



# Account Terms

## Margin FX and Contracts for Difference

### First Index

## 1 The Agreement

- 1.1 These Account Terms are dated 3 September 2018 part of the agreement between AGM Markets Pty Ltd (ABN 87 158 706 766) (trading as First Index) (**AGM Markets, First Index, we, our, or us**) and its client (**you**), which governs our trading services and all of the Contracts which we may enter into with you.
- 1.2 The agreement between you and us relating to the trading services we may provide to you and the Contracts which we may enter into with you consists of the following documents:
- i) the Application Form;
  - ii) these Account Terms, including any schedules or appendices;
  - iii) any additional terms and conditions issued by us and notified to you and accepted by you, in connection with our dealing with you;
  - iv) our Product Disclosure Statement;
  - v) our Financial Services Guide; and
  - vi) any Contract Terms or Product Information, which sets out particular commercial details and requirements for each Contract or Product, and which will be made available to you on our Online Trading Platform or otherwise notified to you prior to the entry by us and you into a Contract,
- (collectively, the **Agreements**).
- 1.3 The Agreements also apply to any services which we may provide to you in connection with the trading services or with any Contracts which we may enter into with you, including your access to and use of:
- i) your Account;
  - ii) the Website, and any services which we may offer on the Website; and
  - iii) the Online Trading Platform, and any other electronic content and/or software which we may provide to you or give you access to.
- 1.4 The Agreements supersede all previous agreements which may have been in place between you and us in connection with the trading services we provide to you or the Contracts which we may enter into with you.
- 1.5 The Agreements commence and are effective from the date on which we acknowledge our acceptance of your Application Form in writing in accordance with clause 2.
- 1.6 We may make changes to the terms and conditions contained within these Account Terms, including any schedules and appendices, at any time at our discretion without notice to you. We will publish any amended version of these Account Terms on our Website and, once we have published an amended version of the Account Terms, those amended terms will apply to you. You should regularly check our website to ensure that you are aware of the latest Account Terms. Your continued use of the Online Trading Platform and our trading services constitutes your acceptance of any amended Account Terms.

## 1.7 Interpretation

- i) If there is any inconsistency between the PDS and these Account Terms, the PDS will prevail.
- ii) If there is any inconsistency between a Confirmation that we provide after a Contract is executed and these Account Terms, the Confirmation will prevail.
- iii) The terms and expressions in these Account Terms have defined meanings, these meanings and the rules of interpretation, are set out in section 34.

## 2 Your Account

### *Opening an Account*

- 2.1 You must complete an Application Form and submit a completed Application Form to us should you wish to open an Account. We may decide whether to accept your Application Form at our sole discretion.
- 2.2 By submitting (electronically or otherwise) an Application Form to us, you agree to the terms and conditions set out in the Agreements, and make the representations and warranties set out in the Agreements. You undertake that any information you provide to us in an Application Form is complete and correct. You must inform us of any material change to the information which you provide to us in an Application Form.
- 2.3 If we accept your Application Form, we will establish your Account. We may, at our discretion, open multiple Accounts for you. We may, at our discretion, accept multiple Application Forms from you and establish more than one account. References in these Account Terms to your Account are taken to include reference to any sub-account(s), as the case requires.
- 2.4 When we open your Account, we will provide you with certain Security Information which you require to access your Account. You agree that:
  - i) it is your responsibility to keep the Security Information private and confidential;
  - ii) you will not disclose the Security Information to any other person;
  - iii) we are not responsible for any Loss that you may suffer which is directly or indirectly caused by your loss of the Security Information or your failure to keep the Security Information confidential; and
  - iv) when you deal with us or give us an instruction, we may require you to provide your Security Information and, if you do not provide your Security Information, we may refuse to deal with you or to accept any instruction.
- 2.5 Should you require assistance with the Account opening process you may contact our customer support department through our Website or by e-mail at [support@firstindex.com](mailto:support@firstindex.com).
- 2.6 We may impose such limits or restrictions on the Instructions on your Account, including in relation to the type and frequency of the Instructions which you may submit or the total aggregate value of the Contracts which you may enter into, which we consider appropriate and at our sole discretion. Where we impose such restrictions, we will inform you in writing and you must comply with such limits or restrictions. We may vary such limits or restrictions at any time at our discretion and will give you notice in writing of any such variation.

### *Account Management*

- 2.7 Your Account is linked to a record or a series of records maintained by us (or on our behalf) that shows, at any point in time, 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, as well as the Contracts you have entered into with us.
- 2.8 You authorise and direct us to make the following adjustments to your account in the following circumstances:
- i) debit your Account any amounts which you withdraw and any amounts payable by you under the Agreements;
  - ii) credit your Account any amounts deposited by you and any amounts payable by us under the Agreements; and
  - iii) designate amounts in your Account to be segregated for the purposes of meeting future Margin Requirements depending on the amounts you deposit with us, your Instructions, Contracts and market movements in accordance with the Agreements.
- 2.9 We are not required to notify you before debiting, crediting or designating amounts in your Account.
- 2.10 You agree to deposit and maintain sufficient funds on your Account at all times to satisfy all amounts payable by you under the Agreements. It is your responsibility to ensure that the funds you transfer are cleared in sufficient time to meet your obligations under the Agreements.

### *Appointment of Authorised Persons*

- 2.11 You may authorise another person (an **Authorised Person**) to give Instructions on your behalf or otherwise to do anything which you are entitled to do in accordance with the Agreements (with the exception of the appointment of further Authorised Persons in accordance with this clause 2.11). You must notify us in your Application Form or otherwise in writing of the appointment of an Authorised Person by giving us the full name, telephone number, email address and specimen signature of the Authorised Person.
- 2.12 If you wish to change or revoke the appointment of an Authorised Person you must inform us in writing. Any change or revocation of such authority is only effective upon receipt by First Index of a signed written notice of change or revocation from you.
- 2.13 For the purposes of the Agreements, Instructions or any other directions given to us by an Authorised Person (or which appear to us on the face of the Instructions or other directions to have been placed or given by an Authorised Person) are taken to be your Instructions or directions.
- 2.14 You are and remain solely liable and responsible for all acts and omissions of your Authorised Person notwithstanding the act or omission of the Authorised Person:
- i) was outside the Authorised Person's actual or ostensible authority; or
  - ii) amounts to an error, fraud, negligence, breach of duty or criminal conduct.

- 2.15 You agree that we will not be liable in any way whatsoever in connection with any Loss which you, or any other person, may incur or suffer arising directly or indirectly from our reliance on Instructions, directions, communications or any other acts or omissions by your Authorised Person.
- 2.16 You may appoint an attorney (under a power of attorney in the relevant jurisdiction) to give instructions and place orders on your behalf or otherwise to do anything which you are entitled to do in connection with or under these Account Terms. You must notify us in writing of any such appointment setting out the attorney's details. You must provide us with a written power of attorney. We may accept or reject this power of attorney.

### **3 Calculations and Valuations**

- 3.1 The Balance of your Account, which represents our non-binding calculation of the net value of the Account at any particular time, will be shown on the Online Trading Platform and will be calculated by First Index on the basis of:
- i) the net value of any open Positions you may have as a result of Contracts you have entered into with us (as calculated by us by reference to prevailing market prices);
  - ii) any fees which you may be required to pay to us in accordance with the Agreements; and
  - iii) any other payments that you are required to make to us and payments which we are required to make to you.
- 3.2 The Balance of your Account may not equal the Available Funds for your Account which you would be entitled to should you wish to withdraw funds from your Account. When calculating the Available Funds for your account, we may make adjustments to reflect:
- i) any amounts which we have designated as being held to meet the future Margin Requirements of any open Positions you may have as a result of Contracts which you have entered into with us;
  - ii) the cost of Closing Out Positions which you may have as a result of Contracts which you have entered into with us; and
  - iii) any other amounts which are or may be owed to you by us in accordance with the Agreements or otherwise.
- 3.3 Any amounts paid by us or you under the Agreements may be payable in a number of different currencies, as you and we may agree. Your Account will be denominated in a particular currency which you and we may agree. Where:
- i) you transfer funds to or from your Account in a currency that differs from the currency in which the Account is denominated, those funds will be converted at the current spot rate for the conversion of the relevant currencies;
  - ii) when we credit your account, we will do so by converting funds into the currency in which your Account is denominated at the current spot rate for the conversion of the relevant currencies; and
  - iii)
  - iv) where we perform a currency conversion in accordance with this clause 3.3, we may charge you a conversion fee as stated in the PDS, the Website and/or the Online Trading Platforms, or as otherwise agreed with you.

## **4 Withdrawals**

- 4.1 If the Balance of your Account is positive, you may ask us to make a payment to you from the Balance of your Account. We will use reasonable endeavours to make the payment to you unless:
- i) your request cannot be met using the Available Funds;
  - ii) you have not complied with our reasonable requirements in accordance with clause 4.4; or
  - iii) we are entitled or required to withhold the funds in accordance with the Corporations Act.
- 4.2 We will notify you as soon as reasonably practicable if we decide not to make a payment to you in accordance with clause 4.1.
- 4.3 If we are able to make a payment to you in accordance with clause 4.1, we will make the payment as soon as reasonably practicable after receiving your request. A withdrawal request is usually processed within 3 Business Days, but your funds may not appear in your bank account within that time period.
- 4.4 We may require you provide certain documents and information, including identification documents and deposit confirmation forms, in order to process a withdrawal request.

## **5 Instructions and Dealing**

- 5.1 You may request on any Business Day, through the Online Trading Platform, by telephone or otherwise as we may agree, a quote for the terms on which we would be willing to enter into any particular Contract with you. The giving of any such quote is an invitation to treat and does not amount to an offer to enter into a Contract. If you wish to enter into any such Contract after receiving the quote, you must give us an Instruction.
- 5.2 You may give us an Instruction:
- i) by giving electronic instructions to us using the Online Trading Platform;
  - ii) in writing through email;
  - iii) by telephone;
  - iv) in person; and
  - v) in any other manner which we may specify in writing.
- 5.3 First Index may, at its absolute discretion, decide to accept or reject an Instruction. You agree and acknowledge that no Contract is entered into until your order is accepted by First Index in accordance with the Agreements. Situations where we may refuse to accept an Instruction include where:
- i) we cannot verify your identity;
  - ii) the Balance or your Available Funds are not sufficient to meet the obligations which would be imposed on you should we accept your Instruction, including any obligation to pay Margin;
  - iii) our acceptance of the Instruction would cause you to exceed any limits or restrictions which

we may apply to your Account;

- iv) the price which we have quoted for the Instruction has been derived from a Material Error;
  - v) an Adjustment Event has occurred; or
  - vi) you have committed an Event of Default.
- 5.4 We may require further instructions from you in respect of any Contract or proposed Contract, and if we do, you must promptly provide us with that information. If you do not, we may, in our absolute discretion take all such steps at your cost as we consider necessary or desirable for our or your protection. This does not detract from your responsibility to keep yourself informed at all times as to the key dates and events affecting your Contracts.
- 5.5 First Index will not be responsible for delays or errors in the transmission or execution of your Instructions. It is your responsibility to ensure that we receive any Instructions which you send.
- 5.6 We may condition our acceptance of any Instructions in our absolute discretion and for any reason. We may at any time use, add and change filters within the Online Trading Platform which prevent delivery or execution of Instructions.
- 5.7 If we decide to refuse to accept an Instruction, or if we wish to impose conditions on our acceptance, we will notify you as soon as reasonably practicable, unless we are prevented by any Applicable Law or a direction from a regulatory authority from notifying you.
- 5.8 We may also cancel any Instruction which we have accepted in any of the following cases:
- i) if the Underlying Asset of the Contract which is the subject of the Instruction has been subject to a trading halt on the relevant market on which it trades, or has been subject to other regulatory action preventing execution of your Instructions;
  - ii) if we consider the cancellation or variation to be appropriate, having regard to the desirability to maintain a fair and orderly market, general market conditions, our obligations as the holder of an AFSL and our other legal and regulatory obligations;
  - iii) if we are required to do so by any Applicable Law;
  - iv) where the Instructions were made on the basis of a Material Error; or
  - v) where you have committed an Event of Default.
- 5.9 It is possible that errors, omissions or misquotes (a **Material Error**) may occur in the pricing of the Contracts that we quote, which is materially incorrect when taking into account the market conditions and quotes in Underlying Assets prevailing at the time. A Material Error may include an incorrect price, date, time or any error or lack of clarity of any information. If a Contract is made based on a Material Error, we reserve the right without your consent to:
- i) amend the terms and conditions of the Contract to reflect what we consider to have been the fair price at the time the Contract was entered into, had there been no Material Error;
  - ii) Close Out the Position which you may have due to your entry into the Contract;
  - iii) render the Contract, and any realised profit, void from the outset; or

- iv) refrain from taking any action in connection with the Contract.
- 5.10 Adjustment Events may occur in connection with the Underlying Asset for a particular Contract which significantly impact the value of the Contract in a manner which is detrimental either to us or to you. In these circumstances, if we consider it appropriate (acting reasonably and in good faith), we may:
- i) amend the terms and conditions of the Contract to reflect what we consider to have been the fair price at the time the Contract was entered into, had there been no Adjustment Event;
  - ii) Close Out the Position which you may have due to your entry into the Contract;
  - iii) render the Contract, and any realised profit, void from the outset; or
  - iv) refrain from taking any action in connection with the Contract.
- 5.11 We will exercise our rights in clauses 5.9 and 5.10 acting reasonably, and as soon as reasonably practicable after we become aware of the Material Error or Adjustment Event. Where reasonably practicable, we will give you prior notice of any action we take under this clause, otherwise we will give you notice as soon as reasonably practicable afterwards. In the absence of fraud or 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 a Material Error or Adjustment Event, including where the Material Error or Adjustment Event arises in connection with an information service on which we rely.
- 5.12 You may cancel or amend any Instructions which you have given to us. However, if you ask us to cancel or to amend an Instruction, but the Instruction has already been executed or a Contract has already been entered into in respect of the Instruction, you will be bound by the terms of the Contract and your request for a cancellation or an amendment will have no effect.
- 5.13 When we receive an Instruction from you, you are offering to enter into a Contract with us at the price we have quoted and on any terms which may have been notified to you. If we accept your Instruction, we will provide you with an electronic acknowledgement and a Confirmation. The Contract will not be completed and binding until the details of the Contract are reported on the Online Trading Platform. In the instance we do not provide you with a Confirmation, your offer can be taken as accepted once the details of the Contract are reported on the Online Trading Platform without the validity of the Contract being affected.
- 5.14 You consent to all Confirmations being sent to you electronically, including by being made available to you on the Online Trading Platform.
- 5.15 You must review any Confirmation and the details of any Contract on the Online Trading Platform immediately to ensure its accuracy and notify us of any inaccuracies within 48 hours. We will not be responsible for any errors where you do not notify us of the error within this time frame.
- 5.16 We do not operate a discretionary account service and, in the absence of Instructions from you, we will not enter into any Contracts with you or otherwise interact with your Account except as otherwise stated in the Agreements.
- 5.17 The entry into a Contract by you does not transfer the legal or beneficial interest in any Underlying Asset, or any rights associated with any Underlying Asset, to you or to us. Neither you nor we have any right or obligation under a Contract to acquire or deliver the Underlying Asset.



## **6 Closing Out a Contract**

- 6.1 With the exception of Futures Based CFDs, a Contract has no inherent limit to its duration and, subject to the payment of Margin and other relevant sums, can continue indefinitely. We may close any Contract opened by you at the prevailing rate if there is an Event of Default.
- 6.2 You may Close Out a Contract by entering into a Contract on opposite terms to the Open Contract (that is, where a Contract relates to a long Position, you may enter into a Contract relating to a short Position to Close Out the first Contract, and vice versa). You may partially close an Open Contract by entering into a Contract on opposite terms but for a smaller quantity as the Open Contract.
- 6.3 If a Contract is Closed Out in accordance with clause 6.1, we will:
- i) where an amount is payable by us to you, credit that amount to your Account; and
  - ii) where an amount is payable by you to us, debit that amount from your Account.

## **7 Online Trading Platform Manipulation**

- 7.1 If we reasonably believe, acting in good faith, that you have manipulated our prices, our execution processes or the Online Trading Platform, or if you have abused any of the functionality which we offer on the Online Trading Platform (including, for example, abuse of the cancellation feature) we may in our sole and absolute discretion, by giving notice to you:
- i) if your conduct relates to a particular Contract, enforce the Contract against you if it results in you owing money to us;
  - ii) treat all your Contracts as void from the outset if they are Contracts which result in us owing money to you, unless you provide conclusive evidence within 30 days of us giving you notice under this clause that you have not committed such manipulation or abuse;
  - iii) withhold any funds which we reasonably believe you have derived from such manipulation or abuse;
  - iv) make corrections or adjustments to your Account;
  - v) close your Account; and/or
  - vi) take any other action that we consider to be appropriate (including not taking any action).

## **8 Force Majeure**

### **8.1 Force Majeure Event**

For the purpose of these Account Terms, a Force Majeure Event means any occurrence or non-occurrence as a direct or indirect result of which a party is prevented from or delayed in performing any of its obligations (other than a payment obligation) under these Account Terms and that is beyond the reasonable control of that party, including forces of nature, industrial action and action or inaction by a government agency.

A Force Majeure Event includes, but not limited to:

- i) where we are, in our opinion, unable to maintain an orderly market in our Products in respect of any one or more of the Underlying Assets as a result of the occurrence of any act, omission or event (including but not limited to any circumstance beyond our control such as strike, riot, civil unrest or failure of power supply, communications or other infrastructure);
- ii) the suspension, closure, liquidation or abandonment of any relevant market or Underlying Assets;
- iii) the imposition of conditions, limits or special or unusual terms in the relevant markets or Underlying Assets;
- iv) the imposition of conditions, limits or special or unusual terms on us by our hedging counterparties;
- v) the excessive movement, volatility or loss of liquidity in the relevant markets or Underlying Assets; or
- vi) where we reasonably anticipate that any of the circumstances set out in paragraphs 8.1i) to 8.1vi) of this Client Agreement are about to occur.

## 8.2 Notice and Suspension of Obligations

If a party to these Account Terms is affected, or likely to be affected, by a Force Majeure Event:

- i) That party must immediately give the other party prompt notice of that fact including:
  - (1) full particulars of the Force Majeure Event;
  - (2) an estimate of its likely duration;
  - (3) the obligations affected by it and the extent of its effect on those obligations; and
  - (4) the steps taken to rectify it.
- ii) The obligations under these Account Terms of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

## 8.3 Actions we may take

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

- i) alter normal trading times;
- ii) alter the Margin;
- iii) amend or vary these Account Terms and any transaction contemplated by these Account Terms, including any Contract, insofar as it is impractical or impossible for us to comply with our obligations to you;
- iv) close any or all open Contracts, cancel Instructions and orders as we deem to be appropriate in

the circumstances; or

- v) take or omit to take all such other actions as we deem to be appropriate in the circumstances having regard to the Positions of us, you and other customers.

#### 8.4 Notification of Force Majeure Event

To the extent practicable, we will take reasonable steps to notify you of any action that we propose to take under clause 0 before we take such action. If it is not practicable to give you prior notice, we will notify you at the time promptly after taking any such action.

#### 8.5 Liability

If we determine that a Force Majeure Event exists, we will not be liable to you for any failure, hindrance or delay in performing our obligations under these Account Terms or for taking or omitting to take any action in accordance with clauses 0 or 8.4 of these Account Terms.

#### 8.6 Close open Contracts

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

### 9 **Margin**

9.1 You may be required to pay an Initial Margin to us for any Contract which you enter into with us, and to maintain additional amounts to meet the Margin Requirements in respect of Contracts which you enter into with us. It is your responsibility to ensure that your Account has sufficient Available Funds to meet the Margin Requirements of all Open Contracts at all times. The Margin Requirements for a particular Contract will be disclosed to you when we provide you with a quote for the particular Contract and will also be shown on the Online Trading Platform.

9.2 If at any time during the term of a Contract the Available Funds in your account are not sufficient to meet your Margin Requirements in relation to a Contract, the shortfall will be immediately due and payable to us. You must either Close Out the Contract or transfer additional funds to us to meet the Margin Requirements.

9.3 We will notify you, via the Online Trading Platform, when the Available Funds in your Account are not sufficient to meet your Margin Requirements. We may cancel any Instructions or Close Out one or more of your Open Contracts or a part of an Open Contract at our sole discretion should the Available Funds in your Account fall below your Margin Requirements. 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 the Agreements.

9.4 We will provide you with access to information about your Account to enable you to calculate your Margin Requirements using the Online Trading Platform. When giving Instructions to us, it is your responsibility that you ensure that you have sufficient Available Funds to meet the Margin Requirements.

9.5 Your Margin Requirements will vary in the following circumstances:

- i) we have expressly advised you in writing that you have an Account type that allows for longer payment periods in respect of Margin, in which case you must pay Margin in accordance with the payment periods advised to you;
- ii) we have expressly agreed to reduce or waive a part of the Margin that we would otherwise require you to pay us in respect of a trade; the period of waiver or reduction may be temporary and must be agreed in writing by us. Any such agreement will not restrict our right to seek further Margin in respect of the trade or open Contracts at any time thereafter;
- iii) we agree otherwise in writing, in which case you will be required to comply with such terms and conditions as stated in such written agreement; and
- iv) when you hold open Contracts and you place one or more trades in the opposite direction in a Contract with the same Underlying Asset, your Margin Requirement for the relevant open Contracts with the same Underlying Asset will be partially offset. You will still be charged an Initial Margin but at a reduced rate.

9.6 We may vary the Margin rate, Margin Call Level and Stop Out Level at any time at our discretion. Without limitation, we may vary the Margin rate, Margin Call Level and/or Stop Out Level in response to or in anticipation of the following:

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

You should note that there may be other circumstances which may give rise to us changing your Margin rate, Margin Call Level and/or Stop Out Level. You agree and acknowledge that any variation of the Margin rate, Margin Call Level and Stop Out Level under this clause may take immediate effect on and from you upon the changing being notified to you under clause 0 of these Account Terms.

We will notify you of a change in the Margin rate on your Account on the Online Trading Platform, or by any other means including telephone, email or by posting notice of increase on our Website. Any increase in Margin arising from an increase in the Margin rate will be due and payable immediately on notice to you, including any deemed notice in accordance with clause 28 of these Account Terms.

9.7 Notwithstanding any other terms of any document, we are not under any obligation to keep you informed of your Account balance and Margin Requirement by making a Margin Call.

## 10 Close of Business Accounting

### *Daily Swaps of Contracts (Other than Futures Based CFDs)*

10.1 When you hold a Contract or Contracts overnight (other than a Futures Based CFD) they will be rolled to the next Business Day which may result in you paying a Swap Charge or receiving a Swap Benefit. You should refer to our Online Trading Platform for detailed information on whether Swap Charge or Swap Benefit is applicable to a particular Product.

- 10.2 The amount of a Swap Charge or Swap Benefit is determined by us and depends on our Swap Rate, being the rates at which you receive or pay interest on Contracts that remain open overnight. This is a varying rate dependent upon the applicable rate in the Interbank Rates for the Underlying Asset, the duration of the rollover period and the size of the Contract.
- 10.3 No Swap Charge is paid or Swap Benefit is received in the case of Futures Based CFDs; but there will be a Rollover Charge or Rollover Benefit: see clause 10.4.

#### *Entitlement*

- i) If you are long on a Margin FX Contract you may either receive a Swap Benefit or pay a Swap Charge, depending on the currency you are long.
- ii) If you are short on a Margin FX Contract you may either pay a Swap Charge or receive a Swap Benefit, depending on the currency you are short on.

#### *Long Margin FX Contracts*

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

#### *Long Bullion CFDs*

- i) If you have a long USD/short bullion Contract and interest rates in the United States of America are higher than the bullion Swap Rate you would typically receive a Swap Benefit at the Bullion Swap Rate if you hold the Contract overnight and do not close it before settlement time. This is because you are holding the higher yielding asset.

#### *Short Margin FX Contracts*

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

#### *Short Bullion CFDs*

- i) If you have a short USD/long Bullion Position and interest rates in the United States of America are higher than the Bullion Swap Rate you will pay a Swap Charge at the relevant Swap Rate if you hold the Contract overnight and do not close it before settlement time. This is because you are holding the lower yielding asset.

### *Index CFDs*

- i) If you hold index CFDs overnight, you may either receive a Swap Benefit or pay a Swap Charge, depending on the Product you hold. Information regarding our Swap Rates for Index CFDs can be found on our Website. Please ensure that you read and understand the Swap Charge/Benefits applicable for a certain Index CFD before entering into any Contracts with us.

### *Rollover of Futures based CFDs*

- 10.4 A rollover will arise in Futures Based CFDs, when the underlying front month futures contract is approaching the Expiry Date and we change our CFD pricing feed from the front month to the Next Serial Futures Contract. When the new price feed takes effect you will immediately create a gain or loss in your open trade equity. This profit or loss will depend on your Contract size and direction and the price differential of the expiring Contract and the new Contract on which the price will be now based. You will be credited or debited with a Rollover Charge or Rollover Benefit that will fully offset the effect of the abovementioned profit or loss. For example, if you have made a profit on the change the new Contract Price feed you will receive a Rollover Charge which will offset the gain.

### *Settlement*

- 10.5 In relation to Swap Charges and Swap Benefits, they will be accrued in the swap value field of your open Contracts. In the event there are insufficient funds in your Account, any amount due to us because of the Swap Charges becomes a debt due and owing by you to us.
- 10.6 In relation to Futures Based CFDs, Rollover Charges and Rollover Benefits will be accrued in the rollover value field of your open Contract. In the event that there are insufficient funds in your Account, any amount due to us because of the Rollover Charges becomes a debt due and owing by you to us.

### *When we make accounting payments*

- 10.7 Any payments due under this clause 20 will be made by us adjusting the Account with effect immediately after Close of Business on the relevant Business Day.

## **11 Stop Loss Orders & Limit Orders**

- 11.1 Stop Loss Orders and Stop Limit Orders are available on all instruments. We may refuse to accept any Stop Loss Orders or Stop Limit Orders on any trade. Those we do accept may be placed (save in the case of a Stop Loss Order which we impose (see clause 11.6)) cancelled at any time during the trading hours of the exchange on which the Underlying Asset is traded.
- 11.2 An Order which involves an instruction to us to open a Contract above a certain price will not ordinarily be filled unless at the time when the price reaches the relevant limit and your Account contains sufficient trading resources to cover the Initial Margin for the trade which is to be opened.
- 11.3 We may, at our discretion, proceed to fill such an order notwithstanding that your Account has insufficient trading resources to cover the Initial Margin for the Contract to be opened. In these circumstances we reserve the right at any time after the opening of the Contract to require you to deposit cash in the amount of the Initial Margin for that Contract. Any such deposits will be payable as Margin in accordance with clause 9 of these Account Terms. A failure to make payment in the time and manner required constitutes an Event of Default.
- 11.4 We reserve the right to refuse to open a Contract in accordance with a Stop Limit Order if:

- i) there has been an Event of Default; or
  - ii) in any other circumstances where we would be entitled to close the Contract had it already been opened.
- 11.5 You will remain liable for any losses in your Account which may be realised as the result of the filling of an Order, regardless of the trading resources available on your Account at the time the Order was filled.
- 11.6 We may impose a Stop Loss Order on any of your open Contracts where we believe such action is necessary or desirable to limit the losses on any of your Contracts including, but without limitation where:
- i) we have any reason whatsoever to think that you will not pay us money that is or may become due to us; or
  - ii) you make any statement to us which we have reason to believe may not be true; or
  - iii) you fail to do anything that you have undertaken to us that you will do; or
  - iv) we are having difficulty in communicating with you and there are grounds for believing that this is because you have failed to take reasonable care to ensure that you are contactable by us at all times. Such grounds will arise if (whether or not in order to make a Margin Call) we dial all the telephone numbers given by you to us but are unable to speak to you personally and:
    - (1) we leave a message on any message-taking facilities offered but we do not hear from you within thirty (30) minutes of leaving the message (or, if we leave more than one, the first message we leave, although if we leave or attempt to leave a message, either with a person who offers to take a message or on an automated message-taking service but for any reason it does not reach you we will nonetheless be deemed to have left a message for you); or
    - (2) no message-taking services are offered, and we dial all the numbers given by you again after a period of not less than thirty (30) minutes and are still unable to speak with you at once.
- 11.7 As soon as reasonably practicable after imposing a Stop Loss Order we will attempt to inform you that this has occurred via the Online Trading Platform. We are under no obligation to take any other steps to inform you of the Stop Loss Order and a failure for any reason to inform you of the imposition of a Stop Loss order will not affect the validity or enforceability of that Stop Loss Order.
- 11.8 We will deal fairly and in due sequence with all client Orders having regard to Australian legislative and regulatory requirements, market practices and our compliance policies and procedures.
- 11.9 To the extent that it is reasonably practicable to do so, we will allocate all Contracts (including Contracts effected pursuant to Orders placed on First Index own account) in the sequence in which First Index receives those Orders, subject to filters and compliance review and to any delay or technical faults connected with or arising through the use of the Online Trading Platform or any other delay that is outside the control of First Index.

## 12 Conflicts of Interest

- 12.1 You acknowledge and agree that we may execute Instructions for you and enter into Contracts with you even when we or our associates:

- ii) hold a principal position or deal in the relevant Contracts;
- iii) provide similar services to other persons in relation to the relevant Contracts;
- iv) have material price sensitive information relating to the relevant Contracts; or
- v) have a potential conflict of interest or duty.

12.2 You agree that, notwithstanding any rule of law or equity to the contrary, we are not disqualified from contracting with any person and no contract, transaction or arrangement in which we are in any way interested is voided or rendered voidable by virtue of the Agreements or of any Contract which we may enter into with you. First Index is not liable to account to you for any profit realised by any such contract, transaction or arrangement. Except to the extent required by any Applicable Law, we are not required to make any disclosure to you concerning any such contract, transaction or arrangement.

12.3 First Index will enter into the Contracts with you as principal. We may, at about the same time as we enter into a Contract with you, take the opposite position in an equivalent Contract with a third party. Your Instructions may match opposite Instructions of other persons, including persons who are our clients, and you authorise us to derive a benefit from each Contract in accordance with the terms of those Contracts.

12.4 You are aware of and acknowledge our right, and the right of our Related Bodies Corporate, directors and employees, either on their own account or on behalf of other clients or persons, to deal in any Contract or take the opposite position to you in a Contract.

### 13 Client Representations and Warranties

13.1 You, represent, warrant and agree that, from the date on which you submit your completed Application Form to us, and at all times during which you have an Account with us, all of the matters listed in clause 13.3 are true and accurate.

13.2 Each of the representations and warranties set out in clause 13.3 are taken to be repeated each time you:

- i) give Instructions to us; and
- ii) enter into a Contract with us.

13.3 You represent and warrant to us that:

- i) **corporate authorisation:** if you are a company, you are duly organised and validly existing and have full power and authority to enter into and perform, and have taken all necessary steps to enable you lawfully to enter into and perform, this Agreement and the transactions and obligations contemplated under them;
- ii) **legal disability:** if you are a natural person, you are over 18 years and are of legal age to make binding agreements and are not under a legal disability or incapacity which would make the Agreements or any transaction or obligation contemplated under them unenforceable or invalid;
- iii) **authority:** you and any Authorised Person have full power and authority to enter into and perform the Agreements and the transactions and obligations contemplated under them, and



the Agreements are binding on you (whether you are a natural person, company, partnership or otherwise);

- iv) **joint account:** if you are more than one person, each person will be jointly (that is, together) and severally (that is, individually fully) liable under the Agreements and the transactions and obligations contemplated under them and all such decisions made, and Instructions and directions issued, pursuant to the Agreements, are made on a fully informed and agreed basis by all the parties to the joint Account;
- v) **partnerships:** if you are one or more persons acting as a partnership, each partner has full power and authority to enter into the Agreements and perform the transactions and obligations contemplated under the Agreements on behalf of all of the partners;
- vi) **trustee:** if you are acting in the capacity as the trustee of a trust:
  - (1) you are the sole trustee of the trust;
  - (2) no action has been taken or proposed to have been taken to remove you as trustee of the trust;
  - (3) you have power under the trust deed to enter into and comply with your obligations under the Agreements and the transactions and obligations contemplated under them;
  - (4) you have in full force and effect the authorisations necessary to enter into and perform the Agreements and the transactions and obligations contemplated under them and make an order, perform obligations under them and allow them to be enforced (including under the trust deed and its constitution (if any));
  - (5) you have a right to be fully indemnified out of the assets of the trust in respect of obligations incurred by you under the Agreements and the transactions and obligations contemplated under them and any order;
  - (6) the trust fund is sufficient to satisfy that right of indemnity and all other obligations in respect of which you have a right to be indemnified out of the trust fund;
  - (7) you have not, and never have been, in Event of Default (howsoever called) under the trust deed;
  - (8) no action has been taken or has proposed to be taken to terminate the trust;
  - (9) you and, if you are a body corporate, your directors and other officers have complied with their obligations in connection with the trust; and
  - (10) you have carefully considered the purpose of the Agreements and the transactions and obligations contemplated under them and any order and consider that entry into the Agreements and the transactions and obligations contemplated under them and any order is for the benefit of the beneficiaries and the terms of the trustee documents are fair and reasonable; all necessary consents required in order for it to conduct its business and relevant to the performance, validity or enforceability of the Agreements and the transactions and obligations contemplated under them and any order have been obtained and are in full force and effect.
- vii) If you are an investment manager or a responsible entity, the investment management agreement or fund constitution specifically empowers and authorises dealings in the Products

by you and on behalf of your underlying clients or investors; and

- (1) such dealings are within the authorised ambit of each the investment strategies and/or governing documents by which you are bound;
  - (2) you will enter into transactions pursuant to the applicable investment management agreement as investment manager or responsible entity and not otherwise;
  - (3) you will only enter into Contracts with us when the funds or other assets under your control are sufficient to meet the obligations which arise in connection with such dealing; and
  - (4) if your appointment as investment manager or responsible entity is terminated, you are authorised to arrange for the Closing Out of all Contracts entered into on behalf of your clients and investors prior to the date of such termination as soon as possible.
- viii) you have read the Agreements issued by us in relation to the Products and the Contracts relevant to the Account (including the disclosures of significant risks), have considered your objectives and financial situation and have been advised by us to obtain appropriate independent advice prior to entering into the Agreements and the transactions and obligations contemplated under them, and have formed the opinion that dealing in the Financial Products is suitable for your needs and purposes;
- ix) you have experience and sufficient knowledge in financial matters, are able to evaluate the benefits and risks of entering into any Contract and are solely responsible for any decision to enter into any Contract;
- x) you are willing and able, financially and otherwise, to assume the risk of trading in high risk investments, and all Contracts covered by the Agreements;
- xi) information supplied to us by you is or will be accurate in all material respects and you will not omit or withhold any information which would make such information inaccurate in any material respect;
- xii) you will provide to us on request such information regarding your financial and business affairs and identity as we may reasonably require;
- xiii) you are complying with all Applicable Law and will comply with all Applicable Law in entering into and performing the Agreements and any Contracts (and, without limitation to the foregoing, you are not resident in or located in any jurisdiction (such as the United States of America) under the laws of which jurisdiction the entry into or performance of the Agreements or any Contracts is illegal);
- xiv) no Event of Default continues unremedied;
- xv) you will not enter into any Contracts, which contravene any laws or regulations (including in relation to insider trading, market manipulation or market abuse);
- xvi) in entering into and complying with the Agreements and the transactions and obligations contemplated by them, you will not infringe any provisions of any other document or agreement to which you are a party; and
- xvii) you will take all reasonable steps to obtain and communicate to us all information and will deliver or cause to be delivered to us, all documents with respect to dealings in the Financial Products which are requested by any person having the right to request such documents and

information. You authorise us to pass on or deliver all such information and documents to any such person.

13.4 You acknowledge and agree that we have entered into the Agreements with you in reliance on the representations and warranties given by you in this clause 13.

#### **14 Additional Acknowledgments**

14.1 You make the following acknowledgements for our benefit and agree that, was it not for these acknowledgements, we would not have entered into the Agreements to provide services to you:

- i) you (or, if you are a body corporate, your directors) have read and understood all documentation provided to you by us including the Agreements which we have made available to you in relation to your Account;
- ii) all dealings in financial products and our performance of our obligations under this Agreement are subject to the Applicable Law;
- iii) we have not and will not provide any legal, tax, financial or accounting advice to you as part of the services that we have agreed to provide to you in accordance with the Agreements;
- iv) we do not act in a fiduciary capacity in relation to you and we do not owe any fiduciary obligation to you in respect of the services which we may provide to you in accordance with the terms of the Agreements;
- v) we may transfer from your other Account(s) held with First Index (if any), such funds as may be required to meet obligations arising in connection with Contracts between you and us, or to satisfy any amount owed by you to us under this Agreement or otherwise;
- vi) we will act as principal in our dealings with you;
- vii) you will indemnify and keep indemnified us and each of our Related Bodies Corporate and their respective directors, officers employees and agents from and against all sums of money, actions, proceedings, suits, Claims, complaints, demands, damages, costs, expenses and any other amounts whatever claimed against any of them in connection with the Agreements and any transactions or obligations contemplated by the Agreements other than moneys payable by us to you under the Contracts entered into in accordance with the Agreements;
- viii) we are not required to act in accordance with your directions if in our opinion to do so would or could constitute a breach by us or our agent or counterparty of any Applicable Law;
- ix) you understand that entering into a Contract carries a risk of loss as well as a potential for profit;
- x) we may, in our sole and absolute discretion, and without notice and explanation, hedge part or all of our exposure to your Positions with a counterparty or counterparties in accordance with risk management parameters determined by it from time to time, but nothing in the Agreements requires us to hedge our exposures at all; and
- xi) there are risks associated with using an internet-based deal execution trading system which include, but are not limited to, the failure of hardware, software, and internet connection and since we do not control data flows, internet or power connection, routing via internet, configuration of your equipment or reliability of its connection, we will not be responsible for communication failures, distortions or delays when trading (including processing payments) via

the internet.

## **15 Fees and Charges**

- 15.1 You must pay us, in the manner in which we direct, the applicable fees and charges which may be published by us from time to time in the PDS, the Online Trading Platforms and/or on our Website. The fees which we may charge may include (but are not limited to):
- i) a fee, commission or charge in respect of each Contract;
  - ii) ongoing fees calculated by reference to the Balance of your Account;
  - iii) rollover fees, interest or other fees that may be charged in respect of any Contracts or Positions which you wish to keep open overnight;
  - iv) interest on any unpaid amounts which are required to be paid under the terms of the Agreements by you to us; and
  - v) amounts charged by our exchanges, clearing houses, information providers, transaction service providers or other third-party service providers which are passed on to you by us.
- 15.2 We may vary our fees and charges for any reason at our discretion. Any change to our fees or charges applicable to any new Contracts or transactions which you may enter into with us will be effective immediately upon us updating our PDS to incorporate the updated fees or publishing the updated fees and charges on our Website or on the Online Trading Platform.
- 15.3 You agree that we may debit your Account at any time, without notice to you, to pay any unpaid fees or charges which charges are payable by you to us.

### *Interest*

- 15.4 We will not pay interest on the credit balance in your Account. We are entitled to retain all interest earned on such credit balances.
- 15.5 If there is a debit balance in your Account after the Margin Requirements for the open Contracts valued in the Base Currency have been taken into account, (i.e. you owe money to meet the Margin Requirement on the relevant currency ledger), you will pay us interest on the debit balance.
- 15.6 Further, if you fail to make any payment required under the Agreements when it falls due, interest will be charged (and you will pay interest) on the outstanding sum.
- 15.7 The relevant rates of interest will be 20% per annum or as otherwise determined by us at our discretion. Any amounts of interest payable to us will be deducted from any interest payable to you.
- 15.8 Interest accrues and is calculated daily from the date payment was due until the date you pay in full and is compounded.

## **16 Client Moneys**

- 16.1 All money paid to us by you or an Authorised Person, or which is received by us on behalf of you, will be held by us in one or more segregated trust accounts with an Australian ADI or an approved foreign bank. These moneys do not constitute a loan to us and are held on trust by us. You agree and acknowledge that individual Accounts of our clients are not separated from each other within

the segregated trust accounts operated by us and that your moneys may be co-mingled with our other clients' moneys, and that we will not be liable for the insolvency or any act or omission of any ADI holding the trust accounts. Furthermore, you understand the possible risks of this as explained in the PDS.

16.2 We may invest any of your money held in any segregated trust account in the kinds of investments as permitted by the Australian Client Money Rules and you irrevocably and unconditionally authorise us to undertake any such investment.

16.3 Unless otherwise agreed in writing with you:

- i) we are solely entitled to any interest or earnings derived from your moneys being deposited in a segregated trust account or invested by us in accordance with the Australian Client Money Rules with such interest or earnings being payable to us from the relevant segregated trust account or investment account, as the case requires as and when we determine;
- ii) upon realisation of an investment of your moneys, the initial capital invested must either be invested in another investment permitted by the Australian Client Money Rules or deposited by us into a segregated trust account operated in accordance with the Australian Client Money Rules;
- iii) in the event that the amount received upon realisation of an investment of your moneys is less than the initial capital invested, we must pay an amount equal to the difference into a segregated trust account for your benefit, except where any such difference is the result of amounts paid out of the investment to us and/or any Associate of ours in accordance with the terms and conditions of this Client Agreement;
- iv) we will not charge a fee for investing your moneys in accordance with the Australian Client Money Rules.

16.4 If property, other than money, is given to us by you or a person acting on your behalf, or for your benefit, it will be held by us on trust in accordance with the Australian Client Money Rules.

16.5 If we determine that your Account has been inactive for a reasonably long period, you authorise us to withdraw your funds from our trust account to be paid into your nominated bank account.

16.6 Where money is held in an account that is inactive for at least 6 years and we are unable to locate you, the money will be paid to the New South Wales Office of State Revenue, where you may make a claim to retrieve it.

## **17 The Online Trading Platform**

17.1 The Online Trading Platform is an online facility that allows you to give us certain Instructions as well as to view certain information in relation to certain Contracts and your Account. The Online Trading Platform is a facility which has been developed by a third party independent from us.

17.2 You may access and use the Online Trading Platform to:

- i) submit Instructions to us;
- ii) receive Confirmations and other reports which we may provide;
- iii) review your Open Contracts; and

- iv) monitor other features of your Account.

17.3 The following terms apply to your use of the Online Trading Platform:

- i) we are not liable to you for any Loss, expense, cost or liability suffered or incurred by you due to any 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;
- ii) we are not liable to you for any Losses you might suffer due to errors in quotes which are the result of errors in the Online Trading Platform or our erroneous perception of information entered into the system by you, and we are entitled to make the necessary corrections in your Account according to the market value of the Underlying Asset in question at the time when the error occurred;
- iii) you are responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the Online Trading Platform and for any communication service fees and charges incurred by you in accessing and using the Online Trading Platform;
- iv) you are responsible for the confidentiality and use of any Security Information issued by us in connection with the Online Trading Platform and agree that you will not disclose any such information to third parties. If you become aware of any unauthorised use, loss or theft of your Security Information, you must notify us immediately. We reserve the right to cancel your Security Information without notice, and we will notify you as soon as practical should this happen;
- v) you are responsible for the consequences of any unauthorised disclosure or use of Security Information, and for any actions or omissions by an Authorised Person;
- vi) we may offer real-time tradable prices to you. A price offered by us may change in the time between when we initially offer it and when we receive an Instruction from you, due to delayed transmission between you and us;
- vii) the Online Trading Platform may be available in several versions, which may vary in relation to certain aspects. We are not liable to you for any Loss, expense, cost or liability suffered or incurred by you due to your use of a version of the Online Trading Platform that differs from our current standard version, with all available updates installed;
- viii) you are responsible for ensuring you have in place alternative arrangements for the execution of orders or other services available through the Online Trading Platform, if the Online Trading Platform or any aspect of it ceases to be available or subject to failure (including, for example, arrangements for the use of telephone or facsimile);
- ix) you are responsible for all Instructions and for the accuracy of all information sent via the Online Trading Platform using your name, password or any other means of personal identification implemented to identify you;
- x) you will be bound by any Contracts executed using your Security Information even if those Contracts were not authorised by you;
- xi) you must inform us if you become aware of a material defect, malfunction or virus in the Online Trading Platform and cease all use of the Online Trading Platform until you have received a direction from us that you may resume use;

- xii) you must keep all passwords secure and ensure that third parties do not obtain access to your trading facilities; and
  - xiii) all Contracts which are executed pursuant to Instructions given using your Account details on the Online Trading Platforms are binding on you, even where those Instructions were not given by you or were unauthorised or wrongful.
- 17.4 We reserve the right to withdraw or suspend access to the Online Trading Platform in its absolute discretion at any time without prior notice to you.
- 17.5 You acknowledge that the Online Trading Platform includes information which is supplied by persons unrelated to us (an **Information Vendor**) and that we have not verified any information provided by an Information Vendor. Except to the extent required by law, we do not make any representation or warranty as to the accuracy, timeliness, suitability or completeness of any information accessed via the Online Trading Platform. You agree that information provided via the Online Trading Platform is provided for your own use and that you may not on sell, disclose or make available such information to any other person without our prior consent.
- 17.6 We may grant you access to one or more Online Trading Platforms, including terminal access through your internet browser, for the electronic transmission of Instructions to us.
- 17.7 The Online Trading Platform includes both software and communication components. In accordance with the Agreements, we may supply you with software for use with the Online Trading Platform and grant you a non-exclusive and non-transferable licence to use the Online Trading Platform subject to the terms of the Agreements.
- 17.8 You agree to use the Online Trading Platform software solely for your own business or investment purposes.
- 17.9 You may send and receive, electronic messages, email, engage in chat, download and upload files and otherwise use the Online Trading Platform in accordance with the Agreements, our policies, any Applicable Law and any applicable terms of use or access agreement. Any activity in conferences and chats on the Online Trading Platform may be subject to review, modification and deletion without notice to you.
- 17.10 We reserve the right to institute or change any policies at any time relating to the use of the Online Trading Platform. Bulletin boards may be subject to limitations on usage, reproduction or dissemination, and you remain responsible for adhering to any such limitations.
- 17.11 There are significant risks in trading through the Online Trading Platform because it is serviced by means of computer and telecommunications systems, even if generally accepted industry standards and practices are followed, including that your data may not be protected, and there are risks that other users of the Online Trading Platform, institutions or brokers may be able to see your orders and other communications relating to trading and execution without your (or our) consent and that third parties (including persons on private networks) will have the ability to attach to your network.
- 17.12 The features, components or terms of use of an Online Trading Platform may be changed by us or by the provider of the Online Trading Platform without requiring an amendment to the Agreements.
- 17.13 You are responsible for reading, understanding and complying with the details of the operational aspects of the Online Trading Platform. It is important that you read and understand any user manuals and operational procedures relating to the relevant Online Trading Platform. Further

information on how to use and understand the Online Trading Platform can be obtained on our Website.

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

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

## **18 Event of Default**

18.1 Each of the following constitutes an Event of Default (in addition to any other matters which may have been specified as such in the Agreements):

- i) you fail to comply with any of your obligations under the Agreements or otherwise commit a breach of the Agreements;
- ii) you fail to make any payment to us that is payable by you under the Agreements on time and in full, including, for the avoidance of doubt, any situation where the Available Funds in your Account is less than the required Margin for your Open Contracts;
- iii) you fail to comply with any limit or restriction imposed on you by us in connection with your Account (for example, a restriction on the kind, volume or value of Contracts or outstanding liabilities);
- iv) a guarantee lodged by you, or lodged by a third party at your request, in our favour is withdrawn without our consent or becomes ineffective and other replacement security acceptable to First Index is not provided;
- v) any representation or warranty which you give under or pursuant to the Agreements, including these Account Terms, is or becomes incorrect or misleading in any way;
- vi) we believe, on reasonable grounds, that you may not be able to meet your obligations to us in respect of one or more Contracts or under the Agreements, including, without limitation, strict compliance with any time limits for performance;
- vii) you become insolvent or bankrupt, or a receiver, or receiver and manager or administrator is appointed to you or any of your assets;
- viii) If you are a body corporate, you call a meeting of your shareholders to discuss a contemplated scheme of arrangement or compromise or you enter or propose to enter into any scheme of arrangement or compromise with your creditors;



- ix) you have threatened to cease to pay any amount duly owed to us under the Agreements, or, if you are a company, you have threatened to cease to carry on business;
- x) if you are a body corporate:
  - (1) a resolution is passed or a petition is presented or an order is made for your winding up or liquidation; or
  - (2) you go into liquidation, voluntarily or otherwise (except for the purpose of reconstruction), or you or another person appoint a liquidator, receiver, administrator or official manager in respect of your assets;
- xi) if you have entered into the Agreements in the capacity of the trustee of a trust, the relevant fund or trust of which you are trustee is terminated, vests or a distribution of capital of the trust or fund is made which would result in there being, in our reasonable opinion, insufficient assets of the trust or fund to meet your obligations under the Agreements or any Contract which you have entered into;
- xii) if you are a natural person, you die or become of unsound mind or if you or your estate is liable to be dealt with in any way under any law relating to mental health;
- xiii) if, after taking all reasonable steps to contact you, we are not able to contact you within any 48-hour period in order for us to obtain directions from you in relation to your Account or Contracts which you have entered into, and you have not notified us in advance that you will not be contactable;
- xiv) we suspect, on reasonable grounds, that your activities may be illegal;
- xv) we consider it reasonably necessary for our own protection or the protection of our associates;
- xvi) it is, or becomes, unlawful for us to give effect to any provision of the Agreements or to provide any of the services contemplated by the Agreements;
- xvii) we or you are requested to end a Contract (or any part of a Contract) by any applicable regulatory authority; or
- xviii) the occurrence of any other event which you have agreed with us constitutes an Event of Default.

## **19 Actions Following an Event of Default**

19.1 If an Event of Default occurs, we may, in addition to and without prejudice to any other rights which we may have, in our absolute discretion and without giving notice to you:

- i) cancel any unfulfilled Instructions which you have given, and we have accepted;
- ii) enter into one or more Transactions to affect the Close Out or cancel all or part of your Open Contracts as we consider reasonably appropriate as if you had agreed to Close Out those Contracts and had given us Instructions to do so;
- iii) calculate any or all amounts owing by you to us and declare such amounts to be immediately due and payable;
- iv) deduct any amounts which may be due and payable by you to us from the Available Funds in

your Account;

- v) satisfy obligations that you may have to us out of any property belonging to you including, funds in our custody or control including, without limitation, by selling securities lodged by you with us or setting off obligations such that security transferred as collateral is not required to be returned and to enforce any asset or security held by us in such manner as it sees fit at your expense;
- vi) transfer from your other Accounts, if any, such funds as may be required to satisfy any obligation you may have to us;
- vii) set off, against any funds which you are entitled to receive from us, but which have not been paid, any amounts which you are payable by you to us;
- viii) immediately, or at a later time, terminate any or all of the documents forming part of the Agreements, including these Account Terms;
- ix) realise or enforce any guarantee or any security interest provided by you or in respect of your obligations to us;
- x) refuse or cancel any other services or products offered to you by us; and/or
- xi) exercise any power or right that we may have under the Agreements or in law or take any other action that we may be required to take by any Applicable Law.

19.2 You agree to indemnify us for any direct or indirect Loss which we may suffer that is caused by us taking any of the actions listed in clause 19.1.

19.3 If we exercise our rights to Close Out a Contract in accordance with clause 19.1, we will calculate the amount owing by you or by us will treat you as having entered into an opposite Contract to the Open Contract on terms which we, acting reasonably and in good faith, may determine. We may debit or credit, as applicable, from your Account an amount equal to the amount which would be payable by you to us, or by us to you, as applicable, had the Contract been closed at the price so determined.

19.4 We will not be taken to have waived any of the rights outlined in this clause as a result of a delay in the exercise of such rights. If we do not exercise any of our rights under this clause we reserve the right to do so at any time in the future.

19.5 Nothing in this clause 19 shall limit any of the other rights we may have under the Agreements or at law.

## **20 Complaints and Disputes**

20.1 If you wish to raise any complaint or dispute you should contact us as soon as practicable.

20.2 We will try to resolve your complaint quickly and fairly. Complaints received in writing will be acknowledged as soon as possible in writing and we will use our best endeavours to try to resolve your complaint within 45 days of receipt of your written complaint.

20.3 We are a member of the Financial Ombudsman Service Australia ("**FOS**"). Complaints which are not resolved to your satisfaction within 45 days may be referred to FOS. FOS's address is:

Financial Ombudsman Service Australia  
GPO Box 3  
Melbourne VIC 3001  
Telephone: 1300 780 808  
www.fos.com.au

- 20.4 If a dispute does not fall within FOS's jurisdiction, you may ask us to submit the dispute to arbitration, to be conducted subject to the Expedited Commercial Arbitration Rules of the Institute of Arbitrators and Mediators of Australia. We may, at our discretion, either accept or decline your request. If we do not accept your request, you may not refer the dispute to arbitration. If a dispute is referred to arbitration in accordance with this clause 20.4, you agree to be bound by the determination of the arbitrator.
- 20.5 You agree that any legal proceedings to be brought by you in connection with this Agreement may only be commenced in the courts of Victoria. For the avoidance of doubt, this clause 20.5 applies only to proceedings commenced by you, and we may commence proceedings against you in any court with jurisdiction.

## **21 Call Recordings**

- 21.1 You consent to:
- i) us recording any or all incoming and outgoing phone calls with you; and
  - ii) the use of such recordings and their transcripts for any purpose, including but not limited to, their use as evidence in any dispute between us and you.
- 21.2 Recordings may be used to assess the performance of or to train our representatives, monitoring compliance with our respective regulatory and contractual obligations and resolving disputes.
- 21.3 We are not obliged (unless required by law) to keep any transcripts or copies of any telephone recording or conversation nor to tell you when we dispose of the record.

## **22 Client to Provide Information**

- 22.1 You acknowledge that information may be provided to any regulatory authority or any other person or organisation if we reasonably consider that the disclosure is required by law, or if the disclosure is requested by a regulatory authority. You authorise us to provide any such information, including information relating to your Account, the Agreements, or any Contract entered into or proposed to be entered into by you.
- 22.2 You must, at our request, take all reasonable steps to deliver all information and documentation which we may require in order for it to comply with our legal obligations.

## **23 Website; Appointment of Attorney**

- 23.1 We grant you a limited non-exclusive, non-transferable licence to access and use our Website (the **Licence**). The licence is subject to your compliance with the Agreements. You agree not to resell or make available our Website to any other person and will not copy any documents contained on our Website for resale or for any other purpose without our prior written consent. You agree to use all the information received from the information systems provided by us for the sole purpose of entering into transactions in accordance with the Agreements. You also agree not to use any electronic communication feature in relation to our Website for any illegal, abusive, intrusive,

obscene, threatening or hateful purpose, or for any harassment, vilification or intrusion in the privacy of others. The licence granted hereunder shall terminate if we consider that any information provided by you, including your e-mail, is no longer current or accurate, or if you fail to comply with any term or condition of the Agreements or if we determine that you have committed a crime or a breach of the Agreements using the Online Trading Platform or our Website. If such a violation occurs, you agree to cease accessing our Website and all products and services provided by us. You agree that we may, at our sole discretion and without notice, terminate your access to all or part of, and may remove and discard any information or content within, our Website and products and services provided by us.

- 23.2 You agree to use our Website at your own risk. Without limitation, the services provided on our Website are intended only for customers who are able to withstand the loss of any money they invest and who understand the risks and have experience in taking risks in financial markets. The possibility exists that you could suffer loss and hence you should not invest money that you cannot afford to lose. You should be aware of all the risks related to entering into any of the Contracts which we offer and should seek the advice of an independent financial adviser if you are unsure.
- 23.3 We assume no responsibility for any error, omission, deletion, interruption, delay, defect, in operation or transmission, communications line failure, theft or destruction or unauthorised access or alteration of our Website and all products and services provided by us. We are not responsible or liable for any problems or technical malfunction of any telephone network or lines, computer online systems, servers or providers, hardware or software, or any technical failure because of technical problems or traffic congestion on the internet, our Website or any service or product provided by us. To the extent permitted by any Applicable Law, we will not be liable for any Loss or damage arising from use of our Website or products and services provided by us, for any content posted on or through our Website or products and services provided by us, or the conduct of all users of our Website or the products and services provided by us, whether online or offline.
- 23.4 In no event shall we or any of our directors, officers, employees or agents be liable for any damages whatsoever to you, including, without limitation, indirect, incidental, consequential or punitive damages, arising out of or related to the use of our Website or the Products and services provided by us, including without limitation the quality of the usefulness of information provided through or as part of our Website or any investment decision making on the basis of the information, whether the damages were predictable or not and whether or not we have been acquainted with the possibility of such damages.
- 23.5 This limitation of liability shall apply to the fullest extent permitted by law and in no event shall our cumulative liability to you exceed the amount of money you have paid to us for the transaction giving rise to such liability in relation to your Account.
- 23.6 We may make available to you a wide range of financial information that is generated internally from agents, suppliers or partners ("Third Party Providers"). This includes, but is not limited to, financial market data, quotes, news, analyst opinions, research reports, graphs and data. The financial information provided on our Website is not intended to be financial or investment advice. We do not warrant the accuracy, timeliness, completeness or correct sequencing of the financial information, or results of your use of this financial information. The financial information may promptly become unreliable for various reasons, including, for instance, changes in market conditions or economic circumstances. Neither we nor the Third-Party Providers are required to update the information or opinions included in the financial information, and we may interrupt the flow of financial information at any time without notice. It is your responsibility to verify the reliability of the information on our Website and its suitability for your needs. We exclude all liability for any Claim, damage or Loss of any kind caused by any financial information contained in our Website or referenced by our Website.

- 23.7 Every content, trademark, service mark, trade name, logo and icon is the property of First Index or its affiliates or agents and is protected by law and international treaties and provisions relating to copyright. You agree not to remove copyright notices or other indications of protected intellectual property rights of any material you print or download from our Website. You will not obtain intellectual property rights, or any right or licence to use such material or our Website, other than those set forth in the Agreements. Images displayed on our Website are the property of First Index. You agree not to upload, post, distribute or reproduce any information, software or other material protected by copyright or other intellectual property right (including rights of publicity and privacy) without first obtaining permission from the copyright owner and our prior written consent.
- 23.8 In consideration for us entering into the Agreements, you irrevocably appoint us and each of our directors, secretaries, officers, and any other person which we may specify in writing, severally as your attorney at any time and from time to time following an Event of Default, to execute and deliver all documents and to do all things which your attorney may consider necessary or desirable to give effect to the provisions of the Agreements, and in particular, without limitation, in connection with, or incidental to, the exercise of any of our rights and powers under the Agreements. Those powers may be exercised in the interests of First Index notwithstanding any conflict of interest. This appointment survives termination of the Agreements.

## **24 Limitations of Liability and Indemnity**

24.1 To the fullest extent permitted by law, and in addition to any other clause in the Agreements:

- i) we make no warranties either expressly or impliedly as to merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, currency, availability, completeness or quality), with respect to any services we provide under the Agreements including, without limitation, the Online Trading Platform;
- ii) we exclude all liability in contract, tort or otherwise relating to or resulting from use of any services or products we provide under the Agreements including any use or access of our Website or of the Online Trading Platform and for any Loss incurred by you directly or indirectly, including without limitation as a result of or arising out of or in connection with:
  - (1) in the absence of our gross negligence or wilful default, any delay in transmitting or a failure to transmit funds caused by reasons outside of our control or as a result of our failure to execute orders in a timely manner or to meet any of our obligations under the Agreements for reasons beyond our control (reasons outside our control include but are not limited to, government restrictions, suspension of trading, power failure, telecommunication failure, industrial action or war);
  - (2) any moratorium, suspension, halt, delisting or removal from quotation or sponsored publication of any Underlying Asset or any other similar or analogous occurrence in relation to the Underlying Asset;
  - (3) any unauthorised use of your Security Information;
  - (4) any inaccuracy, error or delay in or omission from any information provided to you in connection with the Agreements including the Online Trading Platform;
  - (5) any delay, interruption, failure or inaccuracies in the transmission of your instructions;
  - (6) any failure of any electronic means used to transmit instructions or to disseminate orders,

data or information or of any telecommunications link;

- (7) any fault, error or defect in design or engineering of the Online Trading Platform or computer systems or any delay, fault, failure or loss of access to the Online Trading Platform;
- (8) any private dealings, contracts, transactions or relationships between you and any of First Index's employees or agents;
- (9) any delays or failures or inaccuracies, or loss of access to, the provision of a service to you including, without limitation, any delay, failure or inaccuracy in, or the loss of access to, the Online Trading Platform or in respect of the transmission of orders or any other information; and

(10) any misinterpretation by us of your orders or Instructions.

- iii) we exclude all liability for any loss of profits or special, indirect or consequential Loss which you may suffer resulting from the supply of a financial service or financial product to you including, without limitation, the Online Trading Platform;
- iv) every exemption and limitation from liability available to First Index will also be available to First Index's directors, employees, agents and representatives; and
- v) notwithstanding any other clause in the Agreements, our total aggregate liability to you in respect of any Loss that you may suffer in connection with any Contract shall not exceed the amount of money you have paid to us for the Contract giving rise to such Loss.

24.2 To the fullest extent permitted by law, you release, discharge and indemnify and agree to keep us and our respective officers, employees, agents and representatives indemnified from and against all Claims, liabilities, damages, Losses and expenses (including without limitation any lawyers' fees and costs) which we may incur arising out of or in connection with:

- i) any actions which we take in accordance with your Instructions or directions, or those of your Authorised Persons (or what we reasonably believe to be your Instructions or directions or those of your Authorised Persons), in relation to any Contracts or in relation to your Account;
- ii) the occurrence of any Event of Default;
- iii) our exercise of any of our rights and powers upon occurrence of any Event of Default;
- iv) any lawful action by us in accordance with our rights under the Agreements or otherwise, including any actions by us to ensure compliance with any direction, request or requirement of any regulatory authority or government body;
- v) any breach by you of any Applicable Law or of the terms of the Agreements (or any transaction or obligation contemplated by them);
- vi) any representation or warranty made or given by you under the Agreements being untrue or incorrect; and

- vii) any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by you or by any of your employees, agents or Authorised Persons, consultants or servants.

## **25 Termination**

- 25.1 You agree that, without affecting any existing obligations or liabilities, and subject to any other term of the Agreements, you may terminate the Agreements, including rights in connection with the Online Trading Platform, by giving written notice to us, provided that you have no Open Contracts or Positions at the time of giving notice.
- 25.2 We may terminate the Agreements, including your rights associated with the use of the Online Trading Platform, and Close Out any of your Open Contracts or Positions with immediate effect by:
  - i) giving written notice to you;
  - ii) without notice following the occurrence of an Event of Default; or
  - iii) without notice if, acting reasonably and in good faith, we consider it necessary to protect our interests.
- 25.3 If the Agreements are terminated:
  - i) we may Close Out all of your Open Contracts as if an Event of Default had occurred in relation to them;
  - ii) we may consolidate all Accounts held by you, and deduct all amounts payable by you to us from the Available Funds in any Account; and
  - iii) we will transfer any remaining Available Funds in any Account following our exercise of our rights under this clause 25.3 (and any of our other rights under the Agreements) to you.
- 25.4 Termination of the Agreements will not release either party from their obligations or liabilities arising out of any prior breach of the terms of the Agreements.

25.5

## **26 Bonuses and Trading Credits**

- 26.1 We may, at our absolute discretion, offer bonuses and one-time trading credits to our clients. Any bonuses or credits offered by us are limited by time and the conditions related to any bonuses or credits are subject to change.
- 26.2 We may impose such conditions as we consider appropriate in relation to your right to withdraw any bonus or trading credit from any account. We may refuse to permit a withdrawal of a bonus or trading credit if any such condition is not met to our reasonable satisfaction.

## **27 Third-Party Links**

- 27.1 We may include links on our Website or the Online Trading Platform to other websites that are provided or controlled by third parties. Where we do so, unless explicitly stated we do not endorse, approve or sponsor the third party or the subject of the link, nor do we have any relationship or affiliation with the subject of such links, their owners or their suppliers. You should ensure that you understand the risks associated with the use of such links. The links are provided solely for your convenience and you agree not to hold us responsible for any Loss or damage you may suffer due to the use or reliance on any content, products or services available on these websites.

## 28 Notices

- 28.1 Any notices or communications which are required to be given under the Agreements may be made by telephone, email, mail or facsimile to the contact details as provided by you to us in the Application Form or otherwise in writing.
- 28.2 All communications to you will be deemed to have been received:
- i) when delivered to you if delivery occurs in person;
  - ii) 3 Business Days from and including the date of postage if delivered by mail;
  - iii) when transmitted if delivered by facsimile; and
  - iv) when transmitted if sent by email, unless you confirm receipt of a communication prior to this.
- 28.3 You must notify us in writing of any change in your name, address, telephone number, fax number or email address. You acknowledge that we are not liable for any losses (including indirect or inconsequential losses), costs, expense or damage incurred or suffered by you as a consequence of your failure to do so.
- 28.4 If an Account is opened in the joint names of more than one person, each person agrees that we may discharge any obligation we have to give a notice or a document to those persons under the Agreements by giving notice to any one of those persons.

## 29 Anti-Money Laundering Legislation

- 29.1 You acknowledge and agree that:
- i) We are subject to various anti money laundering and counter-terrorism financing laws, including the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* and any regulations or rules made under that Act (**AML/CTF Laws**), which may prohibit us from offering services or entering into or conducting certain Contracts; and
  - ii) We may require further information from you from time to time to comply with the AML/CTF Laws. By entering into the Agreements, opening an Account and transacting with us, you undertake to provide us with all additional information and assistance that we may reasonably require to comply with the AML/CTF Laws.
- 29.2 You agree that:
- i) we are not required to take any action or perform any obligation under or in connection with the Agreements if we are not satisfied as to your identity or if we suspect on reasonable grounds that by doing so we may breach the AML/CTF Laws;
  - ii) we may delay, block or refuse to make any payment or to provide any service if we believe on reasonable grounds that to do so may breach any law in Australia or any other country, including the AML/CTF Laws, and we will incur no liability to you if we do so; and
  - iii) we will not incur any liability to you for any Loss you suffer (including consequential Loss) as a result of any action taken or not taken by us as contemplated in this clause 29.
- 29.3 You agree that we may disclose information which you provide to us, or about Contracts you have entered into with us or which you seek to conduct with us, if we are required to do so by the



AML/CTF Laws or any other Applicable Law.

29.4 You represent and warrant to us that:

- i) you are not aware and have no reason to suspect that:
  - (1) the moneys used or held in your Account have been or will be derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under Australian law, international law or convention or by agreement; or
  - (2) the proceeds of your investment will be used to finance any illegal activities; and
- ii) neither you nor your directors, in the case of a company, are a "politically exposed person" (as that term is defined in the *Anti-Money Laundering and Counter-Terrorism Rules Instrument 2007 (No. 1)*).

### **30 Privacy**

30.1 You acknowledge that you have read and received a copy of our privacy policy and that we may change our Privacy Policy at any time without notice. Our Privacy Policy is available on our Website.

30.2 We may 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.

30.3 We may disclose your personal information on a confidential basis to our agents, contractors or third-party service providers which provide services to us in connection with the Agreements but restricted to the purposes of providing that service.

30.4 We may also disclose your personal information to regulatory authorities and third parties as required or authorised by law.

30.5 We may also use your personal information to tell you about other products and services offered by us or other companies associated with us and in order to do that We may disclose your information to other such companies.

30.6 We may also disclose your personal information to your financial adviser and any other authorised person.

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

30.8 You agree to take all reasonable steps to deliver information or documentation to us, or cause information or documentation to be delivered to us, concerning Contracts which are requested by a person having a right to request such information or documentation. You understand that if you do not provide any information requested by us or do not agree to us using your information as set out in this clause we may not be able to provide our services to you.

30.9 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.

30.10 You acknowledge and agree that we are permitted to carry out an electronic database search and

search credit reference agencies and Issuer or Official record holder of identity documents in order to verify your identity and credit standing, before during and after an Account is opened (since the insolvency or bankruptcy of you after cessation of the Account or termination of this Agreement may continue to be relevant to us). If such searches are carried out, we may keep records of the contents and results of such searches in accordance with all Applicable Law.

30.11 We may provide all such information regarding you in relation to its obligations to or requests (whether legally binding or not) by any regulatory body.

## 31 Risk Disclosures

31.1 You agree that you are aware of and have considered the impact of the following risks, in addition to any other risks disclosed to you in the PDS, our Website or the Online Trading Platform, before accepting any of the services which we may provide or entering into any Contracts with us:

- i) **(General risks)** - you understand that you are using our services at your own risk. Our services should only be used if you can actually bear the loss of any money invested and if you properly understand the associated risks that are inherent to trading the Products. It is also important to have relevant experience when entering into any financial contracts and transactions, including the Contracts with us. The market for many of the Products which we offer are dynamic arenas and their respective prices are often highly unpredictable and volatile. Use of our services and can **NEVER** be considered a safe investment. The Products which we offer are **HIGH RISK** investments with **A HIGH RISK OF LOSS**. In addition, we may add our own spread to existing calculations and online quotes which makes transactions with us even more volatile.
- ii) **(Accountability)** - by using our services, you acknowledge and agree that you will be fully, independently and personally liable for each transaction made on through your Account. As such, you must make sure that you are the only person with access to your Account at all times. You must make sure that no minors have access to your Account. If you do not settle a transaction performed through your Account you shall be liable to us and must indemnify us in the amount necessary to cover the entire cost, whether indirect or direct, of the transaction. In the unlikely event that a Contract is entered to acquire or sell currency at a price that does not reflect the market price (such as an event where a technical error such as a bug or defect has caused a malfunction that has affected the price of the transaction), we reserve our right to terminate and cancel any such transaction. We will notify you of our decision to cancel the transaction. On the other hand, you are required to inform us of any such malfunction should you experience such a malfunction while using the Online Trading Platform.
- iii) **(Compliance with local laws)** - you understand that financial regulations, financial codes, financial ethics and contractual requirements vary worldwide. As such, you understand that ultimately it is your responsibility to make sure that you comply with any and all local regulations, directives, restrictions and laws in your local place of residence before using our services. We do not permit the use of our services by users from jurisdiction in which the use of our services is not permitted. The Agreements do not amount to an offer or solicitation for the use of our services to any one located in a jurisdiction in which the specific use is not authorized or otherwise permitted by local laws.

By using our services, you declare that all the funds that you use and invest on our services do not originate in any way from drug trafficking, abduction, terrorist activity or any other criminal activity that is unlawful or could be considered unlawful by any authority. In the event that we become suspicious that You may be engaging in or have engaged in fraudulent, unlawful or improper activity, including, without limitation, money laundering activities, or conduct otherwise in violation of the Agreements, your access to the services may be terminated immediately and/or your account blocked. If your account is terminated or blocked

in such circumstances, we are under no obligation to refund any funds that may be in your account, unless otherwise instructed by a relevant regulatory authority. In addition to terminating your access to the services and/or blocking your Account, we reserve the right to prevent you from accessing any of our other websites or servers, or accessing any other services offered by us. We shall be entitled to inform the relevant authorities, other online service providers and banks, credit card companies, electronic payment providers or other financial institutions of your identity and of any suspected unlawful, fraudulent or improper activity and you will cooperate fully with us to investigate any such activity

- iv) **(Spread)** you understand that we may apply our own spread to all transactions and trades made by using our services which can increase the cost of the transactions and trades accordingly.
  
- v) **(Trading software)** - we may provide you with the ability to use software to assist in your trading activity, including the ability to interact, follow and copy other traders using information provided to you through the Online Trading Platform or made available on our website. These features are associated with various risks and you should carefully consider all of these risks before using any automated trading features. Some of the risks associated with these features include:
  - (1) these features are provided by us solely for informational purposes to aid in your trading positions. If you make investment decisions based on information which we provide, you do so at your own risk and we will not be liable for any losses that you sustain. You should not make any investment decision before conducting your own research using your own independent sources. You are solely and exclusively responsible for determining whether any investment, strategy, Financial Product or Contract is appropriate or suitable for you;
  - (2) if we offer a copy trading feature, a copied trader's positions shall be copied with the same proportional amounts and with the same leverage, to the maximum extent possible. All such positions shall be Closed Out automatically if and when closed by the copied trader, without providing any notice to you. You should be able and prepared to bear the loss of the entire investment you made in such a copied trader. You are fully responsible for any losses you may sustain as a result of the use of the copy trading features;
  - (3) any past performance of users which you may copy is not indicative as future performance. It is important to understand that historical performance is not a guarantee of future performance. When reviewing the content, portfolio, financial performance information, opinions or advice of another user, you should not assume that the user is unbiased, independent or qualified to provide financial information or advice; and
  - (4) no aspect of the information and/or social trading feature provided and/or made available on our Website or the Online Trading Platform is intended to provide, or should be construed as providing, any investment, tax or other financial related advice of any kind. You should not consider any such content and/or any such feature to be a substitute for professional financial advice. If you choose to engage in transactions based on content on the Website or the Online Trading Platform and/or elect to copy specific traders and/or trades, then such decision and transactions and any consequences flowing therefrom are your sole responsibility. While individual participants may offer investment advice or opinions and/or effect a transaction which may be subsequently copied by another trader, such advice, opinions or trades amount to nothing more than exchanges between persons who may be anonymous or unidentifiable or simply the execution of a trade by such traders. We do not provide investment advice directly, indirectly, implicitly, or in any manner whatsoever by making such information and/or features available to you. You

should use any information gathered from here and/or utilise the social trading features only as a starting point for your own independent research and investment decision making.

vi) (**Other disclosures**) - you understand that, in accordance with the terms of the Agreements:

- (1) we may unilaterally Close Our part, or all, of your Open Contracts, and, if after Closing Out the Contract you are required to pay us money in accordance with the terms of the Contracts, you must pay that amount to us and we may deduct such amount from your Account;
- (2) in the event liquidity providers are unable to provide liquidity to us your order may experience delays in execution or you may not be able to place orders entirely. The size of the order may also impede the speed at which the order is executed;
- (3) while trading on our visual electronic trading system, you might encounter system errors that are resulted from hardware and/or software failures. The result of any system failure may be that your order is either not executed according to your instructions, executing with account balance errors and discrepancies or not executed at all. We will not be liable for the resulting errors in account balances. We reserve the right to make the necessary corrections or adjustments on the account involved;
- (4) some of the Products in relation to which you may enter into Contracts with us for are **VERY HIGHLY LEVERAGED**, which can lead to you suffering **SIGNIFICANT TRADING LOSSES, INCLUDING THE LOSS OF ALL OF YOUR INVESTMENT, IN A VERY SHORT PERIOD OF TIME**, and even **A SLIGHT FLUCTUATION IN THE UNDERLYING ASSET CAN LEAD TO YOU SUFFERING DISPROPORTIONATE LOSSES**;
- (5) depending on market conditions, the value of a Contract can fluctuate rapidly to reflect unforeseeable events which cannot be controlled by us or by you; and
- (6) the risks which we have summarised in this section 31 do not reflect all of the risks which are inherent in the use of our services or the entry into a Contract.

## 32 Governing Law

- 32.1 You agree that any dealings between you and us are subject to, and are each bound by, the Applicable Law as amended or altered from time to time.
- 32.2 You acknowledge and agree that the Agreements are governed by the laws in force in Victoria and agree to submit to the non-exclusive jurisdiction of the Courts of Victoria in relation to any Claim or dispute arising out of the performance of the Agreements.

## 33 General

- 33.1 If any of the provisions contained in the Agreements are found to be invalid or unenforceable, such provisions will be severed, and the validity and enforceability of the remaining provisions will continue unimpaired and will remain in full force and effect.
- 33.2 The Agreements (which may be amended according to the terms of the Agreements) contain the entire terms and understanding between you and us concerning the provision of the services that are the subject of then Agreements (including the Account, the Online Trading Platform and the entry into Contracts).

- 33.3 If we fail to exercise or enforce or delays in exercising or enforcing any right under the Agreements, we do not waive such right. The rights provided in the Agreements do not exclude other rights provided by law.
- 33.4 We may assign or otherwise transfer or deal with our rights or obligations under the Agreements or any Contract without obtaining your consent.
- 33.5 You may not assign or otherwise transfer or deal with your rights or obligations under the Agreements or any Contract without our express prior written consent.

## 34 Definitions

- 34.1 The following terms and expressions have, unless the context otherwise requires, the following meanings.

**Account** means your account with us established under this Agreements, as described in clause 2.7.

**Account Terms** means this document.

**ADI** means an Australian Deposit-taking Institution, as that term is defined in the *Banking Act 1959* (Cth).

**Adjustment Event** means, any event in respect of which we consider in our absolute discretion an adjustment to the terms of a Contract is appropriate, including:

- i) if the Underlying Asset in respect of a Contract is a share, debenture, unit or other security (or depositary receipt of any kind in respect of any of them) - a bonus issue for combination of rights issued, rights issue, stock split, share or other capital consolidation, security reclassification or sub-division return of capital, buy back, special dividend (however legally constituted), in specie distribution, takeover, scheme of arrangement or similar event or other corporate action event in respect of the security, whether or not the event triggers an adjustment to any exchange traded derivative of it;
- ii) a distribution to existing holders of the Underlying Asset granting them the right to receive dividends or other proceeds equally and proportionately with payments made to holders of the underlying securities; or securities, rights or warrants granting the right to a distribution of shares or to purchase, subscribe, or receive shares, in any case for payment (in money cash or money's worth) at less than the prevailing market price per share as determined by us;
- iii) an event that has a dilutive or concentrative effect on the market value of the shares or other Underlying Asset;
- iv) if the Underlying Asset is an index, a substantial adjustment to the composition of the index outside its own terms allowing for adjustments or weightings; a failure to publish the index or a suspension or cancellation of the index; and
- v) if the Underlying Asset is a derivative which is able to be traded on a Financial Market – any event in respect of which the operator of the Financial Market makes an adjustment to the terms of the derivative.

**AFSL** means Australian Financial Services Licence.

**Agreements** has the meaning given to it in clause 1.2.

**AML/CTF Laws** has the meaning given to it in clause 29.1.

**Applicable Law** means all laws, legislation, regulation and subsidiary regulation, instruments and orders of a regulatory authority or a court, rules and procedures of any relevant jurisdiction which apply to us, our clients, the Agreements and the transactions contemplated by the Agreements, including, without limitation, the Corporations Act and rules and regulations made pursuant to the Corporations Act, ASIC class orders and other instruments, and any laws, rules, regulations or directives of the jurisdiction of your residence.

**Application Form** means the form of application which a person is required to complete and return to us in order to become our client and to open an Account.

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

**Authorised Person** has the meaning given to it in clause 2.11.

**Australian Client Money Rules** means the provisions in Part 7.8 of the Corporations Act and the Corporations Regulations made under those provisions that specify the manner in which financial services licensees are to deal with client moneys and property as modified by ASIC.

**Available Funds** has the meaning given in clause 3.2.

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

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Victoria.

**Claim** means any or all, actual or potential claim, action, complaint, suit, cause of action, arbitration, debt due, costs, claim, entitlement, allegation, demand in respect of damages and any other benefit verdict and judgment whether both at law or in equity or arising under the provisions of any statute, award or determination.

**Client** refers to the person who has an Account with First Index.

**Close of Business** means 5pm Melbourne Time (AEST).

**Close Out, Closed Out or Closing Out** in relation to an Open Contract means discharging or satisfying the obligations of the parties under the Open Contract and by entering into an opposite Contract in relation to the same Product with the same contractual counterparty, which will offset the Position created by the Open Contract.

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

**Contract** means any agreement:

- i) between you and First Index as principal;
- ii) to pay an amount calculated in respect of a Underlying Asset; and
- iii) in respect of which you have, or are taken to have, agreed (whether orally, electronically or in writing) to the Contract Terms.

**Contract Price** means the price per Contract Unit of a Contract, quoted by and accepted by us.

**Contract Terms** means the unique terms of any particular Contract, which includes the unique set of price information, minimum and maximum quantities, expiry, and other commercial features which we will make available to you on the Online Trading Platform or otherwise prior to our entry into the particular Contract.

**Corporations Act** means the *Corporations Act 2001* (Cth) and regulations made under it.

**Event of Default** has the meaning in clause 18.1.

**Expiry Date** means the day on which a Contract Expires.

**Financial Market** has the meaning given to it in the Corporations Act.

**Financial Product** has the meaning given to it in the Corporations Act.

**Force Majeure Event** has the meaning given to it in clause 6.1.

**Futures Based CFD** means a CFD where the Underlying Asset is an equity index or a commodity future or other future product.

**Information Vendor** means the meaning given to it in clause 17.5.

**Initial Margin** means, in relation to the Contract, the initial amount which you must pay to us in order to enter into a Contract which represents collateral for your initial exposure under the Contract.

**Instructions** means a direction given by you to us in accordance with clause 5, under which you offer for us to enter into a Contract with you on terms which have been quoted to you and which you have agreed to. The process for giving Instructions and the nature of an Instruction are set out in clause 5.

**Interbank Rate** means the wholesale rate quotes between banks and other liquidity providers.

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

**Margin** means the amount of money you are or may be required to pay to us in order to open and maintain a Contract, which represents collateral for your exposure under the Contract.

**Margin Call** means a demand for additional funds to be deposited into your Account to meet Margin Requirements associated with your open Contracts, usually arising due to price movements, which are adverse to your open Contracts.

**Margin Call Level** means the level of Margin at which First Index will issue a Margin Call.

**Margin Requirement(s)** means the amount of money you are required to pay to us and deposit with us for entering into a trade and/or maintaining an open Contract

**Margin FX Contract** means a contract between you and us for the taking of a spot Position in a foreign currency.

**Material Error** has the meaning given to it in clause 5.9.

Next Serial Futures Contract means a contract of the same type as a futures contract, which is the Underlying Asset of the relevant CFD Contract, but with the expiry date being the next occurring expiry date.

**Online Trading Platform** means the Online Trading Platform which you are given access to by us to enable you to view certain details about your Account and to enter into Contracts with us by giving us Instructions.

**Open Contract** means, at any time, a Contract which has not been Closed Out.

**Order** means an offer made by you under the Agreements.

**PDS** means any product disclosure statement which we may have issued in connection with a Product or with the services offered under this Agreement, including any supplementary or replacement product disclosure statement.

**Position** means the long or short position that you have taken as a consequence of the Contracts which you have entered into with us.

**Product** means each type of Financial Product which we may make available to you under the Agreements, subject to the Product Information.

**Product Information** means the particular terms and features of each Product, which we will make available to you on the Online Trading Platform or otherwise prior to our entry into any Contract relating to the Product.

**Related Bodies Corporate** has the meaning given to it in the Corporations Act.

**Rollover Benefit** means a benefit you may receive on a Futures Based CFDs held overnight and which is described in clause 10.4 of these Account Terms.

**Rollover Charge** means a charge you may have to pay where you have a Futures Based CFD held overnight and which is described in clause 10.4 of these Account Terms.

**Security Information** means the information which we may provide to you in order for you to access your Account using the Online Trading Platform or otherwise.

**Stop Out Level** means the level of Margin that will allow First Index the ability to close all or some of your open Contracts.

**Swap Rate** means the rate determined by us from time to time having regard to, among things, Interbank Rates.

**Third Party Providers** has the meaning given to it in clause 23.6.

**Underlying Asset** means the financial instrument such as the security, index, commodity, foreign exchange, bullion or other instrument or asset or factor the reference to which the value of a Contract is determined.

**Website** means [www.firstindex.com](http://www.firstindex.com).