

**STORMHARBOUR**

**StormHarbour Securities LLP**

**Terms of Business  
for Professional Clients and Eligible  
Counterparties**

**October 2011**

## **StormHarbour Securities LLP Terms of Business for Professional Clients and Eligible Counterparties**

### **1. Scope and Application**

These Terms of Business (these “**Terms**”) apply to services provided to you, and Transactions carried out with you or on your behalf, by StormHarbour Securities LLP (“**StormHarbour**”).

When reference is made in these Terms to “**we**”, “**us**” or “**our**”, we mean StormHarbour and its partners, employees and tied agents. StormHarbour is a member of a group of affiliated companies, and together with each of their partners, employees and tied agents all such companies are referred to herein as “**StormHarbour Affiliates**”.

When reference is made in these Terms to “**you**” or “**your**”, we mean each person identified by us as a client of StormHarbour for the purposes of these Terms.

To the extent that there is any inconsistency between these Terms and any other agreement that you execute with us, the terms of the other agreement shall prevail over these Terms solely to the extent of the inconsistency, and these Terms will supplement any such other agreement to the extent that they are not inconsistent with the other agreement.

Capitalised terms used herein have the meaning ascribed to them in the text or in the Annex A hereto, “Definitions”.

### **2. StormHarbour’s Status**

StormHarbour is authorised and regulated by the United Kingdom Financial Services Authority (the “**FSA**”). StormHarbour is an English limited liability partnership, registered as partnership no. OC343890.

Subject to Applicable Law, we retain the right to cause the performance of any of our services to be carried out by a StormHarbour Affiliate or other person, including, at our discretion any agent of StormHarbour or a StormHarbour Affiliate.

### **3. Your Status**

Based on the information available to us, we have categorised you as a Professional Client or Eligible Counterparty (each as defined in the Rules) with respect to any designated investment business (as defined in the FSA Rules) that you conduct with us, and have notified you of this in

a client categorisation letter. If you are classified as an “Eligible Counterparty”, certain of the statutory and regulatory protections applicable to a “Professional Client” will not apply to you. If you notify us in writing that you wish to be categorised as a “Professional Client” or as an “Eligible Counterparty” instead of the category that we have assigned to you and you meet the criteria for that category we will treat you as having that classification until you notify us otherwise or we determine that you are no longer eligible for that classification. We regret that we are unable to transact business with you if you are categorised or request to be categorised as a “Retail Client”.

You hereby represent and warrant as follows:

- (i) you have and will maintain full power and authority, and you have and will maintain all necessary licences, authorisations, consents and approvals and have taken all necessary corporate or other action, to enter into these Terms and to instruct us to execute or arrange any transaction in investments as set out herein and to perform your obligations thereunder;
- (ii) by entering and performing transactions you will not violate any Applicable Law;
- (iii) you have adequate resources to enter into and perform any such transaction which you decide to undertake;
- (iv) subject to any contrary agreement with us, your investments and any cash delivered on settlement of a transaction are, and will be, free from any charge, lien, pledge or other encumbrance; and
- (v) all information you have given, or will give, to us is true and complete as at the time of delivery and you will promptly notify us of any changes to such information.

Unless otherwise agreed by us, you will in dealing with us be acting as principal and not as agent for any other person (the "**Principal**"). Where you are acting as agent for any Principal (such as, for example, if you are a fund manager acting on behalf of a fund) and we have agreed to deal with or for you in such capacity, you hereby represent and warrant as follows:

- (i) you have and will maintain full power and authority, and have and will maintain all necessary licences, authorisations, consents and approvals and have taken all necessary corporate or other action, to act on behalf of the Principal;
- (ii) the Principal can and does make, and you make on behalf of the Principal, the representations set forth in (i) through (iv) of the prior paragraph;
- (iii) you have obtained, recorded and independently verified the identity of the Principal and its principals and have done all appropriate diligence and other review to comply with the customer information and reporting requirements under Applicable Law;

- (iv) for settlement purposes we may settle directly with the Principal and shall be entitled to take any action to effect the settlement in relation to the Principal; and
- (v) all information you have given, or will give, to us in respect of both you and the Principal is true and complete as at the time of delivery and you will promptly notify us of any changes to such information.

#### **4. Orders and Transaction Requests; Confirmations**

You may provide to us transaction requests, either on an unsolicited basis, in response to an offer or bid or otherwise (together, the “**Transaction Requests**”) to enter into a transaction on your behalf or for or with you (each, a “**Transaction**”).

Where the Transaction Request is in the form of an order placed with us to execute on your behalf, either as an agent or as a riskless (matched) principal with another counterparty or execution venue, the Transaction Request may be a “**Client Order**”. All Client Orders executed by us on your behalf will be carried out in accordance with our Order Execution Policy, as it may be in effect from time to time, information on which is available on our website at [www.stormharbour.com](http://www.stormharbour.com) (or such other website as we may from time to time notify to you). You hereby consent to StormHarbour's Order Execution Policy in respect of any Client Orders we execute on your behalf. You hereby also consent that we may execute your Client Orders outside a regulated market or multilateral trading facility (in other words, over-the-counter). Unless otherwise notified to us in writing, you instruct us not to immediately make public (where we would otherwise be required to do so by Applicable Law) any Client Order that is a client limit order in respect of shares admitted to trading on an EEA regulated market which is not immediately executed under prevailing market conditions.

Unless otherwise notified to you by us, you may transmit your Transaction Request (whether or not they are Client Orders) with respect to Transactions by any means that is ordinary in the market, but all of your Transaction Requests are transmitted to us at your risk and are only effective when we actually receive them.

At our discretion we may refuse to accept, execute or carry out any Transaction Request. If we decline your Transaction Request, we will endeavour promptly to notify you. Regardless whether we have notified you, we will not be liable to you for any losses resulting from our refusal to act. You may only cancel your Transaction Request if we have not already acted upon it.

Unless we otherwise agree in writing, we are entitled to rely on any Transaction Request we believe in good faith to be from you or a person authorised to act on your behalf even if you

have notified us of one or more persons authorised to give us Transaction Requests on your behalf.

You agree to indemnify us and hold us harmless for any loss or damages that we suffer in reliance on any Transaction Request, regardless whether we have confirmed the Transaction Request.

We may combine your Transaction Request with our own orders, transaction requests or orders of persons connected or affiliated with us and transaction requests or orders of other clients. We will only do this where it is unlikely that the aggregation of transaction requests and orders will work overall to your disadvantage, however, in some cases aggregation may result in a less favourable price for you.

Each confirmation, advice note and contract note (each, a “**Confirmation**”) will, in absence of manifest error, be conclusive and binding on you, unless we receive from you objection in writing within three (3) business days of sending it to you or making such Confirmation available to you through and Electronic System, or we notify you of an error in the Confirmation within the same period.

We may, at our sole discretion, arrange for any Transaction to be effected with or through the agency of an intermediate broker, who may be an Affiliate and may be outside of the United Kingdom. We and our partners, officers, employees or agents will not be liable to you or the Principal (where you act as agent) for any act or omission of an intermediate broker or agent.

## **5. Clearing and Settlement**

You are solely responsible for the due performance of every Transaction into which we enter with or for you.

We will advise you of our clearing and settlement arrangements for each of the respective Transactions or types of Transactions that we execute with you. Upon execution of your Transaction Requests, unless settlement is to occur in another manner of which we have notified you, we will instruct our clearing and settlement agent to deliver securities to or pay proceeds to your pre-advised account on a delivery-versus-payment basis. The settlement date for a Transaction will be notified on the relevant Confirmation. Clearing and settlement is conditional upon the receipt by us or our agent of all necessary documents, securities and/or funds. You will not be entitled to exercise any right of set-off or counter-claim against amounts due to you from us or a StormHarbour Affiliate.

Except as otherwise agreed in writing, we shall have no responsibility or liability (i) in respect of any action or failure to act of our clearing and settlement agent in respect of any Transaction or

(ii) for taking or failing to take any action in respect of any rights you may have in respect of any Transaction that is agreed but not yet cleared or settled (an “**Open Position**”). You will be responsible for complying with any obligations in respect of an Open Position, including, without limitation, providing to us any funds or securities required for us to comply with any margin, security or payment obligation that arises in respect of an Open Position. Our clearing and settlement agent may have a contractual or statutory lien to cover its fees, costs or liability in respect of any money or assets it receives or is entitled to receive.

## **6. Fees and Other Compensation; Interest**

You agree to pay our Fees as agreed between us or as notified by us to you from time to time. We may receive from, pay to or share with an Affiliate or other third party Fees and non-monetary benefits in connection with a Transaction. The nature and amount of any Fee or non-monetary benefit which is shared with an Affiliate or other third party (other than fees necessary for the provision of investment business or ancillary services such as custody costs, settlement and exchange fees, regulatory charges and legal fees) will be disclosed to you prior to the provision of the service. This disclosure may be made in summary form. Where the disclosure is made in summary form, further details of the arrangements relating to the fee are available upon your written request.

All amounts payable by you are exclusive of all taxes, and you are responsible for payment of all taxes due and for any claims in relation thereto.

We may charge you interest on unpaid amounts due and payable to us at a rate reasonably determined by us.

## **7. Electronic Systems and Intellectual Property**

We may at our discretion communicate with you or provide services to you through or by an electronic system, including without limitation any website, electronic transmission method, software and other electronic means (an “**Electronic System**”). An Electronic System may be provided by a third-party vendor and if so your access may be subject to additional terms and conditions of the third-party vendor. You agree to use any Electronic System solely for your own internal use and only in compliance with these Terms and any manuals and guides, rules and procedures and any other documents or instructions applicable to the use of the Electronic System.

We cannot and do not guarantee access to or the functioning of any Electronic System. No warranty of any kind, whether express, implied or statutory is provided by us in connection with any Electronic System or the information on it, including without any limitation any warranty of merchantability or fitness for purpose or any warranty of freedom from defect or

computer virus. We are not liable for any loss or damage of any nature that you may incur in reliance on access to or information from an Electronic System, regardless of the cause.

You may not misuse an Electronic System. Misuse includes, without limitation:

- (i) unauthorized use, including any unauthorized entry into an Electronic System or misuse of passwords or any of the information provided on it;
- (ii) use of any Electronic System in any manner that could cause damage or loss to us or to any other user of the Electronic System;
- (iii) use of the Electronic System in violation of any Applicable Law.

Except as expressly indicated otherwise or as is clear from the Electronic System or its context, each Electronic System and all information on it are our property. You have only a temporary, non-exclusive, non-transferable license to access and use any Electronic System that belongs to us and the information on it. You may not use, download, copy, print or store any portion of the Electronic System except for your personal use, and you may not otherwise distribute any information, download, copy or printed version of any portion of this website to a third party without our written authorization. You may not alter, remove or otherwise obscure any trademark, service mark, copyright or other notices provided to you in connection with this website or any of the information on it. You may not use any of our service marks, trademarks, patents, copyright or other intellectual property for any purpose without our written permission.

The name “StormHarbour” and the logo **STORMHARBOUR** are trademarks that belong to us.

You expressly consent to receive promotional communications through Electronic Systems from us.

## **8. Confidentiality**

For the purposes of this agreement, “Confidential Information” includes all information that each (the “recipient”) learns about the other in the course of our relationship, including without limitation its clients, technology and know-how, investments and transactions and its products or services, but it does not include information that (a) is or becomes public knowledge other than as a direct or indirect result of any breach of these Terms, (b) is known by the recipient before the date the information is disclosed to the recipient by the provider or (c) is lawfully obtained by the recipient from a source which, as far as the recipient is aware, has not obtained or disclosed the information in violation of confidentiality. We each agree that during and after the termination of the relationship between us, with respect to all Confidential Information, we each will:

- (i) keep all Confidential Information confidential;
- (ii) not use the Confidential Information for any purpose other than in connection with our business relationship or for any control function of StormHarbour; and
- (iii) not disclose the Confidential Information to anyone except as agreed below.

You agree that notwithstanding the foregoing we are permitted to disclose the Confidential Information in the following circumstances:

- (i) if we are required to do so by any relevant law, competent court, governmental, supervisory, regulatory body, authority or stock exchange;
- (ii) to StormHarbour Affiliates, sub-contractors and service providers, and auditors and other professional advisers, in each case who need to know the Confidential Information and who has been informed of and agree to abide by these restrictions;  
or
- (iii) if you have consented to the disclosure.

## **9. Personal Data; Recording and Monitoring**

You hereby acknowledge and agree that, whether or not pursuant to these Terms, we may receive information about you and individuals who are employed by or otherwise related to you (which may include personal data and sensitive personal data each as defined in the Data Protection Act 1998 ("DPA")). For purposes of these Terms and our relationship with you, you consent that:

- (i) we or a StormHarbour Affiliate as may be determined by us from time to time will be the data controller of such data subject to Applicable Law;
- (ii) you may at your request receive the identity of the data controller and information about the manner in which it processes the data;
- (iii) subject to our confidentiality obligations in paragraph 8, we may collect, store, use and process your personal data in the manner that we decide; and
- (iv) we may transmit your data to such persons in connection with our business as we decide, including without limitation to such persons located outside the European Economic Area in countries without data protection safeguards that would be deemed adequate under European Union standards.

You hereby represent and warrant to us that any personal data (including sensitive personal data) of you or any of your clients or other persons provided to us by you or them in connection with your business with us has been provided with your and their knowledge and consent and in compliance with all Applicable Laws. You hereby agree to indemnify StormHarbour and each

StormHarbour Affiliate for any loss or damage arising out of any breach of this representation and warranty.

You may have a right of access to some or all of the information we hold about you, or to have inaccurate information corrected, under the DPA. If you wish to exercise either of these rights, please contact our Compliance Officer in writing.

We may record all telephone conversations without the use of any additional disclosures or use of a warning tone. Such records will be our sole property and accepted by you as evidence of the Transaction Requests given or other subject matter thereof.

#### **10. Client Money and Custody**

We do not hold, and are not permitted by the FSA to hold, client money or client assets as defined in the Rules. We will not be obliged to provide or arrange for any custody services in respect of your investments unless we have specifically agreed to do so at your request.

#### **11. Suitability and Appropriateness**

You acknowledge that, unless we separately agree to provide you with personal recommendations (as defined in the Rules), you are required to make your own assessment of any Transaction that you are considering and should not rely on any information, proposal or other communication from us as being a personal recommendation.

You undertake to provide us, on request, information regarding your investment objectives, experience and knowledge of the relevant investments and Transactions and your financial situation, so as to enable us to comply with our obligations under the Rules to assess suitability of personal recommendations provided to you or appropriateness of Transactions undertaken on your behalf. If you do not, or are unable to, provide us with the information we request in a timely manner, or we consider that the relevant product, service or Transaction is not suitable or appropriate for you, this may result in a delay in dealing or we may refuse to deal with or for you.

When providing our services to you, whether through a personal recommendation or otherwise, we will assume that you have the necessary experience and knowledge in order to understand the risks involved in relation to those services or relevant Transactions, and that they meet your investment objectives. Unless agreed otherwise in writing, there are no restrictions on the markets or types of investment in which we may carry on business on your behalf. We may also provide you with specific or general risk warnings in relation to some products or Transactions. You undertake to read such risk warnings and take them into account

when deciding whether or not to instruct us in relation to the relevant products or Transactions.

## **12. Non-Reliance and Risks**

The information and opinions provided to you by us in connection with trade ideas, market commentary, advice or recommendations have been obtained and derived from sources believed by us to be accurate, but we cannot and do not make any representation or warranty with respect to it or its accuracy, completeness, sufficiency, appropriateness for your purposes or timeliness. We disclaim, to the extent permitted by Applicable Law, all liability for any use you or your advisers make of such information and opinions.

If the information and opinions provided to you by us includes “forward-looking” information, this information is based upon certain assumptions about future events or conditions and is intended only to illustrate hypothetical results under those assumptions (not all of which are specified herein). Actual events or conditions may differ from those assumed therein. In addition, not all relevant events or conditions may have been considered in developing such assumptions. Accordingly, actual results will vary and the variations may be material. You should understand such assumptions and evaluate whether they are appropriate for your purposes. Past performance is not a guide to future performance.

Transactions in financial instruments or other products may carry risks, which may in some cases result in losses that equal or exceed the entire principal invested, and therefore certain Transactions may be unsuitable for certain investors. You acknowledge and agree that you are relying on your own judgement and advisors in taking all investment decisions and not on us. Unless we agree in writing otherwise, no information or opinion that we provide to you is prepared in relation to your particular circumstances, and we are not providing to you advice or personal recommendations. Before making any investment or taking any action with respect to an existing investment you should consult your own financial, legal, accounting, tax and other advisors as appropriate. You hereby represent and warrant to us that you are able to make your own evaluation of any Transaction and any information or opinions that we provide to you and that you are not relying on us or a StormHarbour Affiliate for advice or recommendations.

You acknowledge that the information or advice provided to our other clients may be different from information or opinions given to you due to different fundamental and technical factors or individual analysis by different personnel.

## **13. Conflicts of Interest**

We have policies and procedures to identify and manage potential conflicts of interest (the “Conflicts of Interest Policy”) between us and you or between you and others of our clients.

Information on our Conflicts of Interest Policy is available on our website at [www.stormharbour.com](http://www.stormharbour.com) (or such other website as we may from time to time notify to you). Our personnel are committed to and are required to comply with all such policies and procedures. Where we do not consider that our standard conflicts of interest management procedures sufficient to manage a particular conflict, we will inform you of the nature of the conflict so that you can decide how to proceed. Examples of possible conflicts of interest include where we:

- (i) deal in the investment, a related investment or an asset underlying the investment, for the account of a third a party, whether directly or through a broker (which may be an affiliated member of our group);
- (ii) matching (e.g., by way of a cross) your Transaction with that of another client by acting on his behalf as well as yours; and
- (iii) advising and providing other services to other clients who may have interests in investments or underlying assets which conflict with your own.

#### **14. Information and Notices**

You confirm that you have regular access to the internet and consent to us providing you with information, including, without limitation, information about amendments to these Terms and our policies and procedures (including our Order Execution Policy and Conflicts of Interest Policy), and information about the nature and risks of investments, by posting such information on our website at [www.stormharbour.com](http://www.stormharbour.com) (or such other website as we may from time to time notify to you); provided that, for the avoidance of doubt, information of such amendments may also be distributed by any of the means described in the next paragraph.

Subject to Clause 4 on the giving of Transaction Requests, all correspondence, notices, Confirmations, certificates and statements of account ("Notices") may be provided by any post, fax, email or other Electronic System unless otherwise required by the Applicable Rules.

Notices will be sent or transmitted by us to you in accordance with the communication details provided to us by you and will be deemed to have been received (whether or not actually received) where we can show evidence of such communication. All Notices will, in the absence of manifest error, be deemed correct, conclusive and binding on you if not objected to in writing within three (3) days of receipt.

All Notices to us must be sent to the address notified by us to you and marked for the attention of the Compliance Officer.

## **15. Termination**

These Terms may be terminated at any time by either party by serving written notice on the other party, such notice taking effect immediately unless specified in the notice or as required by Applicable Rules.

Termination will be without prejudice to any legal rights or obligations which may already have arisen. Transactions in progress at the date of termination will be completed by us as soon as practicable in accordance with these Terms.

## **16. Liability and Indemnity**

We will not be liable to you (whether under these Terms or otherwise) in respect of any action or omission by us arising wholly or partly as a result of an event or state of affairs which was beyond its power to prevent and the effect of which was beyond its power to avoid (including, without limitation, failure of transmission or communication facilities and error or default of you or any exchange, market or clearing house).

Without prejudice to any liability or obligations arising under the Rules or other Applicable Law, we and any StormHarbour Affiliate will not be liable for any loss, liability or expense suffered or incurred by you arising directly or indirectly out of or in connection with its or their investment business with or for you unless such loss, liability or expense arises from its or their respective negligence, wilful default or fraud. In no event will we or any StormHarbour Affiliate be liable for any consequential, indirect or special damages. You hereby indemnify and hold harmless each of us and the StormHarbour Affiliates in respect of any loss, liability or expense suffered or incurred by us arising directly or indirectly out of any business we conduct with or for you.

## **17. Complaints**

If you have a complaint about our services, you should direct it to our Compliance Officer. As a Professional Client or Eligible Counterparty, you will not be entitled to complain to the Financial Ombudsman Service.

## **18. Miscellaneous Provisions**

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

You are not entitled to assign your rights or transfer your rights or obligations hereunder without our prior consent but these Terms will apply to your successor or personal representative or your permitted assignees and transferees. We may assign our rights and transfer its rights and obligations under these Terms to any person without your consent.

StormHarbour, any StormHarbour Affiliate and any of our and their partners, employees and agents may enforce and rely on any provision of these Terms conferring a benefit on it to the same extent as if it were a party to these Terms. Save as above, no person who is not a party to these Terms or a permitted assignee of rights under it may enforce any of its terms or rely on any exclusion of limitation contained in it whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

These Terms is issued to you in compliance with the requirements of the Rules and in light of current conditions of the market and the manner and form of our business. Should any of these requirements, conditions or business change in a material way, we reserve the right to revise these Terms and provide the revised Terms to you. We may amend or modify these Terms by giving you written notice setting out the relevant changes. Such changes will become effective on a date to be specified in the notice.

Each provision of these Terms is severable and if any provision is or becomes invalid or contravenes any Applicable Law, the remaining provisions will not be affected.

Nothing contained or implied in these Terms creates a joint venture or partnership between the parties or makes one party the agent or legal representative of the other party for any purpose.

## **19. Governing Law**

These Terms is governed by and shall be construed in accordance with English Law and you hereby irrevocably submit to the non-exclusive jurisdiction of the English Courts.

## ANNEX A

### DEFINITIONS

**Applicable Law:** The Rules and any other applicable law, regulation, rule, order or judgment in any jurisdiction.

**Client Order:** As defined in Clause 4.

**Confidential Information:** As defined in Clause 8.

**Confirmation:** As defined in Clause 4.

**Conflicts of Interest Policy:** As defined in Clause 13.

**Electronic System:** As defined in Clause 7.

**EEA:** European Economic Area.

**Fees:** Commissions, fees, mark-ups and mark-downs or any other charges and expenses (including any transaction related taxes or duties imposed by any competent authority or market).

**FSA:** The United Kingdom Financial Services Authority or any successor thereto, as defined in Clause 2.

**Notices:** As defined in Clause 14.

**Open Positions:** As defined in Clause 5.

**Principal:** As defined in Clause 3.

**Rules:** The rules and regulations of the FSA as in force from time to time.

**StormHarbour:** As defined in Clause 1.

**StormHarbour Affiliates:** As defined in Clause 1.

**Terms:** As defined in Clause 1.

**Transaction:** As defined in Clause 4.

**Transaction Requests:** As defined in Clause 4.