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## Account Terms

Issue date: 10 August 2012

# An agreement is made by First Prudential Markets Pty Ltd ABN 16 112 600 281 AFSL 286 354 (FP Markets) and the Client on the following terms.

## 1. Terms

- 1.1 CFDs and other Transactions are issued and managed as set out in this document (as amended from time to time). The provisions in this document (as amended from time to time) are referred to as the Terms (see the definition in clause 31).
- 1.2 These Terms also cover the Account you have with FP Markets to manage your Transactions.
- 1.3 In order to establish your Account, you must send or provide to FP Markets your completed and executed Application Form and that must be accepted by FP Markets. FP Markets may, in its absolute discretion, accept or decline to provide any one or more Financial Products that you have selected in your Application Form.
- 1.4 This agreement will apply to you in respect of any Financial Product that you have selected in the Application Form from the earlier of (a) the time FP Markets accepts your Application Form; (b) the time FP Markets otherwise agrees to provide the Financial Products to you; and (c) the time you first place an Order in respect of the Financial Products with FP Markets or otherwise instruct us to provide a service in respect of the Financial Products.
- 1.5 Your Application Form may be the initial form you give us to open your Account or it can be another form which you later give us to apply for other kinds of Financial Products, in either case it will be in the form which we choose to accept. Your forms can be in paper or electronic form, as FP Markets permits from time to time.
- 1.6 FP Markets may in its discretion allow you to have two or more Accounts from time to time. A reference in this document to "Account" is a reference to all of the Accounts you have from time to time, unless the context requires a different meaning. For example, all of your Accounts are subject to set-off and netting in accordance with these Terms and will not be segregated from each other unless we expressly agree that in writing.
- 1.7 All Financial Products offered by FP Markets are subject to the terms in this document, which includes the general terms and also any Schedule which applies to particular Financial Products or services which you use from time to time (as specified in those Schedules). A reference to "terms" is a reference to the terms in this document (including the specific Schedules relevant to particular Financial Products or services) which are applicable to you, as amended from time to time.
- 1.8 If, after opening an Account, you later choose a different kind of Financial Product for Transactions or services which you have not previously dealt with or used, then the relevant Schedule (in the form applying at that time, and as later amended) for the Financial Products or services will apply to your Account from the time when FP Markets agrees to provide the Financial Products or service to you. You should check that you have the latest version of terms including the latest Schedule applicable to the Financial Products or service later chosen by you because that will apply to your Account even if you do not have a copy of them.
- 1.9 These terms set out all of your agreement except only for those provisions which are imposed by law and which cannot be excluded by these terms or have not been excluded by these Terms.
- 1.10 FP Markets has a number of discretions under these Terms (set out in this document) which can affect your Transactions or your Account. You do not have any power to direct how we exercise our discretion. When exercising our discretions we will comply with our legal obligations as the holder of an Australian financial services licence. We will have regard to our policies and to managing all risks (including financial, credit and legal risks) for ourselves and all of our clients, our obligations to our counterparties, market conditions and our reputation. We will always try to act reasonably in exercising our discretions but in doing that we are not obliged to act in your best interests nor are we obliged to avoid or to minimise a loss in your Account.

## 2. Orders

- 2.1 You may from time to time place Orders with us to enter into Transactions. Orders are not Transactions. They are requests for Transactions. Subject to these Terms, we will execute your Orders (or will instruct third parties to execute your Orders) on your behalf or with you as principal, in accordance with your instructions.
- 2.2 We will use our reasonable endeavours to execute or to arrange the execution of your Orders. We will not be responsible for delays or errors in the transmission or execution of your Orders (except to the extent that responsibility cannot be excluded by law).
- 2.3 We may refuse to accept an Order and we may place a limit on any Order or place other conditions on the receipt of instructions or Orders, in our absolute discretion and without giving any reason or any prior notice. We may at any time use, add and change filters within a trading system which prevent delivery of Orders or execution of Orders without giving any reason or any prior notice. We will notify you of any refusal or limitation as soon as reasonably practicable, unless we are prevented by law or a direction from a regulatory authority from notifying you or we decide it is in accordance with our compliance policies and procedures not to notify you at that time or at all.
- 2.4 Without limiting our discretion, we may cancel or amend an Order in any of the following cases:
- (a) if the Financial Product the subject of the Transaction has been subject to a trading halt on a Financial Market or other regulatory action preventing execution of your Order and you have not reconfirmed instructions;
  - (b) if we consider the cancellation or variation is appropriate, having regard to the desirability to maintain a fair and orderly market, our obligations as the holder of an Australian financial services licence or as a participant or user of the relevant Financial Market and our other legal and regulatory obligations;
  - (c) if required by the operator of a relevant Financial Market or CS Facility or Applicable Laws to do so, in respect of your Order or any contract we propose to enter into to hedge our Transactions with you in relation to your Order;
  - (d) if there appears to us to have been or will be an error.
- 2.5 We will make reasonable efforts to effect any instructions to cancel or to amend Orders as quickly as possible. If, however, an Order is filled prior to a cancellation or amendment instruction being effected, you are obliged to accept the Transaction on the original terms of it prior to your amendment or cancellation instruction; unless the Transaction is itself is cancelled or amended.
- 2.6 We may execute Orders for you even in circumstances if we or our associates:
- (a) hold a principal position or deal in the relevant Financial Products;
  - (b) provide similar services to other persons in relation to the relevant Financial Products;
  - (c) have material price sensitive information relating to the relevant Financial Products if the individuals processing your Order are prevented from knowing or taking into account such information (including, but not limited to, by reason of procedures and rules known as “Chinese walls”); or
  - (d) have a potential conflict of interest or duties including, for example, a conflict of interest of which you are not aware and which we are unable to disclose to you.
- 2.7 Notwithstanding any rule of law or equity to the contrary, FP Markets is not disqualified from contracting with any person and no contract, Transaction or arrangement in which FP Markets is in any way interested is avoided or rendered voidable by virtue of your agreement with us or a Transaction. FP Markets is not liable to account to you for any profit realised by any such contract, Transaction or arrangement in connection with these Terms or a Transaction. FP Markets is not required to make any disclosure to you concerning any such contract, Transaction or arrangement.
- 2.8 We, our related bodies corporate and our other associates may enter into Transactions with you as principal, whether in respect of Financial Products able to be traded on a Financial Market or in respect of over-the-counter Transactions such as Derivatives or Foreign Exchange related Transactions. If permitted by law and the Rules, we or an associate may take the opposite position in a Transaction with you (in addition to the Transaction with you). Your

### 3. Calculations and Valuations

3.1 The Balance of an Account will be determined by FP Markets on the basis of:

- (a) Transactions, including rolled Transactions;
- (b) Transaction Fees;
- (c) Margin payments received and credited;
- (d) Unrealised Gain/Loss;
- (e) Finance Charges (including interest on an Account's Balance, forward and rollover fees components); and
- (f) any other fees and costs.

3.2 FP Markets may from time to time calculate and report the Gross Liquidated Value. The Gross Liquidated Value is an indicative (non-binding) value of an Account calculated by FP Markets for the Account. It takes into account (among other things, without limitation):

- (a) Finance Charges (accrued and payable); and
- (b) payment or credit to you to reduce your Margin (which is sometimes referred to as "return of Margin").

It does not include:

- (c) Finance Charges which have not been posted;
- (d) any estimate of costs of closing Transactions by termination or Close Out.

3.3 The Gross Liquidated Value may also be reported as the "cost to close" a Transaction, according to the type of Transaction or the method of dealing.

3.4 FP Markets may from time to time calculate and report the Free Cash for an Account the Free Cash and the Free Equity.

- (a) The Free Cash is the amount calculated by FP Markets as the cash balance of your Account less the required minimum Margin. If your Margin Cover is not positive, there will be no Free Cash. The amount is subject to final adjustment by FP Markets at any time including immediately after payment of cash to you for any reason whatever, including changes in value or level of Underlying Financial Products, interest

rates, currency rates, and unposted (or unreported) but accrued Finance Charges or Transaction Charges.

The Free Cash amount is used to calculate interest payments on your Account, accruing daily and posted monthly.

- (b) The Free Equity is the amount calculated by FP Markets as the amount of cash which may be paid to you from the Account if requested or which is surplus to your minimum Margin requirement and so may permit further trading on Your Account. If your Margin Cover is not positive, there will be no Free Equity. The amount is subject to final adjustment by FP Markets at any time including immediately after payment of cash to you for any reason whatever, including changes in value or level of Underlying Financial Products, interest rates, currency rates, and unposted (or unreported) but accrued Finance Charges or Transaction Charges.

3.5 FP Markets may from time to time calculate and report the Unrealised Gain/Loss for an Account. Unrealised Gain/Loss is the indicative amount of net profit or loss of an Account calculated by FP Markets (including by Trading Platforms) by reference to prevailing market prices and so:

- (a) may be adjusted by FP Markets at any time without notice; and
- (b) is not definitive and so does not assure you that the Transactions will have that value if actually terminated or sold at that particular time or at a later time.

3.6 Defined expressions which are used in these Terms for reporting and calculating amounts may differ from time to time from terms or expressions used in Trading Platforms usage or desk usage or market practice. You should have regard to the statements, Confirmations, guides and dealing practices used from time to time.

3.7 If the composition or calculation of an Underlying Financial Product is adjusted by its issuer, regulator or sponsor, FP Markets will make such adjustment to the Transaction at the time determined by FP Markets which it decides would reasonably preserve the intended economic effect of the Transaction, but without being obliged to consider your particular circumstances. FP Markets need not give notice of the adjustment. If the Underlying Financial Product becomes subject



Orders may match opposite Orders of another person who is our client, and this may entitle us to receive fees or commission from both sides of the Transaction. Similarly, if we deal as principal, then your Orders may match opposite Orders entered on our behalf as principal and you authorise us to charge you commission or a Transaction Fee in respect of the Transaction in those circumstances.

- 2.9 You are aware of and acknowledge the right of FP Markets, its related bodies corporate and their respective directors and employees, either on their own account or on behalf of other clients or persons, to deal in any Transaction or take the opposite position to you in Transactions, if permitted (or, if not expressly permitted, then if not prohibited) to do so by the Corporations Act and the Rules.
- 2.10 If we or our related bodies corporate or any of the respective directors and employees of us or our related bodies corporate enter into Transactions with you as agent for placing your Orders with another person, whether in respect of Financial Products able to be traded on a Financial Market or in respect of over-the-counter Transactions such as Derivatives or Foreign Exchange related Transactions, we and our related bodies corporate are not liable to you for the performance or default by the other person in relation to execution, settlement or clearing of Orders, custody of your assets (including funds) or any open risks which arise in any way in relation to, directly or indirectly, the manner of processing, administering, holding or reporting those Orders, dealings, Transaction or anything else in relation to them.
- 2.11 You acknowledge that we do not operate any discretionary accounts and we will, unless otherwise expressly provided by these Terms, only act on your instructions (including those given by your Authorised Person).
- 2.12 Unless otherwise specified in this document, all Orders will remain open until either cancelled by you or purged by the trading system or the Trading Platform for the relevant Financial Market. An Order or unfilled part of an Order will be purged as determined by FP Markets without having to notify you of that. Once an Order has partially traded, only the remaining volume can be cancelled and you remain liable for the volume traded. We do not accept responsibility for reinstating lapsed Orders or for contacting you to seek new instructions.
- 2.13 If a Financial Product's security code or other identifier for a changes, then you are

responsible for replacing all live and contingent Order codes with the new relevant security code or identifier. We will not be responsible for any live or contingent Orders with the incorrect security code or identifier.

- 2.14 You must not instruct us to submit an Order to enter into an Transaction which would breach or cause us or any other person to breach the Corporations Act, the Rules or any other Applicable Laws including, without limitation, any law or the Rules in relation to:
- (a) market manipulation, false trading, market rigging, fictitious Transactions, wash trading or matching of Orders;
  - (b) insider trading;
  - (c) short selling;
  - (d) creating a disorderly market or otherwise prejudicing the integrity or efficiency of the market; or
  - (e) misleading or deceptive conduct.
- 2.15 Your Order to FP Markets to enter into a Transaction and the Transaction remains valid and enforceable against you, without affecting your other liability to FP Markets, even if you (or your Authorised Person) are not authorised by your own rules (such as a corporate or trust constitution or an investment management agreement).
- 2.16 You agree not to make any Claim against FP Markets for any Loss incurred or suffered by you which arises in connection with or directly or indirectly caused by an exercise of any power by the operator of a Financial Market (whether or not FP Markets has given you a Confirmation in respect of any affected Transaction and whether or not that exercise of power was in relation to a particular contract made by FP Markets to hedge its Transaction with you).

to a take-over bid, a take-over offer, scheme of arrangement or other mechanism for change in control, then FP Markets may elect to Close Out the Transaction on any Closing Date determined by FP Markets.

## 4. Appointment of Authorised Persons

- 4.1 FP Markets may accept your authorisation of another person (Authorised Person) to give instructions and place Orders on your behalf. You must notify FP Markets in your Application Form or otherwise in writing of any such authorisation, setting out the full name, telephone number, fax number, email address and specimen signature of that person.
- 4.2 Any change or revocation of such authority is only effective upon receipt by FP Markets of a signed written notice of change or revocation from you. If another person is later appointed an Authorised Person, the notice must include the full name, telephone number, fax number, email address and specimen signature of that person and be verified by an Authorised Person and, if you are a body corporate, by a director.
- 4.3 You may appoint an attorney (under a power of attorney in the relevant jurisdiction) to give instructions and place orders on your behalf or otherwise to do anything which you are entitled to do in connection with or under these Terms. You must notify FP Markets in your Application Form of any such appointment setting out the attorney's details. You must provide FP Markets with a written power of attorney; FP Markets may accept or reject this power of attorney.
- 4.4 FP Markets may allow a Client which is a corporation or other legal entity to authorise a person (who is by that authorisation an Authorised Person) or an attorney to do anything which the Client is entitled to do under these Terms, including on conditions determined by FP Markets.
- 4.5 FP Markets may allow any other Client to authorise its Authorised Person or attorney to do anything which the Client is entitled to do under these Terms, including on conditions determined by FP Markets.
- 4.6 For the purposes of these Terms, Orders placed by, and other instructions or directions given by, an Authorised Person (or which appear to us on the face of the Orders or other instructions or directions to be placed or given by an

Authorised Person) are taken to be your Orders, instructions or directions.

- 4.7 You are and remain solely liable and responsible for all acts and omissions of your Authorised Person notwithstanding the act or omission of the Authorised Person was:

- (a) outside their actual or ostensible authority; or
- (b) in error, fraudulent, negligent, in breach of their fiduciary duties or criminal.

- 4.8 You agree not to make, and you release us from any liability to you under your right to make, any Claim against us for any Loss incurred or suffered by you which arise directly or indirectly due to us relying on instructions from or other communications from or acts or omissions by your Authorised Person (including your attorney).

## 5. Client Instructions

- 5.1 You must keep all passwords secret and ensure that unauthorised third parties do not obtain access to your facility for Transactions under these Terms.
- 5.2 Transmission of an Order (or any other instruction) by you will not constitute a binding contract with FP Markets until confirmed by FP Markets via the Confirmation.
- 5.3 You must execute, or otherwise authorise FP Markets to execute, all such agreements and other documents as required to enable the provision of the services and Financial Products contemplated in this document. You appoint FP Markets as your attorney to do all things necessary to enter into such agreements on your behalf.
- 5.4 You appoint FP Markets as your agent for the purposes set out in this document and confer upon FP Markets authority to do, or omit to do, all things reasonably necessary to perform FP Markets' functions and all things reasonably incidental to the performance of its functions.

## 6. Confirmations

- 6.1 If you have provided FP Markets with an email or other electronic address, you consent to Confirmations being despatched to it electronically. The Client acknowledges that each Confirmation is subject to the customs and usages of the Exchanges to which these Terms may be subject and to the correction of errors and omissions.
- 6.2 If our service provides Confirmations by accessing a substantially continuously available service, you consent to your Confirmations being available by those means instead of being sent to you.
- 6.3 You can agree with us, if permitted by Applicable Laws, not to give you a Confirmation or to provide Confirmations to an address or person nominated by you.
- 6.4 You acknowledge that FP Markets may, from time to time, approve an agent to provide the Confirmation and the Confirmation may be a joint Confirmation covering the services of FP Markets and of another person from time to time.
- 6.5 It is your obligation to review any Confirmation we send to you immediately to ensure its accuracy and report any discrepancies that you may have to us within 48 hours. Confirmations can be viewed electronically through the Trading Platform and from your daily statements.

## 7. Client Representations and Warranties

- 7.1 You, the Client, represent and warrant that as at the date of these Terms and at all times during these Terms:
  - (a) if you are a legal entity other than a natural person, the Client is duly organised and validly existing (or, if a natural person, you are of legal age to make binding agreements and are not under a legal disability or incapacity which would make these Terms unenforceable or invalid) and you have full power and authority to enter into, and has taken all necessary steps to enable it lawfully to enter into, these Terms and the Transactions and obligations under it;

- (b) the person executing (for the Client) the application for an agreement on these Terms has full power and authority to execute these Terms on behalf of the Client, and bind the entity (whether a natural person, company, partnership or otherwise);
- (c) these Terms constitutes a legal, valid and binding obligation of the Client;
- (d) if the Client is more than one person they will each be jointly (that is, together) and severally (that is, individually fully) liable under these Terms;
- (e) if the Client is a corporation, you have been and remain duly formed under the laws of the place of its incorporation and has power and authority to deal in the Financial Products offered by FP Markets, and the person executing these Terms has full power and authority to execute (for the Client) the application for an agreement on these Terms;
- (f) if the Client is one or more persons acting as a partnership in relation to these Terms, the Client and each other partner has power and authority to deal in Transactions and to be bound by these Terms, and the person executing these Terms has full power and authority to execute these Terms on behalf of all of the partners;
- (g) if the Client is a Trustee, the trust deed specifically empowers and authorises dealings in the Financial Products covered by these Terms, and such dealings are within the authorised ambit of the Trust's investment strategy;
- (h) if the Client is comprised of two or more persons (that is, holding a joint Account), that all such decisions made, and instructions issued, pursuant to these Terms, are made on a fully informed and agreed basis by all the parties to the joint Account;
- (i) a Client may be comprised of two or more persons. If the client is comprised of more than one person then the Account will be deemed to be held by the persons as joint tenants despite any actual or constructive notice to FP Markets of any partnership or other agreement between the persons. The joint holding will be only be deemed not to be held as joint tenants if FP Markets expressly

- agrees that in writing that the persons consisting the client hold the Account as tenants in common in equal shares or by a court determination of that it is not held as joint tenants;
- (j) if the Client is an investment manager or a responsible entity, the investment management agreement or fund constitution specifically empowers and authorises dealings in the Financial Products, by the Client and on behalf of their underlying clients or investors; and
    - (i) such dealings are within the authorised ambit of each underlying client's investment strategy;
    - (ii) it will enter into Transactions pursuant to the applicable investment management agreement as investment manager or responsible entity and not otherwise;
    - (iii) it will only deal in Financial Product Transactions when the funds or other assets under its control are sufficient to meet the obligations which arise in connection with such dealing; and
    - (iv) if your appointment as investment manager or responsible entity is terminated, it is authorised to arrange for Closing Out of all Transactions entered into on behalf of the Client prior to the date of such termination as soon as possible;
  - (k) is not an employee or the close relative of an employee of any exchange participant;
  - (l) you have read these Terms and any product disclosure statement issued by FP Markets in relation to the Financial Products and Transactions relevant to the Account (including the disclosures of significant risks), has considered its objectives and financial situation and has been advised by FP Markets to obtain appropriate independent advice prior to entering into these Terms, and has formed the opinion that dealing in the Financial Products is suitable for your needs and purposes;
  - (m) the Client is willing and able, financially and otherwise, to assume the risk of trading in high risk investments, Transactions using Margin and all other Transactions covered by these Terms;
  - (n) all information supplied to FP Markets by the Client is, or at the time it is supplied will be, accurate in all material respects and the Client will not omit or withhold any information which would make such information inaccurate in any material respect;
  - (o) you will rely upon your own knowledge and judgment and will seek such advice (financial or otherwise) as may be prudent before placing an Order with FP Markets and you assume full responsibility for any Order placed with FP Markets;
  - (p) you fully understand the relevant provisions of:
    - (i) the prohibition of false or misleading markets and other market manipulation as described in Applicable Laws and section 1041A of the Corporations Act;
    - (ii) the prohibition of insider trading as described in section 1043A of the Corporations Act;
    - (iii) the prohibition of false trading and market rigging as described in sections 1041B and 1041C of the Corporations Act;
    - (iv) the prohibition of misleading and deceptive conduct described in section 1041H of the Corporations Act; and
    - (v) Applicable Laws and the Corporations Act which stipulate the conditions upon which short selling is permitted on the ASX and the disclosure obligations imposed on short sellers.

## 8. Client Acknowledgments

- 8.1 You, the Client, acknowledge and confirm to FP Markets for FP Markets' benefit in relying on the following:
  - (a) you (or, if a corporate entity, the directors who apply to be bound by these Terms) have read and understood all



- documentation provided to you by us including these Terms and any product disclosure statement (PDS) in relation to any Financial Products which you request FP Markets to make available to you in relation to your Account;
- (b) you have received, read and understood our Financial Services Guide (FSG);
  - (c) all dealings in Financial Products and the performance by us of our obligations under these Terms are subject to Applicable Laws;
  - (d) at all times you will be able to make payments and fulfil all commitments on your part arising under these Terms and under the conditions applicable to dealings between you and FP Markets;
  - (e) we will not provide legal, tax, financial or accounting advice to you as part of the services that we provide to you in accordance with these Terms;
  - (f) by these Terms (including any Transaction made under it) we do not act in a fiduciary capacity in relation to you and FP Markets does not owe any fiduciary obligations to you in respect of its services provided to you in connection with these Terms;
  - (g) FP Markets may transfer from your other Account(s) held with FP Markets (if any), whether carried or managed by FP Markets, such funds as may be required to meet obligations as a result of Transactions between the Client and FP Markets or to satisfy any amount owing by the Client under these Terms or otherwise and FP Markets would not enter into these Terms but for this acknowledgement (and all of the other terms);
  - (h) FP Markets will either deal by issuance of a contract or it will instruct third parties to deal on behalf of the Client, in the Financial Products, as required by the Transaction;
  - (i) the Client will provide to FP Markets on request such information regarding its financial and business affairs and identity, as FP Markets may reasonably require;
  - (j) in agreeing to these Terms, the Client appoints FP Markets as its agent for the purpose of dealing in Financial Products in accordance with these Terms when necessary to implement your Order;
  - (k) the Client and FP Markets are bound by the Applicable Laws, Rules, customs, usages and practices (as modified from time to time) of the applicable exchange and clearing houses where any dealing takes place in relation to the Transaction and that FP Markets may be bound by the Applicable Laws, Rules, customs, usages and practices of those Exchanges in any order made or contract entered into by FP Markets in relation to the Order or Transaction made with the Client, which can affect FP Markets' capacity to implement your Order or it might lead to later adjustments to the Transaction on these Terms;
  - (l) that all Orders to be placed and all trading to be conducted under these Terms must be lawful;
  - (m) in executing and complying with these Terms, the Client will not infringe any provisions of any other document or agreement to which the Client is a party;
  - (n) the Client will take all reasonable steps to obtain and communicate to FP Markets all information, and will deliver or cause to be delivered to FP Markets all documents with respect to dealings in the Financial Products which are requested by any person having the right to request such documents and information and the Client authorises FP Markets to pass on or deliver all such information and documents to any such person;
  - (o) in relation to Transactions in Derivative Contracts cleared with ASX Clear, the Client's Transactions are bound by the ASIC Market Integrity Rules and are subject to the customs, usages and practices of ASX, ASX Settlement and ASX Clear and in relation to your Transactions in Derivative Contracts, the Client will, on FP Markets' request, provide all information and documentation relevant to that trading and FP Markets is authorised by the Client to provide the information and documentation to ASX Clear or to a person who clears for the Client;
  - (p) in relation to your Transactions which relate to Exchange-Traded Derivative Contracts on any other Futures Exchange, the Client will take all reasonable steps

- to deliver information or documentation to FP Markets or cause information or documentation to be delivered to FP Markets concerning such Transactions which are requested by a person having a right to request such information or documentation and the Client authorises FP Markets to pass on the information or documentation to the person making the request;
- (q) the Client will indemnify and keep indemnified FP Markets and each of its related bodies corporate and their respective directors, officers employees and agents from and against all sums of money, actions, proceedings, suits, Claims, complaints, demands, damages, costs, expenses and any other amounts whatever claimed against any of them;
  - (r) FP Markets is not required to act in accordance with your instructions if in FP Markets' opinion to do so would or could constitute a breach by it or its agent or counterparty of ASX Market Integrity Rules, the ASX Rules or the Corporations Act or any other Applicable Law;
  - (s) that trading in Transactions incurs a risk of loss as well as a potential for profit;
  - (t) dealings in the Transactions may create an obligation to give or take delivery or make a cash adjustment in accordance with the terms of the relevant Transaction;
  - (u) FP Markets may act as principal in respect of the Financial Products traded by FP Markets on behalf of the Client regardless of whether FP Markets is acting on Client instructions or not;
  - (v) subject to applicable legal or regulatory requirements, you consent to FP Markets either knowingly or unknowingly taking the opposite side to the Client in relation to any of the Financial Products, without notice to the Client;
  - (w) subject to applicable legal or regulatory requirements, the Client agrees and acknowledges that FP Markets' directors, employees and associates may and can deal on their own account in relation to your Transactions;
  - (x) FP Markets may, in its sole discretion and without explanation, refuse to deal with or on behalf of the Client in relation to any Transaction (including Closing Out existing open positions held in FP Markets' account on behalf of the Client) or to limit the number of open positions of or held on behalf of the Client or both;
  - (y) if errors have occurred in the pricing of Transactions quoted by FP Markets to the Client, FP Markets may choose not to be bound by such Transactions (without further liability to the Client) if FP Markets is able to substantiate to the Client that there was a material error at the time of the Transaction;
  - (z) any benefit or right obtained by a clearing participant upon registration of a an Exchange-Traded Derivative product with a clearing house is personal to the clearing participant and such benefit or right will not pass to the Client;
  - (aa) there are risks associated with using an internet-based deal execution trading system which include, but are not limited to, the failure of hardware, software, and internet connection and since FP Markets does not control data flows, internet or power connection, routing via internet, configuration of your equipment or reliability of its connection, FP Markets will not be responsible for communication failures, distortions or delays when trading (including processing payments)) via the internet;
  - (ab) reports to the Client on the execution of Confirmations by FP Markets, and the content of such Confirmations, open position statements and monthly statements, unless otherwise objected to within 48 hours after communication to the Client, will be deemed to be conclusive proof of the accuracy of such contents and their execution in accordance with these Terms except only in the case of manifest error; and
  - (ac) a notice issued by an authorised officer or agent of FP Markets stating the amount of money due and payable by the Client will be taken as conclusive evidence of notice except only in the case of manifest error.
- 8.2 All representations, warranties and acknowledgments given by you under this these Terms are taken to have been made at the time you complete the Application Form and are taken to have been repeated by you:

- (a) each time you place an Order with us;
- (b) each time you enter into a Transaction with us, or we enter into a Transaction on your behalf; and
- (c) each time we do anything or refrain from doing something under these Terms or as contemplated by these Terms in connection with your Account or any Transaction.

## 9. FP Markets Undertakings

- 9.1 FP Markets will act honestly and exercise due care and diligence at all times in its performance of these Terms.
- 9.2 FP Markets will use reasonable endeavours to execute or to arrange the execution of your Orders, on these Terms.
- 9.3 Apart from any warranties and representations which are imposed or implied by law and which cannot be excluded, FP Markets makes no warranties in relation to any service or information provided or made available to you in connection with these Terms. To the full extent permitted by law, FP Markets excludes liability for all costs, expenses, damages and Losses (including consequential loss) arising in connection with such services or information, or these Terms (including, without limitation, liability for negligence).

## 10. Risks of Transactions

- 10.1 The Client acknowledges and understands that there are risks involved in Transactions, including:
  - (a) the “gearing” or “leverage” involved in investing in Financial Products (especially CFDs) means that a small Initial Margin payment can potentially lead to large losses for the Client, including more than all of the Margin ever paid to FP Markets;
  - (b) the geared nature of some Transactions also means that acquiring and holding them can carry greater risks than directly investing in the Underlying Financial Products which generally are not geared;
  - (c) a relatively small market movement can lead to a proportionately much

larger movement in the value of your investment, and this can work against you as well as for you;

- (d) over-the-counter Transactions such as CFDs are derivatives not made on any Exchange so might be considered to involve a greater risk than an on-exchange derivative since there is no exchange market on which to Close Out an open position – you are only able to open and close your positions with us;
- (e) markets outside of Australia might involve different risks to Australian markets, so the potential for profit or loss from Transactions relating to a non-Australian market or denominated in non-Australian currency will be affected by fluctuations in foreign exchange rates;
- (f) it is possible to incur a loss if, after your acquisition of an investment, exchange rates change to your detriment, even if the price of the Underlying Financial Product to which the Transaction relates remains unchanged;
- (g) you may sustain a total loss of the Margin that you deposit with or pay to us to establish or maintain a position and if the market moves against you, you may be called upon to pay substantial additional Margin at short notice but if you fail to do so within the required time, your investment position may be liquidated at a loss to you and you will be liable for any remaining deficit in your Account;
- (h) you will be deemed to have received a notice requiring the payment of more margin, even if you are not contactable, or actually contacted, at the telephone, mail or email address you gave us or do not receive the messages we leave for you, if the notices are delivered to your nominated contact addresses;
- (i) under some trading conditions it may be difficult or impossible to liquidate a position, such as (but not limited to) at times of rapid price movement if the price rises or falls in one trading session to such an extent that trading in the underlying market is suspended or restricted;
- (j) if the Client trades in denominated currencies other than Australian dollars the Client may lose money or value of the investment due to exchange rate

fluctuations and that these losses may be in addition to any losses on the value of the Underlying Financial Product relevant to the Transactions;

- (k) gapping, whereby a market price falls or rises without the opportunity to trade, can result in significant losses even when a stop loss has been put on because it may not be possible to transact at the nominated price if the market has gapped;
- (l) under the operating rules of an Exchange, some trading disputes between Market Participants (for example errors involving traded prices that do not bear a relationship to fair market or intrinsic value) may lead to the Exchange cancelling or amending a trade and in these situations your consent is not required for the cancellation of a Transaction which relates to that Exchange action;
- (m) in some circumstances Underlying Financial Products may be halted, suspended from trading or have their quotation for trading withdrawn from the Exchange and these factors will affect the value of your Transaction relating to those Underlying Financial Products;
- (n) a market disruption may mean the Client is unable to trade when desired, and the Client may suffer a loss as a result, including examples of disruption include the “crash” of a computer based trading system, fire or other exchange emergency or a regulatory body could declare an undesirable situation has developed in a particular contract and suspend trading; and
- (o) you may incur losses that are caused by matters outside our control for example, a regulatory authority exercising its powers during a market emergency may result in losses for the client or a regulatory authority can suspend trading (for example in an Underlying Financial Product) or alter the price at which a position is settled, which could also result in a loss to the client.

- 10.2 No advice or recommendation is provided by FP Markets in relation to your Transactions unless expressly stated otherwise.

## 11. Fees and Charges

### 11.1 You must pay to us or as we direct:

- (a) any Transaction charges imposed by FP Markets and all Transaction commission, charges, fees, Margins, premia, settlement and clearing fees and charges, charges imposed by any Exchange, interest, default charges and Taxes (including GST but excluding FP Markets’ income tax or penalty tax and levies) and any other amounts due under these Terms on demand by FP Markets in cleared funds or otherwise as required by these Terms;
- (b) a Transaction Fee for each Transaction in which FP Markets is agent;
- (c) a Transaction Fee, a spread on a rate, a Finance Charge or any or all of them, in respect of each Transaction in which FP Markets acts as principal;
- (d) any Transaction charges imposed by FP Markets and all Transaction commission, charges, fees, Margins, premia, settlement and clearing fees and charges, charges imposed by any Exchange, interest, default charges and Taxes (including GST but excluding FP Markets’ income tax or penalty tax and levies) and any other amounts due under these Terms on demand by FP Markets in cleared funds or otherwise as required by these Terms;
- (e) any royalty or other fee which must be paid for the use of prices or information provided to you via access through the Trading Platform or otherwise by any exchange;
- (f) a monthly access charge for the use of the Trading Platform provided by FP Markets, as specified by FP Markets from time to time; and
- (g) Finance Charges applicable to any Transaction or Account, as specified by FP Markets from time to time;
- (h) any fees, Taxes, stamp duty or other charges as may from time to time be levied on or in connection with any Transactions entered into with you or on your behalf; and
- (i) in respect of any unpaid amounts required to be paid under these Terms including, (without limitation) any

amounts due as a result of your failure to pay interest on all such amounts denominated in Australian dollars at the rate of the Finance Charge then generally applicable for debit amounts on Accounts plus 4% per annum, such interest to accrue daily from and including the due date to and including the date of its payment in full.

Any amount or rate or formula which is to be specified by FP Markets may be specified by a PDS, FSG, and a supplementary disclosure document or in any other permitted way of notifying you. The amount of brokerage, Transaction Fees or other amounts payable by you to FP Markets in respect of any Transaction will be set out in the Confirmation of that Transaction to the extent known at the time.

11.2 You agree that FP Markets may:

- (a) debit your Account (on a monthly or any other basis) or deduct from the Client Moneys Trust Account and pay itself, without further reference to you:
  - (i) all administration fees, including but not limited to fees associated with returned cheques, payment processing, Short Message Service (SMS), debt collection and telephone transcript copies from your Account with FP Markets during the full term of these Terms while you use such services; and
  - (ii) all fees, charges and royalties which you owe to FP Markets;
- (b) withdraw from the Client Moneys Trust Account and pay ourselves the amount of any the Transaction Fee you owe or the amount of Margin which you must pay to maintain the required Margin or to meet any Margin call made to you;
- (c) withdraw from the Client Moneys Trust Account and pay ourselves the amount of any other amount reimbursable in accordance with these Terms; and
- (d) deduct from the Account any amount reimbursable in accordance with these Terms.

11.3 FP Markets may receive commissions and other benefits from other parties in relation to

Transactions FP Markets enters into with you or on your behalf or in connection with other services provided to you. FP Markets is entitled to retain such commissions and benefits.

11.4 If you have been referred to us or on behalf of a broker or other third party, that broker or third party may receive benefits in the form of a commission or rebate from us.

11.5 Unless otherwise agreed, the terms of any amounts payable by you under these Terms are stated exclusive of GST. You must pay the GST on the amount charged for the supply of the service, unless that is not permitted by law. FP Markets will when required by law and as far as practicable state in Confirmations the amounts as GST-inclusive.

11.6 The amounts of the fees, commissions and charges referred to in clause 11.1 will be as notified from time to time in writing by FP Markets, either by way of a PDS, notification to your contact address, posting to FP Markets' website or as otherwise agreed with you or permitted by these Terms.

11.7 You agree that FP Markets may:

- (a) debit your Account (on a monthly or any other basis) and pay itself, without further reference to you:
  - (i) all administration fees, including but not limited to fees associated with returned cheques, payment processing, Short Message Service (SMS), debt collection and telephone transcript copies from your Account with FP Markets during the full term of these Terms while you use such services; and
  - (ii) all fees, charges and royalties which you owe to FP Markets;
- (b) deduct from the Account the Transaction Fee or the amount of any Margin you must pay to maintain the required Margin; and
- (c) withdraw from the Account any amount reimbursable in accordance with these Terms.

11.8 If:

- (a) you are required to make a deduction or withholding in respect of Tax from any payment to be made; or
- (b) FP Markets is required to pay any Tax (other than income tax) in respect of any payment made in relation to these Terms at your request,



then you:

- (c) indemnify FP Markets against the Tax; and
  - (d) agree to pay to FP Markets an additional amount to ensure FP Markets receives a net amount (after payment of any Tax in respect of each additional amount) that is equal to the full amount FP Markets would have received had a deduction or withholding or payment of Tax not been made.
- 11.9 You must reimburse FP Markets for all fees (both direct and indirect) and expenses charged in connection with any Transaction (other than Tax on the income of FP Markets) and for all costs and expenses incurred by FP Markets in implementing these Terms and in enforcing its rights under these Terms (including its legal costs of external or internal legal advisers on a full indemnity basis).
- 11.10 In consideration of FP Markets acting as your agent from time to time, FP Markets is entitled to receive and appropriate for its own use all fees, commissions, Taxes, charges, and other benefits payable by you under these Terms (including all Transaction Fees and all adjustments payable under these Terms).
- 11.11 The rolling of a Transaction to a forward date (regardless of whether the existing or new position is a spot or forward position) is a new Transaction.
- 11.12 FP Markets may charge a Finance Charge on an Account at any time chosen by FP Markets, such as (without limitation):
- (a) either immediately at the time of entering into the Transaction;
  - (b) at day's end, or month's end;
  - (c) at a rollover of the Transaction;
  - (d) at end of the Transaction; or
  - (e) at any other time after entering into the Transaction.
- 11.13 You remain liable to pay the Finance Charge even though:
- (a) the charge may be called other things from time to time, even across different Accounts at the same time;
  - (b) the charge is not stated on a statement for an Account or interim Confirmation for a Transaction;
  - (c) the charges differ according to whether the Transaction was made offline or on-line;
  - (d) the charges differ according to the amount of the Account, regardless of the amount or value of the Account;
  - (e) different rates apply at the same time to other clients' accounts;
  - (f) the charge is applied at rollover but is not levied or enforced until termination of the Transaction;
  - (g) the Transaction is denominated in a currency other than Australian dollars; and
  - (h) the rates will be as determined by FP Markets in its absolute discretion and you might not have prior notice of the current rate.
- 11.14 The Finance Charge may be an amount owing by you to FP Markets or, if applicable, by FP Markets to you, in respect of a Transaction, and may be applied from day to day or at other times determined by FP Markets. The rate payable by FP Markets to you on a Finance Charge may be less than the rate for a Finance Charge payable by you to FP Markets. The net Finance Charges payable by you to FP Markets will take into account the accumulated Finance Charges for a Transaction and the aggregate Finance Charges for an Account.
- 11.15 If Foreign Exchange Transactions or CFDs in respect of Foreign Exchange are "rolled over" or "swapped", you will be charged or will be entitled to receive a Finance Charge at the daily rollover rate determined by FP Markets. The rollover rate is the interest rate differential between the two applicable currencies. The Finance Charge ordinarily is calculated and applied by way of being added to the Transaction amount (forward points) which will therefore vary depending on a number of factors including (but not limited to):
- (a) the currency pair you are trading;
  - (b) the applicable interest rates in the interbank markets according to the period of the rollover that is the interest rates offered for each currency pair (paid or earned);
  - (c) the size of the Transaction;
  - (d) the standard FP Markets fees that may apply; and
  - (e) other factors, all as determined by FP Markets in its absolute discretion.

11.16 The forward points can either be:

- (a) accumulated as an offset to your Account balance and will be directly debited or credited to your Account balance on settlement date; or
- (b) reflected in the price at which the open contract is rolled forward, that is, it is included in the price (or rate at which the contract is rolled) and debited or credited to your Account balance on its settlement date.

11.17 You acknowledge that you are responsible for your own legal costs associated with entering into these Terms and for all Taxes and expenses incurred by you in connection with these Terms, including any Transaction made under it.

11.18 All payments by you under these Terms are:

- (a) to be made without any set-off by you, counter claim or condition made by you and without you making any deduction or withholding for any Tax or any other reason unless the deduction or withholding is required by applicable law or the set-off arises by express application of these Terms; and
- (b) payable in any currency that FP Markets may require or determine.

11.19 FP Markets may give notice to you of any change in its Transaction Fees or any rates, fees charges or other amounts payable by these Terms in any manner permitted by these Terms, including by posting to FP Markets' website or to a Trading Platforms or platform administration service. FP Markets is not required to give any particular minimum period of notice of any change or new fee, charge or change in rates.

11.20 If no minimum period is required or is not stated elsewhere in this document, notice of a change in Transaction Fees, charges or rates (including new ones) may be effective immediately FP Markets first generally publishes the information of any variation or new item on its website or through Trading Platform or platform administration service.

11.21 If GST is payable on a taxable supply made by FP Markets under, by reference to, or in connection with these Terms, you must also pay the amount of GST payable in respect of that taxable supply. This clause does not apply to the extent that consideration for a supply is expressly stated to you to be GST inclusive.

Terms which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 have that meaning in this document.

11.22 You acknowledge that you are responsible for your own legal costs associated with entering into these Terms and for all Taxes and expenses incurred by you in connection with these Terms, including any Transaction made under it.

11.23 All payments by you under these Terms are:

- (a) to be made without any set-off by you, counter claim or condition made by you and without you making any deduction or withholding for any Tax or any other reason unless the deduction or withholding is required by applicable law or the set-off arises by express application of the Terms; and
- (b) payable in any currency that FP Markets may require or determine.

11.24 If:

- (a) you are required to make a deduction or withholding in respect of Tax from any payment to be made; or
- (b) FP Markets is required to pay any Tax (other than income tax) in respect of any payment made in relation to these Terms at your request, then you:
  - (c) indemnify FP Markets against the Tax; and
  - (d) agree to pay to FP Markets an additional amount to ensure FP Markets receives a net amount (after payment of any Tax in respect of each additional amount) that is equal to the full amount FP Markets would have received had a deduction or withholding or payment of Tax not been made.

## 12. Client Moneys

12.1 FP Markets must deal with any money and property which you pay or give to, or which is otherwise received by FP Markets in connection with financial services provided by FP Markets, in accordance with the Applicable Laws. For example, FP Markets may be required to pay such moneys in a clients' segregated account or into a Client Moneys Trust Account which complies with the requirements of the Corporations Act. You acknowledge and authorise that:

- (a) your moneys and the moneys of other clients of FP Markets may be combined and held by FP Markets in a Client Moneys Trust Account or clients' segregated account, separate from the moneys of FP Markets;
  - (b) all moneys credited to the Client Moneys Trust Account or clients' segregated account maintained by FP Markets may be used by FP Markets to meet the default of any client of FP Markets to the extent permitted by the Corporations Act (subject to Applicable Laws and Rules);
  - (c) moneys credited to a Client Moneys Trust Account or clients' segregated account maintained by FP Markets under the Corporations Act may be used by FP Markets for purposes unrelated to your Account to the extent permitted by the Corporations Act and accordingly such use of a Client Moneys Trust Account or clients' segregated account does not fully protect your money and property from risk of loss.
- 12.2 If FP Markets pays your funds to another person at your request or to fulfil your requirement to pay Margin to a Market Participant who executes your Order (whether or not the Market Participant is aware of your role in placing the Order), FP Markets is not liable to you for the performance by the other person who receives the benefit of the payment of your funds. In particular, without limitation, FP Markets is not obliged to enquire into:
  - (a) the use of those funds by the third party;
  - (b) any persons to whom the third party pays all or any of these funds;
  - (c) the solvency of any of those persons;
  - (d) the compliance by any of those person with the Corporations Act, Applicable Laws and Rules;
  - (e) whether any of those persons hold any part of these funds on any nominee, segregated account, trust or any other basis for your protection or security.
- 12.3 You agree that FP Markets is entitled to all interest earned on moneys credited to a clients' segregated account or a Client Moneys Trust Account unless you and FP Markets have otherwise agreed in writing.
- 12.4 The proceeds of a Transaction or other moneys to which you are entitled under these Terms and which is under the control of FP Markets will be paid directly to you and not to any third party, unless you have otherwise instructed us to do so and we agree. You must provide relevant account details for payment instructions in respect of payments to be made by FP Markets to you. Although FP Markets will take reasonable steps to comply with your payment instructions, FP Markets accepts no responsibility for any failure to comply with those instructions and, if such failure occurs, the relevant moneys will continue to be held by FP Markets in accordance with the Corporations Act and Applicable Laws.
- 12.5 You authorise and direct FP Markets to withdraw any or all monies to which you are otherwise entitled in any clients' segregated account or Client Moneys Trust Account maintained by FP Markets to meet any liability, obligation or other Loss which you owe to FP Markets including to pay for your Financial Products (including payment for Margin) or to pay any other person you have dealt with using FP Markets as your agent.
- 12.6 You acknowledge that FP Markets is entitled to be paid from those monies to which you are otherwise entitled in any clients' segregated account or Client Moneys Trust Account maintained by FP Markets an amount sufficient to meet any liability, obligation or other Loss which you owe to FP Markets.
- 12.7 If you pay monies into any Client Moneys Trust Account maintained by FP Markets in anticipation of you creating and meeting any liability, obligation or other Loss which you will owe to FP Markets including to pay for your Financial Products (including payment for Margin) or to fund FP Markets to pay any other person you have dealt with using FP Markets as your agent before that liability or obligation has arisen, by these Terms you authorise and direct FP Markets to withdraw those monies to pay FP Markets in advance of that liability arising. Your payment into the Client Moneys Trust Account will be deemed to be subject to this direction unless you tell FP Markets otherwise. You agree that these Terms are a sufficient written direction by you for the purposes of authorising and directing FP Markets to make the withdrawal on these Terms; subject to any other written direction you give FP Markets from time to time.

12.8 If:

- (a) you have an account with a Settlement Participant or a Clearing Participant (who is acting as your agent) provides their services in respect of Transactions whose orders were placed by FP Markets for you; and
- (b) you are entitled to monies held by or controlled by that agent; and
- (c) you have a liability, obligation or other Loss which you owe to FP Markets including to pay for your Financial Products (including payment for Margin) even if not connected with those Transactions,

you authorise FP Markets on your behalf and for FP Markets' own benefit to instruct or direct the agent to pay into the Client Moneys Trust Account maintained by FP Markets up to an amount of your liability, obligation or other Loss which you owe to FP Markets and you authorise FP Markets to withdraw from the Client Moneys Trust Account that amount to which FP Markets is entitled to be paid.

12.9 All currency exchange risks regarding any payment instruction or any Order or Transaction entered into or arranged for you by FP Markets is your responsibility. Any conversion from one currency to another required to be made for performing or executing any payment instruction, Order or Transaction may be effected by FP Markets in the manner and at the time and at the exchange rates that FP Markets, in its absolute discretion, decides.

## 13. Margin

13.1 You agree and acknowledge each of the following:

- (a) Margin refers to the amount paid or payable (i) to FP Markets as it requires or (ii) as a Market Participant with whom you dealt by FP Markets acting as your agent requires (to protect against your liabilities on Transactions) and which is credited to your Account. In the case of Margin required by an Exchange, the minimum amount of the Margin could be determined by the relevant Exchange but FP Markets has an absolute discretion to set a higher amount.

- (b) A Margin payment is the amount you pay FP Markets for crediting your Account as Margin (with FP Markets or the Market Participant with whom you dealt by FP Markets acting as your agent).
- (c) You must maintain at least the amount of Margin specified by or on behalf of FP Markets from time to time, as required by FP Markets or by a Market Participant, including those imposed by the requirements of trading platforms made available by FP Markets to you, whether or not FP Markets gives any notice to you to make those payments or you have actual notice of the required amount. The required amount of Margin can change continuously and can change automatically, including over the week-end or other non-trading days. Your obligation to maintain at least the required amount of Margin is continuous.
- (d) You have an obligation to satisfy a Margin call (in addition to your obligation to maintain Margin) within the required time by any combination of Closing Out positions, lodging Underlying Financial Products (as required by in the ASIC Market Integrity Rules or other relevant Exchange) or making payments (or both) as accepted by FP Markets, in its absolute discretion. The minimum amount of the Margin call could be determined by the relevant Exchange but FP Markets has an absolute discretion to set a higher amount. The payments to be made towards satisfying a Margin call must be made, as specified by FP Markets from time to time.
- (e) Margin calls may be made by any means of notice permitted by these Terms, including by telephone call to you or your Authorised Person or by way of the Trading Platform (even if you do not access your Account during the time the Margin call requires payment). You acknowledge that it is fundamental that you remain contactable by FP Markets at all times by FP Markets using the contact details you give FP Markets from time to time and that your failure to be contactable or to receive notice of a Margin call at any contact address you give does not affect the validity of the Margin call or your obligation to satisfy it.

- (f) If no other time is stipulated by FP Markets for when you must satisfy the Margin call then you must comply within 24 hours of the Margin call being made, even if you have not received it or are actually aware of it and even if the time of making the Margin call or the time for satisfying it are outside of normal working hours of a Business Day. You acknowledge that Margin calls may be payable immediately if required by FP Markets or the relevant Market Participant.
- (g) If you fail to satisfy the Margin call (or, if your Transactions are subject to ASX Clear, to lodge Underlying Financial Products as defined in ASX Clear's Rules) by the required time, then FP Markets may (without prejudice to any other rights or powers under these Terms) in its absolute discretion, and without creating an obligation to do so, Close Out, without notice, all or some of your Transactions, whether or not those Transactions caused the need for more Margin.
- (h) The time for your payment to maintain Margin and to satisfy any Margin call is of the essence.
- (i) Your obligations to maintain Margin and to satisfy Margin calls arise at the time the Transaction is executed irrespective of the time any later Margin call is made.
- (j) It is solely your responsibility to monitor and to satisfy all Margin and Margin call obligations, whether or not a Margin call is notified to you.
- (k) A Margin payment is credited by FP Markets to your Account at such time as determined by FP Markets. Ordinarily it will be credited by FP Markets to your Account as soon as practical after FP Markets has confirmed and allocated to you FP Markets' receipt of your payment as cleared funds in the Client Moneys Trust Account or clients' segregated account but in any case it will be credited no later than withdrawal from that account. A Margin requirement or a Margin call for the Account generally or specifically for a Transaction issued by FP Markets is not satisfied unless and until your payment is credited by FP Markets to your Account.
- (l) If your Account has been credited with your payment and your funds remain in the Client Moneys Trust Account or clients' segregated account, you authorise and direct, by these Terms, that all of those funds for which your payment has been credited be withdrawn and paid to FP Markets, towards satisfying your obligations to pay Transaction Fees, Finance Charges, to maintain Margin and to meet Margin calls and to pay all other amounts owing under these Terms, even if:
  - (i) your payment (after deduction for Transaction Fees, Finance Charges and other amounts owing) is in an amount less than or more than the amount required to satisfy a Margin call or to maintain the total amount of required Margin;
  - (ii) more than one Margin call is made after your payment to a Client Moneys Trust Account or clients' segregated account;
  - (iii) the required amount of Margin reduces after your payment to a Client Moneys Trust Account or clients' segregated account;
  - (iv) there is any delay between the time you make the payment to the Client Moneys Trust Account or clients' segregated account and when FP Markets makes the withdrawal;
  - (v) you purport to withdraw your authority and direction but you still have at that time an obligation to FP Markets to maintain an amount of Margin or to satisfy a Margin call which has not been satisfied.
- (m) You understand and agree that FP Markets may for the purposes of this clause make regular or specific withdrawals from the Client Moneys Trust Account or clients' segregated account into which your initial payment was deposited.
- (n) Your liability in respect of Margin requirements is not limited to the amount, if any, initially paid to FP Markets for your Account or paid to Market Participants. You are responsible to pay in cash any deficit owing to FP Markets or the relevant Market Participant after Close Out of a Transaction and if you default in payment of such deficit,



FP Markets may pay the deficit out of the Account or realise any Financial Products held by FP Markets (whether or not by sale on any Exchange and, if so, for whatever price and at whatever time is chosen by FP Markets in its discretion) and apply the proceeds against that deficit and you are responsible for the full and prompt discharge of the deficit (which exceeds the value of the Account) by making payment in full to FP Markets immediately that deficit arises.

13.2 FP Markets and the Market Participants may make Margin calls more frequently than daily and you must fully and punctually comply with such calls.

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

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

## 14. Defaults

14.1 Each of the following constitutes a Default:

- (a) you breach these Terms, whether by act or omission, immediately the last time permitted for performance has passed;
- (b) you fail to pay, or provide security for, amounts payable to FP Markets by the required time;

- (c) you fail to pay by the required time the amounts due in respect of any Transaction entered into pursuant to these Terms;
- (d) you fail to perform any obligation arising pursuant to the exercise of an Option Contract or the settlement of a contract which arises pursuant to a Transaction;
- (e) you fail to fulfil any settlement obligations in respect of a Transaction entered into pursuant to these Terms;
- (f) you fail to comply with any limit or restriction imposed on you by FP Markets in connection with your Account (for example, a restriction on the kind, volume or value of Transactions or outstanding liabilities);
- (g) a guarantee lodged by you, or lodged by a third party at your request, in favour of FP Markets is withdrawn without FP Markets' consent or becomes ineffective and other replacement security acceptable to FP Markets is not provided;
- (h) any security provided by you (to any one) which is binding on your assets becomes enforceable and the holder of that security takes any step to enforce the security;
- (i) any representation or warranty which you give under or pursuant to these Terms is or becomes incorrect or misleading in any way which is material to the interests of FP Markets;
- (j) FP Markets believes that you may not be able to meet your obligations to FP Markets in respect of one or more Transactions, including, without limitation strict compliance with any time limits for performance;
- (k) you become insolvent or bankrupt;
- (l) the Client calls a meeting to discuss a contemplated scheme of arrangement or compromise or the Client enters or proposes to enter into any scheme of arrangement or compromise with its creditors;
- (m) you enter into a composition or scheme of arrangement for the benefit of creditors;
- (n) FP Markets believes that you, the Client, has ceased to pay debts duly owed to FP Markets in accordance with these

- Terms or has threatened to cease carrying on business;
- (o) the Client becomes insolvent or a receiver, or receiver and manager or administrator is appointed to the Client or any of your assets;
  - (p) if you are a body corporate:
    - (i) a resolution is passed or a petition is presented or an order is made for your winding up or liquidation;
    - (ii) you go into liquidation, voluntarily or otherwise (except for the purpose of reconstruction), or you or another person appoint a liquidator, receiver, administrator or official manager in respect of your assets;
    - (iii) a director of you has not given a valid deed of guarantee and indemnity in respect of your obligations under these Terms) in favour of FP Markets and in a form acceptable to FP Markets; or
    - (iv) you have not notified FP Markets of a change of any director within seven (7) days of the change taking effect;
  - (q) if you are acting on behalf of another person pursuant to authority provided by another person, the authority is varied in a way which (in FP Markets' opinion) negatively impacts on your authority or legal or financial capacity to perform your obligations under these Terms;
  - (r) if you are a trustee, the relevant fund or trust of which you are trustee is terminated, vests or a distribution of capital of the trust or fund is made which would result in there being, in FP Markets' opinion, insufficient assets of the trust or fund to meet your liabilities under these Terms or any Transaction;
  - (s) if you are a natural person, you die or become of unsound mind or if you or your estate is liable to be dealt with in any way under any law relating to mental health (in any of these cases, as reasonably determined by FP Markets);
  - (t) you impose a moratorium on payments to creditors or cease, or threaten to cease, carrying on business;
  - (u) in the absence of making alternative arrangements, you are not contactable by FP Markets within 12 hours in order for FP Markets to obtain instructions in relation to any of your Transactions; and
  - (v) the occurrence of any other event referred to in an applicable Schedule as constituting a Default or which FP Markets and you have agreed constitutes a Default.
- 14.2 Nothing in these Terms limits your rights to claim a default by FP Markets which is not expressly set out in these Terms or for you to take any proper action you determine is appropriate to claim or to recover for any Loss arising from your claim. You agree that it is reasonable for you to have general rights to claim and act on events of default by FP Markets and not have specific rights following FP Markets' default in order to avoid the possible result that by having such specific defaults and specific consequences all Transactions of all of FP Markets' clients could prematurely terminate, which result could cause irrevocable loss to some or all clients and those losses could be adversely increased by such an automatic termination.
- ## 15. Actions Following a Default
- 15.1 Upon or after any Default occurring, FP Markets, in addition to any and without prejudice to any other rights it may have under these Terms, has the right and power in its sole absolute and unfettered discretion and without necessity to give prior or any notice to the Client take any action, or refrain from taking action, which it considers reasonable in the circumstances in connection with Transactions entered into pursuant to these Terms and, without limitation, FP Markets may:
- (a) cancel any outstanding Orders;
  - (b) enter into one or more Transactions to effect the Close Out of one or more unsettled Transactions or open positions;
  - (c) settle any Transaction which has not at the time of Default settled;
  - (d) in the case of open positions which involve Option Contracts, exercise one or more of those Option Contracts or abandon any one or more Option Contracts not yet exercised;
  - (e) cover in whole or in part open positions by entering into further Transactions;

- (f) take any other action a reasonably prudent broker, intermediary or principal might take in the circumstances to protect FP Markets' personal obligation incurred when dealing on your behalf;
  - (g) charge the Client with all of the costs, expenses and losses incurred by FP Markets as a result of entering into, or Closing Out Transactions pursuant to these Terms;
  - (h) convert any amount owed by the Client to FP Markets into Australian currency at any time on or after payment is due (until payment is received in full);
  - (i) satisfy obligations that the Client may have to FP Markets out of any property belonging to the Client including, money or security in FP Markets' custody or control including, without limitation, by selling securities lodged by the Client with FP Markets or setting off obligations such that security transferred as collateral is not required to be returned and to enforce any asset or security held by FP Markets in such manner as it sees fit at your expense;
  - (j) transfer from your other Accounts, if any, such credit balances or funds as may be required for that purpose to satisfy any obligation the Client may have to FP Markets;
  - (k) apply any money that you have deposited with, or which is held by FP Markets, or in any Client Money's Trust Account or clients' segregated account, and to which you are entitled, by way of set-off;
  - (l) apply any credit balance that you have with FP Markets by way of set-off against any amount you owe to FP Markets, or would owe if a demand is made and time is allowed to meet it, without having to make that demand or wait for payment;
  - (m) immediately, or at a later time, terminate these Terms, one or more Schedules, one or more Accounts or sub-accounts, one or more Transactions or any combination of these;
  - (n) wholly or partly realise or enforce any security or guarantee provided by you or in respect of your obligations to FP Markets;
  - (o) wholly or partly realise or enforce any security or guarantee provided by another person or in respect of your obligations to FP Markets;
  - (p) convert any or all amounts owing by you to FP Markets or by FP Markets to you in a foreign currency into Australian currency;
  - (q) calculate any or all amounts owing by you to FP Markets and declare such amount immediately due and payable; or
  - (r) exercise any power or right that FP Markets may have in accordance with these Terms or in law or equity or take any other form of action as the holder of an AFSL may be required to take.
- 15.2 In respect of any action which FP Markets takes, or refrains from taking under this clause, you must account to FP Markets as if FP Markets took, or refrained from taking, the action on your instructions and, without limitation, you are liable for any deficiency and are entitled to any surplus which may result.
- 15.3 In exercising any right of sale of any property under these Terms, FP Markets may sell (or arrange for the sale of) the property:
- (a) either by public auction, private treaty or tender;
  - (b) for cash or on credit;
  - (c) in one lot or in parcels;
  - (d) with or without special conditions or stipulations as to title or time or mode of payment or purchase money or otherwise;
  - (e) with power to allow the whole or any part of the purchase money to be deferred (whether with or without any security);
  - (f) whether or not in conjunction with the sale of any property to any person; and
  - (g) upon such other terms and conditions as FP Markets may consider appropriate.
- FP Markets is not liable for any loss occasioned by a sale of the property.
- 15.4 Upon any sale purporting to be made in the exercise of the powers conferred by these Terms or otherwise, no purchaser will be:
- (a) bound to ask whether any default has been made or otherwise as to the propriety or regularity of any sale; or
  - (b) affected by express notice that any such sale is unnecessary or improper.
- Despite any irregularity or impropriety in any such sale, the sale will be deemed to be authorised by such powers, as regards the protection of the purchaser or other party to

any such dealing or disposal, and will be valid accordingly.

- 15.5 FP Markets will not forgo any of the rights outlined in this clause incurred as a result of a delay in the exercise of such rights; if FP Markets does not exercise any of its rights it may do so at any time in the future.
- 15.6 Any action taken by FP Markets will not limit any other provision of these Terms and be without prejudice to any of rights FP Markets may have to any remedy or damages.
- 15.7 Subject to Applicable Laws on the right to access moneys in a Client Moneys Trust Account or a clients' segregated account, FP Markets may appropriate credits and all payments received from or on behalf of the Client or held on behalf of the Client in reduction of any moneys owing by the Client to FP Markets whether on the Account or on any other account including, but not limited to, accounts with FP Markets for dealing in any Financial Products.
- 15.8 The Client acknowledges that FP Markets has a lien over all Financial Products of the Client in the possession or control of FP Markets for any charge, expense (including any applicable costs, stamp duty and administration fees) and any amount owing to FP Markets.

## 16. Disputes

- 16.1 The Client agrees to examine the terms of each deal Confirmation immediately upon receipt and the Client agrees that the contents of a Confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal, unless within 48 hours of issue of a written Confirmation the Client notifies FP Markets of any disputed detail in the Confirmation received by the Client.
- 16.2 Upon receipt of written notice within the 48 hour period to a disputed detail, FP Markets will investigate the dispute and in co-operation with the Client must endeavour to resolve the dispute in good faith. Notwithstanding any such dispute, the Client will continue to satisfy its obligation to pay Margin calls made by FP Markets in respect of the derivative position as if the Confirmation was correct and the details contained in the Confirmation were not the subject of dispute.
- 16.3 Complaints (which do not include disputed details) must be referred to us in accordance

with the procedures set out in our FSG from time to time. Unresolved complaints will be referred to the Financial Ombudsman Service or an external dispute resolution scheme of which we are a participant.

## 17. Tape Recordings

- 17.1 FP Markets may record any or all incoming and outgoing phone calls with the Client with or without the use of an automatic tone warning device and without making a disclosure of the recording being made. The Client agrees to the use of such recordings and their transcripts for any purpose which FP Markets or an Exchange (such as ASX Clear) considers desirable including as evidence in any dispute between FP Markets and the Client.
- 17.2 Recordings may be used to assess the performance of or to train FP Markets' representatives, monitoring compliance with FP Markets' respective regulatory and contractual obligations and resolving disputes.
- 17.3 FP Markets is not obliged unless Applicable Laws require for it to keep any transcripts or copies of any telephone recording or conversation nor to tell the Client when it disposes of the record.
- 17.4 FP Markets agrees that upon request, copies of any telephone recording or transcript relating to your dealings will be provided to the Client in the event of a dispute or anticipated dispute with respect to such dealings. The Client agrees to pay any reasonable cost associated with providing any such transcript or copy.

## 18. Client to Provide Information

- 18.1 The Client acknowledges that information may be provided to any regulatory authority or any other person or organization including the ASX or ASX Clear where FP Markets reasonably considers that the disclosure is required by Applicable Laws, regulatory requirement or necessary to protect FP Markets' interests. The Client authorises FP Markets to provide any such information concerning your Account, these Terms, and any CFD entered into or proposed to be entered into by the Client.
- 18.2 You must, upon the request of FP Markets request, take all reasonable steps to deliver to

FP Markets all information and documentation relevant to trading on the Exchange and the Client authorises FP Markets to produce such information or documentation to ASX Clear and ASX.

## 19. Trading Platform

- 19.1 FP Markets may from time to time provide one or more Trading Platforms to you. FP Markets may withdraw or suspend access to the Trading Platform in its absolute discretion at any time without prior notice to you.
- 19.2 The Client is responsible for the confidentiality and use of any user-name login and password issued by FP Markets and agrees that it will not disclose any such information to third parties. If the Client becomes aware of any unauthorized use, loss or theft of its user-name login and/or password, it must notify FP Markets immediately. FP Markets may cancel your user-name and/or password without notice, FP Markets will notify the Client as soon as practical should this happen.
- 19.3 The Client acknowledges that the Trading Platform includes information which is supplied by persons not controlled by FP Markets (Information Vendors) and that FP Markets has not verified any information provided by an Information Vendor and that it is acting solely in the capacity as a carrier by conveying the information to the Client. Except to the extent required by law, neither FP Markets nor any Information Vendor makes any representation or warranty as to the accuracy, timeliness, suitability or completeness of any information accessed via the Trading Platform. The Client agrees that information is provided via the Trading Platform is provided for its own use and that it may not on sell, disclose or make available such information to any other person without the prior consent of FP Markets or the Information Vendor as appropriate.
- 19.4 FP Markets agrees to grant the Client access to one or more electronic terminals, including terminal access through your internet browser, for the electronic transmission of orders to the Clients' account with FP Markets.
- 19.5 FP Markets will permit the Client electronically to monitor the activity and positions in its Account by providing a Trading Platform. The Trading Platform may be a proprietary service offered by FP Markets or a third party system offered by another broker, vendor or exchange.
- 19.6 The Trading Platform includes all software and communication links. In accordance with these Terms, FP Markets agrees to supply the Client with software for use with the Trading Platform, and to agree to grant the Client a non-exclusive and non-transferable licence to use the Trading Platform subject to these Terms.
- 19.7 The Client agrees to use the Trading Platform software solely for their internal business or investment purposes.
- 19.8 If the Trading Platform is to be provided by a third party, the Client agrees and acknowledges that FP Markets will receive benefits in accordance with the terms of any agreements between the third party service provider and the Client as if FP Markets were a party to the agreement.
- 19.9 The Trading Platform provided by FP Markets may be used to transmit, receive and confirm the execution of orders, subject to market conditions and applicable exchange rules and regulations.
- 19.10 FP Markets consents to your access and use in reliance upon the Client having adopted procedures to prevent unauthorised access to and use of the service, in any event, the Client agrees to any financial liability for trades executed through the service.
- 19.11 The Client may send and receive, electronic messages, email, engage in chat, download and upload files and otherwise use the Trading Platform as permitted in accordance in this document, our policies, any applicable laws and, if a third party provides the service, the terms of use and access agreement. Any activity in conferences and chats are subject to review, modification and deletion without notice to the Client.
- 19.12 FP Markets may institute or change any policies at any time relating to the use of the Trading Platform. Bulletin boards may be subject to limitations on usage, reproduction or dissemination, and the Client remains responsible for adhering to any such limitations.
- 19.13 The Client acknowledges and agrees that the Trading Platform may be delayed by filters or other electronic features of the electronic system.
- 19.14 There are significant risks in trading through the Trading Platform because it is serviced by means of computer and telecommunications systems, even if generally accepted industry standards and practices are followed, including



that your data may not be protected, and there are risks that other users of the Trading Platform, institutions or brokers may be able to see your Orders and other communications relating to trading and execution without your (or our) consent and that third parties (including persons on private networks) will have the ability to attach to your network.

- 19.15 The features, components or terms of use of a Trading Platform may be changed by us or the provider of the Trading Platform without requiring an amendment to these Terms.
- 19.16 You are responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the Trading Platform and for any communication service fees and charges incurred by you in accessing and using the Trading Platform.
- 19.17 You are responsible for ensuring you have in place alternative arrangements for the execution of Orders or other services available through the Trading Platform, if the Trading Platform or any aspect of it ceases to be available or subject to failure (including, for example, arrangements for the use of telephone or facsimile).
- 19.18 You must notify us immediately if you become aware of any inaccurate information being transmitted through the Trading Platform including, for example, inaccurate content as to Orders, Transactions or Account balances.
- 19.19 You must only use the Trading Platform for your own internal business and investment purposes.
- 19.20 You also agree to be bound by any terms and conditions of access and use which we or any third party provider of a Trading Platform may specify and notify to you, from time to time.
- 19.21 You are responsible for reading, understanding and complying with the details of the operational aspects of the Trading Platform. It is important that you read and understand any user manuals and operational procedures or rules relating to the relevant Trading Platform and which are made available either by FP Markets or the provider of the Trading Platform. Further information on how to use and understand the Trading Platform can be obtained on our website.
- 19.22 You are responsible for the consequences of any unauthorised disclosure or use of security information, and for any actions or omissions by an Authorised Person.

19.23 We (or any third party providing the Trading Platform) may suspend, terminate or impose conditions on the use by you or any Authorised Person of the Trading Platform at any time without notice to you.

19.24 If you are uncertain as to whether your Order has been received, you must make all reasonable attempts to verify whether the Order has been received, approved and effected prior to taking further action. You agree to issue specific cancellation or amendment instructions with respect to an existing Order and not to attempt to effect changes by placing a second or duplicate Order. You will be solely responsible and liable for any duplicate instruction that you place.

## 20. Exchange Data

20.1 If the Client uses the Trading Platform, the Client agrees and acknowledges that:

- (a) data made available to the Client by access to electronic order entry Financial Products is not the property of FP Markets and remains the valuable property of the relevant Exchange or other data vendor; and
- (b) the Client is prohibited from publicly displaying, redistributing, or re-transmitting the data in any way without having executed a market data distribution agreement or similar agreement with the relevant Exchange or other data vendor.

## 21. Appointment of FP Markets as attorney

21.1 In consideration of FP Markets entering into these Terms, you irrevocably appoint FP Markets and each director, secretary and principal executive officer and each employee (which employee's title of office includes the word "Manager" or "Head") of FP Markets severally as your attorney at any time and from time to time following a Default, to execute and deliver all documents and to do all things which your attorney may consider necessary or desirable to give effect to the provisions of these Terms, and in particular, without limitation, in connection with, or incidental to, the exercise of any of the rights and powers of FP Markets under these Terms. Those powers

may be exercised in the interests of FP Markets notwithstanding any conflict with the interests of FP Markets. This appointment survives termination of these Terms.

## 22. Limitations of Liability and Indemnity

22.1 Subject to those provisions of the Competition and Consumer Act 2010 (Commonwealth), the Australian Securities and Investments Commission Act 2001 (Commonwealth), the Corporations Act, any other legislation and any other rights, duties or other obligations imposed or implied by law which cannot be excluded by agreement between the parties, to the extent each of the following is not prohibited by those laws:

- (a) we make no warranties either expressly or impliedly as to merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, currency, availability, completeness or quality), with respect to any services we provide under these Terms including, without limitation, the Trading Platform;
- (b) we exclude all liability in contract, tort or otherwise relating to or resulting from use of any services we provide under these Terms and for any Loss incurred by you directly or indirectly, including without limitation as a result of or arising out of:
  - (i) in the absence of negligence, fraud, dishonesty or misconduct by FP Markets or any of its employees, agents and representatives and to the full extent of the law, any delay in transmitting or a failure to transmit funds caused by reasons outside the control of FP Markets or as a result of FP Markets' failure to execute Orders in a timely manner or administer these Terms in the manner contemplated by these Terms for reasons beyond its control (reasons outside FP Markets' control include but are not limited to, exchange control or other government restrictions, exchange or market rulings, suspension of trading, power failure, telecommunication failure, strikes or war);

- (ii) any moratorium, suspension, halt, delisting or removal from quotation or sponsored publication of any Underlying Financial Product or any other similar or analogous occurrence in relation to the Underlying Financial Product;
- (iii) any unauthorised use of your user-name login or password;
- (iv) any inaccuracy, error or delay in or omission from any information provided to you under the terms of or for purposes in connection with these Terms including the Trading Platform;
- (v) any delay, interruption, failure or inaccuracies in the transmission of your instructions;
- (vi) any failure of any electronic means used to transmit instructions or to disseminate Orders, data or information or of any telecommunications link;
- (vii) any fault, error or defect in design or engineering of the Trading Platform or computer systems or any delay, fault, failure or loss of access to the Trading Platform;
- (viii) any private dealings, contracts, Transactions or relationships between the Client and any of FP Markets' employees or agents.
- (ix) any delays or failures or inaccuracies, or loss of access to, the provision of a service to you including, without limitation, any delay, failure or inaccuracy in, or the loss of access to, the Trading Platform or in respect of the transmission of Orders or any other information;
- (x) any misinterpretation of your Orders or instructions which are unclear, ambiguous, or not specific;
- (xi) any government restriction, Exchange or market rulings, suspension of trading, computer or telephone failure, unlawful access to our Trading Platform, theft, sabotage, war, earthquakes, strike, force majeure and, without limitation, any other conditions beyond our control;

- (c) FP Markets is not liable in contract, tort (including negligence) or otherwise for any loss of prospective profits or expenses or special, indirect or consequential damages resulting from the supply of a service or Financial Product including, without limitation the Trading Platform; and
  - (d) every exemption and limitation from liability available to FP Markets will also be available to FP Markets' directors, employees, agents and representatives, for whom FP Markets will the benefit of these Terms on trust;
  - (e) FP Markets' liability to you is in any event limited to:
    - (i) in the case of goods, the replacement or repair of the goods; or
    - (ii) in the case of services, the re-supply of the services.
- 22.2 To the fullest extent permitted by law, you release, discharge and indemnify and agree to keep FP Markets and its respective officers, employees, agents and representatives indemnified from and against all Claims arising out of:
- (a) acting on your instructions in relation to their dealings in Transactions or otherwise in relation to their Account;
  - (b) the occurrence of any Default;
  - (c) FP Markets exercising any of its rights and powers upon occurrence of a Default;
  - (d) the payment of any amounts to the Client, in accordance with these Terms;
  - (e) any lawful action by FP Markets in accordance with FP Markets' rights under these Terms or otherwise, including any actions by FP Markets to ensure compliance with any direction, request or requirement of any regulatory authority or government body;
  - (f) any other default, whether by your act or omission under these Terms or any Order or Transaction;
  - (g) any breach by you of any Applicable Laws or Rules;
  - (h) any representation or warranty made or given by you under these Terms proving to be untrue or incorrect;
  - (i) any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by you or by any of your clients, employees, agents or Authorised Persons, consultants or servants;
  - (j) any failure of any of your computer or electronic systems or networks to perform, be available or successfully transmit data to FP Markets, or any error or inadequacy in the data or information input into such systems or networks by you;
  - (k) any delays in processing any Order including, for example (but not limited to), as a result of systems or market delays, or due to verification or filtering procedures or unauthorised processes, email delays or due to telephone call waiting time or adherence to internal policies and procedures;
  - (l) anything lawfully done by FP Markets in accordance with, pursuant or incidental to these Terms;
  - (m) any instruction, request or direction given by you;
  - (n) by reason of FP Markets complying with any direction, request or requirement of Applicable Laws or Rules, any government body or any regulatory body having jurisdiction over FP Markets;
  - (o) arising from and in connection with or in any way related to FP Markets in good faith accepting and acting on instructions received by facsimile transmission, email or by other means of any kind which are signed by or purported to be signed by you or any Authorised Person,
- except only to the extent attributable to the breach of these Terms by FP Markets or the gross negligence or fraud by FP Markets.
- ## 23. Termination
- 23.1 FP Markets and the Client agree that:
- (a) without affecting any existing obligations or liabilities, and subject to any other term of these Terms, in addition to any other right of the Client or FP Markets, either the Client or FP Markets may terminate these Terms at any time by giving the other at least fifteen (15) Business Days' notice in writing to that effect; and

- (b) unless otherwise agreed in writing FP Markets will promptly, at its discretion, Close Out all of your positions prior to termination taking effect.
- 23.2 If the Client has no open positions and there are no existing obligations or liabilities as between the Client and FP Markets, FP Markets may terminate these Terms, with or without notice to the Client.
- 23.3 You or FP Markets may terminate a Schedule within this document at any time and for any reason by giving notice to the other, without terminating another Schedule of these Terms. Termination of a Schedule under this clause does not affect outstanding obligations under these Terms which are undischarged at the time of termination, either under the terminated Schedule or otherwise. Each indemnity in this document survives the termination of any Schedule.
- 23.4 FP Markets may at any time at its sole discretion terminate or restrict your access to the Trading Platform at any time. If FP Markets terminates these Terms or access to the Trading Platform any Trading Platform licence agreement or terms for its use will automatically terminate and any hardware, software, manuals or other items provided by FP Markets to the Client must be returned to FP Markets. The Client will be liable for all fees charges and obligations incurred under these Terms prior to that termination.
- 23.5 If any event occurs which, in the opinion of FP Markets, has the effect of making or declaring it unlawful, uneconomic or impracticable for FP Markets to offer any kind of Transactions (e.g., CFDs) to the Client in accordance with the terms outlined in this document, FP Markets may immediately terminate these Terms by providing the Client written notice of that.
- 23.6 Termination of these Terms (including only some part of them) will not release either party from their obligations or liabilities relating to any breach of the terms outlined in this document.
- 23.7 The termination of these Terms (including only some part of them) does not affect outstanding obligations under these Terms which remain undischarged at the time of termination, limitations of liability or recourse, indemnities provided for in this document or any other clause of these Terms which states or implies that they survive termination.

- 23.8 Each indemnity provided within this document survives the termination of these Terms.
- 23.9 If the Client is aware that these Terms (or any part of them) are terminated and the Client has at that time open positions, the Client must immediately give Orders to FP Markets to Close Out those positions and instructions on how to pay any funds owing to Client after termination of all of the Client's positions. FP Markets need not wait for Orders to Close Out open positions but may Close Out positions as if a Default had occurred. FP Markets will not be liable if it does not Close Out Transactions or all of them before receiving the Client's Orders.

## 24. Illegality

- 24.1 If any event occurs which has the effect of making or declaring it unlawful or impracticable for FP Markets to offer or to maintain Transactions (including CFDs) to you in accordance with the terms outlined in this document, FP Markets may immediately terminate these Terms by providing you written notice of that. A termination of these Terms will also result in the closure of all Transactions (including all CFDs) as if a Default had occurred in relation to them. Any such termination will not relieve you of any obligations you may have to FP Markets in accordance with these Terms prior to the termination.
- 24.2 For this clause, events include any change in law, regulation, treaty, order, official directive or ruling or in their interpretation or application by any governmental authority or agent, and the introduction, implementation, operation or taking effect of, any law, regulation, treaty, order or official directive or ruling.

## 25. Variation of these Terms

- 25.1 We may vary these Terms by giving you notice of any variation by any of the following or any combination of the following: a document in writing, by updating our website, by posting a message in the Trading Platform, by electronic mail or by telephone call with you or by fax to you. The notice of variation is effective even if you are unaware of the notice. The minimum period of notice will be the lesser of:
  - (a) any minimum period of notice required by the Applicable Laws;
  - (b) if no such minimum period is required

- by the Rules, then not less than two (2) Business Days' notice (unless paragraph (c) applies); and
- (c) subject to paragraph (a), if we believe a variation is necessary to maintain or to restore the security of any Accounts or of our systems or to comply with any legal or regulatory requirement, we may make the variation with any method of notice we choose or without prior notice and in that case we will notify you of the change as soon as practicable after the change.

## 26. Notices

- 26.1 Any notices or communications, which include demands for payment of Margin calls or other payments to FP Markets in relation to a Transaction, can be made in person or by the Trading Platform, telephone, email, mail, or facsimile to the contact details as provided by the Client to FP Markets from time to time.
- 26.2 All communications to the Client will be deemed to have been received:
- (a) when delivered to the Client's email account at the address provided by the Client (in any way) even if that account is not accessed by the Client;
  - (b) when delivered to the Client if delivery occurs in person;
  - (c) three (3) Business Days from and including the date of postage if delivered by mail to an address in Australia;
  - (d) when transmitted to the Client's facsimile machine if delivered by facsimile; and
  - (e) when transmitted to the Client if sent by email or SMS to the address provided by the Client,

unless earlier receipt is confirmed by reasonable evidence of that. (This clause on how communications are deemed to be received by the Client does not affect the other clauses of these Terms which provide that Margin requirements need not be actually communicated to the client in order to be effective nor do Margin calls need to be actually received by the Client. This clause does not affect how your communications to FP Markets are deemed to be received by FP Markets.)

- 26.3 The Client must notify FP Markets in writing of any change in the Client's name, address, telephone number, fax number or email address.

- 26.4 If an Account is opened in the joint names of more than one person, each person agrees that we may discharge any obligation we have to give a notice or a document to those persons under these Terms or Applicable Laws by giving notice to any one of those persons.
- 26.5 FP Markets may give notice to you of any change in its Transaction Fees or any rates, fees charges or other amounts payable by these Terms in any manner permitted by these Terms, including by posting to FP Markets' website or to online services or platform administration service, or as required by the Rules. FP Markets must give the minimum period of notice required by the Rules (if any).
- 26.6 If no minimum period is required or a minimum period is not stated elsewhere in these Terms, notice of a change in Transaction Fees, charges or roles may be effective immediately FP Markets first generally publishes the information of any variation on its website or through its Trading Platform or platform administration service.

## 27. Anti-Terrorism/Money Laundering

- 27.1 You acknowledge that:
- (a) we are subject to various anti-money laundering and counter-terrorism financing laws (AML/CTF Laws) which may prohibit us from offering services or entering into or conducting Transactions; and
  - (b) the AML/CTF Laws include prohibitions against any person dealing with the proceeds of or assets used in criminal activity (wherever committed) and from dealing with any funds or assets of, or the provision of finance to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act.
- 27.2 You agree that:
- (a) we are not required to take any action or perform any obligation under or in connection with these Terms if we are not satisfied as to your identity or if we suspect on reasonable grounds that by doing so we may breach the AML/CTF Laws;
  - (b) we may delay, block or refuse to make any payment or to provide any service if we



believe on reasonable grounds that to do so may breach any law in Australia or any other country, and we will incur no liability to you if we do so; and

- (c) we will not incur any liability to you for any loss you suffer (including consequential loss) however caused by reason of any action taken or not taken by us as contemplated in paragraph (a) or (b) above.

27.3 You agree to provide to us, or to allow us or our agents access to, all information and documents which we reasonably require to comply with any law in Australia or any other country, including any AML/CTF Laws. The information we may access, store and disclose for these purposes includes the information the subject of your authorisations in your Application Form or by any other means you authorise us. You agree that we may disclose information about you which we collect or which we have, or about Transactions you have with us or which you seek to conduct with us, if we are required to do so by any Applicable laws in Australia or in any other country or for the purpose of complying with our AML/CTF program and compliance obligations.

27.4 You represent and warrant to us that the payment of moneys by us in accordance with these Terms, or any instructions given by you, will not breach any law in Australia or any other country.

## 28. Privacy

28.1 Information which the Client provides FP Markets and any other information provided by the Client in connection with your Account will primarily be used for the processing the Clients account application and for complying with certain laws and regulations. FP Markets may use this information to send you details of other services or provide you with information that we believe may be of interest to the Client. FP Markets' privacy policy is available free of charge by contacting FP Markets.

28.2 The Client acknowledges that they have had a reasonable opportunity to read FP Markets' privacy policy. FP Markets may change that policy at any time without notice.

28.3 You agree that your personal information can be used or disclosed by us as contemplated in this document. You agree to take all

reasonable steps to deliver information or documentation to FP Markets, or cause information or documentation to be delivered to FP Markets concerning Transactions which are requested by a person having a right to request such information or documentation (including, without limitation, ASIC and ASX). You understand that if you do not provide any information requested by us or do not agree to us using your information as set out in this clause we may not be able to provide our services to you.

28.4 You authorise FP Markets to use and to disclose the tax file number which you have provided to FP Markets for all Accounts conducted by you with FP Markets for the purposes of Transactions in accordance with any legal requirements.

28.5 The Client acknowledges and agrees that FP Markets is permitted to carry out an electronic database search and search credit reference agencies in order to verify your identity and credit standing, before during and after an Account is opened (since the insolvency or bankruptcy of the Client after cessation of the Account or termination of these Terms may continue to be relevant to FP Markets). If such searches are carried out, FP Markets may keep records of the contents and results of such searches in accordance with all current and applicable laws.

28.6 FP Markets may provide all such information regarding the Client in relation to its obligations to, or requests (whether legally binding or not) by, a relevant regulatory body.

## 29. Governing Law and Rules

29.1 The parties agree that any dealings between them are subject to, and they are each bound by, the Applicable Laws as amended or altered from time to time.

29.2 The Client acknowledges that these Terms are governed by the laws in force in New South Wales and all parties to these Terms agree to submit to the non-exclusive jurisdiction of the Courts of New South Wales in relation to any claim or dispute arising out of the performance of these Terms.

## 30. General

- 30.1 If any of the provisions contained in this document are found to be invalid or unenforceable, such provisions will be deemed deleted, and the validity and enforceability of the remaining provisions will continue unimpaired.
- This agreement contains the entire terms and understanding between you and FP Markets concerning the provision of the services (including the Account and all Transactions) referred to in this document, as later amended only in accordance with these Terms. Any disclosure document about any financial product or service does not contain terms and does not prevail over this agreement.
- 30.2 If a party fails to exercise or delays in exercising any right under these Terms, by doing so it does not waive such right. The rights provided in this document do not exclude other rights provided by law.
- 30.3 The Client may not assign or otherwise transfer its rights or obligations under these Terms or any Transaction, without the express written consent of FP Markets.
- 30.4 FP Markets may assign or otherwise transfer its rights or obligations under these Terms or any Transaction, without the express written consent of the Client but on giving not less than 14 days' prior written notice to the Client.

## 31. Interpretation

Unless the context otherwise requires, any expressions or phrases not otherwise defined within this document have the meaning given to them in the Applicable Laws.

**Account** means an account held in your name or on your behalf with FP Markets for the purposes of these Terms.

**Account Value** means the current value of your Account which is calculated by FP Markets by combining:

- the balance of the cash account;
- the sum of the values of the non-margin positions;
- the unrealised value (positive/negative) of the Open Positions in margin products;
- indicative costs to Close (Transaction Fees, Finance Charges); and
- the values of Transactions not yet booked.

**Applicable Laws** means, in relation to a matter, all laws, legislation, regulation and subsidiary regulation, instruments and Orders of a regulatory authority or a court, rules and procedures of a Financial Market or a CS Facility which apply to the relevant matter including for example, and without limitation, the Corporations Act and regulations made pursuant to the Corporations Act, ASIC Class Orders and other instruments, ASIC Market Integrity Rules and ASX Rules.

**Application Form** means the form of application by which a person applies to become a client of FP Markets and to open an Account. It may be in paper form or electronic form. It may be in one or more parts, given at different times.

**ASIC** means Australian Securities and Investments Commission.

**ASIC Market Integrity Rules** means each of the ASIC Market Integrity Rules (ASX) and the ASIC Market Integrity Rules (ASX 24) and any other ASIC market integrity rules relating to the Client's Transactions, in any case by whatever name or style of title, as amended from time to time.

**ASX** means ASX Limited (ABN 98 008 624 691).

**ASX Clear** means ASX Clear Pty Limited (ABN 48 001 314 503).

**ASX Rules** means the operating rules, procedures, directions, decisions requirements, customs, usages and practices of ASX and ASX 24 and includes the ASX Operating Rules and ASX 24 Operating Rules, as amended from time to time.

**ASX 24** means Australian Securities Exchange Limited (ABN 83 000 943 377).

**Authorised Person** means the person (if any) described as your authorised agent or attorney in the Application Form or another person notified by you to us in accordance with these Terms.

**Free Cash** has the meaning given in clause 3.4.

**Balance** has the meaning given in clause 3.1.

**Base Currency** is the first currency quoted when requesting a quote for a CFD which can be denominated in another currency, such as an FX CFD, for example in the quote AUD/USD the AUD is the Base Currency.

**basis point or bp** refers to 0.01% of an amount. E.g., 5 bps means 5 basis points or 0.05% (typically of a Contract Value).

**Business Day** means a weekday which is not a gazetted public holiday in Sydney.

**Claim** means any or all, actual or potential claim, action, complaint, suit, cause of action, arbitration, debt due, costs, claim, entitlement, allegation, demand in respect of damages and any other benefit verdict

and judgment whether both at law or in equity or arising under the provisions of any statute, award or determination whether known at the date of these Terms or not.

**Clearing Participant**, in relation to a Financial Product, means the participant of the relevant CS Facility which has the responsibility for clearing the relevant Transactions in respect of that Financial Product or, if specified, the participant defined as a “Clearing Participant” in the relevant Schedule.

**Client** means the person who is identified as such in the Application Form, being the person who is the party to the agreement on these Terms other than FP Markets. These Terms allow the Client to consist of more than one person, so a reference to “Client” is a reference to each person who makes up the Client.

**Client Mark-up** means the amount (as a percentage), determined by FP Markets, applied to the FP Markets Base Rate to determine the net Finance Charge on long positions or short positions. The Client Mark-up applying to you is notified at the time of opening your Account, and may alter be varied on appropriate notice.

**Client Money Trust Account** means an account (however named or styled) maintained by FP Markets for the purposes of the Corporations Act to hold client moneys.

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

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

**Closing Date** means the date on which the Transaction is Closed Out or is nominated to be Closed Out, or earlier, if deemed to be Closed Out in accordance with these Terms.

**Commodity CFD** means a CFD (issued by FP Markets) whose Underlying Financial Product is a Commodity Transaction.

**Commodity Transaction** means transaction to buy or sell a specific quantity of a described commodity or to make a payment calculated by reference to changes in the level of an index or interest rate, at an agreed date

in the future, whether or not it is physically settled or capable of being physically or cash settled, and includes an option for such a transaction.

**Confirmation** means any confirmation of a Transaction issued by us or on our behalf to you and includes an electronically transmitted confirmation.

**Corporations Act** means the Corporations Act 2001 (Commonwealth) and regulations made under it, as amended from time to time.

**CS Facility** means a clearing and settlement facility, within the meaning of the Corporations Act (which includes, for example, any clearing or settlement facility through which Transactions are cleared or settled), whether located in Australia or overseas.

**Default** has the meaning in clause 14.1 and, if applicable, as supplemented by a term in a Schedule.

**Derivatives** means derivatives as defined in section 761D of the Corporations Act.

**Exchange** means the Australian Securities Exchange operated by ASX, the exchange operated by ASX 24 and any other exchange or market in which FP Markets or its Hedge Counterparties, directly or indirectly, participate from time to time, whether directly or through agents or Market Participants, as the context permits or requires.

**Exchange System** means, in relation to a Financial Market or CS Facility the trading, clearing or settlement facility or system (or both) operated by or on behalf of the relevant Financial Market or CS Facility.

**Finance Charge** means a charge payable in accordance with clauses 3 and 11.

**Financial Market** means a financial market within the meaning of the Corporations Act (which includes, for example, any market on which prices of Financial Products are quoted), whether located in Australia or overseas.

**Financial Product** has the meaning given in Part 7.1 Division 3 of the Corporations Act (including, for the avoidance of doubt, as amended by the Corporations Regulations and ASIC Class Orders).

**Foreign Exchange** means currency including Australian Dollars and foreign currency.

**forward purchase** and similar expressions mean the purchase of a currency (or other agreed security or commodity) at a Price agreed at the time of the purchase, which purchase is to be settled at a future time.

**FP Global** means the Platform of that name made available by FP Markets.

**FP Markets** means First Prudential Markets Pty Ltd ABN 16 112 600 281 AFSL 286354 and its successors or assignees.

**FP Markets Base Rate** means the amount nominated by FP Markets for this term from time to time, as notified to you (including through a Platform), posted on its website or available by contacting FP Markets. It may be different on the Platforms and it may be different for Clients and CFDs.

**Free Cash** has the meaning given in clause 3.4.

**Free Equity** has the meaning given in clause 3.4.

**FSG** means financial services guide.

**Futures** has the same meaning as given in any Rules governing the operation of any Exchange.

**Futures Contract** means a Futures Transaction which is regulated by an Exchange.

**Futures Transaction** means any Transaction, whether exchange traded or an OTC Transaction, to buy or sell a specific quantity of a described commodity at an agreed date in the future, whether or not it is physically settled or capable of being physically or cash settled.

**FX CFD** means a CFD (issued by FP Markets) whose Underlying Financial Product is an FX Transaction.

**FX Option CFD** means an FX CFD (issued by FP Markets) whose Underlying Financial Product is an option over an FX CFD.

**FX Transaction** means a transaction to buy or sell a specific quantity of a currency in exchange for a specific quantity of another currency, at an agreed date (same day or in the future), whether or not it is physically settled or capable of being physically or cash settled, and includes an option for such a transaction.

**Gross Liquidated Value** has the meaning given in clause 3.2.

**GST** means tax that is imposed as a goods and services tax under any of:

- (a) A New Tax System (Goods and Services Tax) Act 1999; or
- (b) any regulation made pursuant to the A New Tax System (Goods and Services Tax) Act 1999.

**Hedge Counterparty**, when used in a Schedule, has the meaning given to the term in the relevant Schedule (and FP Markets may from time to time provide a list of Hedge Counterparties relevant to any particular Financial Product or Trading Platform).

**Initial Margin** means the amount which you are required to deposit with FP Markets or pay to FP Markets (depending on your Financial Product); in either case as the Initial Margin for any Transaction which you propose to enter into.

**Long Party** means the party to a Transaction (including a CFD) who is treated as having notionally bought the Underlying Financial Product (or, in the case of an index CFD, a right in respect of payment arising from a change in the level of an index).

**Loss** means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Margin** means the balance of the amount of cash or other assets required to cover dealing through a Trading Account or other margin payment, by whatever terms they are described, and any like payments, required to be paid under these Terms.

**Margin Cover** means the amount of Margin available for margin trading on your Account. It is calculated by FP Markets by subtracting from the Account Value: (i) the required Margin; (ii) that part of the value of Open Positions which are margin products which is not available to be counted as Margin (usually shown as a percentage of the unrealised value of the margin product) and (iii) that part of the value of non-margin positions which are not margin products and which is not available to be counted as Margin (usually shown as a percentage of the value of the non-margin product).

**margin product** means a CFD (or other Transaction) which has a required Margin.

**margin trading** refers to any trading in any margin product.

**Margin Utilisation** is expressed as a percentage and relates to the proportion of the Account Value which you are utilising for Margin requirements. The purpose of the Margin Utilisation is to calculate and show simply in percentages how you are meeting your obligation to maintain sufficient Margin, for example, if the Margin Utilisation on your Account is above 100%, you have already failed to maintain the minimum required Margin and ordinarily you would already have received a Margin call. The formula used by FP Markets to calculate this is:

$$\frac{\text{margin requirement}}{(\text{Margin Cover} + \text{Margin requirement})} \times 100 \text{ (as \%)}$$

**Market Participant** means:

- (a) in respect of any Transaction governed by Rules of an Exchange, a Market Participant as defined under the Rules of that Exchange; and

- (b) in any other case, a person authorised or licensed to deal in Transactions (including to arrange Transactions, whether by trading platforms or otherwise), or an agent of such a person.

**non-margin position** means an Open Position of a CFD (or other Transaction) which has no required Margin.

**Offer** means the price which FP Markets as the seller is willing to accept i.e., the price at which you can buy the FP Markets CFD.

**Open Contract** has the meaning given to Open Contract under ASX Rules and Open Position under ASX Rules or, in respect of an OTC Financial Product, a Transaction that has not expired or otherwise Closed Out.

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

**Order** means any Order placed by you with us to purchase or sell or otherwise deal in Financial Products.

**OTC Transaction** means a Transaction which is an over-the-counter contract (in contrast with an exchange-traded contract).

**PDS** is defined in clause 8.1.

**Platform means** any of the trading platforms provided by FP Markets, however they are delivered, for accessing your Account and placing Orders.

**Points** means the smallest increment by which a unit of currency (such as for an FX CFD) changes and is quoted depending on the number of decimal places in which the currency is quoted. For example a USDJPY FX CFD is quoted with only two decimal places (meaning one Point = JPY 0.01).

**Price** means, in relation to a Transaction, the price or rate quoted by FP Markets or by a Market Participant (as adjusted for any Transaction Fee or other fees and charges) and agreed to by you to express the value of the Underlying Financial Products the subject of that Transaction.

**Rules**, in relation to a Financial Market or a CS Facility means the operating rules, procedures, customs and usages of the of the Financial Market or CS Facility (as applicable).

**Security Information** means any of your email address, logon code, password or trading password.

**Segregation or segregated** means, in relation to an account or an asset that:

- (a) the party holding the assets in the account:
  - (i) holds the asset separately from its own property;

- (ii) holds the account separately from its own accounts and the accounts of any other person except you (Non-Client);

- (iii) does not record or deposit any assets of its own in the account;

- (b) records in relation to such an asset or account must:

- (i) be kept separate from records in relation to any other account of the party or any Non-Client;
- (ii) record separately the particulars associated with that asset and account;
- (iii) record separately in respect of each client particulars of the amount or property deposited in or withdrawn from the account;
- (iv) ensure that assets in the account are separately classified;
- (v) correctly record and explain dealings in relation to the assets in the account.

The account must be described as the Client Money Trust Account, the clients' segregated Trust Account or a custody account as the case may be.

**Settlement Time** means the time by which a Transaction must be settled, as set out in the Confirmation for the Transaction.

**Share CFD** means a CFD whose Underlying Financial Product is a financial product traded on an Exchange and which itself is not a margin product. This covers Exchange-traded equities, units in listed funds, stapled securities, exchange traded funds (known as ETFs).

**Short Party** means the party to a Transaction (including a CFD) who is treated as having notionally sold the Underlying Financial Product.

**Spot** means the theoretical Value Date for a Transaction two Business Days following the day on which the Transaction is entered into.

**Tax** means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government Agency, other than any imposed on overall net income.

**Terms Currency** is the second currency quoted in a pair for a CFD, for example for the quote AUD/USD, the Terms Currency is the USD.

**Terms** means all of the provisions of the Application Form and of this document (inducing the relevant Schedules), each as amended from time to time.



**Trading Platform** has the meaning given in clause 19.

**Transaction** means any contract:

- (a) between either:
  - (i) you and FP Markets as principal;
  - (ii) you and another person (made by FP Markets as your agent); or
  - (iii) you and a Market Participant (made by FP Markets as your agent), including under a Market Agreement,
- (b) for one of these purposes:
  - (i) to purchase, or to agree to purchase (including a forward purchase) an Underlying Financial Product;
  - (ii) to sell, or to agree to sell an Underlying Financial Product or
  - (iii) to pay, or to agree to pay an amount calculated in respect of an Underlying Financial Product in one currency against the settlement in another currency (or other agreed Underlying Financial Product), and
- (c) in respect of which (other than in respect of Closing Out and Open Transaction as permitted under these Terms) you have, or you are taken to have, agreed (whether orally, electronically or in writing) to:
  - (i) the nominating of the Underlying Financial Products involved in the Transactions;
  - (ii) the amount of the currency (or other agreed Underlying Financial Product or Derivative) to be purchased or sold by you;
  - (iii) the Price; and
  - (iv) the Settlement Time (which may be immediately after your Order is executed).

**Transaction Fee** means the fee or commission from time to time specified by FP Markets to be the amount payable by you to FP Markets in respect of each Transaction, which may include a point spread in respect of the buy and sell prices quoted by the Market Participants or a Transaction Fee payable to FP Markets as principal.

**Underlying Financial Product** means security, Financial Product, Foreign Exchange, commodity, metal (or other relevant thing) the subject of a Transaction, including a value determined by reference to an index or an index multiplied by an amount of currency, in any jurisdiction, whether or not through an Exchange or other market facility.

**Underlying Financial Product Price** means the market price of the security, Financial Product, Foreign Exchange, commodity index or other item (or any combination of one or more of those) which is the subject of a Transaction, including a value determined by reference to an index or an index multiplied by an amount of currency, in any jurisdiction, whether or not through an exchange or other market facility, in any case as calculated by FP Markets, having regard to the purposes of the calculation and the intent to make a reasonable determination in good faith but without having to consider the specific personal interests of any person.

**Underlying Futures Contract** means an Underlying Financial product which is a Futures Contract when it is used as the basis for the calculations of prices of a Futures CFD.

**Unrealised Gain/Loss** has the meaning given in clause 3.5.

**Variation Margin** means an amount which you are required to deposit with FP Markets or pay to FP Markets (depending on your Financial Product), in either case as additional Margin. The Variation Margin liability may arise due to a change in the current marked-to-market value of the Derivative or other Open Transaction and the previous marked-to-market value of that Transaction, or because FP Markets in its discretion calls for more Variation Margin.

**we, us, our or FP Markets** means First Prudential Markets Pty Ltd (ABN 16 112 600 281) and its successors or assignees.

**Withdrawable Funds** means the Free Cash in Trading Accounts on FP Global and so means the amount of credit balance in a Trading Account available for being used as Margin (to cover adverse movements in the value of your existing positions or towards new positions). There is Withdrawable Funds only if your Margin Cover is a positive amount. The amount of the Withdrawable Funds is the surplus (if any) of the cash balance credited to your Trading Account and unrealised profit and loss over the required minimum Margin Cover. If the Margin Cover is not positive, there will be no Withdrawable Funds. The amount is subject to final adjustment by FP Markets at any time including immediately after payment of cash to the Client for any reason whatever, including changes in value or level of Underlying Financial Products, interest rates, currency rates, and unposted (or unreported) but accrued Finance Charges or Transaction Charges.

**you** means the Client, being person or persons in whose name we open an Account (including any Authorised Person), following an application by that person or those persons. You, the Client, are bound by these Terms.



## Schedule 1 – CFD terms

### 1. Introduction

- 1.1 The following terms will apply to you, and you agree to be bound by them, each time you place an Order with FP Markets to deal in a Contract for Differences (as defined in clause 2 of this Schedule).

### 2. Interpretation

In this Schedule, the following terms have the following meanings (which prevail over any other definition elsewhere in this document):

**Adjustment Event** means, any event in respect of which FP Markets considers in its absolute discretion an adjustment to the terms of a CFD is appropriate including, for example:

- (a) if the Reference Asset is a share, debenture, unit or other security (or depositary receipt of any kind in respect of any of them) - a bonus issue for combination of rights issued, rights issue, stock split, share or other capital consolidation, security reclassification or sub-division return of capital, buy back, special dividend (however legal constituted), in specie distribution, takeover, scheme of arrangement or similar event or other corporate action event in respect of the security, whether or not the event triggers an adjustment to any exchange traded derivative of it,
- (b) a distribution to existing holders of additional shares or other securities or other Financial Products granting them the right to receive dividends or other proceeds equally and proportionately with payments made to holders of the Underlying Financial Products; or securities, rights or warrants granting the right to a distribution of shares or to purchase, subscribe, or receive shares, in any case for payment (in money cash or money's worth) at less than the prevailing market price per share as determined by FP Markets;
- (c) an event that has a dilutive or concentrative effect on the market value of the shares;

- (d) if the Reference Asset is an index, a substantial adjustment to the composition of the index outside its own terms allowing for adjustments or weightings; a failure to publish the index or a suspension or cancellation of the index; and
- (e) if the Reference Asset is a Derivative which is able to be traded on a Financial Market – any event in respect of which the operator of the Financial Market makes an adjustment to the terms of the Derivative.

**CFD** means a contract for one Contract for Difference.

**CFD Transaction** means a Transaction in respect of one or more CFDs.

**Close of Business** means the normal time of close of trading of the relevant Exchange.

**Close Out, Closed Out and Closing Out** in relation to a CFD Transaction means discharging or satisfying your obligations to FP Markets under the CFD Transaction and this includes:

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

**Closing Date** means the date on which the CFD Transaction is agreed to be Closed Out, or earlier, if deemed to be Closed Out in accordance with the terms or the Underlying Financial Product expires or lapses according to its terms or the Rules governing its contract specifications. FP Markets may determine an earlier Closing Date if it reasonably decides that the Closing Date should coincide with the last time for a client to give instructions for rolling over the Underlying Financial Product.

**Closing Price** means the price of the CFD at the Closing Date (determined by FP Markets).

**Closing Value** means the value determined (by FP Markets) by multiplying the number of CFDs by the value or level of the CFD's Underlying Financial Product at the Closing Date.

**Contract for Difference** means a Financial Product, being a Derivative which derives its value from one or more Reference Assets on these Terms and

which is referred to or is described as a “Contract for Difference” or CFD by way of PDS, email, posting to FP Markets’ website, the Trading Platform, Account statement or in any other way. A CFD need not expressly nominate this as the Schedule to it.

**Contract Value** means the face value of the CFD, and is calculated by FP Markets by multiplying the price (or, if an index, the level) of the relevant Underlying Financial Product by the number of securities (or, if an index, multiplier) specified in or for the CFD.

**Hedge Contract** means a contract between FP Markets and a Hedge Counterparty on the same, or substantially similar, terms as the CFD (including if one or more CFDs from you and other clients which in aggregate correspond with the Hedge Contract).

**Hedge Counterparty** means a Market Participant with whom FP Markets enters into a Hedge Contract to hedge (all or part of) FP Markets’ exposure to a CFD.

**Reference Asset** means an Underlying Financial Product, as determined by FP Markets and, in the case of a CFD Transaction, the Underlying Financial Product specified in or notified for the Transaction and as confirmed in the Confirmation or statement of the Account. The Reference Asset may be an index, in which case any reference in this document to “Reference Asset” will be applied with such changes as necessary to reflect an index instead of a Financial Product. For example, a reference in these Terms to suspension of trading a Reference Asset includes a reference to suspension of quotation or publication of an index.

### 3. Acknowledgements

In these Terms you acknowledge the following in favour of FP Markets:

- (a) CFD Transactions are cash settled with no physical exchange of the Underlying Financial Product following Close Out of the CFD;
- (b) there may be no definitive time to the life of a CFD, so such a contract will continue until the Closing Date.

### 4. Opening and closing CFD Transactions

- 4.1 All CFD Transactions are entered into between you and FP Markets as principal. The acquisition of a CFD involves entering into, or opening, a CFD. The disposal of a CFD involves Closing Out an open CFD by entering into

another CFD which is opposite to the open CFD and thereby setting off both Transactions.

- 4.2 FP Markets will from time to time state the prices or values at which it may enter into a CFD Transaction with you, either to open or Close Out a CFD (including by an Trading Platform) to do so (including by an Trading Platform). If you wish to enter into a CFD Transaction you may submit an Order to FP Markets. FP Markets is not bound to enter into any CFD Transaction with you and may state another price or value at which it may deal with you.

- (a) You may request on any given Business Day by a Trading Platform, via telephone or otherwise FP Markets to quote a price at which FP Markets may be prepared to enter into a CFD. You agree to and acknowledge that a price quotation pursuant to this request does not constitute an offer to enter into a new or close an existing CFD.
- (b) Upon receiving the quote from FP Markets, you may by a Trading Platform, via telephone or otherwise offer to enter into a CFD with FP Markets at the price quoted by FP Markets.
- (c) FP Markets is not obliged to accept your offer to enter into a CFD and, without limitation, is not obliged to accept your offer to enter into a CFD:
  - (i) if you have exceeded or would exceed a pre-determined limit imposed on you under clause 4.2(g) below; or
  - (ii) until FP Markets has received from you the Initial Margin required in the form of cleared funds to enter into the respective CFD.
- (d) The Initial Margin required to enter into a CFD, if not already received from you, will be payable to FP Markets upon acceptance by FP Markets of your offer to enter into the CFD.
- (e) If FP Markets accepts your offer to enter into a CFD, FP Markets will issue to you an electronic Confirmation of the CFD entered into shortly after it has been entered into. Failure by FP Markets to issue a Confirmation will not prejudice or affect the relevant CFD. FP Markets will not bear any liability whatever resulting from the failure to issue a Confirmation. FP Markets will promptly advise you if

FP Markets decides not to accept your offer to enter into a CFD.

- (f) You agree to examine the terms of each Confirmation immediately upon receipt and you agree that the contents of the Confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal, unless within three (3) Business Days of issue of a written Confirmation you notify FP Markets of any disputed detail in the Confirmation received by you. Upon receipt of written notice within the three (3) Business Day period of a disputed Transaction, FP Markets will investigate the dispute and in co-operation with you must endeavour to resolve the dispute in good faith. Notwithstanding any such dispute, you must continue to satisfy your obligations to maintain the required minimum Margin and to pay Margin calls made by FP Markets in respect of the CFD as if the Confirmation was correct and the details contained in the Confirmation were not the subject of dispute.
  - (g) In its absolute discretion, FP Markets may limit the value of CFDs you may have outstanding under these Terms. If you wish to enter into any further CFDs, you must seek and obtain approval from FP Markets, beyond which you may not enter into any further CFDs whatever.
  - (h) FP Markets may vary the limit imposed at any time in its absolute discretion.
- 4.3 If FP Markets enters into a CFD Transaction with you for the acquisition of one or more CFDs:
- (a) FP Markets will give you a Confirmation or statement in respect of the CFD Transaction setting out, among other things, the number of CFDs acquired and the amount or amounts which you are required to pay, or are entitled to receive, in connection with the acquisition of the CFD; and
  - (b) you or FP Markets (as applicable), must pay the relevant amount referred to in paragraph (a) by the time specified in the Confirmation.
- 4.4 If FP Markets enters into a CFD Transaction with you for the disposal of one or more CFDs (by way of Closing Out that contract):
- (a) FP Markets will give you a Confirmation or statement in respect of the CFD

Transaction setting out, among other things, the number of CFDs disposed of and the amount or amounts which you are required to pay, or are entitled to receive, in connection with the disposal of the CFD; and

- (b) you or FP Markets (as applicable) must pay the relevant amount referred to in paragraph (a) by the time specified in the Confirmation, subject to clause 6.1.

## 5. Settlement of Difference

- 5.1 After Close of Business on each Business Day over the term of an open CFD, FP Markets will determine at Close of Business the Contract Value of the CFD.
- 5.2 If the Contract Value determined by FP Markets in accordance with clause 5.1 above is higher than the Contract Value determined by FP Markets in respect of the previous Close of Business, then the Short Party must pay to the Long Party the difference.
- 5.3 If the Contract Value determined by FP Markets in accordance with clause 5.1 above is lower than the Contract Value determined by FP Markets in respect of the previous Close of Business, then the Long Party must pay to the Short Party the difference.
- 5.4 In order to determine in accordance with these Terms the Contract Value at Close of Business on the Business Day on which the CFD is entered into, the Contract Value will be determined by FP Markets using the Underlying Financial Product Price at which FP Markets and you agreed to enter into the CFD.
- 5.5 If FP Markets determines that the Contract Value of a CFD at Close of Business cannot be determined in accordance with clause 5.1 above for any reason, the Contract Value at Close of Business will be the value determined by FP Markets in its sole discretion.
- 5.6 Without limiting this clause 5, if at any time trading on an Exchange is suspended or halted in any Underlying Financial Product, FP Markets will, when determining the Contract Value, at its discretion consider (but is not limited to) the last traded price before the trading suspension or halt.

## 6. Dividend Payment and Receipt

- 6.1 If you are the Long Party to a CFD, and the issuer of the Reference Asset makes a cash distribution in respect of the Reference Asset (for example, a dividend in respect of a Reference Asset which is a security), FP Markets will credit to your Account in respect of the CFD an equivalent amount (less any Taxes and costs) within a reasonable period following the date the cash distribution is paid in respect of the Reference Asset corresponding with your CFD being the amount that will be equal to the cash dividend payable to the holder of the Underlying Financial Product multiplied by the quantity on the first Business Day following the ex-dividend date for the Underlying Financial Product. FP Markets is not obliged to pay to you any amount under this clause 6.1 unless and until it receives that amount as the owner of the Reference Asset or an equivalent amount under the Hedge Contract acquired in respect of the CFD. Further, FP Markets is not liable to pay to you any amount in excess of the amount (less any Taxes and costs) which FP Markets itself receives either as the owner of the Reference Asset or pursuant to a Hedge Contract acquired in respect of the CFD.
- 6.2 If you are the Short Party to a CFD, FP Markets will debit your (relevant) Account with an amount that will be equal to the cash dividend plus any imputation or franking credits payable to the holder of the Underlying Financial Product multiplied by the quantity on the first Business Day following the ex-dividend date for the Underlying Financial Product.

## 7. Closing out a CFD

- 7.1 At any time you may give FP Markets by way of the Trading Platform, telephone or otherwise notice of its intention to close any CFD (whether in whole or part) by specifying the Underlying Financial Product and the quantity of CFDs that you wish to close.
- 7.2 Upon receipt of a Notice of intent to close a CFD, FP Markets will use reasonable endeavours to provide a quote for the Closing Price and notify you of that quote (by telephone or otherwise). It is your obligation to notify FP Markets as soon as possible (by telephone or otherwise) as to whether you are willing to accept the

Closing Price quote. If you accept the Closing Price quoted by FP Markets, the CFD, or relevant portion of the CFD, will be closed on the Closing Date.

- 7.3 If the Underlying Financial Product for the CFD is on terms that provide for its redemption, exchange or termination and you do not give notice to FP Markets of your intention to Close out the CFD or to roll it over on terms and by the time acceptable to FP Markets (whether or not you have any prior notice of that), you will be deemed to have given notice to FP Markets to Close Out that CFD at the Closing Price reasonably determined by FP Markets. In this case, FP Markets will Close Out the CFD as at the time determined by it.
- 7.4 At the Close of Business on the Closing Date, if there is a difference between the Closing Value and the Contract Value of the CFD (or portion of it closed under clause 7.2) it must be accounted for in the following way:
- (a) If the Closing Value is greater than the Contract Value, the Short Party must pay to the Long Party the difference; and
  - (b) If the Closing Value is less than the Contract Value, the Long Party must pay to the Short Party the difference.
- 7.5 If the issuer whose security represents the Underlying Financial Product on which all or part of a CFD is based becomes externally administered in accordance with the meaning in the Corporations Act (or equivalent legislation), the CFD will be taken to have been Closed at that time. The Closing Price of the CFD will be determined by FP Markets who may consider a number of factors it deems appropriate including, for example, the last traded price of the Underlying Financial Product.
- 7.6 If the Underlying Financial Product on which the CFD is based ceases to be listed for quotation on an Exchange, or is suspended from quotation for 5 consecutive Business Days, FP Markets may, in its absolute discretion, without limiting clause 7.7 elect to terminate the relevant CFD. If FP Markets elects to do so then:
- (a) the Closing Date will be deemed to be the date which FP Markets determines (**Early Closing Date**); and
  - (b) you will be treated as having given notice under clause 7.1 on the Early Closing Date.

- 7.7 If FP Markets determines that the Closing Value of a CFD cannot be calculated on or with effect on the Closing Date for any reason, the Closing Value will be the value determined by FP Markets in its sole discretion.
- 7.8 Without limiting clause 7.7, if at any time trading in the Underlying Financial Product on an Exchange is suspended or halted at any time, FP Markets will, in its absolute discretion in determining the Closing Value of a CFD, have regard to (but is not limited by) the last traded price before the suspension or halt.
- 7.9 All calculations made by FP Markets in accordance with these Terms in the absence of any manifest error will be binding on you.

## 8. Settlement of Positions

- 8.1 Payments to be made to you with respect of any CFD must be made in accordance with this clause 8.
- 8.2 If a CFD is Closed Out in accordance with clause 7 above, or settlement for difference being made in accordance with clause 5 above:
  - (a) FP Markets will credit to your (relevant) Account any amount payable by FP Markets to you; or
  - (b) subject to clause 8.3 below you must pay to FP Markets any amount payable by you to FP Markets in cleared funds in any such currency that FP Markets may require immediately upon the payment request being made.
- 8.3 If there is any credit balance in your Account as at immediately before closing Out a Transaction, on Closing Out any amount owing by you in accordance with clause 8.2 above will be settled in whole or in part by debiting the credit balance of your Account with FP Markets.
- 8.4 If you request payment of any money owed to you under this clause 8, FP Markets will deduct the amount of the requested payment from your Account and pay you, electronically, by cheque or in any other manner as agreed. Money owed to you that has not been the subject of any payment request by you will remain in your Account until your request or dealt with under the laws relating to unclaimed moneys.
- 8.5 FP Markets may offset any money owed to you under these Terms or any other agreement against any moneys owed by you under these Terms or any other agreement.

## 9. Adjustment Events

- 9.1 If the Underlying Financial Product on which a CFD is quoted is subject to an Adjustment Event or possible Adjustment Event, FP Markets will determine the adjustment, if any, that will be made to the Contract Value of that Underlying Financial Product, the related quantity (or both) that would have placed the parties in substantially the same economic position they would have been in had the event not occurred. FP Markets will notify you as soon as practicable of the adjustment. In the absence of any manifest error any adjustment determined will be deemed to be conclusive and binding on you.
- 9.2 FP Markets may give you an opportunity to elect to participate in an adjustment to the CFD which corresponds with the Adjustment Event, but FP Markets is not obliged to give you that opportunity, or give reasonable notice of it or make its terms correspond exactly with the Adjustment Event, nor is FP Markets obliged to accept in part or at all any election you make to participate. Any adjustment will take effect at the time determined by FP Markets.
- 9.3 If the Underlying Financial Product is subject to a take-over offer or similar event, FP Markets may at any time prior to the closing date of the offer provide you notice of FP Markets' intention to Close the CFD, in accordance with clause 7, with the Closing Price being the price notified to you by FP Markets.
- 9.4 If at any time an Adjustment Event occurs and it is not reasonably practicable as determined by FP Markets in its absolute discretion to make an adjustment in accordance with clause 9.1 above, then without limiting 9.1 above, FP Markets may at any time after the Adjustment Event give you notice of FP Markets' intention to Close Out the CFD. If this occurs you will be taken to have been provided with closing notice in accordance with clause 7 above, with the Closing Price being the price notified to you by FP Markets.
- 9.5 References to "offer", "take-over" and "closing date" in this Schedule 1 will have the same meaning given to them in the Corporations Act 2001.

## 10. Interest on Open CFD positions

### 10.1 Finance Charges

- (a) When you are a Long Party under a CFD, FP Markets charges you a Finance Charge by interest payments which accrue on a daily basis and are payable to FP Markets daily by you; and
- (b) when you are a Short Party under a CFD, you may be entitled to receive interest payments (which is a credit of a Finance Charge in your favour) which will accrue on a daily basis and are payable to you by FP Markets daily, from the date the CFD is entered into until the Closing Date; and
- (c) a Finance Charge may also be imposed, regardless of whether you are a Long Party or a Short Party, in accordance with the terms of the CFD disclosed to you on the Platform or a disclosure document (or both), even if the you are not aware of the actual interest rates (such as an FX CFD which is held overnight and has a Base Currency and a Terms Currency with respective FP Markets Base Rates which, in combination, derive a Finance Charge to be debited to your Account)

at the interest rate and on the terms referred to in clause 10.5 below.

- 10.2 Each day FP Markets will make interest payments by debiting or crediting your Account with the interest rate differential between the Finance Charges (being the amount of interest payable by you under the Finance Charges and the amount of interest payable by FP Markets to you as a credit of Finance Charges) or as otherwise disclosed to you (by the Platform, a disclosure document or otherwise or any combination of them). If you have insufficient free equity in your Account such that there is a net Finance Charge payable by you, under this clause you acknowledge that any such amount is a debt owed by you to FP Markets.
- 10.3 When debiting or crediting amounts of interest to your Account, FP Markets may charge or pay you interest at different rates and at rates that are different from the rates which FP Markets is charged or is paid on equivalent borrowings from its bank or any other client or counterparty, including Hedge Counterparties.

- 10.4 FP Markets will retain the difference between the amount FP Markets may charge or pay you and the amount FP Markets may charge or paid on equivalent or similar borrowings with its bank or counterparty.
- 10.5 The interest rate applicable for charging you the Finance Charge or crediting you the Finance Charge will be as determined by FP Markets from time to time, whether or not it is actually received by you from time to time, including by a disclosure document or to the extent permitted, by email to you or posting the information on FP Markets' website or in the Trading Platform which is accessible by you. If the rate has not been set, the rate will be the FP Markets Base Rate (from time to time applicable on each day) plus 3.0%.

## 11. Margin Requirements

- 11.1 This clause 11 supplements clause 13 of the main body of the Terms and only prevails over it to the extent of any inconsistency.
- 11.2 Prior to entering into a CFD with FP Markets you acknowledge that FP Markets requires you to pay cleared funds as an Initial Margin and to maintain the minimum total Margin determined by FP Markets in its absolute discretion from time to time. The Margin requirements may be determined automatically by a Trading Platform. The required Margin may change at any time, including outside of trading hours and without prior notice to you. The amount of Initial Margin required by FP Markets and the time at which it is required is in the absolute discretion of FP Markets. FP Markets is not obliged to permit any offset of any Initial Margin required by FP Markets.
- 11.3 All of your payments for Margin (after withdrawal from any Client Money Trust Account or clients' segregated account) are received and held by FP Markets absolutely for its benefit (and not on any deposit held on trust for you). At the time at which your payment is credited to the benefit of FP Markets in cleared funds, FP Markets will credit your Account with the payment of the Margin by applying it to the cash balance of the Account.
- 11.4 Subject to you meeting all required minimum Margin requirements and Margin calls, you are entitled to be paid by FP Markets an amount equal to the Free Cash and, on being paid there will be a corresponding reduction in the balance of your Account.



- 11.5 You have an absolute obligation to maintain the required minimum amount of Margin required by FP Markets from time to time, even if FP Markets also calls for more Initial Margin or Variation Margin. Your failure to maintain the required minimum Margin is automatically a Default (and so does not require any notice to you or grace period to remedy your Default).
- 11.6 The Initial Margin requirement applicable in respect of any CFD may be increased by FP Markets in its absolute discretion in respect of the time for payment and the amount of it. In the event of such an increase FP Markets may require that you pay FP Markets additional cleared funds equal to such an increase.
- 11.7 Without affecting your obligation to maintain the required amount of Margin, at any time in the discretion of FP Markets you may be required by FP Markets to pay additional Margin (Variation Margin) by paying FP Markets cleared funds equal to the amount FP Markets may determine in its absolute discretion.
- 11.8 Without affecting your obligation to maintain the required amount of Margin, if FP Markets requires additional funds from you to pay Variation Margin (sometimes referred to as “calling for more Margin”) or making a Margin call you must pay the amount called by FP Markets by the time required by FP Markets, which could be immediately. If no time is specified, the time is specified for payment of a Variation Margin is within 24 hours of the Margin call being made, whether or not you actually receive notice of the Margin call. Failure to pay a Variation Margin will result in you being taken to be in Default under these Terms. FP Markets may require payment within a shorter time period (for example, without limitation, when there is Unusual Volatility). In all respects, time is of the essence for all of your payment obligations to FP Markets.
- 11.9 Your payment into a Client Money Trust Account or clients’ segregated account will not satisfy your obligation to make payment to FP Markets in cleared funds. The payment obligation is not satisfied unless and until cleared funds are received for the benefit of FP Markets.
- 11.10 If FP Markets increases the required Margin or makes a call for more Margin, you acknowledge and agree that FP Markets may refuse any request by you to enter into any further CFD positions until FP Markets has confirmed the receipt of the payment for more Margin in the form of cleared funds.
- 11.11 FP Markets does not owe you any payment from your Account in respect of any Margin amount paid to or credited to your Account with FP Markets until all of your obligations under all Accounts between FP Markets and you and otherwise under these Terms are satisfied in full. Until this time any net positive amount of Margin credited to your Account will not constitute a debt due by FP Markets to you nor will you have any right to receive payment of that Margin.
- 11.12 Subject to you meeting all Margin requirements and all Margin calls, FP Markets may in its discretion permit you to withdraw from your Account any excess free equity (by payment to you of cash payments and incurring a corresponding reduction in the balance of your Account).
- 11.13 You acknowledge that your liability with respect to maintaining Margin or to pay calls for more Margin (if any) is not limited to the amount you initially pay FP Markets. You authorise FP Markets to withdraw or otherwise apply funds or Financial Products held on your behalf by FP Markets in any Account, to partially or fully satisfy any liability you have to maintain Margin or to pay a Margin call.
- 11.14 FP Markets will have sole, absolute and unfettered discretion, as to the exercise of any power or right under this clause 11, including, without limitation, the calling of Margin.
- 11.15 Any power or right exercised by FP Markets under this clause 11, including, without limitation, the calling of Margin, will be binding upon you.
- 11.16 Any reference to time under this clause 11 includes weekends and public holidays.
- ## 12. Actions Following a Default
- 12.1 Upon or after any Default occurs, FP Markets, without prejudice to any other rights it may have under these Terms, has the right and power in its sole absolute and unfettered discretion and without necessity to give prior or any notice to you to do any one or more of the following:
- (a) in accordance with clause 13 terminate these Terms;
  - (b) Close Out all or any open CFD positions you may have as if you had given a closing notice to FP Markets and had

- accepted the Closing Price determined by FP Markets in accordance with clause 7;
- (c) in accordance with clause 12.2 treat all or any open CFD positions as having been terminated by you;
  - (d) terminate any agreement or account whatever you have or may have with FP Markets;
  - (e) in the event of there being insufficient funds in your Account to satisfy amounts owing to FP Markets (including to maintain the Margin), FP Markets may cancel any outstanding Orders in order to close your Account;
  - (f) satisfy obligations that you have to FP Markets out of any property belonging to you including, money or security in FP Markets' custody or control including, without limitation, the Account or by selling securities lodged by you with FP Markets or setting off obligations such that security transferred as collateral is not required to be returned but instead the value of them (as determined by FP Markets) is applied in calculation of the set-off of obligations and to enforce any asset or security held by FP Markets in such manner as it sees fit at your risk and expense;
  - (g) transfer from your other accounts or the Account, if any, such funds as may be required for that purpose to satisfy any obligation you may have to FP Markets; and
  - (h) exercise any power or right that FP Markets may have in accordance with these Terms or in law or equity or take any other form of action as the holder of an Australian financial services licence (AFSL) may be required to take.
- 12.2 If FP Markets treats a CFD as having been terminated by you and FP Markets exercises its rights in accordance with clause 12.1(c), FP Markets will calculate the amount owing by you or by FP Markets as if you had been given a closing notice and you had accepted the Closing Price determined by FP Markets in accordance with clause 7. FP Markets may debit from your Account an amount equal to the amount which would have been payable by you to FP Markets had the CFD been closed at the Closing Price. It is agreed that this amount represents a reasonable pre-estimate of the damages incurred by FP Markets.

## 13. Termination of a CFD Contract

- 13.1 You acknowledge that FP Markets may terminate a CFD (apart from any other right to terminate) if:
- (a) the Reference Asset ceases to be able to be traded on a relevant market or is subject to a trading suspension or trading halt for a period of more than two (2) Business Days;
  - (b) an Adjustment Event occurs and FP Markets determines that it is not reasonably practicable to make an adjustment to the terms of a CFD under this Schedule;
  - (c) the relevant Hedge Contract, or FP Markets' rights under the relevant Hedge Contract or in respect of the relevant Reference Asset, are Closed Out, suspended or terminated by the Hedge Counterparty (which may occur automatically under the terms of any agreement between FP Markets and the Hedge Counterparty); or
  - (d) FP Markets considers, acting reasonably, that the Hedge Counterparty or issuer of the Reference Asset may not be able to meet its obligations to FP Markets under the terms of the Hedge Contract or Reference Asset or other contracts between FP Markets and the issuer of the Reference Asset or the Hedge Counterparty.
- 13.2 If FP Markets terminates a CFD under clause 13.1 or otherwise, FP Markets will determine a termination value, payable by FP Markets to you or by you to FP Markets, which FP Markets considers appropriate, acting reasonably, and having regard to the circumstances of termination, the value (if any) of the Reference Asset and the position as between FP Markets and the Hedge Counterparty in respect of the Hedge Contract. The termination will take effect at the time determined by FP Markets.

## 14. Termination of a CFD Contract

- 14.1 You acknowledge that FP Markets may terminate a CFD (apart from any other right to terminate) if:
- (a) the Reference Asset ceases to be able to be traded on a relevant market or is subject to a trading suspension or trading halt for a period of more than two (2) Business Days;
  - (b) an Adjustment Event occurs and FP Markets determines that it is not reasonably practicable or fair to either party to make an adjustment to the terms of a CFD under this Schedule; or
  - (c) the relevant Hedge Contract, or FP Markets' rights under the relevant Hedge Contract or in respect of the relevant Reference Asset, are Closed Out, suspended or terminated by the Hedge Counterparty (which may occur automatically under the terms of any agreement between FP Markets and the Hedge Counterparty).
- 14.2 If FP Markets terminates a CFD under clause 13.1 or otherwise, FP Markets will determine a termination value, payable by FP Markets to you or by you to FP Markets, which FP Markets considers appropriate, acting reasonably, and having regard to the circumstances of termination, the value (if any) of the Reference Asset and the position as between FP Markets and the Hedge Counterparty in respect of the Hedge Contract. The termination will take effect at the time determined by FP Markets.

## Schedule 2 – Securities-Margin Facility

It is agreed as follows:

### 1. Loans of Securities

#### 1.1 Reason for Lending

The Client may from time to time “lend” Securities to FP Markets as collateral to secure the obligations of the Client to FP Markets under other facilities and agreements made from time to time. In each case:

- (a) the Client is the “Lender” and FP Markets is the “Borrower” for the purposes of these Terms;
- (b) the making of any particular loan of Securities is subject to FP Markets’ consent;
- (c) even though the Securities are lent to FP Markets to support your other obligations to FP Markets, all loans of Securities are by way of absolute transfer of all title to and interest in the Securities in accordance with these Terms (see especially clauses 3.1 and 3.4 of this Schedule 2).

#### 1.2 Collateral Request

- (a) The Lender will lend Securities to the Borrower, and the Borrower will borrow Securities from the Lender, in accordance with these Terms and with the Rules. In all cases FP Markets must have received from the Client and accepted (by whatever means) a Collateral Request, regardless of FP Markets being the Borrower.
- (b) Unless otherwise stated in a Confirmation, Collateral Request or other correspondence, FP Markets (as the Borrower) will provide Cash Collateral to the Client as the Lender) only by way of posting a credit balance for the Cash Collateral to the Client’s Account, in which case the Fee payable by FP Markets will be determined on the same basis as any other finance Charge credited to the Client’s Account.

#### 1.3 Changes to a Collateral Request or Loan

If you have requested to deliver Securities as a loan under these Terms and FP Markets

(as Borrower) has accepted that request, FP Markets may nevertheless at any time reduce the amount of Securities or entirely reject the Securities referred to in, or otherwise vary, a Collateral Request, whether before settlement of delivery of the Securities or during a loan.

### 2. Delivery of Securities

#### 2.1 Delivery

The Lender will procure the delivery of Securities to the Borrower or deliver such Securities in accordance with the relevant Collateral Request together with appropriate instructions for or instruments of transfer (if necessary) duly stamped (if necessary) and such other instruments (if any) as required to vest title absolutely in the Borrower.

#### 2.2 Time for Delivery

Such Securities will be deemed to have been delivered by the Lender to the Borrower on delivery to the Borrower or as it directs of the relevant instruments of transfer and certificates or other documents of title (if any), or in the case of Securities title to which is registered in a computer based system which provides for the recording and transfer of title to the same by way of electronic entries (such as CHES), on the transfer of title in accordance with the rules and procedures of such system as in force from time to time, or by such other means as may be agreed.

### 3. Title, Distributions and Voting

#### 3.1 Passing of title

The Parties must execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in:

- (a) any Securities borrowed pursuant to clause 1;
- (b) any Equivalent Securities redelivered pursuant to clause 6;
- (c) any Collateral delivered pursuant to clause 5;
- (d) any Equivalent Collateral redelivered pursuant to clauses 5 or 6,

will pass absolutely from one Party to the other, on delivery or redelivery of the same in accordance with these Terms, free from all liens, charges, equities and encumbrances. In the case of Securities, Collateral, Equivalent Securities or Equivalent Collateral title to which is registered in a computer based system which provides for the recording and transfer of title to the same by way of electronic entries, delivery and transfer of title will take place in accordance with the rules and procedures of such system as in force from time to time.

### 3.2 Distributions

#### (a) Distributions

Unless otherwise agreed, if Income is paid in relation to any borrowed Securities on or by reference to an Income Payment Date where those Securities are the subject of a loan under these Terms, the Borrower must, on the date of the payment of such Income, or on such other date as the Parties may from time to time agree, (Relevant Payment Date) pay and deliver a sum of money equivalent to that to the Lender, irrespective of whether the Borrower received the Income.

#### (b) Corporate Actions

Subject to paragraph (c) (unless otherwise agreed), if, in respect of any borrowed Securities or any Collateral, any rights relating to conversion, sub-division, consolidation, pre-emption, rights arising under a takeover offer or other rights, including those requiring election by the holder for the time being of such Securities or Collateral, become exercisable prior to the redelivery of Equivalent Securities or Equivalent Collateral, then the Lender or Borrower, as the case may be, may, within a reasonable time before the latest time for the exercise of the right or option, give written notice to the other Party that, on redelivery of Equivalent Securities or Equivalent Collateral, as the case may be, it wishes to receive Equivalent Securities or Equivalent Collateral in such form which will arise if the right is exercised or, in the case of a right which may be exercised in more than one manner, is exercised as is specified in such written notice.

#### (c) Tax Act requirements

Notwithstanding paragraph (b), if, in respect of any Borrowed Securities or any Collateral, the relevant issuer company, trustee, government or government authority issues any right or option in respect of the Borrowed Securities or Collateral, as the case may be, the Borrower or the Lender, respectively, must deliver or make, as the case may be, to the other Party on the date of such issue or on such other date as the Parties may from time to time agree:

- (i) the right, or option; or
- (ii) an identical right or option; or
- (iii) a payment equal to the value to the Lender or the Borrower, respectively, of the right or option,

together with any such endorsements or assignments as may be customary and appropriate.

#### (d) Manner of payment

Any payment to be made by the Client under this clause will be made in a manner to be agreed by the Parties.

### 3.3 Voting

Any voting rights attaching to the relevant Securities, Equivalent Securities, Collateral, or Equivalent Collateral will be exercisable by the persons in whose name they are registered, or in the case of Securities, Equivalent Securities, collateral or Equivalent Collateral in bearer form by the persons by or on behalf of whom they are held, and not necessarily by the Borrower or the Lender (as the case may be). The Lender has no right to direct the voting by the Borrower.

### 3.4 Transfer

Notwithstanding the use of expressions such as “borrow”, “lend”, “Collateral”, “redeliver” etc., which are used to reflect terminology used in the market for Transactions of the kind provided for in this document, all right title and interest in and to Securities “borrowed” or “lent” and “Collateral” which one Party transfers to the other in accordance with these Terms (Title) will pass absolutely from one Party to the other free and clear of any

liens, claims, charges or encumbrances or any other interest of the Transferring Party or of any third party (other than a lien routinely imposed on all securities in a relevant clearance system) without the transferor retaining any interest or right to the transferred property, the Party obtaining such title being obliged only to redeliver Equivalent Securities or Equivalent Collateral, as the case may be. Each Transfer under these Terms must be made so as to constitute or result in a valid and legally effective transfer of the Transferring Party's legal and beneficial title to the recipient.

If, in respect of any Transaction, any distribution is made, or Income or fee is paid, other than in cash, the provisions of these Terms (other than clause 3.2(b)) apply, with necessary modifications, to the same extent as if the distribution, Income or fee had been made or paid in cash, and terms such as "pay" and "amount" must be construed accordingly.

## 4. Fees

### 4.1 Fees Payable

In respect of each loan of Securities, unless otherwise specified by FP Markets, the Fees payable are:

- (a) a Fee payable by the Client to FP Markets for the provision of any Cash Collateral paid (or credited) by FP Markets to (or at the direction of) the Client, at the rate determined by FP Markets from time to time and notified to the Client;
- (b) any charges or costs payable by the Client arising from FP Markets reducing the securities loan with FP Markets; and
- (c) any other amounts notified to the Client.

### 4.2 Calculation of Fees

- (a) In respect of each loan of Securities, the payments referred to in clause 4.1 of this clause will accrue commencing on and inclusive of the Settlement Date and terminating on and exclusive of the Business Day upon which Equivalent Securities are redelivered, Cash Collateral is repaid or the loans terminated (including with any adjustment to the amount of Securities lent).
- (b) FP Markets may vary the amount or the manner in which the fee is calculated for the purposes of clause 4.1.

- (c) Variations take effect from the time determined by FP Markets, but may not be retrospective before the time of determination. FP Markets must give notice of the variation. FP Markets may give notice of the variation in any manner or combination of methods, generally or to the Client in particular, including (without limitation) by oral notice, e-mail, facsimile transmission of a letter, a message visible on the FP Markets website, letter or note on a Transaction Confirmation or account statement. The variation takes effect regardless of how the notice is given, when it is given or whether the Client actually receives or is made aware of any form of the notice or the variation itself. Variations referred to in this clause do not include variations to the rate of interest payable by the Client. FP Markets may vary such rates from time to time without prior notice to the Client.

### 4.3 Consideration

The Client and FP Markets acknowledge that the making of these Terms and of Transactions from time to time is sufficient consideration by both Parties for all Transactions without the need for any Cash Collateral or other Collateral to be provided by FP Markets to the Client for any particular Transaction nor for any Fee to be payable by the Client to FP Markets for any particular Transaction.

## 5. Cash Collateral to Client

### 5.1 Margining

The Securities lent by the Client to FP Markets, and any Cash Collateral provided by FP Markets to the Client, is subject to margining as calculated for the purposes of the Client's Account with FP Markets and not discretely for each loan of Securities. Accordingly:

- (a) FP Markets may from time to time allocate values to the Securities in respect of all loans outstanding under these Terms from day to day and may change those values at any time, including any number of times throughout any day and including giving a zero or other percentage allocation of a market value;



- (b) FP Markets may adjust the corresponding amount of any credit for Cash Collateral provided by FP Markets to the Client and any Fees accrued in respect of that Cash Collateral;
- (c) your default in performing any of its obligations to FP Markets under the Terms in this Schedule 2 will constitute a Default under these Terms (without having to be specified in the general terms).

#### 5.2 **Time for repayment of Cash Collateral**

If any Cash Collateral has been paid you or otherwise credited to the Account of the Client, the Client owes and must pay FP Markets Equivalent Collateral in the amount of the Cash Collateral plus any Fees on the earlier of:

- (a) within one Business Day after demand by FP Markets;
- (b) when Equivalent Securities are to be delivered to the Client (unless FP Markets otherwise permits);
- (c) immediately when an Event of Default occurs,

unless and to the extent any amount to be paid to FP Markets is subject to a set-off in accordance with clause 7.

#### 5.3 **Client's permitted use of Cash Collateral**

The Client may only use Cash Collateral for investment or business purposes and only in connection with the Account and not for any personal or domestic use.

#### 5.4 **FP Markets may set off obligation to return Equivalent Securities**

If the Client fails to comply with its obligation to deliver Equivalent Collateral (that is, repay Cash Collateral) or to accept delivery of Equivalent Securities, the obligations of FP Markets are subject to a set-off in accordance with clause 7.

#### 5.5 **Collateral provided to FP Markets' Nominee**

Without limiting clause 21.4, if Securities are provided to FP Markets' nominee, any obligation under these Terms to repay or redeliver or otherwise account for Equivalent Securities will be an obligation of FP Markets, notwithstanding that any such repayment or redelivery may be effected in any particular case by the nominee.

#### 5.6 **Suspended Securities**

This clause applies if:

- (a) dealings in any borrowed Securities are suspended from trading by the stock exchange on which the Securities were quoted at the time of delivery under these Terms, whether by reason of the adverse position of the issuer or otherwise; or
- (b) for any other reason concerning the issuer of those Securities (such as the liquidation, provisional liquidation, administration or receivership of the issuer, or the Securities ceasing to be listed for trading on the stock exchange on which they were listed at the time of delivery under these Terms), or concerning the exchange or clear house through which they are traded, one Party is unable to transfer title to those Securities or Equivalent Securities to the other Party.

At any time while a situation described above prevails in relation to particular borrowed or Collateral Securities (**Suspended Securities**), either the Lender or the Borrower may give notice (**Suspension Notice**) to the other, in which the following applies. If a Suspension Notice is given, the Borrower and the Lender must promptly enter into negotiations in good faith with a view to agreeing promptly the market value of the Suspended Securities for the purposes of this clause. Neither the Borrower nor the Lender may unreasonably withhold or delay its agreement to a market value reasonably proposed by the other Party. Any market value agreed under this clause applies to the Suspended Securities notwithstanding the definition of Value in clause 22.

## 6. Redelivery of Equivalent Securities

#### 6.1 **Borrower's obligation to redeliver Equivalent Securities**

- (a) The Borrower undertakes to redeliver Equivalent Securities in accordance with these Terms and the terms of the relevant Collateral Request.
- (b) Unless otherwise specified, a loan of Securities will not be for more than 12

months but will be automatically rolled over by being terminated and succeeded by a new loan on identical terms except for the period of the loan.

**6.2 Lender may call for early redelivery of Equivalent Securities in limited cases**

Subject to clause 7 and the terms of the relevant Collateral Request, the Lender may call for the redelivery of all or any Equivalent Securities at any time by giving notice on any Business Day of not less than the Standard Settlement Time for such Equivalent Securities or the equivalent time on the exchange or in the clearing organisation through which the relevant borrowed Securities were originally delivered. The Borrower must redeliver such Equivalent Securities not later than the expiry of such notice in accordance with the Lender's instructions unless FP Markets determines that by complying with such a request from the Client it is reasonably likely that there would be a breach of your obligations to FP Markets under any the Terms or any other agreement, including an obligation of the Client to maintain minimum required Margin or other collateral with FP Markets.

**6.3 Lender may terminate loan if Borrower defaults**

If the Borrower does not redeliver Equivalent Securities in accordance with such call (and FP Markets has not made any determination that redelivery of such Equivalent Securities would be reasonably likely to cause a breach by the Client of any of its obligations to FP Markets), the Lender may elect to continue the loan of Securities. If the Lender does not elect to continue the loan, the Lender may by written notice to the Borrower elect to terminate the relevant loan. If the notice of termination does not specify the time of termination then it will take effect immediate from the time of despatch of that notice by the Lender. Upon the time for effect of the termination, the provisions of clause 7 apply as if at that time an Event of Default had occurred in relation to the Borrower (who will be the Defaulting Party for the purposes of these Terms) and as if the relevant loan were the only loan outstanding.

**6.4 Right of Borrower to terminate loan early**

Subject to the terms of the relevant Collateral Request, the Borrower may at any time

terminate a particular loan of Securities and redeliver all and any Equivalent Securities due and outstanding to the Lender in accordance with the Lender's instructions for delivery, even if that would cause the Client, as Lender, to breach any Margin or other collateral obligation of the Client to FP Markets, however arising. If the Client has not given any proper instructions for taking delivery of the Securities, FP Markets may hold the Securities by itself or through a nominee, in either case as bare nominee for the Client.

## 7. Set-off

**7.1 Requirement for simultaneous delivery**

**(a) Automatic Netting of obligations**

Unless the Parties have otherwise agreed, if a Party (first Party) would, but for this paragraph, be required to repay Cash Collateral, redeliver Equivalent Collateral or provide further Collateral in circumstances where the other Party (second Party) would, but for this paragraph, also be required to repay Cash Collateral, redeliver Equivalent Collateral or provide further Collateral under paragraph (a), then the Value of the Cash Collateral, Equivalent Collateral or further Collateral deliverable by the first Party (X) will be set-off against the Value of the Cash Collateral, Equivalent Collateral or further Collateral deliverable by the second Party (Y) and the only obligation of the Parties under paragraph (a) will be, if X exceeds Y, an obligation of the first Party, or if Y exceeds X, an obligation of the second Party, (on demand) to repay Cash Collateral, redeliver Equivalent Collateral or deliver further Collateral having a Value equal to the difference between X and Y.

**(b) Simultaneous Settlement**

Subject to paragraph (a), on the date and time that Equivalent Securities are required to be redelivered by the Borrower in accordance with the provisions of these Terms, unless otherwise agreed by the Borrower, the Lender must simultaneously pay any Cash Collateral (in respect of the Equivalent Securities to be redelivered) to the Borrower. Neither Party is to

obliged to make delivery (or to make a payment as the case may be) to the other unless it is satisfied that the other Party will make such delivery (or make an appropriate payment as the case may be) to it simultaneously. If it is not so satisfied (whether because an Event of Default has occurred in respect of the other Party or otherwise), it will notify the other Party and, unless that other Party has made arrangements which are sufficient to assure full delivery (or the appropriate payment as the case may be) to the notifying Party, the notifying Party (provided it is itself in a position, and willing, to perform its own obligations) may withhold delivery (or payment, as the case may be) to the other Party.

#### 7.2 **Settlement of Payments owing by Client during Loans**

On the date and time for payment by either Party of any amount required by these Terms, including repayments by the Client of Cash Collateral or by FP Markets (as Borrower) in respect of cash distributions, FP Markets may, unless otherwise agreed or expressly instructed in writing, at its election without prior notice to the Client do any one of or combination of the following:

- (a) immediately set-off all or part of your payment obligation against FP Markets' obligation in respect of Equivalent Securities to be delivered to the Client or cash to be paid, thereby immediately reducing the number of Securities lent to FP Markets;
- (b) immediately deduct an amount equal to all or part of your payment obligation standing to the credit of your Account with FP Markets;
- (c) immediately withdraw an amount equal to all or part of your payment obligation from any account nominated by the Client under any valid authority for direct debiting from such accounts held by third parties; and
- (d) immediately sell, transfer or deal in Securities held by the Client in a broker sponsored account held with or for the benefit of FP Markets and in so doing the Client expressly acknowledges this authorisation pursuant to these Terms is sufficient written direction to FP Markets

without any obligation on FP Markets in favour of the Client regarding FP Markets' choice of Securities.

#### 7.3 **Netting following occurrence of Event of Default**

If an Event of Default occurs in relation to either Party, the Parties' delivery and payment obligations in respect of loans (and any other obligations they have under this Schedule) will be accelerated so as to require performance at the time such Event of Default occurs (the time of day the Event of Default first took place and date of that being the "**Performance Date**" for the purposes of this clause and elsewhere in this Schedule), and in such event:

- (a) the Relevant Value of the Securities to be delivered (or payment to be made, as the case may be) by each Party will be established in accordance with clause 7.4; and
- (b) on the basis of the Relevant Values so established, an account will be taken (as at the Performance Date) of what is due from each Party to the other and (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral or any cash payment equals the Relevant Value of them) the sums due from one Party will be set-off against the sums due from the other and only the balance of the accounting for those amounts will be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance will be payable on the Performance Date.

#### 7.4 **Relevant Value**

For the purposes of this clause, the Relevant Value:

- (a) of any cash payment obligation must equal its face value (disregarding any amount taken into account under (b) below);
- (b) of any Securities to be delivered to a Party will be the value as calculated by FP Markets as at the relevant time on the Performance Date, or, if the relevant Event of Default occurs outside the normal business hours of such market, on the first Business Day following the Performance Date (**Default Valuation Time**), having regard to the allocated percentage of the market value as

determined by FP Markets and taking into account all reasonable costs, fees and expenses that would be incurred (directly or indirectly) in connection with FP Markets terminating the Transaction and whether the Securities would be likely to have any reasonable value (if trading in them is suspended or halted). For the avoidance of doubt, FP Markets may determine that the Securities have no value even if the last reported sale price for them indicates a reported value.

#### 7.5 **Master Netting**

Despite any other Term of this Schedule or elsewhere, the net payment obligation which arises under the other provisions of this Schedule 2 must first be applied in setting off against amounts standing to the credit or debit of the Account, so that the Balance will be increased or decreased by application for that netted obligation's amount, unless FP Markets in its discretion waives that to some or all of the extent of that amount. Client acknowledges that FP Markets would not agree to the Account but for each of the Client and FP Markets being bound by this master netting.

#### 7.6 **Securities**

Any reference in this clause 7 to Securities includes any asset other than cash provided by way of Collateral.

#### 7.7 **Event of Default**

If the Borrower or the Lender for any reason fails to comply with its respective obligations in respect of the delivery of Equivalent Securities or the repayment of Cash Collateral, such failure will be an Event of Default for the purposes of this clause 7, and the person failing to comply will be the Defaulting Party.

#### 7.8 **Waiver of right to require simultaneous delivery**

Subject to and without prejudice to its rights under clause 7.1:

- (a) either Party may from time to time in accordance with market practice and in recognition of the practical difficulties in arranging simultaneous delivery of Securities, Collateral and cash transfers waive its right under these Terms in respect of simultaneous delivery or payment; and

- (b) no such waiver in respect of one Transaction will bind it in respect of any other Transaction.

## 8. Stamp duty, taxes etc and loss of tax benefits

### 8.1 **Stamp duty**

The Client undertakes promptly to pay and account for any transfer or similar duties or taxes, and any loan security or other stamp duties (if any) chargeable in connection with any Transaction effected pursuant to or contemplated by these Terms, and will forever indemnify FP Markets against any liability which may arise as a result of your failure to do so.

### 8.2 **Borrower to give Transfer of Distribution Statement to Lender for franked dividends**

If:

- (a) an Income Payment Date occurs during an Income Determination Period in relation to a particular loan of Securities;
- (b) had the Lender been the holder of those Securities on the relevant Income Payment Date, it would have received a Franked Distribution in respect of those Securities;
- (c) the Lender is an Australian Taxpayer;
- (d) the failure of the Lender to receive a Franked Distribution is not due to any unreasonable act or omission by or on behalf of the Lender; and
- (e) the relevant Confirmation does not state that the Lender is not entitled to compensation for the loss of franking credits/rebates;

then the Borrower must either:

- (i) if section 216-10 of the 1997 Tax Act applies, as soon as practicable, and in any event within 10 Business Days, after the relevant Income Payment Date, give to the Lender a Transfer of Distribution Statement in respect of those Securities (which the Borrower is to be taken as having warranted is correct in all material respects and is effective for the purposes of section 216-30 of the 1997 Act); or

- (ii) otherwise, on the 10th Business Day after the relevant Income Payment Date pay to the Lender an amount equal to the Franking Credit allocated (or, under section 202-65 of the 1997 Tax Act, taken to have been allocated) to the Franked Distribution and specified in the Distribution Statement for that Franked Distribution.

**8.3 “Notifiable consideration” for the purposes of s26BC(3)(d) of the 1936 Tax Act**

For the purposes of section 26BC (3) (d) of the 1936 Tax Act, the notifiable consideration in respect of any loan of Securities is as follows:

- (a) a fee - see clause 4.1 (as applicable); and
- (b) other consideration - see clauses 3.2, 5 and 8 and the definition of “Equivalent Securities” in clause 22.

**8.4 GST**

- (a) All payments (including the provision of any non-monetary consideration) to be made by either Party under or in connection with these Terms have been calculated without regard to GST.
- (b) If all or part of any such payment is the consideration for a Taxable Supply, then, when the payer makes the payment, the payer must, after receipt of a Tax Invoice, pay to the supplier additional consideration equal to the GST Amount. Such additional amount must be paid on the earlier of:
  - (i) the date of the first payment for the Taxable Supply; and
  - (ii) the date 5 Business Days after the date on which the Tax Invoice for the Taxable Supply is received by the payer.
- (c) If under or in connection with these Terms a Party is required to reimburse or indemnify for an amount, that Party will pay the relevant amount:
  - (i) including any sum in respect of GST which has been paid by the payee upon any supply made to the payee in connection with the circumstances giving rise to the operation of the indemnity or right of reimbursement;
  - (ii) less any GST Input Tax Credit that that Party determines (acting

reasonably) that the payee is entitled to claim in respect of the circumstances giving rise to the operation of the indemnity or right of reimbursement.

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

**8.5 Non-Australian GST**

- (a) All payments (including the provision of any non-monetary consideration) to be made by either Party under or in connection with these Terms have been calculated without regard to Non-Australian GST.
- (b) If all or part of any such payment is the consideration for a supply of goods or services (however defined) in respect of which Non-Australian GST is payable (whether by a Party or its Related Entities or any person on its behalf or in its place (supplier) to any relevant tax authority or government agency, the other Party must pay to the supplier additional consideration equal to the amount of any such Non-Australian GST. Such additional amount is to be paid on demand by the supplier.
- (c) If under or in connection with these Terms a Party is required to reimburse or indemnify for an amount, that Party will pay the relevant amount:
  - (i) including any sum in respect of non-Australian GST which has been paid by the payee upon any supply made to the payee in connection with the circumstances giving rise to the operation of the indemnity or right of reimbursement;
  - (ii) less any input tax credit (however defined or described) that that Party determines (acting reasonably) that the payee is entitled under the law applicable to that Non-Australian GST to claim in respect of the circumstances giving rise to the operation of the indemnity or right of reimbursement.

- (d) In this clause, the expression Non-Australian GST means any goods and services tax, value added tax or similar Transactional tax, however described, imposed on supplies of goods or services (however defined) under the law of any jurisdiction outside Australia,

together with any related interest, penalties, fines or other charges.

#### 8.6 **Grossing up**

All payments under clauses 3.2(a), 4 and 12 of these Terms are to be made free and clear of, and without any deduction or withholding for or on account of, any taxes. Accordingly, if any deduction or withholding in respect of any such payment is required by law, as modified by the practice of any relevant taxing authority, then the payer must:

- (a) pay to the other Party, in addition to the payment to which that other Party is otherwise entitled under these Terms, such additional amount as is necessary to ensure that the net amount (free and clear of any taxes payable by deduction or withholding, whether assessed against one Party or the other) will equal the full amount that that other Party would have received had no such deduction or withholding been required;
- (b) promptly pay to the relevant taxing authority the full amount of the deduction or withholding by the payer; and
- (c) forward to the payee on request a copy of any official receipt or other evidence showing that the full amount of any such deduction or withholding has been paid over to the relevant taxing authority.

Otherwise, unless otherwise agreed in respect of a particular loan of Securities or a particular payment, no such gross up is required in respect of any payment under these Terms.

#### 8.7 **Client Settlement**

Without affecting the time by which the Client must comply with any Margin obligations to FP Markets however arising and subject to clause 7 and FP Markets' rights arising following an Event of Default, if a loan is to be terminated then the Client must either by 2:00 p.m. (Sydney time) on the date for settling on termination of a loan:

- (a) pay to FP Markets in cleared funds the Total Outstanding for that Transaction; or
- (b) make other arrangements (including extending the term of the Transaction) that are acceptable to FP Markets.

#### 8.8 **Client Declarations**

The Client declares that:

- (a) all the information you have given FP Markets is correct and not misleading;
- (b) you have not withheld any information that might have caused FP Markets not to enter into these Terms or to enter into a Transaction on different terms;
- (c) the Client does not breach, and no other person breaches, any law or any obligation to another person by the Client signing, agreeing to or otherwise adopting these Terms;
- (d) unless you have provided FP Markets with details of a trust) the Client does not hold any interest in the Securities transferred to FP Markets under a Transaction as trustee or agent;
- (e) the Client will use any financial accommodation provided to the Client by FP Markets under these Terms wholly or predominantly for business or investment purposes only; and
- (f) you have (and will) rely on your own judgment in respect of these Terms, and has not (and will not) rely on any statements or representations made by FP Markets unless expressly set out in this document.

Each of the declarations made in this clause continues after the Client agrees to or otherwise adopts these Terms including in respect of each Transaction, and the Client must tell FP Markets if anything has happened which prevents the Client from repeating any one or more of those declarations at any time.

#### 8.9 **Client Obligations**

The Client agrees:

- (a) to give FP Markets promptly any information or documents FP Markets reasonably requests in relation to Transactions or these Terms; and
- (b) to tell FP Markets promptly if there is a default in relation to Transactions in particular or these Terms in general, or



if it is reasonably likely that an Event of Default will occur in the foreseeable future; and

- (c) to do everything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) to bind the Client and your successors to these Terms, and to try your best to get other persons to bind themselves and others to these Terms, as needed and if FP Markets asks; and
- (d) to tell FP Markets in writing of any change to the information contained in your application form for this facility; and
- (e) not to do or to omit to do anything or knowingly permit or cause anything to be done or omitted which could mean that the Collateral is likely to become materially lessened in value or prejudicially affected.

#### 8.10 Further assurances

On FP Markets' request the Client must execute any documents or do any act in the future for the purpose of further or more perfectly:

- (a) securing the fulfilment of your declarations, undertakings or obligations under these Terms;
- (b) securing the effect of set-off or netting provisions that these Terms are intended and purport to grant; or
- (c) granting to FP Markets the rights and powers that these Terms are intended and purport to grant to FP Markets.

#### 8.11 Payments generally

- (a) Subject to clause 7, the Client must pay FP Markets all amounts owing in full without setting off amounts the Client believes FP Markets owes the Client and without counterclaiming amounts from FP Markets.
- (b) FP Markets may reduce the Total Outstanding on a particular Transaction in any order that FP Markets chooses when FP Markets receives a payment in connection with that Transaction or FP Markets derives any Income or proceeds from the sale of any of the collateral for that particular Transaction.
- (c) FP Markets may deduct any amounts payable to FP Markets from an account

maintained by the Client with FP Markets or a Related Entity (for whom FP Markets agrees to be a Party to this document or terms as agent). A Related Entity (for whom FP Markets agrees to be a Party to these Terms as agent) to whom the Client owes amounts may deduct any amounts payable to it from such an account.

#### 8.12 Calculations

In these Terms:

- (a) all calculations will be done to not fewer than four decimal places;
- (b) no rounding of numbers will occur until a Transaction ends or matures and at that time the entitlement the subject of the Transaction will be aggregated that aggregate will be rounded so that all money amounts are rounded to the nearest whole cent and all numbers of securities are rounded to the nearest whole number so that any fraction being a value of 0.5 or more is rounded up and all other fractions are rounded down; and
- (c) if, following an application of this clause, the securities comprise property of different kinds; each of those kinds of property is to be treated as the relevant securities and as if it were a parcel of securities in its own right, and each adjustment required by this clause is to be made to each kind of property separately.

#### 8.13 Valuation

Valuation of securities is, unless otherwise specifically stated in this document by FP Markets with reference to the market bid, offer and sale prices quoted by the Exchange at any time of the day and the market liquidity for those securities. (This does not affect FP Markets' right to allocate a percentage to that market valuation for the purposes of calculating the Securities provided to FP Markets for this or any other agreement or arrangement.)

#### 8.14 Costs and Commissions

When FP Markets asks, the Client must pay FP Markets for all Costs in connection with:

- (a) the negotiation, stamping, registration, variation or discharge of these Terms or any Transaction; and

- (b) the drawing, engrossing, execution or making of any Transaction or service of any demand or notice given by FP Markets; and
- (c) their performance or observance (or default of performance or observance) of these Terms including any particular Transaction.

#### 8.15 **Payment of Taxes**

When FP Markets asks, the Client must pay FP Markets for all Taxes payable by the client or FP Markets in connection with these Terms, any Transaction and any instruments entered into as a result of these Terms.

#### 8.16 **Sharing of Costs, Commissions**

FP Markets may share any costs that are incurred in connection with these Terms with, or pay a commission to, any person. If FP Markets pays a commission to any person, FP Markets will tell the Client the amount and nature of the commission.

#### 8.17 **Indemnity**

The Client forever indemnifies FP Markets against, and must therefore pay FP Markets on demand, for all loss or costs suffered or incurred by FP Markets to the extent arising as a result of:

- (a) the occurrence of any Event of Default by or in respect of the Client;
- (b) FP Markets entering into and performing FP Markets' obligations under these Terms including any particular Transaction (other than any trading loss incurred in the ordinary course of the Transaction);
- (c) any inaccuracy in, or breach of, any of the representations, warranties, declarations or undertakings that the Client gives;
- (d) any omission from or misleading or misrepresentative statement made by the Client in any certificate or declaration delivered or any oral or written statement made or adopted by the Client or your agent or representative, whether prior to entering into these Terms, or pursuant to any of the terms of it or any Transaction;
- (e) any amount under these Terms not being paid by the Client on its due date, other than to the extent caused by FP Markets' gross negligence, fraud or default under these Terms.

The indemnities in this document are continuing obligations, independent of your other obligations under these Terms. They continue after FP Markets releases the Collateral. It is not necessary for FP Markets to incur expense or make payment before enforcing a right of indemnity conferred by these Terms.

#### 8.18 **Confidentiality**

FP Markets may not disclose any information in connection with the Client, a Transaction or these Terms to any person other than if:

- (a) necessary in connection with the establishment, operation and enforcement of a Transaction;
- (b) the Client requests the disclosure;
- (c) FP Markets decides to respond to formal beneficial interest and relevant instructions enquiries (made under the Corporations Act) in respect of holdings of securities held by or for FP Markets a way which discloses your role in the Securities loan as though the Client had bought and retained beneficial ownership of Securities during the loan; or
- (d) required by law or the Exchange.

#### 8.19 **How FP Markets may exercise its rights**

- (a) FP Markets may exercise a right or remedy or give or refuse its consent in any way that FP Markets considers appropriate (including by imposing conditions), and FP Markets need not give the Client notice or reasons for acting in the way that FP Markets does. If FP Markets does not exercise a right or remedy fully or at a given time, FP Markets can still exercise it later.
- (b) FP Markets' rights and remedies under these Terms are in addition to other rights and remedies provided by law or other parts of these Terms. FP Markets may enforce its rights and remedies in any order that FP Markets chooses. The rights and powers granted to FP Markets (or FP Markets' officers, agents or employees) under a statute or at general law can only operate to enhance those contained in this document, not to diminish or to curtail them.
- (c) FP Markets is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy, whether or not caused by FP Markets' negligence or self-interest.

## 9. Lender's warranties

### 9.1 General warranties

Each Party warrants and undertakes to the other on a continuing basis, to the intent that such warranties will survive the completion of any Transaction contemplated by these Terms, that, if acting as a Lender:

- (a) it is duly authorised and empowered to perform its duties and obligations under these Terms;
- (b) it is not restricted under the terms of its constitution, trust deed, investment policies or guidelines, procedures, or restrictions or any applicable laws, or the applicable rules, regulations, interpretations, and policies of applicable regulatory authorities and their staffs or in any other manner from lending Securities in accordance with these Terms or from otherwise performing its obligations under these Terms;
- (c) it is absolutely entitled to pass full legal and beneficial ownership of all Securities provided by it under these Terms to the Borrower free from all liens, charges, equities and encumbrances; and
- (d) if you have stated in its application to become a party to these Terms that it is not resident in Australia for the purposes of the Tax Act then either:
  - (i) it does not have a branch or other permanent establishment in Australia for the purposes of the Tax Act or of any applicable double tax agreement between Australia and its country of tax residence; or
  - (ii) if it does have such a branch or other permanent establishment in Australia, that the loan is not entered into in the course of carrying on business through such branch or permanent establishment,

and each Party would not enter into these Terms but for the other Party making these warranties and giving these undertakings.

- (e) unless clause 9.2 applies, it is acting as principal in respect of these Terms.

### 9.2 Transactions entered into as agent

#### (a) Agency Transactions

Subject to the following provisions of this clause, the Client may enter into loans as agent (in such capacity, the “**Agent**”) for a third person (a “**Principal**”), whether as custodian or investment manager or otherwise (a loan so entered into being referred to in this clause as an “**Agency Transaction**”).

#### (b) Conditions for Agency Transactions

A Client may enter into an Agency Transaction if, but only if:

- (i) it specifies that loan as an Agency Transaction at or before the time when it enters into it;
- (ii) it enters into that loan on behalf of a single Principal whose identity is disclosed to FP Markets (whether by name or by reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal) at the time when it enters into the loan or as otherwise agreed between the Parties;
- (iii) it has at the time when the loan is entered into actual authority to enter into the loan and to perform on behalf of that Principal all of that Principal's obligations under the agreement referred to in clause 9.2(d) below; and
- (iv) FP Markets has agreed that the Client may act as Agent in respect of the relevant loan.

#### (c) Undertakings by Lender

The Client undertakes that, if it enters as agent into an Agency Transaction, forthwith upon becoming aware:

- (i) of any event which constitutes an Act of Insolvency with respect to the relevant Principal; or
- (ii) of any breach of any of the warranties given in this document or of any event or circumstance which has the result that any such warranty would be untrue if repeated by reference to the current facts,

it will inform FP Markets of that fact and will, if so required by FP Markets, furnish it with such additional information as it may reasonably request.

(d) **Consequences of Agency Transaction**

- (i) Each Agency Transaction is a Transaction between the relevant Principal and FP Markets and no person other than the relevant Principal and FP Markets will be a party to or have any rights or obligations under an Agency Transaction. Without limiting the foregoing, the Client will not be liable as principal for the performance of an Agency Transaction, but this is without prejudice to any liability of the Client under any other provision of this clause.
- (ii) All the provisions of these Terms apply separately as between FP Markets and each Principal for whom the Agent has entered into an Agency Transaction or Agency Transactions as if each such Principal were a party to a separate agreement with FP Markets in all respects identical with these Terms other than this paragraph and as if the Principal were the Lender in respect of that agreement; provided that:

- A) if there occurs in relation to the Agent an Event of Default or an event which would constitute an Event of Default if FP Markets served written notice of any Event of Default, FP Markets may by giving written notice to the Principal (which notice is validly given if given to the Lender) to declare that, by reason of that event, an Event of Default is to be treated as occurring in relation to the Principal. If FP Markets gives such a notice, then an Event of Default will be treated as occurring in relation to the Principal at the time when the notice is deemed to be given; and
- B) if the Principal is neither incorporated nor has established a place of business in Australia, the Principal will for the purposes of the agreement be deemed to have appointed as its agent to receive on its behalf service of process in the

courts of Australia the Agent, or, if the Agent is neither incorporated nor has established a place of business in Australia, the person appointed by the Agent for the purposes of these Terms, or such other person as the Principal may from time to time specify in a written notice given to FP Markets.

- (iii) The foregoing provisions of this clause do not affect the operation of these Terms as between the Borrower and the Lender in respect of any Transactions into which the Lender may enter on its own account as principal.

(e) **Warranty by the Client**

The Client warrants to FP Markets that it will, on every occasion on which it enters or purports to enter into a Transaction as an Agency Transaction, have been duly authorised to enter into that loan and perform the obligations arising under it on behalf of the person whom it specifies as the Principal in respect of that Transaction and to perform on behalf of that person all the obligations of that person.

## 10. Borrower's warranties

Each Party warrants and undertakes to the other on a continuing basis, to the intent that such warranties will survive the completion of any Transaction contemplated by these Terms, that, if acting as a Borrower:

- (a) it has all necessary licences and approvals, and is duly authorised and empowered, to perform its duties and obligations under these Terms and will do nothing prejudicial to the continuation of such authorisation, licences or approvals;
- (b) it is not restricted under the terms of its constitution or in any other manner from borrowing Securities in accordance with these Terms or from otherwise performing its obligations under these Terms;
- (c) it is absolutely entitled to pass full legal and beneficial ownership of all Collateral provided by it under these Terms to the Lender free from all liens, charges, equities and encumbrances; and

- (d) it is acting as principal in respect of these Terms,  
and each Party would not enter into these Terms but for the other Party making these warranties and giving these undertakings.

## 11. Events of Default

### 11.1 Events of Default

Each of the following events occurring in relation to either Party (**Defaulting Party**, the other Party being the **Non-Defaulting Party**) will be an Event of Default for the purpose of clause 7:

- (a) the Client failing to pay any amount, whether Margin of any kind or any other kind of payment owing to FP Markets under any Account or agreement with FP Markets however arising;
- (b) Borrower or Lender failing to pay or repay Cash Collateral or deliver or redeliver Collateral or Equivalent Collateral upon the due date, and the Non-Defaulting Party (without any need to serve written notice of that on the Defaulting Party);
- (c) the Lender or Borrower failing to comply with its obligations under clause 5 of this Schedule (without any need to serve written notice of that on the Defaulting Party);
- (d) the Borrower failing to comply with clause 3.2, clause 8.2 or clause 8.3 of this Schedule (without any need to serve written notice of that on the Defaulting Party);
- (e) an Act of Insolvency occurring with respect to the Lender or the Borrower (including in the case of an Act of Insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party of this Schedule (without any need to serve written notice of that on the Defaulting Party);
- (f) any representations or warranties made by the Lender or the Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, and the Non-Defaulting Party serves written notice on the Defaulting Party;

- (g) the Lender or the Borrower admitting to the other that it is unable to perform, or it intends not to perform, any of its obligations or in respect of any loan pursuant to these Terms of this Schedule (without any need to serve written notice of that on the Defaulting Party);
- (h) the Lender (if appropriate) or the Borrower being declared in default by the appropriate authority under the Rules or being suspended or expelled from membership of or participation in any securities exchange or association or other self-regulatory organisation, or suspended from dealing in securities by any government agency, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (i) any of the assets of the Lender or the Borrower or the assets of investors held by or to the order of the Lender or the Borrower being ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation of this Schedule (without any need to serve written notice of that on the Defaulting Party), or
- (j) the Lender or the Borrower failing to perform any other of its obligations under these Terms and not remedying such failure within 5 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure, and the Non-Defaulting Party serves a further written notice on the Defaulting Party.

### 11.2 Obligation of each Party to notify its Event of Default

Each Party must notify the other if an Event of Default occurs in relation to it and it is reasonable to assume that the other Party actually is not aware of it. The failure to notify the other Party does not affect the occurrence of the Event of Default or the other rights of the Parties in relation to it.

### 11.3 Additional Rights

If there is an Event of Default then, in addition to any other rights FP Markets has, whether under these Terms or otherwise, FP Markets may do any one or more of the following:

- (a) immediately without notice to the Client terminate all loans and settle that

termination by netting-off the respective obligations of FP Markets and the Client as provided under these Terms;

- (b) notify the Client that the Total Outstanding in connection with all Transactions is immediately due and payable (which notice will also automatically serve as notice that the Total Outstanding in connection with all Transactions with FP Markets secured by the same collateral is immediately due and payable);
- (c) direct the Client to pay FP Markets immediately all or part of the Total Outstanding in connection with all Transactions (or, after netting with all other obligations arising under the Terms, require the payment of only the net amount owing);
- (d) withdraw or redeem any amount standing to the credit of any account for the Client held by FP Markets or under FP Markets' control;
- (e) expend money or incur liabilities in exercising the powers conferred on FP Markets;
- (f) provide any instruction to a sponsoring participant necessary to give effect to any dealing; or
- (g) after giving notice to the Client, terminate any or all Transactions between the parties with effect from the date specified in the notice, which must not be less than one (1) Business Day after the date notice is given; and use the resulting money to pay and repay the Total Outstanding under all Transactions.

#### 11.4 **No obligation to act**

FP Markets need not take any action, and will not be liable if FP Markets delays in taking any of the actions described in this clause.

#### 11.5 **No obligation to notify**

The Client acknowledges that FP Markets need not give anyone any notice before FP Markets takes any of the actions described in this clause.

#### 11.6 **FP Markets may limit application**

If an Event of Default relates or is attributable solely to a specific Transaction (which FP Markets may decide in FP Markets' sole discretion), FP Markets may exercise

FP Markets' rights under this clause in respect of that Transaction only.

## 12. Overdue payments

If either Party fails to remit sums in accordance with these Terms, such Party undertakes to pay to the other Party upon demand interest (before as well as after judgment) on the net balance due and outstanding, for the period commencing on and inclusive of the original due date for payment to (but excluding) the date of actual payment, in the same currency at a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it in good faith) if it were to fund or of funding the relevant amount, plus 3% (or other agreed percentage) per annum.

## 13. Termination of course of dealings by notice

In addition to any other right given by these Terms or otherwise by law, each Party may bring the course of dealing contemplated under Schedule 2 of these Terms to an end by giving not less than 10 Business Days' notice in writing to the other Party (which specifies the date of termination), subject to an obligation to ensure that all loans and which have been entered into but not discharged at the time such notice is given are duly discharged in accordance with these Terms and with the Rules (if applicable).

## 14. No reliance or tax or accounting representations by other Party

Each Party acknowledges, represents and warrants to the other that, except as expressly stated in this document or any Confirmation:

- (a) it has not relied on any advice, statement, representation or conduct of any kind by or on behalf of the other Party in relation to any tax (including stamp duty) or accounting issues concerning these Terms or any Transactions effected under it; and



- (b) it has made its own determination as to the tax (including stamp duty) and accounting consequences and treatment of any Transaction effected under these Terms, including (without limitation) of any moneys paid or received or any property transferred or received in connection with any such Transaction.

## 15. Severance

If any provision of this Schedule 2 is declared by any judicial or other competent authority to be void or otherwise unenforceable, that provision will be severed from these Terms and the remaining provisions of these Terms will remain in full force and effect. The agreement will be amended by the Parties in such reasonable manner so as to achieve, without illegality, the intention of the Parties with respect to that severed provision.

## 16. Specific performance

Each Party agrees that, in relation to legal proceedings, it will not seek specific performance of the other Party's obligation to deliver or redeliver Securities, Equivalent Securities, Collateral or Equivalent Collateral, but without prejudice to any other rights it may have.

## 17. Assignment

- (a) The Client may not assign, transfer or otherwise dispose of all or any of its rights or obligations under Schedule separately from any effective assignment, transfer or other disposal of the reset of these Terms without the prior written consent of FP Markets.
- (b) FP Markets may assign, transfer or otherwise dispose of all or any of its rights or obligations under these Terms to any related body corporate of it by written notice to the Client. FP Markets may not otherwise assign, transfer or otherwise dispose of all or any of its rights or obligations under these Terms without the prior written consent of FP Markets.

## 18. Time

Time is of the essence in respect of all obligations under this Schedule.

## 19. Recording

FP Markets may electronically record all telephonic conversations between the Parties and may use, retain or destroy such recordings without notice to the other Party.

## 20. Definitions

In these Terms:

**Act of Insolvency** means in relation to either Party:

- (a) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with creditors; or
- (b) its admitting in writing that it is unable to pay its debts as they become due; or
- (c) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
- (d) the presentation or filing of a petition in respect of it (other than by the other Party to these Terms in respect of any obligation under these Terms) in any court or before any agency alleging or for the bankruptcy, winding-up or insolvency of such Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition (except in the case of a petition for winding-up or any analogous proceeding in respect of which no such 30 day period will apply) not having been stayed or dismissed within 30 days of its filing; or
- (e) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such Party over all or any material part of such Party's property; or

- (f) the convening of any meeting of its creditors for the purpose of considering a compromise or arrangement within the Corporations Act (or any analogous proceeding).

In this definition:

- (g) “liquidator” is deemed to include a “provisional liquidator”;
- (h) “receiver” is deemed to include a “receiver and manager”;
- (i) “administrator” is deemed to include an “official manager”;
- (j) “arrangement” is deemed to include a “scheme of arrangement”; and
- (k) “creditors” is deemed to include “any class of creditors”.

**ASX Traded Shares** means any shares or other securities issued by any corporation or any units in any unit trust which are granted official quotation or admitted to trading status by ASX.

**Australian Taxpayer** means any person other than:

- (a) a Party who is not a resident of Australia for the purposes of the Tax Act (whether that Party is acting as a trustee, nominee or agent or in some other capacity) at the time a Franked Distribution is paid; or
- (b) a Party who is acting in the capacity of trustee, nominee or agent for a person who is not a resident of Australia for the purposes of the Tax Act at the time a Franked Distribution is paid.

**Borrower**, in relation to a particular loan of Securities, means the Party who receives a loan of Securities under these Terms.

**Business Day** means a day on which banks and securities markets are open for business generally in Melbourne and Sydney and, in relation to the delivery or redelivery of any of the following in relation to any loan, in the place(s) if the relevant Securities, Equivalent Securities, Collateral (including Cash Collateral) or Equivalent Collateral are to be delivered.

**Cash Collateral** means Collateral that takes the form of a payment of currency or posting of credit to the Client’s Account.

**Close of Business** means

- (a) in relation to any borrowing of Securities or redelivery of Equivalent Securities under these Terms, the final time on a Business Day at which settlement of the transfer of those Securities can take place in the Exchange in order to

constitute good delivery on that day; and

- (b) in relation to the provision of Collateral or return of Equivalent Collateral or the making of any other payment under these Terms, the time at which trading banks close for general banking business in the place in which payment is to be made or Collateral or Equivalent Collateral is to be delivered or redelivered.

**Collateral** means:

- (c) Cash;
- (d) ASX Traded Shares; and
- (e) such other securities or financial instruments or deposits of currency as agreed between the Parties from time to time, or any combination of them which are delivered by the Borrower to the Lender in accordance with these Terms and includes the certificates or other documents of title (if any) and transfer in respect of the foregoing (as appropriate) and Alternative Collateral.

**Collateral Request** means a request made in writing (electronically or otherwise) or orally, in a form approved by FP Markets, by the Lender to the Borrower pursuant to clause 1.1 specifying, if necessary:

- (a) the description, title and amount of the Securities required by the Borrower;
- (b) the description (if other than Australian currency) and amount of any Cash Collateral to be provided;
- (c) the proposed Settlement Date;
- (d) the duration of such loan (if other than indefinite);
- (e) the mode and place of delivery, which will, if relevant, include the bank, agent, clearing or settlement system and account to which delivery of the Securities and any Cash Collateral is to be made; and
- (f) the Fee.

**Confirmation** means the Collateral Request, as it may be amended pursuant to clause 1.2., or other confirming evidence exchanged between the Parties confirming the terms of a Transaction.

Defaulting Party has the meaning given in clause 11.

Distribution has the meaning given to that term in section 995-1 (1) of the 1997 Tax Act.

**Distribution Statement** means a statement given in accordance with section 202-80 (as it may be finally amended under section 202-85) of the 1997 Tax Act.

**Equivalent Collateral** or **Collateral equivalent** to, in relation to any Collateral provided under these Terms, means securities, cash or other property, as the case may be, of an identical type, nominal value, description and amount to particular Collateral so provided and will include the certificates or other documents of title (if any) and transfer in respect of the foregoing (as appropriate). If and to the extent that such Collateral consists of securities that are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression will have the following meaning:

- (a) in the case of conversion, subdivision or consolidation the securities into which the relevant Collateral has been converted, subdivided or consolidated and, if appropriate, notice has been given in accordance with clause 3.2(b);
- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration of which the Borrower has given notice to the Lender in accordance with clause 3.2(b);
- (d) in the case of a call on partly paid securities, the paid-up securities if the Borrower has paid to the Lender an amount of money equal to the sum due in respect of the call;
- (e) in the case of a capitalisation issue, the relevant Collateral together with the securities allotted by way of a bonus on them;
- (f) in the case of a rights issue, the relevant Collateral together with the securities allotted on them, if the Borrower has given notice to the Lender in accordance with clause 3.2(b), and has paid to the Lender all and any sums due in respect of them;
- (g) if a payment or delivery of Income is made of the relevant Collateral in the form of securities or a certificate which may at a future date be exchanged for securities or in the event of an option to take Income in the form of securities or a certificate which may at a future date be exchanged for securities, notice has been given to the Lender in accordance with clause 3.2(b) the relevant Collateral together with securities or a certificate equivalent to those allotted; and

- (h) in the case of any event similar to any of the foregoing, the relevant Collateral together with or replaced by a sum of money or securities equivalent to that received in respect of such Collateral resulting from such event.

**Equivalent Securities** means securities of an identical type, nominal value, description and amount to particular Securities borrowed and such term will include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (if appropriate). If and to the extent that such Securities are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression will have the following meaning:

- (a) in the case of conversion, subdivision or consolidation the securities into which the borrowed Securities have been converted, subdivided or consolidated and, if appropriate, notice has been given in accordance with clause 3.2(b);
- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration of which the Lender has given notice to the Borrower in accordance with clause 3.2(b);
- (d) in the case of a call on partly paid securities, the paid-up securities if the Lender has paid to the Borrower an amount of money equal to the sum due in respect of the call;
- (e) in the case of a capitalisation issue, the borrowed Securities together with the securities allotted by way of a bonus on them;
- (f) in the case of a rights issue, the borrowed Securities together with the securities allotted on them, if the Lender has given notice to the Borrower in accordance with clause 3.2(b), and has paid to the Borrower all and any sums due in respect of them;
- (g) if a payment or delivery of Income is made in respect of the borrowed Securities in the form of securities or a certificate which may at a future date be exchanged for securities or in the event of an option to take Income in the form of securities or a certificate which

may at a future date be exchanged for securities, notice has been given to the Borrower in accordance with clause 3.2(b) the borrowed Securities together with securities or a certificate equivalent to those allotted; and

- (h) in the case of any event similar to any of the foregoing, the borrowed Securities together with or replaced by a sum of money or securities equivalent to that received in respect of such borrowed Securities resulting from such event.

For the purposes of this definition, securities are equivalent to other securities if they are of an identical type, nominal value, description and amount and such term will include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate).

**Event of Default** has the meaning given in clause 11.

**Fee**, in respect of a Transaction, means the fee payable by one Party to the other in respect of that Transaction under clause 4.

**Franked Distribution** has the meaning given to that term in section 995-1 (1) of the 1997 Tax Act.

**Franking Credit** has the meaning given to that term in section 995-1 (1) of the 1997 Tax Act.

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

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

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

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

**Imputation Benefits** has the meaning given to that term in section 204-30 (6) (other than paragraph (d) thereof) of the 1997 Tax Act.

**Imputation System** has the meaning given to that term in section 995-1 (1) of the 1997 Tax Act.

**Income** means any dividends, interest or other distributions of any kind whatever with respect to any Securities or Collateral.

**Income Determination Period**, in relation to a particular loan of Securities, means:

- (a) in relation to the Securities, the period

commencing when the Securities cease to be registered in the name of the Lender (or the relevant transferor) upon or before delivery of those Securities under clause 2 and ending when Equivalent Securities are registered in the name of the Lender (or the relevant transferee) upon or following redelivery of those Equivalent Securities under clause 6.1; and

- (b) in relation to Collateral (other than Cash Collateral), the period commencing when the Collateral ceases to be registered in the name of the Borrower (or the relevant transferor) upon or before delivery of that Collateral under clause 5 and ending when Equivalent Collateral is registered in the name of the Borrower (or the relevant transferee) upon or following redelivery of that Equivalent Collateral.

**Income Payment Date**, in relation to any Securities or Collateral, means the date on which Income is paid in respect of such Securities or Collateral, or, in the case of registered Securities or Collateral, the date by reference to which particular registered holders are identified as being entitled to payment of Income.

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

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

**Lender**, in relation to a particular loan of Securities, means the Party who provides a loan of Securities under these Terms.

**Nominee** means an agent or a nominee appointed by either Party to accept delivery of, hold or deliver Securities, Equivalent Securities, Collateral and/or Equivalent Collateral on its behalf whose appointment has been notified to the other Party.

**Non-Defaulting Party** has the meaning given in clause 11.

**Paid**, in relation to a Dividend, includes credited, distributed or issued and like terms are to be construed accordingly.

**Parties** means FP Markets and the Client and any successor or permitted assignee of either of them and Party will be construed accordingly.

**Performance Date** has the meaning given in clause 7.

**Reference Price** means in relation to the valuation of Securities or Equivalent Securities, the market value of them as determined by FP Markets.

**Relevant Payment Date** has the meaning given in clause 3.2(a).

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

**Securities** means “eligible securities” within the meaning of section 26BC (1) of the 1936 Tax Act which the Borrower is entitled to borrow from the Lender in accordance with the Rules and which are the subject of a loan pursuant to these Terms and that term includes the certificates or other documents of title (if any) in respect of the foregoing.

**Settlement Date** means the date upon which Securities are or are to be transferred to the Borrower in accordance with these Terms.

**Standard Settlement Time**, in relation to Australian Securities, means T + 3 Australian business days on which the Exchange is open for trading, or such lesser time in which Transactions in Australia of quoted securities are customarily required to be settled.

**Tax Act** includes:

- (a) the Income Tax Assessment Act 1936 (1936 Tax Act);
- (b) the Income Tax Assessment Act 1997 (1997 Tax Act); and
- (c) Schedule 1 to the Taxation Administration Act 1953.

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

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

**Transfer of Distribution Statement**, in relation to Distributions, means a properly completed document in the form, or substantially in the form, of Appendix 6.27 to the Rules or a properly completed statement in another form which is acceptable for the purposes of section 216-30 of the 1997 Tax Act.

**Value** at any particular time means:

- (d) in respect of Cash Collateral, the amount in, or converted into, Australian dollars;
- (e) in respect of Securities, the Reference Price.

## 21. Interpretation

### 21.1 Definitions

The terms defined in clause 20 of this Schedule apply for the purposes of this Schedule 2 of these Terms.

### 21.2 Inconsistency

If there is any inconsistency between the provisions of any Confirmation of a Transaction and these Terms, such Confirmation will prevail for the purpose of the relevant Transaction.

### 21.3 Single agreement

All Transactions are entered into in reliance on the fact that all of these Terms (in Schedule 2 and elsewhere) and all Confirmations form a single agreement between the Parties (collectively referred to as these Terms), not separate Transactions or an agreement under Schedule 2 separate from other Terms. The Parties would not otherwise enter into any Transactions.

### 21.4 Nominees

If payment is to be made to a Party’s nominee or otherwise in accordance with the directions of a Party (whether by the other Party or by a third party), it will be deemed, for the purposes of these Terms, to have been paid or made to the first mentioned Party.

## Schedule 3 – FPM OTC contracts

### 1. Introduction

- 1.1 The following terms prescribed in this Schedule 3 will apply to you, and you agree to be bound by them, in respect of Transactions which are FPM OTC contracts.
- 1.2 These terms supplement the Terms. If there is any inconsistency between the rest of the Terms and the terms in this Schedule 3, the provisions of the terms in this Schedule 3 will prevail to the extent of the inconsistency.

### 2. Interpretation

In this Schedule, the following terms have the following meanings (which prevail over any other definition elsewhere in this document). Any other term not defined in this Schedule have the same meaning as given to it elsewhere in the Terms:

**Bid** means the price which FP Markets as the buyer is willing to accept i.e. the price at which you can currently buy an FPM OTC contract to Close Out (“sell”) your existing FPM OTC contract.

**Cash Balance** means the amount of cash which would be paid to you from a Trading Account if requested. There is Cash Balance only if your Margin Cover is a positive amount. The amount of the Cash Balance is the lesser of the cash balance of your Account and the required minimum Margin Cover. If your Margin Cover is not positive, there will be no Cash Balance. The

amount is subject to final adjustment by FP Markets at any time including immediately after payment of cash to you for any reason whatever, including changes in value or level of Underlying Financial Products, interest rates, currency rates, and unposted (or unreported) but accrued Finance Charges or Transaction Charges.

**CFD** means an over-the-counter derivative contract for differences. An FPM OTC contract which is a CFD is issued by FP Markets as principal on the terms set out in the Account Terms and with such other terms as the Client and FP Markets agree at or before the time of issuance (such as the price for it).

**Client Mark-up** means the amount (as a percentage), determined by FP Markets, applied to the FPM Base Rate to determine the net Finance Charge on long positions or short positions. The Client Mark-up applying to you is notified at the time of opening your Account, and may later be varied on appropriate notice.

**Closing Date** means the date on which the FPM OTC contract is agreed to be Closed Out, or earlier, if deemed to be Closed Out in accordance with the Account Terms.

**Closing Price** means the value of an FPM OTC contract determined by FP Markets on a day.

**Closing Value** means the value determined by FP Markets by multiplying the number of your FPM OTC contracts by the Closing Price of the FPM OTC contract at the Closing Date.

**Contract Size** means the standard volume per 1 Lot expressed either in ounces or number of contracts.

**Contract Value** means the face value of the FPM OTC contract, and is calculated by FP Markets by multiplying the applicable price (or, if an index, the level) of the FPM OTC contract by the number of FPM OTC contracts.

**Current Market Price** is the price which is the mid point between FP Market's Bid and Offer prices for FPM OTC contracts, which may be a delayed price depending on whether you have subscribed for live pricing.

**Equity Balance** is the full value of the Account and is calculated by combining the balance of the Account and the aggregate amount of unrealised profit and loss on all Open Positions.

**Finance Charge** means a charge payable by you in respect of your Transaction, in accordance with the Account Terms.

**Finance Charge Adjustment** means the amount you pay in respect of your Transaction, in accordance with the Account Terms.

**Finance Credit Adjustment** means the amount you

receive in respect of your Transaction, in accordance with the Account Terms.

**Finance Rate** displayed as a swap long percentage or swap short percentage on the website means the interest rate percentage for the cost of funding the Open Position Overnight nominated by FP Markets for this defined term from time to time, as notified to you (including through the online trading platform) or posted on its website.

**FPM Base Rate** means the amount determined by FP Markets for this term from time to time. FP Markets sources and chooses its rate from many possible providers on any day, so the FPM Base Rate for any particular Client changes from day to day without prior notice. The Client is notified of the Client Mark-up applicable to that Client from time to time. The total rate (Client Mark-up plus FPM Base Rate) is applied to each Client's Trading Account which uses the MT Platform.

**FPM OTC contract** means an over-the-counter contract, issued (when the Client trades on the MT Platform) by FP Markets as principal on the terms set out in the Account Terms, subject to any Trading Conditions, and with such other terms as the Client and FP Markets agree at or before the time of issuance (such as the price for it).

**FPM Product** means an over-the-counter contract issued by FP Markets as principal on the terms set out in the Account Terms, subject to any Trading Conditions, and with such other terms as the Client and FP Markets agree at or before the time of issuance (such as the price for it). FPM Product includes the FPM OTC contracts.

**Index CFD** means an FPM OTC contract whose Underlying Financial Product is an index comprised of securities of issuers listed on an Exchange, typically an index sponsored or promoted by an Exchange.

**Liquidation Level** means the minimum Margin Cover allowable before there might be automatic Close Out of all or some of your Open Positions.

**Lot** means the unit that represents the volume of a Transaction taking into consideration the Contract Size. It can be represented as a portion of a Lot subject to the minimum lot size, for example (0.1 of a lot) being referred to as a mini Lot or (0.01 of a Lot) being referred to as a micro Lot. For example 1 Lot in EURUSD equals 100,000 EUR being the Base Currency unit and 0.1 Lot is therefore 10,000 units of Base Currency.

**margin FX** means an FPM OTC contract whose Underlying Financial Product is a currency or currency pair.



**Metals Contract** means an FPM OTC contract whose Underlying Financial Product is either a metal (including bullion) traded on a market or Exchange or a financial product traded on an Exchange or market by reference to a contract in respect of metal (including bullion).

**MT Platform** means the Meta Trader 4 electronic trading platform (however it is described) made available by FP Markets to enable the Client to trade in FPM OTC contracts.

**Offer** means the price which FP Markets as the seller is willing to accept i.e., the price at which you can buy the FPM OTC contract.

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

**OTC contract** means an over-the-counter contract for a financial product, including options and contracts in respect of foreign exchange or metals. OTC contracts are not traded or settled with any Exchange.

**Overnight** means end of a trading day at 23:59 London local time.

**Pip Value** and **Points** mean the smallest increment by which a unit of currency (such as for an FX FPM OTC contract) changes and is quoted depending on the number of decimal places in which the currency is quoted. For example a USDJPY margin FX is quoted with only two decimal places (meaning one Pip Value (or "Point") = JPY 0.01).

**Swap Rate** means the rate determined by FP Markets for this defined term from time to time, as notified to you (including through the online trading platform). Please see the definition of "FPM Base Rate".

**Total Equity** means the sum of:

- the balance of the cash account; and
- the unrealised value (positive/negative) of the Open Positions in margin products.

**Trading Conditions** means the operational rules and conditions relating to the MT Platform from time to time. It includes information relating to fees and charges, Margin percentages for each specific margin Product, and the Finance Charge for each specific margin Product (if any), the finance credit account qualification level and other relevant information.

**Transaction Price** means, for margin FX, the exchange rate for the relevant currencies and, for Metals Contracts, it is the price (or for indices, the level) of buying or selling the financial product.

**Value Date** means the theoretical date of delivery if the FPM OTC contract could be settled by physical or deliverable settlement.

### 3. Acknowledgements

In these Terms you acknowledge the following in favour of FP Markets:

- (a) FPM OTC contracts are cash settled with no physical exchange of the Underlying Financial Product following Close Out of the FPM OTC contract;
- (b) there may be no definitive time to the life of an FPM OTC contract, so such a contract will continue until the Closing Date.

### 4. FPM OTC contracts

- (a) FPM OTC contracts are Transactions which are on the Terms, subject to this Schedule 3 and to any Trading Conditions applying to them.
- (b) Transactions are FPM OTC contracts if they are described by FP Markets in a PDS as FPM OTC contracts or if they are otherwise identified on a Platform as FPM OTC contracts or if they are dealt on the MT Platform.
- (c) FPM OTC contracts which are CFDs therefore are CFDs which are subject to Schedule 1 except to the extent this Schedule 3 applies.

### 5. Features of FPM OTC contracts

- (a) The Finance Charges and Transaction Fees for FPM OTC contracts are as described in the Trading Conditions or on the Platform for FPM OTC contracts. A PDS for FPM OTC contracts may describe Finance Charges and Transaction Fees for FPM OTC contracts but these Terms establish the Finance Charges and Transaction Fees for FPM OTC contracts by reference to the Trading Conditions on the Platform for them.
- (b) The Orders and other features of dealing in FPM OTC contracts, including automatic liquidation of them, may be described in a PDS for FPM OTC contracts but these Terms establish the rules for them by reference to the Trading Conditions on the Platform for them.

Should you have any questions or enquiries,  
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