



# Premium Service Terms

*FXTRADING.com – PREMIUM SERVICE TERMS*

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Gleneagle Securities (Aust) Pty Limited trading as FXTRADING.com (FXTRADING.com)

ABN 58 136 930 526, Australian Financial Services Licence No. 337 985

Issue Date: 21 June 2019

Version 1

# FXTRADING.com Premium Service Terms

This agreement is made by

- 1 Gleneagle Securities (Aust) Pty Limited (ABN 58 136 930 526; AFSL 337 985) of Level 27, 25 Bligh Street, Sydney NSW 2000 trading as FXTRADING.com (**FXTRADING.com**); and
- 2 The person identified in the Application Form as “Client” (**Client**).

It is agreed as follows:

## 1. Application of these Terms

### 1.1. This document

The terms in this agreement, as supplemented by any terms in a Schedule or accompanying set of terms in any case as agreed by Client from time to time, govern Client’s Account with FXTRADING.com. In relation to Client’s Account, a reference to “Terms” is a reference to the terms in this agreement (including any Schedule) as amended from time to time.

From time to time Client might also hold (directly or indirectly) beneficial interests in financial products issued by FXTRADING.com. The financial products are subject to their own terms of issue. A financial product’s terms of issue may be issued separately or may be part of this agreement (by way of a Schedule or Annexure) and so those terms may specify if and the extent to which they prevail over the other terms in this agreement.

### 1.2. Establishment of agreement and Account

An agreement between Client and FXTRADING.com consists of the Application Form and these Terms plus any other documents annexed or incorporated to these Terms, as amended from time to time.

If Client has selected a managed discretionary account, there will be a separate contract for the managed account services.

### 1.3. Inconsistency

For the purpose of resolving any inconsistency between the documents specified in clause 1.2, the order of precedence (with highest priority first) is: (a) any other documents annexed to or incorporated into these Terms; (b) the Terms; and (c) the Application Form.

### 1.4. Terms subject to other laws and rules

These Terms and the performance by FXTRADING.com of FXTRADING.com’s obligations under these Terms are subject to the Corporations Act and all other laws and duties imposed on FXTRADING.com which are not validly excluded by these Terms and, if FXTRADING.com’s services for Client involve arranging or placing an order or the settlement or clearing of orders by other persons, the operating rules of relevant financial markets or Exchanges and clearing and settlement facilities and other applicable laws that affect FXTRADING.com’s service to Client.

## 2. Appointment as account operator

### 2.1. Appointment

Client appoints FXTRADING.com as account operator with the powers:

- (a) to establish an Account for Client;
- (b) to carry out the services referred to or incorporated in this agreement;
- (c) to perform the functions otherwise expressly or by implication given to FXTRADING.com under this agreement; and
- (d) to take any action which FXTRADING.com reasonably determines is necessary or reasonable in connection with the carrying out of the services and functions under this agreement.

## 2.2. Services

As account operator, FXTRADING.com may provide any one or more of the following services (**Services**) to Client:

- (a) provision of the Account;
- (b) the settlement of transactions which Client has directly entered into with a third party broker;
- (c) arranging the execution, settlement or clearing of Transactions made directly for Client;
- (d) issuing Transactions directly to Client;
- (e) providing credit for Transactions and services under this agreement;
- (f) borrowing and lending of securities (if applied for by Client and accepted);
- (g) reporting as agreed between the parties from time to time;
- (h) a managed discretionary account service (if applied for by Client and accepted);
- (i) arranging, directly or as nominee for Client, for services for the benefit of Client, including broking, clearing, issuance of products (financial products including shares, options, debentures, interests in managed investment schemes including account services), payment facilities (cash or non-cash), margin lending (standard and non-standard), banking, electronic payment services, crowd-sourced financing and digital asset services and transactions (in all cases, always subject to applicable laws);
- (j) other services set out in this agreement or offered from time to time; and
- (k) other services as agreed between the parties from time to time.

## 2.3. MDA Services

If Client has a managed discretionary account service, Client acknowledges and agrees that:

- (a) FXTRADING.com does not assure, guarantee or represent to Client that any particular investment performance will be achieved, that the capital invested by Client will be maintained or that any particular investment or trading strategy will obtain assured outcomes or meet any performance criteria.
- (b) The discretionary trading of financial products is speculative and carries with it the risk of loss of some or the entire amount traded and that Client's liability is not necessarily limited to the balance of the Account but may include Client's full liability arising from trading on margin accounts.
- (c) FXTRADING.com is authorised, in operating the Account, to deal in financial products on Client's behalf, without, subject to other provisions in the agreement, any prior

approval from, or consultation with, Client in respect of the purchase or sale of financial products, including their exercise or roll-over.

- (d) Past performance of any strategy or investment approach is not a guarantee, assurance or representation of future success, whether regarding Accounts of any kind, any investment or trading strategy or any service or investment.
- (e) Dealing in financial products involves the risk of substantial loss as well as the prospect of profit.
- (f) Income (if any) earned for the Account may be irregular and the timing of that income might not suit Client's requirements. Income earned outside of Australia may be subject to tax laws applying in those other jurisdictions, including obligations on the payer to make withholdings or to disclose information to tax or other authorities. Income earned in other currencies may fluctuate in unrealised value until converted into Australian currency, and any exchange in currencies may incur fees, reducing the amount available to Client.
- (g) FXTRADING.com will not be responsible for any loss or liability incurred by Client if FXTRADING.com acts or refrains from acting within the discretionary terms authorised by Client, or if any dealing or proposed dealing is interrupted, unable to be completed or unable to take place due to the failure of any telephone, computer or other electronic service or any other third party act or omission.
- (h) FXTRADING.com is not obliged to exercise any right or other benefit attached to or granted to a holder of any financial products held for Client in the Account (including, but not limited to, voting rights, participation in rights issues, share purchase plans, buy backs, takeover offers or schemes of arrangement) and will not be liable for failure or delay in exercising any of those rights on Client's behalf.
- (i) FXTRADING.com will not be responsible for any loss or liability incurred by Client in relation to taxation of any investment, payment, dealing or right associated with the Account, including any fine, penalty or interest charge.
- (j) FXTRADING.com, another client of FXTRADING.com or a director, secretary, officer, representative, employee or consultant of FXTRADING.com may be the counterparty to a transaction executed on Client's by FXTRADING.com in operating the Account, or to a transaction in similar financial products or their derivatives, at or near the time of the transaction for Client, and may take an opposite position or one which is contrary to or different from the transaction for Client. FXTRADING.com may, on FXTRADING.com's account or on behalf of other clients, take opposite positions in respect of certain financial products to those taken by FXTRADING.com in operating the Account.
- (k) FXTRADING.com has complete discretion to invest to achieve Client's objectives. In exercising this discretion, Client might expose itself to a range of risks including risk associated with changes in economic cycles, interest rates, investor sentiment and political, social, technological and legal factors as well as changes in a company's management or its business environment as described. These risks may affect the value of Client's funds and the return which Client receives from these funds in the Account.
- (l) For the avoidance of doubt, nothing in these Terms obliges FXTRADING.com to issue Transactions, to give credit, to borrow or lend securities or to provide other services and nothing obliges Client to allow borrowing or lending of securities without its prior consent.

## **2.4. FXTRADING.com' obligations**

FXTRADING.com will:

- (a) act honestly in providing the Services;
- (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in FXTRADING.com' position in providing the Services Client;
- (c) act in Client's best interests in providing the Services and, if there is a conflict between Client's interests and FXTRADING.com' interests in providing the Services, give priority to Client's interests;
- (d) not use information which FXTRADING.com has obtained through providing the Services to gain an improper advantage in FXTRADING.com' favour or any other person or to cause Client detriment;
- (e) comply with:
  - (i) any investment strategy nominated by Client for Client's Account (if applicable); and
  - (ii) comply with any reasonable request from Client regarding Client's Account;
- (f) maintain at all times professional indemnity insurance as required by law; and
- (g) provide Client with all softcopies of reports which are required by law. Unless FXTRADING.com otherwise agrees, FXTRADING.com will provide reports on managed discretionary accounts by way of FXTRADING.com' substantially continuously available website service accessible by Client. Hardcopy reports will be available upon request.

## **2.5. Variation of Services**

FXTRADING.com may vary (including ending them) from time to time the services it will provide Client and the charges associated with those services by prior notice in writing. There is no minimum fixed period of notice of any variation. FXTRADING.com will try to give prior notice which is reasonable in the circumstances according to the nature of the variation. No variation will have retrospective effect unless agreed by Client. If Client does not agree to the variations, FXTRADING.com will give reasonable assistance to Client to terminate the Account however FXTRADING.com is not obliged to compensate Client for any loss or damage suffered or incurred by that termination.

## **2.6. Co-operation**

Client agrees to ratify and to confirm or to do, or procure the doing of, anything necessary or reasonable to complete an action of FXTRADING.com provided under its services under this agreement for the benefit of Client or which is reasonable necessary to protect the interests of FXTRADING.com under this agreement.

## **2.7. No other implied services**

FXTRADING.com does not and will not provide personal financial advice, legal, tax, other financial or accounting advice to Client as part of the services that FXTRADING.com provides to Client in accordance with these Terms except only to the extent of advice recorded in a statement of advice for managed discretionary account Services. By these Terms FXTRADING.com does not act in a fiduciary capacity and FXTRADING.com does not owe any fiduciary obligations to Client or anyone acting through Client or in Client's name in respect of

its services provided to Client in connection with these Terms except as expressly stated in these Terms, including with respect to its managed discretionary account Services.

### **3. Execution, settlement and clearing of Transactions**

#### **3.1. Execution through execution brokers**

FXTRADING.com will act as agent for Client to place orders for execution of Transactions with any executing broker, including FXTRADING.com. If FXTRADING.com, or any other Related Entity of FXTRADING.com, is the executing broker, a separate agreement will set out the terms of the agreement between FXTRADING.com and Client with regard to the execution of Transactions.

#### **3.2. Settlement**

FXTRADING.com will as agent for Client arrange to settle Transactions with any settlement participant of an exchange or clearing house, including FXTRADING.com. If FXTRADING.com, or any other Related Entity of FXTRADING.com, is the settlement participant, a separate agreement will set out the terms of the agreement with regard to the settlement of Transactions.

This clause does not prevent Client separately agreeing directly with a settlement participant for the settlement services. FXTRADING.com must have an agreement on reasonable terms with the other settlement participant before it is obliged to facilitate settlement by that participant.

Unless agreed otherwise in writing, FXTRADING.com is only deemed to have agreed to settle a Transaction upon it actually settling that Transaction.

#### **3.3. Clearing**

FXTRADING.com will as agent for Client to arrange to clear Transactions with any clearing participant of an exchange or clearing house, including FXTRADING.com. If FXTRADING.com, or any other Related Entity of FXTRADING.com, is the clearing participant, a separate agreement will set out the terms of the agreement with regard to the clearing of Transactions.

This clause does not prevent Client separately agreeing directly with a clearing participant for the clearing services. FXTRADING.com must have an agreement on reasonable terms with the other clearing participant before it is obliged to facilitate settlement by that participant.

#### **3.4. Time for instructions**

Client must give FXTRADING.com instructions to settle a Transaction in accordance with clause 3.1 by 5:00 p.m. (Sydney time) on the Business Day of the Transaction or such earlier time as required by FXTRADING.com from time to time.

### **3.5. Sell orders**

If Client gives a sell order to FXTRADING.com, Client must designate the sell order as either long or short. A sell order that is not designated is deemed to be long. The designation of the sell order as long constitutes a confirmation by Client that the securities to be sold are owned by Client. If such securities are not in FXTRADING.com' possession or immediate and unconditional control, by placing such an order Client undertakes that Client will deliver the securities to FXTRADING.com on or before the time and on the date which is necessary to allow FXTRADING.com or the settlement participant to settle the sell order. Client indemnifies FXTRADING.com for any costs, expenses or losses suffered or incurred by FXTRADING.com as a result of Client's failure to deliver securities in accordance with this clause.

### **3.6. Transaction costs**

Client is liable for all costs and Taxes as a result of, or in connection with, the Transactions executed, settlement or cleared by FXTRADING.com or the participant it arranges to provide those services.

### **3.7. Transaction discrepancies**

Client is responsible for notifying FXTRADING.com of discrepancies in relation to execution of Transactions executed by FXTRADING.com.

Client is responsible for notifying FXTRADING.com of discrepancies in relation to settlement or clearing of Transactions if that is arranged by FXTRADING.com.

### **3.8. Refusal**

FXTRADING.com may refuse to settle or clear any Transaction for Client. FXTRADING.com will notify Client of any such refusal giving reasons for such refusal (unless prevented from giving that notice or reasons by law or, in FXTRADING.com' reasonable opinion, under its compliance policies).

### **3.9. Liability of FXTRADING.com**

FXTRADING.com is not responsible and is not liable for:

- (a) any loss on settlement or clearing of any Transaction;
- (b) any acts or omission of the executing broker, settlement participant or clearing participant or their respective employees or agents;
- (c) compliance with any regulatory requirement to report Transactions to the Exchange or any other regulatory body or any other regulatory reporting or notification requirements in respect of any Transaction or any Assets;
- (d) refusing to settle (or to arrange the settlement) of any Transaction or failing to promptly notify Client of refusing or failing to settle a Transaction or to give any or any reasonable reasons for that;
- (e) any losses, costs, liabilities or expenses (including, though not limited to, any loss of profit) which may arise directly or indirectly if Client cannot access or use any on-line service provided by FXTRADING.com for any reason;
- (f) any delay in, or failure of, the transmission or receipt of any instructions or notifications sent by Client through any on-line service provided by FXTRADING.com;

- (g) ensuring that the computer or other device through which Client provides its orders or instructions to FXTRADING.com is properly maintained and adequately protected against viruses.

For the avoidance of doubt and in addition to limitations of FXTRADING.com' liability provided in clauses 3.9(e) to (g), FXTRADING.com will not be liable for any coding risk associated with or in relation to Client providing an order or instruction through any on-line service provided by FXTRADING.com.

### **3.10. Authorities**

- (a) If Client has applied for a managed discretionary account, Client authorises FXTRADING.com to operate and to manage at FXTRADING.com' discretion Client's Account subject to any instructions issued by Client to FXTRADING.com in writing, including in the Application Form or statement of advice. FXTRADING.com do not assure or guarantee the performance of any particular investment, return profits or maintenance of Client's investment arising from any transactions or decisions made under this authority.
- (b) FXTRADING.com may use, at FXTRADING.com' sole discretion, the services of one or more dealers, lenders, option writers, market makers, custodians, financiers, brokers, clearing agents, bankers, settlement agents or other service providers as appropriate to allow FXTRADING.com to perform the Services selected by Client.
- (c) Client authorises FXTRADING.com to enter into and to negotiate the terms of agreements with the service providers referred to in clause (b) without prior consultation with Client, as if FXTRADING.com were the absolute legal and beneficial owner of the Property. Client acknowledges that the agreements may include terms in relation to the following:
  - (i) purchase, sell, subscribe for, apply for, transfer, lend, borrow, redeem or otherwise deal with any Property on Client's behalf including to rebalance Client's portfolio;
  - (ii) process receipts (such as dividends) and payments in relation to Client's Account;
  - (iii) arrange for and agree to dealing in financial products (including shares) as between Client and any other client whose property is aggregated in the same bank account or custody account (including an account services which is a registered managed investment scheme);
  - (iv) signing and executing all forms, deeds, transfers and other instruments necessary to operate, maintain and administer Client's Account;
  - (v) attend (or authorise attendance at) any meeting convened and exercise any rights attached to any Securities including voting, accepting or rejecting any takeover bid;
  - (vi) participating in, refraining from participating or ceasing to participate in any bonus or distribution investment plan relating to any assets in Client's Account;
  - (vii) exercise or not exercise any option held or granted;
  - (viii) dealing in a range of financial products;
  - (ix) foreign exchange (spot or forward) and other derivatives;

- (x) clearing and settlement of all Securities;
- (xi) short selling to the extent permitted by law;
- (xii) nominee holding of financial products, rights, interests or other assets or custody of any of them; and
- (xiii) dealing and investment loan facilities,

including terms providing for enforcement and authorisation to take action on Client's behalf or in Client's name ordinarily arising and reasonable for the requirements of such facilities and security interests. The agreements with such service providers may provide for transactions on one or more exchanges or facilities outside of an exchange. The service provider may be FXTRADING.com or an associate of ours. In either case, the terms must be comparable with if not generally better than corresponding terms ordinarily available in the market to persons with trading status comparable with Client's trading status.

- (d) Client will be bound by the prevailing terms of the agreement which FXTRADING.com makes. FXTRADING.com is only liable in respect of those agreements as Client's agent and not in FXTRADING.com's personal capacity except to the extent required by law. The agreements may provide that the service providers report only to FXTRADING.com and not directly to Client.
- (e) Client acknowledges that if an agreement is entered with a clearing participant of the Exchange who is obliged as principal to comply with the settlement obligations for Exchange transactions, Client owes Client's settlement obligations to that clearing participant or FXTRADING.com, as Client's agent, owes that obligation to that clearing participant.
- (f) FXTRADING.com will not allow investments for Client's Account in an unregistered managed investment scheme unless Client has authorised such an investment and FXTRADING.com is permitted by law to allow that.
- (g) In the ordinary course of business, FXTRADING.com does not record any telephone conversations with you; however, Client authorises FXTRADING.com to record any telephone conversations with FXTRADING.com or FXTRADING.com's representatives, with or without an audible warning tone, for FXTRADING.com's records. Client will be provided access to these records upon reasonable request, but Client acknowledges that FXTRADING.com may destroy these records at any time at FXTRADING.com's sole discretion.

### **3.11. Delay or Failure to Settle**

- (a) If settlement is delayed or cancelled because:
  - (i) FXTRADING.com has not received the relevant payment from Client, FXTRADING.com may enforce payment by Client, which may also involve Client paying FXTRADING.com:
    - (A) interest on the outstanding amount, calculated daily; and
    - (B) a late settlement fee to be determined by FXTRADING.com, to cover FXTRADING.com's reasonable costs and expenses arising from Client's delay or failure to settle; or
  - (ii) Client has not provided FXTRADING.com with the relevant documents, information or instructions by the settlement date, Client must pay FXTRADING.com:

- (A) fees and charges levied by the Exchange in respect of Client's transactions; and
  - (B) a late settlement fee to be determined by FXTRADING.com, to cover FXTRADING.com's reasonable costs and expenses arising from Client's delay or failure to settle and Securities borrowing costs.
- (b) If Client has not provided FXTRADING.com with the relevant documents, information or instructions for settlement, or payment due after a demand by FXTRADING.com or the Exchange, then Client:
  - (i) authorises FXTRADING.com to sell, at FXTRADING.com's sole discretion, any of Client's Property in FXTRADING.com's control or possession;
  - (ii) indemnifies FXTRADING.com for all claims, damages, costs and expenses arising out of Client's delay or failure to settle;
  - (iii) authorises FXTRADING.com to set-off any outstanding payment against a credit balance in the Account; and
  - (iv) agree, if any Property is registered in Client's name, to transfer all of Client's interest in that Property to FXTRADING.com.
- (c) Client grants FXTRADING.com and each of FXTRADING.com's directors, company secretaries and principal executive officers and each employee (which employee's title of office includes the word "Manager" or "Head") severally as Client's attorney at any time and from time to time FXTRADING.com an irrevocable power of attorney to take such actions and sign such documents as are necessary to register the relevant Property in FXTRADING.com's name or as FXTRADING.com directs if Client does not pay as required under this agreement.

## **4. Advances**

### **4.1. Credit advances**

FXTRADING.com may, in its sole discretion, make credit advances to Client at any time up to the Credit Limit.

### **4.2. Calls**

FXTRADING.com may call on demand (that is, without any prior notice or any reasonable period of notice) all or any part of any credit advance made in accordance with clause 4.1 and the advance is repayable in accordance with such demand.

### **4.3. Interest**

Interest accrues on all credit advances daily at the rate applied by FXTRADING.com from time to time and Client must pay such interest at the time and in the manner required by FXTRADING.com.

### **4.4. Gross Up for Withholding tax**

If a law requires Client to deduct an amount in respect of Taxes from a payment under this agreement such that FXTRADING.com would not actually receive on the due date the full amount provided for under this agreement, then:

- (a) Client agrees to deduct the amount for the Taxes (and any further deduction applicable to any further payment due under paragraph (c) below); and

- (b) Client agrees to pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipts to FXTRADING.com within 10 Business Days after the day on which the original receipts were issued; and
- (c) the amount payable is increased so that, after making the deduction and further deductions applicable to additional amounts payable under this clause, FXTRADING.com will receive (at the time the payment is due) the amount it would have received if no deductions had been required.

#### **4.5. Use of credit advances**

Client may only use the proceeds of any credit advance for the purpose of Transactions, including meeting Margin Calls, Margin Requirements, interest and fees and other charges. Client may not use a credit advance, directly or indirectly, for the purpose of making a takeover offer which when completed would result in Client or any person controlling Client or under Client's control acquiring control of any legal entity.

### **5. Fees and charges**

#### **5.1. Fees**

Client agrees to pay the fees and expenses including FXTRADING.com' account fees and brokerage fees, and to reimburse FXTRADING.com for any costs, charges and expenses including stamp duty and FXTRADING.com on transactions made on Client's behalf or any Exchange fees and charges in relation to those transactions or Client's failure to pay for or settle Client's transactions. FXTRADING.com' fees and expenses will be stated in FXTRADING.com' FSG to Client or, if not specifically stated in FXTRADING.com' FSG or those fees and expenses stated in the FSG do not apply to Client, FXTRADING.com' fees and expenses will be notified to Client in FXTRADING.com' statement of advice or otherwise prior to the commencement of the service to Client.

#### **5.2. Other amounts**

Except as otherwise provided in this agreement, Client forever indemnifies FXTRADING.com against all Taxes and other costs and expenses (including, without limitation, commissions) which FXTRADING.com incurs as a result of or in connection with the services it provides to Client under this agreement.

#### **5.3. Authority**

Client authorises FXTRADING.com to deduct any amount due under this agreement to FXTRADING.com from the Cash Account.

#### **5.4. Changes**

FXTRADING.com may change the fees and expenses from time to time by written notice to Client. The notice may be given by email, letter, message posted to Client's Account, oral notice or any other effective notice and the notice will be effective whether or not Client actually reads or accesses the notice. FXTRADING.com will give not less than 7 days' notice of a change taking effect. Client's continued use of FXTRADING.com' Services after the change takes effect as confirmation of Client's acceptance of the change in fees or expenses. If Client does not agree with the change, Client must give FXTRADING.com notice to close Client's Account.

**5.5. GST**

GST is payable on most fees and expenses. Unless otherwise specified, the fees and expenses are stated exclusive of GST. If GST is payable on any supply made by FXTRADING.com under the agreement, Client must pay FXTRADING.com an additional amount equivalent to the GST at the time that payment to FXTRADING.com is due.

**5.6. Entitlement to Interest on client moneys in trust account**

FXTRADING.com is entitled to all interest earned on client moneys in any trust account and if FXTRADING.com notifies Client of an amount of interest FXTRADING.com will pay Client in respect of Client's client moneys, FXTRADING.com is entitled to all other interest earned on those moneys above the amount FXTRADING.com owes Client.

**5.7. TFN not disclosed**

If Client does not provide Client's tax file number or details of exemption, FXTRADING.com will deduct tax from Client's interest payments at the highest marginal rate plus Medicare levy and pay that to the relevant government agency.

**6. Margin**

**6.1. Essential Terms**

It is an essential Term that:

- (a) Client must at all times maintain the Margin Requirement, without needing any specific or prior notice of that;
- (b) Client must meet in full and on time a Margin Call; and
- (c) all cleared funds or Assets provided to FXTRADING.com in satisfaction of the obligation to maintain the Margin Requirement or the obligation to meet a Margin Call are transferred absolutely to FXTRADING.com and so Client retains no interest in or right to those cleared funds or those Assets after they are transferred to or at the direction of FXTRADING.com.

**6.2. Margin Requirement**

- (a) The Margin Requirement is determined by FXTRADING.com and is variable by it at any time in its absolute discretion.
- (b) The permitted composition of Margin Requirement in the form of payment by cleared funds or transfer of Assets or both are determined by FXTRADING.com and variable by it at any time in its absolute discretion.
- (c) FXTRADING.com will notify Client of:
  - (i) the Margin Requirement;
  - (ii) the types of cleared funds or Assets (or both) which will be accepted by FXTRADING.com as Margin; and
  - (iii) the Valuation Percentage.

If the Margin Requirement is expressed as an amount equal to the Valuation Percentage of the value of Assets including securities, Client must maintain the Margin Requirement even if the amount is not calculated by FXTRADING.com or is calculated but not notified to Client (including by way of Client not receiving the notice) or in any case the actual amount must be determined by reference to the market value of the securities which FXTRADING.com or Client must obtain.

- (d) Client must maintain at least the amount of Margin Requirement notified by FXTRADING.com from time to time, whether or not FXTRADING.com gives any notice to Client to meet a Margin Call or Client has actual notice of or has itself calculated the required amount of Margin Requirement. The Margin Requirement can change continuously and can change automatically, including over the week-end or other non-trading days. Client's obligation to maintain at least the Margin Requirement is continuous.

### **6.3. Margin Calls**

- (a) Client must meet a Margin Call (in addition to Client's obligation to maintain the Margin Requirement) within the required time by any combination of Closing Out positions, providing Assets or making payments (or any combination of them both) as accepted by FXTRADING.com, in its absolute discretion.
- (b) FXTRADING.com has an absolute discretion to set the amount of the Margin.
- (c) FXTRADING.com may make Margin Calls more frequently than daily and Client must fully and punctually comply with such calls.
- (d) The payments to be made towards satisfying a Margin Call must be made, as specified by FXTRADING.com from time to time, and in the absence of any specific instructions, to a trust account nominated by FXTRADING.com.
- (e) Margin Calls may be made by any means of notice permitted by these Terms, including by telephone call, email or fax to Client or Client's Authorised Person. Client acknowledges that it is fundamental that Client remains contactable by FXTRADING.com at all times using the contact details given by Client to FXTRADING.com from time to time and that Client's failure to be contactable or to receive notice of a Margin Call at any such contact address does not affect the validity of the Margin Call or Client's obligation to satisfy it.
- (f) If no other time is stipulated by FXTRADING.com for when Client must satisfy the Margin Call then Client must comply within 24 hours of the Margin Call being made, even if Client has not received it or is actually aware of it and even if the time of making the Margin Call or the time for satisfying it are outside of normal working hours of a Business Day.
- (g) Client acknowledges that Margin Calls may be payable immediately if required by FXTRADING.com.
- (h) If Client fails to satisfy the Margin Call by the required time, then FXTRADING.com may (without prejudice to any other rights or powers under these Terms) in its absolute discretion, and without creating an obligation to do so, Close Out, without notice, all or some of Client's Transactions, whether or not those Transactions caused the need for more Margin Requirement.

### **6.4. Late payment**

If Client does not in full and on time meet Client's obligations to maintain the Margin Requirement or to meet a Margin Call:

- (a) Client is immediately liable to pay the Overdue Margin Interest Rate on the amount outstanding; and
- (b) that failure is automatically an Event of Default without the need for any other notice or event.

### **6.5. Excess**

If the value of the Margin paid to FXTRADING.com exceeds the Margin Requirement, FXTRADING.com may pay the amount of that excess to Client when requested in writing by Client. Any such payment must be made by close of business on the Business Day following such request. Nothing in this clause prevents FXTRADING.com from adjusting the Margin Requirement or making a Margin Call before or after the request and if such an adjustment affects the calculation of any excess Margin, then FXTRADING.com's obligation to make a payment to Client is adjusted accordingly.

#### **6.6. No Encumbrances**

- (a) Client warrants and undertakes that all Assets transferred to FXTRADING.com to satisfy the Margin Requirement or to meet a Margin Call are free of any Encumbrance at the time such Assets are transferred to FXTRADING.com.
- (b) Client warrants and undertakes that all Assets transferred to FXTRADING.com as Collateral are free of any Encumbrances at the time such assets are transferred to FXTRADING.com and will remain free from any Encumbrances while the Assets are held by FXTRADING.com as Collateral.

#### **6.7. Crediting Payments**

A payment by Client is credited by FXTRADING.com at the time cleared funds have been received and credited to the account nominated by FXTRADING.com or such earlier time as allowed by FXTRADING.com, so a payment to maintain the Margin Requirement or to meet a Margin Call is not satisfied unless and until Client's payment is received in cleared funds solely to the account of or benefit of FXTRADING.com or as it directs, and not merely by way of evidence of attempts to pay into a trust account or attempts to make an electronic funds transfer.

#### **6.8. Client Authorising Payments**

Without limiting any other right of FXTRADING.com, all of the funds which Client deposits into a trust account nominated by FXTRADING.com for receipt of payments designated for it may by these Terms be immediately withdrawn and paid to FXTRADING.com for its own account, towards satisfying Client's obligations to pay fees, charges, to maintain the Margin Requirement and to meet Margin Calls and to pay all other amounts owing to FXTRADING.com under these Terms, even if:

- (a) Client's payment (after deduction for fees, charges and other amounts owing) is in an amount less than or more than the amount required to satisfy a Margin Call or to maintain the Margin Requirement;
- (b) more than one Margin Call is made after Client's payment to a trust account;
- (c) the amount of Margin Requirement reduces after Client's payment to a trust account;
- (d) there is any delay between the time Client makes the payment to the trust account and when FXTRADING.com makes the withdrawal;
- (e) Client purports to withdraw Client's authority and direction but Client still has at that time an obligation to FXTRADING.com to maintain the Margin Requirement or to satisfy a Margin Call which has not been satisfied; or
- (f) Client later decides to deal in financial products for a lesser value than it intended prior to payment or Client does not deal.

## **6.9. Client's liability unlimited**

Client's liability in respect of Margin Requirement and Margin Calls is not limited to the amount, if any, initially paid to FXTRADING.com for crediting Margin to Client's Account.

Client is responsible to pay in cleared funds any deficit owing to FXTRADING.com after Close Out of a Transaction and if Client defaults in payment of such deficit, FXTRADING.com may pay the deficit out of the Account or realise any financial products held by FXTRADING.com (whether or not by sale on any Exchange and, if so, for whatever price and at whatever time is chosen by FXTRADING.com in its discretion) and apply the proceeds against that deficit.

## **6.10. Closing Out**

FXTRADING.com may (without notice to Client) Close Out, but will not be obliged to Close Out or to attempt to Close Out, some or all Open Transactions, at that time or any later time as FXTRADING.com determines (whether in its discretion or by automatic trading platform management) if:

- (a) on any day on which Client has an Open Transaction, the value of the Account and any other Margin paid by Client under these Terms does not exceed the Margin Requirement; or
- (b) Client fails to make a Margin payment by the due date and time, which may be immediately after the call is made; or
- (c) at any time, and from time to time, FXTRADING.com determines that the value of all of Client's Open Transactions (and not taking into account any cash balance in Client's Account) represents a substantial net unrealised loss to Client such that, in FXTRADING.com's belief, the continued trading, or failure to Close Out, one or more of Client's Open Transactions will or is likely to materially prejudice Client's Account balance.

## **7. Payments and Transfers**

### **7.1. Cash**

If Client is required to pay an amount of cleared funds to FXTRADING.com under this agreement, Client must pay such amount of cleared funds into the bank account or accounts specified by FXTRADING.com from time to time.

### **7.2. Assets**

If Client is required to transfer Assets to FXTRADING.com under this agreement, Client must transfer or cause the Custodian (including by directing FXTRADING.com to issue Proper Instructions) to transfer such assets in accordance with the market convention for assets of that type to FXTRADING.com or such other person as specified by FXTRADING.com.

### **7.3. Payments and transfers by FXTRADING.com**

Any obligation of FXTRADING.com to pay or repay any amount of cleared funds or deliver or redeliver any Asset to Client or the Custodian under this agreement is conditional on the Margin held by FXTRADING.com after the payment or delivery exceeding the Margin Requirement in respect of Client.

### **7.4. Documents and instructions for transfer**

For all deliveries under this agreement, the parties agree to execute and to deliver all documents and give all instructions necessary for all right, title and interest in the securities or

Collateral to be transferred absolutely to FXTRADING.com or as it directs, without Client retaining any beneficial interest in them or any equity of redemption.

## **8. Custody**

### **8.1. Appointment**

Client acknowledges that:

- (a) FXTRADING.com may appoint a nominee to hold Client's Custodial Assets;
- (b) The nominee may be a responsible entity of a managed investment scheme which includes custody services in addition to other services (so that the custody is incidental to or integrated with other services);
- (c) FXTRADING.com or its nominee, may appoint a sub-custodian to hold Client's Custodial Assets (which sub-custodian may appoint a sub-sub-custodian);
- (d) the custodian (if applicable) may make deductions from the Custodial Assets from time to time for the purposes of satisfying any obligation entered into in accordance with the relevant custody agreement;
- (e) Client might not have the benefit of direct contractual rights against a person with whom the custodian transacts on Client's behalf; and
- (f) in respect of the custody arrangements referred to in this clause, some benefits accruing to holders of property (including Securities) might not be directly or indirectly available for Client's benefit and that will be without compensation or other adjustment, for example, voting rights, participation in rights issues, share entitlements, share purchase plans, bonus issues, laws applying to retail derivative client moneys, reporting and direct rights to manage disputes.

### **8.2. Authorisation of FXTRADING.com**

Client authorises FXTRADING.com to give instructions on behalf of Client to the Custodian in relation to all dealings with the Custodial Assets:

- (a) to do anything that this agreement contemplates (either expressly or by implication) will be done by FXTRADING.com;
- (b) to do anything which, in the opinion of FXTRADING.com, is incidental to, or necessary or desirable in connection with, any act referred to in paragraph (a) above; or
- (c) to do anything which FXTRADING.com is directed to do by Client.

### **8.3. Withdrawal of Assets**

In no circumstances is FXTRADING.com obliged to issue instructions to the Custodian to transfer Custodial Assets if FXTRADING.com has not consented to the release of the Custodial Assets from the Charge.

### **8.4. Encumbrances**

Client warrants and undertakes that all Custodial Assets which are transferred to or otherwise from time to time held by the Custodian are free of any Encumbrances and will remain free from any Encumbrances while the Custodial Assets are held by the Custodian except for the Custodian's interests, FXTRADING.com's interests (if any) and any lien imposed on all securities in relevant clearing or custody system.

## 9. Default

### 9.1. Events of Default

Each of the following is an Event of Default:

- (a) **(non-payment or non-delivery)** Client does not pay or deliver on time any amount payable or any Asset required to be delivered by it under this agreement;
- (b) **(cross default)** any present or future monetary obligations of Client or any of its Subsidiaries for amounts totalling \$100,000 are not satisfied on time (or at the end of their period of grace) or become prematurely payable (and in this clause 9.1((b)), a "monetary obligation" means a monetary obligation in connection with:
  - (i) money borrowed or credit raised;
  - (ii) any hiring arrangement, redeemable preference share, letter of credit or financial markets transaction (including a swap, option or futures contract);
  - (iii) a guarantee or indemnity in connection with money borrowed or raised;
- (c) **(enforcement against assets)** distress is levied or a judgment, order or Encumbrance is enforced, or becomes enforceable, against any property of Client (whether in its capacity as trustee and manager or not) or any of its Subsidiaries;
- (d) **(incorrect representation or warranty)** a representation or warranty made by or for Client in connection with this agreement is found to have been incorrect or misleading when made;
- (e) **(insolvency)** Client or any of its Subsidiaries becomes Insolvent;
- (f) **(ceasing business)** Client or any of its Subsidiaries stops payment, ceases to carry on its business or a material part of it, or threatens to do either of those things except to reconstruct or amalgamate while solvent on terms approved by FXTRADING.com;
- (g) **(appointment of manager)** a person is appointed under legislation to manage any part of the affairs of Client or any of its Subsidiaries;
- (h) **(Material Adverse Event)** an event occurs which is or is likely to be (or a series of events occur which, together, are or are likely to be) a Material Adverse Event;
- (i) **(unable or intend not to perform)** Client admits to FXTRADING.com that it is unable or intends not to perform any of its obligations under this agreement;
- (j) **(non-compliance with other obligations)** Client fails to perform when due any other obligation under this agreement and the failure is not remedied by the end of the Business Day following the Business Day on which written notice from FXTRADING.com of the failure is effective;
- (k) **(event of default under Transactions)** a Transaction is terminated due to an event of default (however described) applying to it;
- (l) **(breach of security)** there is a breach of any of the terms of the Security;
- (m) **(voidable charge)** the Security or a transaction in connection with it is or becomes (or is claimed to be) wholly or partly void, voidable or unenforceable or does not have (or is claimed not to have) the priority which FXTRADING.com as the chargee intended it to have ("claimed" in this paragraph means claimed by the chargor in that Security or any of its Related Entities or anyone on behalf of any of them);

- (n) **(prejudice to right of indemnity)** Client's right to an indemnity out of the assets of the Trust is reduced or lost in any way or Client disclaims its right of indemnity;
- (o) **(ceasing to be trustee and manager)** Client does or participates in any act or enters into any agreement which might bring about its removal or retirement as trustee and manager of the Trust or the trustee and manager ceases to be trustee and manager of the Trust;
- (p) **(Trust terminated)** the Trust is terminated, or a resolution that it be terminated is passed by Client or by other persons having the power to initiate the termination of the Trust;
- (q) **(Statement breach)** Client fails to deliver the statements required by FXTRADING.com in accordance with the agreed times; and
- (r) **(Additional Event of Default)** any Additional Event of Default occurs.

Failure by Client to comply with any period for remedy notified by FXTRADING.com will constitute an event of default under this clause 9.1.

## 9.2. Notification

Client must notify FXTRADING.com immediately if an Event of Default occurs, or an event which with the passing of time, giving of notice, expiry of any applicable grace period or the making of any determination by FXTRADING.com will or is reasonably likely to constitute an Event of Default for Client.

## 9.3. Consequences of default

If an Event of Default occurs, FXTRADING.com may by notice to Client:

- (a) terminate any credit advances to Client;
- (b) terminate any loan of securities to or from Client;
- (c) terminate (including by way of Closing Out) any other Transactions or other positions entered into under or in connection with this agreement which have not been completed, or which are outstanding (including the holding of Collateral, any hedging or other derivative transaction and any purchase or sale of securities which has not been completed).

No further payments or deliveries are then required in respect of those terminated items, except as provided for in clause 9.4.

## 9.4. Determination of amounts notionally payable on termination

If FXTRADING.com gives a notice in accordance with clause 9.3, FXTRADING.com must calculate, in its discretion but acting reasonably, the value (represented by The total of all interest, costs, expenses and all other amounts payable to FXTRADING.com by Client under this agreement is also to be included in the total of all amounts notionally payable to FXTRADING.com.

If the result is a positive number, then Client must pay that amount to FXTRADING.com by close of business on the same Business Day that such notice is given.

If the result is a negative number, then (subject to FXTRADING.com's right to set off against that amount any other obligation of Client to FXTRADING.com) FXTRADING.com must pay the absolute value of that amount to Client.

The Australian dollar equivalent amount of a foreign currency amount must be determined by

converting the foreign currency amount at the rate at which FXTRADING.com reasonably considers appropriate.

Transaction or other position terminated under clause 9.3. Each value is to be represented by an amount either notionally payable to FXTRADING.com by Client or notionally payable by FXTRADING.com to Client.

This clause is to be applied and interpreted with the purpose that these calculations are intended to place a fair and reasonable monetary value on every right and liability of Client existing in connection

an Australian dollar amount) of each with Transactions or any other position contemplated by this agreement to enable calculation of a net amount owed to or by Client in any way arising under or in connection with this agreement.

#### **9.5. Calculating the amount payable on termination**

The total of all amounts notionally payable by FXTRADING.com is then to be subtracted from the total of all amounts notionally payable to FXTRADING.com.

#### **9.6. Liability for losses**

Client is liable for any losses incurred by FXTRADING.com as a result of an Event of Default or for termination and closing out Transactions or other positions, or any combination of that. Interest accrues on any amount payable by Client under this clause on a daily basis at the rate of the cost of funding for FXTRADING.com (as reasonably determined by FXTRADING.com) plus 2%.

#### **9.7. Exercise of Security**

If Client fails to pay any amount due to FXTRADING.com in accordance with the requirements of this agreement, FXTRADING.com may, without needing to give prior notice, exercise its rights under the Security including requiring delivery to it of all or any of the Custodial Assets and the sale of those Custodial Assets.

For clarity, FXTRADING.com need not exercise its rights in relation to Custodial Assets prior to calculating the net amount payable on termination nor determining that Client owes FXTRADING.com the net amount payable.

### **10. Client Money and other assets**

#### **10.1. Client money**

Cash paid by or held for Client to or as directed by FXTRADING.com which is paid to another service provider, including any Custodian, will be held beneficially for Client unless and until it is paid to a person (under authorisation from Client pursuant to these terms) to pay for a product or service.

Client acknowledges that payment of Client's moneys by Custodian to an issuer of an over the counter financial product, may, under current laws, not be treated as "retail derivative client moneys" for the purposes of laws governing permitted use of client moneys in relation to retail clients who deal in over the counter derivatives. FXTRADING.com and service providers appointed by it (including associates of it) may benefit from this because client moneys laws may not apply due to the mandatory characterisation of the service providers (e.g., a Custodian) as a wholesale client, not a retail client.

Client acknowledges and agrees to the potential conflicts of duties and interests that

FXTRADING.com and its associates (including any Custodian) may have from time to time arising out of the appointments of service providers and the consequences of laws not applying for the benefit of Client which would apply if Client directly holds those financial products.

## **10.2. Withholding Taxes on Income**

If a law requires FXTRADING.com to deduct an amount in respect of Taxes in relation to any income or other payments to Client under this agreement, Client authorises FXTRADING.com to make such deductions without any further express instructions. FXTRADING.com will pay to Client the amount of income or other payments net of Taxes.

## **11. Representations, warranties and undertakings**

### **11.1. Client's representations and warranties**

Client represents and warrants to FXTRADING.com that:

- (a) it has the power to enter into and perform its obligations under this agreement, and that, on acceptance of its Application Form, it has duly made this agreement so as to constitute valid and binding obligations of Client;
- (b) it holds such licences and authorities as are necessary to lawfully perform its obligations under this agreement;
- (c) at the date of signing this agreement, Client is not in breach of any contractual arrangement which would give rise to an Event of Default;
- (d) it has carefully considered the advantages and disadvantages of entering into this agreement and has concluded that the discretionary trading of financial products pursuant to this agreement is suitable for Client;
- (e) no litigation, arbitration or administrative proceeding or claim is in progress, pending or to Client's knowledge threatened, which could affect the legality, validity or enforceability of this agreement or affect Client's ability to perform its obligations under this agreement;
- (f) it has complied with its legal obligations and regulatory requirements concerning money laundering and investments in the Trust, has implemented due diligence procedures to ensure that investments in the Trust are not made for money laundering purposes or other unlawful purposes and the due diligence procedures are consistent with those which a prudent trustee and manager of a fund of the same kind as the Trust would implement; and
- (g) it is an Australian resident taxpayer (unless expressly specified otherwise in the Application Form);

Client further represents and warrants that each of the warranties set out above in this clause is true and correct in every respect as at the date of this agreement and will be so at all times while this agreement remains in force.

### **11.2. Client as trustee - representations and warranties**

If Client enters into this agreement as a trustee, it warrants in its personal capacity:

- (a) the trust has been duly constituted and is validly existing in compliance with all applicable laws and its trust deed has been duly executed and duly stamped, in each case in accordance with the laws of each State and Territory of Australia;
- (b) the trust deed and its constituent documents give the trustee power to carry on all

of the business activities now conducted by it in any capacity and to enter into and comply with its obligations under, and to carry on the transactions contemplated by, this agreement;

- (c) all necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the trust deed, any other document or any law for the entry into, observance and performance by the trustee of its obligations under this agreement;
- (d) each of Client's obligations under, and the transactions contemplated by, this agreement constitutes binding obligations and is completely and lawfully enforceable against the trustee and in respect of the trust's property in accordance with their terms;
- (e) nothing done under this agreement or any instructions given by Client is or will be a breach of any trust;
- (f) the assets of the relevant trust are, and at all relevant times will be, sufficient and available to the trustee in that capacity to discharge Client's obligations and liabilities under this agreement;
- (g) Client is the only trustee of the trust unless all trustees are described in the Application Form and any later change is promptly notified to FXTRADING.com;
- (h) no property of the trust has been re-settled, set aside or transferred to any other trust or settlement;
- (i) the trust has not been terminated, nor has the date or any event for the vesting of the trust's property in its beneficiaries occurred;
- (j) no determination has been made to distribute the trust's property on a date which is earlier than the latest date under the trust deed by which the trust's property must be distributed;
- (k) there is no conflict of interest on the trustee's part in entering into this agreement and performing its obligations under it;
- (l) it has an unrestricted right to be fully indemnified, reimbursed or exonerated out of the trust's property in respect of any losses or liabilities incurred by it as trustee and the trust's property is sufficient to satisfy that right of indemnity, reimbursement or exoneration; and
- (m) it has complied with its obligations in connection with the trust.

Client further represents and warrants that each of the warranties set out above in this clause is true and correct in every respect as at the date of this agreement and will be so at all times while this agreement remains in force.

### **11.3. Client's undertakings**

Client undertakes to FXTRADING.com that:

- (a) it will hold such licences and authorities as are necessary to lawfully perform its obligations under this agreement;
- (b) in giving any instructions under this agreement, Client will act as principal and not as agent (unless expressly specified otherwise in the Application Form); and
- (c) in giving any instructions under this agreement, Client will act in accordance with the provisions of its constitution, the constitution of the Trust or other constituent documents (if applicable), any applicable laws and regulations and comply with any

investment restrictions in any prospectus, information memorandum, investment management agreement or other document governing the investment by Client;

#### **11.4. FXTRADING.com' representations and warranties**

FXTRADING.com represents and warrants to Client that:

- (a) it has the power to enter into and to perform its obligations under this agreement, and has duly made this agreement so as to constitute the valid and binding obligations of FXTRADING.com;
- (b) it holds such licences and authorities as are necessary to perform its obligations under this agreement;
- (c) the terms of this agreement do not violate any obligation by which FXTRADING.com is bound, whether arising by contract, operation of law or otherwise.

FXTRADING.com further represents and warrants that each of the warranties set out above in this clause is true and correct in every respect as at the date of this agreement and will be so at all times while this agreement remains in force.

#### **11.5. Acknowledgment**

The parties acknowledge that:

- (a) they have taken (or had a reasonable opportunity to take) their own financial, legal, taxation and other advice in relation to this agreement, and they have made (or had a reasonable opportunity to make) an independent assessment of this agreement and the business being entered into under the terms of this agreement; and
- (b) they have not relied on any statements, representations, promises or undertakings that are not contained in this agreement.

### **12. Liability of parties**

#### **12.1. No Responsibility or liability of FXTRADING.com**

Client agrees that:

- (a) FXTRADING.com is not providing advice to Client under this agreement and no executing broker, employee, agent or other person has authority to give investment advice on behalf of FXTRADING.com;
- (b) FXTRADING.com is not responsible for monitoring Client's positions for the purpose of determining their composition, performance, risk, investment return or other investment features;
- (c) FXTRADING.com is not responsible for monitoring the overall financial position of Client or determining whether the Transactions entered into by Client meet the investment objectives or comply with the investment restrictions of Client; and
- (d) Client is responsible for ensuring that it complies with all laws and regulations applicable to Client, including short selling laws or laws affecting investments by trustees of superannuation funds.

## **12.2. Exclusion of Liability**

To the extent permitted by law, none of FXTRADING.com, its Related Entities and their respective employees or agents is liable for any Losses suffered by Client under or in connection with this agreement unless the Losses arise from the negligence, wilful default or fraud of that person, but in no event is FXTRADING.com, any of its Related Entities or their respective employees or agents liable for:

- (a) any consequential loss or damage; or
- (b) any Losses arising from any matter expressly identified in this agreement as a matter for which FXTRADING.com is not responsible and for which FXTRADING.com will not be liable.

## **12.3. Indemnity in Favour of FXTRADING.com**

To the extent permitted by law, Client indemnifies FXTRADING.com and each of its Related Entities or their respective employees and agents against any Losses which may be suffered or incurred directly or indirectly by that person in connection with or as a result of any act or service performed or permitted under this agreement (other than Excluded Tax), except to the extent that the expense or loss is due to negligence, wilful default or fraud of that person.

## **12.1. Limitation of Liability of Client as trustee**

The liability of Client to FXTRADING.com, its agents or any other person under or arising out of this agreement is, if Client is actually acting as trustee under a trust disclosed to FXTRADING.com in the Application Form, limited to the amount that Client actually receives in the exercise of its right of indemnity against the assets of the Trust except, if Client is not entitled to be indemnified from the assets of the Trust due to the fraud, wilful violation of the law, negligence, breach of trust, breach of duty or other default of Client or its agents (other than FXTRADING.com), Client will be fully personally liable to FXTRADING.com.

## **13. Notices**

### **13.1. Form**

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of file person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### **13.2. Delivery**

They must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by electronic messaging system to the electronic address identified by Client in writing or via a dedicated electronic messaging system between Client and FXTRADING.com; or
- (d) given in any other way permitted by law.

If the intended recipient has notified a changed address of any kind, then the communication must be to that address or number.

### **13.3. When effective**

They take effect from the time they are received unless a later time is specified.

### **13.4. Receipt - post**

If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

### **13.5. Electronic messages**

Client may authorise FXTRADING.com to send Client or Client's adviser unencrypted statements (including Margin statements) and other notices or notifications by electronic means. If Client authorises FXTRADING.com to do so, Client accepts all the risks of FXTRADING.com sending the statements, notices or notifications by electronic means, including, without limitation, any risks arising from the corruption, alteration, interception or disclosure of data and the risk of delayed or incomplete receipt.

## **14. Reporting**

### **14.1. Reports to Client**

FXTRADING.com must provide to Client the reports and within the times agreed from time to time or, if not agreed, as appropriate having regard to the services provided under this agreement. These reports will be provided for information only and any valuations represent an estimate or indicative only and do not represent the value of the Assets nor the net proceeds available on their realisation.

### **14.2. Reports to FXTRADING.com**

Client must provide to FXTRADING.com the reports and within the times agreed from time to time or, if not agreed, as appropriate having regard to the risks to FXTRADING.com for its services provided under this agreement.

### **14.3. Method of giving reports**

All reports must be sent in accordance with clause 14 or as agreed by the parties.

### **14.4. Tax information**

FXTRADING.com is not responsible for providing statements, records, summaries or returns on matters relating to Taxes to Client or any Government Agency for or on behalf of Client.

## **15. Duties**

### **15.1. Client to pay or reimburse duties**

Client must pay or reimburse FXTRADING.com for all stamp, transaction, registration and similar Taxes (including interest, fines and penalties) incurred by FXTRADING.com or any of its Related Entities on or in relation to the execution, delivery, performance or enforcement of this agreement or any Transaction under or in connection with it or any payment, receipt or other transaction contemplated by this agreement other than an Excluded Tax.

### **15.2. Included Taxes**

Those Taxes include financial institutions duty, debits tax or other Taxes payable by return and Taxes passed on to FXTRADING.com or any Related Entity by a bank or financial institution, other than an Excluded Tax.

### **15.3. Delay or omission**

Client forever indemnifies FXTRADING.com and each Related Entity against any liability resulting from delay or omission to pay those Taxes except to the extent the liability results from failure by FXTRADING.com or any Related Entity to pay any Tax after having been paid in funds (with all necessary documents) to do so by Client, other than an Excluded Tax.

## **16. Goods and services tax**

### **16.1. Amounts exclusive of GST**

All payments to be made by Client under or in connection with this agreement have been calculated without regard to GST.

### **16.2. GST gross up**

If all or part of any such payment is the consideration for a Taxable Supply, Client must pay to the supplier additional consideration equal to the GST Amount. Such additional amount is to be paid on the earlier of:

- (a) the date of the first payment for the Taxable Supply; and
- (b) the date five (5) Business Days after the date on which an Invoice is issued for the Taxable Supply.

### **16.3. GST Input Tax Credits**

If under or in connection with this agreement Client is required to reimburse or indemnify for an amount, Client will pay the relevant amount (including any sum in respect of GST) less any GST Input Tax Credit which GST determines (acting reasonably) that it is entitled to claim in respect of that amount.

### **16.4. GST Groups**

If a person is a member of a GST Group, references to GST for which the person is liable, and to Input Tax Credits to which the person is entitled, include GST for which the Representative Member of the GST Group is liable and Input Tax Credits to which the Representative Member is entitled.

**GST** means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charges.

**GST Amount** means in relation to a Taxable Supply the amount of GST for which the supplier is liable in respect of the Taxable Supply.

**GST Group** has the meaning given to this term by the GST Law.

**GST Law** has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**Input Tax Credit** has the meaning given to this term by the GST Law.

**Invoice** has the meaning given to this term by the GST Law.

**Representative Member** has the meaning given to this term by the GST Law.

**Taxable Supply** has the meaning given to this term by the GST Law.

## **17. Non-Australian GST**

### **17.1. Amounts exclusive of Non-Australian GST**

All payments to be made by Client under or in connection with this agreement have been calculated without regard to Non-Australian GST.

### **17.2. Non-Australian GST gross up**

If all or part of any such payment is the consideration for a supply of goods or services (however defined) by GST in respect of which Non-Australian GST is payable (whether by FXTRADING.com or any person on its behalf or in its place) to any relevant tax authority or Government Agency, Client must pay to FXTRADING.com additional consideration equal to the amount of any such Non- Australian GST. Such additional amount is to be paid on demand by FXTRADING.com.

### **17.3. Input tax credits**

Where under or in connection with this agreement Client is required to reimburse or indemnify for an amount, Client will pay the amount (including any sum in respect of Non-Australian GST) less any input tax credit (however defined or described) which FXTRADING.com determines (acting reasonably) that it is entitled under the law applicable to that Non-Australian GST to claim in respect of that amount.

Non-Australian GST means any goods and services tax, value added tax or similar transactional tax, however described, imposed on supplies of goods or services under the law of any jurisdiction outside Australia, together with any related interest, penalties, fines or other charges.

## **18. Assignment**

A party may not assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case, without the consent of the other party (which consent must not be unreasonably withheld or delayed).

## **19. Privacy and Confidentiality**

### **19.1. Authorisation to collect and use**

Client authorises FXTRADING.com to collect Client's personal information from Client when FXTRADING.com provides services to Client under these Terms. Client authorises FXTRADING.com to use any information FXTRADING.com collects from Client or from others, or such other relevant documents:

- (a) to assess Client's request for FXTRADING.com to provide FXTRADING.com's services to Client;
- (b) to provide FXTRADING.com's services to Client in accordance with these Terms;
- (c) to allow FXTRADING.com to communicate with third parties in connection with the matters contemplated by these Terms, such as in connection with the Cash Account; and
- (d) to ensure that legal and regulatory requirements under Applicable Laws are met.

### **19.2. Changes**

Client must notify FXTRADING.com in writing when any of the information provided by Client changes.

### **19.3. Disclosures**

Client authorises FXTRADING.com to disclose personal information to:

- (a) FXTRADING.com' related bodies corporate, whether in Australia or overseas;
- (b) any clearing or settlement participant responsible for the clearing or settlement of Client's Transactions;
- (c) FXTRADING.com' service providers (including marketing companies, data consultants and IT contractors);
- (d) FXTRADING.com' agents, contractors, and external advisers;
- (e) government and other regulatory bodies and authorities whether in Australia or overseas;
- (f) payment system operators;
- (g) other financial institutions and credit providers who provide services to Client;
- (h) on a confidential basis, a prospective purchaser of, joint venture partner of, or investor in, FXTRADING.com or a related body corporate or all or part of the business of FXTRADING.com or a related body corporate; and
- (i) any other relevant person to the extent required by Applicable Laws.

### **19.4. Access**

Client has a right to access any personal information that FXTRADING.com holds about Client. Sometimes there may be a reason why access will not be possible. If that is the case, Client will be told why, unless the Applicable Law prevents that.

### **19.5. Further information**

Client agrees to take all reasonable steps to deliver information or documentation to FXTRADING.com, or cause information or documentation to be delivered to FXTRADING.com concerning Transactions which are requested by a person having a right to request such information or documentation. Client agrees that if Client does not provide any information requested by FXTRADING.com or do not agree to FXTRADING.com using Client's information as set out in this clause, FXTRADING.com may not be able to provide FXTRADING.com' services to Client.

### **19.6. Enquires about Client**

Client agrees that FXTRADING.com may make such enquiries as FXTRADING.com reasonably decides of any person, including Client's employer, bank or a credit agency, relating to Client's creditworthiness and disclose the result of those enquires and as a result of Client's disclosures to FXTRADING.com (including Client's tax file number) to any credit rating agency or to any clearing or settlement participant responsible for the clearing or settlement of Client's Transactions for the purposes of FXTRADING.com' or that participant's risk assessment.

### **19.7. Recording conversations**

Client authorises FXTRADING.com to record any or all incoming and outgoing phone calls with Client without making a disclosure to Client of this nature each and every time Client speaks with a representative of FXTRADING.com. These calls may be recorded with or without an audible tone.

Client agrees that FXTRADING.com may use such recordings for the purposes of monitoring and training its staff, monitoring compliance with Client's and FXTRADING.com's respective regulatory and contractual obligations and resolving disputes.

If there is a dispute between FXTRADING.com and Client, Client may listen to any recording of those conversations (where still available). Nothing in these Terms obliges FXTRADING.com to keep a recording or to notify Client that FXTRADING.com has eliminated a recording.

## **20. Governing law**

This agreement is governed by the laws in force in New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts having jurisdiction over laws in that place.

## **21. Entire agreement**

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

## **22. Services of FXTRADING.com not exclusive**

- (a) The services of FXTRADING.com to Client under this agreement are not exclusive and nothing in this agreement restricts FXTRADING.com's ability to provide services (whether or not similar) to other persons and to retain for FXTRADING.com's own use and benefit all fees, charges or other moneys payable as a result of those other services. Client acknowledges that FXTRADING.com may provide its services in respect of any Assets notwithstanding that FXTRADING.com or a Related Entity may be the issuer of the Assets, or provides services to the issuer, or otherwise has an interest in the Assets.
- (b) FXTRADING.com is not deemed to be affected with notice of, or to be under any duty to disclose to Client, any fact or thing which comes to the notice of FXTRADING.com or any officer, servant or agent of FXTRADING.com in the course of FXTRADING.com providing similar services to others or in the course of its business in any other capacity or in any manner whatever otherwise than in the course of carrying out its duties under this agreement.
- (c) FXTRADING.com or any Related Entity may act on its ordinary terms in relation to any Transactions, facilities or other services to be arranged for, on behalf of, by or with Client and is not obliged to provide them to Client on most favourable terms or on the best available terms. FXTRADING.com and any Related Entity are entitled to charge and retain any benefits (including, without limitation, any fees, charges or interest payable by Client or any third party) accruing to FXTRADING.com or any Related Entity in relation to its services as issuer, agent, broker, investment manager, or provider of other facilities or services without liability to account to Client and without that reducing or negating any amounts payable by Client.

## **23. Termination**

### **23.1. Termination by notice**

Either party may terminate this agreement by giving written notice to the other party, except that this agreement remains applicable after termination to any then outstanding:

- (a) Transactions which FXTRADING.com has been instructed to settle;

- (b) credit advances or securities loans under this agreement; and
- (c) Transactions issued by FXTRADING.com.

The period of prior written notice is the earlier of:

- (d) the period agreed by FXTRADING.com and Client;
- (e) 20 Business Days; and
- (f) if FXTRADING.com reasonably determines it must terminate the agreement with effect sooner than 20 Business Days (whether for reasons relating to actual or potential changes in law, changes in taxes, changes in facilities provided to FXTRADING.com which directly or indirectly relate to services provided by FXTRADING.com to Client or for any other reason), that period of notice.

### **23.2. Client's instructions**

On termination in accordance with clause 23.1, FXTRADING.com must use all reasonable endeavours to comply with Client's instructions, including:

- (a) transferring all positions to an alternative account operator or other service provider;
- (b) Closing Transactions or other positions and paying a cash amount to Client; or
- (c) a combination of both.

## **24. General**

### **24.1. Time of essence**

Time is of the essence of performance of a party's obligations under this agreement.

### **24.2. Joint Clients**

Client, being the holder of the Account, may be comprised of two or more persons. If Client comprises more than one person, then the Account must be established in all of Client's names as joint tenants. FXTRADING.com may discharge FXTRADING.com's duties to all of those persons by sending notices or payments to any one of them. Each person constituting Client, the holder of the Account, is jointly and severally liable for the obligations under these Terms, and FXTRADING.com may act on the instructions of any one of those persons.

### **24.3. Discretion in exercising rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

### **24.4. Partial exercising of rights**

If a party does not exercise a right or a remedy fully or at a given time, the party may still exercise it later.

### **24.5. No liability for loss**

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under this agreement.

### **24.6. Approvals and consents**

By giving its approval or consent, a party does not make or give any warranty or representation

as to any circumstance relating to the subject matter of the consent or approval.

**24.7. Conflict of Interest**

The parties' rights and remedies under this agreement may be exercised even if this involves a conflict of duty or a party has a personal interest in their exercise.

**24.8. Remedies cumulative**

The rights and remedies provided in this agreement are in addition to other rights and remedies given by law independently of this agreement.

**24.9. Rights and obligations are unaffected**

Rights given to the parties under this agreement and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

**24.10. Variation and waiver**

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

**24.11. Indemnities**

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

**24.12. Prompt performance**

If this agreement specifies when the party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all other obligations promptly.

**24.13. Force majeure**

Despite any other provision of this agreement, no party need act if it is impossible to act due to any cause beyond its control (including break-down or failure of transmission, communication or computer facilities, failure of any relevant exchange, clearing house or broker to perform its obligations, war, riot, natural disaster, labour dispute, or law taking effect after the date of this agreement). The non-performing party agrees to notify each other party promptly after it determines that it is unable to act.

**24.14. No responsibility for force majeure**

No party has responsibility or liability for any loss or expense suffered or incurred by any other party as a result of its not acting for so long as the impossibility under clause 24.12 continues. The non-performing party must make reasonable efforts to avoid or remove the cause of non-performance and agrees to continue performance under this agreement promptly when the causes are removed.

**24.15. Counterparts**

This agreement may consist of a number of copies, each signed by one or more parties to the agreement. If so, the signed copies are treated as making up the one document and the date on which the last counterpart is executed will be the date of the agreement.

#### 24.16. Currency conversion on judgment debt

If a judgment, order or proof of debt for an amount in connection with this agreement is expressed in a currency other than that in which the amount is due under this agreement, then Client indemnifies FXTRADING.com against:

- (a) any difference arising from converting the other currency if the Spot Rate of exchange for converting the other currency into the due currency available to FXTRADING.com when FXTRADING.com receives a payment in the other currency is less favourable to FXTRADING.com than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and
- (b) the costs, charges, expenses and Taxes of conversion.

Client must pay amounts due under this indemnity on demand from FXTRADING.com.

### 25. Definitions and Interpretation

#### 25.1. Definitions

These meanings apply unless the contrary appears:

**Account** means the record of account established by FXTRADING.com in Client's name. The Client may have more than one Account. Each reference to "Account" is a reference to each of Client's Accounts.

**Applicable Laws** means, in relation to a matter, all laws, legislation, regulation and subsidiary regulation, instruments and orders of a regulatory authority or a court, rules and procedures of a financial market or a clearing facility which apply to the relevant matter.

**Assets** means any assets held by FXTRADING.com and any Custodial Assets.

**Authorised Person** means the person (if any) described as Client's authorised agent in the Application Form or another person notified by Client to FXTRADING.com.

**Associate** means a body corporate that is an associate of FXTRADING.com by application of Part 1.2, Division 2 of the Corporations Act.

**Authorised Officer** means a person appointed by the relevant party to act as an Authorised Officer for the purposes of this agreement.

**Base Currency** means Australian Dollars.

**Cash Account** means a ledger account maintained by FXTRADING.com payments to FXTRADING.com, payments to Client and other debits and credits, in accordance with this agreement. The ledger amount does not represent any moneys held beneficially for Client unless those funds are held in a trust account for Client or are otherwise held in custody beneficially for Client.

**Charge** means the document of that name entered into by Client, FXTRADING.com and the Custodian which identifies itself as the charge for Client securitising its obligations under this agreement, whether before or after this agreement is first made.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature however arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Close Out**, in relation to a Transaction, means discharging or satisfying the obligations of the parties under the Transaction and this includes:

- (a) by delivering the amount or value of the underlying security (including a dollar multiple of an index) required in accordance with the terms of the Transaction;
- (b) as a result of the matching up of the Transaction with a Transaction of the same kind under which Client has assumed an offsetting opposite position; and
- (c) making adjustments for fees and charges.

**Collateral** means such securities or financial instruments or cash which Client delivers to FXTRADING.com for the purpose of meeting any Margin Requirement in accordance with this agreement and includes any certificate or other documents of title and transfer in respect of such securities, financial instruments or cash. Margin paid to FXTRADING.com will not be received or held as Collateral unless specifically and expressly treated as such. Nothing in this definition overrides the terms of this agreement which deal with Margin payments to Global prime.

**Corporations Act** means the Corporations Act 2001 (Commonwealth).

**Credit Limit** means the upper limit of credit advances to Client as determined by FXTRADING.com.

**Custodial Assets** means the assets to be transferred or delivered to the Custodian by Client and accepted by the Custodian, including those transferred or delivered to the Custodian in accordance with this agreement.

**Custodian** means each person appointed (from time to time) as custodian in accordance with clause 8.

**Details** means the relevant details in the Application Form or as subsequently notified in writing to FXTRADING.com.

**Disposal of an Asset** means the sale, transfer, assignment, redemption, surrender or disposal in any way of the Asset, part of the Asset or the right to receive payment of amounts referable to or payable under the Asset.

**Encumbrance** means any mortgage, lien, charge\* pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, easement or any other security arrangement or any other arrangement having the same effect

**Event of Default** means an event so described in clause 9.

**Exchange** means the exchanges and clearing and settlement houses operated by ASX Limited, ASX Clear Pty Limited, ASX Settlement Pty Limited, Australian Securities Exchange Limited, ASX Clear (Futures) Pty Limited and any other exchange, clearing or settlement house.

**Excluded Tax** means a Tax imposed by a jurisdiction on the net income of FXTRADING.com because FXTRADING.com has a connection with that jurisdiction but not:

- (a) a Tax calculated by reference to the gross amount of a payment under a document (without the allowance of a deduction);
- (b) a Tax calculated by reference to the profit or gain from the Disposal of an Asset; or
- (c) a Tax imposed because FXTRADING.com is taken to be connected with that jurisdiction solely because it is party to a document or a transaction contemplated by a document.

**FSG** means a financial services guide.

**Government Agency** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

**Income** means all interest, dividends or other distributions on Assets.

**Initial Margin** means the amount specified by FXTRADING.com as applying to the relevant Transaction or otherwise notified by FXTRADING.com to Client in writing.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts as and when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Interest Rate** means the overnight cash rate announced by the Reserve Bank of Australia from time to time.

**Level of Gearing Liabilities** on any day, means the aggregate (as determined by FXTRADING.com) of all money, debts, liabilities and obligations, whether present or future, actual or contingent, owed by Client to FXTRADING.com or any Related Entity under this agreement, any FXTRADING.com Client Agreement or under any other agreement or transaction between Client and FXTRADING.com or any Related Entity whatever, plus any costs and expenses (including without limitation, legal fees) which FXTRADING.com may incur in enforcing or maintaining any of its rights under any of these agreements.

**Losses** means all Claims, demands, damages, losses, costs, expenses and liabilities.

**Margin** means the value of the aggregate of (a) the amount in the ledger of the Account to the credit of Client ascribed by FXTRADING.com as the "Margin"; and (b) Assets (if any) credited to Client's Portfolio Account (after discounting each security by the applicable Valuation Percentage).

**Margin Call** means a request by FXTRADING.com to Client to pay such additional Margin in the amount specified by FXTRADING.com.

**Margin Requirement** means the amount of Margin required to be paid by Client to FXTRADING.com from time to time calculated or specified by FXTRADING.com as the margin requirement under this agreement.

**Material Adverse Event** means something which materially adversely affects:

- (a) Client's ability or capacity (legal, financial or otherwise) to comply with its obligations under this agreement;
- (b) Client's ability to carry on its business as it affects its capacity to meet its obligations under this agreement; or
- (c) the rights of FXTRADING.com under this agreement,

in any case, whether or there is actual notice of an event or thing.

**Open Transaction** means, at any time, a Transaction which has not been Closed Out or settled prior to the time agreed for settlement.

**Overdue Margin Interest Rate** means the interest rate applied by FXTRADING.com from time to time and in the absence of being specified, it is the Interest Rate plus 2%.

**Portfolio Account** means a ledger account within the Account maintained by FXTRADING.com for the recording of the securities balances of securities which are Assets.

**Receiver** includes a receiver or receiver and manager.

**Related Entity** has the meaning it has in the Corporations Act.

**Security** means the charge created under the Charge.

**Spot Rate** means, if an amount in one currency is to be converted into a second currency on any date, unless the parties otherwise agree, the spot rate of exchange quoted by FXTRADING.com current at 3:00 p.m. (Sydney time) on that date for the sale by FXTRADING.com of the second currency against a purchase by FXTRADING.com of the first currency.

**Subsidiary** of an entity means another entity which is a subsidiary of the first within the meaning of part 1.2 division 6 of the Corporations Act or is a subsidiary or otherwise controlled by the first within the meaning of any approved accounting standard.

**Taxes** means taxes, levies, imposts, charges and duties (including, stamp and transaction duties) imposed by any Government Agency, together with any related interest, penalties, fines and expenses in connection with them.

**Transaction** means the purchase or sale by Client of any security, derivative, currency or other financial instrument (whether on or off market), including without limitation, any foreign exchange transaction, securities loan or exchange traded derivative transaction.

**Trust** means the fund, trust or other managed investment scheme (in any case, whether or not registered or licensed) identified in the Details for which Client is the trustee.

**value** means with respect to any Assets as of any time on any date, the lesser of the market value (as reasonably determined by FXTRADING.com as at the relevant time) or its replacement value (including all transaction costs), having regard to (but not exclusively limited to) market or other valuation data sources selected by FXTRADING.com. If the Assets are suspended, the value will be deemed to be nil unless (including for the purposes of calculating Client's Margin Requirement). Any amount in a currency other than the Base Currency will be converted into the Base Currency at the Spot Rate prevailing at the time relevant to the valuation.

**Valuation Percentage** means the discounted percentage to be applied to the market value of each security to determine the value of the Margin, as determined by FXTRADING.com in its sole discretion and as notified to Client from time to time.

## 25.2. References to certain general terms

Unless the contrary intentions appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule (whether or not the reference has an initial capital letter) is a reference to a clause in or annexure or schedule to this agreement;
- (c) **(reference to statutes)** except in the definitions of Related Entity and Subsidiary a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and *vice versa*;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, permitted substitutes (including persons taking by novation) and permitted assignees;
- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (i) **(jointly and severally)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (j) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (k) **(dollars)** Australian dollars, dollars, AS or \$ is a reference to the lawful currency of Australia;
- (l) **(calculation of dollar amounts)** in calculating any amount referred to in this agreement as an amount in Australian dollars an amount held in a currency other than Australian dollars is to be converted to Australian dollars at the Spot Rate prevailing on the date of such calculation;
- (m) **(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (o) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (p) **(meaning not limited)** the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when

introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

- (q) **(next day)** if an act under this agreement to be done by a party on or by a given day is done after 5:00 p.m. on that day, it is taken to be done on the next day;
- (c) **(next Business Day)** if an event under this agreement must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day
- (d) **(time of day)** time is a reference to Sydney time;
- (e) **(reference to anything)** anything (including any amount) is a reference to the whole and each part of it; and
- (f) **(deliver)** the word "deliver" includes transfer.

### 25.3. Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.