

# **FXNZ**

## **FXNZ Customer Agreement and Risk Disclosure Statement**

FXNZ

4B, 175 Queens Street

Auckland, New Zealand

If in full agreement with the document, please fax the signature page at the end of the document to:

Fax No. +64-9-3739881

## **RISK DISCLOSURE STATEMENT**

THE RISK OF LOSS IN LEVERAGED FOREIGN EXCHANGE TRADING CAN BE SUBSTANTIAL. YOU MAY SUSTAIN LOSS IN EXCESS OF YOUR INITIAL MARGIN FUNDS. PLACING CONTINGENT ORDERS, SUCH AS " STOP-LOSS " OR " STOP-LIMIT " ORDERS, WILL NOT NECESSARILY LIMIT LOSSES TO THE INTENDED AMOUNTS. MARKET CONDITIONS MAY MAKE IT IMPOSSIBLE TO EXECUTE SUCH ORDERS. YOU MAY BE CALLED UPON AT SHORT NOTICE TO DEPOSIT ADDITIONAL MARGIN FUND. IF THE REQUIRED FUNDS ARE NOT PROVIDED WITHIN THE PRESCRIBED TIME, YOUR POSITION MAY BE LIQUIDATED AT A LOSS, AND YOU WILL BE LIABLE FOR ANY RESULTING DEFICIT IN YOUR ACCOUNT. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE IN LIGHT OF YOUR OWN FINANCIAL POSITION AND INVESTMENT OBJECTIVES.

TRADING IN PRECIOUS METALS INVOLVES, BESIDES THE POTENTIAL FOR PROFIT, THE RISK OF LOSS WHICH MAY UNDER ADVERSE TRADING CONDITIONS EXCEED THE AMOUNT OF INITIAL MARGIN DEPOSIT. MOVEMENTS IN THE PRICE OF PRECIOUS METALS ARE INFLUENCED BY A VARIETY OF FACTORS OF GLOBAL ORIGIN AND DIMENSIONS MANY OF WHICH ARE UNPREDICTABLE. VIOLENT MOVEMENTS IN THE PRICE OF PRECIOUS METALS MAY RESULT IN UNSTABLE MARKET AS RESULT OF WHICH A CLIENT MAY BE UNABLE TO SETTLE ADVERSE TRADES. ALTHOUGH THE STAFFS OF OUR COMPANY ARE IN CONSTANT TOUCH WITH MARKET MOVEMENTS, THEY ARE UNABLE TO GUARANTEE THE ACCURACY OF THEIR PREDICTIONS NOR COULD THEY GUARANTEE THAT ANY LOSS WOULD NOT EXCEED A SPECIFIED FIGURE.

**THIS AGREEMENT** is made \_\_\_\_ (DD)/ \_\_\_\_ (MM), 20 \_\_\_\_ between **FXNZ CO LIMITED**, a company registered in New Zealand (Company Registration No. 2200048) having its office at 4B, 175 Queens Street, Auckland, New Zealand (hereinafter referred to as "Trader") and the party whose name, address and description are set out in the Schedule I hereto (hereinafter referred to as "**Client**").

### **WHEREAS:-**

- (1) The Trader is a leverage foreign exchange ("Forex") trader and a precious metals trader.
- (2) The Client is desirous of opening the Account with the Trader for the purpose of selling, buying, exchanging, disposing of or otherwise dealing in Forex / Precious metals.
- (3) The Client has requested the Trader to open and maintain for him the Account and to execute his instructions for Forex / Precious metals trading.
- (4) The Trading accepts and agrees at its sole discretion to open and maintain the Account for the Client and to, subject to the terms and conditions herein, execute all instructions given or by the Client and to provide the Client with any of its services permitted to be provided.

**NOW IT IS HEREBY AGREED:-**

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement including the recitals the following expressions shall have the following meanings except where the context otherwise requires:

**“Account”**

means one or more accounts from time to time opened and maintained with the Trader in the name of the Client for the purposes of selling, buying, exchanging, disposing of or otherwise dealing in Forex / Precious metals;

**“Authorised Person”**

means any person or persons specified in the Notice of Appointment of Authorised Person or such other person or persons from time to time appointed by the Client as the authorised persons whether as a new appointment, in substitution thereof or in addition thereto provided always that such appointment, substitution or replacement is notified in writing to the Trader by the Client in the manner described in Clause 4.3 hereto;

**“Client Group Company”**

means the Client and (where the Client is an individual or firm) any company which is controlled by the Client or (where the Client is a company) any company which is a holding company or a subsidiary or a subsidiary of the holding company, of the Client. A person is in “control” of a corporation if the person has the power directly or indirectly to secure:

- (a) by means of the holdings of shares or the possession of voting power (either at the Shareholder level or Director level) in or in relation to that or any other body corporate;
- or
- (b) by virtue of any power conferred by the Articles of Association or any other document regulating that or any other body corporate

that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person;

**“Rules”**

means the relevant rules and codes of conduct issued by the relevant body pursuant to the Ordinance as may from time to time be modified consolidated or re-enacted;

**“Event of Default”**

means any of the events of default set out in Clause 17.1 hereof;

**“Initial Margin”**

means the minimum amount of fund required to be deposited by the Client with the Trader at the time of or before each trading contract is opened pursuant to and in accordance with the requirement of the Conduct of Business

Rules or any other rules or regulations or policies as may from time to time be prescribed by the Trader;

**“Maintenance Margin”**

means the minimum amount of fund which is required by the Rules or any other rules or regulations or policies as may from time to time be prescribed by the Trader to be maintained in the Account for each contract of the Client;

**“Ordinance”**

means the relevant applicable laws together with all of its regulations, rules and by-laws and includes reference to such Ordinance, regulations rules or regulations as modified, consolidated or re-enacted from time to time;

**“Working Day”**

means a day on which the Trader is open for business.

1.2 The term **“Client”** wherever used shall (in the case where the Client is an individual) include the Client and his executors and administrators and (in the case where the Client is a sole proprietor firm) include the sole proprietor and his executors and administrators and (where the Client consists of more than one person operating the Account jointly) include all joint account holders whose names appear on the Client Information Statement (as referred to the Clause 6.1 below) and their respective executors and administrators and (in the case of a partnership firm) include the persons who are from time to time the partners of the firm when the Client’s Account is being maintained.

1.3 The term **“in writing”** shall include any form of writing, printing, lithography, photography, typewriting, cable and telex messages, facsimile transmission and any other mode of reproducing words or figures in a visible, legible and non-transitory form.

1.4 References to Clauses are reference to clauses or sub-clauses of this Agreement unless otherwise specified.

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

1.6 Reference to any ordinance, regulation or other statutory provision includes reference to such ordinance, regulation or provision as modified, consolidated or re-enacted.

1.7 In this Agreement, words denoting the singular include the plural and vice versa, words denoting one gender include all genders and words denoting persons include corporations and vice versa.

## **2 WARRANTY OF CAPACITY**

- 2.1 The Client warrants that in the case of a client who is an individual/sole proprietorship/partnership, he/each of its partners is full of age and capacity and in the case of a client who is corporation, it is duly constituted and incorporated and has power to enter into this Agreement and all contracts made or to be made incidental and/or pursuant thereto. The Client confirms and warrants that this Agreement and such contracts are and will constitute valid and legally binding and enforceable obligations of the Client.
- 2.2 Where the Client consists of more than one person, the liability and obligations of each of them shall be joint and several and reference to the Client shall be construed, as the context required, to any or each of them.
- 2.3 The Trader hereby warrants that it is a company duly incorporated with limited liability under the applicable laws and has the requisite power to enter into this Agreement.

## **3 ACCOUNT**

- 3.1 Subject to the terms and condition hereof, the Client instructs and the Trader accepts the Client's instructions to open and maintain the Account in the name of the Client with the Trader for the purposes of selling, purchasing, exchanging, disposing of or otherwise dealing in Forex / Precious metals.
- 3.2 The Client hereby declares that, unless he will notify the Trader otherwise in writing in future, he is trading on his own behalf and the Client is the ultimate beneficiary.

## **4 AUTHORISED PERSON**

- 4.1 The Client is entitled to elect at his sole and absolute discretion whether to operate the Account by himself or by his Authorised Person.
- 4.2 If the Client wishes to appoint another person to operate his Account, the Client must make his election in writing by completing and signing the Notice of Appointment of Authorised Person. The appointment shall only be effective upon the actual receipt and acknowledgement of receipt of the duly completed Notice of Appointment of Authorised Person by the Trader.
- 4.3 Any appointment of Authorised Person by the Client shall remain in full force and effect as a valid appointment unless and until a duly signed notice of cancellation, substitution or replacement in writing in respect of any Authorised Person duly signed by or on behalf of the Client has been delivered to the Trader's place of business and actually received by the Trader. For the purpose of this Clause 4.3, any of such notices from the Client shall not be regarded as actually received by the Trader unless the Trader has acknowledged receipt of the same any such cancellation, substitution or replacement shall become effective and operative only upon such acknowledgement

by the Trader.

4.4 Any Authorised Person is hereby unconditionally authorised by the Client to give instructions in relation to the Account on behalf of the Client and the Client undertakes with the Trader that the Client shall at all times ratify and confirm any instruction whatsoever given or purported to be given by any Authorised Person for and on behalf of the Client in connection with the Account at any time including but without limitation any instruction which is given or purported to be given between the revocation of the appointment of any Authorised Person and the actual receipt and acknowledgement of receipt of the notice of revocation by the Trader. For the avoidance of doubt, the Client agrees that any act done or purported to be done by any Authorised Person for and on behalf of the Client after the revocation of his authority shall be regarded as valid and effective in favour of the Trader unless and until the written notice such revocation has been actually received by the Trader and the receipt of which has been acknowledged by the Trader.

4.5 The Client shall procure that no Authorised Person shall delegate any of his powers conferred by the Client to him in respect of trading and no delegation by the Authorised Person shall be accepted by the Trader.

## **5 DISCRETIONARY ACCOUNT**

5.1 The Trader hereby declares that none of its employees or representatives shall accept any appointment by the Client as the Client's agent to operate the Account for an on behalf of the Client unless a separate agreement is entered into between the Trader and the Client in accordance with the provisions the Rules and any other statutory requirements as may from time to time in force.

## **6 CLIENT INFORMATION**

6.1 As a condition of the Agreement, the Client agrees to complete the Client Information Statement in Schedule I or in any other form as may from time to time be prescribed by the Trader after the signing of this Agreement.

6.2 For the purpose of this Clause 6, the Client undertakes that he will:-

- (a) furnish all information (whether requested to be completed in the Client Information Statement or not) together with proof thereof regarding the financial condition and other related information that the Trader may reasonably requires;
- (b) promptly notify the Trader in writing if any information given to the Trader by the Client pursuant to Clause 6.2 (a) becomes or may become untrue or inaccurate;
- (c) promptly inform the Trader of any new circumstances which has arisen after the completion of the Client Information Statement that may materially affect the capacity or financial condition of the Client; and
- (d) promptly notify the Trader of the occurrence of any Events of Default.

6.3 The Client warrants and represents to the Trader that the information contained in the Client Information Statement

duly signed by the Client is true, correct and completed and the Client agrees to fully indemnify and keeps the Trader fully indemnified against all losses, liabilities, penalties, damage, costs and expenses of whatever nature which may be suffered by the Trader by reason any inaccurate, incorrect or incomplete information given by the Client to the Trader or by reason of the default, failure or unreasonable delay of the Client in supplying sufficient information under this Clause 6.

## **7 ENQUIRY ON CLIENT'S FINANCE**

7.1 The Client hereby irrevocably and unconditionally appoints and authorised the Trader and any of its employees, agents or representatives to conduct enquiry into the Client for the purpose of ascertaining the financial condition, investment objectives and the authenticity of the information contained in the Client Information Statement or disclosed by the Client to the Trader pursuant to Clause 6.2. The Client agrees that, if necessary, the Trader may request the Client to execute any separate document waiving the Client's right of confidentiality against any person for the purpose of facilitating the Trader is conducting such enquiry.

7.2 The enquiry referred to in Clause 7.1 shall not be regarded as an obligation on the part of the Trader to verify the financial condition of the Client or the content of the Client Information Statement and the information disclosed by the Client to the Trader pursuant to Clause 6.2. The Client acknowledges that all representations of the Client to the Trader are made to induce the Trader to conclude this Agreement and shall be relied upon by the Trader and that any enquiries done by the Trader (if any) will be for the sole benefit of the Trader and do not and shall not prejudice or affect in any way whatsoever the Client's obligations or liabilities towards the Trader.

## **8 FOREX / PRECIOUS METALS TRADING**

8.1 The Trader shall only accept, conduct or implement the trading orders or instructions of or on behalf of the Client which are in compliance with all laws, rules, regulations, guidelines as well as rules and policies of the Trader as may from time to time be in force and applicable. The Trader may, at its sole discretion as it deems appropriate, refuse to accept or carry out any trading order or instruction of or on behalf of the Client on the ground that the acceptance or implementation of such order or instruction may result in any breach or likely breach of any of the aforesaid laws, rules, regulations, guidelines and internal requirements. Information in connection with the specification of all services and contracts which the Trader may provide to, transact with, or undertake on behalf of, the Client and of all terms and conditions attached to those services and to trading of contracts will be published by the Trader from time to time and be available at all places of business of the Trader.

8.2 The Client hereby acknowledges that operation of the Account may be affected by any curtailment of or restriction on the capacity of the Trader to implement the instructions of or on behalf of the Client or to deal with the Account because of any action taken by any other governmental authorities pursuant to the Ordinance, Rules or any other applicable laws as may from time to time be effective and in force.

- 8.3 The Client hereby acknowledges that the acceptance, entering into or carrying out of any trading orders or instructions of the Client to open any new position for the Client is conditional upon the Client maintaining sufficient funds at all times in the Account to discharge the margin requirements as set out in Clause 11 hereof.
- 8.4 Subject to Clause 8.5 below, the Trader shall not be obligated to accept, enter into or carry out the instructions or orders of the Client if a bankruptcy or winding-up petition (whichever is appropriate) has been or is, in the reasonable opinion of the Trader, likely to be served against the Client or if there is insufficient funds in the Account or if any Event or Default has occurred or is, in the reasonable opinion of the Trader, likely to arise.
- 8.5 The Trader shall, for the purpose of determining the open positions of the Client or to effect trading on behalf of the Client, determine the relevant prices by reference to the current prices quoted by an international reputable financial information services organization. However, all price levels in the trading terminal are determined at the Company's absolute discretion. Any references of the Client to prices of other trading or information systems shall be disregarded.
- 8.6 The Trader shall determine the interest rates for calculating the interests to be credited to the Account in respect of the outstanding positions maintained by the Client in accordance with usual practice of the Trader.
- 8.7 The Trader shall not howsoever be liable for any loss of profits or gains, damage, liabilities, expenses (including but not limited to legal expenses) or loss of opportunities suffered by the Client in connection with any bona fide action or exercise of discretion by the Trader pursuant of Clause 8 hereof.
- 8.8 The Trader hereby declares and the Client acknowledges that none of the agents, employees or representatives of the Trader is authorized to give any representation or advice on behalf of the Trader on trading and that if any of such representatives and advice is given, the same is by all means the personal opinion of the relevant agent, employee or representative of the Trader acting beyond his employment duty and authority. The Client confirms, acknowledges and declares that it will in no event hold the person giving the advice or any other person liable for an loss resulting from the Client's reliance upon such advice. The Client acknowledges that any recommendations and/or market information communicated to the Client by the Trader's agents, employees and representatives do not constitute either advice on which the Client is meant to reply on or an offer to sell or a solicitation of an offer to buy. The Trader shall not be liable in respect of any such recommendations and information. Any such recommendations and information may be incomplete, inaccurate or changed without notice to the Client and the Trader makes no representation, warranty or guarantee with respect thereto or with respect to any financial or tax consequences of the Client's transactions.



## **9 TRADING WITH THE CLIENT**

- 9.1 In respect of any transaction, contract or instruction, the Trader may accept, conduct or trade in the capacity as principal and/or agent for any party or parties without prior consent of the Client.
- 9.2 The Trader may itself take opposite position to match the Client's trading orders.
- 9.3 Any agent, employee or representative of the Trader, subject to prior written approval of the Trader, may accept and enter into trading contracts with the Client on their own accounts.

## **10 ORDERS AND INSTRUCTIONS**

10.1 Subject to the terms and conditions herein, orders and instructions to enter into or execute trading contracts on behalf of the Client may be given by the Client or the Authorised Person to the Trader in writing or orally (whether by way of telephone or actual meeting) but such orders or instructions shall be confirmed by the Trader to the Client in accordance with the Rules.

10.2 All telephone instructions, orders and conversations between any agent, employee or representative of the Trader of the one part and the Client or the Authorised Person of the other part in the course of business via specific trading support telephone lines will be recorded on a centralized tape recording system operated by the Trader. If howsoever the voice of the Client or the Authorised Person cannot be recorded properly on the centralized tape recording system, the Trader shall at liberty not to accept or implement that particular order or instruction and to request the Client to reconfirm the details of that order. The Client agrees that the Trader shall not be liable for any loss, expenses, liabilities or damages suffered by the Client as a result of the actions or steps taken by the Trader pursuant to this Clause 10.2.

10.3 The numbers of the specific trading support telephones lines referred to in Clause 10.2 will be designated by the Trader in writing subject to any change that the Trader may at its sole discretion make from time to time. Such change shall be effective on the date notified or announced by the Trader by way of notice in writing to the Client or notice displayed at the Trader's places of business in New Zealand.

10.4 Internet on-line trading

### **I. Definition and Interpretation**

(a) The following expressions have the following meanings except where the context otherwise requires:

- |                      |   |
|----------------------|---|
| "Access Code"        | means the User ID and the Password;   |
| "Account"            | means the account of the Client with the Trader, the account number of which is shown hereinabove;  |
| "Client Agreement"   | means the client agreement entered into between the Client and the Trader for the opening and maintaining of the Account;   |
| "Trader Web Service" | means the Internet on-line trading services provided by the Trader pursuant to this Agreement from time to time for the operation of the Account, any information contained therein and the software comprised therein; |

“Instruction”	means a request, authorization or instruction given to the Trader in connection with the operation of the Account through the Trader Web Service by the use of the Access Code;
“Password”	means the Client’s personal password from time to time used in conjunction with User ID to gain access to the Trader Web Service; and
“User ID”	means the Client’s personal identification from time to time used in conjunction with the Password to gain access to the Trader Web Service

- (b) References to Clauses are references to clauses or sub-clauses of this Agreement unless otherwise stated.
- (c) Headings are for easy reference only and do not form part of this Agreement.
- (d) Reference to any ordinances, regulations or rules includes reference to such ordinances, regulations or rules as modified, consolidated or re-enacted.
- (e) In this Agreement, words denoting the singular include the plural and vice versa, words denoting one gender include all genders and words denoting persons include corporations and vice versa.

II. Confirmation and Warranties

- (a) In consideration of the Trader’s agreeing to open and maintain the Account and to provide the Trader Web Services to the Client, the Client confirms that the Client has read and understood the terms and conditions hereof and agrees to accept and to be bound by the terms and conditions of this Agreement.
- (b) The Client acknowledges that the Trader and its suppliers of market data and information of the Trader Web Service do not guarantee the timeliness, sequence, accuracy or completeness of market data or information of the Trader Web Service. The Client agrees that neither the Trader nor its suppliers of market data and information of the Trader Web Service shall be liable in any way for inaccuracy, error, delay in or omission of any such data, information or message or the transmission or delivery of any such data, information or message.
- (c) The Client confirms and warrants that the Client is the only user of the Trader Web Service in respect of the Account under these terms and conditions. The Client confirms and warrants that the Client is the only user of the User Name and Password and the Client will be totally responsible for the confidentiality, security and use of the User Name and Password. The Client shall be totally responsible for all orders entered through the Trader Web Service using the Client’s Access Code.
- (d) The Client acknowledges and agrees that the Trader Web Service, the software comprised therein are licensed or proprietary to the Trader. The Client warrants and undertakes that the Client shall not, and shall not attempt to, tamper with, modify, decompile, reverse engineer or otherwise alter in any way, and shall not attempt to gain unauthorized access to, any part of the Trader Web Service. The Client further agrees to notify the Trader immediately if the Client becomes aware of any of the aforesaid actions.
- (e) The Client further agrees that:-

- (i) The Trader is authorized to act on any Instruction which the Trader believes is given or authorized by the Client (whether such Instructions is in fact given or authorized by the Client). The Trader shall not be under any duty to verify the identity of the person giving any Instruction and shall not be liable for acting on any Instruction which the Trader believes is given or authorized by the Client but is not given or authorized by the Client.
- (ii) The Client shall keep the Access Code strictly confidential at all times and shall take appropriate steps to safeguard the confidentiality and security of the Access Code.
- (iii) The Client shall ensure that there are sufficient funds in the Account for the purpose of the relevant Instruction and the Trader shall not be liable for any consequence arising out of the Trader's failure or refusal to carry out such Instruction due to inadequacy of funds in the Account.
- (iv) The Trader shall not be liable for any quoting errors which occur due to mistyping or misfeeding of a quote or missing an erroneous price request from the Client, like wrong big figure quote. The Trader reserves the absolute right to make corrections or adjustments on the Account if there is any error or mistake as aforesaid.
- (v) The Trader does not in any way warrant that the Trader Web Service or any part of it will be free of errors or uninterrupted or that any information, software or other materials provided, used or accessible in connection with the Trader Web Service will be free of virus, disabling devices or other contaminants. The Trader shall not be liable for any losses resulting from or in connection with the Client's use of the Trader Web Service due to a cause over which the Trader does not have control, including but not limited to the failure of electronic or mechanical equipment or communication lines, telephone or other connection problems. The Client acknowledges that the Internet is, due to unpredictable traffic congestion and other reasons, an inherently unreliable medium of communication and that such unreliability is beyond the Trader's control. The Client agrees and acknowledges that the Client's sole and exclusive remedy is to discontinue using the Trader Web Service.
- (vi) Notwithstanding any other provisions herein, any Instruction to the Trader shall operate only as a request to the Trader to act on the Instruction. The Trader may in its absolute discretion and without giving any reason and liability on the part of the Trader refuse to act on immediately or at all.
- (vii) Every transaction indicated or referred to in any statement of account of the Account shall be deemed to be accepted and confirmed by the Client unless the Client notifies the Trader of any error or discrepancy thereof in writing within 72 hours of the issue of such notice or statement of account or such other time prescribed therein from time to time.

### III. General

- (a) The Trader shall be entitled to impose such commission, service fees and/or other charges as the Trader in its absolute discretion from time to time thinks fit and the Client shall on demand pay to the Trader such commission, service fees and charges.
- (b) The Trader shall be entitled to add, delete or vary the scope of the Trader Web Service and any of these terms and conditions at any time and from time to time as the Trader in its absolute discretion thinks fit. Such addition, deletion or variation shall be conclusively deemed to be agreed and accepted by the Client and shall bind the Client if the Client does not discontinue the Trader Web Service or continues to use the Trader Web Service after being notified of such addition, deletion or variation.
- (c) Should any provision of this Agreement be declared void or unenforceable by any competent authority or court, this shall not affect the other provisions hereof which are capable of severance, which shall continue unaffected.
- (d) If any terms and conditions herein is or may at future become inconsistent with any law, rule or regulations of any sovereign or any internal rules and regulations of the Trader as may from time to time in force, the same shall be deemed to be superseded or modified to conform to such law, rule or regulation.
- (e) Where the Client consists of more than one person, the liability of each of the persons shall be joint and several and references to them shall be construed, as the context requires, to any or each of them. The Trader shall be entitled to deal separately with any of the persons without affecting the liability of the others.
- (f) Nothing in this Agreement shall operate so as to exclude or restrict any liability, the exclusion or restriction of which is prohibited by the laws of New Zealand.
- (g) The Client's rights and obligations under this Agreement are not transferable.
- (h) The Trader's rights in relation to this Agreement shall not be capable of being waived or varied otherwise by an express waiver or variation in writing. Any failure to exercise or any delay in exercising any of such rights on the part of the Trader shall not preclude any other or further exercise of that or any other such right.

### IV. Indemnity

The Client shall indemnify the Trader and keep the Trader indemnified at all times against all actions, proceedings, claims, losses, damages, costs and expenses which may be brought against the Trader or suffered or incurred by the Trader directly or indirectly in connection with any failure of the Client to comply with the terms and conditions of this Agreement or in connection with the Trader accepting Instruction or acting or failing to act thereon unless due to the wilful default of the Trader. Such indemnity shall continue notwithstanding the termination of the Client Agreement and/or this Agreement for whatever reason.

10.5 For the purpose of facilitating the internal administration of the Trader, the Client will be assigned a personal identification code as soon as practicable after the execution of this Agreement. The Client hereby agrees that this identification code will be assigned to the Client upon its undertaking to keep it in absolute and strict confidence and any disclosure made by the Client or the Authorised Person shall be at the Client's own risks. The Trader is entitled, without any obligation on its part to conduct any further enquiry, to deem any person who can provide the correct personal identification code of the Client as the Client or the Authorised Person and shall not be liable for any consequence or loss suffered by the Client because of any accidental or intentional divulgence of the Client's personal identification code or any action or abuse by any person in using the personal identification code. The Client is obligated to notify the Trader forthwith upon the Client having notice of or suspicion that the Client's personal identification code may have been disclosed to any unauthorised person or the user of which is likely to be abused. The Client hereby agrees to fully indemnify and keep the Trader fully indemnified against all losses, liabilities, costs or expenses arising from any misuse of the personal identification code.

10.6 Any order and instruction made pursuant to this Clause 10 shall valid, subsisting and irrevocable unless and until the alternation or revocation of such order or instruction has been made by the Client or the Authorised Person (either in writing or orally) and actually received and confirmed by the Trader before the Trader has executed such order or instruction. Without prejudice to the generally of this Clause 10.5, insofar as any such notice of alternation and revocation is reasonably believed by the Trader acting in good faith as a genuine notice made by the Client or the Authorised Person, the Trader may proceed to implement the instruction contained therein and alter/amend the original order or instruction of the Client accordingly.

10.7 The Trader shall not be obligated to apply more than reasonable diligence in ascertaining whether any order or instruction is given or made with due authority and shall not be held liable to any losses, liabilities, damage or expenses suffered by the Client because of any misfeasance, breach of authority or fraud of the Authorised Person or any other persons. The Client hereby agrees to fully indemnify and keep the Trader fully indemnified against all losses, costs and expenses incurred by the Trader in executing the instructions or orders made or purported to be made by the Client or the Authorised Person.

## **11 MARGIN REQUIREMENTS**

11.1 The Client shall deposit with the Trader the Initial Margin prior to placing any trading order. The Trader shall have the right and sole discretion to vary the percentage of Initial Margin at any time by giving notice to the Client pursuant to the Ordinance or the Rules or any other applicable laws or any rules and policies of the Trader as may from time to time be in force and applicable. Any such variation shall become effective immediately after the giving of the relevant notice by the Trader to the Client.

11.2 The Client shall at all times deposit and continue to deposit, in respect of any open position maintained from time to time by the Client, with the Trader the Maintenance Margin in order to maintain any open position in the market and the Trader shall owe no obligation and liability whatsoever and howsoever to the Client to review and check for and

on behalf of the Client whether sufficient Initial Margin or Maintenance Margin has been maintained before the Trader opens a new position pursuant to the order of the Client. Given the volatility of the market, the original amount deposited by the Client with the Trader as Maintenance Margin for an open position may become inadequate and in these circumstances the Client shall be required to provide further deposit further deposit in order to maintain the Maintenance Margin at the level satisfactory to the Trader. If the Client fails to provide sufficient Maintenance Margin with the Trader within the prescribed time set by the Trader, the Trader shall be entitled to liquidate all or any part of the open positions of the Client (even at a loss) in order to ensure that the Maintenance Margin of the Client corresponds with the open positions maintained by him. In liquidating any open position of the Client, the Trader shall not be liable or held liable for any loss, liability, cost or expense incurred by the Client and the Client shall fully indemnify and keep the Trader fully indemnified against all losses, liabilities, costs and expenses (including but not limited to any deficit in the Account) that the Trader may suffer due to its exercise of its rights under this Clause 11.2 .

11.3 The Trader shall have the right and sole discretion to vary the percentage of the Maintenance Margin at any time upon notice in writing to the Client pursuant to the Ordinance or the Rules or any other applicable laws or any of the rules and policies of the Trader as may from time to time be in force and applicable. Such variation shall become effective immediately after the giving of the relevant notice to the Client and shall apply to both existing positions and new positions maintained by the Client with the Trader.

11.4 The Trader may at its sole and unfettered discretion, upon any failure on the part of the Client to put up sufficient Initial Margin or Maintenance Margin as required under this Clause 11, take whatever actions (including but not limited to liquidation of all or any of the open positions and/or the Account of the Client) without any notice to the Client. In exercising its right hereunder, the Trader shall have the unfettered discretion to choose which, when and how and at what spot rate any of the positions of the Client shall be liquidated and the Client irrevocably accepts and agrees to accept that such exercise of the right of the Trader hereunder may result in loss to and/or deficit in the Account. The Client hereby agrees that the Trader shall not be liable for any loss, damage, expenses and cost suffered by the Client in connection with the exercise of the Trader's discretion hereunder and shall fully indemnify and keep the Trader fully indemnified against all costs, losses, expenses and liabilities which the Trader may incur due to the exercise of this discretion.

11.5 The Client shall not be entitled to any interest or any other benefits by depositing with the Trader the Initial Margin and/or Maintenance Margin and/or any other collateral made in favour of the Trader as security for the Client's obligations or liabilities from time to time hereunder.

## **12 COMMISSIONS AND EXPENSES**

12.1 On each trading transaction that the Trader handles for the Client, the Trader shall be entitled to charge the Client commissions at such rate or in such sum as shall from time to time be prescribed by the Trader and notified to the Client by statement by notice displayed at the Trader's places of business. All commissions payable by the Client to

the Trader or hereunder shall be payable on demand. The Trader is hereby authorised by the Client to debit the Account with all commissions payable by the Client hereunder.

12.2 All taxes, stamp duties, bank charges, transfer fees, registration fees, levies, interest, charges and any other expenses and outgoing in respect of any transaction of the Account shall be borne solely by the Client who shall on demand reimburse and indemnify the Trader in full against payment of the same.

### **13 WITHDRAWALS**

13.1 The Client may request any withdrawal from the Account by giving the Trader notice in writing duly signed by or on behalf of the Client and the Trader shall, after the receipt of such notice, withdraw from the Account for the collection of the Client within one Working Day or within any longer period of time as may be required by the Ordinance. The amount to be withdrawn by the Client must not exceed the credit balance in the Account less all Initial Margins, Maintenance, commissions and expenses payable by the Client pursuant to Clause 12 hereof and any other sum (including but not limited to any gross floating which has accrued or is, in the opinion of maintained by the Client with the Trader) which in the opinion of the Trader is appropriate to be retained in the Account.

### **14 INFORMATION**

14.1 The Trader shall within the period as from time to time specified in the Ordinance, the Rules or any other applicable laws deliver to the Client copies of any contract note and statement of accounts in respect of the transactions effected by the Trader on behalf of the Client through the Account.

14.2 The Trader shall deliver at the expenses of the Client such information relating to the Account as the Client may from time to time reasonably request.

14.3 The contracts and details of the copies of the contract notes and statements of accounts including all trading transactions, deposits and withdrawals shall deem to be accepted by the Client and become final, binding and conclusive against the Client if no objection in writing has been raised by the Client within Working 7 Days after the execution of the relevant trading transactions, deposits and withdrawals.

### **15 CONFIDENTIALITY**

15.1 Subject to the terms and conditions hereof, the Trader shall at all times keep the information supplied by the Client in confidence.

15.2 The Client hereby unconditionally and irrevocably authorizes the Trader to disclose any information in connection with the Client or the Account (including but not limited to the identity and the financial conditions of the Client) if the Trader is compelled or required under any applicable laws, regulation, rules, by-law, direction or guidelines so to

disclose with the view to assist in any investigation or otherwise. The Client shall not in any way hold the Trader liable for any loss, liability, cost and expense out of such disclosure and the Client shall fully indemnify and keep the Trader fully indemnified on demand all costs and expenses incurred by the Trader in relation thereto.

## **16 FUNDS**

16.1 The Client shall on demand put the Trader in funds to enable the Trader to discharge any liability incurred or to be incurred in connection with transactions effected through the Account for an on behalf of the Client (including any debit balance in the Account) or to discharge the obligations of the Client to pay commissions to the Trader under Clause 12.1 and shall on demand reimburse the Trader in full for all costs and expenses incurred by it in connection therewith.

16.2 The Trader shall be entitled to charge the Client interest at the rate of three per cent (3%) above the prime rate quoted by an international reputable bank per annum or at any other rate as may from time to time be prescribed by the Trader in respect of any debit balance from time to time on the Account.

## **17 EVENT OF DEFAULT**

17.1 If at any time and for any reason, whether within or beyond the control of the Client:

- (a) the Client fails to observe any terms and conditions of this Agreement;
- (b) any representation or warranty or statement from time to time given by the Client hereunder or any information or document delivered hereunder is or proves to have been incorrect or misleading in any respect when made;
- (c) the Client becomes or is declared insolvent, wound-up or bankrupt under any applicable laws, is unable to pay its debts as they fall due or purposes or makes a general assignment or any arrangement, compromises or composition with or for the benefit of its creditors or a moratorium is agreed or declared affecting the Account;
- (d) a distress, attachment, execution or other legal process is levied, enforced or sued out on or against within 7 days;
- (e) the Client or (in case of joint account holders) any joint account holder of the Client or (in case of a partnership firm) any partner of the Client ceases or threatens to cease carrying on its business or any part thereof;
- (f) it is or will become unlawful for either the Trader or the Client to perform or comply with any one or more of



its obligations hereunder;

- (g) there occurs, in the opinion of the Trader, a material adverse change in the financial position of the Client which may materially affect the ability of the Client to perform any or all of its obligations hereunder;
- (h) the Client makes or purported to make any sale, assignment, transfer, charge, mortgage, grant of any option or other right of interests in and of his interest in the Account without the prior written consent of the Trader;

then, in any such case, the Trader may whether or not such Event of Default is continuing, declare that all rights and remedies of the Trader under this Agreement shall become immediately enforceable and exercisable against the Client (whether or not the provision in Clause 11 have been satisfied or not) and to terminate the Account and liquidate any open position of the Client (even at the risk of loss) immediately without notice.

## **18 TERMINATION OF ACCOUNT**

18.1 Subject to the terms and conditions of this Agreement, the Account may be terminated by either party giving a notice of termination in writing to the other party not less than 1 Working Day before the date of termination. Once the Account has been terminated, the Trader shall be entitled to liquidate the open position of the Client without notice at the Client's risk of loss and upon demand, the Client shall pay promptly any deficit in the Account.

18.2 Any credit balance left in the Account at termination pursuant to Clause 17.1 or 18.1 after the due settlement of all sums payable in respect of the closing out of open position(s), commissions and expenses payable by the Client to the Trader under this Agreement and after any set off pursuant to Clause 19.1 shall be returned to the Client within 2 Working Day after termination of the Account.

18.3 In case of a termination of an Account whether by way of notice pursuant to Clause 18.1 or due to the happening of any Event of Default and where the Client is a partnership firm or consists of more than one person, each partner or joint account holder (whichever is appropriate) of the Client hereby irrevocably and unconditionally authorises the Trader to pay and release any credit balance or any part thereof left in the Account to any partner or joint account holder of the Client and such payment and release shall be a full and good discharge of the obligation of the Trader to return the credit balance to the Client. The Trader shall not be required to make any enquiry or investigation as to whether the receiving partner or joint account holder is eligible to receive such credit balance for and on behalf of the partnership or other joint holder(s). The Trader shall not be required to ascertain how the receiving partner or joint account holder applies the money received. Each of the partners or joint account holders (whichever is appropriate) of the Client hereby agrees to fully indemnify and keep the Trader fully indemnified against all losses, liabilities, costs and expenses (including but not limited to legal expenses) suffered by the Trader due to its exercise of its right and authority hereunder.

## **19 SECURITY, SET-OFF AND CONSOLIDATION OF ACCOUNTS**

19.1 The Client hereby irrevocably authorizes the Trader to set-off, withhold and/or apply any receivable or monies of and in the Account against all or any part of the liabilities (whether primary, collateral, several, joint and whether or not in connection with the Account) owed by the Client or any Client Group Company to the Trader.

19.2 Without prejudice to the generally of Clause 19.1, if the Client or any Client Group Company maintained more than one Account with the Trader, the Trader may at any time consolidate all or any of such accounts and set-off or transfer any sum standing to the credit of any one or more of such accounts in or towards satisfaction or any liability of whatsoever nature owed to the Trader in respect of any of these accounts.

19.3 The Trader shall have a lien on all property of the Client in the Trader's possession including but not limited to margin, securities, equities, credits and credit balance kept by the Trader in any Account as security for all obligations and liabilities owed by the Client to the Trader. Subject to the Ordinance and/or the Rules, the Trader is specifically authorised to transfer such amount from the margin or security deposited with it by the Client without prior notice as the Trader deems appropriate to satisfy all debt balance which may arise in the Account.

## **20 LIABILITY OF THE TRADER**

20.1 Subject to the applicable laws, none of the Trader or any its employees, agents and representative shall be liable to the Client or any Client Group Company for any loss or damage suffered by the Client or any Client Group Company arising out of or in connection with any act or omission in relation to the Account, unless it is proved by the Client that any of such losses or damage is the result of acts in bad faith or gross negligence of the Trader.

20.2 The Trader is not liable for any failure or delay to meet its obligations hereunder due to any cause beyond its reasonable control which includes without limitation fires, storms, floods, earthquakes, riots, strikes, lock-outs, wars, governmental control, restriction or prohibition whether local or international, technical failure of any equipment, power failure and any other acts of god or any other cause which results or may result in the inability of the Trader to conduct its normal business, the erratic behaviour of the spot price, the closure or paralysis of international or local market or any circumstances affecting the operation of the Trader.

## **21 ASSIGNMENT**

21.1 This Agreement shall be binding on the parties hereto and their respective permitted successors, assignees and transferees.

21.2 The Client may not assign or transfer any or all of its rights or obligations under this Agreement without the prior written consent of the Trader.

- 21.3 (a) The Trader may at any time transfer by assignment or novation to any one or more traders all or any part of its rights, benefits and/or obligations under this Agreement and in that event the transferee shall have the same rights and/or obligations (as the case may be) hereunder as it would have if it had been a party hereto.
- (b) In the case of the transfer of all or part of the Trader's obligations hereunder, the Client, the Trader and the transferee trader shall, at no cost to the Client, execute a novation agreement under which the Trader is released from its obligations or the part thereof transferred and the transferee trader assumes the obligations of the Trader or the part thereof transferred.
- (c) The Client hereby irrevocably and unconditionally appoints any one director of the Trader as his attorney to execute and sign any documents, including but not limited to the novation agreement, for the purpose of transferring all or any part of the Trader's obligations hereunder to another trader as described in (a) and (b) above.
- 21.4 The Trader may without prior notice to the Client disclose to a potential transferee such information about the Client (including the identity and financial position of the Client) as it thinks fit.

## **22 COMPLIANCE WITH LAWS**

- 22.1 The Client shall not instruct the Trader and the Trader shall not be obligated to act upon instructions of the Client to do anything which is in breach or in the opinion of the Trader, will likely be in breach of any of the applicable laws or which, in the opinion of the Trader, may adversely affect any of its rights and remedies under this Agreement.

## **23 COMMUNICATIONS**

- 23.1 Unless otherwise agreed herein, any notice, consent, approval or other communication (collectively a "communication") under this Agreement shall be made in writing.
- 23.2 Except otherwise provided herein, each communication or document to be made or delivered to the Trader under this Agreement shall be sent to the Trader at the address or e-mail address from time to time designed by the Trader. The initial address, e-mail address, telex number, and facsimile number so designated by each party is set out under its name on the first page of this Agreement.
- 23.3 All communication or documents to be made or delivered by the Trader to the Client under this Agreement shall be delivered to the address or the principal place of the business (if applicable), or facsimile number or e-mail address of the Client as set out in the Client Information Statement and shall be deemed to have been received by the Client, if by facsimile, upon receipt of a satisfactory report of transmission printed out by the sending machines, if posted to a local address, 24 hours after the dispatch thereof, or if posted to an overseas address, 3 Working Days after the dispatch thereof, or if by e-mail, upon receipt message of successful transmission.

## **24 PARTIAL INVALIDITY**

24.1 The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the laws of any other jurisdiction nor the legality, validity or enforceability of any other provision.

## **25 INDULGENCE**

25.1 This Agreement and the rights of the Trader under it shall not be discharged or in any way affected by:-

- (a) any time, indulgence, waiver or consent at any time given to the Client or any other person;
- (b) any amendment to any of this Agreement or to any other documents;
- (c) the making or the absence of any demand on the Client or any other person for payment;
- (d) the enforcement or absence of enforcement of this Agreement or of any other documents; and
- (e) the illegality, invalidity or unenforceability of any defect in any provisions of this Agreement or any of the obligations of the Client or any other person hereunder.

## **26 DISPUTE RESOLUTION**

26.1 Notwithstanding anything contained herein, where the applicable laws so requires, the Trader shall, if the Client so request, agree to resolve any dispute between the Trader and the Client by way of arbitration.

## **27 GENERAL**

27.1 This Agreement contains the entire understanding between the parties and supersedes any prior understanding and/or agreements between the parties with respect to the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings oral or written between the parties relating to the subject matter of this Agreement which are not fully expressed herein.

27.2 The Trader shall be entitled, without prior notice to the Client and without giving any reason therefor, to amend at any time and from time to time the terms and conditions of this Agreement. If the Client does not object in writing within 7 Working Days after the effectiveness of the relevant amendments, the Client shall be deemed to have agreed to them. If the Client objects in writing as aforesaid, the Trader is entitled to terminate this Agreement immediately.

27.3 Should any provision of this Agreement be declared void or unenforceable by any competent authority or court this shall not affect the other provisions of this Agreement which are capable of severance, which continue unaffected.

27.4 If any terms or provision herein is or may at future become inconsistency with any law, rule or regulation of any sovereign or any internal rules and regulations of the Trader as may from time to time be in force, the said provision

shall be deemed to be superseded or modified to conform with such law, rules or regulation.

27.5 Time shall be in essence in all respects of this Agreement.

27.6 The Trader may require the Client to verify and confirm, to the satisfaction of the Trader, the authenticity of any instruction, notice or communication in writing received by the Trader and the Trader shall not be required to act or reply on such instruction, notice or communication unless and until such verification and confirmation has been received by the Trader.

## **28 GOVERNING LAW AND JURISDICTION**

28.1 This Agreement shall be governed by and construed in accordance with the laws of New Zealand. This Agreement shall only be effective upon the signing of the Trader and the Client.

28.2 Subject to Clause 26.1, each party shall submit itself to the non-exclusive jurisdiction of the Courts of New Zealand.

SIGNATURE PAGE – CUSTOMER AGREEMENT AND RISK DISCLOSURE STATEMENT (Return this completed page to FXNZ)	APPROVED
By signing below the Customer acknowledges that they have read the FXNZ Customer Agreement and Risk Disclosure Document and agree to all the provisions contained therein (All joint account holders are required to sign this page. Include a copy of this page if additional signatures are required).	

**IN WITNESS** whereof the parties hereto have executed this Agreement on the day and year first above written.

**SIGNED by** \_\_\_\_\_ )  
for and on behalf of \_\_\_\_\_ ) **For and on behalf of**  
**FXNZ CO LIMITED** ) **FXNZ CO Limited**

**SIGNED by the CLIENT** \_\_\_\_\_ )  
**Date :** \_\_\_\_\_ (YYYY / MM / DD)

\_\_\_\_\_  
Accepted and agreed by FXNZ

OFFICERS SIGNATURE \_\_\_\_\_

PRINT OFFICERS NAME AND  
TITLE \_\_\_\_\_

DATE \_\_\_\_\_

**THIS PAGE IS ONLY APPLICABLE TO CUSTOMER USING ELECTRONIC SIGNATURE.**

SIGNATURE PAGE – CUSTOMER AGREEMENT AND RISK DISCLOSURE STATEMENT (Return this completed page to FXNZ)	APPROVED
By signing below the Customer acknowledges that they have read the FXNZ Customer Agreement and Risk Disclosure Document and agree to all the provisions contained therein (All joint account holders are required to sign this page. Include a copy of this page if additional signatures are required).	

**IN WITNESS** whereof the parties hereto have executed this Agreement on the day and year first above written.

**SIGNED by** \_\_\_\_\_ )

No signature/entry is required (for customer using electronic signature to enter this agreement).

for and on behalf of \_\_\_\_\_ )

For and on behalf of \_\_\_\_\_

**FXNZ CO LIMITED** )

**FXNZ CO Limited**

**SIGNED by the CLIENT** )

E-Signed by Client:
---------------------

Accepted and agreed by FXNZ

OFFICERS SIGNATURE \_\_\_\_\_

PRINT OFFICERS NAME AND

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

**SCHEDULE I**  
**CLIENT INFORMATION STATEMENT**

Form A  
(For individual /sole proprietor)

Please complete this form carefully and accurately. You may be required by any of our staff, representatives or agents to produce document(s) and to furnish us with copies thereof with the view to verify the accuracy of the information contained herein.

**1. Personal Particulars**

Name: \_\_\_\_\_ (English) \_\_\_\_\_ (Non-English)

Identity Card No. / Passport No.: \_\_\_\_\_

Place of Issuance: \_\_\_\_\_ Expiry Date: \_\_\_\_\_

Nationality: \_\_\_\_\_ Age: \_\_\_\_\_ Sex: \_\_\_\_\_

**2. Correspondence**

Home/Business/Other Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Home Telephone No: \_\_\_\_\_ Home Fax No: \_\_\_\_\_

Mobile phone No: \_\_\_\_\_ Others Contact No: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**Please note that correspondence will be made by e-mail ONLY.**

**3. Employment**

Occupation: \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Position Held: \_\_\_\_\_ Years Employed: \_\_\_\_\_

**4. Reference**

Please supply the details of a person that we can contact in case of your absence:

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone No: \_\_\_\_\_ (Home) \_\_\_\_\_ (Office)



**5. Bank Accounts**

Names of Bank:

(1) \_\_\_\_\_ (2) \_\_\_\_\_

Country: \_\_\_\_\_ Country: \_\_\_\_\_

Account No: \_\_\_\_\_ Account No: \_\_\_\_\_

Date Opened: \_\_\_\_\_ Date Opened: \_\_\_\_\_

**6. Financial Position / Investment Objectives**

Please state the details of your financial position (including annual income, asset worth, financial obligations etc.):

[Use separate sheet(s) which should be signed by you if the space is insufficient]

Please state the details of your investment objectives and strategy:

[Use separate sheet(s) which should be signed by you if the space is insufficient]

**7. Undertaking**

I declare and represent to FXNZ Co Limited ("Trader") that all information contained in this Client Information Statement is true, correct and complete and that the Trader is entitled in all aspects and circumstances to rely on the information herein for all purposes unless the Trader has received notice in writing of any change from me. I further undertake that I shall promptly notify the Trader in writing if any information given herein becomes or is likely to become untrue or inaccurate. For the purpose of facilitating the operation of the Trader and in consideration of the Trader's agreement to open and maintain an account/accounts for me, I hereby irrevocably and unconditionally authorize the Trader and any of its employees, agents or representatives to conduct enquiry with anyone including my employer, broker and banker with the view of verifying the accuracy of any information herein.

Dated (DD)/ (MM),20

\_\_\_\_\_  
Signature of Client