



Client Agreement (Terms & Conditions)

CLIENT AGREEMENT

This client agreement, together with any Schedule(s), and accompanying documents, as amended from time to time and the policies available on our website www.midorifx.com from time to time, (this "Agreement") sets out the terms of the contract between you and us. Please read the documents carefully and let us know as soon as possible if there is anything which you do not understand – contact details for this purpose are complaints@midorifx.com.

Copies of the components of this Agreement, as amended from time to time, are continuously available for viewing, downloading and printing by clicking on the relevant hyperlinks found at the footer of each page of our website.

Goods and Services

Midori FX (Pty) Ltd is a business in the Financial Services Industry, an authorized FSP, with FSP No 53077, that provides an online trading platform

Delivery Policy

Subject to availability and receipt of payment, requests will be processed within 2 days and delivery confirmed by way of electronic mail (Email)

Return and Refunds Policy

The provision of goods and services by Midori FX (Pty) Ltd is subject to availability. In cases of unavailability, Midori FX (Pty) Ltd will refund the client in full within 30 days. Cancellation of orders by the client will attract a 5% administration fee.

Customer Privacy Policy

Midori FX (Pty) Ltd will take reasonable steps to protect the personal information of users. For the purpose of the clause, “personal information” shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA).

Responsibility

Midori FX (Pty) Ltd will take responsibility for all aspects relating to the transaction including sale of services sold on this website, Customer service and support, dispute resolution and delivery of services.

Variation

Midori FX (Pty) Ltd may, in its sole discretion, change this agreement or any part thereof at any time and without notice.

1. INTERPRETATION

In this Agreement:

- 1.1 **Account** means the account you hold with us and designated with a particular account number.
- 1.2 **Applicable Regulations** means, without limitation, the FAIS Act and subordinate legislation, any rules, statements of principle and directives of applicable authorities responsible for the regulation of Midori FX (Pty) Ltd 's business (including, without limitation, the FSCA and SARS) and all other laws, rules and regulations regulating or otherwise affecting this Agreement, in force from time to time.
- 1.3 **Associate** means an undertaking in the same group as us, a representative whom we or an undertaking in the same group as us appoint, or any other person with whom we have a relationship that might reasonably be expected to give rise to a common interest between us and them.
- 1.4 **Base Currency** means South African Rands.
- 1.5 **Business Day** means a day on which banks and the JSE are open for business in Durban.
- 1.6 **Client** and/or **Customer** means you, the counterparty of the Company agreeing to these terms and entering into this Agreement with the Company and any reference to "you" or "your" or cognate words will be interpreted as denoting or connoting the Client.
- 1.7 **Code** means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2008 as amended from time to time.
- 1.8 **Company** or **Midori FX (Pty) Ltd** for the purposes of this Agreement means Midori FX (Pty) Ltd and any reference to "our" or "us" or cognate words will be interpreted as denoting or connoting the Client.
- 1.9 **Compliance Officer** means the Company's compliance officer required under the FAIS Act;
- 1.10 **Contract for Differences** or **CFD** means an agreement to exchange the difference in price of an instrument over a set period of time.
- 1.11 **Counterparty Credit Risk** means the risk that the counterparty to a transaction could default before the final settlement of the transaction's cash flows.
- 1.12 **Credit Support Provider** means any person who has entered into any guarantee, hypothecation, agreement, margin or security agreement in our favor in respect of your obligations under this Agreement.
- 1.13 **Electronic Services** means a service provided by us, for example an Internet trading service offering clients access to information and trading facilities, via an internet service, a WAP service and/or an electronic order routing system.
- 1.14 **Event of Default** means any of the events of default as listed in Clause 16.1 (Events of Default).
- 1.15 **Execution** means the completion of Clients' orders on Midori FX (Pty) Ltd 's Online Trading Platform, where Midori FX (Pty) Ltd is a principal to clients' transactions.
- 1.16 **FATCA** is an abbreviation for "Foreign Account Tax Compliance Act".
- 1.17 **FAIS Act** means the Financial Advisory and Intermediary Services Act No. 37 of 2002.
- 1.18 **FICA** means the Financial Intelligence Centre Act No. 38 of 2001.
- 1.19 **FMA** means the Financial Markets Act No. 19 of 2012.
- 1.20 **FSB** means the old Financial Services Board now known as the Financial Sector Conduct Authority (FSCA).
- 1.21 **JSE** means the Johannesburg Stock Exchange Limited.
- 1.22 **OTC** means 'over the counter' and refers to transactions conducted otherwise than on an exchange.
- 1.23 **Privacy Policy** refers to Midori FX (Pty) Ltd 's Protection of Personal Information Policy provided on Midori FX (Pty) Ltd 's website, as this may be changed from time to time, which represents an inherent part of this Agreement and includes how Midori FX (Pty) Ltd collects, processes, stores and protects your information.

- 1.24** SARS means South African Revenue Services.
- 1.25** **Midori FX (Pty) Ltd Trading Desk** means the trading desk operated by us.
- 1.26** **Midori FX (Pty) Ltd Online Trading System** means the internet-based trading system available on our website that allows you to provide us with instructions. This also includes the Meta Trader 5 (MT5) platform.
- 1.27** **Secured Obligations** means the net obligation owed by you to us after the application of set-off under Clause 14 (Margining Arrangements) in the paragraph entitled “Set-off on default”.
- 1.28** **FX Contract** or **FX** means a contract between Midori FX (Pty) Ltd and its Client to exchange two currencies at an agreed exchange rate but does not render intermediary services.
- 1.29** **System** means all computer hardware and software, equipment, network facilities and other resources and facilities needed to enable you to use an Electronic Service.
- 1.30** **Transaction** means any transaction subject to this Agreement and includes a CFD, FX Contract or forward contract of any kind, future, option or other derivative contract in relation to any commodity, financial instrument (including any security), currency, interest rate, index or any combination thereof and any other transaction or financial instrument for which we are authorised under our FAIS Financial Services Provider (“FSP”) licence from time to time which we both agree shall be a Transaction.
- 1.31** **US Reportable Persons** - In accordance with FATCA, a US Reportable person is:
- (a) a US citizen (including dual citizen);
 - (b) a US resident alien for tax purposes;
 - (c) a domestic partnership;
 - (d) a domestic corporation;
 - (e) any estate other than a foreign estate;
 - (f) any trust if:
 - (i) a court within the United States is able to exercise primary supervision over the administration of the trust;
 - (ii) one or more United States persons have the authority to control all substantial decisions of the trust;
 - (g) any other person that is not a foreign person.

2. INTRODUCTION

2.1 Scope of this Agreement

This Agreement constitutes an intermediary services contract in terms of the FAIS Act. This Agreement sets out the basis on which we will provide services to you. This Agreement governs each Transaction entered into or outstanding between us on or after the execution of this Agreement.

2.2 Commencement

This Agreement supersedes any previous agreement between you and us on the same subject matter and takes effect when you indicate your acceptance via our website. This Agreement shall apply to all Transactions contemplated under this Agreement.

3. GENERAL

3.1 Information about us

- (a) The Company is authorized and regulated by the Financial Sector Conduct Authority under license number 53077, pursuant the Financial Intermediary and Services Act 37 of 2002 (“FAIS”). Our registered office is at 697 Jacques Street, Moreleta Park, Pretoria, Gauteng, 0181, South Africa.

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- (b) Our contact details are set out in Clause 21 (Miscellaneous) under the heading “Notices”. FSCA’s office is situated at Riverwalk Office Park, Block B41 Matroosberg Road (Corner Garsfontein and Matroosberg Roads) Ashlea Gardens, Extension 6 Menlo Park Pretoria South Africa 0081
- (c) The Company is a provider for CFD products. The Company owns and operates websites, trading platforms and brand names as indicated in its website www.midorifx.com. The Company operates through this website which allows online trading.

3.2 Language

This Agreement is supplied to you in English and we will continue to communicate with you in English for the duration of this Agreement. However, where possible, we will communicate with you in other languages in addition to English.

3.3 Communication with us

You may communicate with us in writing (including fax), by email or other electronic means, or orally (including by telephone). Our contact details are set out in Clause 21 (Miscellaneous) under the heading “Notices”. The language of communication shall be English, and you will receive documents and other information from us in English. However, where appropriate and for your convenience, we will endeavor to communicate with you in other languages. Our website contains further details about us and our services, and other information relevant to this Agreement. In the event of any conflict between the terms of this Agreement and our website this Agreement will prevail.

3.4 Capacity

- (a) Midori FX (Pty) Ltd is licenced to act as an Intermediary FSP, where a person acts as an intermediary between the client and the relevant product supplier (the client does not deal directly with the product supplier themselves). We act as principal and not as agent on your behalf and you enter this Agreement as principal and not as agent (or trustee) on behalf of someone else.
- (b) The definition of “intermediary service” can be found under section 1 of the FAIS Act. Intermediary services include, amongst other things : any act (other than giving advice) where a person performs an act on behalf of a client or product supplier, such as:
 - (i) the keeping in safe custody of a financial product in which a client has invested E.g. a share certificate;
 - (ii) the collection of premiums from clients on behalf of product suppliers;
 - (iii) receiving, submitting or processing a client’s claim against a product supplier;
 - (iv) buying, selling or dealing in (discretionary or non-discretionary basis) financial products;
 - (v) administrating any financial product;

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- (vi) maintaining or servicing a financial product e.g. the nomination of a beneficiary on a policy or updating bank details.
- (c) Midori FX (Pty) Ltd, as a registered FSP is required to and does in fact, comply with the obligations imposed on FSP's in terms of the Code.

3.5 Legal Age

Midori FX (Pty) Ltd services and products traded are only available to individuals who are at least 18 years old (and at least the legal age in your jurisdiction). You represent and warrant that if you are an individual, you are at least 18 years old and of legal age in your jurisdiction to enter into a binding contract, and that all registration information you submit is accurate and truthful. Midori FX (Pty) Ltd reserves the right to ask for your proof of age, furthermore, your account may be suspended until satisfactory proof of age is provided. Midori FX (Pty) Ltd may, in its sole and absolute discretion, refuse to offer its products and services to any person or entity and change its eligibility criteria at any time.

3.6 Banned/Not permitted Jurisdictions

- (a) Midori FX (Pty) Ltd reserves the right and is entitled to at any time, and in its sole and absolute discretion, to restrict offering its services to certain jurisdictions and consider them as banned countries in terms of engagement with potential clients. Currently the Company does not accept new clients and/or the opening of new accounts from the following jurisdictions:

Afghanistan, Algeria, American Samoa, Angola, Belgium, Bosnia and Herzegovina, Cambodia, Canada, Cuba, Democratic People's Republic of Korea (DPRK), Guam, Guyana, Iran, Iraq, Israel, Lao People's Democratic Republic, Macao, Myanmar, Northern Mariana Islands, Panama, Papua New Guinea, Puerto Rico, Russia, Sudan, Syrian Arab Republic, Uganda, US Virgin Islands, USA, Vanuatu, Yemen.

- (b) The aforementioned list of countries is non-exhaustive and the updated list of banned countries, which can be found with Midori FX (Pty) Ltd's customer support, is subject to alteration at any time that Midori FX (Pty) Ltd deems proper in its sole and absolute discretion without any prior notice.
- (c) The Customer hereby confirms that by agreeing to this Agreement he/she is not residing in one of the countries mentioned on the aforementioned list and undertakes to inform the Company should his situation alter in any way. Midori FX (Pty) Ltd reserves the right to request and the Customer agrees to provide any additional information deemed necessary to verify compliance with this clause.

3.7 General interpretation

A reference in this Agreement to a "clause" or "Schedule" shall be construed as a reference to, respectively, a clause or Schedule of this Agreement, unless the context requires otherwise. References in this Agreement to any statute or statutory instrument or Applicable Regulations include any modification, amendment, extension or re-enactment thereof. A reference in this Agreement to "document" shall be construed to include any electronic document. The masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires. Words and phrases defined in the Code and the Applicable Regulations have the same meaning in this Agreement unless expressly defined in this Agreement.

3.8 Schedules

The clauses contained in any attached Schedule (as amended from time to time) shall apply as if part of the main body of this Agreement. We may from time to time send to you further Schedules in respect of Transactions. In the event of any conflict between the clauses of any Schedule and this Agreement, the clauses of the Schedule shall prevail. The fact that a clause is specifically included in a Schedule in respect of one Transaction shall not preclude a similar clause being expressed or implied in relation to any other Transaction. You acknowledge having read, understood and agreed to the Schedules to this Agreement.

3.9 Headings

Headings are for ease of reference only and do not form part of this Agreement.

3.10 Lists not exhaustive

In this Agreement the use of the word “including” followed by specific example/s will not be construed as limiting the meaning of the general wording preceding it and the *ejusdem generis* rule will not be applied in the interpretation of such general wording or such specific examples.

4. REGULATION

4.1 This Agreement and all Transactions are subject to Applicable Regulations so that:

- (a) nothing in this Agreement shall exclude or restrict any obligation which we have to you under Applicable Regulations;
- (b) we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Regulations;
- (c) all Applicable Regulations and whatever we do or fail to do in order to comply with them will be binding on you; and
- (d) such actions that we take or fail to take for the purpose of compliance with any Applicable Regulations shall not render us or any of our directors, officers, employees or agents liable.

4.2 Action by regulatory body

If a regulatory body takes any action which affects a Transaction, then we may take any action which we, in our reasonable discretion, consider desirable to correspond with such action or to mitigate any loss incurred as a result of such action. Any such action shall be binding on you. If a regulatory body makes an enquiry in respect of any of your Transactions, you agree to co-operate with us and to promptly supply information requested in connection with the enquiry.

5. COSTS, PAYMENTS AND CHARGES**5.1 Charges**

You shall pay our charges as agreed with you from time to time, any fees or other charges imposed by a clearing organization and interest on any amount due to us at the rates then charged by us (and which are available on request). A copy of our current charges is published on our website. Any alteration to charges will be notified to you before the time of the change.

5.2 Additional costs

You acknowledge the possibility that other taxes or costs may exist that are not paid through or imposed by us.

5.3 Payments

All payments to us under this Agreement shall be made in such currency as we may from time to time specify to the bank account designated by us for such purposes. All such payments shall be made by you without any deduction or withholding.

5.4 Remuneration and sharing of charges

Midori FX (Pty) Ltd may share charges with Associates, partners, intermediary service providers and agents (collectively referred to as “Partners”) relating to Transactions carried out in your Account. Partners are receiving remuneration on the basis of a percentage of the spread, a fixed fee and/or based on any other method agreed with them, which may affect the costs associated with your Account. More information on the fees and commissions Midori FX (Pty) Ltd pays to its Partners can be provided upon request.

5.5 Rollovers, Interest

- (a) A daily financing charge may apply to each FX/CFD open position at the closing of Midori FX (Pty) Ltd’s trading day as regard to that FX/CFD. If such financing charge is applicable, it will either be requested to be paid by Customer directly to the Company or it will be paid by the Company to the Customer, depending on the type of FX/CFD and the nature of the position Customer holds. The method of calculation of the financing charge varies according to the type of FX/CFD to which it applies. Moreover, the amount of the financing charge will vary as it is linked to current interest rates (such as LIBOR). The financing charge will be credited or debited (as appropriate) to or from Customer’s account on the next trading day following the day to which it relates.
- (b) The Company reserves the right to change the method of calculating the financing charge, the financing rates and/or the types of FX/CFDs to which the financing charge applies. For certain types of FX/CFDs, a commission is payable by Customer to open and close FX/CFD positions. Such commission payable will be debited from Customer’s account at the same time as the Company opens or closes the relevant FX/CFD. Changes in our swap interest rates and calculations shall be at the Company’s sole and absolute discretion and without notice. Clients need to always check our website for the then current rates charged. Rates may change quickly due to market conditions (changes in interest rates, volatility, liquidity etc.) and due to various risk related matters that are at the Company’s sole discretion.
- (c) Any open FX/CFD transaction held by Customer at the end of the trading day as determined by the Company or over the weekend, shall automatically be rolled over to the next Business Day so as to avoid an automatic close and physical settlement of the transaction. Customer acknowledges that when rolling over such transactions to the next Business Day, a premium may be either added or subtracted from Customer’s account with respect to such transaction. The MT5 platform calculates overnight rollover at 21:00 GMT and the rollover charge/credit is debited or credited to and from the trading account.

5.6 CFD Expiration Rollover

- (a) Unless otherwise specified, the underlying instrument of a CFD has an expiration date. However, you should be aware that CFDs are not traded up until the exact expiration date of the underlying instrument. Instead, CFDs are rolled over to the next underlying future price on the last Friday before the official expiration day (except in cases of when it falls on a Friday when the markets are closed). This is known as the “Expiration Rollover”. If there would be any substantial price difference between the two futures, an adjustment will be credited or debited from the balance of your Account (subject to the open position amount of the expiring CFD) (“Adjustment”).
- (b) This Adjustment will show up in your Account under “Rollover Charge” and will not affect the real value of your equity. However, you should be aware that the switch between the two future prices of the underlying CFD could involve a substantial price difference. Any existing pending order(s) (stop, limit, entry stop and entry limit) placed on these instruments will be automatically removed on the CFD rollover date at 21:00 GMT. To calculate the rollover Midori FX (Pty) Ltd takes the settlement prices of the two contracts from the relevant official exchange. There are no other costs incurred by the Customer involved in the Expiration Rollover.
- (c) Midori FX (Pty) Ltd will endeavor to inform customers about any projected expiration of instruments by Popup, email or through the Company’s website. However, Midori FX (Pty) Ltd cannot provide adjustment information about an Expiration Rollover before the adjustment occurs. Therefore, Customers with open positions who do not wish to have their positions rolled over into the new tradable contract should close their position(s) and/or cancel orders before the rollover date and open a new position afterwards.
- (d) The formula used by Midori FX (Pty) Ltd for calculating the Adjustment:
 - (i) MT5 Platform:

$$[(\text{Lots} \times \text{Contract Size}) \times (\text{New Contract} - \text{Old Contract Price})] + \text{Overnight Rollover Markets Web Trade} [\text{Quantity} \times \text{Swap percentage charge} \times \text{Last platform Mid price}]$$
 - (ii) General rules:

$$\text{New Price} < \text{Old Price} = \text{Credit for Long Positions/Debit for Short Positions for CFD contracts}$$

Example 1: **MT5 Platform**

New contract price: 9,975.00EUR

Old contract price: 9,982.00EUR

Formula: $[(\text{Lots} \times \text{Contract Size}) \times (\text{New Contract} - \text{Old Contract Price})] + \text{Overnight Rollover}$

Long position will be charged positive rollover adjustment

Customer X has a **long** open position on the underlying instrument of 1 lot.

The adjustment will be:

$$[(1 \times 100) \times (9975 - 9982)] + \text{Overnight Rollover} = 700\text{EUR} + \text{Overnight Rollover}$$

Short position will be charged negative rollover adjustment

Customer X has a **short** position on the underlying instrument of 1 lot.

The adjustment will be:

$$[(1 \times 100) \times (9975 - 9982)] + \text{Overnight Rollover} = -700\text{EUR} + \text{Overnight Rollover}$$

Web Trader

New contract price: 480.30USD

Old contract price: 484.20USD

Formula: [Quantity x Swap percentage charge x Last Platform Mid Price]

Swap percentage charge = (old contract price – new contract price)/ old contract price

Last platform Mid price = (Last Bid Price + Last Ask Price)/2

Long position will be charged positive rollover adjustment

Customer X has a **long** open position on the underlying instrument of 100 units.

The adjustment will be:

[Quantity x Swap percentage charge x Last platform Mid price]

Swap percentage charge = $(484.20 - 480.30) / 484.20 = 0.80545\%$, rounded to the second decimal 0.81%

Last platform Mid price = $(475.13 + 477.63) / 2 = 476.38$

$$[100 \times 0.81\% \times 476.38] = 385.87\text{USD}$$

Short position will be charged negative rollover adjustment

Customer X has a **short** position on the underlying instrument of 100 units.

The adjustment will be:

[Quantity x Swap percentage charge x Last platform Mid price]

Swap percentage charge = $(484.20 - 480.30) / 484.20 = 0.80545\%$, rounded to the second decimal 0.81%

Last platform Mid price = $(475.13 + 477.63) / 2 = 476.38$

$$[100 \times 0.81\% \times 476.38] = -385.87\text{USD}$$

New Price > Old Price = Debit for Long Positions/Credit for Short Positions

Example 2:

MT5 Platform

New contract price: 9,982.00EUR

Old contract price: 9,975.00EUR

Formula: $[(\text{Lots} \times \text{Contract Size}) \times (\text{New Contract} - \text{Old Contract Price})] + \text{Overnight Rollover}$

Long position will be charged negative rollover adjustment

Customer X has a **long** position on the underlying instrument of one (1) lot.

The adjustment will be:

$[(1 \times 100) \times (9982 - 9973)] + \text{Overnight Rollover} = -900\text{EUR} + \text{Overnight Rollover}$

Short position will be charged positive rollover adjustment

Customer X has a **short** position on the underlying instrument of one (1) lot.

The adjustment will be:

$[(1 \times 100) \times (9982 - 9973)] + \text{Overnight Rollover} = 900\text{EUR} + \text{Overnight Rollover}$

Web Trader

New contract price: 480.30USD

Old contract price: 478.20USD

Formula: $[\text{Quantity} \times \text{Swap percentage charge} \times \text{Last Platform Mid Price}]$

Swap percentage charge = $(\text{old contract price} - \text{new contract price}) / \text{old contract price}$

Last platform Mid price = $(\text{Last Bid Price} + \text{Last Ask Price}) / 2$

Long position will be charged negative rollover adjustment

Customer X has a **long** position on the underlying instrument of 100 units.

The adjustment will be:

$[\text{Quantity} \times \text{Swap percentage charge} \times \text{Last platform Mid price}]$

Swap percentage charge = $(478.20 - 480.30) / 478.20 = 0.43714\%$, rounded to the second decimal
0.44%

Last platform Mid price = $(475.13 + 477.63) / 2 = 476.38$

$[100 \times 0.44\% \times 476.38] = -209.61\text{USD}$

Short position will be charged positive rollover adjustment

Customer X has a **short** position on the underlying instrument of 100 units.

The adjustment will be:

Swap percentage charge = $(478.20 - 480.30) / 478.20 = 0.43714\%$, rounded to the second decimal

0.44%

Last platform Mid price = $(475.13+477.63)/2 = 476.38$ $[100 \times 0.44\% \times 476.38] = 209.61\text{USD}$

- (e) For **Islamic accounts**, due to the account being swap-free, the aforementioned actions shall be effected through manual adjustments, credit or debit, to reflect the difference on the price between the old expiring contract and the new contract. The calculation formula and prices used are the same as prescribed for the normal procedure. As with normal procedure, any manual adjustments will not affect the Customer's equity.
- (f) Exceptions to the normal procedure:
 - (i) When the difference in the price of the expiring contract and the new contract is abnormally big, and In Midori FX (Pty) Ltd sole and absolute discretion, Midori FX (Pty) Ltd retains the right to apply the Islamic accounts procedure and reflect the difference to the price through manual adjustments instead of through swaps.
 - (ii) In the case of the liquidity of the CFD old contract being too small, and in Midori FX (Pty) Ltd sole and absolute discretion, Midori FX (Pty) Ltd has the right to effect the rollover on an earlier date than the prescribed one.
 - (iii) All Adjustments are calculated in the currency the underlying instrument is denominated in and in case the Account is in a different currency, the system will automatically convert this to the currency of the Account using the market rate at that time.

5.7 Overnight Rollover

On Wednesday at 21:00 GMT, overnight rollover fees are multiplied by three (x3) in order to compensate for the upcoming weekend. The premium amount shall be determined by Midori FX (Pty) Ltd from time to time, in Midori FX (Pty) Ltd's sole and absolute discretion. Customer hereby authorises Midori FX (Pty) Ltd to add or subtract the premium to or from Customer's account for any open transaction that has accrued a premium, in accordance with the applicable rate thereto, each day at the time of collection specified on the trading platform for each individual instrument, as applicable.

6. RIGHT TO CANCEL

You have a right to cancel this Agreement within a period of fourteen (14) days commencing on the date on which this Agreement is concluded (the "**Cancellation Period**"). Should you wish to cancel this Agreement within the Cancellation Period, you should send notice electronically to the following email address: compliance@midorifx.com. Cancelling this Agreement within the Cancellation Period will not cancel any Transaction entered into by you during the Cancellation Period. If you fail to cancel this Agreement within the Cancellation Period, you will be bound by its terms, but you may terminate this Agreement in accordance with Clause 19 (Termination Without Default).

7. NON-ADVISORY**7.1 Execution only**

We deal on an execution only basis and do not advise on the merits of particular Transactions, or their taxation consequences.

7.2 Own judgement and suitability

Without prejudice to our foregoing obligations, in asking us to enter any Transaction, you represent that you have been solely responsible for making your own independent appraisal and investigations into the risks of the Transaction. You represent that you have sufficient knowledge, market sophistication, professional advice and experience to make your own evaluation of the merits and risks of any Transaction and that you have read and accepted the Risk Disclosure Statement and guidelines in relation to the financial instruments and the markets which are available on our website. We give you no warranty as to the suitability of the products traded under this Agreement and assume no fiduciary duty in our relations with you.

7.3 Incidental information and investment research

- (a) Where we do provide generic trading recommendations, market commentary or other information:
 - (i) this is incidental to your dealing relationship with us. It is provided solely to enable you to make your own investment decisions and does not amount to advice;
 - (ii) where information is in the form of a document containing a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on to any such person or category of persons;
 - (iii) we give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the tax consequences of any Transaction;
 - (iv) you accept that prior to dispatch, we may have acted upon it ourselves or made use of the information on which it is based. We do not make representations as to the time of receipt by you and cannot guarantee that you will receive such information at the same time as other clients. Any published research reports or recommendations may appear in one or more screen information services.

8. CONFLICTS OF INTEREST POLICY

Please refer to our conflicts of interest policy for further information on how we manage conflicts which would affect the impartiality of the investment research we provide to you. Upon request, we will provide you with any further details in that regard.

9. CUSTOMER ACCOUNTS AND INITIAL DEPOSITS**9.1 Account Set Up and Maintenance**

- (a) Before you can proceed with the set up and registration of your Account, you must read and accept this Agreement and all other policies published on our

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website. You must also deposit sufficient clear funds in your Account and your customer registration form and all accompanying documents must be approved by Midori FX (Pty) Ltd in its sole and absolute discretion

- (b) Kindly note that upon Account registration and/or following ongoing monitoring, you will be requested to provide us with certain information and/or supporting documentation about you that we require in compliance with Applicable Regulations. We may from time to time, carry out various evaluations and checks (including but not limited to verification of your identity and proof of residence as well as your good repute) as we may deem appropriate. We may also obtain information or verification of the information you provide us from independent organisations that are licensed to provide such data and / or services or from other reputable sources and databases that we may select at our discretion (collectively the “3rd parties”). You expressly consent and agree to our use of such 3rd parties. You hereby authorise us to use the information you provide to us, as well as any other information we receive from the 3rd parties for the purposes of our aforementioned evaluation and checks. You agree and accept that Midori FX (Pty) Ltd may share such information on a need to know basis with its Associates (including its holding company), the FSB or any other authority that may have a legal right to request receipt of such information. Midori FX (Pty) Ltd shall use your data in accordance with its Protection of Personal Information Policy. Please be advised that we reserve the right to periodically request additional and up-to-date documentation and/or information from you, in order to ensure that our records are up to date. Nevertheless, you remain responsible at all times to advise Midori FX (Pty) Ltd, in a timely manner, of all changes to your personal status and all other information provided to us.
- (c) In compliance with our Applicable Regulations, to view our regulated payment service providers through which a deposit can be made, please [click here](#).

9.2 Currency of Accounts

- (a) You will be able to open your trading Account(s) in USD or any currency that may be offered by Midori FX (Pty) Ltd.
- (b) Account(s) balances will be calculated and reported to you in the currency in which Account(s) are maintained.

9.3 Joint Accounts

- (a) In addition to the conditions listed in Clause 10 in the paragraph entitled “Authority” with regards to joint Account holders, the following additional conditions apply.
- (b) Where your Account held with Midori FX (Pty) Ltd is jointly owned by two or more beneficiaries:
- (i) Each joint Account holder will be jointly and severally liable for all obligations to Midori FX (Pty) Ltd arising in respect of your joint trading Account, one paying the other to be absolved.
 - (ii) Each of you are separately responsible for complying with the terms of this Agreement.

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- (iii) If there is a dispute between you which we know about, we may insist that both or all of you authorize written instructions to us.
- (iv) If one of you dies, the survivor(s) may continue to operate the Account and if there is more than one survivor, the provisions of this clause will continue to apply to the trading Account.
- (v) Where you provide personal and financial information relating to other joint Account holders for the purpose of opening or administering your Account you confirm that you have their consent or are otherwise entitled to provide this information to us and for us to use it in accordance with this Agreement.
- (vi) Any of you may request closure and the redirection of balances, unless there are circumstances that require us to obtain authorization from all of you.
- (vii) Each of you will be given sole access to the funds initially deposited by you in your joint trading Account. Should you wish to withdraw these funds from your trading Account, you will be required to complete and sign a withdrawal form, upon receipt of the completed and signed withdrawal form you will be granted permission by Midori FX (Pty) Ltd to withdraw funds up to the amount you initially deposited, provided that the conditions for withdrawals stipulated in Clause 10 (Trading Policies and Procedures) are satisfied. Midori FX (Pty) Ltd will credit the amount withdrawn in the same bank account from where it was originally debited.
- (viii) In the case of withdrawal of profits, if any of you wish to withdraw profits from the joint trading Account, you will be required to complete and sign a withdrawal form, provided that the conditions for withdrawals stipulated in Clause 10 (Trading Policies and Procedures) are satisfied. Upon receipt of the completed and signed withdrawal form you will be granted permission by Midori FX (Pty) Ltd to withdraw any profits from the joint trading Account. Midori FX (Pty) Ltd will credit the amount of profits withdrawn in the same bank account from where it was originally debited.
- (ix) It is required that all joint Account holders read and indicate their acceptance of this Agreement and all policies appearing on our website and in case you and/or any of the Account holders wish to terminate this Agreement and close the joint trading Account held with Midori FX (Pty) Ltd, the written consent of all Account holders must be obtained in accordance with the provisions of Clause 19 (Termination without Default) of this Agreement.

9.4 Islamic Accounts

- (a) In the event of a customer who due to its observance of Islamic religious beliefs cannot receive or pay interest, such customer may elect to designate, in the manner provided by the Company as this may be altered from time to time, their trading account to be a swap-free account not charged with or entitled to, premiums and/or rollovers and/or interest (“Islamic Account”). The Customer hereby confirms and/or accepts and/or declares that a request to render their account as an Islamic Account shall only be made due to the said Islamic religious beliefs and for no other reason whatsoever. The

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Company reserves the right to refuse to accept the request of a customer to designate their account as an Islamic Account, at its sole and absolute discretion which shall be conclusive and undisputable by the Customer.

- (b) In the event that the Company suspects that a Customer is abusing the rights conferred to them by the classification of the account as Islamic Account, the Company has the right, without prior notice, to proceed with one or more of the following:
 - (i) The Company may add commission upon each and every one of the Transactions executed on the Islamic Account; and/or
 - (ii) The Company may cancel the special rights and/or conditions conferred to the Account due to its classification as an Islamic Account, recall the designation of the Account as an Islamic Account and render it a normal trading Account; and/or
 - (iii) The Company may restrict and/or prohibit the Customer from hedging their positions; and/or
 - (iv) The Company may, at its sole discretion, close any open positions and reinstate them at the then real market price. The Customer hereby acknowledges that they shall bear all costs derived from the aforementioned action, including but not limited to, the cost of the change of the spread.

10. TRADING POLICIES AND PROCEDURES

10.1 Placing of instructions

- (a) You may give us instructions in electronic form through the Midori FX (Pty) Ltd Online Trading System (MT5), unless we tell you that instructions can only be given in a particular way.
- (b) In this Agreement “instructions” and “orders” have the same meaning.

10.2 Types of Orders Accepted

- (a) Some of the types of orders Midori FX (Pty) Ltd accepts include, but are not limited to:
 - (i) **Good till Cancelled (“GTC”)-** An order (other than a market order), that by its terms is effective until filled or cancelled by Customer. GTC Orders do not automatically cancel at the end of the business day on which they are placed.
 - (ii) **Limit-** An order (other than a market order) to buy or sell the identified market at a specified price. A limit order to buy generally will be executed when the ask price equals or falls below the bid price that you specify in the limit order. A limit order to sell generally will be executed when the bid price equals or exceeds the ask price that you specify in the limit order.
 - (iii) **Market-** An order to buy or sell the identified market at the current market price that Midori FX (Pty) Ltd provides either via the Midori FX (Pty) Ltd Online Trading System or over the telephone through one of the dealers. An order to buy is executed at the

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current market ask price and an order to sell is executed at the current market bid price.

The Customer acknowledges and accepts that as the order is executed at market price, the execution price may be different from the price indicated when entering the order due to a change in market price at the time of execution.

- (iv) **Stop Loss-** A stop loss order is an instruction to buy or sell a market at a price which is worse than the opening price of an open position (or worse than the prevailing price when applying the stop loss order to an already open position). It can be used to help protect against losses. The Customer acknowledges and accepts that because of market gapping, the best available price that may be achieved could be materially different to the price set on the stop loss order and as such, stop loss orders are not guaranteed to take effect at the price for which they are set.
- (v) **Trailing Stop-** A trailing stop is the same as a stop loss order with the only difference being that, instead of setting a price at which the order is activated, the trailing stop order is activated at a fixed distance from the market price. For example, if Customer has purchased a long open position and the market ask price increases, the trailing stop price will also increase and will trail behind the market ask price at the fixed distance set by Customer. If the market ask price then decreases, the trailing stop price will remain fixed at its last position and if the market ask price reaches the trailing stop price, the order will be executed. The Customer acknowledges and accepts that because of market gapping, the best available price that may be achieved could be materially different to the price set on the trailing stop order and as such, trailing stop orders are not guaranteed to take effect at the fixed distance for which they are set.
- (b) Following submission of an order, it is your sole responsibility to remain available for order and fill confirmations, and other communications regarding your Account until all open orders are completed. Thereafter, you must monitor your Account frequently when you have open positions in the Account.
- (c) Your order shall be valid in accordance with the type and time of the given order, as specified. If the time of validity or expiration date/time of the order is not specified, it shall be valid for an indefinite period.

10.3 Terms of Acceptance for Orders

It is your sole responsibility to clearly indicate the terms of an order when entered, whether it is a market order, limit order, stop loss order or any other type of order, including the relevant price and lot size. You acknowledge and agree that, despite our best efforts, the price at which execution occurs may be materially different to the price specified in your order. This may result from sudden price movements in the underlying assets that are beyond our control. Midori FX (Pty) Ltd shall have no liability whatsoever for any losses arising in this manner. Midori FX (Pty) Ltd shall have the right, but not the obligation, to reject any order in whole or in part prior to execution, or to cancel any order, where your Account contains margin that is insufficient to support the entire order or where such order is illegal or otherwise improper.

10.4 Execution Policy

- (a) We are required to have an execution policy and to provide our clients with appropriate information in relation to our execution policy. Where you place orders with us, the execution factors that we consider and their relative importance is as set out below:
- (i) **Price.** The relative importance we attach is “high”.
 - (ii) **Speed.** The relative importance we attach is “high”.
 - (iii) **Likelihood of execution and settlement.** The relative importance we attach is “high”.
 - (iv) **Size.** The relative importance we attach is “high”.
- (b) We are the intermediary between the client and the counterparty, liquidity provider, market maker or any other product supplier to every order you place with us and therefore we are the only intermediary venue.

10.5 Authority

We shall be entitled to act for you upon instructions given or purporting to be given by you or any person authorized on your behalf without further enquiry as to the genuineness, authority or identity of the person giving or purporting to give such instructions provided such instruction is accompanied by your correct Account number and password. If your Account is a joint account, you agree that we are authorized to act on the instructions of any one person in whose name the Account is held, without further inquiry. We shall have no responsibility for further inquiry into such apparent authority and no liability whatsoever for the consequences of any actions taken or failed to be taken by us in reliance on any such instructions or on the apparent authority of any such persons.

10.6 Cancellation/withdrawal of instructions

Non-market orders may be cancelled via the Midori FX (Pty) Ltd Online Trading System but we can only cancel your instructions if you explicitly request so, provided that we have not acted up to the time of your request upon those instructions. Executed instructions may only be withdrawn or amended by you with our consent. Midori FX (Pty) Ltd shall have no liability whatsoever for any claims, losses, damages, costs or expenses, including legal fees, arising directly or indirectly out of the failure of such order to be cancelled.

10.7 Right not to accept orders

We may, but shall not be obliged to, accept instructions to enter into a Transaction. If we decline to enter into a proposed Transaction, we shall not be obliged to give a reason but we shall promptly notify you accordingly.

10.8 Control of orders prior to execution

- (a) We have the right (but not the obligation) to set limits and/or parameters to control your ability to place orders at our absolute discretion. Such limits and/or parameters may be amended, increased, decreased, removed or added to by us at our sole and absolute discretion and may include (without limitation):

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- (i) controls over maximum order amounts and maximum order sizes;
- (ii) controls over our total exposure to you;
- (iii) controls over prices at which orders may be submitted (to include (without limitation) controls over orders which are at a price which differs greatly from the market price at the time the order is submitted to the order book);
- (iv) controls over the Electronic Services (including (without limitation) any verification procedures to ensure that any particular order or orders has come from you); and/or
- (v) any other limits, parameters or controls which we may be required to implement in accordance with Applicable Regulations.

10.9 Trade Adjustments

- (a) Customers must be aware that FX Contracts carry a high degree of risk. The amount of initial margin may be small relative to the value of the foreign currency so that transactions are 'leveraged' or 'geared'. A relatively small market movement may have a proportionately larger impact on the funds that the Customer has deposited or will have to deposit. This may work against as well as for the customer.
- (b) The Customer agrees that Midori FX (Pty) Ltd may in its sole and absolute discretion widen its variable spreads, adjust leverage, change its rollover rates and/or increase the margin requirements without notice under certain market conditions including, but not limited to, when the Midori FX (Pty) Ltd Trading Desk is closed, around fundamental announcements, as a result of changes in credit markets, at times of extreme market volatility and/or when Midori FX (Pty) Ltd deems that such exposure is risky and that it is not possible for Midori FX (Pty) Ltd to mitigate its risks. The Customer agrees that Midori FX (Pty) Ltd shall have no liability whatsoever for any claims, losses, damages, costs or expenses, including legal fees, arising directly or indirectly out of any such action on the part of Midori FX (Pty) Ltd .

10.10 Execution of orders

- (a) We shall make all reasonable endeavors to execute any order you place, taking into consideration the relevant market conditions and our internal risk management policies. By accepting your orders we do not warrant that it will be possible to execute them, or that execution will be possible according to your instructions. Execution of an order may take up to 8 seconds. Please note that execution price may be different than the price indicating when entering the order should a change in the market price occur during the execution of the order.
- (b) Midori FX (Pty) Ltd uses two types of execution, namely instant and market, depending on the platform chosen by the client. For more information please contact [Customer Support](#).

10.11 Negative Balance Protection

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CFDs, which are leveraged products, incur a high level of risk and can result in the loss of all of the client's invested capital. However, it should be noted that Midori FX (Pty) Ltd operates on a 'negative balance protection' basis which means that the client cannot lose more than his/ her overall invested capital (deposit).

10.12 Confirmations

- (a) At the end of each trading day, confirmations for all Transactions that we have executed on your behalf on that trading day will be available via your online Account on our website in the Open Positions window. in the dealing console, which is updated online as each Transaction is executed. Confirmation of execution and statements of your Account(s), in the absence of manifest error, shall be deemed correct, conclusive and binding upon you if not objected to immediately by email if orders were placed through Midori FX (Pty) Ltd Online Trading System or within five Business Days of making such confirmations available to you via our website if the orders were placed by telephone through the Midori FX (Pty) Ltd Trading Desk, provided that we may notify you of an error in confirmation whenever such errors occur.
- (b) In cases where the prevailing market represents prices different from the prices posted by Midori FX (Pty) Ltd., Midori FX (Pty) Ltd will endeavor in good faith to execute market orders on or close to the prevailing market prices. This may or may not adversely affect customer's realized and unrealized gains and losses. Midori FX (Pty) Ltd shall have no liability whatsoever for any claims, losses, damages, costs or expenses, including legal fees, arising directly or indirectly as a result of prices posted by Midori FX (Pty) Ltd differing from the prices represented by the prevailing market.

10.13 Improper or Abusive Trading

- (a) Midori FX (Pty) Ltd objective is to provide the most efficient trading liquidity available in the form of streaming, tradable prices for most of the financial instruments we offer on the Midori FX (Pty) Ltd Online Trading Platform. As a result of the highly automated nature of the delivery of these streaming, tradable prices, you acknowledge and accept that price misquotations are likely to occur from time to time.
- (b) Should you execute trading strategies with the objective of exploiting such misquotation(s) or act in bad faith (commonly known as 'sniping'), Midori FX (Pty) Ltd shall consider this as unacceptable behavior. Should Midori FX (Pty) Ltd determine, in its sole and absolute discretion and in good faith, that you or any representative of yours trading on your behalf is taking advantage, benefitting, attempting to take advantage of or benefit from such misquotation(s) or that you are committing any other improper or abusive trading act such as:
 - (i) fraud/illegal actions that led to the Transaction;
 - (ii) orders placed based on manipulated prices as a result of system errors or system malfunctions;
 - (iii) arbitrage trading on prices offered by our platforms as a result of systems errors; and/or
 - (iv) coordinated transactions by related parties in order to take advantage of systems errors and delays on systems updates; and

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- (v) entering into transactions or combinations of transactions (voluntarily and/or involuntarily) such as holding long and short positions in the same or similar instruments at similar times either by you or by you acting in concert with others, possibly connected accounts, including (but not limited to) between accounts held with different entities within Midori FX (Pty) Ltd, which taken together or separately are for the purpose of manipulating the trading platform for gain,

then Midori FX (Pty) Ltd will have the right to:

- (c) adjust the price spreads available to you; and/or
- (d) restrict your access to streaming, instantly tradable quotes, including providing manual quotation only; and/or
- (e) obtain from your Account any historic trading profits that you have gained through such abuse of liquidity as determined by us at any time during our trading relationship; and/or
- (f) reject any order or cancel any trade, profits; and/or
- (g) immediately terminate our trading relationship,

without prejudice to any other rights Midori FX (Pty) Ltd may have in law.

10.14 Prohibited Trading

- (a) No employee and/or former employee who currently works or used to work on a full time or part time basis for Midori FX (Pty) Ltd or any of its Associates may, during the term of the employee's and/or former employee's service to Midori FX (Pty) Ltd or any of its Associates and after termination of service become a client of any brand of Midori FX (Pty) Ltd (either directly or indirectly, alone or with partners, associates, affiliates or any other third party) without Midori FX (Pty) Ltd's prior written approval. Should Midori FX (Pty) Ltd determine that the employee and/or former employee is trading with any brand of Midori FX (Pty) Ltd without Midori FX (Pty) Ltd's prior written approval personally and/or via a third party we shall consider all the trading to be abusive and/or improper trading. In such circumstances the employee and/or former employee's Account(s) and all open positions shall be closed immediately and any funds held within the Account shall be forfeited to Midori FX (Pty) Ltd.
- (b) No Associate of Midori FX (Pty) Ltd shall, during the period of the agreement between the Associate and Midori FX (Pty) Ltd and after termination of such agreement, become a client of any brand of Midori FX (Pty) Ltd (either directly or indirectly, alone or with partners, associates, affiliates or any other third party) without Midori FX (Pty) Ltd's prior written approval. Should Midori FX (Pty) Ltd determine that the associate/former business associate is trading with any brand of Midori FX (Pty) Ltd without Midori FX (Pty) Ltd's prior written approval personally and/or via a third party we shall consider all the trading to be abusive and/or improper trading. In such circumstances the relevant Associate's Account(s) and all open positions shall be closed immediately and any funds held within the account shall be forfeited to Midori FX (Pty) Ltd.

- (c) When trading through Midori FX (Pty) Ltd's online trading system (MT5), you must not engage in the following activities: registering or trading using false contact information or third-party contact information; making repeated deposits, trades, and withdrawals at the same timing among third parties; engaging in hedging transactions (including bonuses) between multiple accounts within our company; conducting hedging transactions (including bonuses) with funds placed with multiple brokers; and conducting transactions deemed to exploit loopholes in the provided services or systems. The determination of prohibited activities is at our discretion, and we are not obligated to explain the reasons or basis to you. If prohibited activities are confirmed, we may take measures such as suspension of service, account deletion, freezing of rewards, and suspension of withdrawals, unconditionally.
- (d) Midori FX (Pty) Ltd may, at its election, recover damages in lieu of the penalties stipulated in this clause.

10.15 **Disabling and Cancelling Deposits**

- (a) We have the right not to accept funds deposited by you and/or to cancel your deposits in the following circumstances:
 - (i) if you fail to provide Midori FX (Pty) Ltd with any documents it requests from you either for client identification purposes or for any other reason;
 - (ii) if Midori FX (Pty) Ltd suspects or has concerns that the submitted documents may be false or fake;
 - (iii) if Midori FX (Pty) Ltd suspects you are involved in illegal or fraudulent activity;
 - (iv) if Midori FX (Pty) Ltd is informed that your credit or debit card (or any other payment method used) has been lost or stolen;
 - (v) where Midori FX (Pty) Ltd considers that there is a chargeback risk; and/or
 - (vi) when you deposit R25,000 or more or you if make over 10 separate deposits to your Account(s) and/or Midori FX (Pty) Ltd is unable to verify your credit or debit card details or is unable to verify any other payment method used.
- (b) In case of cancelled deposits, and if there is not a confiscation of your funds by a supervisory authority on the grounds of money laundering suspicion or for any other legal infringement, your funds will be returned to the bank account from which they were initially received.

10.16 **Performance and settlement**

You will promptly deliver any instructions, money, or documents deliverable by you under a Transaction in accordance with that Transaction as modified by any instructions given by us.

10.17 Position limits

We may limit the number of open positions which you may have with us at any time and we may in our sole discretion close out any one or more Transactions in order to ensure that such position limits are maintained.

10.18 Trailing Stop functionality in case that MT5 terminal is closed

The Customer acknowledges and agrees that in the event that the MetaTrader 5 client terminal is closed, trailing stop will not work. This happens as the trailing stop works on the client terminal side and in this respect, if the client terminal is closed, only the stop loss that was placed by trailing stop before the closing of the terminal can trigger.

10.19 Withdrawals

- (a) Without prejudice and subject to the terms of this Agreement, all Applicable Regulations and all conditions attaching to any relevant payments made to you under a bonus or rebate scheme operated by us, funds may be withdrawn by you from your Account provided that such funds are not being utilized for margin purposes or have otherwise become owing to us. Once your withdrawal request is approved, your withdrawal request will be processed by us and sent for execution to the same bank, credit card provider or other source from which the funds were debited or as we, in our sole and absolute discretion determine, as soon as possible. Withdrawals will only be made at a source in your name. Note that some banks and credit card companies may take time to process payments especially in currencies where a correspondent bank is involved in the transaction.
- (b) Please note that a client's failure to complete the Company's due diligence procedure to the Company's satisfaction may affect the client's ability to withdraw his funds.
- (c) If you have a joint trading Account, payments from your Account will require a withdrawal request form which must be completed by all required Account holders and which must be submitted to us. Please refer to Clause 9 (Customer Accounts and Initial Deposits), under "Joint Accounts" for additional information.
- (d) If you request a withdrawal of monies from your Account and we cannot comply with it without closing some part of your open positions, we will not comply with the request until you have closed sufficient positions to allow you to make the withdrawal. In order to process your withdrawal request please ensure that the funds, namely the realised balance, remaining on your account following your withdrawal is at least twice of your used margin. If you have not met the necessary bonus trading requirements at the time you make a withdrawal request the bonus will be debited from your trading account.
- (e) Please see Clause 11 (Bonus and Award Policy) for more information.

10.20 Corporate Action's Account Adjustment Policy

- (a) Stock splits, reverse stock splits, stock dividends and other stock related events ("Corporate Action") can have an impact on the share price and thus on the price of their CFDs. A Client who performs a CFD Transaction has no ownership of the underlying instrument. However, in the event of a

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Corporate Action which has an effect on the underlying asset of a CFD, the Company shall make the relevant adjustments in the Account to reflect the economic effect of the Corporate Action on the price of the CFD. This can be done through a cash adjustment and/or a position adjustment in the Account before or after the ex-date (“Effective Date”).

- (b) In the case of a Corporate Action, and in an effort to maintain the same economic value of the relevant Transaction, the Company shall proceed with, among others, one or more of the following:
- (i) freeze the financial instrument the underlying asset of which is subjected to the split or reverse split, so as not be subjected to any trading until the relevant adjustments are made in the Account; and/or
 - (ii) freeze the Account until the relevant adjustments are performed; and/or
 - (iii) set the financial instrument the underlying asset of which is subjected to the split or reverse split on a close-only mode, in which case no new positions shall be opened; and/or
 - (iv) make the relevant adjustments in the Account to restore the Account’s Transactions in other financial instruments which were (post the Effective Date) or will be (prior to the Effective Date) affected by the Split. Such adjustments can be executed at the then-current market prices which may be different than the prices at which the original Transaction was executed.
- (c) The abovementioned measurements shall get executed selectively or on several Accounts, pre or post the Effective Date, in timely fashion in an effort to disturb the activity in the Accounts to the minimum. The following are non-binding and non-exhaustive scenarios and examples made to illustrate the above-mentioned:
- (i) In the case of a client holding a long position of a financial instrument the underlying asset of which encountered a split, the Company may proceed with a positive adjustment to the Account. In case of a reverse split, a client holding a long position shall face a negative adjustment to the Account.
 - (ii) In case of a client holding a short position and the financial instrument the underlying asset of which encountered a split, the Company may proceed with a negative adjustment to the Account. In case of a reverse split, a client holding a short position shall face a positive adjustment to his account.
 - (iii) When the client holds either a long or short position and the financial instrument the underlying asset of which encountered a split or reverse split, the Company may proceed with a position adjustment in order to make the necessary adjustment to the price of the financial instrument to reflect the split or reverse split economic effect on the Account. In this case, the Company may close-out the position in the Account and reinstate the position under a new instrument with the adjusted price to reflect the effect of the split or reverse split.

(d) For example (Exhibit 1):

Exhibit 1

APPLE 1:7 Stock Split date on the 6th June
Ex-date: 9th June

Cash adjustments (positive or negative) for clients holding position until the closing of trading on the 6th of June 2014:

The adjustment will be calculated as follows: closing price on 06th June - (closing price on 06th June * adjustment factor)

e.g. : closing price on 6th June = 606.97
adjustment factor = 0.1428571 (1/7)
 $606.97 - (606.97 * 0.1428571) = 606.97 - 86.7099 = 520.26$ USD

Then multiplied by lots and contract size: **520.26*contract size*lots.**

Client X holds LONG position of 0.1 lots of APPLE CFD. He will receive a positive adjustment of $520.26 * 100 * 0.1 = 5202.60$ USD

Client Y holds SHORT position of 0.2 lots of APPLE CFD. He will receive a negative adjustment of $520.26 * 100 * 0.2 = 10405.20$ USD

Position adjustments:

All open positions held at the close of business on June 6, 2014 will be closed and new positions will be reopened under a new instrument APPLEINC at the split-adjusted price.

Client X holds LONG or SHORT position of 0.01 lots of APPLE CFD at 603.59. The position will be closed at the opening price 603.59.

A new position will be opened as follows: $0.01 * 7$ at 603.59/7.

So the equity of the client will not be affected and the P&L will remain as it was before.

The new position will be 0.07 lots of APPLEINC at 86.2271.

(e) In the case of a dividends distribution, the Company also has the right to proceed with a positive or negative adjustment done pre or post the ex-dividend date either before or after the opening of trade.

10.21 The following are non-binding and non-exhaustive scenarios and examples made to illustrate the above-mentioned:

(a) In the case of a client holding a long position, the Company shall make a positive adjustment to reflect the economic effect the dividend shall have on the Account whereas in case of a client holding a short position the Company shall make a negative adjustment to reflect the economic effect the dividend shall have on the Account (Exhibit 2):

Exhibit 2

APPLE dividend: 3.29USD per share

Ex-date: 8th May

Clients holding a long CFD position will receive a positive adjustment and clients holding a short CFD position will receive a negative adjustment. Adjustments will be calculated as follows:

Lots x contract size x dividend

Contract size = 100

Client X holds LONG position of 0.3 lots of APPLE CFD. The client will receive a positive adjustment of $0.3 * 100 * 3.29 = 98.7\text{USD}$

Client Y holds SHORT position of 0.2 lots of APPLE CFD. The client will receive a negative adjustment of $0.2 * 100 * 3.29 = 65.8\text{USD}$

- (b) The Client hereby acknowledges and confirms that they shall keep themselves informed and up-to-date with announcements on stock dividends distribution. The Company shall have no liability whatsoever for any claims, losses, damages, costs or expenses, including legal fees, arising directly or indirectly from any Corporate Action that may affect a Client's account and/or position.
- (c) Any activity in the Account is void until the relevant adjustment contemplated in this clause has been made by the Company. Therefore, Transactions and withdrawals shall be executed from an adjusted Account only, which reflect the correct balance of the economic effect the Corporate Action had on the price of the CFD.

10.22 MT5 Trading Account Archiving

- (a) If we do not record any activity in your MT5 Trading Account during a continuous period of three (3) months and you have a zero account balance, your MT5 Trading Account and all its history will be archived on our trade server.
- (b) If you wish to keep using your MT5 Trading Account or restore it in the future, please contact us at [\[support@midorifx.com\]](mailto:support@midorifx.com).

10.23 Inactive and Dormant Account

- (a) The Customer acknowledges and confirms that any Account(s) where the Customer has:
 - (i) not placed a trade;
 - (ii) opened or closed positions; and/or

(iii) made a deposit,

for a period of 90 days and more, shall be classified by Midori FX (Pty) Ltd as an Inactive Account (“Inactive Account”).

(b) The Customer acknowledges and confirms that any Account(s) where the Customer has and continues to:

(i) place a trade;

(ii) open or close positions; and/or

(iii) made a deposit,

shall be classified by Midori FX (Pty) Ltd as an Active Account ("**Active Account**")

(c) The Customer further agrees that any Inactive Accounts, holding zero balance/equity, shall be turned to Dormant Accounts ("**Dormant Account**"). For re-activation of Dormant Accounts, the Customer must contact the Customer Support Department at support@midorifx.com and inform them of the Customer's wish to reactivate the Dormant Account. The Customer's Dormant Account will then be reactivated (subject to, if required, up-to-date Know Your Customer documentation being provided to Midori FX (Pty) Ltd by the Customer) and become an Active Account. However where the Customer has not done the following with the Active Account:

(i) placed a trade;

(ii) opened or closed positions; and/or

(a) made a deposit,

for a period of 90 days and more, then this account it will once again become a Dormant Account.

(d) Please also refer to the Bonus and Award Policy for further implications on Inactive Accounts.

11. BONUS AND AWARD POLICY

For more information regarding the terms of the Company's Bonus and Awards, please visit the [Terms and Conditions for Bonus and Awards](#) page.

12. ELECTRONIC TRADING TERMS

12.1 Scope

These clauses apply to your use of any Electronic Services.

12.2 Access and Trading Hours

Once you have gone through the security procedures associated with an Electronic Service provided by us, you will get access to such service, unless agreed otherwise or stated on our website. All references to Midori FX (Pty) Ltd hours of trading are in Greenwich Mean Time (“GMT”) using 24-hour format. Our Electronic Services will normally be available continuously from 21:00 GMT Sunday until 21:00 GMT Friday (winter time), every week, excluding public holidays where the Forex market does not operate and in cases where the market is closed due to illiquidity in the financial instruments. Please consult our website for more details on operating times for each financial instrument. We reserve the right to suspend or modify the operating hours in our sole and absolute discretion and in such event our website, or relevant linked websites, will be updated without delay in order to inform you accordingly. We may change our security procedures at any time and we will inform you of any new procedures that apply to you as soon as possible.

12.3 **One-Click Trading**

To use one-click trading, you must go to the “Settings” menu and choose “View and Edit”. You should check the “One-Click Trading” box. To enter an online order with one-click trading, you must access the Markets window and enter the price and lot size. The order is filled shortly after you click the BUY/SELL button provided you have sufficient funds in your Account. Orders may fail for several reasons including changing dealer prices, insufficient margin, unspecified lot size or unanticipated technical difficulties. The Company shall have no liability whatsoever for any claims, losses, damages, costs or expenses, including legal fees, arising directly or indirectly from any such order failure. One-Click Trading can also be used when closing positions.

12.4 **Restrictions on services provided**

There may be restrictions on the number of Transactions that you can enter into on any one day and also in terms of the total value of those Transactions when using an Electronic Service. Please refer to our [website](#) for details of the limits imposed upon Transactions carried out through our Electronic Services.

12.5 **Risk classification**

The Customer acknowledges and accepts that the Company applies a risk mitigation and management approach according to which certain settings may apply and certain features may not be available on the Customer's Account depending on several factors, including but not limited to, the platform used, the trading profile of the Customer and market conditions.

12.6 **Access requirements**

You will be responsible for providing the System to enable you to use an Electronic Service.

12.7 **Virus detection**

You will be responsible for the installation and proper use of any virus detection/scanning program we require from time to time.

12.8 Use of information, data and software

In the event that you receive any data, information or software via an Electronic Service other than that which you are entitled to receive pursuant to this Agreement, you must immediately notify us and you may not use, in any way whatsoever, such data, information or software.

12.9 Maintaining standards

- (a) When using an Electronic Service you must:
- (i) ensure that the System is maintained in good order and is suitable for use with such Electronic Service;
 - (ii) run such tests and provide such information to us as we shall reasonably consider necessary to establish that the System satisfies the requirements notified by us to you from time to time;
 - (iii) carry out virus checks on a regular basis;
 - (iv) inform us immediately of any unauthorized access to an Electronic Service or any unauthorized Transaction or instruction which you know of or suspect and, if within your control, cause such unauthorized use to cease; and
 - (v) not at any time leave the terminal from which you have accessed such Electronic Service or let anyone else use the terminal until you have logged off such Electronic Service.

12.10 System defects

In the event you become aware of a material defect, malfunction or virus in the System or in an Electronic Service, you will immediately notify us of such defect, malfunction or virus and cease all use of such Electronic Service until you have received permission from us to resume use.

12.11 Intellectual Property

All rights in patents, copyrights, design rights, trade marks and any other intellectual property rights (whether registered or unregistered) relating to the Electronic Services remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify the Electronic Services or any part or parts thereof unless expressly permitted by us in writing, reverse compile or disassemble the Electronic Services, 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 Electronic Services made in accordance with law are subject to the terms and conditions of this Agreement. You shall ensure that all the licensors trademarks and copyright and restricted rights notices are reproduced on these copies. You shall maintain an up-to-date written record of the number of copies of the Electronic Services made by you. If we so request, you shall as soon as reasonably practical, provide to us a statement of the number and whereabouts of copies of the Electronic Services.

12.12 Liability and Indemnity

Without prejudice to any other terms of this Agreement, relating to the limitation of liability and provision of indemnities, the following clauses shall apply to our Electronic Services.

12.13 System Errors

12.14 We shall have no liability to you whatsoever for damage which you may suffer as a result of transmission errors, technical faults, malfunctions, illegal intervention in network equipment, network overloads, malicious blocking of access by third parties, internet malfunctions, interruptions or other deficiencies on the part of internet service providers. You acknowledge that access to Electronic Services may be limited or unavailable due to such system errors, and that we reserve the right upon notice to suspend access to Electronic Services for this reason.

12.15 Delays

- (a) Neither we nor any third party software provider will incur any liability whatsoever for any claims, losses, damages, costs or expenses, including legal fees, in respect of any delays, inaccuracies, errors or omissions in any data provided to you in connection with an Electronic Service.
- (b) We will not incur any liability whatsoever for any claims, losses, damages, costs or expenses, including legal fees in respect of any delays, inaccuracies or errors in prices quoted to you if these delays, inaccuracies or errors are caused by third party service providers with which we may collaborate.
- (c) We shall not be obliged to execute any instruction which has been identified that is based on errors caused by delays of the system to update prices provided by the system price feeder or the third party service providers. We do not accept any liability whatsoever for any claims, losses, damages, costs or expenses, including legal fees arising in respect of executed trades that have been based on and have been the result of delays as described above.

12.16 Viruses from an Electronic Service

We shall have no liability to you whatsoever for any claims, losses, damages, costs or expenses, including legal fees arising directly or indirectly from any viruses, worms, software bombs or similar items being introduced into the System via an Electronic Service or any software provided by us to you in order to enable you to use the Electronic Service, provided that we have taken reasonable steps to prevent any such introduction.

12.17 Viruses from your System

You will ensure that no computer viruses, worms, software bombs or similar items are introduced into our computer system or network and will indemnify us on demand for any loss that we suffer arising as a result of any such introduction.

12.18 Unauthorized use

We shall not be liable for any loss, liability or cost whatsoever arising from any unauthorized use of the Electronic Service. You shall on demand indemnify, protect and hold us harmless from and against all losses, liabilities, judgements, lawsuits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using an Electronic Service by using your designated passwords, whether you authorized such use.

12.19 Markets

We shall not be liable for any act taken by or on the instruction of an exchange, clearing house or regulatory body.

12.20 Suspension or permanent withdrawal with notice

We may suspend or permanently withdraw an Electronic Service without having to provide reasons for the suspension or withdrawal, by giving you 24 hours written notice.

12.21 Immediate suspension or permanent withdrawal

We have the right, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to use any Electronic Service, or any part thereof, without notice, where we consider it necessary or advisable to do so, for example due to your non-compliance with the Applicable Regulations, breach of any provisions of this Agreement, or the occurrence of an Event of Default, network problems, failure of power supply, for maintenance, or to protect you when there has been a breach of security. In addition, the use of an Electronic Service may be terminated automatically, upon the termination (for whatever reason) of:

- (a) any license granted to us which relates to the Electronic Service; or
- (b) this Agreement.

12.22 Effects of termination

In the event of a termination of the use of an Electronic Service for any reason, upon request by us, you shall, at our option, return to us or destroy all hardware, software and documentation we have provided you in connection with such Electronic Service and any copies thereof.

13. CLIENT MONEY

We treat money received from you or held by us on your behalf in accordance with the requirements set out in the FAIS Act and the Code.

13.1 Interest

You, the Client, acknowledge and confirm that no interest will be received on the balance of your Account.

13.2 Overseas banks, intermediate broker, settlement agent or OTC counterparty

We will endeavor to hold client money on your behalf within authorized credit institutions in the Republic of South Africa, however we may also hold your money outside of South Africa. The funds will be kept in bank accounts denominated as clients' funds and clearly segregated from the Company's own funds. Funds deposited may be kept in one or more omnibus accounts with any authorized credit institution used to accept funds which the Company will specify from time to time and will be held in the Company's name. The legal and regulatory regime applying to any such bank or person will be different from the legal and regulatory regime in South Africa and in the event of the insolvency or any other analogous proceedings in relation to that bank or person, your money may be treated differently from the treatment which would apply if the money was held with a bank in an account in South Africa. We will not be liable for any claims, losses, damages, costs or expenses, including legal fees, arising from the insolvency, acts or omissions of any third party referred to in this clause.

13.3 Due care, skill and diligence

We deposit financial instruments held on behalf of our clients in an account and/or accounts opened with a third party, provided that we have exercised reasonable care, skill and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of financial instruments. With regards to the deposit of clients' funds, in the event we do not deposit clients' funds with a central bank, we exercise reasonable care, skill and diligence in the selection, appointment and periodic review of the credit institution, bank or money market fund where the funds are placed and the arrangement for the holding of those funds. It is noted that we take into account the expertise and reputation of the third party as well as the legal requirements or market practices related to the holding of those financial instruments that could adversely affect clients' rights.

13.4 Denomination of Clients' Funds Accounts and Segregation from Midori FX (Pty) Ltd's own funds

We shall take all necessary measures in order to ensure that any clients' financial instruments deposited with a third party are identifiable separately from the financial instruments belonging to the Company and from financial instruments belonging to that third party, by means of differently titled accounts in the books of the third party or other equivalent measures that achieve the same level of protection.

13.5 Diversification of risks

We shall ensure, where deemed necessary, the diversification of the clients' financial instruments and funds, for example the maintenance of accounts with several third parties.

13.6 Omnibus Account Risk

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- (a) The Company may hold clients funds in omnibus accounts within third party financial and credit institutions. In this respect, the client is warned that there is a risk of loss emanating from the use of omnibus accounts in financial or credit institutions. In such case it may not be possible to distinguish if the particular Client funds are held by a certain financial or credit institution. Omnibus accounts may also hold other types of risks including legal, liquidation risk, haircut risk, third party risk etc.
- (b) In the event of insolvency or any other analogous proceedings in relation to a financial or credit institution where clients funds are held, the Company (on behalf of the client) and/or the Client may only have an unsecured claim against the financial or credit institution, and the Client will be exposed to the risk that the money received by the Company from the financial or credit institution, is insufficient to satisfy the claims of the Client with claims in respect of the Account. The Company will not be liable for any claims, losses, damages, costs or expenses whatsoever, including legal fees, arising in these circumstances, so in the unlikely event of default the proportionate loss shall affect all of the Company's clients' monies held in omnibus accounts with the financial or credit institution. To mitigate this risk the Clients funds are being held by a few reputable financial or credit institutions and constant exposure monitoring is taking place.

13.7 Liability and Indemnity

- (a) You agree that we shall not be liable for any default of any counterparty, bank, custodian or other entity which holds money on your behalf or with or through whom transactions are conducted.
- (b) Midori FX (Pty) Ltd will not be liable for any claims, losses, damages, costs or expenses whatsoever, including legal fees, suffered by you in connection to your funds held by us, unless such loss directly arises from our gross negligence, willful default or fraud.

14. MARGINING ARRANGEMENTS**14.1 Contingent liability**

Where we effect or arrange a Transaction, you should note that, depending upon the nature of the Transaction, you may be liable to make further payments when the Transaction fails to be completed or upon the earlier settlement or closing out of your position. You may be required to make further variable payments by way of margin against the purchase price of the investment, instead of paying (or receiving) the whole purchase (or sale) price immediately. The movement in the market price of your investment will affect the amount of margin payment you will be required to make. We will monitor your margin requirements on a daily basis and we will inform you as soon as it is reasonably practicable of the amount of any margin payment required under this clause.

14.2 Margin call

You agree to pay us on demand such sums by way of margin as are required from time to time as we may in our discretion reasonably require for the purpose of protecting

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ourselves against loss or risk of loss on present, future or contemplated Transactions under this Agreement.

14.3 Failure to meet margin call

Please note that in the event that you fail to meet a margin call, we may immediately close out the position.

14.4 Form of margin

Margin must be paid in cash in currency acceptable by us, as requested from time to time by Midori FX (Pty) Ltd . Cash margin paid to us is held as client money in accordance with the requirements of Clause **Error! Reference source not found.** (Client Money) above. Margin deposits shall be made by an Electronic Funds Transfer (EFT) or by such other means as Midori FX (Pty) Ltd may direct. [PayGate]

14.5 Set-off on default

If there is an Event of Default or this Agreement terminates, we shall set-off the balance of cash margin owed by us to you against your obligations (as reasonably valued by us). The net amount, if any, payable between us following such set-off, shall consider the Liquidation Amount payable under Clause 17 (Netting).

14.6 Obligation to provide security

You agree to execute such further documents and to take such further steps as we may reasonably require perfecting our security interest over and obtain legal title to the Secured Obligations.

14.7 Negative pledge

You undertake neither to create nor to have outstanding any security interest whatsoever over, nor to agree to assign or transfer, any of the cash margin transferred to us, except a lien routinely imposed on all securities in a clearing system in which such securities may be held.

14.8 General lien

In addition, and without prejudice to any rights to which we may be entitled under this Agreement or any Applicable Regulations, we shall have a general lien on all cash held by us or our Associates or our nominees on your behalf until the satisfaction of the Secured Obligations.

15. REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 You represent and warrant to us on the date this Agreement comes into effect and as of the date of each Transaction that:

- (a) if you are a natural person, you are of legal age and you have full legal capacity to enter into this Agreement.

- (b) if you are not a natural person:
 - (i) you are duly organized, constituted and validly existing under the applicable laws of the jurisdiction in which you are constituted;
 - (ii) execution and delivery of this Agreement, all Transactions and the performance of all obligations contemplated under this Agreement have been duly authorized by you; and
 - (iii) each natural person executing and delivering this Agreement on your behalf, entering Transactions and the performance of all obligations contemplated under this Agreement have been duly authorized by you and have been disclosed to us providing all the necessary information and/or documentation.
 - (iv) you have all necessary authority, powers, consents, licenses and authorizations and have taken all necessary action to enable you lawfully to enter into and perform this Agreement and each Transaction and to grant the security interests and powers referred to in this Agreement;
- (c) the persons entering into this Agreement and each Transaction on your behalf have been duly authorized to do so and have been and will be disclosed to us giving details of the relationship with you by providing all necessary information and/or documentation;
- (d) this Agreement, each Transaction and the obligations created under them both are binding upon you and enforceable against you in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, order, charge or agreement by which you are bound;
- (e) no Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the above) an Event of Default (a “Potential Event of Default”) has occurred and is continuing with respect to you or any Credit Support Provider;
- (f) you act as principal and sole beneficial owner (but not as trustee) in entering into this Agreement and each Transaction and in case you wish to open, either in the present time or in the future, more than one account with Midori FX (Pty) Ltd whether as an individual client (natural person) or as the beneficial owner of a corporate client (legal person) will immediately disclose to us that you are the beneficial owner of the account(s) during the account opening procedure and will provide us with the necessary information and/or documentation regarding the relationship between the natural and/or legal person(s);
- (g) any information which you provide or have provided to us in respect of your financial position, domicile or other matters is accurate and not misleading in any material respect;

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- (h) you are willing and financially able to sustain a total loss of funds resulting from Transactions and trading in such Transactions is a suitable investment for you; and
- (i) except as otherwise agreed by us, you are the sole beneficial owner of all margin you transfer under this Agreement, free and clear of any security interest whatsoever other than a lien routinely imposed on all securities in a clearing system in which such securities may be held.

15.2 Covenants

- (a) You undertake that:
 - (i) you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licenses and authorizations referred to in this clause;
 - (ii) you will promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to yourself or any Credit Support Provider;
 - (iii) you will use all reasonable steps to comply with all Applicable Regulations in relation to this Agreement and any Transaction, so far as they are applicable to you or us;
 - (iv) you will not send orders or otherwise take any action that could create a false impression of the demand or value for a financial instrument;
 - (v) you will not send orders which we have reason to believe are in breach of Applicable Regulations;
 - (vi) you will not take advantage of the account(s) you may maintain with Midori FX (Pty) Ltd by acting in a manner which could be considered as abusive, evidenced for example by an intention to benefit from delays in the prices, to trade at off-market prices and/or outside trading hours and to abuse the system for trading at manipulated prices;
 - (vii) upon demand, you will provide us with such information as we may reasonably require to evidence the matters referred to in this clause or to comply with any Applicable Regulations; and
 - (viii) you will not use Midori FX (Pty) Ltd 's services, systems and/or facilities for abusive purposes aiming to defraud Midori FX (Pty) Ltd and/or any authorities with jurisdiction and you agree to comply with Midori FX (Pty) Ltd 's instructions should such behavior be identified or suspected by Midori FX (Pty) Ltd .

16. EVENTS OF DEFAULT**16.1** The following shall constitute Events of Default:

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- (a) you fail to make any payment when due under this Agreement or to observe or perform any other provision of this Agreement and such failure continues for one Business Day after notice of non-performance has been given by us to you;
- (b) you commence a voluntary case or other procedure seeking or proposing liquidation, reorganization, an arrangement or composition, business rescue, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official (each a “**Custodian**”) of you or any substantial part of your assets, or if you take any corporate action to authorize any of the foregoing, and in the case of a reorganization, arrangement or composition, we do not consent to the proposals;
- (c) an involuntary case or other procedure is commenced against you seeking or proposing liquidation, reorganization, an arrangement or composition, business rescue, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent) or seeking the appointment of a Custodian of you or any substantial part of your assets and such involuntary case or other procedure either:
 - (i) has not been dismissed within five days of its institution or presentation; or
 - (ii) has been dismissed within such period but solely on the grounds of an insufficiency of assets to cover the costs of such case or other procedure;
- (d)** you die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you: or any indebtedness of yours is not paid on the due date therefor, or becomes capable at any time of being declared due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of your property, undertaking or assets (tangible and intangible);
- (e) you or any Credit Support Provider (or any Custodian acting on behalf of either of you or a Credit Support Provider) disaffirms, disclaims or repudiates any obligation under this Agreement or any guarantee, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party (“**Credit Support Provider**”), or of you, in favor of us supporting any of your obligations under this Agreement (each a “**Credit Support Document**”);
- (f) any representation or warranty made or given or deemed made or given by you under this Agreement or any Credit Support Document proves to have

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been false or misleading in any material respect as at the time it was made or given or deemed made or given;

- (g) any Credit Support Provider fails, or you yourself fail to comply with or perform any agreement or obligation to be complied with or performed by you or it in accordance with the applicable Credit Support Document;
- (h) any Credit Support Document expires or ceases to be in full force and effect prior to the satisfaction of all your obligations under this Agreement, unless we have agreed in writing that this shall not be an Event of Default;
- (i) any representation or warranty made or given or deemed made or given by any Credit Support Provider pursuant to any Credit Support Document proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given;
- (j) any event referred to in Clauses (b) to (d) of this Clause 16 (Events of Default) occurs in respect of any Credit Support Provider;
- (k) we consider it necessary or desirable for our own protection, or any action is taken or event occurs which we consider might have a material adverse effect upon, your ability to perform any of your obligations under this Agreement;
- (l) you fail or omit to disclose to us your capacity as the beneficial owner of more than one account you may maintain with us and/or your capacity to act as a money manager on behalf of any other client of us;
- (m) you take advantage of delays occurred in the prices and you place orders at outdated prices, you trade at off-market prices and/or outside trading hours, you manipulate the system to trade at prices not quoted to you by us or you perform any other action that constitutes prohibited, improper or abusive trading as contemplated in this Agreement or otherwise; and/or
- (n) any event of default (however described) occurs in relation to you under any other agreement between us.

17. NETTING**17.1 Rights on Default**

On the occurrence of an Event of Default, we may exercise our rights under this clause, except that in the case of the occurrence of any Event of Default specified in Clause 16.1(b) or Clause 16.1(c) of the definition of Events of Default (each a “**Bankruptcy Default**”), the automatic termination provision of this clause shall apply.

17.2 Liquidation Date

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Subject to the following sub-clause, at any time following the occurrence of an Event of Default, we may, by notice to you, specify a date (the “**Liquidation Date**”) for the termination and liquidation of Transactions in accordance with this clause.

17.3 **Automatic termination**

The date of the occurrence of any Bankruptcy Default shall automatically constitute a Liquidation Date, without the need for any notice by us and the provisions of the following sub-clause shall then apply.

17.4 **Calculation of Liquidation Amount**

Upon the occurrence of a Liquidation Date:

- (a) neither of us shall be obliged to make any further payments or deliveries under any Transactions which would, but for this clause, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount (as defined below);
- (b) we shall (on, or as soon as reasonably practicable after, the Liquidation Date) determine (discounting if appropriate), in respect of each Transaction the total cost, loss or, as the case may be, gain, in each case expressed in the Base Currency (and, if appropriate, including any loss of bargain, cost of funding or, without duplication, cost, loss or, as the case may be, gain as a result of the termination, liquidation, obtaining, performing or re-establishing of any hedge or related trading position) as a result of the termination, pursuant to this Agreement, of each payment or delivery which would otherwise have been required to be made under such Transaction (assuming satisfaction of each applicable condition precedent and having due regard, if appropriate, to such market quotations published on, or official settlement prices set by the relevant exchange as may be available on, or immediately preceding, the date of calculation); and
- (c) we shall treat each cost or loss to us, determined as above, as a positive amount and each gain by us, so determined, as a negative amount and aggregate all of such amounts to produce a single, net positive or negative amount, denominated in the Base Currency (the “**Liquidation Amount**”).

17.5 **Payer**

If the Liquidation Amount determined pursuant to this clause is a positive amount, you shall pay it to us and if it is a negative amount, we shall pay it to you. We shall notify you of the Liquidation Amount, and by whom it is payable, immediately after the calculation of such amount.

17.6 **Other transactions**

Where termination and liquidation occur in accordance with this clause, we shall also be entitled, at our discretion, to terminate and liquidate, in accordance with the provisions of this clause, any other transactions entered into between us which are then outstanding.

17.7 Payment

The Liquidation Amount shall be paid in the Base Currency by the close of business on the Business Day following the completion of the termination and liquidation under this clause (converted as required by applicable law into any other currency, any costs of such conversion to be borne by you, and (if applicable) deducted from any payment to you). Any Liquidation Amount not paid on the due date shall be treated as an unpaid amount and bear interest, at the average rate at which overnight deposits in the currency of such payment are offered by major banks in the London interbank market as of 11.00 am (London time) (or, if no such rate is available, at such reasonable rate as we may select) plus one (1%) per annum, compounded monthly in arrears, for each day for which such amount remains unpaid.

17.8 Base Currency

For the purposes of any calculation hereunder, we may convert amounts denominated in any other currency into the Base Currency at such rate prevailing at the time of the calculation as we shall reasonably select.

17.9 Payments

Unless a Liquidation Date has occurred or has been effectively set, we shall not be obliged to make any payment or delivery scheduled to be made by us under a Transaction for as long as an Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination hereunder, or any combination thereof) an Event of Default with respect to you has occurred and is continuing.

17.10 Additional rights

Our rights under this clause shall be in addition to, and not in limitation or exclusion of, any other rights which we may have (whether by agreement, operation of law or otherwise).

17.11 Application of netting to Transactions

This clause applies to each Transaction entered into or outstanding between us on or after the date this Agreement takes effect.

18. RIGHTS ON DEFAULT**18.1 Default**

On an Event of Default or at any time after we have determined, in our absolute discretion, that you have not performed (or we reasonably believe that you will not be able or willing in the future to perform) any of your obligations to us, in addition to any rights under Clause 17 (Netting) we shall be entitled, without prior notice to you:

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- (a) instead of returning to your investments equivalent to those credited to your Account, to pay to you the fair market value of such investments at the time we exercise such right;

to the extent permissible under Applicable Regulations, to sell such of your investments as are in our possession or in the possession of any nominee or third party appointed under or pursuant to this Agreement, in each case as we may in our absolute discretion select or and upon such terms as we may in our absolute discretion think fit (without being responsible for any loss or diminution in price) in order to realize funds sufficient to cover any amount due by you hereunder;
- (b) to the extent permissible under Applicable Regulations, to close out, replace or reverse any Transaction, buy, sell, borrow or lend or enter into any other Transaction or take, or refrain from taking, such other action at such time or times and in such manner as, at our sole discretion, we consider necessary or appropriate to cover, reduce or eliminate our loss or liability under or in respect of any of your contracts, positions or commitments; and/or
- (c) to cancel and/or consider void any Transactions and profits or losses either released or unreleased and/or to close out the account(s) you maintain with us pursuant to this Agreement, immediately and without prior notice.

19. TERMINATION WITHOUT DEFAULT**19.1 Termination**

- (a) Unless required by Applicable Regulations, either party may terminate this Agreement (and the relationship between us) by giving ten (10) days written notice of termination to the other. We may terminate this Agreement immediately if you fail to observe or perform any provision of this Agreement or in the event of your insolvency.
- (b) Upon terminating this Agreement:
 - (i) all amounts payable by you to us will become immediately due and payable including (but without limitation):
 1. all outstanding fees, charges and commissions;
 2. any dealing expenses incurred by terminating this Agreement; and
 3. any losses and expenses released in closing out any Transactions or settling or concluding outstanding obligations incurred by us on your behalf.
 - (ii) Midori FX (Pty) Ltd shall apply best execution rules in cases where you have not provided Midori FX (Pty) Ltd with specific instructions regarding the closing of your positions; and

- (iii) Midori FX (Pty) Ltd shall return any funds remaining in your Account to your bank account, specifically the account from which the funds were debited

19.2 Existing rights

Termination without default shall not affect then outstanding rights and obligations and Transactions which shall continue to be governed by this Agreement and the particular clauses agreed between us in relation to such Transactions until all obligations have been fully performed.

20. EXCLUSIONS, LIMITATIONS, AND INDEMNITY

20.1 General Exclusion

Neither we nor our directors, officers, employees, or agents shall be liable for any losses, damages, costs or expenses, whether arising out of negligence, breach of contract, misrepresentation or otherwise, incurred or suffered by you under this Agreement (including any Transaction or where we have declined to enter a proposed Transaction) unless such loss arises directly from our or their respective gross negligence, willful default or fraud. In no circumstance, shall we have any liability whatsoever for losses suffered by you or any third party for any special or consequential damage, loss of profits, loss of goodwill or loss of business opportunity arising under or in connection with this Agreement, whether arising out of negligence, breach of contract, misrepresentation or otherwise.

20.2 Tax implications

Without limitation, we do not accept any liability whatsoever for any adverse tax implications of any Transaction whatsoever.

20.3 Changes in the market

- (a) Market orders are executed at the bid/ask prices offered by Midori FX (Pty) Ltd . Pending orders such as stop loss, limit (take profit, entry limit to buy or to sell), entry stop to buy or to sell are executed at the market price requested by you and offered by Midori FX (Pty) Ltd .
- (b) Please note, that in case of slippage in the market price, the order may be executed at a price materially different to the price indicated on the screen at the time of placing the order. In addition, any stop loss and/or take profit orders may not be possible to be placed until right after the execution of an order. We reserve the right, at our full discretion, not to execute the order, or to change the quoted price of the Transaction, or to offer you a new quote in case of technical failure of the trading platform or in case of fluctuations of the price of the financial instrument as offered in the market. In the event we offer you a new quote you have the right to either accept it or refuse and thus cancel the execution of the Transaction.
- (c) Without limitation to the general exclusion of liability above, we will not be liable for any claims, losses, damages, costs or expenses whatsoever,

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including legal fees, resulting directly or indirectly from any delay or change in market conditions, including market price, caused on any Transaction.

20.4 Force majeure

- (a) We shall not be liable to you for any partial or non-performance of our obligations hereunder by reason of any cause beyond our reasonable control, including without limitation any breakdown, delay, malfunction or failure of transmission, communication or computer facilities, industrial action, act of terrorism, act of God, acts and regulations of any governmental or supra national bodies or authorities or the failure by the relevant intermediate broker or agent, agent or principal of our custodian, sub-custodian, dealer, exchange, clearing house or regulatory or self-regulatory organization, for any reason, to perform its obligations. Nothing in this Agreement will exclude or restrict any duty or liability we may have to you under Applicable Regulations, which may not be excluded or restricted thereunder.
- (b) Midori FX (Pty) Ltd offers its clients the opportunity to use and/or benefit from third party services in any way they deem appropriate, accepting and carrying NO RESPONSIBILITY and NO LIABILITY whatsoever as to the content provided by the third party nor as to the consequences of the use of the service. Clients use any of the third party services and/or the information provided by third party services for marketing and/or otherwise, in their sole discretion and responsibility, at their own risk and undertaking all liability arising directly or indirectly from the use of the third party service and the Client hereby indemnifies Midori FX (Pty) Ltd and holds it harmless against any claims, losses, damages, costs or expenses, including legal fees, arising directly or indirectly from the Client's use of a third party service as contemplated in this clause,. Clients are encouraged to seek advice and/or training prior to using the services or information provided making sure they fully understand the instruments, technical terms and descriptions provided. Please note that Midori FX (Pty) Ltd is not able to provide such advice and/or training.

20.5 Responsibility for orders

You will be responsible for all orders entered on your behalf via an Electronic Service and you will be fully liable to us for the settlement of any Transaction arising from it.

20.6 Entire Agreement

You acknowledge that you have not relied on or been induced to enter into this Agreement by a representation other than those expressly set out in this Agreement. We will not be liable to you (in equity, contract or tort) for a representation that is not set out in this Agreement and that is not fraudulent.

20.7 Indemnity

You shall pay to us such sums as we may from time to time require in or towards satisfaction of any debit balance on any of your accounts with us and, on a full indemnity basis, any losses, liabilities, costs or expenses (including legal fees), taxes, imposts and levies which we may incur or be subjected to with respect to any of your accounts or any Transaction or as a result of any misrepresentation by you or any

violation by you of your obligations under this Agreement (including any Transaction) or by the enforcement of our rights.

21. MISCELLANEOUS

21.1 Amendments

We have the right to amend the terms of this Agreement. If we make any material change to this Agreement, we will give at least ten Business Days written notice to you. Such amendment will become effective on the date specified in the notice. Unless otherwise agreed, an amendment will not affect any outstanding order or Transaction or any legal rights or obligations which may already have arisen.

21.2 Notices and means of communication

Unless otherwise agreed, all notices, instructions and other communication to be given by us to you under this Agreement shall be given to the address, phone number or email address provided by you to us. Likewise, all notices, instructions and other communications to be given by you under this Agreement shall be given to us in writing at the address below:

21.3 Our Details

- (a) **Name:** Midori FX (Pty) Ltd
Address: 697 Jacques Street, Moreleta Park, Pretoria, Gauteng, 0181, South Africa
Email Address: support@midorifx.com
- (b) You must notify us of any change of your information for the receipt of notices, instructions and other communications immediately.

21.4 Electronic Communications

Subject to Applicable Regulations, any communication between us using electronic signatures and any communications via our website and/or Electronic Services shall be binding as if they were in writing. Orders or instructions given to you via e-mail or other electronic means will constitute evidence of the orders or instructions given.

21.5 Recording of calls

We may record telephone conversations without use of a warning tone to ensure that the material terms of the Transaction, and any other material information relating to the Transaction is promptly and accurately recorded. Such records will be our sole property and accepted by you as evidence of the orders or instructions given.

21.6 Our records

Our records, unless shown to be wrong, will be evidence of your dealings with us about our services. You will not object to the admission of our records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer. You will not rely on us to comply with your

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record keeping obligations, although records may be made available to you on request at our absolute discretion and will be made available to you strictly to the extent required by Applicable Regulations.

21.7 Your records

- (a) You agree to keep adequate records to demonstrate the nature of orders submitted and the time at which such orders are submitted.
- (b) You can access your statements online at any time via Midori FX (Pty) Ltd 's Online Trading Platform.
- (c) You may request to receive your statement monthly or quarterly via email, by providing such a request to the support department - support@midorifx.com

21.8 Money Laundering and Client Identification Procedures

- (a) Midori FX (Pty) Ltd is an accountable institution in terms of FICA and as such, has an obligation:
 - (i) prior to the conclusion of any transaction with a Client to establish and verify the identity of the Client; and
 - (ii) record and retain the records of the business relationship and transactions concluded with the Client.
- (b) In order to establish and verify the identity of the Client, the Client shall provide Midori FX (Pty) Ltd with the information and documentation that may be requested in order to enable Midori FX (Pty) Ltd to discharge its obligation in terms of FICA and any other relevant Applicable Regulations.
- (c) The Client undertakes and warrants to Midori FX (Pty) Ltd that, unless the Client notifies Midori FX (Pty) Ltd to the contrary in writing, the Client is acting as principal and not as agent on behalf of any other person, whether natural or juristic. If Midori FX (Pty) Ltd is so notified, the Client shall provide Midori FX (Pty) Ltd with proof of identity of the principal and such other information which Midori FX (Pty) Ltd may require from time to time to comply with its obligations in terms of FICA and any other relevant Applicable Regulations.
- (d) The Client acknowledges that until all the information requested by Midori FX (Pty) Ltd has been provided and verified, Midori FX (Pty) Ltd will not carry out the terms of this Agreement.
- (e) The Client recognises that it is Midori FX (Pty) Ltd obligation under FICA to report any suspicious or unusual transactions.
- (f) Midori FX (Pty) Ltd shall be entitled to take whatever steps it deems necessary from time to time to comply with its obligations in terms of FICA, the prevention of Organized Crime Act No. 121 of 1998, as amended, any rule and directives of any relevant exchanges or any other money laundering legislation and the Client must cooperate with Midori FX (Pty) Ltd in this regard.

21.9 Complaints procedure

- (a) Any complaints must be directed to Midori FX (Pty) Ltd in writing to complaints@midorifx.com for the attention of the Compliance Officer. Details of Midori FX (Pty) Ltd 's written Complaints Resolution Procedure is available upon request by the Client.
- (b) When submitting a complaint, the Client must submit all supportive documentation that may assist the Company in its investigation along with the written complaint.
- (c) We will send you a written acknowledgement of your complaint promptly following receipt, enclosing details of our complaints procedures, including when and how you may be able to refer your complaint to the FSB which is the relevant regulatory body.

21.10 Third Party Rights

This Agreement shall be for the benefit of and binding upon us both and our respective successors and assigns. You shall not assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer your rights or obligations under this Agreement or any interest in this Agreement, without our prior written consent, and any purported assignment, charge or transfer in violation of this clause shall be void. You agree that we may without further notice to you and subject to Applicable Regulations, transfer by whatever means we consider appropriate all or any of our rights, benefits, obligations, risks and/or interests under this Agreement to any person who may enter into a contract with us in connection with such transfer and **YOU AGREE THAT WE MAY TRANSFER TO SUCH PERSON ALL INFORMATION WHICH WE HOLD ABOUT YOU.**

21.11 Time of essence

Time is of the essence in respect of all obligations of yours under this Agreement (including any Transaction).

21.12 Rights and remedies

The rights and remedies provided under this Agreement are cumulative and not exclusive of those provided by law. We shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to you. No failure by us to exercise or delay by us in exercising any of our rights under this Agreement (including any Transaction) or otherwise shall operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy shall prevent further exercise of that right or remedy or the exercise of another right or remedy.

21.13 Set-off

Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially

reasonable value to any amount which is contingent or which for any other reason is unascertained.

21.14 **Partial invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

22. GOVERNING LAW AND JURISDICTION

22.1 **Governing law**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

22.2 **Jurisdiction**

Each of the parties irrevocably:

- (a) agree, that the courts of South Africa shall have jurisdiction to settle any suit, action or other proceedings relating to this Agreement (“**Proceedings**”) and submits to the jurisdiction of such courts (provided that this shall not prevent us from bringing an action in the courts of any other jurisdiction); and
- (b) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court and agrees not to claim that such Proceedings have been brought in an inconvenient forum or that such court does not have jurisdiction over it.

22.3 **Waiver of immunity and consent to enforcement**

You irrevocably waive to the fullest extent permitted by Applicable Regulation, with respect to yourself and your revenue and assets (irrespective of their use or intended use) all immunity on the grounds of sovereignty or other similar grounds from suit; jurisdiction of any courts; relief by way of injunction, order for specific performance or for recovery of property; attachment of assets (whether before or after judgment); and execution or enforcement of any judgment to which you or your revenues or assets might otherwise be entitled in any Proceedings in any jurisdiction and irrevocably agree that you will not claim any immunity in any Proceedings. You consent generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings, including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.

22.4 **Service of process**

If you are situated outside South Africa, process by which any Proceedings in South Africa are begun may be served on you by being delivered to the address in South

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Africa nominated by you for this purpose. This does not affect our right to serve process in another manner permitted by law.