



Terms & Conditions

2014

This document sets out the Terms & Conditions on and subject to which Collinson & Co. Ltd (Company Number 685128, New Zealand FSP number FSP119385) and the Client enter into transactions.

Contents

1. Definitions and Interpretations	2
2. Introduction	4
3. Forex Transactions	4
4. Limit Orders	5
5. Settlement & Payment.....	5
a. Basis of Settlement	5
b. Client Payments	6
c. Collinsons’s Payments.....	6
6. Set Off	6
7. Deposits & Margins.....	7
8. Term, Extension & Pre-Deliveries of Forward Contracts	8
9. Trading Platform	9
a. Availability of Trading Platform	9
b. Using an Electronic Trading Platform	9
c. Acknowledgments and agreements of the Client.....	10
d. Third party Licensors.....	12
e. Security and operating environment.....	14
f. Disclaimer.....	15
10. Authority & Communications	15
11. Amendment to Termination	16
12. Default Events.....	16
13. Indemnity.....	18
14. Limitation of Liability.....	18
15. Representations and Acknowledgements	19
16. Force Majeure.....	20
17. Proper Law and Jurisdiction	20
18. Dispute Resolution.....	21
19. Assignment.....	21
20. Notices	21

1. Definitions and Interpretations

- a. In this Agreement and any Confirmations the following terms shall have the following meanings:
- i. **“Agreement”**: The terms and conditions of concluding business between the parties in this document.
 - ii. **“Authorised Person”**: the Client and/or any person authorised by the Client to give instructions (oral, written or electronic) to Collinsons in the Client Profile Form.
 - iii. **“Balance Date”**: The day on which any Settlement funds due by the Client are to be paid.
 - iv. **“Beneficiary or Beneficiaries”**: The party or parties receiving the benefit due to Clients arising from Forex Transactions.
 - v. **“Business Day”**: A day in which the Banks and the Foreign Exchange Market are open for business and Settlements for the currencies specified on a Forex Transaction.
 - vi. **“Client”**: The party specified on the Application to Open an Account attached to this Agreement, the “Client Profile Form”.
 - vii. **“Close Out”**: The reversal of a Forex Transaction at the then Current Market Value or Rate.
 - viii. **“Confirmation”**: The written advice given by Collinsons to the Client recording the essential dates and currency amounts in the Forex Transaction.
 - ix. **“Contract Date”**: The day on which a Forex Transaction is entered into by the parties as recorded in the Confirmation.
 - x. **“Contract Market Value (or) Rate”**: The current market rates quoted by Collinsons.
 - xi. **“Collinsons”**: Collinson & Co, Collinson Forex Limited.
 - xii. **“Electronic Trading Platform”**: an electronic trading platform referred to in clause 9(a) made available by Collinsons to the Client, including by way of the Internet, for the purposes, among other things, of entering into certain types of Transactions;
 - xiii. **“Extension”**: Transfer of settlement obligations (in full or part) of the parties to a date following the original Value Date of the Forex Transaction as recorded in the Confirmation.
 - xiv. **“Forex Transaction”**: The sale and purchase of foreign currency.
 - xv. **“Forward Contract”**: When delivery of currency is due to occur on a date in the future beyond two (2) business days after the Contract Date referred to in the Confirmation.
 - xvi. **“Historic Rate Roll”**: Extensions or Pre-Deliveries with the rate adjustment based on the original rates of the Forex Transaction as recorded in the Confirmation.
 - xvii. **“Initial Deposit”**: The sum of money required to be paid to Collinsons to secure a Forward Contract.

- xviii. **“Licensor”**: each licensor of any software utilised by Collinsons in relation to an Electronic Trading Platform.
- xix. **“Limit Order”**: An order by the Client to enter a Forex Transaction at a rate more favourable to the Client than the Current Market Rate as quoted by Collinsons.
- xx. **“Margin Deposit”**: The sum of money required to reinstate part or all of the diminished value of Initial Deposits arising from Marking to Market Open Positions.
- xxi. **“Market Rate Roll”**: Extensions or Pre-Deliveries with rate adjustment based on Current Market Rates as quoted by Collinsons.
- xxii. **“NZD”**: New Zealand Dollars
- xxiii. **“Open Position”**: Forex Transactions where Settlement obligations still remain.
- xxiv. **“Pre-Deliveries”**: Transfer of Settlement obligations (in full or in part) to a date prior to the original Value Date of the Forex Transaction.
- xxv. **“Settlement”**: The completed delivery of currency by both parties.
- xxvi. **“Security Credentials”**: in relation to any Trading Platform, any security credentials that the Client and/or any of its Authorised Persons uses to access or use the Trading Platform, including any user name, account number, Client ID, user ID and/or password.
- xxvii. **“Spot Contract”**: An agreement where the delivery of currency is due to occur in the second business day after the Contract Date specified on the Confirmation.
- xxviii. **“Stop Entry”**: An order to enter into a new Forex Transaction at a rate less favourable to the Client than the Current Market Rate as quoted by Collinsons.
- xxix. **“Stop Loss”**: An order to enter or exit an existing Forex Transaction at a rate less favourable to the Client than the Current Market Rate as quoted by Collinsons.
- xxx. **“Trading Platform”**: means either:
 - 1. An Electronic Trading Platform; or
 - 2. Telephone or other means as may be specified by Collinsons in writing with respect to a type of Transaction.
- xxxi. **“Trading Platform Communication”**: any order or instruction or other communication sent by way of the Trading Platform by or on behalf of the Client (or purportedly by or on behalf of the Client).
- xxxii. **“Transaction”**: any transaction into which Collinsons and the Client have entered or propose to enter involving, or referable to the value of, or granting rights or accepting obligations in respect of or by reference to one or more currencies, which for the avoidance of doubt includes currency option transactions;
- xxxiii. **“Unrealised Loss”**: Loss or losses sustained by Collinsons arising on marking to Market Open Positions as Current Market Rates.

- xxxiv. **“Value Date”**: The day on which any Settlement due by Collinsons is to be paid.
- b. In this Agreement unless the context otherwise states:
 - i. Words denoting the singular shall include the plural and vice versa and words denoting a given gender shall include all other genders.
 - ii. Headings are for convenience only and shall not affect the interpretation of this Agreement.
 - iii. References to clauses are to clauses of this Agreement.
 - iv. These Terms and Conditions of Business are dated 6 March 2014 and supersede all previous Terms and Conditions of Business.

2. Introduction

- a. This Foreign Exchange Agreement is entered into between the Client or the ‘Confirmation’ (**“the Client”**) and Collinson Forex Limited of Collinson & Co (**“Collinsons”**), as specified on the Confirmation. Collinsons provides services for the sale and purchase of foreign currency (**“Forex Transactions”**).
- b. Each Forex Transaction between Collinsons and the Client will always be subject to these Terms and Conditions:

3. Forex Transactions

- a. A Forex Transaction may be of any type agreed between Collinsons and the Client, for the sale or purchase of currency including but not limited to those known in the industry as:
 - i. Spot;
 - ii. Forward;
 - iii. Option; and
 - iv. Other Derivative Contracts as specified in the Confirmation.
- b. Forex Transactions may be entered into either verbally, electronically or by written agreement between Collinsons and the Client.
- c. Where a Forex Transaction is entered into, Collinsons shall promptly confirm the terms by completing a written Confirmation of the Forex Transaction (**“the Confirmation”**). The failure of Collinsons to do so will not prejudice the rights or obligations of either party under such contract.
- d. Unless the Client notifies Collinsons of any error or omission immediately upon receipt of any Confirmation, the client shall be deemed to have ratified and

accepted the contents of such Confirmation. The Client shall not thereafter be entitled to dispute the contents of any such Confirmation and it shall (except where there is manifest error accepted by Collinsons) be conclusive evidence of the matters stated in it.

- e. In entering into Forex Transactions, Collinsons acts as principal and not as a broker or an agent of the Client.

4. Limit Orders

- a. Collinsons will accept, on a 'best endeavours basis' only, Limit Orders from the Client to enter into a new Forex Transaction or to Close Out an existing Forex Transaction.
- b. All Limit Orders, once accepted by Collinsons, are valid until filled by Collinsons or until the Client's request to cancel is accepted by Collinsons.
- c. New Limit Orders placed by the Client and requests by the Client to cancel existing Limit Orders are subject to written acceptance by Collinsons.
- d. New Limit Orders may not be filled, or cancelled, Limit Orders may be filled, prior to written acceptance by Collinsons of the new or cancelled Limit Order. In such cases Collinsons will have no liability for New Limit Orders not filled and the Client will have full liability to settle cancelled Limit Orders that are filled.
- e. The Client accepts that Limit Orders placed to limit losses on existing Forex Transactions ("**Stop Losses**") or entering into new Forex Transaction at levels less favourable to the Client than the Current Market Rate as quoted by Collinsons ("**Stop Entries**") may at times be filled at a level worse than that at which the order was placed. Such differences may, in times of high volatility or low liquidity, result in significant losses to the Client.

5. Settlement & Payment

a. Basis of Settlement

- i. Subject to clause 6(a), settlement obligations in Forex Transactions are to pay money in the currency specified in the Confirmation without any deduction, set off or counter-claim whatsoever.
- ii. However, Collinsons may at its sole discretion set off amounts payable to the Client against amounts receivable by the Client on more than one Forex Transaction maturing on the same date upon which settlement is due to be paid by Collinsons ("**the Value Date**"). The effect of this will be that only the

net difference in amount in the currency specified in the Confirmations are settled.

b. Client Payments

- i. All payments must be made in the agreed currency on the date that settlement funds are due to be paid by the Client (“**the Balance Date**”) without any deduction, set off or counter-claim whatsoever.
- ii. Any deduction from the amount due by the Client, either as a result of bank charges or otherwise, may be deducted at the Current Market Rate quoted by Collinsons from the amount due to the Clients or the Client’s Beneficiary or Beneficiaries.
- iii. Payments must be made exactly as requested in the Confirmation.
- iv. Time is of the essence for all payments to be made by the Client and payment dates and times are essential terms of the agreement between the parties. Dates and times mean New Zealand dates and times.
- v. Where the amount due by the Client is received after the Value Date, Collinsons reserves the right to charge for any funding costs arising from such late payment. These funding costs may either be charged as a fee to the Client or as an adjustment to the original contract rate.

c. Collinsons’s Payments

- i. Collinsons’s obligation to perform this agreement is subject to and conditional upon the Client having first paid all amounts required to be paid to Collinsons with regard to each Forex Transaction. These payments must be received by Collinsons as cleared funds without recourse or by Collinsons having received cleared payments originally received on a recourse basis.
- ii. Collinsons will not be responsible for, nor have any liability for, any delay in payment of the Client or the Client’s Beneficiaries or agents where such delay is caused by any bank or third party.
- iii. Collinsons will not be responsible, nor have any liability for, any charges incurred as a result of paying to or receiving from any banks or any other financial intermediary.

6. Set Off

- a. Collinsons may at its sole discretion at any time set off, deduct or counter-claim any amount which is or may become payable by the Client against any amount which is

or may become payable by Collinsons to the Client so that only the net balance remains owing. This right may be exercised whether or not:

- i. The amounts concerned relate to Forex Transactions;
- ii. The amounts concerned arise under this or a different agreement between Collinsons and the Client;
- iii. The amounts concerned are due in the same or different currencies.

7. Deposits & Margins

- a. Where delivery of currency is due to occur at a date in the future beyond two (2) business days after the Contract Date referred to in the Confirmation ("**Forward Contract**") then delivery is subject to the payment of money of the deposit ("**Initial Deposit**"). Collinsons may also make delivery subject to the payment of further deposits ("**Margin Deposits**") by the Client.
- b. An Initial Deposit (at a rate determined by Collinsons in its absolute discretion) is payable by the Client to secure the Client's obligation under the Forward Contract and will be recorded in the Confirmation issued by Collinsons.
- c. Collinsons may, in its absolute discretion, raise or lower the Initial Deposit requirement which, once established, may apply to existing as well as to any new Forward contracts.
- d. Collinsons may from time to time revalue the Client's Forex Transactions that have not fully matured ("**Open Positions**") by Marking to Market the Client's Open Positions. This is a revaluation based on the Current Market Rate quoted by Collinsons and applying it as if the Open Position was to be Closed at that date. Where such revaluation results in an Unrealised Loss to Collinsons (less any Margin Deposits still retained by Collinsons reducing the value of the Initial Deposit of the Client by more than 50%), Collinsons may in its absolute discretion call upon the Client to make immediate payment of a Margin Deposit sufficient in sum to restore the original value of the Initial Deposit.
- e. Collinsons, in its absolute discretion, may apply Margin Deposits against either one or more Open Positions of the Client and may do so at any time from receipt of, to the repayment of, the Margin Deposits.
- f. Collinsons may in its absolute discretion reallocate Initial Deposits between Open Positions of the Client where the total value of all the deposits applied against individual Open Positions records a negative value when that Open Position is revalued by Marking to Market as set out in clause 6.d above.

- g. Collinsons will, upon request, repay Margin Deposits to the Client when revaluations result in the value of total deposits exceeding Initial Deposits of the Client's total Open Positions or at an earlier time when Collinsons decides it appropriate to make either a full or part repayment. However, in no case shall any Initial Deposit amount be repaid prior to final settlement of the Open Position to which the Initial Deposit applies.
- h. Unless otherwise stipulated by Collinsons, Initial Deposits are payable by the close of business on the day following the Contract Date recorded in the Confirmation. Margin Deposits are payable by the close of business on the day following the day.
- i. If agreed between Collinsons and the Client, Collinsons will credit the Client any net interest (less any withholding taxes) on all deposits held against the Client's Open Positions. Interest is accrued and paid annually at 31 March in each and every year. For the purposes of interest calculations, all Deposits applied against each individual Open Position are treated as one individual "at call" deposit and any Margin Deposits not applied against individual Open Positions are treated in total as one individual "at call" deposit. However, in the absolute discretion of Collinsons, deposits may be adjusted by the amount of any Unrealised Loss (as set out in clause 6.d above) for the purposes of determining any interest payment.
- j. Payment of all deposits by the Client to Collinsons is an essential term of this Agreement and time is of the essence with respect to them. The deposits are in consideration of and in part performance of the Client's obligations in this Agreement. Unless stated otherwise in the Confirmation, all deposits paid are the property of Collinsons and are not held by Collinsons as a stakeholder, nor are they held in trust for the Client.

8. Term, Extension & Pre-Deliveries of Forward Contracts

- a. Unless otherwise agreed in writing by Collinsons, the initial term of a Forward Contract (as described in clause 6.a above) shall not exceed 12 months from the Contract Date referred to in the Confirmation.
- b. Unless otherwise agreed in writing by Collinsons at the time of entering into a Forward Contract, an extension to any Forward Contract is undertaken as a "Market Rate Roll". Any pre-delivery to any Forward Contract is undertaken as a "Historic Rate Roll".
- c. Extensions undertaken as a Market Rate Roll shall not exceed 12 months in duration.
- d. Extensions, which are agreed to as an Historic Rate Roll, are limited to no more than three extensions of term within a six-month period with no individual extension having a term greater than three months.

9. Trading Platform

a. Availability of Trading Platform

i. Schedule specifies form of Trading Platform

For each type of Transaction offered by Collinsons, the relevant schedule and/or addendum will specify:

1. If an Electronic Trading Platform is available; or
2. Such other form of Trading Platform that may be used.

ii. Password-protected Electronic Trading Platform

Where an Electronic Trading Platform is available, Collinsons will deal with the Client by way of a password-protected electronic trading platform to which the Client has access over the internet.

iii. Transacting only in accordance with specified Trading Platform

The Client acknowledges and agrees that the Client may not transact with Collinsons except in accordance with the specified Trading Platform or as may otherwise be agreed by Collinsons on a case by case basis.

b. Using an Electronic Trading Platform

i. What an Electronic Trading Platform enables Client to do

Collinsons may provide an Electronic Trading Platform for the purpose of the Client entering into certain types of Transactions, viewing Confirmations and/or other ancillary services.

ii. Agreement to access and use

The Client agrees to access and use each Electronic Trading Platform in accordance with, and solely for the purposes set out in, this Agreement.

iii. Third party providers

The provision of an Electronic Trading Platform may involve the sub-licensing of Licensor software and/or information systems.

iv. Changes to Electronic Trading Platform

Collinsons or the Licensor may, with or without notice to the Client, change the nature, composition, features or availability of an Electronic Trading Platform.

v. Reference to Electronic Trading Platform in Agreement

1. Collinsons may provide one or more Electronic Trading Platforms depending upon the type of Transactions that Collinsons is willing to enter into at that time.
2. A reference to "Electronic Trading Platform" in this Agreement is a reference to the Electronic Trading Platform(s) provided in relation to the relevant type of Transaction.

vi. Unavailability of Electronic Trading Platform

Where, for any reason, the Client is unable to access and use the relevant Electronic Trading Platform, Collinsons may, at its absolute discretion, trade through other means with the Client, such as by telephone.

c. Acknowledgments and agreements of the Client

The Client:

i. **Authority to make determinations**

Authorises Collinsons to make certain determinations under this Agreement, including in relation to the Client's margin position and the termination and close-out of Transactions through use of and/or communication by way of the relevant Trading Platform;

ii. **"As is" basis**

Acknowledges and agrees that any Electronic Trading Platform is provided on an "as is" basis;

iii. **Risks of use of Trading Platform**

1. Acknowledges and agrees that there are significant risks associated with using and relying on a Trading Platform, including risks related to the use of software and/or telecommunications systems, such as software errors and bugs, delays in telecommunications systems, interrupted service, data supply errors, faults or inaccuracies and security breaches;
2. Assumes all risk of use or attempted use of a Trading Platform and any data provided by way of a Trading Platform; and
3. Acknowledges and agrees that it has no recourse against Collinsons or any Licensor in relation to the use or availability of a Trading Platform or any errors in Licensor software and/or related information systems;

iv. **Support and maintenance**

Acknowledges and agrees that Collinsons has no obligation or responsibility to provide support for or maintenance of any Trading Platform, including by supplying any corrections, updates or new releases;

v. **No responsibility to inform Client of difficulties**

Acknowledges and agrees that Collinsons has no obligation or responsibility:

1. To inform the Client of any difficulties Collinsons or other third parties experience in relation to use of or access to a Trading Platform or to take any action in relation to those difficulties; and
2. To verify, correct, complete or update any information displayed on a Trading Platform;

vi. **Client responsibility**

1. Assumes full responsibility for any decision in relation to which any data provided to the Client by way of a Trading Platform may be used or relied upon;
2. Will make its own independent decision to access or use a Trading Platform or to enter into any Transaction; and
3. Acknowledges and agrees that no Trading Platform serves as the primary basis for any of the Client's investment decisions concerning its accounts or its managed or fiduciary accounts;

vii. Authorised Persons

1. Agrees to be responsible for ensuring that each of its Authorised Persons accesses or uses any Trading Platform in compliance with this Agreement or as otherwise notified by Collinsons, as if the same were stated to apply to the Authorised Person;
2. Agrees to be responsible for ensuring that any person who accesses or uses a Trading Platform is duly qualified and appointed as an Authorised Person;
3. Agrees that the Client is liable for the conduct of each of its Authorised Persons; and
4. In the case of any breach of this Agreement by any of its Authorised Persons, agrees to notify Collinsons immediately;

viii. Security Credentials

1. Agrees to ensure the security and confidentiality of all Security Credentials;
2. Agrees to ensure that any such Security Credentials are exclusive to and only used by a single Authorised Person;
3. Agrees to ensure that each Authorised Person maintains the security and confidentiality of such Security Credentials and that none of its Authorised Persons:
 - a. Copies, distributes or transfers any such Security Credentials in any manner to any other computer, computer system or electronic device; or
 - b. Modifies, alters, disassembles or decrypts any Security Credentials, attempts to do so or allows another person to do so or attempt to do so; or
 - c. Uses the Security Credentials for any purpose other than to communicate with Collinsons; and
4. Agrees and acknowledges that, if any person who is not an Authorised Person accesses or uses a Trading Platform using a security Credential, the Client is liable for the conduct of that person and the person's compliance with this Agreement as if that person were an Authorised Person, whether or not the Client authorised the access and/or use;

ix. Termination, etc., of Security Credentials

Acknowledges and agrees that, if Collinsons determines that the security surrounding any Trading Platform or the security or confidentiality of any Security Credentials is or has been breached, Collinsons may terminate, revoke, suspend, modify or change any or all of the Security Credentials at any time with or without prior notice; and

x. Trading Platform Communications

1. Acknowledges and agrees that where a Trading Platform requires the use of Security Credentials, all trading Platform Communications are deemed to be on behalf of and authorised by the Client;

2. Accepts all responsibility for the genuineness and accuracy, in relation to content and for, of all Trading Platform Communications and for all resulting actions, including order entered and Transactions entered into;
3. Acknowledges that Collinsons is not obliged to act on any Trading Platform Communication and will be free to accept or reject, in its sole discretion, any transaction that the Client seeks to execute through the Trading Platform;
4. Acknowledges and agrees that Collinsons may, at its discretion, verify receipt of any Trading Platform Communications;
5. Acknowledges and agrees that the Client has no right to amend or revoke a Trading Platform Communication, unless Collinsons agrees otherwise; and
6. Acknowledges and agrees that:
 - a. Collinsons's records of any Trading Platform Communication and any communication sent by Collinsons by way of the relevant Trading Platform are deemed to be accurate until the contrary is proven; and
 - b. The Client bears the burden of proof that those records are inaccurate or incomplete, except in the case of manifest error or fraud

xi. **Provision of Market Information**

Acknowledges and agrees that where a Trading Platform displays market data and other purely factual information (collectively "**Market Information**") that:

1. Collinsons does not endorse or approve the Market Information and makes it available to the Client only as a service and convenience;
2. Collinsons does not guarantee the accuracy, timeliness, completeness or correct sequencing of the Market Information;
3. Collinsons does not warrant any results from the Client's use or reliance on the Market Information;
4. Collinsons is not obligated to update any information or opinions contained in any Market Information;
5. Collinsons may discontinue offering Market Information at any time;
6. Collinsons will not be liable in any way for the termination, interruption, delay of inaccuracy of any Market Information; and
7. The Client will not redistribute or facilitate the redistribution of Market Information to any third party.

d. Third party Licensors

i. Waiver of claims

1. The Client acknowledges and agrees that the provision of an Electronic Trading Platform may involve the sub-licensing of Licensor software and/or information systems.

2. The Client waives all claims and causes of action which it may otherwise have against a Licensor.

ii. **Licensor not party to Transactions**

The Client acknowledges and agrees that:

1. The Licensor is providing only a technical means for effecting Transactions;
2. The Licensor is neither directly nor indirectly a party to any Transaction;
3. The Licensor is not inviting, arranging for, or advising the Client or any third party to effect any Transaction or to purchase, sell or otherwise deal in any currency, security, commodity, derivative of future;
4. The Licensor is not liable in any manner to any person for the failure of any person effecting a Transaction by way of an Electronic Trading Platform to perform its obligations under that Transaction; and
5. The Licensor will not be involved in any dispute relating to any Transaction.

iii. **Audit**

The Client:

1. Is to maintain, for the duration of this Agreement, and for a period of 3 years afterwards, accounting and computer records that enable Collinsons and/or any Licensor to determine compliance with this clause and this Agreement;
2. Is to permit Collinsons and/or any Licensor to audit the Client's access to and use of any Electronic Trading Platform (including the Client's records of its access to and use of that Electronic Trading Platform); and
3. Acknowledges that information obtained pursuant to this clause may be used to determine the Client's compliance with this clause.

iv. **Intellectual Property Rights in Electronic Trading Platform**

1. The Client acknowledges and agrees that:
 - a. All Intellectual Property Rights in respect of or derived from an Electronic Trading Platform are and remain the sole and exclusive property of Collinsons and/or any Licensors; and
 - b. The Client has no Intellectual Property Rights in respect of or derived from and will not acquire any Intellectual Property Rights in relation to an Electronic Trading Platform and/or any derivative or adaptation of an Electronic Trading Platform.
2. The Client is to use all reasonable efforts:
 - a. To protect any such Intellectual Property Rights in an Electronic Trading Platform; and

- b. To comply with a request of Collinsons, acting reasonably, to protect its contractual, statutory and common law rights and obligations in respect of an Electronic Trading Platform.
 3. If the Client becomes aware of any access to or use of the Electronic Trading Platform by a third party that is unauthorised or which constitutes and infringement or interference with any of Collinsons's and/or the Licensor's Intellectual Property Rights, it is promptly to notify Collinsons and, acting reasonably, co-operate with Collinsons and/or any Licensor with respect to any legal action which Collinsons and/or any Licensor may undertake in respect of the infringement.
- v. **Restrictions on use of Electronic Trading Platform**

The Client acknowledges and agrees not:

1. To access or use any Electronic Trading Platform for any purpose other than to request prices and enter into Transactions with Collinsons; or
2. To use, copy, merge, make derivative works of or transfer copies of any software; or
3. To use or disclose to any third party any information obtained through or from an Electronic Trading Platform other than for the purposes expressly set out in this Agreement; or
4. To allow any access to or use of an Electronic Trading Platform by any third party; or
5. To sell, lease or otherwise provide, directly or indirectly, an Electronic Trading Platform to any third party except as expressly permitted by this Agreement; or
6. To reverse engineer, disassemble or decompile any software; or
7. To copy any manuals related to an Electronic Trading Platform; or
8. To remove any statutory copyright notice, or other notice included in an Electronic Trading Platform or Licensor software or on any medium containing that software; or
9. To transmit or receive using an Electronic Trading Platform (or cause to transmit or receive) any information or material which is pornographic, obscene, abusive, profane, offensive, misleading, deceptive, disparaging or defamatory; or
10. To use the Electronic Trading Platform after the expiry, termination or cancellation of this Agreement and/or any license agreement between Collinsons and its Licensor.

e. Security and operating environment

The Client is responsible for ensuring the adequacy of the operating environment and the security of the environment, both physical and electronic, of the Client's and the Client's Authorised Persons' access to and use of an Electronic Trading Platform, including:

i. **Maintaining security measures**

Maintaining appropriate security measures to prevent unauthorised access to, use of or damage:

1. To an Electronic Trading Platform and any information systems accessible through an Electronic Trading Platform; and
2. To any password management system not explicitly controlled by Collinsons or a Licensor;

ii. **Use of Electronic Trading Platform from laptop, etc.**

Where the Client accesses and uses, or attempts to access and use, an Electronic Trading Platform from any laptop computer or other portable device, taking all measures necessary to ensure the security, integrity and reliability of such computer or other portable device (including the security of the internet connection) and the Client is solely liable for any failure in such computer or other portable device's security, integrity or reliability; and

iii. **Compliance with operational and security procedures**

Complying with all reasonable operational and security procedures notified by Collinsons from time to time and to inform Collinsons immediately of any breach of security.

f. Disclaimer

To the maximum extent permitted by law, Collinsons makes no representation or warranties (express or implied) and expressly disclaims any warranties:

i. **Quality and performance of Trading Platform**

In relation to the merchantability or fitness for a particular purpose and any warranty for the access to or use of or the results of the access to or use of a Trading Platform with respect to its suitability, availability, functionality, correctness, quality, accuracy, completeness, reliability performance, timeliness, operation, continued availability or otherwise;

ii. **Instructions**

That any Trading Platform Communication:

1. Will result in Collinsons entering into a Transaction with the Client; and/or
2. Has been received by Collinsons; and

iii. **Requirements or needs**

That a Trading Platform meets the requirements or needs of the Client.

10. Authority & Communications

- a. The Client shall be responsible for providing Collinsons with a list of persons authorised to enter into Forex Transactions with Collinsons ("**Authorised Persons**") on its behalf and shall have sole responsibility for ensuring the reliability and communication of this list to Collinsons. Collinsons may rely on the list at all times, and is not bound to inquire as to whether or not persons who represent themselves

as being an Authorised Person of the Client in their dealings with Collinsons are duly authorised by that Client.

- b. The Client must ensure that all its communications with Collinsons relation to Forex Transactions are made clearly and in a form acceptable to Collinsons.
- c. Collinsons rely on all communications received by it and believed in good faith to have originated from the Client as if the communication was made by and with the full authority of the Client. Collinsons may assume each communication received is made by and with the full authority of the Client if it is consistent with a practise or established pattern of dealing in Forex Transactions. This includes offers made by a person who has succeeded to a position where the previous holder of that position had the required authority.
- d. Any such telephone recordings or transcripts of such recordings made by Collinsons may be destroyed by Collinsons in accordance with Collinsons's normal practice and without notice to the Client.

11. Amendment to Termination

- a. Collinsons may from time to time amend, alter, modify, substitute or supplement the terms and conditions of this Agreement. If an Agreement had been actually signed (electronically or otherwise) between Collinsons and the Client, then Collinsons shall give two Business Days' notice in writing of such change. Unless otherwise terminated by the Client in accordance with provisions of Clause 9(c), the Client will be deemed to have accepted such changed terms and conditions.
- b. The terms and conditions upon which a Client enters into new Forex Transactions under this Agreement are those terms and conditions (as so amended, altered, modified, substituted or supplemented under Clause 9(a)) in force at the time the Client enters into a new Forex Transaction.
- c. If the Agreement is terminated, Collinsons in its absolute discretion may Close Out all Open Positions of the Client in accordance with Clause 10(d).

12. Default Events

- a. The following events constitute Default Events.
 - i. The Client breached or fails to comply with any terms of the Confirmation of this Agreement or any terms of each Forex Transaction including, but not limited to, the failure to pay an amount due within the stipulated time including Initial Deposits and Margin Deposits.
 - ii. If any dispute arises between Collinsons and the Client relating to the Confirmation (as referred to in Clause 2(d) of this Agreement).
 - iii. The Client commits any act of insolvency, bankruptcy, suspends payment of its debts, makes a composition with any of its creditors or any steps are taken to appoint a receiver, statutory manager, liquidator or provisional liquidator or to bankrupt or wind up the Client.

- iv. The Client, if an individual, dies or becomes of unsound mind or mentally disordered (in the sole opinion of Collinsons).
 - v. The Client fails to adequately disclose the nature of and reason for any settlement of purchased currency when requested by Collinsons acting within the guidelines of the Financial Transactions Reporting Act 1996 (a New Zealand Statute) and any amendments thereto or any similar legislation of a jurisdiction other than New Zealand or any legislation of an Exchange Control nature of any jurisdiction.
 - vi. If it becomes unlawful of Collinsons to maintain or give effect to all or any of the obligations under this Agreement or if Collinsons or the Client is requested to close a Contract, or any part thereof, by any regulatory authority whether or not that request is legally binding.
- b. If any Default Event occurs Collinsons shall have the right to Close Out any Forex Transaction of the Client including the right to Close Out all or any part of the Client's Open Position without giving prior notice to or receiving authority from the Client.
- c. The Client unconditionally and irrevocably appoints Collinsons as its agent with all necessary authority to carry out any action to protect Collinsons's position and to do these things on the basis that Collinsons will not be liable for action taken in good faith, following the Default Event.
- d. If Collinsons chooses to Close Out one or more of the Client's Open Positions following a Default Event, then those Forex Transactions will be immediately cancelled as follows: -
- i. Collinsons will sell back to the Client (at Current Market Rates as quoted by Collinsons) the currency originally purchased by Collinsons, or will buy back from the Client (at Current Market Rates as quoted by Collinsons) the Currency originally sold by Collinsons.
 - ii. The net difference, if other than New Zealand Dollars ("NZD"), shall be immediately converted to NZD by Collinsons (at Current Market Rates as quoted by Collinsons).
 - iii. Where the aggregate amount of NZD due to the Client (including deposits and any accrued interest applied against the Open Positions is Closed Out) is greater than the aggregate amount of NZD due to Collinsons, then the difference will be payable immediately by Collinsons to the Client as directed.
 - iv. Where the aggregate amount of NZD due to the Client (including deposits and any accrued interest applied against the Open Positions is Closed Out) is less than the aggregate amount of NZD due to Collinsons, then the difference will be payable immediately by the Client to Collinsons as directed.
- e. If any payment due by the Client arising from a default event is not paid on the Balance Date, then the Client must pay to Collinsons interest on the amount unpaid (both before and after judgement). The interest rate per annum will be equal to

Collinsons cost of funds as determined by Collinsons plus an additional 5% p.a., of the said amount unpaid.

- f. The Client must also pay to Collinsons, “upon demand”, such other amounts as are necessary to compensate Collinsons for any other damages, losses, costs (including any legal costs or costs of collection on a solicitor-client basis) and expenses arising out of, or consequential to any Default Event.
- g. Collinsons’s certificate as to the amount due under clauses 10(d)(iii) & (iv) and 10(f) will be conclusive

13. Indemnity

- a. The Client shall at all times indemnify (and keep indemnified) Collinsons for all losses which Collinsons suffers:
 - i. In its proper performance of services to the Client; or
 - ii. Where the Client fails to honour its obligations under this or any other agreement; or
 - iii. Where Collinsons exercises it’s right under clause 10(b) above; or
 - iv. On the happening of a Default Event.
- b. Such losses include (but are not limited to) all costs of collection (including Collinsons’s actual legal costs), expenses, liabilities, loss of profits, consequential losses, costs incurred to third parties, and costs incurred in taking such actions as Collinson (in its absolute discretion) considers reasonable to mitigate any losses it incurs or could incur.
- c. The certificate of Collinsons as to the amount due under Clause 11(b) shall, except for manifest error be conclusive.

14. Limitation of Liability

- a. Any defect in the Forex Transaction provided by Collinsons shall not entitle the Client to cancel this Agreement.
- b. Collinsons contracts with the Client are for the sale and purchase of foreign currency only. The Client acknowledges that all contracts are entered into at its own risk and that, subject to Collinsons complying with the Client’s instructions as to delivery of currency, no liability whatsoever shall attach to Collinsons in respect to any loss suffered by the Client as a result of a Forex Transaction.
- c. Without limited or expanding the other terms of the Agreement, the Client’s sole remedy against Collinsons will be limited to breach of contract. Collinsons sole and total liability for such claim shall be limited to the re-supply of the Forex Transaction again at the original rate.
- d. Subject only to Collinsons’s liability for breach of contract (if any) pursuant to clause 12(c) above Collinsons (together with any of its employees, agents and Directors) will not be liable to the Client for any form of loss or damage or claims. Such claims

- include breach of contract, statute or duty in tort (including negligence) or any other claim in equity or otherwise at law for any losses or damages.
- e. Notwithstanding anything else herein contained or implied, Collinsons enters this Agreement as a business or trade transaction with the Client and to the fullest extent possible, excludes all of its legal liabilities under any relevant consumer protection legislation (including, in New Zealand, the Consumer Guarantees Act 1993).
 - f. The Client at all times relies on its own judgment only and although Collinsons may provide information to the Client from time to time, it will not provide advice to the Client upon the merits of a proposed Forex Transaction or provide taxation or other advice to the Client. Any information that may be given to the Client by Collinsons will be on the basis that it is provided in good faith and with Collinsons's 'best endeavours' undertaking not to be misleading. However, Collinsons does accept liability for any losses or damage incurred by the Client (whether direct or indirect) as a result of such advice or information. Clients act upon any advice or information from Collinsons entirely at their own risk.
 - g. These clauses 12(a) to 12(g) inclusive shall survive termination of this Agreement.

15. Representations and Acknowledgements

- a. The Client represents and Warrants that:
 - i. No available act of bankruptcy or insolvency exists at the Contract Date of any Forex Transaction.
 - ii. All Forex Transactions are in the normal course of business or are legitimate commercial or investment activities and none are in contravention of the Financial Transactions Reporting Act 1996 (a New Zealand Statute) and any amendments thereto or any similar legislation of a jurisdiction other than New Zealand.
 - iii. All Forex Transactions are and will be on their own behalf unless otherwise disclosed to Collinsons and where such disclosure has been made Collinsons may in its absolute discretion decline to enter into the Forex Transactions, the Client will provide to Collinsons, upon request, such information regarding its financial and business affairs and identity as Collinsons reasonable require.
 - iv. All sums by way of deposit or other settlement are the unencumbered property of the Client and do not and will not constitute any preferential payment to Collinsons.
 - v. It will advise Collinsons of any change in its circumstances as set out above, before any Settlement.
- b. The Client Acknowledges that:
 - i. Entering into Forex Transactions carries the risk of loss as well as the prospect of profit.

- ii. It is the Client's responsibility to advise Collinsons the name(s) and account details of any party to receive the benefit of the Forex Transaction ("**the Beneficiary**") together with the amount of currency purchased by the Client to be settled to that Beneficiary. Unless so advised, Collinsons will hold the purchased currency on behalf of the Client without any obligation to pay interest to the Client on the amounts so held.
- iii. It is aware that Collinsons may, on its own account or on behalf of other Clients, enter into Forex Transactions that may run counter to the Client's interests. Collinsons is entitled to do so and owed no duty of disclosure or care to the Client in respect of such Forex Transactions.

16. Force Majeure

- a. Collinsons shall not be liable for any loss suffered by the Client as a result of Collinsons's non-performance by reason of impossibility, illegality, impracticability or generally as a result of circumstances beyond Collinsons's control including (but not limited to):
 - i. Any requirement to comply with any law or direction of any kind which financial institutions like Collinsons customarily obey; or
 - ii. Events arising directly or indirectly from the occurrence of any natural or man-made disaster, armed conflict, act of terrorism, riot, labour disruption,
 - iii. Computer or electronic communication of funds transfer failure; or
 - iv. Any banks or other financial institution's errors, delays or miscalculations.

17. Proper Law and Jurisdiction

- a. This Agreement shall be governed by New Zealand in every particular including formation and interpretation and shall be deemed to have been made in New Zealand;
 - i. Any proceedings arising out of or in connection with this agreement may be brought in any court of competent jurisdiction in New Zealand;
 - ii. The submission by the parties to such jurisdiction shall not limit the right of Collinsons to commence proceedings arising out of this Agreement in any other jurisdiction it may consider appropriate;
 - iii. Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party in accordance with clause 18.

18. Dispute Resolution

- a. If at any time a dispute arises between Collinsons and the client relating to the existence or terms of any Contract, Collinsons may at any time in its discretion without prior notice to or any further authority from the Client take whatever action that it considers appropriate in relation to the disputed Contract (including Closing out any or all contracts of the Client). Collinsons will notify the Client (verbally or in writing) as soon as it is practically possible thereafter of any action it has taken but any failure by Collinsons to give such notice will not prejudice the validity of such action.

19. Assignment

- a. The Client may not, without prior written consent of Collinsons transfer this Agreement or any interest or obligation in or under this Agreement and any purported transfer without such consent shall be null and void.

20. Notices

- a. Except as otherwise set out in this Agreement, any notice, demand or other communication to be given by one party to the other pursuant to the Agreement shall be in writing. Such notice shall be delivered or sent to the parties at their respective addresses set out below or by facsimile or email to the following numbers:

- i. In the case of Collinsons:

Collinson & Co. Level 2 75 Queen Street Auckland 1010 New Zealand Fax: +64 9 303 1674	PO Box 5068 Wellesley Street Auckland 1141 New Zealand Email: forex@collinsonfx.com
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- ii. In the case of the Client:

1. To the postal, facsimile or email address as advised in the annexure to this Agreement or to other addresses, facsimile or e-mail numbers or addresses as one party may from time to time notify in writing.