



CLIENT AGREEMENT

MerchantFX Pty Ltd

Issue Date: 30th April 2019

MerchantFX Pty Ltd
ACN 115 459 124, AFSL 297499
Level 10, 230 Collins Street
Melbourne VIC 3000

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1 Introduction

- 1.1 MerchantFX means EverForex Financial Pty Ltd (ACN 115 459 124, AFSL No. 297499, **MerchantFX, Us, We, or Our**)..This is an Agreement made between **You**, the Client, and us, MerchantFX.
- 1.2 MerchantFX is an Australian owned and operated proprietary company. It is a Corporate Authorised Representative (**CAR**) number 001241758 of Australian Financial Services Licence (**AFSL**) number 297499. We provide Over-the-Counter (**OTC**) derivatives products to both Wholesale and Retail clients. MerchantFX is regulated by the Australian Securities and Investments Commission (**ASIC**). This statement or any other references to ASIC in this document or elsewhere by us cannot be considered as an ASIC endorsement of this document or our products and services. Further information about ASIC and how ASIC regulates Australian Financial Services Licensees can be found on ASIC's website at: www.asic.gov.au.
- 1.3 Our contact details are as follows:
- Phone:** 03 8393 1800
- Email:** info@merchantfx.com.au
- Post:** MerchantFX Pty Ltd
Level 10, 230 Collins Street
Melbourne VIC 3000 AUSTRALIA
- 1.4 **Our products and services are highly risky and are not suitable for all investors. You may lose more than your investment amount. Trading in our products will not result in ownership of the underlying instrument. You should carefully read our Financial Services Guide (FSG) and our Product Disclosure Statement (PDS) in conjunction with this Agreement before deciding whether to enter into this Agreement with Us. The FSG and the PDS provide you with detailed information on the features of our products and services, and highlight the key risks and costs in doing so.** The FSG and the PDS are available on our website www.merchantfx.com.au
- 1.5 This Agreement is subject to the provisions of the *Corporations Act 2001* (Cth) (the **Corporations Act**), which shall prevail in the event that there are any inconsistencies between the terms of this Agreement and the provisions of the Corporations Act unless otherwise stated. This Agreement does not intend to restrict or exclude any rights or obligations that the parties to the Agreement have under the Corporations Act.
- 1.6 Our official language is English. We may make our FSG, PDS and this Agreement available in languages other than English for Your convenience. While care is taken in the translation process, we cannot guarantee the accuracy of any translation. In the event of any inconsistencies in the content of the documents in different languages, the English version prevails.

2 Account Application

- 2.1 You may submit an Application for an Account by submitting a completed Online Application Form to us. MerchantFX in its sole discretion determines whether to establish an Account for you. We are not obligated to provide You with any reasons in the event that we refuse to open an Account for you.

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- 2.2 If your Application is accepted, the following will take place:
- 2.2.1 your Account is established;
 - 2.2.2 You transfer funds into the Segregated Client Money Trust Account; and
 - 2.2.3 credits your Account with the amount of funds You have transferred into the Segregated Client Money trust Account.
- 2.3 Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**)
- 2.3.1 We will use the collected information for identification and verification purposes to fulfil our obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (the **AML/CTF Act**) and the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 No 1* (Cth) (the **AML/CTF Rules**). We may release your information to credit reporting agencies for the purpose of verifying the information you have provided us with. We may also be obligated to share your personal information with government agencies without notification to you.

Electronic Verification - MerchantFX Pty Ltd and its related entities are required by the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 to verify your identity before we can provide you with financial products and services. Electronic verification allows us to verify your identity by using electronic tools and external data sources.

How electronic verification works

In order to verify your identity electronically, we will ask you for your details (such as your name, address, date of birth) and details of your identification documents. This information will be passed on to external organisations in order to electronically match your information with information on their databases. These organisations will assess and advise us whether all or some of the information you provided matches their records. We have an arrangement with Equifax Pty Ltd who completes electronic verification on our behalf.

The external data sources used to verify your identity include:

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The external data sources used to verify your identity include: Credit information files held by Equifax Pty Ltd (this is only to confirm your identity and is not a credit check); Publicly available information such as the electoral roll and white pages; Information held by the official record holder via third party systems

It is an offence under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 to provide false and misleading information about your identity.

Who your information will be shared with: We will share your personal information with the following external organisations for the purposes of verifying your identity: Equifax Pty Ltd; The official record holder via third party systems, such as Commonwealth and State government departments.

These organisations may use your personal information and personal information of other individuals, such as names, addresses and dates of birth, for the purposes of preparing their assessments.

Other methods of verification

You do not have to agree to electronic verification. Instead you can choose to visit one of our branches so we can verify your identity in person. We will advise you if we are unable to verify your identity electronically.

By agreeing to these terms and conditions you agree that: The information you are providing is your personal information and you have authority to provide it to us, and; We may use and disclose your personal information for the purposes of electronic verification as described above.

- 2.4 If your Application has been accepted and you wish to open more than one account, MerchantFX reserves the right to exercise its discretion in assessing any successive Application. We are not obligated to provide you with any reasons in the event

3 Our Dealings with You

- 3.1 We act as the principal when transacting with you. We treat you as a Retail Client under the Corporations Act unless you qualify as a wholesale client, in which case We will notify you of such classification in writing.
- 3.2 Detailed information on the trading hours of the Underlying Instruments and any relevant public holidays can be found on our website www.merchantfx.com.au . Please note that this information may be updated from time to time and you should always refer to our website for the current information.
- 3.3 In the course of our dealings with you, We may provide you with factual information on the features of our products and services, and our procedures of dealing with your Transactions. This may constitute the provision of general financial product advice. We will not provide any personal financial advice to you under any circumstances, which means We will not take into consideration of any of your personal circumstances, financial goals or objectives in any case.
- 3.4 You acknowledge and agree to the following in terms of the operations of Your Account with us:

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- 3.4.1 Only funds that have been cleared into your Account can be used for trading purposes;
 - 3.4.2 It is solely your responsibility to monitor your Account and ensure that there are sufficient funds to satisfy all Initial Margin and Maintenance Margin requirements;
 - 3.4.3 Where there are insufficient funds on your Account to satisfy the Initial Margin requirement for a particular Order when it is due to be executed, such an Order will be cancelled;
 - 3.4.4 Where there are insufficient funds to satisfy the Maintenance Margin requirements for all of your open Positions, our system may force close one or more of the Positions.
- 3.5 You authorise and direct us to:
- 3.5.1 Credit to your Account the sums that you have deposited into our Segregated Client Trust Account for the purposes of using our products and services;
 - 3.5.2 Debit your Account for the purpose of processing a withdrawal request upon your written instructions;
 - 3.5.3 Debit your Account any commissions, fees, and charges for the provision of the products and services;
 - 3.5.4 Updating your Account records as shown on our Electronic Client Facilities to reflect the real-time status of your Account in terms of Margins and profits and losses;
 - 3.5.5 Credit your Account with sums that you are entitled to, such as realised profits upon the closure of a winning Position;
 - 3.5.6 Debit your Account sums that We are entitled to, such as realised losses You have incurred upon the closure of a losing Position.
- 3.6 A notice given by us stating any amount or rate for the purpose of this Agreement and any Order or Position is sufficient evidence of the amount or rate unless it is proved to be incorrect.
- 3.7 We may from time to time make available additional products and/or services to you. Alternatively, We may remove certain products and/or services from our offering. We will provide you with written notification in either event and provide you with reasonable notice.
- 3.8 Where there is more than one individual as either the Account holder or the Authorised Signatory, all Account holders or Authorised Signatories authorise us to deal with any individual Account holder or Authorised Signatory, and the actions of any individual Account holder or Authorised Signatory are binding on all of the Account holders or Authorised Signatories.

4 Client Money

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- 4.1 MerchantFX deposits all money paid by you into our Segregated Client Trust Account, which is an account operated in accordance with the Australian Client Money Rules, as stipulated in the Corporations Act. Client money is held in trust for the benefit of the clients entitled to it.
- 4.2 You agree that Your money in our Segregated Client Trust Account is not kept separate from the money of other clients.
- 4.3 You agree that MerchantFX may withdraw your money from the Segregated Client Trust Account:
 - 4.3.1 in order to make a payment in accordance with your written directions, including directions given under this Agreement;
 - 4.3.2 for defraying commissions and other proper fees and charges;
 - 4.3.3 for paying to MerchantFX money to which We are entitled;
 - 4.3.4 for making a payment that is otherwise authorised by law; or
 - 4.3.5 for making payments to another licensee provided that the licensee is notified that the money paid to it is sourced from the Segregated Client Trust Account and the receiving licensee pays that money into its own trust account.
- 4.4 If you are a Retail Client, MerchantFX does not use your money:
 - 4.4.1 as working capital to support our own operations;
 - 4.4.2 for meeting obligations incurred by us other than on your behalf;
 - 4.4.3 for the margining, guaranteeing, securing, transferring, adjusting, or settling of our dealings in derivatives with third parties, including dealings on behalf of Clients other than you; or
 - 4.4.4 for hedging, counteracting, or offsetting risk to us associated with a Transaction between us and you.
- 4.5 You agree and acknowledge that any amounts withdrawn under clause 4.3:
 - 4.5.1 belong to us; and
 - 4.5.2 will no longer be your funds or be held for you.
- 4.6 MerchantFX is entitled to invest the money held in the Segregated Client Trust Account in accordance with the Corporations Act and Corporations Regulations. This may include:
 - 4.6.1 investments in any manner in which MerchantFX is, for the time being, authorised to invest in;
 - 4.6.2 investment on deposit of any eligible money market dealer;

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- 4.6.3 investment on deposit at interest with any ADI;
 - 4.6.4 the acquisition of cash management trust interests;
 - 4.6.5 investment in a security issued or guaranteed by the Commonwealth or a state or territory; or
 - 4.6.6 investment on deposit with a clearing and settlement facility;
- 4.7 Unless otherwise agreed by MerchantFX in writing, We are solely entitled to any interest or earnings derived from any permitted investment of Client Money. At the end of an investment period, We are obligated to either return the initial investment back to a Segregated Client Trust Account, or use the initial investment to enter into another investment permitted by the Corporations Act.
- 4.8 We may maintain Segregated Client Trust Accounts in different currencies, such as AUD, USD and a number of other currencies that We may decide to offer from time to time. In the event that you make a deposit into a particular Segregated Client Trust Account in a currency that is different to the denominated currency of that account, you agree that your deposit will be converted to the denominated currency of the respective account at the prevailing exchange rate that is offered by the Australian Deposit-taking Institution (**ADI**) with which the account is maintained. You are liable for the costs associated with the currency conversion, and the net amount will be credited to your Account. For example, you make an AUD deposit into our USD Segregated Client Trust Account, the relevant ADI will convert the AUD deposit into USD before depositing the net amount (after deduction of conversion costs) into the USD Segregated Client Trust Account.
- 4.9 How We process your withdrawal requests
- 4.9.1 We generally follow your written instructions in terms of processing your requests to withdraw funds out of your Account.
 - 4.9.2 We are not obligated to process your request in the event that your Account may, in our reasonable opinion, no longer satisfy the Margin requirements after the withdrawal. You should note that it remains your responsibility to monitor your Account at all times and ensure that you satisfy all Margin requirements. Our decision to process your withdrawal request cannot be construed as an opinion that your Account will not fail to satisfy all Margin requirements. We are not liable for any losses that you may incur as a result of having insufficient funds on your Account in any circumstances.
 - 4.9.3 We may request information and documentation from you before We can process your request for fraud prevention purposes and also to satisfy our AML/CTF obligations. There may be delays, or We may be unable to process your request if you do not provide us with the requested information and documentation.
 - 4.9.4 It is in our absolute discretion to decide the means used to return the funds to you. Generally, We aim to return the funds back to the original source where possible.
 - 4.9.5 We reserve the right to pass onto you any fees, bank charges and other costs associated to processing your withdrawal request.

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5 Quotes and Orders

- 5.1 MerchantFX is the market maker for the OTC derivative products that We offer. We make a market via our Electronic Client Facilities which can be accessed from computers and mobile phone applications.
- 5.2 We are not obligated to quote any specific instruments. When We chose to do so, We may quote a Bid price (the price at which We may be willing to buy a contract from you) and an Ask price (the price at which We may be willing to sell a contract to you) which are derived from the prices of the Underlying Instrument. You should note that our quotes may not necessarily be the same as that of the Underlying Instrument.
- 5.3 Our quotes do not constitute an offer to transact with you. An Order is an offer from you to either open or close a Position in an instrument quoted by us. By placing an Order on a specific instrument, you make an offer to transact with us by requesting to open or close a Position.
- 5.4 We are not obligated to accept any Orders you place provided that We act reasonably given the prevailing market conditions and the liquidity We can reasonably obtain. We will determine whether to accept an Order and whether to fulfil an Order in its part or entirety as at the time that it is received in our back office system. There may be occasions, especially during extreme volatile market conditions, where the quoted prices have changed by the time your Order reaches our back office system.
- 5.5 We make every effort to maintain our systems in a working order. However, We cannot guarantee that our systems will work at all times, especially during extreme market conditions. The transmission of the Orders is also affected by factors such as the reliability of your internet connection and the speed of your network. If you are in doubt as to whether an Order has been accepted and executed by us, you should refrain from attempting to place the same Order multiple times, but rather contact our client services team as soon as possible.
- 5.6 We may impose limits on the size of a Position You may hold on a specific instrument which may change from time to time. You should always refer to our website for the most up-to-date information www.MerchantFX.com.
- 5.7 Orders and all trading-related instructions can only be provided by you on our Electronic Client Facilities. By submitting an Order you acknowledge that you have sufficient funds on your Account for the purpose of the execution of the Order, including the Initial Margin requirement and any costs such as commission and other fees and charges where applicable. Our system does not check the adequacy of your funds when accepting an Order. In the event that there are insufficient funds on the Account when an Order is triggered and due to be executed, your Order will be cancelled.
- 5.8 The types of Orders that may be placed on our trading platforms include:
 - 5.8.1 A Market Order is an instruction to us to either open or close a Position at the prevailing market price that can be obtained on our trading platforms. In the event there is insufficient volume at the requested price, the rest of the Order will be filled at the next best price(s) available at the time of the Order execution.
 - 5.8.2 A Limit Order is an instruction from you to us to open or close a Position at a specific price or a more favourable price. In the event that the requested price is triggered but there is insufficient liquidity to fill the entire Order.

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- 5.8.3 A Stop Loss Order is an instruction from you to us to close part or the whole of a Position at a particular price. Once your Stop Loss Order price level is triggered, it will be executed in full. In the event there is insufficient liquidity at the requested price level to full your Order in its entirety, the remaining portion of your Order will be filled at the best price(s) available.

- 5.9 Orders may have different expiries:
 - 5.9.1 a Day Order is an Order that remains valid till the end of the current trading session. If it is not executed by the end of that trading session, it will be cancelled. For day Orders on Margin FX contracts, the end of day is deemed to be 5pm New York Time;

 - 5.9.2 a Good till Cancelled Order is an Order that remains valid until it is either cancelled or executed;

 - 5.9.3 a Good till [a specific date] Order is an Order that remains valid till it is either executed or cancelled at the end of the trading session on the specified date if not executed. The end of day is deemed to be 5pm New York Time.

- 5.10 You may amend the details of your Order or cancel it before it becomes due to be executed. Any amendment or cancellation is not effective until it has reached our back office system and has been accepted by us.

- 5.11 MerchantFX may in its sole discretion accept an Order in whole or in part. An Order is accepted by us when MerchantFX records the Transaction concerning the Contract in our records.

6 Confirmations

- 6.1 A Confirmation refers to Our acknowledgment that
 - 6.1.1 We have received your instructions in relation to a certain action, such as placing, amending or cancelling an Order;

 - 6.1.2 We have acted upon such instruction or We have rejected such an instruction;

 - 6.1.3 We have executed or cancelled an Order in accordance with the terms of this Agreement;

- 6.2 All records associated with your trading activities, including Confirmations are available from our Electronic Client Facilities. You agree that this is sufficient for the purpose of informing you of the Account activities. You are deemed to have received the Confirmations when they become available on the Electronic Client Facilities. While We are not obligated to do so, We may in our sole discretion provide you with Confirmations via other means such as emails sent to your nominated email address.

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- 6.3 It is your responsibility to monitor your Account at all times and to review the Confirmations as they become available. The information as recorded in the Confirmations is deemed correct, accurate and conclusive unless challenged by you within 3 business days of the Confirmations becoming available.

7 Margining

- 7.1 Margin refers to the amount of money required to open a Position (Initial Margin), or the maintenance of a Position on an ongoing basis (Maintenance Margin). Margin requirements may be a fixed sum per contract or a percentage of the total value of the contract. Margin requirements may fluctuate while your Position is open.
- 7.2 You acknowledge that you have continuing Margin obligations to us to ensure that throughout the duration of Transactions you have opened, you have positive Margin Cover in your Account at all times.
- 7.3 You also agree to maintain the minimum amount of Margin Cover required by us regardless whether any notice has been provided to you to make those payments or you have actual notice of the required amount. You understand that your obligation to maintain at least the required amount of Margin Cover is continuous as this can constantly change automatically.
- 7.4 It is your responsibility to ensure that you satisfy the relevant Margin requirements at all times.
- 7.5 A Margin Cover requirement for a Contract or other Transaction issued by MerchantFX will not be satisfied unless or until your Margin payment is received in cleared funds. Once the payment is received, MerchantFX will apply the payment to your Account.
- 7.6 We are not obligated to notify you when you have insufficient funds on your Account to satisfy all Margin requirements. However, We endeavour to notify you via alerts on the trading platform when your margin falls below 100% of your margin requirements.
- 7.7 MerchantFX may in its absolute discretion Close Out your positions when your margin falls below 50% of your margin requirements.
- 7.8 You are also responsible to provide payment of any deficit owing to us after Close Out of a Transaction. If you default in payment of such deficit, We may pay the deficit out of the Account or realise any Financial Products held by us and apply the proceeds against that deficit, you must make prompt discharge of the deficit through providing full payment to us immediately.
- 7.9 You may access your Account online to view details of Margin amounts that have been paid and are owing by you to MerchantFX. Margin payments must be paid to the nominated account of MerchantFX in the form of cleared funds.
- 7.10 MerchantFX is not bound by any requirement to inform you of your Account balance or Margin Cover requirements or to make Margin calls. You must be aware of the details of the Account, Margin Cover requirements and Margin calls at all times.
- 7.11 You acknowledge that your failure to satisfy a Margin call will not result in MerchantFX being liable for any losses, costs, expenses or damages incurred by you.

8 Closing Positions

- 8.1 Closing a Position means to place an Order on the same instrument but in the opposite direction of the original Order. For example, if you have bought 5 Aussie 200 contracts, in order to close it, you will need to sell 5 Aussie 200 contracts.
- 8.2 Positions are closed on a “first-in first-out” basis. For example, if you bought 2 Aussie 200 contracts, and then you bought another 3 Aussie 200 contracts, you hold an overall long Position of 5 Aussie 200 contracts. If you subsequently sell 4 Aussie 200 contracts, the 2 contracts you bought in the first Transaction will be closed first, and then 2 out of the 3 contracts that you bought in the second Transaction will be closed.
- 8.3 Profits and losses are settled in cash immediately upon the closing of a Position. This means that:
- 8.3.1 We will credit a profit to your Account if your exit price is higher than the entry price for Long Position, or if your exit price is lower than the entry price for a Short Position;
- 8.3.2 We will debit a loss from your Account if your exit price is lower than the entry price for Long Position, or if your exit price is higher than the entry price for a Short Position.
- 8.4 Profits and losses posted to your Account will be net of all trading costs and adjustments applicable during the period when the Position is held open.

9 Electronic Client Facilities

- 9.1 We provide you with the electronic online trading platforms for the purpose of trading OTC derivative products We offer, and electronic communication facilities available through our secured client area to assist you with your trading activities (together known as **Electronic Client Facilities**).
- 9.2 We grant you a limited and non-exclusive licence to utilise our Electronic Client Facilities in accordance with this Agreement. You may not transfer or sub-licence the licence to any other person and We reserve the right to revoke the licence at any time.
- 9.3 It is your responsibility to ensure that you keep your login details, including your user name and password, secure at all times. You should not share these details with anyone. We are entitled to rely on the instructions from anyone who appears to be you, including but not limited to a person that has successfully logged onto your Account using your user name and password.
- 9.4 You should only access the Electronic Client Facilities from one terminal (such as a computer, a tablet or a mobile phone device) at any point in time. Simultaneous Access from more than one terminal may cause delays in the transmission of data between our servers and your terminals. We are not liable for any losses incurred as a result of multiple terminals being used to access the Electronic Client Facilities.

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- 9.5 Our Electronic Client Facilities may allow third-party plug-ins or software to be used for your convenience only. The availability of these plug-ins or software cannot be construed as promotion or endorsement by MerchantFX. You acknowledge that MerchantFX has no control over their functionality or reliability, and you use them at your own risk. It remains your responsibility to monitor your Account and you are liable for any financial losses incurred as a result of the utilisation of third-party plug-ins or software.
- 9.6 It is your responsibility to take reasonable steps to prevent our Electronic Client Facilities from being infected by any viruses, bugs, worms or any other harmful substances.

10 Fees and Charges

- 10.1 You agree to pay us the applicable fees and charges when trading with us, which include but are not limited to:
- 10.1.1 Spread, which is the difference between the Bid and the Ask;
 - 10.1.2 Commissions, which may be either a fixed dollar amount per contract or a percentage of the total value of the contract;
 - 10.1.3 Withdrawal fees for any money you may remove from your Account.
- 10.2 The fees and charges are available on our website www.MerchantFX.com.au . We reserve the right to amend these rates from time to time. Where a change is in your favour, We will inform you but We are not obligated to provide you with prior notice. However, if a change is adverse to you, We will provide you with a minimum of 30 days' written notice, during which period you may decide to close your Account. You are taken to have accepted the new fees and charges if you continue to trade with us at the end of the notice period.
- 10.3 The fees and charges become due and payable when are incurred and debited from your Account. If you have insufficient funds on the Account to satisfy the fees and charges, you must pay us the outstanding amounts in cleared funds as soon as practically possible.
- 10.4 We reserve the right to impose interest to any outstanding amount including but not limited to outstanding fees and charges owed to us at an interest rate that is 4% above the prevailing cash rate, calculated daily and compounded monthly, from the due date till when the sum is paid to us in full.
- 10.5 MerchantFX may, in its absolute discretion, charge you for any chargebacks, reversals or other charges which are incurred by Us in respect of your Account.

11 Currencies and Currency Conversions

- 11.1 The currency that your Account is denominated in is referred to as the Base Currency.
- 11.2 We offer accounts in AUD, USD and a number of other currencies that may be offered from time to time.
- 11.3 When you trade in an instrument denominated in a currency different to the Base Currency of your Account, the Profits and Losses will be calculated in that currency and will automatically be converted back into the Base Currency of your Account upon the closing of a Position.

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12 Dealing and Risk Management

12.1 In order to protect the interests of our clients as a whole, and to manage our risk exposure as a result of clients' trading activities, We reserve the right to:

12.1.1 impose reasonable limitations on your trading activities which may be amended from time to time, such as the maximum Position size in a particular instrument;

12.1.2 amend the Margin requirements applicable to our OTC derivative products;

We reserve right to take one or more of the following courses of actions which may be considered as reasonable taken into consideration all the circumstances of a particular case:

12.1.3 Close the Position(s) (in part or in full) in question;

12.1.4 Reverse all Orders to the effect that no Position was created;

12.1.5 Suspend or close your Account.

12.2 MerchantFX may choose to hedge its exposures. We may match buy and sell Orders on the same instruments before hedging any Orders that cannot be matched among our clients. We may also from time to time hold Positions, that is, not hedge on exposure, within the pre-defined parameters in accordance with our Hedging Policy.

13 Suspensions and Trading Halts

13.1 If an instrument to which a Transaction relates is suspended or trading in respect of that instrument is halted, MerchantFX reserves the right to suspend trading or place a trading halt in the CFD.

13.2 MerchantFX may also, in its absolute discretion, change the amount of Margin required to open a Position in respect of a CFD over such an instrument.

13.3 MerchantFX reserves the right to Close Out positions that have been placed in trading halt or that are suspended for a period of time that is unreasonably long in the opinion of MerchantFX.

14 Representations and Warranties

14.1 You make the following continuous representations and warranties upon entering into this Agreement and during the term of this Agreement:

14.1.1 All information you have provided to us is true and accurate and you will inform us as soon as practicable if any information changes;

14.1.2 You are not breaching any laws or regulations applicable to you by dealing with us;

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- 14.1.3 Any person that has obtained your user name and password to your Account has been duly authorised by you to provide us with instructions in relation to your Account;
- 14.1.4 If you work in a financial services organisation that is subject to the regulation of ASIC or its overseas counterpart, you represent and warrant that you will notify us of this information as soon as practically possible and that you will not breach any compliance procedures of your organisation by dealing with us;
- 14.1.5 You will use our Electronic Client Facilities for personal purposes and in good faith. You will refrain from reverse engineering the workings of our Electronic Client Facilities, abusing or taking unfair advantage of us, or providing us with instructions in such a manner that can be reasonably expected to overload our systems;
- 14.2 Any breach of warranties gives us the absolute discretion to hold the relevant Position or other actions void.
- 14.3 In the event that We reasonably suspect that you have breached or is likely to breach one or more of the warranties, We may investigate into the matter including requesting further information from you. You agree to comply with our reasonable requests for such information for the purpose of determining whether We should exercise our discretion in accordance with clause 14.2 above.
- 14.4 With the exception fraud or wilful misconduct on our part, We give no warranty in relation to our Electronic Client Facilities and the associated services in terms of their performance or suitability to your needs.

15 Indemnities and Exclusion of Liability

- 15.1 You are liable for all losses, costs and any other liabilities that may be incurred, directly or indirectly as a result of failing to fulfil your obligations under this Agreement, including but not limited to any costs We may incur to recover sums you owe us, such as legal costs, investigation fees, court filing fees, fees paid to debt collection agencies.
- 15.2 You hold Us, our directors, officers, employees and associates harmless for any losses, costs, liabilities, claims, proceedings you have suffered as a result of your actions or omissions, whether they are negligent, wilful, fraudulent or otherwise.
- 15.3 We exclude our liability to you in contract, torts including negligence, and breach of statutory duty, to the maximum level possible as permitted by the applicable laws and regulations, in respect of any direct, indirect, consequential or incidental costs, losses or other liabilities, including but not limited to the following circumstances:
 - 15.3.1 Any authorised or unauthorised access to your Account using the correct user name and password;
 - 15.3.2 Any incorrect or inaccurate information provided by a third party;

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15.3.3 Any delay in the transmission of information on the Electronic Client Facilities or its malfunction that is not a result of our failure to perform regular and reasonable maintenance;

15.3.4 Your inability to open or close a Position on the Electronic Client Facilities.

15.4 This clause survives the termination of this Agreement.

16 Guarantee

16.1 This clause applies to Clients that are non-individual entities.

16.2 A Guarantor refers to a natural person who acts or has the authority to act on your behalf in your dealings with us. For example, each director is a Guarantor for their body corporate.

16.3 Each Guarantor acknowledges that they have been given a copy of this Agreement, including the scope of the guarantee, and have had reasonable opportunities to evaluate the content of the Agreement.

16.4 Each Guarantor agrees that it is their responsibility to be informed about your financial standing, and the availability of financial resources of other Guarantors.

16.5 Each Guarantor irrevocably guarantees that you will fulfil your obligations under this Agreement. Guarantors are jointly and severally liable in the event that you fail to do so, upon receiving a proper demand from us. We may make a demand on any Guarantor(s) regardless whether We have first made a demand on you. We are not obligated to have incurred any costs or initiated any proceedings against you before making such a demand on a Guarantor.

17 Amendment and Termination

17.1 In the event that We make amendments to this Agreement, We will provide you with reasonable written notice as to the details of the amendments. You will be bound by the amended Agreement at the earlier of the two following events:

(a) at the end of the notice period by when you are deemed to have accepted such terms and conditions; or

(b) when you enter into a Transaction with us using the new products and/or services in question for the first time.

17.2 We reserve the right to suspend or close your Account at any time without having to provide you with any reasons. In such an event, you may be permitted, in our absolute discretion, to access your Account and to close some or all of your Positions in all or in part. However, you will not be permitted to open new Positions. We may also impose limit the time frame within in you must close all Positions.

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- 17.3 You can request to have your Account closed at any time. It is your responsibility to close all Positions before We can close your Account for you. You may instruct us to close all your Positions for you, in which case you accept the market price(s) applicable to your Position(s) when We close them for you, and you are responsible for any losses incurred as a result. We are entitled to deduct any sums you owe us before We return the balance of your funds to you.
- 17.4 In the event that your Account has a negative balance, that sum is a debt owed by you to us which is immediately due and payable. Clause 10.4 applies.

18 Tax

- 18.1 You are liable for all taxes associated with your dealings with us under this Agreement in accordance with the applicable taxation legislation which may change from time to time. We are not taxation advisers and information contained in this document is for general purposes only. Tax treatment of your dealings with us under this Agreement may differ depending on your particular personal circumstances. You should seek your town tax advice from a qualified adviser.
- 18.2 We may be required by law to provide your personal information and your Account records to the relevant taxation authorities which We will do in accordance with our Privacy Policy.
- 18.3 Prices specified in our PDS and this Agreement are exclusive of Goods and Services Tax (GST) unless otherwise stated. If We are required to pay GST to a third party in connection with our dealings with you, We may require that you pay us the relevant GST without any set-off or deduction.

19 Conflicts of Interests

- 19.1 We act as the principal when dealing with our clients. We may not completely hedge our exposure arising out of our clients' trading activities. Therefore We may benefit from our clients' losses.
- 19.2 You acknowledge that MerchantFX may have a material interest in a Transaction which involves you and it is possible for a conflict of interest to arise between your interests and those of other clients, counterparties, or ourselves. We are not required to account to you any financial gains obtained in circumstances where a conflict of interest may be present.
- 19.3 By entering into this Agreement with us you acknowledge the potential conflicts of interest on our part and you give us your consent nonetheless.

20 Force Majeure

- 20.1 A Force Majeure Event refers to an unforeseeable event outside our control that prevents us from fulfilling our obligations under this Agreement.
- 20.2 We may use our reasonable discretion to determine that certain extraordinary or extreme market conditions constitute a Force Majeure Event, which may include but not limited to:

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- 20.2.1 Natural, economic, industrial or governmental incidences such as natural disasters, riots, strikes and military actions which prevent us from continuing to quote or deal in the affected instruments;
 - 20.2.2 Any suspension, closure or other forms of material restrictions affecting the underlying instrument that prevent us from continuing to quote on or deal in the affected Instruments;
 - 20.2.3 Extreme fluctuations in the price level and/or the liquidity of the underlying instrument which has taken place or is reasonably expected to take place;
 - 20.2.4 Unexpected substantial interruptions in terms of the technology infrastructure of MerchantFX or that of a third party with no fault on the part of MerchantFX;
 - 20.2.5 Substantial interruptions to the operations of a supplier or business partner, such as a liquidity provider or hedging counterparty.
- 20.3 In the event We reasonably determine that a Force Majeure Event has occurred, We may take one or more of the following actions in relation to the affected instruments without any prior notification to you:
- 20.3.1 Suspend trading on our Electronic Client Facilities;
 - 20.3.2 Closing your Positions in part or in full at price levels that We reasonably consider to be appropriate given all the circumstances of the particular case;
 - 20.3.3 Increase Margin requirements;
 - 20.3.4 Widen the Spreads;
 - 20.3.5 Make reasonable and temporary adjustments to this Agreement to allow us to fulfil our obligations under the Agreement.
- 20.4 We will take reasonable steps to notify you as soon as practically possible of the occurrence or the probability of the occurrence of a Force Majeure Event and our course of action.

21 Assignment

- 21.1 Your rights and obligations under this Agreement are personal and may not be assigned to any other person without the prior written consent of MerchantFX.
- 21.2 We may assign our rights and/or obligations under this Agreement to another person, in whole or in part, by providing you with 10 business days' written notice, provided that:
 - 21.2.1 The assignee agrees to abide by this Agreement;
 - 21.2.2 MerchantFX is reasonably satisfied that the assignee is capable of fulfilling its obligations under this Agreement to a similar level of standard as us.

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22 Enforceability and Severability

- 22.1 In the event that one or more clause of this Agreement is held to be invalid or unenforceable in a particular jurisdiction, to the extent possible it should be severed from the Agreement, without affecting the validity or enforceability of the remaining clauses. This does not affect the validity and enforceability of the clause in any other jurisdiction.

23 Waiver

- 23.1 Upon entering into this Agreement and thereafter, You waive the right to raise any disputes, claims, suits or proceedings against Us on the basis that you do not have sufficient understanding of the English language.
- 23.2 Any delay or failure by a party to exercise their rights under this Agreement cannot be construed as a waiver unless specifically provided in writing.
- 23.3 This clause survives the termination of this Agreement.

24 Applicable Law and Jurisdiction

- 24.1 This Agreement and all dealings contemplated thereunder are governed by the proper law of New South Wales Australia.
- 24.2 Subject to clause 26, the parties irrevocably agree to submit any disputes to the exclusive jurisdiction of the courts in Victoria and the appellant courts from there.

25 Dispute Resolution

- 25.1 MerchantFX is required to maintain a robust and effective internal and external dispute resolution system to resolve complaints raised by Retail Clients and small businesses.
- 25.2 We invite you to contact Us by phone or email if you have any issues or concerns. We endeavour to fairly investigate into the matter for you as soon as possible.
- 25.3 If you are still unsatisfied after exhausting Our internal dispute resolution process, you can lodge a complaint with the Australian Financial Complaints Authority (**AFCA**). AFCA provides fair and independent financial services complaints resolution services which are free to consumers. Our Membership Number is 10072. You can contact AFCA via the below channels:

Website: www.afca.org.au

Email: info@afca.org.au

Telephone: 1800 931 678 (free call)

Post: Australian Financial Complaints Authority, GPO Box 3, Melbourne VIC 3001

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You may also contact ASIC on 1300 300 630.

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26 Privacy

- 26.1 You agree that We collect, use and disclose your personal information for the primary purpose of providing you with the requested products and services, including processing your Account application, establishing your Account and providing you with ongoing support and assistance. We may be unable to provide you with the requested products and services if you do not provide us with the requested information. We may from time to time inform you of our products and services that We think may be of interest to you. You can opt out of further communication in relation to promotional materials at any time.
- 26.2 We may disclose your personal information to third party credit reporting agencies for the purpose of verifying your identity in order to comply with our AML/CTF obligations. We may also be required to disclose your personal information to government agencies.
- 26.3 It is our responsibility to take reasonable steps to ensure that the personal information We hold about you is correct, accurate and up-to-date. You have the right to access the personal information that We hold about you. If you believe that the personal information We have on file for you may be incorrect or out of date, please contact us to correct or update the information. We endeavour to provide you with free access to your personal information, but We may impose a small fee to cover the costs of information retrieval and the associated costs.
- 26.4 Please refer to our website www.MerchantFX.com for our detailed Privacy Policy.

27 Dictionary

- 27.1 Throughout this Agreement, the following phrases carry the corresponding definitions:
- 27.2 **Account** means the account you hold with MerchantFX for the purpose of entering into trading activity and as described in clause of this Agreement.
- 27.3 **Agreement** means this agreement, as amended from time to time.
- 27.4 **Application** means a written form to request the opening of an Account with MerchantFX.
- 27.5 **Ask** means the price at which you can buy the Contract.
- 27.6 **Australian Client Money Rules** means Division 2 of Part 7.8 of the Corporations Act, and associated regulations.
- 27.7 **Authorised Signatory** means the person that is permitted to act on behalf of a Client as described at clause 3.8.
- 27.8 **Base Currency** means the form of currency assigned to your Account.
- 27.9 **Bid** means the price at which MerchantFX is willing to sell the Contract.

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- 27.10 **Close Out** a Position means to place an Order on the same instrument but in the opposite direction of the original Order, or otherwise discharging or satisfying your obligations to MerchantFX.
- 27.11 **Confirmation** means any confirmation of a Transaction between you and us which is provided through an electronically transmitted confirmation that details the relevant information pertaining to the confirmation of a Transaction.
- 27.12 **Contract** means an over the counter derivative agreement between you and MerchantFX.
- 27.13 **Contract Value** means the face value of the Contract, and is calculated by us by multiplying the applicable price of the Contract by the number of units of the Underlying Product.
- 27.14 **Corporations Act** means the *Corporations Act 2001* (Cth)
- 27.15 **Electronic Client Facilities** means any electronic services that We enable you to access or make available to you either directly or through a third-party service provider and allows you to view information and enter into Transactions.
- 27.16 **Force Majeure Event** means the occurrence of an unforeseeable event outside our control that prevents us from fulfilling our obligations under this Agreement, including without limitation, the events detailed in clause 20.2.
- 27.17 **Guarantor** means any person identified as such in the Application and has a meaning affected by clause 16.2 of this Agreement.
- 27.18 **Initial Margin** means the minimum amount of money required in your Account in order to open a Transaction with MerchantFX.
- 27.19 **Maintenance Margin** means the minimum amount of money required in your Account to keep a Transaction open.
- 27.20 **Margin Cover** means the amount of Margin available for current and ongoing margin trading on your Account.
- 27.21 **Margin** means the amount of money you must pay us to open and maintain a Transaction, including the Initial Margin and Maintenance Margin.
- 27.22 **Online Application Form** means the Application is available on our website at: www.MerchantFX.com
- 27.23 **Order** means an instruction issued by the client to open or close a position in a particular instrument.
- 27.24 **Position** means your position in relation to any Contract currently open on your Account.
- 27.25 **Retail Client** has the meaning given in s 761G of the Corporations Act.
- 27.26 **Segregated Client Trust Account** means a bank account which holds client money for solely transactional purposes for the purposes of s 981B of the Corporations Act..

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- 27.27 **Transaction** means either opening or closing of an offer to either buy or sell a CFD for an instrument on the Trading Platform, whether by you or us, in accordance with the terms of the
- 27.28 **Underlying Instrument** means the rate at which a single unit of the subject of the Contract may be bought with or sold in units of the specified Currency the subject of the Contract.
- 27.29 **Wholesale Client** has the meaning given in s 761G of the Corporations Act.