



# **Client Agreement**

## Access to Worldwide Forex Trading

JD Capital Financial Group Limited

Company Registration Number 3837956

FSP 302606

120 Albert Street, Auckland 1010, New Zealand

Published June 9, 2017

## Contents

1. Terms and Conditions .....	9
1.1 Introduction .....	9
1.2 Interpretation.....	9
1.3 Who are we? .....	10
1.4 Financial Services License .....	10
2. General Information .....	10
2.1 Principal.....	10
2.2 No Personal Financial Advice .....	11
2.3 All trades at your own Risk .....	11
2.4 Reliance on your own Judgement.....	12
2.5 Margin Requirements .....	12
2.6 Our Trading Service.....	12
2.7 Access to Internet .....	12
2.8 Underlying Instrument.....	12
2.9 Our Discretions .....	12
2.10 Application Form.....	13
2.11 Anti-Money Laundering Legislation .....	13
2.12 Our Office and Trading Hours .....	14
3. Your Account.....	14
3.1 Opening.....	14
3.2 Account Information .....	14
3.3 Trust Account .....	14
3.4 Naming of Client .....	15
3.5 Account Details .....	15
4. Instructions and Dealings.....	15
4.1 Changing Authorised Persons .....	15
4.2 Account Security Information .....	15
4.3 Further Instructions .....	16
4.4 Confirmation of Instructions.....	16
4.5 Acknowledgement of Instructions.....	16
4.6 Internet Instructions .....	16
4.7 Instruction not a Contract.....	16

4.8	Correct Designation .....	16
5.	Consent to Recording of Telephone Conversations .....	17
6.	Operating your Account.....	17
6.1	Charges and Fees you pay.....	17
6.2	No Interest .....	17
6.3	Commissions .....	17
6.4	Timing of Credits Deductions or fees which you are to pay from your Account.....	17
6.5	Incorrect Crediting of Account.....	17
6.6	Reporting to you .....	18
7.	Opening a Trade.....	19
7.1	No Rights in Underlying Agreement .....	19
7.2	Opening a Trade using our Trading Platform.....	19
7.3	Telephone .....	20
7.4	Nature of Quote.....	20
7.5	Formation of Contract.....	20
7.6	Currency.....	21
7.7	New Zealand Dollars .....	21
7.8	Opposing Positions.....	21
7.9	Difference in Buy and Sell Price .....	21
7.10	Profit and Losses .....	21
8.	Pricing.....	22
8.1	Quotes.....	22
8.2	Amended Quotes and Margin FX Contracts outside the Normal Trading Size.....	22
8.3	Minimum Trading Size .....	23
8.4	Margin FX Contracts.....	23
8.5	Your Choice to Deal.....	23
8.6	Errors in Prices .....	23
8.7	Price, Execution Process and Trading Platform Manipulation.....	24
9.	Margin.....	25
9.1	Initial Margin .....	25
9.2	Margins while positions are Open .....	25
9.3	Continuing Margin Obligation.....	25
9.4	Exceptions .....	25

9.5	Changing Margin Percentage .....	26
9.6	Notification of Increased Margin Percentage .....	26
10.	Your Obligation to pay and monitor Margin .....	27
10.1	You must pay Margin .....	27
10.2	You must monitor Margin .....	27
10.3	No Obligation to make Margin Call .....	27
10.4	Timing of Changes to Margin Percentages .....	28
10.5	No Online Access .....	28
10.6	Your obligation to notify us .....	28
10.7	Time allowance for rewarding Margin .....	28
11.	Closing a Margin FX Contract .....	28
11.1	When can a Margin FX Contract be closed .....	28
11.2	Automatic Closure .....	29
11.3	Time Limits for Closing .....	29
11.4	Method of Closing Margin FX Contracts by us .....	29
11.5	Contract Price at Closing .....	29
11.6	Contract Value at Closing .....	30
11.7	Closure During Business Day .....	30
11.8	Timing of Payments .....	30
11.9	Automatic Closure: Margin FX Contracts .....	30
11.10	Closure: Long and Short Contract .....	30
11.11	Closure: Two or more Margin FX Contracts .....	31
12.	Close of Business Accounting .....	31
12.1	When we Account .....	31
12.2	Contract Value .....	31
12.3	Contract Value at Close .....	31
12.4	Valuation .....	31
12.5	Daily Swaps of Margin FX Contracts .....	32
12.6	Entitlement .....	32
12.7	Long Margin FX Contracts .....	32
12.8	Long Bullion Contract .....	32
12.9	Short Margin FX Contracts .....	32
12.10	Short Bullion Contract .....	33

12.11	When we make Accounting Payments .....	33
13.	Stop Loss Orders and Limit Orders .....	33
13.1	Availability of Orders.....	33
13.2	Margin Requirements to Fill Orders .....	33
13.3	Liability for Losses arising from Orders.....	34
13.4	Our Right to impose a Stop Loss Order.....	34
13.5	Informing you of orders we impose.....	34
14.	Events of Default.....	35
14.1	What constitutes an event of default? .....	35
14.2	What action may we take? .....	36
14.3	Additional Closing Rights .....	37
14.4	Our Right to Close or Void .....	37
14.5	Our Rights to suspend Account.....	37
14.6	Conclude Investigations .....	38
14.7	Exercise of Rights .....	38
15.	Netting and Setting Off .....	38
16.	Payments.....	39
16.1	Your Payments must be the full amount .....	39
16.2	Payments we owe you and you to owe us are offset .....	39
16.3	Payment of Amounts due to us .....	39
16.4	Withdrawing Credit from your Account .....	40
16.5	No Securities Interest created .....	40
16.6	Payments transferred must have free title.....	40
17.	Amendment and Termination .....	40
17.1	Current Version of Agreement governs Margin FX Contracts .....	40
17.2	Amending Agreement.....	40
17.3	You may Object.....	41
17.4	Application Date.....	41
17.5	Our Right to Terminate .....	41
17.6	Your Right to Terminate.....	41
17.7	Reservation of Rights .....	42
18.	Application of Account Funds .....	42
18.1	Our Rights to apply Account Funds.....	42

19.	Ceasing to offer to Trade .....	42
19.1	Our Right to Cease to Trade in Margin FX Contracts .....	42
19.2	Close out of Positions if we cease to trade .....	42
20.	Legal and Regulatory Requirements .....	43
20.1	Our Actions to comply with the Law .....	43
20.2	You agree to comply with the Law .....	43
21.	Limitation of Liability .....	43
21.1	Our Liability Limited .....	43
21.2	Reasonably Foreseeable Losses .....	43
21.3	Indirect Losses .....	43
21.4	Loss of Profit .....	43
21.5	Applications of Limitations .....	44
21.6	You agree to Indemnify us .....	44
21.7	Survival of Indemnity .....	44
22.	Warranties, Representations and Undertakings .....	44
22.1	Your Warranties .....	44
22.2	Trustee of a Trust .....	45
22.3	Notification of Changes .....	46
22.4	Electronic Services .....	46
23.	Electronic Services .....	46
23.1	Scope .....	46
23.2	Access .....	47
23.3	Access Requirements .....	47
23.4	Virus Detection .....	47
23.5	Use of Information, Data and Software .....	47
23.6	Maintaining Standards .....	47
23.7	System Defects .....	48
23.8	Intellectual Property .....	48
23.9	Liability and Indemnity .....	48
23.10	Suspension or Permanent Withdrawal with Notice .....	49
23.11	Immediate Suspension or Permanent Withdrawal .....	49
23.12	Effects of Termination .....	50
24.	Direct Debit Authorisation .....	50

25.	Force Majeure.....	51
25.1	Force Majeure Event.....	51
25.2	Actions we may take .....	51
25.3	Notification of Force Majeure Event.....	52
25.4	Liability .....	52
25.5	Close Open Positions.....	52
26.	Dispute Resolutions .....	52
26.1	Informing us about Disputes.....	52
26.2	How Disputes are dealt with.....	52
26.3	Where we may commence Legal Proceedings .....	52
26.4	Internal Complaints handling policy .....	52
27.	Privacy .....	53
27.1	Personal information .....	53
27.2	Provision of our Services.....	53
27.3	Disclosing Information .....	53
27.4	Credit and Identity Checks .....	53
27.5	Introducing Brokers .....	53
27.6	New Products or Services .....	54
27.7	Pass Personal Data .....	54
27.8	Other Countries.....	54
27.9	Access to Information .....	54
27.10	Recording .....	54
28.	Illegality ETC. ....	54
29.	Assignment and Delegation .....	54
30.	Rights and Remedies.....	55
31.	Rights of Third Parties.....	55
32.	Delay, Omission and Waiver .....	55
33.	Governing Law and Jurisdiction .....	56
33.1	Law .....	56
33.2	Jurisdiction .....	56
34.	Notices .....	56
34.1	Notices must be in writing .....	56
34.2	Provision of Notice.....	57

34.3	When Notices are received.....	57
34.4	Change of Notice Details.....	57
34.5	Deemed Notice where Notice sent to Contact Details provided.....	57
34.6	Your Responsibility to update Contact Details .....	57
35.	Glossary.....	58



# 1. Terms and Conditions

## 1.1 Introduction

These Terms and Conditions are part of the Agreement between JD Capital Financial Group Ltd (FSP 302606) (“we” or “us”) and you the client (“you” or “yourself”). They govern our dealings with you in our margin foreign exchange contracts (Margin FX Contracts). These dealings include our trading services and the transactions we conduct with you. The Agreement between us is constituted by the following documents:

Application Form;

these terms and conditions;

any additional Terms and Conditions issued by us and notified to you and accepted by you, in connection with our dealings with you; and the market information that is located on our Trading Platform. These documents are referred to as the “Agreement”, which is dated 09/06/2017. There are other materials that explain the basis of our dealings with you, but are not part of the Agreement. They include: our Website and our Trading Platform.

By signing the Application Form or by electronically submitting your Application on our Website, you confirm that you accept the terms and conditions of the Agreement. When we open an account for you, you will be bound by the Agreement in all your dealings with us. Contracts that arise out of the transactions we conduct with you under this Agreement are legally binding and enforceable.

You must, therefore, read this Agreement carefully and seek professional advice, if necessary. We particularly draw your attention to those terms and conditions which deal with Margin, those that set out our rights to void and/or close a Margin FX Contract and those that relate to termination of this Agreement and closing of your Account, as you need to clearly understand these important obligations and the implications arising from your failure to comply with these conditions.

## 1.2 Interpretation

- a) If there is any inconsistency between the Confirmation and this Agreement, the Confirmation will prevail.
- b) The terms and expressions in this Agreement which have defined meanings, and the rules of interpretation, are set out in Schedule 1.

### 1.3 Who are we?

JD Capital Financial Group Ltd was established to acquire and operate a foreign exchange business. It subsequently expanded its operations to include the issuing of the financial products that are the subject of our Client Agreement, the delivery of services in respect of them and the development of platforms to facilitate the delivery of those services to New Zealand and international clients.

JD Capital is owned and supported by experienced and capable staff and investors which have provided the capital to expand and support its operations.

### 1.4 Financial Services License

JD Capital is registered by the New Zealand Financial Service Providers and FSP number is FSP302606. We are fully registered to provide the following financial services:

- Wholesale and/or generic financial adviser services
- Providing forward foreign exchange contracts
- Entering into or trading on an exchange, in an over-the-counter market or otherwise service to retail and wholesale clients

## 2. General Information

### 2.1 Principal

In our dealings with you, we will act as principal and not as agent on your behalf. Accordingly, we will be the counterparty to all of your trades. Unless we agree otherwise in writing, you will also deal with us as principal, and not as an agent or representative of another person. If you act on behalf of a principal, whether or not you identify that principal to us, we will not accept that principal as a client, unless we agree that such person can act on your behalf. We will then be entitled to rely on any instructions given to us by the agent in relation to your Account. But, from time to time, we may require confirmation that the agent has authority to act on your behalf.

## 2.2 No Personal Financial Advice

Personal advice is advice about a financial product that is given or directed to a person in circumstances where the provider of the advice has considered one or more of the person's objectives, financial situation and needs, or a reasonable person might expect the provider to have considered one or more of those matters.

We will not provide any personal or financial product advice to you, in relation to the terms and conditions of this Agreement or on the merits of any trade. We deal with you on an execution-only basis and any advice we give you will be general advice only. This means that any advice we do give you has been prepared without taking account of your objectives, financial situation or needs. In the circumstances, you should seek professional advice as to whether the financial products that we offer are suitable for your purposes having regard to your objectives, financial situation or needs. You should obtain our Client Agreement before making any decisions in relation to our products or services.

## 2.3 All trades at your own Risk

We are under no obligation:

- a) to satisfy ourselves as to the suitability of any trade for you;
- b) to monitor or advise you on the status of any trades; or
- c) to make Margin Calls; or except where legislation requires it, close any open Position despite the fact that previously we may have given such advice or taken action in relation to that trade or any other.

All trades will, therefore, be made at your own risk and to the maximum extent permitted by law, we will not in any way be liable for any claims, damages, losses (including consequential losses) or injury suffered or incurred by you as a result of or arising out of:

- a) any misinformation or general financial product advice provided by, or on behalf of, us relating to a trade entered into or proposed trade to be entered into by you under this Agreement; or
- b) any information or general financial product advice provided by, or on behalf of, us in relation to any financial product that you may deal in under this Agreement.

## 2.4 Reliance on your own Judgement

You must understand the risks of dealing in Margin FX Contracts and rely solely upon your own judgment in dealing with us. We are not under any responsibility or owe to you any duty of care to monitor your trades or to prevent you from trading beyond your means or ability or otherwise, to protect you.

## 2.5 Margin Requirements

It is your responsibility and obligation to monitor and pay Margins strictly in accordance with clause 10.

Before you begin to trade with us we will take all reasonable steps to provide you with a clear explanation of spreads, fees, funding and other charges for which you will be liable. You should appreciate that these charges will affect your trading net profits (if any) or increase your losses.

## 2.6 Our Trading Service

Our trading service is an online service and you specifically consent to the receipt of documents in electronic form via email, website or other electronic means. Upon your request, we will send you the Product Disclosure Statement and Client Agreement in paper form at no charge.

## 2.7 Access to Internet

You confirm that you have regular access to the Internet and consent to us providing you with information about us and our services (including market information), our costs and charges and our Notices by email or by posting such information on our Website or on our Trading Platform.

## 2.8 Underlying Instrument

You will not have any rights of ownership or otherwise in any Underlying Instrument as a result of the trade with us. This means you will not own or have any interest in the physical currency Bullion and the Margin FX Contract.

## 2.9 Our Discretions

Various clauses of this Agreement confer discretions on us to act in circumstances that are set out in the relevant provision. In exercising such discretions, we will act in accordance with the following:

- a) we will have due regard to our commercial objectives, which include;
  - (i) maintaining our reputation as a product issuer;

- (ii) responding to market forces;
- (iii) managing all forms of risks, including, but not limited to operational risk and market risk; and
- b) we will act when necessary to protect our Position in relation to the trade or Event;
- c) we will take into account the circumstances existing at the time and required by the relevant provision, and not take into account irrelevant or extraneous considerations or circumstances;
- d) we may take into account your trading or investment experience; and
- e) at all times, we will act reasonably, commercially and bona fide, and where required or appropriate provide you with prior notice before exercising that discretion.

## 2.10 Application Form

You, by signing or submitting electronically the Application Form when you are applying to become our customer:

- a) acknowledge to us that you have received or downloaded, and read and understood this Client Agreement; and
- b) agree that we will provide our products and services to you on the terms and conditions of this Agreement.

## 2.11 Anti-Money Laundering Legislation

You acknowledge that we may require further information from you from time to time to comply with the Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT Act). By entering into this Agreement, opening an account and transacting with us, you undertake to provide us with all additional information and assistance that we may reasonably require to comply with the AML/CFT Act.

You also warrant that:

- a) you are not aware and have no reason to suspect that:
  - (i) the moneys used to fund your transactions have been or will be derived from or related to any money laundering, financing of terrorism or other illegal activities, whether prohibited under New Zealand law, international law or convention or by agreement; or

- (ii) the proceeds of your investment will be used to finance any illegal activities; and
- (iii) neither you nor your directors, in the case of a company, are a politically exposed person or organisation as the term is used in the Anti-Money Laundering and Countering Financing of Terrorism Rules Instrument 2009.

## 2.12 Our Office and Trading Hours

- a) Hours: Our office is from 10am to 7pm Monday to Friday (Summer Daylight Savings) and trading hours is 9am Monday to 9am Saturday (winter daylight savings); 10am Monday to 10am Saturday (summer daylight savings).
- b) Limited Trading Hours: We are under no obligation to quote prices or accept orders or instructions in respect of any Contract to which Limited Hours Trading applies during any time when the relevant underlying exchange is closed for business.

## 3. Your Account

### 3.1 Opening

After we accept your Application, we will open an Account in your name. We may split your Account into different sub -accounts denominated into different currencies and references in this Agreement to your Account is to be taken to include reference to sub-accounts or the relevant sub-accounts, as the case requires. We reserve the right to refuse to open an Account for any reason whatsoever.

### 3.2 Account Information

You undertake and warrant to us that any information provided to us is correct and that you will immediately inform us of any material change to that information, and including any changes to your contact details or financial status.

### 3.3 Trust Account

JD Capital is following The Futures Industry (Client Funds) Regulations 1990, all funds received from clients are banked and held in a client trust account with a NZ registered bank.

### 3.4 Naming of Client

Where 2 or more natural persons and no others are named as the client, the account will be established in their names as joint tenants unless they specifically advise otherwise. In all other cases, the accounts will be established in the names as tenants in common.

### 3.5 Account Details

Upon opening an account with us, you will be given an internet specific password, which must be declared, together with your account number, when you wish to access your account. You will also be given an account name, which must also be declared to access your account in certain circumstances. You will be deemed to have authorised all trading under your account number irrespective of whether the person using it for the purpose of trading is using it with your authority, unless the trade in question is not one that you in fact authorised directly or through a power of attorney; and

- a) the person using the account number obtained it from us as a result of our negligence, or
- b) we otherwise act negligently in accepting instructions on your account.

## 4. Instructions and Dealings

### 4.1 Changing Authorised Persons

You may, by written notice, change the persons who are authorised from those indicated on the Application; but we are not bound by any such variation until we actually receive written notice. We may act upon the oral or written orders or instructions of any Authorised Person, or any person who appears to us to be an Authorised Person, despite the fact that the person may not be authorised. For example, we are entitled to act on any orders or instructions transmitted using your user name, account number, user ID or password.

### 4.2 Account Security Information

You are required to keep all security information relating to the Account, including, but not limited to, any user name, account number, user ID and password, confidential and we do not have to establish the authority of anyone using these items. If you are aware or suspect that these items are no longer confidential, you should contact us as soon as practicable so that they may be changed.

### 4.3 Further Instructions

We may require instructions from you in respect of any Margin FX Contract or proposed Margin FX Contract and if we do, you must promptly provide us with that information. If you do not, we may, in our absolute discretion take all such reasonable steps at your cost as we reasonably consider necessary or desirable for our or your protection. But this does not detract from your responsibility to keep yourself informed at all times as to the key dates and events affecting your Margin FX Contracts.

### 4.4 Confirmation of Instructions

We may also, although we are not obliged to, require confirmation of any order or instruction:

- a) if any instruction is to close an Account or remit money to you; or
- b) otherwise, if it reasonably appears to us that confirmation is necessary or desirable.

### 4.5 Acknowledgement of Instructions

Instructions may be acknowledged orally or in writing by us, as appropriate.

### 4.6 Internet Instructions

Subject to clause 4.7, any order or instruction sent by you by internet will only be deemed to have been received, and will only then constitute a valid instruction and binding Margin FX Contract between you and us, when such order or instruction has been recorded as accepted and confirmed to you (see clause 4.4).

### 4.7 Instruction not a Contract

When you transmit an order or instruction to us, this does not automatically give rise to a binding Margin FX Contract between you and us because any order made by you is always subject to us accepting your offer and such order having been recorded as accepted and confirmed by us to you. You are responsible for inquiring of us if a Confirmation is expected in relation to a transaction, but has not been received by you.

### 4.8 Correct Designation

It is your responsibility to ensure that moneys sent to us are correctly designated in all respects, including, where applicable, that the moneys are by way of Margin and to which of your Accounts they should be applied. We will provide you from time to time with details of such



arrangements as may apply to making payments to us, which may include permitting payments in different currencies as notified by us to you.

## 5. Consent to Recording of Telephone Conversations

You consent to:

- a) the electronic recording of your telephone discussions with us, with or without an automatic tone warning device; and
- b) the use of recordings or transcripts from such recordings for any purpose, including, but not limited to, their use as evidence by either party in any dispute between you and us.

## 6. Operating your Account

### 6.1 Charges and Fees you pay

You agree to pay the charges and fees and receive the benefits set out in this Agreement.

### 6.2 No Interest

There is no Interest on the credit balance of your trading account.

### 6.3 Commissions

Other than in the limited circumstances set out in our DS&CA, we do not receive commissions.

### 6.4 Timing of Credits Deductions or fees which you are to pay from your Account

- a) Any charges will be deducted from your Account the day following the day on which the charges were incurred and Benefits will be paid the day on which it was derived.
- b) If a Position is closed at a loss, that loss will immediately be deducted from your Account and your available trading resources will be adjusted accordingly.
- c) If a Position is closed at a profit that profit will immediately be credited to your Account and your available trading resources will be adjusted accordingly, subject to clauses 21 and 23 of this Agreement.

### 6.5 Incorrect Crediting of Account

- a) Limitation of liability: Except in the case of our fraud, we do not accept responsibility for, nor are we liable for, any loss or damage suffered by you as a

result of you trading on moneys deposited in or credited to your Account in error by, or upon behalf of, us.

- b) **Permitted deductions:** We are entitled at any time to deduct, without notice or recourse to you, any moneys deposited in, or credited to, your Account in error by, or on behalf of us.

## 6.6 Reporting to you

- a) **Confirmations:** In respect of each Contract entered into by us with you a Confirmation will appear in the Trading Platform. If the Confirmation does not appear you must contact us immediately and if you do not do so the details, or lack thereof, that we have recorded in relation to the Contract will be deemed to have been accepted by you. The prices quoted on Confirmations sent to you will be net of any charges, which may not be separately identified. You agree to receive Confirmations in this form.
- b) **Monthly statement:** A monthly statement in respect of each Account, including any Positions which you may have, will be sent by us to you within 14 days of the end of each calendar month. For the purposes of such monthly statement, we will report all currency balances on the Account in the relevant currency and in the Base Currency, based upon the month-end JD Capital Exchange Rate, as determined by us and based on the current Interbank Rate.
- c) **Daily statement:** If you have any open Positions, a daily statement in respect of each Account, including any Positions which you may have, will be sent by us to you following our end of day settlement time. For the purposes of such daily statement, we will report all currency balances on the Account in the relevant currency and in the Base Currency.
- d) **Trading Platform:** You agree and acknowledge that:
  - i) We will provide Confirmations, daily and monthly statements and other reports to you via our Trading Platform where you will be able to view, download and print them;
  - ii) you authorise us to use the Trading Platform as the means of providing the Confirmations, daily statements, monthly statements and other reports we make;
  - iii) you will access and use such Trading Platform to:
    1. receive the Confirmations, daily statements, monthly statements and other reports we provide;
    2. confirm all Contracts; and

3. monitor your obligations under this Agreement.
- e) **When reports are made available:** The Confirmations, daily statement, monthly statement or other report is made available to you at the time the relevant document is posted by us on the Trading Platform.
  - f) **We may send reports by other means:** We may send Confirmations, daily statements, monthly statements and other reports that we provide, by email, post or by any other means, in addition to making them available using the Trading Platform.
  - g) **Errors:** You must verify the contents of each document received from us. Such documents will, in the absence of manifest error, be conclusive unless you notify us in writing to the contrary immediately in the case of a Confirmation or within 3 Business Days of receiving a daily or monthly report.
  - h) **When you may object to the content of a report:** You agree that in the event that a Confirmation, daily statement, monthly statement or other report is provided to you in accordance with this clause 6.6 the time for objecting to the contents of a document under paragraph 6.6(g) is from the earlier of the date you receive the report under paragraph 6.6(f) (if applicable) and when the report is posted on the Trading Platform by us.

## 7. Opening a Trade

### 7.1 No Rights in Underlying Agreement

A trade does not entitle you to any rights in relation to the Underlying Instrument being traded and you will not be entitled to delivery of the Underlying Instrument; nor will you acquire any ownership or other such rights in relation to it.

### 7.2 Opening a Trade using our Trading Platform

You will be able to open or close a Position and execute Limit Orders and Stop Loss Orders on a trade opened with us via our Trading Platform.

We will have no liability to you if any internet connection is lost with the result that you are unable to trade at any given price.

We do not warrant that the Trading Platform will always be available or accessible when the exchanges on which the Underlying Instruments in respect of which you have traded or wish to trade are open and we reserve the right to remove altogether or reduce the Trading Platform service at any time for any purpose, without thereby incurring any liability to you.

If our computer records are at variance with your own records or recollection of your trading, the version of events recorded contemporaneously by our computer will prevail and our obligations to each other (including the obligation to pay any money) will be assessed and calculated on the basis that our contemporaneous computer records are correct and are conclusive evidence of the matters they record.

### 7.3 Telephone

- a) You may request a quote to open a trade or close a Position or otherwise give trading instructions by telephone on one of our designated trading lines. Indeed, you must do so if you are experiencing difficulty with our Trading Platform or Website in placing a trade or closing an open Position.
- b) When you trade by telephone your instructions to open or close a Margin FX Contract must be given to our trader during the same telephone conversation in which the quote was given. We have no liability to you if this telephone conversation is interrupted before we receive an instruction from you to trade on that quote; nor will we be under any obligation to repeat the quote in a subsequent conversation.

### 7.4 Nature of Quote

A quote given to you by one of our traders is not an offer to contract. If you indicate that you wish to trade at the price quoted you will be deemed to be making an offer to trade at the quoted price and our trader will be entitled to confirm or reject that offer. No trade will be effective unless and until such confirmation is given.

### 7.5 Formation of Contract

Your clicking 'buy' or 'sell' or accepting a quote to buy or sell by telephone will send a message to our traders indicating that you wish to trade on the terms and conditions indicated. This message will constitute an offer by you to buy or sell at the price and trade size chosen. If we accept the trade, we will send you a message to this effect. Your trade will not have been placed and no contract will come into existence until we send this message to you. You must wait for this message to appear after sending a 'buy' or 'sell' message and should you not receive this within two minutes you must notify us immediately. If you do not receive our Confirmation and you do not notify us as required, you will be deemed to have agreed only the transactions recorded by us. Similarly, if you dispute the contents of any Confirmation sent by us to you, you must notify us immediately upon receipt by telephone; if you do not, the transactions recorded by us will be deemed to have been agreed by you.

## 7.6 Currency

All trades will be conducted in the currency appropriate to the trade and will be converted into New Zealand dollars at the previous day's official closing Exchange Rate for the purposes of calculating the components of your account summary.

## 7.7 New Zealand Dollars

All payments made by you to us and by us to you will be in New Zealand dollars unless otherwise agreed.

## 7.8 Opposing Positions

- a) You may run opposing Positions in Margin FX Contracts in the same currency pair and a Position in a market where you have an opposing Position already opened. Both long and short Positions will appear in your trade account and they will be treated as two open Positions. When you choose to keep two opposing open Positions they will be revalued and rolled as an individual open Position until you choose to offset or match the two Positions.
- b) You may run opposing Positions in the same market and a Position in a market where you have an opposing Position already open will automatically be deemed to be an instruction to close the earlier Position. If you have more than one open Position in the same market, closing trades will apply to them on a first opened first closed basis, unless otherwise agreed by us.

## 7.9 Difference in Buy and Sell Price

You understand there may be a wider difference between 'buy' and 'sell' prices you are quoted on closing a Position than when it was opened.

## 7.10 Profit and Losses

You further understand that a payment will pass between us equal to the difference in value expressed in New Zealand dollars between the opening price of all Positions and their Closing Prices. If you make a profit, we must pay a sum to you equal to that profit. If you make a loss you must pay to us a sum equal to that loss.

## 8. Pricing

### 8.1 Quotes

We will quote prices which provide an indication of the prices at which we are prepared to deal with you and which are calculated in accordance with clause 23.4 for Margin FX Contracts. You should note that:

- a) Principal: we act under this Agreement as a principal, and accordingly, set the applicable price at which we are prepared to deal with you;
- b) Other prices: prices that may be quoted or traded upon from time to time by third parties do not apply to trades and dealings between us and you;
- c) Different prices: we, in our absolute discretion, may quote different prices to different Clients and trade at different prices with different Clients;
- d) Underlying Instrument: neither you or us:
  - (i) acquire any interest in, or right to, acquire; and
  - (ii) is obliged to sell, purchase, hold, deliver or receive any Underlying Instrument;
- e) Make and receive payments: the rights and obligations of you and us under Margin FX Contracts are principally to make and receive such payments as are provided in this Agreement and any Margin FX Contract.

### 8.2 Amended Quotes and Margin FX Contracts outside the Normal Trading Size

When you make a request to place an order, we may:

- a) provide an amended quote of the Contract Price originally quoted by our Trading Platform; and/or
- b) make the quote subject to special conditions and requirements;

as we consider fair and reasonable and as notified to you by us at the time of the order being considered by us. This may occur, for example, when you place an order outside the Normal Trading Size, or the aggregate of your order and all other orders for a Margin FX Contract is outside the Normal Trading Size, or to take account of any change in market conditions since the original quote. Such amended Contract Price will be determined by us as we consider fair and reasonable having regard to the applicable prices and costs of entering into a transaction of that size on the relevant market. You will not be obliged to proceed with any order for which special conditions and requirements are notified to you by us. For example, we may quote a revised price applicable to the proposed Margin FX Contract which you may, at your absolute discretion,

accept or reject. The amended quote may no longer be available if there is any delay in acceptance.

### 8.3 Minimum Trading Size

The size of your Margin FX Contracts must exceed the Minimum Trading Size.

### 8.4 Margin FX Contracts

- a) Contract Unit: of a Margin FX Contract will be one currency unit of the primary reference currency.
- b) Our pricing:
  - i. The Contract Price of a Margin FX Contract will be a bid or offer price (whichever is applicable) calculated by us by applying our Spread to the Interbank Rate.
  - ii. If the Specified Date of a Margin FX Contract is other than a date generally quoted in the market, we will calculate the Interbank Rate from the available market prices for other value dates as we consider representative, fair and reasonable.

### 8.5 Your Choice to Deal

Except where:

- a) we exercise any of our rights to close out a Margin FX Contract; or
- b) a Margin FX Contract closes automatically;

it is your responsibility to decide whether or not you wish to deal at those prices. If you decide to deal at the prices indicated by us, you may make an offer to us to deal at that price. We may choose, in our absolute discretion, whether to accept or reject any offer to deal made by you.

### 8.6 Errors in Prices

- a) It is possible that errors, omissions or misquotes (“Material Error”) may occur in the pricing of Margin FX Contracts quoted by us, which by fault of either of us or any third party, is materially incorrect when taking into account market conditions and quotes in Underlying Instruments which prevailed at the time. A Material Error may include an incorrect price, date, time or Margin FX Contract or any error or lack of clarity of any information.

If a trade is based on a Material Error, we reserve the right without your consent to:

- i. amend the terms and conditions of the Margin FX Contract to reflect what we consider to have been the fair price at the time the Margin Contract was entered into and there had been no Material Error;
  - ii. close the trade and any open Positions resulting from it;
  - iii. void the Margin Contract from the outset; or
  - iv. refrain from taking action to amend or void the Margin FX Contract.
- b) We will exercise the right in paragraph 8.6(a) reasonably, in good faith and as soon as reasonably practicable after we become aware of the Material Error. To the extent practicable, we will give you prior notice of any action we take under this clause; but if it is not practicable we will give you notice as soon as practicable afterwards. In the absence of fraud or gross negligence on our part, we are not liable to you for any loss cost, claim, demand or expense that you incur or suffer (including loss of profits or indirect or consequential losses), arising from or connected with the Material Error including where the Material Error arising from an information service on which we rely.
- c) In the event that a Material Error has occurred and we exercise our rights under paragraph 8.6(a), we may, without notice, adjust your Account or require that any moneys paid to you in relation to the Margin FX Contract the subject of the Material Error be repaid to us as a debt due payable to us on demand.

## 8.7 Price, Execution Process and Trading Platform Manipulation

If we reasonably believe that you have manipulated our prices, our execution processes or our Trading Platform, we may in our sole and absolute discretion, subject to paragraph 8.6(b) without notice to you:

- a) enforce the trade(s) against you if it is a trade(s) which results in you owing money to us;
- b) treat all your trades as void from the outset if they are trades which result in us owing money to you, unless you produce conclusive evidence within 30 days of us giving you notice under this clause that you have not committed any breach of warranty, misrepresentation or undertaking in this Agreement;
- c) withhold any funds suspected to have been derived from any such activities;
- d) make any resultant corrections or adjustments to your Account;
- e) close your Account;
- f) and/or take such other action as we consider appropriate.



## 9. Margin

### 9.1 Initial Margin

Upon placing a trade that creates an open Position you are required to pay us, or have in your Account, the Margin for that trade as calculated by us (“Initial Margin”).

### 9.2 Margins while positions are Open

In addition to the Initial Margin, you must have in respect of all open Positions on your Account Margin calculated on the basis of the current Contract Price then being quoted and determined by us under clauses 8.4 of this Agreement. The amount of Margin on your Account at any time will be determined as if such payments as are due under this clause 9 were calculated and deducted from your Account on an ongoing basis during the day and based on the current bid or offer Contract Price (as applicable).

### 9.3 Continuing Margin Obligation

You also have a continuing Margin obligation to us to ensure that at all times during which you have opened Positions your account balance, that is your Total Net Equity, taking into account all realised or unrealised Profits and Losses (“P&L”), is equal to at least the Margin that we require you to have paid to us for all of your open Positions. If there is any shortfall between your account balance (taking into account P&L) and your total Margin Requirement, you are required to deposit additional funds into your account. These funds are due and payable to us immediately on your account balance (taking into account P&L) falling below your Margin Requirement.

### 9.4 Exceptions

The requirements imposed under clauses 9.1 to 9.3 will vary in the following circumstances:

- a) we have expressly told you that you have an account type that allows for longer payment periods for Margin, in which case you must pay Margin in accordance with the payment periods that we have advised you;
- b) we have expressly agreed to reduce or waive a part of the Margin that we would otherwise require you to pay us in respect of a trade; the period of waiver or reduction may be temporary and must be agreed in writing by us. Any such agreement will not restrict our right to seek further Margin in respect of the trade or open Positions at any time thereafter;

- c) we agree otherwise in writing, in which case you will be required to comply with such terms and conditions as stated in such written agreement;
- d) when you hold open Positions in a Margin FX Contract and you place one or more trades in the opposite direction in a Margin FX Contract with the same Underlying Instrument, your Margin Requirement for all open Positions with the same Underlying Instrument is the larger of the aggregate of the Margin Requirements for all Long Positions or the aggregate of the Margin Requirements for all Short Positions;
- e) for certain Margin FX Contracts or options or option related instruments;
- f) if we change the Margin Percentage under clause 9.5.

In the case of your continuous Margin obligation set out in clause 9.3, you will not be required to pay it if we have extended you a credit facility, and you have sufficient credit to cover your Margin Requirements. However, if at any time the credit facility is not sufficient to cover the Margin Requirement on your open Positions you must immediately place additional funds in your Account in order to fully cover the Margin Requirements.

### 9.5 Changing Margin Percentage

We may vary the Margin Percentage, but we will only do so where we reasonably consider it necessary, for example in response to or in anticipation of the following:

- i. changing volatility and/or liquidity in the Underlying Instrument or in the financial markets generally;
- ii. economic news;
- iii. changes in your dealing pattern with us;  
your credit circumstances change; or
- iv. your exposure to us being concentrated in a particular Underlying Instrument.

You should note that there may be other circumstances which may give rise to us changing your Margin Percentage.

### 9.6 Notification of Increased Margin Percentage

We will notify you of a change in the Margin Percentage by any of the following means: telephone, post, fax, email, text message or by posting notice of increase on our Website. Any increase in Margin arising from an increase in the Margin Percentage will be due and payable immediately on our demand, including any deemed demand.

## 10. Your Obligation to pay and monitor Margin

### 10.1 You must pay Margin

- a) You must pay to us such amounts by way of Margin as we may require under this Agreement, including but not limited to Margin calculated by reference to Client Agreement and in order to always maintain the Minimum Total Equity Balance.
- b) Your failure to pay any Margin required under Client Agreement will be regarded as an Event of Default for the purposes of clause 14.

### 10.2 You must monitor Margin

- a) Through the Electronic Facility we will provide you with access to your Account and sufficient information to enable you to calculate the amount of any Margin required by us under this Agreement and notify you of the total amount of Margin due from you in the Base Currency using our Exchange Rate. Nevertheless, it is your responsibility when placing any orders over the telephone to ensure that you request all relevant information in respect of your Account before placing any orders to open or close a Position, including all information in respect of your current open Positions. We will not be responsible for any losses you may suffer or incur as a result of not requesting any such information.
- b) It is your responsibility to monitor at all times the amount of Margin deposited with us from time to time against the amount of any Margin currently required under clauses 24 and 25 of this Agreement and any additional Margin that may be necessary or desirable, having regard to such matters as:
  - i) your open Positions;
  - ii) the volatility of any relevant Underlying Instrument;
  - iii) the volatility of the relevant market
  - iv) the volatility of the markets generally
  - v) any applicable Exchange Rate risk; and
  - vi) the time it will take for you to remit sufficient cleared funds to us.

### 10.3 No Obligation to make Margin Call

We are not under any obligation to keep you informed of your Account balance and required Margin by making a Margin Call. However, if we do so, the Margin Call may be made by telephone call, post, fax, email or text message. The Margin Call is deemed to have been made as soon as you are deemed to have received such notice in accordance with clause 50. We are deemed to have made a demand on you if:

- a) we have left a message requesting you to contact us and you have not done so within a reasonable time after we have left such a message; or

- b) if we are unable to leave such a message and have used all reasonable endeavours to contact you by telephone at the telephone number last notified to us by you, but have been unable to contact you on such number.

#### 10.4 Timing of Changes to Margin Percentages

You agree and acknowledge that any variation of the Margin Percentage under clause 9.5 of this Agreement may take immediate effect on and from you being given oral or written notice of the variation in accordance with this Agreement.

#### 10.5 No Online Access

Where we are not able to provide you online access through the Electronic Facility to information on the Account due to circumstances that are reasonably within our control, we will use reasonable endeavors to make a Margin Call. You accept that in extreme circumstances where your open Positions are moving or have moved particularly quickly against you, we may not provide a Margin Call before exercising our rights to close out your Positions under this Agreement.

#### 10.6 Your obligation to notify us

It is your responsibility to notify us immediately of any changes in your contact details and to provide us with any alternative contact details and ensure that our Margin Calls will be met if you will be uncontactable at the contact address or telephone number notified to us. You acknowledge that we are not liable for any losses (including indirect or consequential losses), costs, expense or damages incurred or suffered by you as a consequence of your failure to do so.

#### 10.7 Time allowance for rewarding Margin

We are not obliged to allow you time to forward further funds to meet such Margin as is required under this clause 10 before exercising our right to close out your Positions. However, where we, in our absolute discretion, do allow you time to meet your Margin Requirements, that permission will only be effective once it is confirmed in writing by us, and only to the extent specified in the written notice given by us.

### 11. Closing a Margin FX Contract

#### 11.1 When can a Margin FX Contract be closed

A Margin FX Contract may be closed out if:

- a) You give instructions to close a Margin FX Contract other than an Excepted Contract by entering into an equal and opposite Contract irrespective of the date on which either Contract closes automatically under clause 10.3 as follows:
  - (i) Single Position Closing: a single open trade Position can be closed by choosing the close button when you execute the trade on line. The Contract will be closed and offset by the opposite trade; or
  - (ii) Close by Opposite Positions: you can choose to close a Position by an opposite Position but not offsetting the two trades. You can execute an opposite trade and both long and short Positions will appear in your trade account. You can choose to offset the trades at a later time when you prefer.
- b) We may exercise any of our rights under this Agreement to close a Margin FX Contract at any time before the Contract closes automatically under clause 11.2.

### 11.2 Automatic Closure

A Margin FX Contract, will close automatically on the fifth anniversary of the date on which the Contract was first entered into.

### 11.3 Time Limits for Closing

Details of the last day and time for closing out a Margin FX Contract, are available on request. It is your responsibility to be aware of the last day and time for closing out a particular Margin FX Contract.

### 11.4 Method of Closing Margin FX Contracts by us

Where we exercise any of our rights under this Agreement to close a Margin FX Contract, we will do so by entering into an equal and opposite Margin FX Contract on the Account irrespective of the date on which either Margin FX Contract, closes automatically under clause 11.2 of this Agreement.

### 11.5 Contract Price at Closing

Where:

- a) we exercise any of our rights under this Agreement to close a Margin FX Contract; or
- b) a Margin FX Contract, closes automatically under clause 11.2 of this Agreement.

- c) we will determine the Contract Price at the time of closing in accordance with the current prices than being quoted by us, but except where the Margin FX Contract to be closed is outside the Normal Trading Size, our Spread used in calculating the Contract Price will not exceed 30% or one cent (or equivalent currency unit), whichever is the greater.

#### 11.6 Contract Value at Closing

A Margin FX Contract will close at the Contract Value at the time of closing as calculated by us, which will equal:

Contract Price x Contract Quantity and as notified to you

#### 11.7 Closure During Business Day

Where a Margin FX Contract has been closed out during a Business Day, clauses 11.2 and 11.3 of this Agreement will continue to apply to your long and short Positions in the particular Underlying Instrument until Close of Business on such Business Day and will apply to the balance of your outstanding long or short Position (if any) in the relevant Underlying Instrument with effect immediately after Close of Business on such Business Day.

#### 11.8 Timing of Payments

Any payment due by either us or you under this clause 11 in respect of dates on or after the Closing Date will be made by us adjusting the Account at Close of Business on the Settlement Date.

#### 11.9 Automatic Closure: Margin FX Contracts

Subject to clauses 11.10 and 11.11, Margin FX Contracts close automatically at Close of Business on each Business Day and are to be replaced by an equivalent contract with effect immediately after Close of Business on that Business Day, and this will not affect the automatic closing of a contract under clause 21.11, with effect that the 5 year period will run from the date on which the contract was first entered into and when such contract closes automatically under clause 11.11 will not be reopened in accordance with this clause 11.9.

#### 11.10 Closure: Long and Short Contract

If you are long and short a Margin FX Contract, with effect immediately after Close of Business on the Closing Date, we will close the relevant long and short Positions and record in your account the balance, if any, of your then outstanding long or short Position in the Contract, as appropriate.

### 11.11 Closure: Two or more Margin FX Contracts

Where you have two or more position of Margin FX Contracts; where you are in the Margin FX Contracts as either the Long Party or the Short Party; we will with effect immediately after Close of Business on each Business Day replace such Margin FX Contracts with a single aggregated Margin FX Contract equivalent to the total of the Contract Quantities of each Margin FX Contract. The date on which such replacement Margin FX Contract will expire automatically under clause 11.2 will be the latest of the Expiry Dates of each of the original Margin FX Contracts.

## 12. Close of Business Accounting

### 12.1 When we Account

Commencing at Close of Business on the date of the transaction and at Close of Business on each subsequent Business Day during the terms of the Margin FX Contracts, (including the Closing Date), we will account under this clause 12.

### 12.2 Contract Value

We will calculate the Contract Value, which will equal Contract Price x Contract Quantity.

### 12.3 Contract Value at Close

Margin FX Contracts: The Contract Price will be the mid-price calculated in accordance with clause 8.4.

### 12.4 Valuation

If on the date of the transaction:

- a) the current Contract Value exceeds the Opening Value, the Short Party will pay to the Long Party such excess;
- b) the Opening Value exceeds the current Contract Value, the Long Party will pay to the Short Party such excess.

If, on any Business Day during the term of the Margin FX Contract, (including the Closing Date):

- a) the Contract Value exceeds the Contract Values on the preceding Business Day, the Short Party will pay to the Long Party such excess;

- b) the Closing Value on the preceding Business Day, exceeds the current Contract Value, the Long Party will pay to the Short Party such excess.

### 12.5 Daily Swaps of Margin FX Contracts

When you hold a Position or Positions overnight in a Margin FX Contract, they will be rolled to the next Business Day which will result in you paying a Swap Charge or receiving a Swap Benefit at the JD Capital Swap Rate and the amount depends on our Swap Rate, being the rates at which you receive or pay interest on Positions that remain open overnight. This is a varying rate dependent upon the applicable rate in the Interbank Markets for the currencies or Bullion, the duration of the rollover period, the size of the Position and the JD Capital Spread that is applied at our discretion. The operation of this clause 12.5 is subject to clauses 12.7, 12.8, 12.9 and 12.10.

### 12.6 Entitlement

If you are long on a Margin FX Contract you may either receive a Swap Benefit or pay a Swap Charge, depending on the currency you are long, subject to clause 12.7 and if you are short on a Margin FX Contract you may either pay a Swap Charge or receive a Swap Benefit, depending on the currency you are short on, subject to clause 12.9.

### 12.7 Long Margin FX Contracts

If you are long on a Margin FX Contract where the bought currency interest rates are higher than the sold currency interest rates you will receive interest at the Swap Rate if you hold the Position overnight and do not close it before the settlement time. This is because you are holding the higher yielding currency. On the other hand, if you are long on a Margin FX Contract where the bought currency interest rates are lower than the sold currency interest rates then you will pay interest at the Swap Rate if you hold the Position overnight and do not close it before the settlement time. This is because you are holding the lower yielding currency.

### 12.8 Long Bullion Contract

If you have a long US dollar/short Bullion Position and interest rates in the USA are higher than the Bullion Swap Rate you will receive a Swap Benefit at the JD Capital Bullion Swap Rate if you hold the Position overnight and do not close it before settlement time. This is because you are holding the lower yielding asset.

### 12.9 Short Margin FX Contracts

If you are short on a Margin FX Contract where the sold currency interest rates are higher than the bought currency interest rates you will pay interest at the Swap Rate if you hold the Position overnight and do not close it before the settlement time. This is because you are holding the



lower yielding currency. On the other hand, if you are short on a Margin FX Contract where the sold currency interest rates are lower than the bought currency interest rates then you will receive interest at the Swap Rate if you hold the Position overnight and do not close it before the settlement time. This is because you are holding the higher yielding currency.

#### 12.10 Short Bullion Contract

If you have a short US dollar/ long Bullion Position and interest rates in the USA are higher than the Bullion Swap Rate you will pay a Swap Charge at the JD Capital Bullion Swap Rate if you hold the Position overnight and do not close it before settlement time. This is because you are holding the higher yielding asset.

#### 12.11 When we make Accounting Payments

Any payments due under this clause 12 will, subject to clause 15 of this Agreement, be made by us adjusting the Account with effect immediately after Close of Business on the relevant Business Day.

### 13. Stop Loss Orders and Limit Orders

#### 13.1 Availability of Orders

Stop Loss Orders and Limit Orders are only available on selected instruments. We may refuse to accept any Stop Loss Orders or Limit Orders on any trade. Such orders as we do accept may be placed or (save in the case of a Stop Loss Order which we impose (see clause 13.4) cancelled at any time during the trading hours of the exchange on which the Underlying Instrument is traded.

#### 13.2 Margin Requirements to Fill Orders

An order which involves an instruction to us to open a trade above a certain price will not ordinarily be filled unless at the time when the price reaches the relevant limit your Account contains sufficient trading resources to cover the initial Margin for the trade which is to be opened. We may, however, at our discretion proceed to fill such an order notwithstanding that your account has insufficient trading resources to cover the initial Margin for the trade which is to be opened. In such circumstances, we reserve the right at any time after the opening of the trade to require you to deposit cash in the amount of the required initial Margin for that trade. Any such further cash deposits will be payable as Margin in accordance with the provisions of clause 9. A failure to make payment in the time and manner required will be an Event of Default. We reserve the right to refuse to open a trade in accordance with a Limit Order if:

- a) there has been an Event of Default; and
- b) in any other circumstances where we would be entitled to close the trade if it had already been opened.

### 13.3 Liability for Losses arising from Orders

You will remain liable for any losses in your Account which may be realised as the result of the filling of an order, regardless of the trading resources available on your account at the time the order was filled.

### 13.4 Our Right to impose a Stop Loss Order

We may impose a Stop Loss Order on any of your open trades where we believe such action is necessary or desirable to limit the losses on any of your Positions including, but without limitation where:

- a) we have any reason whatever to think that you will not pay us any money that is or may become due to us; or
- b) you make any statement to us which we have reason to believe is or may not be true; or
- c) you fail to do anything that you have undertaken to us that you will do; or
- d) we are having difficulty in communicating with you and there are grounds for believing that this is because you have failed to take reasonable care to ensure that you are contactable by us at all times. Such grounds will arise if (whether or not in order to make a Margin Call) we dial all the telephone numbers given by you to us but are unable to speak to you personally and:
  - (i) we leave a message on any message-taking facilities offered but we do not hear from you within 30 minutes of leaving the message (or, if we leave more than one, the first message we leave, although if we leave or attempt to leave a message, either with a person who offers to take a message or on an automated message-taking service but for any reason it does not reach you we will nonetheless be deemed to have left a message for you); or
  - (ii) no message-taking services are offered and we dial all the numbers given by you again after a period of not less than 30 minutes and are still unable to speak with you at once.

### 13.5 Informing you of orders we impose

We will as soon as is reasonably practicable after imposing a Stop Loss Order attempt to inform you of it by telephoning you on the number or numbers that you leave with us and;

- a) informing you personally of the Stop Loss Order, or if this is not possible by;
- b) leaving a message if, and only if, there is an automated message-taking facility or a person who offers to take such a message for you. If a message is left, it will be deemed to have reached you whether or not it has in fact done so. We will also send written notification to you by post and/or email at the addresses that you have given to us. We are under no obligation to take any other steps to inform you of the Stop Loss Order and a failure for any reason to inform you of the imposition of a Stop Loss Order will not affect the validity or enforceability of that Stop Loss Order.

## 14. Events of Default

### 14.1 What constitutes an event of default?

The following constitute Events of Default, which upon their occurrence give us the right to take action in accordance with clause 14.2:

- a) an Insolvency Event occurs in relation to you;
- b) you are an individual and you die or become of unsound mind;
- c) you fail to provide any Margin or other sum due under this Agreement in respect of any Margin FX Contract, or the Margin held by us in respect of any open Positions falls below our Margin Requirements;
- d) you are in breach of any warranty or representation made under this Agreement and/or any information provided to us in connection with this Agreement is or has become untrue or misleading;
- e) any fee due to us is not paid in accordance with this Agreement;
- f) whether or not any sums are currently due to us from you, where any cheque or other payment instrument has not been met on first expectation or is subsequently dishonoured or you have consistently failed to pay any amount owed to us in time;
- g) at any time or for any period deemed reasonable by us you are not contactable or you do not respond to any notice or correspondence from us;
- h) we reasonably believe it is prudent for us to take any or all of the actions described in clause 14.2 in light of any relevant legal or regulatory requirement applicable either to you or to us;
- i) we reasonably consider that there are abnormal trading conditions;
- j) we reasonably consider it necessary for the protection of our rights under this Agreement;

- k) we are unable to make price in the Margin FX Contract due to the unavailability of the relevant market information for reasons beyond our control;
- l) we consider that you may be in breach of any Applicable Law
- m) we are so requested by any other regulatory body or authority;
- n) the aggregate of your order and all other orders for a Margin FX Contract is outside the Normal Trading Size; or
- o) a Position Limit is less likely to be exceeded.

#### 14.2 What action may we take?

If an Event of Default occurs, we may take all or any of the following actions;

- a) immediately require payment of any amount you owe us, including Margin;
- b) terminate this Agreement;
- c) close all or any of your open Positions;
- d) limit the size of your open Positions either in monthly terms or a number of Margin FX Contracts (net or gross);
- e) refuse orders to establish new Positions;
- f) convert any ledger balances to the Base Currency of your Account;
- g) exercise our rights of set off;
- h) change the Margin level at which we may close your Account;
- i) impose new Margin Requirements to your Trading or Account;
- j) limit or withdraw the credit on your Account;
- k) suspend your Account and refuse to execute any trades;
- l) call on any guarantee in respect of your obligations;
- m) require you immediately to close out and settle the Margin FX Contract in such a manner as we requested;

- n) enter into any transaction at such rates and times as we may determine in order to meet any obligation you may have incurred under a Margin FX Contract;
- o) combine, close or consolidate any of the Accounts sustained by you and offset any and/or amounts owed to, or by, us in such manner as we may in our absolute discretion determine; or
- p) retain any amount owed by us to you against any contingent liability of yours to us or so long as the contingency subsists.

### 14.3 Additional Closing Rights

We may also close your Account on 14 days' notice in the circumstances set out below.

If we rely on our rights under this clause, your Account will be suspended during the 14-day notice period and you will not be able to place trades other than those to close existing open Positions. If you have not closed all the open Positions within the 14 days' notice, we are entitled to take any action within clause 14.2. The relevant circumstances are:

- a) any litigation is commenced involving both of us in an adversarial Position to each other and, in view of the subject matter of or any issues in dispute in relation to that litigation, we reasonably decide that we cannot continue to deal with you while the litigation is pending;
- b) where you have persistently acted in an abusive manner toward our staff (for example by displaying what we consider to be serious discourtesy or the use of offensive or insulting language);
- c) where we believe on reasonable grounds that you are unable to manage the risks that arise from your trades.

### 14.4 Our Right to Close or Void

Without limiting our right to take action under clauses 14.2 and 14.3, we may also close or void individual open Positions and/or cancel any order where:

- a) we are in dispute with you in respect of an open Position. In this case, we can close all or part of the open Position in order to minimize the amount in dispute; and/or
- b) there is a material breach of this Agreement in relation to the open Position.

### 14.5 Our Rights to suspend Account

Without limiting our right to take action under clauses 14.2, 14.3 and 14.4, we may in our discretion suspend your Account pending investigation for any reason. Whilst your Account is suspended you will be able to close your open Positions but you will not be entitled to place new trades. Circumstances in which we may choose to exercise this right include but are not limited to the following:

- a) when we have reasonable grounds for believing that an Event of Default has occurred or may occur but believe that it is reasonably necessary to investigate circumstances with a view to confirming this;
- b) when we have reasonable grounds for believing that you do not have a sufficient understanding of the trades which you are placing or the risks involved;
- c) when we have not received within 10 days of a written request all information, which we believe that we require in connection with this Agreement; or
- d) we have reason to believe that there has been a breach in your Account share or that there has been a threat to your Account share.

#### 14.6 Conclude Investigations

If we have suspended your account pending investigation, we will use reasonable endeavours to conclude our investigation within five (5) Business Days. When we conclude our investigation, we will inform you whether trading on your Account may resume or whether we will seek to take further action pursuant to this Agreement.

#### 14.7 Exercise of Rights

We may exercise our rights to close open Positions under this clause 14 at any time after the relevant event has occurred and will do so on the basis of the next available price for the affected open Position, as determined under clause 11.

### 15. Netting and Setting Off

- a) This Agreement and all trades under it form part of a singular Agreement between us and you, and we both acknowledge that we enter into this Agreement and any trades under it in reliance upon these being a singular Agreement.
- b) When open Positions and/or your Account are closed under this Agreement, we may:
  - i) combine and consolidate your cash and any money we hold for you in all of the Accounts you may have with us; and
  - ii) set-off against each other the amounts referred to in (A) and (B) below:
    - A. any amounts that are payable by us to you, regardless of how and when payable, including your cash (if a credit balance) unrealised profits and

any credit balance held on any Account even if any of these Accounts have been closed;

- B. any amounts that are payable by you to us, regardless of how and when payable, including, unrealised losses, interest, costs, expenses, charges and any debit balance on any Account even if those Accounts have been closed.
- c) You are also entitled to require us to exercise the above rights in relation to your Accounts and/or open Positions that have been closed.
- d) If the rights under paragraphs 15(b) or 15(c) are exercised, all the payment obligations will be consolidated into an obligation for you to pay the net sum to us or for us to pay a net sum to you.

## 16. Payments

### 16.1 Your Payments must be the full amount

When you make any payment, which is subject to any withholding or deduction under this Agreement, you must pay to us an amount that ensures that the amount actually received by us is equal to the full amount we would have received had no withholding or deduction been made.

### 16.2 Payments we owe you and you to owe us are offset

- a) If on any day, the same amounts are payable under this Agreement in respect of the same Account by either you or us to the other in the same currency, then, on such date, each of our obligations to make payment to such amount will be automatically satisfied and discharged.
- b) On the other hand, if the aggregate amount that is payable by one of us exceeds the aggregate amount that is payable by the other in the same currency, then the one who has to pay the larger amount must pay the excess to the other, and the obligations to make payment of each party will be satisfied and discharged.

### 16.3 Payment of Amounts due to us

Unless otherwise provided in this Agreement, all amounts due to us will, at our option:

- a) be deducted from any funds held by us for you; or
- b) be paid by you in accordance with this Agreement.

#### 16.4      **Withdrawing Credit from your Account**

When your Account is in credit, you may request us to send you a cheque or effect payment by alternative means of the amount in credit of such amount as you may specify. But, we may at our discretion withhold from the amount of the credit balance if:

- a) any overnight Position on your account shows a notional loss;
- b) we reasonably consider that further amounts may be required to meet any current or future margin requirement on open Positions due to Underlying Market conditions;
- c) if you have any contingent liability to us (or to any of our Associates), in respect of any other Account open with us;
- d) we reasonably determine that there is an unresolved dispute between us and you in connection with this Agreement or any Margin FX Contract; or
- e) we consider it necessary or desirable to withhold such amount to comply with our regulatory or legal obligations, and we will, except where paragraph 16.4(e) applies, notify you as soon as reasonably practicable if we decide to take such action.

#### 16.5      **No Securities Interest created**

Nothing in this Agreement is intended to create or does create in favour of either of us any mortgage, charge, lien, pledge or other security interest in any cash or other property transferred by one to the other under any Margin FX Contract.

#### 16.6      **Payments transferred must have free title**

Each of us agrees that all rights, title and interest to and in any payment which it transfers to the other in respect of a Margin FX Contract under this Agreement vests in the recipient clear of any liens, charges, encumbrances or other interest of the transferor or any third party.

### 17.      **Amendment and Termination**

#### 17.1      **Current Version of Agreement governs Margin FX Contracts**

You agree that the version of this Agreement published on our Website at the time of entering into a Margin FX Contract governs that Margin FX Contract.

#### 17.2      **Amending Agreement**

We may amend or replace this Agreement by giving written notice of the changes. We will only make changes for good reason, including:



- a) making the provisions clearer or more favourable to you;
- b) reflecting legitimate increases or reductions in the cost of providing services to you;
- c) rectifying any mistakes that may be discovered;
- d) reflecting any changes in the Applicable Laws, codes of practice or decisions by a court, ombudsman, regulator or similar body;
- e) reflecting changes in market conditions;
- f) reflecting changes in the way we do business.

### 17.3 You may Object

If you object to any changes, you must notify us within 14 days of the date the notice is deemed to be received. If you do not do so, you will be deemed to have accepted the changes if you give us notice that you object, then the changes will not bind you; but we may require you to close your Account as soon as reasonably practicable and/or restrict you from placing trades and/or orders to close your open Positions.

### 17.4 Application Date

Subject to clause 17.2, the amendments made under this clause 17 will apply, including to all open Positions and unexecuted orders, from the effective date as stated by us of the changes specified in the notice.

### 17.5 Our Right to Terminate

We may terminate this Agreement and close your Account at any time by giving you 30 days' written notice; this right is in addition to any other rights to terminate this Agreement or close your Account that we may have under this Agreement.

### 17.6 Your Right to Terminate

You may also terminate this Agreement or close your Account at any time by giving us written notice. Your account will be closed as soon as reasonably practicable after we have received notice, all open Positions are closed, or orders cancelled, and all of your obligations are discharged.

### 17.7 Reservation of Rights

If you or we provide notice to close your Account or terminate this Agreement under this clause 17, we reserve the right to refuse to allow you to enter into any further trades or orders which may lead to you holding further open Positions.

## 18. Application of Account Funds

### 18.1 Our Rights to apply Account Funds

We may at any time without prior notice to you, in order to discharge your obligations (actual or contingent) under this Agreement:

- a) apply all or part of any currency held by us in your Account and any currency held by us for the purpose of your dealings in such order or manner as we think fit, whether the liabilities are actual or contingent, primary or collateral, joint or several;
- b) combine or consolidate all or any of your Accounts with us; and
- c) convert at a commercial rate currency held by us in your Account into a currency or currencies in which payments are due from you to us and without us being responsible to you for any loss resulting from such conversion.

## 19. Ceasing to offer to Trade

### 19.1 Our Right to Cease to Trade in Margin FX Contracts

We may at any time by written notice to you cease to offer to trade in any Margin FX Contract, specifying in the notice a date on which we will cease to offer to trade in the particular Margin FX Contract and such date being at least 7 days after the notice is sent.

### 19.2 Close out of Positions if we cease to trade

- a) You agree to close out all open Positions in relation to the Margin FX Contract for the date specified in the notice and we will close out any remaining open Positions on the date specified in the notice with effect from the close of trading on the day.
- b) If we exercise our right to close out your remaining Positions under the preceding clause, we will close out those open Positions at the Closing Price for the Contract except where your open Positions are outside the Normal Trading Size, in which case we will close those Positions at a reasonable price determined by us in accordance with market practice, but at our absolute discretion.

## 20. Legal and Regulatory Requirements

### 20.1 Our Actions to comply with the Law

Despite any other provision of this Agreement, in providing the services in this Agreement, we will be entitled to take any action as we consider necessary in our absolute discretion to ensure compliance with all Applicable Laws.

### 20.2 You agree to comply with the Law

You agree strictly to comply with all Applicable Laws. If we reasonably consider you have not so complied, we may terminate this Agreement immediately without notice.

## 21. Limitation of Liability

### 21.1 Our Liability Limited

Subject to any laws restricting us from limiting our liability, and to the maximum extent permitted by those laws, we are not liable for:

- a) any action we may take under this Agreement, so long as we act within the terms of its provisions and in particular act reasonably where required to do so; and
- b) any claim, loss, expense, cost or liability suffered or incurred by you (“claims”) except to the extent that such a loss, expense, cost or liability is suffered or incurred as a result of our breach of this Agreement, negligence or willful default.

### 21.2 Reasonably Foreseeable Losses

Other than is described in clause 21.3 and subject to our limits on our liability in this clause 21, we are each only responsible for losses that are reasonably foreseeable consequences of breaches of this Agreement are at the time the Agreement is entered into.

### 21.3 Indirect Losses

We are not responsible for indirect losses which occur as a side effect of the main loss and damage which are not foreseeable by you and us. We are not liable to you for losses which you incur which are foreseeable by us for the reason that you have communicated the possibility of such losses or any special circumstances to us.

### 21.4 Loss of Profit

We are not liable to you for any loss of profit or opportunity.

### 21.5 Applications of Limitations

The limitations of liability in this clause 21 apply whether or not we or any of our employees or agents knew of the possibility of the claim being incurred.

### 21.6 You agree to Indemnify us

You agree continuously to indemnify us against all losses (including consequential losses), taxes, expenses, damages, charges, receipts, demands and expenses of any nature and on any account and liabilities present, future, contingent or otherwise and including legal fees on a full indemnity basis which may be suffered or incurred or brought against us or in connection with or caused by:

- a) your breach of this Agreement;
- b) us entering into any Margin FX Contract;
- c) us taking any action under clause 29 of this Agreement;
- d) any representation or warranty given by you being incorrect, misleading or untrue, or any error in any order or instruction which is, or appears to be, from an Authorised Person, unless and to the extent only such is suffered or incurred as a result of our gross negligence or willful default.

### 21.7 Survival of Indemnity

The indemnity in clause 21.6 survives termination of this Agreement and any transaction under this Agreement.

## 22. Warranties, Representations and Undertakings

### 22.1 Your Warranties

You undertake, warrant and represent to us, with the intention that the following undertakings, warranties and representations are repeated each time you provide instructions to us:

- a) legal disability: you are not under any legal disability and are not subject to any law which prevents you from entering this Agreement or any Margin FX Contract;
- b) corporate authorisation: if you are a company, you are empowered by, and have obtained, all necessary corporate or other authorities under your constitution and at law;

- c) consents: you have obtained all necessary consents and have the authority to enter into this Agreement;
- d) compliance with laws: you are complying with all laws to which you are subject;
- e) able to pay debts: you are able to pay your debts as and when they fall due and are not otherwise insolvent or presumed to be insolvent under any law;
- f) no liquidator etc.: no liquidator, provisional liquidator, receiver, receiver and manager, trustee, controller, official manager, administrator or similar officer has been appointed in relation to your affairs and no application has been made for the appointment of any of these persons;
- g) information accurate: at all times, the information provided by you to us, whether in the Application Form or otherwise will be complete, accurate and not misleading in any material respect; and
- h) transactions: you will not conduct any transactions, including trades, which contravene laws or regulations in any Transactions in relation to insider trading, market manipulation or market abuse.

## 22.2 Trustee of a Trust

Where you are the trustee of a trust, settlement or fund (including a superannuation fund) (the Trust) you further undertake, warrant and represent to us, with the intention that these undertakings, warranties and representations are repeated each time you provide instructions to us:

- a) capacities: you acknowledge and agree that you enter into this Agreement in your personal capacity and in your capacity as trustee of the Trust;
- b) sole trustee: you are the sole trustee or trustees of the Trust and you have been validly appointed;
- c) trust validly created: the Trust was validly created and is in existence at the date of your application and has been duly stamped (if required);
- d) solely constituted: the Trust is solely constituted by the trust deed described in your Application and is as amended or substituted (Trust Deed);

- e) right of indemnity: you have the right of indemnity against the assets of the Trust under the Trust Deed and there has not, and will not be, any breach of trust or any other action that will prevent you from enforcing your rights under that indemnity;
- f) full authority: you are empowered and have full authority under the Trust Deed to enter into this Agreement and to enter into the transactions contemplated by it;
- g) no actions: there is no current or pending or threatened action or proceeding affecting the Trust or any of the Trust's assets before any court or body which draws or purports to draw into question or is likely to affect the legality, or validity, of your right of indemnity under the Trust Deed or of this Agreement or any Margin FX Contract or your ability to observe your obligations under it;
- h) ceasing to be trustee: you will notify us immediately in writing if you cease for any reason to be the trustee of the Trust or the Trust is determined or ceases to exist; and
- i) no distribution of capital or income: you will not make any distribution of any income or capital or assets of the Trust that results in there being insufficient assets of the Trust to meet any of your liabilities under this Agreement.

### 22.3 Notification of Changes

You undertake that throughout the term of this Agreement you will promptly notify us of any change to the details supplied by you in your Application Form and any material or anticipated change in your financial circumstances which may affect the basis upon which we do business with you.

### 22.4 Electronic Services

We do not warrant or forecast that the Electronic Services or any component of any Electronic Services or any services performed in respect of any such Electronic Services will meet the requirements of any user, or that the operation of the Electronic Services will be uninterrupted or error-free, or that any services performed in respect of the Electronic Services will be uninterrupted or error-free.

## 23. Electronic Services

### 23.1 Scope

This clause 23 applies to your use of Electronic Services.

### 23.2 Access

Once you have gone through the share procedures associated with an Electronic Service provided by us, you will get access to such service, unless agreed otherwise or stated on our Website. Please consult our Website for more details on operating times. We may change our share procedures at any time and we will tell you of any new procedures that apply to you as soon as possible.

### 23.3 Access Requirements

You will be responsible for providing the system to enable you to use an Electronic Service.

### 23.4 Virus Detection

You will be responsible for the installation and proper use of any virus detection/scanning program we require from time to time.

### 23.5 Use of Information, Data and Software

In the event that you receive any data, information or software via the Electronic Service other than that which you are entitled to receive pursuant to this Agreement, you will immediately notify us and will not use, in any way whatsoever, such data, information or software.

### 23.6 Maintaining Standards

When using the Electronic Service, you must:

- a) ensure that the system is maintained in good order and is suitable for use with such Electronic Service;
- b) run such tests and provide such information to us as we reasonably consider necessary to establish that the system satisfies the requirements notified by us to you from time to time;
- c) carry out virus checks on a regular basis;
- d) inform us immediately of any unauthorised access to an Electronic Service or any unauthorised transaction or instruction which you know of or suspect and, if within your control, cause such unauthorised use to cease; and

- e) not at any time leave the terminal from which you have accessed such Electronic Service or let anyone else use the terminal until you have logged off such Electronic Service.

### 23.7 System Defects

In the event you become aware of a material defect, malfunction or virus in the system or in an Electronic Service, you will immediately notify us of such defect, malfunction or virus and cease all use of such Electronic Service until you have received permission from us to resume use.

### 23.8 Intellectual Property

All rights in patents, copyrights, design rights, trade-marks and any other intellectual property rights (whether registered or unregistered) relating to the Electronic Services remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify the Electronic Services or any part or parts thereof unless expressly permitted by us in writing, reverse compile or disassemble the Electronic Services, nor purport to do any of the same or permit any of the same to be done, except in so far as such acts are expressly permitted by law. Any copies of the Electronic Services made in accordance with law is subject to the terms and conditions of this Agreement. You must ensure that all the licensors trademarks and copyright and restricted rights notices are reproduced on these copies. You must maintain an up-to-date written record of the number of copies of the Electronic Services made by you. If we so request, you must as soon as reasonably practical, provide to us a statement of the number and whereabouts of copies of the Electronic Services.

### 23.9 Liability and Indemnity

Without prejudice to any other terms and conditions of this Agreement relating to the limitation of liability and provision of indemnities, the following clauses apply to our Electronic Services.

- a) System errors: We have no liability to you for damage which you may suffer as a result of transmission errors, technical faults, malfunctions, illegal intervention in network equipment, network overloads, malicious blocking of access by third parties, internet malfunctions, interruptions or other deficiencies on the part of internet service providers. You acknowledge that access to Electronic Services may be limited or unavailable due to such system errors, and that we reserve the right upon notice to suspend access to Electronic Services for this reason.
- b) Delays: Neither we nor any third-party software provider accepts any liability in respect of any delays, inaccuracies, errors or omissions in any data provided to you in connection with an Electronic Service.



- c) Viruses from an Electronic Service: We have no liability to you (whether in contract or in tort, including negligence) in the event that any viruses, worms, software bombs or similar items are introduced into the System via the Electronic Service or any software provided by us to you in order to enable you to use the Electronic Service, so long as we have taken reasonable steps to prevent any such introduction.
- d) Viruses from your system: You must ensure that no computer viruses, worms, software bombs or similar items are introduced into our computer system or network and will indemnify us on demand for any loss that we suffer arising as a result of any such introduction.
- e) Unauthorised use: We are not liable for any loss, liability or cost whatsoever arising from any unauthorised use of the Electronic Service. You continuously indemnify us against all losses, liabilities, judgements, suits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using the Electronic Service by using your designated passwords, whether or not you authorised such use.
- f) Markets: We are not liable for any act taken by or on the instruction of a market, clearing house or regulatory body.

### 23.10 Suspension or Permanent Withdrawal with Notice

We may suspend or permanently withdraw an Electronic Service, by giving you 10 days' written notice.

### 23.11 Immediate Suspension or Permanent Withdrawal

We have the right, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to use the Electronic Service, or any part thereof, without notice, where we consider it necessary or advisable to do so, for example due to your non-compliance with the Applicable Laws, breach of any provisions of this Agreement, on the occurrence of an Event of Default, network problems, failure of power supply, for maintenance, or to protect you when there has been a breach of share. In addition, the use of an Electronic Service may be terminated automatically, upon the termination (for whatever reason) of (i) any licence granted to us that relates to the Electronic Service; or (ii) this Agreement.

### 23.12 Effects of Termination

In the event of a termination of the use of the Electronic Service for any reason, upon request by us, you must, at our option, return to us or destroy all hardware, software and documentation that we have provided you in connection with such Electronic Service and any copies thereof.

## 24. Direct Debit Authorisation

The following provisions apply if a direct debit arrangement (“Direct Debit Authorisation”) is entered into between you and us to debit the account of you for moneys you owe to us.

- a) The Direct Debit Authorisation applies in respect of all moneys due and payable to us under the Confirmation and this Agreement;
- b) You:
  - (i) must ensure that sufficient funds are available in the nominated account to meet all drawings on their due dates;
  - (ii) must advise us immediately if the account nominated is transferred or closed;
  - (iii) must ensure a suitable alternate payment method is arranged with us if you terminate this Direct Debit Authorisation; and
  - (iv) are liable for all fees incurred by us in relation to failed drawings.
- c) We:
  - (i) where the due date falls on a non-business day, will draw the amount on the next Business Day thereafter; and
  - (ii) reserve the right to cancel the Direct Debit Authorisation if three or more drawings are returned unpaid by your nominated financial institution and to arrange with you an alternate payment method.
- d) You:
  - (i) may terminate or amend the Direct Debit Authorisation at any time by giving 14 days prior to written notice to us;
  - (ii) stop payment of a drawing under the Direct Debit Authorisation by giving 3 days’ prior written notice to us; and
  - (iii) where you consider a drawing has been debited incorrectly, you can dispute the drawing directly with us or lodge a direct debit claim through your nominated financial institution.

## 25. Force Majeure

### 25.1 Force Majeure Event

We may in our reasonable opinion determine that an emergency or exceptional market condition exists (“a Force Majeure Event”), including but not limited to:

- a) where we are, in our opinion, unable to maintain an orderly market in our Margin FX Contracts in respect of any one or more of the Underlying Instruments as a result of the occurrence of any act, omission or event (including but not limited to any circumstance beyond our control such as strike, riot, civil unrest or failure of power supply, communications or other infrastructure);
- b) the suspension, closure, liquidation or abandonment of any relevant market or Underlying Instruments;
- c) the imposition of limits or special or unusual terms in the relevant markets or Underlying Instruments;
- d) the excessive movement, volatility or loss of liquidity in the relevant markets or Underlying Instruments; or
- e) where we reasonably anticipate that any of the circumstances set out in paragraphs 25.1(a) to (d) of this Agreement are about to occur.

### 25.2 Actions we may take

If we determine that a Force Majeure Event exists then we may (without prejudice to any other rights under this Agreement and at our sole discretion) take any one or more of the following steps:

- a) alter normal trading times;
- b) alter the Margin Percentage;
- c) amend or vary this Agreement and any transaction contemplated by this Agreement, including any Contract, insofar as it is impractical or impossible for us to comply with our obligations to you;
- d) close any or all open Margin FX Contracts, cancel instructions and orders as we deemed to be appropriate in the circumstances; or
- e) take or omit to take all such other actions as we deem to be reasonably appropriate in the circumstances having regard to the Positions of us, you and other customers.

### 25.3 Notification of Force Majeure Event

To the extent practicable, we will take reasonable steps to notify you of any action that we propose to take under clause 25.2 before we take such action. If it is not practicable to give you prior notice, we will notify you at the time promptly after taking any such action.

### 25.4 Liability

If we determine that a Force Majeure Event exists, we will not be liable to you for any failure, hindrance or delay in performing our obligations under this Agreement or for taking or omitting to take any action in accordance with clauses 25.2 or 25.3 of this Agreement.

### 25.5 Close Open Positions

In some circumstances, we may be unable, after using all reasonable efforts, to acquire, substitute, maintain, unwind or dispose of any Underlying Instrument we consider necessary to hedge or protect our exposure to market and other risks arising from an open Position. In such circumstances, we may close that open Position at the Contract Price.

## 26. Dispute Resolutions

### 26.1 Informing us about Disputes

You should inform us immediately in writing of any dispute or difference whatsoever in connection with this Agreement. We will endeavour to investigate and resolve any dispute or difference in accordance with our internal complaints handling system.

### 26.2 How Disputes are dealt with

Any dispute or difference whatsoever in connection with this Agreement must be dealt with by you in New Zealand as follows: In the event the dispute or difference is unable to be resolved by us to your satisfaction in accordance with our internal complaints handling system, you may refer the dispute or difference to the Financial Services Complaints Limited (FSCL) for determination in accordance with their rules.

### 26.3 Where we may commence Legal Proceedings

Clause 26.2 of this Agreement is for the benefit of us only, and it does not prevent us from commencing proceedings against you in any relevant jurisdiction.

### 26.4 Internal Complaints handling policy

You should contact us for information on how complaints are handled by us internally.

## 27. Privacy

### 27.1 Personal information

In the course of opening your Account and providing services to you under this Agreement, it will be necessary for us to obtain and hold personal information that we obtain from you in accordance with data protection and anti-money laundering legislation. You agree that we can rely on, hold and process personal information for the purpose of performing those services and our obligations under this Agreement and for the purpose of improving those services through such things as product improvement and development.

### 27.2 Provision of our Services

If you do not provide the information requested by us or agree to our information handling practices detailed in this Agreement, we may not be able to provide our services to you.

### 27.3 Disclosing Information

You agree to us disclosing any information we collect from you:

- a) in accordance with this clause 27;
- b) where we are required by law or regulatory authorities;
- c) to regulatory authorities and to such third parties as we originally consider necessary in order to prevent crime;
- d) where reasonably necessary, to any third party which provides a service to us in connection with this Agreement, but restricted to the purposes of providing that service.

### 27.4 Credit and Identity Checks

You consent to us, or our agents acting on our behalf, carrying out credit and identity checks, including money laundering, compliance regulatory reporting and fraud prevention checks, as we may reasonably consider necessary or desirable, including references on your bank or any credit reference agency. You agree that any third party that we use for this purpose may share any information concerning you with us and other organization.

### 27.5 Introducing Brokers

In the situation where you have been introduced to us by an introducing broker, you consent to us exchanging information with that introducing broker for the purposes of this clause 27. You may withdraw your consent by advising us accordingly.

### 27.6 New Products or Services

You authorise us to contact you by email, telephone or post to give you information about our new products or services and you consent to us using your data for this purpose for the period that you have an account with us and after you have closed the account. However, if you do not wish to receive such information, you should advise us.

### 27.7 Pass Personal Data

You authorise us to pass your personal information to selected Related Entities of us or third parties for the purpose of contacting you by email, telephone or post to give you information about products offered by that Related Party for the period you have an Account with us and after you have closed it. If you no longer wish to receive this information, you should advise us.

### 27.8 Other Countries

You acknowledge that it may be necessary for your information to be transferred to someone who provides a service to us in other countries, and you consent to such transfer.

### 27.9 Access to Information

You may contact us at the address listed in our Client Agreement if you wish to request access to any personal information that we hold about you for the time.

### 27.10 Recording

We may record all conversations with you and monitor and maintain a record of all emails sent by or to us. All such records are our property and can be used by us.

## 28. Illegality ETC.

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement under the law of that jurisdiction nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction will be in any way affected.

## 29. Assignment and Delegation

The following provisions apply in relation to assignment and delegation:

- a) You may not assign any of your rights or delegate any of your obligations under this Agreement to any person without our prior written consent.
- b) You may not charge any or all of their rights under this Agreement, including any rights to deposits held by us. Without prejudice to paragraph 29(a) of this Agreement, we may assign our rights or delegate any of our obligations under this Agreement to any person on giving not less than 7 Business Days' notice to you and to the extent that such approval is required by law.
- c) If you are in default of any of your obligations under this Agreement, we will be entitled (without prejudice to any other rights it may have) at any time thereafter to assign to any person with immediate effect all or any of our rights in respect of moneys owing to it under this Agreement, as well as any security or other remedies available to it in respect of such moneys. If any such assignment is made, you will, if so required by us and the assignee, acknowledge in writing that the assignee has assumed our rights and obligations under this Agreement in relation to the relevant moneys owing by you.
- d) Despite anything to the contrary contained in this Agreement, we may disclose to any actual or potential delegate or assignee as referred to in paragraph 29(c) of this Agreement, such information relating to you and your relationship with us, as we see fit.

### 30. Rights and Remedies

The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

### 31. Rights of Third Parties

Nothing in this Agreement is intended to confer on any person other than us or you any right to enforce any term of this Agreement.

### 32. Delay, Omission and Waiver

The following provisions apply to any delay, omission and waiver:

- a) No delay or omission on our part in exercising any right, power or remedy provided by law or under this Agreement, or partial or defective exercise thereof, will:
  - (i) impair or prevent further or other exercise of such right, power or remedy; or

- (ii) operate as a waiver of such right, power or remedy.
- b) No waiver of any breach of any term of this Agreement will (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.

## 33. Governing Law and Jurisdiction

### 33.1 Law

This Agreement, and each Margin FX Contract between us and you will be governed by and construed in accordance with the law of New Zealand.

### 33.2 Jurisdiction

You and we submit, for the benefit of us only, to the exclusive jurisdiction of the law of New Zealand. For the avoidance of doubt, this clause 33 will not prevent us from commencing proceedings in any other relevant jurisdiction.

## 34. Notices

### 34.1 Notices must be in writing

Subject to clause 34.2 and our Client Agreement, any notice or other communication given or made under or in connection with the matters contemplated by this Agreement will, except where oral communication is expressly provided for, be in writing and will be sent to the address below:

- a) JD Capital Financial Group Ltd

Address: Level 12, BDO Tower, 120 Albert Street  
Auckland 1010

PO Box 5766  
Wellesley Street,  
Auckland 1141

New Zealand

Ph No.: +64 9 973 2060

Fax No.: +64 9 379 2954

Email: [info@jdfx.co.nz](mailto:info@jdfx.co.nz)



- b) You: The address, facsimile number and electronic mail address provided by you for this purpose.

### 34.2 Provision of Notice

A notice in writing can be provided by letter, fax, email or to the extent permitted by Applicable Laws, the Website including the Trading Platform. We may send notices to you at your last known home or email address, place of work, fax, telephone, pager number or other contact details.

### 34.3 When Notices are received

Any such notice will be deemed to have been received:

- a) if delivered personally or by hand, at the time of delivery;
- b) if posted, within 3 Business Days of posting;
- c) if oral, whether by telephone or face to face, when actually given;
- d) if by leaving a message on a telephone answering machine or voice mail, one hour after the message was left;
- e) if sent by facsimile, one hour after completion of its transmission; and
- f) if sent by electronic mail, one hour after sending

### 34.4 Change of Notice Details

You may alter the address (including electronic mail address) to which Confirmations, statements and other communications are issued, by written notice to us and we may notify you of a change to any of its details as stated above, provided in either case that such alteration will only be effective on the later of the date specified in the notice and the time of deemed service under clause 34.3 of this Agreement.

### 34.5 Deemed Notice where Notice sent to Contact Details provided

You agree and acknowledge that any Confirmations, statements, supplementary Client Agreement, and any other written notices will be deemed to have been properly given or made available if sent to the address (including electronic mail address) last notified to us by you.

### 34.6 Your Responsibility to update Contact Details

You agree and acknowledge that you are solely responsible for ensuring that we have your current address, telephone number, facsimile number and electronic mail address.

## 35. Glossary

<b>ACCOUNT</b>	means an account you have with us
<b>AGREEMENT</b>	means this Client Agreement, as amended, varied, or replaced from time to time
<b>AML/CFT ACT</b>	means the Anti-Money Laundering and Countering Financing of Terrorism Act and all regulations, rules and instruments made under that Act
<b>APPLICABLE LAWS</b>	means all: a) applicable provisions of laws and regulations, including all relevant rules of government agencies, exchanges, trade and clearing associations and self-regulatory organisations, that apply to the parties, this Agreement and the transactions contemplated by this Agreement; and b) applicable New Zealand law; and c) applicable Market Rules.
<b>APPLICATION FORM</b>	means the application form and account opening documentation, including documentation required to be returned for the purposes of complying with Anti-Money Laundering and Countering Financing of Terrorism legislation, completed by you and submitted to us whether electronically or in hard copy
<b>ASSOCIATE</b>	means: a) a person who is an officer, employee, agent, representative or associate of a party; b) a Related Body Corporate of a party; and c) a person who is an officer, employee, agent, representative or associate of a Related Body Corporate of a party
<b>AUTHORISED PERSON</b>	means you and/or any person authorised by you to give instructions to us under this Agreement
<b>BASE CURRENCY</b>	means the currency selected by you in the application form and which, in the absence of a selection will be NZD dollars
<b>BULLION</b>	means gold or silver
<b>BULLION CONTRACT</b>	means a contract whose value fluctuates by reference to the fluctuations in the Underlying Instrument which relate to gold or silver
<b>BUSINESS DAY</b>	means: any day other than a Saturday, Sunday or public holiday on which banks are open for business in New Zealand; (a) in the case of services relating to an Index to which Limited Hours Trading applies, any day on which the exchange on which the relevant security or each constituent security has its primary listing, or the exchange on which the Index operates, whichever is applicable, is open for trading, and will exclude any day on which all trading on the relevant exchange is closed or

	suspended; (b) in the case of services relating to an Index to which Limited Hours Trading does not apply, any day on which any relevant exchange is open for trading.
<b>CLIENT</b>	You
<b>CLIENT MONEY</b>	means the moneys Clients have deposited with us and held by us under the Client Money Rules
<b>CLOSE OF BUSINESS</b>	means 22.00 Greenwich Mean Time (21.00 during daylight saving)
<b>CLOSING PRICE</b>	means the price determined by us, from time to time, having regard to the last traded or mid close price and our Spread as may be appropriate for the Underlying Instrument
<b>COMPANIES ACT</b>	means the Companies Act 1993 of New Zealand
<b>CONFIRMATION</b>	means a form of notification, which may be provided by us electronically, including via the internet, requiring access by the Client, confirming entry into a Contract
<b>CONTRACT</b>	means any contract, whether oral or written, including any derivative or other transaction relating to such financial products entered into by us with you or any back to back agreement which we may enter into to enable us to enter into or fulfil our obligations under such contract
<b>CONTRACT PRICE</b>	means the price we offer you to trade in our financial products from time to time and which is calculated by us according to the Product Disclosure Statement and Client Agreement
<b>CONTRACT QUANTITY</b>	means in relation to a Margin FX Contract, the number of Contract Units as the case may be, traded by you as stated in the Confirmation
<b>CONTRACT UNIT</b>	means The Minimum Trading Size for the type of Margin FX Contract you wish to trade with us
<b>CONTRACT VALUE</b>	means the total value of the Margin FX Contract as calculated by us in accordance with the terms of this Agreement
<b>CURRENCY LEDGER BALANCE</b>	upon realising your profit and loss for a Margin FX Contract Position denominated in a foreign currency you will hold a foreign currency balance in your Account that can be converted back to your Base Currency upon request (and which may be converted back to your Base Currency by us in certain circumstances)
<b>ELECTRONIC SERVICE</b>	means a service provided by us, for example an internet trading service offering clients access to information and trading facilities, via an internet service, a WAP service and/or an electronic order routing system and including relevant software provided by us to enable you to use an electronic trading service
<b>EVENT OF DEFAULT</b>	means an event described in clause 14.1 of the Client Agreement
<b>EXCEPTIONAL MARKET CONDITIONS</b>	means an exceptional market condition as we may in our reasonable opinion determine exists, including but not limited to, a Force Majeure Event
<b>EXCHANGE RATE</b>	means the exchange rate we may reasonably offer to you from time to time having regard to the applicable prevailing Interbank

	Rates and our Spread, and which is available to you from us via the Electronic Services or on request
<b>EXPIRY DATE</b>	means the day on which the Margin FX Contract expires
<b>FORCE MAJEURE EVENT</b>	an emergency or exceptional market condition
<b>FOREIGN CLIENT</b>	means a Client who is a resident outside New Zealand (based on the address in their Application Form or as notified by the Client to JD Capital from time to time)
<b>FREE EQUITY</b>	is your Total Equity less your Margin Requirement
<b>FSCL</b>	means the Financial Services Complaints Limited
<b>FSP</b>	means the New Zealand Financial Services Provider
<b>GMT</b>	means Greenwich Mean Time
<b>INSOLVENCY EVENT</b>	<p>means any of the following:</p> <ul style="list-style-type: none"> <li>a) an order is made that a corporate client be wound up;</li> <li>b) an application is made to a court for an order: <ul style="list-style-type: none"> <li>(i) that a corporate client be wound up; (ii) appointing a liquidator or provisional liquidator for a corporate client;</li> </ul> </li> <li>c) a liquidator, provisional liquidator or controller is appointed to a corporate client;</li> <li>d) a resolution is passed to appoint an administrator to a corporate client;</li> <li>e) you enter into a deed of company arrangement or propose a reorganisation, moratorium or other administration involving all or any of your creditors;</li> <li>f) a corporate client is dissolved or wound up in any other way;</li> <li>g) you are or state that you are unable to pay your debts as and when they fall due;</li> <li>h) you are or state that you are insolvent;</li> <li>i) you seek or obtain protection from any of your creditors under any legislation;</li> <li>j) you become insolvent or commit an act of bankruptcy or your estate comes within the law dealing with bankrupts;</li> <li>k) a bankruptcy petition is presented in respect of you or, if a partnership, in respect of one or more of the partners, or if a company, a receiver, trustee, administrative receiver or similar officer is appointed;</li> <li>l) if execution is levied against your business or your property and is not removed, released, lifted, discharged or discontinued within 28 days;</li> <li>m) you seek a moratorium or propose any arrangement or compromise with your creditors;</li> <li>n) any other event having substantially the same legal effect as the events specified in paragraphs (a) to (n) above;</li> <li>o) any security created by any mortgagee or charge becomes enforceable against you and the mortgagee or chargee takes steps to enforce the security or charge;</li> <li>p) any indebtedness of you or any of your Related Corporations becomes immediately due and payable, or capable of being</li> </ul>

	<p>declared so due and payable, prior to its stated maturity by reason of your default or the default of any of your subsidiaries, or you or any of your subsidiaries fail to discharge any indebtedness on its due date;</p> <p>q) you fail fully to comply with any obligations under this Agreement or any Margin FX Contract;</p> <p>r) any of the representations or warranties given by you are, or become, untrue;</p> <p>s) we reasonably consider it necessary for our own protection or the protection of our Associates.</p>
<b>INSTRUMENT</b>	Margin FX Contract is determined
<b>INTERBANK RATE</b>	means the mid Interbank Rate calculated by us with reference to the bid and offer prices for the Underlying Instrument most recently quoted by any one or more third party banks
<b>INTEREST QUALIFICATION LEVEL</b>	means the interest qualification level as specified in our Product Disclosure Statement and Client Agreement
<b>JD CAPITAL</b>	means JD Capital Financial Group Ltd COMPANY REGISTRATION NUMBER 3837956
<b>JD Capital PRODUCT SCHEDULE</b>	means the list of Margin FX Contracts which we hold ourselves out from time to time as willing to quote a price, as amended by us from time to time. The Product Schedule is available at <a href="http://jdfx.co.nz">http://jdfx.co.nz</a>
<b>JD CAPITAL ROLLOVER RATE OR OUR ROLLOVER RATE</b>	means the rate as we may determine from time to time having regard to rolling from the front month underlying having regard to rolling from the front month underlying futures contract to the Next Serial Futures Contract
<b>JD CAPITAL SPREAD</b>	means the difference between the bid and offer prices of a Contract quoted from time to time by us and, where appropriate, expressed as a percentage of the relevant price
<b>JD CAPITAL SWAP RATE OR OUR SWAP RATE</b>	means the rate as we may determine from time to time having regard to the interbank swap for swaps
<b>LIMIT ORDER</b>	an order used by you to either open or close a Position at a predetermined price that is more favourable to you than the current market price
<b>LIMITED TRADING HOURS</b>	means the ability of the Client to trade Margin FX Contracts and (where available) as are designated by us from time to time under this Agreement only during such hours as the relevant exchange is open
<b>LIQUIDATION LEVEL</b>	means the minimum Total Equity balance
<b>LONG PARTY</b>	means, in relation to a Margin FX Contract, the party that has notionally bought the relevant Underlying Instrument
<b>MARGIN</b>	means the amount that you must have in your Account to enter into a Margin FX Contract with us
<b>MARGIN ADJUSTMENT</b>	means an adjustment to the amount of Margin you need to have in your Account to maintain a Position, due to us changing the Margin Percentage or making a variation of Margin or Margin Call

<b>MARGIN CALL</b>	means a call on you normally made via the Trading Platform, requiring you to top up the amount of money you have in your Account as Margin in order to maintain your Margin Percentage where the market has moved against you, and where the additional payment is required in order to maintain your open Positions
<b>MARGIN CONTRACT</b>	means any contract, whether oral or written or concluded electronically, entered into between you and us and includes Margin FX Contracts
<b>MARGIN FX CONTRACT</b>	means a contract between you and us for the taking of spot Position in a foreign currency
<b>MARGIN PERCENTAGE</b>	means, such percentage of the Contract Value as specified by us, and as amended by us under the Product Disclosure Statement and Client Agreement from time to time
<b>MARGIN REQUIREMENT</b>	is the amount of Margin you are required to have in your Account from time to time in order to enter into a Margin FX Contract, or to maintain your Position/s
<b>MARKET ORDER</b>	means an order placed to buy or sell a contract at our current price
<b>MARKET RULES</b>	means the rules, regulations, customs and practices from time to time of any exchange, licensed financial market, clearing house, licensed clearing and settlement facility, or other organisation or market involved in the conclusion, execution or settlement of a transaction or Contract and any exercise by such exchange, clearing house or other organisation or market of any power or authority conferred on it
<b>MID PRICE</b>	means the price at the mid-point between our bid and offer prices
<b>MINIMUM POINT INCREMENT</b>	represents the minimum possible price change between two successive transaction prices permitted by us. The Minimum Point Increment can represent either an upward or downward movement in price
<b>MINIMUM TOTAL EQUITY BALANCE</b>	means such minimum Total Equity balance in your Account (as amended from time to time)
<b>MINIMUM TRADING SIZE</b>	means such minimum contract quantity or contract value as we may specify on our Website from time to time for any type of Margin FX Contract
<b>NEW ZEALAND CLIENT</b>	means a client who is a resident within New Zealand (based on the address in their Application Form or as notified by the Client to us from time to time)
<b>NORMAL TRADING SIZE</b>	means the minimum and maximum Contract Quantity or Contract Value that we reasonably consider appropriate, having regard if appropriate, to the normal market size for which prices are available on any relevant exchange and for which we quote live price information
<b>NZD OR \$</b>	means New Zealand dollars
<b>NZT</b>	means the time in New Zealand
<b>OPENING VALUE</b>	means in relation to a Contract, the total Contract Value as agreed between us and you at the time of the transaction as stated on the

	Confirmation or as determined in accordance with the terms of this Agreement
<b>PDS</b>	means our Product Disclosure Statement
<b>POSITION</b>	means the long or short Position you have taken in your Margin FX Contract with us
<b>POSITION LIMIT</b>	means the limits, if any, imposed by us
<b>RELATED BODY CORPORATE</b>	has the meaning as in the Corporations Act, with any necessary modifications for companies incorporated outside New Zealand
<b>RELATED CURRENCY FUTURES CONTRACT</b>	means, in relation to any Margin FX Contract, any contract over a currency or cross currency which, in our reasonable opinion, is likely to be indicative of potential fluctuations in the value of such Contract
<b>RELEVANT INTEREST RATE</b>	means such applicable interest rate as we may reasonably select from time to time which is appropriate to the currency of the outstanding amount or the Underlying Instruments (as applicable) as detailed on the daily statement
<b>ROLLOVER RATE</b>	means the rate determined by us from time to time, having regard to Interbank Rates
<b>SERVICES</b>	means the services provided by us under this Agreement
<b>SETTLEMENT DATE</b>	means such settlement date following the Closing Date as we may reasonably determine in accordance with practice in the relevant market and notify to you at the time of entering into the Contract
<b>SHORT PARTY</b>	means in relation to a Margin FX Contract, the party that has sold a Margin FX Contract in opening a Margin FX Contract Position
<b>SPREAD</b>	means the difference in the bid and offer prices of a Margin FX Contract quoted from time to time by us and, where appropriate, expressed as a percentage of the relevant price
<b>STOP LOSS ORDER</b>	is an order placed with the aim of limiting the potential loss on an open Position
<b>SWAP BENEFIT</b>	means benefits you may receive on short Margin FX contracts held overnight
<b>SWAP CHARGE</b>	means a charge you may have to pay where you have a Margin FX Contract
<b>SWAP RATE</b>	means the rate determined by us from time to time having regard to Interbank Rates
<b>TOTAL EQUITY</b>	means the aggregate of the current cash balance in your Account and your current unrealised profits and losses
<b>TOTAL MARGIN REQUIREMENT</b>	means the sum of your Margin Requirements for all of your open Positions
<b>TRADING PLATFORM</b>	means the trading platform in the Electronic Service we make available to you by which you may trade with us online in our Margin FX Contracts
<b>UNDERLYING ENTITY</b>	means an entity that is the issuer of an Underlying Instrument.
<b>UNDERLYING INSTRUMENT</b>	means the instrument, currency, Bullion or other instrument or asset or factor the reference to which the value of a Contract is determined

<b>UNDERLYING MARKET</b>	means the underlying market in which the Underlying Instrument is traded
<b>UNREALISED P&amp;L</b>	means a figure stated on the Trading Platform which represent your unrealised profits less your unrealised losses
<b>WE/US/OUR</b>	means JD Capital Financial Group Ltd (COMPANY REGISTRATION NUMBER: 3837956) trading as JD Capital
<b>WEBSITE</b>	means the internet address <a href="http://jdfx.co.nz">http://jdfx.co.nz</a> and includes the Trading Platform



Physical:

JD Capital Financial Group Limited  
Level 12, 120 Albert Street  
Auckland 1010, New Zealand

Postal Address:

PO Box 5766, Wellesley Street  
Auckland 1141

Phone: +64 9 973 2060

Fax: +64 9 379 2954

Email: [support@jdfx.co.nz](mailto:support@jdfx.co.nz)

