

Trading Terms and Conditions New Zealand



Western Union Business Solutions (Australia) Pty Limited, (NZ Branch) doing business as Western Union Business Solutions

TERMS AND CONDITIONS

Terms and Conditions of doing business with WUBS New Zealand and WUBS International.

1. Definitions and Interpretation

1.1. Capitalised terms used in used in these Terms and Conditions have the following meaning.

Authorised Person: individual(s) and/or entity(ies) authorised by the Client to provide Instructions to WUBS on behalf of the Client. For the avoidance of doubt this may include an Authorised User.

Authorised User: an individual authorised by the Client to access the Online Payment System on behalf of the Client.

Business Hours/Business Days: in respect of a Transaction, means the hours/days during which banks are open for general banking business in the jurisdiction(s) which relate to that Transaction. In respect of an Instruction or payment obligation to WUBS (including, without limitation, an Initial Margin, Margin Call or amount payable in connection with the termination of a Forward Contract) means the hours/days during which banks are open for general banking business in the jurisdiction(s) where the Instruction or payment (as the case may be) is being received by WUBS.

Buyer: the party specified as the buyer of an Option Contract in the relevant Transaction Confirmation.

Call Currency: the currency denomination that is to be purchased by a Buyer pursuant to a Call Option.

Call Currency Amount: the amount of the Call Currency to be purchased on exercise of a Call Option.

Call Option: a transaction that gives the Buyer the right, but not the obligation to buy from the Seller at the Expiration Time the Call Currency Amount at the Strike Price.

CFTC: the Commodity Futures Trading Commission of the United States of America.

Client: the entity agreeing to these Terms and Conditions.

Client Access Methods: the unique password(s) and user identification(s) required to access the Online Payment System.

Client Money: money paid to which Subpart 7 in Part 6 of the Financial Markets Conduct Act 2013 applies.

Confidential Client Information: has the meaning give in clause 17.1 (*Information for Services*).

Contract Funds: the type of currency and amount the Client agrees to purchase/sell.

Corporations Act: Corporations Act 2001 (Cth).

Delivery Window: the period of time prior to the Maturity Date (Delivery Date/Value Date) during which the Client may draw down on a Forward Contract as specified by WUBS.

Derivative Rules: ASIC Derivative Transaction Rules (Reporting) 2013 (Cth).

Expiration Date: the last date on which a Options Contract can be exercised.

Expiration Time: the last time at which WUBS will accept a Notice of Exercise, which shall be 3.00pm (Tokyo Time) on the Expiration Date, unless otherwise stated in the applicable Transaction Confirmation.

Facility: the Settlement terms and foreign currency exposure or trading limit(s) that WUBS, in its sole discretion, may grant the Client from time to time. Additional detail with respect to the Client's Facility may be set forth in a written communication and delivered to the Client by WUBS.

Fixing Date: the date that is specified by WUBS for calculating the settlement amount that is payable pursuant to a NDF.

Foreign Exchange Contract: a legally binding agreement between the Client and WUBS to effect a foreign exchange transaction including a Forward Contract or an Option Contract in accordance with any Instruction.

Forward Contract: a legally binding agreement in which the Client agrees to purchase from or sell to WUBS a specific amount of funds in

one currency and to settle, on an agreed future date, in a specific amount of funds in another currency or to purchase a NDF.

Holding Balances: Client funds held by WUBS International as nominee for the Client for the convenience of the Client pending receipt by WUBS International (or WUBS as its agent) of an Instruction from the Client, including Payee designation.

Initial Margin: collateral (or security), the amount of which shall be determined by WUBS in its sole discretion and deposited with WUBS in connection with a Foreign Exchange Contract(s).

Instruction (Request): a request by the Client for WUBS and/or WUBS International to provide Services, including any request for Services made by mail, electronic mail, facsimile, telephone, Standing Order Instructions, the Online Payment System(s) or other means which is effective upon receipt, each as more particularly described herein.

ITM: means where the prevailing market exchange rate for the currency pair in an Option Contract is less favourable than the Strike Price for that Option Contract.

Knock-In Rate: 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 Buyers right pursuant to an Option Contract to become effective.

Knock-Out Rate: 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 Buyers right pursuant to an Option Contract to terminate.

Legal Entity Identifier/LEI: a unique 20-character alphanumeric code issued pursuant to the Global Legal Entity Identifier System.

Margin Call: an additional security payment required by WUBS in connection with a Forward Contract or Options Contract.

Maturity Date (Delivery Date/Value Date): the date on which a Foreign Exchange Contract becomes due for delivery and Settlement.

New Zealand Client Money Rules: all laws and regulations applicable to Client Money including but not limited to Subpart 7 in Part 6 of the Financial Markets Conduct Act 2013 and the Financial Markets Conduct Regulations 2014 as may be amended from time to time.

Non-Deliverable Forward Contract/NDF: a Forward Contract for an undeliverable currency that is settled by the parties netting the value of the contract against the spot rate in a specified Reference Currency on a specified date and the relevant party paying the other the difference.

Notional Amount: the amount and type of currency that is the subject of an NDF.

Notification: a communication other than an Instruction made by mail, electronic mail, facsimile, telephone, the Online Payment System(s) or other means.

Online Payment System(s): WUBS' proprietary online system(s) for making international payments.

Option Contract: a Call Option or a Put Option.

Party or Parties: individually or collectively, as the context requires the Client and/or WUBS.

Payee: any third party to which the Client instructs WUBS to deliver a payment.

Premium: the amount that is payable by the Buyer to the Seller on the Premium Payment Date for an Option Contract.

Premium Payment Date: the date that is two business days after the date that an Option Contract is entered into.

Put Currency: the currency denomination that is to be sold by a Buyer pursuant to a Put Option.

Put Currency Amount: the amount of the Put Currency to be sold on exercise of a Put Option.

Put Option: a transaction that gives the Buyer the right, but not the

obligation, to sell to the Seller at the Expiration Time the Put Currency Amount at the Strike Price.

Reference Currency: in respect of a NDF means AUD or such other currency as WUBS may specify as the settlement currency for that NDF.

Reference Currency Notional Amount: in respect of a NDF means the cost of the Notional Amount for that NDF expressed in the Reference Currency and calculated by applying the relevant forward exchange rate.

Related Bodies Corporate: has the meaning given in the Corporations Act.

Seller: the party specified as the seller of an Option Contract in the relevant Transaction Confirmation.

Services: the provision of Foreign Exchange Contracts, the making of payments by telegraphic transfer, direct debit or credit or banker's draft, and other global payment solutions provided by WUBS in accordance with the Client's Instruction.

Settlement: the total amount, including the cost of currency acquisition as well as any fees and charges, the Client owes to WUBS.

Site Administrator: the individual designated by the Client to access and administer the security of the Client's usage of the Online Payment System(s), such as granting or rescinding Authorised User privileges and maintaining Client Access Methods.

Standing Order Instruction: the Client's Instruction to purchase/sell for the Client's account, Contract Funds at the Target Rate within the Standing Order Effective Period, without prior oral approval. The Standing Order Instruction must also set forth the currency, the amount, and delivery instructions (if any).

Standing Order Effective Period: the time within which the Client has instructed WUBS to purchase or sell Contract Funds at the Target Rate.

Strike Price: the currency exchange rate at which the Put Currency and the Call Currency will be exchanged upon the exercise of an Options Contract.

Sustainable and Purchasable: in regard to foreign exchange market rates, the rate at which a Standing Order will be executed. The rate must be traded in the market with volume sufficient to sustain that rate level for a commercially reasonable timeframe.

Target Rate: the rate (calculated after WUBS applies its margin) at which the Client has instructed WUBS to purchase/sell Contract Funds if and when the stipulated rate is Sustainable and Purchasable

Term: the period of time from the date the Parties enter into an Options Contract to the Expiration Time.

Terms and Conditions: the Trading Application, these Terms and Conditions and any Exhibits, Attachments, Schedules and/or Addenda (each as amended from time to time), which taken together, shall govern the relationship among the Parties, as it relates to the ordering, delivery and receipt of the Services contemplated herein.

Trading Application: The Application for Doing Business with Western Union Business Solutions (Australia) Pty Ltd.

Transaction: a Foreign Exchange Contract or any other Services that WUBS agrees to provide to the Client following an Instruction in accordance with these Terms and Conditions.

Transaction Confirmation: a Notification that details the Transaction(s) that the Parties have agreed to execute.

Transaction Date: the date on which WUBS executes an Instruction on behalf of the Client regarding the receipt or initiation of a payment in a particular amount.

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

U.S. Person: has the meaning given to such term in CFTC regulations relating to derivatives transactions and guidance issued by the CFTC or CFTC staff from time to time relating to derivatives transactions.

Window: an agreed period of time during the Term of an Option Contract 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 Contract), "last week" (where the Trigger Rate is only effective in the last week of an Option Contract), "last day" (where the Trigger Rate is only effective on the last day of an Option Contract and "at Expiry" (where the Trigger Rate is only effective at the Expiration Time on the Expiration Date.

WUBS: as the context requires, means WUBS New Zealand or WUBS International depending on the type of Service being provided (as set out in clause 2.2 (*Provision of Services*)).

WUBS New Zealand: Western Union Business Solutions (Australia) Pty Ltd (Company number 3527631 FSP 168204).

WUBS Group Company: any Related Body Corporate of WUBS and includes WUBS' shareholder and ultimate holding company and all subsidiaries of that ultimate parent entity, including WUBS International.

WUBS International: Western Union Business Solutions (USA) LLC or such other WUBS Group Company as WUBS, at its discretion may determine from time to time.

2. Conducting Business with WUBS

2.1. Master Agreement. These Terms and Conditions are a master agreement that apply to all Transactions. The specific transactional details of each Transaction (including the currencies to be exchanged and the amount of the Transaction) will be agreed separately when the Client books the Transaction. For the avoidance of doubt, each Transaction will constitute independent separate agreements and will incorporate the Terms and Conditions.

2.2. Provision of Services. Where any of the Services involve the provision of a Foreign Exchange Contract and/or the remittance of funds to designated Payee's or to the Client, WUBS will provide such Services as principal. The provision of Holding Balances will be provided by WUBS International either directly or via WUBS as its agent.

2.3. Reliance on Instruction. The Client hereby authorises WUBS to accept, act and rely upon any Instruction that WUBS reasonably believes to have been made by the Client to provide the Services set forth in the Instruction from the Client.

2.4. Delivery of Instructions. The Client may give Instructions relating to Services being provided to the Client by WUBS International to WUBS as agent for WUBS International.

2.5. Accuracy of Instruction. Before transmitting an Instruction, the Client is responsible for ensuring all information contained in the Instruction is complete, accurate and, if in writing, legible. If the Client subsequently learns of any error in an Instruction, the Client must immediately notify WUBS in writing.

2.6. Inaccurate or Incomplete Instructions. If the Client fails to provide a timely, complete, accurate and legible Instruction, WUBS may place the Contract Funds in a Holding Balance pending receipt from the Client of the information necessary to complete the transaction(s). WUBS shall not be liable for any loss or damage suffered by the Client as a result of any such delay.

2.7. Transaction Processing.

A. WUBS agrees to process Transactions for the Client as soon as commercially practicable (during Business Hours) after receiving an Instruction provided always that WUBS may refuse to do so:

- (i) if information required from the Client is not sufficient or inadequate; and/or
- (ii) in order to comply with applicable laws and regulations.

B. The Parties agree that a Transaction will be deemed to be binding and final once a transaction confirmation number has been generated by WUBS.

C. Once the Instruction has been processed and the Transaction Confirmation has been generated, WUBS will provide the Transaction Confirmation to the Client. WUBS will send drafts to the Client (or Payee) once the Instruction is processed or will initiate the electronic funds transfer(s) upon receipt of Settlement from the Client, unless otherwise agreed in writing between the Client and WUBS.

2.8. Cancellation. Once a Transaction has become legally binding, the Client may not cancel the Transaction in any circumstances. The Client may only take action to correct any of the Transaction details set out in the Transaction Confirmation if the Transaction Confirmation does not reflect the transaction details that have already been agreed.

2.9. Fees. The Client understands that WUBS will charge certain fees for the Services, which fees will be set forth in a fee schedule that will be provided to the Client upon request. The Client agrees and acknowledges that the Client has seen and agreed to the relevant fee for the Service before placing an Instruction. WUBS may change the fees charged for the Services at its sole discretion at any time upon notice to the Client. Any change will be effective

from the date of the notice, or as soon as permitted by applicable law.

- 2.10. Use of Subcontractor.** WUBS may subcontract any part of the Services to any third party (whether or not a WUBS Group Company) but WUBS will remain primarily liable for the provision of the Services.
- 2.11. Assignment of Interest.** The Client understands and agrees that no interest will be paid to the Client by WUBS with respect to any funds received by WUBS on the account of the Client (including, without limitation, funds awaiting Instruction, funds maintained in a Holding Balance or Initial Margin or Margin Call). In consideration for the Client's use of the Services, the Client irrevocably transfers and assigns to WUBS any ownership right that the Client may claim to have in any interest that may accrue with respect to any funds held on behalf of the Client. For avoidance of doubt, such assignment extends only to any interest earned on any such funds.
- 2.12. Refusal of Services.** WUBS may, in its absolute discretion, refuse to accept any Trading Application or Instruction, suspend, cancel, block or freeze any of the Services (including any part of the Services) and in certain circumstances, may not disclose reasons for doing so to the Client.

3. Instructions and Confirmations

- 3.1. Authorised Persons.** The Client agrees that each of the persons named in the Trading Application are Authorised Persons and are empowered to give Instructions and that WUBS is authorised (though not obliged) to act in accordance with any Instruction given by any such person or any person who purports to be such person. If the Client wishes to change an Authorised Person it must notify WUBS in writing. The Client acknowledges that until actual receipt of such written notice, WUBS is entitled to rely on the Client's most recent list of Authorised Persons.
- 3.2. Telephone Instructions.** The Client agrees that it will be bound by all telephone Instructions regardless of whether they are later confirmed in writing. To verify the identity of a caller WUBS is only obliged to request that the caller give his or her name. If the caller identifies him or herself as an Authorised Person, WUBS is entitled to assume that it is such person. The Client consents to WUBS recording all telephone Instructions for the protection of the Parties and acknowledges that such recordings remain the property of WUBS.
- 3.3. Facsimile Instructions.** The Client agrees that WUBS may act on any facsimile Instruction which is signed, or appears to be signed by an Authorised Person and that the Client will be bound by all such Instructions. WUBS is not obliged to verify the source of any facsimile Instructions or to make enquires as to the identity of the person giving or purporting to give facsimile Instructions.
- 3.4. Email Instructions.** The Client agrees that WUBS may act on, and the Client will be bound by, any email Instruction which is from, or appears to be from, an Authorised Person.
- 3.5. Internet Instructions.** The Client agrees that WUBS may act on, and the Client will be bound by, any Instructions received through the Online Payment System.
- 3.6. Transaction Confirmations.** WUBS may issue to the Client a Transaction Confirmation setting forth the details of any Instruction that WUBS receives. If there are any discrepancies between the Instruction and the Transaction Confirmation, the Client must immediately notify WUBS of such discrepancy during Business Hours. If the Client does not communicate any discrepancies within one (1) Business Day of the day that WUBS sends a Transaction Confirmation, then the Transaction Confirmation will constitute conclusive proof of the details of the Instruction. The Client will be bound by the terms upon which WUBS accepted any Instruction, regardless of whether the Client receives a Transaction Confirmation. In the event of any conflict between the terms and a Transaction Confirmation and the Terms and Condition the terms of the Transaction Confirmation will prevail.

4. Online Payment System License

- 4.1. Online Payment System License.** The Client may request access to the Online Payment System and WUBS may require the Client

sign additional authorisation forms prior to providing such access. Upon the provision of access by WUBS to the Online Payment System the Client will be granted non-exclusive, non-transferable, and non-sublicensable licence to use the Online Payment System for the sole purpose of facilitating the Client's receipt of the Services while these Terms and Conditions remain in effect.

- 4.2. Online Payment System Restrictions.** The Client agrees that the Online Payment System is and will remain the exclusive property of WUBS (or the applicable WUBS Group Company). Accordingly, the Client must not distribute or disclose the Online Payment System to, or permit use of the Online Payment System by, any third party. The Client must not, directly or indirectly, decompile, disassemble, reverse engineer, or otherwise attempt to derive or discern the source code or internal workings of the Online Payment System.
- 4.3. Use of Online Payment System.** The Client agrees to use the Online Payment System solely in the ordinary course of its business and agrees to restrict access to the Online Payment System to employees or representatives whose functions require them to access the Online Payment System for such purposes.
- 4.4. Termination of Client's use of the Online Payment System.** The Client agrees that WUBS may terminate the Client's licence to access and use the Online Payment System at any time for any reason. WUBS will provide written notification of such termination.
- 4.5. Intellectual Property Indemnity.** WUBS will indemnify and hold the Client harmless of any direct damages and costs awarded by a court of competent jurisdiction against the Client, which relate directly to a finding by such court that the Client's use of the Online Payment System in accordance with these Terms and Conditions infringed any copyright, patent, trade secret or other intellectual property right of a third party; provided, however, the Client must provide WUBS with prompt notice of any actual or potential third party claim, and agree to allow WUBS, to the extent it chooses, to defend and direct all activities relating to the defense and/or settlement of any such third party claim.

5. Online Payment System Security.

- 5.1. Two Factor Authentication.** If the Client requests access to the Online Payment System, WUBS may provide access through two factor identification such as a digital certificate(s) or unique code provided through SMS, email or through a mobile application ("2FA Device") and if it does, the Client will assume sole responsibility for use of the 2FA Device. The Client agrees that the 2FA Device will be used only by the Client on the Client's premises or at the Client's authorised remote locations.
- 5.2. Security of the Client Access Methods.** The security of the Client's access to and transactions on the Online Payment System, including, but not limited to, the security and secrecy of the Client Access Methods, will at all times be the sole responsibility of the Client and will be administered by the Site Administrator. The Client hereby acknowledges that:
- A.** there are inherent risks of using online financial services such as the Online Payment System if the security of the Client Access Methods are not strictly maintained; and
- B.** it is important (among other things) that the Client:
- (i) takes appropriate security measures to protect their devices and computer systems;
 - (ii) protects the Client Access Methods, security tokens (if applicable), personal details and other confidential data;
 - (iii) does not use the same Client Access Methods for different websites, applications or services. Client Access Methods should not be based on guessable information such personal telephone number, birthday or other personal information; and
 - (iv) adopts security precautions and practices including up-to-date anti-virus, anti-spyware, firewall software and operating systems on their devices and computer, remove file and print sharing, make regular back up of critical data, consider the use of encryption technology, log off online sessions when complete, clear browser cache after the online session, does not install software or run programs of unknown origin, does not open email attachments from strangers, does not disclose

sensitive information to little-known or suspect websites, does not use a computer or a device which cannot be trusted and does not use public computers to access the Online Payment System.

5.3. Site Administrator. The Client must appoint and maintain the appointment of a Site Administrator and provide WUBS with the name of that individual. The Site Administrator is responsible for maintaining the security of the Client Access Methods and will be designated as the primary Client contact (unless otherwise communicated in writing by the Site Administrator or a duly authorised officer of the Client, which writing will designate a replacement contact). The Site Administrator may also, among other things, add/remove an Authorised User (by delivering a notice of such a change in writing) and/or, enable Authorised Users to initiate an electronic debit payment(s) via the Online Payment System.

5.4. Authorised Users. The Site Administrator must provide WUBS with a list identifying each Authorised User so WUBS can properly assign the Client Access Methods. Each Authorised User may make changes to its Client Access Methods at any time after WUBS' initial assignment.

6. Forward Contracts

6.1. Forward Contracts. The Client may authorise WUBS to enter into a Forward Contract only by delivering an Instruction.

6.2. Initial Margin and Margin Call Payments.

A. WUBS may, in its absolute discretion, require the Client:

- (i) to make an Initial Margin payment in relation to any Forward Contract within 2 Business Days of the Client's Instruction to enter into a Forward Contract; and/or
- (ii) to make an Initial Margin payment (if not already provided) or Margin Call payment within 2 Business Days at any time and on more than one occasion during the term of a Forward Contract.

B. Initial Margin and Margin Call payments are intended to maintain the relative value of the funds to be purchased from or sold to WUBS pursuant to a Forward Contract or to address, in WUBS' sole discretion, an adverse change in the Client's financial standing and/or credit worthiness or an adverse change in the external economic environment. The Client acknowledges that the amount of any Initial Margin or Margin Call will be determined by WUBS in its absolute discretion and that WUBS may require an Initial Margin or Margin Call payment to be made even if WUBS has provided the Client with a Facility.

C. Any Initial Margin and/or Margin Call payments delivered by the Client and received by WUBS are non-refundable and will be applied to satisfy the Client's total payment obligation owed to WUBS with respect to the relevant Forward Contract on the Maturity Date (Delivery Date/Value Date) or on the date of any final draw down.

6.3. Delivery of Funds. Once Settlement has been received by WUBS with respect to a Forward Contract, WUBS will deliver the Contract Funds in accordance with the Instruction or, if no such Instruction is provided, into a Holding Balance. If the Client does not have access to a Holding Balance, the Client must provide to WUBS, at least 2 Business Days before the Maturity Date (Delivery Date/Value Date) or Draw Down Date, the necessary remittance details and Instructions to initiate payment of the Contract Funds to the Payee.

6.4. Draw Down. Subject to WUBS' agreement the Client may draw down against a Forward Contract during the Delivery Window provided that WUBS has received Settlement in immediately available funds corresponding to the amount of the draw down. Notwithstanding any draw down, the Client is required to provide full Settlement (or any remaining balance) to WUBS in immediately available funds in connection with a Forward Contract on or before the end of Business Hours on the Maturity Date (Delivery Date/Value Date). WUBS may, at its discretion, apply to any draw down any rate of exchange that it deems reasonably appropriate.

6.5. Rollover. Subject to WUBS' agreement the Client may rollover a Forward Contract, or any portion thereof, before the Maturity Date (Delivery Date/Value Date) subject to the terms, conditions and

costs (if any) of such rollover being agreed in advance by the Client and WUBS.

6.6. Settlement of a Non-Deliverable Forward Contract. On the Fixing Date, WUBS will determine the amount payable by calculating the difference between the Reference Currency Notional Amount and the value of the Notional Amount in the Reference Currency at the prevailing spot exchange rate. If the value of the Notional Amount in the Reference Currency at the prevailing spot exchange rate on the Fixing Date is greater than the Reference Currency Notional Amount payment of the difference will be made by WUBS on the Maturity Date (Delivery Date/Value Date). If the value of the Notional Amount in the Reference Currency at the prevailing spot exchange rate on the Fixing Date is less than the Reference Currency Notional Amount payment of the difference must be made by the Client to WUBS on the Maturity Date (Delivery Date/Value Date).

6.7. Termination of Forward Contracts.

A. If the Client:

- (i) fails to deliver to WUBS any Initial Margin or Margin Call or, communicates to WUBS an intent not to provide to WUBS any Initial Margin or Margin Call required in relation to a Forward Contract;
- (ii) disputes the validity or existence of a Forward Contract or defaults, or communicates its intent to default, on any of its obligations described in these Terms and Conditions including any of the representations or warranties set out in clause 21 (*Representations and Warranties*) or elsewhere;
- (iii) is insolvent or a receiver or administrator is appointed with respect to some or all of its assets or it enters into liquidation or is subject to any other analogous insolvency event;
- (iv) ceases or threatens to cease to carry on business or sells all, or substantially all of the assets of the business; or
- (v) breaches any applicable laws.

WUBS may, without notice, immediately terminate the relevant Forward Contract and/or any other outstanding Forward Contract agreed to between the Parties without any liability to WUBS and/or take any other steps WUBS deems appropriate, including any actions contemplated under clause 11 (*Settlement*) to mitigate the potential loss(es) caused by the Client's failure to honour its contractual obligations under the Forward Contract.

B. In the event of such termination, the Client agrees to pay to WUBS on demand within 5 Business Days the amount of any and all losses and expenses incurred by WUBS in connection with the termination and unwinding of the Forward Contract(s).

C. Where a Forward Contract has been terminated, the Client agrees that WUBS's sole liability to the Client will be to return any amounts the Client actually paid to WUBS that remain after deducting all amounts owed to WUBS. Except as contemplated in this clause 6.7 (*Termination of Forward Contracts*), the Client understands that a Forward Contract, once agreed and entered into, cannot be terminated.

7. Option Contracts

7.1. Option Contracts. The Client may authorise WUBS to enter into an Option Contract only by delivering an Instruction. Each Option Contract will be governed by the provisions of this clause 7 (*Options Contracts*), in addition to the rest of these Terms and Conditions.

7.2. Payment of Premium. If applicable the Buyer must pay to the Seller the Premium in cleared funds on the Premium Payment Date in accordance with the Seller's instructions. The Premium is non-refundable. If the Buyer fails to pay the Premium in full the Seller is not obliged to accept Exercise and may terminate the Option Contract and recover all costs and expenses incurred in connection with the Option Contract, including payment of the Premium, which shall remain due and payable as a debt. For the avoidance of doubt the payment of the Premium is separate and distinct from any payment obligations that arise upon Exercise of an Option Contract.

7.3. Initial Margin and Margin Call Payments.

A. WUBS may, in its absolute discretion, require the Client:

- (i) to make an Initial Margin payment in relation to any Option Contract within 2 business days of the Client's Instruction to enter into an Option Contract; and/or
 - (ii) to make an Initial Margin payment (if not already provided) or Margin Call payment within 2 business days at any time and on more than one occasion during the term of an Option Contract.
- B.** Initial Margin and Margin Call payments are intended to maintain the relative value of the funds to be purchased from or sold to WUBS pursuant to an Option Contract or to address, in WUBS' sole discretion, an adverse change in the Client's financial standing and/or credit worthiness or an adverse change in the external economic environment. The Client acknowledges that the amount of any Initial Margin or Margin Call will be determined by WUBS in its absolute discretion and that WUBS may require an Initial Margin or Margin Call payment to be made even if WUBS has provided the Client with a Facility.
- C.** Any Initial Margin and/or Margin Call payments delivered by the Client and received by WUBS are non-refundable and will be applied to satisfy the Client's total payment obligation owed to WUBS with respect to the relevant Option Contract on the Maturity Date (Delivery Date/Value Date) or on the date of any final Draw Down.
- 7.4. Trigger Rates and Windows.** WUBS and the Client may agree that a particular Trigger Rate will apply to an Option Contract. Any agreed Trigger Rate will apply during the Term of an Option Contract unless the Parties agree that a Window will apply to the Trigger Rate. If the Parties agree that a Window will apply to the Trigger Rate the applicable rate can only be triggered during the period of the Window.
- 7.5. Exercise.** The Buyer may exercise an Option Contract by giving a Notice of Exercise to the Seller. The Notice of Exercise of an Option Contract must be given on the Expiration Date and not later than the Expiration Time. The Seller must accept the Notice of Exercise provided that any applicable Premium has been paid. Clause 3 of these Terms and Conditions shall apply to the provision of an Exercise Notice by the Client. An Exercise Notice may be given by WUBS by telephone, fax or electronic mail. Unless the Client provides WUBS with an Instruction to the contrary if the Client is the Buyer of an Option Contract that is ITM on the Expiration Date WUBS will exercise the Option Contract provided that any applicable Premium has been paid and the Client is not otherwise in breach of these Terms and Conditions. Unless WUBS provides an instruction to the Client to the contrary if WUBS is the buyer of an Option Contract that is ITM on the Expiration Date WUBS will exercise the Option Contract. If an Option Contract is not exercised in accordance with this clause the Option Contract will lapse at the Expiration Time.
- 7.6. Delivery of Funds.** Once Settlement has been received by WUBS with respect to an Option Contract, WUBS will deliver Contract Funds in accordance with the Client's Instruction or, if no such Instruction is provided, into a Holding Balance. If the Client does not have access to a Holding Balance, the Client must provide to WUBS, at least 2 Business Days before the Maturity Date (Delivery Date/Value Date) the necessary remittance details and Instructions to initiate payment of the Contract Funds to the Payee.
- 7.7. Termination of Option Contracts**
- A.** If the Client:
- (i) fails to deliver to WUBS any Initial Margin or Margin Call or, communicates to WUBS an intent not to provide to WUBS any Initial Margin or Margin Call required in relation to an Option Contract;
 - (ii) disputes the validity or existence of an Option Contract or defaults, or communicates its intent to default, on any of its obligations described in these Terms and Conditions including any of the representations or warranties set out in clause 21 (*Representations and Warranties*) or elsewhere;
 - (iii) is insolvent or a receiver or administrator is appointed with respect to some or all of its assets or it enters into liquidation or is subject to any other analogous insolvency event;
 - (iv) ceases or threatens to cease to carry on business or sells all, or substantially all of the assets of the business; or

(v) breaches any applicable laws.

WUBS may, without notice, immediately terminate the relevant Option Contract and/or any other outstanding Option Contract agreed to between the Parties without any liability to WUBS and/or take any other steps WUBS deems appropriate, including any actions contemplated under clause 11 (*Settlement*) to mitigate the potential loss(es) caused by the Client's failure to honour its contractual obligations under the Option Contract.

- B.** In the event of such termination, the Client agrees to pay to WUBS on demand within 5 Business Days the amount of any and all losses and expenses incurred by WUBS in connection with the termination and unwinding of the Option Contract(s).
- C.** Where an Option Contract has been terminated, the Client agrees that WUBS's sole liability to the Client will be to return any amounts the Client actually paid to WUBS that remain after deducting all amounts owed to WUBS. Except as contemplated in this clause 7.7 (*Termination of Option Contracts*), the Client understands that an Option Contract, once agreed and entered into, cannot be terminated.

8. Foreign Currency Cheque Purchase

- 8.1. Purchase and conversion.** WUBS may agree to purchase and convert into New Zealand dollars, or some other currency, a foreign currency cheque(s) that the Client has received in its name and delivered to WUBS. WUBS may request additional information satisfactory to WUBS, in its sole discretion, that the Client has the authority to deliver the foreign currency cheque to WUBS for purposes of foreign currency conversion and negotiation.
- 8.2. Endorsement.** Any foreign currency cheque(s) delivered to WUBS for the purpose of purchase and conversion must be endorsed to WUBS, without restriction or qualification, by an authorised representative of the Client.
- 8.3. Non-negotiable cheques.** In the event that a foreign currency cheque(s) is returned to WUBS as non-negotiable or for insufficient funds or is otherwise not accepted by WUBS' depository financial institution, such cheque(s) will be returned to the Client and the Client agrees to immediately reimburse WUBS for amounts delivered to the Client by WUBS in connection with the foreign currency cheque(s) purchase, plus any charges, fees or losses that WUBS may have incurred.
- 8.4. Lost, stolen or destroyed cheques.** In the event that a foreign currency cheque is lost, stolen or destroyed in transit during the clearing process, WUBS will promptly notify the Client after being advised of any such loss, theft or destruction. WUBS will provide the Client with a letter certifying that WUBS has not received value for the foreign currency cheque(s) and the Client agrees to immediately reimburse WUBS for any amounts delivered to the Client by WUBS in connection with the foreign currency cheque(s) purchase. If such amounts have been delivered to the Client in foreign currency WUBS may convert such amounts to New Zealand dollars at its then prevailing spot foreign exchange rate and the Client shall immediately remit the New Zealand dollar amount in accordance with WUBS instructions.
- 8.5. Foreign currency cheque indemnity.** The Client agrees to indemnify and hold WUBS harmless for any damages, losses, costs and expenses incurred by WUBS in connection with WUBS' acceptance, negotiation or purchase of any foreign currency cheque received by WUBS from the Client. The Client acknowledges that WUBS is relying upon this indemnity in providing value in exchange for any foreign currency cheque.

9. Incoming Payments

9.1. Delivery of Incoming Payments

- A.** The Client may instruct a third party to electronically deliver a certain amount of funds for the benefit of the Client into a correspondent bank account designated, owned and maintained by WUBS ("**Incoming Payment**").
- B.** The Client must require that the third party sender include the Client's name and account number (as designated by WUBS) in the memo or reference line of any such Incoming Payment. WUBS may in its sole discretion, attempt to contact the third party sender to secure any additional information that may be needed to

ensure accurate processing of the Incoming Payment.

- C.** WUBS will not be liable to the Client for any loss or damage suffered by the Client as a result of any delay in delivery of the Incoming Payment which results from the lack of complete and accurate Incoming Payment information.
- D.** Following WUBS' receipt and confirmation of the Incoming Payment, WUBS will deduct its applicable fees and may deliver the Incoming Payment into the Holding Balance or, if the Client previously had delivered an Instruction stipulating the disposition of the Incoming Payment, WUBS will initiate the payment in accordance with such Instruction.

10. Standing Order Instructions

- 10.1. Standing order instruction.** If the Client issues a Standing Order Instruction to WUBS, the Client authorises WUBS to accept and act in accordance with the Instruction to purchase or sell Contract Funds at a specified Target Rate. Each Standing Order Instruction will only be effective after WUBS has received it and has had a commercially reasonable opportunity to act upon it. The Standing Order Effective Period, as communicated to WUBS in the Standing Order Instruction, shall be deemed to be "good until cancelled" unless the Client provided a fixed ascertainable date for the end of the Standing Order Effective Period.
- 10.2. Standing Order Purchase or Termination.** If the terms of the Standing Order Instruction are met during the Standing Order Effective Period, WUBS will send to the Client a Transaction Confirmation in respect of each Transaction executed pursuant to the Standing Order Instruction. If the terms of the Standing Order are not met by the end of the Standing Order Effective Period, the Standing Order Instruction will expire. The Client agrees to promptly review each Transaction Confirmation for accuracy and immediately advise WUBS of any error or discrepancy.
- 10.3. Cancellation of a Standing Order Instruction.** To cancel a Standing Order Instruction, WUBS must receive an Instruction directing cancellation and have had a commercially reasonable opportunity to act upon such Instruction. In the absence of such Instruction, WUBS will honour the Standing Order Instruction and the Client will be liable for Settlement.
- 10.4. Target Rate.** If the Target Rate does not become Sustainable and Purchasable during the Standing Order Effective Period, the Standing Order will automatically expire at the end of the Standing Order Effective Period. Unless otherwise stated by WUBS, Standing Orders are accepted between 9:00 a.m. and 5:00 p.m. (Auckland time). Unless otherwise stated by WUBS, orders will remain in force until 11:59 p.m. (Auckland time) on the last day of the Standing Order Effective Period.

11. Settlement

- 11.1. Settlement.** Unless otherwise provided in these Terms and Conditions or agreed in writing between the Parties, the Client agrees to promptly deliver Settlement to WUBS or WUBS' nominated account in immediately available funds on or before the Maturity Date (Delivery Date/Value Date) (which date may be amended from time to time if WUBS agrees). If Settlement is paid to WUBS electronically, the Client agrees that Settlement shall not be recallable by the Client without WUBS' prior written consent. If the Client fails to make immediate payment in full Settlement for the Transaction, WUBS shall have the right to suspend and/or ultimately terminate these Terms and Conditions, terminate and unwind any Transactions and/or initiate any proceedings necessary to recover any balance due. Such steps shall be at the sole discretion of WUBS, and the Client agrees:
- (i) that WUBS shall have no liability to the Client, and the Client waives any claim or action against WUBS;
 - (ii) to indemnify and hold WUBS harmless from any and all liability, claims, damages, and costs, including all reasonable fees incurred by WUBS resulting from the Client's failure to pay and WUBS' effort to collect any balance due (including any costs associated with terminating and unwinding any Transactions); and

- (iii) WUBS may recover interest calculated at the daily rate of the indicator lending rate for business overdrafts as periodically announced by the Westpac Banking Corporation plus 2% upon any unpaid amounts plus a late fee.

11.2. Settlement using Collateral. In the event that the Client defaults with respect to any payment obligation arising under these Terms and Conditions, the Client acknowledges and agrees that WUBS and/or any WUBS Group Company may satisfy any resulting liability to WUBS and/or any other WUBS Group Company, out of any funds held by WUBS and/or a WUBS Group Company in relation to a Transaction (whether held absolutely or on behalf of the Client), including without limitation, any Initial Margin or Margin Call, funds maintained in a Holding Balance or other obligations owed to the Client (such as distribution of Contract Funds), without prior notification to the Client. In the event such funds or other obligation is insufficient, the Client will remain liable to WUBS for full Settlement or for any costs associated with terminating and unwinding a Transaction and must promptly pay on demand the amount of any loss or expense sustained by WUBS.

11.3. Set-Off. Subject to applicable laws, without prior notice to the Client, the Client acknowledges and agrees that WUBS may at any time set off any amount payable by WUBS or any WUBS Group Company to the Client against any amount payable by the Client to WUBS or any WUBS Group Company. For this purpose any amount outstanding may be converted by WUBS into the currency in which any other amount is denominated at the rate of exchange at which WUBS would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency. If an obligation is unascertained, WUBS may in good faith estimate that obligation and set off in respect of the estimate, subject to accounting to the Client when the obligation is ascertained. In the event such funds or other obligation is insufficient, the Client will remain liable to WUBS for full Settlement or for any costs associated with terminating and unwinding a Transaction and must promptly pay on demand the amount of any loss or expense sustained by WUBS. Nothing in this clause 11.3 (*Set-Off*) will be effective to create a charge or other security interest.

11.4. Electronic debits. If the Client has authorised WUBS to initiate debit entries to the Client's bank account by direct debits, the Client agrees that in the case of debit instructions transmitted through the Online Payment System, the usage of the Client Access Methods is a security procedure which constitutes a commercially reasonable method of protecting against unauthorised debits. The Client agrees to be bound by any debit instructions, whether authorised or not, issued in its name and acted upon by WUBS, and the Client agrees to indemnify WUBS and hold it harmless from and against any and all liability, loss and expense incurred by WUBS in connection with its execution of debit instructions believed by WUBS to have been issued by an Authorised User. In the event the Client elects not to use or adhere to the security procedures described above, the Client will remain liable as set forth hereinabove for any debit instructions issued in its name, whether authorised or not, and acted upon by WUBS. The Client agrees that WUBS and the Client's bank are authorised to credit the Client's account from time to time in the event that credit adjustments become necessary. The Client authorises WUBS to contact the Client's bank as necessary to provide the Services.

11.5. Changes to Clients bank. The Client must provide written notice to WUBS if the Client changes the account(s) at its bank / financial institution from which WUBS has been granted the authority to initiate electronic debits. Such notice will take effect thirty (30) days after WUBS' receipt of such notice.

11.6. Dishonoured Settlement. In the event any cheque delivered or telegraphic transfer authorised by the Client is dishonoured by the Client's bank, WUBS will charge and the Client agrees to pay all processing costs associated with each returned cheque or rejected electronic debit.

12. Holding Balances

12.1. Delivery of funds into a Holding Balance. WUBS may credit all or any part of any funds purchased by the Client or paid to it by the Client (or a third party on the Client's behalf for Incoming

Payments) to a Holding Balance. If it does so, the funds will be held by WUBS International as nominee for the Client and the making of the payment by the Client will not affect any obligation of the Client to WUBS, except to the extent that funds are paid to WUBS from the Holding Balance in accordance with an Instruction from the Client.

12.2. Funds owed to WUBS. The Client irrevocably grants WUBS International the authority and directs WUBS International to pay to WUBS or WUBS International or a WUBS Group Company (as the case may be) from the Holding Balance:

- (i) any amount due to WUBS or a WUBS Group Company in relation to any Foreign Exchange Contract requested in an Instruction; and
- (ii) any other amount due to WUBS, WUBS International and/or a WUBS Group Company under these Terms and Conditions.

Each such payment will be taken for the purposes of these Terms and Conditions to have been requested in an Instruction.

12.3. Commingled Funds. The Client authorises WUBS International to mix funds held for the Client in a Holding Balance with funds held for other clients of WUBS and with interest amounts belonging to WUBS provided that WUBS International maintains sufficient accounting records to determine what part of the mixed funds are held for the Client.

12.4. Holding Balance Limits. Funds may be maintained in a Holding Balance for a maximum of ninety (90) days. The Client shall be responsible for all risks (including, without limitation, volatility of the foreign currency market) associated with maintaining Holding Balances in one or more foreign currencies. If WUBS does not receive a timely Instruction for the disposition of such funds, those funds will be converted to the Client's home currency at the then-prevailing exchange rate(s) and returned to the Client.

12.5. Repayment on termination. In the event that these Terms and Conditions are terminated for any reason WUBS may convert funds that are held in the Client's Holding Balance into the Client's home currency at the then-prevailing exchange rate(s) and return such funds to the Client.

13. Termination and Survival

13.1. Termination for Convenience. Any Party may terminate these Terms and Conditions at any time, with or without cause, upon providing written notice to the other Party/ies.

13.2. Survival. The provisions in these Terms and Conditions relating to

- (i) indemnification in clause 4 (*Online Payment System License*);
- (ii) Online Payment System security in clause 5 (*Online Payment System Security*);
- (iii) settlement in clause 11 (*Settlement*); and
- (iv) all of clauses 16 (*Intellectual Property*), 17 (*Data Rights; Confidentiality*), 18 (*Indemnification & Limitation of Liability*), 20 (*Compliance with Laws*), 21 (*Representations and Warranties*) and 22 (*General Terms & Conditions*)

will survive completion of the Services to the Client and termination of these Terms and Conditions.

13.3. Accrued Rights. For the avoidance of doubt, termination by either Party will not affect any rights that have accrued prior to termination (including with respect to any Transaction existing at the date of termination).

14. Client Money

14.1. Client Money. All Initial Margins and Margin Calls shall be held by WUBS as Client Money in accordance with the New Zealand Client Money Rules. The Client acknowledges and agrees that such funds may be commingled with other clients' funds.

14.2. Interest on Client Money. The Client acknowledges and agrees that any interest that accrues with respect to funds held by WUBS as Client Money shall irrevocably transfer and assign to WUBS in consideration for the Client's use of the Services.

14.3. Dealing with Client Money. The Client acknowledges and agrees that WUBS may deal with Client Money in accordance with the New Zealand Client Money Rules.

15. Derivative Reporting

15.1. Client Identifiers. The Client acknowledges and agrees that:

- A.** it may require a Legal Entity Identifier to enter into certain Transactions with WUBS;
- B.** if notified by WUBS that a Legal Entity Identifier is required by the Transaction(s) contemplated by the Client, the Client will:
 - (i) if it has an LEI at the time of the notice, advise WUBS of its LEI promptly; or
 - (ii) if it does not have an LEI at the time of the notice, obtain an LEI and advise WUBS of it as soon as reasonably practicable;
- C.** WUBS may elect not to enter into Transactions with the Client if the Client has not provided details of its LEI to WUBS;
- D.** WUBS may, in its absolute discretion, elect to accept any other form of client identifier recognised under the Derivative Rules in lieu of an LEI; and
- E.** unless otherwise agreed in writing between the Parties, the Client is solely responsible for obtaining and maintaining its LEI or other client identifier accepted under clause 15.1(d) above (including, without limitation, all costs, fees and ongoing information obligations in respect of the identifier).

15.2. Reporting. The Client acknowledges and agrees that:

- A.** WUBS has certain reporting obligations under the Derivative Rules;
- B.** without limiting clause 20.4 (*Disclosure*), WUBS is entitled to report, communicate or disclose any and all information in relation to the Client and its Transactions including, without limitation, Confidential Client Information, that WUBS determines, in good faith, it is required to report, communicate or disclose pursuant to or in connection with its obligations under the Derivative Rules or any other law or regulation;
- C.** it will indemnify and hold WUBS (and any other WUBS Group Company harmless) for any damages, losses, costs and expenses incurred by any of them in connection with reporting any false or erroneous information provided by or on behalf of the Client to WUBS (including, without limitation, any correction, investigation or rectification of such information); and
- D.** WUBS is not liable to the Client for any acts or omissions pursuant to this clause 15 (*Derivative Reporting*) or under the Derivative Rules or any other similar legislation or regulation in any jurisdiction.

16. Intellectual Property.

16.1. WUBS Deliverables. The Client acknowledges and agrees that all copyright and other intellectual property rights in and to any deliverables produced by WUBS in carrying out any of the Services for the Client (including, but not limited to reports, compilations or databases in any and all media and any promotional materials or promotional sites of a third party) will be the property of WUBS (or the applicable WUBS Group Company). The Client will be permitted to use such reports, compilations or databases for its own internal business purposes but it must not disclose, disseminate, sell or otherwise make any such deliverables available to any third party whether in whole or in part, without the express written consent of WUBS.

16.2. WUBS Systems. The Client acknowledges and agrees that all WUBS web-pages (including service marks, logos and trademarks), applications, process, systems and the Services ("WUBS Systems"), are the property of WUBS (or the applicable WUBS Group Company) and protected by copyright law and/or other intellectual property laws. Except as set forth in this clause 16 (*Intellectual Property*), the Client must not:

- (i) reproduce any part(s) thereof in any form;
- (ii) create any derivative work based thereon, or
- (iii) incorporate WUBS Systems into other websites, electronic retrieval systems, publications or otherwise.

Subject to the Client's compliance with these Terms and Conditions, the Client is permitted to view, use, and download a single copy of any web-page(s), (but not any applications, processes or systems) for the purposes of its internal recordkeeping and accounting for transactions.

17. Data Rights; Confidentiality

17.1. Information for Services. The Client acknowledges that for WUBS to perform any of the Services, it is necessary for the Client to provide certain information to WUBS, such as the Client's banking details, transaction currencies, amounts or any other information related to the Services that the Client requests ("**Confidential Client Information**"). The Confidential Client Information does not include information that is or has become publicly known, has been independently developed by WUBS without use of any of the Confidential Client Information, or is received from a third party who has no obligation of confidentiality with respect to such information.

17.2. Payee Data. WUBS, at times and in its sole discretion, may, contact any Payee to effect the delivery and provision of the Services, including, but not limited to, the ongoing maintenance of Payee details (e.g., bank account information, routing number and contact details) ("**Payee Data**"). Nothing in these Terms and Conditions is intended to or should be construed to:

- (i) preclude, restrict or prevent WUBS from establishing or maintaining with any Payee a commercial relationship that is separate and distinct from the Services provided to the Client hereunder; or
- (ii) relieve the Client of its responsibility to ensure the accuracy of all Payee Data contained in any Instruction.

The Client further acknowledges that WUBS already holds and maintains Payee Data for an extensive compilation of Payees and, therefore, the Client's right to any particular Payee Data will not be exclusive. WUBS agrees that any Payee Data received from the Client will not be disclosed to any third party, except as necessary to deliver the Services, to comply with relevant laws, for WUBS' own business purposes, including, but not limited to conducting surveys to ascertain Payee satisfaction with the Services, marketing the Services to any Payee or as otherwise contemplated under these Terms and Conditions.

17.3. Use of Client Information

A. The Client's personal information is controlled and is processed by WUBS in accordance with applicable law. WUBS uses personal information that the Client provides to WUBS when using WUBS' products and the Services, as well as other information that is collected or generated during WUBS' relationship with the Client. This includes information from other services like money transfers, bill and business payments, loyalty or membership program details, historical transactions, and marketing choices. This information is used for the following purposes:

- (i) to provide the Client with the Services;
- (ii) administration;
- (iii) customer service;
- (iv) to comply with relevant laws, including but not limited to anti-money laundering laws and WUBS anti-money laundering policies and procedures;
- (v) to validate the Client's details;
- (vi) to complete analysis and research;
- (vii) to help prevent and detect of fraud;
- (viii) debt and theft recovery and enforcement of WUBS rights under these Terms and Conditions; and
- (ix) to help WUBS improve its products and services and operations.

B. WUBS may also use, collect from and share with other businesses who work with WUBS information from other products and services and convenience and/or rewards programs, which the Client has registered for during the Client's relationship with WUBS. WUBS will hold and retain the information that the Client gives WUBS about another person including the details of any of the Client's nominated beneficiary's in order to execute the transaction. It is the Client's obligation to ensure prior to providing this information that the Client has notified and secured authorisation from the other person on WUBS's use and disclosure of this information as set out in this clause 17 (*Data Rights; Confidentiality*).

C. WUBS may transfer information to affiliates in countries other than the country in which the information was originally collected or created, including to affiliates in the United States. WUBS may

also provide the information to other organisations, that help WUBS run its business, if there is a reasonable need, to carry out or aide the payment services, future services, or for any of the reasons or uses set out in this clause 17 (*Data Rights; Confidentiality*). WUBS may add to information the Client provides with information from available other business or individuals, including information to validate the accuracy of the Client information provided by the Client. WUBS may disclose personal data, including without limitation, name, customer ID number, address, transaction patterns and bank account information:

- (i) if required to do so by domestic or foreign law or legal process; or
- (ii) to law enforcement authorities or other government officials (including those in this country, the United States, or elsewhere) for purposes such as detecting, investigating, prosecuting and preventing crimes, including money laundering and related criminal activity, and the recipients may further disclose the information for these and other related purposes.

D. The information WUBS holds may be accessed by WUBS and its affiliates including but not limited to any authorised WUBS third party service provider for any of the purposes set out in this clause 17 (*Data Rights; Confidentiality*) or for other purposes to which the Client has agreed. The Client has a right to ask WUBS to see and get a copy of the Client's information, and WUBS may charge a small fee for the provision of the information. The Client can also correct, erase or limit WUBS's use of the Client's information which is incomplete, inaccurate or out-of-date. The Client may object at any time on legitimate reasons to the use of the Client's Personal Data, where the use is not required to complete the Service, or required by law or regulation. If the Client wishes to exercise these rights or no longer wishes to receive commercial communications from WUBS, please contact WUBS by emailing wubsprivacy@westernunion.com or alternatively by writing to the address: Attention: Privacy Officer, Western Union Business Solutions, Level 12, 1 Margaret Street, Sydney NSW, Australia 2000

18. Indemnification & Limitation of Liability

18.1. Client Indemnity. The Client agrees to indemnify and hold WUBS and any other WUBS Group Company harmless for any damages, losses, costs and expenses incurred by any of them in connection with any Instruction made by the Client or WUBS' actions in response to receiving an Instruction from the Client (including losses relating to the disposal or reuse of any foreign currency acquired or made available by a WUBS Group Company) together with interest until the date of payment, unless such damages, losses, costs and expenses are caused by gross negligence or intentional misconduct of WUBS or any other WUBS Group Company. Where applicable, WUBS holds the benefit of this indemnity on trust for itself and each WUBS Group Company.

18.2. Disclaimers

A. The Client agrees that excluding WUBS International no WUBS Group Company will be liable to the Client for the performance of, or failure to perform, any obligations of WUBS International under these Terms and Conditions.

B. The Client understands that the Online Payment System and the licence to use and access it is provided on an "as is" basis, to the extent permitted by law, without warranty of any kind, either expressed or implied. WUBS does not warrant the accuracy or completeness of the information available through the Online Payment System and disclaims any liability for errors or omissions or interruptions to access. Where WUBS cannot exclude any express or implied condition or warranty, it limits its liability to the:

- (i) resupply of the Services; or
- (ii) cost of having the Services resupplied.

C. TO THE EXTENT PERMITTED BY LAW, WUBS EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND PERFORMANCE.

D. The Client acknowledges that laws may imply certain conditions and warranties in these Terms and Conditions and confer certain rights and remedies on the Client that cannot be excluded or modified ("**Rights**"). These Terms and Conditions do not exclude or modify any of those Rights if to do so would contravene a law or make any part of these Terms and Conditions void.

18.3. LIMITATION OF LIABILITY. THE CLIENT AGREES THAT WUBS WILL NOT BE LIABLE TO THE CLIENT FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES, LOSS OF PROFIT OR BUSINESS OPPORTUNITY ARISING FROM ANY PROVISION OF THE SERVICES OR IN CONNECTION WITH ANY FAILURE OR PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, LINE OR SYSTEM FAILURE (EVEN IF WUBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). EXCEPT TO THE EXTENT CONTEMPLATED UNDER CLAUSE 4.5 (*INTELLECTUAL PROPERTY INDEMNITY*) AND TO THE EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL WUBS' LIABILITY TO THE CLIENT OR ANY THIRD PARTY FOR ANY DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING ALL INDEMNIFIED AMOUNTS), EXCEED THE SUM OF:

- (i) THE NEW ZEALAND DOLLAR VALUE OF THE RELEVANT TRANSACTION AS OF THE TRANSACTION DATE; AND
- (ii) THE AMOUNT OF ANY FEE OR COMMISSION CHARGED AND COLLECTED BY WUBS IN CONNECTION WITH THE RELEVANT TRANSACTION.

19. GST and Taxes

19.1. GST. Any consideration payable or to be provided for a supply of Services pursuant to these Terms and Conditions does not include any amount on account of GST. If GST is payable on any supply of services the Client must pay to WUBS an additional amount equal to the GST payable on the supply of those Services, provided that WUBS first issues a tax invoice.

19.2. Taxes. The Client shall be responsible for remitting to the appropriate tax authority any taxes that may apply to any payments initiated in connection with the Services. The Client acknowledges that WUBS shall not be responsible for determining what, if any, taxes apply to the Client's payments.

20. Compliance with Laws

20.1. Transaction Processing. The Client understands, acknowledges and agrees that all transactions, wherever originated, may be processed by WUBS or may be processed on behalf of WUBS by one or more of its affiliated WUBS Group Companies, one or more of which may be located outside the country of the Client. As such, all transactions, wherever originated, will be processed in accordance with the laws and regulations of the jurisdiction where the transaction is being processed, including but not limited to, those laws and regulations relating to anti-money laundering, anti-terrorism financing and foreign asset control.

20.2. Freezing or Blocking Transactions. In certain circumstances, WUBS may be obliged to freeze or block a Transaction to comply with applicable laws. Freezing or blocking can arise as a result of the account monitoring that WUBS conducts as required by relevant laws or where the name of a sender or beneficiary of a Transaction matches a name on a relevant government list of prohibited persons or where the Transaction is being sent to a country that has been subjected to relevant government sanctions. If this occurs, WUBS is not liable to the Client for any consequences or losses whatsoever and the Client agrees to indemnify WUBS to the extent that WUBS incurs any liability in connection with the freezing or blocking of the Client's account.

20.3. Suspension and Termination. WUBS may terminate these Terms and Conditions and/or suspend the provision of Services hereunder or cancel or reject any Instruction at any time, with or without notice, in the event of any (i) actual or suspected regulatory non-compliance or breach of laws by the Client; (ii) risk of reputation damage to WUBS; or (iii) if otherwise required to comply with applicable laws or regulations.

20.4. Disclosure. The Client understands that WUBS takes appropriate

measures to ensure that it is not participating or assisting in money laundering or terrorist financing. The Client agrees that WUBS (or any WUBS Group Company), at its sole discretion, may disclose any transaction-related information including but not limited to Client Confidential Information or Payee Data in order to satisfy WUBS' legal obligations under applicable law, including, but not limited to, anti-money laundering, trade and economic sanctions laws and/or regulations, or as may otherwise be required by law or court order. Furthermore, such disclosure may be made to any governmental agency, body or department that exercises regulatory or supervisory authority with respect to WUBS' operations, where such disclosure is made to satisfy routine governmental audit or examination requirements or as part of informational submissions required to be made to such governmental entities in the ordinary course of business.

20.5. Additional Information. Upon request, the Client agrees to provide any additional information that WUBS may need to satisfy its obligations under clause 20.4 (*Disclosure*).

21. Representations and Warranties

21.1. Limitation on Services.

A. The Client represents that the Services are being used for business/commercial purposes only and in the course of effecting genuine business transactions and not for the purpose of speculation and/or investment.

B. The Client further represents, warrants and confirms that all Instructions will be placed pursuant to and in accordance with these Terms and Conditions.

C. The Client agrees not to use the Services to make payments for any illegal purpose. In addition, the Client certifies that it will not use the Services to make any payments relating to online gambling, pornography or other similar activities (as notified to the Client from time to time).

D. The Client acknowledges that any Instruction issued will be binding upon and enforceable against the Client and does not violate the terms of any other agreement to which the Client is bound.

21.2. Client Funds.

A. The Client represents and warrants that it is acting as a principal and has legal title to all funds used in connection with the Transactions, and that any transaction is being undertaken in accordance with applicable law.

B. The Client represents and warrants that the Client has entered into these Terms and Conditions for lawful and commercial purposes connected with the Client's business and not for the purpose of investment or speculation.

C. The Client further represents and warrants that each use of the Services by the Client is exercised in connection with the Client's line of business and to manage the risk associated with an asset or liability owned or incurred, or reasonably likely to be owned or incurred, in the conduct of the Client's business.

21.3. Authority. The Client represents and warrants that the individual(s) signing the Trading Application has/have the authority to agree to bind the Client to the Terms and Conditions, and that the person(s) signing the Trading Application is/are authorised to act on the Client's behalf and is/are authorised to empower each Authorised Person appointed in accordance with clause 3.1 (*Authorised Person*).

21.4. Not a US Person. The Client hereby represents and warrants that it is not a U.S. Person under applicable U.S. laws and regulations. The Client further agrees to promptly notify WUBS if it becomes a U.S. Person. WUBS is not liable to the Client for any regulatory reporting obligations that are not known to WUBS.

21.5. Legal Entity Identifiers. The Client represents and warrants that the LEI it has provided to WUBS (if any) is true, correct and current.

21.6. Repetition of Representations and Warranties. The Client repeats each representation and warranty made in clauses 21.2 to 21.5 (inclusive) on the date of each Instruction and each Transaction Date.

22. General

- 22.1. Equitable Remedies.** The Parties agree that monetary damages may not be a sufficient remedy for breach of the confidentiality and licence undertakings in these Terms and Conditions. Accordingly, in addition to all other remedies, each Party will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any breach of those provisions.
- 22.2. Waiver.** Either Party's failure to exercise any of its rights under these Terms and Conditions will not be deemed a waiver of such rights or remedies.
- 22.3. Severability.** If any provision in these Terms and Conditions is held to be unenforceable by a court of competent jurisdiction, the remainder of the provisions will remain in full force and effect.
- 22.4. Governing Law.** These Terms and Conditions are governed by the laws of New Zealand, without regard to the law of conflicts, and the Parties agree to be subject to the jurisdiction and venue of the courts of New Zealand with respect to any disputes arising out of these Terms and Conditions.
- 22.5. Assignment and Novation.** The rights and obligations set out in these Terms and Conditions and in each Transaction may not be assigned, transferred, novated or otherwise dealt with in any other way by the Client without first obtaining WUBS' prior written consent. The Client agrees that WUBS will have the right to assign, transfer, novate or otherwise deal with its rights and obligations under these Terms and Conditions and any Transaction ("**Authorised Dealing**") and the Client hereby consents to any such Authorised Dealing. WUBS shall provide notice to the Client of any Authorised Dealing either before the Authorised Dealing takes effect or as soon as reasonably practicable thereafter.
- 22.6. Modification of Terms and Conditions.** WUBS reserves the right, in its sole discretion, to change, amend or otherwise modify these Terms and Conditions upon written notice to the Client or, upon posting of a revised version of the Terms and Conditions to WUBS's website ("**Notice of Change**"). Any Client change, modification or amendment to these Terms and Conditions will not be binding unless set forth in a written addendum signed by both the Client and WUBS. Any changes, amendments, or modifications so conveyed to the Client will be effective as to the relevant Services from the date of a Notice of Change.
- 22.7. Entire Agreement.** These Terms and Conditions constitutes the entire agreement between the Parties concerning the subject matter hereof and supersede all prior agreements between the Parties concerning the subject matter hereof. It is expressly agreed by the Client that any indemnification obligation in effect and contemplated in any prior agreement will be extinguished as of the date the Trading Application is signed by the Client.
- 22.8. Force Majeure.** In the event WUBS is unable to deliver any of the Services due to circumstances beyond WUBS' control, including, but not limited to government acts, wars, strikes, riots, other civil disturbances, legal process or failure of telecommunications or computer networks or equipment, WUBS will, as soon as reasonably practicable, advise the Client, and will not, to the extent permitted by law, have any liability whatsoever for any loss resulting directly or indirectly from these circumstances, including but not limited to any liability to pay any damages or otherwise compensate the Client or any other person.
- 22.9. Escheatment.** If a cheque issued by WUBS or a WUBS Group Company remains un-cashed for a period of six (6) months (as measured from the date on the cheque), the Client acknowledges and agrees that, WUBS may escheat the funds in accordance with applicable abandoned property laws.
- 22.10. Independent Contractors.** The Parties will each act at all times as independent contractors and nothing contained in these Terms and Conditions will be interpreted, construed or implied to create any agency, partnership or joint venture between the Parties. Nothing in these Terms and Conditions will be interpreted, construed or implied as creating or establishing the relationship of employer and employee between WUBS and the Client. At no time will either WUBS or the Client make commitments for or in the name of the other.
- 22.11. Publicity.** The Client may not use WUBS name in news releases, articles, brochures, marketing materials, advertisements and other publicity or investor promotions without the written consent of WUBS.

22.12. Notices. Communications and notices required or permitted under these Terms and Conditions will be deemed delivered:

- (i) if sent by prepaid mail on the third (3rd) Business Day after posting;
- (ii) if sent by fax when faxed to the facsimile number last provided to WUBS;
- (iii) upon confirmation of delivery from the information system from which the communication was sent if sent by email or other electronic communication to the e-mail address last provided to WUBS.

The Client agrees that any written communication by WUBS may be sent by fax or email or other electronic means to the number or email or other electronic address provided to WUBS by any Authorised Person. The Client expressly agrees to receive product disclosure statements, financial services guides and related documents as a website link via email.

22.13. Third Party Rights. Save with respect to any WUBS Group Company the Parties to these Terms and Conditions do not intend for any provision of these Terms and Conditions to be enforceable by any person or entity that is not a Party to these Terms and Conditions.

22.14. Headings. The headings of several sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of these Terms and Conditions.

22.15. Laws. A reference to an "Act" or other legislation includes reference to any related regulations.

22.16. Electronic execution of documents. Each of the Client and WUBS unconditionally agree to accept the electronic execution of any document by the other Party relating to any Transaction or any other arrangement between the Parties.