



# AXICORP FINANCIAL SERVICES PTY LTD

## INSTITUTIONAL CLIENT AGREEMENT

# TABLE OF CONTENTS – INSTITUTIONAL CLIENT AGREEMENT

<b>1.</b>	<b>TERMS AND CONDITIONS .....</b>	<b>5</b>
1.1	INTRODUCTION.....	5
1.2	DEFINITIONS .....	5
1.3	INTERPRETATION.....	13
<b>2.</b>	<b>ACCOUNT OPERATION .....</b>	<b>14</b>
2.1	ACCOUNT INFORMATION .....	14
2.2	CHANGING AUTHORISED PERSONS.....	14
2.3	CHARGES AND CREDIT TO YOUR ACCOUNT .....	14
2.4	REPORTING TO YOU .....	14
<b>3.</b>	<b>TRADING .....</b>	<b>14</b>
3.1	INSTRUCTIONS .....	14
3.2	NO RIGHTS IN UNDERLYING INSTRUMENT .....	15
3.3	CURRENCY .....	15
3.4	OPPOSING POSITIONS.....	15
3.5	MATERIAL ERRORS IN PRICES.....	15
3.6	CLOSE OPEN POSITIONS .....	15
<b>4.</b>	<b>MARGIN.....</b>	<b>16</b>
4.1	INITIAL MARGIN.....	16
4.2	YOUR MARGIN OBLIGATIONS .....	16
4.3	CHANGING MARGIN PERCENTAGE.....	16
<b>5.</b>	<b>DAILY VALUATION .....</b>	<b>16</b>
5.1	CONTRACT VALUE .....	16
5.2	VALUATION .....	16
5.3	WHEN WE MAKE ACCOUNTING PAYMENTS .....	16
<b>6.</b>	<b>CLOSING POSITIONS .....</b>	<b>17</b>
6.1	GENERAL .....	17
6.2	AUTOMATIC CLOSURE.....	17
6.3	TIMING OF PAYMENTS .....	17
<b>7.</b>	<b>REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS .....</b>	<b>17</b>
7.1	YOUR WARRANTIES.....	17
7.2	NOTIFICATION OF CHANGES .....	18
7.3	ELECTRONIC SERVICES.....	18
<b>8.</b>	<b>DEFAULT.....</b>	<b>18</b>

8.1	EVENTS OF DEFAULT.....	18
8.2	CONSEQUENCES OF DEFAULT .....	19
<b>9.</b>	<b>NETTING .....</b>	<b>20</b>
<b>10.</b>	<b>DISPUTE RESOLUTION.....</b>	<b>20</b>
10.1	APPLICATION .....	20
10.2	NEGOTIATION .....	20
10.3	CONDITION PRECEDENT TO LITIGATION.....	21
10.4	CONTINUANCE OF PERFORMANCE.....	21
<b>11.</b>	<b>LIABILITY AND INDEMNITY .....</b>	<b>21</b>
11.1	EXCLUSION OF LIABILITY .....	21
11.2	TRADING PLATFORM .....	22
11.3	INDEMNITY .....	22
<b>12.</b>	<b>AMENDMENT, ASSIGNMENT AND TERMINATION .....</b>	<b>22</b>
12.1	AMENDING AGREEMENT .....	22
12.2	TERMINATION .....	22
12.3	RESERVATION OF RIGHTS.....	23
12.4	ASSIGNMENT AND DELEGATION.....	23
<b>13.</b>	<b>FORCE MAJEURE .....</b>	<b>23</b>
13.1	NOTICE AND SUSPENSION OF OBLIGATIONS.....	23
13.2	EFFORT TO OVERCOME.....	23
13.3	TERMINATION .....	24
13.4	ADDITIONAL ACTIONS .....	24
13.5	LIABILITY.....	24
<b>14.</b>	<b>ELECTRONIC SERVICES.....</b>	<b>24</b>
14.1	USE OF INFORMATION, DATA AND SOFTWARE .....	24
14.2	MAINTAINING STANDARDS .....	24
14.3	SYSTEM DEFECTS.....	25
14.4	INTELLECTUAL PROPERTY .....	25
14.5	IMMEDIATE SUSPENSION OR PERMANENT WITHDRAWAL .....	25
14.6	EFFECTS OF TERMINATION .....	25
<b>15.</b>	<b>DISCLOSURE.....</b>	<b>26</b>
<b>16.</b>	<b>SURVIVAL OF OBLIGATIONS.....</b>	<b>27</b>
<b>17.</b>	<b>NOTICES .....</b>	<b>27</b>
17.1	NOTICES MUST BE IN WRITING .....	27
17.2	PROVISION OF NOTICE.....	28

17.3	WHEN NOTICES ARE RECEIVED .....	28
17.4	CHANGE OF NOTICE DETAILS .....	28
<b>18.</b>	<b>GOVERNING LAW AND JURISDICTION.....</b>	<b>29</b>
18.1	LAW.....	29
18.2	JURISDICTION.....	29
<b>19.</b>	<b>MISCELLANEOUS.....</b>	<b>29</b>
19.1	PRINCIPAL .....	29
19.2	NO PERSONAL FINANCIAL ADVICE .....	29
19.3	ANTI-MONEY LAUNDERING LEGISLATION .....	29
19.4	CONSENT TO RECORDING OF TELEPHONE CONVERSATIONS.....	30
19.5	OUR ACTIONS TO COMPLY WITH THE LAW .....	30
19.6	CLIENT MONEY .....	30
19.7	OPERATION OF THIS AGREEMENT.....	32
19.8	RIGHTS AND REMEDIES .....	32
19.9	RIGHTS OF THIRD PARTIES .....	32
19.10	WAIVER AND VARIATION OF RIGHTS .....	32
19.11	TIME IS OF THE ESSENCE.....	32
19.12	LIABILITY FOR EXPENSES.....	33
19.13	GIVING EFFECT TO TRANSACTIONS .....	33
19.14	COUNTERPARTS .....	33

## Schedules

<b>1</b>	<b>PRODUCTS .....</b>	<b>34</b>
	PART A – FOREIGN EXCHANGE CONTRACTS.....	34
	PART A.1 – FOREIGN EXCHANGE CONTRACTS: FX CONTRACTS.....	34
	PART A.2 – FOREIGN EXCHANGE CONTRACTS: NDFS.....	36
<b>2</b>	<b>PART B.1: BULLION CONTRACTS.....</b>	<b>37</b>

# AXICORP INSTITUTIONAL CLIENT AGREEMENT

## 1. TERMS AND CONDITIONS

### 1.1 INTRODUCTION

These terms and conditions are part of the Agreement between AxiCorp Financial Services Pty Ltd (ACN 127 606 348) (**we, us or AxiCorp**) [and [INSERT NAME OF CLIENT]] (**you or yourself**). They govern our dealings with you in our products listed in Schedule 1 of this Agreement.

**You should carefully read this Agreement in its entirety, including all documents listed below, as well as our Privacy Policy (you can find this on our website).**

The Agreement between you and us is constituted by the following documents:

- the Application Form;
- the terms and conditions of this Agreement as set out in this document;
- any applicable Commercial Terms Annexure;
- any additional terms and conditions issued by us and accepted by you, in connection with our dealings with you; and
- the market information that is located on our Trading Platform

(together, the **Agreement**).

### 1.2 DEFINITIONS

In this Agreement the following terms and expressions have, unless the context otherwise requires, the following meanings:

<b>ACCOUNT</b>	means an account you have with us;
<b>AGREEMENT</b>	means the agreement described in clause 1.1, as amended, varied, or replaced from time to time;
<b>AML/CTF ACT</b>	means the <i>Anti-Money Laundering and Counter- Terrorism Financing Act 2006</i> (Cth) and all regulations, rules and instruments made under that Act;
<b>APPLICABLE LAWS</b>	means all:  (a) applicable provisions of laws and regulations, including all relevant rules of government agencies, exchanges, trade and clearing associations and self- regulatory organisations, that apply to the parties, this Agreement and the transactions contemplated by this Agreement; and  (b) Australian laws, procedures, standards and codes of practice that apply in relation to the parties, this

Agreement and the transactions contemplated by this Agreement, including the Corporations Act, the ASIC Act, ASIC policy documents and the *Privacy Act 1988* (Cth); and

(c) applicable Market Rules;

**APPLICATION FORM** means the application form and account opening documentation, including documentation required to be returned for the purposes of complying with Anti-Money Laundering and Counter-Terrorism Financing legislation, completed by you and submitted to us;

**ASIC** means the Australian Securities and Investment Commission;

**ASIC ACT** means the *Australian Securities and Investment Commission Act 2001* (Cth);

**ASSOCIATE** means:

(a) a person who is an officer, employee, agent, representative or associate of a party;

(b) a Related Body Corporate of a party; and

(c) a person who is an officer, employee, agent, representative or associate of a Related Body Corporate of a party;

**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 money;

**AUSTRALIAN PRIVACY LAWS** means the *Privacy Act 1988 (Cth)* (which includes the Australian Privacy Principles), and privacy regulations as issued by the Governor-General under section 100 of the *Privacy Act 1988 (Cth)*.

**AUTHORISATION** means:

(a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and

(b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken;

**AUTHORISED PERSON** means you and/or any person authorised by you to give instructions to us under this Agreement;

**AXICORP SPREAD** means the difference between the bid and offer prices of a contract quoted from time to time by us and, where appropriate,

expressed as a percentage of the relevant price;

<b>AXICORP SWAP RATE</b>	means the rate as we may determine from time to time having regard to the Interbank Rate and the AxiCorp Spread;
<b>BASE CURRENCY</b>	means Australian Dollars or the currency as agreed under clause 3.3 of this Agreement;
<b>BULLION</b>	means gold, silver, palladium or platinum;
<b>BULLION CONTRACT</b>	means a CFD whose value is derived by reference to the fluctuations in the Underlying Instrument which relate to Bullion;
<b>BUSINESS DAY</b>	means any day other than a Saturday, Sunday or public holiday on which banks are open for business in Sydney, New South Wales, Australia;
<b>CFD</b>	means the contracts for difference that we offer under this Agreement;
<b>CLAIM</b>	means, in relation to a person, any claim, allegation, cause of action, proceeding, liability, suit or demand made against a person however it arises and whether it is present or future, fixed or unascertained, actual or contingent;
<b>CLIENT</b>	means you;
<b>CLIENT MONEY</b>	means the money Clients have deposited with us and which is held by us in accordance with the Australian Client Money Rules;
<b>CLOSE OF BUSINESS</b>	means 17.00 Sydney time on a Business Day;
<b>CLOSING DATE</b>	means, in respect of a Position, the date on which the relevant Position is closed out;
<b>COMMERCIAL TERMS ANNEXURE</b>	means the annexure to this document setting out the relevant charges, fees and other commercial terms in respect of a Product;
<b>COMMODITY</b>	means oil or gas, or any other commodity acceptable to us;
<b>COMMODITY CFD</b>	means a CFD whose value is derived by reference to the fluctuations in the value of an Underlying Instrument relating to a Commodity;
<b>CONFIRMATION</b>	means a form of notification, which may be provided by us electronically, including via the internet, requiring access by the

	Client, confirming entry into a Position;
<b>CONTRACT PRICE</b>	means the price per Contract Unit of a Product, calculated under the relevant parts of Schedule 1 of this Agreement;
<b>CONTRACT QUANTITY</b>	means in relation to a Position, the number of Contract Units making up that Position;
<b>CONTRACT UNIT</b>	means a single unit of a Product, as defined in the relevant part of Schedule 1 of this Agreement for that Product;
<b>CONTRACT VALUE</b>	means, in respect of a Product, the Contract Price multiplied by the Contract Quantity;
<b>CONTROLLER</b>	has the same meaning as in the Corporations Act;
<b>CORPORATIONS ACT</b>	means the <i>Corporations Act 2001</i> (Cth);
<b>DISPUTE</b>	means any dispute or difference between the parties arising out of, relating to or in connection with this Agreement or transactions under this Agreement, including any dispute or difference as to the formation, validity, existence or termination of this Agreement;
<b>ELECTRONIC SERVICE</b>	means a service provided by us, for example an internet trading service offering clients access to information and trading facilities, via an internet service, a WAP service and/or an electronic order routing system and including relevant software provided by us to enable you to use an electronic trading service;
<b>EQUITY INDEX FUTURES CONTRACT</b>	means a futures contract over an equity index;
<b>EVENT OF DEFAULT</b>	means an event described in clause 8.1 of this Agreement;
<b>EXCHANGE RATE</b>	means the exchange rate we may reasonably offer to you from time to time having regard to the applicable prevailing Interbank Rates and the AxiCorp Spread, and which is available to you from us via the Electronic Services or on request;
<b>EXEMPT WHOLESALE CLIENT</b>	Exempt Wholesale Client means a wholesale client within the meaning of the Corporations Act, but excludes wholesale clients classified as "sophisticated investors" by AxiCorp under section 761GA of the Corporations Act.
<b>EXPIRY DATE</b>	means the day on which a Product expires;
<b>FOREIGN EXCHANGE CONTRACT</b>	means a FX Contract or an NDF;



**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 this Agreement 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:

- (a) us, in our opinion, becoming unable to maintain an orderly market in respect of a Product for one or more of the Underlying Instruments as a result of the occurrence of any act, omission or event (including a strike, riot, civil unrest or failure of power supply, communications or other infrastructure);
- (b) the suspension, closure, liquidation or abandonment of any relevant market or Underlying Instruments;
- (c) the imposition of limits or special or unusual terms in the relevant markets or Underlying Instruments;
- (d) the excessive movement, volatility or loss of liquidity in the relevant markets or Underlying Instruments; or
- (e) where we reasonably anticipate that any of the circumstances listed in sub-sections (a) to (d) above are about to occur;

**FX CONTRACT**

means a contract between you and us in accordance with this Agreement for the taking of a Position where the Underlying Instrument is a currency pair;

**INDEX**

means an index which is, or forms part of or is referenced by, an Underlying Instrument;

**INDEX FUTURES CFD**

means a CFD where the Underlying Instrument is an Equity Index Futures Contract;

**INSOLVENCY EVENT**

means any of the following:

- (a) an administrator is appointed to you;
- (b) any of the following occurs:
  - (i) a Controller or analogous person is appointed to you or any of your property;
  - (ii) an application is being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to you or any of your property; or
  - (iii) an appointment of the kind referred to in (ii) is being made (whether or not following a

resolution of application);

- (c) the holder of a security interest or any agent on its behalf, appoints a Controller or takes possession of any of your property (including seizing your property within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) or otherwise enforcing or exercising any rights under the security interest or Chapter 4 of that Act;
- (d) you fail to comply with a statutory demand under section 459F(1) of the Corporations Act;
- (e) an application is being made to a court for an order for your winding up;
- (f) an order is being made, or the passing of a resolution for your winding up;
- (g) you:
  - (i) suspend payment of your debts, cease (or threaten to cease) to carry on all or a material part of your business, stating that you are unable to pay your debts or being or becoming otherwise insolvent; or
  - (ii) are unable to pay your debts or otherwise are insolvent;
- (h) you take any step towards entering into a compromise or arrangement with, or assignment for the benefit of, any of your members or creditors;
- (i) a court or other authority enforces any judgment or order against you for the payment of money or the recovery of any property; or
- (j) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent, amalgamation, merger or consolidation that has been approved by us;

**INTERBANK RATE**

means the mid Interbank Rate calculated by us with reference to the bid and offer prices for the Underlying Instrument most recently quoted by any one or more third party banks;

**INTRODUCING  
BROKER**

means an independent entity that refers clients to us, including pursuant to an introducing broker agreement;

**LONG PARTY**

means, in relation to a Product, the party that has notionally taken a long position in respect of the relevant Underlying Instrument;

<b>LOSS</b>	includes any loss, damage, liability or obligation, compensation, fine, penalty, charge, payment, cost or expense (including any legal costs and expenses on a full indemnity basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent;
<b>MARGIN</b>	means the amount that you must have in your Account to enter into a Position with us;
<b>MARGIN PERCENTAGE</b>	means such percentage of the Contract Value as specified by us in the Commercial Terms Annexure;
<b>MARGIN REQUIREMENT</b>	means the total amount of money that you are required to deposit with us as consideration for entering into and maintaining all open Positions under this Agreement;
<b>MARKET RULES</b>	means the rules, regulations, customs and practices from time to time of any exchange, financial market, clearing house, clearing and settlement facility, or other organisation or market involved in the conclusion, execution or settlement of a transaction or contract (including in respect of an Underlying Instrument) and any exercise by such exchange, clearing house or other organisation or market of any power or authority conferred on it;
<b>MATERIAL ERROR</b>	has the meaning given in clause 3.5(a);
<b>MATURITY DATE</b>	means, in respect of an NDF, the date on which the NDF is to be closed out (unless terminated earlier);
<b>MAXIMUM NET OPEN POSITION LIMIT</b>	means a limit on the maximum Position size that you may take in respect of a Product, as set out in the Commercial Terms Annexure;
<b>MINIMUM MARGIN REQUIREMENT</b>	has the meaning given in the Commercial Terms Annexure;
<b>NDF</b>	means a non-deliverable forward contract in respect of a currency pair offered under this Agreement;
<b>PERSONAL INFORMATION</b>	has the meaning ascribed to it under the Privacy Act 1988 ( <i>Cth</i> );
<b>POSITION</b>	means a long or short position you have taken in respect of a Product;
<b>PRIVACY POLICY</b>	AxiCorp's privacy policy as set out on its websites, and as amended from time to time.

<b>PRODUCT</b>	means a product offered and entered into under this Agreement, as described in Schedule 1;
<b>RELATED BODY CORPORATE</b>	has the meaning as in the Corporations Act, with any necessary modifications for companies incorporated outside Australia;
<b>REPORT</b>	means any daily statement, monthly statement or other report we provide to you;
<b>ROLLOVER BENEFIT</b>	means a benefit you may receive on certain Positions held overnight and which are described in the relevant parts of Schedule 1 of this Agreement;
<b>ROLLOVER CHARGE</b>	means a charge you may have to pay on certain Positions held overnight and which is described in the relevant parts of Schedule 1 of this Agreement;
<b>SENIOR MANAGEMENT REPRESENTATIVE</b>	means a senior executive or a position of equivalent seniority or higher authorised by AxiCorp and the Client to negotiate prior to the initiation of litigation;
<b>SERVICES</b>	means the services provided by us under this Agreement;
<b>SETTLEMENT DATE</b>	means such settlement date following the Closing Date or Maturity Date (if applicable) as we may reasonably determine in accordance with practice in the relevant market and notify to you at the time of entering into a Position;
<b>SHORT PARTY</b>	means in relation to a Product, the party that has notionally taken a short position in respect of the Underlying Instrument;
<b>TRADING DAY</b>	means in the case of Positions over an Underlying Instrument which is traded on, or references, an Underlying Market, a day on which the Underlying Market is open for trading in the ordinary course (and if there is more than one Underlying Market, a day on which all applicable Underlying Markets are open for trading in the ordinary course);
<b>TRADING PLATFORM</b>	means the trading platform we make available to you by which you may trade with us online and includes the Client portal of the back office accounting system through which we will report confirmation statements, etc;
<b>UNDERLYING INSTRUMENT</b>	means the instrument, Index, Commodity, currency, futures contract, Bullion or other instrument or asset or factor by reference to which the value of a contract is determined;
<b>UNDERLYING MARKET</b>	means the underlying market in which the Underlying Instrument is traded;

- VALUATION TIME** means, in respect of a Position:
- (a) the time the Position is opened;
  - (b) the Close of Business on each Trading Day the Position is open (other than the Trading Day the Position is closed); and
  - (c) the time the Position is closed;
- WEBSITE** means the internet address [www.axitrader.com.au](http://www.axitrader.com.au) and includes the Trading Platform.

### 1.3 INTERPRETATION

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
  - (i) A reference to:
    - (A) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
    - (B) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
    - (C) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
    - (D) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
    - (E) anything (including a right, obligation or concept) includes each part of it.
  - (ii) A singular word includes the plural, and vice versa.
  - (iii) A word which suggests one gender includes the other genders.
  - (iv) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (b) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (c) If there is any inconsistency between a Confirmation and this Agreement, the Confirmation will prevail.

## **2. ACCOUNT OPERATION**

### **2.1 ACCOUNT INFORMATION**

- (a) You undertake and warrant to us that any information provided to us at any time is true and correct and that you will immediately inform us of any material change to that information.
- (b) You are required to keep all security information relating to the Account, including, but not limited to, any user name, account number, user ID and password, confidential and we do not have to establish the authority of anyone using these items. If you are aware or suspect that these items are no longer confidential, you should contact us as soon as practicable.

### **2.2 CHANGING AUTHORISED PERSONS**

You may, by written notice, change the persons who are authorised to give us instructions on your behalf. We are not bound by any such variation until we receive written notice and agree to such requested change. We may act upon the orders or instructions of any Authorised Person, or any person who appears to us to be an Authorised Person, despite the fact that the person may not be authorised. We are under no obligation to verify the authority of any person who purports to be authorised by you in connection with this Agreement.

### **2.3 CHARGES AND CREDIT TO YOUR ACCOUNT**

- (a) You agree to pay the interest, charges and fees as specified in this Agreement (including any Schedule) and in the Commercial Terms Annexure from time to time and to receive the benefits set out in this Agreement.
- (b) Any charges will be deducted from your Account the day following the day on which the charges were incurred and benefits will be paid the day on which they are derived.
- (c) If we discover that we have made an error in respect of any fee calculation, we may rectify that error by giving you notice within 28 days.

### **2.4 REPORTING TO YOU**

We will provide Confirmations and Reports to you via our Trading Platform or by email or post. Any Confirmation or Report will, in the absence of manifest error, be conclusive unless you notify us in writing to the contrary within two (2) Business Days of the Confirmation or Report being issued. You will access and use the Trading Platform to confirm all your Positions with us and to download and view the Confirmations and Reports.

## **3. TRADING**

### **3.1 INSTRUCTIONS**

You may give us instructions by telephone or via the Trading Platform. If you indicate that you wish to trade at the price quoted you will be deemed to be making an offer to trade at the quoted price. A contract in respect of the Product and the quoted price offered by you will not be binding until your order has been accepted and confirmed by us. We reserve the right to decline to enter into any Position proposed by you. We will not be obliged to provide you with a reason but we will provide you with prompt notice in such event. We may from time to time require instructions from you in respect of any Position or proposed Position and if we do, you must promptly provide us with those instructions. If you do not do so, we

may in our absolute discretion take all such steps at your cost as we reasonably consider necessary or desirable for our or your protection.

### 3.2 **NO RIGHTS IN UNDERLYING INSTRUMENT**

A Position does not entitle you to any rights in relation to the Underlying Instrument being traded and you will not be entitled to any rights in respect of any Underlying Instrument.

### 3.3 **CURRENCY**

- (a) All Positions will be entered into in the currency specified for the trade and will be converted into Australian dollars at the previous day's official closing Exchange Rate for the purposes of calculating the components of your account summary.
- (b) All payments made by you to us and by us to you will be in Australian dollars unless otherwise agreed.

### 3.4 **OPPOSING POSITIONS**

Subject to Schedule 1, you may run opposing Positions in the same market, and a Position in a market where you have an opposing Position already open will automatically be deemed to be an instruction to close out the earlier Position (to the extent of any overlap).

### 3.5 **MATERIAL ERRORS IN PRICES**

- (a) It is possible that an error, omission or misquote (**Material Error**) may occur in the pricing of a Position. We will determine whether a material error has occurred, acting reasonably.

If we determine that a Position is based on a Material Error, we reserve the absolute discretion to:

- (i) amend the terms and conditions of the relevant Position to reflect what we consider to have been the fair price at the time the Position was entered into had there had been no Material Error;
  - (ii) close the trade and any open Positions resulting from it; or
  - (iii) void the contract entered into in relation to the Position.
- (b) We will exercise the right in paragraph 3.5(a) reasonably and in good faith. To the extent reasonably practicable, we will give you prior notice of any action we take under this clause; but if this is not possible we will give you notice as soon as practicable afterwards.

### 3.6 **CLOSE OPEN POSITIONS**

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

## **4. MARGIN**

### **4.1 INITIAL MARGIN**

Upon placing a trade that creates an open Position you are required to pay into your Account the Margin for that Position as calculated by us, as set out in the Commercial Terms Annexure (**Initial Margin**).

### **4.2 YOUR MARGIN OBLIGATIONS**

- (a) You must pay to us such amounts of Margin as we may require under this Agreement.
- (b) You must always ensure your Account balance meets the higher of the Margin Requirement or the Minimum Margin Requirement.
- (c) We may, in our absolute discretion, provide you with further time to meet your Margin Requirements. Such permission will only be effective once confirmed in writing by us, and only to the extent specified in that written notice.

### **4.3 CHANGING MARGIN PERCENTAGE**

- (a) We may vary the Margin Percentage in respect of any Position at any time by giving notice in accordance with clause 17.
- (b) Any variation of the Margin Percentage and/or increase in Margin or Margin requirement will be due and payable immediately on our demand.

## **5. DAILY VALUATION**

### **5.1 CONTRACT VALUE**

We will calculate the Contract Value for each Position, as at each Valuation Time during the term of a Position. The Contract Price for each Position at Close of Business is to be calculated in accordance with the relevant parts of Schedule 1.

### **5.2 VALUATION**

If, at any Valuation Time:

- (a) the Contract Value exceeds the Contract Value at the preceding Valuation Time, the Short Party will pay to the Long Party such excess; and
- (b) the Contract Value at the preceding Valuation Time exceeds the current Contract Value, the Long Party will pay to the Short Party such excess.

### **5.3 WHEN WE MAKE ACCOUNTING PAYMENTS**

Any payments due under this clause 5 will, subject to clause 9 of this Agreement, be made by us adjusting the Account with effect immediately after the relevant Valuation Time.



## 6. CLOSING POSITIONS

### 6.1 GENERAL

You may provide instructions to close out a Position at any time which we will action as soon as reasonably practicable. We will determine the Contract Price at the time of closing of a Position in our commercially reasonable discretion.

### 6.2 AUTOMATIC CLOSURE

A Position will close automatically on the fifth anniversary of the date on which the Position was first entered into.

### 6.3 TIMING OF PAYMENTS

Any payment due by either us or you under this clause 6 in respect of dates on or after the Closing Date will be made by us adjusting your Account at Close of Business on the Settlement Date. If you have insufficient funds in your Account to meet a payment obligation, you must immediately pay to us as a debt an amount equal to the shortfall.

## 7. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

### 7.1 YOUR WARRANTIES

You represent, warrant and undertake to us, at the time of entering into this Agreement and each time you provide instructions to us:

- (a) **status:** you are a company limited by shares under the Corporations Act;
- (b) **power:** you have full legal capacity and power to enter into this Agreement and to carry out the transactions that it contemplates;
- (c) **this Agreement:** this Agreement constitutes your legal, valid and binding obligations, enforceable against you in accordance with its terms;
- (d) **corporate authorisation:** you are empowered by, and have obtained, all necessary corporate or other authorities under your constitution and at law;
- (e) **consents:** you have obtained all necessary consents and have the authority to enter into this Agreement;
- (f) **wholesale client:** you are a "wholesale client" within the meaning of section 761G of the Corporations Act;
- (g) **compliance with laws:** you are complying with all laws to which you are subject;
- (h) **solvency:** you are able to pay your debts as and when they fall due and are not otherwise insolvent or presumed to be insolvent under any law;
- (i) **commercial benefit:** your execution of this Agreement and carrying out of transactions under it is for a corporate benefit and commercial interest;
- (j) **information accurate:** at all times the information provided by you to us in connection with this Agreement, whether in the Application Form or otherwise will be complete, true and accurate and not misleading (including by omission);

- (k) **disclosure of relevant information:** you have disclosed to us all the information that is reasonably likely to be material to an assessment by us of the risks that we assume by entering into this Agreement with you;
- (l) **no contravention:** neither your execution of this Agreement nor your carrying out of the transactions under this Agreement contemplates does or will:
  - (i) contravene any law to which you or any of your property is subject or any order of any Government Agency that is binding on you or any of your property;
  - (ii) contravene any Authorisation;
  - (iii) contravene any agreement binding on you or any of your property; or
  - (iv) contravene your constitution or the powers or duties of your directors; and
- (m) **independence:** you acknowledge and agree that we operate independently of any Introducing Brokers or any other third party vendors that you may interact with in relation to a Position under this Agreement and that we make no warranty as to an Introducing Broker's or a third party's regulatory status, compliance with Applicable Laws or their quality of service provided to you in relation to any Products entered into under this Agreement.

## 7.2 NOTIFICATION OF CHANGES

You undertake that throughout the term of this Agreement you will promptly notify us of:

- (a) any change to the details supplied by you in your Application Form; and
- (b) any change to your officeholders, share structure or control and any material or anticipated change in your financial circumstances.

## 7.3 ELECTRONIC SERVICES

We give no warranty as to the availability, accessibility, description, quality, performance or fitness of the purposes for you of the Electronic Services or any component of such Electronic Services.

# 8. DEFAULT

## 8.1 EVENTS OF DEFAULT

The following constitute Events of Default, which upon their occurrence give us the right to take action in accordance with clause 8.2:

- (a) an Insolvency Event occurs in relation to you;
- (b) you fail to provide any Margin or other sum due under this Agreement in respect of any Position, or the Margin held by us in respect of your Positions falls below our Margin Requirement;
- (c) you are in breach of any representation, warranty or undertaking made under this Agreement or any other material term of this Agreement and/or any information provided to us in connection with this Agreement is or has become untrue or misleading;

- (d) you knowingly take advantage of an incorrect price when dealing with us and a reasonable person in your position would have known the price offered was incorrect or we consider that you have, or have attempted to, manipulate the Platform or any other system of ours in any way;
- (e) any fee or charges or other payments due to us are not paid in accordance with this Agreement;
- (f) at any time or for any period deemed reasonable by us you are not contactable or you do not respond to any notice or correspondence from us;
- (g) we reasonably believe it is prudent for us to take any or all of the actions described in clause 8.2 in light of any relevant legal or regulatory requirement applicable either to you or to us;
- (h) we reasonably consider it necessary for the protection of our rights under this Agreement;
- (i) we consider that you may be in breach of or have failed to comply with any Applicable Law;
- (j) we are so requested by ASIC or any other regulatory body or authority;
- (k) your Account balance falls below the Minimum Margin Requirement;
- (l) any Dispute occurs or litigation is commenced and, in view of the subject matter of or any issues in dispute in relation to that litigation, we reasonably decide that we cannot continue to deal with you while the litigation is pending;
- (m) where we have not received, within 10 days of a written request, all information which we have requested in connection with this Agreement; or
- (n) where we believe on reasonable grounds that you are unable to manage the risks that arise from your Positions; or
- (o) any restriction on your Position size is, or is likely to be, exceeded.

## 8.2 CONSEQUENCES OF DEFAULT

If an Event of Default occurs we may take all or any of the following actions;

- (a) immediately require payment of any amount you owe us, including Margin;
- (b) terminate this Agreement;
- (c) close or limit the size of all or any of your open Positions or the number of Positions you have with us;
- (d) refuse orders to establish new Positions;
- (e) convert any ledger balances to the Base Currency of your Account;
- (f) exercise our rights under clause 8;
- (g) change the Margin level at which we may close your Account;
- (h) impose new Margin requirements to your Trading or Account;

- (i) limit or withdraw the credit on your Account;
- (j) call on any guarantee in respect of your obligations;
- (k) enter into any transaction at such rates and times as we may determine in order to meet or hedge any obligation you may have incurred under a Position; or
- (l) retain any amount owed by us to you against any contingent liability of yours to us or so long as the contingency subsists.

## 9. NETTING

- (a) This Agreement and all Positions under it form part of a singular Agreement between us and you.
- (b) When an Event of Default occurs, we shall:
  - (i) calculate a final Contract Value in respect of all Positions;
  - (ii) calculate all amounts owing by you to us or us to you, under this Agreement or otherwise (including any costs arising from the Event of Default);
  - (iii) if a relevant amount in paragraph 9(b)(i) or 9(b)(ii) is denominated in a currency other than Australian dollars, then we shall determine the amount in Australian dollars that would be required to purchase such amount of such other currency on the date of the calculation at such rate as we in our absolute discretion shall determine, acting reasonably;
  - (iv) as soon as reasonably practicable, following our determination of the above amounts, we shall aggregate all such amounts and set-off the total of all amounts due from us to you against the total of all amounts due from us to you, and the only net difference between such amounts (the **Net Termination Amount**) is payable by the relevant party having a net payment obligation; and
  - (v) we will notify you in writing of our calculation of the Net Termination Amount promptly following our determination. The Net Termination Amount shall be payable on the date on which such notice is effective.
- (c) The Net Termination Amount shall accrue interest at the rate reasonably determined by us from (and including) the date of the close out (but excluding) the date on which the relevant Net Termination Amount is paid in full.

## 10. DISPUTE RESOLUTION

### 10.1 APPLICATION

Any Dispute must be determined in accordance with this clause 10.

### 10.2 NEGOTIATION

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Senior Management Representatives for resolution. The Dispute Notice must:
  - (i) be in writing;
  - (ii) state that it is given pursuant to this clause 10.2;

- (iii) include or be accompanied by reasonable particulars of the Dispute including:
  - (A) a brief description of the circumstances in which the Dispute arose;
  - (B) references to any:
    - (aa) provisions of this Agreement;
    - (bb) acts or omissions of any person, relevant to the Dispute; and
  - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within five Business Days of the Referring Party giving the Dispute Notice (**Resolution Period**), the Senior Management Representative from each of the parties to the Dispute must meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication (the **Senior Management Representative Meeting**) to attempt to resolve the Dispute in good faith.
- (c) Each party warrants that their Senior Management Representative has full authority to resolve any Dispute.

### 10.3 **CONDITION PRECEDENT TO LITIGATION**

Subject to a party's court application for injunctive, interlocutory or declaratory relief in respect of a Dispute, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) five Business Days has lapsed following the earlier of: (i) the Senior Management Representative Meeting; or (ii) the end of the Resolution Period.

### 10.4 **CONTINUANCE OF PERFORMANCE**

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement, unless the parties have agreed otherwise and you are still required to do what you can to mitigate your losses.

## 11. **LIABILITY AND INDEMNITY**

### 11.1 **EXCLUSION OF LIABILITY**

To the maximum extent permitted by law, we have and are under no liability (whether in negligence or otherwise) to you for any Loss or Claim in connection with or relating to this Agreement or a transaction under this Agreement.

In particular, we are not liable for:

- (a) any Loss or Claim in respect of an alleged loss of profits, loss of revenue or loss of opportunity;
- (b) any Loss that was not reasonably foreseeable;
- (c) any action we may take under this Agreement, so long as we act within the terms of its provisions;

- (d) any action taken by or on the instruction of a market, clearing house or regulatory body;
- (e) any breach of this Agreement, except in the case of our fraud, negligence or wilful default;
- (f) any Material Error that may occur;
- (g) any Claim in respect of general product financial advice provided by us;
- (h) any error or inaccuracy in, or unsuitability of, or omission from the Agreement, or any other information provided by us, whether negligent or otherwise;
- (i) any Loss or Claim suffered or incurred by you in respect of our Electronic Services including due to the unavailability of the Trading Platform or Electronic Services, system and data errors, delays, inaccuracies, errors or omissions in data provided to you, software or computer viruses or the unauthorised use of the Electronic Services at any time; and
- (j) any errors, actions or inactions of any Introducing Broker, Associate or any other third party.

## 11.2 TRADING PLATFORM

We do not warrant that the Trading Platform will always be available and we reserve the right to remove altogether or reduce the Trading Platform service at any time for any purpose, without thereby incurring any liability to you.

## 11.3 INDEMNITY

You agree to indemnify us against all Losses or Claims which may be suffered or incurred or brought against us or in connection with or caused by:

- (a) your breach of this Agreement;
- (b) any Loss suffered by us as a result of any computer viruses, worms, software bombs or similar items introduced into the system via the Electronic Service or any software provided by us to you in order to enable you to use the Electronic Service;
- (c) us entering into any Position with you;
- (d) us taking any action under clause 8 of this Agreement,

unless such Loss or Claim is suffered or incurred as a result of our fraud, negligence or wilful default.

## 12. AMENDMENT, ASSIGNMENT AND TERMINATION

### 12.1 AMENDING AGREEMENT

We may amend or replace this Agreement at any time by giving written notice to you of the changes. You may amend this Agreement with our written consent.

### 12.2 TERMINATION

Notwithstanding any other termination rights we have under this Agreement, we may immediately terminate this Agreement at any time by giving written notice to you. You may

terminate this Agreement at any time by giving ten Business Days' written notice to us. Your Account will be closed as soon as reasonably practicable after the expiry of the termination notice period, with all open Positions, or orders cancelled, and all of your obligations discharged.

### 12.3 RESERVATION OF RIGHTS

If you provide notice to terminate this Agreement under this clause 12, we reserve the right to refuse to allow you to enter into any further Positions or orders which may lead to you holding further open Positions during the termination notice period.

### 12.4 ASSIGNMENT AND DELEGATION

- (a) You may not assign any of your rights or delegate any of your obligations under this Agreement to any person without our prior written consent.
- (b) You may not create any security interest over any of your rights under this Agreement, including any rights to deposits held by us.
- (c) We may assign our rights or delegate any of our obligations under this Agreement to any person on giving not less than seven Business Days' notice to you.
- (d) If you are in default of any of your obligations under this Agreement, we will be entitled (without prejudice to any other rights we may have) to assign to any person with immediate effect all or any of our rights in respect of moneys owing to us under this Agreement, as well as any security or other remedies available to us in respect of such moneys. You may be required to acknowledge in writing to us that the assignee has assumed our rights and obligations under this Agreement in relation to the relevant moneys owing by you.

## 13. FORCE MAJEURE

### 13.1 NOTICE AND SUSPENSION OF OBLIGATIONS

If a party to this Agreement is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must immediately give the other prompt notice of that fact including:
  - (i) full particulars of the Force Majeure Event;
  - (ii) an estimate of its likely duration;
  - (iii) the obligations affected by it and the extent of its effect on those obligations; and
  - (iv) the steps taken to rectify it; and
- (b) the obligations under this Agreement 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.

### 13.2 EFFORT TO OVERCOME

A party claiming a Force Majeure Event must use reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a party to settle any industrial dispute in any way that it considers inappropriate.

### 13.3 TERMINATION

- (a) If a Force Majeure Event continues for more than five (5) Business Days, either party may terminate this Agreement immediately by giving written notice to the other party; and
- (b) In the event of termination under paragraph (a), neither party is liable to the other except to the extent of rights or obligations which accrued before the termination.

### 13.4 ADDITIONAL ACTIONS

Notwithstanding clauses 13.2 and 13.3 above, if we determine that a Force Majeure Event exists then we may (without prejudice to any other rights under this Agreement and at our sole discretion) take any one or more of the following actions:

- (a) alter normal trading times;
- (b) alter the Margin Requirement;
- (c) amend or vary this Agreement and any transaction contemplated by this Agreement, including any Position, insofar as it is impractical or impossible for us to comply with our obligations to you;
- (d) close any or all existing Positions, cancel instructions and orders as we deem to be appropriate in the circumstances; or
- (e) take or omit to take all such other actions as we deem to be reasonably appropriate in the circumstances having regard to the Positions of us, you and other clients.

To the extent practicable, we will take reasonable steps to notify you of any action that we propose to take under this clause 13.4. If it is not practicable to give you prior notice, we will notify you promptly after taking any such action.

### 13.5 LIABILITY

If we determine in our absolute discretion that a Force Majeure Event exists, we will not be liable to you for any failure, hindrance or delay in performing our obligations under this Agreement or for taking or omitting to take any action in accordance with clauses 13.2 or 13.3 of this Agreement.

## 14. ELECTRONIC SERVICES

### 14.1 USE OF INFORMATION, DATA AND SOFTWARE

If you receive any data, information or software via the Electronic Service other than that which you are entitled to receive pursuant to this Agreement, you will immediately notify us and will not use, in any way whatsoever, such data, information or software.

### 14.2 MAINTAINING STANDARDS

When using the Electronic Service you must:

- (a) ensure that the system is maintained in good order and is suitable for use with such Electronic Service;
- (b) carry out virus checks on a regular basis;



- (c) not at any time leave the terminal from which you have accessed such Electronic Service or let anyone else use the terminal until you have logged off such Electronic Service;
- (d) run such tests and provide such information to us as we reasonably consider necessary to establish that the system satisfies the requirements notified by us to you from time to time; and
- (e) inform us immediately of any system defect, or any unauthorised access to an Electronic Service or any unauthorised transaction or instruction which you know of or suspect and, if within your control, cause such unauthorised use to cease and cease all use of such Electronic Service until you have received permission from us to continue.

#### **14.3 SYSTEM DEFECTS**

In the event you become aware of a material defect, malfunction or virus in the system or in an electronic service, you will immediately notify us of such defect, malfunction or virus and cease all use of such electronic service until you have received permission from us to resume use.

#### **14.4 INTELLECTUAL PROPERTY**

All rights in patents, copyrights, design rights, trade-marks and any other intellectual property rights (whether registered or unregistered) relating to the Electronic Services remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify the Electronic Services or any part or parts thereof unless expressly permitted by us in writing, reverse compile or disassemble the Electronic Services, 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 Electronic Services made in accordance with law are subject to the terms and conditions of this Agreement. 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 Electronic Services made by you. If we so request, you must as soon as reasonably practicable, provide to us a statement of the number and whereabouts of copies of the Electronic Services.

#### **14.5 IMMEDIATE SUSPENSION OR PERMANENT WITHDRAWAL**

We have the right, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to use the Electronic Service, or any part thereof, without notice, where we consider it necessary or advisable to do so. In addition, your use of an Electronic Service will be terminated automatically, upon the termination (for whatever reason) of (i) any licence granted to us that relates to the Electronic Service; or (ii) this Agreement.

#### **14.6 EFFECTS OF TERMINATION**

If either party terminates your use of the Electronic Service for any reason, upon request by us, you must, at our option, return to us or destroy all hardware, software and documentation that we have provided you in connection with such Electronic Service and any copies thereof.

## 15. YOUR PRIVACY & DISCLOSURE

- (a) By providing us with information about yourself through any associated AxiCorp websites (including AxiTrader and regardless of the jurisdiction you may be in when doing so), you consent to the collection, use, disclosure and transfer of that information as set out in our Privacy Policy and as summarised below.
- (b) Our Privacy Policy can be found on our website or you may contact us for a free copy.
- (c) You understand and agree that we will collect your Personal Information for the purposes of assessing your application and, if applicable, opening, maintaining and operating your Account which includes the enforcement of this Agreement.
- (d) You are under no obligation to provide us with your Personal Information, however if you choose not to, we may not be able to process or progress your application which will result in us not being able to open your Account.
- (e) **If you apply to open an Account, your Application Form (whether written or electronic, or in any other form (including verbal)) will constitute your express consent to the use and (in certain circumstances) disclosure of your Personal Information, as set out below and in our Privacy Policy.**
- (f) You **consent** to the use of your Personal Information where we use this information to:
  - (i) assess your application, conduct identity checks, verify you and do anything else necessary in order to open your Account. This includes conducting screening checks in accordance with our obligations under applicable AML/CTF Laws and also includes your consent to us processing all such information for the purposes of performing any contractual obligations, including other obligations we have at law, and administering the relationship between you and us; and
  - (ii) if applicable, open, maintain and operate your Account, which includes the enforcement of this Agreement.
- (g) You **consent** to the disclosure of your Personal Information where we disclose such information to:
  - (i) relevant regulators or government authority as required, authorised, permitted or compelled by law;
  - (ii) other companies within the AxiCorp group (including our Associates in other jurisdictions) who may be involved in administering your Account or providing other services for the AxiCorp group;
  - (iii) where applicable, anyone authorised by you;
  - (iv) an Introducing Broker, referrer or agent who may have introduced or referred you to us (this is necessary in order to pay fees or commissions for such a referral and can include any click-through links you may have clicked on);
  - (v) third party service providers, including those who help facilitate or support our business, or develop new software to run our business more efficiently (these could include specialist advisers who have been contracted to provide us with

administrative, IT, financial, regulatory, compliance, taxation, insurance, research or other services); and

- (vi) comply with our legal, regulatory or professional obligations (including compliance with AML/CTF Laws);
- (h) Where we share your Personal Information in the ways set out above, you acknowledge and understand that this may result in your Personal Information being sent outside Australia. Where this occurs, while we make reasonable attempts to, you acknowledge that we may not be able to extract an undertaking from the overseas recipients that they will comply with Australian Privacy Laws and the ability to enforce Australian Privacy Laws or any other contractual privacy obligation in relation to any breach may be very limited. As such, we will not be accountable for any breaches of the Australian Privacy Laws by that overseas recipient.

## 16. CONFIDENTIALITY

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

- (a) with the consent of the party who provided the information (such consent not to be unreasonably withheld);
- (b) if allowed, compelled or required by law, the Agreements, our Privacy Policy or required by any market exchange;
- (c) in connection with any legal proceedings relating to the Agreements; or
- (d) to any person in connection with an exercise of rights or when dealing with rights or obligations under the Agreements (including in connection with preparatory steps such as in relation to assignments).

This clause does not apply in relation to Personal Information (as defined and as set out in clause 15 above).

## 17. SURVIVAL OF OBLIGATIONS

Clauses 1, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 survive any termination or expiry of this Agreement.

## 18. NOTICES

### 18.1 NOTICES MUST BE IN WRITING

Subject to clause 17.2, any notice or other communication (including any Confirmations, Reports and statements) given or made under or in connection with the matters contemplated by this Agreement will, except where oral communication is expressly provided for, be in writing and will be sent to the address below:

- (a) Us:

AxiCorp Financial Services Pty Ltd  
Group Risk

Address: PO Box 1079  
North Sydney NSW 2059

Fax No.: +61 2 9965 5899

Email: [GroupRisk@axicorp.com.au](mailto:GroupRisk@axicorp.com.au)

(b) You:

[[Client Name]

[Client Address]

[Client Fax]

[Client Telephone]

[Client Email] ]

## 18.2 PROVISION OF NOTICE

A notice in writing can be provided by letter, fax, email or to the extent permitted by Applicable Laws, the Website including the Trading Platform.

## 18.3 WHEN NOTICES ARE RECEIVED

Any such notice will be deemed to have been received:

- (a) if delivered personally or by hand, at the time of delivery;
- (b) if sent by mail, when it would be delivered in the ordinary course of post, but in any event:
  - (i) not later than three (3) Business Days after posting within Australia; or
  - (ii) not later than seven (7) Business Days after posting internationally; or
- (c) if sent by facsimile, one hour after completion of its transmission, unless after Close of Business in which case deemed the next Business Day;
- (d) if sent by electronic transmission, when received and opened by the recipient in readable form:
  - (i) by 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
- (e) if it is given in any other manner permitted by law, when actually received by that person, unless a later time of receipt is specified in it.

## 18.4 CHANGE OF NOTICE DETAILS

You may alter the address (including electronic mail address) to which Confirmations, Reports, notices and other communications are issued, by written notice to us. You agree and acknowledge that you are solely responsible for ensuring that we have your current address, telephone number, facsimile number and electronic mail address.

## **19. GOVERNING LAW AND JURISDICTION**

### **19.1 LAW**

This Agreement, and each Position between us and you will be governed by and construed in accordance with the laws of the State of New South Wales, Australia.

### **19.2 JURISDICTION**

Both parties submit irrevocably, for our benefit only, to the exclusive jurisdiction of the laws of the State of New South Wales, Australia. Both parties waive any objection they may have to proceedings being brought in such courts, waive any claim that such proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such proceedings, that such courts do not have any jurisdiction over such party. For the avoidance of doubt, this clause 18 will not prevent us from commencing proceedings in any other relevant jurisdiction.

## **20. MISCELLANEOUS**

### **20.1 PRINCIPAL**

In our dealings with you, we will act as a principal counterparty to all of your Positions. Unless we agree otherwise in writing, you will also deal with us as principal, and not as an agent or representative of another person.

### **20.2 NO PERSONAL FINANCIAL ADVICE**

We will not provide any personal financial product advice to you. We deal with you on an execution-only basis and any advice we give you will be general advice, which will not take into account your objectives, financial situations or needs. In the circumstances, you should seek professional advice as to the suitability of our financial products for your purposes.

### **20.3 ANTI-MONEY LAUNDERING LEGISLATION**

- (a) You acknowledge that by entering into this Agreement, we may require further information from you from time to time to comply with the AML/CTF Act. By entering into this Agreement, opening an account and transacting with us, you undertake to promptly provide us with all additional information and assistance that we may reasonably require to comply with the AML/CTF Act
- (b) You also warrant that:
  - (i) you are not aware and have no reason to suspect that:
    - (A) the moneys used to fund your transactions have been or will be derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under Applicable Laws, international law or convention or by agreement; or
    - (B) the proceeds of your investment will be used to finance any illegal activities; and
  - (ii) neither you nor your directors are a politically exposed person or organisation as the term is used in the Anti-Money Laundering and Counter-Terrorism Rules Instrument 2007 (1).

#### 20.4 **CONSENT TO RECORDING OF TELEPHONE CONVERSATIONS**

You consent to the electronic recording of your telephone discussions with us and the use of recordings or transcripts from such recordings for any purpose.

#### 20.5 **OUR ACTIONS TO COMPLY WITH THE LAW**

Despite any other provision of this Agreement, in providing the Services in this Agreement, we will be entitled to take any action as we consider necessary in our absolute discretion to ensure compliance with all Applicable Laws.

#### 20.6 **CLIENT MONEY**

##### (a) Australian Client Money Rules and authorisations

All moneys deposited by you to the credit of your Account is Client Money within the meaning of the Australian Client Money Rules and will be held in an account with an Australian Authorised Deposit-taking Institution (**ADI**) or an approved foreign bank in accordance with the Australian Client Money Rules, unless you are deemed to be an Exempt Wholesale Client (as explained below). Client Money is held in trust for the clients entitled to it. You agree and acknowledge that individual Accounts of our clients are not separated from each other within the trust accounts operated by us.

##### (b) Withdrawal of Client Money

The Australian Client Money Rules relevantly permit us to withdraw money from the segregated trust account in the following circumstances:

- (i) to defray brokerage and other proper charges (e.g. commissions);
- (ii) from 4 April 2018, to meet an obligation incurred by us in connection with derivative transactions which will be cleared through a domestic licensed clearing and settlement facility or a foreign clearing and settlement facility (note this will not usually be the case with financial products offered under this document); and
- (iii) where interest is earned on the account, and we have disclosed to you that we intend to keep any interest payments (which we have done in section 20.6(e) below).

##### (c) Exempt Wholesale Clients

Where you are an Exempt Wholesale Client, in agreeing to these terms, you are providing written agreement to opt-out of the Australian Client Money Rules to the extent permissible by the Applicable Laws.

Please note that we will assess wholesale client or retail client status from time to time. If you satisfy the criteria to be classified as a "wholesale client" we may classify you as such. We are under no obligation to inform you if we classify you as a wholesale client.

##### (d) Investment of Moneys held

We may invest any of your money held in any trust account according to the Australian Client Money Rules and you irrevocably and unconditionally authorise us to undertake any such investment.

(e) Treatment of Investment Capital and Interest

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 trust account or invested by us in accordance with the Australian Client Money Rules;
- (ii) 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 trust account for the benefit of you, 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 Agreement; and
- (iii) we will not charge a fee for investing your moneys.

You irrevocably and unconditionally authorise us and/or any Associate of ours to:

- (iv) withdraw, deduct or apply any amounts payable by you to us under this Agreement from your trust account, including, without limitation making a payment for, or in connection with, the margining, adjusting or settling of dealings in Positions entered into by you or the payment of interest or fees or charges to us;
  - (v) deal with any property, other than money, given to us in accordance with the terms and conditions of this Agreement, including, without limitation:
    - (A) dealing with such property in connection with the margining, adjusting or settling of dealings in Positions entered into by you: or
    - (B) selling or charging in any way any or all of your property which may from time to time be in the possession or control of us or any of our Associates following the happening an Event of Default.
- (f) Record-keeping, reconciliation and reporting under the Australian Client Money Rules

From 4 April 2018, new derivative retail client money reporting rules will apply to us. Under the client money reporting rules, we will be required to comply with various record-keeping, reconciliation and reporting obligations in relation to any "reportable client money" we hold. "Reportable client money" is money held by a retail client in connection with OTC derivatives or overseas exchange-traded derivatives (such as foreign futures contracts).

Under the new client money reporting rules, we must:

- (i) keep accurate records of the amount of reportable client money we receive from you, and retain them for seven years;
- (ii) perform a daily and monthly reconciliation of the amount of reportable client money we have recorded against the amount actually held in the client money account, some of which will include your client money;
- (iii) notify ASIC within five business days if we fail to perform a reconciliation in accordance with the client money reporting rules or if we identify a discrepancy when performing a reconciliation;

- (iv) prepare and give to ASIC an annual directors' declaration and an external auditor's report on our compliance with the client money reporting rules within three months of the end of the financial year; and
- (v) establish, implement and maintain policies and procedures designed to ensure our compliance with the client money reporting rules.

Please note that we will assess wholesale client or retail client status from time to time. If you satisfy the criteria to be classified as a "wholesale client" we may classify you as such. We are under no obligation to inform you if we classify you as a wholesale client.

#### **20.7 OPERATION OF THIS AGREEMENT**

- (a) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.
- (b) If there is any inconsistency between the English version of this Agreement and any translation of this Agreement, the English version will prevail to the extent of any inconsistency.

#### **20.8 RIGHTS AND REMEDIES**

The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

#### **20.9 RIGHTS OF THIRD PARTIES**

Nothing in this Agreement is intended to confer on any person other than us or you any right to enforce any term of this Agreement.

#### **20.10 WAIVER AND VARIATION OF RIGHTS**

- (a) No delay or omission on our part in exercising any right, power or remedy provided by law or under this Agreement, or partial or defective exercise thereof, will:
  - (i) impair or prevent further or other exercise of such right, power or remedy; or
  - (ii) operate as a waiver of such right, power or remedy.
- (b) No waiver of any breach of any term of this Agreement will (unless expressly agreed in writing by us) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.
- (c) Our exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this Agreement. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this Agreement.

#### **20.11 TIME IS OF THE ESSENCE**

Time is of the essence for this Agreement.



20.12 **LIABILITY FOR EXPENSES**

Each party must pay its own expenses incurred in executing this Agreement and negotiating any additional terms and conditions as it relates to a Position.

20.13 **GIVING EFFECT TO TRANSACTIONS**

Each party must do anything (including execute any document), and must ensure that its employees and Authorised Person does anything (including execute any document), that any other party may reasonably require to give full effect to this Agreement.

20.14 **COUNTERPARTS**

This Agreement may be executed in counterparts. Delivery of a counterpart of this Agreement by email attachment or fax constitutes effective mode of delivery.

# SCHEDULE 1

## PRODUCTS

### PART A – FOREIGN EXCHANGE CONTRACTS

#### 1. TRADING: Calculation of Contract Value

For the purpose of calculating the prices quoted at which we are prepared to deal, the following is to be noted:

- (a) **Contract Unit:** of a Foreign Exchange Contract will be one currency unit of the primary reference currency.
- (b) **Our pricing:**
  - (i) The Contract Price of a Foreign Exchange Contract will be a bid or offer price (whichever is applicable) calculated by us by applying the AxiCorp Spread to the Interbank Rate.
  - (ii) If the Closing Date of a Foreign Exchange Contract is other than a date generally quoted in the market, we will calculate the Interbank Rate from the available market prices for another value date as we consider representative, fair and reasonable.

#### 2. MARGIN

##### 2.1 Initial Margin

Initial Margin will be calculated as follows:

Initial Margin requirement = (Margin Percentage x Contract Price) x Quantity of Contract.

##### 2.2 Margin Percentage

We will specify the Margin Percentage for each Foreign Exchange Contract in the relevant Commercial Terms Annexure.

In accordance with clause 4.3 of this Agreement, Margin Percentages may be subject to change without notice.

### PART A.1 – FOREIGN EXCHANGE CONTRACTS: FX CONTRACTS

#### 1. DAILY VALUATION

##### 1.1 Long FX Contracts

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

do not close it before the settlement time. This is because you are holding the lower yielding currency

## 1.2 Short FX Contracts

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 AxiCorp Swap Rate if you hold the Position overnight and do not close it before the settlement time. This is because you are holding the lower yielding currency. 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 AxiCorp Swap Rate if you hold the Position overnight and do not close it before the settlement time. This is because you are holding the higher yielding currency.

## 2. CLOSING POSITIONS

### 2.1 When can a FX Contract be closed?

A FX Contract may be closed out if:

- (a) You give instructions to close a FX Contract by entering into an equal and opposite Position irrespective of the date on which either Position closes automatically under clause 6.2 of the Agreement as follows:
  - (i) **Single Position Closing:** a single open Position can be closed by choosing the close button when you execute the trade online. The Position will be closed and offset by the opposite Position; or
  - (ii) **Close by Opposite Positions:** you can choose to close a Position by an opposite Position but not offsetting the two Positions. You can execute an opposite Position and both long and short Positions will appear in your trade account. You can choose to offset the Positions at a later time when you prefer.

We may exercise any of our rights under this Agreement to close a FX Contract at any time before the Position closes automatically under clause 6.2 of this Agreement.

### 2.2 Closure: Long and Short contract

If you are long and short on a FX Contract, with effect immediately after Close of Business on the Closing Date, we will close the relevant long and short Positions and record in your account the balance, if any, of your then outstanding long or short Position, as appropriate. If there is more than one Position in relation to the particular Underlying Instrument, we may close out whatever Position we consider appropriate.

### 2.3 Closure: Two or more FX Contracts

Where you have two or more FX Contracts:

- (a) which are in respect of the same Underlying Instrument; and
- (b) where you are in the FX Contracts as either the Long Party or the Short Party; we will with effect immediately after Close of Business on each Trading Day replace such FX Contracts with a single aggregated FX Contract equivalent to the total of the Contract Quantities of each FX Contract. The date on which such replacement FX Contract will expire automatically under clause 6.2 of the Agreement will be the latest of the Expiry Dates of each of the original FX Contracts.

## **Part A.2 – FOREIGN EXCHANGE CONTRACTS: NDFs**

### **1. CLOSING POSITIONS**

NDFs, if not terminated earlier under this Agreement, will close automatically at Close of Business on the Maturity Date and will settle on the Settlement Date.

## PART B.1: BULLION CONTRACTS

### 1. TRADING

#### 1.1 Position Duration

A Position in respect of a Bullion Contract has no inherent limit to its duration and, subject to the payment of Margin and other relevant sums, can continue indefinitely. Any Position opened by you may be closed by us at the prevailing rate if there is an Event of Default.

#### 1.2 Calculation of Contract Value

For the purpose of calculating the prices quoted at which we are prepared to deal, the following should be noted:

- (a) **Contract Unit:** The Contract Unit of a Bullion Contract will be one ounce of the relevant metal (gold, silver, palladium or platinum) and we quote prices in the customary currency of the relevant market per ounce.
- (b) **Our pricing:** The Contract Price of a Bullion Contract will be a bid or offer price (whichever is applicable) calculated by us by applying the AxiCorp Spread to the Interbank Rate.

### 2. MARGIN

#### 2.1 Initial Margin

Initial Margin will be calculated as follows:

Initial Margin requirement = (Quantity of Contract Units x Contract Price) x Margin Percentage;

### 3. DAILY VALUATION

#### 3.1 Long Bullion Contracts

If you have a long US dollar/short Bullion Position and interest rates in the USA are higher than the Bullion swap rate determined by us you will receive a Rollover Benefit at the AxiCorp Swap Rate if you hold the Position overnight and do not close it before settlement time. This is because you are holding the lower yielding asset.

#### 3.2 Short Bullion Contracts

If you have a short Australian dollar/short Bullion Position and interest rates in the USA are higher than the Bullion swap rate determined by us you will pay a Rollover Charge at the AxiCorp Swap Rate if you hold the Position overnight and do not close it before settlement time. This is because you are holding the higher yielding asset.

### 4. CLOSING POSITIONS

#### 4.1 When can a Bullion Contract be closed?

A Bullion Contract may be closed out if:

- (a) You give instructions to close a Bullion Contract by entering into an equal and opposite Position irrespective of the date on which either Position closes automatically under clause 6.2 of the Agreement as follows:

- (i) **Single Position Closing:** a single open Position can be closed by choosing the close button when you execute the trade online. The Position will be closed and offset by the opposite Position; or
  - (ii) **Close by Opposite Positions:** you can choose to close a Position by an opposite Position but not offsetting the two Positions. You can execute an opposite Position and both long and short Positions will appear in your trade account. You can choose to offset the Positions at a later time when you prefer.
- (b) We may exercise any of our rights under this Agreement to close a Bullion Contract at any time before the Position closes automatically under clause 6.2 of this Agreement.

#### **4.2 Closure: Long and Short Contract**

If you are long and short on a Bullion Contract, with effect immediately after Close of Business on the Closing Date, we will close the relevant long and short Positions and record in your account the balance, if any, of your then outstanding long or short Position, as appropriate. If there is more than one Position in relation to the particular Underlying Instrument, we may close out whatever Position we consider appropriate.

#### **4.3 Closure: Two or more Bullion Contracts**

Where you have two or more Bullion Contracts:

- (a) which are in respect of the same Underlying Instrument; and
- (b) where you are in Bullion Contracts as either the Long Party or the Short Party; we will with effect immediately after Close of Business on each Trading Day replace such Bullion Contracts with a single aggregated Bullion Contract equivalent to the total of the Contract Quantities of each Bullion Contract. The date on which such replacement Bullion Contract will expire automatically under clause 6.2 of the Agreement will be the latest of the Expiry Dates of each of the original Bullion Contracts.

**[Note: Choose the applicable version between "MT4" and "Other Platforms" below and delete the other version. For institutional clients using both MT4 and another Platform, include both versions with the following introductory wording:**

**"The Product Schedule referenced under the heading "Commercial Terms Annexure – MT4" will apply to all Positions entered into through the MT4 Platform. In respect of all Positions entered into on other Platforms, the terms under the heading "Commercial Terms Annexure – Other Platforms" will apply.]**

**COMMERCIAL TERMS ANNEXURE[ – MT4]**

The Commercial Terms Annexure is as set out in the Product Schedule available on our Website. |

**COMMERCIAL TERMS ANNEXURE [ – Other Platforms]**

<b>MAXIMUM NET OPEN POSITION LIMIT</b>	<p>means the absolute value of the Net receivable (Long) or Net payable (Short) amount across all value dates, whichever is greater (Aggregate Net Settlement method);</p> <p>Limit: [USD ]</p>		
<b>MINIMUM MARGIN REQUIREMENT</b>	<p>means the minimum amount of funds to be maintained with us;</p> <p>Minimum: [USD ]</p>		
<b>MARGIN PERCENTAGE</b>	<b>Product</b>	<b>Tier</b>	<b>Rate</b>
	AUD	1	[X] %
	CAD	1	[X] %
	CHF	1	[X] %
	EUR	1	[X] %
	GBP	1	[X] %
	JPY	1	[X] %
	NZD	1	[X] %
	USD	1	[X] %
	CNH	2	[X] %
	MYR	2	[X] %
	NOK	2	[X] %
	SEK	2	[X] %
	SGD	2	[X] %
	AED	2	[X] %
	BRL	2	[X] %
	CLP	2	[X] %
	COP	2	[X] %
	CZK	2	[X] %
	HUF	2	[X] %
	INR	2	[X] %
	ILS	2	[X] %
	INR	2	[X] %
	MXN	2	[X] %



	PEN	2	[X] %
	PHP	2	[X] %
	PLN	2	[X] %
	RON	2	[X] %
	THB	2	[X] %
	TRY	2	[X] %
	TWD	2	[X] %
	XAU	2	[X] %
	ZAR	2	[X] %
	ARS	3	[X] %
	KRW	3	[X] %
	RUB	4	[X] %
	XPT	4	[X] %
	XAG	4	[X] %
	XPD	4	[X] %
IDR	4	[X] %	

]

**EXECUTED as an agreement on:**

**EXECUTED by AXICORP FINANCIAL SERVICES PTY LTD ACN 127 606 348:**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXECUTED by [\*]:**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name