to the Facility Agreement of the existence of a Material Adverse Change, and no agreement has been reached by the Commodity Contract Counterparty and CSL under clause 8 of the Facility Agreement in connection with such Material Adverse Change, and the Commodity Contract Counterparty does not agree pursuant to the Facility Agreement to the Creation of Commodity Contracts which would result from that Settlement Application notwithstanding the existence of such Material Adverse Change,

and, save as provided under sub-paragraph (d) above and paragraph 5, no Short or Leveraged Commodity Securities shall be issued in respect of or under that Settlement Application.

3. A Settlement Application which is received by CSL on an Issuer Business Day after 30 minutes before the Notice Deadline but prior to 6.30 pm shall be deemed to be received by CSL at 8.00 am on the following Issuer Business Day, unless the Commodity Contract Counterparty agrees pursuant to the Facility Agreement to treat the Settlement Creation Notice for Commodity Contracts which would result from that Settlement Application as having been received prior to the Notice Deadline in which case the Settlement Application shall be deemed to have been received by CSL 30 minutes prior to the Notice Deadline. For the purposes of these creation procedures a Settlement Application that relates to more than one class of Commodity Security will be deemed to comprise a separate Settlement

Application in respect of each such class of Commodity Security.

4. If a Settlement Application in relation to a class of Short or Leveraged Commodity Securities is deemed received by CSL not less than 30 minutes prior to the Notice Deadline on an Issuer Business Day (“Day 1”):

- (a) if Day 1 is not a Pricing Day for such Short or Leveraged Individual Securities or, in the case of Short or Leveraged Index Securities, if Day 1 is not a Pricing Day for each of the commodities by reference to the Settlement Prices for which the Commodity Index relating to the class of Short or Leveraged Index Securities to which the Settlement Application relates is calculated (in whole or in part):
- (i) AP may by written notice to CSL, sent prior to 30 minutes before the Notice Deadline on the next succeeding Issuer Business Day, cancel the Settlement Application, and where such a Withdrawal Notice is given no Short or Leveraged Commodity Securities shall be Created in respect of or under that Settlement Application; and
  - (ii) if no notice is issued under paragraph 4(a)(i) then the Settlement Application will be deemed received by CSL prior to 30 minutes before the Notice Deadline on the next Issuer Business Day (and no creation of Short or Leveraged Commodity Securities for that Settlement Application shall occur before then) in priority to any Settlement Application deemed received by CSL prior to 30 minutes before the Notice Deadline on such Issuer Business Day pursuant to paragraph 3 and that Issuer Business Day will then constitute Day 1 for the Settlement Application and this paragraph 4 shall apply thereto accordingly;
- (b) in the case of Short or Leveraged Index Securities, if Day 1 is a Pricing Day for one or more but not all futures contracts by reference to the Settlement Price for which the Composite Commodity Index relating to a Short or Leveraged Index Security of class i relates is calculated (in whole or in part) then (1) that Short or Leveraged Index Security will not be priced until the next General Trading Day on which each such futures contract has had one or more Pricing Days; and (2) the Price of a Short or Leveraged Index Security of that class for a Settlement Application deemed received on Day 1 will be an amount (which may not be negative) calculated to 7 places of decimals with 0.00000005 rounded upwards):

$$P_{i,t} = IP_{i,t} \times \left( 1 + \sum_{\Gamma=t}^{IPD-1} CA_{i,\Gamma+1} \right) + \sum_{w=1}^{ND} \sum_{\tau=t}^{CPD^{w-1}} \sum_{j=1}^2 HP_{i,\tau,j}^w \times \left( \frac{WAV_{\tau+1,j}^w}{CIM_{\tau+1,j}^w} - \frac{WAV_{\tau,j}^w}{CIM_{\tau,j}^w} \right)$$

where:

- $P_{i,t}$  is the Price of a Short or Leveraged Index Security of class i for day t;
- $IP_{i,t}$  is the Indicative Price (determined in accordance with Condition 5.5) of a Short or Leveraged Index Security of class i for day t;
- $i$  refers to the relevant class of Short or Leveraged Index Security;

$t$	refers to the applicable calendar day (Day 1);
$IPD$	represents the 'Index Pricing Day', which is defined as the day upon which the relevant Short or Leveraged Index Security is priced, being the General Trading Day on which each futures contract by reference to the Settlement Price for which the relevant Composite Commodity Index is calculated has had at least one Pricing Day from and including day $t$ ;
$IPD-1$	refers to the calendar day prior to $IPD$ ;
$CA_{i, \Gamma+1}$	is the Capital Adjustment applicable to a Short or Leveraged Index Security of class $i$ for day $\Gamma+1$ ;
$\Gamma$	represents each calendar day from and including $t$ until and including $IPD-1$ ;
$\tau$	means each calendar day from and including $t$ until and including $CPD^{w-1}$ ;
$ND$	means the 'Number of Disrupted commodities', being defined as the number of commodities represented in the relevant Composite Commodity Index which are the subject of a Market Disruption Event on Day 1;
$w$	is a commodity in relation to the relevant Composite Commodity Index which is subject to a Market Disruption Event on Day 1;
$CPD^w$	represents the 'Commodity Pricing Day' which is defined as the first calendar day following Day 1 which is a Pricing Day for commodity $w$ ;
$CPD^{w-1}$	refers to the calendar day preceding $CPD^w$
$j$	in relation to a commodity $w$ , is either a Lead Future or a Next Future and where $j=1$ it is a Lead Future and where $j=2$ it is a Next Future;
$HP_{i, \tau, j}^w$	means the Theoretical Hedge Position (determined in accordance with Condition 5.7(ii)) for futures contract $j$ of commodity $w$ in respect of Short or Leveraged Index Security $i$ on day $\tau$ ;
$WAV_{\tau+1, j}^w$	means the weighted value for futures contract $j$ of commodity $w$ on day $\tau+1$ used for calculating the relevant Composite Commodity Index calculated in accordance with the Handbook, provided that where day $\tau+1$ is not a General Trading Day then it shall be equal to  $WAV_{\tau, j}^w$ ;

$WAV_{\tau,j}^w$  means the weighted value for futures contract  $j$  of commodity  $w$  on day  $\tau$  used for calculating the relevant Composite Commodity Index calculated in accordance with the Handbook, provided that where day  $\tau$  is not a General Trading Day then it shall be the weighted value for such futures contract on the General Trading Day preceding day  $\tau$ ;

$CIM_{\tau,j}^w$  means the Commodity Index Multiplier (as defined in the Handbook from time to time) on day  $\tau$  for futures contract  $j$  of commodity  $w$ , provided that where day  $\tau$  is not a General Trading Day then it shall be equal to the Commodity Index Multiplier for such futures contract on the first General Trading Day prior to day  $\tau$ ; and

$CIM_{\tau+1,j}^w$  means the Commodity Index Multiplier (as defined in the Handbook from time to time) on day  $\tau+1$  for futures contract  $j$  of commodity  $w$ , provided that where day  $\tau+1$  is not a General Trading Day then it shall be equal to

$$CIM_{\tau,j}^w.$$

- (c) where paragraph 4(b) applies, the Pricing Date in respect of the Settlement Application relating to the Short or Leveraged Index Securities concerned will be the Trading Day on which all futures contracts by reference to the Settlement Price for which the Composite Commodity Index relating to such Short or Leveraged Index Securities is calculated have had one or more Pricing Days since (but including) Day 1;
- (d) where paragraph 4(b) applies:
- (i) in relation to a Settlement Application, at any time prior to a Pricing being completed in accordance with paragraph 4(b) the Relevant Commodity Contract Counterparty and the AP may agree a Price and applicable Pricing Date in lieu of that which would be determined in accordance with paragraph 4(b) and notify that Price and applicable Pricing Date jointly to the Issuer in such form as the Issuer may reasonably require. Such joint notification shall be conclusive evidence that the Relevant Commodity Contract Counterparty and the AP have agreed a Price and applicable Pricing Date which shall apply in lieu of that which would be determined in accordance with paragraph 4(b);
  - (ii) if a Price has not been determined in accordance with paragraph 4(b) or 4(d)(i) by the end of the fourth General Trading Day following Day 1 then, either the relevant Authorised Participant or the Issuer, by notice to the other given in the same manner as for a Pricing Notice, may elect that the Price should instead be determined in the manner provided in the following subparagraphs. Any such notice must, to be valid, be given between 8.00 a.m. and 6.30 p.m. (in the case of notice given by the AP) or 7.00 p.m. (in the case of notice given by the Issuer) on an Issuer Business Day. Any such notice which is received by the Issuer or the AP on an Issuer Business Day after the Notice Deadline but prior to 6.30 p.m. (in the case of notice given by the AP) or 7.00 p.m. (in the case of notice given by the Issuer) shall be deemed to be

received by the Issuer or the AP (as the case may be) at 8.00 a.m. on the following Issuer Business Day, unless the Issuer or the AP (as the case may be) agrees to treat that Settlement Redemption Form as having been received prior to the Notice Deadline in which case it shall be deemed to have been received by the Issuer or the AP (as the case may be) prior to the Notice Deadline. The giving of any notice pursuant to paragraph (ii) shall not prevent the Relevant Commodity Contract Counterparty and the AP from agreeing a Price and Pricing Date in accordance with paragraph 4(d)(i) above in which case such Price and applicable Pricing Date shall apply in lieu of that which would be determined in accordance with the following sub-paragraphs;

- (iii) if a notice is given pursuant to paragraph 4(d)(ii) above the Calculation Agent shall calculate in good faith and in a commercially reasonable manner a Price as at the close of business on the Issuer Business Day on which such notice was deemed given using the formula set out in paragraph 4(b) and, for each relevant futures contract for which a Market Disruption Event would (but for paragraph 4(d)) have prevented the determination of the Price hereunder, a fair market value for such futures contract determined using the principles set out in Condition 14.3 and shall notify the same to the Issuer, the AP and the Relevant Commodity Contract Counterparty; and
- (iv) if by 6.30 p.m. on the Issuer Business Day following notification by the Calculation Agent to the Issuer and the AP of any determination made by the Calculation Agent pursuant to paragraph (iii) above either the Issuer or the AP notifies the Relevant Commodity Contract Counterparty that it requires the appointment of a leading dealer in commodity derivatives as substitute calculation agent (a "**Substitute Calculation Agent**") to determine the fair market values for any futures contract for which a Market Disruption Event would (but for paragraph 4(d)) have prevented the determination of the Price hereunder in accordance with this paragraph and the Price, then (unless agreement is reached otherwise in accordance with sub-paragraph (i) above) each of the Issuer, the AP and the Relevant Commodity Contract Counterparty shall, in the absence of manifest error, be bound by a determination made by the Substitute Calculation Agent of such fair market values and Price. Any Substitute Calculation Agent shall be appointed jointly by the Relevant Commodity Contract Counterparty and the AP or, at the request of either, by the Issuer. Any Substitute Calculation Agent, if it is an Authorised Participant, shall be independent of the Creation concerned and shall itself have no similar transactions with the Issuer awaiting Pricing in accordance with provisions of this Agreement analogous to paragraph 4(b). The Issuer shall not be obliged to appoint any Substitute Calculation Agent hereunder unless it is indemnified and/or secured to its reasonable satisfaction against any Liabilities to which it may thereby render itself liable. In performing its duties under this paragraph any Substitute Calculation Agent shall calculate such fair market values and Price in good faith and in a commercially reasonable manner and shall calculate such Price as at the close of business on the Issuer Business Day on which the notice under sub-paragraph (ii) above was deemed given using the formula set out in paragraph 4(b) and, for each relevant futures contract for which a Market Disruption Event would (but for this paragraph 4(d)) have prevented the

determination of the Price hereunder, a fair market value for such futures contract using the principles set out in Condition 14.3 and the applicable reported settlement prices for all other relevant futures contracts. The Substitute Calculation Agent shall assume, without enquiry, that any determination by the original Calculation Agent as to whether a Market Disruption Event in relation to any futures contract has occurred is correct and shall be bound by any such determination. Accordingly, the role of the Substitute Calculation Agent shall be limited to the determination of the relevant fair market values and the Price consequent upon such determinations. The Substitute Calculation Agent shall have no liability or responsibility to the parties for any error or omission in making any determination in connection with this paragraph.

### **Confirmation of Settlement Application**

5. AP's Authorised Individual shall, within 30 minutes of any Settlement Application having been sent by AP, try to contact CSL's Authorised Individual by telephone to seek confirmation by CSL of such Application. CSL's Authorised Individual shall generally be available from 8.00am to 2.00pm and must be available from 2.00pm to 2.30pm (the "Application Required Time"). CSL shall confirm such Settlement Application during the Application Required Time (or earlier), except where such Settlement Application is not valid under paragraph 2 above (other than by virtue of sub-paragraph 2(h)), provided that where sub-paragraph 2(d), (e), (f), (g), (j) or (k) applies CSL may, but shall not be obliged to, confirm such Settlement Application; and if the Settlement Application was deemed received by CSL after the Notice Deadline CSL may, but shall not be obliged to, agree that such Settlement Application should be treated as though received prior to the Notice Deadline (and in any event, CSL's Authorised Individual shall inform AP's Authorised Individual whether, and to what extent, CSL has confirmed or rejected such Settlement Application).

6. Where CSL confirms its acceptance of a Settlement Application, that Settlement Application (to the extent accepted by CSL) shall be a valid Settlement Application.

7. If CSL considers that a purported Settlement Application is invalid, it shall notify AP of that fact as soon as reasonably possible. For this purpose notification to AP by the Commodity Contract Counterparty pursuant to paragraph 7 of Schedule 11 to the Facility Agreement in relation to the corresponding Settlement Creation Notice shall be treated as notification by CSL. CSL shall not be obliged to issue pursuant to a Settlement Application Form any Commodity Securities where the relevant Commodity Contract Counterparty has not confirmed a corresponding Commodity Contract Creation in accordance with the provisions of the relevant Facility Agreement.

### **Agreed Application**

8. The Commodity Contract Counterparty and AP may give a notice in the form attached as Schedule 7 to the Facility Agreement (or such other form as may be prescribed from time to time for the purposes of this paragraph by CSL) to CSL (either jointly in the same notice, or in separate notices from each of them) (an "**Agreed Creation Notice**") that they have agreed upon the issue by CSL of a number and class of Short or Leveraged Commodity Securities specified in the notice(s) and the Creation of the Equivalent Number of Commodity Contracts determined by reference to that number and class of Short or

Leveraged Commodity Securities, and the US Dollar amount which is the Application Amount for those Short or Leveraged Commodity Securities (and also the Creation Amount (as defined in the Facility Agreement) for those Commodity Contracts). The giving of such an Agreed Creation Notice by the Commodity Contract Counterparty and AP shall constitute an Application.

9. If the Commodity Contract Counterparty and AP purport to send an Agreed Creation Notice by separate notices:

- (a) which are inconsistent with one another in relation to any of the items referred to in sub-paragraphs 11(a), (b) or (c) of this Schedule; or
- (b) one of which is invalid under paragraph 11 of this Schedule,

those notices shall not constitute a valid Agreed Creation Notice and CSL shall reject the notices and advise the Commodity Contract Counterparty and AP accordingly.

10. Where an Agreed Creation Notice is given by separate notices from AP and the Commodity Contract Counterparty, CSL shall be deemed to have received the Agreed Creation Notice at the time that it is deemed to receive the second of the two notices.

11. An Agreed Creation Notice shall be invalid if it does not set out:

- (a) the number and class of Short or Leveraged Commodity Securities to be issued;
- (b) the Application Amount for those Short or Leveraged Commodity Securities (being the Creation Amount for that Creation of Short or Leveraged Commodity Contracts) (stated as a total amount); and
- (c) the Payment Date for that Application, which shall be not earlier than two London Business Days following the day on which the Agreed Creation Notice is deemed received by CSL.

#### **Application Amount**

12. The Application Amount with respect to an Application shall be the amount (in US Dollars) determined as follows:

- (a) if the Application is pursuant to an Agreed Creation Notice, the amount specified as the Creation Amount in the Agreed Creation Notice; or
- (b) if the Application is pursuant to a Settlement Application, an amount equal to the sum of the Class Amounts in respect of the class of Short or Leveraged Commodity Security to be issued.

13. By 12 noon on the first Business Day after the last Pricing Day in respect of any Settlement Application, CSL shall notify AP of the Application Amount payable in respect of that Settlement Application, determined as provided in paragraph 12.

#### **Payment of Application Amount**

14. AP shall by 4.00 pm on the Payment Date in respect of an Application pay the Application Amount in respect of that Application to CSL by causing such amount to be

credited to the Commodity Contract Counterparty Account through CREST against delivery of the relevant Short or Leveraged Commodity Securities, and CSL shall cause such Short or Leveraged Commodity Securities to be issued and delivered to AP through CREST against such payment, save in each case if and to the extent that AP or CSL has given a notice to withdraw in respect of any such Application in accordance with paragraphs 4 above or 15 below.

#### **Non-Payment of Creation Amount**

15. Subject to paragraph 16, CSL may give a notice to withdraw in respect of an Application for any Short or Leveraged Commodity Securities at any time after 4.00 pm on the first Business Day following the Payment Date in respect of such Application, by sending such notice to AP, if and to the extent that CSL has not at such time received payment in full of the Application Amount (in the Commodity Contract Counterparty Account) in respect of such Application. CSL shall send copies of such notice to withdraw to the Commodity Contract Counterparty at the same time as it sends such notice to AP. For this purpose a notice to withdraw given by the Commodity Contract Counterparty to AP pursuant to paragraph 15 of Schedule 11 to the Facility Agreement in relation to the creation of the corresponding Commodity Contracts shall be treated as a notice to withdraw given by CSL.

16. Where a notice to withdraw is duly given in respect of any Application, then:

- (a) such Application shall be cancelled, and (without prejudice to any amounts payable under the Direct Agreement) the Parties shall have no further obligations to each other under or in respect of it;
- (b) no interest shall be payable to CSL in respect of such Application Amount; and
- (c) the number and classes of Short or Leveraged Commodity Securities issued pursuant to that Application shall be cancelled (without any payment obligation arising under this Agreement).

#### **Set-off**

17. If at any time a Redemption Amount is due to be paid by CSL in respect of a Redemption of Short or Leveraged Commodity Securities by AP and AP has failed to pay an Application Amount on its due date and such Application Amount or part thereof remains outstanding, then CSL may elect, by giving written notice thereof to AP on or before the Payment Date for that Redemption, to effect a set-off of those amounts in accordance with this paragraph 17, and upon CSL giving notice accordingly the following provisions shall apply:

- (a) if the relevant Redemption Amount is greater than the relevant outstanding Application Amount, CSL shall apply sufficient of the relevant Redemption Amount to meet the relevant outstanding Application Amount in full, whereupon (i) the relevant outstanding Application Amount shall be deemed paid in full; (ii) CSL's obligation to pay to AP that portion of the relevant Redemption Amount so applied shall be deemed satisfied in full; and (iii) CSL shall pay to AP the balance of the relevant Redemption Amount in accordance with the Conditions;
- (b) if the relevant Redemption Amount is less than the relevant outstanding Application



Amount, CSL shall apply all of the relevant Redemption Amount to meet the relevant outstanding Application Amount in part, whereupon (i) the relevant Application Amount shall be deemed paid in such part; (ii) CSL's obligation to pay to AP the relevant Redemption Amount so applied shall be deemed satisfied in full; and (iii) CSL shall not be entitled to give a notice of withdrawal in respect of the issue of Short or Leveraged Commodity Securities corresponding to that part of the Application Amount which has been so set off; and

- (c) CSL shall procure that the Administrator will effect deliveries and payments (and, in the case of Short or Leveraged Commodity Securities in Uncertificated Form, amend their settlement instructions to CREST) such that:
- (i) where paragraph 17(a) applies:
    - (A) the issue of Short or Leveraged Commodity Securities relating to the Application Amount which is set off in whole under paragraph 17(a)(i) is settled on a delivery free of payment basis, and
    - (B) the Redemption of Short or Leveraged Commodity Securities relating to the Redemption Amount is settled on a delivery versus payment basis (the amount of the payment being the amount of the balance of Redemption Amount payable by CSL under paragraph 17(a)(iii)); and
  - (ii) where paragraph 17(b) applies:
    - (A) the issue of the greatest number of Short or Leveraged Commodity Securities relating to the Application Amount the aggregate subscription price for which does not exceed the balance of the Application Amount that has been set off is settled on a delivery versus payment basis (the amount of the payment being the amount of the balance of Application Amount payable to CSL) and any difference between such aggregate subscription price and such balance so set off is paid by CSL into the Redemption Account, and
    - (B) the Redemption of Short or Leveraged Commodity Securities relating to the Redemption Amount which is set off in whole under paragraph 17(b)(ii) is settled on a delivery free of payment basis.

#### **Creation Limits – Order of Priority**

18. For the purposes of the Creation Limits, Applications will be dealt with in order of their actual receipt by CSL and, for the purpose of this paragraph, paragraph 3 above shall be disregarded.

#### **Listing Failure**

19. If the UK Listing Authority refuses to admit to the Official List any Short or Leveraged Commodity Securities issued under this Agreement, CSL shall promptly upon becoming aware of that fact notify the Commodity Contract Counterparty and AP thereof in accordance with the procedure for sending notices under Clause 9(a).

20. If the Short or Leveraged Commodity Securities in question have not been issued or

have been issued but not transferred to AP:

- (a) if not yet issued CSL shall not issue such Short or Leveraged Commodity Securities and if issued CSL shall immediately cancel such Short or Leveraged Commodity Securities; and
- (b) no amount shall be paid or payable by or on behalf of AP to CSL in respect of those Short or Leveraged Commodity Securities except as provided in paragraph 22 below.

21. If the Short or Leveraged Commodity Securities in question have been both issued and transferred to AP:

- (a) CSL shall treat the Short or Leveraged Commodity Securities in question as non-transferable except back to CSL and shall not accept or register any transfer thereof except back to CSL, and shall so instruct the Administrator;
- (b) all amounts received by CSL on account of the Application Amount for the Short or Leveraged Commodity Securities, plus any amount which CSL is required to pay in accordance with paragraph 22(c)(i) below or less any amount which CSL is entitled to deduct from such amounts in accordance with paragraph 22(c)(ii) below, shall be repaid by CSL into the Redemption Account of AP against delivery to CSL (through CREST, in the case of Short and Leveraged Commodity Securities in Uncertificated Form) of the Short or Leveraged Commodity Securities in question; and
- (c) the Parties shall, and CSL shall procure that the Administrator shall, give all necessary payment and delivery instructions to CREST for settlement of that transaction to take place on the Payment Date determined in accordance with paragraph 22 below (or such other date as may be agreed by the Commodity Contract Counterparty and AP).

22. Where paragraph 19 above applies:

- (a) a Settlement Redemption Form shall be deemed to have been received by CSL in respect of such Short or Leveraged Commodity Securities (without the need for AP to send any such Settlement Redemption Form) at 11.00 am on the relevant Listing Failure Date, and (unless the Commodity Contract Counterparty and AP agree upon a Redemption Amount in accordance with paragraph 22(b)) a Redemption Amount shall be calculated accordingly;
- (b) in lieu of a Redemption Amount being calculated in accordance with paragraph 22(a), the Commodity Contract Counterparty and AP may agree upon the Redemption Amount, and the amount so agreed shall be the Redemption Amount for the purposes of this paragraph 22;
- (c) the Application Amount relating to the issue of such Short or Leveraged Commodity Securities (calculated in accordance with paragraph 12) and the Redemption Amount for the corresponding Redemption (calculated in accordance with the Conditions) shall be set off against one another and discharged to the extent so set off and by 4.00 pm on the Payment Date for such Redemption:
  - (i) if the Redemption Amount is greater than the Application Amount, CSL shall pay or procure payment of the difference between such amounts into the

Redemption Account of AP; and

- (ii) if the Application Amount is greater than the Redemption Amount, AP shall pay the difference between such amounts into the Commodity Contract Counterparty Account,

such that such set-off and the payment in full of any such amount to be paid by CSL shall constitute Redemption of such Short or Leveraged Commodity Securities; and

- (d) neither Party shall have any obligation to pay (or procure the payment of) any amount in respect of the Application or Cancellation of those Short or Leveraged Commodity Securities other than under paragraph 21 above and this paragraph 22.

### **Division of Pools**

23. If a valid Application has been received or deemed received pursuant to a deemed authorised participant agreement (as referred to in Clause 3) prior to the division of any Pool becoming effective in accordance with Condition 18.3 and by the time at which such division becomes effective such Application has not been completed by the issue of Short or Leveraged Commodity Securities, such Application shall not be invalidated by such division and shall be treated as having been made pursuant to the same deemed authorised participant agreement (as referred to in Clause 3) and in respect of such number of Short or Leveraged Commodity Securities of the relevant class as has the same aggregate Price calculated as if the division had become effective as the aggregate Price of the number of Short or Leveraged Commodity Securities in respect of which the Application was actually made.

## Schedule 5

### Web-Based Ordering System

#### Part A

#### Application Orders

CSL shall give AP written notice of the date from which the System will be used for Settlement Application Orders in accordance with this Part A.

1. Settlement Application Orders may be given through the System. Settlement Application Notices shall not be given other than if the System is affected by a breakdown or other problem such that it is not possible to give Settlement Application Orders in accordance with this Part A or in such other circumstances as CSL may reasonably determine from time to time upon written notice to AP.
2. A Settlement Application Order given through the System in accordance with the AP User Guide shall (subject as provided in this Part A) have the same effect as if a Settlement Application with the same particulars had been delivered to CSL in accordance with paragraph 1 of Schedule 4.
3. AP shall, subject to Clause 7(e), be deemed for the purposes of this Agreement to have given a Settlement Application Order if it has been inputted and approved by an Authorised User on the Website using a username and password belonging to AP by the user clicking "Approve".
4. A Settlement Application Order given through the System shall be invalid in the circumstances specified in paragraphs 2(b), 2(d) to (g) and 2(i) to (k) of Schedule 4 and if it is not confirmed either in accordance with paragraph 5 of Schedule 4 or in accordance with paragraph 5 or paragraph 8 below, *provided that* for the purposes of paragraphs 2(d) to (g), 2(j) and 2(k) of Schedule 4, confirmation by a Counterparty in accordance with paragraph 8 below shall constitute the consent and agreement of that Counterparty and such Settlement Application Order shall not (unless otherwise invalid) be invalid if such confirmation is given.
5. In the event of a Settlement Application Order being created and, as a result of a breakdown or other problem with the System, confirmation in accordance with paragraph 8 below is not possible, so that in accordance with the Facility Agreement the Commodity Contract Counterparty completes and sends to CSL and AP a Settlement Application with the details given in the Settlement Application Order, CSL shall confirm (or reject) the same in accordance with paragraph 5 of Schedule 4 and paragraph 6 of Schedule 4 shall apply accordingly.
6. Without prejudice to the first sentence of paragraph 3 of Schedule 4, a Settlement Application Order given on a day which is not an Issuer Business Day or after 6.30 p.m. on an Issuer Business Day will be treated for the purposes of this Agreement as though it had been given at 8.00 a.m. on the next Issuer Business Day.
7. Paragraphs 1 and 2 of Schedule 4 shall not apply to Settlement Application Orders save as applied by paragraph 4 above.

8. If the Counterparty has confirmed a Settlement Application Order through the System it shall be a valid Settlement Application and CSL need not also comply with paragraph 5 of Schedule 4.
9. Agreed Application Orders may be given through the System. Agreed Creation Notices shall not be given other than if the System is affected by a breakdown or other problem such that it is not possible to give Agreed Application Orders in accordance with this Part A or in such other circumstances as CSL may reasonably determine from time to time upon written notice to AP. Agreement between AP and a Commodity Contract Counterparty as evidenced through the System (by having been inputted and approved by an Authorised User on the Website using a username and password belonging to AP by the user clicking "Approve" and having been confirmed by the Counterparty in accordance with the Facility Agreement) as to (a) a number and type of Commodity Securities to be Issued, (b) the Equivalent Number of Commodity Contracts to be Created, (c) the US Dollar amount (save if the order type "Agreed Price at Set. Index" has been selected) which is the Application Amount for those Commodity Securities (and also the Creation Amount (as defined in the Facility Agreement) for those Commodity Contracts) and (d) the Payment Date for that Application (which shall not be earlier than one London Business Day following the day on which the Agreed Application Order is deemed given) will constitute an Agreed Application Order and such provisions shall apply in lieu of paragraphs 9 to 11 of Schedule 4.

## **Part B**

### **Redemption Orders**

CSL shall give AP written notice of the date from which the System will be used for Settlement Redemption Orders in accordance with this Part B.

1. Settlement Redemption Orders may be given through the System. Settlement Redemption Notices shall not be given other than if the System is affected by a breakdown or other problem such that it is not possible to give Settlement Redemption Orders in accordance with this Part B or in such other circumstances as CSL may reasonably determine from time to time upon written notice to AP.
2. A Settlement Redemption Order given through the System in accordance with the AP User Guide shall (subject as provided in this Part B) have the same effect as if a Redemption Form with the same particulars specifying Settlement Pricing had been delivered to CSL in accordance with Condition 7.2.
3. AP shall, subject to Clause 7(e), be deemed for the purposes of this Agreement to have given a Settlement Redemption Order if it has been inputted and approved by an Authorised User on the Website using a username and password belonging to AP by the user clicking "Approve".
4. Without prejudice to Condition 7.9, a Settlement Redemption Order given through the System shall be invalid in the circumstances specified in paragraphs (d) to (j) of Condition 7.8 and if it is not confirmed in accordance with paragraph 5 or paragraph 8 below, *provided that* for the purposes of paragraphs (e) and (f) of Condition 7.8, confirmation by a Counterparty in accordance with paragraph 8 below shall constitute the agreement of that Counterparty and acceptance by CSL

and such Settlement Redemption Order shall not be invalid (unless otherwise invalid) if such confirmation is given accordingly.

5. In the event of a Settlement Redemption Order being created and, as a result of a breakdown or other problem with the System, confirmation in accordance with paragraph 8 below is not possible, so that in accordance with the Facility Agreement CSL completes and sends to the Commodity Contract Counterparty and AP a Settlement Cancellation Notice with the details given in the Settlement Redemption Order, CSL shall notify AP as soon as practicable as to whether or not the Commodity Contract Counterparty has confirmed such Settlement Cancellation Notice and Condition 7.9 shall continue to apply accordingly.
6. Without prejudice to Condition 7.11, a Settlement Redemption Order given on a day which is not an Issuer Business Day or after 6.30 p.m. on an Issuer Business Day will be treated for the purposes of this Agreement as though it had been given at 8.00 a.m. on the next Issuer Business Day.
7. Condition 7.8 and the first two sentences of Condition 7.9 shall not apply to Settlement Redemption Orders save as applied by paragraph 4 above. The notification referred to in the last sentence of Condition 7.9 may be given through the System.
8. If the Counterparty has confirmed a Settlement Redemption Order through the System it shall be a valid Settlement Redemption Form.
9. Agreed Redemption Orders may be given through the System. Agreed Redemption Forms shall not be given other than if the System is affected by a breakdown or other problem such that it is not possible to give Agreed Redemption Orders in accordance with this Part B or in such other circumstances as CSL may reasonably determine from time to time upon written notice to AP. Agreement between AP and a Commodity Contract Counterparty as evidenced through the System (by having been inputted and approved by an Authorised User on the Website using a username and password belonging to AP by the user clicking "Approve" and having been confirmed by the Counterparty in accordance with the Facility Agreement) as to (a) a number and type of Commodity Securities to be Redeemed, (b) the Equivalent Number of Commodity Contracts to be Cancelled, (c) the US Dollar amount (save if the order type "Agreed Price at Set. Index" has been selected) which is the Redemption Amount for those Commodity Securities (and also the Cancellation Amount (as defined in the Facility Agreement) for those Commodity Contracts) and (d) the Payment Date for that Redemption (which shall not be earlier than one London Business Day following the day on which the Agreed Redemption Order is deemed given) will constitute an Agreed Redemption Order and such provisions shall apply in lieu of Conditions 7.15 to 7.17.