

Security Assignment

ETFS Commodity Securities Limited
the Assignor

and

Merrill Lynch International
the Assignee

Security Assignment relating to an Authorised
Participant Agreement relating to Short and
Leveraged Commodity Securities with [insert
name of Authorised Participant]

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THIS DEED is made on

20[●]

BETWEEN:

- (1) **ETFS COMMODITY SECURITIES LIMITED**, a company incorporated in Jersey and having its registered office at Ordnance House, 31 Pier Road, St. Helier, Jersey, Channel Islands (the "**Assignor**"); and
- (2) **MERRILL LYNCH INTERNATIONAL**, a company incorporated under the laws of England and Wales and having its registered office at 2 King Edward Street, London EC1A 1HQ, United Kingdom (the "**Assignee**").

RECITALS

- (A) Pursuant to a facility agreement entitled "MLI Facility Agreement relating to Short and Leveraged Commodity Contracts" dated [●] between the Assignor and the Assignee (the "**Facility Agreement**") the Assignee has agreed to provide the Assignor with a facility for the Creation and Cancellation of Commodity Contracts.
- (B) To secure its obligations under the Facility Agreement and, for the avoidance of doubt, under each Commodity Contract, the Assignor has agreed to assign to the Assignee (i) all of its rights against [*insert name of Authorised Participant*] (the "**Authorised Participant**") pursuant to the Applicable Authorised Participant Agreement (as defined below); and (ii) all amounts due from the Authorised Participant to the Assignor pursuant to, or in connection with, the Applicable Authorised Participant Agreement, subject to and on the terms set out in this deed.

THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this deed (including, without limitation, the Recitals), the "Deed", except where the context otherwise requires, words and expressions defined in the Facility Agreement and not defined in this Deed shall have the same meaning herein and the following expressions shall have the following meanings:

"Applicable Authorised Participant Agreement" means the authorised participant agreement deemed to have been entered into between the Assignor and the Authorised Participant with respect to the Assignee as a "New Commodity Contract Counterparty" (as defined in the Authorised Participant Agreement) pursuant to Clause 3(a) of the Authorised Participant Agreement;

"Authorised Participant Agreement" means the authorised participant agreement relating to Commodity Securities dated [●] between, among others, the Assignor, and the Authorised Participant;

"Receiver" means any person (being a licensed insolvency practitioner) who is appointed by the Assignee to be a Receiver of the Assigned Property (as defined in Clause 3 below);

"Secured Obligations" means:

- (a) all present and future obligations (which, for the avoidance of doubt, are all limited recourse obligations) of the Assignor to the Assignee on account of Creation Amounts and interest thereon under the Facility Agreement; and
- (b) all losses, damages, legal and other costs, charges and expenses sustained, suffered or incurred by the Assignee arising out of or in connection with any act,

matter or thing done or omitted to be done by the Assignor under the Facility Agreement or this Deed,

and references to the Secured Obligations shall include references to any of them; and

"Service Documents" means all claim forms, application notices, judgments, orders or other notices of legal process relating to this Deed.

1.2 **Construction of specific terms**

In this Deed:

- (a) any references to the Assignee and to the Assignor include references to their respective successors, permitted assignees and transferees; and
- (b) any references to a document or agreement include any Deed, negotiable instrument, certificate, notice or other document or agreement of any kind and references to any such document or agreement (or a provision thereof) shall be construed as a reference to that document or agreement or provision as from time to time novated, amended, supplemented, varied or replaced (in whole or in part).

1.3 **General Construction**

In this Deed, except where the context otherwise requires:

- (a) references to any provision of law (including any statute or other legislation) is a reference to that provision as extended, applied, amended or substituted from time to time and includes any subordinate legislation;
- (b) the index and headings in this Deed are inserted for convenience only and are to be ignored in construing this Deed; and
- (c) words importing the plural include the singular and vice versa.

2. **COVENANT TO PERFORM THE SECURED OBLIGATIONS**

The Assignor hereby covenants with, and undertakes to, the Assignee that it shall duly perform in full the Secured Obligations in accordance with the terms of the Facility Agreement and this Deed.

3. **ASSIGNMENT**

The Assignor by way of first fixed security for the performance and discharge of the Secured Obligations, hereby assigns to and in favour of the Assignee:

- (a) all of its right, title, interest and benefit, existing now or in the future, in, to, under or in respect of the Applicable Authorised Participant Agreement; and
- (b) all other rights, moneys and property whatsoever which may from time to time be derived from or accrue with respect to the Applicable Authorised Participant Agreement including:
 - (i) all of its rights to receive payment of any amounts which may become payable to it pursuant to the Applicable Authorised Participant Agreement or with respect to such Applicable Authorised Participant Agreement;
 - (ii) all amounts due, payable and properly received by it pursuant to such Applicable Authorised Participant Agreement;

- (iii) all its rights to serve notices and/or make demands pursuant to such Applicable Authorised Participant Agreement and/or to take such steps as are required to cause payments to become due and payable pursuant to or with respect to such Applicable Authorised Participant Agreement;
- (iv) all of its rights of action in respect of any breach of such Applicable Authorised Participant Agreement; and
- (v) all of its rights to receive damages or obtain other relief in respect of such Applicable Authorised Participant Agreement,

together, the "**Assigned Property**"; provided that such assignment by way of security shall take effect subject to any contractual set-off expressly permitted under the Applicable Authorised Participant Agreement between amounts payable under such Applicable Authorised Participant Agreement.

4. **PROVISIONS RELATING TO THE ASSIGNED PROPERTY**

4.1 **Continuance of security**

Without prejudice to the generality of Clause 2 (*Covenant to Perform the Secured Obligations*), the assignments, charges, covenants, undertakings and provisions contained in this Deed shall remain in force as a continuing security to the Assignee notwithstanding any discharge, performance or other form of satisfaction of the whole or any part of the Secured Obligations but shall secure the ultimate performance and discharge of the Secured Obligations, except only upon an absolute and unconditional release of the Assigned Property made in accordance with Clause 4.2 (*Unconditional release of the Assigned Property*).

4.2 **Unconditional release of the Assigned Property**

On the irrevocable and unconditional satisfaction of the Secured Obligations, the parties agree that, subject to Clause 5 (*Insolvency Claw-back*), the Assigned Property shall be automatically released and reassigned to the Assignor.

4.3 **Security being additional to any other security**

The security constituted by this Deed shall be in addition to, and shall not be affected by, any other guarantee, lien or other security now or hereafter held by the Assignee for all or any part of the Secured Obligations.

4.4 **Authority to deal with security**

At any time before the security constituted by this Deed becomes enforceable, the Assignor may, from time to time (subject to the provisions of this Deed and the Facility Agreement):

- (a) enter into, make, execute, sign and do all such agreements, receipts, payments, and things and bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to the Assigned Property as it may reasonably think expedient;
- (b) exercise all or any of the powers or rights incidental to the ownership of all or any of the Assigned Property, including the right to enforce the same; and
- (c) without prejudice to the generality of the foregoing, act generally in relation to the Assigned Property in such manner as it may reasonably think expedient,

provided that nothing in this Clause 4.4 shall entitle the Assignor to dispose of or otherwise deal with the Assigned Property or any part thereof otherwise than in accordance with the provisions of this Deed, the Facility Agreement or the Applicable Authorised Participant Agreement or to act in any manner which is inconsistent with its obligations under this Deed, the Facility Agreement or the Applicable Authorised Participation Agreement without obtaining the prior written consent of the Assignee (such consent not to be unreasonably withheld).

4.5 **Enforcement of security**

- (a) The security constituted by this Deed shall become immediately enforceable upon the occurrence of a CSL Event of Default.
- (b) At any time after the security constituted by this Deed shall have become enforceable, the Assignee shall be entitled to:
 - (i) take possession of the Assigned Property or any part thereof or otherwise exercise all rights of an absolute owner of the Assigned Property; and
 - (ii) enforce in any way whatsoever, including by way of instituting proceedings in the Assignor's name, any rights or claims arising under or in respect of the Assigned Property,

in each case, in such manner and upon such terms and at such time or times as the Assignee shall in its absolute discretion deem appropriate, but free from the restrictions imposed by Sections 93 and 103 of the Law of Property Act (the "**LPA**"). The Assignee shall also have power (without being responsible for any loss occasioned thereby) for the purposes mentioned in this Clause 4.5 to execute and do all such assurances, deeds, acts and things as it shall think fit. For the avoidance of doubt, the Assignee shall in no circumstances 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 the Assignor in respect of the Secured Obligations.

4.6 **Appointment of a Receiver**

At any time after the security constituted by this Deed shall have become enforceable (and so that no delay or waiver of the right to exercise the powers hereby conferred shall prejudice the future exercise of such powers), the Assignee may in writing appoint a Receiver of the Assigned Property or any part thereof and remove any Receiver so appointed and appoint another Receiver and the following provisions shall have effect:

- (a) such appointment may be made either before or after the Assignee has taken possession of the Assigned Property or any part thereof;
- (b) such Receiver may be vested by the Assignee with such powers and discretions as the Assignee may think expedient and may assign or release, or give any notice or do any other act or thing in relation to, the whole or any part of the Assigned Property, in each case without restriction (including the restrictions imposed by Sections 93 and 103 of the LPA) and on such terms and for such consideration (if any) and in such manner and at such time as the Assignee may think fit;
- (c) the Assignee may from time to time fix the remuneration of such Receiver and direct payment thereof out of moneys accruing to him in the exercise of his powers as such Receiver, but the Assignor alone shall be liable for the payment of such remuneration;
- (d) the Assignee may from time to time and at any time require any such Receiver to give security for the due performance of his duties as Receiver and may fix the

nature and amount of the security to be so given but the Assignee shall not be bound in any case to require any such security;

- (e) every such Receiver shall be the agent of the Assignor for all purposes and the Assignor alone shall be responsible for his acts, defaults and misconduct, and the Assignee shall not incur any liability for or by reason of its or their making or consenting to the appointment of a person as a Receiver under this Deed; and
- (f) the Assignee shall not be in any way responsible for any misconduct or negligence on the part of any such Receiver.

4.7 **Limit on liability following realisation of the security**

The Assignee shall not, nor shall any Receiver or any attorney or agent of the Assignee, by reason of taking possession of the Assigned Property or any part thereof or for any other reason be liable to account to the Assignor or any other person for any thing except actual receipts or be liable to the Assignor or any other person for any loss or damage arising from realisation of the Assigned Property or any part thereof or from any act, default or omission in relation to the security constituted by this Deed or any part thereof or from any exercise or non-exercise by it of any power, authority or discretion conferred upon it in relation to the security constituted by this Deed or any part thereof unless such loss or damage shall be caused by its own negligence, fraud, wilful default or bad faith.

4.8 **Powers conferred in relation to security are additional**

The powers conferred by this Deed in relation to the security constituted by this Deed or any part thereof on the Assignee or on any Receiver of the Assigned Property or any part thereof shall be in addition to and not in substitution for the powers conferred on mortgagees or Receivers under the LPA and the Insolvency Act 1986 and where there is any ambiguity or conflict between the powers contained in either of such Acts and those conferred by this Deed, the terms of this Deed shall prevail.

5. **INSOLVENCY CLAW-BACK**

Where any release or discharge (whether in respect of the Secured Obligations or any security for those obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise, the liability of the Assignor under Clause 2 (*Covenant to Perform the Secured Obligations*) shall continue as if the release or discharge or arrangement had not occurred and the Assignee's security over the Assigned Property shall be restored.

6. **REPRESENTATIONS AND WARRANTIES**

The Assignor represents and warrants that:

- (a) this Deed constitutes an effective first ranking fixed security interest over the Assigned Property;
- (b) it has taken all necessary steps to enable it to charge or assign as security the Assigned Property in accordance with Clause 3; and
- (c) it has taken no action or steps (other than the entering into of this Deed) to prejudice its right, title and interest in and to the Assigned Property.

7. **UNDERTAKINGS AND FURTHER ASSURANCES**

7.1 The Assignor shall on the date hereof execute and deliver to the Authorised Participant a notice in the form set out in appendix 1 and shall procure that the Authorised Participant executes and delivers to the Assignee a notice in the form set out in appendix 2.

7.2 The Assignor shall execute and do all such documents, assurances, acts and things in connection with the Assigned Property or any part thereof as the Assignee may reasonably require for perfecting or protecting the security constituted by or pursuant to this Deed (including the granting and perfection of such further assignments or other securities over the Assigned Property as the Assignee may reasonably require) and give or join in giving or procuring the giving of such notices to such persons all in such form as the Assignee or the Receiver may reasonably require and from time to time and at any time after the security constituted by or pursuant to this Deed shall have become enforceable shall execute and do all such documents, assurances, acts and things as the Assignee may reasonably require for facilitating the realisation of such property and the exercise of all powers, authorities and discretions vested in the Assignee or in any Receiver of the Assigned Property or any part thereof. For the purposes of this Clause 7, a certificate in writing signed by the Assignee to the effect that any particular assurance or thing required by it is reasonably required shall be conclusive evidence of the fact.

8. **POWER OF ATTORNEY**

As security for the performance of its obligations under this Deed and for conferring on the Assignee the benefit of the rights expressed to be conferred hereunder, the Assignor hereby irrevocably appoints and constitutes the Assignee as the Assignor's true and lawful attorney with full power (in the name of the Assignor or otherwise) to carry out any of the Assignor's obligations hereunder, to ask, require, demand, receive, compound and release any and all moneys and claims for moneys due or to become due, under or arising out of, the Assigned Property, to enforce any provision thereof, to give valid receipts and discharges, to endorse any cheques or other instalment or orders in connection therewith, and generally to file any claims or take any actions or institute any proceedings (other than, for the avoidance of doubt, against the Assignor) which may seem necessary or advisable to the Assignee for the purpose of putting into effect the intent of this Deed.

9. **LIMITED RECOURSE**

The Assignee hereby agrees that, in relation to any claims of the Assignee under this Deed, it shall have recourse only to the Security and the Property to be Assigned with respect to each Applicable Authorised Participant Agreement (as defined in the Facility Agreement). Without prejudice to the rights of the Assignee under this Deed, neither the Assignee nor any person acting on its behalf shall be entitled to take any other steps against the Assignor to recover any sums payable by the Assignor under this Deed and no debt shall be owed by the Assignor to such person in respect of any such sum in excess of the amount recovered from such Authorised Participant. In particular, the Assignee 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 the Assignor in respect of the Secured Obligations.

10. **SERVICE AGENTS**

10.1 Each party to this Deed appoints the person specified opposite its name below to be its Service Agent to receive, for it and on its behalf, service of any Service Document:

Party	Service Agent
ETF Commodity Securities Limited	ETF Securities (UK) Limited 3 Lombard Street London EC3V 9AA

Party	Service Agent
Merrill Lynch International	United Kingdom N/A

- 10.2 Service upon the Service Agent of a party constitutes valid service on that party. The parties irrevocably consent to service of process given in the manner provided for pursuant to the Facility Agreement.
- 10.3 Each party may, by General Notice given to the other party, change its Service Agent or the address of its Service Agent. A person who is a Service Agent of a party shall for the purposes of this Deed remain the Service Agent of that party until a replacement Service Agent is notified under this Clause 10.3. If for any reason the Service Agent ceases to be unable to act as such, the Assignor shall appoint another person based in England to be its Service Agent.
- 10.4 Nothing in this Deed will affect the right of either Party to serve process in any other manner permitted by applicable law.

11. GOVERNING LAW AND JURISDICTION

11.1 Governing Law

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England.

11.2 Jurisdiction

(a) The English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Deed (including claims for set-off and counterclaims), 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 Deed; and
- (ii) any non-contractual obligations arising out of or in connection with this Deed. For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

11.3 Each party irrevocably consents to service of process, or any other documents in connection with proceedings, in any court by facsimile transmission, personal service, delivery at any address specified in this Deed or any other usual address, mail or in any other manner permitted by English law, the law of the place of service or the law of the jurisdiction where proceedings are instituted.

12. COUNTERPARTS

This Deed may be executed in any number of counterparts and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart shall together constitute one and the same instrument. Delivery of a counterpart of this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

APPENDIX 1

Notice to Authorised Participant

From: ETFS Commodity Securities Limited ("**CSL**")

To: [***Insert name of Authorised Participant***]

[●]

Dear Sirs

We hereby give you notice that pursuant to the Security Assignment dated [●] between CSL and Merrill Lynch International (the "**Assignee**") (the "**Security Assignment**"), and in relation to the authorised participant agreement relating to Short and Leveraged Commodity Securities dated [●] between us, amongst others, and yourselves (the "**Authorised Participant Agreement**"), we have assigned absolutely to the Assignee all our right, title, interest and benefit, existing now or in the future, in, to, and under the agreement (the "**Applicable Authorised Participant Agreement**") deemed to have been entered into between you and us with respect to the Assignee as a "New Commodity Contract Counterparty" (as defined in the Authorised Participant Agreement) pursuant to Clause 3(a) of the Authorised Participant Agreement and all of our powers relative thereto.

We also hereby irrevocably confirm that, until you have received notice from the Assignee that it is enforcing its security interests under the Security Assignment, all of your obligations under the Applicable Authorised Participant Agreement shall be performed in favour of us and that from such time as you have received notice from the Assignee enforcing its security interests under the Security Assignment, all of your obligations under the Applicable Authorised Participant Agreement shall be performed in favour of the Assignee.

We would be grateful if you would acknowledge receipt of this letter, and for this purpose we would be obliged if you would send a letter, in the form of the enclosed draft, to the Assignee under copy to us.

Yours faithfully

.....

For and on behalf of
ETFS Commodity Securities Limited

APPENDIX 2

Acknowledgment of Notice of Assignment from Authorised Participant

From: **[Insert name of Authorised Participant]**

To: Merrill Lynch International (the "**Assignee**")

[●]

Dear Sirs

We hereby acknowledge receipt of a Notice of Assignment dated [●] relating to the security assignment dated [●] between ETFS Commodity Securities Limited ("**CSL**") and the Assignee (the "**Security Assignment**").

We hereby acknowledge that, pursuant to the Security Assignment, and in relation to the authorised participant agreement relating to Short and Leveraged Commodity Securities dated [●] between CSL, ETF Securities Limited and **[Insert name of Authorised Participant]** (the "**Authorised Participant Agreement**"), CSL has assigned absolutely to the Assignee all its right, title, interest and benefit, existing now or in the future, in, to, and under the agreement (the "**Applicable Authorised Participant Agreement**") deemed to have been entered into between CSL and us with respect to the Assignee as a "New Commodity Contract Counterparty" (as defined in the Authorised Participant Agreement) pursuant to Clause 3(a) of the Authorised Participant Agreement and all of its powers relative thereto.

We confirm that:

1. we have neither claimed or exercised nor will claim or exercise any security interest, any rights of counter-claim, rights of set-off or any other equities which we may have against CSL in relation to the Applicable Authorised Participant Agreement (other than any set-off expressly permitted thereunder);
2. we have not, at the date of this acknowledgement, received any notice that any third party has or will have any right or interest whatsoever in the Applicable Authorised Participant Agreement or is taking any action whatsoever against the same; and
3. if we become aware of any matter referred to in paragraph 2 above, we will immediately inform the Assignee in writing thereof.

We also hereby irrevocably undertake that, until we have received notice from the Assignee that it is enforcing its security interests under the Security Assignment, all of our obligations under the Applicable Authorised Participant Agreement shall be performed in favour of CSL and that from such time as we have received notice from the Assignee enforcing its security interests under the Security Assignment, all of our obligations under the Applicable Authorised Participant Agreement shall be performed in favour of the Assignee.

Yours faithfully

.....
For and on behalf of
[Insert name of Authorised Participant]

IN WITNESS whereof this Deed has been executed and delivered as a deed on the date first above written

Executed as a Deed by **ETFS**)
COMMODITY SECURITIES LIMITED)
a company incorporated in Jersey by)
being a person who, in accordance with)
the laws of that territory is acting under)
the authority of the company:

Director

Director/Secretary
Executed as a Deed by **MERRILL LYNCH**)
INTERNATIONAL)
acting by [a director and its)
secretary/two directors]:)

Director

Director/Secretary