

## Appendix – MahiFX Terms of Use

### MahiFX Limited

ARBN 152 535 085 (Australia)

AFSL no. 414198

NZBusNo. 9429031595070 (New Zealand)

FSP no. 197465

### Client Terms of use

Version 12.4

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## Part 1 – General and introduction

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### 1. Terms of use - Introduction

- 1.1 These Terms of use (**Terms**) are the terms and conditions that apply to your use of the services provided or made available by MahiFX to you. Those MahiFX Services include your use of the MahiFX website and any of the specific services available from MahiFX which you use, and all dealings which you have with MahiFX in the course of or relating to MahiFX providing services to you: the terms and conditions therefore apply whether or not you are a registered client of MahiFX.
- 1.2 If you do not accept these Terms, then you cannot use the MahiFX Services.
- 1.3 If you use the MahiFX Services, then you accept these Terms, and you also accept these Terms if you have made an application to become a Client. You agree that these Terms form a valid and binding deed between you and MahiFX.
- 1.4 In consideration for the payment of all fees and costs which are payable by you in accordance with the Fee Schedule, MahiFX agrees to provide the MahiFX Services to you in accordance with these Terms.
- 1.5 Subject to any specific provision of these Terms, the version of the Terms published on the MahiFX website on any date is the version of the Terms which apply to your use of the MahiFX Services on that date.
- 1.6 MahiFX may vary these Terms at any time by providing 2 Business Days' notice on its website, or by notifying you directly. Accordingly, you must check the website and your Portal for any variation each time you use the MahiFX Services. If you use the MahiFX Services after the notice period has elapsed, then you agree to these Terms as varied. If you do not accept these Terms as varied, then you cannot use the MahiFX Services.
- 1.7 You agree that different provisions of the Terms may relate to different aspects of the MahiFX Services. Accordingly, if any provision of this document conflicts with either information published by MahiFX on its website from time to time, or statements in the nature of disclaimers or warnings published by MahiFX on its website from time to time, or documents published on or downloadable from the website from time to time which govern your use of the MahiFX Services, then those

specific provisions of the Terms will prevail to the extent of any inconsistency in respect of the relevant aspect of the MahiFX Services.

1.8 Capitalised words in these Terms are defined in the clause 2 dictionary.

## 2. Dictionary

Unless expressed or implied to the contrary, the following words have the meaning set out below in these Terms:

**AML** means anti-money laundering and counter-terrorism financing legislation in Australia or New Zealand, including the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* (NZ).

**Applicable Law** means applicable law in New Zealand and Australia, as the context requires.

**Base Currency** means the base currency selected by a Client (or nominated by MahiFX if the Client does not select a base currency) to apply to that Client's Trading Account. Base Currency may also referred to as a Client's "native currency".

**Business Day** means Monday to Friday excluding public holidays in New South Wales and New Zealand.

**Cash Balance** means the amount cash a Client has deposited into their MahiFX Trading Account, less any withdrawals made by the Client, and net of any realised gains and/or losses from closed-out contracts or trades.

**Claims** includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

**Client** means a client of MahiFX, being a Client Applicant whose application to be a client of MahiFX has been accepted.

**Client Applicant** means any person who is in the process of inquiring or applying to be a client of MahiFX.

**Client Associates** means:

- (a) any person associated with a Client or Client Applicant who is an 'Associate', 'Related Entity' or 'Relative', as those terms are defined in the *Corporations Act 2001* (Cth) or a 'Relative' or 'Related Company' as those terms are defined in the *Companies Act 1993* (NZ); and
- (b) any person dealing with MahiFX on behalf of a Client or Client Applicant, including as contemplated by clause 3.5.

**Client Content** means any information, statement, data or representation communicated by you in relation to the MahiFX Services, whether communicated to MahiFX or any third party, including:

- (a) through the MahiFX Community;
- (b) as part of an application to become a Client; or

- (c) in telephone or email conversations with us.

**Client NAV** means the Client's net asset value position at any time represented by:

- (a) the balance of the Client's Cash Balance (excluding any 'Disputed Amount' as that term is defined in clause 8.3.4); and
- (b) the Client's exposure under each open contract or trade.

**Fee Schedule** means the fee schedule as published by MahiFX on the Website from time to time (and which may be incorporated in the Financial Services Guide) which:

- (a) sets out the fees and costs and other amounts, and payment conditions, for which you are liable when using the MahiFX Services;
- (b) may describe the transaction pricing spread which applies to each contract or trade you enter into using the MahiFX Services; and
- (c) may describe MahiFX's Margin Amount requirements of Clients.

**Financial Services Guide** means the financial services guide which MahiFX is required by the *Corporations Act 2001* to provide in respect of the financial services which it provides, as available from the Website from time to time.

**Insolvency Event** means, in relation to a party, any of the following events:

- (a) the party assigns any of its property for the benefit of creditors or any class of them;
- (b) the party's interest in or under these Terms or in the subject matter of these Terms becomes attached or taken in execution or under any legal process;
- (c) an encumbrancee takes any step towards taking possession or takes possession of any assets of the party or exercises any power of sale;
- (d) the party ceases, suspends or threatens to cease or suspend the conduct of a majority of its business, or disposes of or threatens to dispose of its assets, except for the purposes of a solvent reconstruction or amalgamation previously approved by MahiFX;
- (e) any security interest becomes enforceable or is enforced against the party;
- (f) a distress, attachment or other execution is levied or enforced against the party in excess of AUD\$1,000.00 (or the equivalent in another currency);
- (g) the party has a judgment or order given against it in an amount exceeding AUD\$1,000 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 Business Days after being given;
- (h) the party takes any step to obtain protection or is granted protection from its creditors under any applicable legislation;
- (i) a resolution is passed by the party to appoint an administrator or an administrator of the party is appointed;

- (j) an order is made that the party be wound up;
- (k) an order is made appointing a liquidator or a provisional liquidator of the party;
- (l) the party resolves to wind itself up or otherwise dissolve itself, or gives notice of its intention to do so, except for the purposes of a solvent reconstruction or amalgamation previously approved by MahiFX, or is otherwise wound up or dissolved;
- (m) an order is made or a resolution is passed for the party 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 previously approved by MahiFX;
- (n) the party is, or states that it is, or under applicable legislation is taken to be, unable to pay its debts (other than as a result of a failure to pay a debt or claim the subject of a dispute in good faith) or stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (o) a receiver, receiver and manager, administrator, controller or similar officer of any of the assets or the whole or any part of the undertaking of the party is appointed;
- (p) the party is or makes a statement from which it may be reasonably deduced by the other party that the party is the subject of an event described in section 459C(2) of the *Corporations Act 2001* (Cth);
- (q) any event that is analogous or having a substantially similar effect to any of the events specified in this definition; or
- (r) the party, being an individual, commits an act of bankruptcy or becomes insolvent.

**Intellectual Property** means all Intellectual Property Rights (whether or not registered including all applications and the right to apply for registration) which are owned by or licensed to MahiFX including, without limitation:

- (a) any trade marks, service marks, trade names, domain names, brands and company names, trade secrets and copyright works, URL's, drawings, discoveries, inventions, improvements, technical data, formulae, computer programs, software, know-how, logos, symbols and similar industrial or intellectual property rights;
- (b) all patents, patent applications, registered designs and unregistered design rights;
- (c) all client lists and other client related information generated by MahiFX;  
and
- (d) all confidential information of MahiFX.

**Intellectual Property Rights** means all and any patents, patent applications, trade marks, service marks, trade names, domain names, registered designs, unregistered design rights, copyrights, know how, trade secrets and rights in confidential information, URLs and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

**Legal disability** includes that you are not of sound mind, are less than 18 years of age, or have any form of guardian or administrator appointed in respect of your estate or personal affairs.

**Liabilities** include all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

**Loss** means loss or damage however caused whether based in tort, contract or otherwise and includes without limitation any direct, indirect, special or consequential loss or damage, loss of profits, loss of production, loss or corruption of data, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expense and damage to property, personal injury and death.

**MahiFX** means MahiFX Limited (ARBN 152 535 085; NZBusNo 9429031595070); 'we', 'our' or 'us' is also taken to be a reference to MahiFX. Where relevant, MahiFX also includes reference to those service providers to MahiFX with whom you deal in relation to the Services and, or alternatively, to our officers, employees and agents.

**MahiFX Bank Accounts** means such operational banking accounts of MahiFX as it has from time to time which are:

- (e) held in the name of and/or for the benefit of MahiFX; and
- (f) each of which relate to a separate base currency to reflect those Base Currencies selected by Clients.

**MahiFX Community** means that aspect of the MahiFX Services by which MahiFX allows its Clients to participate through the Website with MahiFX and other Clients, including through or by:

- (g) blogs and Client forums;
- (h) providing status updates;
- (i) providing various analytical tools (such as market data, exchange rates, news, headlines and graphs), links to other websites, newsletters and third parties' information; and
- (j) providing features which enable Clients to search, interact with, follow, feature, rank and copy other Clients.

**MahiFX Content** means any information, statements, data and representations made by or on behalf of MahiFX including analytical tools such as market data, exchange rates, news, headlines, graphs, links to other websites, newsletters and third parties' information.

**MahiFX Account** means your Trading Account on the MahiFX Platform that you access with your login details and from which you conduct, monitor, and manage your FX trading activities.

**MahiFX Platform** means the MahiFX web-browser based FX trading applications that are provided by MahiFX.

**MahiFX Privacy Policy** means MahiFX's privacy policy, in the form which MahiFX publishes on the Website from time to time.

**MahiFX Services** means all products and services MahiFX provides or makes available from time to time relating to:

- (a) making the Website available for use;
- (b) products and services which MahiFX provides or makes available to Client Applicants;
- (c) products and services which MahiFX provides or makes available to Clients;
- (d) correspondence with MahiFX relating to the above; and
- (e) other dealings which you have with MahiFX relating to the above including data collection and storage, privacy and website content.

**MT4** means the software known as “MetaTrader 4” as licensed to MahiFX by Metaquotes Software Corp.

**MT4 Account** means your Trading Account on the MT4 Platform that you access with your login details and from which you conduct, monitor, and manage your FX trading activities.

**MT4 Platform** means the “MT4” web-browser based FX trading applications that are provided by MahiFX.

**Margin Amount** means the amount which, in respect of every trade or contract you enter into, MahiFX requires in addition to the contract or trade price, in order to cover the exposure which you have on trades or contracts which are open at any time, as advised by MahiFX at any time.

**Margin Reserve** means the aggregate of all Margin Amounts required to cover the exposure which you have on trades or contracts which are open at any time, as advised by MahiFX at any time.

**Portal** means the online MahiFX Platform or MT4 Platform to which MahiFX provides you access with your username and password and which sets out the balance of your Trading Account, your Margin Reserve, your open contracts and trades and, to the extent determined by MahiFX, your past trades, and your profit and other Client Content of yours provided through the MahiFX Community.

**Prohibited Territory** means any jurisdiction, in addition to those stated in clause 18.1, to which MahiFX determines it does not wish to or cannot by law provide any or all of the MahiFX Services.

**Provider Contracts** means the contracts which we have with third parties who provide services to MahiFX which relate to the MahiFX Services.

**Terms** means all the terms and conditions which apply to your use of the MahiFX Services, including this document as varied from time to time, all information published by MahiFX on the website from time to time, all statements in the nature of disclaimers or warnings published by MahiFX on its website from time to time, all documents published on or downloadable from the website from time to time which govern your use of the MahiFX Services and which may include the Provider Contracts.

**Trading Account** means the Client's MahiFX Account and/or MT4 Account, as the context requires, which holds the Client's Cash Balance, in the Client's selected Base Currency.

**Website** means the website from which MahiFX makes the MahiFX Services available, being mahifx.com, whether accessed via computer, phone, tablet device or other mobile device, and including any mobile device application offered by MahiFX.

**You** means the Client, Client Applicant or visitor to the website, as the case may be. Where relevant, it includes all your Client Associates.

## **Part 2 – Client application & registration**

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### **3. Client Application and registration**

- 3.1 MahiFX retains the discretion to accept or reject any person's application to become a Client and need not give its reasons for doing so.
- 3.2 You agree that you will provide us with all information which we request from you for the purposes of assessing any application you make to become a Client, including any documents which support or verify that information.
- 3.3 You agree that all data, statements, information or representations you provide or make to MahiFX, whether express or implied, are entirely true, complete and correct in every particular. You agree that:
  - 3.3.1 if any such data, statement, information or representation was true, complete and correct when provided or made prior to you being a Client, but changes in any way prior to you becoming a Client, then you will notify MahiFX immediately;
  - 3.3.2 if you become aware that MahiFX has misinterpreted or misconstrued any data, statement, information or representation you provided or made, then you will immediately notify MahiFX of the true and correct position.
- 3.4 You agree that if you apply to be, and are registered as, a single Client, then you cannot apply to be, or be registered as, more than one Client including through the use of any person acting as agent or trustee for you or by making your financial resources available directly or indirectly to any other Client or Client Applicant. For this reason, you agree to disclose any relationship which you have with any Client Associate where that Client Associate is a Client or Client Applicant.
- 3.5 You agree and warrant that all persons dealing with MahiFX on your behalf are duly authorised to do so: you agree and warrant that they are authorised to bind you to these Terms and that all relevant corporate or other authorisation necessary to bind you to these Terms has been taken. Each person dealing with MahiFX on behalf of a Client or Client Applicant personally agrees and warrants to MahiFX that these agreements and warranties are true and correct.
- 3.6 You agree that MahiFX may:
  - 3.6.1 require evidence of the appointment (and the continuing validity of that appointment) of any representative or power of attorney authorised by you; and

- 3.6.2 elect to dismiss and/or reject any transactions performed by such representative or attorney.
- 3.7 You agree that MahiFX may require you at any time to provide additional information to personally identify you.
- 3.8 MahiFX agrees that it will deal with all information which you supply, and which is capable of identifying you, in accordance with the MahiFX Privacy Policy.
- 3.9 You acknowledge and agree that:
  - 3.9.1 you are solely responsible for keeping your user name and password confidential and secure, and that you will do so at all times;
  - 3.9.2 you must notify MahiFX immediately if the confidentiality or security of your user name or password is compromised;
  - 3.9.3 you indemnify MahiFX in respect of any Claim or Loss which may arise in consequence of any such compromise and release MahiFX in respect of any Claim or Loss the Client may suffer or incur; and
  - 3.9.4 MahiFX is entitled to accept any instructions in respect of your Trading Account where those instructions follow the provision by that person of your username and password.

#### **4. Client representations, warranties and acknowledgements**

- 4.1 You acknowledge and agree that:
  - 4.1.1 In addition to our rights under clause 8.3, from time to time you may be requested to provide us with certain documents to verify the details of the credit card used by you to deposit monies to your Trading Account. Subject to our satisfaction from the above documentation checks, you may or may not be permitted to deposit further monies by recurring credit card or other means of payment; and
  - 4.1.2 MahiFX may elect to provide you with documentation, information and communications in languages other than English: if MahiFX does that, then you acknowledge and confirm that MahiFX's official language is English, and in the event of any discrepancy or inconsistency between any document, information or communication in another language, the English document, information or communication prevails.
- 4.2 You agree to comply in all respects with the terms and conditions of the Provider Contracts and that you will not, by any act or omission, cause MahiFX to breach its obligations under those contracts.

### **Part 3 – Accounts, and payments and instructions**

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#### **5. Your Trading Accounts**

- 5.1 You represent, warrant and agree that all the details that you gave us when opening a Trading Account and making a deposit are true, accurate, complete and match the name on the payment card and/or payment accounts in which you intend to deposit or receive monies from your account.



## 6. MahiFX Bank Accounts

MahiFX will ensure that the MahiFX Bank Accounts are held with major banking institutions.

## 7. Payment, fees and trading limits

MahiFX reserves the right to:

- 7.1 impose and vary limits on the amount which may be deposited into or maintained in a Trading Account;
- 7.2 impose and vary fees and costs which it may recover from or charge to Clients, as set out in the Fee Schedule; and
- 7.3 impose and vary volume limits on contracts and trades which are or may be made using the MahiFX Services.

## 8. Payments generally

- 8.1 You may deposit funds into your Trading Account at any time. Deposits will only be accepted by a payment method (e.g., bank account, credit cards, e-wallets, etc.) in the same name as yours. Under no circumstances will MahiFX accept any payments from a third party.
- 8.2 If MahiFX is not satisfied that you are the sender of the funds, it reserves the right to reject the funds and return them to the remitter net of any transfer fees or other charges. You may be required to submit additional documentation as required by AML and any other similar regulations applicable to us.
- 8.3 If you make a deposit into your Trading Account using a credit card, then you acknowledge and agree that:
  - 8.3.1 you may only use the amount of that deposit to enter into a contract or trade once payment has cleared;
  - 8.3.2 for 8 weeks following deposit of that amount, you may only withdraw the amount of that deposit by making a withdrawal request to return that money (net of fees or the contract or trade price and Margin Reserve) to that credit card;
  - 8.3.3 only after that 8 week period elapses, and provided that MahiFX has received no notice of any issues in respect of the relevant credit card, will MahiFX treat that credit card as verified thereby enabling you to withdraw any funds from your Trading Account to another credit card or bank account;
  - 8.3.4 if MahiFX receives any notice of any issues in respect of the relevant credit card then, until the issue is resolved to MahiFX's satisfaction:
    - (a) you may not withdraw the amount of any deposit received from that credit card (**Disputed Amount**), nor use any part of such amount to enter into any contract or trade;
    - (b) MahiFX will not take any Disputed Amount into account in its calculation of a Client's NAV, and MahiFX may exercise any of its rights under these Terms which arise out of or relate to the Disputed Amount, including closing out any of your open contracts or trades.

- 8.4 MahiFX will not pay you interest on any funds held by us on your behalf: you waive any entitlement to interest on moneys you deposit with us.
- 8.5 If you instruct MahiFX to withdraw funds from your Trading Account, then we will reduce your Trading Account balance by the amount of the withdrawal immediately, and will process the specified request within 5 Business Days once we accept your instruction and provided that the following requirements are met:
- 8.5.1 the instruction includes all necessary information;
  - 8.5.2 the instruction is to make a payment through a payment method in your name (e.g. bank account, credit card, e-wallet, etc); and
  - 8.5.3 you have provided full identification documents to support your instruction.
- 8.6 If we accept any payments to be made by a debit card, credit card or any other payment method that may charge processing fees, we reserve the right to levy a transfer charge on you. You also indemnify MahiFX in respect of any Loss or Claim it may suffer or incur if any such payment is cancelled or rejected.
- 8.7 If you make a payment to your Trading Account, MahiFX will credit it with the amount of that payment less any relevant fee or charge (determined in accordance with the Fee Schedule), if MahiFX is satisfied that you (and no third party) sent the funds. Credit in your Trading Account will be denominated only in your Base Currency.
- 8.8 We reserve the right, without prior notice to you, to make any currency conversions which we consider necessary or desirable for the purposes of complying with our obligations or exercising our rights under these Terms or in respect of any transaction. We may effect these conversions in such manner and at such rates as we see fit, having regard to the prevailing rates for freely convertible currencies.
- 8.9 You acknowledge and agree that you bear all foreign currency exchange risk arising from any contract or trade or from the compliance by us with our obligations or the exercise by us of our rights under these Terms.
- 8.10 If a Client and its Client Associates have more than one Trading Account, then we reserve the right to treat all such Trading Accounts as if they were under one account (of such of those Clients as MahiFX determines) and to limit the number of Trading Accounts maintained by a Client and its Client Associates.
- 8.11 When a withdrawal is performed, MahiFX reserves the right to refund Clients via any of the payment methods a Client used when it initially funded its Trading Account. MahiFX makes all withdrawal payments to the Client and not to any third party.
- 8.12 MahiFX reserves the right to impose withdrawal limits and withdrawal fees in its system.
- 8.13 Where possible, MahiFX pays withdrawal amounts through the original payment method that you used to deposit the money, subject to the terms of our Provider Contracts. If we are unable to send any or all of the funds back to you using the original payment method, then we reserve the right to pay the amount through an alternative payment method indicated by you in your Base Currency (regardless of the currency in which the deposit was made). MahiFX is not responsible for any transfer fees or charges charged by the receiver and/or any currency exchange rates resulting from the payment of such amount in your Base Currency.

- 8.14 Upon submitting a withdrawal request, MahiFX may at its discretion require you to submit documentation as required by AML.

## **9. Fees for dormant Trading Accounts**

- 9.1 In the event that your Trading Account is not accessed for a period of at least six months, we will regard your account to be dormant.
- 9.2 MahiFX may deduct a monthly fee (**Monthly Fee**) of AUD\$5 (or the equivalent in another currency) or 10% of the funds in your dormant Trading Account, whichever is greater, on the date that it became dormant commencing from the last day of the sixth month in which the Trading Account was not accessed, and on the last day of every month, until the balance of the Trading Account has reached zero. In the event that you log on to your Trading Account during a ten-month period during which the Monthly Fee is being applied, and before the balance of the Trading Account reaches zero, MahiFX will cease to deduct the fee but will not refund any deducted fees.
- 9.3 MahiFX may close any dormant Trading Account with a zero balance.

## **10. No manual instructions**

You acknowledge and agree that:

- 10.1 MahiFX does not represent or warrant that the MahiFX Services include the capacity to take or execute instructions or orders manually or over the phone;
- 10.2 If at any time MahiFX elects to make that facility available, then it may withdraw it at any time; and
- 10.3 All such instructions or orders must be made, and will be processed, through the electronic online MahiFX Platform or MT4 Platform which forms part of the MahiFX Services.

## **11. Accountability for financial transactions**

- 11.1 By using MahiFX Services, you agree to be fully, solely and personally liable for each contract or trade and/or credit card transaction made using the MahiFX Services through your Trading Account.
- 11.2 You acknowledge and agree that you are fully, solely and personally liable for, and will indemnify MahiFX in respect of, all fees, costs and Losses, including trading losses, associated with each contract or trade you enter into, and that your liability is unaffected by any Margin Amount MahiFX may hold in respect of contracts or trade.
- 11.3 You must make sure that you are the only person with access to your Trading Account at all times and that no minors have access to your Trading Account.
- 11.4 You acknowledge and agree that we are not liable for:
- 11.4.1 Any unauthorised real money transactions associated with your Trading Account; or
  - 11.4.2 Any unauthorised real money transactions conducted by minors in respect of your Trading Account.

- 11.5 If you do not settle a contract or trade performed through your Trading Account, you are liable to MahiFX and you must indemnify us in the amount necessary to cover any Loss or Claim associated with the transaction.
- 11.6 If a contract or trade is entered to acquire or sell currency or metal at a price that does not reflect the market price (such as an event where a technical error such as a bug or defect has caused a malfunction that has affected the price of the transaction), we may terminate and cancel any such contract or trade. We will notify you of our decision to cancel the contract or trade and explain our reasons to you.
- 11.7 You agree to inform us of any such malfunction should you experience such a malfunction whilst trading on our system.

## **12. Margin Amount**

- 12.1 When you instruct MahiFX in respect of a contract or trade, then MahiFX may transfer the Margin Amount from your Cash Balance within your Trading Account to the Margin Reserve. If the amount in your Cash Balance is insufficient to meet the required Margin Amount and/or Margin Reserve, then MahiFX may reject, cancel or terminate your requested contract or trade.
- 12.2 You acknowledge and agree that MahiFX may establish automated processes by which amounts are transferred or appropriated to or from your Cash Balance and Margin Reserve to maintain the required Margin Amounts.
- 12.3 MahiFX may pledge, appropriate or use some or all of the Margin Amounts comprised within the Margin Reserve as its own collateral in respect of any trade or contract or arrangement that MahiFX enters or has entered into with a third party or counterparty which relates in any way to the trade or contract that you have entered into with MahiFX as allowed under Applicable Law.
- 12.4 If either:
- 12.4.1 your Client NAV holds 50% or less of the required Margin Reserve at any time; or
  - 12.4.2 your Client NAV is less than 100% of the required Margin Reserve for 5 days or more,

then MahiFX may close all or some contracts or trades which are open on your Trading Account as it sees fit, at market rates and to the extent it deems necessary.

- 12.5 MahiFX asks that you always have sufficient funds in your Cash Balance and Margin Reserve to cover any Liabilities or Losses you might incur.

## **13. Change of payment arrangements**

You acknowledge and agree that if you change any of your Trading Account details, including any associated credit card or bank account details, then MahiFX will require information from you to verify those changes, to satisfy its obligations under AML.

## Part 4 – Intellectual property

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### 14. Licence from MahiFX to Client

- 14.1 MahiFX grants each Client a personal licence that is non-transferable, non-exclusive and fully revocable to use the MahiFX Services (including the use of the website and any associated downloadable software), subject in all instances to the provisions of these Terms.
- 14.2 You agree and acknowledge that the document entitled 'End User License Agreement' of MahiFX Limited, which governs downloading any software from the Website and is available from the Website, forms part of these Terms.

### 15. Intellectual Property - General

- 15.1 You acknowledge that all Intellectual Property of MahiFX associated with the MahiFX Services is the sole property of MahiFX.
- 15.2 You agree that:
- 15.2.1 you will not use our downloadable software in a manner that is beyond the scope of the limited licence granted under clause 14, nor in any manner not absolutely required to enable you to use the MahiFX Services;
  - 15.2.2 nothing contained on the Website may be construed as granting, by implication or otherwise, any licence or right to use our Intellectual Property without our written permission.
- 15.3 Except as expressly provided by these Terms, you may not without our prior written permission, alter, modify, reproduce, distribute or commercially exploit our Intellectual Property.

### 16. Copyright

- 16.1 Copyright in the Website (including text, graphics, logos, icons, sound recordings and software), and in any way relating to the MahiFX Services, is owned or licensed by us. Other than for the purposes of, and subject to the conditions prescribed under, the *Copyright Act 1968* (Cth), the *Copyright Act 1994* (NZ) and similar legislation which applies in your location, and except as expressly authorised by these Terms, you may not in any form or by any means without our prior written permission:
- 16.1.1 adapt, reproduce, store, distribute, print, display, perform, publish or create derivative works from any part of the Website or any other copyright material; or
  - 16.1.2 commercialise any information, products or services obtained from any part of the Website or other copyright material.

### 17. Trade marks

- 17.1 Except where otherwise specified, any word or device to which is attached the <sup>TM</sup> or <sup>®</sup> symbol is a registered trade mark.
- 17.2 If you use any of our trade marks in reference to our activities, products or services, you must include a statement attributing that trade mark to us. You must not use any of our trademarks:

- 17.2.1 in or as the whole or part of your own trademarks;
- 17.2.2 in connection with activities, products or services which are not ours;
- 17.2.3 in a manner which may be confusing, misleading or deceptive; or
- 17.2.4 in a manner that disparages us or the MahiFX Services (including the Website).

## **Part 5 - Service availability, website and data**

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### **18. Restrictions on availability of MahiFX Services**

- 18.1 You cannot use the MahiFX Services if:
  - 18.1.1 you are a resident of the United States of America or any other Prohibited Territory;
  - 18.1.2 you are less than 18 years old;
  - 18.1.3 you are under a legal disability; or
  - 18.1.4 you have suffered an Insolvency Event.
- 18.2 From when you first access the MahiFX Services, and at all times thereafter, you represent and warrant that you are not prevented from using the MahiFX Services on any of the grounds stated in clause 18.1.
- 18.3 In the event of your death, MahiFX agrees only to deal with your legal personal representative on being satisfied that he or she has been duly appointed to administer your estate.
- 18.4 Without limiting any other provision of these Terms, you agree that MahiFX operates solely in Australia and New Zealand and not in any other jurisdiction. If you access the MahiFX Services from other jurisdictions then you do so entirely at your own risk and are responsible for ensuring any use you make of the MahiFX Services is legal in your own jurisdiction. You represent and warrant that you have verified and determined that your use of the MahiFX Services does not violate any laws of your jurisdiction and you indemnify MahiFX in respect of your use of the MahiFX Services.

### **19. Suspension and Termination of MahiFX Services**

- 19.1 MahiFX may suspend access to or terminate access to the MahiFX Services if you breach these Terms, including on the basis that you do not provide information to MahiFX which MahiFX requested from you.
- 19.2 MahiFX may suspend access to the MahiFX Services if it suspects that you have breached or intend to breach these Terms for such time as it considers appropriate (acting reasonably) while it investigates all circumstances concerning your compliance or non-compliance with these Terms.

### **20. Linked web sites**

- 20.1 The Website may contain links to other websites (**Linked Websites**). Those links are provided for convenience only and may not remain current or be maintained.

- 20.2 We are not responsible for the content or privacy practices associated with Linked Websites.
- 20.3 Our links with Linked Websites should not be construed as an endorsement, approval or recommendation by us of the owners or operators of those Linked Websites, or of any information, graphics, materials, products or services referred to or contained on those Linked Websites, unless and to the extent stipulated to the contrary.

## **21. Client Content and Personal Data**

- 21.1 You acknowledge and agree that your Client Content, other than information which is capable of identifying you (not including any online pseudonym you use):
- 21.1.1 is non-confidential and non-proprietary information; and
  - 21.1.2 is licensed by you to MahiFX to use in its discretion, and that licence is non-exclusive, irrevocable, transferable, sub-licensable, royalty-free and worldwide, to use, copy, duplicate store, present and/or publish without any attribution or royalties or other compensation to you.
- 21.2 You acknowledge and agree that your Client Content is stored by us, including with third parties in some cases on remote servers which are not controlled by us.
- 21.3 You acknowledge and agree that telephone conversations, email/chat communications with us may be recorded and maintained by us. Any recordings are the sole property of MahiFX and will be accepted by you as conclusive evidence of their content as recorded by us.
- 21.4 By entering into these Terms, you consent to the transmission of your personal data (i.e., your personally identifiable information and your payment details) to other companies in the MahiFX group and to external companies to help us to process and/or analyse it as part of the provision of the MahiFX Services to you. Such personal data may also be used for marketing purposes, or to conduct market research for us or other companies in our group that may use the personal data to bring to your attention products and services that may be of interest to you and also to assist in the efficient provision of the MahiFX Services.

## **22. Client Content and third party content**

- 22.1 Any Client Content or other third party content placed on the Website reflects solely and exclusively the views, and are the responsibility of, those who post such content: you acknowledge and agree that they do not represent MahiFX's views.
- 22.2 You acknowledge and agree that you are solely responsible for your Client Content, including your responsibility as to its legality, reliability, appropriateness, originality and copyright.
- 22.3 You will not post any Client Content which contains viruses or other computer codes, files or programs which are designed to limit or destroy the functionality of, or spy or track, other computer software or hardware or its processes.
- 22.4 You release MahiFX from, and indemnify MahiFX in respect of, any Loss or Claim which may arise or relate to your use or reliance upon Client Content or any other third party content.
- 22.5 Concerning your Client Content, and any other person's Client Content, you acknowledge and agree that we:

- 22.5.1 do not undertake to review or monitor Client Content;
- 22.5.2 do not in any manner endorse, support, sanction, encourage, verify or agree with any Client Content;
- 22.5.3 may review, monitor, revise and/or remove any Client Content;
- 22.5.4 may report to government authorities any Content which may be considered or signal illegal activity, or which may be required by such authorities;
- 22.5.5 when requested, may cooperate with government authorities in any investigation of alleged illegal activity; and
- 22.5.6 may maintain records of all Client Content.

## **Part 6 - MahiFX Content and the MahiFX Community**

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### **23. MahiFX Content**

- 23.1 You acknowledge and agree that:
  - 23.1.1 we do not endorse, represent, warrant, guarantee or sponsor the accuracy, correctness, timeliness, completeness or suitability of MahiFX Content, whether provided as part of the MahiFX Community or generally as part of the MahiFX Services;
  - 23.1.2 no MahiFX Content is intended to constitute, or should be construed as, a solicitation or any offer to buy an interest in any security or financial product and is not financial advice or a recommendation or promotion of any transaction, other financial product, investment manager, or trading or investment strategy;
  - 23.1.3 you may use the MahiFX Content as you see fit, but you acknowledge and agree that you are solely responsible for how you use it; and
  - 23.1.4 MahiFX does not, by providing the MahiFX Content or any other aspect of the MahiFX Services, provide any advice that is personal to you and MahiFX refers you to the general financial advice warning in clauses 28.1 and 28.2.
- 23.2 You agree not to enable deep linking or any other form of redistribution or reuse of the MahiFX Content to any other person.
- 23.3 You release MahiFX from, and indemnify MahiFX in respect of, any Loss or Claim which may arise or relate to your use or reliance upon MahiFX Content.

### **24. Withdrawal and variation of MahiFX Content**

You acknowledge and agree that MahiFX:

- 24.1 is not obligated to continue to provide the MahiFX Content or MahiFX Community to you;
- 24.2 is not obliged to update the MahiFX Content; and



24.3 is not liable to you for the termination, interruption, delay or inaccuracy of any MahiFX Content.

**25. Availability of the MahiFX Community**

MahiFX may make the MahiFX Community available to you, subject to these Terms.

**26. Participation in the MahiFX Community**

26.1 You agree as follows concerning the MahiFX Community and, to the extent relevant, the MahiFX Services generally:

26.1.1 you acknowledge that your Client Content is and will be treated by us as non-confidential and non-proprietary and we may use such material without restriction;

26.1.2 you assign all copyright which subsists in your Client Content to us;

26.1.3 you will not post or transmit any material or information which is offensive, defamatory, obscene, unlawful, vulgar, harmful, threatening, discriminatory, abusive, harassing or ethnically objectionable;

26.1.4 you agree not to disrupt the flow of dialogue or otherwise act in a manner which negatively affects or disparages MahiFX or other Clients in the MahiFX Community;

26.1.5 you agree not to impersonate any other person;

26.1.6 you agree to provide current, accurate and up-to-date information about yourself as required under these Terms;

26.1.7 you agree not to post or transmit any unsolicited advertising, commercial, competitive or promotional materials;

26.1.8 any material which you post may be removed by us from the MahiFX Community without notice at any time;

26.1.9 you will not post or transmit any Client Content in which the copyright is owned by another person or entity and you warrant that all material posted is your original work and not sourced from any third party and any such Client Content will not violate the privacy rights, publicity rights, copyright, contract rights or any other rights of any person;

26.1.10 you accept that any Client Content may be posted in the MahiFX Community for any other Client to read;

26.1.11 MahiFX Content is provided in good faith;

26.1.12 we do not warrant that we will respond to questions or comments submitted by you on the MahiFX Community;

26.1.13 if you download any material from the Website, you acknowledge that we are not liable to you for any Loss, however caused, arising from the downloading or subsequent use of the downloaded material;

26.1.14 you may not adapt, reproduce, store, distribute, transmit, print, display, publish or create derivative works from any downloaded material. In

addition, you may not commercialise any information, products or services from the downloaded material;

- 26.1.15 you will not make any statement as to your eligibility to provide financial product advice or any other financial service or other service which may require a licence or registration in any jurisdiction;
- 26.1.16 you will not collect or solicit any other person's Client Content (including account details) by any method including automated means such as harvesting bots, robots, spiders, or scrapers;
- 26.1.17 you will not engage in unlawful multi-level marketing, such as a pyramid scheme, using the MahiFX Community or through the MahiFX Services; and
- 26.1.18 you will not do anything that could disable, overburden, or impair the proper working of the MahiFX Services.

## **27. Masters and leading traders**

MahiFX may classify you as a 'master' or 'leading trader', in which case it may impose additional Terms in relation to you. These may be specific, or part of specified promotions, and will take effect when those additional Terms are notified to you.

## **Part 7 - General financial product advice warning**

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### **28. No advice**

- 28.1 You acknowledge that MahiFX does not provide any advice, including financial product advice, which takes into account your objectives, financial situation or needs.
- 28.2 Any financial advice on the Website or provided by MahiFX including through the MahiFX Content, the MahiFX Community, the publication known as "The Daily Score" produced by MahiFX, or otherwise through providing the MahiFX Services, is general only. In relation to this, you acknowledge and agree that:
  - 28.2.1 the advice is general and is prepared without taking into account your objectives, financial situation or needs;
  - 28.2.2 because of that, you should, before acting on any general advice, consider the appropriateness of the general advice, having regard to your objectives, financial situation and needs; and
  - 28.2.3 where relevant, you should obtain a copy of any relevant product disclosure statement (**PDS**) which relates to any financial product you intend to obtain and consider that PDS before making any decision about whether to acquire the financial product.

## **Part 8 - Risk and liability**

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### **29. General Risk Statement**

You acknowledge and agree that:

- 29.1 you use the MahiFX Services at your own risk;
- 29.2 you alone bear the loss of any money you have invested;
- 29.3 trading in currencies and metals is inherently risky, including as a result of the unpredictable and volatile nature of currency and metals valuations and prices; and
- 29.4 use of MahiFX Services can never be considered a safe investment, and carries with it a high risk of loss.

### **30. Restrictions on Financial Transactions**

- 30.1 By using the MahiFX Services, you declare that all the funds that you use and invest through the MahiFX Services do not originate in any way from drug trafficking, abduction, terrorist activity or any other criminal activity that is unlawful or could be considered unlawful in any jurisdiction.
- 30.2 If we terminate, suspend or block your use of the MahiFX Services as a consequence of a breach or suspected breach of this clause, then you acknowledge and agree that:
  - 30.2.1 MahiFX is under no obligation to refund any funds that may be in your Trading Account until directed by a relevant regulatory authority. In those circumstances we may also prevent you from accessing any of the MahiFX Services; and
  - 30.2.2 MahiFX may inform the relevant authorities, other online service providers and banks, credit card companies, electronic payment providers or other financial institutions of your identity and of any suspected unlawful, fraudulent or improper activity and you will cooperate fully with us to investigate any such activity.

### **31. Additional Risk Disclosures**

- 31.1 You acknowledge and agree that:
  - 31.1.1 MahiFX reserves the right to close part, or all, of a Client's open positions, in order to facilitate the charge of any fees, costs or amounts due by you. Notwithstanding, you remain liable to pay, in accordance with our Fee Schedule, all fees, costs, Losses (including trading losses) and other amounts to MahiFX even if you have had full loss of all margins deposited by you;
  - 31.1.2 MahiFX does not guarantee any order. Placing stops, regardless of the entry or closing designation, does not guarantee that the trade will be filled at the order price. All entry stops and stops will be filled, upon activation, at the first/best available market price that may or may not match the requested order price;
  - 31.1.3 In the event liquidity providers are unable to provide liquidity to us, your order may experience delays in execution or you may not be able to place

orders entirely. The size of the order may also impede the speed at which the order is executed. You acknowledge and agree that it is only necessary to enter any order once and that multiple entries for the same order may inadvertently open unwanted positions;

- 31.1.4 While trading through the MahiFX Services, you may encounter system errors that result from hardware and/or software failures. The result of any system failure may be that your order is either not executed according to your instructions, executed with Trading Account balance errors and discrepancies, or not executed at all. MahiFX will not be liable for, and you release MahiFX in respect of, any Claim or Loss associated with the resulting errors in Trading Account balances. MahiFX may make the necessary corrections or adjustments on the Trading Account involved;
  - 31.1.5 Concerning margin based contracts or trades:
    - (a) the high level of leverage possible when conducting those transactions with respect to foreign currencies is because it is only necessary to pay relatively modest margins or guarantees in relation to the scope of the contract; and
    - (b) accordingly, even a slight fluctuation of the market could mean substantial gains when these fluctuations are in your favour, but could also mean considerable losses if the fluctuations are to your detriment;
  - 31.1.6 We do not guarantee that a contract or trade you enter into will generate a return for you;
  - 31.1.7 At any time, market conditions might render the execution of an order, or of a limit on an order (either stop loss or take profit), at a stipulated price impossible, including on the basis of market illiquidity. Accordingly, even though the extent of the losses could be subjected to an agreed-upon limit, the risk of incurring losses could be higher, and that loss could occur in a relatively short period of time;
  - 31.1.8 Since MahiFX does not require you to deposit an additional guarantee with us, MahiFX may close the outstanding balances without your consent in accordance with these Terms;
  - 31.1.9 In volatile market conditions, foreign currencies may fluctuate rapidly to reflect unforeseeable events that cannot be controlled either by us or by you;
  - 31.1.10 There is a distinction between indicative prices which are displayed on charts and dealable prices which are displayed on the Website;
  - 31.1.11 Indicative quotes only give an indication of where the market is; and
  - 31.1.12 Because the foreign exchange and derivatives products markets are decentralised, without a single central exchange where all transactions are conducted, each market maker may quote slightly different prices. Accordingly, any prices displayed on any chart made available by us or by a third party will only reflect "indicative" prices and not necessarily actual "dealing" prices at which trades can be executed.
- 31.2 The risk information presented here and elsewhere in these Terms does not reflect all of the risks as well as other important aspects intrinsic to foreign currency and

metals transactions. Accordingly, before starting to trade, you agree to seek appropriate financial, legal and/or taxation advice.

- 31.3 There are a series of inherent risks with the use of the mobile trading technology such as the duplication of order instructions, latency in the prices provided, and other issues that are a result of mobile connectivity. Any prices displayed on a mobile platform are solely an indication of the executable rates and may not reflect the actual executed price of the order.
- 31.4 To the extent that your use of the MahiFX Services relies upon using a public communication network, we will not be liable for any Claim or Loss you suffer or incur in consequence of a delay in price quotation or an inability to trade caused by the availability of transmission quality of that network, software or hardware problems, or any other problems outside our direct control, which include but are not limited to the strength of the mobile signal, latency, or any other issues that may arise between you and any internet service provider, phone service provider, or any other service provider.
- 31.5 You acknowledge and agree that some of the features available on our Website or on the MahiFX Community may not be available on any mobile device application we offer.

## **32. Risks Associated with the MahiFX Community and social trading**

- 32.1 You acknowledge and agree that there are risks specific to the MahiFX Community, and the trading features which it contains – referred to in this clause as **Social Trading Features**.
- 32.2 You acknowledge and agree that:
- 32.2.1 MahiFX provides Social Trading Features for information purposes only; and
  - 32.2.2 If you make investment decisions in reliance on information which is available on the Website, or as a result of the use of the Social Trading Features, then you do so at your own risk, and you release and indemnify MahiFX in respect of any such use of the Social Trading Features.
- 32.3 Concerning any process by which you use the MahiFX Services to copy another Client's position, you acknowledge and agree that:
- 32.3.1 the copied position will be copied with the same proportional amounts and with the same leverage, to the maximum extent possible;
  - 32.3.2 all such positions will be closed automatically if and when closed by the copied Client and/or if the copied Client's positions were automatically closed by us, for whatsoever reason, without providing any further notice and without any action on your part;
  - 32.3.3 you acknowledge and agree that you may bear the loss of the entire investment you made in such a copied trade and you are fully responsible for any Loss or Claim you may suffer or incur as a result of our automatic execution of instructions generated as a result of using any of the Social Trading Features;
  - 32.3.4 If you place additional trades in your Trading Account or you modify or cancel an order generated by a Social Trading Feature, you may achieve a materially different result than the Client that you copied.

- 32.4 Any past performance of our Clients indicated on the Website is not indicative of future results and should be considered as hypothetical performance results.
- 32.5 You acknowledge and agree that historical performance is not a guarantee or reliable indicator of future performance. When reviewing the Client Content, portfolio, financial performance information, opinions or advice of another Client, you should not assume that the Client is unbiased, independent or qualified to provide financial product advice or provide any other financial service. MahiFX does not endorse, support, sanction, encourage, verify or agree with any Client position you may copy.
- 32.6 Any hypothetical performance results indicated on the Website have many inherent limitations. No representation or guarantee is being made that any Client or Trading Account will or is likely to achieve profits or losses similar to those shown and may not take into account fees, spreads and/or trading commissions that may be charged. The actual percentage gains/ losses which Clients' experience will vary depending on many factors, including but not limited to:
- 32.6.1 starting Trading Account balances (deposits and withdrawals);
  - 32.6.2 market behaviour;
  - 32.6.3 your Trading Account settings; and
  - 32.6.4 the performance of the copied Client,
- and, accordingly, actual percentage gains/losses experienced by Clients may be materially different from the percentage gains/ losses as presented on the Website.
- 32.7 You acknowledge that there are frequently sharp differences between hypothetical performance results and the actual results subsequently achieved by any particular trading program.
- 32.8 You acknowledge and agree that:
- 32.8.1 hypothetical performance results are generally prepared with the benefit of hindsight; and
  - 32.8.2 hypothetical trading does not involve financial risk, and no hypothetical trading performance can completely or accurately account for the impact of financial risk in actual trading. You acknowledge that the ability to withstand losses or to adhere to a particular trading program in spite of trading losses, are material points which can also adversely affect actual trading results.

### **33. Indemnification and limitation of liability**

#### **33.1 Indemnity**

- 33.1.1 To the full extent permissible by applicable law:
- (a) MahiFX makes no, and hereby disclaims all, representations or warranties of any kind, express or implied, as to the availability, operation and use of the MahiFX Services, including but not limited to warranties of performance, functionality, merchantability, fitness for a particular purpose, title, non-infringement, and implied warranties arising from course of dealing or course of performance; and

- (b) You release and indemnify MahiFX in respect of any Claim or Loss which may arise in consequence of your use of the MahiFX Services, including in consequence of any breach of these Terms by you.

33.1.2 The above indemnity:

- (a) extends to Claims incurred or suffered by MahiFX's officers, employees, agents or sub-contractors; and
- (b) extends to and includes all Losses incurred in defending and/or settling any Claims, including legal costs on a full indemnity (solicitor/own-client) basis.

### **33.2 Limitation of liability**

33.2.1 Nothing in these Terms is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.

33.2.2 Any representation, warranty, condition or undertaking which (but for this clause) would be implied in this document by law, is excluded to the fullest extent permitted by law.

33.2.3 MahiFX is not liable to you for any Claims (arising in contract, tort, statute or otherwise, or as a result of a force majeure) which may arise in consequence of, or in connection with, your use of the MahiFX Services and these Terms.

33.2.4 You indemnify and hold harmless MahiFX for all Claims (arising under contract, tort, statute or otherwise, or as a result of force majeure), which may be made against MahiFX or arise as a consequence of, or in connection with, your use of the MahiFX Services and these Terms.

33.2.5 Notwithstanding any other provision of these Terms and to the fullest extent permitted by law, MahiFX will not be liable to you for consequential, indirect or special losses or damages of any kind (including, without limitation, loss of profit, loss or corruption of data, business interruption or indirect costs) suffered by you as a result of any act or omission whatsoever of MahiFX, its officers, employees, agents or sub-contractors.

33.2.6 Where MahiFX elects to make good any Loss suffered by you, or is obliged by law to do so, then the maximum amount that will be made good for any reason is the lesser of:

- (a) the actual sum of money that you deposited in your Trading Account for the purpose of trading that may have been the basis for any accumulated liability that you incur; and
- (b) to the extent that the Loss is attributable to any act or omission on the part of our third parties under our Provider Contracts, to the amount which we recover from that service provider.

### **34. Set-off**

If you have any liability to MahiFX under these Terms, then MahiFX may set-off that liability against any liability we have to you.

## **Part 9 - Technical requirements**

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### **35. Technical Requirements to use the MahiFX Services**

35.1.1 You acknowledge and agree that:

- (a) you must provide and maintain adequate technical equipment and resources on which you install our software and access the MahiFX Services; and
- (b) you are solely liable for the integrity and proper storage of any data associated with the MahiFX Services.

35.1.2 You represent and warrant to us that you have installed and implemented appropriate means of protection relating to the security and integrity of your technical equipment and resources and that you have taken appropriate action to protect them from computer viruses or other similar harmful or inappropriate materials, devices, information or data.

35.1.3 You acknowledge and agree that we are not liable to you, and you indemnify us in respect of:

- (a) any event by which your technical equipment and resources fail, are damaged or destroyed, or by which your records and data are deleted, changed or corrupted;
- (b) any delays or Loss you suffer as a result of the configuration, use, performance or management of your technical equipment and resources; and
- (c) any wrongful transmissions of computer virus or other similarly harmful or inappropriate material or device to our system from your personal computer.

### **36. Technical Problems and Difficulties**

36.1 You acknowledge and agree that the use of the internet can at times be unreliable and at times you may experience trouble connecting.

36.2 You acknowledge and agree that we are not liable to you, and you indemnify us in respect of and delays or Loss arising in consequence of, any technical problems, system failures and malfunctions, communication line failures, equipment or software failures or malfunctions, system access issues, system capacity issues, high internet traffic demand, security breaches and unauthorised access, and other similar computer problems and defects.

36.3 You acknowledge and agree that we provide no representation, warranty or guarantee or that:

- 36.3.1 you will be able to access or use the MahiFX Services at all times and from any location; or
- 36.3.2 the MahiFX Services will be uninterrupted and error-free at all times.



### **37. Disconnection Policy**

If you are suddenly disconnected from the MahiFX Services whilst actively trading online, we will keep your positions open until you can re-establish your connection or trading ceases.

## **Part 10 - Trading requirements and restrictions**

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### **38. Circumvention & Reverse Engineering**

You must not access or attempt to gain access, reverse engineer or otherwise circumvent any security measures that we have applied in respect of the MahiFX Services.

### **39. Artificial Intelligence Software**

You must not use any software which applies any kind of artificial intelligence analysis of our system relating to the MahiFX Services.

### **40. Abusive trading technique**

40.1 You acknowledge that internet connectivity delays and price feed errors sometimes create a situation where the prices displayed on the Website will not actually reflect the market rates.

40.2 You must not seek to, in any way, take advantage of any arbitrage caused by internet delays.

40.3 MahiFX may revoke any contract or trade that relies on price latency arbitrage opportunities, and may make necessary corrections or adjustments on the Trading Account involved.

40.4 If any of your Trading Accounts rely on arbitrage strategies then MahiFX may intervene in respect of that Trading Account including by making transactions on that Trading Account subject to MahiFX approval.

40.5 You acknowledge and agree MahiFX may resolve any dispute arising from such quoting or execution errors and its resolution will be final.

### **41. Measures in respect of Prohibited Trading Techniques**

If you breach this clause, then MahiFX may:

41.1 terminate, or suspend access to, the provision of the MahiFX Services to you including by blocking access to your Trading Accounts;

41.2 notify relevant third parties; and

41.3 take such other take action as we see fit, including seizing all profits and revenues generated directly or indirectly from such technique in any affected Client accounts.

## **Part 11 - Conflicts of Interest**

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41.4 You acknowledge and agree that a conflict of interests may arise when the interest of MahiFX and its associates competes or may appear to compete with your interests under these Terms.

- 41.5 You acknowledge and agree that:
- 41.5.1 we may assign or transfer the execution of your orders to another member of the MahiFX group of companies;
  - 41.5.2 we may execute at the same time, orders by different Clients that are opposite to one another;
  - 41.5.3 we may establish business, including without limitation, trading relationships with other issuers of financial products and we may have a financial interest in such products;
  - 41.5.4 in addition to entering into contracts and trades with Clients, MahiFX will enter into contracts, trades and arrangements with third parties and counterparties, including to manage its position, exposure and risk related to all its Clients' open contracts or trades, and in this context there may be inherent conflicts of interest; and
  - 41.5.5 we may compensate and/or share our revenues from your activity with our associates and/or other similar parties performing marketing activities on our behalf, as described in our Financial Services Guide. You hereby further acknowledge that we also may compensate other Clients who you have elected to follow and/or copy.

## **Part 12 - GST and taxation**

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### **42. GST**

- 42.1 In this clause:
- 42.1.1 words and expressions that are not defined in these Terms but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
  - 42.1.2 GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or the *Goods and Services Tax Act 1985* (NZ), depending on where the goods and services are deemed to be supplied.
- 42.2 Except as otherwise provided by this clause, all consideration payable under these Terms in relation to any supply is exclusive of GST.
- 42.3 If GST is payable in respect of any supply made by a supplier under these Terms (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST Amount payable on the supply.
- 42.4 Subject to clause 42.5, the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under these Terms.
- 42.5 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 42.6.
- 42.6 If these Terms require a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- 42.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
  - 42.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.
- 42.7 If a change or an adjustment event occurs in relation to a taxable supply under these Terms:
- 42.7.1 the supplier must provide an adjustment, credit or debit note to the recipient within 7 days of becoming aware of the adjustment; and
  - 42.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment, credit or debit note.

### **43. Taxation**

- 43.1 You acknowledge and agree that:
- 43.1.1 we do not collect any taxes for any government authority in any form or manner;
  - 43.1.2 it is your own responsibility to calculate and pay all taxes applicable in your country of residence arising as a result of your trading activity using the MahiFX Services; and
  - 43.1.3 notwithstanding the above, and without derogating in any way from your sole, exclusive and personal obligation to pay taxes in your local jurisdiction, you unequivocally agree that we may deduct any taxes if we are required to do so by law, and in that event, you release and indemnify MahiFX in respect of any Claim or Loss which may arise in consequence of MahiFX acting in that way.

## **Part 13 - Termination, General, Force Majeure, Notices & Interpretation**

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### **44. Termination**

- 44.1 We reserve the right to terminate these Terms and all your Trading Accounts and registration (including your username and password) in the following cases:
- 44.1.1 if for any reason we decide to discontinue to provide the MahiFX Services, by providing at least a 5 Business Days' notice;
  - 44.1.2 if we believe that you have breached these Terms, immediately without notice;
  - 44.1.3 if your use of the MahiFX Services has been in any way improper or breaches the spirit of these Terms immediately without notice;
  - 44.1.4 an Insolvency Event happens in relation to you immediately without notice; or
  - 44.1.5 the death of the Client, immediately without notice.
- 44.2 You may terminate these Terms and your Trading Account and registration (including your username and password) at any time by serving a written notice on MahiFX.

In that case, MahiFX will terminate your Trading Account and registration within 5 Business Days, provided that you remain responsible for any activity on your Trading Account between serving your notice and the termination of your Trading Account by us.

- 44.3 If these Terms are terminated for any reason due to suspected misconduct on your part, then MahiFX reserves the right to withhold any funds in the Trading Account until the matter is resolved. Any decision made by MahiFX regarding the matter will be final.

## **45. General**

- 45.1 These Terms contain the entire understanding between the parties as to the subject matter contained in it: they operate as a deed binding upon the parties. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this document and have no effect.

- 45.2 Any reference to discretion on the part of MahiFX in these Terms is to be read as, unless stated expressly to the contrary, a reference to MahiFX's sole, absolute and unfettered discretion.

- 45.3 A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.

- 45.4 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

- 45.5 A Client must not:

45.5.1 sell, transfer, novate, delegate, assign, licence; or

45.5.2 mortgage, charge or otherwise encumber,

any right or obligation under these Terms to any person without the prior written consent of MahiFX.

- 45.6 Nothing in these Terms will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties.

- 45.7 Each indemnity in these Terms is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of these Terms.

- 45.8 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by these Terms.

- 45.9 In the interpretation of these Terms, no rule of construction applies to the disadvantage of the party preparing this document on the basis that it prepared or put forward this document or any part of it.

## **46. Force majeure**

- 46.1.1 To the extent that any of the events of the force majeure specified in this clause cause a delay in the availability of the MahiFX Services, or the

ability of MahiFX to provide the MahiFX Services in full, MahiFX will notify you as soon as practicable concerning:

- (a) the nature and extent of the event causing the delay;
- (b) the nature and extent of the delay; and
- (c) as far as possible, the likely duration of the delay.

46.1.2 This clause relates to the following events of force majeure:

- (a) loss or damage by fire, storm, tempest, explosion, lightning, earthquake or other act of God or civil commotion or other similar cause;
- (b) war, terrorism, revolution, insurrection, riot or invasion;
- (c) any other matter, cause or thing beyond the reasonable control of MahiFX;
- (d) weather sufficiently inclement to prevent MahiFX from proceeding with any of its obligations;
- (e) any prohibition or embargo imposed by any Act of Parliament or rule, regulation or order;
- (f) the delay of any authority in giving any necessary approval or permit, beyond the control of MahiFX;
- (g) any combination of workmen disputes between employers and employees or strikes or a strike or lockout affecting any of the trades employed by MahiFX in performing its obligations under these Terms;
- (h) any temporary or permanent unavailability of any required material or service caused by circumstances beyond the control of MahiFX; or
- (i) any proceedings taken or threatened by or any disputes with adjacent or neighbouring occupiers.

46.1.3 We will use reasonable endeavours to avoid any unnecessary interruption to the MahiFX Service under these Terms in consequence of any force majeure event.

## **47. Notices**

47.1 A notice or other communication required or permitted, under these Terms, to be served on a person must be in writing and may be served:

- 47.1.1 personally on the person;
- 47.1.2 by email to the person's current email address for service; or
- 47.1.3 to the Client by notice posted on the Client's Portal.

47.2 Additionally, MahiFX reserves the right to communicate with you by telephone, facsimile, email, through the Portal, post, newsletters issued by us and/or any other

means of communication, whether such communication is personally addressed to you or generally addressed to all Clients. You acknowledge and agree that we may communicate in this way, and any information or notice provided in that way will be deemed to have been received by you and/or any transaction so executed will be deemed final and binding on your part.

- 47.3 The particulars for service of MahiFX are those set out on the website from time to time.
- 47.4 The particulars for service of a Client or Client Applicant are those set out on the relevant application form, as updated by the Client or Client Applicant by notice to MahiFX in accordance with these Terms.
- 47.5 Additionally, if the person to be served is a company, the notice or other communication may be served on it at the company's registered office.
- 47.6 Subject to clause 47.2, a notice or other communication is deemed served:
- 47.6.1 if served personally or left at the person's address, upon service;
  - 47.6.2 if served by email, subject to clause 47.6.4, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient;
  - 47.6.3 if served by notice posted on the Portal, at the time that notice was posted; and
  - 47.6.4 if received after 5.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

## **48. Interpretation**

- 48.1 These Terms are governed by and are to be construed in accordance with the laws of New South Wales, Australia and New Zealand, as the context requires. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and New Zealand and waives any right to object to proceedings being brought in those courts.
- 48.2 In these Terms, a reference to:
- 48.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
  - 48.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and
  - 48.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.
- 48.3 If a party consists of more than one person, these Terms bind them jointly and each of them severally.
- 48.4 In these Terms, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

- 48.5 In these Terms:
- 48.5.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
  - 48.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in, or to, these Terms all of which are deemed part of these Terms;
  - 48.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
  - 48.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of these Terms;
  - 48.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
  - 48.5.6 where the expression **including** or **includes** is used, it means 'including but not limited to' or 'including without limitation'.
- 48.6 If a provision in these Terms is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 48.7 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in these Terms.
- 48.8 In these Terms, a reference to '\$' or 'dollars' is a reference to Australian dollars, unless expressly stated otherwise.
- 48.9 If a payment or other act is required by these Terms to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.
- 48.10 In these Terms, a reference to:
- 48.10.1 the singular includes the plural and vice versa; and
  - 48.10.2 a gender includes the other genders.
- 48.11 In these Terms, a reference to any property or assets of a person includes the legal and beneficial interest of that person in those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise.
- 48.12 A reference to a matter being to the knowledge of a person means the matter is to the best of the knowledge and belief of the person after making proper enquiry including enquiry which a reasonable person would be prompted to make by reason of knowledge of a fact.
- 48.13 Where a party is a trustee and the party makes a covenant, agreement, undertaking representation or warranty, it will be construed to be a covenant, agreement, undertaking, representation or warranty made in its own capacity and as trustee of the relevant trust.