



TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Whenever used in this Agreement, unless inconsistent with the subject matter or context, the following words shall have the following meanings:

Accept or Acceptance means, except in the case of a Third Party Online Platform, if the Client, or an Authorized User, indicates by either telephone, email, face-to-face or through an Online Service that they accept the Trade Contract Terms provided by Kern Private Capital.

Application Form means the form a Client must complete and submit to apply to open an account with Kern Private Capital.

Authorized User means a person authorized by the Client to access Kern Private Capital's services and/or enter into Orders on the Client's behalf.

Base Currency means the first currency in a Currency Pair. The Base Currency is assigned a value of 1 when calculating exchange rates.

Bought Swap Rate means the interest rate that applies to the Base Currency at the Close of Business on the relevant Trading Day.

CFD means a Contract for Difference.

Client, you or your means the Client named in this Agreement, together with its subsidiaries, affiliates, successors and/or assigns, as well as its officers, directors, employees and agents.

Client Agreement means the completed Application Form and these Terms.

Close of Business means 22:00 GMT.

Closed-Out means the termination of all or part of an Order.

Close-Out Date means the date on which all or part of an Order is Closed-Out.

Close-Out Value means the Order Value at the Close-Out Date.

Corporate Action means payment of a dividend, scrip dividend or special dividend, a rights issue, open offer or free distribution of shares by way of a bonus, capitalization or any other offer or issue to the holders of the underlying asset, a takeover, reverse any analogous event directly affecting holders of the underlying asset;

Credit Limit means the limit on the total amount of credit that Kern Private Capital will provide to the Client.

Currency Pair means the Base Currency and the Term Currency for a Margin FX contract.

Day means a day on which commercial banks are open for business (including dealings in foreign exchange) in the place specified by Kern Private Capital for that purpose.

Default Event means any acts or omissions on the part of

- a) the Client;
- b) Authorized User; or
- c) the Client or Authorized User's employee, agent or assignee (whether or not known to us, and whether or not acting in concert with other natural persons or algorithmic tools) which in Kern Private Capital's sole discretion, are deemed as being:
- d) negligence;
- e) mistake;
- f) wilful misconduct, (including commission churning, sniping, causing or contributing to or benefiting from a Quoting Error, moving the price of an underlying asset, scalping, arbitraging off-market pricing);
- g) the use, or allowing any other person (whether or not an Authorized Person) to use, any electronic device, software, algorithm or any trading strategy that has the purpose or effect of manipulating or taking unfair advantage of the way in which Kern Private Capital constructs, provides or conveys its bid or offer prices; or
- h) the breach of any Law; or
- i) the breach of any provision of this Agreement.

Deposit means the amount deposited by the Client with Kern Private Capital as requested by Kern Private Capital in relation to all Financial Products, at the time of booking and at any time prior to the Value Date which is a part payment toward the agreed Order value and not client monies. Deposit includes amounts deposited by the Client with Kern Private Capital as requested by Kern Private Capital in respect of any anticipated or existing Open Positions which the Client has or will have with Kern Private Capital.

Financial Product means a foreign exchange contract or a transaction in which a Client and Kern Private Capital enter into an OTC derivatives contract based on the value of an underlying asset or assets (including but not limited to a currency or currency pair, a commodity, a precious metal or an index).

Force Majeure means events or causes including, but not limited to, the following: an act of God, peril of the sea, unavoidable accident of navigation, war (whether declared or not), sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, flood, cyclone, earthquake, landslide, explosion, power or water shortage, failure of a transmission or communication network, epidemic, quarantine, strike or other labour difficulty or expropriation, restriction, prohibition, law, regulation, decree or other legally enforceable order of a government



agency, breakage or accident, change of International, State or Commonwealth law or regulation or any damage of Kern Private Capital's hardware or systems, unless occurring as a result of an act, omission, default or negligence of the Client or Kern Private Capital.

Free Balance means, at any time, the excess (if any) of the balance of the Client's account at that time over the required Deposit.

Futures CFD means a CFD where the value of the contract derives its value from an underlying asset or instrument whose price is quoted on a futures market.

Fully Hedged Position means an Open Position that is equal and opposite of another Open Position.

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

Hedged Position is as defined in clause 24.1.

Instruction means any instruction or request given by the Client to Kern Private Capital relating to the execution of a Financial Product as provided for under clause 8.2.

Insolvency Event means any steps taken for:

- a) the winding up, dissolution or administration of the Client;
- b) the Client to enter into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them except for the purposes of a solvent reconstruction or amalgamation; or
- c) a receiver, receiver and manager, or other controller, administrator or similar officer to be appointed with respect to, or takes control of, the Client or any of the Client's assets and undertakings.

Law means any local or foreign law, regulation or judgment, court order or sanctions regimes which Kern Private Capital is subject to.

Long Party means in respect of any Order the party identified in the Trade Confirmation Notice as having notionally bought the underlying asset or assets to the OTC derivative contract.

Margin Call means an amount, in addition to the Deposit, as solely determined by Kern Private Capital.

Margin FX contract means a Margin Foreign Exchange contract.

Mark to Market means the daily revaluation of an OTC derivatives contract entered into between Kern Private Capital and the Client to reflect its current market value rather than its original contract value. Kern Private Capital shall have the right, at its sole discretion, to determine the Mark to Market value on a daily basis.

Merger Event means in respect of any underlying asset:

- a) any reclassification or change of the underlying asset that results in a transfer of or an irrevocable commitment to transfer all outstanding securities of the same class as the underlying asset to another entity or person;

- b) consolidation, amalgamation, merger or binding share exchange of the issuer of the relevant underlying asset with or into another person (other than a consolidation, amalgamation, merger or binding share exchange in which such issuer is the continuing person and which does not result in a reclassification or change of all outstanding securities of the same class as the underlying asset); or
- c) takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person to purchase or otherwise obtain 50% or more of the outstanding securities of the same class as the underlying asset that results in a transfer of or irrevocable commitment to transfer all such securities (other than such securities owned or controlled by such other entity or person).

Notice means a notice required or permitted to be given under this Agreement or for the purposes of this Agreement.

Online Services means the services which provide the ability for clients to transact with Kern Private Capital by way of an online trading platform including a Third Party Online Platform.

Open Position is where the Client have entered into a transaction or contract with Kern Private Capital, and a further transaction is required in order to close the position;

Order means a Financial Product entered into between Kern Private Capital and the Client under the applicable Trade Contract Terms.

Order Value means for any Order, the Order price or rate multiplied by the Order quantity.

OTC means Over-the-Counter.

Partially Hedged Position means an Open Position that is opposite but not equal to another Open Position.

Previous Order Value means, the amount calculated as follows:

- a) where the Order Value is being determined for the first time for an Order Contract, the Order Value at the commencement of the Order; or
- b) in all other cases, the Order Value at the most recent Valuation Time.

Quoting Error means a liquidity provider error, a software error, a typographical error or obvious mistake in a quote or indication and includes quoting delays.

Reciprocal Obligation means Kern Private Capital's obligations to the Client in relation to an Order, a Margin Call or a Deposit.

Security Details means the information required by Kern Private Capital under clause 11.3.

Sell Swap Rate means the interest rate that applies to the Term Currency at the Close of Business on the relevant Trading Day.

Share CFD means a Financial Product where the underlying asset is a security listed on an exchange.

Short Party means in respect of any Order the party identified in the Trade Confirmation Notice as having notionally sold the underlying asset or assets to the OTC derivative contract.



Spot CFD means a CFD where the value of the contract derives its value from an underlying asset or instrument whose price is quoted on a spot market.

Swap Charge or **Swap Credit** is as defined in clause 20.1 and 20.2.

Swap Free Account or **Islamic Account** means an account offered by Kern Private Capital, at its sole discretion, which is designed specifically for, and available only to, Clients who cannot receive or pay rollover interest on overnight Open Positions for religious reasons.

Term Currency means the second currency in a Currency Pair.

Terms means these terms and conditions, together with all schedules, attachments or other documents attached.

Third Party means any entity with whom Kern Private Capital have entered into an agreement or arrangement whereby Kern Private Capital offers the Client access to that entity's online trading platform ("Third Party Online Platform") for the purpose of the provision via the Third Party Online Platform of additional services to the Client.

Third Party Online Platform means any online trading platform offered by a Third Party.

Trade Confirmation Notice means a document signed by the Client and Kern Private Capital confirming the details of the Financial Product entered into between the Client and Kern Private Capital.

Trade Contract Terms means the price, timing and other details (as contained in the Instructions) Kern Private Capital provides you, either verbally or via the Internet, at which the relevant Order can be purchased or sold.

Trading Day means Monday to Saturday including public holidays.

Value Date means either the Day selected by the Client and agreed by Kern Private Capital for the settlement of an Order or if there is no such Day, the future value date after the execution of an Order by the Client and includes any agreed variation to the original date, being either an earlier or a later date.

Valuation Time means the Close of Business on each Day or any other time Kern Private Capital decides in its absolute discretion.

Kern Private Capital, we, our or **us** means Kern Private Capital, its subsidiaries, holding companies, successors and/or assigns, as well as its officers, directors, employees and agents.

Website means the Kern Private Capital website located at www.kernprivatecapital.com.

1.2 If the Client is comprised of two or more legal persons then a reference to a right or obligation of the Client under this Agreement or under a transaction contemplated by this Agreement confers that right or imposes that obligation, as the case may be, jointly and severally on those persons.

2. THIS AGREEMENT

2.1 These Terms together with your completed and submitted Application Form comprise the Client Agreement.

2.2 This is a master agreement and sets out the terms and conditions upon which dealings between you and us relating to the provision of advice to the Client or the execution of Orders.



2.3 This Agreement is in addition to other documents (including but not limited to the Product Disclosure Statement and the Financial Services Guide) that may have been exchanged and/or executed between the parties. You should read this Agreement carefully and any other documents given to you and that apply to you.

2.4 If you are an overseas resident Client or a Wholesale Client, you acknowledge that despite being given or otherwise obtaining the Product Disclosure Statement some of the information contained in the Product Disclosure Statement does not apply to you.

2.5 The terms of this Agreement and any transactions under it, may be amended by Kern Private Capital at any time. Kern Private Capital will provide Notice to the Client of any such amendment. The Client agrees to be bound by the terms of such an amendment on the earlier of:

- (a) ten (10) Days after Kern Private Capital has posted notice of the amendment on the Website; or
- (b) on the date of the Client entering any Order after the amendment.

Any other amendments must be agreed to in writing between Kern Private Capital and the Client.

2.6 At no time shall either party enter into commitments for or in the name of the other party or use their intellectual property for any purpose whatsoever. Except as specifically provided for in this Agreement, neither party will:

- (a) use the other party's name or intellectual property without the prior written approval of the other party; or
- (b) represent itself as being affiliated with, or Authorized to act for, the other party.

3. CLIENT REPRESENTATIONS AND WARRANTIES

3.1 The Client warrants that:

- a) in the case of an individual or more than one individual, they are of full age and capacity;
- b) in the case of a firm or corporation, it is duly constituted and incorporated and possesses the requisite power to enter into this Agreement and all contracts made or to be made;
- c) in the case of a trustee of a trust, they are properly appointed as trustee, they will be liable both in their personal capacity and as trustee, the trust instrument is valid and complies with all applicable Laws, and the trustee has a right of indemnity from the trust assets in respect of this Agreement; and
- d) in any case, this Agreement and such contracts are and will constitute legally binding and enforceable obligations of the Client.

3.2 The Client represents and warrants to Kern Private Capital that:

- a) the Client will place Orders wholly or predominantly for business and investment purposes and not for personal, domestic or household use or consumption;
- b) execution and delivery by the Client of this Agreement, and performance of all of the Client's obligations contemplated under this Agreement, does not violate any Law applicable to the Client;
- c) all information provided by the Client to Kern Private Capital is true, correct and complete, and the Client will notify Kern Private Capital promptly of any changes to such information;



- d) the Client shall make ongoing disclosure to Kern Private Capital of any matters that may affect the operation of this Agreement or of the ability of the Client to pay Margin Calls or to remain solvent.

3.3 The Client acknowledges that:

- a) by applying to open an account, you acknowledge that you have read and understood this Agreement;
- b) Kern Private Capital will enter into the transactions contemplated by this Agreement in reliance on the representations and warranties made by the Client;
- c) Kern Private Capital provides advisory and execution-only services and the final investment decision is always the Client's own;
- d) if Kern Private Capital provides advice to the Client then that the advice is general only and does not consider the personal objectives, circumstances or needs of the Client; and
- e) in the event that the Client is comprised of two or more legal persons, Kern Private Capital's primary contact for the receipt of Notices is the first person named on the Application Form.

3.4 The Client:

- a) confirms that they have regular access to the internet;
- b) consents to Kern Private Capital contacting the Client (in the circumstances described in this Agreement) by email on the address provided by the Client;
- c) agrees to ensure that the Client's contact details are up to date at all times.

3.5 If this Agreement is provided to you in a language other than English, it is provided for information purpose only. The governing language of this Agreement is English. In the event of any inconsistency between the English language version of this Agreement and a foreign language version, the English version will prevail to the extent of any inconsistency.

4. AUTHORIZED USERS AND AUTHORIZATION LIMITS

4.1 The Client shall provide Kern Private Capital with a list of Authorized Users.

4.2 The Client shall immediately notify Kern Private Capital when:

- (a) any new person becomes an Authorized User; or
- (b) any existing Authorized User is no longer entitled to be an Authorized User.

Upon Kern Private Capital receiving such Notice the change in Authorized User is effective immediately. However, the Notice shall not affect any Orders already executed.

4.3 Any appointment of an Authorized User shall remain in full force and effect unless and until Notice of cancellation of appointment has been delivered to Kern Private Capital.

4.4 The Client may inform Kern Private Capital of an authorization limit applicable to some or all Orders either in general or for particular Authorized Users. Any authorization limit provided by the Client to Kern Private Capital may be withdrawn by the Client at any time by giving Notice to Kern Private Capital.

4.5 All Instructions given and Orders accepted by an Authorized User within their authorization limits will be deemed to be Instructions and Orders Authorized by the Client and shall be binding upon the Client.



4.6 Until the Client has provided a Notice to Kern Private Capital to the contrary, Kern Private Capital may continue to assume that all existing Authorized Users have authority to execute legally binding Orders with Kern Private Capital within their authorization limits.

4.7 The Client hereby indemnifies and agrees to hold Kern Private Capital harmless in respect of any loss incurred by an Authorized User entering into Orders within their authorization limits.

5. OPENING AN ACCOUNT

5.1 An account must be opened prior to any transaction. No Orders can be placed until an account has been opened and cleared funds received.

5.2 If Kern Private Capital permits the Client to place an Order where no account has been opened, or clear funds received, this will not limit the Client's liability to Kern Private Capital under this Agreement.

5.3 Kern Private Capital may refuse to accept you as a Client for any reason. Kern Private Capital will notify you of such refusal as soon as practicable after applying to become a Client but is not required to provide you with reasons for such refusal.

6. SEGREGATED CLIENT MONEY ACCOUNTS

6.1 All money deposited by the Client with Kern Private Capital, received by Kern Private Capital or its agent on behalf of the Client, or that is, client profits on the Close Out of a Financial Product shall be deposited into one or more accounts nominated by Kern Private Capital and will be paid into a client segregated bank account when required by Law, which is typically when the Client pays money into the nominated account:

(a) without agreeing to the terms of a Financial Product by the next Day following actual receipt of the deposit; or

(b) without Kern Private Capital issuing the Financial Product immediately; or

(c) that is less than the price of the Financial Product, and Kern Private Capital does not issue the Financial Product immediately for the lesser price; or

(d) in excess of the price of the Financial Product, and the excess amount is not returned to the Client by the next Day.

Such segregation of the Client's money does not fully protect the Client's money from the risk of loss.

6.2 While the Client's money is segregated from Kern Private Capital's money, it may be co-mingled with the money of other Clients and utilized by Kern Private Capital from time to time where Kern Private Capital is allowed to do so pursuant to Law.

6.3 Kern Private Capital shall be entitled to retain any interest earned on such segregated money held or invested by Kern Private Capital.

6.4 Kern Private Capital may use the funds in the client segregated account in accordance with applicable Laws to manage Kern Private Capital's dealings with its counterparties with respect to Wholesale Clients (other than Sophisticated Investors), including margining, guaranteeing, securing, transferring, adjusting or settling such dealings, but only at the time at which Kern Private Capital has incurred such an obligation.



6.5 If the Client is a Wholesale Client (other than a Sophisticated Investors) then the Client acknowledges that clause 6.4 constitutes the Client's written agreement to using funds in the client segregated account in the manner referred to in that clause.

6.6 The Client acknowledges that this clause 6 is sufficient written authorization for Kern Private Capital to withdraw without notice to, or further authorization from, the Client the amount of money deposited into the segregated account necessary to meet Kern Private Capital's obligations incurred for this purpose. The Client has no interest in or claim over Kern Private Capital's contracts (if any) with any other person or in the accounts into which Kern Private Capital lodges or pays the funds which were withdrawn from the segregated accounts. The Client acknowledges that the balance of the Client's account may not be protected if there is a default in the dealings with counterparties or in the overall segregated account balance.

6.7 Kern Private Capital enters into arrangements with third party execution providers for the facilitation of transactions and settlements, and avails monies received for Deposits and settlements which are not client money to such providers for this purpose.

6.8 When Kern Private Capital accepts money from a Client in connection with an Order, a Margin Call or a Deposit, the Client immediately receives Reciprocal Obligations from Kern Private Capital under the Trade Contract Terms. The payment is not "client money", but rather has purchased that Reciprocal Obligation from Kern Private Capital.

7. TRADING HOURS

7.1 Kern Private Capital's trading hours are normally from 7.00am AEST (9.00am AEDT) Monday to 7.00am AEST (9.00am AEDT) Saturday. We quote prices and accept Orders during those hours. However, subject to the Online Services being operational, you may place orders at any other time.

7.2 We are under no obligation to quote prices or accept Orders on a public holiday in any jurisdiction which, in our reasonable opinion, affects the relevant value of the underlying asset or assets to the OTC derivative contract Kern Private Capital offers. We give notice of such public holidays and the underlying asset or assets affected on the Online Service.

8. INSTRUCTIONS AND CREATION OF ORDERS

8.1 Rate indications from Kern Private Capital are available by telephone, email, face-to-face or through the Online Services. Such indications are not binding and the rates will be as agreed when Kern Private Capital exercises its right to create an Order.

8.2 When the Client, or an Authorized User, contacts Kern Private Capital by either telephone, email, face-to-face or through an Online Service and provides the appropriate Client reference number (and such other security checks as Kern Private Capital may specify), Kern Private Capital may, but is not obligated to, ask for the following information:

- (a) the Client's contact details;
- (b) your account number;
- (c) your other identification details;
- (d) the type of Order the Client wishes to enter into with reference to the asset or assets underlying the Order (e.g. exchange rate, currency pair, commodity, precious metal or index);



- (e) whether you intend to be the Long Party or the Short Party for the Order;
- (f) the Order quantity;
- (g) the Order price or rate; and
- (h) any other information applicable to the Order as Kern Private Capital may require from time to time.

Collectively, though not exhaustively, this information or any portion constitutes an Instruction.

8.3 An Order may be:

- (a) A day Order meaning that the order will be cancelled at 22:00 GMT; or
- (b) A good 'til cancelled Order, which means that the Order will remain capable of being accepted by Kern Private Capital until the Client cancels the Order or Kern Private Capital accepts it.

8.4 Orders may be placed as:

- (a) market Orders to buy or sell a Financial Product as soon as possible at the price obtainable in the market; or
- (b) limit and stop Orders to trade reaches a predefined level, as applicable to the various Financial Products offered (or a combination of these types of Orders).

8.5 Within a reasonable time after receiving the Instructions Kern Private Capital will contact the Client by either, telephone, email, face-to-face or through an Online Service using the contact details provided by the Client and provide the Client with the Trade Contract Terms.

8.6 If the Client, or an Authorized User, accepts the Trade Contract Terms, then Kern Private Capital shall have a discretionary right to create an Order.

8.7 If Kern Private Capital exercises this right, then an Order is formed between the Client and Kern Private Capital. When an Order is created, the parties shall become bound by the content of the relevant Trade Contract Terms and this Agreement.

8.8 If Kern Private Capital declines to exercise the right to create an Order, Kern Private Capital shall not be obliged to give a reason. However, Kern Private Capital shall promptly notify the Client that Kern Private Capital has not created an Order with the Client.

8.9 Limit Orders to buy and stop Orders to sell must be placed below the current market price, and limit Orders to sell and stop Orders to buy must be placed above the current market price. If the bid price for sell Orders or ask price for buy Orders is reached, the Order is filled as soon as possible at the price obtainable in the market. Limit and stop Orders are therefore not guaranteed executable at the specific level or amount.

8.10 Where the Client is using a Third Party Online Platform, and the Client selects a feature offered by the Third Party that facilitates trades automatically, then acceptance of the Order occurs automatically for each Order placed by the Third Party, subject to the terms of the Third Party's agreement with the Client, and subject to Kern Private Capital's discretionary right to create an Order.



8.11 You acknowledge that Kern Private Capital is not making any discretionary decisions to buy or sell Financial Products on the Client's behalf, but rather, the Client is choosing to use trading strategies offered by a Third Party via a Third Party Online Platform.

8.12 The Client shall indemnify Kern Private Capital for any error made by the Client or an Authorized User in providing Instructions to Kern Private Capital.

9. TELEPHONE AND EMAIL TRANSACTIONS

9.1 An Authorized User may request Kern Private Capital to accept Instructions and enter into Orders by telephone. Kern Private Capital has sole discretion to accept Instructions and enter into Orders by telephone.

9.2 Kern Private Capital may check the authority of the caller by requesting the caller give his or her name and confirming that such name has been notified to Kern Private Capital by the Client as an Authorized User. Upon such check confirming the identity of the caller, Kern Private Capital may assume that the caller has the full authority as previously notified by the Client.

9.3 The Client acknowledges and agrees, and will ensure that each Authorized User acknowledges and agrees, that Kern Private Capital may make a recording of each telephone Instruction and any other conversation (including Internet conversations e.g. chats) received from a Client or an Authorized User or between a Client or an Authorized User and Kern Private Capital. The recording remains the property of Kern Private Capital. The telephone recording can be used by Kern Private Capital to confirm the terms and conditions of any transaction where there is dispute with a Client as to the Trade Contract Terms of the transaction, and for training and monitoring purposes.

9.4 An Authorized User may request Kern Private Capital to accept Instructions and enter into Orders by email. Kern Private Capital may accept Instructions sent by email. The Client acknowledges and agrees that upon the acceptance by Kern Private Capital of the Client's Instructions, the Client shall be bound by those Instructions.

10. ONLINE TRANSACTIONS

10.1 If the Client or the Client's Authorized User uses any of the Online Services, the Client or Authorized User will be able to:

- (a) issue Instructions to Kern Private Capital to which is an offer to enter into an Order at the prices quoted on the Online Service;
- (b) obtain information relating to balances and transactions booked on the Client's Kern Private Capital account;
- (c) use such other facilities as Kern Private Capital may from time to time make available through the Online Services.

10.2 Kern Private Capital may at any time without notice suspend, withdraw or deny access to the Online Services to a Client or one or more of the Client's Authorized Users for any reason including but not limited to security, quality of service, failure by the Client to pay an amount when due or breach by the Client of any provision of this Agreement.

10.3 A Client can end access to an Online Service at any time by contacting Kern Private Capital via telephone or email.

10.4 Kern Private Capital can delay, decline or reverse any Order if Kern Private Capital reasonably:



(a) suspects that the transaction might be unlawful or might be associated with financial crime;

(b) believes that by carrying out the transaction Kern Private Capital might breach our compliance obligations; or

(c) believes that you are in breach of this Agreement. Under such circumstances Kern Private Capital will not be liable for delaying or refusing to carry out an Instruction.

10.5 The Client will be liable for all Orders made when using any of the Online Services including instances of any misuse, fraud or abuse by the Client or the Client's Authorized Users or where the Client or the Client's Authorized Users have disclosed Security Details to a third party.

10.6 Kern Private Capital may change the minimum specification required to access the Online Services and also may make operational changes to and alter the services currently available at any time. Kern Private Capital will notify Clients of such changes by either placing a message on the client area, trading platform or by email.

10.7 Clients are responsible for obtaining, maintaining and ensuring compatibility of their electronic software, devices and equipment. Kern Private Capital will not be responsible for any loss of or damage to a Client's data, software, computer, electronic devices, telecommunications or other equipment caused by use of any of the Online Services, unless such loss or damage is directly and solely caused by our negligence or deliberate default.

10.8 Clients are responsible for ensuring that their electronic devices and equipment are free from viruses and other malware and Kern Private Capital will not be responsible for any losses incurred by failure to do this. Kern Private Capital shall use reasonable endeavours to keep the Online Services free from viruses and corrupt files but cannot guarantee that the Online Services will be free from infection by viruses or anything else with contaminating or destructive properties. Kern Private Capital is not able to guarantee that access to any of the Online Services will be uninterrupted, continuous or error free.

10.9 Clients must not:

(a) misuse any of the Online Services by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful;

(b) attempt to gain unAuthorized access to any of the Online Services or any server, computer or database connected to any of the Online Services;

(c) attack any of the Online Services via a denial-of-service attack or a distributed denial-of service attack.

10.10 By breaching this provision, a Client may also commit a criminal offence. Kern Private Capital may report any such breach to the relevant law enforcement authorities and will co-operate with those authorities by disclosing a Client's identity to them. In the event of such a breach, the Client's right to use the Online Services will cease immediately and without Notice. Kern Private Capital will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect a Client's electronic devices and equipment.

11. SECURITY DETAILS



11.1 For security purposes, when accessing any of the Online Services it is a condition that Kern Private Capital is satisfied of your identity. Accordingly, Kern Private Capital is entitled not to act on Instructions received or given through any Online Service if Kern Private Capital is in doubt as to Client's identity.

11.2 Whenever a Client or an Authorized User uses an Online Service the use of Security Details authorises Kern Private Capital to act on any Instructions received. Kern Private Capital will treat use of Security Details as the Client's consent to conduct transactions using the Online Service.

11.3 When activating any of the Online Service, before being granted access, a Client must set up their Security Details. Security Details will include:

- (a) a login username,
- (b) a login password,
- (c) any items of memorable information which we ask you to confirm (e.g. place of birth, mother's maiden name); and
- (d) any other security requirements we may notify to you from time to time.

11.4 Each Authorized User will also have to set up their separate Security Details to gain access to the relevant Online Service.

11.5 Clients and Authorized Users must change their Security Details if asked to do so by Kern Private Capital at any time and for any reason. Kern Private Capital also reserves the right to change Security Details without prior notice.

11.6 The Client must take all reasonable precautions to ensure that Security Details are kept secure and confidential and each Authorized User to whom Security Details are provided, will keep them secure and confidential;

11.7 The Client must inform Kern Private Capital immediately should they suspect or discover that:

- (a) their Security Details are lost or stolen;
- (b) someone else knows their Security Details; or
- (c) someone has used or tried to use their Security Details.

11.8 If a Client's Security Details have been used to access any Online Services and Kern Private Capital has not received any notification of any unAuthorized use Kern Private Capital will act on any Instruction it receives.

12. TRADE CONFIRMATIONS

12.1 Within one Day of Kern Private Capital entering into an Order with the Client, Kern Private Capital will provide a Trade Confirmation Notice specifying the Trade Contract Terms of the Order. The Trade Confirmation Notice is provided to the Client for record keeping purposes only and does not form part of the Order.

12.2 The Client is required to check the details set out in the Trade Confirmation Notice immediately.

12.3 If the information contained in the Trade Confirmation Notice is incorrect the Client must immediately notify Kern Private Capital, whereupon a further Trade Confirmation Notice will be sent with the correct details which the Client will again need to confirm.

12.4 A payment will not be made to a Client until Kern Private Capital receives confirmation that payment and beneficiary account details are correct.

12.5 If the Client does not respond to the Trade Confirmation Notice or does not notify Kern Private Capital that the beneficiary details are incorrect, this does not affect the Order that has been entered into.

12.6 The Client acknowledges that:

(a) Kern Private Capital may establish a standing facility over the Internet that allows the Client to view, download and print the Trade Confirmation Notices and other reports that Kern Private Capital provides;

(b) Kern Private Capital is Authorized to use the standing facility as the means of providing Trade Confirmation Notices and other reports from Kern Private Capital;

(c) Kern Private Capital accesses and uses such standing facility to:

(i) receive Trade Confirmation Notices and other reports Kern Private Capital provides;

(ii) confirm all Orders; and

(iii) monitor the Client's obligations under the Agreement;

(d) the Trade Confirmation Notices and other reports are made available to Clients as at the time the relevant document is posted by Kern Private Capital on the standing facility. Kern Private Capital may send Trade Confirmations Notices and other reports directly to Clients, in addition to making them available using the standing facility.

13. METHOD AND TIMING OF PAYMENT

13.1 Kern Private Capital has sole discretion as to whether the Client may pay by cheque. Any sums that the Client owes to Kern Private Capital must be paid in one of the following:

(a) by online bank transfer;

(b) by same day bank transfer;

(c) with Kern Private Capital's consent, by cheque; or

(d) by international telegraphic transfer.

13.2 The method of payment must be agreed before the Order is entered into.

13.3 The Client must have sufficient cleared funds deposited in an account before Kern Private Capital creates any Order. Kern Private Capital will indicate to the Client, where applicable, the sum required as the Deposit for each Order (where applicable).

13.4 Kern Private Capital may impose other fees and charges for using the services, by providing Notice to the Client. If the Client does not consent to the charges, the Client can terminate the

Agreement immediately and the charges will not apply to the Order prior to the Notice being given by Kern Private Capital.

13.5 Kern Private Capital is not responsible for any fees or charges imposed by third party banks or other counterparties, which are incurred by the Client in connection with the use of the services.

13.6 All payments under this Agreement must be made in Australian dollars or any other currency that Kern Private Capital may agree to.

13.7 Any failure by the Client to pay an amount payable to Kern Private Capital under this Agreement is deemed to be an application for a Credit Limit from Kern Private Capital.

13.8 Kern Private Capital will use all reasonable endeavours to make payments to the Client or to any third party specified by the Client, in accordance with the timing specified in the Client's Instructions. However, Kern Private Capital shall not be liable under any circumstances for any direct, indirect or consequential loss (including any loss of profits) incurred as a result of a delay in funds reaching the Client's nominated account.

13.9 Kern Private Capital will not be liable if a payee/beneficiary bank fails to process a payment correctly.

13.10 Kern Private Capital is only required to make an international payment to or at the direction of the Client on a particular Day if cleared funds have been received by Kern Private Capital prior to the Cut-off Time for that Day. International payments relating to funds received by Kern Private Capital after the Cut-off Time for a Day will be made on the next Day.

14. CANCELLATION OR ALTERATION OF AN ORDER

14.1 If the Client decides that it wants to change any of the amounts or the dates under an Order, and the Client contacts Kern Private Capital accordingly, Kern Private Capital may in its discretion provide the Client with Trade Contract Terms for the alteration which are reasonable given the market conditions. The Client may either accept the new Trade Contract Terms and form a new Order or remain bound by the Trade Contract Terms of the original Order.

14.2 If, after an Order has been placed, the Client informs Kern Private Capital that they wish to cancel the Order, or this Agreement allows Kern Private Capital to treat the Client as having terminated the Order or this Agreement, Kern Private Capital may terminate at its complete discretion either the Order alone or the Order and this Agreement, but may also at its discretion insist on the performance of the Order.

14.3 If the Client cancels or fails to perform an Order, the Client is liable for any loss or damage suffered by Kern Private Capital in closing out Orders which the Client has cancelled or failed to perform.

14.4 The Client may forfeit part or all of any Deposit in the event of cancellation. Where Kern Private Capital has suffered loss it reserves the right to set off against the Client's Deposit or any other funds received from the Client, any charges, fees or losses sustained by Kern Private Capital in closing out the Order.

15. MARGIN DEPOSIT



15.1 Before creating an Order, Kern Private Capital may in its absolute discretion require a Deposit (typically between 0.01% and 100%) of the Order 's value in respect of any anticipated or existing Open Positions which the Client has or will have with Kern Private Capital.

15.2 Payment of the Deposit is treated by Kern Private Capital as a part-payment for the Financial Product. When Kern Private Capital accepts a Deposit the Client immediately receives Reciprocal Obligations under the Trade Contract Terms. The Deposit has purchased that Reciprocal Obligation and is not "client money".

15.3 Payment of the specified Deposit may be made by electronic transfer or same day bank transfer to an account nominated by Kern Private Capital. The method of payment must be agreed before the Order is entered into.

16. MARK TO MARKET PAYMENTS

16.1 Kern Private Capital calculates the Order Value as at each Valuation Time.

16.2 If at a Valuation Time:

(a) the Order Value is greater than the Previous Order Value:

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

(ii) the seller must pay the buyer the excess of the Order Value over the Previous Order Value; or

(b) the Order Value is less than the Previous Order Value:

(iii) the Long Party must pay the Short Party the excess of the Previous Order Value over the Order Value; or

(iv) the buyer must pay the seller the excess of the Previous Order Value over the Order Value.

16.3 If on the Close-Out Date:

(a) the Close-Out Value is greater than the Previous Order Value the Long Party must pay the Short Party the excess of the Previous Order Value over the Close-Out Value; and

(b) the Close-Out Value is less than the Previous Order Value the Short Party must pay the Long Party the excess of the Previous Order Value over the Close-Out Value.

16.4 All Mark to Market Payments:

(a) Kern Private Capital owes to the Client are credited to your account; and

(b) you owe to us are debited from your account, on the same Day as the relevant Valuation Time or Close-out Date.

17. FORCED LIQUIDATION

17.1 The Client is required to maintain a sufficient level of Deposit. Kern Private Capital reserves its rights to close out all Open Positions:



(a) if at any time the Deposit held by Kern Private Capital is approaching or is no longer sufficient to cover the negative mark to market value of any or all Open Positions that the Client has open with Kern Private Capital; or

(b) if at any time the pre-agreed Credit Limit assigned to the Client by Kern Private Capital is no longer sufficient to cover the negative mark to market value of any or all Open Positions that the Client has open with Kern Private Capital.

17.2 Kern Private Capital shall have the right, at our sole discretion, to determine the Mark to Market value from time to time.

17.3 In addition to other remedies available to Kern Private Capital, if the Client fails to pay any amount when due under this Agreement, or if a Default Event occurs, Kern Private Capital has the right to terminate (by either buying or selling) any or all of the Client's Open Positions.

17.4 When Kern Private Capital accepts payment of a Margin Call the Client immediately receives Reciprocal Obligations under the Trade Contract Terms. Margin Call payments purchase that Reciprocal Obligation and are not "client money".

18. CREDIT LIMITS

18.1 The Client understands that:

(a) Kern Private Capital may grant certain Clients a Credit Limit. A Credit Limit is a pre-agreed amount of Australian dollars that can be offset against a negative Mark to Market value on Open Position; or an amount applicable to unsettled trading losses to some or all Orders (either individually or in aggregate or both);

(b) if the negative Mark to Market of Open Position is approaching or has exceeded the Client's Credit Limit, Kern Private Capital reserves the right to Margin Call the Client an amount entirely at its discretion;

(c) Kern Private Capital is not obliged to provide credit to the Client; and

(d) any Credit Limit set by Kern Private Capital may be reduced or withdrawn at any time by giving Notice to the Client.

18.2 The Client acknowledges that if Kern Private Capital acts on an Instruction which would result in a Credit Limit being exceeded:

(a) Kern Private Capital is not obliged to inform the Client that the Credit Limit will be exceeded;

(b) the Client will continue to be liable to Kern Private Capital for all amounts including those above the Credit Limit; and

(c) Kern Private Capital is not obliged to act upon any subsequent Instruction where a Credit Limit might be exceeded.

19. ADVANCES AND INTEREST RATES

19.1 The Client is required to settle each Order on the Value Date or on such date as Kern Private Capital may require settlement.

19.2 If Kern Private Capital agrees to provide a Credit Limit, the Client undertakes to repay upon demand including interest at the rate of 3% per annum above the central bank target rate for the relevant underlying asset or assets to the OTC derivative contract, calculated on a daily basis from the date of such advance up to and including the date of repayment in full.

19.3 In addition to clause 19.2 above, interest at the said rate shall be chargeable on the following items:

- (a) any part of the Deposit or additional Deposit not paid or deposited in the form of cash; and.
- (b) any amount due to Kern Private Capital which remains outstanding.

19.4 Nothing in this clause 19 or other clauses in this Agreement shall be construed as binding Kern Private Capital to make any advance to the Client as aforesaid nor shall it prejudice any of the rights and remedies Kern Private Capital has against the Client or any other persons under this Agreement, the Orders or otherwise conferred by law, equity or usage.

19.5 Kern Private Capital may vary such interest rates without notice when changes are to the Client's advantage, or are due to external circumstances beyond Kern Private Capital's control. Such circumstances include:

- (a) changes in the monetary or credit policies domestic or abroad that affect the general interest level in a way that is of importance to Kern Private Capital;
- (b) other developments in the general interest level, including in the money and bond markets, in a way that is of importance to Kern Private Capital; or
- (c) changes in the relationship with our counterparties, which affect our cost structures.

19.6 Kern Private Capital may vary such interest rates on providing one month's Notice if:

- (a) market conditions, including competitive behaviour, mean it is prudent for us to change its conditions; or
- (b) for commercial reasons we wish to change our general cost and pricing structure; or
- (c) significant particulars of a Client's individual conditions have changed.

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

- (a) pay interest to you on any Free Balance in any Account or on any other sum held by us; or
- (b) account to you for any interest we receive on such sums or in connection with any Order.

20. INTEREST CHARGES ON OPEN MARGIN FX POSITIONS

20.1 Where an Order for a Margin FX contract is held overnight, the Order is subject to a Swap Charge or Swap Credit (unless the account is a Swap Free Account) determined by Kern Private Capital in accordance with this clause:

- (a) if the Client is the Long Party and the Bought Swap Rate is higher than the Sell Swap Rate, Kern Private Capital must pay you interest on the Open Position of any Orders at the rate that is the Bought Swap Rate minus the Sell Swap Rate;

(b) if the Client is the Long Party and the Bought Swap Rate is less than the Sell Swap Rate, the Client must pay Kern Private Capital interest on the Open Position of any Orders at the rate that is the Bought Swap Rate minus the Sell Swap Rate;

(c) if the Client is the Short Party and the Sell Swap Rate is higher than the Bought Swap Rate, Kern Private Capital must pay the Client interest on the Open Position of any Orders at the rate that is the Bought Swap Rate minus the Sell Swap Rate; and

(d) if the Client is the Short Party and the Sell Swap Rate is lower than the Bought Swap Rate, the Client must pay Kern Private Capital interest on the Open Position of any Orders at the rate that is the Bought Swap Rate minus the Sell Swap Rate.

20.2 Where an Order for a Margin FX contract is held at the Close of Trade on a Wednesday, the Swap Charge or Swap Credit is adjusted to reflect interest rate changes in the Currency Pair until the following Monday.

20.3 Where an Order for a Margin FX contract is held overnight, the Client agrees to pay Kern Private Capital a transaction fee of up to 10% of the value of the Swap Charge or Swap Credit.

20.4 Swap Charges or Swap Credits and Kern Private Capital's transaction fee are calculated and applied to your account at the beginning of the next Trading Day.

20.5 No Swap Charge, Swap Credit or transaction fee is payable where an Order for a Margin FX contract is opened and closed on the same Trading Day.

20.6 If the Client holds a Swap Free Account, then the Order is not subject to a Swap Charge. Instead, on reopening, the Order is subject to an administration fee. Kern Private Capital reserves the right to change the administration charges from time to time.

21. INTEREST CHARGES ON OPEN SPOT CFD POSITIONS

21.1 Where an Order for a Spot CFD is held overnight, the Order is subject to a Swap Charge or Swap Credit (unless the account is a Swap Free Account) determined by Kern Private Capital multiplying the value of the contract at the end of the Trading Day by the Reference Interest Rate and adjusted for any dividend in relation to the underlying asset or instrument.

21.2 Where an Order for a Spot CFD is held at the Close of Trade on a Friday, the Swap Charge or Swap Credit is adjusted to reflect the cost of holding the position until the following Monday.

21.3 Swap Charges or Swap Credits in relation to Spot CFDs are calculated and applied to your account at the beginning of the next Trading Day.

21.4 No Swap Charge or Swap Credit is payable where an Order for a Spot CFD is opened and closed on the same Trading Day.

21.5 If the Client holds a Swap Free Account, then the Order is not subject to a Swap Charge. Instead, on reopening, the Order is subject to an administration fee.

22. ROLLOVER CHARGES & CREDITS FOR OPEN FUTURES CFD POSITIONS

22.1 Where an Order for a Futures CFD is held overnight, the Order is not subject to a Swap Charge or Swap Credit.

22.2 Where an Order for a Futures CFD is held at the Close of Trade on the Close-Out Date, the Order is automatically rolled over meaning that the contract is closed and a new Order is created for the Futures CFD on the next Trading Day at the new contract price. Kern Private Capital will not automatically roll over an Open Position for a Futures CFD held at the Close of Trade on the Close-Out Date unless Kern Private Capital has provided reasonable notice to the Client of the Close-Out Date and the position remains open after this date.

22.3 Where an Order for a Futures CFD is held at the Close of Trade on the Close-Out Date, an adjustment will be applied to the Client's account to reflect the difference between the old contract price and the new contract price for the Futures CFD less an administration fee of 2.5 basis points payable to Kern Private Capital.

22.4 Cash adjustments will be applied to the Client's account on the first Trading Day of the new contract.

23. SWAP FREE OR ISLAMIC ACCOUNT

23.1 Clients who hold a Swap Free Account will be charged an administrative fee instead of being credited or debited with a Swap Charge when holding a position overnight. Kern Private Capital reserve the right to change the administration charges from time to time. Apart from this difference, Swap Free Accounts have exactly the same trading conditions and terms as Kern Private Capital's regular Client accounts.

23.2 If a Client holds an existing regular account and wishes to convert that account to a Swap Free Account, the client must make a request in writing to our support team. The conversion from a regular account to a Swap Free Account can only take place if all positions on the regular accounts are closed and the account is reconciled.

23.3 Swap Free Accounts are to be used in good faith and, the Client may not use the Swap Free Account to make profits from swaps or, not paying swaps. The Client may not request the payment of any Swap Credit amounts that have been lost as a result of converting Client account(s) into one or more Swap Free Accounts for the period during which the Client's account(s) have been converted into one or more Swap Free Accounts.

23.4 Kern Private Capital reserve the right to revoke or cancel a Swap Free Account without having to provide any reason. If Kern Private Capital detect that a Swap Free Account is being abused by taking advantage of not paying swaps, in the form of, but not limited to; fraud, manipulation, cash-back arbitrage, carry trades, or other forms of deceitful or fraudulent activity with the usage of a Swap Free Account, then Kern Private Capital reserves the right to take immediate action in the form of;

(a) with immediate effect, revoking all live trading accounts that are under suspicion of exploitation;

(b) correction and recovery of accrued swaps and related accrued interest expenses and/or costs pertaining to and all of the Client's Swap Free Accounts for the period which the accounts were converted into Swap Free Accounts;

(c) with immediate effect, termination of the Agreement; and/or

(d) with immediate effect, nullifying all trades carried out on client's trading accounts and, cancelling any profits earned or losses incurred on such client's trading accounts.

24. HEDGED POSITIONS

24.1 Kern Private Capital may allow you to execute Hedged Positions on some Financial Products from time to time. A Hedged Position is an Open Position that is opposite of another Open Position. In other words, it is the same Financial Product, but the opposite direction (i.e. you are the Long Party and the Short Party). A Hedged Position may be a Fully Hedged Position or a Partially Hedged Position.

24.2 Kern Private Capital reserves the right to reduce the Deposit to zero for Fully Hedged Positions. We also reserve the right to reduce the Deposit for Partially Hedged Positions. If we choose to reduce the Deposit, we do not waive the right to require a Deposit at any given time.

24.3 You acknowledge and agree that if the Deposit for a Hedged Position has been reduced and you close any one Open Position that forms part of the Hedged Position, it will immediately trigger the full Deposit for the Open Position. If you do not have sufficient Deposit such Open Position will be closed in accordance with clause 17.

24.4 Kern Private Capital may close all or part of any Hedged Position at any time without notice at the Close-Out Value where we reasonably believe that the Hedged Position is being abused by a Client including where we reasonably believe that such Hedged Positions are not in the ordinary course of trading.

25. DELAYS AND QUOTING ERRORS

25.1 Although Kern Private Capital will use all reasonable efforts to process the Client's Order on a timely basis. However, Kern Private Capital shall not, in the absence of gross negligence or wilful misconduct, be liable for delays, damages, failures or errors in the completion of the Order.

25.2 Should a quoting error occur due to a typographical error or obvious mistake in a quote or indication,

Kern Private Capital:

- (a) reserves the right to make the necessary adjustments to correct the quoting error; and
- (b) is not liable for any damages, claims, losses, liabilities or costs arising from the quoting error. Any dispute arising from a quoting error will be resolved on the basis of the fair market value, as determined by Kern Private Capital acting reasonably, of the relevant currency at the time such quoting error occurred.

25.3 If Kern Private Capital is unable to perform its obligations under this Agreement or an Order because of factors beyond its control or because of a Force Majeure Event, Kern Private Capital will notify the Client as soon as is reasonably practicable and will use reasonable endeavours to secure the return of any money paid by the Client in respect of which Kern Private Capital has been unable to discharge its obligations under this Agreement.

25.4 Kern Private Capital may give a Notice to the Client at any time if it forms the view that market conditions in the relevant financial market for the currency concerned are seriously disturbed. This includes circumstances where, in Kern Private Capital's opinion, deposits in the currency concerned are not available in the ordinary course of business to Kern Private Capital in the relevant financial market or because of national or international financial, political or economic circumstances or exchange controls, it is impractical.

25.5 When a Notice under clause 25.4 is given, Kern Private Capital's obligations will be suspended while it and the Client negotiate alternative arrangements. If the parties reach agreement before the Value Date, those alternative arrangements will apply. If they do not reach agreement within that period, each will be released from its obligations under the relevant transaction.

26. COMMISSIONS FEES AND EXPENSES

26.1 In addition to any other fees or charges set out in these Terms, the Client agrees to pay:

(a) an amount equal to any other fee charged or levied on Kern Private Capital, or other expense incurred by Kern Private Capital, arising from any action taken pursuant to this Agreement; and

(b) all taxes (including GST) and expenses incurred by the Client in connection with this Agreement.

26.2 The Client confirms and acknowledges that Kern Private Capital is, without limiting its powers to recover amounts owing by the Client to Kern Private Capital in any other way, permitted to deduct, without further reference to the Client, charges relating to any services provided by Kern Private Capital including administration charges (including but not limited to fees associated with returned cheques, payment processing, debt collection and telephone transcript copies), charges relating to the use of the Online Services and any transaction fees charged to Kern Private Capital by others with respect to the Client's transactions including, but not limited to tracing fees.

26.3 Kern Private Capital may in its absolute discretion waive or reduce fees or transaction charges, for individual clients or for classes of clients, for any length of time, with or without conditions, without notice.

26.4 The Client acknowledges that should they effect an Order with Kern Private Capital, the Client must pay all transaction charges, fees, settlements, interest and any other amounts due under this Agreement on demand by Kern Private Capital in cleared funds or otherwise as required in accordance with the terms of this Agreement.

26.5 The Client agrees that Kern Private Capital may at any time share transaction fees and charges with any other persons without being required to disclose the sharing of such fees and charges to the Client, unless such disclosure is required by Law.

27. CORPORATE ACTIONS

27.1 If a Corporate Action occurs Kern Private Capital will reasonably determine what adjustment, if any, should be made to an Order to account for the dilutive or concentrative effect of any such event to preserve the economic equivalent of such Orders prior to the relevant event or to reflect the effect of such event on such Orders. Any such adjustments will be effective as of a date reasonably determined by us.

27.2 Kern Private Capital will not make dividend payments.

27.3 If a Client is the Long Party for a Share CFD which goes ex-dividend, Kern Private Capital will credit the Client's account with a cash adjustment to reflect the impact of the dividend on the Orders. The amount of the adjustment will depend on the amount of the gross dividend on the relevant number of Share CFDs on the ex-dividend date.

27.4 If a Client is the Short Party for a Share CFD which goes ex-dividend, Kern Private Capital will debit the declared cash dividend from the Client's account. The amount of the adjustment will depend on the amount equal to the gross dividend on the relevant number of Share CFDs on the ex-dividend date.

27.5 If an underlying asset to which an Open Position relates is subject to a Merger Event, Kern Private Capital reserves the right to close any or all affected Open Positions at any time during the Merger Event. Kern Private Capital will not close any Open Position that is subject to a Merger Event unless it has provided reasonable notice to the Client of a deadline for the Client to close their Open Position and the position remains open after this deadline.

27.6 Kern Private Capital reserves the right to adjust the opening price of any Financial Product that is subject to a Merger Event to reflect any cash portion of the offer or to amend the size to reflect any corresponding adjustment to the underlying asset caused by the Merger Event and/or to close the affected Open Positions and reopen a new position reflecting the new underlying asset that has been created. Any such adjustments will be effective as of a date reasonably determined by us.

27.7 If Kern Private Capital determines that no adjustment can be made under this clause 27 which would produce a commercially reasonable result, Kern Private Capital may close your Open Position at the Close-Out Value on a date reasonably determined by us.

27.8 Where the Client is the Long Party for a Share CFD in relation to a US stock or security, and the Share CFD goes ex-dividend, Kern Private Capital is required by US tax legislation to withhold 15% of the cash adjustment to reflect the impact of the declared dividend. Kern Private Capital will remit the amount withheld to its liquidity provider who will account the withheld amounts to the proper US authorities. Clients can view amounts withheld for US tax legislation purposes from their account.

28. GUARANTEE

28.1 A Client's obligations under the Agreement must be guaranteed:

- (a) where the Client (including a trustee) is a company, by each director of the Company; and
- (b) in any other circumstance, where Kern Private Capital determines, in its absolute discretion, that such a guarantee is required.

28.2 The Guarantor acknowledges that Kern Private Capital is acting in reliance on the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

28.3 The Guarantor unconditionally and irrevocably guarantees to Kern Private Capital compliance with their obligations in connection with the Agreement, including each obligation to pay money.

28.4 If the Client does not comply with those obligations on time and in accordance with the Agreement, then the Guarantor agrees to comply with those obligations on demand from Kern Private Capital. A demand may be made whether or not Kern Private Capital has made demand on the Client.

28.5 The Guarantor indemnifies Kern Private Capital against any liability or loss arising from, and any costs it incurs, if:

- (a) the Client does not, or is unable to, comply with an obligation the Client has (including an obligation to pay money) in connection with the Agreement; or

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

(c) an obligation the Guarantor would otherwise have under clause 28 is found to be unenforceable; or

(d) a representation or warranty by the Client in the Agreement is found to have been incorrect or misleading when made or taken to be made.

28.6 The Guarantor agrees to pay amounts due under clause 28.3 on demand from Kern Private Capital.

28.7 Kern Private Capital need not incur expense or make payment before enforcing this right of indemnity.

28.8 The guarantee in clause 28.3 is a continuing obligation despite any intervening payment, settlement or other thing and extends to all of the Client's obligations in connection with the Agreement. The Guarantor waives any right it has of first requiring Kern Private Capital to commence proceedings or enforce any other rights against the Client or any other person before claiming from the Guarantor under this guarantee and indemnity.

28.9 The Guarantor acknowledges that, before entering into this guarantee and indemnity, it was given a copy of the Agreement (and all documents giving rise to your obligation in connection with the Agreement) and had full opportunity to consider their provisions and takes the responsibility for making itself aware of the Client's financial position and any other person who guarantees any of the Client's obligations in connection with the Agreement.

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

(a) in full without set-off or counterclaim, and without any withholding or deduction unless prohibited by law; and

(b) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

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

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

(a) reduce its liability under this guarantee and indemnity by claiming that the Client or any other person has a right of set-off or counterclaim against Kern Private Capital; or

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

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



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

29. TERMINATION

29.1 This Agreement may be terminated immediately by the Client or Kern Private Capital by Notice to the other in writing. However, termination by either party shall not affect any Order or other transaction previously entered into and shall not relieve either party of any outstanding obligations arising out of this Agreement, nor shall it relieve the Client of any obligations arising out of any Order entered into prior to such termination.

29.2 In the event that Kern Private Capital is made aware of or has reason to believe any of the following:

- (a) that the Client has provided false or misleading information to Kern Private Capital; or
- (b) that the Client has participated or is participating or has assisted or is assisting in money laundering or terrorist financing;
- (c) that the Client is being officially investigated by law enforcement and/or regulatory agencies;
- (d) that abnormal trading conditions exist;
- (e) that Kern Private Capital is unable to make prices in the relevant Order due to the unavailability of relevant market information for reasons beyond Kern Private Capital’s control;
- (f) a Default Event has occurred;
- (g) an Insolvency Event has occurred in respect of the Client, then Kern Private Capital, at its sole discretion, may terminate this Agreement immediately by Notice to the Client, and Kern Private Capital shall be relieved of any obligations set out in this Agreement or arising out of the transactions contemplated by this Agreement, including any obligations arising out of any Order already placed with Kern Private Capital.

29.3 Within two (2) Days of termination of this Agreement the Client will return or destroy all materials received from Kern Private Capital as per Kern Private Capital’s written instructions. Each party’s duties of payment, delivery, and destruction of materials shall survive termination of this Agreement.

30. SET OFF AGAINST MONIES OWED

30.1 In addition to other remedies available to Kern Private Capital, the Client authorizes Kern Private Capital to:

- (a) appropriate, transfer, credit, apply or pay monies that may be received by Kern Private Capital or held by Kern Private Capital on the Client’s behalf in payment of any amounts which may be outstanding by the Client to Kern Private Capital or to an agent of Kern Private Capital in a transaction effected on the Client’s behalf; and
- (b) set-off against any amounts due to it by the Client, any amounts received by Kern Private Capital from or on behalf of the Client including but not limited to monies received as



Deposits or Margin Calls. Kern Private Capital may determine the application of any amounts which are to be set-off at its own discretion.

30.2 Payments by the Client to Kern Private Capital in accordance with this Agreement must be made without any set-off, counter claim or condition and without any deduction or withholding for any tax or any other reason unless the deduction or withholding is required by applicable Law. Should the Client be required to make any form of deduction in respect of tax from any payment to be made or if Kern Private Capital is required to pay any tax in respect of any payment made in relation to this Agreement at the Client's request the Client agrees to keep Kern Private Capital indemnified against that tax and agrees to pay to Kern Private Capital any additional amounts required to ensure Kern Private Capital receives the full net amount that is equal to the amount Kern Private Capital would have received had a deduction, withholding or payment of tax not been made.

30.3 Deposits or Margin Calls deposited by the Client will not fall due for repayment until the Client's obligations under this Agreement and under or in respect of any other account between Kern Private Capital and the Client are satisfied in full. Until this time, Deposits or Margin Calls will not constitute a debt due from Kern Private Capital to the Client nor will the Client have any right to receive payment of these funds.

30.4 If the Agreement is terminated, the Client and Kern Private Capital agree that the claims against each other are finally discharged by means of close-out netting. Kern Private Capital will determine the Close-Out Values for each affected Order in its sole discretion. The final amount to be paid by one of the parties will be the difference between the payment obligations of the parties.

31. LIABILITY AND INDEMNITY

31.1 The Client shall indemnify and hold Kern Private Capital harmless from any and all liabilities, claims, costs, expenses and damages of any nature, including, but not limited to, reasonable legal fees and any fees and expenses incurred in connection with litigation, arising out of or relating to the Client's negligence or wilful misconduct, the violation of any Law by the Client, or the breach by the Client of any provision of this Agreement or if a Default Event occurs.

31.2 The Client also agrees to promptly pay Kern Private Capital for all damages, costs and expenses, including reasonable legal fees and expenses, incurred by Kern Private Capital in the enforcement of any of the provisions of this Agreement.

31.3 Kern Private Capital is not responsible for any delays, charges or loss incurred due to errors in the payment or as a result of a delay in funds reaching the Client's nominated account. The Client agrees to indemnify Kern Private Capital and be liable for any losses or charges incurred by Kern Private Capital arising from such error on the Client's behalf.

31.4 Kern Private Capital will not be liable under any circumstances for any direct, indirect or consequential loss (including any loss of profits) incurred by the Client as a result of any acts or omissions by a Third Party.

31.5 Nothing in this Agreement is intended to limit or exclude any liability Kern Private Capital may owe the Client under any statutory rights the Client may have.

31.6 In calculating or mitigating its loss due to a Default Event or Quoting Error, Kern Private Capital is entitled to:



- (a) unwind, reverse, repair or close any Open Positions by closing any open Contracts; and/or
- (b) nominate the date on which the open Order is valued; and/or
- (c) nominate the methodology used to calculate the open Orders' value; and/or
- (d) take any other action that Kern Private Capital determines to be reasonably necessary to protect its legitimate interests.

31.7 The Client's obligations under this clause 31 shall survive the termination of this Agreement.

32. INFORMATION AND CONFIDENTIALITY

32.1 The Client acknowledges and agrees that Kern Private Capital is permitted to carry out an electronic database search and search credit reference agencies in order to verify the Client's identity and credit standing. If such searches are carried out, Kern Private Capital may keep records of the contents and results of such searches in accordance with all applicable Laws.

32.2 Kern Private Capital reserves the right to collect such information as is necessary from the Client to meet its obligations under applicable Anti-Money Laundering and Counter-Terrorism Financing Laws. Kern Private Capital may pass on information collected from the Client and relating to transactions as required by applicable Anti-Money Laundering and Counter-Terrorism Financing Laws and is under no obligation to inform the Client it has done so. Kern Private Capital may undertake all such Anti-Money Laundering and Counter-Terrorism Financing checks in relation to the Client (including restricted lists, blocked persons and countries lists) as deemed necessary or appropriate by Kern Private Capital.

32.3 Personal information collected by Kern Private Capital is treated as confidential and is protected by the Privacy Act 1988. Kern Private Capital will only collect personal information which is necessary to perform the services contemplated by this Agreement.

32.4 Kern Private Capital will treat the Client's personal information in accordance with its privacy policy, which the Client may obtain on the Website.

32.5 Kern Private Capital will use reasonable precautions to maintain the confidentiality of information Kern Private Capital receives from the Client and material and/or data the Client provides, creates, inputs or develops in connection with the Client's use of the Kern Private Capital services. Nonetheless, because such information, material and/or data may be provided through the internet, the Client hereby acknowledges and agrees that Kern Private Capital cannot assure that such information, material and/or data will continue to be confidential.

32.6 The Client accepts the risk of a third party receiving confidential information concerning the Client and specifically releases and indemnifies Kern Private Capital from any claim arising out of a third party intercepting, accessing, monitoring or receiving any communication from a Client intended to be provided to Kern Private Capital or from Kern Private Capital intended to be provided to the Client.

32.7 The Client acknowledges and agrees that Kern Private Capital may disclose the Client's name and other personal and financial information about the Client, and any relevant details of an Authorized User, to its employees, representatives, officers, agents, introducing brokers and affiliates, as well as to a governmental entity or self-regulatory authority, an internet service provider or any other third party agent or service provider for any purpose related to offering,

providing, administering or maintaining the Kern Private Capital services, or to comply with applicable Laws.

32.8 Due to the inherent risks in transferring currency between parties located in different countries, Kern Private Capital takes measures to ensure that it is not participating or assisting in money laundering or terrorist financing. Law enforcement agencies and regulatory authorities may periodically inspect and require copies of Client information and business records held by Kern Private Capital, to ensure compliance with all applicable anti-money laundering and counter terrorism financing laws.

32.9 The Client should be fully aware that in appropriate cases all communications and information concerning the Client held by Kern Private Capital, may be disclosed to and reviewed by law enforcement agencies and regulatory authorities. In addition, the Client agrees to comply with all applicable anti money laundering and counter terrorism financing laws, including, but not limited to, the requirement to obtain satisfactory evidence of the identity of any principal whom the Client may represent in any transaction entered into with Kern Private Capital.

33. ANTI-MONEY LAUNDERING LEGISLATION

33.1 You acknowledge that we may require information from you from time to time to comply with the AML/CTF Act. By submitting an Application Form, opening an Account or transacting with us, you undertake to provide us with all information and assistance that we may require to comply with the AML/CTF Act.

33.2 We may pass on information collected from you and relating to transactions as required by the AML/CTF Act or other applicable laws and regulations and we are under no obligation to inform you that we have done so. We may undertake any such anti-money laundering and other checks in relation to you (including restricted lists, blocked persons and countries lists) that we deem necessary or appropriate, and we reserve the right to take any associated action without any liability whatsoever to you.

33.3 You also warrant that:

(a) you are not aware and have no reason to suspect that:

(i) the moneys used to fund your Account have been or will be derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under Australian law, international law or convention or by agreement; or

(ii) the proceeds of your investment will be used to finance any illegal activities; and

(b) neither you nor your directors, in the case of a company, are a politically exposed person as the term is used in the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1).

34. DISPUTE RESOLUTION

34.1 If a dispute arises between Kern Private Capital and the Client relating to any transaction, Kern Private Capital may close out or take any other action it considers appropriate in relation to the disputed transaction without previously notifying and/or without having received instruction from the Client.

34.2 Kern Private Capital will try to notify the Client (verbally or in writing) what action it has taken, as soon afterwards as it practically can, but if it does not, the validity of its action shall not be affected.

34.3 Nothing in this clause 34 limits the Client's rights (if applicable) to take any dispute to an equivalent external dispute resolution scheme of which Kern Private Capital is a member.

35. NOTICES

35.1 A Notice shall be in writing and shall:

- (a) if to the Client, be sent by prepaid registered mail or delivered by hand to the address of the Client set out in this Agreement, or such other address the Client designates in writing, or by Kern Private Capital posting a Notice to the Website; and
- (b) if posted on the Website, Notice is deemed to have been given 3 Days after the Notice was posted on the Website; or
- (c) if the Notice was sent to the address of the Client, the Notice is deemed to have been given on the Day after the Notice was sent, unless delivered by hand in which case the Notice is deemed to have been given on delivery.
- (d) if to Kern Private Capital, be sent by prepaid registered mail or delivered by hand to the address of Kern Private Capital set out in this Agreement, or such other address as Kern Private Capital designates in writing, and such Notice is deemed to have been given on the Day after the Notice was sent, unless delivered by hand in which case the Notice is deemed to have been given on delivery.

35.2 Any Notice may also be sent by email if:

- (a) the Notice is sent to the email address last notified by the intended recipient to the sender; and
- (b) the sender keeps an electronic or printed copy of the Notice sent.

35.3 A Notice sent by email will be deemed to have been given on:

- (a) receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the email address stated above;
- (b) the time that the Notice enters an information system which is under the control of the recipient;
- and/or
- (c) the time that the Notice is first opened or read by an employee or officer of the recipient.

36. GOVERNING LAW

36.1 This Agreement shall be governed by and construed in accordance with the Law of New South Wales. The parties agree to irrevocably submit to the non-exclusive jurisdiction of the Courts of New South Wales.

37. ASSIGNMENT



37.1 Any rights or obligations that the Client may have pursuant to this Agreement shall not be assigned, transferred, sold, or otherwise conveyed, except with the prior written consent of Kern Private Capital. Kern Private Capital may, however, transfer any rights or obligations it may have pursuant to this Agreement to another party without the consent of the Client. The Client will execute any documents (including a deed of novation) reasonably required by Kern Private Capital to effect such a transfer.

38. SEVERENCE

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

38.2 Any present or future legislation which operates to vary the Client's obligations in connection with this Agreement with the result that Kern Private Capital's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

39. FURTHER ACTS

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

39.2 The Client agrees to do anything Kern Private Capital reasonably requests (such as obtaining consents, signing and producing documents and arranging documents to be completed and signed):

- (a) to bind the Client and any other person intended to be bound under this Agreement;
- (b) to show whether the Client is complying with this Agreement.