

The service provided by HiFX to the Client (under either the "HiFX", "Currency Online" or "XE" brands) is provided on the following terms (**Terms**).

1. THE SERVICE

1.1 **Application of these Terms:** These Terms (including the Schedules) set out the terms and conditions applying to:

- (a) FX Transactions, FX Options and the Service; and
- (b) the Account, which the Client must have with HiFX for the management of FX Transactions and FX Options.

2. APPLICATIONS

2.1 **New client:** To establish the Account, the Client must complete an Application Form. The Application Form will be in such form (including in electronic form) and requiring such information as HiFX requires from time to time. HiFX may, in its absolute discretion, accept or decline an Application Form. These Terms will apply to the Client and HiFX from the time HiFX accepts the Application Form.

2.2 **Subsequent new product offerings:** HiFX may require the Client to submit additional Application Forms to access different kinds of FX Transactions or Services that may be subsequently offered by HiFX. HiFX may, in its absolute discretion, accept or decline any such application.

3. WARRANTIES, ACKNOWLEDGEMENTS AND UNDERTAKINGS

3.1 **Client warranties:** The Client warrants and undertakes that:

- (a) The Client is acting as principal only and not as agent for (or otherwise on behalf of) any third party whose identity has not been disclosed in writing to HiFX prior to applying for the Account.
- (b) All FX Transactions will be for non-speculative and legal purposes only, and that the Client has full capacity and authority to instruct HiFX to perform the Service, to place an Order, and to enter into FX Transactions.
- (c) The Client will take physical delivery on the Value Date of the Bought Currency after payment to HiFX of the full amount of the Sold Currency for each FX Transaction.

3.2 **Information and advice:** In relation to any FX Transaction, FX Option and information or advice supplied by HiFX:

- (a) The Client warrants that the Client relies solely on the Client's own skill and judgment in determining whether the FX Transaction or Services acquired from HiFX are suitable and reasonably fit for the Client's purposes.
- (b) The Client acknowledges that HiFX does not give any personal advice to the Client and HiFX has not taken into account the personal situation of the Client or the Client's experience, financial objectives, needs or circumstances unless HiFX expressly tells the Client it is giving personal advice.
- (c) The Client warrants that the Client does not place any reliance on HiFX's opinion of the merits or otherwise of any FX Transaction, taxation matters or matters concerning any foreign exchange financial products or markets or other matters of whatever kind.
- (d) The Client acknowledges that HiFX recommends that the Client seeks prior independent financial and legal advice and consider carefully whether entering into specific foreign exchange transactions are appropriate in terms of the Client's experience, financial objectives, needs and circumstances.

3.3 **US Payments:** If any payment requested by the Client is:

- (a) in United States dollars;
- (b) to be cleared in the United States; or
- (c) to be made via a bank in the United States,

then the Client shall, in respect of such payment, be deemed to have warranted, declared and undertaken to HiFX at the time of the relevant payment request that the beneficiary of the payment is not a person, group or entity, or in or associated with a country, sanctioned by United States laws and regulations, including (without limitation) those administered by the Office of Foreign Assets Control of the United States Department of Treasury.

3.4 **Repetition of warranties:** Each warranty and acknowledgement by the Client is deemed to be repeated prior to each Order and on each day that a FX Transaction or FX Option exists.

4. INSTRUCTIONS

4.1 **Client request for a FX Transaction:** The Client may make an Order:

- (a) through the On-line Services system; or
- (b) over the telephone; or
- (c) by email from the Client's designated email address.

4.2 **Entry into a FX Transaction:** Each Order from a Client constitutes an offer to HiFX and, if accepted by HiFX, will result in an agreement for the relevant FX Transaction on these Terms. HiFX is not obliged to accept any Order or agree to perform any Service and may refuse to do so without giving any reason. HiFX will have no liability to the Client for any loss in relation to any Order or Service it has not accepted or agreed to provide.

4.3 **How a FX Transaction is accepted:** A FX Transaction will come into force when HiFX accepts the Client's Order or, in respect of a FX Transaction made using the On-line Service, when HiFX accepts the Client's offer made when using the On-line Services system (see Schedule 1 clause 7).

4.4 **Confirmation of a FX Transaction:** If a FX Transaction has been entered into, HiFX will confirm the details by emailing to the Client a Confirmation of the FX Transaction. The failure of HiFX to do so will not prejudice the rights or obligations of either party in respect of that FX Transaction.

4.5 **Notification of errors and omissions:** The Client agrees to check each Confirmation within 24 hours of HiFX sending the Confirmation and immediately notify HiFX of any errors or omission in the Confirmation. Unless the Client notifies HiFX of any error or omission within 24 hours, the Client will be deemed to have ratified and accepted the contents of such Confirmation. After that time, the Client will not be entitled to dispute the contents of the Confirmation and it will (except where HiFX accepts there is manifest error in the FX Transaction details and these could not reasonably have been identified by the Client from the contents of the Confirmation) be conclusive evidence of the matters stated in it and of the agreement and instructions of the Client in respect of the relevant FX Transaction and/or onward payment.

4.6 **Written confirmation:** Notwithstanding clause 4.1, HiFX may require written confirmation of any Order by the Client prior to accepting the Order.

4.7 **Recording of telephone conversations:** HiFX may record and store recordings of all telephone conversations with the Client (and its Authorised Persons), with or without an automatic warning message or tone. HiFX may produce and store a transcript of the recorded telephone conversation and use either the transcript or the recording of the telephone conversation for the purposes of verifying the details of an Order or FX Transaction or to resolve any dispute between the Client and HiFX in respect of the FX Transaction or Service.

5. ON-LINE SERVICES

5.1 **Additional Terms for On-line service:** If you use our On-line Services, the additional Terms set out in Schedule 1 will apply.

6. FINANCIAL PROVISIONS

6.1 **Payment in full and on time:** The Client must make all payments due to HiFX pursuant to these Terms by the required date and time by electronic payment. Payments must be made in full without any set-off, counterclaim or deduction.

6.2 **Time of the essence:** Time is of the essence in relation to the performance of the Client's payment obligations under these Terms.

6.3 **HiFX deductions:** HiFX may make any deductions it is required by law to deduct or is permitted to make under these Terms.

6.4 **Bank delay and errors:** HiFX accepts no responsibility for, and will have no liability in respect of, any delay or withholding of payment by a bank or intermediary bank(s). The parties acknowledge that the banks through which payment of the FX Transaction is to be effected have specified times of cut off for the receipt and despatch of electronic payments. Delays in onward payment may be attributable to the late arrival of payment relative to the cut off times of the designated bank(s), their errors, omissions or delays or their failure to conduct the payment. A bank may also be required to (among other things) delay or withhold payment if it is not satisfied with information about the Client, payment or recipient for the purposes of AML/CFT Laws or other laws.

6.5 **Bank charges:** The Client acknowledges that bank charges and fees may be deducted from payments to or from HiFX by third party banks in the following circumstances:

- (a) by the Client's bank and any intermediary or receiving banks from money paid by the Client to HiFX; or
- (b) by intermediary and receiving banks from Bought Currency transferred internationally by HiFX on behalf of the Client,

and these charges and fees are to the Client's account.

- 6.6 **Payment of cleared funds:** No onward payments will be made by HiFX until funds received by HiFX have cleared.
- 6.7 **Interest for late payment:** HiFX may charge the Client interest for the late payment of any sum due under these Terms or any Agreement at the rate of five percent per annum above HiFX's principal bank's base lending rate from time to time from and including the due date until payment is received in cleared funds. This rate is available from HiFX on request.
- 6.8 **No interest on funds held by HiFX:** The Client will not receive interest on any Margin payments or any Client money held by HiFX. HiFX will retain interest paid to it in respect of Margin payments and Client money (including money held by it on trust) and the Client waives all rights to receive interest.
- 6.9 **FX Transaction below Transfer Threshold:** HiFX will charge the Client a Transfer Fee if the Sold Currency amount falls within a Transfer Threshold. HiFX may vary both the amount of the Transfer Fee and the applicable Transfer Threshold from time to time. The Transfer Fee and the Transfer Threshold are available on HiFX's websites.
- 6.10 **Multiple payments:** HiFX may charge a fee to the Client if the Client instructs HiFX to make more than one onward payment on settlement of a FX Transaction.
- 6.11 **No cash or cheques accepted:** All payments to HiFX must be made by electronic payment. Payments must not be made in cash or by cheque. Cash payments made into HiFX's bank account may be repaid to the Client less any cash handling fees (approximately 2.5%) imposed by HiFX's bank and HiFX's reasonable administrative fees. HiFX may also be required by AML/CFT Laws to seek satisfactory information from the Client about the source of the funds before returning the funds to the Client.
- 6.12 **Payments by third parties:** The Client must inform HiFX in advance of making a payment to HiFX if the payment is to be made by a third party on behalf of the Client. HiFX may be required by AML/CFT Laws to undertake additional compliance checks for a third party payment and there may be delays in allocating the payment to the Client's Account. HiFX reserves the right to return the payment to the remitting account and require the Client to pay from its own bank account if HiFX is not satisfied with the information provided.
- 6.13 **Transaction limits:** HiFX may (without notice) from time to time set or alter limits on the value and/or types of FX Transactions that the Client may enter into with HiFX.

7. SPOT AND SAME DAY FX TRANSACTIONS

- 7.1 **Spot FX Transaction:** If the FX Transaction is a Spot FX Transaction, the Client must pay in cleared funds on such date or dates as HiFX directs, but no later than the Business Day immediately preceding the Value Date, the full amount of the Sold Currency as full payment for the FX Transaction.
- 7.2 **Same Day FX Transaction:** If the FX Transaction is a Same Day FX Transaction, the Client must pay in cleared funds the full amount of the Sold Currency by no later than the time stipulated by HiFX on the day of the Same Day FX Transaction.

8. FORWARD FX TRANSACTIONS

- 8.1 **Forward FX Transactions and Margin:**
- (a) If the FX Transaction is a Forward FX Transaction, the Client must immediately after HiFX agrees to the FX Transaction:
- pay a Margin, as specified by HiFX (a percentage of the Sold Currency or as otherwise agreed); and
 - pay any outstanding balance of the Sold Currency by the time nominated by HiFX and in any case not later than one Business Day before the Value Date of the particular Forward FX Transaction, unless specifically agreed by HiFX.
- (b) After a Forward FX Transaction is established, HiFX may make a Margin Call, as determined by HiFX in its absolute discretion, to re-establish the Margin to an amount acceptable to HiFX.
- 8.2 **Margin payment:** A Margin payment is the amount paid by the Client to HiFX for part payment of the Sold Currency. Once payment has been made to HiFX, and HiFX has received cleared funds, that amount will be credited to the Client's Account as Margin.
- 8.3 **Margin Calls:** The Client agrees to and acknowledges each of the following:
- The Client has an obligation to satisfy a Margin Call within the time specified by HiFX. HiFX may make a Margin Call requiring further Margin to be paid immediately, for example if there are Volatile Market Conditions.
 - The minimum amount of the Margin Call may be determined by HiFX in its absolute discretion up to the full unpaid amount of the Sold Currency.

(c) HiFX may make Margin Calls by any means of notice permitted by these Terms, including by telephone call or email to the Client or the Authorised Person while the Client is a party to a Forward FX Transaction. It is fundamental that the Client remains contactable by HiFX Monday to Friday (New Zealand time) using the contact details given to HiFX from time to time. The Client's failure to be contactable or to receive notice of a Margin Call at any contact address does not affect the validity of the Margin Call or the Client's obligation to satisfy it.

(d) HiFX will assess the need for a Margin Call on a daily basis and may make a Margin Call after it completes each assessment.

(e) Time is of the essence in relation to the Client making a payment to satisfy its Margin Call obligations. If the Client fails to satisfy the Margin Call by the required time, then HiFX may (without prejudice to any other rights or powers under these Terms) in its absolute discretion immediately terminate by way of Close Out without notice, all or some of the Client's FX Transactions, whether or not those FX Transactions caused the need for a Margin Call.

8.4 **Margin not a debt due:** Any amount of Margin or other net positive amount credited to the Account will not constitute a debt due by HiFX to the Client.

8.5 **New Zealand retail client margin:** If the Client is a New Zealand retail client (being a client of HiFX that resides in New Zealand and who is not a "wholesale client" as defined in the Financial Markets Conduct Act 2013), HiFX will hold on trust for the Client in a statutory pooled client trust bank account with a registered bank an amount equal to the aggregate Margin payments paid by the Client and held by HiFX. Those funds cease to be held on trust for the Client on settlement of the FX Transaction.

8.6 **All other client Margin:** All other client Margin is held in HiFX's STAs in accordance with clause 12.

9. FX SWAP TRANSACTIONS

9.1 **FX Swap Transaction:** If the FX Transaction is a FX Swap Transaction:

(a) clause 7.1 will apply to the Spot FX Transaction component of the FX Swap Transaction; and

(b) clause 8 will apply to the Forward FX Transaction component of the FX Swap Transaction.

10. PREDELIVERY AND ROLLOVERS

10.1 **Variation to a FX Transaction:** The Client acknowledges that in respect of a FX Transaction, if the Client requests:

(a) delivery of the Bought Currency earlier than the Value Date, HiFX may in its discretion agree to that on the basis of an adjusted exchange rate or other variations;

(b) termination of the FX Transaction on a date that is earlier than the Value Date, HiFX may in its discretion agree to the termination and that may result in an adjustment to the amount payable on termination of the FX Transaction; or

(c) an extension of the Value Date to a later date, HiFX may in its absolute discretion agree to that and HiFX may either adjust the current FX Transaction for a new exchange rate or HiFX may Close Out the existing FX Transaction at the existing exchange rate and enter into a new FX Transaction on agreed terms appropriate to the extension.

11. MARKET ORDERS

11.1 **Client Request for Market Order:** The Client may make a Market Order in the manner set out in clause 4.1. Clauses 4.2 and 4.3 will not apply to Market Orders.

11.2 **Target Rate and cancellation:** For each Market Order:

(a) on the Target Rate being reached, HiFX will enter into a Spot FX Transaction or Forward FX Transaction (as applicable) with the Client on the terms of the Market Order and this clause 11 without any further action being required of the Client.

(b) the Client may cancel or alter a Market Order using the On-line Service or by telephone during the business hours of HiFX at any time before the Target Rate is reached.

(c) HiFX will use its best endeavours to fill the Market Order but makes no guarantee that a Market Order will be filled on the Target Rate being reached.

11.3 **Stop loss Market Orders:** HiFX will execute each stop loss Market Order at the first available price at which HiFX is able to transact with its bank counterparties after the Target Rate has been reached.

11.4 Client acknowledgements: The Client acknowledges and agrees that:

- (a) although the Client specifies an exchange rate for a Market Order, market conditions may prevent the execution of an individual Market Order at that exchange rate;
- (b) HiFX will in its sole discretion determine whether a Target Rate has been reached and may disregard temporary movements in exchange rates;
- (c) as a result of rapid movements in supply and demand factors during Volatile Market Conditions outside of the control of HiFX, a Spot FX Transaction or a Forward FX Transaction entered into on execution of a stop loss Market Order may be significantly and adversely above or below the rate nominated by the Client; and
- (d) each Market Order constitutes a continuing offer to HiFX that HiFX may accept at any time until cancelled by the Client or the expiry date for the Market Order (if applicable).

12. SECURITY AND TRUST ARRANGEMENTS

12.1 All funds into STAs: All funds received by HiFX from its clients and Hedge Counterparties or which are paid by HiFX to its clients and Hedge Counterparties (including Sold Currency, Bought Currency and Margin) will be received into and paid out of, the STAs.

12.2 Use of funds in STAs: HiFX is entitled to use funds from the STAs from time to time in the ordinary course of its business, but must only use such funds for one or more of the following purposes:

- (a) to meet its obligations for the settlement of FX Transactions with its clients and/or the onward payment of funds in accordance with the applicable Terms and client instructions;
- (b) to meet its obligations owed to its Hedge Counterparties in respect of Hedge Contracts, including in respect of payments by way of absolute transfer of funds or by way of security or collateral as support for HiFX's obligations under its Hedge Contracts;
- (c) to pay bank charges, government taxes or levies on or in respect of that STA or as reasonably allocated to that STA;
- (d) to withdraw any interest credited to the STA; or
- (e) to pay itself or otherwise to appropriate for its own uses amounts surplus to the amounts actually or contingently needed or reasonably likely to be needed to meet all of its obligations on all foreign exchange transactions with its clients and to meet all of its obligations on all Hedge Contracts, in either case as at the time of that withdrawal,

but in all cases always subject to the terms of the Security and the Trust Deed.

12.3 Transfers into trust account: HiFX may also withdraw funds from the STAs and pay those funds into a statutory pooled client trust account of HiFX at a registered bank where required to do so by law.

12.4 Security in favour of clients: HiFX has granted for the benefit of each of its clients with a foreign exchange transaction that has not terminated, a first ranking (subject to claims of creditors who have a statutory preference that cannot be excluded) security (**Security**) over (in summary):

- (a) the STAs; and
- (b) HiFX's rights under its Hedge Contracts, including in respect of payments by way of absolute transfer of funds or by way of security or collateral as support for HiFX's obligations under its Hedge Contracts.

12.5 Representations about Security: HiFX represents and warrants to the Client that HiFX has not granted and will not in the future grant any other security interest or charge over the STAs or HiFX's rights under its Hedge Contracts and that the Security will always consist of one or more first ranking securities (registered where applicable) subject only to claims of creditors who have a statutory preference that cannot be excluded (e.g. preferential claims from government revenue authorities and employees).

12.6 Independent Trustee: HiFX confirms that it has appointed an independent trustee (**Trustee**) under the Trust Deed, who is the registered holder of the Security and holds the Security for the benefit of each of its clients on the terms set out in the Trust Deed and the Trust Deed has not been revoked.

12.7 Trustee's powers on behalf of Client: Under the terms of the Trust Deed, the Trustee is empowered to act on behalf of, and for the benefit of, the Client and HiFX's other clients upon HiFX's insolvency.

12.8 Client right to copy of Trust Deed: The Client acknowledges that it has had a reasonable opportunity to read and to obtain a copy of the Trust Deed (available free of charge on request from HiFX).

13. TERMINATION AND SET-OFF

13.1 HiFX may terminate: In addition to any other termination rights in these Terms, HiFX will have the right (without notice to the Client) to terminate and Close Out, at that time or any later time as HiFX determines some or all FX Transactions and/or terminate the Agreement (without notice to the Client) if any of the following events occur:

- (a) the Client fails to make a Margin payment or to comply with a Margin Call within the applicable time period, which may be immediately after the Margin Call is made;
- (b) any information provided by the Client to HiFX is false, misleading or inaccurate in any material respect or the Client is unable to prove to HiFX's reasonable satisfaction that any information requested of the Client is true and complete in all material respects;
- (c) the Client breaches any of these Terms or otherwise fails to comply with the Client's obligations to HiFX in respect of a FX Transaction or FX Option or HiFX in its reasonable discretion determines there to be a material risk of the Client being unable to comply with its obligations to HiFX as and when they fall due;
- (d) it becomes or there is a material risk that it may become unlawful for HiFX to maintain or give effect to all or any of the obligations under these Terms, or if HiFX is requested to Close Out a FX Transaction (or any part of it) by any court or regulatory authority whether or not the request is legally binding;
- (e) the Client becomes unable to pay the Client's debts as they become due or makes any assignment, arrangement or composition with or for the benefit of the Client's creditors or if the Client ceases or threatens to cease to carry on all or a part of the Client's business or becomes insolvent or stops or threatens to stop any payment or payments due under these Terms or any Agreement;
- (f) if the Client is a natural person; the Client dies, becomes of unsound mind or commits one or more acts of bankruptcy as set out in the Insolvency Act 2006;
- (g) HiFX, acting reasonably, considers termination of one or more FX Transactions is necessary or desirable for its own protection, including (without limitation and by way of example only) when Volatile Market Conditions exist or the Client is not contactable for a period of 24 hours Monday to Friday (New Zealand time);
- (h) HiFX, after making reasonable inquiries, believes on reasonable grounds that there is a material risk that the Client:
 - (i) is entering into a FX Transaction for speculative purposes;
 - (ii) has provided information that is false, misleading or inaccurate in any material respect or has failed to comply in full with any reasonable information request made by HiFX; or
 - (iii) is in breach of AML/CFT Laws or any other law relevant to a FX Transaction or the Service.

13.2 Notice of termination: HiFX must promptly give to the Client notice of the termination after exercising its termination rights under clause 13.1.

13.3 Client to notify HiFX: If the Client becomes aware of the occurrence of any event referred to in clause 13.1 (other than paragraph (g) and (h)), the Client must give HiFX notice of such event immediately.

13.4 Termination by Client: The Client may terminate any FX Transaction by giving written notice to HiFX if any of the following events occur:

- (a) HiFX breaches any of these Terms or otherwise fails to comply with HiFX's obligations to the Client in respect of a FX Transaction;
- (b) the Client is in breach of any statute or regulation relevant to the FX Transaction; or
- (c) HiFX becomes unable to pay its debts as they become due or makes any assignment, arrangement or composition with or for the benefit of its creditors or it becomes insolvent.

On a Client giving a notice of termination in accordance with this clause, HiFX must immediately Close Out each relevant FX Transaction and clauses 13.4, 13.5, 13.7 and 13.8 shall apply to that termination by way of Close Out.

13.5 Netting agreement: If one or more FX Transactions are terminated by either party under these Terms, HiFX may elect to net the payments due and payable but unpaid from HiFX to the Client and from the Client to HiFX on termination (together with any other payments due and payable but unpaid from HiFX to the Client and from the Client to HiFX in respect of any other FX Transaction or otherwise) so that one netted balance is calculated by HiFX and notified to the Client as soon as reasonably practicable after termination. The obligations of the Client and HiFX to make all such payments will be satisfied by the payment of the net amount due, from the party having a net debit, to the party having the net credit, provided that those obligations of the party having the net credit will be deemed to be satisfied and discharged on the date such payment is due, regardless of whether the payment is

made. The party with the net debit will pay the net amount due to the party having the net credit on the date on which that notice is given.

- 13.6 **Costs and expenses of termination:** The Client is liable to HiFX for any costs and expenses HiFX reasonably incurs in connection with the exercise of its rights under this clause 13 (including legal costs on a solicitor and own client basis), together with interest on those costs and expenses at the rate of five percent per annum above HiFX's bank's base lending rate at the time the costs and expenses are incurred. The Client authorises HiFX to withdraw the amount of such costs, expenses and interest from any funds held to the account of the Client.
- 13.7 **Amount payable:** The amount payable by the Client or HiFX (as applicable) in relation to each FX Transaction terminated (the **Close Out Amount**) in accordance with clause 13.1 or 13.4 will be the amount determined by HiFX by entering into an equal and opposite transaction at current HiFX rates (incorporating HiFX's standard spread) to close out the FX Transaction. HiFX and the Client agree that any such amount is a reasonable pre-estimate of loss and not a penalty. HiFX will notify the Client of the Close Out Amount for each terminated FX Transaction as soon as practicable after termination. Subject to HiFX electing to net payments due in accordance with clause 13.5, the Close Out Amount and any further money to be paid by the Client to HiFX will be payable by the Client or HiFX (as applicable) on the date notice of the Close-Out amount is given to the Client.
- 13.8 **Set off:** The Client agrees that HiFX may set off any money due and payable by the Client to HiFX under the Agreement or in respect of any FX Transaction, FX Option or otherwise against any money of the Client held by HiFX or any money payable by HiFX to the Client. The Client authorises HiFX to withdraw the amount set-off from any funds held to the account of the Client and/or in the Account. This clause 13.8 will not limit any right of set-off, combination of accounts, or rights of retention or withholding that HiFX may have at law or in equity.

14. LIMITATION OF LIABILITY

- 14.1 **Entire liability:** This clause 14 sets out HiFX's entire liability to the Client for any losses, costs (including legal costs and expenses), damages, expenses, taxes, charges or any other liability whatever (**Claim**).
- 14.2 **Client aware of nature of foreign exchange:** The limitation and exclusion of liability is set on the basis that the Client is aware of the volatile nature of foreign exchange and is not speculating.
- 14.3 **No liability for currency fluctuations:** HiFX will not be liable to the Client for any Claim which arises as a result of currency fluctuation between the entry into a FX Transaction and the Value Date or as a result of the Client's non-compliance with any FX Transaction.
- 14.4 **No liability unless negligence or breach:** Subject to clause 14.8, notwithstanding anything in these Terms or in any Agreement, to the extent permitted by law HiFX will not be liable to the Client for any Claim whether arising out of these Terms, the Service, or any FX Transaction, or FX Option, by reason of any cause of action arising in contract, tort or otherwise, save except to the extent of direct losses caused by the negligence or breach of HiFX in the performance of a FX Transaction, or FX Option, (taking into account, without limitation, any act, omission, and/or contributory negligence of the Client and subject to the limitations on HiFX's liability under the other terms of this clause 14).
- 14.5 **Limitation on liability:** Subject to clause 14.8, notwithstanding anything in these Terms or in any Agreement, to the extent permitted by law HiFX will not be liable in any circumstances for:
- (a) any loss of profits, economic changes, goodwill, anticipated savings, loss caused by the failure or delay of any third party in the transmission, provision or delivery of the Service, or any special, indirect, incidental or consequential loss whether resulting from currency speculation, from purposes associated with the Client's personal business or from any other cause whatever, regardless of the legal basis or form of action (including loss or damage suffered by the Client as a result of an action brought by a third party) and even if such loss was reasonably foreseeable or HiFX was advised as to the possibility of that; and
 - (b) an amount exceeding (in total) the amount of money actually received by HiFX from the Client in respect of the particular FX Transaction, FX Option, payment or other matter or circumstance giving rise to the relevant Claim.
- 14.6 **Client indemnity:** The Client indemnifies and will keep HiFX indemnified against any and all liabilities, costs and expenses (including legal costs on a solicitor and own client basis) reasonably incurred by HiFX in the proper performance of the Services and the enforcement of its rights under the Terms and, in particular, without prejudice to the generality of the foregoing, in respect of all amounts necessary to compensate HiFX for any and all liabilities, costs and expenses sustained or incurred by HiFX (including but not limited to HiFX's loss of profits) as a result of or in connection with:

- (a) any default in payment by the Client of any sum under these Terms when due;
 - (b) any breach by the Client of these Terms or any Agreement; and
 - (c) any action or steps of whatever nature or kind taken by HiFX to carry out or give effect to instructions or Orders, received from or purporting to be from the Authorised Persons referred to in clause 20; and
 - (d) HiFX exercising its rights under clauses 6 to 11.
- 14.7 **Causes beyond HiFX's control:** Subject to clause 14.8, notwithstanding anything in these Terms or in any Agreement, to the extent permitted by law HiFX will not be liable to the Client for any delay or non-performance of its obligations under these Terms or any Agreement arising from any unusual and unforeseeable cause or causes beyond its reasonable control which could not have been avoided by HiFX even if all due care had been exercised including, without limitation, any Act of God, governmental act, war, fire, flood, explosion, civil commotion, failure of computer equipment or communications systems or industrial dispute as a result of which it is impractical, impossible or illegal for HiFX to comply with any of its obligations under these Terms or any Agreement.
- 14.8 **Limit on liability:** If by law the liability of HiFX cannot be excluded or limited as provided in these Terms, then the exclusion or limitation is to be deemed to be varied so as to limit the liability of HiFX to:
- (a) supplying the Services again; or
 - (b) the payment of the cost of having the Services supplied again.

15. SAME CURRENCY PAYMENTS

- 15.1 **Fees and payments:** If the FX Transaction is a Same Currency Payment:
- (a) HiFX will charge and the Client will pay HiFX's applicable fee for Same Currency Payments. HiFX will advise the Client of the fee prior to the parties entering into the agreement for the Same Currency Payment.
 - (b) The Client agrees that all payments to HiFX and by HiFX in respect of the Same Currency Payment are to be paid to HiFX and by HiFX into or out of the STAs.
 - (c) The Client acknowledges that bank charges and fees may be deducted from a Same Currency Payment in the manner set out in clause 6.5 of the Agreement.
 - (d) Same Currency Payments are available for commercial purposes only and are subject to HiFX completing its due diligence checks on the source of payments, recipients and purpose of payments.

16. GENERAL

- 16.1 **Consumer Guarantees Act:** The Client warrants and acknowledges that if the Services acquired from HiFX are for the purposes of a business, then nothing in the Consumer Guarantees Act 1993 will apply to the Services or any FX Transaction, or FX Option.
- 16.2 **Independent contractor:** HiFX is an independent contractor in providing the Services to the Client. HiFX does not owe the Client any duty to offer the Client the best possible price or terms in the Client's favour nor is HiFX required to act in the Client's best interests. HiFX will honour any pricing commitment it may make to the Client from time to time. These Terms and any FX Transaction do not establish any relationship of partnership, joint venture, employment, franchise or agency between the Client and HiFX.
- 16.3 **Exercise of discretions:** HiFX has discretions under these Terms which can affect the Client's Account and FX Transactions. The Client does not have any power to direct how HiFX exercises its discretions. When exercising HiFX's discretions HiFX will comply with its legal obligations. HiFX will have regard to (but not be bound by) its policies and have regard to managing risk (including financial, credit and legal risks) for HiFX and all of HiFX's clients, HiFX's obligations to its counterparties, market conditions and HiFX's reputation. HiFX will always try to act reasonably in exercising HiFX's discretions but HiFX is not obliged to act in the Client's best interests or to avoid or minimise a loss in the Account.
- 16.4 **Survival of obligations:** The termination of any FX Transaction or the Agreement is without prejudice to any pre-existing liabilities or obligations of a party. The provisions of clauses 3.3, 6, 13, 14, 18 and this clause 16 will survive termination of any FX Transaction, completion of any FX Transaction or termination of the Service or the Agreement.
- 16.5 **Single agreement:** Notwithstanding any other provision of these Terms to the contrary, all FX Transactions and FX Options are entered into under one single contract between HiFX and the Client on these Terms (as amended from time to time), and agreements for FX Transactions and FX Options do not constitute separate severable contracts. References to "any Agreement" in these Terms shall,

as the context requires be deemed to be a reference to the agreement of the parties in relation to the relevant FX Transaction or FX Option under the Agreement. These Terms and any applicable Confirmation set out all of the agreement between the Client and HiFX except only for those provisions which are imposed by law and which cannot or have not been excluded by these Terms. The terms of the Trust Deed are governed by its terms.

- 16.6 **Entire agreement:** These Terms and the Agreement (including any Confirmation) will constitute the entire agreement and understanding of the parties in relation to the subject matter of the Agreement and supersede all oral communications and prior writing relating to them.
- 16.7 **Transfer:** The Client may not assign or otherwise transfer the benefit of this Agreement or any FX Transaction or FX Option without the express written consent of HiFX. HiFX may without prior notice to the Client assign all or any of its rights or novate its rights and obligations under these Terms and the Agreement to any third party and the Client consents to any such assignment or novation. On a novation by HiFX, the third party will be the contracting party in place of HiFX and references to HiFX in these Terms will be deemed to be references to the third party.
- 16.8 **No waiver:** Any failure by either party to exercise, and any delay, forbearance or indulgence by either party in exercising, any right, power or remedy under these Terms will not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time.
- 16.9 **Illegality:** Notwithstanding that any provision of these Terms is determined by a court to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason, that provision is deemed omitted without affecting the legality of the remaining provisions which will continue in full force and effect.
- 16.10 **Amendments:** HiFX may amend these Terms from time to time by giving notice in writing to the Client in accordance with clause 16.11 or by informing the Client of the change by telephone or by posting details on HiFX's website. The amendment is deemed to be accepted by the Client if the Client continues to use the Services. These changes will be effective and binding when issued. Any such amendment will not be retrospective or affect any rights or obligations that may already exist in respect of any then outstanding Orders, FX Transactions or FX Options.
- 16.11 **Notices:** All notices or demands under these Terms or any Agreement must be in writing (including electronic form) and may be given to, or served on a party by facsimile, electronic mail or personal delivery to the address or facsimile number advised by the relevant party from time to time. Any notice or demand given or made by HiFX under these Terms will be deemed to be delivered as follows:
- if sent by domestic post, five Business Days after it is posted;
 - if sent by facsimile, at the earlier of the time of receipt of a correct and complete transmission report by HiFX at the close of transmission or acknowledgement from the Client of the facsimile; and
 - if sent by electronic mail, at the time sent by the sender to the recipient (provided that the sender has not received an undeliverable message); and
 - if delivered by hand, at the time delivered.
- 16.12 **Taxes:** The Client acknowledges and accepts that HiFX does not collect tax for any authority in any form or manner unless required by law. It is the sole obligation of the Client to calculate and pay all taxes applicable to the Client.
- 16.13 **Client and onward payment details:** The Client will be solely responsible for ensuring that the details the Client supplies to HiFX to enable HiFX to perform the Service, including without limitation, the Client's contact details, the details of any Order or FX Transaction and the Client's onward payment instructions (inclusive of recipient name and physical address details), are true, accurate, complete and up to date. The Client must not withhold or omit any information that would render those details false or inaccurate. The Client agrees to notify HiFX immediately where the Client becomes aware of any error or change in the details the Client has supplied to HiFX.
- 16.14 **Disclosures to Client:** The Client acknowledges and agrees that any disclosure statement or other document required to be given to the Client by law may be given to the Client by being placed on an identified website of HiFX or be sent by electronic means to the email address nominated by the Client in the Application Form or as subsequently nominated by the Client in writing.
- 16.15 **Costs:** The Client acknowledges that the Client is responsible for the Client's own legal and other costs associated with entering into these Terms and for all taxes and expenses incurred by the Client in connection with these Terms, including any FX Transaction or FX Option entered into under these Terms.
- 16.16 **No set-off:** All payments by the Client under these Terms are to be made without any set-off by the Client, counter claim or condition made by the Client and without the Client making any deduction or withholding for any tax or any other reason unless the deduction or withholding is required by applicable law or the set-off arises by express application of the Terms.

- 16.17 **Joint and several obligations:** If more than one person is named as the Client the obligations of the Client under these Terms will bind each of them jointly and severally.
- 16.18 **Information about third persons:** The Client warrants that if any personal information has been provided to HiFX by or on behalf of the Client in relation to third persons connected to the Client, each such person has authorised the Client to provide such personal information to HiFX to be used, held and disclosed in the manner set out in these Terms.
- 16.19 **Remuneration of affiliates:** HiFX pays commission to affiliates and other parties who refer a person to HiFX where the person becomes a HiFX client and transacts with HiFX.

17. ANTI-MONEY LAUNDERING

17.1 **AML/CFT Laws:** The Client acknowledges that:

- HiFX and its bank counterparties are subject to various AML/CFT Laws which require identification of clients and may prohibit HiFX and/or its bank counterparties from offering services or entering into or conducting FX Transactions and payments either at all or unless prescribed information is provided by the Client and/or checks undertaken; and
- the AML/CFT Laws include prohibitions against any person dealing with the proceeds of or assets used in criminal activity (wherever committed) and from dealing with any funds or assets of, or the provision of finance to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act.

17.2 **Delay or refusal to provide Services:** The Client agrees that:

- HiFX is not required to take any action or perform any obligation under or in connection with these Terms and may delay, block or refuse to make any payment or to provide any Service or freeze the Account if (1) it is not satisfied as to the identity of the Client or any payee or the information provided by the Client, or (2) if HiFX is not satisfied that providing a Service or making a payment would be in compliance with AML/CFT Laws or any other applicable law, regulation or sanction of New Zealand or any other country;
- HiFX will not incur any liability to the Client for any loss or damage the Client suffers (including consequential loss) however caused by reason of any action taken or not taken by HiFX as contemplated in clause 17.2(a) above.

17.3 **Provision of information:** HiFX is the ordering institution for the purposes of AML/CFT Laws. The Client agrees to provide HiFX with all information and documents which HiFX and its bank counterparties reasonably require to comply with any law in New Zealand or any other country, including any AML/CFT Laws. That information will include (without limitation) information about recipients of payments the Client directs HiFX to make on behalf of the Client. The Client agrees that HiFX may disclose information which the Client provides to HiFX and any historical or proposed transactional or payment information (including information about recipients of payments) if disclosure is required by, or for the purposes of compliance by, HiFX or a bank counterparty with, any law in New Zealand or in any other country.

17.4 **Anti-money laundering checks:** HiFX will, and its bank counterparties may, need to conduct checks on the Client from time to time to comply with AML/CFT Laws. The Client authorises HiFX to use electronic and such other means of conducting AML/CFT checks as HiFX deems to be necessary, including using third party service providers. The Client authorises HiFX to provide personal information provided by the Client or a third party about the Client and third persons connected with the Client to such third party services providers for the sole purpose of the third party service provider undertaking those AML/CFT checks on behalf of HiFX (and no other purpose).

17.5 **Jurisdictions involving risks:** HiFX does not make or receive payments to or from all jurisdictions. HiFX reserves the right to not accept or allow payments from or to jurisdictions which HiFX determines in its sole discretion represent an elevated risk to HiFX or involve a high level of compliance complexity.

18. COMPLAINTS

18.1 **Dispute resolution processes:** HiFX is committed to the delivery of excellence through its high customer service standards. Should the Client be dissatisfied with the service provided, the steps set out in clauses 18.2 to 18.3 below should be followed as part of HiFX's internal and external dispute resolution procedures.

18.2 **Internal complaints procedure:** The Client should seek to have their complaint resolved by HiFX in the following manner prior to commencing any external complaints procedure set out under clause 18.3:

- The Client should contact its HiFX representative in the first instance and discuss the Client's concerns.

(b) If the Client's complaint is not satisfactorily resolved, the Client should contact HiFX's Complaints Manager. The Client may do this either by telephone, email or by letter in accordance with HiFX's Contact Details.

18.3 **External complaints procedure:** HiFX is a member of an independent dispute resolution scheme operated by Financial Services Complaints Limited (FSCL).

(a) Where HiFX has been unable to adequately resolve the Client's complaint after 40 days of the complaint having been made in accordance with clause 18.2, the Client will have the right to refer the complaint to FSCL either verbally, by email or in writing.

(b) Full details on how to access the FSCL scheme and make a complaint can be obtained from FSCL's website www.fscl.org.nz or by calling 0800 347257 or +64 (0)4 472 3725.

(c) Resolution of the Client's complaint by FSCL is provided free of charge.

19. GOVERNING LAW

19.1 **New Zealand law:** These Terms, the Agreement and each FX Transaction and FX Option are entered into in New Zealand and are governed by and interpreted according to the laws of New Zealand. The Client consents and submits to the jurisdiction of the courts of New Zealand.

19.2 **Compliance with other laws:** HiFX is based in, and operates its business out of New Zealand, and in accordance with New Zealand law. If the Client is accessing the Service from outside New Zealand, the Client undertakes to only use the Service, and enter into FX Transactions or FX Options if doing so does not cause the Client or HiFX to be in breach of any applicable foreign law.

20. AUTHORISED PERSONS

20.1 **Initial Authorised Persons:** The Authorised Persons named during the application process are each authorised by the Client to give instructions for the Services to be acquired from HiFX by the Client.

20.2 **Further Authorised Persons:** If the Client notifies HiFX that it is authorising a person to convey the Client's instructions to HiFX, HiFX is entitled to rely on the instructions of that person and implement them.

21. CLIENT INFORMATION AND PRIVACY

21.1 **Privacy Policy:** HiFX collects, uses, retains and may disclose to third parties information about its Clients as set out in HiFX's privacy policy. HiFX's privacy policy is incorporated by reference into these Terms. HiFX's privacy policy includes information about:

(a) the ways HiFX may collect, use or disclose to third parties information about the Client;

(b) how the Client may access and seek correction of the information; and

(c) how the Client may make a complaint about a breach of the Client's privacy rights, and HiFX's complaint handling procedures.

The Client acknowledges that it is bound by and has had the opportunity to read HiFX's privacy policy. A copy of HiFX's privacy policy is available on HiFX's websites or free of charge on request from HiFX.

22. INTERPRETATION

Unless the context otherwise requires, the following expressions are defined for these Terms:

Account means a running account maintained by HiFX for the purpose of recording credits and debits in relation to FX Transactions and FX Options, Margin and other financial requirements.

Agreement means the agreement between HiFX and the Client on these Terms made when HiFX accepts the Client's application, as these Terms are amended from time to time (as more particularly described in clause 16.10).

AML/CFT Laws means anti-money laundering and countering financing of terrorism laws in New Zealand and equivalent laws in other applicable jurisdictions.

Application Form means the form of application by which a person applies to become the Client of HiFX and to open an Account or by which the Client may apply to access different kinds of FX Transactions, as accepted by HiFX, by whatever means that form is given.

Authorised Person means the person(s) (if any) described as the Client's authorised agent in the Application Form or another person later notified by the Client to HiFX

in accordance with these Terms.

Bought Currency means the amount of currency to be received by the Client in return for the Sold Currency

Business Day means a day on which the trading banks are open for business in Auckland, New Zealand excluding a Saturday, Sunday or public holiday.

Claim has the meaning set out in clause 14.1.

Client means the person who, as the applicant, completes, signs, and delivers to HiFX the Application Form, as accepted by HiFX as the Client.

Contact Details means email: info@hifx.co.nz; post: PO Box 7646, Wellesley Street, Auckland; phone: +64 (0)9 306 3700; website: www.hifx.co.nz.

Close Out means to enter into an equal and opposite FX Transaction with the effect of terminating the original FX Transaction resulting in a set-off of the amounts owing on each of those FX Transactions and a net amount owing calculated in accordance with these Terms.

Confirmation means HiFX's electronic or other written notification sent to the Client setting out the details of a FX Transaction, FX Option or onward payment on behalf of the Client.

Currency Online means Currency Online, a trading name of HiFX.

Forward FX Transaction means a FX Transaction whose Value Date is not less than three Business Days after the transaction is agreed.

FX Option means an agreement by which the Client has the right but not the obligation to enter into a FX Transaction with HiFX.

FX Swap Transaction means a FX Transaction in which two foreign exchange contracts - a Spot FX Transaction and a Forward FX Transaction - are packaged together to offset each other (albeit with different Value Dates and exchange rates).

FX Transaction means any transaction between the Client and HiFX to purchase, deliver and/or pay currency (including a Same Day FX Transaction, a Spot FX Transaction, a Forward FX Transaction, a FX Swap Transaction or a Same Currency Payment).

GST means goods and services tax in terms of the Goods and Services Tax Act 1985, at the prevailing rate from time to time.

Hedge Contract means a contract or other instrument between HiFX and a Hedge Counterparty concluded for the purpose of hedging HiFX's exposure to foreign exchange transactions with clients.

Hedge Counterparty means any bank, related body corporate of a bank or other regulated financial corporation which is a counterparty to HiFX in its contractual dealings to hedge its exposure to foreign exchange transactions with clients.

HiFX means HiFX Limited (New Zealand Company number 1121503) whose registered office is at Level 4, 32 Mahuhu Crescent, Auckland 1010, New Zealand.

Margin means the amount of the Sold Currency the Client is required to pay to HiFX as Security for the Client's Forward FX Transaction in accordance with clause 8. Margin is part payment of the Bought Currency.

Margin Call means a direction by HiFX to the Client in accordance with clause 8 to pay a specified additional amount of Margin (not exceeding the full amount of the Sold Currency).

Market Order means an Order under which the Client requests to enter into a Spot FX Transaction or Forward FX Transaction with HiFX in the future in accordance with clause 11 when the relevant exchange rate reaches the Target Rate.

On-line Services has the meaning set out in Schedule 1.

Order means the Client's request for a FX Transaction or a FX Option.

Same Currency Payment means a domestic or international funds transfer or transfers that HiFX makes to third parties for and on behalf of the Client in the same currency as that received from the Client.

Same Day FX Transaction means a FX Transaction whose Sold Currency is sold for the Bought Currency by the end of the same Business Day.

Security has the meaning given in clause 12.4.

Security Information means any email address, logon code, password of the Client (including of an Authorised Person) used for the On-line Service.

Service means the financial service of issuing a FX Transaction or FX Option to the Client, managing the FX Transaction or FX Option (including settlement or execution), the Account and all ancillary services.

Sold Currency means the amount of currency to be paid by the client in return for the Bought Currency.

Spot FX Transaction means a FX Transaction where the Value Date is two Business Days after the date the Client's Order is accepted.

STAs or Security Trust Accounts mean the bank accounts nominated by HiFX from time to time as "Security Trust Accounts" for the purposes of the Security in favour of HiFX's clients and subject to the restrictions contained in these Terms. The Security Trust Accounts are not trust accounts.

Target Rate means the rate at which a Market Order, is executed, being the exchange rate specified by the Client for the Market Order plus HiFX's margin over the wholesale exchange rate HiFX is able to obtain from its bank counter parties.

Trust Deed means the deed of trust entered into between HiFX and the Trustee on behalf of Clients, containing the terms, powers and rights of the Trustee in relation to the Security.

Transfer Fee means the fee listed on HiFX's website charged by HiFX (in Sold Currency) when the amount of the Sold Currency transferred falls within the Transfer Threshold.

Transfer Threshold means the range (or ranges) listed on HiFX's website as attracting a Transfer Fee if the amount of the Sold Currency transacted falls within that range.

Trustee has the meaning given in clause 12.6.

Value Date means the date specified by HiFX on which the FX Transaction settles.

Volatile Market Conditions means abnormal or unusual conditions in any foreign currency market that, in the opinion of HiFX, results in, or is likely to result in, a material effect, volatility or uncertainty in the price or availability of any currency.

XE means XE, a trading name of HiFX.

**SCHEDULE 1
ON-LINE SERVICES**

1. This Schedule 1 contains provisions which, in addition to the other Terms, govern the use of any on-line or other electronic transacting or any information service (the **On-line Service**) HiFX provides or makes available to the Client (including, without limitation, all software and communication links) under which the Client will (among other things):
 - (a) place the Client's Orders (which results in a FX Transaction upon HiFX accepting the Client's offer made when using the On-line Services system (see clause 8 of this Schedule 1)) or transmit other instructions to HiFX or other persons;
 - (b) supply HiFX with onward payment instructions;
 - (c) enquire as to the availability or pricing or value of one or more FX Transaction;
 - (d) enquire into the Client's Account balances and transactional history;
 - (e) receive market data and other information in relation to one or more FX Transactions; or
 - (f) receive Confirmations or other information in connection with the Account.
2. An On-line Service may be a proprietary service provided by HiFX, or a service provided to the Client by a third party pursuant to an arrangement with HiFX. To the extent that the On-line Service is provided to the Client by HiFX, HiFX grants the Client a non-exclusive and non-transferable licence to use the On-line Service subject to the terms in this Schedule 1.
3. The Client is bound by any terms of access to and use of the On-line Service which HiFX specifies and notifies to the Client, from time to time. If there is any inconsistency, those terms prevail over these Terms to the extent of any inconsistency.
4. The Client agrees that:
 - (a) it must not use the On-line Service (or permit or procure any other person including any Authorised Person to use the On-line Service) until the Security Information has been provided by HiFX;
 - (b) the Security Information is confidential;
 - (c) it is responsible for maintaining the confidentiality and use of that Security Information at all times and must procure that any Authorised Person maintains the confidentiality of the Security Information;
 - (d) it will not permit, consent or allow any person (other than any Authorised Person in its capacity as the Client's agent) to use the Security Information or to access or use the On-line Service using that Security Information;
 - (e) it will not provide, disclose or make available the Security Information to any person (other than an Authorised Person in its capacity as the Client's agent); and
 - (f) it must notify HiFX immediately upon becoming aware of any unauthorised disclosure or use of the Security Information or the use of the On-line Service.
5. The Client acknowledges and agrees that:
 - (a) it is only permitted to access and use the On-line Services system by using the Security Information;
 - (b) HiFX may rely on all instructions and Orders given by, on behalf of, or apparently on the Client's behalf, using the On-line Services system accessed using the Security Information despite any other provision of the Terms, and that HiFX is not liable for any Claim caused by HiFX acting on instructions or other communications provided to HiFX via the On-line Services system accessed using the Security Information;
 - (c) any On-line Service is provided on an "as is" basis and, except as required by law, HiFX makes no representations or warranties express or implied with respect to the On-line Service;
 - (d) the speed of information provided through the On-line Service is subject to a number of factors including, but not limited to, the speed of the user's internet connection, the user's settings, the number of concurrent users accessing the On-line Service and the volume of information being received and sent by the On-line Service;
 - (e) there are significant risks in trading through any online platform and you acknowledge these risks in using the On-line Service;
 - (f) the features, components or terms of use of the On-line Service may be changed by HiFX without requiring an amendment to the terms in this Schedule 1;
 - (g) the Client is responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the On-line Service and for any communication service fees and charges incurred by the Client in accessing and using the On-line Service;
 - (h) the Client is responsible for ensuring the Client has in place alternative arrangements for the execution of Orders or other services available through the On-line Service, if the On-line Service or any aspect of it ceases to be available or subject to failure (including, for example, arrangements for the use of telephone, email or facsimile);
 - (i) the Client must notify HiFX immediately if the Client becomes aware of any inaccurate information being transmitted through the On-line Service including, for example, inaccurate content as to Orders, FX Transactions or Account balances;
 - (j) the Client must only use the On-line Service for the Client's own purposes; and
 - (k) HiFX is not liable for any Claim incurred or damage caused to the Client's computer equipment or software by the Client's use of the On-line Services.
6. The Client is responsible for reading, understanding and complying with the details of the operational aspects of the On-line Service. It is important that the Client reads and understands any user manuals and operational procedures or rules relating to the relevant On-line Service and which are made available by HiFX. Further information on how to use and understand the On-line Service can be obtained from HiFX's website.
7. The following provisions apply to Orders placed through the On-line Services system:
 - (a) the Client may place an Order through the On-line Services system. Once placed, the Order is an irrevocable offer to enter into the relevant FX Transaction;
 - (b) before the Client places its Order, exchange rates may move. Movements will be shown on the On-line Services system. HiFX is not liable for any Claim incurred by the Client by reason of any such movement in exchange rates;
 - (c) the Client's Order only results in a FX Transaction upon HiFX accepting the Client's Order;
 - (d) HiFX will confirm acceptance of the Client's Order by indicating on the On-line Services system that the FX Transaction is confirmed. HiFX will also email the Client a Confirmation of the FX Transaction in accordance with clause 4.4 of the Terms;
 - (e) there may be delays in the processing or acceptance of an Order entered through the On-line Service and, without limiting clause 5(b) of this Schedule 1, HiFX will not be liable for any Claim incurred by the Client arising from any delay in the dissemination of market information or the processing of any Order;
 - (f) the acceptance of an Order placed through the On-line Services system (resulting in a FX Transaction being entered into) may be delayed by filters or other electronic features of the electronic system; and
 - (g) HiFX is not responsible for the processing or execution of any Orders submitted through the On-line Service system, regardless of who enters such Orders and regardless of whether or not there is an error in the Order entry or for any delays.
8. The Client and each Authorised Person must satisfy any requirements (including without limitation requirements as to knowledge, training, testing, procedures and controls) notified by HiFX to the Client from time to time and the Client is solely responsible for ensuring that an Authorised Person satisfies these requirements.
9. The Client is responsible for the consequences of any unauthorised disclosure or use of the Security Information, and for any actions or omissions by an Authorised Person, and will compensate HiFX for any Claim suffered by HiFX in respect of any such disclosure, use, actions or omissions.
10. HiFX (or any third party providing the On-line Service) may suspend, terminate or impose conditions on the use by the Client or any Authorised Person of the On-line Service at any time.
11. If the Client is uncertain as to whether the Client's Order has resulted in an FX Transaction following the Client confirming the exchange rate being offered by hitting on the "Confirm (or similar) button" on the On-line Services system, the Client must make all reasonable attempts to verify whether the Order has been received, approved and effected prior to taking further action. The Client will be solely responsible and liable for any duplicate instruction that the Client places.
12. The Client is bound by any electronic communications between the Client (including the Client's Authorised Person) and HiFX.
13. If a failure, interruption or malfunction of electronic communication between the parties prevents an Order from being placed then, without limiting this Schedule 1, neither party is liable to the other party for any Claim caused then by that failure, interruption or malfunction.
14. The Client acknowledges that all market data and information in relation to trading, volumes and pricing provided through any On-line Service is proprietary information of HiFX or another person and may be subject to restrictions imposed by HiFX or another person. The Client is responsible for complying with any such restrictions and must not seek or obtain rights or hold itself out as having rights in respect of the proprietary rights of HiFX or another person.
15. The Client must:
 - (a) only gain or attempt to gain access to HiFX's electronic systems including the On-line Services in an authorised manner;
 - (b) not modify, alter, disassemble, decompile, reproduce, reverse engineer or connect any unauthorised attachments to the On-line Services in any form; and
 - (c) not display, copy, disseminate or use the information provided through the On-line Services except in respect of its FX Transactions and proposed FX Transactions, and in accordance with any applicable restrictions.

**SCHEDULE 2
FX OPTIONS****1. INCORPORATION OF FX OPTION TERMS**

1.1 These FX Option Terms are additional to and supplement the other Terms. They apply to all FX Options issued by HiFX to the Client.

2. INSTRUCTIONS

2.1 HiFX may at its absolute discretion provide the Client with a FX Option quotation from time to time.

2.2 The quotation will give details as mentioned in clause 3 of these FX Option Terms.

2.3 HiFX may change the Premium stated in the quotation prior to the Client and HiFX entering into a FX Option.

2.4 Clauses 4.1 to 4.7 of the other Terms apply to FX Options as if a FX Option was a FX Transaction, and those clauses are incorporated into and form part of this Schedule 2 with the following changes:

(a) references to "FX Transaction(s)" are replaced with "FX Option(s)"; and

(b) the Client may only make an Order for a FX Option over the telephone or by email from the Client's designated email address.

3. DETAILS TO BE INCLUDED IN THE CONFIRMATION

3.1 The Confirmation of the FX Option will include:

(a) quotation/confirmation date and time of transaction;

(b) the currency and amount sold to HiFX (Sold Currency);

(c) the currency and amount bought from HiFX (Bought Currency);

(d) Expiration Date;

(e) Expiration Time;

(f) settlement date;

(g) FX Guaranteed Rate;

(h) Premium payable/due; and

(i) Premium Payment Date.

4. FINANCIAL PROVISIONS

4.1 The performance by HiFX of the FX Option is subject to payment of the Premium by the Premium Payment Date by the Client to HiFX.

4.2 The Client must pay the Premium into the STA specified by HiFX no later than the Premium Payment Date.

4.3 The Premium must be paid in the agreed currency and amount.

4.4 The Premium is not refundable under any circumstances, in whole or in part.

4.5 Failure by the Client to pay the Premium by the Premium Payment Date is a fundamental breach of these Terms and entitles HiFX to exercise its rights under clause 13 of the Terms.

5. PROCESS OF EXERCISE

5.1 The FX Option will be deemed to be Exercised when the Client gives valid notice to Exercise the FX Option.

5.2 A notice to Exercise will only be valid if completed on the Expiration Date before the Expiration Time, by the Client notifying HiFX of its wish to Exercise the FX Option and HiFX has responded to and acknowledged receipt of such notification.

5.3 Upon valid Exercise of the FX Option by the Client, or Exercise of the FX Option by HiFX in accordance with clause 6 of this FX Option terms, a Spot FX Transaction will automatically come into force between HiFX and the Client on the terms set out in the FX Option Confirmation. The Client must sell and make delivery of the specified amount of the Sold Currency to HiFX, and the Client must buy and take delivery of the specified amount of the Bought Currency from HiFX on the specified settlement date. HiFX will confirm the details of the Spot FX Transaction by emailing to the Client a Confirmation of the Spot FX Transaction.

6. AUTOMATIC EXERCISE BY HIFX IF FX OPTION IS "IN-THE-MONEY"

6.1 HiFX will exercise the FX Option on the Client's behalf if the FX Option is "In-The-Money" at the time of expiration. If there is volatility in the market for the Bought Currency and/or the Sold Currency or the FX Option is not (in HiFX's opinion) materially "In-The-Money" then HiFX may elect not to exercise the FX Option.

6.2 The Client acknowledges that it is aware that it must notify HiFX by no later than the Business Day immediately preceding the Expiration Date if it does not want HiFX to Exercise the FX Option on its behalf.

7. GENERAL

The other Terms apply generally to all FX Options, but if there is any inconsistency between the other Terms and the FX Option Terms, the FX Option Terms will prevail to the extent of the inconsistency.

8. INTERPRETATION OF FX OPTION TERMS

Exercise means the process whereby the Client gives notice to HiFX on the Expiration Date that the FX Option's underlying FX Transaction is required and the consequent creation of the appropriate FX Transaction as provided in clause 5 of these FX Option Terms.

Expiration Date means the day on which the Client may elect to Exercise the FX Option always providing that such Exercise is effective only if completed before the Expiration Time.

Expiration Time means the time on the Expiration Date at which all rights granted under the FX Option irrevocably cease and expire (time being of the essence).

FX Guaranteed Rate means the fixed currency exchange rate between the amounts of the Sold Currency and the Bought Currency, agreed at the time the FX Options is issued or is confirmed.

FX Option means an agreement by which the Client has the right but not the obligation to enter into a FX Transaction with HiFX as specified in the Confirmation.

FX Option Terms means these Terms in this Schedule 2 for FX Option, as amended from time to time.

In-The-Money refers to the value of your FX Option being worth more than had you undertaken the transaction at the current prevailing exchange rates.

Premium means the consideration payable to HiFX by the Client for the rights provided by the FX Options.

Premium Payment Date means the Value Date by which the full amount of the Premium must be paid in cleared funds by the Client to the STA of HiFX.