

## **Terms and Conditions (Agreement)**

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**Corporate Alliance Group Pty Ltd T/A Corporate  
Alliance FX (CAFX)**

**Corporate Alliance Payments Pty Ltd (CAPAY)**

## A. General Information

### 1. INTRODUCTION AND HOW THIS AGREEMENT WORKS

- 1.1. This Terms and Conditions document constitute the principal agreement (Agreement) between you and the following legal entities, singly or collectively:

**CORPORATE ALLIANCE GROUP PTY LTD** T/A Corporate Alliance FX (CAFX) ABN 58 167 119 226 (**CAFX**), AFS License No. 523351, Independent Remittance Dealer IND100692739-001

**AND**

**CORPORATE ALLIANCE PAYMENTS PTY LTD** ABN 66 650 245 382 (**CAPAY**)  
AFS Representative No. 001295931, Independent Remittance Dealer IND100792739-001,  
Remittance Network Provider RNP100792739-001

both of Suite 605, Level 6, South Tower, 1 – 5 Railway St, Chatswood NSW 2067.

- 1.2. In this document, the terms “Agreement” and “Terms and Conditions” mean the same thing and are used interchangeably.
- 1.3. A reference to “us”, “our” or “we” means CAFX and CAPAY unless indicated otherwise, and the reference to “Client”, “you” or “your” means you as the Client. CAFX, CAPAY and Client are referred collectively as parties and each, a party, and CAFX and CAPAY are also referred to collectively as “Corporate Alliance entities”, singly, “Corporate Alliance entity”.
- 1.4. For the avoidance of doubt, our Financial Services are provided to you by CAFX while our FX Remittance Services are provided to you by CAPAY.
- 1.5. This Agreement, together with related documents that binds you to it, such as among others, the Application Form and Offer of Credit, are taken as part of this Agreement and when taken together, means “Agreements”. The agreements govern our dealings with you in relation to our Services,

which is provided to you where applicable, by either or both of the Corporate Alliance entities, as follows:

- (a) CAFX – Financial Services in relation to Financial Products, such as Spot FX, Forward Contract, Options Contract, Contract for Differences (CFD), and non-cash payment products, as they change from time to time.
- (b) CAPAY – FX Remittance Services (electronic transfer of funds), primarily in relation to Spot FX.

- 1.6. For the avoidance of doubt, your Account application for Financial Services in relation to a Financial Product is an application with CAFX and your Account application for FX Remittance Services is an application with CAPAY.
- 1.7. Despite the type of this Agreement being a tripartite Agreement, the obligations of a Corporate Alliance Entity and vice versa will only commence to be operative from the time of your first transaction with the Corporate Alliance Entity.
- 1.8. If you are initially a Client of one of the Corporate Alliance Entities and subsequently wish to apply for an Account with the other Corporate Alliance Entity, the relevant terms and conditions of this Agreement shall automatically apply to that subsequent relationship at the time of your first transaction with that subsequent Corporate Alliance Entity. We will notify you when the subsequent Account has been established for you.
- 1.9. The *Electronic Transactions Act 2000* (NSW) applies to this Agreement. By applying for an Account with us you agree to be bound by our Agreements in relation to the Services you applied for and agree to receive communications from us by way of among others, electronic means.
- 1.10. This Agreement shall replace the prior Terms & Conditions document you received from us and shall apply to all existing arrangements currently operating between or among the parties. By executing an Account Application Form and/or undertaking any transaction with us, you agree to be bound by the terms and conditions of this Agreement, as amended from time to time.

- 1.11. You must read this Agreement in its entirety and we recommend that you consult appropriate professional advisers on any legal, stamp duty, taxation and accounting implications, if any, on using our Services.

## **2. AMENDMENTS TO THIS AGREEMENT**

- 2.1. We may amend this Agreement at any time, for example if we change the functionality of our Services or as required by Law.
- 2.2. We will post any revised version of this Agreement on our Website. With the exclusion of any substantive changes referred to in clause 2.3, the revised Terms and Conditions will take effect as soon as it is posted on the Website.
- 2.3. If we make any substantive changes to this Agreement which may negatively impact your use of our Services in a material way, we will post a notice of those changes on the Website and may email you a notification. You agree to receive such notices in this way.
- 2.4. The changes under clause 2.3 will take effect ten (10) Days from the date specified by us in writing.
- 2.5. Subject to clause 2.4, we may not provide ten (10) Days prior written notice where we add new functionality to our Services.
- 2.6. By continuing to use our Services after any amendments to this Agreement, you agree to abide and be bound by any changes. If you do not agree with any changes we make to this Agreement, you may terminate this Agreement by closing your account.

## **3. RELATIONSHIP BETWEEN US AND YOU**

- 3.1. Nothing in this Agreement:
  - (a) creates or will be deemed to create a partnership, a joint venture, the relationship of principal and agent or employee and employer or any other relationship as between you and us; or
  - (b) authorises you to act, or to enter into any contract or other agreement, on our behalf, or bind us except as otherwise expressly provided in this Agreement; or

- (c) is intended to create or does create in favour of either you or us, any mortgage, charge, lien, pledge or other security interest in any cash or other property transferred by one to the other under any transaction.

#### **4. PRINCIPAL**

4.1. In our dealings with you:

- (a) we will act as principal in all transactions and not as agent on your behalf; and
- (b) unless we agree otherwise in writing, you will also deal with us as principal, and not as an agent or representative of another person.

#### **5. ALL TRANSACTIONS AT YOUR RISK**

5.1. All transactions and use of our Services will be made at your own risk and to the maximum extent permitted by law, we will not in any way be liable for any claims, damages, losses (including consequential losses) or injury suffered or incurred by you as a result of or arising out of:

- (a) any statement, information or communication provided by, or on behalf of, us relating to any Services or Financial Products under this Agreement or
- (b) any statement, information or communication provided by, or on behalf of, us in relation to any Products that you may deal in under this Agreement.

5.2 You understand the risks of using our Services and dealing in our Products and will rely solely upon your own judgement in dealing with us.

## **B. Our Services and Products**

#### **6. FX REMITTANCE SERVICES**

6.1. We provide FX Remittance Services through CAPAY which primarily deal with Spot FX (T+2) CAPAY only acts on your instruction to convert foreign currencies at an agreed rate for electronic transfer to your recipient.

- 6.2. CAPAY can service all types of Clients, including individuals and non-individuals, such as among others, company, trust, partnership, association.
- 6.3. More information about our FX Remittance Services is found in Schedule B.

## **7. FINANCIAL SERVICES**

- 7.1. We provide Financial Services in relation to the following Financial Products through CAFX:
  - (a) SPOT FX (in excess of T+2)
  - (b) Forward Contract
  - (c) Options Contract
  - (d) Contract for Difference
  - (e) Non-cash payment
- 7.2. CAFX's Financial Products are for Wholesale Clients only.
- 7.3. More information about our Financial Services is found in Schedule C.

## **8. NO PERSONAL FINANCIAL PRODUCT ADVICE**

- 8.1. We do not provide personal financial product advice. We will not take into account your specific financial circumstances or personal needs when providing Services to you. To the extent that we provide you with any advice, it will relate only to the mechanics of the transaction you are proposing to enter into or to make information publicly available, therefore such advice is only of a general nature.

## **C. Your CAPAY Account (Account)**

### **9. OUR CAPAY SYSTEM**

- 9.1. We operate a proprietary (platform) system called the CAPAY System where we primarily provide our Services to you.
- 9.2. Unless you have our consent in writing, you must not allow anyone to operate your Account for you or on your behalf.

- 9.3. You are responsible for protecting your computers and computer network from malicious software (including, but not limited to, worms and viruses) while using the CAPAY Systems and at all other times, and should use your own virus protection software. We do not guarantee that our Services will be free from bugs or viruses, and we are not responsible if you cannot access the CAPAY Systems due to any malicious software.
- 9.4. We will try to make sure our Services are available to you when you need them. However, we do not guarantee that our Services will always be available or be uninterrupted. We may suspend, withdraw, discontinue or change all or any part of our Service without notice. We will not be liable to you if for any reason our Services are unavailable at any time or for any period. You are responsible for making all arrangements necessary for you to have access to our Services.
- 9.5. We are not liable to you for any loss or damage caused in any way, including by our own negligence, whether directly or indirectly, by:
- (a) the failure of the CAPAY Systems to perform or properly perform a function;
  - (b) the unavailability of the CAPAY Systems in whole or in part for any reason; and
  - (c) delays or errors in the execution of a Transaction or Instruction, or failure to execute a Transaction or Instruction, through the CAPAY Systems, because of the network, any internet service provider or equipment used in connection with the provision of the CAPAY Systems, or because of circumstances beyond our reasonable control.
- 9.6. If legislation does not allow liability for breach of a warranty to be excluded, our liability for breach of a warranty is limited to us re-supplying the service or paying the cost of having the service resupplied, as elected by us.
- 9.7. If you cannot use or access the CAPAY Systems for any reason (including due to our negligence), you must find other ways to effect the Transaction and obtain information.
- 9.8. We may terminate your right to use the CAPAY Systems and then use reasonable efforts to notify you of the termination. We may also modify or withdraw the CAPAY Systems at any time without notice.

- 9.9. We may suspend or disconnect your access to the CAPAY Systems for any reason, including local or international market conditions or technical failure, modification or maintenance. We must take commercially reasonable steps to resume your access to the CAPAY Systems as soon as reasonable.
- 9.10. We do not warrant that:
- (a) the CAPAY Systems will be uninterrupted, timely, secure or error free;
  - or
  - (b) information from the CAPAY Systems is accurate or complete.
- 9.11. You must not modify or delete any material on or accessible from the CAPAY Systems or link any material to the CAPAY Systems or its material.
- 9.12. You authorise us to act on all Instructions that you transmit through the CAPAY Systems, and treat any such Instructions as authorised by you without verification.
- 9.13. We retain the right to:
- (a) specify times when transactions may be entered into for specific currencies via the CAPAY Systems;
  - (b) prevent transactions outside of nominated currency trading hours via the CAPAY Systems; and
  - (c) modify the terms of any Transaction entered into by you outside of specified currency trading hours.
- 9.14. If we quote you an exchange rate that is clearly outside the current market rate, you must notify us and must not complete a transaction at that rate. If you breach this section, we may terminate the transaction.
- 9.15. You are liable for any loss or damage suffered or incurred as a result of a transaction, where the CAPAY Systems were accessed with your password (even if unauthorised).
- 9.16. You release us from all liability for any loss or damage suffered by you that results from such a transaction.

## 10. HYPERLINKS



- 10.1. Hyperlinks or other links to or from websites outside of the CAPAY Systems are for your convenience only. We do not review, monitor, endorse or control any sites linked to or from our Website and is not responsible for them. We will not be liable for any damage caused in respect of or in consequence of following a link.

## **11. PROHIBITED USE OF THE CAPAY SYSTEMS**

- 11.1. You agree that the CAPAY Systems is and shall remain our exclusive property. Accordingly, you represent, warrant and covenant that you, including any Authorised User(s), employees, directors, officers, agents, or affiliates, shall not:

- (a) distribute or disclose the CAPAY Systems, or any component of it, to, or permit use of the CAPAY Systems by, any third party;
- (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive or discern the source code or internal workings of the CAPAY Systems;
- (c) use the CAPAY Systems for any purpose that is illegal or prohibited under this Agreement;
- (d) use any automated means or interface to access the Services or extract other users' information;
- (e) use the CAPAY Systems to communicate with other users (i.e. Clients) or for any commercial purpose;
- (f) use the Services in a way that could interfere with, disrupt, negatively affect, or inhibit other users from using the Services, or that could damage, disable, overburden, or impair the functioning of the Services;
- (g) use or attempt to use another user's access to the CAPAY Systems without appropriate written permission from the relevant Corporate Alliance Entity;
- (h) upload viruses or other malicious code that otherwise compromises the security of the Services;
- (i) attempt to circumvent any content-filtering techniques we use, or attempt to access areas or features of the Services that you are not authorised to access;
- (j) probe, scan, or test the vulnerability of the Services, or any related system; or
- (k) encourage or promote any activity that violates this Agreement.

- 11.2. More information about using the CAPAY Systems and your CAPAY Account is found in Schedule A.

## 12. OPENING A CAPAY ACCOUNT

- 12.1. You must complete and submit an Account Application Form to us. If we accept your application, we will open a CAPAY Account in your name.
- 12.2. All information you provide to us must be complete, true and accurate. You must keep your information up-to-date at and notify us of any changes, such as among others:
- (a) Contact details, such as address
  - (b) delivery information
  - (c) beneficial owner
  - (d) wholesale client status
- 12.3. We cannot be responsible for any financial loss arising out of your failure to do so. We may ask you at any time to confirm the accuracy of your information and/or provide additional supporting documents.
- 12.4. You may only open one Account with a Corporate Alliance Entity unless we have agreed in writing to the opening of any additional accounts. We may refuse the creation of sub-accounts or duplicate accounts for the same user. Where sub-accounts or duplicate accounts are detected, we may close or merge these accounts at our absolute discretion.
- 12.5. All activities in your Account shall be deemed as activities carried out by you or your registered user. You shall only use the Services to transact on your own account and not on behalf of any other person or entity.
- 12.6. If you are a non-individual, such as a corporation or a trust, you are required to have a legal entity identifier (“LEI”) to engage in over-the-counter (“OTC”) derivative trading, which covers some of the Products we offer. You must provide us with your LEI before we can provide you with any Services in relation to OTC Products. If you do not have an LEI, please contact us as we may be able to assist you to obtain one.
- 12.7. We reserve the right to refuse to open an Account for you for any reason whatsoever. We may also impose restrictions as a condition of agreeing to open an Account for you.

## 13. ABOUT YOUR CAPAY ACCOUNT

- 13.1. Your Account allows you to hold, send or receive electronic money/payments. It also allows you to enter into Transactions in relation to foreign exchange contracts (including Spot FX and Forwards) and derivatives (including Options).
- 13.2. The electronic money held on your Account will not earn any interest. Your electronic money will be held by us in our client money account that may be co-mingled with the money of other clients, but segregated from our money. As permitted in the Corporations Act, we will retain any interest earned on monies in the account.
- 13.3. You may hold your electronic money in any currencies which we support from time to time and you may withdraw money from your Account at any time subject to certain conditions.
- 13.4. Certain limits may be placed on your Account depending on your country of residence, verification checks or other considerations. Please contact us if you have any questions regarding these limits.
- 13.5. The electronic money held in your Account belongs to the person or legal entity which is registered as the Account holder.
- 13.6. Unless you have our consent in writing, you must not allow anyone to operate your Account on your behalf.
- 13.7. Your Account is an electronic money account and is not a bank account. You acknowledge that the Australian Government's Financial Claims Scheme does not apply to your Account. However, we observe the requirements of the Corporations Act which are designed to ensure the safety of funds held in electronic money accounts like your CAPAY Account.
- 13.8. You acknowledge and agree that when CAFX accepts money from a Client in connection with an Order, a Margin Call or a Deposit, the Client immediately receives reciprocal obligations from CAFX under the Trade Contract Terms. The payment is not "client money", but rather the Client has purchased that reciprocal obligation from CAFX.
- 13.9. Pursuant to section 981D of the Corporations Act, we are entitled to use your funds for the purpose of meeting obligations we incur in connection

with margining, guaranteeing, securing, transferring, adjusting, or settling dealings in derivative contracts.

- 13.10. For more information about using the CAPAY Account, please refer to Schedule A.

#### **14. KEEPING YOUR CAPAY ACCOUNT SAFE**

- 14.1. As part of opening an Account for you, you may be given a specific password and an account name, which must be entered, together with your account number, when you wish to access your Account via the CAPAY Systems.
- 14.2. You will be deemed to have authorised all Transactions under your account number irrespective of whether the person using it for the purpose of trading is using it with your authority.
- 14.3. You shall only use our Services to transact on your own account and not on behalf of any other person or entity. Unless you have our consent in writing, you must not allow anyone to operate your Account on your behalf.
- 14.4. You are required to keep all security information relating to your Account confidential and must not disclose information including any username, account number, user ID and password to anyone else. We do not have to establish the authority of anyone using your Account details. You are responsible for all instructions and for the accuracy of all information sent electronically using any such details. If you are aware or suspect that these details are no longer confidential, you should contact us as soon as possible so that they may be changed.
- 14.5. Further, you must not:
- (a) use any functionality that allows your login details or passwords to be stored by the computer or browser you are using or to be cached or otherwise recorded; or
  - (b) do anything which may in any way avoid or compromise our authentication process.
- 14.6. If you suspect your Account or other security credentials are stolen, lost, used without your authorisation or otherwise compromised, you must

contact us immediately. You are also advised to change your password. Any undue delays in notifying us may affect the security of your Account and result in you being responsible for financial losses.

## **15. ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING LEGISLATION**

- 15.1. We are required by law (including AML/CTF Laws) to carry out all necessary security and customer due diligence checks on you (including any parties involved in your transactions, for example, your recipient or beneficiary) to provide Services to you. By submitting the Account Application Form to us, you undertake to provide us with all information and assistance that we may reasonably require to comply with the AML/CTF Laws including carrying out any credit and identity checks on you as we consider necessary.
- 15.2. In addition, you agree that:
- (a) we may make, directly or through any third party (such as a credit reporting agency), any inquiries (which will involve disclosing your name, residential address and date of birth to third parties) we consider necessary to validate the information you provided to us, including checking commercial databases or credit/identity reports.
  - (b) you authorise us to obtain one or more of your credit/identity reports, from time to time, to establish, update, or renew your CAPAY Account with us or in the event of a dispute relating to the Agreements and activity under your CAPAY Account.
- 15.3. If you disagree with having your identity information provided to a credit reporting agency or other third parties, please contact us.
- 15.3. We may pass on information collected from you and relating to the Transactions you conduct with us as required by the AML/ CTF Laws or other Applicable Law and are under no obligation to inform you we have done so. We may undertake all such anti-money laundering and other checks in relation to you (including restricted lists, blocked persons and countries lists) as deemed necessary or appropriate by us, and we reserve the right to take any action with regard thereto with no liability whatsoever to us.
- 15.4. You also warrant that:

15.4.1 You are not aware and have no reason to suspect that:

- (a) the monies used for the Services you request have been or will be derived from or relate to any money laundering, terrorism financing or other illegal activities, whether prohibited under Applicable Law, international law or convention or by agreement; or
- (b) the proceeds of your Transactions will be used to finance any illegal activities; and
- (c) neither you (nor anyone related or associated with you) are a politically exposed person or a sanctioned person as the term is used in the AML/CTF Laws.

## **D. Authorised User/s**

### **16. APPOINTMENT OF AUTHORISED USERS**

- 16.1. We may accept your authorisation of a person ("Authorised User") to give us instructions (including dealing instruction) on your behalf.
- 16.2. You must notify us in writing of any such authorisation, setting out the full name, telephone number, email address and specimen signature of that person and any other information required by us to identify the Authorised Users. You may notify us a list of Authorised Users when you complete the Account Application Form or otherwise notify us at a later stage in writing.
- 16.3. We may refuse access to your nominated Authorised Users if we are concerned about unauthorised or fraudulent access by the nominated persons. We will give you notice if we do this, either before or immediately after we refuse access, unless notifying you would be unlawful or compromise our reasonable security measures.
- 16.4. You may inform us of a limit applicable to some or all transactions or on any Authorised Users. Such limits must be notified to us in writing. Any limit(s) provided by you to us may be withdrawn by you at any time by giving written notice to us.

### **17. CHANGING AUTHORISED USERS**

- 17.1. You shall immediately notify us when there is any change or revocation to such authority or any of the Authorised Users. Any change or revocation of such authority or any of the Authorised Users is only effective upon receipt by us of a signed written notice of change or revocation from you. We are only bound by any such variation upon written notice being received by us.
- 17.2. Until you have provided a written notice, we may continue to assume that all existing Authorised Users have authority to legally commit and bind you to Transactions with us.
- 17.3. If another person is later appointed an Authorised User, the notice must include the full name, telephone number, email address and specimen signature of that person and be verified by an Authorised User and any other information required by us to identify the Authorised User and, if you are a body corporate, by a director.

## **18. INSTRUCTIONS BY AN AUTHORISED USER**

- 18.1. For the purposes of this Agreement, any dealing instructions placed by, and other instructions or directions given by, an Authorised User (or which appear to us on the face of the dealing instructions or other instructions or directions to be placed or given by an Authorised User) are taken to be your dealing instructions or directions.
- 18.2. You remain solely liable and responsible for all acts and omissions of your Authorised User notwithstanding that the act or omission of the Authorised User was:
  - (a) outside their actual or ostensible authority; or
  - (b) in error, fraudulent, negligent, in breach of their fiduciary duties or criminal.
- 18.3. You agree not to make, and you release us from any liability to you under your right to make, any claim against us for any loss incurred or suffered by you which arises directly or indirectly due to us relying on instructions from or other communications from or acts or omissions by your Authorised User(s) (including your attorney).

## E. Instructions and Dealing

### 19. GIVING US INSTRUCTIONS

- 19.1. You can give us Instructions via:
- (a) the CAPAY Systems – this is the preferred method;
  - (b) email using your registered email address as verified and recorded by us, in circumstances where we have agreed with you to accept Instructions via the registered email address;
  - (c) phone, in circumstances where we have agreed with you to accept Instructions via phone with Authorised User(s); and
  - (d) any other means if we expressly agree with you in advance or as expressly permitted in this Agreement.
- 19.2. Instructions received via email or the CAPAY Systems are generally processed within one (1) Business Day. If Instructions are received in any other format, it will generally be processed within two (2) to five (5) Business Days.
- 19.3. Regardless of whether you give us Instructions via any of the above methods, you are required to access the CAPAY Systems on a regular basis to:
- (a) confirm that your Instructions have in fact been received by us, reconfirm all orders that you place with us; and
  - (b) review any Transaction Confirmation we provide to ensure its or their accuracy.
- 19.4. Any discrepancies identified must be reported to us immediately.
- 19.5. We have no liability to you if any communication is interrupted before we receive an Instruction from you.
- 19.6. We are entitled to act on any Instructions transmitted using your:
- (a) username, Account number, user ID and password via the CAPAY Systems, registered email address;



- (b) through any Authorised Users, or any other means that we expressly agreed with you.
- 19.7. For the avoidance of doubt, we are entitled to not to accept any Instructions transmitted through an unregistered email address despite that in the email correct username, Account number, user ID and/or password are included.
- 19.8. Subject to clause 19.3 and 21, if you provide an Instruction over the telephone, the transaction will generally be legally binding at the conclusion of the phone call. The Transaction Confirmation will be available via the CAPAY Systems. We may, but are not obliged to, send the Transaction Confirmation to you via email. You may be requested to provide your personal information for identify verification purposes when requesting the Remittance Services from us via phone.
- 19.9. Subject to sections 19.3 and 21, if you place an Instruction by email, the Transaction will generally be binding on you when we process the email. You acknowledge and agree that, if you choose to place an Instruction via email, it may not be processed by us immediately. When we process your Instruction and a transaction is formed, the Transaction Confirmation will be displayed via the CAPAY System. We may, but are not obliged to send you a Transaction Confirmation via email.
- 19.10. We may require further confirmation or information from you, and if we do, you must promptly provide us with that information. If you do not do so, we may, in our absolute discretion take all such steps at your cost as we consider necessary or desirable for our or your protection. We are not liable to you for any delay or non- completion of the Transaction resulting from such request for further information. This provision is similarly applicable in situations where we are unable to make contact with you.
- 19.11. Any notice or any other communication to be provided by us to you, including account statements, may be sent to you in email or displayed on the CAPAY Systems.
- 19.12. Transaction Confirmations will be displayed on the CAPAY Systems, and may be sent to you by us via email. You are obliged to provide us with an email address for this purpose and must check your emails from time to time. An email is considered received by you when sent from us. We are not responsible for any delay, alteration, redirection or any other

modification an email or other message may undergo after transmission from us.

19.13. A message on your Account on the CAPAY Systems is considered received by you when we have placed the message on the CAPAY Systems. It is your responsibility to ensure that your software and hardware setup does not prevent you from receiving emails or accessing the CAPAY Systems.

19.14. You are obliged to verify the contents of any communication, notice, statement or document, from us whether sent electronically or in print. Such content shall in the absence of manifest error be deemed conclusive evidence, unless you notify us in writing to the contrary immediately after having received such communication, notice, statement or document.

19.15. An Instruction received from you will be acted upon on a commercially reasonable efforts basis only. We do not guarantee that an Instruction can or will be filled or that Instructions provided can or will be acted upon.

19.16. We may in our absolute discretion reject any Instructions given by you without reason and shall not be liable to you in this regard.

## **20. CONSENT TO RECORDING OF PHONE CONVERSATIONS**

20.1. You consent to:

- i. the electronic recording of your telephone conversations with us, with or without an automatic tone warning device;
- ii. the recording and retention of all electronic communications with us, including but not limited to communications by email or through the CAPAY Systems, with or without any further warning to this effect during the communication; and
- iii. use of recordings, transcripts or electronic communications from such recordings for any purpose, including, but not limited to, their use as evidence by either party in any dispute between you and us.

## **21. CONTRACT FORMATION, TRANSACTION CONFIRMATION AND CORRECTION**

21.1. The transmission of an Instruction to us does not automatically give rise to a binding contract between you and us. The receipt of an Instruction from you and our acceptance will result in the formation of a contract (i.e. a transaction) between the relevant parties. On the execution of the

transaction, a Transaction Confirmation which includes the details of the transaction will be available via the CAPAY Systems.

- 21.2. Within one (1) hour of us emailing the Transaction Confirmation to you, you must check the Transaction Confirmation carefully and immediately bring any errors or omissions to our attention. Where any errors or omissions are caused by our fault, those errors or omissions will be rectified in the transaction that has been formed between we and you. If you do not contact us within one (1) hour, the transaction details in the Transaction Confirmation will be deemed correct.
- 21.3. The Transaction Confirmation constitutes an error correction mechanism only.

## **22. PROCESSING TRANSACTIONS**

- 22.1. We may use whatever intermediary banks, payments systems or methods we deem commercially reasonable and appropriate for processing an Instruction. You agree to be bound by Applicable Law, regulations, clearing house rules or other rules or procedures of any funds transfer or communications system that is used. While we will make every commercially reasonable effort to ensure the timely fulfilment of each Instruction, we are not responsible for the speed and timing of payment processing by financial institutions or systems beyond our control.
- 22.2. We are not responsible for any errors or omissions or for any actions that may be taken or not taken, or fees that may be deducted, by any intermediary or correspondent financial institution or by the Beneficiary's financial institution in association with any Instruction, including any trace, cancellation, or rejection.

## **23. CANCELLATION OR ALTERATION OF INSTRUCTION**

- 23.1. Once an Instruction is received by us, you may not cancel it and you are liable for all amounts owed as result.
- 23.2. If you wish to cancel or amend an Instruction/Transaction, we endeavour to use commercially reasonable efforts only to do so. There is no assurance that we will be able to cancel or amend an Instruction and/or Transaction. You agree to indemnify and hold us harmless for any and all Losses we incur in attempting to cancel or amend an Instruction and/or Transaction, whether or not ultimately successful.

- 23.3. If you request for the alteration of your instruction or order, we may, at our discretion:
- (a) provide you with Trade Contract Terms for the alteration which are reasonable given the market conditions;
  - (b) vary the Settlement Date, Settlement Period and/or Value Date; or
  - (c) Close Out the Order and allocate any profit to you or recover from you any loss or costs we incur in so doing.
- 23.4. If an alteration under clause 23.1 concerns a Forward Contract, then CAFX in its absolute discretion agree to change the Settlement Date or Settlement Period for the Forward Contract on the basis of a Historical Rate Rollover.
- 23.5. If, after an Order has been placed you must inform us that you wish to cancel the Order, we are allowed to treat the Order as having been terminated by you, and we in our absolute discretion either:
- (a) terminate the Order;
  - (b) Close Out the Order and allocate any profit to you or recover any loss or costs incurred by us in so doing from you; or
  - (c) insist on the performance of the Order.
- 23.6. If you cancel or fail to perform an Order (including failure to perform on the extension of a Value Date), you are liable for any loss or damage suffered by us in Closing Out an Order which you have cancelled or failed to perform.
- 23.7. We reserve the right to charge you:
- (a) an administration fee not exceeding \$50 (as we determine from time to time) representing administration costs involved in the cancellation of an Order; and
  - (b) a cancellation fee of 0.05% of the total amount of the Sale Currency for each Day between the Cancellation Event and payment of our administration fee and costs in Closing Out the Order on a Mark to Market basis.
- 23.8. you may forfeit part or all of any Deposit in the event of cancellation. Where we have suffered loss, we reserve the right to set off against:
- (a) your Deposit;
  - (b) your profits on the Close Out of a Financial Product;
  - (c) any other funds received from you; and

- (d) any charges, fees or losses sustained by us in Closing Out the Order.

## **24. WE ARE NOT LIABLE**

24.1. You acknowledge that we cannot be held liable for:

- (a) the number of days passing between the transfer of funds by the sending bank until the funds are received by us and booked on your Account;
- (b) the number of days passing between the transfer of funds from us until the funds are booked on the account with the receiving bank.
- (c) You understand and accept that you are liable for any costs arising from any delays caused by and any errors made by the receiving financial institution or its intermediate financial institutions.
- (d) You are made aware that certain exceptional market conditions, Force Majeure Events and similar events can cause the booking of funds to be delayed. We are not liable for such delays.

## **F. Our Fees**

### **25. FEES**

- 25.1. You understand and agree that we will charge certain fees, charges, and other costs for the Services ("Fees"). You must pay the Fees to us otherwise we will not process your Instructions until we have received the Fees from you. All Fees applicable to you will be notified to you before you transact with us via the CAPAY Systems.
- 25.2. You may also incur additional fees and charges from banks transmitting/receiving beneficiary funds, and such fees may be deducted from the final amount transmitted. We do not receive advance notice from banks and shall not be liable for such fees.
- 25.3. You agree and acknowledge that you have agreed to the relevant Fees before placing an Instruction. All Fees payable under this Agreement are

exclusive of any legally applicable value added tax or similar sales or turnover tax in any relevant jurisdiction.

- 25.4. You confirm and acknowledge that we are, without limiting our power to recover amounts owing to us in any other way, permitted to deduct, without further reference to you, charges relating to any Services we provide including administration charges (including but not limited to fees associated with returned cheques, payment processing, debt collection and telephone transcript copies), charges relating to the use of the Online Services and any transaction fees charged to us by others with respect to your transactions including, but not limited to tracing fees.
- 25.5. Any Fees will be deducted from your Account on the day they were incurred.

## G. Payment

### 26. PAYMENT BY YOU

- 26.1. You must pay us in full in cleared and transferable funds, the amount of any Transaction, and any applicable service fees before we will pay, transmit or exchange any funds for you (unless we otherwise agree in our sole discretion).
- 26.2. You must make all payments to us in full without any deduction, set off, or counterclaim or withholding of any kind. We are not obliged to make a payment or facilitate a Transaction while you are in default.
- 26.3. You agree that all rights, title and interest to and in any payment which you transfer us in respect of a Transaction under this Agreement vests in the recipient clear of any liens, charges, encumbrances or other interest of the transferor or any third party.
- 26.4. When you make any payment, which is subject to any withholding or deduction under this Agreement, you must pay us an amount that ensures that the amount actually received by us is equal to the full amount we would have received had no withholding or deduction been made.
- 26.5. Unless otherwise provided in this Agreement, all amounts due to us will, in our discretion:
- (a) be deducted from any funds held by us for you; or

- (b) be paid by you in accordance with this Agreement.

## 27. MODE OF PAYMENT AND DIRECT DEBIT AUTHORISATION

- 27.1. You acknowledge and agree that we do not accept cash or cheques. All payments to us must be paid by electronic transmission only (or by such other means as agreed with us in any particular case) into our nominated bank account.
- 27.2. The following provisions apply if a direct debit arrangement (“Direct Debit Authorisation”) is entered into between we and you to debit your bank account for moneys owing by you to us.
- (a) The Direct Debit Authorisation applies in respect of all moneys due and payable to CAPAY under the Transaction Confirmation and this Agreement.
- (b) The Direct Debit Authorisation is to remain in full force and effect until we have received written notification from you of your termination in such time and manner as to afford us a reasonable opportunity to act on such notification after completing all open Transactions at the time of such notification.
- (c) You:
- i. must ensure that sufficient funds are available in the nominated bank account to meet all drawings on their due date;
  - ii. must advise us immediately if the bank account nominated is transferred or closed;
  - iii. must ensure a suitable alternate payment method is arranged with us if you terminate the Direct Debit Authorisation;
  - iv. are liable for all fees we incur in relation to failed drawings. In the event any funds transfer of any kind authorised by you is dishonoured by your financial institution or not completed for any reason, we will charge and you agree, unless otherwise restricted by law or regulation, to pay all processing costs, fees, penalties

and liabilities we incur as a result of such incomplete funds transfer; and

- v. agree that the usage of the CAPAY Systems is a security procedure which constitutes a commercially reasonable method of protecting against unauthorised debits. You agree to be bound by any debit instructions, whether authorised or not, issued in your name and acted upon by us, and you agree to indemnify and hold us harmless from any Losses incurred by any of them in connection with the execution of debit instructions believed by any of them to have been issued by an Authorised User. In the event you elect not to use or adhere to the security procedures described herein, you will remain liable for any debit instructions issued in your name, whether authorised or not, and acted upon by us. You agree that we and your financial institution(s) are authorised to credit your account from time to time in the event that credit adjustments become necessary.

- 27.3. The Direct Debit Authorisation is subject to the terms and conditions of the Direct Debit Agreement annexed to the Direct Debit Authorisation. In the event of an inconsistency between this Agreement and the Direct Debit Authorisation Agreement, the Direct Debit Agreement shall prevail.

## **28. PAYMENT AND DEDUCTIONS**

- 28.1. We may, but is not required to, make any payment under any transaction without first having received confirmation satisfactory to it that cleared funds for all sums due and payable by you to us have in fact been received. Once we received your Settlement funds, we will deliver the funds in accordance with your instructions.
- 28.2. We may deduct from any payment to be made to you any amount you may owe to us or any fees, costs, withholding taxes, or charges we incur in respect of any transaction with you, however, they arise.
- 28.3. Where outstanding transactions are terminated pursuant to this Agreement, we will calculate in Australian dollars the Mark to Market Value of each transaction as at the termination date using prevailing market rates we choose in good faith.



28.4. You irrevocably authorise us to apply any moneys held at any time by us for you under any account or arrangement between we and you to our own account to pay any amount that you owe or may at any time owe to us under any other account or arrangement between we and you.

## **29. NETTING AND SETTING OFF**

29.1. When Transactions and/or your Account/s are settled or closed under the Agreements, we may:

(a) combine and consolidate your cash and any money we hold for you in all of the Accounts you may have with us; and

(b) set-off against each other:

i. any amounts that are payable by us to you, regardless of how and when payable; and

ii. consolidate and pay the net sum to us or for us to pay a net sum to you.

29.2. In addition to other remedies available to us, you authorise us to:

(a) appropriate, transfer, credit, apply or pay monies that may be received by us or held by us on your behalf in payment of any amounts which may be outstanding to us or to our agent in a transaction effected on your behalf; and

(b) set-off against any amounts due to us, any amounts received by us from or on your behalf including but not limited to moneys received as Deposits or Margin Calls and client profits on the Close Out of a Financial Product. We may determine the application of any amounts which are to be set-off at our own discretion.

29.3. Your payments to us in accordance with this Agreement must be made without any set-off, counter claim or condition and without any deduction or withholding for any tax or any other reason unless the deduction or withholding is required by applicable Law.

29.4. Should you be required to make any form of deduction in respect of tax from any payment to be made or if we are required to pay any tax in respect of any payment made in relation to this Agreement at your

request, you agree to keep us indemnified against that tax and agree to pay to us any additional amounts required to ensure we receive the full net amount that is equal to the amount we would have received had a deduction, withholding or payment of tax not been made.

- 29.5. Deposits or Margin Calls deposited by you will not fall due for repayment until your obligations under this Agreement and under or in respect of any other account between we and you are satisfied in full. Until this time, Deposits or Margin Calls will not constitute a debt due from us to you nor will you have any right to receive payment of these funds.
- 29.6. For the avoidance of doubt, netting-off and setting-off of monies can only be made in relation to the Account/s you have with the Corporate Alliance Entity providing you the Service, in which case, CAFX, in respect of Financial Services, or CAPAY in respect of FX Remittance Services, or both, where applicable.

### 30. CURRENCY CONVERSION

- 30.1. If we receive an amount ("**Paid Amount**") in a currency other than that in which it is due ("**Required Currency**"):
- (a) we may convert the Paid Amount into the Required Currency in accordance with our normal procedures at the rates we consider appropriate without consent from you; and
  - (b) we may deduct our conversion costs from either the Paid Amount or the Required Amount.
- 30.2. If a judgement, order or proof of debt in connection with an amount which you owe us is not expressed in the Required Currency, you must pay us on demand any difference arising from the conversion, if the exchange rate we use is less favourable to us than the exchange rate used for the judgment, order or proof of debt, and the conversion costs.

### 31. INCORRECT CREDITING OF ACCOUNT

- 31.1. Except in the case of our fraud, we do not accept responsibility for, nor are we liable for, any loss or damage suffered by you as a result of you using moneys deposited in or credited to your Account in error by, or upon behalf of, us.

- 31.2. We are entitled at any time to deduct, without notice or recourse to you, any moneys deposited in, or credited to, your Account in error by, or on behalf of, us.

## **32. INTEREST**

- 32.1. If you fail to make any payment required under this Agreement that are due and payable, interest will be charged on the outstanding sum at a rate of 7.5% per annum over the rate determined by the Reserve Bank of Australia (or of such monetary authority as may replace it) as the cash rate that may be charged on interbank loans. Such interest will accrue and be calculated daily from the date the payment was due until the date you pay in full and will be compounded monthly.
- 32.2. We may receive and retain or apply for our own benefit any interest which arises in respect of any sum paid to or held by us.

## **33. WITHHOLDING TAX**

- 33.1. If you are required by Applicable Law to deduct or withhold Tax from a payment to us, you must:
- (a) deduct or withhold the Tax and any further tax applicable to a further payment under subclause 33.1.iii
  - (b) remit the Tax as required by law, and give the original receipt to us; and
  - (c) increase the payment to us that we would have received if no deduction (and no further deduction) had been required.

# **H. Intellectual Property**

## **34. CAPAY MATERIALS**

- 34.1. CAPAY Materials include any software (including without limitation the App, the API, developer tools, sample source code, and code libraries), data, materials, content and printed and electronic documentation (including any specifications and integration guides) developed and provided by us or our affiliates to you, or available for download from our Website. You acknowledge and agree that all CAPAY Materials are the property of CAPAY and protected by copyright law and/or other intellectual property and other laws.

- 34.2. You may not, and may not attempt to, directly or indirectly:
- (a) transfer, sublicense, loan, sell, assign, lease, rent, distribute or grant rights in the Service or the CAPAY Materials to any person or entity
  - (b) remove, obscure, or alter any notice of any of our trademarks, or other “intellectual property” appearing on or contained within the Remittance Services or on any CAPAY Materials;
  - (c) modify, copy, tamper with or otherwise create derivative works of any software included in the CAPAY Materials; or
  - (d) reverse engineer, disassemble, or decompile the CAPAY Materials or the Remittance Services or apply any other process or procedure to derive the source code of any software included in the CAPAY Materials or as part of the Remittance Services.
- 34.3. All copyright, trademarks, service marks, trade secrets, registered and unregistered design rights and all other intellectual property and other rights in and to the CAPAY Intellectual Property, shall remain at all times the sole and exclusive property of CAPAY and, where applicable, its licensors. You shall have no right or interest in or to any such intellectual property or other rights, except the right to access and use the Service as provided for in this document. All rights not expressly granted to you are reserved by CAPAY.

## **I. DISPUTE RESOLUTION**

### **35. DISPUTE RESOLUTION**

- 35.1. If you have a problem with the Service/s or Financial Products provided to you, you should initially bring it to our attention so that we are able to resolve any concerns or complaints in accordance with our internal dispute resolution process. We will attempt to resolve your dispute quickly and fairly. We both (being we and you) must attempt in good faith to resolve any dispute between us in connection with this Agreement by negotiation. All complaints or disputes should be addressed to:

The Complaints Officer  
Corporate Alliance Payments (CAPAY)

Address: Suite 602, Level 6, South Tower  
1-5 Railway Street, Chatswood NSW 2067 Australia  
Email: [compliance@capay.com.au](mailto:compliance@capay.com.au)

- 35.2. If any dispute, question or difference of opinion is not settled promptly by the Parties by negotiation:
- (a) the Parties must seek to agree on the procedural rules and a timetable for resolving the dispute through mediation by a mediator agreed upon by the parties, or if the parties cannot agree, a mediator appointed by the Australian Commercial Disputes Centre or a similar body.
  - (b) the Parties in dispute will bear the costs of the mediation equally and provide all assistance reasonably requested by the mediator.
- 35.3. If a suitable mediator cannot be agreed, or if mediation fails, the parties can then proceed with formal legal action.
- 35.4. Nothing in this clause prevents us from commencing proceedings against you in any relevant jurisdiction, in addition to submitting any dispute or difference whatsoever with you in connection with this Agreement.

## J. Warranties, Representations and Undertakings

### 36. YOUR WARRANTIES

- 36.1. You undertake, warrant and represent to us, with the intention that the following undertakings, warranties and representations are provided as at the date of this Agreement, repeated each time you provide Instructions to us, and during the term of this Agreement:
- (a) **legal disability:** you are not under any legal disability and are not subject to any law which prevents you from entering this Agreement or any Transactions;
  - (b) **corporate authorisation:** if you are a company, you are empowered by, and have obtained, all necessary corporate or other authorities under your constitution and at law;

- (c) **consents:** you have obtained all necessary consents and have the authority to enter into this Agreement and any Transactions;
- (d) **compliance with laws and valid obligations:** you are complying with all laws to which you are subject, and the obligations expressed to be assumed by you under this Agreement and any Transaction are your legal, valid, binding and enforceable obligations;
- (e) **You agree not to use the Services to make payments for any illegal purpose:** you certify that you will not use the Services to make any payments relating to online gambling, pornography, firearms or other illegal or immoral purposes, as notified by us;
- (f) **Insolvency:** no insolvency event exists in relation to you;
- (g) **information accurate:** at all times the information provided by you to us, whether in the Account Application Form or otherwise will be complete, accurate and not misleading, and you will notify us immediately if any of such information is no longer true. You are responsible for ensuring the accuracy and completeness of each and every Instruction;
- (h) **Transactions:** you will not conduct any Transactions which contravene any laws or regulations, including in relation to insider trading, market manipulation or market abuse;
- (i) **own judgement:** you have initiated each Instruction solely based on your analysis and/or third-party advice and have not received or relied upon any advice from us with respect to the suitability or appropriateness of such Instruction for you.
- (j) **your funds:** you are acting as a principal and have legal title to all funds used in connection with the transactions;
- (k) **security:** you shall maintain security systems, procedures and controls to prevent and detect:
  - i. the theft of funds;
  - ii. forged, fraudulent and unauthorised Instructions and electronic transfer of funds by anyone who are not you (including Authorised Users);

iii. losses due to fraud or unauthorised access to the service by anyone who are not you or an Authorised User;

(l) **not a US person:** you are not a US person as defined under applicable US laws and regulations. You further agree to promptly notify us if you become a US person. We are not liable to you for any regulatory reporting obligations that are not known to us.

36.2. Each warranty is to be construed independently and is not limited by reference to any other warranty.

### 37. TRUSTEE OF A TRUST

37.1. Where you are the trustee of a trust (including a superannuation fund) you further undertake, warrant and represent to us, with the intention that these undertakings, warranties and representations are repeated each time you provide instructions to us:

- (a) **capacities:** you acknowledge and agree that you enter into this Agreement in your personal capacity and in your capacity as trustee of the trust;
- (b) **sole trustee:** you are the sole trustee or trustees of the Trust and you have been validly appointed;
- (c) **trust validly created:** the trust was validly created and is in existence at the date of your application and has been duly stamped (if required);
- (d) **solely constituted:** the trust is solely constituted by the trust deed described in your Account Application Form and is as amended or substituted (Trust Deed);
- (e) **right of indemnity:** you have the right of indemnity against the assets of the trust under the Trust Deed and there has not, and will not be, any breach of trust or any other action that will prevent you from enforcing your rights under that indemnity;
- (f) **full authority:** you are empowered and have full authority under the Trust Deed to enter into this Agreement and to enter into the transactions contemplated by it;

- (g) **no actions:** there is no current or pending or threatened action or proceeding affecting the trust or any of the trust's assets before any court or body which draws or purports to draw into question or is likely to affect the legality, or validity, of your right of indemnity under the Trust Deed or of this Agreement or your ability to observe your obligations under it;
- (h) **ceasing to be trustee:** you will notify us immediately in writing if you cease for any reason to be the trustee of the trust or the trust is determined to cease to exist;
- (i) **no distribution of capital or income:** you will not make any distribution of any income or capital or assets of the trust that results in there being insufficient assets of the trust to meet any of your liabilities under this Agreement.

37.2. If you are the trustee of a superannuation fund you further undertake, warrant and represent to us, with the intention that this warranty is repeated each time you provide us with Instructions, that you have sought advice as the trustee of a superannuation fund dealing in our Remittance Services and are satisfied that in so doing you comply with all your fiduciary duties and obligations under the *Superannuation Industry (Supervision) Act 1993*, the regulations made under it and/or other relevant legislation or regulations, and that your dealings do not in any way breach that legislation or those regulations.

## K. Limitation of Liability and Indemnity

### 38. LIMITATION OF LIABILITY

38.1. Under no circumstances shall we and our representatives be liable to you or to any other party for lost revenue, profits or for any other special, incidental, punitive, exemplary or consequential damages, even if we or our representatives have been informed of such potential loss or damage as a result of or arising out of the relationship between the parties or in any way connected to this Agreement. The parties agree this limitation represents a reasonable allocation of risk, without which we would not have entered into this Agreement. The limitations of liability stated in this Agreement shall have effect to the extent permitted by Applicable Law.



- 38.2. Subject to any laws restricting us from limiting our liability, and to the maximum extent permitted by those laws, in no event will we or our Associates be liable to you for any losses, damages, and liabilities caused by or arising from, whether directly or indirectly, any of the following:
- (a) any material error which may occur;
  - (b) any error or inaccuracy in, or unsuitability of, or omission from the Agreements, or any other information provided by us, whether negligent or otherwise;
  - (c) any delays or failure by us in accepting or acting on your Instruction;
  - (d) delays in the transmission of Instructions due to the breakdown or failure of transmission or communication facilities or any cause beyond our control;
  - (e) any erroneous transmission, or failure to transmit or delay in transmitting, any notification or Instructions to us;
  - (f) your reliance on notifications or Instructions transmitted via email, phone or otherwise to us;
  - (g) any malfunctions, failures or errors in programming in relation to the CAPAY Systems;
  - (h) any delay, fault, failure in or loss of access to our FX Remittance Services;
  - (i) any failure, malfunction or defect of our and/or our Associates' software, hardware, electronic or mechanical equipment, or telecommunication channels or connections; or
  - (j) any failure by you to perform your obligations under this Agreement in whole or in part, or in a timely manner;
  - (k) any failure by us or our Associates to make available information, materials, software, hardware, equipment and personnel as and when required under this Agreement;
  - (l) any negligent or unlawful conduct by or on behalf of you and your employees, representatives, agents or any contractor;

- (m) any action we may take under these Remittance T&Cs, so long as we act within the terms of its provisions and in particular act reasonably where required to do so;
- (n) any performance delay or failure due to a cause beyond our reasonable control including, without limitation, failure of any communication systems or delays caused by a third party. You acknowledge that we use payment transfer services of third-party financial institutions and that you understand the associated risks, and agree that we are not liable for any failure or error by any third-party financial institutions we use; and
- (o) any loss of interest, revenue, profit, opportunity or data or for any consequential, indirect, incidental, special, punitive or exemplary damages suffered by you arising from or in connection with this Agreement.

### **39. MAXIMUM LIABILITY OF A CORPORATE ALLIANCE ENTITY**

- 39.1. To the maximum extent permitted by law, our liability to you and anyone claiming through you for a breach of the Agreements by us shall be limited to not more than the smaller of AUD10,000 or the currency value of the impugned Instruction as at the Instruction date only.
- 39.2. For the avoidance of doubt, we shall not be liable to you for lost profits, business or opportunities, indirect, consequential or punitive damages, whether based in contract or tort (including negligence, strict liability or otherwise) whether or not either party has been advised of the possibility of such damages.

### **40. INDEMNITY BY YOU**

- 40.1. You will indemnify, defend, and hold us harmless from and against any and all claims, Losses, damages, judgments, tax assessments, penalties, and interest arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to:
  - (a) any actual or alleged breach of your representations, warranties, or obligations under the Agreements;

- (b) your wrongful or improper use of our Services;
  - (c) your violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights;
  - (d) your violation of any law, rule or regulation of any country; and
  - (e) any other party's use of our Services or access to the CAPAY Systems.
- 40.2. You continually, unconditionally and irrevocably indemnify and hold us harmless from and against all liabilities, damages, losses and costs (including legal costs), duties, charges, commissions or other expenses we incur in the proper performance of our Remittance Services or the enforcement of our rights under this Agreement and, in particular, but without limiting the general indemnity, against all amounts which we may certify to be necessary to compensate us for all liabilities, damages, losses and costs including loss of profit and losses and expenses from any action we take to seek to cover or reduce our exposure under any Transaction as a result of (including, but not limited to):
- (a) Your actual or alleged breach of the Agreements, including your representations, warranties and obligations;
  - (b) us acting, or failing to act, on a written, verbal, telephone or electronic order which appeared to us to be from you (including an Authorised User); or
  - (c) us exercising our rights under this Agreement.
- 40.3. For the avoidance of doubt and without limiting any other provision of this document,
- (a) if your funds are sent to the wrong account or otherwise fails to reach your Beneficiary Account as a result of our mistake, we will credit your Beneficiary Account in the full amount of the funds you expect to receive, but that shall be the full extent of our liability to you;
  - (b) If we refuse to process one or more of your Transactions for any reason, we shall refund to you any funds that we hold on your behalf, but that shall be the full extent of our liability to you.

## 41. SURVIVAL

41.1. The indemnities in clause 39 and 40 will survive the termination of this Agreement and any Transaction.

## L. Default

### 42. EVENT OF DEFAULT

42.1. Each of the following constitutes an Event of Default, which upon their occurrence give us the right to take action in accordance with **clause 43**:

- (a) an Insolvency Event occurs in relation to you;
- (b) you are an individual and you die or become of unsound mind;
- (c) you fail to make any payment when it is due under the Agreements;
- (d) you are in breach of any obligation, warranty or representation made under this Agreement and/or any information provided to us in connection with the Agreements is or has become untrue or misleading;
- (e) you knowingly take advantage of an incorrect price when dealing with us and a reasonable person in your position would have known the price offered was incorrect or we consider that you have, or have attempted to, manipulate any system of ours in any way;
- (f) whether or not any sums are currently due to us from you, where any cheque or other payment instrument has not been met on first expectation or is subsequently dishonoured or you have consistently failed to pay any amount owed to us in time;
- (g) at any time or for any period deemed unreasonable by us you are not contactable or you do not respond to any notice or correspondence from us;
- (h) we reasonably believe it is prudent to take any or all of the actions described in clause 43 in light of any relevant legal or regulatory requirement applicable either to you or to us;
- (i) we consider that there are abnormal conditions;
- (j) we consider it necessary for the protection of our rights under the Agreements;
- (k) we are unable to quote the price of an Spot FX offered under this Agreement due to the unavailability of the relevant market information for reasons beyond our control;
- (l) we consider that you may be in breach of or have failed to comply with any Applicable Law;

- (m) we are requested by AUSTRAC or any other regulatory body or authority;
- (n) there has been a deterioration in your financial circumstances and we reasonably consider that such deterioration is material in the context of the size of the Transactions open in your CAPAY Account;
- (o) where we have not received, within the timeframe stated in a written request to you, all information which we have requested in connection with the Agreements;
- (p) where you are trustee of a trust, and without our consent, you cease to be sole trustee of the trust, or any step is taken to:
  - i. remove you as trustee, or to appoint a substitute or additional trustee; or
  - ii. bring any part of the trust assets under the control of any court;
- (q) any of the following were to occur where you are trustee of a trust:
  - i. any application or order is made in any court for:
    - A. accounts to be taken in respect of the trust; or
    - B. any property of the trust is to be brought into court or administered by the court under its control;
  - ii. the beneficiaries of the trust resolve to wind up the trust;
  - iii. you are required to wind up the trust under the Trust Deed or applicable law;
  - iv. the winding up of the trust commences for any other reason;
- (r) where you are trustee of a trust,
  - i. the trust is held, or is conceded by you, not to have been properly constituted;
  - ii. you cease to be authorised under the Trust Deed or at law to own the trust assets in your name or to perform your obligations under this Agreement;
  - iii. you breach any of your obligations as trustee of the trust; or
- (s) we reasonably believe that any one or more of the circumstances set out above is likely to happen or in any other circumstance where we reasonably believe that it is necessary or desirable to protect ourselves or all or any of our other clients.

#### **43. ACTIONS WE MAY TAKE**

- 43.1. If an Event of Default occurs, we are entitled, but not obliged, to take all or any of the following actions without prior notice to you:
- (a) immediately require payment of any amount due to us;
  - (b) terminate the Agreements;
  - (c) close all or any of your Transactions;

- (d) suspend or close your CAPAY Account(s);
- (e) refuse your Instructions to establish new transactions;
- (f) convert any ledger balances to Australian dollars;
- (g) impose restrictions to your CAPAY Account or Transaction(s);
- (h) limit or withdraw the credit on your CAPAY Account;
- (i) call on any guarantee in respect of your obligations;
- (j) require you immediately to settle any Transactions in such a manner as we request;
- (k) combine, close or consolidate any of your CAPAY Accounts and offset any amounts owed to, or by, us in such manner as we may in our absolute discretion determine; or
- (l) retain any amount owed by us to you against any contingent liability of yours to us or so long as the contingency subsists.

43.2. If we take any of the above action(s), we will not incur any liability to you for Losses that you may suffer or incur as a result.

#### **44. OUR RIGHTS TO CLOSE OR VOID**

44.1. Without limiting our right to take action under clause 45, we may also close or void individual Transactions and/or cancel any Instruction where:

- (a) we are in dispute with you in respect of a Transaction. In this case we can close all or part of the Transaction in order to minimise the amount in dispute; and/or
- (b) there is a material breach of this Agreement in relation to the Transaction(s).

44.2. If we take any of the above action(s), we will not incur any liability to you for Losses that you may suffer or incur as a result.

#### **45. OUR RIGHTS TO SUSPEND ACCOUNT**

45.1. Without limiting our right to take action under this Agreement, we may in our discretion suspend your CAPAY Account pending investigation for any reason. While your CAPAY Account is suspended you will not be able to place new Instructions (or Transactions). Circumstances in which we may choose to exercise this right include but are not limited to the following:

- (a) when we have grounds for believing that an Event of Default has occurred or may occur but believe that it is necessary to investigate circumstances with a view to confirming this;

- (b) when we issue you with a written request for information and within the timeframe stipulated in the request we have not received all information which we believe that we require in connection with this Agreement; or
- (c) we have reason to believe that there has been a breach in your Account or that there has been a threat to your Account.

45.2. If we have suspended your CAPAY Account pending an investigation, we will use reasonable endeavours to conclude our investigation within five (5) Business Days. When we conclude our investigation, we will inform you whether trading on your Account may resume or whether we intend to take further action pursuant to this Agreement.

#### **46. PAYMENTS WHEN CAPAY TERMINATES ANY OUTSTANDING TRANSACTIONS**

46.1. If we terminate any open Transaction(s), we must calculate in Australian dollars the Mark to Market Value of each open Transaction as at the termination date using prevailing market rates chosen by us in good faith. We must have regard to what a person would pay us to take over your rights under each Transaction (expressed as a negative number), or what we would have to pay another person to take over your obligations under that Transaction (expressed as a positive number). If the total amount exceeds zero, you must pay us that amount. Subject to clause 27, if the total amount is less than zero, we must notify you as soon as practicable after making those calculations. A payment under this clause must be made within two (2) Business Days after we give this notice.

### **M. Use of Information, Privacy and Disclosure**

#### **47. HANDLING OF YOUR INFORMATION**

- 47.1. We are committed to compliance with the *Privacy Act 1988* (Cth). Our Privacy Statement sets out how we handle (collect, use, disclose, store and keep secure) your personal information generally as well as containing specific details as to how we look after your credit related personal information. You may access our Privacy Statement from our Website.
- 47.2. You shall indemnify and hold us harmless from and against any and all Losses resulting from our non-compliance with applicable privacy laws which are a direct consequence of your actions or omissions.

## **N. Communication and Notices**

### **48. COMMUNICATION AND NOTICES**

- 48.1. You agree that we may communicate with and give notice to you in writing electronically, via electronic mail to you or via the CAPAY Systems. All such communications will be considered to have been provided in accordance with this Agreement. You agree that it is your responsibility to access all such communications.
- 48.2. All communications sent by regular mail will be deemed received three (3) clear Business Days after the date of the mailing. All communications sent by personal delivery will be deemed received on the day of actual delivery, if a Business Day, and if not a Business Day, on the next Business Day after the day of actual delivery. All electronic communications will be deemed to be received on the day the electronic communication is acknowledged by us by way of return email.
- 48.3. If we are unable to deliver any communications due to incorrect address or contact information, you are in breach of this Agreement and we will have no further obligation to seek out correct contact information to continue to attempt to deliver. We are not responsible for your failure to receive any communication if sent in accordance with contact information as provided by you.
- 48.4. If you use electronic mail to initiate Instructions or otherwise communicate with us, you agree to bear the risk that such electronic mail may be corrupted, modified, incomplete, hacked, compromised or be undelivered with or without notice to the sender or receiver. You agree to bear the risk of these events and to hold us harmless from acting or failing to act on any and all electronic communications purporting to be sent by you.
- 48.5. If you post communication to us, please ensure that you use our address on the cover page of this Agreement.

### **49. MARKET DISTURBANCE NOTICE**

- 49.1. We may give a Market Disturbance Notice to you at any time if we reasonably form the view that market conditions in the relevant financial



market for the currency concerned are seriously disturbed. This includes, but is not limited to, circumstances where, in our opinion, deposits in the currency concerned are not available in the ordinary course of business to us in the relevant financial market or because of national or international, political or economic circumstances or exchange controls, it is impractical.

- 49.2. When a Market Disturbance Notice is given, our obligations under the Agreements will be suspended while we and you negotiate alternative arrangements. If both parties reach agreement before the Settlement Cut-off Time of a particular Transaction, those alternative arrangements will apply to that Transaction. If the parties do not reach agreement within that period, both parties will be released from their respective obligations under the relevant Transaction.

## O. Termination and Force Majeure

### 50. TERMINATION

- 50.1. Either party may terminate this Agreement at any time by giving the other notice in writing to that effect immediately. In the event you terminate this Agreement, we shall not be required to accept or process any Instructions and Transaction(s) thereafter placed by you.
- 50.2. Subject to clause 50.3, termination by either party shall not affect any Transaction previously entered into and shall not relieve either party of any outstanding obligations arising out of the Agreements, nor shall it relieve you of any obligations arising out of any Transaction entered into prior to such termination.
- 50.3. In the event that we are made aware of or have reason to believe any of the following:
- (a) you have provided false or misleading information to us;
  - (b) you have participated or is participating or has assisted or is assisting in money laundering or terrorist financing activities;
  - (c) you are being officially investigated by law enforcement and/or regulatory agencies;
  - (d) an Insolvency Event has occurred;
  - (e) you fail to provide CAPAY with the following information within [10] business days from the date of request:

- i. your company's latest financial statements;
  - ii. a complete summary of FX and derivatives liabilities you have executed with parties other than CAPAY; and
  - iii. any other information CAPAY requests.
- (f) based on CAPAY's assessment, your circumstances do not warrant a renewal of credit limits; or
- (g) you disagree to the changed Credit Terms provided to you pursuant to the Credit Offering Letter;
- then we, in our sole discretion, may terminate this Agreement and Credit Terms and shall be relieved of any obligations set out in these agreements immediately, including any obligations arising out of any Transaction already placed with and accepted by us.

## 51. FORCE MAJEURE

- 51.1. In the event that we are unable to provide the Services due to circumstances beyond our control, including but not limited to force majeure, we shall have no liability for direct, indirect, special, incidental or consequential damages, including, but not limited to, loss of profits or expenses, arising in connection with any Transactions entered into with you pursuant to this Agreement.

## P. Interpretation and definitions

### 52. INTERPRETATION

- 52.1. In this Agreement,
- (a) If there is any conflict between:
    - i. Law, the Applicable Law (to the extent it cannot be excluded or modified by this document) shall prevail; and
    - ii. this Agreement and the Transaction Confirmation, the Transaction Confirmation shall prevail.
  - (b) any reference to a person includes bodies corporate, unincorporated associations, partnerships, and individuals.
  - (c) all references to times of the day are to the time in Sydney, NSW, Australia unless otherwise advised.

- (d) headings and examples are for reference only and do not affect the construction of the document.
- (e) any reference to any enactment includes references to any statutory modifications, enactments or re-enactment of such enactments or to any regulation or order made under such enactment (or under such a modification or re-enactment).

### 53. DEFINITIONS

**Account** means the account established by us for you in relation to the Services we provide.

**Account Application Form** means the relevant Application Form you need to complete and agree to be bound to for purposes of a Corporate Alliance entity opening an Account for you..

**Account** or **CAPAY Account** means the account established for you on the CAPAY platform (system) by the relevant Corporate Alliance entity in accordance with the terms and conditions of this Agreement.

**Advice** means any recommendation, express or implied, made by a person with respect to, or associated with, the offer, sale, purchase, holding, variation or termination of a Financial Product, and includes Financial Product Advice within the meaning of section 766B of the Act, but does not include routine administrative queries.

**Affiliates** means any corporation or other business entity directly or indirectly Controlling, Controlled by or under common Control of a party from time to time.

**Agreements** means this Agreement as it relates to subclause 1.5.

**AML/CTF Laws** means the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) and the AML/CTF Rules and instruments made under that Act.

**AML/CTF Program** is a document that sets out our obligations under the AML/CTF Laws and describes how we identify and manage the risk of our FX Remittance Services business being used for money laundering, terrorism financing and financial crimes.

**API** means the application programming interface made available to you in respect of our CAPAY Systems.

**App** means the mobile application software, the data supplied with the software and

the associated media, forming part of the CAPAY Systems.

**Applicable Law** means any statute, regulation, rule, subordinate legislation or other document enforceable under any statute, regulation rule or subordinate legislation.

**Associate(s)** means:

- (a) a person who is an officer, employee, agent, representative or associate of a party;
- (b) Related Body Corporate of a party;
- (c) person who is an officer, employee, agent, representative or associate of a Related Body Corporate of a party; and
- (d) any third party service provider, including the officer, employee, agent, representative or associate of the third party service provider engaged by a party.

**Authorised User** means the person authorised by the Client to access the Services and/or enter into Orders or provide instructions to us, including payment instructions, on the Client's behalf..

**Beneficiary** means the payee designated by you.

**Beneficial owner** has the meaning given in Rule 1.2.1 of the AML/CTF Rules.

**Business Day** means a day on which commercial banks are open for ordinary banking business (including dealings in foreign exchange) in New South Wales.

**CAFIN** means Corporate Alliance Finance, which is a business division within Corporate Alliance Group Pty Ltd that deals with Clients' applications for Credit financing in relation to an FX Contract.

**CAFX or CAPAY Materials** mean any software, including without limitation the App, API and developer tools, sample source code, and code libraries, data, materials, content (printed and electronic documentation) including any specifications and integration guides developed and provided by us or our affiliates to you, or available for download from our Website.

**CAPAY Systems** means the internet or electronic system we utilise and may make accessible to you through an interface or protocol or application program interface, including but not limited to our websites, the API and APP, any client portals or payment platform, and any electronic services provided by us. While it is a proprietary system developed and owned by CAPAY, both CAFX and CAPAY utilise the system for the Accounts of each of their Clients.

**CFD** or **Contract for Difference** means a leveraged financial derivative that allows you to speculate on prices rising or falling in an underlying market, without having to take direct ownership. This is only available to CAFX wholesale Clients.

**Client, you** or **your** means the person or entity named as the Client in the application to open an account with us, together with the Client's:

- (a) subsidiaries, affiliates, successors and/or assigns; and
- (b) officers, directors, employees and agents.

**Corporations Act** means the *Corporations Act 2001* (Cth) and regulations.

**Credit Facility** means any trading limit, settlement limit, foreign currency exposure limit, unrealised loss limits, trading tenor, margin limit or any other credit limit that CAFX has issued to you.

**Credit Limit** means the total limit or maximum amount of credit that CAFX provides to you.

**Credit Terms** mean the terms and conditions governing the credit facility provided by CAFX to the Client under the Credit Offering Letter. **Credit Terms are not available to FX Remittance Clients.**

**Delivery Instructions** means all information provided by you to us whereby we are directed to deliver your funds to a Beneficiary, including without limitation information required to be collected under Applicable Law.

**Drawdown** means the (pre) delivery and settlement of a Forward any time before the Settlement Cut-off Time.

**Expiration Date** means the last date on which an FX Option can be exercised.

**Exercise Notice** means the notice given by the buyer to the seller of its intention to exercise an Option.

**Expiration Time** means the last time at which CAFX will accept a notice of exercise, which shall be 14:00pm (Sydney Time) on the Expiration Date, unless otherwise stated in the applicable Transaction Confirmation.

**Financial Product** means for the purposes of this Agreement, the following CAFX products:

- (a) FX Spot (exclusion applies in relation to FX Remittance)

- (b) FX Forward Contract
  - (c) FX Options Contract
  - (d) Contract for Differences
  - (e) Non-cash Payments
  - (f) Risk Management
- as they change from time to time.

**Financial Services** mean for purposes of this Agreement, CAFX or its Representative:

- (a) providing financial product advice; or
- (b) dealing in a financial product.

**Force Majeure Event** means act of nature, national disaster, national emergency, , acts of war, acts of terrorism, cyber-crimes, strikes, riots, other civil disturbances, change of government regulations or any other cause or causes beyond the Parties' reasonable control.

**Forward Contract** means an Order conferring the obligation to buy or to sell a specified amount of a currency at a specified exchange rate within a predetermined point in time between three (3) days and 12 months after the Order is entered into.

**This is only available to CAFX wholesale Clients.**

**FX** means foreign exchange.

**FX Remittance Services** mean for purposes of this Agreement, CAPAY's business involving accepting instruction from you to buy and/or sell foreign currency (funds) at an agreed exchange rate for the electronic transfer of funds from you to your beneficiary. CAPAY provides FX Remittance Services to all types of Clients (both retail and wholesale), subject to its AML/CTF Program.

**Insolvency Event** means, in respect of the Client:

- (a) declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts or suspends payment of its debts generally;
- (b) declared bankrupt or a bankruptcy petition is made against you, or if a partnership, in respect of one or more of the partners, or if a company, a receiver, trustee, administrative receiver, liquidator or similar officer is appointed;
- (c) any application (not being an application withdrawn or dismissed within 5 Business Days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - i. appointing a person referred to in paragraphs (a);
  - ii. winding up a corporation; or
  - iii. proposing or implementing a scheme of arrangement;

- (d) a moratorium of any debts, or an official assignment, or a composition, or an arrangement (formal or informal) with creditors, or any similar proceeding or arrangement by which the assets of the Client are subjected conditionally or unconditionally to the control of its creditors or a trustee, is ordered, declared, or agreed to, or is applied for and the application is not withdrawn or dismissed within 5 Business Days; or
- (e) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the Client.

**In The Money** or **ITM** means the value of the original Forward Contract or Options Contract is more favourable than the current Mark to Market value.

**Initial Margin** or **Deposit** means the amount required by CAFX to be deposited by the Client in relation to an FX Contract at the time of booking and at any time prior to the Value Date which is a part-payment toward the agreed Order value and is not considered as Client monies.

**Instruction** means any instruction or request given by you to us offering to enter into an FX transaction with us.

**Knock-In Rate** is where applicable, the exchange rate that if traded at or through in the spot foreign exchange market before the Expiration Time or during any Window will result in the buyer's right pursuant to an Option to become effective.

**Knock-Out Rate** is where applicable, the exchange rate that if traded at or through in the spot foreign exchange market before the Expiration Time or during any Window will result in the buyer's right pursuant to an Option to terminate.

**Legal Entity Identifier** or **LEI** means a unique 20-character alphanumeric code issued by the Global Legal Entity Identifier System administered by the Global Legal Entity Identifier Foundation.

**Loss** or **Losses** means direct and consequential financial losses, damages, costs, judgments, penalties, fines, expenses, legal and accounting fees and expenses, costs of investigation, settlements, court costs and other expenses of litigation, as well as fees and expenses and losses not related to litigation or legal process and lost profits.

**Mark to Market** means the revaluation of a Forward Contract or an Options Contract to reflect its current market value rather than its original value. CAFX shall have the right, at its sole discretion, to determine the Mark to Market value on a daily or intra-

daily basis.

**Market Disturbance Notice** has the meaning given to it in clause 49.

**Options Contract** means an order conferring the right, but not the obligation, to buy (call) or to sell (pu) a specified amount of a currency at a specified exchange rate within a predetermined time period. **This is only available to CAFX wholesale Clients.**

**OTC** means Over the Counter.

**OTC Products** means any of our Products that involve OTC foreign exchange contracts or derivatives. Please note that any non-cash payment facilities we provide are not OTC Products.

**OTM** or **Out of the Money** means the value of the original Forward Contract or Options Contract is less favourable than the current Mark to Market value.

**Payin Methods** has the meaning given to it in Schedule A.

**Payout Methods** has the meaning given to it in Schedule A.

**PID** means the Product Information Disclosure document CAFX may issue to you from time to time.

**Premium** means the amount payable by you to CAFX on Premium payment date for an Option. The Premium is determined by CAFX in its sole discretion and in some cases may be nil.

**Privacy Act** means the *Privacy Act 1988* (Cth), as amended from time to time.

**Related Party, Related Bodies Corporate** has the meaning given in the Act.

**Representative** has the meaning given in the Act and includes our employees, directors, and Authorised Representatives.

**Settlement** means the total amount, including the cost of currency acquisition as well as any fees and charges you owe to CAPAY, less any prepayment and or other additional payment relating to the Transaction held by CAPAY. If Settlement is paid to CAPAY electronically, you agree that Settlement shall not be recallable by you without CAPAY's prior written consent.

**Settlement Cut-off Time** has the meaning given to it in Schedule 2.



**Settlement Date** means the date specified as such in the Transaction Confirmation.

**Source Currency** means the currency which you hold and/or fund your payment order with.

**Spot FX** means a foreign exchange contract whose rate is agreed on today for the exchange of two currencies two (2) Business Days from the date it is entered (T+2).

**Target Currency** means the currency which your recipient will receive.

**Tax/Taxes** means taxes, imposts, duties, levies, charges, fees, withholdings and deductions imposed by statute or any government or governmental authority (including, but not limited to, land tax, stamp duty, goods and services tax, transaction duties, fines and penalties, except if imposed on income).

**Transaction(s)** includes but is not limited to the transactions in relation to the Services provided by CAFX or CAPAY.

**Transaction Confirmation** means a document issued by CAPAY setting out material details of a Transaction.

**Trigger Rate** means a Knock-In Rate or a Knock-Out Rate (as applicable).

**Variation Margin** means cash funds required when the net marked to market value of all open Transactions and Instructions exceeds a percentage or fixed amount as CAFX may advise, of the notional value of all open Transactions and Instructions.

**Wholesale Client** means a person or entity that meets the definition of a wholesale client as defined in the Corporations Act and who is not a retail client by virtue of section 761G of the Act.

**Window** means an agreed period of time during the term of an Option during which a Trigger Rate is effective. Typical Windows include, but are not limited to, “last month” (where the Trigger Rate is only effective in the last month of an Option), “last week” (where the Trigger Rate is only effective in the last week of an Option), “last day” (where the Trigger Rate is only effective on the last day of an Option and “at Expiry” (where the Trigger Rate is only effective at the expiration time on the Expiration Date).

## Q. Other Important Terms

#### **54. NO WAIVER**

54.1. Our failure to exercise any of our rights under this Agreement shall not be deemed a waiver of such rights or remedies at a later time.

#### **55. GOVERNING LAW AND JURISDICTION**

55.1. This Agreement shall be governed by and construed in accordance with the laws in force in New South Wales. The parties submit to the jurisdiction of the courts of that State. Notwithstanding that, we retain the right to bring proceedings against you for breach of this Agreement in your country of residence or any other relevant country.

#### **56. SEVERABILITY**

56.1. In the event that any terms or provisions of this Agreement shall be determined to be illegal, invalid, or unenforceable in whole or in part for any reason whatsoever including, but not limited to illegality, unenforceability or invalidity, this shall not affect the enforceability or validity of the remaining terms or provisions or parts thereof which shall continue to be binding and enforceable.

#### **57. VARIATION**

57.1. We may, in our absolute discretion, change, amend or otherwise modify this Agreement and any Transactions under it, at any time (including to introduce or charge a fee or cost) by giving you written notice (generally via email). Such notice may be given to you as you or generally as a group (and not to you specifically). The variation takes effect on the day specified in the notice.

#### **58. ASSIGNMENT**

58.1. You shall not assign, mortgage, charge, declare a trust of rights or obligations under this Agreement without our written consent. If we provide a written consent to any assignment of this Agreement, it shall be binding upon your successors, heirs, and assigns.

58.2. We may assign our rights or delegate any of our obligations under this Agreement at any time without your consent. Despite anything to the contrary contained in this Agreement, we may disclose to any actual or

potential delegate or assignee, such information relating to you and your relationship with us, as we see fit.

## **59. ENTIRE AGREEMENT**

- 59.1. This Agreement the entire agreement of the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, representations, understandings, negotiations and discussions between the parties, whether oral or written.

## Schedule A – CAPAY Systems and your CAPAY Account

### 1. CAPAY API AND APP

- 1.1 The CAPAY App, forming part of the CAPAY Systems, is subject to this Agreement, the Appstore Rules and the Google Play Terms and Service. We license the use of the CAPAY App to you on the basis of this Agreement and subject to any rules and policies applied by any Appstore provider or operator whose sites are located at the App Store (<https://www.apple.com/au/legal/internet-services/itunes/au/terms.html>) and Google Play ([https://play.google.com/intl/en\\_au/about/play-terms.html](https://play.google.com/intl/en_au/about/play-terms.html)). We do not sell the CAPAY App to you. We remain the owners of the CAPAY App at all times.
- 1.2 From time to time updates to the CAPAY App may be issued through the App Store or Google Play. Depending on the update, you may not be able to use our Remittance Services via the CAPAY App until you have downloaded the latest version of the CAPAY App and accepted any new terms.
- 1.3 In consideration of you agreeing to abide by the terms of this Agreement, we grant you a non-transferable, non-exclusive licence to use the CAPAY App on your device and the CAPAY API subject to this Agreement. We reserve all other rights.

### 2. OPENING HOURS

- 2.1 **Opening hours of CAPAY Systems.** The opening hours of the CAPAY Systems are set out on the CAPAY Systems. You can view live prices and place live orders during the opening hours.

### 3. UPLOADING MONEY VIA CAPAY SYSTEMS INTO YOUR CAPAY ACCOUNT

- 3.1 **How to upload money into your CAPAY Account.** To upload money, you need to log in to your CAPAY Account and follow the steps as they appear on screen. We are not responsible for the money you have uploaded until we have received it. For clarity, in an upload transaction, we are the recipient of funds and not the payment services provider.

- 3.2 **Payin Methods.** You may be presented with one or more methods of upload for example, bank transfer, direct debit, BPay and New Payments Platform (NPP) (in this Agreement, we will call these methods “**Payin Methods**”). We do not accept payments via credit or debit cards. The number of Payin Methods made available to you will depend on a number of factors including where you live and your verification status with us. Payin Methods are not part of our Remittance Services, they are services provided by third parties for example, the card provider which issued you with your credit or debit card. We cannot guarantee the use of any particular Payin Method and may change or stop offering a Payin Method at any time without notice to you.
- 3.3 **Payment instrument must be in your name.** Any payment instrument (for example, the credit card or debit card) you use with your chosen Payin Method must be in your name.
- 3.4 **Correct Amount.** Payments into your Account are deposited by us on the condition that we receive the amount in question. This shall apply irrespective of whether it has been explicitly stated in receipts or other notices of, or requests for, payment.
- 3.5 **Chargebacks/Recall on your payment instrument.** If you selected a Payin Method which gives you chargeback or recall rights, you promise that you will only exercise this chargeback right if:
- (i) we have breached this Agreement; or
  - (ii) there was an unauthorised use of your payment instrument.

You promise that you will not exercise your chargeback right for reasons which we are not responsible, including a dispute with us, your recipient or if there are insufficient funds in your payment instrument. If we need to investigate or take any actions in connection with a chargeback raised by you, we may charge you for our costs in doing so and may deduct such amount from your CAPAY Account.

- 3.6 **Upload limits.** For legal and security reasons, we impose limits on how much you can upload into your CAPAY Account.
- 3.7 **When we will credit your CAPAY Account:**

- (i) We will credit your CAPAY Account once we have received your money. The funds are booked and will generally be available for trading on your CAPAY Account without undue delay after we have received the funds and subject to the Instruction being complete and correct. The funds will not be taken to be received by us before the funds are booked and are available on your Account.
- (ii) For some Payin Methods such as credit or debit card, we will credit the money to your CAPAY Account as soon as possible subject to our right of reversal. This means if the actual amount you intended to upload does not reach us within a reasonable time, we may deduct such amount from your CAPAY Account. If you do not have enough money in your CAPAY Account for this purpose, we can demand repayment from you using other methods.
- (iii) When you transfer funds between two Accounts held with us, the funds will generally be available for trading on the receiving account on the day of the transfer.

## 4. CLIENT INSTRUCTIONS TO CAPAY

### SENDING MONEY

- 4.1 **Setting up payment Instructions.** You must set up your payment order from your CAPAY Account via the CAPAY System. Your order may either be:
- (i) a "Fixed Source Order" which is a payment order where you indicate that you wish to send and convert a fixed amount of Source Currency to your recipient who will receive the converted amount in the Target Currency; or
  - (ii) a "Fixed Target Order" which is a transfer where you indicate that you wish to send and convert a fixed amount of Target Currency to your recipient from the Source Currency you pay into CAPAY.

You can only set up a Fixed Target Order for certain Source Currencies.

- 4.2 **Information you need to provide to set up a payment order.** To

set up a payment order via the CAPAY App, you need to provide certain information to us including:

- (i) the full name of your recipient;
- (ii) your recipient's bank account details or their CAPAY Account details; and
- (iii) amount to be transferred.

You understand and accept that you must always supply us with complete and correct payment details when providing payment Instructions. When providing payment Instructions you shall use the form we provide. In the absence of the said information, we are not liable for the completion of the transfer, nor for any delays or extra costs arising from the absence of e.g. the IBAN number and/or BIC code.

- 4.3 **Payment order limits.** We may place limits on the amount you may send per transfer. For more information on the applicable limits to your Account, please refer to your CAPAY Account.
- 4.4 **When is your payment order received.** If your payment Instruction is received by us after 5:30pm on a Business Day or not on a Business Day, your payment order will be deemed received on the following Business Day.
- 4.5 **What happens after you have submitted your payment order.** Once we have received your payment order, we will display it under the "History" section of your CAPAY Account. Each payment order is given a unique transaction number which you can find there. You should quote this number when communicating with us about a particular payment order.
- 4.6 **There must be sufficient funds before we can process your payment order.** We will only process your payment order if we hold or have received sufficient cleared funds in your CAPAY Account. It is your responsibility to fund your payment order in a timely manner. We cannot be responsible for the time it takes for the money to be sent to us by your bank or payment service provider.
- 4.7 **Verification checks may increase the time for processing your**

**payment order.** We carry out verification checks, and these checks may increase the time it takes to process your payment order. We cannot be responsible for any delays as a result of carrying out those checks.

- 4.8 **Status of your payment order.** The status of your payment order will be displayed in the CAPAY Account (via the CAPAY System) and you will be able to check the status any time after your order is accepted by us.
- 4.9 **We will use reasonable efforts to ensure funds arrive at your recipient's account within the notified timeframe.** We will use reasonable efforts to ensure that the funds arrive in the recipient's bank account or payment account within the timelines notified to you. We do not have any control over the time it may take for the recipient's bank or payment provider to credit and make available funds to the recipient.
- 4.10 **Refusal of your payment order.** If we are unable to complete your payment order, we will let you know and, if possible, the reasons for the refusal and an explanation on how to correct any factual errors. However, we are not required to notify you if such notification would be unlawful.
- 4.11 **You may cancel your payment order before your funds are converted.** You may cancel your payment order by calling our dealing desk at +61 2 9006 8888. You cannot cancel your payment order once your funds have been converted into the Target Currency you requested. Further, you may not initiate cancellation via the CAPAY Systems.
- 4.12 **You must ensure the information you provide to us is correct.** You must make sure that the information you provide when setting up a payment order is accurate. If we have processed your order in accordance with the information you have provided to us it will be considered correctly completed even if you have made a mistake.
- 4.13 **What happens if you provide us with incorrect information.**
- (i) If you provide incorrect information with your payment Instruction, we will use reasonable efforts to recover the funds for you and may need to charge you a fee for that.



- (ii) If your funds are sent to the wrong account as the result of a mistake made by you, and we have acted in accordance with your Instructions, we will be under no obligation to recover the funds or to resend the funds to the correct Beneficiary Account.
- (iii) If your funds are sent to the wrong account as the result of our mistake, we will take urgent action to recover those funds, provided that you assist us in recovering such funds if the mistaken beneficiary is known to you or is associated with you in some way.

## 5. EXCHANGE RATE

5.1 **The applicable exchange rate.** We will let you know the exchange rate:

- (i) when you place your payment order, if it is a guaranteed rate payment order; or
- (ii) when we have converted your Source Currency into the Target Currency, if it is a non-guaranteed rate payment order.

5.2 **Exchange rate.**

- (i) Unless specified otherwise, when we refer to an exchange rate in this Agreement, it means the mid-market exchange rate at the relevant time for the relevant currency pair (for example, GBP to EUR, USD to AUD) as provided by our reference rate provider, Reuters. We may change our reference rate provider from time to time without notice to you.
- (ii) For some currencies, we cannot use the mid-market exchange rate as we are required to use a different reference rate for the exchange rate for your currency pair. For these currencies we will notify you of the reference rate used for the exchange rate when you place your payment order.

## 6. RECEIVING MONEY

6.1 **You can receive money into your CAPAY Account.** You can receive money into your CAPAY Account using methods which we support from time to time.

- 6.2 **The money received is shown in your CAPAY Account.** Any money you receive into your CAPAY Account will be recorded in the transaction history section of your CAPAY Account. You should check the incoming funds in your CAPAY Account against your own records regularly and let us know if there are any irregularities.
- 6.3 **The money received may be subject to reversal.** You acknowledge that the money received in your CAPAY Account ("**Received Amount**") may be subject to reversal and you agree that we may deduct the Received Amount from your CAPAY Account if it was reversed by the person who paid you the Received Amount or any relevant payment services provider.
- 6.4 **Sending money using an email address.** If you send money to a person using an email address which is not registered with us, the money will not be credited until the intended recipient has claimed the money following the steps we have set out for them. Until then, there is no relationship between us and the intended recipient and the money continues to belong to you. We will refund the money to you if the intended recipient does not claim the money or if they have failed our customer checks within a reasonable time period as determined by us.

## 7. MAINTAINING YOUR CAPAY ACCOUNT

- 7.1 **Transaction history is displayed on your CAPAY Account.** All your transactions (including money you have uploaded, received, sent and/or withdrawn) are recorded in the transaction history section of your CAPAY Account. You may access this information after you log in to your CAPAY Account. We have allocated a reference number to each transaction, you should quote this reference number when communicating with us about a particular transaction.
- 7.2 **Check your CAPAY Account regularly.** You must check your CAPAY Account regularly and carefully and contact us immediately if you do not recognise a transaction or think we have made a payment incorrectly. You must tell us about:
- (i) any unauthorised transactions immediately, but no later than five (5) Business Days from the transaction; otherwise you may

not be entitled to have any errors corrected; and

- (ii) any incorrect Transactions executed by you within one (1) hour as required in clause 18 of this Agreement;

otherwise you may not be entitled to have any errors corrected.

7.3 **No negative balance in your CAPAY Account.** You promise to always have a zero or positive Balance in your CAPAY Account. If your CAPAY Account goes into a negative balance as a result of a chargeback, reversal of a transaction, deduction of fees or any other action carried by you, you promise to repay the negative balance immediately without any notice from us. We may send you reminders or take such other reasonable actions to recover the negative balance from you, for example, we may use a debt collection service or take further legal action. We will charge you for any costs we may incur as a result of these additional collection efforts.

7.4 **Taxes.** You are responsible for any taxes which may be applicable to payments you make or receive, and it is your responsibility to collect, report and pay the correct tax to the appropriate tax authority.

## 8. WITHDRAWING FROM YOUR CAPAY ACCOUNT

8.1 **Request to withdraw your money.** After you log in to your CAPAY Account, you may request all or part of your money held in your CAPAY Account to be withdrawn. Go to the "Payment" section of your CAPAY Systems and follow the steps as prompted on screen. We will charge you a fee for each withdrawal request. We will let you know the exact amount when you submit your request. You can also find out more information about any applicable fees we charge on the CAPAY Systems.

8.2 **Available Payout Methods.** You may be presented with one or more methods of withdrawal (in this Agreement, we will call these methods "**Payout Methods**"). The number of Payout Methods made available to you will depend on a number of factors including where you live and your verification status with us. We do not guarantee the use of any particular Payout Method and may change or stop offering a Payout Method at any time without notice to you in our sole discretion, but we will ensure that you will always have at least one Payout Method available to you.

- 8.3 **Payout Methods are not part of our Remittance Services.** Payout Methods are not part of our Remittance Services, they are services provided by third parties for example the bank where you hold your bank account. For the purposes of a withdrawal transaction, we are a payer and not a payment service provider.
- 8.4 **You must provide correct information to us.** When setting up your withdrawal request, you must ensure that the information you provide is correct and complete. We will not be responsible for money sent to the wrong recipient as a result of incorrect information provided by you. If you have provided wrong information to us, you may ask us to assist you in recovering the money, but we do not guarantee that such efforts will be successful.
- 8.5 **Withdrawal request is subject to limits.** You agree that your CAPAY Account is subject to withdrawal limits. If your withdrawal request exceeds the current limit, we may decline your request and require you to provide additional documents to us so that we can carry out additional checks before allowing the money to be withdrawn.

## 9. FEES FOR USING CAPAY ACCOUNT<sup>[1]</sup><sub>SEP</sub>

- 9.1 **You must pay our fees.** You must pay the fees in connection with the use of our Remittance Services. We will not process your transaction until we have received the fees from you.
- 9.2 You can see any fees applicable to you on the CAPAY Systems. We will let you know the exact amount payable by you when you set up your Instruction. For clarity, the fees applicable to you as set out on the CAPAY Systems form part of this Agreement which may be subject to change.
- 9.3 We can make deductions from your CAPAY Account. You agree that we are authorised to deduct our fees, any applicable reversal amounts, and/or any amounts you owe us from your CAPAY Account. If you do not have enough money in your CAPAY Account to cover these amounts, we may refuse to execute the relevant Transaction or provide any Remittance Services to you.

## 10. CURRENCY CONVERSION

- 10.1 **You may convert the money held in one currency in your CAPAY Account into other currencies we support from time to time.** You can only perform a conversion in respect of funds that you already hold in your CAPAY Account. CAPAY does not charge conversion fees when we perform a currency conversion.

## 11. CLOSING YOUR CAPAY ACCOUNT<sup>11</sup>

- 11.1 **You may close your CAPAY Account at any time.** You may end this Agreement and close your CAPAY Account at any time by contacting our Customer Support.
- 11.2 **You should withdraw your money within a reasonable time.** Whenever an Instructions for our Remittance Services are completed by us, you should withdraw

your money immediately and within a reasonable time as we do not hold money on your behalf in CAPAY Accounts.

- 11.3 **You are responsible for your CAPAY Account after closure.** You agree that you will continue to be responsible for all obligations related to your CAPAY Account even after it is closed.

## SCHEDULE B – FINANCIAL SERVICES (FX Contracts: Spot, Forward, Options)

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### 1. APPLICABILITY OF THIS SCHEDULE

Where applicable, this Schedule B applies to all your dealings with us in relation to Spot FX, Forwards and Options.

### 2. MARGIN

**Margin Requirements.** Margin requirements are applicable to all Spot FX, Forwards and Options to which we act as a counterparty. CAFX applies the following main principles in relation to our Margin practices:

- (i) You must provide Initial Margin (if required) before issuance of any Spot FX, Forwards or Options, and you are liable to meet all Margin Calls;
- (ii) When you have open positions, you are obliged to maintain at all times the total Margin requirements for all of your open positions;
- (iii) The Margin Call obligation is in addition to your obligation to maintain the total Margin requirements for your Account;
- (iv) The timing and amount of each Margin Call will depend on movements in the market price of the open positions and the changes to your net equity and funds available for Margin;
- (v) You have an obligation to meet the Margin Call even if we cannot successfully contact you. We are not obliged to notify you about your obligation under Margin Calls, though we may do so by email, phone call, via CAPAY Account or otherwise, as a courtesy.

**Initial Margin.** CAFX may, in its sole discretion, require you to:

- (i) provide Initial Margin in relation to any Option or Forward within twenty-four (24) hours of the Instructions to enter into an Option or Forward; and/or;
- (ii) provide Initial Margin, if not already provided, within one (1) clear Business Day at any time during the term of an Option or Forward.

**Variation Margin.** If CAFX determines, in its sole discretion, that the net market value of all of your open Transactions has declined and the unrealised loss when marked to market exceeds a percentage or fixed amount as CAFX may advise, of the notional value of the open Transactions, you are required to post Variation Margin as stated in the Margin Call issued by CAFX. Each time the net market value of all of your open Transactions decline and the unrealised loss when marked to market further increase, CAFX may issue a Margin Call whereby you

are required to post additional Variation Margin in the amount stated in the Margin Call within one (1) clear Business Day. Payment of Variation Margin is due on or before the close of business on the next Business Day after the day CAFX issues Margin Call to you.

**Return of Margin.** If the unrealised loss of all your open Transactions falls below the Variation Margin requirements established elsewhere in these T&Cs, based on our computation on any Business Day, then you may request that we return to you the difference between the unrealised loss of all open Transactions and the Variation Margin held by CAFX on that Business Day. Upon receipt of the notice, CAFX may process the return in a timely manner but does not guarantee that the return will be processed on the same day.

**Margin is non-refundable.** Any Margin paid by you to CAFX is non-refundable and will be applied to satisfy your total payment obligation owed to CAFX with respect to the relevant Transaction by the Settlement Cut-off Time or on the date of any final Drawdown.

**Failure to meet Margin requirements.** If CAFX does not receive Initial Margin or Variation Margin when due, CAFX, at its option and in its sole discretion, may close out any or all of your open Transactions and apply the proceeds first to reimburse CAFX for the amounts due under the Transactions, including all Losses, and remit the balance of the proceeds, if any, to you. If the proceeds of disposition are insufficient to fully satisfy the amount owing to CAFX, then you shall pay to CAFX the difference within one (1) clear Business Day.

### 3. YOUR MONEY FOR DEALING IN SPOT FX, FORWARDS AND OPTIONS

**Trust Account.** We handle all client money we receive in relation to Forwards and/or Options in accordance with and subject to the T&Cs and the following applicable laws (**Australian Wholesale Client Money Rules**) to the extent that they are applicable to your dealings with us:

- (i) Part 7.8 of Division 2 of the Corporations Act;
- (ii) the relevant regulations in the Corporations Regulations 2001; and
- (iii) ASIC Regulatory Guide 212: Client money relating to dealing in OTC derivatives.
- (iv) Your client money paid to us in relation to Forwards and/or Options will be paid into a trust account maintained by us with an authorised deposit-taking institution (**ADI**). We will not be liable for the insolvency or any act or omission of any ADI holding the trust account. Your moneys may be co-mingled into one or more pooled trust accounts with other clients' moneys.

**Investment or other dealing of your money.** We may invest any of your money paid to us in relation to Spot FX, Forwards and/or Options as permitted by the Applicable Laws and you authorise us to undertake any such investment. Unless otherwise agreed in writing with you:

- (i) We are solely entitled to any interest or earnings derived from your moneys being deposited with us or invested by us in accordance with the Applicable Laws, with such interest or earnings being payable to us from the relevant account or investment account, as the case requires as and when we determine;
- (ii) upon realisation of an investment of your moneys, the initial capital invested must either be invested in another investment permitted by the Applicable Laws or deposited by us into an account operated in accordance with the Applicable Laws;
- (iii) in the event that the amount received upon realisation of an investment of your moneys is less than the initial capital invested, we must pay an amount equal to the difference into the account for the benefit of you, except where any such difference is the result of amounts paid out of the investment to us and/or any Associate of ours in accordance with these T&Cs;
- (iv) We will not charge a fee for investing your moneys in accordance with the Applicable Laws.

**Your authorisation.** You irrevocably and unconditionally authorise us and/or any Associate of ours to:

- (i) withdraw, deduct, apply or otherwise use any amounts payable by you to us and/or any Associate of ours under these T&Cs from your moneys held in any account or invested by us in relation to Spot FX, Forwards and/or Options, for the purpose of meeting obligations incurred by us in connection with the margining, guaranteeing, securing, transferring, adjusting or settling of dealings in any Contracts entered into by us (including dealings on behalf of entities and people other than a client of ours);
- (ii) withdraw, deduct, apply or otherwise use any amounts payable by you to us and/or any Associate of ours under this Agreement from your moneys held in any account or invested by us in relation to Spot FX, Forwards and/or Options, for the payment of interest, fees or charges to us. You acknowledge and agree that such amounts belong to us under this Agreement and may be used by us in our business from time to time;
- (iii) pay, withdraw, deduct or apply any amounts from your moneys in relation to Spot FX, Forwards and/or Options, held in any account or invested by us as permitted by the Applicable Laws, it being acknowledged and agreed



by you that any such amounts that belong to us may be used by us in our business from time to time, including for the payment of amounts to our counterparties;

- (iv) deal with any property, other than money, given to us under these T&Cs, including, without limitation:
  - a. dealing with such property in connection with the margining, adjusting or settling of dealings in any Contracts entered into by you; or
  - b. selling or charging in any way any or all of your property which may from time to time be in the possession or control of us or any of our Associates following the happening of an Event of Default;
- (v) deal with any property, other than money, given to us as permitted by the Applicable Laws.

#### 4. FORWARDS

**Risks.** You acknowledge and agree that you expressly accept the risks associated with Forward noting that the value of the currencies in a Forward may change between the date of the Transaction and the Settlement Cut-off Time.

##### **Dealing in Forward Contracts:**

- (i) A Forward can only be requested by phone, email or via the CAPAY Systems, and will become legally binding as and from the time the Transaction details are agreed between you and CAFX during the phone call, entered into via the CAPAY System or otherwise agreed by CAFX, and as further evidenced in the Transaction Confirmation.
- (ii) You may request early Drawdown, i.e. pre-delivery, of your Forwards via phone, email or the CAPAY Systems. This will reduce your obligation under the Forward. Depending on the market forward points, Drawdown (or pre-delivery) could mean a discount from the Forward rate or the Premium from the Forward rate. If CAFX agrees to your request, CAFX may adjust the agreed Transaction rate. Unless otherwise agreed, the Transaction becomes payable on the agreed Settlement Cut-off Time.
- (iii) Forwards may be extended (or Rollover) beyond the Settlement Cut-off Time but only at the discretion of and on conditions set by CAFX (including, but not limited to, adjustment of the agreed Transaction rate). If CAFX agrees to such an extension, you agree that the existing Forward will be terminated based on a rate determined by CAFX and a new Forward will be entered into which reflects the agreed changes. You acknowledge that the rates for the new Forward and for the termination of the original Forward may differ from those in the original Forward. You agree that all

losses and costs in relation to the change are your responsibility and must be paid within two (2) Business Days of termination of the original Forward.

**Historical Rate Roll.** You acknowledge that CAFX does not usually permit Forward to roll over at the rate(s) set out in the Transaction Confirmation applicable to the relevant Transaction (“**Historical Rate Roll**”). CAFX may consider a Historical Rate Roll in its sole discretion and on a case by case basis and on written request by you. An Application/request for Historical Rate Roll must be communicated to CAFX via phone or email, not via the CAPAY Systems.

**Margin requirements.** You acknowledge that we bear the risk that you may default on Settlement of the Forwards, and to mitigate this risk, we reserve the right to request that you pay one or more partial payments (Initial Margin and Variation Margin) in relation to all Forwards.

**Payment of full amount on Settlement Cut-off Time:**

- (i) You must transmit to CAFX’s nominated account the full amount required to settle the Forward, less any Margin payment already paid, together with any Fees that we (or any third party) have requested, on or before the Settlement Cut-off Time.
- (ii) If you fail to pay in full any Margin requirements or Settlement amount, CAFX may exercise its rights as set out in clause 45.

## 5. OPTIONS

**Risks.** You acknowledge and agree that you expressly accept the risks associated with Options noting that the value of the Options may change between the date of the Transaction and the Expiration Date. You expressly accept that a Premium is not refundable and that a potential loss in full or partial of Premium payment will result to you if the Option is not exercised or if the gain on exercise of the Option is less than the Premium.

**Dealing in Options.** All Options may be entered into only by phone or via email. An Option will become legally binding as and from the time that the Transaction details are agreed between CAFX and you over the phone, or otherwise agreed by CAFX via email, and as further evidenced in the Transaction Confirmation.

**Premium:**

- (i) If applicable, the Premium required will be specified in the Transaction Confirmation. The Premium must be paid to CAFX within two (2) Business Days of the Option being entered into.

- (ii) The Premium is a non-refundable fee. It does not relate to the underlying transaction that will be entered into when the Option is exercised and will not be applied towards a reduction of the Settlement amount payable under the underlying Transaction.
- (iii) In the event that you fail to pay the Premium in accordance with section 0 of Schedule B, CAFX is not obliged to exercise the Option, and reserves the right to terminate the Option upon twenty-four (24) hours' oral or written notice and recover all Losses incurred in connection with the Option. In the event the Option is terminated, the Premium remains payable by you as a debt to us. CAFX may also exercise its rights under clause 45.

**Windows and Trigger Rates.** Some Options allow a Window on the trigger event (“**Trigger**”). If the Option allows a Window for the Trigger, the applicable rate i.e. the Trigger Rate, can only be triggered during the period of the Window.

**Exercise the Option:**

- (i) Should you decide to exercise the Option, you must notify CAFX of your election to do so either by phone or email no later than the Expiration Time on the Expiration Date. Upon exercising the Option, you will be automatically entered into a Spot FX detailed in the Transaction Confirmation and will be bound by these T&Cs. You must immediately provide CAFX with Beneficiary Account details and deliver to us in full the Settlement Amount within twenty-four (24) hours.
- (ii) Unless CAFX receives contrary Instructions from you prior to the Expiration Date, CAFX will automatically exercise an ‘in the money’ (ITM) Option on your behalf. If an Option is not exercised in accordance with this section, the Option will lapse at the Expiration Time on the Expiration Date.

## 6. CREDIT FACILITY

**Credit Offer Letter.** Where CAFX has agreed to provide you with a CAPAY Account and provide Services to you in relation to:

- (i) Forwards or/and Options, CAFX will issue you a credit offer letter for your consideration and execution; and
- (ii) Spot FX, CAFX may issue you a credit offer letter if requested by you. Please speak with your Account manager for further information.

**When a Credit Facility will be issued.** Once you agree to the Credit Offer Letter and return an executed version to us, a Credit Facility will be established and applied to your CAPAY Account, Instructions and Transactions in relation to your dealings in Spot FX, Forwards and Options. The setting of any applicable Credit Facility

will be at the absolute discretion of CAFX.

**Exceeding the applicable Credit Facility.** You acknowledge and agree that if CAFX acts on an Instruction and/or Transaction which would result in a Credit Facility being exceeded:

- (i) you will continue to be liable to CAFX for all amounts including those above the Credit Facility; and
- (ii) CAFX is not obligated to (but may) act upon any subsequent Instruction where a Credit Facility might be exceeded.

## SETTLEMENT

### Settlement.

- (a) Unless otherwise provided in the Agreements or agreed in writing between you and us, you must promptly deliver the total amount of the cost to you of a Transaction, including the cost of currency acquisition as well as any fees and charges related to the execution of the Delivery Instructions, to our nominated bank account in immediately available funds on or before the Settlement Cut-off Time.
- (b) If any Settlement payment to us is paid to us electronically, you agree that payment shall not be recallable by you without our prior written consent.
- (c) You must ensure cleared funds are received by us for the full amount and applicable transfer charges on or before the required due date and time (i.e. the applicable Settlement Cut-Off Time) in relation to the Transactions. You are liable to us for all of the costs, taxes, interest, expenses and losses we incur arising out of your failure to settle a Transaction and us exercising our rights hereunder.

**Settlement Cut-Off Time.** You must make all Settlements:

- (a) owing to us in Australian dollars (unless otherwise agreed by us) by 3:30pm (Sydney Time) on the Settlement Date; or
- (b) owing to us in other currencies, by the date and cut off time specified in the Transaction Confirmation or any other document.

### Settlement Extension.

- (a) In the event we do not receive Settlement on or before Settlement Cut-off Time, we may, without your consent, amend the originally agreed upon Value Date to the immediately subsequent Business Day ("**Settlement Extension**"). You shall pay us any Losses incurred as a result of a difference between the value of the Transaction on the originally agreed upon Value Date and the prevailing market rate on the subsequent Business Day.

- (b) We reserve the right to extend the Settlement Cut-off Time of an Transaction as often as needed prior to its receipt if past due Settlement.
- (c) At any time prior to the Value Date, you may request us to extend the Value Date to a future Business Day (“**Settlement Extension Request**”). You must have an underlying business purpose for each Settlement Extension Request. All Settlement Extension Requests are subject to our approval. We may decline a Settlement Extension Request in our sole discretion for any reason. In the event of our acceptance of a Settlement Extension Request, you agree to pay to us on demand within one (1) clear Business Day the amount of any and all Losses we incur and any fee assessed by us to you in connection with its fulfilment of the Settlement Extension Request.

**Failure to make payments.** If you fail to make immediate payment in full Settlement for a Transaction or Instruction by the required timeframe or any other amount under this Agreement, we have the right to:

- (a) exercise our rights in accordance with the terms and conditions of this Agreement;
- (b) initiate any proceedings and take any other steps necessary to recover any balance due. Such steps shall be in our sole discretion, and you agree;
- (c) have no liability to you, and you waive any claim or action against us and our representatives;
- (d) indemnify and hold us and our representatives harmless from any and all Losses we incur resulting from your failure to pay and our effort to collect any balance due, including any costs associated with terminating and unwinding any Transactions;
- (e) recover interest upon any unpaid amounts in accordance with this Agreement; and
- (f) notify a credit reporting body of a non-payment by you, in accordance with the *Privacy Act 1988*.

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## **SCHEDULE C – FX REMITTANCE SERVICES**

### **1. APPLICABILITY OF THIS SCHEDULE**

Where applicable, this Schedule B applies to all your dealings with us in relation to our FX Remittance Services, which primarily involves Spot FX transactions.

### **2. YOUR INSTRUCTION**

2.1 We will only act on your instruction when buying and selling foreign currencies for electronic transfer or payment to your nominated recipient.

### **3. SETTLEMENT**

#### **3.1 Settlement.**

(a) Unless otherwise provided in the Agreements or agreed in writing between you and us, you must promptly deliver the total amount of the cost to you of a Transaction, including the cost of currency acquisition as well as any fees and charges related to the execution of the Delivery Instructions, to our nominated bank account in immediately available funds on or before the Settlement Cut-off Time.

(b) If any Settlement payment to us is paid to us electronically, you agree that payment shall not be recallable by you without our prior written consent.

(c) You must ensure cleared funds are received by us for the full amount and applicable transfer charges on or before the required due date and time (i.e. the applicable Settlement Cut-Off Time) in relation to the Transactions. You are liable to us for all of the costs, taxes, interest, expenses and losses we incur arising out of your failure to settle a Transaction and us exercising our rights hereunder.

#### **3.2 Settlement Cut-Off Time.** You must make all Settlements:

(a) owing to us in Australian dollars (unless otherwise agreed by us) by 3:30pm (Sydney Time) on the Settlement Date; or

(b) owing to us in other currencies, by the date and cut off time specified in

the Transaction Confirmation or any other document.

### 3.3 Settlement Extension.

- (a) In the event we do not receive Settlement on or before Settlement Cut-off Time, we may, without your consent, amend the originally agreed upon Value Date to the immediately subsequent Business Day (“**Settlement Extension**”). You shall pay us any Losses incurred as a result of a difference between the value of the Transaction on the originally agreed upon Value Date and the prevailing market rate on the subsequent Business Day.
- (b) We reserve the right to extend the Settlement Cut-off Time of an Transaction as often as needed prior to its receipt if past due Settlement.
- (c) At any time prior to the Value Date, you may request us to extend the Value Date to a future Business Day (“**Settlement Extension Request**”). You must have an underlying business purpose for each Settlement Extension Request. All Settlement Extension Requests are subject to our approval. We may decline a Settlement Extension Request in our sole discretion for any reason. In the event of our acceptance of a Settlement Extension Request, you agree to pay to us on demand within one (1) clear Business Day the amount of any and all Losses we incur and any fee assessed by us to you in connection with its fulfilment of the Settlement Extension Request.

3.4 **Failure to make payments.** If you fail to make immediate payment in full Settlement for a Transaction or Instruction by the required timeframe or any other amount under this Agreement, we have the right to:

- (a) exercise our rights under section 44 of this Agreement;
- (b) initiate any proceedings and take any other steps necessary to recover any balance due. Such steps shall be in our sole discretion, and you agree:
- (c) have no liability to you, and you waive any claim or action against us and our representatives;
- (d) indemnify and hold us and our representatives harmless from any and all Losses we incur resulting from your failure to pay and our effort to collect any balance due, including any costs associated with

terminating and unwinding any Transactions;

- (e) recover interest upon any unpaid amounts in accordance with section 29 of this Agreement; and
- (f) notify a credit reporting body of a non-payment by you, in accordance with the *Privacy Act 1988*.