

# **Client Agreement**

This client agreement sets out the terms and conditions on and subject to which Velocity Trade Limited (ARBN 131 876 698) and the Client enter into Transactions

## Contents

---

1.	<b>Interpretation</b> .....	4
2.	<b>Application Form</b> .....	13
3.	<b>Term of Agreement</b> .....	14
4.	<b>Scope of Agreement</b> .....	14
5.	<b>No agency</b> .....	16
6.	<b>Trading Platform</b> .....	16
7.	<b>Entry into of Transactions</b> .....	23
8.	<b>Interest and third party accounts</b> .....	27
9.	<b>Client Account</b> .....	28
10.	<b>Segregated Funds Account</b> .....	29
11.	<b>Representations and warranties</b> .....	31
12.	<b>Trading hours</b> .....	34
13.	<b>Legal and regulatory requirements</b> .....	35
14.	<b>Payments</b> .....	35
15.	<b>Fees, commission and other charges</b> .....	37
16.	<b>Taxes</b> .....	38
17.	<b>Force Majeure</b> .....	38
18.	<b>Events of Default</b> .....	39
19.	<b>Other terminations</b> .....	41
20.	<b>Close-out</b> .....	43
21.	<b>Indemnity</b> .....	46
22.	<b>Exclusion of liability</b> .....	49
23.	<b>Tape recording</b> .....	50

24.	<b>Confidentiality</b> .....	51
25.	<b>Conflicts of interest</b> .....	52
26.	<b>Hedging Arrangements</b> .....	53
27.	<b>Instructions and Authorised Persons</b> .....	54
28.	<b>Reporting to Client</b> .....	56
29.	<b>Dispute process</b> .....	56
30.	<b>Assignment</b> .....	58
31.	<b>Notices</b> .....	59
32.	<b>Remedies and waivers</b> .....	63
33.	<b>Severance</b> .....	64
34.	<b>Rights of third parties</b> .....	64
35.	<b>Amendments</b> .....	65
36.	<b>Costs</b> .....	66
37.	<b>Miscellaneous</b> .....	66
38.	<b>Governing law and jurisdiction</b> .....	67
	<b>Schedule 1: Margin FX</b> .....	68
1.	<b>Holding of Client Money</b> .....	68
2.	<b>MarginFX Trading Platform</b> .....	68
3.	<b>MarginFX Addendum</b> .....	68
4.	<b>Accounts and interest</b> .....	68
5.	<b>Rollover of Margin FX</b> .....	69
6.	<b>Close-out of Margin FX</b> .....	70
7.	<b>Margin and margin maintenance</b> .....	70
8.	<b>Stop Loss Orders and Limit Orders</b> .....	73
	<b>Schedule 2: Spot FX</b> .....	75

1.	<b>Definitions</b> .....	75
2.	<b>Holding of Client Money</b> .....	75
3.	<b>Spot FX Trading Platform</b> .....	76
4.	<b>Accounts and interest</b> .....	76
5.	<b>Spot FX Transactions</b> .....	77
6.	<b>Close-out of Spot FX Transactions</b> .....	78
	<b>Schedule 3: Tenor FX</b> .....	80
1.	<b>Definitions</b> .....	80
2.	<b>Holding of Client Money</b> .....	81
3.	<b>Tenor FX Trading Platform</b> .....	81
4.	<b>Accounts and interest</b> .....	82
5.	<b>Tenor FX Transactions</b> .....	82
6.	<b>Close-out of Tenor FX Transactions</b> .....	85
7.	<b>Part Payment</b> .....	85

This **Agreement** is made between **Velocity Trade Limited** and the **Client** and sets out the terms and conditions on and subject to which Velocity Trade Limited (ARBN 131 876 698) and the Client enter into Transactions.

## 1. Interpretation

---

### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

**Abnormal Market Conditions** means that, in the opinion of Velocity Trade, abnormal, emergency or unusual conditions exist in any foreign exchange, securities, commodities, derivatives or futures market or exchange the effect or likely effect of which is that:

- (a) the prices, rates or availability of any currency, security, commodity, derivative or future is materially affected; or
- (b) Velocity Trade or any of its Associates, including MBL, is not able or is not willing to make prices or rates in any currency, security, commodity, derivative or future;

**Account** means, in relation to the Client, a running account maintained by Velocity Trade for the purpose of recording certain credits and debits in relation to Transactions, margin and other financial requirements, as set out or described in this Agreement;

**Agreement** means this agreement and includes each schedule (including the Rates Schedule) and any addendum to this agreement and any other document expressed by Velocity Trade to be part of this agreement as amended from time to time in accordance with clause 4.3;

**Applicable Law** includes each statute and each regulation in each relevant jurisdiction and other instrument under any such statute or regulation that:

- (a) applies to the conduct by Velocity Trade of its business; or
- (b) applies to the performance by Velocity Trade or the Client of its obligations under this Agreement or any Transaction; or
- (c) otherwise applies to Velocity Trade or to the Client;

**Application Form** means the application form and account opening documentation completed by the Client and submitted to Velocity Trade;

**Associate** means, in the case of Velocity Trade only, each of its Related Companies and each person that has a 25 per cent. or more direct or indirect interest in Velocity Trade or any of those Related Companies;

**Authorised Person** means the Client and/or any person authorised by the Client to give instructions (oral, written or electronic) to Velocity Trade in the Application Form or otherwise under clause 27.1(a);

**Base Rate** means, at any time:

- (a) in the case of the New Zealand dollar, the overnight Reserve Bank of New Zealand cash rate; and

- (b) in the case of another currency, the official cash rate or other base rate for that currency at that time of the relevant Public Authority;

**Blotter** means, in relation to an Electronic Trading Platform, a record of Transactions and the details of the Transactions made over a period of time (usually one trading day), which may include details such as the time, price, order size and whether it was a buy or sell order;

**Break Date** has the meaning set out in clause 19.1;

**Buffer Account** means each buffer account opened by Velocity Trade with a Hedging Counterparty for the purposes of providing a buffer or margin in relation to the Hedging Arrangements;

**Business Day** means:

- (a) a day (not being a Saturday or Sunday) on which banks and foreign exchange markets are open for business in Auckland; and
- (b) in the case of a payment or the determination of an exchange rate or interest rate, a day on which banks and foreign exchange markets are open for business in the principal financial centres of the countries of the relevant currencies;

**Client** means the person who has agreed to be bound by the terms and conditions of this Agreement and who has been notified by Velocity Trade that his or her application has been accepted;

**Client Base Currency** means New Zealand dollars or otherwise such currency as is agreed separately between Velocity Trade and the Client in writing;

**Client Money** means, in relation to the Client:

- (a) all money which:
  - (i) in the course of carrying on its business of dealing in Transactions, Velocity Trade or any person on its behalf holds for, or receives from or on behalf of, the Client; and
  - (ii) is not immediately due and payable on demand to Velocity Trade or that other person for its own account; and
- (b) where the money is required by the relevant schedule to be held in a Segregated Funds Account, all such money held in a Segregated Funds Account;

**Close of Business** means 5:00 p.m. (New York time) each day, other than a Saturday or a Sunday;

**Close Out Formula** means the standard formula or formulae used by Velocity Trade, at the time of termination of a Transaction, to determine any Settlement Amount;

**Commencement Date** means the date on which Velocity Trade notifies the Client that, having received and accepted a duly completed and transmitted Application Form and completed all further checks or enquiries that Velocity Trade deems necessary or desirable, the Client's application has been accepted;

**Companies Act** means the Companies Act 1993 of New Zealand;

**Confidential Information** means, in relation to a party and each of its Related Companies and Associates:

- (a) the know how, trade secrets, technical processes, information relating to pricing, market share, products, finances, clients or suppliers, the right to all lists of clients and suppliers of that party or of any of its Related Companies or Associates; and
- (b) other information relating to that party or to any of its Related Companies or Associates and their respective businesses,

which by its nature, or by the circumstances of its disclosure to the holder of the information, is or could reasonably be expected to be regarded as confidential;

**Confirmation:**

- (a) means, in relation to a Transaction, a document or other confirming evidence delivered to one party by the other party, exchanged between the parties, available by way of an Electronic Trading Platform or otherwise effective, and whether by way of the Electronic Trading Platform or otherwise, in each case for the purposes of confirming or evidencing that Transaction; but
- (b) does not include an electronic mail or text message, unless Velocity Trade specifies otherwise in that electronic mail or text message or otherwise in writing;

**Consequential Loss** means any indirect or consequential Loss, including loss of profits, business or anticipated savings and damages, whether or not the Loss was or ought to be known by the relevant party;

**Corporations Act** means the Corporations Act 2001 of the Commonwealth of Australia;

**Cost of Funds** means, in relation to an amount payable by the Client to Velocity Trade, the rate per annum equal to the cost to Velocity Trade (as determined by Velocity Trade) if it were to fund that amount;

**Credit Requirement** means any Margin Requirement, Part Payment Requirement or other credit requirement that may be specified in the relevant schedule or addendum in relation to a type of Transaction;

**Defaulting Party** has the meaning set out in clause 18.1;

**Deposit Interest** has the meaning set out in clause 8.1;

**Disclosure Document** means, at any time, for prospective Australian clients the Combined Financial Services Guide and Product Disclosure Statement which is then current and for prospective clients in other jurisdictions the disclosure document then current issued by Velocity Trade in relation to Transactions;

**Dispute** has the meaning set out in clause 29.1;

**Electronic Trading Platform** means an electronic trading platform referred to in clause 6.1(a) made available by Velocity Trade to the Client, including by way of the Internet, for the purposes, among other things, of entering into certain types of Transactions;

**Event of Default** has the meaning set out in clause 18.1;

**Force Majeure** means any event or cause beyond the reasonable control of Velocity Trade, including:

- (a) Abnormal Market Conditions; or

- (b) an act of God, inevitable accident, fire, lightning, cyclone, earthquake, landslide, volcanic eruption or other natural phenomenon; or
- (c) sabotage, revolution, insurrection, act of war (whether declared or not) or war-like operations; or
- (d) a confiscation or expropriation, embargo, quarantine restriction or any like event; or
- (e) any strike, dispute or lockout; or
- (f) an epidemic, toxic emission or any like event; or
- (g) a requirement, restriction, prohibition, intervention, law, regulation, decree or other legally enforceable order of any Public Authority; or
- (h) an explosion, nuclear accident or any like event; or
- (i) a telecommunications, network, power or equipment failure or damage, or power or water shortage,

as a result of which, in each case in the opinion of Velocity Trade, it is impossible, impractical or illegal for Velocity Trade to perform and comply with any of its obligations under this Agreement or any Transaction;

**Free Margin** means, at any time, the amount in an Account available to meet any additional Margin Percentage Requirement (if applicable) at that time and which is determined in accordance with the relevant schedule;

**FX Forward** means a Transaction in which one party agrees to buy a specified quantity of one currency against another currency on the Value Date at a price which is fixed on the Trade Date;

**FX Option** means a Simple FX Option or a Structured FX Option;

**FX Swap** means a Transaction in which one party pays fixed or floating periodic amounts in one currency and the other party pays fixed or floating periodic amounts of another currency based on predetermined notional amounts of the two currencies;

**GST** means goods and services tax levied or imposed in New Zealand or Australia as applicable;

**Hedging Counterparty** means a counterparty to any Hedging Arrangements;

**Hedging Arrangements** means certain hedging arrangements that Velocity Trade as principal has entered into or may enter into with one or more third parties, including MBL, for the purposes, among other things, of hedging its exposures under this Agreement and Transactions;

**Intellectual Property Rights** means all patents, copyrights, trade secrets, trademarks, service marks, trade names and all other intellectual property rights;

**Interest Earning Amount** means the amount, as determined in accordance with the relevant schedule, in an Account on which Velocity Trade agrees from time to time to pay interest;

**Velocity Trade** means Velocity Trade FX Limited;

**Velocity Trade Exchange Rate** means, in relation to the exchange of one currency into another at any time, the exchange rate applicable to those currencies that Velocity Trade, acting reasonably, determines at that time having regard to current market rates;

**Velocity Trade's Preferred Side** means, at any time in relation to the Velocity Trade Spread, the bid or offer price, as the case may be, at which Velocity Trade, as price maker, is prepared to deal at that time;

**Velocity Trade Rollover Interest Rate** means, in relation to a Rollover and a currency, the relevant Base Rate plus or minus, as the case may be, the Velocity Trade Spread at the relevant Close of Business;

**Velocity Trade Spread** means, at any time, the difference between the bid and offer prices of an exchange rate or interest rate quoted by Velocity Trade at that time;

**Licensor** means each licensor of any software utilised by Velocity Trade in relation to an Electronic Trading Platform;

**Limit Order** means, in relation to a Transaction, an order placed by the Client with Velocity Trade to enter into that Transaction when the applicable exchange rate reaches a pre-determined level;

**Loss** means a claim, action, proceeding, judgment, damage, loss, cost, expense or liability, however arising and whether present, future or contingent, whether ascertained or unascertained and whether arising before or after the Commencement Date;

**Margin FX** means a Transaction that is entered into as a Spot FX Transaction that is automatically rolled over at Close of Business;

**MarginFX Addendum** means the terms and conditions published under the heading "MarginFX Addendum" on the Velocity Trade website from time to time.

**Margin Interest Threshold** means the amount determined in accordance with clause 8.1(d);

**Margin Percentage** means, at any time, the percentage specified by Velocity Trade in the Rates Schedule at that time or, where relevant, the MarginFX Addendum at that time;

**Margin Percentage Requirement** means, at any time, the amount calculated in accordance with the relevant schedule or the MarginFX Addendum (where applicable);

**Margin Requirement** means, at any time, the amount calculated in accordance with the relevant schedule or the MarginFX Addendum (where applicable);

**MBL** means Macquarie Bank Limited (ABN 46 008 583 542);

**Maximum Trading Size** means, at any time in relation to a Transaction, the maximum Transaction Value that Velocity Trade specifies at that time;

**Minimum Trading Size** means, at any time in relation to a Transaction, the minimum Transaction Value that Velocity Trade specifies at that time;

**Non-defaulting Party** has the meaning set out in clause 18.1;

**Normal Trading Hours** means 7:00 a.m. (New Zealand time) on Monday to 5:00 p.m. (New York time) on Friday;

**Part Payment** has the meaning set out in schedule 3;

**Part Payment Requirement** has the meaning set out in schedule 3;

**Privacy Statement** means, at any time, the privacy statement in any then-current Disclosure Document at that time or as otherwise published or provided by Velocity Trade which explains how Velocity Trade collects personal information and maintains, uses and discloses that information;

**Public Authority** means:

- (a) any government in any jurisdiction whether national, federal, state, regional, territorial or local; and
- (b) any minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government or any state-owned enterprise; and
- (c) the Australian Securities and Investments Commission;

**Rates Schedule** means, at any time, the schedule or other document of Velocity Trade containing its Credit Requirements, Margin Interest Thresholds, interest rates and certain other rates, fees, commissions and charges applicable to Transactions at that time, which is either published on the Velocity Trade website or otherwise available on request from Velocity Trade;

**Registered Bank** means :

- (i) in respect of New Zealand, a bank registered under the Reserve Bank of New Zealand Act 1989; and
- (ii) in respect of Australia, an authorised deposit taking institution as that term is defined in the Banking Act 1959;

**Related Company** has the same meaning as in the Companies Act, with any necessary modifications for companies incorporated or established outside New Zealand;

**Representative** means, in relation to any person, each of its officers, directors, employees, agents and representatives;

**Rollover** has the meaning set out in clause 3.1 of schedule 1;

**Rollover Enhancement Income** has the meaning set out in clause 3.2 of schedule 1;

**Securities Markets Act** means the Securities Markets Act 1988 of New Zealand;

**Security Credentials** means, in relation to any Trading Platform, any security credentials that the Client and/or any of its Authorised Persons uses to access or use the Trading Platform, including any user name, account number, Client ID, user ID and/or password;

**Segregated Funds Account** means:

- (a) a New Zealand dollar bank account that, where required by the relevant schedule, is established and maintained by Velocity Trade in accordance with such schedule for the purpose of receiving, holding and disbursing Client Money, including client money of other clients of Velocity Trade; or
- (b) in relation to Clients who are to the knowledge of Velocity Trade resident in Australia or as otherwise required by the terms of Velocity Trade's Australian financial services licence, to the extent required by section 981B of the Corporations Act an account

maintained in accordance with that section and the regulations made pursuant to section 981C of the Corporations Act;

**Settlement Amount**, in relation to each Terminated Transaction and the corresponding Termination Date, means the Termination Currency Equivalent of the amount calculated by Velocity Trade in accordance with the Close Out Formula necessary to compensate, as the case may be, Velocity Trade (in which case the amount is expressed as a positive number) or the Client (in which case the amount is expressed as a negative number) for that party's total losses and costs in connection with or consequent upon the termination of that Terminated Transaction on that Termination Date;

**Simple FX Option** means a Transaction where the Client, in consideration of the payment of a premium, buys the right to buy or sell a specified quantity of one currency on the Value Date at a price which is either fixed on the Trade Date or to be determined at a later date by reference to another currency;

**Spot FX** means a Transaction entered into in accordance with Schedule 2;

**Stop Loss Order** means, in relation to a Transaction, an order placed by the Client with Velocity Trade to close out that Transaction when the applicable exchange rate moves to a pre-determined level;

**Structured FX Option** means a Transaction which includes a Simple FX Option but also includes the Client granting Velocity Trade the right to buy or sell the same quantity of the same currency on the same Value Date (or earlier) as the Simple FX Option at a price which is either fixed on the Trade Date or to be determined at a later date by reference to another currency;

**Tax(es)** includes any tax, levy, impost, stamp or other duty and any other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of these);

**Tenor FX** means any FX Forward, FX Swap or FX Option;

**Terminated Transaction** means a Transaction that is terminated in accordance with clause 20;

**Termination Currency Equivalent** means:

- (a) in relation to any amount denominated in the Client Base Currency, that Client Base Currency amount; and
- (b) in relation to any amount denominated in a currency other than the Client Base Currency (the **other currency**) at any time the amount in the Client Base Currency determined by Velocity Trade as being required to purchase the amount of that other currency at that time;

**Termination Date** means a date for the termination of all or some Transactions either as specified in a Termination Notice or as otherwise provided by this Agreement;

**Termination Notice** means a notice given by Velocity Trade in accordance with this Agreement terminating all or some Transactions;

**Trade Date** means the date on which a Transaction is entered into;

**Trading Platform** means either:

- (a) an Electronic Trading Platform; or

- (b) telephone or other means as may be specified by Velocity Trade in writing with respect to a type of Transaction;

**Trading Platform Communication** means any order or instruction or other communication sent by way of the Trading Platform by or on behalf of the Client (or purportedly by or on behalf of the Client);

**Transaction** means any transaction into which Velocity Trade and the Client have entered or propose to enter involving, or referable to the value of, or granting rights or accepting obligations in respect of or by reference to one or more currencies, which for the avoidance of doubt includes currency option transactions;

**Transaction Value** means, at any time in relation to a Transaction, the current value of that Transaction, being the nominal position in each currency of that Transaction, converted, where necessary, to the Client Base Currency at the Velocity Trade Exchange Rate at that time; and

**Value Date** means:

- (a) in relation to a Margin FX Transaction or a Spot FX Transaction, the spot delivery day for the currency pair to be purchased and sold pursuant to that Transaction as generally used in the relevant currency market; and
- (b) in relation to any other Transaction, the Business Day determined by Velocity Trade for the currency pair to be purchased and sold pursuant to that Transaction.

## 1.2 Interpretation of certain references

In this Agreement, unless the context otherwise requires:

- (a) **Agreement**

**agreement** includes a contract, deed, licence, franchise, undertaking, arrangement or understanding (in each case, whether oral or written, present or future) or other document recording obligations (whether mutual or otherwise) and includes that document as amended, assigned, novated or substituted from time to time;

- (b) **Assets**

**assets** includes the whole or any part of the relevant person's business, undertaking, property, revenues or choses in action (in each case, present or future);

- (c) **Consent**

a **consent** includes an approval, authorisation, exemption, filing, licence, order, permit, recording and registration;

- (d) **Costs**

**costs** incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes incurred by that person;

(e) **Guarantee**

a **guarantee** includes an indemnity, letter of credit, legally binding letter of comfort, suretyship and other agreement the economic effect of which is to provide security, or otherwise assume responsibility, for the indebtedness of another person;

(f) **Liquidation**

the **liquidation** of a person includes the dissolution, winding-up and bankruptcy of that person and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, carries on business or has property;

(g) **Material adverse effect**

something having a **material adverse effect** on a person is a reference to it having a material adverse effect:

- (i) on that person's financial condition or operations or on its consolidated financial condition or operations; or
- (ii) on its ability to comply with its obligations under this Agreement; and

(h) **Security interest**

a **security interest** includes:

- (i) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and
- (ii) a "security interest" as defined in section 17(1)(a) of the Personal Property Securities Act 1999,

but does not include a lien arising solely by operation of law.

### 1.3 **Construction of certain references**

In the construction of this Agreement, unless the context otherwise requires:

(a) **Party, clause or schedule**

a reference to a clause or schedule is a reference to a party to, clause of, or a schedule to, this Agreement;

(b) **Varied document**

a reference to this Agreement or another to agreement or document includes any variation, novation or replacement of it;

(c) **Statutes**

a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before, or after the date of this Agreement);

(d) **Singular includes plural**

the singular includes the plural and *vice versa*;

(e) **Person includes groups**

the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state (in each case, whether or not having a separate legal personality);

(f) **Person includes successors**

a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assignees;

(g) **Grammatical forms**

where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(h) **Gender**

words importing one gender include the other genders;

(i) **Inclusive words**

the word **including** when introducing an example does not limit the meaning of the words to which the example relates;

(j) **Continuing**

an Event of Default is **continuing** until it has been waived in writing by, or remedied to the satisfaction of, Velocity Trade;

(k) **Writing**

the words written and writing include facsimile communications and electronic mail and any other means of communication resulting in permanent visible reproduction; and

(l) **Close out**

a reference to "close out" or "closing out" is a reference to a party terminating a Transaction or Transactions.

## 1.4 Headings

Headings are inserted for convenience and do not affect the interpretation of this Agreement.

## 2. Application Form

---

By submitting an Application Form, the Client:

(a) **Agreement and Disclosure Document understood**

acknowledges to Velocity Trade that the Client has received or downloaded, and read and understood, this Agreement and any then-current Disclosure Document; and

(b) **Transactions**

whether or not this Agreement is specifically referred to and unless the terms of this Agreement are expressly excluded, every Transaction is governed by the terms and conditions of this Agreement.

### 3. **Term of Agreement**

---

(a) **Commencement**

This Agreement takes effect, and the rights and obligations of each party commence, on and from the Commencement Date.

(b) **Termination**

This Agreement continues in force until terminated in accordance with its terms or as agreed by the parties.

### 4. **Scope of Agreement**

---

#### 4.1 **Transactions**

Subject to the Client fulfilling its obligations under this Agreement, Velocity Trade may enter into Transactions with the Client as set out in, and in accordance with, the applicable schedule.

#### 4.2 **Types of Transactions offered**

Subject to the requirements of the Applicable Law Velocity Trade may, but is not obliged to, enter into the following types of Transactions with the Client:

- (a) MarginFX in accordance with schedule 1;
- (b) Spot FX in accordance with schedule 2; and
- (c) Tenor FX in accordance with schedule 3.

#### 4.3 **Further Transactions and other amendments to this Agreement**

If Velocity Trade specifies any further type of Transaction that it may enter into with the Client or if Velocity Trade otherwise determines (in its sole discretion) that amendments to this Agreement are necessary, the Client acknowledges and agrees that:

- (i) Velocity Trade may amend this Agreement including, in the case of any further type of Transaction being specified, to reflect the terms and conditions on and subject to which Velocity Trade will enter into any such Transaction;
- (ii) any such amendment will be notified to the Client by way of the Velocity Trade website or each Electronic Trading Platform or electronic mail or such other form of communication as Velocity Trade determines to be appropriate;

- (iii) a copy of this Agreement, as amended, will be available on Velocity Trade's website; and
- (iv) the Client will be bound by this Agreement as amended immediately it enters into any further Transaction.

#### **4.4 Single agreement**

This Agreement, each Transaction (and, to the extent recorded in a Confirmation, each Confirmation) together constitute a single agreement between the parties.

#### **4.5 Advice**

(a) **No investment advice**

The Client acknowledges and agrees that, unless Velocity Trade agrees otherwise in writing:

(i) **Velocity Trade not responsible**

Velocity Trade is not responsible for providing any recommendation, opinion or guidance in relation to the entry into of this Agreement or any Transaction; and

(ii) **Client solely responsible**

entry into of a Transaction by the Client does not mean that Velocity Trade makes a recommendation, holds an opinion or gives guidance to the Client in relation to its entry into of that Transaction.

(b) **General information**

The Client acknowledges and agrees that Velocity Trade does not intend to and is not required to consider one or more of the Client's objectives, financial situation and needs but that:

(i) **Information to Clients generally**

Velocity Trade may provide general information to the Client that Velocity Trade provides to its clients generally; and

(ii) **Particular needs of Client not considered**

that information will not take into account the particular needs, objectives or financial circumstances of the Client.

#### **4.6 Risks of Transactions**

The Client acknowledges and agrees that:

(a) **Risk disclosure in Disclosure Document**

the Client has read and understood the risks of entering into Transactions outlined in the Disclosure Document and/or on Velocity Trade's website; and

(b) **Risk of loss**

entering into Transactions incurs the risk of loss as well as the prospect of profit.

## 5. **No agency**

---

### 5.1 **Velocity Trade is principal**

Velocity Trade enters into this Agreement and each Transaction as principal and not as agent.

### 5.2 **Client is principal**

(a) **Representation and undertaking**

The Client represents and warrants to Velocity Trade that it enters into this Agreement, and undertakes that it will enter into each Transaction, as principal and not as agent.

(b) **Deemed repetition of representation**

The representation and warranty in paragraph (a) is deemed to be repeated each time the Client enters into a Transaction.

### 5.3 **Undisclosed agency**

If the Client nevertheless enters into this Agreement or any Transaction on behalf of one or more principals, the Client acknowledges and agrees that Velocity Trade does not accept any such principal as a client for the purposes of this Agreement or any Transaction.

### 5.4 **Limited circumstances where Client may be agent**

Velocity Trade may accept as a client a Client who acts as agent for a principal only if the Client and Velocity Trade enter into an addendum amending this Agreement.

## 6. **Trading Platform**

---

### 6.1 **Availability of Trading Platform**

(a) **Schedule specifies form of Trading Platform**

For each type of Transaction offered by Velocity Trade, the relevant schedule and/or addendum will specify:

- (i) if an Electronic Trading Platform is available; or
- (ii) such other form of Trading Platform that may be used.

(b) **Password-protected Electronic Trading Platform**

Where an Electronic Trading Platform is available, Velocity Trade will deal with the Client by way of a password-protected electronic trading platform to which the Client has access over the Internet.

(c) **Transacting only in accordance with specified Trading Platform**

The Client acknowledges and agrees that the Client may not transact with Velocity Trade except in accordance with the specified Trading Platform or as may otherwise be agreed by Velocity Trade on a case by case basis.

## 6.2 Using an Electronic Trading Platform

(a) **What an Electronic Trading Platform enables Client to do**

Velocity Trade may provide an Electronic Trading Platform for the purpose of the Client entering into certain types of Transactions, viewing Confirmations and/or other ancillary services.

(b) **Agreement to access and use**

The Client agrees to access and use each Electronic Trading Platform in accordance with, and solely for the purposes set out in, this Agreement.

(c) **Third party providers**

The provision of an Electronic Trading Platform may involve the sub-licensing of Licensor software and/or information systems.

(d) **Changes to Electronic Trading Platform**

Velocity Trade or the Licensor may, with or without notice to the Client, change the nature, composition, features or availability of an Electronic Trading Platform.

(e) **Reference to Electronic Trading Platform in Agreement**

(i) Velocity Trade may provide one or more Electronic Trading Platforms depending upon the type of Transactions that Velocity Trade is willing to enter into at that time.

(ii) A reference to “Electronic Trading Platform” in this Agreement is a reference to the Electronic Trading Platform(s) provided in relation to the relevant type of Transaction.

(f) **Unavailability of Electronic Trading Platform**

Where, for any reason, the Client is unable to access and use the relevant Electronic Trading Platform, Velocity Trade may, at its absolute discretion, trade through other means with the Client, such as by telephone.

## 6.3 Acknowledgments and agreements of Client

The Client:

(a) **Authority to make determinations**

authorises Velocity Trade to make certain determinations under this Agreement, including in relation to Rollovers, the Client’s margin position and the termination and close-out of Transactions through use of and/or communication by way of the relevant Trading Platform;

(b) **“As is” basis**

acknowledges and agrees that any Electronic Trading Platform is provided on an “as is” basis;

(c) **Risks of use of Trading Platform**

- (i) acknowledges and agrees that there are significant risks associated with using and relying on a Trading Platform, including risks related to the use of software and/or telecommunications systems, such as software errors and bugs, delays in telecommunications systems, interrupted service, data supply errors, faults or inaccuracies and security breaches;
- (ii) assumes all risk of use or attempted use of a Trading Platform and any data provided by way of a Trading Platform; and
- (iii) acknowledges and agrees that it has no recourse against Velocity Trade or any Licensor in relation to the use or availability of a Trading Platform or any errors in Licensor software and/or related information systems;

(d) **Support and maintenance**

acknowledges and agrees that Velocity Trade has no obligation or responsibility to provide support for or maintenance of any Trading Platform, including by supplying any corrections, updates or new releases;

(e) **No responsibility to inform Client of difficulties**

acknowledges and agrees that Velocity Trade has no obligation or responsibility:

- (i) to inform the Client of any difficulties Velocity Trade or other third parties experience in relation to use of or access to a Trading Platform or to take any action in relation to those difficulties; and
- (ii) to verify, correct, complete or update any information displayed on a Trading Platform;

(f) **Client responsibility**

- (i) assumes full responsibility for any decision in relation to which any data provided to the Client by way of a Trading Platform may be used or relied upon;
- (ii) will make its own independent decision to access or use a Trading Platform or to enter into any Transaction; and
- (iii) acknowledges and agrees that no Trading Platform serves as the primary basis for any of the Client’s investment decisions concerning its accounts or its managed or fiduciary accounts;

(g) **Authorised Persons**

- (i) agrees to be responsible for ensuring that each of its Authorised Persons accesses or uses any Trading Platform in compliance with this Agreement or as otherwise notified by Velocity Trade, as if the same were stated to apply to the Authorised Person;
- (ii) agrees to be responsible for ensuring that any person who accesses or uses a Trading Platform is duly qualified and appointed as an Authorised Person;

- (iii) agrees that the Client is liable for the conduct of each of its Authorised Persons; and
- (iv) in the case of any breach of this Agreement by any of its Authorised Persons, agrees to notify Velocity Trade immediately;

(h) **Security Credentials**

- (i) agrees to ensure the security and confidentiality of all Security Credentials;
- (ii) agrees to ensure that any such Security Credentials are exclusive to and only used by a single Authorised Person;
- (iii) agrees to ensure that each Authorised Person maintains the security and confidentiality of such Security Credentials and that none of its Authorised Persons:
  - (A) copies, distributes or transfers any such Security Credentials in any manner to any other computer, computer system or electronic device; or
  - (B) modifies, alters, disassembles or decrypts any Security Credentials, attempts to do so or allows another person to do so or attempt to do so; or
  - (C) uses the Security Credentials for any purpose other than to communicate with Velocity Trade; and
- (iv) agrees and acknowledges that, if any person who is not an Authorised Person accesses or uses a Trading Platform using a Security Credential, the Client is liable for the conduct of that person and the person's compliance with this Agreement as if that person were an Authorised Person, whether or not the Client authorises the access and/or use;

(i) **Termination, etc., of Security Credentials**

acknowledges and agrees that, if Velocity Trade determines that the security surrounding any Trading Platform or the security or confidentiality of any Security Credentials is or has been breached, Velocity Trade may terminate, revoke, suspend, modify or change any or all of the Security Credentials at any time with or without prior notice; and

(j) **Trading Platform Communications**

- (i) acknowledges and agrees that where a Trading Platform requires the use of Security Credentials, all Trading Platform Communications are deemed to be on behalf of and authorised by the Client;
- (ii) accepts all responsibility for the genuineness and accuracy, in relation to content and form, of all Trading Platform Communications and for all resulting actions, including orders entered and Transactions entered into;
- (iii) acknowledges that Velocity Trade is not obliged to act on any Trading Platform Communication and will be free to accept or reject, in its sole discretion, any transaction that the Client seeks to execute through the Trading Platform;
- (iv) acknowledges and agrees that Velocity Trade may, at its discretion, verify receipt of any Trading Platform Communications;

- (v) acknowledges and agrees that the Client has no right to amend or revoke a Trading Platform Communication, unless Velocity Trade agrees otherwise; and
- (vi) acknowledges and agrees that:
  - (A) Velocity Trade's records of any Trading Platform Communication and any communication sent by Velocity Trade by way of the relevant Trading Platform are deemed to be accurate until the contrary is proven; and
  - (B) the Client bears the burden of proof that those records are inaccurate or incomplete, except in the case of manifest error or fraud.

**(k) Provision of Market Information**

acknowledges and agrees that where a Trading Platform displays market data and other purely factual information (collectively "**Market Information**") that:

- (i) Velocity Trade does not endorse or approve the Market Information and makes it available to the Client only as a service and convenience;
- (ii) Velocity Trade does not guarantee the accuracy, timeliness, completeness or correct sequencing of the Market Information;
- (iii) Velocity Trade does not warrant any results from the Client's use or reliance on the Market Information;
- (iv) Velocity Trade is not obligated to update any information or opinions contained in any Market Information;
- (v) Velocity Trade may discontinue offering Market Information at any time;
- (vi) Velocity Trade will not be liable in any way for the termination, interruption, delay or inaccuracy of any Market Information; and
- (vii) The Client will not redistribute or facilitate the redistribution of Market Information to any third party.

## **6.4 Third party Licensors**

**(a) Waiver of claims**

- (i) The Client acknowledges and agrees that the provision of an Electronic Trading Platform may involve the sub-licensing of Licensor software and/or information systems.
- (ii) The Client waives all claims and causes of action which it may otherwise have against a Licensor.

**(b) Licensor not party to Transactions**

The Client acknowledges and agrees that:

- (i) the Licensor is providing only a technical means for effecting Transactions;
- (ii) the Licensor is neither directly nor indirectly a party to any Transaction;

- (iii) the Licensor is not inviting, arranging for, or advising the Client or any third party to effect any Transaction or to purchase, sell or otherwise deal in any currency, security, commodity, derivative or future;
- (iv) the Licensor is not liable in any manner to any person for the failure of any person effecting a Transaction by way of an Electronic Trading Platform to perform its obligations under that Transaction; and
- (v) the Licensor will not be involved in any dispute relating to any Transaction.

(c) **Audit**

The Client:

- (i) is to maintain, for the duration of this Agreement, and for a period of 3 years afterwards, accounting and computer records that enable Velocity Trade and/or any Licensor to determine compliance with this clause and this Agreement;
- (ii) is to permit Velocity Trade and/or any Licensor to audit the Client's access to and use of any Electronic Trading Platform (including the Client's records of its access to and use of that Electronic Trading Platform); and
- (iii) acknowledges that information obtained pursuant to this clause may be used to determine the Client's compliance with this clause.

(d) **Intellectual Property Rights in Electronic Trading Platform**

- (i) The Client acknowledges and agrees that:
  - (A) all Intellectual Property Rights in respect of or derived from an Electronic Trading Platform are and remain the sole and exclusive property of Velocity Trade and/or any Licensors; and
  - (B) the Client has no Intellectual Property Rights in respect of or derived from and will not acquire any Intellectual Property Rights in relation to an Electronic Trading Platform and/or any derivative or adaptation of an Electronic Trading Platform.
- (ii) The Client is to use all reasonable efforts:
  - (A) to protect any such Intellectual Property Rights in an Electronic Trading Platform; and
  - (B) to comply with a request of Velocity Trade, acting reasonably, to protect its contractual, statutory and common law rights and obligations in respect of an Electronic Trading Platform.
- (iii) If the Client becomes aware of any access to or use of the Electronic Trading Platform by a third party that is unauthorised or which constitutes an infringement or interference with any of Velocity Trade's and/or the Licensor's Intellectual Property Rights, it is promptly to notify Velocity Trade and, acting reasonably, co-operate with Velocity Trade and/or any Licensor with respect to any legal action which Velocity Trade and/or any Licensor may undertake in respect of the infringement.

(e) **Restrictions on use of Electronic Trading Platform**

The Client acknowledges and agrees not:

- (i) to access or use any Electronic Trading Platform for any purpose other than to request prices and enter into Transactions with Velocity Trade; or
- (ii) to use, copy, merge, make derivative works of or transfer copies of any software; or
- (iii) to use or disclose to any third party any information obtained through or from an Electronic Trading Platform other than for the purposes expressly set out in this Agreement; or
- (iv) to allow any access to or use of an Electronic Trading Platform by any third party; or
- (v) to sell, lease or otherwise provide, directly or indirectly, an Electronic Trading Platform to any third party except as expressly permitted by this Agreement; or
- (vi) to reverse engineer, disassemble or decompile any software; or
- (vii) to copy any manuals related to an Electronic Trading Platform; or
- (viii) to remove any statutory copyright notice, or other notice included in an Electronic Trading Platform or Licensor software or on any medium containing that software; or
- (ix) to transmit or receive using an Electronic Trading Platform (or cause to transmit or receive) any information or material which is pornographic, obscene, abusive, profane, offensive, misleading, deceptive, disparaging or defamatory; or
- (x) to use the Electronic Trading Platform after the expiry, termination or cancellation of this Agreement and/or any license agreement between Velocity Trade and its Licensor.

## 6.5 Security and operating environment

The Client is responsible for ensuring the adequacy of the operating environment and the security of the environment, both physical and electronic, of the Client's and the Client's Authorised Persons' access to and use of an Electronic Trading Platform, including:

### (a) **Maintain security measures**

maintaining appropriate security measures to prevent unauthorised access to, use of or damage:

- (i) to an Electronic Trading Platform and any information systems accessible through an Electronic Trading Platform; and
- (ii) to any password management system not explicitly controlled by Velocity Trade or a Licensor;

### (b) **Use of Electronic Trading Platform from laptop, etc.**

where the Client accesses and uses, or attempts to access and use, an Electronic Trading Platform from any laptop computer or other portable device, taking all measures necessary to ensure the security, integrity and reliability of such computer or other portable device (including the security of the internet connection) and the Client is solely liable for any failure in such computer or other portable device's security, integrity or reliability; and

(c) **Compliance with operational and security procedures**

complying with all reasonable operational and security procedures notified by Velocity Trade from time to time and to inform Velocity Trade immediately of any breach of security.

## 6.6 Disclaimer

To the maximum extent permitted by law, Velocity Trade makes no representation or warranty (express or implied) and expressly disclaims any warranties:

(a) **Quality and performance of Trading Platform**

in relation to the merchantability or fitness for a particular purpose and any warranty for the access to or use of or the results of the access to or use of a Trading Platform with respect to its suitability, availability, functionality, correctness, quality, accuracy, completeness, reliability, performance, timeliness, operation, continued availability or otherwise;

(b) **Instructions**

that any Trading Platform Communication:

- (i) will result in Velocity Trade entering into a Transaction with the Client; and/or
- (ii) has been received by Velocity Trade; and

(c) **Requirements or needs**

that a Trading Platform meets the requirements or needs of the Client.

## 7. Entry into of Transactions

---

### 7.1 Price quotes

(a) **Velocity Trade quotes prices and rates**

Velocity Trade, by way of the relevant Trading Platform or otherwise, quotes prices and rates which provide an indication of the prices and rates at which it is prepared to enter into Transactions and otherwise deal with the Client.

(b) **Velocity Trade is price maker**

The Client acknowledges and agrees that:

- (i) Velocity Trade acts under this Agreement as a price maker;
- (ii) Velocity Trade, by way of the relevant Trading Platform or otherwise, sets the applicable price or rate at which it is prepared to enter into Transactions and otherwise deal with the Client; and
- (iii) accordingly, by reason of Velocity Trade's Preferred Side, prices and rates that may be quoted and/or traded upon from time to time by other price and/or market makers or third parties do not apply to Transactions and dealings between Velocity Trade and the Client.

## **7.2 Client's decision to trade**

Except where a Transaction is terminated and closed out under this Agreement, the Client is responsible for deciding whether or not to deal at those prices or rates.

## **7.3 Offer and acceptance**

### **(a) Offer by Client**

- (i) If the Client wishes to deal at the prices or rates so indicated by Velocity Trade, it may make an offer to Velocity Trade to deal at that price or rate by communicating the requisite message by way of the relevant Trading Platform.
- (ii) Subject to clause 7.4(c), the Client acknowledges and agrees that, once it communicates that message, its offer is irrevocable.

### **(b) Acceptance by Velocity Trade**

- (i) Velocity Trade may choose, in its absolute discretion, whether or not to accept that offer.
- (ii) Subject to clause 7.5, if Velocity Trade accepts that offer the Client will receive or have access to (by way of the relevant Electronic Trading Platform) a Confirmation accordingly.
- (iii) If Velocity Trade does not accept that offer, the Client will receive a message from Velocity Trade by way of the relevant Trading Platform.

### **(c) Verification, etc., of Confirmation**

- (i) The Client is to review and verify the accuracy, correctness and completeness of each Confirmation immediately that it is made available.
- (ii) The Client acknowledges and agrees that, if the Client believes that any Confirmation is not accurate, complete or correct, the Client must notify Velocity Trade in writing within one hour of the time of receipt of the relevant Confirmation.
- (iii) The Client acknowledges and agrees that if, after communicating to Velocity Trade an offer (in accordance with clause 7.3(a)), the Client does not receive or have access to a Confirmation or a message from Velocity Trade as specified by clause 7.3(b)(iii), then it is the Client's responsibility to notify Velocity Trade within one hour of the Client communicating such offer, whether by way of telephone, Electronic Trading Platform or otherwise.
- (iv) Velocity Trade accepts no responsibility for mis-trades, errors in Confirmations or non-Confirmations if not notified within the period specified in accordance with sub-paragraphs (ii) and (iii).
- (v) The Client acknowledges and agrees that, if the Client fails so to notify Velocity Trade within the specified period, the Confirmation is deemed to be conclusive and binding on the Client, except in the case of manifest error or fraud.
- (vi) The Client acknowledges and agrees that, notwithstanding any delay in the production of a Confirmation and absent any manifest error, such Confirmation is evidence of a Transaction between the parties.

### **(d) Confirmation prevails**

If there is any inconsistency between a Confirmation and a provision of this Agreement, the Confirmation prevails.

## **7.4 Transaction outside trading limits**

### **(a) When offer to deal may not be accepted**

If the Client makes an offer to Velocity Trade to deal in relation to a Transaction:

- (i) in respect of which the Client will have, if the Transaction were to be entered into, no Free Margin (where required in relation to that type of Transaction); or
- (ii) outside any applicable Minimum Trading Size or Maximum Trading Size; or
- (iii) where the Client does not have sufficient funds in the relevant Account to satisfy a Part Payment Requirement or a Margin Requirement (where required in relation to that type of Transaction); or
- (iv) in other circumstance specified from time to time by Velocity Trade,

the Client acknowledges and agrees that its offer will or may be rejected by Velocity Trade.

### **(b) “Greying out”**

Where an Electronic Trading Platform is used, this rejection will or may be indicated by an offer being “greyed out”.

### **(c) Automatic revocation of offer**

If the Client makes an offer that is not accepted by Velocity Trade, that offer is deemed automatically to be revoked at the time of “greying out” or when the Client receives a rejection message from Velocity Trade by way of the relevant Trading Platform or otherwise.

## **7.5 Errors in quotes**

### **(a) Notice of error**

- (i) If the Client wishes to assert that a Transaction has been entered into (whether or not confirmed by Velocity Trade) at a price or rate which was, or ought reasonably to have been, known to either party to be materially incorrect at the time of the Transaction, the Client is to give notice to Velocity Trade within one hour after the Transaction or purported Transaction was entered into.
- (ii) If Velocity Trade wishes to assert that a Transaction has been entered into (whether or not confirmed by Velocity Trade) at a price or rate which was, or ought reasonably to have been, known to either party to be materially incorrect at the time of the Transaction, Velocity Trade is to give notice to the Client:
  - (A) in relation to a Spot FX Transaction, within one Business Day after the Transaction or purported Transaction was entered into; or
  - (B) in relation to any other type of Transaction, within three Business Days after the Transaction or purported Transaction was entered into.

(b) **Determination of materially incorrect**

If notice is given under paragraph (a), Velocity Trade, acting reasonably, is to determine whether the price or rate quoted was materially incorrect.

(c) **Parties not bound where price or rate known to be materially incorrect**

If Velocity Trade determines that the price or rate quoted was materially incorrect then, without prejudice to any rights Velocity Trade may have under Applicable Law or at law Velocity Trade will notify the Client of that determination and:

- (i) neither party is bound by any Transaction entered into (whether or not confirmed by Velocity Trade) at a price or rate which was, or ought reasonably to have been, known to either party to be materially incorrect at the time of the Transaction;
- (ii) that Transaction is deemed to have been void from the outset;
- (iii) Velocity Trade will endeavour to execute a Transaction (in same quantity and currencies) between Velocity Trade and Client on or close to the prevailing market prices but subject to the Velocity Trade Spread and any per trade or per lot commission and/or fees charged by Velocity Trade;
- (iv) this may or may not adversely affect the Client's realized and unrealized gains and losses;
- (v) Velocity Trade is not liable for any resulting errors in the balance(s) published for the Client's Account and reserves the right to make necessary corrections or adjustments to the Account involved; and
- (vi) any dispute arising from such quoting errors will be resolved on the basis of the fair market value, as determined by Velocity Trade acting in a commercially reasonable manner, of the relevant Currency at the time such an error occurred. In cases where the prevailing market rates plus the Velocity Trade Spread represent prices different from the rates Velocity Trade has quoted, Velocity Trade will make a commercially reasonable effort to contact the Client (including verbal notification to the extent possible) and will endeavour to execute trades on or close to the prevailing market prices, subject to the Velocity Trade Spread.

## 7.6 Transaction outside Velocity Trade Spread

(a) **Velocity Trade not bound in certain circumstances**

If a Transaction is entered into at a price or rate which varies from the Velocity Trade Spread at the time of entry into of the Transaction as a result of the Client affecting, modifying or using an Electronic Trading Platform in such a way that it:

- (i) fails to show changes in the Velocity Trade Spread that have occurred since the Client first made the relevant offer to deal; or
- (ii) in any other way results in a Transaction being based on an abnormal price in relation to the then-current market or trading conditions,

then Velocity Trade:

- (iii) is not bound by that Transaction; and

(iv) may avoid that Transaction by giving notice of avoidance under paragraph (b).

(b) **Notice of avoidance of Transaction**

If Velocity Trade wishes to avoid that Transaction, Velocity Trade must give notice to the Client within a reasonable period not exceeding 10 Business Days after the relevant offer was made.

## 8. Interest and third party accounts

---

### 8.1 Deposit Interest

(a) **Limited right to interest**

No interest is payable by Velocity Trade on an Account except as provided in this sub-clause.

(b) **Deposit Interest**

**Deposit Interest** means interest payable by Velocity Trade on Client Moneys.

(c) **Payment of Deposit Interest**

Velocity Trade may pay Deposit Interest on either of the following bases:

- (i) if, at Close of Business on any day, the Interest Earning Amount exceeds an applicable Margin Interest Threshold, Velocity Trade will pay simple interest to the Client on the Interest Earning Amount for that day at the interest rate then applicable to that Margin Interest Threshold; or
- (ii) by such other method as may be specified in the relevant schedule and//or addendum.

(d) **Interest rates and Margin Interest Thresholds**

The applicable interest rates and Margin Interest Thresholds in respect of which Velocity Trade will pay Deposit Interest are set out in the then-current Rates Schedule.

(e) **When Deposit Interest paid**

Velocity Trade will pay Deposit Interest in arrear on such days as may be specified in the relevant schedule and/or addendum.

(f) **Withholding tax**

The Client authorises Velocity Trade:

- (i) to withhold or deduct from any such payment of Deposit Interest to the Client any resident or non-resident withholding tax that is required to be withheld or deducted by Applicable Law; and
- (ii) if necessary for this purpose, to withdraw any such withholding tax from the Velocity Trade bank account where Client Moneys are held (including, where relevant, a Segregated Funds Account).

(g) **Retention by Velocity Trade**

Except to the extent that interest is payable to the Client pursuant to clause 8.1(c) Velocity Trade will retain for its own account any interest earned on money held for the Client in the Segregated Funds Account and will not be required to pay interest on any other money held for the Client.

## **8.2 Interest payable by Client**

### **(a) Interest on debit balance in Account**

If an Account has a debit balance, the Client is to pay interest daily to Velocity Trade on the full amount of that balance at the relevant Cost of Funds plus a margin that is set out in the then-current Disclosure Document or otherwise published or provided by Velocity Trade.

### **(b) Interest charged where Client fails to meet payment obligations**

If the Client fails to meet any payment obligations, the Client is to pay interest daily to Velocity Trade on the amount that was due but not paid at the relevant Cost of Funds plus a margin that is set out in the then-current Disclosure Document or otherwise published or provided by Velocity Trade.

## **8.3 Third party accounts**

### **(a) In Client's name**

The Client is to ensure that any cheque drawn by it, or transfer of moneys by it, is drawn on or made from an account in its name and not on or from that of another party, unless Velocity Trade has previously agreed otherwise in writing.

### **(b) Return of third party cheque or transfer**

The Client acknowledges and agrees that Velocity Trade:

- (i) may, in its absolute discretion, without being obliged to do so, return any cheque drawn on, or transfer of moneys from, a third party account, unless Velocity Trade has previously agreed otherwise in writing; and
- (ii) does not accept or bear any liability or responsibility for any Loss, including Consequential Loss, incurred or sustained by the Client as a result of or arising out of Velocity Trade returning any cheque drawn on, or transfer of moneys from, a third party account, including any Loss, including Consequential Loss, incurred or sustained by the Client because it is subsequently in default of its obligations under this Agreement or any Transaction.

## **9. Client Account**

---

### **9.1 Accounts to be kept separate**

Except as otherwise expressly provided in this Agreement, where the Client opens more than one Account:

- (a) Velocity Trade will treat each Account as separate; and
- (b) accordingly, any credit balance (including Free Margin) on one Account does not, except where Velocity Trade exercises its rights under clause 20, discharge any liability of the Client in respect of another Account.

## 9.2 Combination of Accounts

Where the Client so requests in writing:

- (a) **Velocity Trade may treat Accounts as single Account**

Velocity Trade may in its discretion agree to treat each of the Client's Accounts as one Account;

- (b) **References to Account**

if it does so, all references to the Account in this Agreement are to the Client's Accounts as so aggregated; and

- (c) **When request takes effect**

that request, if agreed to by Velocity Trade, takes effect on the date notified to the Client by Velocity Trade, which is to be no later than five Business Days from the date of actual receipt of the request by Velocity Trade.

## 10. Segregated Funds Account

---

### 10.1 Manner in which Client Money is held

Subject to this Agreement and Applicable Law, Velocity Trade will hold Client Money in respect of Transactions in a Segregated Funds Account:

- (a) in New Zealand with one or more Registered Banks; or
- (b) outside New Zealand with one or more overseas banks.

### 10.2 Client Money is pooled in Segregated Funds Account

The Client acknowledges and agrees that, where Client Money is described as being held in a "segregated funds account":

- (a) that account is maintained by Velocity Trade in its own name but is held in trust for the benefit of the clients
- (b) Client Money of the Client is pooled with client money of other clients of Velocity Trade;
- (c) Client Money of the Client may, in the insolvency of Velocity Trade and subject to Applicable Law, be held in favour of all clients of Velocity Trade with funds in the relevant Segregated Funds Account; and
- (d) there are risks involved in the manner in which Client Money is so held.

### **10.3 Permitted withdrawals from Segregated Funds Account**

The Client acknowledges and agrees that Velocity Trade may subject to Applicable Law withdraw moneys from a Segregated Funds Account for the purpose of:

(a) **Entering into, margining and settling Transactions**

making a payment for, or in connection with, the entering into, margining or settling of Transactions by Velocity Trade (including any such payment referred to in this Agreement); or

(b) **Payment to Client**

making a payment to the Client; or

(c) **Payment to other person as permitted under this Agreement**

making a payment:

(i) to a Hedging Counterparty or to the Buffer Account; or

(ii) in respect of withholding tax; or

(iii) to another person designated by Velocity Trade in connection with a Transaction entered into under this Agreement and agreed to by the Client,

such payments being, for the purposes of this clause, payments made to persons specified by the Client in accordance with the specific written authority of the Client;

(d) **Fees, commission, charges, etc.**

meeting the amount of any fees, commissions or other charges (including, for example, any Rollover Enhancement Income) properly payable under this Agreement by the Client to Velocity Trade in respect of any Transaction; or

(e) **Reimbursement of Velocity Trade**

making a payment to Velocity Trade in reimbursement for any payment made by Velocity Trade to or on behalf of the Client for which Velocity Trade is entitled to be reimbursed by the Client under this Agreement; or

(f) **Withdrawing money that is not Client Money**

where funds are deposited into the Segregated Funds Account that include Client Money and other money, withdrawing that portion of the funds that is not Client Money; or

(g) **Withdrawing Velocity Trade money**

where Velocity Trade has deposited its own money into the Segregated Funds Account to cover a shortfall in the Segregated Funds Account, withdrawing that money once it is no longer required to cover the shortfall.

### **10.4 Incorrect crediting of Segregated Funds Account**

Velocity Trade is entitled at any time to deduct, without notice or recourse to the Client, any moneys deposited in, or credited to, the Segregated Funds Account:

- (a) **Moneys credited in error**  
in error by, or upon behalf of, Velocity Trade; or
- (b) **Non-Client Moneys**  
that are not Client Money.

## 11. Representations and warranties

---

### 11.1 General

Each of Velocity Trade and the Client represents and warrants to the other that:

- (a) **Obligations enforceable**  
its obligations under each of this Agreement and each Transaction are legal, valid, binding and enforceable in accordance with its terms, subject to equitable principles and insolvency laws of general application;
- (b) **Litigation**  
no litigation, arbitration or administrative proceeding is current, pending or, to its knowledge, threatened that has or could have a material adverse effect on it or on Velocity Trade's ability to exercise or enforce its rights under this Agreement or any Transaction;
- (c) **Solvency**  
it is solvent and able to pay its indebtedness as it falls due;
- (d) **No Event of Default**  
no Event of Default has occurred and is continuing;
- (e) **No conflict with law**  
the execution and delivery of, and observance under, this Agreement and each Transaction, and any instrument in connection with this Agreement to which it is a party, do not violate or conflict with any Applicable Laws, any provision of its constituent documents, any order or judgment of any court or Public Authority applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (f) **Contracting as principal**  
it will be liable as principal for its obligations under this Agreement and under each Transaction and it is not acting as agent for any other party;
- (g) **Withholding tax**  
(other than any deduction or withholding required by law in relation to interest payable under this Agreement) it is not required by any Applicable Law, as modified by the practice of any relevant government revenue authority, to make any deduction or withholding for or on account of any tax from any payment to be made by it to the other party under this Agreement; and

(h) **Consents**

all consents required to be obtained by it in connection with the execution, delivery and performance of this Agreement, including in relation to its access to and use of a Trading Platform, have been obtained and all Transactions are valid and subsisting.

## 11.2 Client-specific representations and warranties

The Client represents and warrants that:

(a) **Information**

- (i) all information provided by the Client to Velocity Trade in connection with this Agreement and each Transaction was true in all material respects as at the date when that information was provided and remains so as at the date of this Agreement; and
- (ii) there are no facts or circumstances that have not been disclosed to Velocity Trade that would make that information untrue or misleading in any material respect;

(b) **Use of Trading Platform**

the Client's access to and use of each Trading Platform complies with:

- (i) all Applicable Law (including all relevant export laws and regulations to ensure that no software or any portion of it is exported, directly or indirectly, in violation of those laws);
- (ii) all applicable policies and practices of securities and futures exchanges and associations, alternative trading facilities, and regulatory or self-regulatory organisations; and
- (iii) the policies and procedures (whether stated orally or in writing) applicable to each Trading Platform and this Agreement;

and the Client has all consents, rights, authority and has taken all actions necessary, to use a Trading Platform and enter any Transactions relating thereto;

(c) **No default**

the Client is not in default under:

- (i) any agreement relating to indebtedness; or
- (ii) any guarantee; or
- (iii) any other agreement,

to an extent or in a manner that has or would have a material adverse effect on the Client;

(d) **Non-reliance**

- (i) the Client is acting for the Client's own account, and it has made its own independent decision to enter into this Agreement and each Transaction, and whether any Transaction is appropriate or proper, based upon the Client's own

judgment and upon advice from such advisers as the Client has deemed necessary;

- (ii) the Client is not relying on any communication (written or oral) of Velocity Trade as investment advice or as a recommendation to enter into this Agreement or any Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction are not considered investment advice or a recommendation to enter into that Transaction; and
- (iii) the Client has not received from Velocity Trade any assurance or guarantee as to the expected results of any Transaction;

(e) **Evaluation and understanding**

- (i) the Client is capable of assessing the merits of and understanding (on the Client's own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of each Transaction; and
- (ii) the Client is capable of assuming, and assumes, the financial and other risks of each Transaction;

(f) **Status of parties**

Velocity Trade does not act as a fiduciary for or an adviser to the Client in respect of any Transaction; and

(g) **No security interests**

except as disclosed to, and accepted in writing by, Velocity Trade, no security interest exists over or affects, nor is there any agreement to give or permit to exist any security interest over or affecting, any Account or moneys payable or paid to Velocity Trade.

### **11.3 Company-specific representations and warranties**

If the Client is a company, the Client represents and warrants that:

(a) **Existence, power and authority**

- (i) it is incorporated, has full power and authority to enter into and comply with its obligations under this Agreement and each Transaction; and
- (ii) has taken all corporate and other action and obtained all consents needed to enable it to do so; and

(b) **Constitution**

the execution, delivery and performance of this Agreement and each Transaction does not violate its constitution.

### **11.4 Trust-specific representations and warranties**

If the Client is trustee of a trust, the Client represents and warrants that:

- (a) **Trustee**
  - (i) the Client is entering into this Agreement and each Transaction as duly appointed trustee of the trust; and
  - (ii) the Client is presently the sole trustee or, if not, that all trustees have entered into this Agreement;
- (b) **Trust deed**
  - (i) the trust was validly created and is in existence at the date of the Client's submission of the Application Form;
  - (ii) the execution, delivery and performance of this Agreement and each Transaction is permitted by the terms of the trust deed and does not violate the trust deed or the trust; and
  - (iii) the trust is solely constituted by the trust deed;
- (c) **Power and authority**
  - (i) the Client has full power and authority to enter into and comply with its obligations under this Agreement and each Transaction; and
  - (ii) the Client has taken all action and obtained all consents necessary to enable it to do so; and
  - (iii) the Client is not in breach of the terms of the trust, whether related to this Agreement or not, and has the right to be indemnified from the assets of the trust for all liabilities incurred under this Agreement and each Transaction;
- (d) **Acknowledgment**

even though the Client is entering into this Agreement and each Transaction as trustee of a trust, the Client is personally liable to meet any obligations under this Agreement and each Transaction.

## **11.5 Representations continuing**

Each of the representations and warranties in this clause is deemed to be repeated continuously so long as this Agreement remains in effect by reference to the facts and circumstances then existing.

## **12. Trading hours**

---

### **12.1 Normal Trading Hours**

Subject to clauses 12.2 and 12.3, Velocity Trade intends to, but is under no obligation to, quote prices and rates and accept instructions (whether oral, written or electronic) in relation to any Transaction during Normal Trading Hours.

### **12.2 Public holidays**

Velocity Trade is under no obligation to quote prices or rates, or to accept instructions (whether oral, written or electronic) in relation to any Transaction on a public holiday in any

jurisdiction which, in Velocity Trade's reasonable opinion, affects any relevant currency, security, commodity, derivatives, future, market or exchange.

### **12.3 Limited trading**

Velocity Trade is under no obligation to quote prices or rates or accept instructions (whether oral, written or electronic) in relation to any Transaction during any time when any relevant foreign exchange, securities, commodities, derivatives or futures market or exchange is closed for business.

## **13. Legal and regulatory requirements**

---

### **13.1 Compliance with Applicable Law by Velocity Trade**

(a) **Action to comply with Applicable Law**

Notwithstanding any other provision of this Agreement, Velocity Trade may take any action it considers necessary or desirable in its absolute discretion to ensure compliance with all Applicable Law.

(b) **Undertaking to comply**

Velocity Trade undertakes to comply with all Applicable Law including the terms and conditions of any authorisation to carry on the business of dealing in futures contracts granted by the Securities Commission under the Securities Markets Act and under the terms of its Australian financial services licence.

### **13.2 Compliance with Applicable Law by Client**

The Client undertakes to comply with all Applicable Law.

## **14. Payments**

---

### **14.1 Payments generally**

(a) **Obligation to pay**

Each party is to make each payment specified in this Agreement and in each Confirmation to be made by it, subject to the provisions of this Agreement.

(b) **Manner of payment**

Subject to the provisions of this Agreement, each payment under this Agreement or any Transaction is to be made on the due date for value on that date in the currency of the relevant amount, in freely transferable and immediately available funds.

(c) **Free and clear**

Unless otherwise agreed to by Velocity Trade, each payment under this Agreement or any Transaction is to be paid free and clear of, and without withholding or deduction for or on account of, any Taxes, unless the withholding or deduction is required by law.

## 14.2 Gross-up

If:

(a) **Client required to withhold, etc.**

the Client is required by law to make any deduction or withholding (excluding New Zealand resident withholding tax) for or on account of Tax from any amount paid or payable by it under this Agreement; or

(b) **Velocity Trade required to make payment**

Velocity Trade is required by law to make any payment on account of Tax (other than Tax on its overall net income) on or in relation to any amount received or receivable by it under this Agreement,

the amount in respect of which that deduction, withholding or payment is required to be made is to be increased so that Velocity Trade actually receives and retains (free from any liability in respect of any deduction, withholding or payment) a net amount equal to the amount that it would have received and retained had no deduction, withholding or payment been required to be made.

## 14.3 Payment netting

Velocity Trade may, in its absolute discretion, determine and advise the Client that:

(a) **Same amounts in same currency**

if, on any date, the same amounts are payable under this Agreement in respect of the same type of Transaction by each party to the other in the same currency, then, on that date, each party's obligation to pay that amount is automatically satisfied and discharged; and

(b) **Different amounts in same currency**

if, on any date, the aggregate amount payable by one party exceeds the aggregate amount that is payable by the other party in the same currency, then, on that date, the amounts payable by each party to the other party are to be paid or satisfied by payment of the net amount of those obligations by the party having a net debit to the party having a net credit.

## 14.4 Authority to apply amounts due from Client

Unless specified otherwise in this Agreement, all amounts due to Velocity Trade under this Agreement or any Transaction may, at the option of Velocity Trade, be deducted from any funds, including Client Moneys, held by Velocity Trade for the Client, as well as each Account.

## 14.5 Credit balance in Account

(a) **Withdrawal of Free Margin**

- (i) The Client may request Velocity Trade to withdraw an amount of Free Margin to make a payment to the Client.
- (ii) In addition, Velocity Trade may withdraw an amount of Free Margin to make a payment to:

- (A) a Hedging Counterparty or to the Buffer Account; or
  - (B) in respect of withholding tax; or
  - (C) another person designated by Velocity Trade in connection with a Transaction entered into under this Agreement and agreed to by the Client.
- (iii) The Client acknowledges and agrees that payments made under sub-paragraph (ii) are to persons specified by the Client in accordance with the specific written authority of the Client.
- (b) **Conditions to be satisfied**

However, Velocity Trade may withhold any such withdrawal under paragraph (a)(i) or (ii) if:

- (i) Velocity Trade, acting reasonably, considers that funds may be required from the Client to meet any current or future margin in respect of an outstanding Transaction;
- (ii) the Client has any contingent liability to Velocity Trade or to any of its Associates in respect of any other account of the Client with any of them;
- (iii) Velocity Trade, acting reasonably, considers that there is an unresolved dispute between Velocity Trade and the Client arising out of or in connection with this Agreement or any Transaction; or
- (iv) Velocity Trade considers it necessary or desirable to do so to enable Velocity Trade to comply with Applicable Law.

## 14.6 Title and interest

### (a) Payments free of security interest

Each party agrees that all right, title and interest in, to, under or derived from any payment which it makes to the other party in respect of this Agreement or any Transaction vests in the recipient clear of any security interest or any other adverse interest of the payer (other than any interest that arises under the Futures Industry (Client Funds) Regulations 1990 of New Zealand or the Corporations Act) or any third party.

### (b) No security interest

Nothing in this Agreement is intended to create in favour of either party any security interest in any moneys or other property transferred by one party to the other party under this Agreement or any Transaction.

## 15. Fees, commission and other charges

---

### 15.1 Obligation to pay

The Client is to pay to Velocity Trade each fee, commission and charge in respect of this Agreement or a Transaction specified at the relevant time in either the Disclosure Document or the then-current Rates Schedule or as otherwise notified by Velocity Trade to the Client or its clients generally.

## **15.2 Authority to deduct**

The Client authorises Velocity Trade, in accordance with its usual practice, to withdraw from the Velocity Trade bank account where Client Moneys are held (including, where relevant, the Segregated Funds Account), and to debit the relevant Account accordingly, at any time any such fee, commission or charge when it becomes payable.

## **16. Taxes**

---

### **16.1 Obligation to pay and authority to deduct**

(a) **GST, etc.**

The Client is to pay all applicable GST and other Taxes and all other fees reasonably incurred by Velocity Trade in connection with this Agreement or any Transaction.

(b) **Stamp duty, etc.**

Any imposition of stamp duty or other Tax, which may from time to time be levied in respect of this Agreement or any Transaction, is for the account of, and payable by, the Client.

(c) **Authority to deduct**

The Client authorises Velocity Trade, in accordance with its usual practice, to withdraw from the Velocity Trade bank account where Client Moneys are held (including, where relevant, the Segregated Funds Account), and to debit the relevant Account accordingly, any such GST, Tax, other fee, stamp duty or other Tax.

### **16.2 Entitlement to withhold**

Velocity Trade is entitled to deduct or withhold any Tax, as required by law to be deducted or withheld, from any payment made under this Agreement, or any payment made under any Transaction or any amount credited to the Velocity Trade bank account where Client Moneys are held (including, where relevant, the Segregated Funds Account) or any Account.

## **17. Force Majeure**

---

### **17.1 No default**

Velocity Trade is not in default or breach of this Agreement or any Transaction to the extent that Force Majeure arises.

### **17.2 Notice of Force Majeure**

(a) **Notice of Force Majeure**

Subject to paragraph (b), if Force Majeure arises, Velocity Trade is to use its reasonable endeavours to give notice as soon as reasonably practicable to the Client accordingly.

(b) **Velocity Trade not liable for failure to give notice**

Velocity Trade is not liable to the Client for any failure or delay in giving this notice.

### 17.3 Effect of Force Majeure

If Force Majeure arises, and regardless of whether or not Velocity Trade has given the notice referred to in clause 17.2(a), Velocity Trade may take whatever steps in relation to this Agreement or any Transaction that, in its opinion, are necessary or desirable, including:

(a) **Margin Percentage**

changing the Margin Percentage; or

(b) **Trading hours**

changing or restricting any hours within which the Client may enter into Transactions;  
or

(c) **Amendments**

amending this Agreement or any Transaction, to the extent only that it is not possible, practicable or legal for Velocity Trade to perform or comply with its obligations to the Client under this Agreement or any Transaction; or

(d) **Termination and close-out**

terminating, closing out or not rolling over any Transaction or cancelling any instructions or orders under this Agreement or any Transaction; or

(e) **Other action**

taking or omitting to take any other action that Velocity Trade, acting reasonably, deems to be appropriate in the circumstances having regard to its business and its clients generally.

## 18. Events of Default

---

### 18.1 Events of Default

An **Event of Default** is any of the following events or circumstances with respect to Velocity Trade or the Client, as appropriate (the **Defaulting Party**, the other party being the **Non-defaulting Party**):

(a) **Misrepresentation**

any representation or warranty made by Velocity Trade or the Client under or in connection with this Agreement or a Transaction is later found to be incorrect or misleading in a material respect; or

(b) **Failure of Client to meet Margin Requirement**

the Client fails to maintain margin at least equal to the then-current Margin Requirement; or

- (c) **Failure of Client to meet any other Credit Requirement**
- the Client fails to satisfy any Credit Requirement; or
- (d) **Losses exceed applicable Credit Requirement**
- either:
- (i) the unrealised losses of outstanding Margin FX Transactions of the Client exceed any applicable Margin Requirement at any time; or
  - (ii) the unrealised losses of outstanding Tenor FX Transactions of the Client exceed any applicable Part Payment Requirement at any time; or
- (e) **Breach of other obligations**
- the Client fails to perform or comply with any of its other obligations under this Agreement or any Transaction; or
- (f) **Breach of Applicable Law**
- the Client is in breach of any Applicable Law; or
- (g) **Conduct of Client**
- the conduct of the Client is such that, in the opinion of Velocity Trade, it would cause a reasonably prudent financial person dealing in transactions (such as Margin FX Transactions or other Transactions as may be provided for under this Agreement) to be of the view that the Client could be unable to perform and comply with any of the Client's obligations under this Agreement or any Transaction, including strict compliance with any time limit; or
- (h) **Death or mental incapacity of Client**
- where the Client is a natural person:
- (i) the Client dies or becomes of unsound mind; or
  - (ii) the Client's person or estate is liable to be dealt with in any way under any law relating to mental health; or
- (i) **Inability to contact Client**
- in the absence of the Client making alternative arrangements, the Client is not contactable by Velocity Trade for any period of 24 hours in order for Velocity Trade to obtain instructions relating to any Transaction, any order or any obligations of the Client under this Agreement or any Transaction; or
- (j) **Bankruptcy of Client**
- the Client becomes bankrupt or enters into a composition or arrangement for the benefit of creditors or becomes insolvent under administration as defined in the Corporations Act; or
- (k) **Insolvency**
- Velocity Trade or the Client, where the Client is a company:

- (i) is put into liquidation voluntarily or otherwise (except for the purpose of reconstruction approved in advance in writing by Velocity Trade); or
  - (ii) enters into any compromise or arrangement with or assignment for the benefit of any of its creditors or members; or
  - (iii) any liquidator, administrator, receiver, manager, receiver and manager, managing controller or official or statutory manager is appointed; or
  - (iv) is or becomes insolvent within section 95A of the Corporations Act; or
- (l) **Moratorium, etc.**
- Velocity Trade or the Client imposes a moratorium on payments to creditors or ceases or threatens to cease carrying on business; or
- (m) **Withdrawal of security by Client**
- any guarantee of or security given in respect of the Client's obligations under this Agreement is, without the consent of Velocity Trade, withdrawn or becomes defective or insufficient.

## 18.2 Designation of Termination Date on occurrence of Event of Default

(a) **Termination by Termination Notice**

If, at any time, an Event of Default has occurred in respect of the Defaulting Party, the Non-defaulting Party may give a Termination Notice to the Defaulting Party designating a Termination Date for the termination of all (or some only) Transactions.

(b) **Immediate termination**

If an Event of Default occurs pursuant to clauses 18.1 (b), (c) or (d), Velocity Trade may immediately terminate all (or some only) Transactions without giving a Termination Notice to the Defaulting Party.

## 19. Other terminations

---

### 19.1 Velocity Trade's right to break

(a) **Notice of Break Date**

If Velocity Trade is at any time unable to obtain acceptable wholesale prices or rates under any of its Hedging Arrangements, Velocity Trade may terminate any or all outstanding Transactions before their Value Date by giving a Termination Notice to the Client not less than one Business Day before the proposed termination date (the **Break Date**).

(b) **Contents of Termination Notice**

The notice must specify:

- (i) each Transaction to be terminated; and
- (ii) the Break Date.

(c) **Consequences of Termination Notice**

If a Termination Notice is given under paragraph (a):

- (i) the Termination Notice is to specify the Termination Date of each Transaction; and
- (ii) the amount payable in respect of that Termination Date and each Terminated Transaction is to be determined and paid in accordance with clause 20.3.

## 19.2 **Abnormal Market Conditions**

If, in the opinion of Velocity Trade, Abnormal Market Conditions exist, it may (but is not obliged to):

(a) **Termination Notice**

give a Termination Notice to the Client designating a Termination Date for the termination of all (or some only) Transactions; or

(b) **Immediate Termination**

terminate those Transactions immediately in accordance with clause 20.2.

## 19.3 **Dealing in futures contracts**

If:

(a) **Cease or limit dealing**

Velocity Trade is requested or required by any Public Authority to cease or limit carrying on business of dealing in one or more types of Transactions; or

(b) **Rescission, etc., of consent**

any consent, licence or authority that Velocity Trade has obtained from a Public Authority is rescinded, modified or varied in any material respect,

then Velocity Trade may give a Termination Notice to the Client designating a Termination Date for the termination of all (or some only) Transactions which is not later than the second Business Day after the date of that Termination Notice.

## 19.4 **Illegality**

If at any time it is unlawful or contrary to any present or future requirement (whether or not having the force of law) of any Public Authority or of Applicable Law for:

(a) **Perform obligations**

Velocity Trade to perform or comply with all or any of its obligations under this Agreement or any Transaction; or

(b) **Exercise of rights**

Velocity Trade to exercise all or any of its rights under this Agreement or any Transaction; or

(c) **Compliance with Hedging Arrangements**

- (i) Velocity Trade to comply with any of its obligations under any Hedging Arrangements; or
- (ii) any third party that is party to any such Hedging Arrangements to comply with any of its obligations under those Hedging Arrangements,

then Velocity Trade:

(d) **Notice**

must promptly give notice accordingly to the Client; and

(e) **Termination Notice**

may give a Termination Notice to the Client designating a Termination Date for the termination of all (or some only) Transactions which is not later than the second Business Day after the date of receipt of that Termination Notice.

## **19.5 Ceasing to deal in type of Transactions**

(a) **Withdrawal of Transactions**

Velocity Trade may at any time send a Termination Notice to the Client notifying the Client that Velocity Trade will cease to deal in any type of Transaction.

(b) **Contents of notice**

This Termination Notice is to specify a Termination Date on which Velocity Trade will cease to deal in the type of Transaction, which Termination Date is to be at least one Business Day after the notice is sent.

(c) **Obligation to close-out**

The Client agrees to close out all outstanding Transactions in relation to the relevant type of Transaction before the Termination Date.

(d) **Close out by Velocity Trade**

Close out by Velocity Trade closes out any remaining outstanding Transactions in the relevant type of Transaction on the Termination Date with effect from Close of Business on that day.

## **20. Close-out**

---

### **20.1 Termination**

If:

(a) **Credit Requirement-related Events of Default**

an Event of Default occurs pursuant to clauses 18.1 (b), (c) or (d); or

(b) **Event of Default**

any other Event of Default occurs and the Non-defaulting Party gives a Termination Notice pursuant to clause 18; or

(c) **Other terminations**

Velocity Trade gives a Termination Notice pursuant to clause 19; or

(d) **Abnormal Market Conditions**

Abnormal Market Conditions exist; or

(e) **Schedule**

the relevant schedule provides accordingly,

then:

(f) **Termination of Terminated Transactions**

as from the Termination Date, the Terminated Transactions are terminated;

(g) **Calculation of netted balance**

the amount payable in respect of that Termination Date and those Terminated Transactions is to be determined by Velocity Trade and paid in accordance with this clause; and

(h) **Refuse to enter into further Transactions**

Velocity Trade may refuse to enter into any further Transactions.

## 20.2 Immediate termination

Notwithstanding any other provision in this Agreement, the parties agree that where:

(a) **Credit Requirement-related Event of Default**

an Event of Default occurs pursuant to clauses 18.1(b), (c) or (d); or

(b) **Abnormal Market Conditions**

Abnormal Market Conditions exist,

some or all Transactions in existence between them will (in the case of paragraph (a)) and may (in the case of paragraph (b)) immediately become Terminated Transactions and that:

(c) **Termination Date**

the Termination Date is the date of the occurrence of such Event of Default or that such Abnormal Market Conditions first occur;

(d) **No obligation to provide Termination Notice**

the nature of immediate termination is such that Velocity Trade will not be able to give a Termination Notice to the Client prior to the termination taking effect; and

(e) **Subsequent notice**

Velocity Trade may, but is not obliged to, give a Termination Notice to the Client after such Transactions have been terminated, whether by way of electronic mail, text messaging, a message displayed on the Trading Platform or such other notice procedures as are set out in this Agreement.

### **20.3 Calculation of netted balance on termination**

The netted balance payable in respect of a Termination Date and the relevant Terminated Transactions is to be determined by Velocity Trade as follows:

(a) **Velocity Trade calculates netted balance**

Velocity Trade is to take an account of all money due between the parties in respect of the Terminated Transactions by calculating an amount equal to:

(i) the sum of:

(A) the Settlement Amount (as determined by Velocity Trade); and

(B) the Termination Currency Equivalent of any amounts that are due and payable but unpaid from the Client to Velocity Trade; less

(ii) the Termination Currency Equivalent of any amounts that are due and payable but unpaid from Velocity Trade to the Client; and

(b) **Two-way payments**

all obligations in respect of that netted balance are to be satisfied by payment of the net amount due from or on behalf of the party having a net debit to or on behalf of the party having a net credit.

### **20.4 Payment on termination**

On or as soon as reasonably practicable after the Termination Date, Velocity Trade is to give the Client notice specifying any amount payable in accordance with clause 20.3.

### **20.5 When netted balance due**

Any netted balance calculated in accordance with to clause 20.3 is payable in the case of:

(a) **Event of Default**

a Termination Date which occurs as a result of an Event of Default, on the day on which notice given in accordance with clause 20.4 is effective; or

(b) **Other termination**

any other Termination Date, on the day which is two Business Days after the day on which notice given in accordance with clause 20.4 is effective.

## 20.6 Pre-estimate

### (a) Not a penalty

The parties agree that any Settlement Amount determined by reference to the Close Out Formula is a reasonable pre-estimate of loss and not a penalty.

### (b) Loss of bargain, etc.

The parties agree that:

- (i) any Settlement Amount includes full and final payment in respect of the loss of bargain and the loss of protection against future risks; and
- (ii) except as otherwise provided in this Agreement, neither party is entitled to recover any additional damages as a consequence of those losses.

## 20.7 Set-off

Notwithstanding any other provision of this agreement and without limiting any right of set-off, off-set, combination of accounts, right of retention or withholding or similar right that either party may have at law or in equity, the Client agrees that Velocity Trade may debit and set off at current value any moneys due and payable by the Client to Velocity Trade under this Agreement or any Transaction or otherwise against any currency deposits or other moneys held by Velocity Trade or payable by the Client.

## 20.8 Professional costs

### (a) Liability for costs

The Client is liable to Velocity Trade for any costs and expenses incurred by Velocity Trade, acting reasonably, in connection with or arising out of the exercise by Velocity Trade of its rights under this clause, together with interest on those costs and expenses at the Cost of Funds.

### (b) Authority to withdraw

The Client authorises Velocity Trade to withdraw the amount of any such costs, expenses or interest payable under paragraph (a) from the Velocity Trade bank account where Client Moneys are held (including, where relevant, the Segregated Funds Account).

## 21. Indemnity

---

### 21.1 Indemnity

The Client indemnifies each of Velocity Trade, each of its Representatives and each of its Associates (each, an **indemnified party**) against, and agrees to hold each of them harmless from, any and all Loss, including Consequential Loss, sustained or incurred by an indemnified party arising out of or in connection with:

#### (a) Breach of representation

any breach of representation or warranty made by the Client and/or its Authorised Persons under or in connection with this Agreement or any Transaction; or

(b) **Failure to comply**

any failure by the Client to comply with or perform any of its obligations under or in connection with this Agreement or a Transaction; or

(c) **Use of Trading Platform**

(i) any access or use or attempted access or use to or of a Trading Platform by the Client, its Authorised Persons and any person accessing or using a Trading Platform through any Security Credentials, whether or not such access or use is authorised by the Client; or

(ii) any third party claim related to the access or use or attempted access or use to or of a Trading Platform by the Client or its Authorised Persons, any component of a Trading Platform or any data provided through a Trading Platform or relating to decisions or advice arising out of such access or use; or

(iii) any claim by any Licensor arising or resulting from the Client's and its Authorised Persons' access or use or attempted access or use to or of an Electronic Trading Platform; or

(iv) any insufficiency whatsoever with respect to the environment from which the Client accesses or uses a Trading Platform and/or with respect to the Client's security measures to prevent unauthorised access to or use of a Trading Platform and any security breach in relation to a Trading Platform (including any access to or use of any of Velocity Trade's other systems not covered by this Agreement and any software viruses or other activities that comprise the security arrangements of Velocity Trade's IT infrastructure or network) caused directly or indirectly by the Client or any of its Representatives; or

(d) **Orders and instructions**

(i) any error, corruption or delay in any order or other instruction (whether oral, written or electronic) communicated by the Client or by an Authorised Person; or

(ii) acting on any order or instruction (whether oral, written or electronic) which is, or appears to be, from an Authorised Person or which is communicated using any Security Credentials; or

(e) **Termination and close-out of Transactions**

the termination and close-out by Velocity Trade of any Transaction under this Agreement; or

(f) **Third party rights**

the enforcement of an indemnified party's rights under this Agreement or any Transaction,

except and to the extent that the Loss or Consequential Loss is sustained or incurred by an indemnified party directly as a result of its gross negligence or wilful default.

## 21.2 **Currency indemnity**

If:

(a) **Judgment or order**

a judgment or order is rendered by any court or tribunal:

- (i) for the payment of any amount owing to an indemnified party; or
- (ii) for the payment of damages in respect of any breach of this Agreement or any Transaction; or
- (iii) under or in respect of a judgment or order of another court or tribunal for the payment of those amounts or damages; and

(b) **Judgment currency**

that judgment or order is expressed in a currency (the **judgment currency**) other than the Client Base Currency,

then the Client indemnifies and holds harmless the indemnified party against any deficiency in terms of the Client Base Currency in the amount received by the indemnified arising or resulting from any variation between:

(c) **Conversion rate of exchange**

the rate of exchange at which the Client Base Currency is converted into the judgment currency for the purposes of that judgment or order; and

(d) **Actual rate of exchange**

the rate of exchange at which the indemnified party is able to purchase the Client Base Currency with the amount of the judgment currency actually received by the indemnified party.

### **21.3 Additional provisions in relation to indemnities**

(a) **Indemnities separate**

Each indemnity in this clause constitutes a separate and independent obligation of the Client from its other obligations under this clause.

(b) **No proof of Loss required**

No proof or evidence of any actual Loss, including Consequential Loss, may be required by the Client.

### **21.4 Privity Legislation**

Clause 21.1 confers, and is intended to be construed to confer, a benefit on, and to create an obligation enforceable at the suit of, each Representative and each Associate for the purposes of the Contracts (Privity) Act 1982 of New Zealand and similar legislation of any other relevant jurisdiction. If the laws of any relevant jurisdiction prevent any Representative or Associate of Velocity Trade being able to enforce directly the provisions of clause 21.1 then the rights and benefits of the indemnities granted pursuant to clause 21.1 for the Representatives and Associates of Velocity Trade will be held upon trust by Velocity Trade for the Representatives and Associates and may be enforced by Velocity Trade as trustee for those beneficiaries.

## 22. Exclusion of liability

---

Velocity Trade is not liable to the Client for any Loss or Consequential Loss suffered or incurred by the Client arising out of or in connection with this Agreement or any Transaction, whether in contract, tort, or otherwise, including:

(a) **Orders and instructions**

- (i) any error, corruption or delay in any order, instruction or other communication (whether oral, written or electronic) by the Client or by any of its Authorised Persons; or
- (ii) Velocity Trade acting on any order, instruction or other communication (whether oral, written or electronic) through any Security Credentials or which otherwise is, or appears to be, from any of its Authorised Persons; or

(b) **General financial product advice, etc.**

any misrepresentation of any information or general financial advice provided by or on behalf of Velocity Trade in relation to this Agreement or a Transaction; or

(c) **Knowing reliance on incorrect rates**

except in the case of fraud by Velocity Trade, the reliance of the Client on a rate or a price which the Client knew, or ought reasonably to have known, to be materially incorrect; or

(d) **Account errors**

the entry into of a Transaction, or other action, by the Client on the basis of money deposited in or credited to an Account, or (where applicable) the Segregated Funds Account or any other account where Client Money is held, in error by, or on behalf of, Velocity Trade; or

(e) **Enforcement rights**

the exercise, attempted exercise or non-exercise of any of the rights, powers or remedies of Velocity Trade under this Agreement or any Transaction; or

(f) **Force Majeure**

the occurrence and continuance of any Force Majeure; or

(g) **Trading Platform – Client failure**

any failure of the Client:

- (i) to access or use a Trading Platform for its intended purposes; or
- (ii) to maintain the security, integrity and confidentiality of all Security Credentials; or
- (iii) to verify its Trading Platform Communications and any communications sent by Velocity Trade by way of the relevant Trading Platform, other notices and communications and other reports; or

- (iv) to ensure the compliance of each of its Authorised Persons with each of the above; or
- (h) **Failure of Trading Platform**  
  
any deficiency whatsoever of a Trading Platform, including failure of, or inability to, access or use a Trading Platform; or
- (i) **Abnormal Market Conditions**  
  
the occurrence of Abnormal Market Conditions; or
- (j) **Stop Loss Order**  
  
any failure of Velocity Trade to close out a Transaction at the rate or price set out in a Stop Loss Order for the reasons set out in the relevant schedule; or
- (k) **Limit Order**  
  
any failure of Velocity Trade to enter into a Transaction at the rate or price set out in a Limit Order for the reasons set out in the relevant schedule; or
- (l) **Failure of telecommunications link**  
  
any failure of a telecommunications link or network by which the Client may seek access to or use of a Trading Platform; or
- (m) **Website**  
  
with respect to any information published on Velocity Trade's website, including any claims or losses in relation to the accuracy, reliability or timeliness of such information; or
- (n) **Support**  
  
with respect to any support, advice or assistance provided by Velocity Trade, including any claims or losses in relation to technical support, trading support and account administration support.

## 23. Tape recording

---

### 23.1 Telephone conversations

The Client acknowledges and agrees that Velocity Trade may:

- (a) **Recording authorised**  
  
record all telephone conversations between the Client and Velocity Trade; and
- (b) **Use of recording**  
  
submit the recording, or a transcript from the recording, as evidence to any court or in any proceeding for the purpose of establishing any matters pertinent to this Agreement or any Transaction.

## 23.2 Retention of records

The Client acknowledges and agrees that Velocity Trade is under no obligation to retain a recording or transcript made by Velocity Trade and that Velocity Trade may destroy such recording or transcript.

## 24. Confidentiality

---

### 24.1 Confidential Information

Each party undertakes, without the prior written consent of the other party:

(a) **Use and disclosure of Confidential Information**

not to use (other than in performing its obligations or exercising its rights under this Agreement or a Transaction) or disclose to any person any Confidential Information it has or acquires under or pursuant to this Agreement or any Transaction; and

(b) **Prevention of use and disclosure of Confidential Information**

to make every effort, including issuing legal proceedings, to prevent the use or disclosure of Confidential Information by any person.

### 24.2 Exceptions

The obligations contained in clause 24.1 do not apply:

(a) **Requirements of law or stock exchange**

to the extent required by law, by the listing requirements of any relevant stock exchange or other Public Authority; or

(b) **Public domain**

to the extent that the information is already in the public domain (other than by virtue of a breach by it of the provisions of this Agreement or any Transaction); or

(c) **Agreement**

to any information that each party agrees in writing is not Confidential Information; or

(d) **Performance of obligations**

to the extent that either party must use or disclose Confidential Information in order to perform its obligations under, or comply with the terms of, this Agreement or any Transaction; or

(e) **Limited disclosure**

to any information about the Client that Velocity Trade, in its absolute discretion, deems necessary to disclose to its Representatives or Associates (including to any third party, including MBL, pursuant to any Hedging Arrangements) provided that each of those persons:

(i) is made aware of the provisions of this clause; and

- (ii) needs to know that information for the purpose of performing obligations or exercising rights under this Agreement, a Transaction or in connection with any Hedging Arrangements, as the case may be.

### **24.3 Security breach**

If either party becomes aware, or suspects, that any unauthorised person has obtained or attempted to obtain access to Confidential Information of the other party, that party is immediately to notify the other party and take the steps reasonably available to it to protect that Confidential Information.

### **24.4 Privacy Statement**

By entering into this Agreement, the Client authorises Velocity Trade to process, disclose and use information relating to the Client as described in the Privacy Statement.

## **25. Conflicts of interest**

---

### **25.1 Third party conflicts of interest**

Nothing in this Agreement prevents:

(a) **Third party**

Velocity Trade providing advice and other services to third parties whose interests may be in conflict or competition with the Client's interests; or

(b) **Other Clients**

any of Velocity Trade, any of its Associates and any of its or their Representatives acting on behalf of other clients who may take positions opposite to the Client or may be in competition with the Client to acquire the same or a similar position.

### **25.2 Velocity Trade not responsible for loss**

(a) **No deliberate favour**

Velocity Trade will not deliberately favour any person over the Client.

(b) **Acknowledgement and agreement**

The Client acknowledges and agrees that Velocity Trade is not responsible for any Loss, including Consequential Loss, which may result directly or indirectly from advice, other services or actions provided or taken pursuant to clause 25.1.

### **25.3 No fiduciary duties**

The Client acknowledges that Velocity Trade's relationship to the Client is not that of a fiduciary and Velocity Trade owes no fiduciary duties to the Client.

## 26. Hedging Arrangements

---

### 26.1 Hedging

(a) **With third parties**

From time to time, Velocity Trade may effect hedging and other transactions with or through third parties, including its Associates and MBL, in order to hedge its exposure under this Agreement and Transactions.

(b) **MBL**

For these purposes, the Client acknowledges and agrees that Velocity Trade has entered into certain Hedging Arrangements as principal with MBL and may from time to time enter into further arrangements with MBL.

(c) **Buffer Account**

For these purposes also, the Client:

- (i) acknowledges and agrees that Velocity Trade will withdraw funds from the Velocity Trade bank account where Client Moneys are held (including, where relevant, the Segregated Funds Account) and deposit those funds in one or more Buffer Accounts;
- (ii) acknowledges and agrees that each Buffer Account is not a trust account or a segregated funds account, such that any funds in that account may, subject to Applicable Law, be available to the creditors generally of the account holder; and
- (iii) authorises Velocity Trade to withdraw from time to time, in respect of the Client, such amount from Velocity Trade bank account where Client Moneys are held (including, where relevant, the Segregated Funds Account) that Velocity Trade, in its absolute discretion, deems necessary or advisable in order that Velocity Trade is able to provide margin and a substantial additional buffer in relation to any transactions it has entered into or may enter into with MBL or any other third party with whom Velocity Trade enters into Hedging Arrangements.

### 26.2 Sharing of commissions, fees and charges

(a) **Acknowledgement and agreement**

The Client acknowledges and agrees that Velocity Trade may share commissions, fees and charges with its Associates or other third parties or receive remuneration from them in respect of Transactions and/or Hedging Arrangements.

(b) **Disclosure**

Details of these commissions, fees, charges, remuneration or sharing arrangements will not be set out in the relevant Confirmation but will be disclosed in accordance with any requirements of Applicable Law.

## 27. Instructions and Authorised Persons

---

### 27.1 Instructions

(a) **Client instructions and appointment of Authorised Persons, etc.**

- (i) The Client may place an order or otherwise give Velocity Trade instructions (whether oral, written or electronic) as specified in any then-current Disclosure Document or otherwise published or provided by Velocity Trade.
- (ii) Velocity Trade may, in its absolute discretion, decide whether or not to accept any oral, written or electronic instructions.
- (iii) The persons authorised to place an order or to otherwise give Velocity Trade instructions, including in relation to any Transaction, on the Client's behalf are those persons notified by the Client to Velocity Trade.
- (iv) The Client may vary those persons by written notice to Velocity Trade.
- (v) Velocity Trade is not bound by any such variation until it actually receives written notice accordingly.

(b) **Velocity Trade may act on instructions, etc.**

- (i) Velocity Trade may act upon the oral, written or electronic order or instruction, including any Trading Platform Communications, of any Authorised Person, or any person who appears to Velocity Trade to be an Authorised Person, notwithstanding that the person is not, in fact, so authorised.
- (ii) In particular, Velocity Trade may act upon any Trading Platform Communications using the Client's Security Credentials.

(c) **Client responsible for own security**

- (i) The Client is to keep all security information relating to a Trading Platform, its Transactions, each Account and this Agreement, and all Security Credentials, confidential and secure.
- (ii) Velocity Trade is not required to establish the authority of any person quoting the Client's Security Credentials.
- (iii) If the Client is aware or suspects that any of these things is no longer confidential or secure, then the Client is to contact Velocity Trade as soon as practicable in order that it or they may be changed or otherwise made secure.

### 27.2 Required instructions, etc.

(a) **Client required to provide instructions, etc.**

- (i) The Client is promptly to give to Velocity Trade any instructions which Velocity Trade may require of the Client in respect of any Transaction or proposed Transaction.
- (ii) If the Client does not promptly give those instructions, Velocity Trade, acting reasonably, may take the steps at the Client's cost and expense as Velocity

Trade considers necessary or desirable for its own protection or the protection of the Client.

- (iii) The Client authorises Velocity Trade to charge the Velocity Trade bank account where Client Moneys are held (including, where relevant, the Segregated Funds Account) with any such cost or expense of taking those steps.

(b) **Key times, dates and events**

The Client acknowledges and agrees that Velocity Trade is not responsible for notifying the Client of any times, dates or events that may be relevant to any Transaction (including in relation to Transactions where Velocity Trade may require instructions).

(c) **Velocity Trade may require confirmation**

Velocity Trade may (but is not in any circumstances obliged to) require confirmation (in the form that Velocity Trade requires) of any order or instruction (whether oral, written or electronic) if:

- (i) the order or instruction is to close an Account or remit money due to the Client; or
- (ii) it appears to Velocity Trade, acting reasonably, that the confirmation is necessary or desirable.

(d) **Acknowledgement of instructions, etc.**

Velocity Trade may acknowledge an order, instruction or other communication (whether oral, written or electronic) orally, in writing or by way of a Trading Platform.

## **27.3 Authorised Persons**

For the purposes of this Agreement, persons may only be authorised in accordance with clause 27.1(a) in the following circumstances:

(a) **Company**

where the Client is a company, corporation, body corporate or incorporated society, the Authorised Person is a director or employee of the Client;

(b) **Trustee**

where the Client is a trustee, the Authorised Person is an employee of the trustee;

(c) **Partnership**

where the Client is a partnership, the Authorised Person is a partner in, or employee of, the Client;

(d) **Power of Attorney**

in any circumstances other than those specified in sub-paragraphs (a) and (b), a person authorised under a limited power of attorney or representative authorisation in the form specified by Velocity Trade from time to time; and

(e) **Authorised Person can instruct withdrawal**

the Client acknowledges and agrees that:

- (i) an Authorised Person is permitted to communicate an order or instruction (whether oral, written or electronic) to withdraw or transfer Client Money or other moneys or property belonging to the Client and deposited or lodged with Velocity Trade; and
- (ii) Velocity Trade may act on an order or instruction (whether oral, written or electronic) from an Authorised Person to withdraw or transfer Client Money or other moneys or property belonging to the Client and deposited or lodged with Velocity Trade.

## 28. **Reporting to Client**

---

(a) **Daily report**

As at Close of Business, Velocity Trade may, but is not obliged to, send a daily report by electronic mail to the Client.

(b) **Client to ensure accuracy of contact details**

The Client is responsible for ensuring that its electronic mail contact details with Velocity Trade are accurate and up-to-date.

## 29. **Dispute process**

---

### 29.1 **Arbitration**

(a) **No proceedings**

Subject to clause 29.3, if a dispute (including an alleged breach of, or default under, any Transaction) (a **Dispute**) arises under, or in connection with, this Agreement or any Transaction (including any claim in tort, in equity or pursuant to any statute), the parties are to refer the Dispute to arbitration for final resolution in accordance with this clause.

(b) **Notice of Dispute**

Either party claiming that a Dispute has arisen is to give written notice to the other party specifying the nature of the Dispute in reasonable detail.

(c) **Single arbitrator**

The Dispute is to be determined by:

- (i) a single arbitrator agreed to by the parties; or
- (ii) failing agreement within 10 Business Days, a single arbitrator appointed:
  - (A) by the President of the Arbitrators' and Mediators' Institute of New Zealand for the time being or by the President's delegate appointed in writing for this purpose in accordance with the Arbitration Act 1996; or

- (B) if within Australia by the President of The Chartered Institute of Arbitrators (Australia) Limited for the time being or by the President's delegate appointed in writing for this purpose;

upon the application of either party.

(d) **Conduct of arbitration**

The arbitration is to be held in Auckland and is to be conducted in accordance with the Arbitration Act 1996 unless, where the Client is resident in Australia, Velocity Trade in its discretion determines and notifies the Client that the arbitration is to be held in Sydney and is to be conducted in accordance with the Commercial Arbitration Act 1984 (NSW).

## 29.2 Limited recourse to courts

Each party agrees not to commence any legal proceedings under or in relation to this Agreement or any Transaction, except:

(a) **Set aside arbitration award**

by way of an application to set aside an award of the arbitrator in accordance with clause 33 of the First Schedule to the Arbitration Act 1996 or, as applicable, the equivalent provision in the Commercial Arbitration Act 1984 (NSW); or

(b) **Clause 29.3**

where clause 29.3 applies.

## 29.3 Equitable remedies

If either party does, or omits to do, or threatens to do or to omit to do, any act, matter or thing, and in the opinion of the other party, acting reasonably, that act or omission, or threatened act or omission:

(a) **Breach of agreement**

is, will be, or is likely to be a breach of this Agreement or any Transaction; or

(b) **Material adverse effect**

is having, will have, or is likely to have, a material adverse effect on the financial condition, operations or commercial or financial prospects of the other party,

then nothing in this clause prevents the other party from seeking through legal proceedings an injunction, an order for specific performance or other equitable remedy in respect of that act or omission or threatened act or omission.

## 29.4 Continued performance

Notwithstanding the existence of a Dispute and the operation of this clause, each party is to continue to perform its obligations under this Agreement and each Transaction.

## 30. Assignment

---

### 30.1 Benefit and burden of this Agreement

Subject to this clause, this Agreement is binding upon and enures for the benefit of each of Velocity Trade and the Client and its successors and permitted assignees or transferees.

### 30.2 Velocity Trade

(a) **Ability to assign or transfer**

Velocity Trade may assign or transfer any of its rights or obligations under this Agreement or any Transaction without the consent of the Client.

(b) **Same rights and obligations**

Each assignee or transferee is to have the same rights against the Client under this Agreement or any Transaction as if named in this Agreement as Velocity Trade.

### 30.3 Disclosure of information

Velocity Trade may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with this Agreement or any Transaction are contemplated, any information about the Client, whether or not that information was obtained in confidence and whether or not that information is publicly available.

### 30.4 Client

(a) **Client may not assign**

The Client may not:

- (i) assign or transfer (whether absolutely, in equity, by way of security or otherwise), declare a trust over or otherwise deal with any of its rights or obligations under this Agreement or any Transaction; or
- (ii) allow any such assignment, transfer, trust or dealing to subsist,

without the prior written consent of Velocity Trade.

(b) **Purported assignment void**

Any purported assignment, transfer, trust or dealing under paragraph (a) without the consent of Velocity Trade is void.

### 30.5 Assignment and transfer on Client default, etc.

(a) **On Event of Default**

If an Event of Default occurs or the Client is in default of any of its obligations under this Agreement or any Transaction, Velocity Trade may (without prejudice to any other rights it may have) at any time afterwards assign and transfer to any person (including MBL or any other third party with whom Velocity Trade has entered into Hedging Arrangements) with immediate effect all or any of its rights in respect of moneys owing

to it under this Agreement or any Transaction, as well as any security or other remedies available to it in respect of those moneys.

(b) **Acknowledgement of novation**

If any such assignment is made, then the Client, if so required by Velocity Trade and the assignee and transferee, is to acknowledge in writing that the assignee and transferee has assumed the rights and obligations of Velocity Trade under this Agreement and any Transaction in relation to the relevant moneys.

## 31. Notices

---

### 31.1 Addresses and references

(a) **Manner in which notices made**

Each notice or other communication under this Agreement is to be made in writing and sent by facsimile, electronic mail, personal delivery or by post to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for that purpose by the addressee to the other party.

(b) **Address detail**

- (i) The initial facsimile number and address of the Client is set out in the completed Application Form.
- (ii) The facsimile number, address and relevant person or office holder of Velocity Trade is set out on Velocity Trade's website.

### 31.2 Deemed delivery

(a) **Effective on receipt**

No notice or other communication is effective until received.

(b) **Deemed receipt**

A notice or other communication is, however, deemed to be received by the Client:

- (i) in the case of a letter, on the third business day after posting;
- (ii) in the case of a facsimile, on the date it was sent; and
- (iii) in the case of electronic mail, immediately it was sent.

### 31.3 Change of contact details

(a) **By Client**

The Client may change its contact details (including electronic mail address) to which Confirmations, Trading Platform Communications, statements and other communications are issued by written notice to Velocity Trade.

(b) **By Velocity Trade**

- (i) Velocity Trade may notify the Client of a change to any of its contact details by written notice to the Client.
- (ii) For the purpose of this paragraph, written notice includes Velocity Trade publishing such change on its website with immediate effect.

(c) **Effectiveness of charges**

In either case, the change is only effective on the later of the date specified in the notice and the time of deemed service under clause 31.2(b) or clause 31.3(b) (as applicable).

### **31.4 Client responsible for ensuring correct address details**

The Client agrees and acknowledges that:

(a) **Sending Confidential Information**

Confidential Information in respect of the Client may be sent by Velocity Trade in accordance with contact details the Client has provided; and

(b) **Client responsible**

the Client is solely responsible for ensuring that Velocity Trade has its current address, telephone number, facsimile number and electronic mail address.

### **31.5 Text messages and electronic mail and other communications**

(a) **Text messages may be sent**

From time to time, Velocity Trade may send a text message to a mobile telephone of the Client or electronic mail to an electronic mail address provided by the Client in relation to this Agreement and Transactions, including in relation to the margin position of the Client.

(b) **No obligation to send text messages**

However, the Client acknowledges and agrees that Velocity Trade has no obligation under this Agreement or any Transaction to send any such text message or electronic mail at any time.

(c) **Disclaimer in relation to Margin FX text messages**

The Client acknowledges and agrees that the following disclaimer is deemed to be incorporated in each and every text message sent under paragraph (a) with respect to Margin FX:

*“This text message is an unsecured automatically-generated notification. This text message does not constitute a Confirmation for the purposes of the trading agreement between you and Velocity Trade. Please login to your on-line trading account for more details.*

*Velocity Trade has sent you this text message notification upon your request.”*

(d) **Disclaimer in relation to all communications by Velocity Trade**

This disclaimer is not to be construed as giving any representation that Velocity Trade has provided or will provide any investment advice to you. In addition to any other disclaimer specified in this Agreement or in any communication by Velocity Trade, the Client acknowledges and agrees that the following disclaimer is deemed to be incorporated in each and every email, text message, facsimile and oral communication by Velocity Trade:

*“This disclaimer applies to email, text message, facsimile and oral communications (individually referred to as a **“Communication”**) by Velocity Trade FX Limited (**“Velocity Trade”**). A disclosure statement is available on request and free of charge by contacting Velocity Trade on +64 9 9918 8800.*

**Confidentiality.** Any information, advice or opinions contained in this Communication are confidential and is provided solely for the information of the intended recipient. You may not distribute it to other persons. If you are not the intended recipient, you are not authorised to use the information, advice or opinions in this Communication in any way. This information may not be reproduced or circulated without the prior written consent of Velocity Trade.

**Where you are not the intended recipient.** If you are not the intended recipient any review, disclosure, conversion to hard copy, dissemination, reproduction or other use of any part of this Communication is strictly prohibited, as is the taking or omitting of any action in reliance upon this Communication. If you receive this Communication in error or without authorisation, please notify Velocity Trade immediately by return Communication and permanently delete the entire Communication from any computer, disk drive or other storage medium.

**Communications not on behalf of Velocity Trade.** The information, advice or opinions expressed in this Communication may be the author's own and may not reflect the views or opinions of Velocity Trade.

**Currency and accuracy of information.** Any information, advice or opinions contained in this Communication are current as at the time it is sent. Past performance is not a reliable indication of future performance.

**Third party data.** Certain parts of this Communication may be obtained or is based upon information, advice and/or opinions obtained from third parties which may not have been checked or verified by Velocity Trade.

**Independent advice.** Before acting on any information, advice or opinions contained in this Communication, you should consider the appropriateness of such information, advice or opinions having regard to your situation. Any information, advice or opinions provided may not take account of your objectives, financial situation or needs. We recommend you obtain financial, legal and taxation advice before making any financial investment decision.

**Potential investors.** If you are a potential investor in a product discussed in this Communication, you should obtain a Disclosure Document available from Velocity Trade and consider it in full before making any decision about this financial product. To acquire the product, you must complete the application form attached to the Disclosure Document and enter into a Client Agreement with Velocity Trade.

**Velocity Trade's interests.** Velocity Trade or its associates, officers or employees may have interests in the financial products referred to in this Communication by acting in various roles including as holder of principal

positions, broker or adviser. Velocity Trade or its associates may receive fees, brokerage or commissions for acting in those capacities. In addition, Velocity Trade or its associates, officers or employees may buy or sell the financial products and as such may effect transactions which are not consistent with any recommendations in the information.

**Factual information.** To the extent this Communication contains purely factual information, such information is not an expression of opinion or recommendation. Such information does not constitute financial product advice and should not be relied on as such. None of the factual information takes into account your personal objectives, financial situation or needs and you must determine whether the information is appropriate in terms of your particular circumstances

**Pricing information.** If this Communication contains pricing information, such information is of a purely factual nature and is not an expression of opinion or recommendation. It does not constitute financial product advice and should not be relied on as such.

**Trade re-caps.** If this Communication includes trade re-cap information, then such information is provided as a service to you to assist with your trading and account administration. Unless otherwise specified, this Communication is not a Confirmation. A Confirmation may be separately sent to you. To the extent that this information conflicts with the terms of the Transaction contained in the Confirmation, you must rely on that Confirmation.

**Valuation information.** If this Communication includes indicative revaluation information (“**Value**”), such information is provided solely for your information. Each Value that is given is an indication of a 'close-out value' for the Transaction as at the close of the business day to which the Value relates. The Value will alter with changing market conditions and a variety of other relevant market factors. Provision of a Value by Velocity Trade does not constitute an offer or bid to unwind the Transaction. If Velocity Trade quotes a firm price to unwind a transaction, it may differ from the most recent Value provided to you and can be less favourable to you.

**Forecasts.** If this Communication contains any information by way of forecasts, you should consult Velocity Trade for the full details of the assumptions upon which the forecast return and tax treatment are based. You should be aware that these are forecasts and may be affected by the accuracy of assumptions, risks and other uncertainties which may cause the actual returns to differ.

**Research.** If this Communication contains research information (“**Research**”), such information may have been prepared by Velocity Trade or a third party. To the extent Research is prepared by third parties, it may be subject to additional disclaimers and conditions either as specified in the Communication, on Velocity Trade’s website or as you may be advised by contacting Velocity Trade. Research may be based on assumptions or market conditions and may change without notice. Any quotes given are indicative only. Where any reference is made in the information to past performance, it must be remembered that past results are not necessarily indicative of future results. The value of products can and does fluctuate, and a product may even become valueless. No part of the Research is to be construed as a solicitation to buy or sell any product, or to engage in or refrain from engaging in any transaction.

**Opinions.** Any opinions, ideas and strategies in this Communication are based on certain assumptions and current market conditions. If those underlying assumptions or market conditions change, the opinions, ideas and strategies will change. All quotations are indicative only. If you have entered into a Client Agreement with Velocity Trade, a firm quotation can be provided by contacting

Velocity Trade directly by the relevant trading platform specified in your Client Agreement. The strategies outlined are not intended to be specific and/or personal advice.

**Liability.** To the extent permitted by law Velocity Trade, its related entities and third party suppliers accept no responsibility regardless of the cause of action, including without limitation for negligence, breach of contract, under an indemnity or statute, or in relation to any errors or misstatements, for any direct, indirect, consequential or any other loss or damage arising from or relating to (i) any error or omission in relation to the information, opinion or advice provided, or (ii) interception by any person of a Communication, or (iii) failure or delay in the transmission or receipt of a Communication, or (iv) any use of any information, advice or opinions contained in this Communication and/or further communication in relation to this Communication, whether such information, advice or opinions are those of Velocity Trade or its related entities or third party supplier(s). Any information, advice or opinions have been obtained from sources believed to be reliable but Velocity Trade, its related entities and/or third party suppliers make no representation or warranty that it is accurate, complete or up to date. The information may be based on assumptions or market conditions and may change without notice. No part of the information is to be construed as solicitation to make a financial investment.

**Electronic Communications.** Velocity Trade, its related entities and third party suppliers do not warrant or guarantee that information contained in any email, text message or attached file is free of viruses, worms, trojan horses or anything else having contaminating or destructive properties and has not been intercepted and interfered with during transmission. It is your sole responsibility to protect yourself against such risk and, by opening any email, text message or attached file, you agree to assume all risks associated with electronic data transmission.

**Unsubscribe facility.** If this Communication is for the purpose is the marketing or promoting of products or services supplied by Velocity Trade or if it contains a hyperlink to Velocity Trade's website, you may contact Velocity Trade to unsubscribe from receiving further similar Communications by using the same means by which you received this Communication.

**Definitions.** Terms not otherwise defined above have the meaning set out in the Client Agreement published on Velocity Trade's website."

## 32. Remedies and waivers

---

### 32.1 Exercise of rights and waivers

(a) **Time of essence**

Time is of the essence in respect of all dates and times for compliance by each party with its obligations under this Agreement and each Transaction.

(b) **No waiver**

- (i) However, no failure to exercise, and no delay in exercising, a right of a party under this Agreement or a Transaction operates as a waiver of that right.
- (ii) Nor does a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right.

(c) **Waivers in writing**

A provision of, or a right created under, this Agreement or any Transaction may not be waived except in writing executed by the party granting the waiver.

## **32.2 Remedies cumulative**

The rights of each party under this Agreement and each Transaction are cumulative and not exclusive of any rights provided by law.

## **33. Severance**

---

### **33.1 Partial invalidity**

The illegality, invalidity or unenforceability of a provision of this Agreement or of any Transaction under any law does not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

### **33.2 Severance**

If a provision of this Agreement or of any Transaction is, or becomes, unenforceable, illegal or invalid for any reason:

(a) **Modify provision**

the relevant provision is deemed to be modified to the extent necessary to remedy that unenforceability, illegality or invalidity;

(b) **Negotiation**

if the relevant provision is unable to be modified under paragraph (a), each party is to negotiate, for a period of 28 days, to agree on a legal substitute provision as close to the original provision as possible; and

(c) **Severed provision**

if it is not possible to agree on a legal substitute provision in accordance with paragraph (b), the relevant provision is to be severed from this Agreement or Transaction, without affecting the enforceability, legality or validity of any other provision of this Agreement or that Transaction.

## **34. Rights of third parties**

---

Except as otherwise described in this Agreement, nothing in this Agreement or any Transaction is intended to confer on any person other than Velocity Trade or the Client any right to enforce any term of this Agreement or any Transaction.

## 35. Amendments

---

### 35.1 Entire agreement

(a) **Agreement and Confirmations**

This Agreement, together with each Confirmation, constitutes the entire agreement and understanding between Velocity Trade and the Client with respect to its subject matter (including all Transactions).

(b) **Agreement supersedes other arrangements**

This Agreement supersedes all previous oral or written representations, arrangements, understandings and/or agreements between the Client and Velocity Trade with respect to its subject matter (including all Transactions).

(c) **No oral agreements, etc.**

Neither Velocity Trade nor the Client has relied on any representation, warranty or other assurance not expressly referred to or set out in this Agreement.

### 35.2 Amendment to Agreement

Except in relation to the MarginFX Addendum and the Rates Schedule, Velocity Trade may amend, modify or replace this Agreement and/or the then-current Disclosure Document at any time by:

(a) **Written notice**

written notice to the Client in accordance with clause 31; and/or

(b) **Notice on website**

posting notice accordingly and/or an amended form of this Agreement and/or a supplementary or new Disclosure Document on its website; and/or

(c) **Notice on Electronic Trading Platform**

posting notice accordingly and/or an amended form of this Agreement and/or a supplementary or new Disclosure Document on an Electronic Trading Platform; and/or

(d) **As permitted by Applicable Law**

as otherwise permitted by Applicable Law.

For the avoidance of doubt, Velocity Trade may, in its sole discretion, amend the MarginFX Addendum and the Rates Schedule from time to time by publishing updates on the Velocity Trade website. It is the Client's responsibility to regulatory check the MarginFX Addendum and Rates Schedule as published on Velocity Trade website to monitor any amendments to such documents.

### 35.3 Disclosure Document, etc.

The Client acknowledges and agrees that:

(a) **New Disclosure Document**

Velocity Trade may make available to the Client any such notice and/or supplementary or new Disclosure Document, by any one or more of the means specified in clause 35.2; and

(b) **Deemed time of availability**

if the notice and/or supplementary or new Disclosure Document is made available to the Client by more than one means, it is deemed to be made available to the Client at the earliest possible time.

**35.4 Deemed time of availability where posted on website or on Electronic Trading Platform**

A notice and/or supplementary or new Disclosure Document posted on Velocity Trade's website or on an Electronic Trading Platform is deemed to have been made available to the Client at the time the relevant document was posted by Velocity Trade on its website or on the Electronic Trading Platform.

**35.5 When amendment takes effect**

(a) **Effective date and deemed acceptance by Client**

- (i) Any amendment, modification or replacement to or of this Agreement is effective on the date specified in the notice and/or supplementary or new Disclosure Document.
- (ii) The amendment, modification or replacement to or of this Agreement is deemed to be accepted by the Client if the Client:
  - (A) continues to enter into Transactions by way of a Trading Platform; or
  - (B) allows any outstanding Transaction to roll over.

(b) **Outstanding Transactions**

This amendment, modification or replacement, where applicable, also amends the terms of any outstanding Transaction on that effective date.

**36. Costs**

---

Each party will pay its own costs (including legal fees) of entering into -this Agreement.

**37. Miscellaneous**

---

**37.1 Certificates conclusive**

A certificate by Velocity Trade of any amount payable under this Agreement or any Transaction is, in the absence of manifest error or fraud, conclusive evidence for all purposes, including for any proceedings.

## **37.2 Trustee Client**

If the Client is a trustee, the Client undertakes:

(a) **Notify Velocity Trade**

to notify Velocity Trade immediately in writing if:

- (i) the Client ceases for any reason or at any time to be the sole trustee of the trust; or
- (ii) if there are two or more trustees, any other trustee ceases for any reason to be a trustee of the trust; or
- (iii) the trust is determined or for any other reason ceases to exist; or
- (iv) it becomes aware of any breach of trust; and

(b) **Limitation on distributions**

not to make any distribution of any capital of the trust which would result in the trust having insufficient assets to meet the Client's liabilities under outstanding Transactions and this Agreement.

## **37.3 Survival**

The obligations of the parties under this Agreement survive the termination or settlement of any Transaction.

## **37.4 Exclusions**

(a) **Warranties excluded**

Except as expressly set out in this Agreement, all warranties that may be implied into this Agreement by law are excluded to the maximum extent permitted by law.

(b) **Consumer Guarantees Act**

The Client acknowledges and agrees that, if the Client enters into Transactions for the purpose of a business, the Consumer Guarantees Act 1993 does not apply.

## **37.5 Execution by attorney**

Where this Agreement is executed by any party under power of attorney then, by executing this Agreement, each attorney is deemed to have stated that the attorney has received no notice of revocation of the relevant power of attorney.

## **38. Governing law and jurisdiction**

---

### **38.1 New Zealand law**

Each of this Agreement and each Transaction is governed by and is to be construed in accordance with New Zealand law. This does not exclude any obligation of Velocity Trade or the Client to comply with any other Applicable Law.

## 38.2 Submission to jurisdiction

Each party submits to the non-exclusive jurisdiction of the courts of New Zealand.

## Schedule 1: Margin FX

---

The provisions in this schedule apply to Margin FX Transactions.

### 1. Holding of Client Money

---

Subject to this Agreement and Applicable Law, Velocity Trade will hold Client Money in respect of Margin FX Transactions in a Segregated Funds Account.

### 2. MarginFX Trading Platform

---

#### 2.1 Trading Platform

The Trading Platform for Margin FX Transactions is either:

(a) **Electronic Trading Platform**

an Electronic Trading Platform (or, as the case may be, Electronic Trading Platforms) Velocity Trade provides for the purpose of Margin FX Transactions; or

(b) **Other form of communication**

such other form of communication as Velocity Trade may specify in writing from time to time.

### 3. MarginFX Addendum

---

(a) The terms of the MarginFX Addendum are incorporated by reference into this Agreement.

(b) The MarginFX Addendum sets out:

(i) terms (including the Margin Requirement) which are specific to MarginFX Transactions entered into by way of a given Electronic Trading Platform; and

(ii) other terms which may apply to MarginFX Transactions generally.

### 4. Accounts and interest

---

#### 4.1 New Account with Velocity Trade

(a) **Request to open MarginFX Transaction Account**

Prior to the Client first entering into any MarginFX Transactions with Velocity Trade, the Client must request Velocity Trade to open an Account ("**Request**") for the purpose of Client entering into MarginFX Transactions with Velocity Trade ("**MarginFX Transaction Account**").

(b) **Actions by Velocity Trade**

- (i) Velocity Trade may, in its absolute discretion, accept or decline a Request.
- (ii) Velocity Trade is to notify the Client either that Velocity Trade accepts the Request and that a MarginFX Transaction Account has been opened for the Client or that Velocity Trade declines the Request.

(c) **Separate Accounts**

- (i) For the avoidance of doubt and notwithstanding any other provision in this Agreement, the Client's MarginFX Transaction Account will be treated as separate from any other Account in the Client's name.
- (ii) The Client cannot request the MarginFX Transaction Account to be combined with any other Account.

## 4.2 Interest

Details of the Interest Earning Amount and when Deposit Interest may be paid are set out in the MarginFX Addendum and may vary depending upon the Trading Platform used to enter into MarginFX Transactions.

## 5. Rollover of Margin FX

---

### 5.1 Rollover at Close of Business

Each outstanding Margin FX Transaction is automatically valued and rolled over by Velocity Trade, and Velocity Trade derives Rollover Enhancement Income, at Close of Business on each day in accordance with this clause (a **Rollover**).

### 5.2 How Rollover takes place

(a) **Transaction Value**

Velocity Trade determines the Transaction Value as at the Close of Business.

(b) **Velocity Trade Rollover Interest Rate**

Velocity Trade determines the Velocity Trade Rollover Interest Rate for each currency as at the Close of Business.

(c) **Funding Cost/Benefit**

- (i) Where the Client is long the relevant currency, Velocity Trade credits the Margin FX Account with an amount equivalent to overnight interest to the next spot date equal to the Velocity Trade Rollover Interest Rate on the Transaction Value.
- (ii) Where the Client is short the relevant currency, Velocity Trade debits the Margin FX Account with an amount equivalent to overnight interest to the next spot date equal to the Velocity Trade Rollover Interest Rate on the Transaction Value.
- (iii) For these purposes, the interest is calculated on the basis of the annual rate, divided by 360 or 365 (according to relevant market practice), for and including

the Business Day on which that Close of Business occurs to but excluding the next spot date.

- (iv) The amounts of interest referred to in this paragraph are credited and debited to the Margin FX Account with effect immediately after the Close of Business.
- (v) These amounts of interest are called **Funding Cost/Benefit**.
- (vi) The Client acknowledges and agrees that where there is more than one Electronic Trading Platform available in respect of MarginFX Transactions, the Velocity Trade Spread relevant to the Velocity Trade Rollover Interest Rate may differ according to the Electronic Trading Platform used.

(d) **Rollover Enhancement Income**

The Client acknowledges and agrees that Velocity Trade derives income (**Rollover Enhancement Income**) when a Margin FX Transaction is rolled, being the cost or charge to the Client over and above the cost to Velocity Trade of re-establishing a Margin FX Transaction at Close of Business in the wholesale market.

(e) **Authority to debit Rollover Enhancement Income**

The Client authorises Velocity Trade to withdraw Rollover Enhancement Income from the Segregated Funds Account with effect immediately after the Close of Business.

## 6. Close-out of Margin FX

---

A Margin FX Transaction may be closed out in accordance with clause 20 if:

(a) **By Client**

the Client instructs Velocity Trade including by way of the Trading Platform; or

(b) **By Velocity Trade**

Velocity Trade exercises any of its rights under this Agreement to close out a Margin FX Transaction at any time before the Margin FX Transaction otherwise closes out under this Agreement.

## 7. Margin and margin maintenance

---

### 7.1 Client's obligation to pay and maintain Margin

(a) **Obligation to pay margin**

The Client is to pay to Velocity Trade such sums of money in the Client Base Currency by way of margin as Velocity Trade may require under this Agreement or as otherwise notified in writing by Velocity Trade to the Client.

(b) **Client to ensure funds correctly designated**

(i) The Client is to ensure that moneys paid to Velocity Trade are correctly designated in all respects, including, where applicable, that those moneys are by way of margin and to which Margin FX Account of the Client they should be applied.

- (ii) From time to time, Velocity Trade is to provide to the Client details of the arrangements that apply to making payments to Velocity Trade.

(c) **Cleared funds**

- (i) The Client acknowledges and agrees that Velocity Trade will credit those moneys to the Segregated Funds Account only when they become cleared funds.
- (ii) Accordingly, moneys paid by:
  - (A) electronic credit may not be available as collateral and, therefore, Free Margin until the next Business Day; and
  - (B) cheque may, in accordance with normal cheque clearance processes, not be available as collateral and, therefore, Free Margin for up to three Business Days.
- (iii) Velocity Trade will, in accordance with the normal practices of the Registered Bank at which the Segregated Funds Account is held, arrange for the credit of those moneys to the Segregated Funds Account as soon as practicable after they become cleared funds.

(d) **Obligation to maintain margin**

- (i) The Client undertakes to maintain the Margin Requirement(s) being either:
  - (A) in the case of MarginFX Transactions entered into using an Electronic Trading Platform, the relevant Margin Requirement(s) specified in the MarginFX Addendum; and
  - (B) in all other cases, the Margin Requirement(s) advised by Velocity Trade.
- (ii) The undertaking in sub-paragraph (i) is deemed to be repeated at the time each Margin FX Transaction is entered into.
- (iii) If the Client has more than one Margin FX Account, the undertaking in sub-paragraph (i) relates to each Margin FX Account separately, unless Velocity Trade has agreed otherwise in writing.
- (iv) For the avoidance of doubt, the undertaking in sub-paragraph (i) is a margin requirement for the purpose of clause 18.1(b).
- (v) The Client acknowledges and agrees that:
  - (A) the Margin Requirement may differ depending on the Electronic Trading Platform on which MarginFX Transactions are entered;
  - (B) the applicable Margin Requirement may, from time to time, be updated by Velocity Trade by amending the MarginFX Addendum and it is the Client's responsibility to ensure it is aware of the prevailing Margin Requirement at any point in time.

(e) **Client to maintain surplus Free Margin**

The Client must maintain sufficient surplus Free Margin so that, should the relevant Trading Platform become unavailable and the Client is unable to ascertain its real-time Margin Requirement or amount of Free Margin available, , the applicable Margin

Requirement will still be satisfied notwithstanding any market movement during that period.

(f) **Failure to meet Margin Requirement**

The Client acknowledges and agrees that, if at any time during any day, the relevant Margin Requirement is not maintained:

- (i) the relevant Electronic Trading Platform may automatically terminate and close out some or all outstanding Margin FX Transactions; and
- (ii) Velocity Trade may, but is under no obligation to, terminate and close out some or all of the Client's Transactions.

(g) **Margin position does not include accrued but unpaid interest**

The Client acknowledges and agrees that Free Margin in its Margin FX Account at any time does not include any interest that has accrued but has not been paid under this Agreement.

## 7.2 **Monitoring margin**

(a) **Access to Margin FX Account information**

The Client acknowledges that, by accessing the Electronic Trading Platform at any time, the Client is able to view its margin position in real time.

(b) **Client to monitor margin on 24-hour basis**

The Client acknowledges and agrees that the Client is solely responsible for monitoring its margin position daily on a 24-hour basis, by way of the Electronic Trading Platform, and that, in doing so, the Client must have regard to:

- (i) outstanding Margin FX Transactions;
- (ii) the volatility of any relevant currency, commodities, securities, derivatives or futures market or exchange or of exchanges or markets generally;
- (iii) any applicable exchange rate or interest rate risk; and
- (iv) the time it takes the Client to remit sufficient cleared funds to Velocity Trade (including the time it takes those funds to clear).

(c) **Waiver of right to margin demand, etc.**

- (i) The Client acknowledges and agrees that under no circumstances is it entitled to receive a margin demand, call or notice from Velocity Trade.
- (ii) In particular, the Client acknowledges and agrees that, whether or not extreme or unusual market conditions exist, where the value of outstanding Margin FX Transactions is moving or have moved particularly quickly against the Client, Velocity Trade may not make a margin call or give notice before exercising its right to terminate and close out all (or some only) Transactions under this Agreement.

- (iii) No demand, call or notice made or given by Velocity Trade to the Client in any one or more instances invalidates the acknowledgement and agreement given by the Client in sub-paragraph (i).
- (d) **Time for forwarding moneys**
  - (i) Velocity Trade is not obliged to allow the Client time to forward further funds to meet its Margin Requirement under this clause before exercising its right to terminate and close out any Transactions (including Margin FX Transactions) under this Agreement.
  - (ii) However, Velocity Trade may in its absolute discretion allow the Client time to forward funds to meet its Margin Requirement, in which event that permission is only effective once it is confirmed in writing by Velocity Trade, and then only to the extent specified in the written notice given by Velocity Trade.

## 8. Stop Loss Orders and Limit Orders

---

### 8.1 Stop Loss Orders

- (a) **Stop Loss facility**
  - (i) Velocity Trade may, on the request of a Client by way of the Trading Platform, agree to a Stop Loss Order in relation to a Margin FX Transaction.
  - (ii) Velocity Trade may charge a fee it deems appropriate for the Stop Loss Order.
  - (iii) The Client authorises Velocity Trade to withdraw this fee from the Segregated Funds Account when the Stop Loss Order is entered into.
- (b) **No guarantee that Stop Loss Order will be fulfilled in every case**
  - (i) Subject to sub-paragraph (ii), Velocity Trade will close out the relevant Margin FX Transaction in accordance with the Stop Loss Order.
  - (ii) However, the Client acknowledges that:
    - (A) market conditions, including Abnormal Market Conditions, may arise such that Velocity Trade may only be able to terminate and close out the Margin FX Transaction the subject of the Stop Loss Order at a price or rate that is substantially less than that in the Stop Loss Order;
    - (B) once the Stop Loss Order is triggered, Velocity Trade will close out the Margin FX Transaction at whatever price or rate it is able to obtain for the Client in the market; and
    - (C) the Client accepts these risks accordingly.

### 8.2 Limit Orders

- (a) **Limit Order facility**
  - (i) Velocity Trade may, on the request of a Client by way of the Trading Platform, agree to a Limit Order in relation to a Margin FX Transaction.
  - (ii) Velocity Trade may charge a fee it deems appropriate for the Limit Order.

- (iii) The Client authorises Velocity Trade to withdraw this fee from the Segregated Funds Account when the Limit Order is entered into.

(b) **No guarantee that Limit Order will be at market in every case**

However, the Client acknowledges that:

- (i) while the Limit Order will be entered into at the price or rate set out in the Limit Order, market conditions, including Abnormal Market Conditions, may arise such that Velocity Trade may only be able to enter into the Margin FX Transaction the subject of the Limit Order at a price or rate that is substantially different from the prices or rates prevailing in the relevant market at the time of entry into of the Margin FX Transaction; and
- (ii) the Client accepts this risk accordingly.

## Schedule 2: Spot FX

---

The provisions in this schedule apply to Spot FX Transactions.

### 1. Definitions

---

1.1 In this schedule, unless the context otherwise requires:

**Contractual Currency** means, in respect of any Payment, the currency so specified in this Agreement, the Confirmation or any notice (as the case may be);

**Payee** means the party entitled to receive a Payment;

**Payer** means the party required to make a Payment;

**Payment** means a payment to be made by the Payer to the Payee pursuant to or in respect of any Spot FX Transaction;

**Settlement Account** means, in respect of:

- (a) the Client, the bank account advised by the Client to Velocity Trade by notice in writing; and
- (b) Velocity Trade, the bank account specified in Velocity Trade's standard settlement instructions as published from time to time; and

**Spot FX/Tenor FX Transaction Account** means an Account opened by Velocity Trade for the purpose of entering into:

- (a) Spot FX Transactions; and/or
- (b) Tenor FX Transactions.

1.2 In addition to the above, where used in a Confirmation and/or on an Electronic Trading Platform made available for entering into Spot FX Transactions:

**Date Booked** means the Trade Date;

**Payee** means the party designated by the Client as entitled to receive a Payment on behalf of the Client;

**Payee Information** means information in relation to the Payee designated by the Client as entitled to receive a Payment on behalf of the Client;

**you** means the Client; and

**we** means Velocity Trade.

### 2. Holding of Client Money

---

Velocity Trade will not hold any Client Money in respect of Spot FX in a Segregated Funds Account.

### 3. **Spot FX Trading Platform**

---

The Trading Platform for Spot FX Transactions is either:

(a) **Electronic Trading Platform**

an Electronic Trading Platform which may be made available by Velocity Trade from time to time for the purposes of Spot FX Transactions; or

(b) **Telephone**

telephone communications between the Client and Velocity Trade; or

(c) **Other form of communication**

such other form of communication as Velocity Trade may specify in writing from time to time.

### 4. **Accounts and interest**

---

#### 4.1 **New Account with Velocity Trade**

(a) **Request to open Spot FX/Tenor FX Transaction Account**

Prior to the Client entering into any Spot FX Transactions with Velocity Trade, the Client must request Velocity Trade to open a Spot FX/Tenor FX Transaction Account unless that account has already been established in accordance with this schedule or schedule 3.

(b) **Actions by Velocity Trade**

(i) Velocity Trade may, in its absolute discretion, accept or decline this request.

(ii) Velocity Trade is to notify the Client either that Velocity Trade accepts this request and that a Spot FX/Tenor FX Transaction Account has been opened for the Client or that Velocity Trade declines this request.

(c) **Separate Accounts**

(i) For the avoidance of doubt and notwithstanding any other provision in this Agreement, the Client's Spot FX/Tenor FX Transaction Account will be treated as separate from any other Account in the Client's name.

(ii) The Client cannot request the Spot FX/Tenor FX Transaction Account to be combined with any other Account.

#### 4.2 **Interest**

(a) **No interest payable**

No interest is payable by Velocity Trade in respect of any Spot FX Transaction.

(b) **Interest Earning Amount is zero**

Accordingly, for the purpose of clause 8.1(c) the Interest Earning Amount is zero and no Deposit Interest is payable.

## 5. Spot FX Transactions

---

### 5.1 Entry into of Spot FX Transactions

(a) **Condition precedent**

Velocity Trade is not obliged to enter into any Spot FX Transaction with the Client unless and until a Spot FX/Tenor FX Transaction Account is opened in respect of the Client.

(b) **No Margin Requirement**

There is no Margin Requirement in respect of any Spot FX Transaction.

(c) **Confirmations**

Velocity Trade is to issue Confirmations in respect of Spot FX Transactions either:

- (i) where available, by way of an Electronic Trading Platform; or
- (ii) by way of letter, electronic mail, facsimile or such other method as Velocity Trade may specify.

### 5.2 Specific terms for Spot FX Transactions

The terms of each Spot FX Transaction are to be documented in the relevant Confirmation and may include:

(a) **Trade Date**

the Trade Date;

(b) **Currency payable by Client**

the amount and currency payable by the Client to Velocity Trade;

(c) **Currency payable by Velocity Trade**

the amount and currency payable by Velocity Trade to the Client; and

(d) **Value Date**

the Value Date.

### 5.3 Settlement of Spot FX Transactions

(a) **When Payment is due**

- (i) Unless otherwise specified in a Confirmation, a Payment due from the Client to Velocity Trade is payable on the Trade Date.

- (ii) Unless otherwise specified in a Confirmation, Velocity Trade will endeavour to and will typically make each Payment due to the Client to the Payee's Settlement Account on the Value Date provided that prior to making such Payment Velocity Trade has verified its receipt of cleared funds from the Client in respect of that Transaction into the Velocity Trade Settlement Account.
- (iii) Client acknowledges that in certain circumstances it will not receive a Payment by the Value Date.

(b) **Secured settlement**

If, on any Value Date, a Payment is otherwise due by Velocity Trade to the Client, Velocity Trade is not required to make any Payment to the Client until such time as Velocity Trade has received confirmation that the corresponding Payment to be made by the Client to Velocity Trade:

- (i) has been received as cleared funds in the Velocity Trade Settlement Account; or
- (ii) has been received by Velocity Trade in accordance with any other instructions set out in the relevant Confirmation.

(c) **Physical delivery**

Subject to clause 14.3, all Spot FX Transactions are to be settled by the Payer delivering to the Payee the amount and currency payable by the Payer.

(d) **Third party payments**

- (i) The Client may request that a Payment otherwise due to the Client is made to an account in the name of a third party.
- (ii) Velocity Trade may, in its absolute discretion, approve this request on the condition that the Client satisfies any requirement that Velocity Trade determines to be appropriate.

## 6. **Close-out of Spot FX Transactions**

---

A Spot FX Transaction may be closed out:

(a) **Confirmation**

in accordance with any terms of the Spot FX Transaction set out in the relevant Confirmation;

(b) **Clause 20**

in accordance with clause 20;

(c) **By Velocity Trade**

by Velocity Trade, if Velocity Trade exercises any of its rights under this Agreement to close out a Spot FX Transaction at any time; or

(d) **Mutual agreement**

as otherwise mutually agreed between the parties.

## Schedule 3: Tenor FX

---

The provisions in this schedule apply to Tenor FX Transactions.

### 1. Definitions

---

In this schedule, unless the context otherwise requires:

**Cash Settled** means a Tenor FX Transaction that is settled by the party who is out-of-the-money paying the other party the amount of loss, as opposed to each party delivering to the other party the full amount of the currency as specified in the relevant Confirmation;

**Contractual Currency** means, in respect of any Payment, the currency so specified in this Agreement, the Confirmation or any notice (as the case may be);

**Excess Part Payment** means a Payment by the Client to Velocity Trade in respect of a Tenor FX Transaction which, at the time of payment, is in excess of the Part Payment Requirement specified in this schedule in respect of such Transaction;

**Initial Part Payment** has the meaning set out in paragraph 7.2(b);

**Initial Part Payment Percentage** means, at any time, the percentage specified at that time by Velocity Trade in the Rates Schedule with respect to the relevant type of Tenor FX Transaction;

**Initial Transaction Value** has the meaning set out in paragraph 7.2(b);

**Velocity Trade Bank Account** means the account or accounts held by Velocity Trade to which Part Payments will be credited;

**Ongoing Part Payment Percentage** means, at any time, the percentage specified at that time by Velocity Trade in the Rates Schedule with respect to the relevant type of Tenor FX Transaction;

**Part Payment** means any Payment to meet a Part Payment Requirement;

**Part Payment Requirement** means the requirement for part payment of a Tenor FX Transaction as specified in paragraph 7.2;

**Payee** means the party entitled to receive a Payment;

**Payer** means the party required to make a Payment;

**Payment** means a payment to be made by the Payer to the Payee pursuant to or in respect of any Tenor FX Transaction;

**Settlement Account** means, in respect of:

- (a) the Client, the bank account advised by the Client to Velocity Trade by notice in writing; and
- (b) Velocity Trade, the bank account specified in Velocity Trade's standard settlement instructions as published from time to time.

**Spot FX/Tenor FX Transaction Account** means an Account opened by Velocity Trade for the purpose of entering:

- (c) Spot FX Transactions; and/or
- (d) Tenor FX Transactions; and

**Transaction Value** has the meaning set out in paragraph 7.2(b).

## 2. Holding of Client Money

---

### 2.1 Segregated Funds Account

(a) **Part Payments are not Client Money**

For the avoidance of doubt:

- (i) subject to sub-paragraph (ii), Excess Part Payments are Client Money; and
- (ii) Part Payments and any Excess Part Payment which, due to an outstanding Tenor FX Transaction moving against the Client, is applied to meet the on-going Part Payment Requirement are not Client Money.

(b) **Manner in which Client Money is held**

Subject to this Agreement and Applicable Law, Velocity Trade will hold Client Money in respect of Tenor FX Transactions in a Segregated Funds Account.

### 2.2 Permitted withdrawals from Segregated Funds Account

The Client acknowledges and agrees that Velocity Trade may under clause 10.3(a) of the Agreement withdraw moneys from a Segregated Funds Account for the purpose of making a payment on behalf of the Client for, or in connection with, a Part Payment Requirement.

## 3. Tenor FX Trading Platform

---

The Trading Platform for Tenor FX Transactions is either:

(a) **Electronic Trading Platform**

an Electronic Trading Platform which may be made available by Velocity Trade from time to time for the purposes of Tenor FX Transactions; or

(b) **Telephone**

telephone communications between the Client and Velocity Trade; or

(c) **Other form of communication**

such other form of communication as Velocity Trade may specify in writing from time to time.

## 4. Accounts and interest

---

### 4.1 New Spot FX/Tenor FX Transaction Account with Velocity Trade

(a) **Request to open Spot FX/Tenor FX Transaction Account**

Prior to the Client entering into any Tenor FX Transactions with Velocity Trade, the Client must request Velocity Trade open a **Spot FX/Tenor FX Transaction Account**, unless that account has already been established in accordance with this schedule or schedule 2.

(b) **Actions by Velocity Trade**

- (i) Velocity Trade may, in its absolute discretion, accept or decline this request.
- (ii) Velocity Trade is to notify the Client either that Velocity Trade accepts this request and that a **Spot FX/Tenor FX Transaction Account** has been opened for the Client or that Velocity Trade declines this request.

(c) **Separate Accounts**

- (i) For the avoidance of doubt and notwithstanding any other provision in this Agreement, the Client's **Spot FX/Tenor FX Transaction Account** will be treated as separate from any other Account in the Client's name.
- (ii) The Client cannot request the **Spot FX/Tenor FX Transaction Account** to be combined with any other Account.

### 4.2 Velocity Trade Bank Account

Subject to this Agreement and Applicable Law, Velocity Trade will hold Part Payments in the Velocity Trade Bank Account:

- (a) in Australia or New Zealand with one or more Registered Banks; or
- (b) outside Australia or New Zealand with one or more overseas banks.

### 4.3 Interest

(a) **No interest payable**

No interest is payable by Velocity Trade in respect of any Part Payment, Excess Part Payment or otherwise in respect of any Tenor FX Transaction.

(b) **Interest Earning Amount is zero**

Accordingly, for the purpose of clause 8.1(c)(ii), the Interest Earning Amount is zero.

## 5. Tenor FX Transactions

---

### 5.1 Entry into Tenor FX Transactions

(a) **Conditions precedent**

Velocity Trade is not obliged to enter into any Tenor FX Transaction with the Client unless and until:

(i) **Opening an Account**

a **Spot FX/Tenor** FX Transaction Account is opened in respect of the Client; and

(ii) **Part Payment**

Velocity Trade has received Payment from the Client of the Part Payment Requirement in respect of the Tenor FX Transaction.

(b) **Margin Requirement**

There is no Margin Requirement in respect of any Tenor FX Transaction.

(c) **Confirmations**

Velocity Trade is to issue Confirmations in respect of Tenor FX Transactions either:

(i) where available, by way of an Electronic Trading Platform; or

(ii) by way of letter, electronic mail, facsimile or such other method as Velocity Trade may specify.

## 5.2 **Specific terms for Tenor FX Transactions**

(a) **General terms**

The terms of each Tenor FX Transaction are to be documented in the relevant Confirmation and may include:

(i) **Trade Date**

the Trade Date;

(ii) **Currency payable by Client**

the amount and currency payable by the Client to Velocity Trade;

(iii) **Currency payable by Velocity Trade**

the amount and currency payable by Velocity Trade to the Client; and

(iv) **Value Date**

the Value Date.

(b) **Additional terms for FX Option Transactions**

In respect of FX Option Transactions, the following additional terms apply:

(i) **Terms documented in Rates Schedule or Confirmation**

as documented either in the Rates Schedule or in the relevant Confirmation (where the Confirmation prevails to the extent of any inconsistency):

(A) **Option style**

the option style that may be offered, such as whether it is exercisable during a specified period or only on a specified date;

(B) **Expiration time**

the time at which a FX Option Transaction is deemed to expire; and

(C) **Method of exercise**

the manner in which a FX Option Transaction may be exercised by the Client; and

(ii) **Terms documented in Confirmation**

as documented in the relevant Confirmation:

(A) **Premium**

the amount and currency of the premium payable by the Client and the date on which the premium must be received by Velocity Trade; and

(B) **Expiration date**

the date on which the option expires; and

(iii) **Terms incorporated without need for further documentation**

without the need for further documentation (whether in a Confirmation or the Rates Schedule):

(A) **Option buyer**

the Client is the buyer of the FX Option, whether it is a Simple FX Option or a Structured FX Option; and

(B) **Structured Option must be performed in its entirety**

where the Client buys a Structured FX Option, the Client acknowledges and agrees that the Transaction must be performed in its entirety.

### 5.3 **Settlement of Tenor FX Transactions**

(a) **Manner of Payment**

Each party is to make each Payment in the Contractual Currency to the Payee for value on the Value Date to the Payee's Settlement Account or as set out in the relevant Confirmation.

(b) **Secured settlement**

If, on any Value Date, a Payment is due by the Client to Velocity Trade and by Velocity Trade to the Client, Velocity Trade is not required to make any Payment to the Client until such time as Velocity Trade has received confirmation that the corresponding Payment to be made by the Client to Velocity Trade:

- (i) has been received in the Velocity Trade Settlement Account; or
- (ii) has been received by Velocity Trade in accordance with any other instructions set out in the relevant Confirmation.

(c) **Cash settlement**

A Tenor FX Transaction may, in Velocity Trade's absolute discretion, be Cash Settled.

(d) **Third party payments**

- (i) The Client may request that a Payment otherwise due to the Client is made to an account in the name of a third party.
- (ii) Velocity Trade may, in its absolute discretion, approve this request on the condition that the Client satisfies any requirements that Velocity Trade determines to be appropriate.

## 6. **Close-out of Tenor FX Transactions**

---

A Tenor FX Transaction may be closed out:

(a) **Confirmation**

in accordance with the terms of the Tenor FX Transaction as set out in the relevant Confirmation;

(b) **Clause 20**

in accordance with clause 20;

(c) **By Velocity Trade**

by Velocity Trade if Velocity Trade exercises any of its rights under this Agreement to close out a Transaction at any time; or

(d) **Mutual agreement**

as otherwise mutually agreed between the parties.

## 7. **Part Payment**

---

### 7.1 **Client's obligation to make Part Payments**

(a) **Obligation to make Part Payment**

The Client is to pay to Velocity Trade such sums of money in the Client Base Currency by way of Part Payment to satisfy the applicable Part Payment Requirement as set out in this schedule or as otherwise notified in writing by Velocity Trade to the Client.

- (b) **Client to ensure funds correctly designated**
  - (i) The Client is to ensure that moneys paid to Velocity Trade are correctly designated in all respects, including, where applicable, that those moneys are by way of Part Payment, the Tenor FX Transaction to which the Part Payment relates and to which Account of the Client they should be applied.
  - (ii) From time to time, Velocity Trade is to provide to the Client details of the arrangements that apply to making payments to Velocity Trade.
- (c) **Cleared funds**
  - (i) The Client acknowledges and agrees that Velocity Trade will credit those moneys to the Velocity Trade Bank Account only when they become cleared funds.
  - (ii) Accordingly, moneys paid by:
    - (A) electronic credit may not be available as Part Payment until the next Business Day; and
    - (B) cheque may, in accordance with normal cheque clearance processes, not be available as Part Payment for up to three Business Days.
  - (iii) Velocity Trade will, in accordance with the normal practices of the Registered Bank at which the Velocity Trade Bank Account is held, arrange for the credit of those moneys to the Velocity Trade Bank Account as soon as practicable after they become cleared funds.

## 7.2 Part Payment Requirements

- (a) **Transactions without a Part Payment Requirement**
  - (i) There is no Part Payment Requirement for FX Options; and
  - (ii) There is no Part Payment Requirement for those FX Forwards where the Value Date is no more than 5 Business Days after the Trade Date.
- (b) **FX Forward and FX Swap Transactions**

The Client undertakes to maintain the following Part Payment Requirements at all times in relation to each FX Forward and each FX Swap Transaction:

- (i) prior to entering that Tenor FX Transaction, the Part Payment Requirement (**Initial Part Payment**) is:

**Initial Transaction Value x Initial Part Payment Percentage**

where:

**Initial Transaction Value** means, at the time that that Tenor FX Transaction is entered into, the value of that Tenor FX Transaction, based on Velocity Trade's Preferred Side, converted, where necessary, to the Client Base Currency at the Velocity Trade Exchange Rate at that time;

- (ii) for the duration of that Tenor FX Transaction, the Part Payment Requirement is the greater of:

- (A) the Initial Part Payment; and
- (B) **Transaction Value x Ongoing Part Payment Percentage**

where:

**Transaction Value** means, at any time, the value of that Tenor FX Transaction, based on Velocity Trade's Preferred Side, converted, where necessary, to the Client Base Currency at the Velocity Trade Exchange Rate at that time;

- (iii) If the Client has more than one current Tenor FX Transaction:
  - (A) the undertakings in sub-paragraphs (i) and (ii) relate to each Tenor FX Transaction separately, unless Velocity Trade has agreed otherwise in writing; and
  - (B) a Part Payment received in respect of one Tenor FX Transaction cannot be used in satisfaction of the Part Payment Requirement in respect of any other Tenor FX Transaction;
- (iv) The undertaking in sub-paragraphs (i) and (ii) are deemed to be repeated at the time each Tenor FX Transaction is entered into; and
- (v) For the avoidance of doubt, the undertaking in sub-paragraphs (i) and (ii) is a Credit Requirement for the purpose of clause 18.1(c).

(c) **Ongoing obligation to meet Part Payment Requirements**

- (i) The Client acknowledges and agrees that its obligation to meet the Part Payment Requirement in respect of any Tenor FX Transaction exists for the duration of that Transaction.
- (ii) Where the value of an outstanding Tenor FX Transaction is moving or has moved against the Client, the Client may be required to make additional Payments to ensure its Part Payment Requirement is satisfied.
- (iii) The Client is to maintain sufficient funds in its Spot FX/Tenor FX Transaction Account to ensure its Part Payment Requirements in respect of each Tenor FX Transaction are satisfied at all times, notwithstanding that the Client being unable to access its Spot FX/Tenor FX Transaction Account information as contemplated by paragraph 7.3(b).
- (iv) In addition, the Client acknowledges and agrees that, where the value of an outstanding Tenor FX Transaction is moving or has moved in favour of the Client, any funds deposited towards satisfaction of a Part Payment Requirement but which become in excess of the Part Payment Requirement as a result of the movement:
  - (A) remain and are deemed to be part of the Part Payment in respect of the particular Tenor FX Transaction; and
  - (B) cannot be used in satisfaction of the Part Payment Requirement in respect of any other Tenor FX Transaction; and
  - (C) are not Client Moneys and will not be held in a Segregated Funds Account.

(d) **No right to return of Part Payments**

- (i) The Client acknowledges and agrees that it has no right to the return of any amount constituting a Part Payment for the duration of the relevant Tenor FX Transaction.
- (ii) However, in its absolute discretion, Velocity Trade may agree to return to the Client any amount that is in excess of the Part Payment Requirement due to movements in value of the outstanding Tenor FX Transaction in favour of the Client.

### **7.3 Monitoring Part Payments**

(a) **Access to FX Account information**

The Client acknowledges that the Client is able to monitor its Part Payment Requirements in real time by:

- (i) where available for Tenor FX Transactions, accessing the Electronic Trading Platform; or
- (ii) where there is no Electronic Trading Platform available for Tenor FX Transactions:
  - (A) reviewing the daily report (or similar report) which Velocity Trade may send to the Client by electronic mail; and/or
  - (B) contacting Velocity Trade by the Trading Platform specified or otherwise as agreed with Velocity Trade, such as by telephone or electronic mail.

(b) **Client to monitor Part Payment Requirements on 24-hour basis**

The Client acknowledges and agrees that the Client is solely responsible for monitoring its Part Payment Requirements on a 24-hour basis and that, in doing so, the Client must have regard to:

- (i) outstanding Tenor FX Transactions;
- (ii) the volatility of any relevant currency or markets generally;
- (iii) any applicable exchange rate or interest rate risk; and
- (iv) the time it takes the Client to remit sufficient cleared funds to Velocity Trade (including the time it takes those funds to clear).

(c) **Waiver of right to be notified of Part Payment Requirements, etc.**

- (i) The Client acknowledges and agrees that under no circumstances is it entitled to receive a demand, call or notice from Velocity Trade notifying the Client that further funds are required for the Client to meet its Part Payment Requirements.
- (ii) In particular, the Client acknowledges and agrees that, whether or not extreme or unusual market conditions exist, where the value of outstanding Tenor FX Transactions is moving or have moved particularly quickly against the Client, Velocity Trade may not make a demand or a call for further funds by way of Part Payment or give notice before exercising its right to terminate and close out Transactions under this Agreement.

- (iii) No demand, call or notice made or given by Velocity Trade to the Client in any one or more instances invalidates the acknowledgement and agreement given by the Client in sub-paragraph (i).

(d) **Time for forwarding moneys**

- (i) Velocity Trade is not obliged to allow the Client time to forward further funds to meet its Part Payment Requirements before exercising its right to terminate and close out Tenor FX Transactions under this Agreement.
- (ii) However, Velocity Trade may in its absolute discretion allow the Client time to forward funds to meet its Part Payment Requirements, in which event that permission is only effective once it is confirmed in writing by Velocity Trade, and then only to the extent specified in the written notice given by Velocity Trade.

## **7.4 Failure to meet Part Payment Requirements and Events of Default**

(a) **Failure to meet Part Payment Requirements**

- (i) The Client understands that, if at any time during any day, the Client fails to meet the Part Payment Requirements in respect of a Tenor FX Transaction:
  - (A) that failure constitutes an Event of Default by the Client for the purpose of clause 18.1;
  - (B) Velocity Trade may, in its absolute discretion, close out some or all outstanding Transactions (including any Transactions between the parties but which are not Tenor FX Transactions); and
  - (C) where a Trading Platform is available for the purpose of Tenor FX Transactions, that Trading Platform may automatically terminate and close out all outstanding Tenor FX Transactions.
- (ii) Where Velocity Trade closes out a Transaction or Transactions in accordance with sub-paragraph (B) or (C), the Client acknowledges and agrees that that termination may be immediate or may be upon notice to the Client.

(b) **Events of Default**

The Client acknowledges and agrees that, if an Event of Default occurs:

- (i) Velocity Trade may use Payments made by way of Part Payment in part or total satisfaction of any amount otherwise payable by the Client to Velocity Trade and that that use is not limited to satisfaction of the Tenor FX Transaction in respect of which the Part Payment was made; and
- (ii) where a Part Payment is used in accordance with sub-paragraph (i), that Part Payment will not be available to satisfy the Part Payment Requirement in respect of which the Part Payment was received.

(c) **Greying out**

Where a Trading Platform is available for Tenor FX Transactions, the Client acknowledges and agrees that the Trading Platform may “grey out” certain Tenor FX Transactions and, by doing so, indicate it does not permit the Client to enter into that Tenor FX Transaction.

## **7.5 Settlement of Transaction where Part Payment has been received**

### **(a) Full amount due**

- (i) Each Payment is to be paid in full on the Value Date unless Velocity Trade has agreed in writing on a case by case basis that the Client may set off the amount of any Part Payment against a Payment to be made by the Client.
- (ii) Accordingly, the Client may only set off the amount of that Part Payment as agreed and/or directed by Velocity Trade.

### **(b) Return of Part Payment**

Where the Client is required to make Payment in full in accordance with paragraph 7.5(a), Velocity Trade will return to the Client's Bank Account the Client's Part Payment in the Client Base Currency in respect of the relevant Tenor FX Transaction.