

THE EMIR DELEGATED REPORTING AGREEMENT

THIS AGREEMENT is dated as of _____ and is made BETWEEN:

- a) **GAIN CAPITAL UK LIMITED OF PARK HOUSE, FINSBURY CIRCUS, LONDON EC2M 7EB**
- b) _____; and
- c) _____.

1. THE EMIR DELEGATED REPORTING TERMS

- 1.1. These EMIR Delegated Reporting Terms (the "**EMIR Delegated Reporting Terms**") set out the terms upon which we, Gain Capital UK Limited of Park House, 16 Finsbury Circus, London EC2M7EB, a company incorporated in England and Wales and authorised and regulated by the Financial Conduct Authority with registration number 113942 ("**GAIN Capital**"; "**we**"; "**us**" or "**our**"), have at your request agreed to report on your behalf details of the derivative financial contracts traded on your Account with us to a trade repository (the "**Delegated Reporting Service**") as required under Article 9 of the European Markets Infrastructure Regulation ("**EMIR**") (the "**Reporting Obligation**").
- 1.2. Upon acceptance, you will be bound by these EMIR Delegated Reporting Terms as well as the General Terms and Policies (including Supplemental Terms) that apply to your Account ("**Our Terms**"). Unless otherwise defined, capitalised terms and expressions used in these EMIR Delegated Reporting Terms shall have the same meanings as in Our Terms. In the event of any inconsistency between the provisions of these EMIR Delegated Reporting Terms and Our Terms, these EMIR Delegated Reporting Terms will prevail.

2. DELEGATION OF REPORTING OBLIGATION AND THE DELEGATED REPORTING SERVICE

- 2.1. You hereby expressly delegate to and authorise us to report on your behalf details of all derivative financial contracts traded on your Account with us (the "**Relevant Contracts**") to the trade repository set out in clause 3 below.
- 2.2. You acknowledge that in accordance with the provisions under EMIR, notwithstanding our agreement to provide the EMIR Delegated Reporting Service, you are and will be solely responsible and liable for the submission and accuracy of reporting of data subject to your Reporting Obligation.
- 2.3. Subject to the other terms of these EMIR Delegated Reporting Terms, you agree that the information to be reported shall include details of the Relevant Contracts including, but not limited to, the information contained in the Data Schedule to these EMIR Delegated Reporting Terms and such other information as is required to be reported per the "Reporting Annexes" as the same is set out in the Annexes to the Commission Delegated Regulation (EU) No 148/2013 and Commission Implementing Regulation (EU) No 1247/2012 (together, the "**Reportable Data**"). You agree to promptly provide all information necessary to compile the Reportable Data to enable us to provide the Delegated Reporting Service. You agree and acknowledge that the Delegated Reporting Service cannot occur unless we have received all required information necessary, as shall be determined by us in our sole discretion, to submit the Reportable Data to a trade repository in compliance with the provisions under EMIR. If you fail to deliver such information to us, we will be under no obligation to (but may) submit the Reportable Data to the Trade Repository.
- 2.4. We agree to provide the Delegated Reporting Service and submit the Reportable Data on your behalf within the deadline set under EMIR and in accordance with the provisions of these EMIR Delegated Reporting Terms. We agree to notify you in the event that we are unable for whatever reason to submit the Reportable Data to a trade repository on your behalf within the deadline set under EMIR.
- 2.5. We reserve the right, upon notice to you, to use the services of third party service providers to submit or assist in the submission of Reportable Data to trade repositories.
- 2.6. You acknowledge that the Delegated Reporting Service, and these EMIR Delegated Reporting Terms, are subject to change at any time if required by any changes in law, rule, regulation, operational or other requirement.

3. TRADE REPOSITORY

- 3.1. You expressly agree that GAIN Capital shall submit the Reportable Data to its current choice of trade repository, as notified to you from time to time (the "**Trade Repository**"). For the purposes of these EMIR Delegated Reporting Terms, all references to "trade repository" shall be to the Trade Repository or such other trade repository we may have selected for submission of your Reportable Data.
- 3.2. You acknowledge and agree that GAIN Capital may, upon notice to you, select another trade repository other than the Trade Repository and you agree under such circumstances to take such action as is necessary to register with the alternative trade repository.
- 3.3. You acknowledge that, unless notified in writing by us, we shall be under no obligation to report to any other trade repository other than the Trade Repository.
- 3.4. You agree that should we be unable to submit the Reportable Data to the Trade Repository, we shall be entitled in our sole and absolute discretion to submit the same to the European Securities and Markets Authority ("**ESMA**") or any designated body as may be authorised by ESMA to receive such data.

4. REPORTING

- 4.1. You agree that GAIN Capital shall in its sole and absolute discretion determine when and how the Reporting Obligation has arisen. Nothing in these EMIR Delegated Reporting Terms shall limit or preclude GAIN Capital from reporting any information to a trade repository to discharge its own Reporting Obligations.
- 4.2. We shall submit the Reportable Data based on information you have provided to us and which we have on record for you or which is available from the Relevant Contracts. Notwithstanding anything to the contrary contained herein, you acknowledge and agree that we are not obliged to discover errors in or check the accuracy, authenticity or completeness, of any information you provide to us. In the event of either party becoming aware of a material error in any Reportable Data submitted to the Trade Repository, the parties shall notify the other party and both parties will use reasonable efforts, acting in good faith and a commercially reasonable manner, to resolve any errors.
- 4.3. You agree not to report or otherwise submit Reportable Data with respect to the Relevant Contracts to any other trade repository except where previously agreed in writing with us.

5. CLIENT REPRESENTATIONS

You represent and warrant and, where relevant, agree on a continuing basis that:

- 5.1. You are and remain responsible and liable for the submission and accuracy of the reporting of data subject to your Reporting Obligation. Accordingly, it is your responsibility to promptly verify and review the Reportable Data submitted at the Trade Repository on your behalf.
- 5.2. You have obtained the consent of any third party or governmental authority required for the transfer of any Reportable Data to us and the Trade Repository.
- 5.3. We have not made any representations or warranties in respect of the Trade Repository or its services.
- 5.4. We shall be entitled to rely on all information provided to us by you in good faith without enquiry.
- 5.5. The information you deliver to us under these EMIR Delegated Reporting Terms, is at the time of delivery, true, accurate and complete in every material respect.

6. LIABILITY AND INDEMNITY

- 6.1. GAIN Capital shall, in providing the Delegated Reporting Service, perform its obligations and exercise discretion with reasonable care. GAIN Capital shall not, in the performance of the Delegated Reporting Service, be required to do anything which would breach any laws, rules or regulations or is not permitted or is otherwise contrary to or inconsistent with the operating procedures of any third party service provider or any Trade Repository.
- 6.2. Notwithstanding any other provision of these EMIR Delegated Reporting Terms but subject to the remaining provisions of this clause 6, GAIN Capital and each of its directors, officers, employees,

contractors and agents of GAIN Capital (together, the "**Officers**") shall not have any liability to you whether in contract, tort, breach of statutory or regulatory duty or otherwise, for any Losses arising directly from or in connection with the Delegated Reporting Service, including, but not limited to, any acts, omissions or failures of any third party involved directly or indirectly in the provision of the Delegated Reporting Service, the failure of any platform, system, interface or other technology, including any internal platform, system, interface or other technology, which we may use in the performance of our obligations under these EMIR Delegated Reporting Terms, any delays in you providing information required for the proper performance by us of the Delegated Reporting Service or a third party accessing or intercepting any information or data of yours, unless caused by GAIN Capital's or the Officers' gross negligence, wilful default or fraud.

"**Losses**" shall for the purposes of these EMIR Delegated Reporting Terms mean all losses, damages, fines, penalties, costs, expenses or other liabilities of any kind or nature whatsoever (including reasonable legal and other fees) and expenses relating to investigating or defending the same.

- 6.3. We shall not be liable to you where we have submitted Reportable Data based on information you have supplied to us and which we have relied upon and accepted from you in good faith without verification.
- 6.4. You further agree that we shall not be liable to you for any indirect or consequential loss or damage or for any direct or indirect loss of business, profits, anticipated savings or goodwill howsoever arising in the provision by us of the Delegated Reporting Service.
- 6.5. You agree that this clause 6 represents a fair and equitable position and nothing in these EMIR Delegated Reporting Terms will exclude or limit any duty or liability which may not be excluded or limited under applicable law or regulation.
- 6.6. You agree that GAIN Capital assumes no responsibility or liability for the Trade Repository's acts or omissions.
- 6.7. You agree that GAIN Capital shall have no liability if prevented, hindered or delayed from or in performing any of our obligations under these EMIR Delegated Reporting Terms as a result of your breach of these EMIR Delegated Reporting Terms or any other act or omission, any act or omission of a third party service provider or Trade Repository or a Force Majeure Event. You further agree that our obligations to provide the Delegated Reported Service shall be suspended in the event of a Force Majeure Event and be so for as long as the event continues.

"**Force Majeure Event**" means any event which occurs due to reasons outside of GAIN Capital's control including, but not limited to, any natural, systems, facilities, technological, political or other cause and which cannot be overcome by reasonable diligence and/or without unreasonable expense by GAIN Capital.

- 6.8. You shall on demand indemnify and keep us and each of our Officers harmless against Losses suffered or incurred by us or any of our Officers as a result of or in connection with the provision by us or our Officers of the Delegated Reporting Service unless, and then only to the extent that, such cost, expense, damage, loss or liability is finally judicially determined to be fraudulent, in wilful default or grossly negligent on our part or on the part of any of our Officers.

7. FEES

- 7.1. We shall not charge a fee for the Delegated Reporting Service except that we reserve the right to do so in the future upon written agreement with you. You, however, agree to reimburse us or settle on demand any fees and charges invoiced to us for you by the Trade Repository as a direct result of us providing the Delegated Reporting Service on your behalf.

8. DATA AND CONFIDENTIALITY

- 8.1. You expressly consent to us submitting and disclosing the Reportable Data to the Trade Repository and, if required for the purposes of the Delegated Reporting Service, transferring personal data outside of the European Economic Area.
- 8.2. You acknowledge that disclosures made pursuant to these EMIR Delegated Reporting Terms may include, without limitation, the disclosure of trade information including your identity (by name, identifier or otherwise) to the Trade Repository or to relevant regulators, our affiliate offices and to and between persons who may assist us in the Delegated Reporting Service. You acknowledge that

disclosure to the Trade Repository or regulators may result in certain anonymous transaction and pricing data becoming available to the public.

9. AMENDMENTS AND TERMINATION

- 9.1. These EMIR Delegated Reporting Terms may only be amended by agreement in writing signed by both parties except that nothing shall preclude us, upon notice to you, from amending the scope of the Delegated Reporting Service and/or these EMIR Delegated Reporting Terms to accommodate any changes in law, rule, regulation or operational or other requirement. In the event of such notice, any amendment will only be effective if not rejected by you by written notice to us. If you:
 - 9.1.1. reject an amendment by written notice, these EMIR Delegated Reporting Terms will terminate without such amendment taking effect; or
 - 9.1.2. do not reject an amendment by written notice, you will be deemed to have agreed to such amendment.
- 9.2. In terms of the notice requirements and timings set out in clause 9.1 above:
 - 9.2.1. amendments will be effective on the later of the date specified in the notice and the date that is seven (7) days following the date on which the amendment notice is deemed to have been received by you in accordance with the Notices section in Our Terms;
 - 9.2.2. a rejection notice from you will only be effective if delivered to us on or before the date that is seven (7) days following the date on which the amendment notice is deemed to have been received by you in accordance with the Notices section in Our Terms; and
 - 9.2.3. if you deliver a rejection notice within the period specified in sub-clause 9.2.2 above, these EMIR Delegated Reporting Terms will terminate on the date by which the rejected amendment would have become effective if not rejected, unless otherwise agreed by the parties.
- 9.3. Notwithstanding the provisions of clause 9.1 and unless otherwise agreed in writing between the parties, either party may terminate these EMIR Delegated Reporting Terms upon thirty (30) days written notice to the other.

10. GOVERNING LAW AND JURISDICTION

- 10.1. These EMIR Delegated Reporting Terms and any dispute or claim arising out of or in connection thereof (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

11. REPRESENTATIONS

Each party makes the following representations to the other party on the date this Agreement is entered into and, in the case of the representations in Sections 11.3, 11.4 and 11.5, at all times until the termination of this Agreement:

- 11.1. **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing.
- 11.2. **Powers.** It has the power to execute this Agreement, to deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary action to authorise such execution, delivery and performance.
- 11.3. **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
- 11.4. **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
- 11.5. **Obligations Binding.** Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights

generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

- 11.6. **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement.
- 11.7. **No Agency.** It is entering into this Agreement as principal and not as agent of any person or entity.
- 11.8. **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into this Agreement, it being understood that information and explanations related to the terms and conditions of this Agreement will not be considered investment advice or a recommendation to enter into this Agreement. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of this Agreement.
- 11.9. **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of this Agreement.

12. MISCELLANEOUS

- 12.1. **Consideration.** Each party hereby agrees and acknowledges that it is entering into this Agreement in consideration of (i) the mutual representations, warranties and covenants contained in this Agreement; (ii) maintaining a trading relationship with a counterparty with which it can enter into further Relevant Contracts; and (iii) other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties).
- 12.2. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.
- 12.3. **Amendments.** Unless otherwise expressly permitted by another provision of this Agreement, an amendment, modification or waiver in respect of this Agreement will only be effective if in writing and executed by each of the parties or confirmed by an exchange of e-mails or by an exchange of electronic messages on an electronic messaging system.
- 12.4. **Partial Invalidity.** If, at any time, any term of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, this will not affect:
- 12.4.1. the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or
 - 12.4.2. the legality, validity or enforceability in other jurisdictions of that or any other term of this Agreement.
- 12.5. **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- 12.6. **Counterparts.** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.
- 12.7. **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege, whether in respect of a dispute between the parties or otherwise. Reportable Data reported to a Trade

Repository in accordance with this Agreement is provided without prejudice to any present or future dispute between the parties in relation to such Reportable Data.

- 12.8. **Third Party Rights.** Other than in respect of our affiliates and our directors, officers, employees, contractors and agents, and the rights that such entities or people are granted under this Agreement (to the extent applicable), a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement. Notwithstanding any term of this Agreement, the consent of any person who is not a party to this Agreement is not required to rescind or vary this Agreement at any time.
- 12.9. **Transfer.** Neither party may transfer or assign any interest or obligation in respect of this Agreement without the prior written consent of the other party. Any purported transfer that is not in compliance with this Section 12.9 will be void.

13. NOTICES

- 13.1. **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner described below to the address or number or in accordance with the electronic messaging system or e-mail details provided below (as may be amended in accordance with Section 13.3) and will be deemed effective as indicated:

- 13.1.1. if in writing and delivered in person or by courier, on the date it is delivered;
- 13.1.2. if sent by telex, on the date the recipient's answerback is received;
- 13.1.3. if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
- 13.1.4. if sent by electronic messaging system, on the date it is received; or
- 13.1.5. if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a business day with respect to the receiving party or that communication is delivered (or attempted) or received, as applicable, after 4 p.m. local time on a business day with respect to the receiving party, in which case that communication will be deemed given and effective on the first following day that is a business day with respect to the receiving party.

13.2. **Contact Information**

- 13.2.1. With reference to this Section 13 (*Notices*), the contact details for all communications in connection with this Agreement are:

13.2.1.1. Our contact details: Trade and Transaction Reporting Team, Park House,
16 Finsbury Circus, London EC2M 7EB

ttr@gaincapital.com

13.2.1.2. Your contact details: _____

- 13.3. **Change of Details.** Either party may by written notice to the other change the address, electronic messaging system or e-mail details at which notices or other communications are to be given to it.

SIGNATORIES

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Gain Capital UK Limited

.....
(LEI number, if available)

By:
Name:
Title:
Date:

.....
[•]

.....
(LEI number, if available)

By:
Name:
Title:
Date: