



AXICORP FINANCIAL SERVICES PTY LTD

CONTRACTS FOR DIFFERENCE

RETAIL CLIENT AGREEMENT

NZBN 9429042567608 FSP 518226

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# 1 TERMS AND CONDITIONS

## 1.1 INTRODUCTION

These terms and conditions form part of the agreement between AxiCorp Financial Services Pty Ltd (NZBN 9429042567608, Company No. 6106188) (we, us, or Axi) and you, the Client (you or yourself). They govern our dealings with you in relation to our Products.

This Agreement replaces the Agreement dated 16 August 2019.

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

The Agreement between you and us that governs our dealings with you is made of the following documents:

- Our Application Form;
- this Agreement;
- the PDS;
- the Retail Client Product Schedule;
- our Privacy Notice; and
- any additional terms and conditions issued by us and accepted by you, in connection with our dealings with you.

You are referred to other materials that explain the basis of our dealings with you, but which are not part of the Agreement, including:

- our Financial Services Guide (FSG); and
- our Website.

Transactions you enter into pursuant to the terms of this Agreement carry a high level of risk and can result in Losses that can exceed your initial deposit. As a Retail Client, you are given the added safeguard of negative balance protection. This means your losses are limited to the money in your Account.

A more detailed explanation of the risks associated with these transactions is set out in section 3 of the PDS (*Risks of these derivatives*) and in the Retail Client Product Schedule. You should ensure that you fully understand such risks before entering into this Agreement or any transaction with us.

By signing and submitting the Application Form by post or electronically via our Website, or by taking any action consistent with your agreement to these terms and conditions, you confirm that you:

- have received, read and understood this Agreement, including our current PDS; and
- agree that we will provide our Products and Services to you on the terms and conditions of this Agreement.

Contracts that arise out of the Positions we enter into with you under this Agreement are legally binding and enforceable. You must therefore read this Agreement carefully and seek professional advice, if necessary. We particularly draw your attention to those terms and conditions which deal with Margin, those that set out our rights to terminate and/or close out a Position and those that relate to the termination of this Agreement and closing of your Account, as you need to clearly understand these important terms and the implications arising from your failure to comply with these conditions.

## 1.2 ABOUT US

AxiCorp Financial Services Pty Ltd is incorporated in Australia, authorised by the Australian Securities and Investments Commission (ASIC) and holds a New Zealand Derivatives Issuer Licence issued by the Financial Markets Authority (FMA), FSP Number 518226. AxiCorp Financial Services Pty Ltd is registered in New Zealand as a foreign company (Company No. 6106188, NZBN 9429042567608). AxiCorp Financial Services Pty Ltd trades as Axi.

## 1.3 ALL TRADES AT YOUR RISK

Because the risk is high in trading of the Products, only genuine “risk” funds should be used in such trading. If you do not have the extra capital that you can afford to lose, you should not trade in the markets in respect of the Products.

We are under no obligation:

- to satisfy ourselves as to the suitability of any Position for you, see section 10 of the PDS (How to enter into the Client Agreement) for our general Client suitability obligations;
- to monitor or advise you on the status of any of your Positions;
- prevent you from trading beyond your means or ability or to protect you; or
- to close any open Position.

All Positions will, therefore, be made at your own risk and we will not be liable to you to the maximum extent permitted by law in accordance with clause 12.

You acknowledge that no representations have been made by us or any individual associated with us regarding future profit or loss in your Account. You understand that trading involves a substantial risk of loss and that many people lose money trading the Products.

To the extent that that you trade in the Products offered under this Agreement pursuant to a system, course, program, research or recommendations of an Introducing Broker or another third party, you acknowledge that there is a substantial risk of loss and reliance on the information and resources provided by an Introducing Broker or another third party will not necessarily result in profit or limit loss.

#### 1.4 OUR TRADING SERVICE

Our trading service is an online service and you specifically consent to the receipt of documents and information about us and our Services, costs and charges and our notices via email, our Website or other electronic means. Upon your request, we will send you the PDS and FSG in paper form at no charge.

You undertake that, in the event that you are unable for any reason whatsoever to open or close a Position because of technical difficulties you may be having with our Trading Platform, you will immediately contact our service team by email to [service@Axi.com](mailto:service@Axi.com)

Alternatively, the Contact Us page of our Website [www.Axi.com](http://www.Axi.com) provides international toll-free telephone numbers for Clients from a number of countries and an international telephone number for Clients from other countries.

#### 1.5 DEFINITIONS

In this Agreement capitalised terms and expressions have, unless the context otherwise requires, the meanings given to them in section 11 of our PDS (*Glossary*) or the definitions section of this Agreement.

#### 1.6 INTERPRETATION

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

A reference to:

- a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- a document (including this Agreement) or agreement, or a provision of a document (including this Agreement) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- a party to this Agreement or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
- a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- anything (including a right, obligation or concept) includes each part of it.

A singular word includes the plural, and vice versa.

A word which suggests one gender includes the other genders.

If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

Unless otherwise specified in this Agreement, a reference in this Agreement to a transaction, asset, act or liability of any nature of you includes your transactions, assets, acts or liabilities as trustee of the Trust (if applicable).

If you enter into this Agreement in your capacity as trustee of a Trust, this Agreement will be binding on you personally and in your capacity as trustee of the Trust.

If there is any inconsistency between a Confirmation and this Agreement, the Confirmation will prevail.

## 2 ACCOUNT OPERATION

### 2.1 OPENING

After we accept your Application, we will open an Account in your name. The Account may be split into different sub-accounts denominated in different currencies or commodities. References in this Agreement to your Account are taken to include reference to sub-accounts or the relevant sub-accounts as the case may be. We may at our absolute discretion refuse to open an Account with you for any reason we consider appropriate. Each Account will have an Account Currency.

### 2.2 ACCOUNT INFORMATION

You undertake and warrant to us that any information provided to us at any time is true and correct and that you will immediately inform us of any change to that information.

You are required to keep confidential all security information relating to the Account, including, but not limited to, any username, account number, user ID and password. Once you have established this security information, we have no obligation to verify the authority of anyone using this information to operate your account. If you are aware or suspect that these items are no longer confidential, you should contact us immediately.

### 2.3 LEGAL ENTITY IDENTIFIER (LEI)

If your Account is held in the name of a legal entity, such as a company, you are required to provide an LEI. It is your responsibility to determine if you are required to provide an LEI and it is a condition of this Agreement that you provide this to us prior to the commencement of trading. This includes where your current LEI is or has expired. LEIs are valid for one year from the date of first issuance and may or may not be automatically renewed by your registration agent. In addition, you undertake to promptly provide all information and assistance that we may reasonably require including up to date LEI information. We reserve the right to close out your open Positions or, at our absolute discretion, terminate this Agreement immediately, where you have failed to provide up to date LEI information or where your LEI has expired.

### 2.4 INTRODUCING BROKER

You understand and agree that, if your Account with us is introduced by an Introducing Broker, the Introducing Broker:

- may be authorised by us to view trades on your Account; but
- may not have the right to enter into any trades on your behalf (unless they are an Authorised Person).

### 2.5 AUTHORISED PERSONS

You may, by written notice, change the persons who are authorised to give us instructions on your behalf. This can include an Introducing Broker, but we will require an Authorisation by you under a power of attorney or other permissible evidence of authority granting such Introducing Broker the right to trade on your Account. You agree to produce the original of any such power of attorney or other permissible evidence of authority to us on request (or a copy that has been certified as a true copy in a manner acceptable to us).

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

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

You agree to pay the interest, charges and fees as specified in this Agreement or in accordance with our Retail Client Product Schedule, from time to time and to receive the benefits set out in this Agreement.

Any charges will be deducted from your Account the day following the day on which the charges were incurred, and benefits will be paid the day on which they are derived. Deductions from your Account may be made at any time without notice or recourse provided to you.

If we discover that we have made an error in respect of any fee calculation, we will rectify that error by giving you written notice within 28 days.

You acknowledge that, due to circumstances beyond our control (for example, delays from third party banks), you may experience delays from time to time when you make a request to withdraw funds from your Account or when you are due to receive other payments or benefits from us.

If a Position is closed at a loss, that loss will immediately be deducted from your Account and your available trading resources will be adjusted accordingly.

If a Position is closed at a profit, that profit will immediately be credited to your Account and your available trading resources will be adjusted accordingly, subject to this clause 2 and clause 3.

## **2.7 CORRECT DESIGNATION**

It is your responsibility to ensure that money sent to us is correctly designated, including, where applicable, that the money is for Margin and to which of your Accounts the money should be applied.

## **2.8 REPORTING TO YOU**

We will provide Confirmations and Reports to you via our Trading Platform or by email.

Any Confirmation or Report will, in the absence of obvious error, be conclusive unless you notify us in writing to the contrary within two (2) Business Days of the Confirmation or Report being issued. You will access and use the Trading Platform to confirm all your Positions with us, to download and view the Confirmations and Reports and to monitor your obligations under this Agreement.

## **2.9 DELIVERY OF CONFIRMATIONS REPORTING AND STATEMENTS ELECTRONICALLY**

If at any time execute a transaction with us, a Confirmation of the executed trade will appear in the Trading Platform. Daily and monthly statements will also be made available to you through the Trading Platform following their respective trading periods. You may print these daily and monthly statements for your records.

## **2.10 OPERATING YOUR ACCOUNT THROUGH AXI'S TRADING PLATFORM**

When using our Trading Platform your Positions may be viewed at any point in real-time, as well as all deals, Orders, pending Orders and available statements using the dealing platform. You agree to use the Trading Platform to:

- confirm all transactions entered into with us; and
- monitor your obligations to us.

We may make available to you documents, including those which have the effect of amending this Agreement, by either:

- sending them to you by email or other electronic means;
- posting them on our Website;
- sending to you an electronic link to the relevant document by email or other electronic means; or
- sending them as otherwise permitted by law.

## 2.11 DAILY SETTLEMENTS

Following our end of day settlement time, provided you have dealt or have an open Position, we will cause to be produced electronically a daily statement which will be emailed to you and then made available on the Trading Platform. Daily statements include details of:

- your open Positions;
- your new Positions;
- the opening cash balance on your Account, together with details of Account movements such as deposits, withdrawals or settlements;
- your closing Account balance for the day;
- profit or loss made on open Positions (your open trade equity);
- the value of your Positions and movements on your Account in the currency in which your Account is denominated, indicating, where appropriate the consolidation rates used;
- other items affecting your Account, such as Rollover Benefits or Rollover Charges applied to your Account;
- profit or loss made on open Positions (your open trade equity);
- the liquidation value;
- your Total Margin Requirement; and
- your Margin excess or deficit.

## 2.12 MONTHLY STATEMENTS

Following month end, we will produce an electronic version of your trading statement which will be emailed to you and also be available on the Trading Platform. This will provide the same details as the daily statements but cover all Account movements and Positions opened for the month.

## 2.13 CHECKING OF CONFIRMATIONS

It is imperative that you check all the contents of the Confirmations of your trades and you contact us immediately if you disagree with any of their contents. The Confirmation will, in the absence of manifest error, otherwise be conclusive. The time from which you must contact us begins from the time the Confirmation is posted on the Trading Platform, although we may also send the document to you electronically via email.

## 2.14 CHECKING OF STATEMENTS

It is imperative that you check all the contents of the daily statements and monthly statements in detail and contact us within 3 Business Days if you disagree with any of the content of a daily or monthly Report. These documents will, in the absence of manifest error, be conclusive unless you notify us in writing to the contrary within 3 Business Days of receiving them. The 3 Business Days begins from the time the document is posted on the Trading Platform, although we may also send the document to you electronically via email.

The summary of your financial Position will provide you with your Margin, Position and indicate to you whether you are approaching your minimum Total Equity balance. It will also indicate the excess funds available, if any, that you may either use to open new Positions or withdraw. It is important that you remain aware of your daily Total Equity balance, your Total Margin Requirement for your open Position, and any Free Equity available.

# 3 TRADING

## 3.1 INSTRUCTIONS

You may issue trading instructions by using our Trading Platform through a computer connected to the internet or your mobile telephone.

We may not accept Orders or instructions from you through any other means, such as by email or telephone.

If you execute an Order on the Trading Platform, you are deemed to be making an offer to trade at the quoted price. A Product Contract and the quoted price offered by you will not be binding until your Order has been accepted and confirmed by the Trading Platform. We reserve the right to decline to enter into any Position proposed by you and are

under no obligation to provide you with a reason. We will, however, provide you with prompt notice in accordance with clause 19 of this Agreement in such event.

We may, from time to time, require instructions from you in respect of any Position or proposed Position. You must promptly provide us with those instructions through the Trading Platform. If you do not, we may, in our absolute discretion, take all steps we consider reasonably necessary for our or your protection, which will be at your cost.

### **3.2 MINIMUM TRADING SIZE**

The size of your Positions must exceed the Minimum Trading Size as specified in the Retail Client Product Schedule.

### **3.3 CURRENCY**

All Positions will be entered into in the currency specified for the trade and will be converted into the Base Currency of your Account at the previous day's closing Exchange Rate for the purposes of calculating the components of your Account summary.

All payments made by you to us and by us to you will be converted into the Base Currency of your Account unless otherwise agreed.

### **3.4 HEDGED POSITIONS**

You may hold long and short Positions in the same instrument at the same time which we call 'hedging' and which may be partial or full.

### **3.5 ERRORS IN PRICES**

Errors in pricing may occur from time to time. In these circumstances, we may adjust any element of your Position. See section 2.4 of our PDS (*How do you enter into a CFD?*) for more information about the basis on which we can do this.

### **3.6 HEDGING DISRUPTION**

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

## **4 MARGIN**

### **4.1 INITIAL MARGIN**

Upon placing a trade that creates an open Position you are required to pay into your Account the Initial Margin for that Position as specified in our Retail Client Product Schedule and calculated by us.

### **4.2 YOUR MARGIN OBLIGATIONS**

You must pay to us such amounts of Margin as we may require under this Agreement.

It is your sole responsibility to monitor at all times through the Trading Platform any notifications that Axi may, but is not obliged to, provide, the Margin deposited or any Minimum Margin requirement under this Agreement having regard to such matters as:

- your open Positions;
- the volatility of any relevant Underlying Instrument;
- the volatility of the Underlying Market and the markets generally;
- any applicable Exchange Rate risk; and
- the time it will take for you to remit sufficient cleared funds to us.

You must always ensure your Account balance meets the higher of the Margin Requirement or the minimum Margin Requirement.

We may, in our absolute discretion, provide you with further time to meet your Margin Requirements. Such permission will only be effective once confirmed in writing by us, in accordance with clause 19 of this Agreement, and only to the extent specified in that written notice.

#### **4.3 CHANGING MARGIN PERCENTAGE**

We may vary the Margin Percentage in respect of any Position at any time by giving notice in accordance with clause 19.

Any variation of the Margin Percentage and/or increase in Margin or minimum Margin Requirement will be due and payable immediately on our demand.

## **5 DAILY VALUATION**

#### **5.1 CONTRACT VALUE**

We will calculate the Contract Value for each Position, as at each Valuation Time during the term of a Position. The Contract Price for each Position at Close of Business is to be calculated, in respect of each relevant Product, in accordance with section 2 of the PDS (Key features of the derivatives) and the Retail Client Product Schedule.

#### **5.2 VALUATION**

If, at any Valuation Time:

- the Contract Value exceeds the Contract Value at the preceding Valuation Time, the Short Party will pay to the Long Party the value of such excess; and
- the Contract Value at the preceding Valuation Time exceeds the current Contract Value, the Long Party will pay to the Short Party the value of such excess.

#### **5.3 ACCOUNT ADJUSTMENTS**

Any payments due under this clause 5 will, subject to clause 10 of this Agreement, be made by us debiting or crediting the Account with effect immediately after the relevant Valuation Time.

## **6 CLOSING POSITIONS**

#### **6.1 GENERAL**

You may provide instructions through the Trading Platform to close out a Position at any time. We will act on those instructions as soon as reasonably practicable.

Details of the last day and time for closing out a Position are available on request. It is your responsibility to be aware of the last day and time for closing out a particular Position as set out in the Retail Client Product Schedule, on the Website, and available on the Trading Platform.

The close out provisions are set out in section 2.5 of the PDS (*Amounts payable when a CFD is closed*).

#### **6.2 AUTOMATIC CLOSURE**

A Position may close automatically on the fifth anniversary of the date on which the Position was first entered into unless the Position has already been closed.

### 6.3 TIMING OF PAYMENTS

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

### 6.4 DIFFERENCES BETWEEN BUY AND SELL PRICES

You acknowledge that you understand that there may be a difference between buy and sell prices you are quoted on closing a Position compared with opening a Position.

### 6.5 PROFIT AND LOSS

You acknowledge that you understand that a payment will pass between us equal to the difference in value between the Opening Price and the Closing Price of the CFD. If you make a profit, we must pay a sum to you equal to that profit. If you make a loss, you must pay to us a sum equal to that loss. Our Trading Platform will automatically and immediately apply profit and loss to your Account when a Position is closed.

As a Retail Client, you are given the added safeguard of negative balance protection. This means your losses are limited to the money in your Account.

## 7 ACKNOWLEDGEMENTS

### 7.1 YOU ACKNOWLEDGE AND AGREE THAT:

- We operate independently of any Introducing Broker who is not an authorised representative or Related Company of ours, or any other third-party vendors that you may interact with in relation to a Position under this Agreement. You understand that any agreement between us and an Introducing Broker does not establish a joint venture or partnership and any such Introducing Broker is not an agent or employee of ours. You also acknowledge that we make no warranty as to an Introducing Broker's or a third party's regulatory status, compliance with Applicable Laws or their quality of service they provide to you in relation to any Products entered into under this Agreement;
- We may remunerate an Introducing Broker for introducing you to us and such remuneration may be on a per-trade basis or other basis. Such remuneration to the Introducing Broker may require you to make an additional payment above and beyond the ordinary Spread generally provided by us. This payment could take the form of wider Spreads, commissions, fees or other charges. We will provide you with information as to the precise nature of such remuneration upon request; and
- In our dealings with you, we will act as a principal counterparty to all of your Positions. Unless we agree otherwise in writing, you will also deal with us as principal, and not as an agent or representative of another person.

## 8 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

### 8.1 YOUR WARRANTIES

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

#### ***Natural persons***

- You are not bankrupt, of unsound mind or incapable of managing your own affairs.

#### ***Corporate entities***

Where applicable, you are empowered by, and have obtained, all necessary authorities under your constitution and at law to enable you to:

- properly execute this Agreement and to carry out the transactions contemplated;
- ensure this Agreement is legal, valid, binding and admissible in evidence;
- properly carry on your business as it is now being conducted; and
- ensure you are complying with any conditions to which any of these authorisations is subject.

***Natural persons and corporate entities***

- You have full legal capacity and power to enter into this Agreement and to carry out the transactions that it contemplates;
- this Agreement constitutes your legal, valid and binding obligations, enforceable against you in accordance with its terms;
- where applicable, you have obtained all necessary consents and have the authority to enter into this Agreement;
- you are complying with all laws to which you are subject;
- no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to your knowledge after due enquiry, threatened which, if adversely decided, could have a material adverse effect on you;
- you are able to pay your debts as and when they fall due and are not otherwise insolvent or presumed to be insolvent under any law;
- at all times the information provided by you to us in connection with this Agreement, whether in the Application Form or otherwise, will be complete, true and accurate and not misleading (including by omission);
- you have disclosed to us all the information that we require for an assessment by us of the risks that we assume by entering into this Agreement with you;
- neither your execution of this Agreement nor your carrying out of the transactions under this Agreement contemplates, does or will: contravene any law to which you or any of your property is subject or any order of any government agency that is binding on you or any of your property; contravene any Authorisation; contravene any agreement binding on you or any of your property; or contravene your constitution or the powers or duties of your directors;
- you will pay any amount due and payable by you under this Agreement when it is due;
- we may require further information from you from time to time to comply with the AML/CTF Act. By entering into this Agreement, opening an account and transacting with us, you undertake to promptly provide us with all additional information and assistance that we may reasonably require to comply with the AML/CTF Act;
- you are not aware and have no reason to suspect that the moneys used to fund your transactions have been or will be derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under Applicable Laws, international law or convention or by agreement the proceeds of your investment will be used to finance any illegal activities and if you, or your directors are a politically exposed person as the term is used in the AML/CTF Act, then you have disclosed that fact to us; and
- your LEI is valid, current and has not expired.

## **8.2 TRUSTEE OF A TRUST**

Where you are the trustee of a trust, settlement or fund (including a superannuation fund) (the **Trust**), you further represent, warrant and undertake to us, at the time of entering into this Agreement and each time you provide instructions to us:

- the Trust is validly constituted and has not terminated, nor has the date or any event occurred for the vesting of the assets of the Trust. You will notify us immediately in writing if the Trust is determined or ceases to exist;
- you are the sole trustee or trustees of the Trust and you have been validly appointed. You have not given any notice of resignation and no action has been taken to remove you or to appoint an additional trustee of the Trust. You will notify us immediately in writing if you cease for any reason to be the trustee of the Trust;
- you have power under the instrument that constitutes the Trust (**Trust Deed**) to: own the Trust assets and carry on the business of the Trust as it is now being conducted; and enter into this Agreement and to perform your obligations under this Agreement. You will ensure that your powers under the Trust Deed are not revoked or modified;
- all action has been taken that is necessary or desirable under the Trust Deed or at law to: authorise your entry into the Agreement and to perform your obligations under this Agreement; ensure that this Agreement is binding on you as trustee of the Trust; and enable you to properly carry on the business of the Trust;
- the Trust Deed has not been amended;

- you are entering into this Agreement as part of the proper administration of the Trust, for the commercial benefit of the Trust and for the benefit of the beneficiaries of the Trust;
- you have the right to be indemnified out of the Trust assets in relation to any liability arising under or in connection with your rights and obligations under this Agreement; and the Trust assets are sufficient to satisfy that right in full; and you have not released or disposed of your equitable lien over the Trust assets;
- the rights of the beneficiaries to and their interest in the Trust assets are subject to: our rights and interests in the Trust assets under this Agreement; and any rights and interests that you hold in the Trust assets to which our rights may be subrogated;
- this Agreement has priority over the interests of the beneficiaries of the Trust;
- you have disclosed to us the full particulars of the Trust and of any other trust or fiduciary relationship affecting the Trust assets and have given us a complete and up-to-date copy of the Trust Deed;
- you will comply with all of your obligations as trustee of the Trust, whether under the terms of the Trust Deed or otherwise;
- you are not in breach of any of your obligations as trustee of the Trust, whether under the terms of the Trust Deed or otherwise;
- no action has been taken nor is there any proposal or requirement to wind up, terminate, reconstitute or resettle the Trust, and no date or event for the vesting of the Trust is contemplated to occur before the final vesting date for distribution specified in the Trust Deed;
- you will not act as trustee of any other trust or fund, or carry on any business except as trustee of the Trust, without our consent;
- you will not make any distribution of any income or capital or assets of the Trust that results in there being insufficient assets of the Trust to meet any of your liabilities under this Agreement;
- you will not release, dispose of or otherwise prejudice your rights of indemnity against the Trust assets; or equitable lien over the Trust assets; and, at our request, must exercise those rights and that lien and facilitate the subrogation of our rights to them; and
- you will give us promptly on request and, in any event, within five (5) Business Days any information relating to the financial condition, business, assets and affairs of the Trust that we reasonably request. As at the date of this Agreement or, if given later, when given you represent and warrant that the other information and reports (if any) relating to the Trust that you have given to us in connection with this Agreement are true and accurate in all material respects and not misleading in any material respect (including by omission); and any forecasts, projections and opinions in that other information and reports are fair and reasonable (and were made or formed on the basis of recent historical information and reasonable assumptions after inquiry and consideration).

### **8.3 REGISTERED SCHEMES**

If you are the supervisor of a “registered scheme” (as defined in the FMCA), you further represent, warrant and undertake to us (in addition to the representations, warranties and undertakings given in clause 8.2), at the time of entering into this Agreement and each time you provide instructions to us that:

- you have sought professional advice in respect of dealing in the Products and are satisfied that in so doing you comply with all your fiduciary duties and obligations under the FMCA and the regulations made under it, and that your dealings do not in any way breach that legislation;
- you will not do anything which would cause or permit your removal as supervisor of the registered scheme, or permit any additional or substitute supervisor to be appointed and have not retired as supervisor; and
- you will ensure that your powers in relation to the registered scheme are not revoked or modified.

### **8.4 NOTIFICATION OF CHANGES**

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

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

## 9 DEFAULT

### 9.1 EVENTS OF DEFAULT

The following constitute Events of Default, which upon their occurrence give us the right to act in accordance with clause 9.2:

- an Insolvency Event occurs in relation to you;
- you are an individual and you die or become of unsound mind;
- you fail to provide any Margin or other sum due under this Agreement in respect of any Position, or the Margin held by us in respect of your Positions falls below our Margin Requirement;
- your Account balance falls below the minimum Margin Requirement;
- any information provided to us in connection with this Agreement is or has become untrue or misleading or, if we have requested information from you in connection with this Agreement, we have not received all of that information within 10 days of our written request;
- you knowingly take advantage of an incorrect price when dealing with us and a reasonable person in your Position would have known the price offered was incorrect or we consider that you have, or have attempted to, manipulate the Trading Platform or any other system of ours in any way;
- at any time or for any period deemed reasonable by us you are not contactable, or you do not respond to any notice or correspondence from us;
- any regulatory body or authority (including the Australian Securities and Investment Commission or the New Zealand Financial Markets Authority) asks us to take, in respect of you, any or all of the actions permitted following an Event of Default;
- any restriction we impose on the size of your Position under a Product is, or is likely to be, exceeded;
- you are the trustee of a Trust and certain events occur including events relating to changes of trustee, the administration of the Trust assets by the court, the winding up of the Trust, the invalid constitution of the Trust, limits on your powers as trustee and any breach of trust.
- any fee or charges or other payments due to us are not paid in accordance with this Agreement;
- we reasonably believe it is prudent for us to take any or all of the actions described in clause 9.2 in light of any relevant legal or regulatory requirement applicable either to you or to us;
- we reasonably consider that you may be in breach of or have failed to comply with any Applicable Law;
- any Dispute occurs, or litigation is commenced and, in view of the subject matter of or any issues in Dispute in relation to that litigation, we reasonably decide that we cannot continue to deal with you while the litigation is pending;
- we have not received, within ten days of a written request, all information which we have requested in connection with this Agreement;
- we believe on reasonable grounds that you are unable to manage the risks that arise from your Positions;
- you are trustee of a Trust and, without our consent, you cease to be sole trustee of the Trust, or any step is taken to remove you as trustee, or to appoint a substitute or additional trustee; or bring any part of the Trust assets under the control of any court; or any of the following were to occur where you are trustee of a Trust: Any application or order is made in any court for: accounts to be taken in respect of the Trust; or any property of the Trust is to be brought into court or administered by the court under its control; the beneficiaries of the Trust resolve to wind up the Trust; you are required to wind up the Trust under the Trust Deed or Applicable Law; or the winding up of the Trust commences for any other reason;
- where you are trustee of a Trust, the Trust is held, or is conceded by you, not to have been properly constituted;
- where you are trustee of a Trust, you cease to be authorised under the Trust Deed or at law to own the Trust assets in your name or to perform your obligations under this Agreement; or
- where you are trustee of a Trust, you breach any of your obligations as trustee of the Trust.

### 9.2 CONSEQUENCES OF DEFAULT

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

- immediately require payment of any amount you owe us, including Margin;
- terminate this Agreement immediately;

- close or limit the size of all or any of your open Positions or the number of Positions you have with us;
- refuse Orders to establish new Positions;
- convert any ledger balances to the Base Currency of your Account;
- exercise our rights under this clause 9 and clause 10 below;
- change the Margin level at which we may close your Account;
- impose new Margin Requirements on your trading or Account;
- limit or withdraw the credit on your Account;
- call on any guarantee in respect of your obligations;
- enter into any transaction at such rates and times as we may determine in order to meet or hedge any obligation you may have incurred under a Position; or
- retain any amount owed by us to you against any contingent liability of yours to us, so long as the contingency exists.

## 10 SET OFF

This Agreement and all Positions under it form part of a singular agreement between us and you.

When an Event of Default occurs, we shall:

- calculate a final Contract Value in respect of all Positions;
- calculate all amounts owing by you to us or us to you, under this Agreement or otherwise (including any costs arising from the Event of Default) to form a single net sum;
- if a relevant amount is denominated in a currency other than the Account Currency, determine the amount in Account Currency that would be required to purchase the equivalent amount of the other currency on the date of the calculation at a rate as we in, our absolute discretion, shall reasonably determine;
- as soon as reasonably practicable, following our determination of the above amounts, aggregate all such amounts and set-off the total of all amounts due from us to you against the total of all amounts due from you to us, and the only net difference between those amounts (the **Net Termination Amount**) is payable by the relevant party having a net payment obligation; and
- notify you in writing, pursuant to clause 19 of this Agreement, of our calculation of the Net Termination Amount promptly following our determination. The Net Termination Amount shall be payable on the date on which such notice is effective.

The Net Termination Amount shall accrue interest at the rate reasonably determined by us from (and including) the date of the close out (but excluding) the date on which the relevant Net Termination Amount is paid in full.

For the avoidance of doubt, we have a right of set-off across all Accounts and sub-accounts you hold with us.

## 11 DISPUTE RESOLUTION

### 11.1 EVENTS OF DEFAULT

Please refer to section 8 of our PDS (*How to complain*) for our procedure for complaints and Dispute resolution.

### 11.2 CONTINUANCE OF PERFORMANCE

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement, unless the parties have agreed otherwise in writing. If you have submitted your complaint to the Financial Dispute Resolution Service (or equivalent), you are still required to do what you can to mitigate your Losses.

## 12 LIABILITY AND INDEMNITY

### 12.1 EXCLUSION OF LIABILITY

To the maximum extent permitted by law, we are not liable for:

- any Losses or Claims in respect of an alleged loss of profits, loss of revenue or loss of opportunity;

- any Losses that were not reasonably foreseeable;
- any action we may take under this Agreement, so long as we act within the terms of its provisions;
- any action taken by or on the instruction of a market, clearing house or regulatory body;
- any breach of this Agreement, except in the case of our fraud, negligence or wilful default;
- any error that may occur;
- any error or inaccuracy in, or unsuitability of, or omission from the Agreement, or any other information provided by us, whether negligent or otherwise;
- any Losses or Claims suffered or incurred by you in respect of our Trading Platform including due to the unavailability of the Trading Platform or Trading Platform, system and data errors, delays, inaccuracies, errors or omissions in data provided to you, software or computer viruses or the unauthorised use of the Trading Platform at any time; and
- any errors, actions or inactions of any Introducing Broker, Associate or any other third party.

## 12.2 TRADING PLATFORM

We give no warranty as to the availability, accessibility, description, quality, performance or fitness for purpose for you of the Trading Platform or any component of the Trading Platform. We reserve the right to remove altogether or reduce the Trading Platform service at any time for any purpose, without incurring any liability to you, however we will provide written notice of our intention to do so in accordance with clause 19.

## 12.3 INDEMNITY

Unless such Losses or Claims are suffered or incurred as a result of our fraud, negligence or wilful default, you agree to indemnify us against, and you must pay on demand, all Losses or Claims (including without limitation lost profit or business opportunity and Losses of or damage to reputation) which may be suffered or incurred or brought against us or in connection with or caused by:

- a breach by you of your obligations under this Agreement or, where relevant, by any of your officers, employees, agents or contractors;
- any wilful, unlawful or negligent act or omission by you or, where relevant, any of your officers, employees, agents or contractors;
- any Losses suffered by us as a result of any computer viruses, worms, software bombs or similar items introduced by you into the system via the Trading Platform or any software provided by us to you in Order to enable you to use the Trading Platform;
- us entering into any Position with you; or
- us taking any action under clause 9 or clause 10 of this Agreement.

# 13 AMENDMENT, ASSIGNMENT AND TERMINATION

## 13.1 AMENDING AGREEMENT

We may amend or replace this Agreement at any time by giving written notice to you of the changes or, where the changes are considered by us to be immaterial, by updating the Agreement available on our Website. By continuing to trade you will be deemed to have accepted the amendment or replacement and the most recent Agreement will govern our dealings with you in relation to our Products.

## 13.2 TERMINATION

Notwithstanding any other termination rights we have under this Agreement, we may immediately terminate this Agreement at any time by giving you written notice in accordance with clause 19 of this Agreement. You may terminate this Agreement at any time by giving us ten (10) Business Days' written notice in accordance with clause 19 of this Agreement. Your Account will be closed as soon as reasonably practicable after the expiry of the termination notice period, with all open Positions, or Orders cancelled, and all your obligations discharged.

### 13.3 RESERVATION OF RIGHTS

You may terminate this Agreement by giving us ten (10) Business Days written notice. If you provide such notice, we reserve the right to refuse to allow you to enter into any further Positions or Orders which may lead to you holding further open Positions during the termination notice period.

### 13.4 ASSIGNMENT AND DELEGATION

You may not assign any of your rights or delegate any of your obligations under this Agreement to any person without our prior written consent.

You may not create any security interest over any of your rights under this Agreement, including any rights to deposits held by us.

We may assign, novate or otherwise transfer our rights or delegate any of our obligations under this Agreement to any person on giving not less than seven (7) Business Days' notice in accordance with clause 19 of this Agreement.

If you are in default of any of your obligations under this Agreement, we will be entitled (without prejudice to any other rights we may have) to assign to any person with immediate effect all or any of our rights in respect of money owing to us under this Agreement, as well as any security or other remedies available to us in respect of such money. You may be required to acknowledge in writing to us that the assignee has assumed our rights and obligations under this Agreement in relation to the relevant money owing by you.

## 14 FORCE MAJEURE

### 14.1 DEFINITION OF FORCE MAJEURE EVENT

A Force Majeure Event occurs if, as a result of something happening (or not happening), which is beyond your or our reasonable control, you or we (as the case may be) cannot perform or are delayed in performing your or our obligations under this Agreement, other than an obligation to pay. Forces of nature, industrial action and action (or inaction) by a government agency may cause a Force Majeure Event. A Force Majeure Event will also occur if the circumstances listed below occur or we reasonably anticipate that they are about to occur:

- we determine that we cannot maintain an orderly market for CFDs for one or more of the Underlying Instruments as a result of the occurrence of any act, omission or event (including a strike, riot, civil unrest or failure of power supply, communications or other infrastructure);
- the market for any of the Underlying Instruments is suspended, closed, liquidated or abandoned;
- limits or special or unusual terms are imposed in the relevant markets or Underlying Instruments; or
- there is excessive movement, volatility or loss of liquidity in the relevant markets or Underlying Instruments.

### 14.2 NOTICE AND SUSPENSION OF OBLIGATIONS

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

- that party must immediately give the other prompt notice of that fact including: full particulars of the Force Majeure Event; an estimate of its likely duration; the obligations affected by it and the extent of its effect on those obligations; and the steps taken to rectify it; and
- the obligations under this Agreement of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

### 14.3 REASONABLE ENDEAVOURS

A party claiming a Force Majeure Event must use reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a party to settle any industrial Dispute in any way that it considers inappropriate. If the party comes to the view that the Force Majeure Event is not amenable to such actions, it must notify the other party as soon as possible.

#### **14.4 TERMINATION DUE TO FORCE MAJEURE EVENT**

If a Force Majeure Event continues for more than five (5) Business Days, either party may terminate this Agreement immediately by giving written notice to the other party in accordance with clause 19 of this Agreement.

In the event of termination under this clause, neither party is liable to the other except to the extent of rights or obligations which accrued before the termination.

#### **14.5 ADDITIONAL ACTIONS**

Notwithstanding clauses 14.2 and 14.3 above, if we reasonably determine that a Force Majeure Event exists then we may (without prejudice to any other rights under this Agreement and at our sole discretion) take any one or more of the following actions:

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

To the extent practicable, we will take reasonable steps to notify you, in accordance with clause 19, of any action that we propose to take under this clause 14.5. If it is not practicable to give you prior notice, we will notify you promptly after taking any such action.

#### **14.6 LIABILITY**

If we reasonably determine in our absolute discretion that a Force Majeure Event exists, we will not be liable to you for any failure, hindrance or delay in performing our obligations under this Agreement or for taking or omitting to take any action in accordance with clauses 14.2 or 14.3.

### **15 TRADING PLATFORM**

#### **15.1 USE OF INFORMATION, DATA AND SOFTWARE**

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

You will promptly take all reasonable steps to delete such data, information or software from your systems if we request you to do so.

#### **15.2 MAINTAINING STANDARDS**

When using the Trading Platform, you must:

- ensure that your systems are maintained in good order and is suitable for use with the Trading Platform;
- carry out virus checks on a regular basis;
- not at any time leave the terminal from which you have accessed the Trading Platform or let anyone else use the terminal until you have logged off the Trading Platform;
- run such tests and provide such information to us as we reasonably consider necessary to establish that the system satisfies the requirements notified by us to you from time to time; and
- inform us immediately of any system defect, or any unauthorised access to the Trading Platform or any unauthorised transaction or instruction which you know of or suspect and, if within your control, cause such unauthorised use to cease and cease all use of such Trading Platform until you have received permission from us to continue.

### 15.3 SYSTEM DEFECTS

In the event you become aware of a defect, malfunction or virus in your systems or in the Trading Platform, you will immediately notify us of such defect, malfunction or virus and cease all use of such Trading Platform until you have received permission from us to resume use.

### 15.4 INTELLECTUAL PROPERTY

All rights in patents, copyrights, design rights, trade-marks and any other intellectual property rights (whether registered or unregistered) relating to the Trading Platform remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify the Trading Platform or any part or parts thereof unless expressly permitted by us in writing, reverse compile or disassemble the Trading Platform, nor purport to do any of the same or permit any of the same to be done, except in so far as such acts are expressly permitted by law. Any copies of the Trading Platform made in accordance with law are subject to the terms and conditions of this Agreement. You must ensure that all the licensors' trademarks and copyright and restricted rights notices are reproduced on these copies. You must maintain an up-to-date written record of the number of copies of the Trading Platform made by you. If we so request, you must as soon as reasonably practicable, provide to us a statement of the number and whereabouts of copies of the Trading Platform.

### 15.5 IMMEDIATE SUSPENSION OR PERMANENT WITHDRAWAL

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

## 16 YOUR PRIVACY & DISCLOSURE

The information you provide to us upon application and in connection with your transactions will primarily be used for the processing of your application, the provision of our Products and Services and for complying with certain laws and regulations. We collect, maintain, use and disclose Personal Information in the manner described in our Privacy Notice. Our Privacy Notice is available on our Website or by calling our client services team.

## 17 CONFIDENTIALITY

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

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

This clause does not apply in relation to Personal Information (as set out in clause 16 above).

## 18 SURVIVAL OF OBLIGATIONS

Clauses 1, 8, 10, 11, 12, 13.3, 17, 18, 19 and 20 survive any termination or expiry of this Agreement.

## 19 NOTICES

### 19.1 NOTICES MUST BE IN WRITING

Subject to clause 19.2, any notice or other communication (including any Confirmations, Reports, statements or supplementary PDS) given or made under or in connection with the matters contemplated by this Agreement will, except where oral communication is expressly provided for, be in writing and will be sent to the address below:

Us: The “Contact Us” page of our Website provides our business addresses for the purposes of written notifications or alternatively email [service@Axi.com](mailto:service@Axi.com). Our registered address is Level 13, 73 Miller Street, North Sydney, NSW 2060 Australia.

You: The address and electronic mail address provided by you in the Application Form.

## 19.2 PROVISION OF NOTICE

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

## 19.3 WHEN NOTICES ARE RECEIVED

Any such notice will be deemed to have been received:

- if delivered personally or by hand, at the time of delivery;
- if sent by mail, when it would be delivered in the ordinary course of post, but in any event: Not later than three (3) Business Days after posting locally; or not later than seven (7) Business Days after posting internationally.
- if sent by electronic transmission, when received by the recipient in readable form: By 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
- if it is given in any other manner permitted by law, when actually received by that person, unless a later time of receipt is specified in it.

## 19.4 CHANGE OF NOTICE DETAILS

You may alter the address (including electronic mail address) to which Confirmations, Reports, notices and other communications are issued, by written notice to us. Such change, however, will not be actioned until approved by us. You agree and acknowledge that you are solely responsible for ensuring that we have your current address, telephone number, and electronic mail address.

# 20 GOVERNING LAW AND JURISDICTION

## 20.1 LAW

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

## 20.2 JURISDICTION

Both parties submit irrevocably, for our benefit only, to the exclusive jurisdiction of the laws of New Zealand. Both parties waive any objection they may have to proceedings being brought in such courts, waive any Claim that such proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such proceedings, that such courts do not have any jurisdiction over such party. For the avoidance of doubt, this clause 20.2 will not prevent us from commencing proceedings in any other relevant jurisdiction.

# 21 MISCELLANEOUS

## 21.1 NO ADVICE

We deal with you on an execution-only basis and do not provide any advice. If you require advice, you may seek professional advice as to the suitability of our Products for your purposes having regard to your objectives, financial situation or needs. You should obtain and read our PDS before making any decisions in relation to our Products or Services.

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

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

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

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

## **21.4 CLIENT MONEY**

Our procedures with respect to the holding of Client Money can be found in section 6 of the PDS (*How Axi treats funds and property received from you*).

We do not hold individual segregated accounts and your money will be co-mingled into one or more trust accounts with our other Clients' Money.

We may invest money held on trust in term deposit investments. We are solely entitled to any interest or earnings derived from your money being deposited in a trust account or invested by us.

You irrevocably and unconditionally authorise us, subject to all applicable client money rules, to:

- withdraw, deduct or apply any amounts payable by you to us under this Agreement from your trust account, including, without limitation making a payment for, or in connection with, the margining, adjusting or settling of dealings in Positions entered into by you or the payment of interest or fees or charges to us, it being acknowledged and agreed by you that such amounts belong to us under this Agreement and may be used by us in our business from time to time, including for the payment of amounts to our counterparties; and
- deal with any property, other than money, without limitation: dealing with such property in connection with the margining, adjusting or settling of dealings in Positions entered into by you: or selling or charging in any way any or all of your property which may from time to time be in the possession or control of us or any of our Associates following the happening an Event of Default.

## **21.5 OPERATION OF THIS AGREEMENT**

Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

If there is any inconsistency between the English version of this Agreement and any translation of this Agreement, the English version will prevail to the extent of any inconsistency.

## **21.6 RIGHTS AND REMEDIES**

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

## **21.7 RIGHTS OF THIRD PARTIES**

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

## **21.8 WAIVER AND VARIATION OF RIGHTS**

No delay or omission on our part in exercising any right, power or remedy provided by law or under this Agreement, or partial or defective exercise thereof, will:

- impair or prevent further or other exercise of such right, power or remedy; or
- operate as a waiver of such right, power or remedy.

No waiver of any breach of any term of this Agreement will (unless expressly agreed in writing by us) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.

Our exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this Agreement. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this Agreement.

#### **21.9 OUR OFFICE AND TRADING HOURS**

Trading hours for Margin FX Contracts and CFDs vary and will depend on the relevant Underlying Instrument's hours of operation. They are published on our Website.

We are under no obligation to quote prices or accept orders or instructions on Contracts to which Limited Trading Hours applies.

#### **21.10 MULTIPLE PARTIES**

If a party to this Agreement is made up of more than one person, or a term is used in this Agreement to refer to more than one party, then unless otherwise specified in this Agreement:

- an obligation of those persons is joint and several;
- a right of those persons is held by each of them severally; and
- any other reference to that party or that term is a reference to each of those persons separately, so that (for example): a representation, warranty or undertaking relates to each of them separately; and a reference to that party or that term is a reference to each of those persons separately.

#### **21.11 TIME IS OF THE ESSENCE**

Time is of the essence for this Agreement

#### **21.12 LIABILITY FOR EXPENSES**

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

#### **21.13 GIVING EFFECT TO TRANSACTIONS**

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

#### **21.14 COUNTERPARTS**

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

## 22 DEFINITIONS

<b>AML/CTF Act</b>	means the <i>Anti-Money Laundering and Countering Financing of Terrorism Act 2009</i> and all regulations, rules and instruments made under that Act;
<b>Applicable Laws</b>	means all: <ul style="list-style-type: none"> <li>a) applicable provisions of laws and regulations, including all relevant rules of government agencies, exchanges, trade and clearing associations and self-regulatory organisations that apply to the parties, this Agreement and the transactions contemplated by this Agreement; and</li> <li>b) New Zealand laws, procedures, standards and codes of practice that apply in relation to the parties, this Agreement and the transactions contemplated by this Agreement, including the FMCA, the Financial Markets Conduct Regulations 2014, the Companies Act 1993 and the Privacy Act 1993.</li> </ul>
<b>Application Form</b>	means the account opening documentation, including documentation required to be returned for the purposes of complying with the AML/CTF Act, completed by you and submitted to us whether electronically or in hard copy;
<b>Associate</b>	means: <ul style="list-style-type: none"> <li>a) a person who is an officer, employee, agent, representative or associate of a party;</li> <li>b) a Related Company of a party; or</li> <li>c) a person who is an officer, employee, agent, representative or associate of a Related Company of a party;</li> </ul>
<b>Authorisation</b>	means: <ul style="list-style-type: none"> <li>a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and</li> <li>b) in relation to anything that could be prohibited or restricted by law if a government agency acts in any way within a specified period, the expiry of that period without that action being taken;</li> </ul>
<b>Authorised Person</b>	means you and/or any person authorised by you to give instructions to us under this Agreement;
<b>Business Day</b>	means any day other than a Saturday, Sunday or public holiday on which banks are open for business in London, England, New York, United States and Sydney, Australia and <ul style="list-style-type: none"> <li>(a) in the case of services relating to an Index to which Limited Trading Hours apply, any day on which the exchange on which the relevant security or each constituent security has its primary listing, or the exchange on which the Index operates, whichever is applicable, is open for trading, and will exclude any day on which all trading on the relevant exchange is closed or suspended; and</li> <li>(b) in the case of services relating to an Index to which Limited Hours Trading does not apply, any day on which any relevant exchange is open for trading;</li> </ul>
<b>Claim</b>	means, in relation to a person, any claim, allegation, cause of action, proceeding, liability, suit or demand made against a person however it arises and whether it is present or future, fixed or unascertained, actual or contingent;
<b>Client</b>	means you;

<b>Close of Business</b>	means 17.00 New York time Monday to Friday;
<b>Closing Date</b>	means, in respect of a Position, the date on which the relevant Position is closed out;
<b>Confirmation</b>	means a form of notification, which may be provided by us electronically, including via the internet, requiring access by you, confirming entry into a Position;
<b>Contract</b>	means any transaction entered into between us and you, whether oral or written, including any derivative, option, future, contract for difference or other transaction relating to the Products issued by us;
<b>Contract Price</b>	means the price we offer you to trade in our Products from time to time and which is calculated by us according to this Agreement;
<b>Contract Quantity</b>	means, in relation to a Position, the number of Contract Units making up that Position;
<b>Contract Size</b>	means, in relation to a Product, the quantity of the Underlying Instrument included in a Contract Unit;
<b>Contract Unit</b>	means a single unit of a Product;
<b>Contract Value</b>	means, in respect of a Product, the Contract Price multiplied by the Contract Quantity multiplied by the Contract Size;
<b>Dispute</b>	means any dispute or difference between the parties arising out of, relating to, or in connection with, this Agreement or transactions under this Agreement, including any dispute or difference as to the formation, validity, existence or termination of this Agreement;
<b>FMCA</b>	<u>means the Financial Markets Conduct Act 2013;</u>
<b>FSG</b>	means our financial services guide, including any supplementary and replacement financial services guide, as replaced or amended from time to time;
<b>Introducing Broker</b>	means an independent entity that refers clients to us, including pursuant to an introducing broker agreement or other referrer agreement;
<b>Limited Trading Hours</b>	means the ability of the client to trade CFDs (where available) as are designated by us from time to time under this Agreement only during such hours as the relevant exchange is open;
<b>Long Party</b>	means, in relation to a Product, the party that has notionally taken a long position in respect of the relevant Underlying Instrument;
<b>Loss</b>	includes any loss, damage, liability or obligation, compensation, fine, penalty, charge, payment, cost or expense (including any legal costs and expenses on a full indemnity basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent;
<b>Lot</b>	means one standard Contract Unit;

<b>Margin Percentage</b>	means such percentage of the Contract Value as specified by us in the Retail Client Product Schedule;
<b>Minimum Trading Size</b>	means such minimum Contract Quantity or Contract Value as we may specify on our Website from time to time for any type of CFD;
<b>PDS</b>	means our product disclosure statement, including a supplementary and replacement product disclosure statement;
<b>Personal Information</b>	has the meaning ascribed to it under the <i>Privacy Act 2020</i> and any other applicable privacy laws;
<b>Privacy Notice</b>	means Axi's privacy policy or privacy notice as set out on its Website, and as amended from time to time;
<b>Product</b>	means a product offered by Axi under this Agreement and described in the Retail Client Product Schedule;
<b>Retail Client</b>	means any person who receives a financial service who is not a wholesale client;
<b>Related Company</b>	has the meaning given to it by the Companies Act 1993, with any necessary modifications for companies incorporated outside New Zealand;
<b>Report</b>	means any daily statement, monthly statement or other report we provide to you;
<b>Services</b>	means the services provided by us under this Agreement;
<b>Settlement Date</b>	means such date following the Closing Date as we may reasonably determine in accordance with practice in the relevant market and notified to you at the time of entering into a Position;
<b>Short Party</b>	means, in relation to a Product, the party that has notionally taken a short position in respect of the Underlying Instrument;
<b>Total Equity</b>	means the aggregate of the current cash balance in your Account and your current unrealised profits and losses;
<b>Total Margin Requirement</b>	means the sum of your Margin Requirements for all of your open Positions;
<b>Trading Day</b>	means, in the case of Positions over an Underlying Instrument which is traded on, or references, an Underlying Market, a day on which the Underlying Market is open for trading in the ordinary course (and, if there is more than one Underlying Market, a day on which all applicable Underlying Markets are open for trading in the ordinary course);
<b>Underlying Market</b>	means the underlying market in which the Underlying Instrument is traded;
<b>Valuation Time</b>	means, in respect of a Position: <ul style="list-style-type: none"> <li>a) the time the Position is opened;</li> <li>b) the Close of Business on each Trading Day the Position is open (other than the Trading Day the Position is closed); and</li> <li>c) the time the Position is closed.</li> </ul>