

# CLIENT AGREEMENT

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**EIGHTCAP PTY LTD**

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## ABOUT THIS CLIENT AGREEMENT | EIGHTCAP PTY LTD

This *Client Agreement* is part of the agreement between *EightCap Pty Ltd* ("EightCap", "we", "us", "our" or "ours" as appropriate) and you, the *Client* ("you", "your", "yours" or "yourself" as appropriate). It will govern all transactions ("Transaction") entered into between you and us, in particular *Margin Foreign Exchange contracts* ("*Margin FX contracts*") and *Contracts for Differences* ("CFDs"). You should read this Agreement carefully, including our *Contract Details*, the *Financial Services Guide* ("FSG") and ancillary documents, the *Product Disclosure Statement* ("PDS") and any other documents that we have supplied or in the future do supply to you, and seek professional independent advice if necessary. If this Agreement is provided to you in any language other than English, then please note that it is for information only and that the governing language of this Agreement and of any dispute arising hereunder is English. The English language version of this Agreement is available on our website and upon request. We may be able to offer you specialist language services from time to time in your dealings with us but please note that these are not guaranteed to be available at all times.

Nothing in this Agreement will exclude or restrict any duty or liability owed by us to you under the Governing Legislation and if there is any conflict between this Agreement and the Governing Legislation, the Governing Legislation will prevail. By signing our Account Application form or by electronically submitting an account application on our website, you confirm that you accept the terms and conditions of the Agreement – this Agreement will come into effect on the date we open your account, and, for any new versions thereafter, on the date we notify you.

Certain words and expressions used in this Agreement have defined meanings – you should refer to '*Interpretation*' in the last section of this document for further details.

You should note that this Agreement shall replace any prior or existing agreement, or previously issued agreement, and shall apply to any existing arrangements currently operating between you and us.

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## 1 | ABOUT US AND HOW TO CONTACT US

### (1) About Us

*EightCap Pty Ltd* is a company incorporated and registered in Australia (ABN 73 139 495 944). We hold an *Australian Financial Services Licence* ("AFSL") number 391441 and are regulated by the *Australian Securities and Investment Commission* ("ASIC").

### (2) How to Contact Us

Address: EightCap Pty Ltd  
Level 11, 356 Collins Street  
Melbourne, VIC 3000, Australia

Telephone: (03) 8373 4800

Email: customerservice@eightcap.com

Website: www.eightcap.com

## 2 | REPRESENTATIONS AND WARRANTIES

You represent and warrant to us, and agree that each such representation and warranty is deemed repeated each time you

open or close a Transaction by reference to the circumstances prevailing at such time, that:

- (1) This Client Agreement constitutes a legal, valid and binding obligation of yours.
- (2) You will not enter into a financial product transaction as or by way of a wager and that all orders to be placed and all trading to be conducted under this Client Agreement are lawful.
- (3) In executing and giving effect to this Client Agreement, you do not and will not infringe any provision of any other document or agreement to which you are a party, nor any law or judgment/order binding upon it.
- (4) Where the Client is more than one person that all decisions made, and instructions issued, pursuant to this Client Agreement, are made on a fully informed and agreed basis by all the parties to the account.
- (5) You are not an employee or the close relative of an employee of any exchange participant.
- (6) All information supplied to us by you is, or at the time it is supplied will be, accurate in all material respects and you will not omit or withhold any information which would make such information inaccurate in any material respect.
- (7) You shall, where so required, provide to us a valid and binding guarantee and indemnity in our favour as a precondition of entering into this Client Agreement.

- (8) You will provide to us on request such information regarding its financial and business affairs and/or identity, as we may reasonably require.
- (9) In executing this Client Agreement, you will appoint us as the agent for the purpose of dealing in financial products in accordance with the terms of this Client Agreement.
- (10) We are bound by the applicable financial product laws, the *Corporations Act 2001*, applicable operating rules, customs, usages and practices (as modified from time to time) of the applicable exchange and clearing houses where any dealing takes place.
- (11) You will take all reasonable steps to obtain and communicate to us all information, and shall deliver or cause to be delivered to us all documents with respect to dealings in the financial products which are requested by any person having the right to request such documents and information – you authorise us to pass on/deliver all such information and documents to any such person.
- (12) You are not insolvent, and if you are a corporate client, no resolution has been passed and no petition has been presented or order made for you winding up or liquidation or the appointment of a receiver or a receiver and manager or an administrator of other insolvency official to you or any of its assets.

### 3 | CAPACITY TO ENTER INTO THIS CLIENT AGREEMENT

*You represent and warrant to us that:*

- (1) You are duly organised and validly existing (or, if an individual, is of legal age and is under no legal disability or incapacity) and have full power and authority to enter into, and have taken all necessary steps to enable it lawfully to enter into, this Client Agreement and the transactions contemplated by it, and perform your obligation.
- (2) You have the full power and authority to execute this Client Agreement, and bind the entity (whether individual, company, partnership or otherwise).
- (3) You have been properly categorised as a 'retail' or 'wholesale' client pursuant to the *Corporations Act 2001* and accurately advised us of your status of such.
- (4) You are not insolvent, and if you are a corporate client, no resolution has been passed and no petition has been presented, or order made for you winding up, or liquidation or the appointment of a receiver or a receiver and manager or an administrator of other insolvency official to you or any of your assets.
- (5) If you are a trustee (including for a superannuation fund), you confirm that:
  - (a) the trust has been duly constituted, is valid, and complies with all applicable laws;
  - (b) the trust deed has been executed and stamped, in accordance with the laws of the relevant state or territory of Australia;
  - (c) you are the only trustee of the trust;
  - (d) the property of the trust has not been resettled, set aside or transferred to any other trust or settlement, and the trust deed has not been terminated and the

- date or any event for the vesting of the trust's property has not occurred;
- (e) the trust deed specifically empowers and authorises dealings in financial products, and such dealings are within the authorised ambit of the trust's investment strategy;
- (f) all obligations under, and transactions contemplated by this Client Agreement constitute binding obligations and are lawfully enforceable against the trust and its property in accordance with their terms;
- (g) you have unrestricted right to be fully indemnified or exonerated out of the trust's property in respect of any losses or liabilities incurred by you in your dealings with us, and the trust's property is sufficient to satisfy that right of indemnity or exoneration;
- (h) you have complied with your obligations in connection with the trust;
- (i) there is no conflict of interest on your part in entering into this Client Agreement and performing your obligations under it or the transactions contemplated by it; and
- (j) if you have a superannuation fund, you have complied with all requirements outlined in the *Superannuation Industry (Supervision) Act 1993*
- (6) If you are an investment manager or a responsible entity, the investment management agreement or constitution specifically empowers and authorises dealings in the financial products, by you and on behalf of your underlying clients:
  - (a) such dealings are within the authorised ambit of the/each underlying client's investment strategy;
  - (b) you will enter into transactions pursuant to the applicable investment management agreement as

- investment manager or responsible entity and not otherwise;
- (c) you will only deal in financial product transactions when the funds or other assets under your control are sufficient to meet the obligations which arise in connection with such dealing;
  - (d) in the event of termination of your appointment as investment manager or responsible entity of the

- underlying client, you are authorised to arrange for closing out of all contracts entered into on behalf of your client prior to the date of such termination as soon as possible; and
- (e) repeats each of these representations and warranties in relation to both yourself and your underlying clients

#### 4 | ACCOUNT ESTABLISHMENT

- (1) We agree to establish an account in the name of the Client who is the person named as the holder of the account.
- (2) Where the Client is more than one person, the account shall be established in their names as joint tenants unless they specifically advise otherwise (in which case it shall be established in their names as joint tenants). In any case, the

parties to such joint account shall each be jointly (together) and severally (individually) liable.

- (3) No one except the Client has an interest in the Client's account with us opened for the purposes of this Client Agreement.

#### 5 | SEGREGATED ACCOUNTS

*You agree and acknowledge to us that:*

- (1) All money and property deposited by you with us, or received by us on behalf of you, shall be deposited to your account and form a credit balance and will initially be paid into a client segregated bank account established and maintained by us and invested in accordance with applicable legal and regulatory requirements.
- (2) Such segregation of your money and property does not protect your money and property from the risk of loss.
- (3) Whilst your money and property is segregated from our money and property, please note that it may be co-mingled with the money and property of other clients, and utilised as free and clear collateral by us from time to time in respect of open positions. Such monies and property shall accordingly be treated as the legal and beneficial property of ours, subject to an obligation by us to transfer equivalent back to you in accordance with your transaction rights under this Client Agreement.
- (4) We shall be entitled to retain any interest earned on such segregated money or property held or invested by us.
- (5) If you do not provide us with a tax file number or details of exemption, we shall be legally obliged to deduct tax from interest payments at the highest marginal rate plus *Medicare Levy*.
- (6) We may use the funds in the client segregated account to manage our dealings with our counterparties with respect to client positions. You acknowledge that this serves as sufficient written authorisation for us to withdraw without notice to, or further authorisation from you, any money or property deposited into the segregated account to be used by us for this purpose. Further, you have no interest in or claim over our contracts (if any) with any other person or in the

accounts into which we lodge or pay the funds which were withdrawn from the segregated accounts. You acknowledge that the balance of your account may not be protected if there is a default in the dealings with counterparties or in the overall segregated account balance.

- (7) Any collateral transferred by you to us or held by us or our counterparties on behalf of you is pledged as a security for any liability that you may have towards us. You warrant that all such collateral is beneficially owned by you and is and will remain free from any lien, security interest or other encumbrance. If you fail to fulfil any obligation under this Client Agreement, we are entitled to sell any collateral immediately without notice and by the means and at the price that we in our reasonable discretion determines. We shall not be liable for any loss occasioned by such sale.

- (8) Financial product trades executed through us are routed to our service provider, who then facilitates execution and/or clearing on our behalf. Depending on the relevant jurisdiction or exchange, either we or our service provider will be the registered owner of the instrument, within our client omnibus account. The value and dividends are then provided to you by us in accordance with your recorded, and continually reconciled, holdings. However, if we were to go into liquidation, and an administrator appointed, you would be prima facie entitled to fair value for your recorded holdings, rather than holding such instruments in your name directly, thereby placing you in the position of 'unsecured creditors' with the administrators.

- (9) We may enter into arrangements with third party execution and clearing providers for the facilitation of transactions and settlements, and avails monies received for margin calls and settlements to such providers for this purpose.

#### 6 | MULTIPLE ACCOUNTS

- (1) You are able to open multiple accounts denominated in the same currency as or in currencies other than that of the

main trading account. The operation of multiple accounts may mean that it may incur additional costs.

(2) If you open opposite positions in the same currency cross (for example) on the same account, such positions will cancel each other out. However, if you operate several accounts (or sub-accounts) and opposite positions are opened on different accounts (or sub-accounts), such positions will not cancel each other out. Please note that unless closed manually, all such positions may be rolled over on a continuous basis and consequently incur charge based on the 'tom-next rate'.

(3) Keeping opposite positions open on different accounts will result in both positions being continuously rolled over (and thereby continuously being charged the 'tom-next rate') until manually closed.

(4) If you have opened more than one account, the margin or collateral deposited on one account will not automatically serve as margin coverage on the other account(s). You may

therefore receive margin calls and stop-outs on one account despite having additional margin or collateral available on the other accounts. However, if you have deposited money or collateral on one account, we are entitled to transfer money or collateral from one account to another, even if such transfer will necessitate the closing of margin trades on the account from which the transfer takes place.

(5) Interest is calculated on the basis of the net free equity of each individual account or sub-account. When operating several accounts, you will be charged interest on the full negative net free equity on any account despite having a positive net free equity on another account. When operating several accounts, you should use caution when using more than one account, and understand that the rate of interest paid on positive balance differs from the rate of interest charged on negative balances.

## 7 | RISK DISCLOSURES

*You represent and warrant to us that:*

(1) You have received, read, understood and accepted the risk disclosures provided herein in relation to the financial products to be traded and contained herein.

(2) You have received, read and understood our FSG and PDS.

(3) You acknowledge, recognise and understand that trading and investment in these financial products is speculative, may involve an extreme degree of risk and significant loss, and is appropriate only for persons who can assume risk of loss in excess of their margin deposit.

(4) You have read this Client Agreement and understand that we only provide general advice, and you have considered

your objectives and financial situation and have obtained appropriate independent advice prior to entering into this Client Agreement, and have formed the opinion that dealing in the financial products is suitable for your needs and purposes.

(5) You have taken independent legal and financial advice as you consider necessary prior to executing this Client Agreement.

(6) You are willing and able to, financially and otherwise, assume the risk of trading in high risk investments.

(7) You acknowledge that neither we nor any associated entity guarantees the performance of any given financial product or account nor that any financial product or account will achieve a particular rate of return.

## 8 | CLIENT ACKNOWLEDGEMENT

*You agree and acknowledge to us that:*

(1) We will deal or instruct third parties to deal on behalf of you, in the financial products.

(2) We may utilize the execution and settlement services of appropriately licensed third parties on behalf of you in order to provide the services detailed in this Client Agreement.

(3) Dealings in the financial products create an obligation to make a cash adjustment in accordance with the terms of the relevant transaction.

(4) Where a financial product has no maturity date or defined term, open contracts shall continue until such date as they are closed.

(5) All dealings executed on behalf of you pursuant to this Client Agreement shall be at the absolute discretion of ours. In particular, we shall be entitled to take any action we consider necessary in our absolute discretion to ensure compliance with the operating rules and all other applicable laws and regulatory decisions.

(6) We act as principal in respect of the financial products traded by us on your behalf regardless of whether we are acting on your instructions or not.

(7) Please note that in certain markets, we act as a market maker and quote you bid and ask prices. These bid and ask prices may not necessarily reflect those of our liquidity providers. We will only disclose that we are acting as a market maker in response to a written request from you to make such disclosure. You accept that in such markets, we may hold positions that are contrary to your position resulting in potential conflicts of interest.

(8) Subject to applicable legal/regulatory requirements, you consent where we, either knowingly or unknowingly, take the opposite side to you in relation to any of the financial product transactions.

(9) Subject to applicable legal/regulatory requirements, you agree and acknowledge that our directors, employees and associates may, and can deal on their own accounts.

(10) We reserve the right, at our sole discretion and without explanation, to refuse to deal on your behalf in relation to any exchange traded or *over-the-counter* financial products (other than closing out existing open positions held in your account) or to limit the number of open positions held on your behalf, or both. We will inform you of any refusal before or as soon as practicable after such refusal.

(11) You have no rights, whether by way of subrogation or otherwise, against any person other than us, in respect of transactions market traded pursuant to the applicable rules of the exchange or market, except to the extent (if any) provided by any applicable law.

(12) Where errors have occurred in price quotes provided by, or the pricing of transactions quoted by us to you, we reserve the right to not be bound by such a quote or transaction where we are able to substantiate to you that there was a material error at the time of the quote or transaction. Where this occurs in relation to the initial purchase of a financial product, we will not issue (or if already issued, will cancel) the contract and refund your money accordingly. Where this occurs in relation to a price quote for an existing position, we will reissue the price quote accordingly.

(13) Any benefit or right obtained by us upon registration of an exchange traded or *over-the-counter* financial products with a clearing house is personal to us and such benefit or right shall not pass to you.

(14) In dealing in the financial products on your behalf or for any other purpose under this Client Agreement, when we need to buy or sell foreign currency from time to time, the applicable exchange rate shall be any widely recognised and published foreign exchange rate selected by us in our sole discretion available on the date your money is exchanged and a conversion calculation fee may be payable.

(15) There are risks associated with utilising an internet-based deal execution trading system which include, but are not limited to, the failure of hardware, software, and internet connection. Since we do not control signal power, our reception or routing via internet, configuration of your equipment or reliability of our connection, we will not be responsible for communication failures, distortions or delays when trading via the internet.

(16) Reports to you on the execution of contract notes by us, and the content of such contract notes, open position statements and monthly statements, unless otherwise objected to within 48 hours after communication to you, shall be deemed proof of the accuracy of such contents and their execution in accordance with this Client Agreement.

(17) A notice issued by an authorised officer or agent of ours stating the amount of money due and payable by you shall be taken as final evidence thereof in the absence of manifest error.

(18) All determinations and calculations made by us under this Client Agreement will be binding on you in the absence of manifest error.

(19) We are entitled, in our reasonable opinion, to determine that an emergency of an exceptional market condition exists. Such conditions include, but are not limited to, the suspension or closure of any market or the abandonment or failure of any event to which we relate our quote or the occurrence of an excessive movement in the level of any margin trade and/or underlying market or our reasonable anticipation of the occurrence of such a movement. In such cases we may increase our margin requirements, close any or all of your open margin trades and/or suspend or modify the application of all or any of the terms, including but not limited to, altering the last time for trading a particular margin trade, to the extent that the condition makes it impossible or impracticable for us to comply with the term in question.

(20) Anything we are permitted to do in accordance with this Client Agreement may be done in our absolute discretion, and any opinion or view required to be formed by us may be formed in our absolute discretion.

(21) Provision of a tax file number is optional however, the non-provision of the number may result in a higher tax liability or surcharge.

## 9 | OUR REPRESENTATIONS AND SERVICES

(1) We seek to act honestly, exercise due care and diligence, and act in your best interests at all times. We will give priority to your interests and undertake that we will not misuse your information. We will use reasonable endeavours to execute or arrange the execution of your instructions.

(2) We will arrange execution and clearing for transactions in financial products defined herein, and other authorised services as agreed with you from time to time.

(3) Unless otherwise expressly agreed, we will provide services on an execution only basis in accordance with your

instructions, and will not provide advice to you regarding the merits of a transaction. You are hereby prohibited from treating any remark made by our representatives regarding the market, transaction or forecast as advice.

(4) Any transaction or market information or research provided by us to you is provided as general information only, and does not constitute and cannot be relied upon as a recommendation to trade. We make no representation, warranty or guarantee, and accept no liability for, the accuracy or completeness of any such information, and your reliance on such at your sole risk.

## 10 | ONLINE TRADING FACILITY

(1) You acknowledge that you have read, understood and agree to the terms and conditions associated with dealing via our online trading facility as set out in this Client Agreement.

(2) We may amend any of the terms of this Client Agreement and by continuing to deal with us or to access or use our online trading facility, you agree to any amendments.

(3) We agree to grant you access to one or more electronic terminals, including terminal access through your internet browser, for the electronic transmission of orders to your account with us.

(4) You are permitted to monitor the activity and positions in your account electronically by the provision of our online

trading facility. The online trading facility may be a proprietary service offered by us or a third party system.

(5) You agree to use the online trading facility software solely for your internal business or investment purposes.

(6) You agree that you are not legally allowed to distribute the platform to any third party.

(7) Our online trading facility may be used to transmit, receive and confirm the execution of orders, subject to market conditions and applicable operating rules and regulations. Regardless of any online confirmation received upon placement of an instruction via the online trading facility, such transaction is not confirmed by us until we provide confirmation. The confirmation forwarded by us or made available on the online trading facility constitutes our confirmation of a contract.

(8) We consent to your access and use in reliance upon you having adopted procedures to prevent unauthorised access to and use of the online trading facility, in any event, you agree to any financial liability for trades executed through the online trading facility.

(9) You may send and receive email messages and otherwise use the online trading facility as permitted in accordance with this Client Agreement, our policies and any applicable laws.

(10) We reserve the right, in our sole discretion, to institute or change any policies at any time relating to the use of the online trading facility.

(11) The online trading facility is provided on an 'as-is' basis and we make no express or implied representations or warranties to you regarding its operation or usability.

(12) We make no representations or warranties regarding any services provided by any third party.

(13) The online trading facility may be available in several versions, which may be differentiated in various aspects including, but not limited to the level of security applied, products and services available etc. – we shall not be liable to you for any loss, expense, cost or liability suffered or incurred by you due to you using a version different from the standard version with all available updates installed.

(14) We may offer real-time tradable prices to you. However, please be noted that due to delayed transmission between you and us, the price offered may have changed before an order from you is received by us. If automatic order execution is offered to you, we shall be entitled to change the price on which your order is executed to the market value at the time which the order from you was received.

(15) We do not warrant that access to or use of the online trading facility will be uninterrupted or error free, or that the service will meet any particular criteria with respect to its performance or quality. We expressly disclaim all implied warranties, including without limitation warranties of merchantability, title, fitness for a particular purpose, non-infringement, compatibility, security or accuracy.

(16) Under no circumstances, including negligence, will we, our employees and/or service providers be liable for any direct, indirect, incidental, special or consequential damages including, without limitation, business interruption or loss of profits that may result from the use of or inability to use the online trading facility.

(17) You agree not to hold us and any of our service providers (for whom we act as agent in this regard) liable for any form of damage arising as a result of the unavailability of the online trading facility.

(18) You agree that the use of the online trading facility is at your own risk and you assume full responsibility for any losses resulting from the use of or materials obtained via the online trading facility.

(19) Us, our directors, officers, employees, agents, contractors, affiliates, third party vendors, information providers, and other suppliers providing information or data services do not warrant that the online trading facility will be uninterrupted or error free nor do we or they make any warranty as to the timeliness, sequence, accuracy, completeness, reliability or content of any information, service or transaction provided through the use of the online trading facility or the results obtained from its use.

(20) We and our service providers will not accept any form of liability including any loss or damage to you or to any other person for:

- (a) any inaccuracies, errors or delays or omissions of any data, information or message or transmission or delivery of any such data, information or message;
- (b) non-performance; or
- (c) interruptions in data, information or message transmission, due to any negligent act or omission, including any force majeure event or any other cause, whether or not within our control – this includes amongst other things, floods, extraordinary weather conditions, earthquakes, acts of God, fire, war, riot, labour disputes, accidents, actions of any government, communications or power failure, equipment or software malfunction

(21) The use and storage of any information provided or made available to you through the use of the online trading facility is for your use only and is your sole risk and responsibility.

(22) You are responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the online trading facility, and for all communications service fees and charges incurred by you in accessing the online trading facility.

(23) We may at any time, and at our sole discretion, terminate or restrict your access to the online trading facility. Should we terminate this Client Agreement or access to the trading platform, you will be liable for all fees charges and obligations incurred under this Client Agreement prior to termination.

(24) You acknowledge that from time to time, and for any reason, the online trading facility may not be operational or otherwise available for you to use due to servicing, hardware malfunction, software defect, service or transmission interruption or other cause.

(25) Your failure to observe any of the undertakings or representations may result in civil or criminal liability, as well as termination of the use of the online trading facility.

(26) You acknowledge that you have alternative arrangements in place at all times, for the transmission and execution of orders, if for any reason, circumstances prevent the transmission and execution of all, or any portion of, your orders through the online trading facility. In the event the

online trading facility not being operational, you agree to contact us to make alternative order entry arrangements. Such arrangements may be in the form of telephone, or as otherwise agreed.

(27) You may not under any circumstance use the online trading facility to do any of the following:

- (a) publish, post, distribute or disseminate defamatory, infringing, obscene or other unlawful or offensive material or information;

- (b) intercept or attempt to intercept any email correspondence;
- (c) use the online trading facility in any manner that may adversely affect its availability or its resources to other users;
- (d) send correspondence electronically or otherwise to other users for any purpose other than personal communication; or
- (e) act, or fail to act in a manner which may result in the violation of any laws or regulations

## 11 | AUTHORISATIONS AND INSTRUCTIONS

(1) You hereby authorise us to trade in the financial products on your behalf pursuant to your prior approval and instruction, or otherwise in accordance with our rights elsewhere under this Client Agreement.

(2) You may communicate your instructions to us via the online trading facility or by telephone. Faxed or email orders will not be accepted unless pursuant to a prior agreed arrangement between you and us.

(3) In consideration of us agreeing to accept telephone (or other written) instructions from you, you acknowledge that we are not obliged to accept/implement such instructions, and will not be liable to you or any other party should such instructions be unauthorised, forged or fraudulently given.

(4) You may authorise any other person to give instructions (via the agreed methods) on your behalf and we are entitled to act upon instructions which are, or appear to be from you or your authorised person thereof. It is your sole responsibility to notify us in writing immediately if there is any change to the authorised person list provided pursuant to this Client Agreement.

(5) You shall be responsible for all orders, and for the accuracy of information, sent via the internet using your name, password or any other personal identification means implemented to identify you.

(6) We may, in our sole discretion and without explanation, refuse to act upon any instruction.

(7) If you, the client, are more than one person, we may act upon instructions received from any one person who is, or appears to us to be, such a person, whether or not such person is an authorised person.

(8) Persons may only be appointed as authorised persons where they are an employee or director of a corporate client, they are a family member appointed to act in the temporary absence of an individual client, or where they are or act for an AFSL with respect to the relevant activities.

(9) We are under no obligation to accept any instruction that is not made by an authorised person or to enquire as to the identity of any person providing the instruction if we reasonably believe the person is an authorised person.

(10) Should we receive any instruction that we reasonably assume was from an authorised person, we will not be liable for any properly performed action or omission by us in reliance on that instruction.

(11) We shall not be liable for any act or omission by us in reliance on any instruction given or action taken by any

person acting or purporting to act on behalf of you who is not listed as an authorised person.

(12) You are obliged to keep all passwords secret and ensure that third parties do not obtain access to your trading facilities.

(13) Mere transmission of an instruction by you shall not constitute a binding contract with us until confirmed by us.

(14) You have appointed us as your agent for the purposes set out in this Client Agreement and conferred upon our authority to do, or omit to do, all things reasonably necessary to perform our functions and all things reasonably incidental to the performance of our functions.

(15) You will execute or otherwise authorise us to execute all such agreements as required to enable the provision of the services contemplated in this Client Agreement. You appoint us as your attorney to do all things necessary to enter into such agreements on your behalf.

(16) You shall promptly provide any instructions to us, which we may require. If you do not provide such instructions promptly, we may, in our absolute discretion, take such steps at your cost, as we consider necessary or desirable for our own protection or your protection. This provision also applies in situations when we are unable to contact you.

(17) If you do not provide us with notice of your intention to exercise a financial product transaction which requires an instruction from you at the time stipulated by us, we may treat the transaction as abandoned by you. If a transaction can be prolonged on expiry, we may in our absolute discretion, choose to prolong or to close such transaction.

(18) In general, we shall act according to instructions as soon as practically possible and shall, as far as trading instructions are concerned, act within a time frame reasonable seen in the context of the nature of the instruction. However, if after instructions are received, we believe that it is not reasonable practicable to act upon such instructions within a reasonable time, we may defer acting upon those instructions until it is, in our reasonable opinion, practicable to do so or notify you that we are refusing to act upon such instructions.

(19) We will not be deemed to have any order or communication electronically transmitted by you until we have actual knowledge of any such order or communication. The mere transmission of an instruction by you shall not constitute a binding contract between you and us. The terms of any order or communication electronically transmitted to you may be subject to change or correction. Regardless of the fact that the online trading facility might confirm that a

contract is executed immediately when you transmit instructions via the online trading facility, the confirmation forwarded by us or made available on the online trading facility constitutes our confirmation of a contract. Any instruction sent electronically shall only be deemed to have been received and shall only then constitute a valid instruction and/or binding contract between you and us when such instruction has been recorded as executed by us and confirmed by us to you including through a deal confirmation and/or account statement.

(20) You acknowledge and warrant that you have received a password granting access to the online trading facility; are the sole owner of the password provided; and accept full responsibility for any transaction that may occur on an account opened, held or accessed through the use of the password provided to you by us, even if such use may be unauthorised or wrongful. You agree to accept full

responsibility for the use of the online trading facility, for any orders transmitted through the online trading facility and for all communications and the accuracy of all information sent via the online trading facility using your name, password or any other personal identification means implemented to identify you.

(21) You warrant and agree that any person who is in possession of any password is authorised by you, and you acknowledge that they will be responsible for any actions on the account associated with the use of your password.

(22) You agree to notify us immediately should you become aware of any unauthorised use, loss or theft of your username, password or account numbers; or inaccurate information with respect to the content of statements including, cash balances, open positions or transaction history.

## 12 | OPENING A TRANSACTION

(1) You may request on any given business day, via telephone or otherwise, us to quote a price at which we may be prepared to enter into a financial product transaction. You acknowledge that a price quotation pursuant to this request does not constitute an offer to enter into a new or close an existing financial product.

(2) Upon receiving the quote from us, you may via telephone or otherwise offer to enter into a financial product transaction with us at the price quoted by us.

(3) We are in no way obliged to accept your offer to enter into a financial product transaction and, without limitation, are not obliged to accept your offer to enter into a financial product transaction, if you have exceeded or would exceed a predetermined limit imposed on you under this Client Agreement; or until we have received from you the initial margin where required, in the form of 'cleared funds'. We will promptly advise you should we decide not to accept your offer to enter into a financial product transaction.

(4) The initial margin where required to enter into a financial product transaction, if not already received from you, will be payable to us upon acceptance by us of your offer to enter into the financial product transaction.

(5) Should we accept your offer to enter into a financial product transaction, we will issue to you an electronic confirmation shortly after the financial product transaction has been entered into. This confirmation will be in the form of a deal confirmation. Failure by us to issue a deal confirmation will not prejudice or affect the relevant financial product

transaction. We will not bear any liability whatsoever resulting from the failure to issue a deal confirmation.

(6) You agree to examine the terms of each deal confirmation immediately upon receipt, and further agree that the contents of the deal confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal, unless within 48 hours of issue of a deal confirmation you notifies us of any disputed detail in the deal confirmation received by you. Upon receipt of written notice within the 48-hour period of the disputed detail, we will investigate the dispute and with your co-operation, will endeavour to resolve the dispute in good faith. Notwithstanding any such dispute, you will continue to satisfy any obligation to pay margin calls made by us in respect of the transaction as if the deal confirmation was correct and its details were not the subject of dispute.

(7) In our absolute discretion, we reserve the right to limit the value of financial product transactions you may have outstanding under this Client Agreement. Should you wish to enter into any further financial product transactions, you must seek and obtain approval from us, which we may grant or refuse in our absolute discretion.

(8) If you provide us with standing instructions to enter into a financial product transaction when a particular price level is reached in the market of the underlying security, you acknowledge that the price at which the financial product transaction is entered into may not be the same as the price requested by you as we may elect not to enter into the financial product transaction until we have satisfied ourselves that we can hedge our exposure in the underlying security.

## 13 | ORDER EXECUTION

(1) We undertake, and you acknowledge, that in respect of dealings in the financial products, and in compliance with the applicable *Corporations Act 2001* and exchange operating rules requirements, we shall execute all dealings in the sequence in which they are received and recorded, unless it would be fair and equitable to allocate such contracts on a different basis.

(2) We shall provide you with contract notes and monthly statements in accordance with applicable laws and regulation.

(3) It is your responsibility on receipt to carefully check all transaction confirmations and statement documentation (whether received/accessed electronically or otherwise) and to bring any errors or omissions to our attention in writing

within the time specified by us. In the absence of such written objection, the contract notes and monthly statements shall be deemed correct in all respects.

(4) Orders may be placed as market orders to buy or sell an instrument as soon as possible at the price obtainable in the market, or limit and stop orders to trade when the price reaches a predefined level, as applicable to the various instruments offered. Limit orders to buy and stop orders to sell must be placed below the current market price, and limit orders to sell and stop orders to buy must be placed above the current market price. If the bid price for sell orders or ask price for buy orders is reached, the order will be filled as soon as possible at the price obtainable in the market. Limit and stop orders are thus not guaranteed executable at the specified level or amount, unless explicitly stated otherwise by us.

(5) We may, in our absolute sole discretion, execute a *stop-loss* order in relation to any contract where there are reasonable grounds to believe that subsequent price

movements may be adverse to you. We shall not be liable to you however for any failure to exercise this discretion. A stop-loss order is triggered when you have a '*sold*' position and the contract is traded at or above the stop-loss price; or when you have a '*bought*' position and the contract is traded at or below the stop-loss price. Once a stop-loss order is triggered or executed it becomes a market order and we shall use our best endeavours to execute the market order. The acceptance of a stop-loss order is not a guarantee or representation by us that the stop-loss order can be executed at the stop-loss price.

(6) We may, at our discretion, aggregate your orders with our own orders, or orders of associates and/or persons connected with us including employees and other clients. In addition, we may split your orders. Orders will generally be aggregated or split where we reasonably believe it to be in your overall best interests, but you acknowledge that on some occasions the consequence of the aggregation or splitting may result in a less favourable price than your order having been executed separately.

## 14 | MARGIN OR DEPOSIT

*You agree and acknowledge to us that:*

(1) We may advise you of the need to provide an initial or variation deposit or margin by way of the payment of money, or if we so agree, the lodgement of collateral, in such amount as determined by us in our sole discretion, feel is necessary to protect ourselves from the personal obligation incurred by dealing in the financial products on your behalf. Prior to entering into a financial product transaction, we may require you to deposit *cleared* funds. The amount required and the time at which it is required will be at our absolute discretion. We are not obliged to permit any offset of any moneys or collateral so required by us.

(2) We reserve the right, or whenever we deem appropriate, to raise or lower the margin or deposit requirements, which may apply to existing positions as well as to new positions. You will comply with and meet all such calls in accordance with this Client Agreement by depositing in cleared funds, the sum requested or lodging the collateral agreed within the time specified by us. We may determine the amount and time in our absolute discretion. Should we require additional funds from you to pay *Variation Margin* ("**Margin Call**"), you must pay the amount called by us immediately upon being given notice. In all respects, time shall be of the essence for all your payment obligations.

(3) Should we make a margin call, you acknowledge and agree that we may refuse any of your request to enter into any further financial product transaction positions until we have confirmed the receipt of the margin call amount in the form of cleared funds.

(4) Any exercise by us of any power or right under this clause, including, without limitation, the calling of margin, shall be binding on you.

(5) Where you trade via the trading platform, margin calls will be notified via email/trading platform, and you are required to log in to the system on a daily basis if you have open positions to ensure you receive notification of any such margin calls. It is your sole responsibility to monitor and

manage your open positions and exposures, and ensure that margin calls are met as required.

(6) Where you have not checked the trading platform for margin call notifications, and so have not met them in a timely manner, all margined positions will be closed out by us, without further reference to you.

(7) We may, in our discretion, request you to make all margin and deposit payments with respect to any exchange traded or over-the-counter financial product transactions directly to a broker affiliated with us. We agree that any payments made by you to such affiliate of ours pursuant to such a request will satisfy your obligation to make payments to us.

(8) Liability for a deposit or margin arises at the time it is executed irrespective of the time at which any call is made, and such liability is not limited to the amount, if any, deposited with us.

(9) You are responsible to pay any deficit owing to us after closure, and if you default or refuse such payment, we may apply the proceeds of any assets held by us against that deficit.

(10) A margin call will not be considered to have been met **UNLESS AND UNTIL** cleared funds have been received by us in the nominated account (generally around 10AM on the following business day).

(11) Should you fail to meet a margin call, we may without prejudice to any other rights or powers under this Client Agreement, and in our absolute discretion, close out, without notice, any or all of your exchange traded or over-the-counter financial product contracts or refuse any of your request to enter into any further contracts.

(12) No credit shall be extended directly or indirectly to you by us, unless otherwise agreed in writing.

(13) Subject to you meeting all margin call obligations, we may permit you to withdraw from your account any excess net free equity.

(14) Margin deposited by you will not fall due for repayment until your obligations under this Client Agreement and under, or in respect of, any other account between you and us are satisfied in full. Until this time, margin will not constitute a

debt due from us to you nor will you have any right to receive payment of these funds.

## 15 | MARGIN FX OR CFD TRANSACTION

### (1) Payments for Difference

*You agree and acknowledge to us that:*

(a) following business close on each business day during the term of an open Margin FX or CFD transaction, we will determine at business close the contract value of the contract;

(b) if the contract value determined is higher than the contract value determined in respect of the business close on the previous business day, then the short party must pay to the long party the difference;

(c) if the contract value determined is lower than the contract value determined in respect of the business close on the previous business day, then the long party must pay to the short party the difference;

(d) the contract value at business close on the business day on which the position is entered into is determined using the underlying security price;

(e) the contract value determined will ordinarily be the closing price of the underlying security quoted by the relevant exchange – where we determine that the contract value of a Margin FX or CFD position at business close cannot be determined on that basis for any reason, the contract value will be the value determined by us in our sole discretion; and

(f) without limiting sub-clause(e), if at any time trading on a relevant exchange is suspended or halted in any underlying security, we will, in determining the contract value, at its discretion have regard to the last traded price before the time of suspension or halt

### (2) Dividends

*You agree and acknowledge to us that:*

(a) if you are a long party, your account will be credited with an amount equal to any gross un-franked amount of any dividend or distribution payable to the holder of the underlying security (after any applicable withholding tax, other local taxes or other charges as determined by us) multiplied by the contract quantity on the first business day immediately preceding the ex-dividend date; and

(b) if you are a short party, your account will be debited with an amount equal to any gross un-franked amount of any dividend or distribution payable to the holder of the underlying security (plus, an amount representing any applicable withholding tax, other local taxes or other charges as determined by us) multiplied by the contract quantity on the first business day following the ex-dividend date

### (3) Closing a Position

*You agree and acknowledge to us that:*

(a) at any time you may give us, by telephone or otherwise, notice of your intention to close any position (whether in

whole or part) by specifying the underlying security and the proportion of the position that you wish to close;

(b) upon receipt of a closing notice, we shall use reasonable endeavours to provide a quote for the closing price and notify you of that quote (by telephone or otherwise) – it is your obligation to notify us as soon as possible (by telephone or otherwise) as to whether you are willing to accept the closing price – should you accept the closing price of the position, or relevant portion of the position, will be closed on the closing date;

(c) at the close of business on the closing date, should there be a difference between the closing value and the contract value of the open position (or portion of it), it must be accounted for in the following way:

(i) should the closing value be greater than the contract value, the short party must pay to the long party the difference; and

(ii) should the closing value be less than the contract value, the long party must pay to the short party the difference;

(d) if a company, whose security represents all or part of the subject matter of a Margin FX or CFD position becomes externally administered within the meaning of the *Corporations Act 2001*, the Margin FX or CFD position is taken to have been closed at the time that such administration commences – the closing price shall be determined by us who may have regard to any factors we consider appropriate including, for example, the last traded price of the underlying security;

(e) without limiting our discretion, if any of the underlying securities cease to be quoted on a relevant exchange, or are suspended from quotation, or subject to a trading halt for 5 or more consecutive business days, we may, in our absolute discretion, elect to terminate the relevant Margin FX contract or CFD by providing written notice to you;

(f) if at any time a take-over offer is made in respect of an underlying security, then at any time prior to the closing date of such offer, we may close the Margin FX or CFD position – references to 'offer', 'take-over' and 'closing date' in this Client Agreement have the meanings given to them in the *Corporations Act 2001*;

(g) it may not be possible to close out a position if there is a suspension of trading or a trading halt in respect of the underlying security – in such a circumstance, we may decide, in our absolute discretion, not to close a position;

(h) we may close a position if the aggregate amount of margin represented by payments for difference payable by you in relation to a position exceeds 50% of the initial margin in respect of that position;

(i) as at business close on the day that a position is closed out, we will calculate your remaining payment rights and obligations and we based on the difference between the

closing value and the contract value at the time it was entered into and taking into account any margin which has already been debited from or credited to your account in respect of that position;

(j) where we determine that the closing value of a position cannot be calculated on the closing date for any reason, the closing value will be the value determined by us in our sole discretion;

(k) without limiting the above, if at any time trading on a relevant exchange is suspended or halted in any underlying security, we will, in determining the closing value of a position, at our discretion have regard to the last traded price before the time of suspension or halt; and

(l) all determinations and calculations made by us pursuant to this Client Agreement will be binding on you in the absence of manifest error

#### **(4) SETTLEMENTS OF POSITION**

*You agree and acknowledge to us that:*

(a) payments to be made to you with respect to any position will be made in accordance with this clause;

(b) when a payment for difference is made, or a position is closed out in accordance with this Client Agreement:

(i) we will credit to your account any amount payable by us to you; or

(ii) you must (subject to sub-clause c)) pay to us any amount payable by you to us in such currency as we may require in cleared funds within 24 hours of being advised of the amount so payable;

(c) if there is then sufficient excess variation margin any amount owing by you under this clause may be settled in whole or in part by debiting your account;

(d) we reserve the right to offset any money owed to you under this Client Agreement or any other agreement against any money owed by you under this Client Agreement or any other agreement;

(e) if you have requested payment of any money owed to you under this clause, we will deduct that money from your account and pay it to you by cheque or in such other manner as may be agreed between us and you – if you have not requested payment of any money so owed to you it will be retained in your account

#### **(5) ADJUSTMENTS**

*You agree and acknowledge to us that:*

(a) if any underlying security becomes subject to possible adjustment as the result of any of the events set out in this clause, we shall determine the appropriate adjustment, if any, to be made to the contract value of that underlying security and/or the related contract quantity to place the parties in substantially the same economic position they would have been in had the event not occurred – the adjustment will take effect as at the time determined by us, and will be conclusive and binding on you in the absence of manifest error;

(b) the events to which paragraph (a) of this clause refers are the declaration by the issuer of the underlying security of the terms of any of the following:

(i) a subdivision, consolidation or reclassification of shares, or a free distribution of shares to existing holders by way of bonus, capitalisation or similar issue;

(ii) a distribution to existing holders of the underlying shares of additional shares, other share capital or securities granting the right to payment of dividends and/or proceeds of liquidation of the issuer equally proportionately with such payments to holders of the underlying shares, or securities, rights or warrants granting the right to a distribution of shares or to purchase, subscribe, or receive shares, in any case for payment (in money cash or money's worth) at less than the prevailing market price per share as determined by us;

(iii) any event in respect of the shares analogous to any of the foregoing events or otherwise having a dilutive or concentrative effect on the market value of the shares; and

(iv) any other event in respect of which we (in our absolute discretion) decide an adjustment is appropriate;

(c) if at any time a take-over offer is made in respect of an underlying security, then at any time prior to the closing date of such offer, we may give you notice of our intention to close the position – if that happens, you are taken to have given a closing notice, with the closing price being the price notified to you by us;

(d) without limiting the above, if at any time an event occurs and we determine (in our absolute discretion) that it is not reasonably practicable to make an adjustment under this clause, we may at any time after we become aware of the event, give you notice of our intention to close the position – if that happens, you are taken to have given a closing notice, with the closing price being the price notified to you by us

#### **(6) INTEREST CHARGES**

(a) Interest payments owing in respect of borrowings by the long party under a position or in respect of borrowings by us from the short party under a position shall accrue and be payable on a daily basis at our prevailing rates of interest (determined at our sole discretion from time to time), and shall be settled by us on each day by debiting or crediting your account with the daily interest rate differential between the amount of interest payable by you and the amount of interest payable by us to you. In the event that there is insufficient excess variation margin in your account, you acknowledge that any amount due under this clause is a debt due and owing by you to us.

(b) In debiting or crediting interest to your account, we may charge or pay you interest at a rate different to the interest rate which we are charged or paid on equivalent borrowings of foreign currency (or otherwise) by a bank or counterparty and may retain the difference.

(c) The rates of interest applicable under this clause may be as agreed between you and we from time to time and, in the absence of such agreement, shall be a rate determined by us in our absolute discretion.

## 16 | COMMISSIONS, FEES AND EXPENSES

- (1) You agree to pay:
  - (a) all legal costs incurred by you associated with entering into this Client Agreement and all taxes and expenses incurred by you in connection with this Client Agreement;
  - (b) commission upon the execution of any requested financial product transaction at such rate as is agreed separately between we and you, as well as an amount equal to any other fee charged or levied on us, or other expense incurred by us, arising from any action taken pursuant to this Client Agreement;
  - (c) all stamp duty, duties and taxes (including GST) payable on or pursuant to this Client Agreement;
  - (d) all amounts payable as a result of making or taking delivery or making cash adjustment in accordance with the terms of an exchange traded or over-the-counter financial product transaction;
  - (e) all amounts incurred by you as a result of your default under the terms of this Client Agreement, including without limitation, all reasonable legal costs on a solicitor/client basis;
  - (f) interest, in respect of any unpaid amount due under this Client Agreement, at a rate of three (3) per cent per annum above LIBOR (at a minimum of 10% per annum) – such interest shall accrue and be calculated daily from the date payment was due until the date you pay in full and shall be compounded monthly; and
  - (g) interest is calculated on the basis of net free equity on each account, unless specifically agreed otherwise – interest will be charged on the full negative net free equity on any account, regardless of whether you hold other accounts which have positive net free equity (please note that this means that if you hold multiple accounts, you may incur interest charges although the aggregate net free equity position of all of your accounts may be positive)
- (2) You authorise us to appropriate, transfer, credit, apply, or pay monies that may be received by us or held by us on your behalf in payment of any amounts which may be outstanding by you to us or our agent in a transaction effected on your behalf.
- (3) Where amounts are payable by one party to the other, netting principles shall apply to enable the party owing the larger amount to pay the excess only to the other party. Amounts may be converted into the same currency in accordance with this Client Agreement.
- (4) We may in our absolute discretion reduce or waive the minimum deposit amount, the minimum account balance or interest rates on debit balances, fees (including royalties or fees for third party services) or transaction charges, for individual clients or for classes of clients, for any length of time, with or without conditions, without notice.
- (5) You acknowledge that should you effect a financial product transaction with us, you must pay all transaction charges, fees, margins, settlements, interest and any other amounts due under this Client Agreement on demand by us in cleared funds or otherwise as required in accordance with the terms of this Client Agreement.
- (6) You confirm and acknowledge that we are permitted to deduct, without further reference to you, charges relating to any services provided by us including administration charges (including but not limited to fees associated with returned cheques, payment processing, debt collection and telephone transcript copies), charges relating to the use of the online trading facility and royalties payable to any exchange from your account held with us during the full term of this Client Agreement whilst you utilise such services.
- (7) Any commissions payable by you with respect to dealings conducted on your behalf by your financial adviser will be deducted from your account by us for remittance to your financial adviser pursuant to details provided in writing by you to us. Adviser commissions are payable immediately upon the entering into and the closing of a financial product transaction.
- (8) Should you be given access through the electronic platform or otherwise to prices or information provided by any exchange to which a royalty or other fee must be paid for the use of such prices or information, we shall have the right to effect the payment of any such royalty or other fee by debiting your account on a monthly basis.
- (9) Payments by you to us in accordance with this Client Agreement must be made without any offset, counter claim or condition and without any deduction or withholding for any tax or any other reason unless the deduction or withholding is required by applicable law. Should you be required to make any form of deduction in respect of tax from any payment to be made or if we are required to pay any tax in respect of any payment made in relation to this Client Agreement at your request, you agree to keep us indemnified against that tax and agree to pay to us any additional amounts required to ensure we receive the full net amount that is equal to the amount we would have received had a deduction, withholding or payment of tax not been made.
- (10) You agree that we may at any time share transaction fees and charges with any other persons without being required to disclose the sharing of such fees and charges to you, unless such disclosure is required by law.

## 17 | DEFAULT

- (1) You acknowledge and agree that where one of the following events occurs, we may take any such action provided in clause 17(3) below:
  - (a) you fail to meet a call for a deposit or margin, or make any other payment when due under this Client Agreement;
  - (b) you are not contactable by us (and have not made alternative arrangements) within the time specified by us in order for us to obtain instructions (where required);

- (c) you die or become of unsound mind, or the partnership is dissolved or ceases to exist for any reason;
  - (d) you suspend payment of your debts, make any composition with your creditors, have a receiver appointed over some or all of your assets, take or have any proceedings taken against you in bankruptcy or take or allow any steps to be taken for your winding up (except for a solvent amalgamation or reconstruction approved in advance in writing by us) or anything similar to any of these events happens to you anywhere in the world;
  - (e) you fail in any respect fully and promptly to comply with any obligations to us under this Client Agreement or otherwise, or if any of the representations or information supplied by you are, or become, inaccurate or misleading in any material respect;
  - (f) any guarantee, indemnity or security for your obligations is withdrawn or becomes defective, insufficient or unenforceable in whole or in part;
  - (g) any security created by any mortgage or charge binding your assets becomes defective, insufficient or unenforceable in whole or in part;
  - (h) this Client Agreement has been terminated;
  - (i) it becomes or may become unlawful for us to maintain or give effect to all or any of the obligations under this Client Agreement or otherwise to carry on our business, or if we or you are requested not to perform or to close out a transaction (or any part thereof) by any governmental or regulatory authority whether or not that request is legally binding; or
  - (j) we consider it necessary to do so for our own protection
- (2) If you become aware of the occurrence of any event referred to in clause 17(1) above, you shall notify us immediately.
- (3) If any event referred to in clause 17(1) above takes place, we shall at our absolute discretion be entitled, but not obliged to, and at your expense:
- (a) terminate the Client Agreement immediately;
  - (b) close out any or all of your contracts;
  - (c) cover positions by entering into further contracts;
  - (d) cancel any outstanding orders in order to close your account;
  - (e) convert any amount owed by you to us into AUD at any time on or after payment is due (until payment is received in full);
  - (f) satisfy any obligation you may have to us out of any property, money or security belonging to you in our custody or control, and enforce any such asset or security (at your expense) held by us in such manner as it deems appropriate, but to a maximum amount equal to all sums due or to become due to us from you;
  - (g) charge you with all of the costs, expenses and losses incurred by us as a result of entering into, or closing out transactions pursuant to this Client Agreement; and
  - (h) to take any such action a reasonably prudent person would take in the circumstances to protect the personal obligation incurred when dealing on your behalf

## 18 | INDEMNITY

(1) You will indemnify and keep indemnified us and our employees, contractors or agents from and against any cost, expense, claim, action, suit, loss, damage or other amounts whatsoever arising out of any default, whether by act or omission, of you under this Client Agreement or anything lawfully done by us in accordance with this Client Agreement or by reason of us complying with any direction, request or requirement of an exchange or its clearing house or other regulatory authority.

(2) We shall not be responsible or liable in any way for any delay or error in the transmission or execution of any dealing by it under this Client Agreement caused by you or any other third party, including but not limited to trading floor or exchange system operational failure or action, bank delay, postal delay, failure or delay of any fax or electronic

transmission or delay caused by accident, emergency or act of god.

(3) No warranty is provided by us in relation to information or advice sourced from third parties, and all information provided by us to you is for your private use and is not to be communicated to any third party without prior written consent of us.

(4) We make no representation or warranty as to the results of dealing in the financial products, and shall not be liable for any damage or loss suffered or incurred by you arising out of or in connection with any general advice, forecast, or opinion to you in relation to price movements or positions or to the likely profitability of any transaction.

(5) These indemnities shall survive any termination of your relationship.

## 19 | LIMITATION OF LIABILITY

(1) You declare that you have read, understood and accepted all of the terms and conditions outlined in this Client Agreement. You agree that when entering into a financial product transaction with us, you are relying on your own judgment and, to the extent permitted by law, in the absence of negligence, fraud or dishonesty by us or any of our employees, agents and representatives in relation to our

activities as the holder of an AFSL, we shall bear no responsibility or liability of any kind whatsoever with respect to any general advice given or views expressed to you, whether or not the general advice or views expressed was as a result of a request by you, nor will we be liable in any respect of any losses incurred by you resulting from dealing in any

product or products offered by us including Margin FX contracts or CFDs.

(2) We will bear no liability whatsoever in respect of any private dealings, contracts, transactions or relationships between you and any of our employees or agents.

(3) We shall bear no liability whatsoever in respect of any impact on you caused directly or indirectly by the issuance of any instructions by you to us.

(4) In the absence of negligence, fraud, dishonesty or misconduct by us or any of our employees, agents and representatives and to the full extent of the law, we bear no responsibility or liability for any of your losses or damages whatsoever incurred as a result of any delay in transmitting or a failure to transmit funds caused by reasons outside our control or as a result of our failure to execute orders in a timely manner or administer this Client Agreement in the manner contemplated by this Client Agreement for reasons beyond our control and, without limiting the indemnity in

clause 18, you indemnify and agree to keep us and our employees, agents and representatives (for whom we act as agent) indemnified and against all sums of money, actions, proceedings, suits, claims, demands, damages, costs, expenses and other amounts whatsoever arising in respect of any such loss or damage. Reasons outside our control may include but are not limited to, exchange control or other government restrictions, exchange or market rulings, suspension of trading, power failure, telecommunication failure, strikes or war.

(5) We will not be liable for any losses or damages arising from or in connection with any Margin FX contract or CFD as the result of any moratorium, suspension or delisting of any underlying security or any other occurrence in relation to a relevant exchange.

(6) All such available exemptions and limitations of liability shall apply in respect of our employees, officers, agents and representatives.

## 20 | DISPUTE RESOLUTION

If a dispute arises between we and you relating to any transaction (a *'Disputed Transaction'*), we may close out or take any other action we consider appropriate in relation to the disputed transaction without previously notifying and/or

without having received instruction from you. We will try to notify you (verbally or in writing) what action we have taken, as soon afterwards as we practically can, but if we do not, the validity of our action shall not be affected.

## 21 | TERMINATION

(1) This Client Agreement can be terminated at any time by either party giving **seven (7)** business days written notice to the other party.

(2) Unless otherwise agreed in writing between the parties upon termination of this Client Agreement, we will close out all of your exchange traded or over-the-counter financial product transactions, at our discretion.

(3) Should any event occur which has the effect of making or declaring it unlawful or impracticable for us to offer financial product transactions to you in accordance with the terms outlined in this Client Agreement, we may immediately terminate this Client Agreement by providing you with written notice.

(4) In the event of this Client Agreement being terminated, a closing notice must be provided by you in respect of all open positions. Such notice must be provided within five (5) business days of the termination date. Should you fail to

unwind any open position within the notice period, we reserve the right to close out your positions as if a default event had occurred in accordance with this Client Agreement.

(5) Termination of this Client Agreement shall not release either party from any existing obligations or from any liabilities for any antecedent breach of any of the terms of this Client Agreement and will not relieve you of any obligations you may owe to us in accordance with this Client Agreement prior to its termination.

(6) Rights under this Client Agreement can only be waived in writing, such waiver not to affect the waiving party's rights or entitlements in respect of subsequent breaches of the Client Agreement. Failure to compel performance shall not be construed as a waiver.

(7) If this Client Agreement is terminated, you acknowledge and agree that all open positions must be closed within five (5) business days of the date of termination.

## 22 | MISCELLANEOUS

(1) We may amend this Client Agreement by giving you thirty (30) days written notice of any amendments.

(2) In the event that any of the provisions contained in this Client Agreement are found to be invalid or unenforceable, such provisions shall be deemed deleted, and the validity and enforceability of the remaining provisions shall continue unimpaired.

(3) If a party fails to exercise or delays in exercising any right under this Client Agreement, by doing so it does not waive

such right. The rights provided in this Client Agreement do not exclude other rights provided by law.

(4) You may not assign or otherwise transfer your rights or obligations under this Client Agreement or any transaction, without our express written consent.

(5) The parties agree to the electronic recording by either party of telephone or internet conversations between the parties with or without an automatic tone warning device, and the use of such recordings as evidence by either party in any

dispute or anticipated dispute between the parties or relating to dealings between the parties. You shall be permitted access to such tapes (where still held) after the date of the relevant telephone conversation, and shall be liable to us for all reasonable costs in retrieving and providing such tape.

(6) You acknowledge and agree that we are permitted to carry out an electronic database search and search credit reference agencies in order to verify your identity and credit standing. If such searches are carried out, we may keep records of the contents and results of such searches in accordance with all current and applicable laws.

(7) We reserve the right to collect such information as is necessary from you to meet our obligations under applicable

*Anti-Money Laundering* laws and regulations. We may pass on information collected from you and relating to transactions as required by applicable *Anti-Money Laundering* laws and regulations and is under no obligation to inform you we have done so. We may undertake all such anti-money laundering checks in relation to you (including restricted lists, blocked persons and countries lists) as deemed necessary or appropriate by us, and reserve the right to take any action with regard thereto with no liability whatsoever therefore.

(8) We reserve the right to provide all such information regarding you in relation to our obligations to, or requests (whether legally binding or not) by a relevant regulatory body.

## 23 | PRIVACY

(1) In order to provide you with these services, we need to collect personal information about you and obtain your agreement in relation to the handling of such personal information. If you do not provide the requested information or agree to the information handling practices detailed in this Client Agreement, we may be unable to provide the services outlined in this Client Agreement to you.

(2) You shall ensure that all information provided to us is accurate and up-to-date at all times. Any changes must be advised to us as soon as practicable.

(3) We have systems and processes in place to address privacy requirements, and can provide you with a *Privacy Statement* should you require further information about our information handling practices.

(4) You authorise us to collect, use, store, or otherwise process any personal information which enables us to provide and/or improve our services. This may, on occasion, require the disclosure of personal information to our related entities, agents and service providers, and to organisations located in countries which do not have comparable laws to protect your information.

## 24 | NOTICES

All communications relating to this Client Agreement shall be in writing and delivered by hand or sent by post, facsimile, or, electronic mail to the party concerned at the relevant address. Any such communication shall take effect if delivered, upon delivery; if posted, two (2) business days after it is posted to the party's last known address; if sent by facsimile, or

electronic mail, at the time of transmission (and receipt of confirmation. Where the Client is more than one person, any notice or other communication provided by us to one such person shall be deemed to have been provided to all such persons.

## 25 | GOVERNING LAW AND JURISDICTION

This Client Agreement is governed by and construed in accordance with the laws of Victoria, and the parties submit

to the non-exclusive jurisdiction of the courts and tribunals in that state.

## 26 | INTERPRETATION

In this Client Agreement:

**'Account'** means the account of your dealing in the financial products issued by us, which is established in accordance with the terms and conditions of this Client Agreement;

**'Agent'** means a legal entity undertaking a transaction or function on behalf of another legal entity but in its own name;

**'Authorised Person'** means a person authorised to bind the client under this Client Agreement;

**'Business Day'** means a day on which trading banks in Melbourne, Australia are open for business;

**'CFDs'** or **'Contracts for Differences'** are over-the-counter derivative products comprising an agreement under which one party is entitled to be paid an amount of money (profit), or has to pay an amount of money (loss), resulting from movements in the price or value of an underlying instrument or security (without actually owning that underlying instrument or security);

**'Client Agreement'** means the account application, these terms & conditions and any other documents annexed or incorporated by reference;

**'Close of Business'** means the time at which the market of the exchange, on which the underlying security over which a

Margin FX or CFD is quoted, normally closes on any business day;

**'Closing Date'** means in relation to a Margin FX contract or CFD the date on which you accept the closing price of the underlying security, or on which a closing date is deemed to have occurred in accordance with this Client Agreement;

**'Closing Notice'** means in relation to a Margin FX or CFD, the notice given by one party to the other to close any Margin FX or CFD in accordance with this Client Agreement;

**'Closing Price'** means in relation to a Margin FX or CFD the underlying security price as determined by us at the time we receive the closing notice;

**'Closing Value'** means in relation to a Margin FX or CFD the closing price multiplied by the contract quantity;

**'Collateral'** means any property (including securities or other assets) deposited with us by you;

**'Contract'** means any contract whether verbal or written, for the purchase or sale of a financial product, entered into by you;

**'Contract Value'** means in relation to a Margin FX or CFD the underlying security price multiplied by the contract quantity;

**'Contract Quantity'** means in relation to a Margin FX or CFD the number of underlying securities or the amount of currency to which the Margin FX or CFD relates;

**'Corporations Act 2001'** means the Corporations Act 2001 (Commonwealth);

**'Excess Variation Margin'** means the amount of your variation margin plus any amount payable by us to you at that time and less any amount payable by you to us at that time;

**'Financial Product'** includes Margin FX contracts and CFDs (commodities, shares, etc.), whether traded on an eligible exchange or over-the-counter, as those terms are defined in the applicable legislation or governed by market convention;

**'Initial Margin'** means an amount required to be deposited by you with us to open a position;

**'Long Party'** means the party identified as having notionally bought the underlying security;

**'Margin'** means initial margin or variation margin or both;

**'Net Free Equity'** means the amount of money you would have left in your account should all of your open positions be closed out at the current market price less any interest, fees

or transaction charges (gross liquidation value) less your margin requirement;

**'Operating Rules'** shall mean the rules, regulations, customs and practices from time to time of any exchange, clearing house or other organisation or market involved in the execution or settlement of any financial product transaction or contract;

**'Relevant Exchange'** means, in relation to a Margin FX or CFD transaction, where applicable, the financial market on which the reference security which forms the subject of the Margin FX or CFD is quoted and is able to be traded. If the reference security is quoted on more than one financial market, we will advise you of the relevant exchange for the purposes of the Margin FX or CFD, at the time the Margin FX or CFD is entered into;

**'Short Party'** means the party identified as having notionally sold the underlying security;

**'Trust'** means where the client is a trust, the trust identified in the application form;

**'Trust Deed'** means where the client is a trust, the trust deed governing the trust as varied, substituted, supplemented or resettled from time to time;

**'Underlying Security'** means the underlying security (including asset, exchange rate, index or commodity) to which the Margin FX or CFD relates;

**'Underlying Security Price'** means in relation to a Margin FX or CFD the current price of the underlying security as determined by us;

**'Variation Margin'** means the amount deposited by you with us including any increase or reduction arising from settlement of a closed position.

*Please note that headings are for convenience only and shall not affect the construction and interpretation of this Client Agreement. Furthermore, the singular includes the plural and vice versa. Reference to a person or individual includes corporate bodies, unincorporated associations, partnerships and individuals. If there is any conflict between the terms of this Client Agreement and the relevant operating rules, the operating rules shall prevail. Please also note that any reference in this Client Agreement to any law, statute, regulation or enactment shall include references to any statutory modification or re-enactment thereof or to any regulation or order made under such law, statute or enactment (or under such modification or re-enactment).*