



# CLIENT & TRADING TERMS AND CONDITIONS

**Black River Markets**

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<https://www.blackrivermarkets.com>

[support@blackrivermarkets.com](mailto:support@blackrivermarkets.com)

# Terms and Conditions

## 1. Application

### Applying for an Account

1.1. You must complete an Account Application Form in order to apply for an Account. We (Black River Markets), in our sole discretion, will decide whether to accept an Application.

1.2. Unless we agree otherwise, you agree to pay to us, and maintain at all times with us, cleared funds. These funds will be held in accordance with clause 3.5.

1.3. If we accept your Account Application, we will;

1.3.1. establish the Account;

1.3.2. if you are required to pay an initial amount under clause 1.2.;

(i) deposit the cheque which accompanied your Application Form into our trust account or require you to transfer the amount to our trust account;  
and

(ii) once the funds have been cleared, credit the Account with the initial amount.

1.4. The Account is active once the steps in clause 1.3 have been completed.

1.5. You may apply for more than one Account.

### Term

1.6. The Agreement commences once the steps in clause 1.3 have been completed and continues until it is terminated in accordance with these Terms.

## 2. Our Service

### Entry into Contracts

2.1. Subject to you fulfilling your obligations under the Terms, if we accept an Order, we will enter into a Contract with you.

2.2. A notice given by us stating any amount or rate for the purpose of these Terms and any Contract or Order is sufficient evidence of the amount or rate, unless it is proved to be incorrect.

2.3. We enter into each Contract as a principal. You enter into each Contract as principal (unless we otherwise agree in writing). If you act as an agent on behalf of a principal, whether or not you identify that principal to us, we will not accept that principal as a 'client', unless otherwise agreed in writing.

### Financial product advice

2.4. Any information or general financial product advice that we give you does not take into account your financial situation, needs or personal objectives. In particular, we do not give

you advice about whether you should open, hold or Close-Out a Contract. You must consider the appropriateness of entering into a Contract having regard to your own financial situation, needs or personal objectives and obtain your own independent financial advice.

#### **How we provide services**

2.5. We quote Underlying Instrument Prices which provide an indication of the prices at which we are prepared to deal with you.

2.6. To allow Black River Markets to have a completely neutral position and limited internal risk controls with trading, we have entered into an agreement with Hedging Partners to allow us to enter into Contracts with you. Immediately after you enter into a Contract with us we automatically enter into a back to back contract with a Hedging Partner.

#### **Our Business hours**

2.7. Our maned business hours are normally 8am to 11pm on Business Days. We quote Underlying Instrument Prices and accept Orders during those hours. However, we maintain support office staff in foreign territories which allows us to maintain a constant 24/6 support availability and server function.

2.8. We are under no obligation to quote Underlying Instrument Prices or accept Orders on a public holiday in any jurisdiction which, in our reasonable opinion, affects the relevant Underlying Instrument. We give notice of such public holidays and the Underlying Instruments affected on the Black River Markets Platform.

### **3. The Account**

#### **Nature of the Account**

3.1. The Account is a record, or a series of records, maintained by us (or on our behalf) that shows, at any point in time, the net position of the payments you have made or are required to make to us and the payments we have made or are required to make to you. The Account is not a deposit account with us and no money is held in the Account.

3.2. You authorise and direct us and the Hedging Partner to:

3.2.1. debit to the Account any Free Balance you withdraw and any amounts payable by you under the Terms;

3.2.2. credit to the Account any amounts deposited by you and any amounts payable by us under these Terms; and

3.2.3. designate the amounts in the Account as either Free Balance or Actual Margin depending on the amounts you deposit with us, your Orders, Contract positions and market movements in accordance with the Terms.

3.3. We are not required to notify you before debiting, crediting or designating amounts on the Account. You agree to maintain sufficient funds on the Account. You will receive a Margin Call at 75% and your trades will be close out when the margin reaches 50%

3.4. You agree to deposit with us sufficient funds at all times to satisfy all amounts payable by you under these Terms. It is your responsibility to ensure that the funds you transfer are

cleared in sufficient time to meet all the payment obligations you have under these Terms.  
Use of funds deposited with us

3.5. We deposit all money paid by you into our trust account. You agree and acknowledge that:

3.5.1. your money in our trust account is not kept separate from the money of other clients;

3.5.2. we may withdraw your money from the trust account in any of the following circumstances:

- (i) making a payment to, or in accordance with your written directions for purposes of entering into Contracts (including but not limited to Mark to Market Payments);
- (ii) defraying brokerage and other proper charges;
- (iii) paying to us money to which we are entitled;
- (iv) making a payment that is otherwise authorised by law;
- (v) paying to us money to which we are entitled pursuant to the operating rules of a financial market; and
- (vi) making a payment to another licensee provided that the receiving licensee is notified that the money has been withdrawn from the trust account and pays it into its trust account;

3.5.3. any amounts withdrawn from the trust account under clause 3.5.2.:

- (i) belong to us; and
- (ii) will no longer be your funds or be held for you;

3.5.4 we may use your money from the trust account for the purpose of meeting obligations incurred by us in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives by us (including dealings with our Hedging Partner), including dealings on behalf of other clients. In the case of amounts withdrawn under this clause 3.5.2., the amounts are held in one or more accounts in the Hedging Partner's name.

### **Withdrawals of Free Balance**

3.6. If the Account shows that you have Free Balance, you may request us to send to you a cheque or effect payment by alternative means in respect of such amount as you may specify. However, we may at our discretion elect to withhold any payment requested (in whole or in part) due to you if:

3.6.1. an amount is required to be maintained with us at all times under clause 1.2;  
or

3.6.2. we are entitled to withhold an amount.

3.7. We will notify you as soon as reasonably practicable if we decide to withhold any part of your Free Balance under clauses 3.6.1. or 3.6.2.

## **Accounts treated separately**

3.8. Except as otherwise expressly provided in the Agreement, where you have opened more than one Account with us, we treat the Accounts as entirely separate. Therefore, any amount standing to your credit on one Account does not, except where we exercise our rights under clause 14 and clause 22.3, discharge any of your liabilities in respect of another Account.

3.9. Where you request in writing, we may, in our absolute discretion, agree to treat the Accounts as one Account. In this case, all references to the Account in the Agreement are taken to be the Accounts as so aggregated. Such request, if agreed by us, takes effect on the date we notify you, which is to be no later than 7 days from the date of actual receipt of the request by us.

## **4. Orders**

### **Quotation of Underlying Instrument Prices**

4.1. You may obtain a quote from us for an Underlying Instrument Price.

4.2. You acknowledge that;

4.2.1. any quote provided by us in accordance with this clause is indicative only; and

4.2.2. no Contract is entered into until your Order is accepted by us in accordance with these Terms.

4.3. You may, by placing an Order with us:

4.3.1. offer to enter into a new Contract with us; or

4.3.2. request us to Close-Out an open Contract.

4.4. You may provide us with oral or written Orders (which includes Orders provided via the Black River Markets Platform as described below). We may acknowledge instructions orally or in writing, as appropriate.

4.5. And Order may be:

4.5.1. a day Order, which means that the Order you place will be cancelled at 22.00 GMT; or

4.5.2. a good 'til cancelled Order, which means that the Order you place will remain capable of being accepted by us, until you cancel the order or we accept it.

4.6. Before placing an Order you are responsible for ensuring that:

4.6.1. the Actual Margin is equal to or more than the Required Margin, as set out in clause 6 of these Terms; and

4.6.2. you can comply with the requirements of clause 3.4.

4.7. When placing an Order, you must set out details of:

4.7.1. whether you intend to be the Long Party or the Short Party under the Contract;

4.7.2. the Contract Quantity; and

4.7.3. the Underlying Instrument, and other information applicable to the Order as we may require from time to time.

#### **Acceptance of Order**

4.8. We may in our sole discretion accept an Order in whole or in part. An Order is accepted by us when we record the transaction concerning the Contract in our records.

4.9. An Order is binding on you when we accept the Order. You acknowledge that we may accept an Order without any notice of acceptance, aside from giving you the Confirmation.

4.10. We inform you if we decide not to accept an Order.

4.11. Orders may be placed as:

4.11.1. market Orders to buy or sell an Underlying Instrument as soon as possible at the price obtainable in the market; or

4.11.2. limit and stop Orders to trade when the price reaches a predefined level, as applicable to the various Underlying Instruments offered (or a combination of these types of Orders). Limit Orders to buy and stop Orders to sell must be placed below the current market price, and limit Orders to sell and stop Orders to buy must be placed above the current market price. If the bid price for sell Orders or ask price for buy Orders is reached, the Order is filled as soon as possible at the price obtainable in the market. Limit and stop Orders are therefore not guaranteed executable at the specific level or amount.

4.12. Where your request to cancel an Order is not received by us prior to acceptance of that Order, the Contract or Close-Out resulting from the acceptance of the Order is valid and binding on you and us under these Terms.

4.13. You acknowledge that any action by you to modify or cancel an Order is ineffective unless:

4.13.1. we have received from you a cancellation notice in a form acceptable to us; or

4.13.2. we have cancelled the order in our books and records.

4.14. Errors in Pricing.

4.14.1. It is possible that errors, omissions or misquotes (“Material Error”) may occur in the pricing of Margin FX Contracts or CFDs quoted by us, which by fault of either of us or any third party, is materially incorrect when taking into account market conditions and quotes in Underlying Instruments which prevailed at the time. A Material Error may include an incorrect price, date, time or Margin FX Contract or CFD or any error or lack of clarity of any information. If a trade is based on a Material Error, we reserve the right without your consent to:

(i) amend the terms and conditions of the Margin FX Contract or CFD to reflect what we consider to have been the fair price at the time the Margin Contract or CFD was entered into and there had been no Material Error;

(ii) close the trade and any open Positions resulting from it;

(iii) void the Margin Contract or CFD from the outset; or

(iv) refrain from taking action to amend or void the Margin FX Contract or CFD.

4.14.2. We will exercise the right in paragraph 4.14(a) reasonably, in good faith and as soon as reasonably practicable after we become aware of the Material Error. To the extent practicable, we will give you prior notice of any action we take under this clause; but if it is not practicable we will give you notice as soon as practicable afterwards. In the absence of fraud or gross negligence on our part, we are not liable to you for any loss, cost, claim, demand or expense that you incur or suffer (including loss of profits or indirect or consequential losses), arising from or connected with the Material Error including where the Material Error arising from an information service on which we rely.

4.14.3. In the event that a Material Error has occurred and we exercise our rights under paragraph 4.14.1., we may, without notice, adjust your Account or require that any moneys paid to you in relation to the Margin FX Contract or CFD the subject of the Material Error be repaid to us as a debt due payable to us on demand.

#### **Price, execution process and trading platform manipulation.**

4.15. If we reasonably believe that you have manipulated our prices, our execution processes or our Trading Platform, we may in our sole and absolute discretion, subject to paragraph 4.14.2. without notice to you:

(i) enforce the trade(s) against you if it is a trade(s) which results in you owing money to us;

(ii) treat all your trades as void from the outset if they are trades which result in us owing money to you, unless you produce conclusive evidence within 30 days of us giving you notice under this clause that you have not committed any breach or warranty, misrepresentation or undertaking in this Agreement;

(iii) withhold any funds suspected to have been derived from any such activities;

(iv) make any resultant corrections or adjustments to your Account;

(v) close your Account; and/or

(vi) take such other action as we consider appropriate.

## **5. No Transfers**

5.1. A Contract does not transfer the legal or beneficial interest in any Underlying Instrument to you and neither party has any right or obligation to acquire or deliver the Underlying Instruments.

## **6. Required Margin**

### **Obligation to have Required Margin**

6.1. Our margin requirements apply throughout the term of each Contract. It is your responsibility to ensure that the Required Margin is available on the Account at all times. We may or may not notify you that the Actual Margin is less than the Required Margin. If, at any time during the term of a Contract, the Actual Margin is not sufficient to cover the Required Margin, you must Close Out open Contracts or transfer adequate funds to us. Such transfer must be effected and documented immediately after we request you to do so. Even if you effect such transactions, we may do one or both of cancel any Orders or Close-Out one or more Contracts or part of a Contract at our sole discretion without assuming any responsibility towards you for such action.

6.2. If, at any time during the term of a Contract, the Actual Margin is less than the Required Margin, the shortfall is immediately due and payable, and, if not paid, constitutes an Event of Default.

6.3. We provide to you through the Black River Markets Platform access to information about the Account to enable you to calculate the Required Margin. It is your responsibility when placing Orders over the telephone to ensure that you request all relevant information in respect of the Account before placing Orders, including all information in respect of your current open Contracts. We are not responsible for any losses you may suffer or incur as a result of not requesting any such information.

6.4. Where we are not able to provide you on-line access through the Black River Markets Platform to information on the Account due to circumstances within our control, we use reasonable endeavours to contact you to request additional funds so that Actual Margin equals Required Margin. You accept that in extreme circumstances where your Contracts are moving or have moved particularly quickly against you, we may not be able to contact you before exercising our rights to Close-Out your Contracts under these Terms. No demands, contact, calls or notices made or given by us to you in any one or more instances invalidates the waiver given by you under this clause.

## 7. Mark to Market Payments

### Contract Valuations

7.1. We calculate the Contract Value as at each Valuation Time.

### Mark to Market Payments

7.2. If at a Valuation Time:

7.2.1. the Contract Value is greater than the Previous Contract Value:

(i) the Short Party must pay the Long Party the excess of the Contract Value over the Previous Contract Value; or

(ii) the Seller must pay the Buyer the excess of the Contract Value over the Previous Contract Value; or

7.2.2. the Contract Value is less than the Previous Contract Value:

(i) the Long Party must pay the Short Party the excess of the Previous Contract Value over the Contract Value; or

(ii) the Buyer must pay the Seller the excess of the Previous Contract Value over the Contract Value.

7.3. If on the Close-Out Date:

7.3.2. the Close-Out Value is greater than the Previous Contract Value the Long Party must pay the Short Party the excess of the Previous Contract Value over the Close-Out Value; and

7.3.3. the Close-Out Value is less than the Previous Contract Value the Short Party must pay the Long Party the excess of the Previous Contract Value over the Close-Out Value.

7.4. All Mark to Market Payments:

7.4.1. we owe to you are credited to your Account; and

7.4.2. you owe to us are debited from your Account, on the same Business Day as the relevant Valuation Time or Close-out Date.

7.5. Any Mark to Market Payment made under this clause 7 by:

7.5.1. us, is treated:

(i) firstly as a refund of any Loss prepaid by you under clause 7.5.2.(ii); and

(ii) secondly, to the extent of any excess of the Mark to Market Payment over the amount referred to in paragraph (i), as a prepayment of any Profit; and

7.5.2. you, is treated:

(i) firstly as a refund of any Profit prepaid by us under clause 7.5.1.(ii); and

(ii) secondly, to the extent of any excess of the Mark to Market Payment over the amount referred to in paragraph (i), as a prepayment of the Loss.

## 8. Commissions, Charges and Other Costs

8.1. You must pay to us the applicable commissions and charges as set out in the commissions and charges schedule which is available on our website.

8.2. We may vary these commissions and charges without notice when changes are to your advantage, or are due to external circumstances beyond our control. Such circumstances include:

8.2.1. changes in the relationship with our counterparties, which affect our cost structures;

8.2.2. changes in commissions and charges from exchanges, clearing houses, information providers or other third party providers that are passed on to you by us.

8.3. We may vary these commissions and charges with 30 days' prior notice if:

8.3.1. market conditions, including competitive behaviour, mean it is prudent for us to change our conditions; or

8.3.2. for commercial reasons we wish to change our general cost and pricing structure; or

8.3.3. significant particulars of your individual circumstances have changed.

8.4. Amounts due under this clause 8 are debited from your Account on the Close of Business on the day the commission, charge or other Cost is incurred by you.

## 9. Interest on Open Positions

### No interest paid on amounts we hold for you

9.1. Unless otherwise agreed in writing, we are not liable to:

9.1.1. pay interest to you on any Free Balance in any Account or any other sum held by us; or

9.1.2. account to you for any interest we receive on such sums or in connection with any Contract

### Default interest

9.2. If you fail to pay an amount payable to us under the Agreement, we may charge you interest on the unpaid amount at the default interest rate. The default interest rate will be central bank target cash rate for the relevant Underlying Instrument plus 3% as determined by us. The amount of default interest will be debited from the Account daily until the amount owed to us is paid.

### Changes to interest rates

9.3. We may vary such interest rates without notice when changes are to your advantage, or are due to external circumstances beyond our control. Such circumstances include:

(i) changes in the monetary or credit policies domestic or abroad that affect the general interest level in a way that is of importance to us;

(ii) other developments in the general interest level, including in the money and bond markets, in a way that is of importance to us; or

(iii) changes in the relationship with our counterparties, which affect our cost structures.

9.4. We may vary such interest rates with one month's notice if:

(i) market conditions, including competitive behaviour, mean it is prudent for us to change our conditions; or

(ii) for commercial reasons we wish to change our general cost and pricing structure; or

(iii) significant particulars of your individual conditions have changed.

## 10. Currency Conversions

10.1 All amounts paid by you to us and paid by us to you may be payable in New Zealand Dollars, Australian dollars, US Dollars, British Pound Sterling or Euros. Where you deal in a Contract denominated in a currency other than Australian dollars, US Dollars, New Zealand Dollars, British Pound Sterling or Euros:

10.1.1. funds transferred from our trust account will be converted at the current spot rate for the conversion of the relevant funds into your nominated currency (being either New Zealand Dollars, Australian dollars, US Dollars, British Pound Sterling or Euros) minus a conversion calculation fee of up to 0.5 per cent, which we will charge you; and

10.1.2. realised profits and losses will be converted to your nominated currency (being either New Zealand Dollars, Australian dollars, US Dollars, British Pound Sterling or Euros) immediately on closing of the position at the current spot rate minus a conversion calculation fee of up to 0.5 per cent, which we will charge you.

10.2. Amounts due under this clause 10 are debited from your Account on the Close of Business of the day that a currency conversion occurs.

10.3. We may waive or defer the conversion calculation fee at our discretion.

## 11. Swap Charge for Contracts Held Until the Specified Date

11.1 Where a Contract is held at the Close of Business on the day before its Specified Date, it is rolled over to a new Specified Date. On re-opening, the Contract is subject to a Swap Charge determined by us in accordance with this clause:

11.1.1. if you are the Long Party and the Bought Swap Rate is higher than the Sell Swap Rate, we must pay you interest on the Contract Value of the open position at the rate that is the Bought Swap Rate minus the Sell Swap Rate;

11.1.2. if you are the Long Party and the Bought Swap Rate is less than the Sell Swap Rate, you must pay us interest on the Contract Value of the open position at the rate that is the Bought Swap Rate minus the Sell Swap Rate;

11.1.3. if you are the Short Party and the Sell Swap Rate is higher than the Bought Swap Rate, we must pay you interest on the Contract Value of the open position at the rate that is the Bought Swap Rate minus the Sell Swap Rate; and

11.1.4. if you are the Short Party and the Sell Swap Rate is lower than the Bought Swap Rate, you must pay us interest on the Contract Value of the open position at the rate that is the Bought Swap Rate minus the Sell Swap Rate.

11.2. The Swap Charge is paid by adjusting the Underlying Instrument Price by an amount equal to the amount of the Swap Charge calculated in accordance with this clause.

## 12. Close-out of Contract

### Close-out of a Contract

12.1. You may instruct us to enter into a position which is opposite to one or more of your open positions.

### Close-out of Contracts

12.2. An open Contract is Closed-Out:

12.2.1. on acceptance by us of your Order requesting Close-Out of your Contract (including where the Order is deemed to be a Close-Out under clause 12.1);

12.2.2. by us under Clause 22 Settlement following Close-out

12.3 If a Contract is Closed-Out under clause 12.2, we must pay any Profit and you must pay any Loss to the extent that such payment has not been prepaid under clause 7.

## 13. Confirmations

### Reporting to you

13.1. If we accept an Order, we send you a Confirmation.

13.2. If we fail to send you a Confirmation, it does not affect the validity of the Order or the Contract.

13.3. If there is a conflict between:

13.3.1. the Agreement; and

13.3.2. our records of the transaction concerning a Contract or an Order, our records of the transaction concerning a Contract or an Order prevail.

### Standing facility

13.4. You acknowledge that:

13.4.1. we may establish a standing facility over the internet that allows you to view, download and print the Confirmations and other reports that we provide;

13.4.2. we are authorised to use the standing facility as the means of providing the Confirmations and other reports from us;

13.4.3. you access and use such standing facility to:

(i) receive the Confirmations and other reports we provide;

(ii) confirm all Contracts; and

(iii) monitor your obligations under the Agreement; and

13.4.4. the Confirmations and other reports are made available to you as at the time the relevant document is posted by us on the standing facility.

13.5. We may send Confirmations and other reports that we provide, in addition to making them available using the standing facility.

#### Errors

13.6. You must verify the contents of each document received from us. Such documents are, unless incorrect, conclusive unless you notify us in writing to the contrary within 3 Business Days of receiving the document.

## 14. Our Rights

14.1. We may, with or without notice, and in addition to any other rights we may have under these Terms:

- (i) Close-Out or Cancel all or part, as we reasonably consider appropriate, the Contracts; or
- (ii) reduce your Position Limit; or
- (iii) refuse Orders; or
- (iv) terminate the Agreement; or
- (v) adjust the price, size or value of the contract; or
- (vi) adjust the margin requirement (leverage).

14.2. We may exercise our rights in clause 14.1 if:

- (i) an Event of Default has occurred; or
  - (ii) we reasonably consider that there are abnormal trading conditions; or
  - (iii) we reasonably consider it necessary for the protection of our rights under the Agreement;
- or
- (iv) we are unable to make prices in the relevant Contract due to the unavailability of the relevant market information for reasons beyond our control; or
  - (v) we so decide in our absolute discretion and, in this case only, give written notice of such decision to you; or
  - (vi) we consider that you may be in possession of 'inside information'; or
  - (vii) we consider that you may be in breach of any applicable law; or
  - (viii) either party is so requested by any regulatory agency or authority; or
  - (ix) your Actual Margin is less than the Required Margin; or

(x) the aggregate of the Contract Value for your Orders and the Contract Value for all other orders for an Underlying Instrument is below the minimum or above the maximum values that we reasonably consider appropriate in the market.

14.3. If we exercise our right to Close-Out all or part of any Contract, clause 12 applies except that we determine, in our sole discretion, the Close-Out Value for the affected Contract.

14.4. You accept that we may Close-Out any of your Contracts and in what proportion that we decide in our absolute discretion.

## 15. Suspension and Market Disruption

15.1. If, at any time:

- (i) trading in an Underlying Instrument on any exchange is limited or suspended; or
- (ii) trading is limited or suspended on any exchange so as to restrict trading within any relevant Index, such that we are prevented from determining the Underlying Instrument Price of an Underlying Instrument, then the Underlying Instrument Price of such Underlying Instrument is to the Underlying Instrument Price immediately preceding such limitation or suspension

15.2. If the limitation or suspension continues for 5 Business Days, we may Close-Out the Contract and if we do so we will determine the Close-Out Date and the Close-Out Value acting in good faith. We reserve the right at all times during the term of any such limitation or suspension to adjust the Underlying Instrument Price of any affected Underlying Instrument in our reasonable discretion but having regard to the then prevailing market conditions affecting trading as a whole or trading in such Underlying Instrument.

## 16. Client's Warranties and Representations

16.1. You and each Guarantor (as applicable) warrant and represent that:

16.1.1. if a body corporate:

- (i) it is duly authorised and validly existing under the laws of its jurisdiction of incorporation;
- (ii) it is properly empowered and has obtained necessary corporate or other authority pursuant to its constitutional and organisational documents;

16.1.2. if you completed the Application in the name of a trustee:

- (i) you are the only trustee of the trust; and
- (ii) no action has been taken or proposed to remove you as trustee of the trust; and
- (iii) you have power under the trust deed to enter into and comply with your obligations under the Agreement and any Contract or Order; and

(iv) you have in full force and effect the authorisations necessary to enter into the Agreement or any Contract and make an Order, perform obligations under them and allow them to be enforced (including under the trust deed and its constitution (if any)); and

(v) you have a right to be fully indemnified out of the assets of the trust in respect of obligations incurred by you under the Agreement and any Contract or Order; and

(vi) the trust fund is sufficient to satisfy that right of indemnity and all other obligation in respect of which you have a right to be indemnified out of the trust fund; and

(vii) you have not, and never have been, in default under the trust deed; and

(viii) no action has been taken or proposed to terminate the trust; and

(ix) you and your directors and other officers have complied with their obligations in connection with the trust; and

(x) you have carefully considered the purpose of the Agreement and any Contract or Order and consider that entry into the Agreement and any Contract or Order is for the benefit of the beneficiaries and the terms of the trustee documents are fair and reasonable;

16.1.3. all necessary consents required in order for it to conduct its business and relevant to the performance, validity or enforceability of the Agreement and any Contract or Order have been obtained and are in full force and effect;

16.1.4. you are not under any legal disability with respect to, and is not subject to any law or regulation which prevents its performance according to the Agreement or any Contract or transaction contemplated by the Agreement;

16.1.5. it is in compliance with all laws to which it is subject including, without limitation, all tax laws and regulations, exchange control requirements and registration requirements;

16.1.6. the information you give us is complete, accurate and not misleading in any material respect;

16.1.7. unless stated in the Application Form, you are not acting as trustee of a trust;

16.1.8. all funds deposited in the Account are not subject to an Encumbrance;

16.1.9. no Event of Default continues unremedied;

16.1.10. there are no actions or claims pending the adverse determination of which might have a Material Adverse Effect on your ability or the Guarantor's ability to perform its obligations under the Agreement any Contract or Order, or on the rights granted to us;

16.1.11. it is not entitled to claim for itself or any of its assets or revenues any right of general immunity or exemption on the grounds of sovereignty or otherwise from

suit, execution, attachment or other legal process in respect of its obligations under the Agreement any Contract or Order; and

16.1.12. the information contained in the Application Form is complete and accurate.

16.2. The above warranties and representations are deemed to be repeated each time you place an Order.

16.3. You and the Guarantor acknowledge that we have entered into the Agreement in reliance on the representations and warranties in this clause 16.1.

## 17. Undertakings and Acknowledgments

17.1. You and the Guarantor undertake to:

17.1.1. notify us if any warranty or representation made by you or the Guarantor is or becomes incorrect or misleading;

17.1.2. do everything necessary to ensure that no Event of Default occurs;

17.1.3. supply to us when requested to do so such financial or other information relating to you or the Guarantor as we may from time to time reasonably request.

## 18. Indemnity and Exclusion of Liability

### Indemnity

18.1. You indemnify us against any liability or loss arising from, and any Costs incurred in connection with:

18.1.1. us acting in connection with the Agreement or any Contract or Order in good faith on fax, telephone, email or written instructions purporting to originate from your offices or to be given by an Authorised Person; or

18.1.2. an Event of Default; or

18.1.3. the Agreement or any Contract or Order; or

18.1.4. us acting in accordance with any direction, request or requirement of any regulatory authority or government body; You agree to pay amounts due under this indemnity on demand from us.

18.2. This indemnity survives any termination of the Agreement. Exclusion of Liability

18.3. We are not liable for loss or Costs caused by:

18.3.1. the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under the Agreement;

18.4.2. not accepting or your Orders or delay in accepting your Orders;

18.4.3. not designating or delay in designating amounts as either Actual Margin or Free Balance on the Account.

## 19. Dealings between You and Us

19.1. We are entitled to act on the oral or written Orders:

19.1.1. of any Authorised Person;

19.1.2. of any person who appears to us to be an Authorised Person, notwithstanding that the person is not, in fact, so authorised; and

19.1.3. transmitted using your username, account number, user ID and/or password.

19.2. You agree to promptly provide any instructions to us which we may require. If you do not provide the instructions promptly, we may, in our absolute discretion, take such steps at your cost, as we consider necessary or desirable for our own protection or your protection. This provision is similarly applicable in situations when we are unable to contact you.

19.3. We may (but we are not obliged to) require confirmation in such form as we may reasonably request if an instruction is to remit money due to you or if it appears to us that such confirmation is necessary or desirable.

19.4. If you are more than one person (for example, joint account holders):

19.4.1. the liabilities of each such person are joint and several;

19.4.2. we may act upon instructions received from any one person who is, or appears to us to be, such a person, whether or not such person is an Authorised Person;

19.4.3. any notice or other communication provided by us to one such person is deemed to have been provided to all such persons; and

19.4.4. our rights under clause 22 apply if an Event of Default occurs in respect of any one of such persons.

## 20. Taxes

### Stamp Duty

20.1 You must pay and account for any transfer or similar duties or taxes, and any loan security or other stamp duties chargeable in connection with any transaction effected pursuant to or contemplated by these Terms or the PDS and will indemnify and keep indemnified us against any liability arising as a result of your failure to do so.

### GST

20.2 Consideration for a supply under or in connection with or contemplated by these Terms and the PDS is exclusive of GST unless expressly stated to be inclusive of GST.

20.3. If GST is payable by us or any members in our group of companies on any supply under or in connection with or contemplated by these Terms or the PDS, in addition to providing any consideration for that supply (which is exclusive of GST), you must:

20.3.1. pay to us or the relevant member of our group of companies (as the case may be) an amount equal to the GST payable on the supply, without deduction or set-off of any other amount; and

20.3.2. make that payment as and when the consideration or part of it must be paid or provided, except that you need not pay unless you have received a tax invoice (or adjustment note) for that supply.

### **Withholding**

20.4. If you make any payment which is subject to any withholding or deduction, you must pay us such additional amount to ensure that the amount actually received by us equals the full amount we would have received had no withholding or deduction been made.

20.5. If we make any payment which is subject to any withholding or deduction, we will pay you the net amount after making such withholding or deduction and will not pay you an additional amount.

## **21. Guarantee and Indemnity**

### **Requirement for a Guarantor**

21.1. Your obligations under the Agreement must be guaranteed:

21.1.1. where you (including a trustee) are a company, by each director of the Company; and

21.1.2. in any other circumstance, where we determine, in our absolute discretion, that such a guarantee is required.

### **Consideration**

21.2. The Guarantor acknowledges that we are acting in reliance on the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

### **Guarantee**

21.3. The Guarantor unconditionally and irrevocably guarantees to us your compliance with your obligations in connection with the Agreement, including each obligation to pay money.

21.4. If you do not comply with those obligations on time and in accordance with the Agreement, then the Guarantor agrees to comply with those obligations on demand from us. A demand may be made whether or not we have made demand on you.

### **Indemnity**

21.5. The Guarantor indemnifies us against any liability or loss arising from, and any Costs it incurs, if:

21.5.1. you do not, or are unable to, comply with an obligation you have (including an obligation to pay money) in connection with the Agreement; or

21.5.2. an obligation you would otherwise have under the Agreement (including an obligation to pay money) is found to be unenforceable; or

21.5.3. an obligation the Guarantor would otherwise have under clause 21.3 is found to be unenforceable; or

21.5.4. a representation or warranty by you in the Agreement is found to have been incorrect or misleading when made or taken to be made.

21.6 The Guarantor agrees to pay amounts due under clause 21.3 on demand from us.

21.7 We need not incur expense or make payment before enforcing this right of indemnity.  
Extent of guarantee and indemnity

21.8 The guarantee in clause 21.3 is a continuing obligation despite any intervening payment, settlement or other thing and extends to all of your obligations in connection with the Agreement. The Guarantor waives any right it has of first requiring us to commence proceedings or enforce any other right against you or any other person before claiming from the Guarantor under this guarantee and indemnity.

### **Acknowledgement**

21.9. The Guarantor acknowledges that, before entering into this guarantee and indemnity, it:

21.9.1. was given a copy of the Agreement (and all documents giving rise to your obligation in connection with the Agreement) and had full opportunity to consider their provisions; and

21.9.2. is responsible for making itself aware of your financial position and any other person who guarantees any of your obligations in connection with the Agreement.

### **Payments**

21.10. The Guarantor agrees to make payments under this guarantee and indemnity:

21.10.1. in full without set-off or counterclaim, and without any withholding or deduction unless prohibited by law; and

21.10.2. in the currency in which the payment is due, and otherwise in US dollars, in immediately available funds.

21.11. If the Guarantor makes a payment that is subject to any withholding or deduction, the Guarantor agrees to pay us such additional amount to ensure that the amount actually received by us equals the full amount we would have received had no withholding or deduction been made.

### **Our Rights Protected**

21.12 The rights given to us under this guarantee and indemnity, and the Guarantor's liabilities under it, are not affected by any act or omission of us or any other person. For example, those rights and liabilities are not affected by:

21.12.1. any act or omission:

- (i) varying or replacing the Agreement;
- (ii) releasing you or giving you a concession (such as more time to pay);
- (ii) releasing any person who gives a guarantee or indemnity in connection with any of your obligations;
- (iv) by which a person becomes a Guarantor after the date of this guarantee and indemnity;
- (v) by which the obligations of any person who guarantees any of your obligations (including obligations under this guarantee and indemnity) may become unenforceable;
- (vi) by which any person who was intended to guarantee any of the obligations does not do so, or does not do so effectively;
- (vii) by which a person who is co-surety or co-indemnifier is discharged under a Client Agreement or by operation of law; (viii) a person dealing in any way with the Agreement or this guarantee and indemnity;
- (viii) the death, mental or physical disability, or liquidation, administration or insolvency of any person including you or the Guarantor;
- (ix) changes in the membership, name or business of any person; or
- (x) acquiescence or delay by us or any other person.

**Guarantor's rights are suspended**

21.13. As long as any obligation is required, or may be required, to be complied with in connection with this guarantee and indemnity, the Guarantor may not, without our consent:

21.13.1. reduce its liability under this guarantee and indemnity by claiming that you or it or any other person has a right of set-off or counterclaim against us; or

21.13.2. exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity, mortgage, charge or other encumbrance given in connection with the Agreement or any other amount payable under this guarantee and indemnity; or

21.13.3. claim an amount from you, or another guarantor (including a person who has signed the Application Form as a "Guarantor"), under a right of indemnity; or

21.13.4. claim an amount in your liquidation, administration or insolvency or of another guarantor of any of your obligations (including a person who has signed the Application Form as a "Guarantor").

## 22. Termination

22.1. If all of a Client's Contracts have been Closed-Out, you may terminate the Agreement, including your rights associated with the use of the Black River Markets Platform, immediately by giving written notice to us.

22.2. We may:

22.2.1. Close-Out any Contracts; and

22.2.3. terminate the Agreement, including your rights associated with the use of the Black River Markets Platform, either:

(i) at any time on giving you 7 days' notice; or

(ii) immediately, following an Event of Default or to otherwise protect our interests, without notice to you.

22.3. On termination by any party, we may consolidate all Accounts held by you, and deduct all amounts due to you from any Account, before transferring any credit balances on any Account to you.

22.4. After the Agreement has been terminated, in addition to the rights set out at clause 22.3:

22.4.1. any indemnity granted by you;

22.4.2. the guarantee and indemnity granted under clause 21;

22.4.3. all of your and the Guarantor's confidentiality obligations;

22.4.4. your obligations in relation to the Black River Markets Platform in clause 23;

22.4.5. the representations and warranties given by you and the Guarantor; and

22.4.6. any exclusion of our liability, under the Agreement, and any other rights or obligations you have which arose before the Agreement is terminated, continue to have full force and effect.

## 23. Black River Markets Platform

23.1. The Black River Markets Platform provides a possibility for execution of certain transactions. Furthermore, details regarding Accounts, Confirmations and messages from us to you may be available on the Black River Markets Platform:

23.1.1. We are not liable to you for any loss, expense, cost or liability suffered or incurred by you due to failure of the system, transmission failure or delays or similar technical errors whether or not the error might be due to factors under our control;

23.1.2. we are not liable to you for any removal of profits or losses you might suffer due to errors in quotes which are the result of our typing errors or feed errors committed or our erroneous perception of information entered into the system by you;

23.1.3. we are entitled to make the necessary corrections in your Account according to market value of the Underlying Instrument in question at the time when the error occurred;

23.1.4. we may offer real-time tradable prices to you. Due to delayed transmission between you and us, the price offered by us may have changed before an Order from you is received by us. If automatic Order execution is offered to you, we are entitled to change the price on which the Order is executed to the market value at the time at which the Order from you was received;

23.1.5. the Black River Markets Platform may be available in several versions, which may be differentiated in various aspects including, but not limited to the level of security applied, products and services available. We are not liable to you for any loss, expense, cost or liability suffered or incurred by you due to you using a version different from our standard version with all available updates installed;

23.1.6. you are responsible for all Orders, and for the accuracy of all information, sent via the Black River Markets Platform using your name, password or any other personal identification means implemented to identify you;

23.1.7. you are obliged to keep passwords secret and ensure that third parties do not obtain access to your trading facilities;

23.1.8. you are liable to us for Contracts executed by means of your password even if such use might be unauthorised or wrongful; and

23.1.9. regardless of the fact that the Black River Markets Platform might confirm that a Contract is executed immediately when you transmit instructions via the Black River Markets

Markets Platform, the Confirmation forwarded by us or made available to you on the Black River Markets Platform constitutes our confirmation of a Contract.

## 24. General

### How we may exercise our rights

24.1 We may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing clauses).

24.2. If we do not exercise a right or remedy fully or at a given time, we may still exercise it later.

24.3. Our rights and remedies under the Agreement are in addition to other rights and remedies given by law independently of the Agreement. We may enforce our rights and remedies in any order we choose.

### Set-off

24.4. We may set off any amount owing by us to you (whether or not due for payment) against any amount due for payment by you to us under the Agreement, any Contract or an Order.

24.5. We may do anything necessary to effect any set-off under this clause (including varying the date for payment of any amount owing by us to you). This clause applies despite any other agreement between you and us.

### **Reinstatement of rights**

24.6. Under law relating to liquidation, administration, insolvency or the protection of creditors, a person may claim that a transaction (including a payment) in connection with the Agreement is void or voidable. If a claim is made and upheld, conceded or compromised, then:

24.6.1. We are immediately entitled as against you and the Guarantor to the rights under the Agreement to which it was entitled immediately before the transaction; and

24.6.2. on request from us, you and the Guarantor agree to do anything (including signing any document) to restore to us any rights (including the Guarantee) held by it immediately before the transaction.

### **No Merger**

24.7 Our rights under the Agreement are additional to and do not merge with or affect and are not affected by any mortgage, charge or other encumbrance held by us or any of your other obligations or obligations of the Guarantor to us, despite any rule of law or equity or any statutory provision to the contrary.

### **Further Steps**

24.8. You agree to do anything we ask (such as obtaining consents, signing and producing documents and getting documents completed and signed):

24.8.1. to bind you and any other person intended to be bound under the Agreement;

24.8.2. to show whether you are complying with this agreement.

### **Amendment**

24.9. We may vary the Agreement at any time. In doing so we must comply with any applicable law.

24.10. We may, following 30 days notice to you, charge you additional fees and/or commissions or increase the current fees and/or commissions) under the Agreement

### **Waivers**

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

### **Assignment**

24.12. You may not assign or otherwise deal with its rights under the Agreement or a Contract or allow any interest in them to arise or be varied, in each case, without our consent.

24.12. We may assign or otherwise deal with our rights under the Agreement or a Contract (including by assignment or participation) without the consent of any person. You agree that

we may disclose any information or documents we consider necessary to help us exercise this right.

#### **Inconsistent law**

24.14. To the extent permitted by law, the Agreement prevails to the extent it is inconsistent with any law.

24.15. A provision of the Agreement that is void, illegal or unenforceable is ineffective only to the extent of the voidness, illegality or unenforceability, but the remaining provisions are not affected.

24.16. Rights given to us under the Agreement and your liabilities under it are not affected by anything which might otherwise affect them at law.

24.17. Any present or future legislation which operates to vary your obligations in connection with an Agreement with the result that our rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law. Notices and other communications.

24.18. Unless expressly stated otherwise in the Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with the Agreement:

24.18.1. must be in writing or such other means as we specify from time to time;

24.18.2. must be signed by the sender (if an individual) or an Authorised Officer of the sender;

24.18.3. will be taken to be received:

(i) if delivered by person, by post or facsimile transmission - when delivered, received or left at the last notified address of the recipient;

(ii) if sent by email - when the sender receives an automated message confirming delivery or four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered;

24.19. We may, to the extent of your authorisation, give a communication under the Agreement to your

#### **Authorised Person.**

24.20. Communications take effect from the time they are received unless a later time is specified in them.

#### **Applicable law**

24.21. The Agreement is governed by the law in force and you submit to the nonexclusive jurisdiction of the courts of that place.

24.22. Without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party's address for service of notices as notified to the other party from time to time.

## **Confidentiality**

24.23. Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of the Agreement) except:

- (a) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (b) if allowed or required by law or the Agreement or required by an stock exchanges;
- (c) in connection with any legal proceedings relating to the Agreement;
- (d) to any person in connection with an exercise of rights or a dealing with rights or obligations under an Agreement (including in connection with preparatory steps such as negotiating with any potential assignee or potential sub-participant or other person who is considering contracting with us in connection with the Agreement).

## **Indemnities**

24.24. Any indemnity in the Agreement is a continuing obligation, independent of your other obligations under the Agreement and continues after the Agreement ends. It is not necessary for us to incur expense or make payment before enforcing a right of indemnity under the Agreement.

## **Counterparts**

24.25. This agreement may consist of a number of copies each signed by one or more parties to the agreement. If so, the signed copies are treated as making up the one document.

## **Consent to Telephone Recording**

24.26. You agree that we may record all telephone conversations, internet conversations (chat), and meetings between you and us and use such recordings, or transcripts from such recordings, as evidence towards any party (including, but not limited to, any regulatory authority and/or court of law) to whom we, in our entire discretion, see it to be desirable or necessary to disclose such information in any dispute or anticipated dispute between us and you.

## **Netting**

24.27. If on any date the same amounts are payable under the Terms by each party to the other in the same currency, then, on such date, each party's obligations to make payment of any such amount will be automatically satisfied and discharged. If the amounts are not in the same currency, the amounts are converted by us in accordance with clause 10.

24.28. If the aggregate amount that is payable by one party exceeds the aggregate amount that is payable by the other party, then the party by whom the larger aggregate amount is payable must pay the excess to the other party and the obligations to make payment of each party will be satisfied and discharged.

24.29. If the Agreement is terminated according to clause 22, you and we agree that the claims we have against each other are finally discharged by means of close-out netting. We will determine the Close-Out Values for each affected Contract in our sole discretion. The

final amount to be paid by one of the parties will be the difference between the payment obligations of the parties.

### **Currency of payments**

24.30. All payments under the Agreement must be made in US dollars or any other currency that we may agree to. Any default to make payments to us is deemed to be an application for credit

24.31. Every failure by you to pay an amount payable to us under the Agreement is deemed to be an application for credit from us.

## **25. Privacy**

25.1. Before completing the Application Form you should read the PDS and the Terms carefully. The Application Form requires you to disclose personal information and explains how we collect personal information and then how we maintain, use and disclose this information.

25.1.1. We collect personal information from you in order to process your Application, and if your Application is accepted, to administer your investment and to provide you with services related to your investment. If you do not provide us with your personal information we may not be able to process your Application.

25.1.2. In order to do these things, we may disclose your personal information on a confidential basis to our agents, contractors or third party service providers to whom we outsource services (the Service Providers), to our related bodies corporate, our professional advisers, or to a proposed purchaser of the whole or any substantial part of our business, even if the disclosure is to an organisation overseas which is not subject to equivalent privacy obligations as apply to us.

25.1.3. We may also disclose your personal information to relevant regulators as required or authorised by law.

25.1.4. We may also use your personal information to tell you about other products and services offered by us and in order to do that we may disclose your information to other Service Providers.

25.1.5. We also disclose your personal information to your financial adviser.

25.2. Please contact our Administration Team on 09 887 3229 if you do not consent to us using or disclosing your personal information in the ways described in clause 25.1.4. and 25.1.5. above. It is important that you contact us because, by applying for an Account, you will be taken to have consented to these uses and disclosures. To provide you with a Contract we must use and disclose your personal information in the ways disclosed in paragraphs 25.1.1. to 25.1.3.

25.3. In most cases you can gain access to the personal information that we hold about you. We may charge you a fee for providing access, based on the cost of providing the information. We aim to ensure that the personal information we retain about you is accurate, complete and up-to-date. To assist us with this, please contact us if any of the

details you have provided change. If you have concerns about the completeness or accuracy of the information we have about you, we will take steps to correct it.

25.4. Our full privacy policy is available from our website [www.BlackRiverMarkets.com](http://www.BlackRiverMarkets.com)

## 26. Interpretation

### 26.1. Definitions

These meanings apply unless the contrary intention appears:

**Account** means your account with us.

**Actual Margin** means the amount standing to the credit of your Account and designated as Actual Margin

**Agreement** means the Terms, the Application Form and the Confirmations.

**Application** means your application to us for an Account on the terms and conditions set out in this PDS and the Application Form.

**Application Form** means the application form attached to this PDS or downloaded from our website.

**Authorised Person** means those persons you notify us as authorised by you to give instructions to us.

**Bought Swap Rate** means LIBID for a currency minus a margin of no more than 0.25% as determined by us.

**Business Day** means a day on which banks are open for general banking business in Malaysia (not being a Saturday, Sunday or public holiday in that place).

**Close-Out Date** means the date on which all or part of a Contract is Closed-Out.

**Close of Business** means 22.00 GMT.

**Close-Out or Closed-Out** means the termination of all or part of a Contract in accordance with clause 12.

**Close-out Value for a Contract** means the amount calculated as follows:

Close-out Underlying Instrument Price x Contract Quantity (in each case, as applying to the Contract).

**Confirmation** means a message from us to you confirming your transaction in respect of a Contract.

**Contract** means an over the counter 'contract for difference' between you and us where the Underlying

Instrument is a Currency which we nominate as available to underlie an Order or Contract and where the settlement date is within two working days after the Contract is opened.

**Contract Quantity** means the amount of Currency to be traded to which the Contract or Order relates.

**Contract Value** means for any contract or Order for any Contract the amount calculated by us in accordance with the following formula: Underlying Instrument Price x Contract Quantity

**Costs** include costs, charges and expenses, including those incurred in connection with advisers.

**Currency** means a currency which we nominate as being available to underlie a Contract;

**Dividend Amount** means in respect of a Listed Entity, an amount equal to the gross amount of any ordinary cash dividend paid in respect of a relevant Underlying Instrument as determined by us.

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

**Free Balance** means, at any time, the excess (if any) of the balance of your Account at that time over the Required Margin.

**Guarantor** means any person(s) identified as such in the Application.

**Hedging Partner** means any counterparty to which we have deemed suitable to form an agreement to pass all trades as back to back transactions to manage risk.

A person is **Insolvent** if:

- (a) it commits act of bankruptcy;
- (b) a liquidator or trustee in bankruptcy or similar person is appointed to the person;
- (c) it is (or states that it is) an insolvent under administration or insolvent; or
- (d) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (e) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved; or (f) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (g) have failed to comply with a statutory demand; or
- (h) it is otherwise unable to pay its debts when they fall due; or

(i) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Interest Period** means the number of calendar days between one Business Day and the next Business Day.

**LIBID** means the London Interbank Bid Rate.

**LIBOR** means the London Interbank Offered Rate.

**Listed Entity** means in relation to a Security, the entity that is considered by the applicable market to be the issuer of that Security.

**Long Party** means in respect of any Contract the party identified in the Confirmation as having notionally bought the Underlying Instrument.

**Loss** means, the difference between the Opening Value of the Contract and the Close-Out Value of the

Contract if you are:

(a) the Long Party and the Close-Out Value of the Contract is lower than the Opening

Value of the Contract; or

(b) the Short Party and the Close-Out Value of the Contract is higher than the Opening Value of the Contract.

**Margin Percentage** means the percentage rate applicable to your Contract as specified by us in our sole discretion and published on our website.

**Mark to Market Payments** means the payments calculated under clause 7.

**Material Adverse Effect** means a material adverse effect on:

(a) your ability to comply with its obligations under the Agreement; or

(b) your rights under the Agreement; or

(c) the business or financial position of you.

**Opening Value** means:

Opening Underlying Instrument Price x Contract Quantity

**Opening Underlying Instrument Price** means the Underlying Instrument Price on opening the Contract as agreed between us and you.

**Order** means an offer made by you under these Terms.

**Black River Markets Platform** means any online Black River Markets Platform made available by us under the Terms;

**PDS** means this Product Disclosure Statement.

**Position Limit** means a limit placed by us on the sum of the Contract Values for all Contracts between us and you.

**Previous Contract Value** means, the amount calculated as follows:

- (a) where the Contract Value is being determined for the first time for a Contract, the Opening Value;
- (b) in all other cases, the Contract Value at the most recent Valuation Time.

**Profit** means the difference between the Opening Value of the Contract and the Close-Out Value of the

Contract if you are:

- (a) the Long Party and the Close-Out Value of the Contract is higher than the Opening Value of the Contract;
- (b) the Short Party and the Close-Out Value of the Contract is lower than the Opening Value of the Contract.

**Required Margin** means an amount that is required to be standing to the credit of your Account and which is calculated as follows:

- (a) when an Order is placed to open a Contract, an amount that is: Opening Value x Margin Percentage
- (b) throughout the term of an open Contract:  
Contract Value x Margin Percentage in respect of each such open Contract between you and us.

**Sell Swap Rate** means LIBOR for a currency plus a margin of no more than 0.25% as determined by us.

**Short Party** means the party identified in the Confirmation as having notionally sold the Underlying Instrument.

**Specified Date** means the future value date with reference to which that Contract was entered into.

**Swap Charge** means the charge calculated in accordance with clause 11

**Terms** means the terms and clauses governing the relationship between you and us.

**Underlying Instrument** means the instrument which we list as being available to underlie an Order or Contract being a unit of Currency.

**Underlying Instrument Price** means the rate at which a single unit of the first Currency, the subject of the Contract, may be bought with or, as the case may be, sold in, units of the second Currency the subject of the Contract.

**Valuation Time** means:

- (a) the Close of Business on each Business Day; and
- (b) any other time that we decide in our absolute discretion.

References to certain general terms

26.2. Unless the contrary intention appears, a reference in this agreement to:

- (a) (singular includes plural) the singular includes the plural and vice versa;
- (b) (variations or replacement) a document (including this agreement) includes any variation or replacement of it;
- (c) (law) law means common law, principles of equity, and laws made by parliament;
- (d) (person) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency;
- (e) (two or more persons) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (f) (jointly and severally) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (g) (reference to a group of persons) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (h) (dollars) United States dollars, dollars, USD\$ or \$ is a reference to the lawful currency of United States;
- (i) (calculation of time) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (j) (reference to a day) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (k) (meaning not limited) the words “include”, “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (l) (reference to anything) anything (including any amount) is a reference to the whole and each part of it.

26.3. If an event under the Agreement must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

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

**EXECUTED as an agreement**

Kind regards

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