



## **Australia Account Terms Version 4**

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OANDA Australia Pty Ltd  
ACN 152 088 349, AFSL 412918  
Level 1, 60 Martin Place  
Sydney NSW 2000

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# OANDA Account Terms

## 1. INTRODUCTION

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1.1 These terms govern your Account with OANDA. The terms which apply to you will depend on the Financial Products or financial services provided to you by OANDA. All the Financial Products or financial services are subject to the general terms in this document and to the Schedules which apply to financial services you may receive or particular Financial Products you may transact from time to time.

1.2 In relation to your Account, a reference to “Terms” is a reference to the terms in this document (including the Schedules) which are applicable to you, as amended from time to time.

1.3 In order to establish your Account, you will need to complete OANDA’s Online Application Form. OANDA may, in its absolute discretion, accept or decline to provide any one or more Financial Products or financial services that you have selected in your Application Form.

1.4 These Terms will apply to you in respect of your Account from the earlier of (a) the time OANDA accepts your application in the Application Form in respect of a particular Financial Product or financial service; (b) the time OANDA otherwise agrees to provide the Financial Product or financial service to you; or (c) the time you first place an Order in respect of a Financial Product with OANDA or otherwise instruct OANDA to provide the financial service to you.

1.5 You acknowledge and agree that you have read and understood all documentation provided to you by us including these Account Terms and any Product Disclosure Statement (PDS) in relation to any Financial Products which you request OANDA to make available to you in relation to your Account. You authorise OANDA to open an Account for you.

1.6 You acknowledge that you have received, read and understood our Financial Services Guide (FSG). Our FSG may change from time to time. A copy of the current FSG is available as part of the online application process or can be viewed on our website.

1.7 You acknowledge that all dealings in Financial Products and the performance by us of our obligations under these Terms are subject to the Applicable Laws.

1.8 You acknowledge that we will not provide legal, tax, financial or accounting advice to you as part of the services that we provide to you in accordance with these Terms. By these Terms we do not act in a fiduciary capacity and OANDA does not owe any fiduciary obligations to you in respect of its services provided to you in connection with these Terms except as expressly stated in these Terms.

1.9 These Terms do not constitute personal financial advice, nor a recommendation or opinion that a Financial Product or service is appropriate for you.

1.10 A liability of OANDA accrues solely to that entity. OANDA is not the agent, fiduciary, joint venturer or guarantor of any other person.

1.11 OANDA has discretions under these Terms which can affect your Transactions. You do not have any power to direct how we exercise our discretions. When exercising our discretions, we will comply with our legal obligations as the holder of an Australian Financial Services Licence. We will have regard to our policies and to managing all risks (including financial, credit and legal risks) for ourselves and all our clients, our obligations to our counterparties, market conditions and our reputation. We will try to act reasonably in exercising our discretions, but we are not obliged to act in your best interests or to avoid or minimise a loss in your Account.

## 2. Interpretation

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2.1 Unless the context otherwise requires, any expressions or phrases not otherwise defined within these Terms have the meaning given to them in the Rules relevant to the Financial Product or financial service.

2.2 In these Terms, unless otherwise indicated, the following words and expressions have the meaning set out below:

**ABN** means Australian Business Number. **Account** means an account held in your name or for your benefit with OANDA including all Transactions recorded in them, for the purposes of these Terms.

**Account Value** means the current value of your Account which is calculated by OANDA by combining:

- (a) the equivalent balance of your Account in the Trust Account;
- (b) the Realised/Unrealised Losses and Realised/Unrealised Profits;
- (c) indicative costs to Close (e.g., Transaction Fees, Finance Charges); and
- (d) the values of Transactions not yet booked (if any).

**ACN** means Australian Company Number.

**Applicable Laws** means, in relation to a matter, all laws, legislation, regulation and subsidiary regulation, instruments and directions of a regulatory authority or a court, rules and procedures of a Financial Market or a CS Facility which apply to the relevant matter including for example, and without limitation, the Corporations Act and regulations made pursuant to the Corporations Act, ASIC Class Orders and other instruments, ASIC Market Integrity Rules, the ASX Rules, the ASX Clear Operating Rules, the ASX Settlement Operating Rules, and the ASX Clear (Futures) Operating Rules.

**Application Form** means the online application form by which a person applies to become a Client of OANDA and to open an Account.

**ARBN** means Australian Registered Body Number.

**ASIC** means Australian Securities and Investments Commission.

**ASIC Class Order** means an instrument issued by ASIC from time to time which is designated a "Class Order".

**ASIC Market Integrity Rules** means each of the ASIC/ASX Market Integrity Rules and the ASIC/ASX 24 Market Integrity Rules as amended from time to time.

**ASX** means ASX Limited (ABN 98 008 624 691).

**ASX 24** means Australian Securities Exchange Limited (ABN 83 000 943 377).

**ASX 24 Operating Rules** the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX 24, as amended from time to time.

**ASX Clear** means ASX Clear Pty Limited (ABN 48 001 314 503).

**ASX Clear Operating Rules** means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX Clear, as amended from time to time.

**ASX Clear (Futures)** means ASX Clear (Futures) Pty Limited (ABN 91 050 615 864).

**ASX Clear (Futures) Operating Rules** means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX Clear (Futures), as amended from time to time.

**ASX Rules** means the operating rules, procedures, directions, decisions requirements, customs, usages and practices of ASX and includes the ASX Operating Rules and ASX 24 Operating Rules, as amended from time to time.

**ASX Settlement** means ASX Settlement Pty Limited (ABN 49 008 504 532) or another clearing facility approved to clear securities and other Financial Product Transactions effected on the Exchanges operated by ASX.

**ASX Settlement Operating Rules** means the operating rules, procedures, directions, decisions requirements, customs, usages and practices of ASX Settlement, as amended from time to time.

**AUD, Australian Dollars and \$A** means the lawful currency of the Commonwealth of Australia.

**Authorised Person** means the person (if any) described as your authorised agent in the Application Form or another person notified by you to us under clause 5.

**Base Rate** means the amount nominated by OANDA for this term from time to time, as notified to you (including through the Online Service) or posted on its website.

**Business Day** means a weekday which is not a gazetted public holiday in Sydney.

**Calculation Time** means the time that OANDA performs the calculation for a Finance Charge Adjustment or a Finance Credit Adjustment, the time generally being 5:00 p.m. New York time.

**CHESS** means the Clearing House Electronic Sub- Register System, operated by ASX Settlement.

**CHESS Holding** means a holding of one or more Financial Products in CHESS which holding is identified by a HIN.

**Claim** means any or all, actual or potential claim, action, complaint, suit, cause of action, arbitration, debt due, costs, claim, entitlement, allegation, demand in respect of damages and any other benefit verdict and judgment whether both at law or in equity or arising under the provisions of any statute, award or determination whether known at the date of these Terms or not.

**Clearing Participant**, in relation to a Facility, means the participant of the relevant CS Facility which has the responsibility for clearing the relevant Transactions in respect of that Facility.

**Client** means the person who is (or persons who are) recorded as having an Account.

**Close Out, Closed Out and Closing Out** in relation to a Transaction means discharging or satisfying the obligations of the Client and OANDA under the transaction and this includes matching up the Transaction with a Transaction of the same kind under which the Client has assumed an offsetting opposite position.

**Closing Date** means the date on which the Transaction is agreed to be Closed Out, or earlier, if deemed to be Closed Out in accordance with these Terms.

**Confirmation** means any confirmation of a Transaction issued by us to you and includes an electronically transmitted confirmation or a substantially continuously available account statement which contains the information which would be in a confirmation.

**Contract Size** means the standard volume per 1 Lot expressed either in ounces or number of contracts.

**Commission Charges** means the commission charged to your Account calculated in accordance with the Pricing Sheet.

**Core Pricing** means OANDA's optional commission based on pricing models for Trades.

**Default** has the meaning in clause 24.1 and, if applicable, as supplemented by a term in a Schedule.

**Derivatives** means derivatives as defined in section 761D of the Corporations Act.

**Exchange** means each of the ASX 24 operated by the ASX, the Australian Securities Exchange operated by ASX, the Australian Clearing House operated by ASX Clearing Corporation Limited and any other exchange or market in which OANDA participates directly or indirectly, from time to time (e.g., but not limited to, by way of its Hedge Counterparties transacting on these exchanges or in those markets).

**Exchange System** means, in relation to a Financial Market or CS Facility, the trading, clearing or settlement facility or system (or both) operated by or on behalf of the relevant Financial Market or CS Facility.

**Finance Charge** means a charge payable in accordance with clause 13. This may be referred to as an “interest charge” or “interest debit” on the Online Service, the relevant PDS or elsewhere.

**Finance Charge Adjustment and Finance Credit Adjustment** mean the amount charged or credited (as applicable) to your Account by OANDA for Transactions. This may be referred to as an “interest charge adjustment”, “interest debit adjustment”, “interest credit adjustment” or any other applicable term on the Online Service, the relevant PDS or elsewhere.

**Financial Market** means a financial market within the meaning of the Corporations Act (which includes, for example, any market on which prices of Financial Products are quoted), whether located in Australia or elsewhere.

**Financial Product** has the meaning given in part 7.1 division 3 of the Corporations Act (including, for the avoidance of doubt, any ASIC Class Orders).

**Foreign Exchange** means currency including Australian Dollars and foreign currency.

**Futures** has the same meaning as given in rules governing the operation of any Exchange relevant to an OTC Transaction.

**FSG** is defined in clause 1.6.

**GST** means tax that is imposed as a goods and services tax under any of:

- (a) A New Tax System (Goods and Services Tax) Act 1999; or
- (b) any regulation made pursuant to the A New Tax System (Goods and Services Tax) Act 1999.

**Hedge Counterparty** means a person with whom OANDA enters into a hedge contract to hedge OANDA’s exposure to OTC Contracts or other Financial Products.

**Initial Margin** means the amount which you are required to pay to OANDA (depending on your Financial Product or financial service), as the initial Margin Cover for any Transaction which you propose to enter into.

**Inactivity Fee** means a charge to your account, calculated in accordance with section 14.3 of the Agreement.

**JPY** means the lawful currency of Japan.

**Long Party** means the party to a Transaction (including an OTC Contract) who is treated as having notionally bought the Underlying Security (or, in the case of an index OTC Contract, a right in respect of payment arising from a change in the level of an index).

**Loss** means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Lot** means the unit that represents the volume of a Transaction taking into consideration the Contract Size. It can be represented as a portion of a Lot subject to the minimum lot size, for example, 0.1 of a lot being referred to as a mini Lot or (0.01 of a Lot) being referred to as a micro Lot. For example, 1 Lot in EUR/USD equals 100,000 EUR being the Term Currency unit and 0.1 Lot is therefore 10,000 units of Term Currency.

**Margin** means the amount of cash or other assets paid to OANDA and credited to your Account as Margin.

**Margin Closeout Level** means the minimum Margin Cover allowable before there might be automatic Close Out of all or some of your Open Positions.

**Margin Cover** means the amount of Margin available for margin trading on your Account. It is calculated by OANDA by subtracting from the Account Value: (i) the required Margin; and (ii) a percentage of the value of Open Positions.

**OANDA** means OANDA Australia Pty Ltd ACN 152 088 349; AFSL 412981.

**Online Service** is defined in clause 9.1. This may be referred to as an “Electronic Trading Platform” or as the actual name of the electronic trading platform in a PDS or on OANDA’s website.

**Open Position** means, at any time, a Transaction which has not been Closed Out, or settled prior to the time agreed for settlement.

**Orders** means any instruction placed by you with us to purchase or to sell or otherwise deal in Financial Products.

**OTC Contract** means a Financial Product, being a Derivative which derives its value from one or more Reference Assets. OANDA may notify you, from time to time, if the relevant Financial Product is to be classified by a particular name. Notification can be by way of PDS, email, posting to OANDA’s website, the Online Service, Account statement or in any other way.

**OTC Transaction** means a Transaction which is an OTC Contract (in contrast with an exchange traded contract).

**PDS** is defined in clause 1.5.

**Pip Value** means the smallest increment by which a unit of currency, index level or a commodity contract changes and is quoted depending on the number of decimal places in which the currency or index is quoted. For example, in the case of a Foreign Exchange Transaction, a USD/JPY Foreign Exchange Transaction is quoted with only two decimal places.

**Price** means, in relation to a Transaction, the price or rate quoted by OANDA as finally determined when an Order is implemented.

**Pricing Sheet** means the then current OANDA Core Pricing and Commission Price Sheets as updated from time to time by OANDA and set OANDA Australia Pty Ltd. ACN 152 088 349 AFSL 412981 7 forth on OANDA’s Web site at <https://www.oanda.com/au-en/trading/account-comparison/>

**Realised/Unrealised Loss** means:

(a) (realised loss) – the amount by which the value of an Open Position on Close Out is less than the value of the Open Position when the Open Position was last valued or if the Open Position has never been valued previously, it is the value when the position was opened; and

(b) (unrealised loss) – the amount by which the value of an Open Position (not on Close Out) is less than the value of the Open Position when it was last re-valued or if the Open Position has never been valued previously, it is the value when the position was opened.

**Realised/Unrealised Profit** means:

(a) (realised gain) - the amount by which the value of an Open Position on Close Out is more than the value of the Open Position when the Open Position was last valued or if the Open Position has never been valued previously, the value when the position was opened; and

(b) (unrealised gain) – the amount by which the value of an Open Position (not on Close Out) is more than the value of the Open Position when it was last re-valued or if the Open Position has never been valued previously, the value when the position was opened.

**Rules**, in relation to a Financial Market or a CS Facility, means the operating rules, procedures, customs and usages of the of the Financial Market or CS Facility (as applicable).

**Security Information** means any of your email address, logon code, password or trading password.

**Segregation or segregated** means, in relation to an account or an asset, that:

(a) the party holding the assets in the account:

- I. holds the asset separately from its own property;
- II. holds the account separately from its own accounts and the accounts of any other person except you (Others);
- III. does not record or deposit any assets of its own in the account;
- IV. records in relation to such an asset or account must:
- V. be kept separate from records in relation to any other account of the holding party or any Others;
- VI. record separately the particulars associated with that asset and account;
- VII. record separately in respect of each client particulars of the amount or property deposited in or withdrawn from the account;
- VIII. ensure that assets in the account are separately classified;
- IX. correctly record and explain dealings in relation to the assets in the account.

The account must be described as the Trust Account, the client moneys trust account, the clients' segregated trust account or a custody account or similar words, as the case may be.

**Settlement Time** means the time by which a Transaction must be settled, as set out in the Confirmation for the Transaction or on the Online Service.

**Short Party** means the party to a Transaction (including an OTC Contract) who is treated as having a financial outcome similar to having effectively sold the Underlying Security.

**Tax** means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government agency, other than any imposed on overall net income.

**Terms** is defined in clause 1.2 and see also clause 2.

**Trading Conditions** means the operating conditions for trading on the Online Service from time to time.

**Transaction** means any contract between you and OANDA as principal:

(a) to pay, or to agree to pay, an amount calculated in respect of an Underlying Security in one currency against the settlement in the same or another currency (or other agreed Underlying Security); and

(b) in respect of which (other than in respect of Closing Out an Open Position as permitted under these Terms) you have, or you are taken to have, agreed (whether orally, electronically or in writing) to:



- I. the specification of the Underlying Securities involved;
- II. the amount of Underlying Securities involved and, if applicable, the amount of the specified currency involved;
- III. the Price;
- IV. Transaction Fee and Finance Charges; and
- V. any other features agreed by OANDA.

**Transaction Fee** means the fee or commission from time to time specified by OANDA to be the amount payable by you to OANDA in respect of each Transaction.

**Trust Account** means an account (however named or styled) maintained by OANDA for the purposes of the Corporations Act to hold client moneys.

**Underlying Security** means any security, Financial Product, Foreign Exchange, commodity, cryptocurrency, index or other item (or any combination of one or more of those) the subject of a Transaction, including a value determined by reference to an index or an index multiplied by an amount of currency, in any jurisdiction, whether through an Exchange or other market facility. References in these Terms to an Underlying Security which is a share or other similar equity financial product also apply when the Underlying Security is different, for example, a futures contract, an exchange traded option, a currency (or pairs of currencies) (with any necessary adaptation to the kind of Underlying Security).

**Underlying Security Price** means the market price of the security, Financial Product, Foreign Exchange, commodity (or other relevant thing) which is the subject of a Transaction, including a value determined by reference to an index or an index multiplied by an amount of currency, in any jurisdiction, whether or not through an exchange or other market facility, in any case as calculated by OANDA, having regard to the purposes of the calculation and the intent to make a reasonable determination in good faith but without having to consider the specific personal interests of any person.

**USD** means United States dollar or the lawful currency of the United States of America.

**We, Us or Our** means OANDA Australia Pty Ltd (ACN 152 088 349) and its successors and assignees.

**Withdrawable Funds** means the amount of cash which would be paid to you from the Account if requested. There are Withdrawable Funds only if your Account balance is a positive amount. The amount of the Withdrawable Funds is the lesser of the cash balance of your Account and the Margin Cover. If your Margin Cover is not positive, there will be no Withdrawable Funds.

**You** means the Client, being the person or persons in whose name we open an Account (including any Authorised Person), following our acceptance of an application by that person or those persons.

2.3 The following rules also apply in interpreting this document, except if the context makes it clear that a rule is not intended to apply.

(a) Headings used in these Terms are used for convenience only, and do not affect interpretation.

(b) A reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.

(c) A singular word includes the plural and vice versa.

(d) A word which suggests one gender includes the other gender.

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

(f) A reference to time is to local time in Sydney, New South Wales, unless otherwise specified.

(g) Anything permitted to be done by OANDA in accordance with these Terms may be done in its absolute discretion, and any opinion or view required to be formed by OANDA may be formed in its absolute discretion.

(h) For the avoidance of doubt, time will continue to run on days which are not Business Days.

(i) The English version of these Terms prevails over any other translated version of these Terms.

2.4 If a specific provision in a Schedule is inconsistent with another provision in these Terms, the specific provision prevails over the other provision to the extent of the inconsistency.

### 3. ACCOUNT

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3.1 OANDA will establish one or more Accounts in respect of the Financial Products or financial services it provides to you. Transactions entered into by you pursuant to these terms will be recorded in the relevant Account established by OANDA for that Financial Product or financial service. Unless you have specifically requested OANDA to open separate Accounts, you will be taken to have only one Account, with Transactions in respect of each Financial Product or financial service provided to you being recorded in that Account.

3.2 The calculations, reporting and administration may be performed by OANDA separately for each Account, so that (without limitation):

(a) Margin calculations may be managed, and enforcement action may be taken for each Account separately; and

(b) OANDA may at any time aggregate one or more Accounts (for reporting or managing Margins or otherwise for the purposes of these Terms), even if you cannot immediately access reports for aggregated Accounts.

3.3 OANDA may set off any amount owing by you (including any negative balance in one or more Accounts) against any amount OANDA owes you in any other Account, without notice. OANDA may choose, in its absolute discretion, which Financial Products, Transactions, cash, or account balance or other property to apply to offset the debt. For the avoidance of doubt, this right of set off (and other rights of set off under these Terms) apply in respect of rights and obligations across more than one Account. You agree that OANDA may apply the set off as among one or more Accounts, before Default and on and following Default.

3.4 The Account Value may reflect any such aggregation or set off any debt or other amount owing from time to time.

3.5 All Accounts will be denominated in Australian Dollars unless we agree with you that one or more Accounts may be denominated in a foreign currency. You may only instruct OANDA to effect a Transaction denominated in another currency if you have established a relevant Account denominated in that currency.

3.6 You must maintain Margin in the currency of the relevant Account, even if OANDA converts that Margin into Australian dollars for the purposes of managing reports about your Accounts. The conversion for reporting will be at the rate determined by OANDA and that rate will not represent any actual conversion or agreed rate for actual conversion.

3.7 You must maintain Margin for Foreign Exchange Transactions in Australian Dollars (or any other foreign currency permitted by OANDA). If you do not have Margin in Australian Dollars in your Account (or any other foreign currency permitted by OANDA) or your Account has a negative account balance in Australian Dollars (or any other foreign currency permitted by OANDA) but you have sufficient funds in another currency (at the current market rate), OANDA may allow those other funds to be used to offset the required Margin. OANDA may withdraw that permission at any time, without reason or prior notice to you.

3.8 You must, whenever required by OANDA and at your expense, take or defend all legal proceedings which OANDA determines in its discretion is appropriate for the protection of the Account (or any part of it) or money paid as Margin to it for itself, whether those proceedings are or might be reasonably be expected to be in the interests of OANDA, or your interests, or partly both.

3.9 A Client may be comprised of two or more persons. If the Client is comprised of more than one person, then the Account will be deemed to be held by the persons as joint tenants despite any actual or constructive notice to OANDA of any partnership or other agreement between the persons. The joint holding will be only be deemed not to be held as joint tenants if there is a court determination that it is not held as joint tenants.

## 4. Calculations and valuations

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4.1 OANDA may from time to time calculate and report the Account Value for an Account.

4.2 OANDA may from time to time calculate and report the Withdrawable Funds for an Account.

4.3 OANDA may from time to time calculate and report the Realised/Unrealised Loss and Realised/Unrealised Profit for an Account.

4.4 Terms and expressions used in these Terms for reporting and calculating amounts may differ from time to time from terms or expressions used in Online Services usage or market practice. You should have regard to the statements, Confirmations, guides and dealing practices used from time to time.

4.5 If the composition or calculation of an Underlying Security is adjusted by its issuer, regulator or sponsor, OANDA will make such adjustment to the Transaction at the time determined by OANDA which reasonably preserves the intended economic effect of the Transaction, but without being obliged to consider your circumstances or any adjustments. OANDA need not give notice of the adjustment. If the Underlying Security becomes subject to a takeover bid, a take-over offer, scheme of arrangement or other mechanism for change in control, then OANDA may elect to Close Out the Transaction on a new Closing Date determined by OANDA.

4.6 For OTC Contract Transactions, ordinarily the Long Party will be credited with an amount equal to the gross unfranked amount of any dividend payable to the holder of the Underlying Security (as determined by OANDA) and the Short Party will be debited with an amount equal to the gross unfranked amount of any dividend payable to the holder of the Underlying Security (as determined by OANDA).

## 5. Appointment And Authorised Persons

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5.1 OANDA may accept your authorisation of another person (Authorised Person) to give instructions and place Orders on your behalf. You must notify OANDA in your Application Form or otherwise in writing in a way permitted by OANDA of any such authorisation, setting out the full name, telephone number, fax number, email address and signature of that person and any other information required by OANDA to identify the Authorised Person.

5.2 Any change or revocation of such authority is only effective upon receipt by OANDA of a signed written notice of change or revocation from you. If another person is later appointed an Authorised Person, the notice must include the full name, telephone number, fax number, email address and specimen signature of that person and be verified by an Authorised Person and any other information required by OANDA to identify the Authorised Person and, if you are a body corporate, by a director.

5.3 You may appoint an attorney (under a power of attorney in the relevant jurisdiction) to give instructions and place orders on your behalf or otherwise to do anything which you are entitled to do in connection with or under these Terms. You must notify OANDA in writing of any such appointment setting out the attorney's details. You must provide OANDA with a written power of attorney; OANDA may accept or reject this power of attorney.

5.4 OANDA may allow a Client which is a corporation or other legal entity to authorise a person (who is by that authorisation an Authorised Person) or an attorney to do anything which the Client is entitled to do under these Terms, including on conditions determined by OANDA.

5.5 OANDA may allow any other Client to authorise its Authorised Person or attorney to do anything which the Client is entitled to do under these Terms, including on conditions determined by OANDA.

5.6 For the purposes of these Terms, Orders placed by, and other instructions or directions given by, an Authorised Person (or which appear to us on the face of the Orders or other instructions or directions to be placed or given by an Authorised Person) are taken to be your Orders, instructions or directions.

5.7 You are and remain solely liable and responsible for all acts and omissions of your Authorised Person notwithstanding the act or omission of the Authorised Person was:

5.8 outside their actual or ostensible authority; or

5.9 in error, fraudulent, negligent, in breach of their fiduciary duties or criminal.

5.10 You agree not to make, and you release us from any liability to you under your right to make, any Claim against us for any Loss incurred or suffered by you which arise directly or indirectly due to us relying on instructions from or other communications from or acts or omissions by your Authorised Person (including your attorney).

## 6. Orders

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6.1 You may from time to time place Orders with us to enter into Transactions. Before reading the below terms, we wish to advise you that all Australian financial service(AFS) licensees (including Oanda Australia (Pty) Limited ) have a legal obligation to ensure that all markets are fair, orderly and transparent and do all things necessary to ensure that financial services are provided efficiently, honestly and fairly. You must be aware that some practices in placing orders can constitute market manipulation or creating a false market which is conduct prohibited under the Corporations Act.

Market misconduct provisions apply to all financial products and financial markets and involve a range of offences carrying significant fines and other penalties. It is your responsibility to be aware of unacceptable market practices and the legal implications. You may be liable for penalties to regulators such as ASIC or liable to us for costs to us arising out of those trading practices of yours which lead to you, we or any other person suffering loss or penalty.

Subject to these Terms, we will execute your Orders with you as principal in accordance with your instructions.

6.2 We will not be responsible for delays or errors in the transmission or execution of your instructions (except to the extent that responsibility cannot be excluded by law).

6.3 We may refuse to accept an Order (including but not limited to any Order that relates to black-box trading, scalping or any similar trading practices) and we may place a limit on any Order or place other conditions on the receipt of instructions or Orders, in our absolute discretion and for any reason, including if there is no pricing data available in respect of the Underlying Security. We may at any time use, add and change filters within a trading system which prevent delivery of Orders or execution of Orders. We will notify you of any refusal or limitation as soon as reasonably practicable, unless we are prevented by law or a direction from a regulatory authority from notifying you

6.4 We may cancel or amend an Order:

(a) if required by Applicable Laws to do so;

(b) in the event of an error;

(c) if we consider the cancellation appropriate, having regard to the desirability to maintain a fair and orderly market, our obligations as the holder of an Australian financial services licence or as a participant or user of the relevant Financial Market and our other legal and regulatory obligations including those detailed in 6.1 above; or

(d) if the Financial Product the subject of the Transaction has been subject to a trading halt on a Financial Market and you have not reconfirmed instructions.

You acknowledge that Exchanges have a range of powers, including the power to cancel or amend a Transaction. This power can be exercised without your permission or our agreement and so may give rise to us cancelling or amending an Order due to an Exchange exercising its powers even though your Transaction issued by us is an over the counter Transaction with no interest in any Financial Product the subject of the Transaction and even though we might not have fully or even partly hedged our Transaction with you.

6.5 We will make reasonable efforts to affect any instructions to cancel or amend Orders as quickly as possible. If, however, an Order is filled prior to a cancellation or amendment instruction being affected, you are obliged to accept the Transaction on the original terms prior to your amendment or cancellation instruction, unless the Transaction is itself cancelled or amended.

6.6 We may execute Orders for you even in circumstances if we or our associates:

(a) hold a principal position or deal in the relevant Financial Products;

(b) provide similar services to other persons in relation to the relevant Financial Products;

(c) have material price sensitive information relating to the relevant Financial Products if the individuals processing your Order are prevented from knowing or considering such information (including, but not limited to, by reason of procedures known as “Chinese walls”); or

(d) have a potential conflict of interest or duties including, for example, a conflict of interest of which you are not aware and which we are unable to disclose to you.

6.7 Notwithstanding any rule of law or equity to the contrary, OANDA is not disqualified from contracting with any person and no contract, transaction or arrangement in which OANDA is in any way interested is avoided or rendered voidable by virtue of your agreement with us. OANDA is not liable to account to you for any profit realised by any such contract, transaction or arrangement in connection with these Terms or a Transaction. OANDA is not required to make any disclosure to you concerning any such contract, transaction or arrangement.

6.8 We and our related bodies corporate may enter into Transactions with you as principal, whether in respect of Financial Products able to be traded on a Financial Market or in respect of over the counter Transactions such as Derivatives or Foreign Exchange related Transactions. When permitted by law and the Rules, we or an associate may take the opposite position in a Transaction with you. Your Orders may match opposite Orders of another person who is our Client, and this may entitle us to receive commission or other benefits from both Transactions. Similarly, because we deal as principal, then your Orders may match opposite Orders entered by us as principal and you authorise us and consent to us charging you the Transaction Fees and Finance Charges in respect of the Transaction provided by these Terms.

6.9 You are aware of and acknowledge the right of OANDA and its related bodies corporate, directors and employees, either on their own account or on behalf of other clients or persons, to deal in any Transaction or take the opposite position to you in Transactions, if permitted (or, if not expressly permitted, then if not prohibited) to do so by the Corporations Act, Applicable Laws and the Rules.

6.10 You acknowledge that we do not operate any discretionary accounts and we will, unless otherwise expressly provided by these Terms, only act on your instructions (including those given by your Authorised Person).

6.11 Unless otherwise specified in these Terms, all Orders will remain open until either cancelled by you or purged by the Online Service. We do not accept responsibility for reinstating lapsed Orders or for contacting you to seek new instructions.

6.12 If a security code or identifier changes, you are responsible for replacing all live and contingent Order codes with

the new relevant security code or identifier. We will not be responsible for any live or contingent Orders with the incorrect security code or identifier.

6.13 You must not instruct us to submit an Order to enter into a Transaction which would breach or cause us or any other person to breach the Corporations Act, the Rules or any other Applicable Laws including, without limitation, any law or the Rules in relation to:

(a) market manipulation, false trading, market rigging, fictitious transactions, black box trading, scalping, wash trading or matching of Orders;

(b) insider trading;

(c) short selling;

(d) creating a disorderly market or otherwise prejudicing the integrity or efficiency of the market; or

(e) misleading or deceptive conduct.

6.14 Your instructions to OANDA to enter into a Transaction, your Order to OANDA to enter into the Transaction and the Transaction remains valid and enforceable against you, without affecting your other liability to OANDA even if you (or your Authorised Person) are not authorised by your own rules (such as a corporate or trust constitution or an investment management agreement).

6.15 You agree not to make any Claim against OANDA for any Loss incurred or suffered by you which arises in connection with the exercise of any power by ASIC or by the ASX pursuant to the ASX Rules or by any other Exchange which directly or indirectly affects your Transaction, including by way of OANDA directly or indirectly, fully or partly hedging your Transaction (whether or not OANDA has given you a Confirmation in respect of any affected Transaction) except to the extent that the Loss incurred or suffered is caused by the negligence, fraud or breach of these Terms by OANDA.

## 7. Abusive trading practices

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7.1 We do not accept and are entitled to take various actions as set out in these Terms against abusive trading practices.

7.2 All of the following practices are considered to be abusive trading practices and therefore a default pursuant to clause 25.1(h) of the Terms. We are entitled to take any or all of the actions set out in clause 25.2 of the Terms immediately, if we reasonably believe any of the following has occurred, or will occur:

(a) Any of your Orders, Open Positions or Closed Positions are placed in reliance on price latency opportunities or with an intent to exploit price latency across platforms or markets. You will be considered by us as exploiting latency opportunities if you utilise or intend to utilise trading strategies designed to profit from delayed pricing, high volume of Transactions within an unusual short period of time (as compared to the average client trades), and/or targeting opportunistic system related price differentials rather than movements reflecting the correct pricing of the Underlying Assets; or

(b) Any of your Orders, Open Positions or Closed Positions are placed in attempt to manipulate, game, abuse or otherwise take an unfair advantage of our system, platforms, and the financial services and financial products we offer you.

For example:

- I. You benefitted or intend to benefit from an unfair advantage or acted in an unfair or abusive manner in respect of our systems, pricing, platforms or Accounts;
- II. You benefitted or intend to benefit from exploiting a fault, loophole or error in our systems, pricing, platforms or Accounts;
- III. Collusion by or between multiple accounts held by one person or a group or persons;
- IV. You utilised or intend to utilise trading strategies that involve the use of ultra-high speed or mass data entry without our prior written consent (which we may withhold in our sole discretion).

## 8. Allocation policy

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8.1 OANDA will deal fairly and in due sequence with all client Orders having regard to Australian regulatory requirements and market practices.

8.2 To the extent that it is reasonably practicable to do so, OANDA will allocate all Transactions (including Transactions effected pursuant to Orders placed on OANDA's own account) in the sequence in which OANDA receives those Orders, subject to filters and compliance review and to any delay or technical faults connected with or arising through the use of the Online Service, an Exchange System or any other delay that is outside the control of OANDA.

## 9. Online services

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9.1 This clause contains provisions which, in addition to the other Terms, govern the use of any online or other electronic trading or any information service we provide or make available to you (including, without limitation, all software and communication links) under which you may:

9.2 place your Orders or transmit other instructions to OANDA or other persons;

9.3 enquire as to the availability or pricing or value of one or more Financial Products;

9.4 receive market data and other information in relation to one or more Financial Products; or

9.5 receive Confirmations, Account balances or other information in connection with your Account or Transactions.

9.6 In these Terms, we refer to such a service as an Online Service.

9.7 An Online Service may be a proprietary service provided by OANDA, or a service provided to you by a third party pursuant to an arrangement with OANDA (for example, by an Exchange or by a Hedge Counterparty). To the extent that the Online Service is provided to you by OANDA, we grant you a non-exclusive and non-transferable licence to use the Online Service subject to these terms.

9.8 OANDA may refuse to accept or place any Order in its absolute discretion without having to provide a reason.

9.9 OANDA will not be responsible for confirming the receipt of instructions or verifying the authenticity of your instructions.

9.10 OANDA has no obligation to resubmit Orders purged from any Online Service.

9.11 You agree that:

(a) you must not use the Online Service (or permit or procure any other person including any Authorised Person to use the Online Service) until the Security Information has been provided by us;

(b) the Security Information is confidential;

(c) you are responsible for maintaining the confidentiality and use of that Security Information at all times and must procure that any Authorised Person maintains the confidentiality of the Security Information;

(d) you will not permit, consent or allow any person (other than any Authorised Person in its capacity as your agent) to use the Security Information or to access or use the Online Service using that Security Information;

(e) you will not provide, disclose or make available the Security Information to any person (other than an Authorised Person in its capacity as your agent); and

(f) you must notify us immediately upon becoming aware of any unauthorised use of the Security Information or the Online Service.

9.12 You acknowledge and agree that:

(a) you are only permitted to access and use the Online Service, using the Security Information;

(b) we are entitled to rely on all instructions given by, on behalf of, or apparently on your behalf, using the Security Information; despite any other provision of these Terms, we are not liable for any Loss caused by us acting on instructions or other communications using the Security Information;

(c) there may be delays in the processing, execution, amendment or cancellation of an Order entered through the Online Service and:

- I. an Order may be filled before an instruction for its amendment or cancellation is processed;
- II. you remain liable to settle the original Order, until any relevant amendment or cancellation is effected; and
- III. without limiting clause 24, OANDA will not be liable for any Loss incurred by you arising from any delay in the dissemination of market information or the processing of any Order or instruction to amend or cancel an Order;

(d) the execution of an Order placed through the Online Service may be delayed by filters or other electronic features of the electronic system;

(e) we are not responsible for the processing, execution or cancellation of any Orders submitted through the Online Service, regardless of who enters such Orders and regardless of whether or not there is an error in the Order entry or for any delays;

(f) any Online Service is provided on an “as is” basis and, except as required by law, we make no representations or warranties express or implied with respect to the Online Service;

(g) the speed of information provided through the Online Service is subject to a number of factors including, but not limited to, the speed of the user’s internet connection, the user’s settings, the number of concurrent users accessing the Online Service and the volume of information being received and sent by the Online Service;

(h) there are significant risks in trading through the Online Service because it is serviced by means of computer and telecommunications systems, even if generally accepted industry standards and practices are followed;

(i) the features, components or terms of use of an Online Service may be changed by us or the provider of the Online Service without requiring an amendment to these Terms;

(j) you are responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the Online Service and for any communication service fees and charges incurred by you in accessing and using the Online Service;

(k) you are responsible for ensuring you have in place alternative arrangements for the execution of Orders or other services available through the Online Service, if the Online Service or any aspect of it ceases to be available or subject to failure (including, for example, arrangements for the use of telephone or facsimile);

(l) you must notify us immediately if you become aware of any inaccurate information being transmitted through the Online Service including, for example, inaccurate content as to Orders, Transactions or Account balances; and

(m) you must only use the Online Service for your own internal business and investment purposes.

9.13 You also agree to be bound by any terms and conditions of access and use which we or any third party provider of an Online Service may specify and notify to you, from time to time.



9.14 You are responsible for reading, understanding and complying with the details of the operational aspects of the Online Service. It is important that you read and understand any user manuals and operational procedures or rules relating to the relevant Online Service and which are made available either by OANDA or the provider of the Online Service. Further information on how to use and understand the Online Service can be obtained on our website.

9.15 Either you or your Authorised Person may place Orders with us using the Online Service. You authorise each person who is an Authorised Person from time to time to enter Orders using the Online Service in accordance with this document as your agent. You must provide us on request with a list of your Authorised Persons (containing their names and contact details) and any changes to the list.

9.16 You and each Authorised Person must satisfy any requirements (including without limitation requirements as to knowledge, training, testing, procedures and controls) notified by us to you from time to time and you are solely responsible for ensuring that an Authorised Person satisfies these requirements.

9.17 You are responsible for the consequences of any unauthorised disclosure or use of the Security Information, and for any actions or omissions by an Authorised Person.

9.18 We (or any third party providing the Online Service) may suspend, terminate or impose conditions on the use by you or any Authorised Person of the Online Service at any time without notice to you.

9.19 If you are uncertain as to whether your Order has been received, you must make all reasonable attempts to verify whether the Order has been received, approved and effected prior to taking further action. You agree to issue specific cancellation or amendment instructions with respect to an existing Order and not to attempt to effect changes by placing a second or duplicate Order. You will be solely responsible and liable for any duplicate instruction that you place.

9.20 You agree not to contest the validity or enforceability of any electronic communications between yourself (including your Authorised Person) and OANDA.

9.21 If a failure, interruption or malfunction of electronic communication between the parties prevents an Order from being placed, cancelled or amended then, without limiting clause 24, neither party is liable to the other party for any Loss caused then by that failure, interruption or malfunction.

9.22 You acknowledge that all market data and information in relation to trading, volumes and pricing for a Financial Market provided through any Online Service may be proprietary information of the relevant Exchange or Financial Market or another person and any display, dissemination or other use of that information may be subject to restrictions imposed by the Financial Market or other person. You are responsible for complying with any such restrictions.

## 10. Confirmations

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10.1 We will, if required by Applicable Laws, give you a confirmation (Confirmation) in respect of each Transaction which OANDA enters into with you. You consent to receiving Confirmations by electronic means including, for example, through any Online Service. If our service provides Confirmations by accessing a substantially continuously available service, you consent to your Confirmations being available by those means instead of being sent to you.

10.2 You can agree with us, if permitted by Applicable Laws, not to give you a Confirmation or to provide Confirmations to an address or person nominated by you.

10.3 Each Confirmation given by us is subject to the Applicable Laws and the correction of errors and omissions. OANDA may, at any time, reissue a Confirmation in order to correct any errors or omissions.

10.4 You are responsible for promptly checking each Confirmation. You must immediately notify us if you become aware that there is an error in the Confirmation. We are entitled to assume that the Confirmation is correct unless you notify us of

any error within 48 hours following us (or someone on our behalf) giving you the Confirmation or the Confirmation (or its equivalent) becoming available to you.

## 11. Client acknowledgments

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11.1 You, the Client, acknowledge and confirm to OANDA for OANDA's benefit in relying on the following:

(a) you (or, if a corporate entity, the directors who apply to be bound by these Terms) have read and understood all documentation provided to you by us including these Terms and any product disclosure statement (PDS) in relation to any Financial Products which you request OANDA to make available to you in relation to your Account;

(b) you have received, read and understood our Financial Services Guide (FSG);

(c) all dealings in Financial Products and the performance by us of our obligations under these Terms are subject to Applicable Laws;

(d) OANDA relies on your representation that at all times you will be able to make payments and fulfil all commitments on your part arising under these Terms and under the conditions applicable to dealings between you and OANDA;

(e) that trading in Transactions incurs a risk of loss as well as a potential for profit;

(f) we will not provide legal, tax, financial or accounting advice to you as part of the services that we provide to you;

(g) by these Terms (including any Transaction made under it) we do not act in a fiduciary capacity in relation to you and OANDA does not owe any fiduciary obligations to you in respect of its services provided to you in connection with these Terms;

(h) the Client will provide to OANDA on request such information regarding its financial and business affairs and identity, as OANDA may reasonably require;

(i) that all Orders to be placed and all trading to be conducted under these Terms must be lawful;

(j) in executing and complying with these Terms, the Client will not infringe any provisions of any other document or agreement to which the Client is a party;

(k) the Client will take all reasonable steps to obtain and to communicate to OANDA all information, and will deliver or cause to be delivered to OANDA all documents with respect to dealings in the Financial Products which are requested by any person having the right to request such documents and information and the Client authorises OANDA to pass on or deliver all such information and documents to any such person;

(l) the Client will indemnify and keep indemnified OANDA and each of its related bodies corporate and their respective directors, officers employees and agents from and against all sums of money, actions, proceedings, suits, Claims, complaints, demands, damages, costs, expenses and any other amounts whatever claimed against any of them;

(m) OANDA is not required to act in accordance with your instructions if in OANDA's opinion to do so would or could constitute a breach by it or its agent or Hedge Counterparty of the Corporations Act or any other Applicable Laws;

(n) dealings in the Transactions may create an obligation to make a payment to OANDA in accordance with these Terms;

(o) OANDA acts as principal in respect of the Financial Products issued by OANDA;

(p) subject to applicable legal or regulatory requirements, you consent to OANDA either knowingly or unknowingly taking the opposite side to the Client in relation to any of the Financial Products, without notice to the Client;

- (q) subject to applicable legal or regulatory requirements, the Client agrees and acknowledges that OANDA's directors, employees and associates (and their directors, employees) may and can deal on their own account in Transactions which may be the same as or differ from your Transactions;
- (r) OANDA may, in its sole discretion and without explanation, refuse to deal with or on behalf of the Client in relation to any Transaction (including Closing Out existing Open Positions held in the Account on behalf of the Client) or to limit the number of Open Positions of the Client or both;
- (s) if errors have occurred in the pricing of Transactions quoted by OANDA to the Client, OANDA may choose not to be bound by such Transactions (without further liability to the Client) if OANDA is able to substantiate to the Client that there was a material error at the time of the Transaction;
- (t) there are risks associated with using an internet-based deal execution trading system which include, but are not limited to, the failure of hardware, software, and internet connection and since OANDA does not control data flows, internet or power connection, routing via internet, configuration of your equipment or reliability of its connection, OANDA will not be responsible for communication failures, distortions or delays when trading (including processing payments) via the internet;
- (u) reports to the Client on the execution of Confirmations by OANDA, and the content of such Confirmations being statements, unless otherwise objected to within 48 hours after communication to the Client, will be deemed to be conclusive proof of the accuracy of such contents and their execution in accordance with these Terms except only in the case of manifest error;
- (v) a notice issued by an authorised officer or agent of OANDA stating the amount of money due and payable by the Client will be taken as conclusive evidence of notice except only in the case of manifest error;
- (w) Financial Products traded on the Online Service will not be settled by the physical or deliverable settlement of the Underlying Security on their Value Date. Depending on the Financial Product, they are generally rolled or "swapped" indefinitely until Closed Out;
- (x) an Open Position must remain open for the minimum period of time as determined by OANDA and cannot be Closed Out by you during this period; and
- (y) the English version of these Terms prevails over any other translated version of these Terms.
- (z) Under this agreement, the payment processing services for goods and/or services are provided by OANDA Europe Ltd. on behalf of OANDA Australia Pty Ltd or by OANDA Australia Pty Ltd depending on the type of payment method used. In the event you choose to pay with credit card the payment will be processed via a European Acquirer, these terms are an agreement between you and OANDA Europe Ltd. For any other type of purchases, these terms are an agreement between you and OANDA Australia Pty Ltd and goods and/or services will be delivered by OANDA Australia Pty Ltd directly.

All representations, warranties and acknowledgments given by you under these Terms are taken to have been made at the time you complete the Application Form and are taken to have been repeated by you:

- (a) each time you place an Order with us;
- (b) each time you enter into a Transaction with us; and
- (c) each time we do anything or refrain from doing something under these Terms or as contemplated by these Terms in connection with your Account or any Transaction.

## 12. Oanda undertakings

12.1 OANDA will always act honestly and exercise due care and diligence in its performance of these Terms.

12.2 OANDA will use reasonable endeavours to execute your Orders, subject to these Terms.

12.3 Apart from any warranties and representations which are imposed or implied by law and which cannot be excluded, OANDA makes no warranties in relation to any service or information provided or made available to you in connection with these Terms. To the full extent permitted by law, OANDA excludes liability for all costs, expenses, damages and Losses (including consequential loss) arising in connection with such services or information, or these Terms (including, without limitation, liability for negligence).

## 13. Risks of transactions

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13.1 You acknowledge and understand that there are risks involved in Transactions, including:

- (a) the gearing or leverage involved in investing in Financial Products means that a small Initial Margin payment can potentially lead to large losses for you, including more than all the Margin ever paid to OANDA;
- (b) the geared nature of Transactions also means that acquiring and holding them can carry greater risks than directly investing in the Underlying Security which generally are not geared;
- (c) a relatively small market movement can lead to a proportionately much larger movement in the value of your investment, and this can work against you as well as for you;
- (d) over the counter Transactions are derivatives not made on any Exchange so might be considered to involve a greater risk than an exchange-traded derivative since there is no exchange market on which to Close Out an Open Position – you are only able to open and close your positions with us;
- (e) markets outside of Australia might involve different risks to Australian markets, so the potential for profit or loss from Transactions relating to a non-Australian market or denominated in non-Australian currency will be affected by fluctuations in foreign exchange rates;
- (f) it is possible to incur a loss if, after your acquisition of an investment, exchange rates change to your detriment, even if the price of the Underlying Security to which the Transaction relates remains unchanged;
- (g) you may sustain a total loss of the Margin that you deposit with or pay to us to establish or maintain a position and if the market moves against you, you may be required to pay substantial additional Margin at short notice but if you fail to do so within the required time, your investment position may be liquidated at a loss to you and you will be liable for any remaining deficit in your Account (note that funding options for accounts trading in cryptocurrency CFDs may be restricted, due to restrictions placed by payments providers, and this may have implications for the speed at which you may be able to pay additional Margin);
- (h) you will be required to maintain the Margin Cover, which might mean you must pay more Margin, even though we do not give Margin calls and even if you are not contactable;
- (i) under some trading conditions it may be difficult or impossible to liquidate a position, such as (but not limited to) at times of rapid price movement if the price rises or falls in one trading session to such an extent that trading in the underlying market is suspended or restricted;
- (j) if you trade in denominated currencies other than the Account currency you may lose money or value of the investment due to exchange rate fluctuations and that these losses may be in addition to any losses on the value of the Underlying Security relevant to the Transactions;
- (k) gapping, whereby a market price falls or rises without the opportunity to trade, can result in significant losses even when a stop loss has been put on because it may not be possible to transact at the nominated price if the market has gapped;

(l) in some circumstances the Underlying Security may be halted, suspended from trading or have their quotation for trading withdrawn from an Exchange, or an index may be suspended and these factors might affect the value of your Transaction relating to those Underlying Securities due to OANDA exercising its discretion to determine the fair value of them;

(m) a market disruption may mean that you are unable to trade when desired, and you may suffer a loss as a result, including examples of disruption include the “crash” of a computer based trading system, fire or other exchange emergency or a regulatory body could declare an undesirable situation has developed in a particular contract and suspend trading; and

(n) you may incur losses that are caused by matters outside our control for example, a regulatory authority exercising its powers during a market emergency may result in losses for the Client or a regulatory authority can suspend trading (for example in an Underlying Security) or alter the price at which a position is settled, which could also result in a loss to the Client.

13.2 No advice or recommendation is provided by OANDA in relation to your Transactions unless expressly stated otherwise.

## 14. Fees, commissions and charges

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14.1 Any profit or loss net of any fees and charges (that is, the realised gain or loss) arising on Closing Out a Transaction will be credited or debited (as the case may be) against the Account Value, in the Account currency.

14.2 You owe us, and must pay to us or as we direct (in accordance with these Terms):

(a) any Transaction charges including all Transaction commission, charges, fees, Margins, premia, settlement and clearing fees and charges, interest, default charges and Taxes (including GST but excluding OANDA's income tax or penalty tax and levies) and any other amounts due under these Terms on demand by OANDA in cleared funds or otherwise as required by these Terms;

(b) a Transaction Fee for each Product or Transaction (as the case may be) being the fee from time to time specified by OANDA to be the amount payable by you to OANDA in respect of each such Transaction or Transactions (including any special handling debit arising from a large Transaction or Transactions following Close Out of your Transactions);

(c) any royalty or other fee which must be paid for the use of prices or information provided to you via access through the Online Service or otherwise by any Exchange;

(d) (if applicable) a monthly access charge for the use of the Online Service provided by OANDA, as specified by OANDA from time to time;

(e) the Finance Charge calculated as disclosed in the PDS, FSG, a supplementary disclosure document or in any other permitted way of notifying you, such as on OANDA's website or the Online Service, in the amount of the Finance Charge Adjustments from time to time;

(f) Finance Charge Adjustments applicable to any Transaction or Account;

(g) any fees, Taxes, stamp duty or other charges as may from time to time be levied on or in connection with any Transactions entered into with you; and

(h) in respect of any unpaid amounts required to be paid under these Terms including, (without limitation) any amounts due as a result of your failure to pay interest on all such amounts denominated in Australian dollars at the Base Rate then generally applicable for debit amounts on Accounts plus a rate of interest per annum as reasonably determined by OANDA (but so that the total rate does not exceed generally prevailing rates for personal unsecured loans in comparable amounts), such interest to accrue daily from and including the due date to and including the date of its payment in full. Guidance note: this is the rate of interest you pay if you default on making any payment to OANDA. It is not the rate for any Finance

Charge Adjustment. We owe you and must pay you (in accordance with these Terms) Finance Credit Adjustments and any special handling credit applicable to any Transaction or Account from time to time, calculated as disclosed in the PDS, FSG, a supplementary disclosure document or in any other permitted way of notifying you, such as on OANDA's website, the Online Service or, if you are not a retail client, by separate agreement with you. Any amount or rate or formula which is to be specified by OANDA may be specified by a PDS, FSG, a supplementary disclosure document or in any other permitted way of notifying you, such as on OANDA's website or the Online Service. The amount of any fees and charges or other amounts payable by you to OANDA in respect of any Transaction will be set out in the Confirmation of that Transaction or the Online Service to the extent known at the time.

(i) A currency conversion fee to convert any profit or loss on your transactions from the currency of your transaction to the currency of your account. Further detail on this is available on our website FAQ "Home Currency conversion with OANDA Australia Pty Ltd". at the link below: -

<https://oanda.secure.force.com/#!/article/ka04O000000LYJpSAO/ka04O000000LmbeQAC/>

14.3 You agree that OANDA may:

(a) debit your Account (on a monthly or any other basis) or deduct from the Trust Account and pay itself, without further reference to you:

- I. all administration fees, including but not limited to fees associated with returned cheques, payment processing, credit card fees, Short Message Service (SMS), debt collection and telephone transcript copies from your Account with OANDA during the full term of these Terms while you use such services; and
- II. all fees, charges and royalties which you owe to OANDA;

(b) You acknowledge that in the event that there are no Open Positions in your Account for an extended period of time, OANDA may designate your Account as "inactive". If you request to reactivate your Account, you agree to provide whatever information and execute such additional documentation as OANDA may reasonably require, and to be bound by the version of these Terms in effect at such time. OANDA may impose Inactivity Fees on inactive accounts, to be calculated and charged in such manner as OANDA shall publish from time to time on OANDA's website at

<https://oanda.secure.force.com/helpportalcountryselection?artP1=ka04O000000LXdbSAG&artP2=ka04O000000LI89QAC/>

(c) withdraw from the Trust Account and pay ourselves the amount of any Transaction Fee, any administration fees, (including but not limited to credit card fees) you owe and the amount of Margin which you must pay to maintain the required Margin Cover;

(d) withdraw from the Trust Account and pay ourselves any moneys to which we are entitled in accordance with these Terms (such as, but not limited to, Realised/Unrealised Losses); and

(e) deduct from the Account any amount reimbursable in accordance with these Terms.

14.4 Core Pricing. If you choose the Core pricing option, OANDA will charge your account the Commission Charges, in addition to any other charges or fees as set forth in this Account Terms. As long as Core Pricing is in effect on your account, the Commission Charges will be assessed on all Orders executed by you in your Account.

14.5 OANDA may receive commissions and other benefits from other parties in relation to Transactions OANDA enters into with you or in connection with other services provided to you. OANDA is entitled to retain such commissions and benefits.

14.6 If you have been referred to us or on behalf of a broker or other third party, that broker or third party may receive benefits in the form of a commission, rebate or other payment from us.

14.7 Unless otherwise agreed, the terms of any amounts payable by you under these Terms are stated exclusive of GST. You must pay the GST on the amount charged for the supply of the service, unless that is not permitted by law. OANDA will when required by law and as far as practicable state in Confirmations the amounts as GST-inclusive.

14.8 The amounts of or basis of calculating the fees, commissions, charges and credits referred to in this clause 14 will be as notified from time to time in writing by OANDA, either by way of a PDS, postings on the Online Service (including by way of Transaction prices), notification to your contact address, posting to OANDA's website or as otherwise agreed with you or permitted by these Terms.

14.9 If:

(a) you are required to make a deduction or withholding in respect of Tax from any payment to be made; or

(b) OANDA is required to pay any Tax (other than income tax) in respect of any payment made in relation to these Terms at your request, then you:

(c) indemnify OANDA against the Tax; and

(d) agree to pay to OANDA an additional amount to ensure OANDA receives a net amount (after payment of any Tax in respect of each additional amount) that is equal to the full amount OANDA would have received had a deduction or withholding or payment of Tax not been made.

14.10 You must reimburse OANDA for all fees (both direct and indirect) and expenses charged in connection with any Transaction (other than Tax on the income of OANDA) and for all costs and expenses incurred by OANDA in implementing these Terms and in enforcing its rights under these Terms (including its legal costs of external or internal legal advisers on a full indemnity basis).

14.11 Open Positions will be charged a Finance Charge Adjustment or will be entitled to receive a Finance Credit Adjustment, depending on the Transaction chosen by you either buy/long position or sell/short position.

These accrue (and so are calculated) on an:

1. End of Day basis for the following products:

- a. Forex and CFDs on Bitcoin;
- b. CFDs on Indices;
- c. CFDs on Precious Metals;
  - I. Gold, Silver, Platinum and Palladium

2. Second by Second basis for the following products:

- a. CFDs on Commodities and Copper;
- b. CFDs on Bonds

The full details of OANDAs finance charges can be found on our website

<https://www.oanda.com/au-en/trading/financing-costs/>

14.12 You remain liable to pay the Finance Charge Adjustment even though:

(a) the charge may be called other things from time to time, even across different Accounts, different Financial Products or on the Online Service at the same time;

(b) the charge is not stated on a statement for an Account or Confirmation for a Transaction;

(c) the charges differ according to whether the Transaction was made offline or on-line;

(d) the charges differ according to the amount of the Account, regardless of the amount or value of the Account;

(e) the rate is expressed or inferred to be an annual rate but is applied and calculated by the day or any other time interval proportional to the annual rate;

(f) the Finance Charge Adjustment is first applied by way of posting the amount to the Account so that you become liable

only for any net debit amount of the Account (or we owe you the net credit amount of the Account);

(g) we may owe from time to time Finance Credit Adjustments (which are posted to the Account);

(h) different rates apply at the same time to other clients' accounts;

(i) the charge may be applied at rollover but not levied or enforced until termination of the Transaction;

(j) the Transaction is denominated in a currency other than Account currency; and

(k) the rates will be as determined by OANDA in its absolute discretion and you might not have prior notice of the current rate.

14.13 You acknowledge that you are responsible for your own legal costs associated with entering into these Terms and for all Taxes and expenses incurred by you in connection with these Terms, including any Transaction made under it.

14.14 All payments by you under these Terms are:

(a) to be made without any set-off by you, counter claim or condition made by you and without you making any deduction or withholding for any Tax or any other reason unless the deduction or withholding is required by applicable law or the set-off arises by express application of these Terms; and

(b) payable in any currency that OANDA may reasonably require or determine.

14.15 OANDA will give notice to you of any change in its fees and charges or other amounts payable by these Terms in accordance with Applicable Laws except rates (including, but not limited to, rates of the Finance Charge Adjustments and Finance Credit Adjustments) will change at any time, as available via the Online Service.

14.16 If GST is payable on a taxable supply made by OANDA under, by reference to, or in connection with these Terms, you must also pay the amount of GST payable in respect of that taxable supply. This clause does not apply to the extent that consideration for a supply is expressly stated to you to be GST inclusive. Terms which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 have that meaning in this document.

## 15. Client moneys and trust account

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15.1 OANDA must deal with any money and property which you pay or give to, or which is otherwise received by OANDA in connection with financial services provided by OANDA, in accordance with the Applicable Laws. For example, OANDA may be required to pay such moneys into the Trust Account which complies with the requirements of the Corporations Act. You acknowledge and authorise that:

(a) your moneys and the moneys of other clients of OANDA may be combined and held by OANDA in a Trust Account, separate from the moneys of OANDA;

(b) all moneys credited to the Trust Account maintained by OANDA may, by law, be used by OANDA to meet the default of any client of OANDA to the extent permitted by the Corporations Act (subject to Applicable Laws), even though OANDA does not do this under its business procedures; and

(c) moneys credited to any Trust Account maintained by OANDA under the Corporations Act may, by law, be used by OANDA for purposes unrelated to your Account to the extent permitted by the Corporations Act even though OANDA does not do this under its business procedures and accordingly such use of a Trust Account does not fully protect your money and property from risk of loss.

15.2 If OANDA pays your funds to another person at your request, OANDA is not liable to you for the performance by the other person who receives the benefit of the payment of your funds. In particular, without limitation, OANDA is not obliged to



enquire into:

- (a) the use of those funds by the third party;
- (b) any persons to whom the third party pays all or any of these funds;
- (c) the solvency of any of those persons;
- (d) the compliance by any of those persons with the Corporations Act, Applicable Laws and Rules;
- (e) whether any of those persons hold any part of these funds on any nominee, segregated account, trust or any other basis for your protection or security.

15.3 You agree that OANDA is entitled to all interest earned on moneys credited to any Trust Account unless you and OANDA have otherwise agreed in writing.

15.4 The moneys to which you are entitled under these Terms and which are under the control of OANDA will be paid directly to you and not to any third party, unless you have otherwise instructed us to do so and we agree. You must provide relevant account details for payment instructions in respect of payments to be made by OANDA to you. Although OANDA will take reasonable steps to comply with your payment instructions, OANDA accepts no responsibility for any failure to comply with those instructions and, if such failure occurs, the relevant moneys will continue to be held by OANDA in accordance with the Corporations Act and Applicable Laws.

15.5 You authorise and direct OANDA to withdraw any or all moneys to which you are otherwise entitled in any Trust Account maintained by OANDA to meet any liability, obligation or other Loss which you owe to OANDA including to pay for your Financial Products, an amount in respect of any Realised/Unrealised Loss on your Account, Margin or Margin Cover).

15.6 When you pay moneys to OANDA in connection to a Transaction, you are also directing those moneys to be paid into a Trust Account and those moneys will remain in there until withdrawn by OANDA to pay you amounts you are entitled to receive or to pay for amounts to which OANDA is entitled including to pay for your Financial Products without limitation an amount in respect of any Realised/Unrealised Loss on your Account. If there has been a Realised/Unrealised Loss on your Account after OANDA re-values your Account, OANDA is authorised, by your direction under these Terms to withdraw the equivalent amount of that Realised/Unrealised Loss from the Trust Account to pay OANDA an amount to which OANDA is entitled.

15.7 If OANDA determines that your Account has been inactive for a reasonably long period, you authorise OANDA to withdraw any Withdrawal Funds from the Trust Account to be paid into your nominated bank account.

15.8 You acknowledge that OANDA is entitled to be paid from those moneys to which you are otherwise entitled in any Trust Account maintained by OANDA an amount sufficient to meet any liability, obligation or other Loss which you owe to OANDA.

15.9 You acknowledge that from the time any funds withdrawn from the Trust Account in connection with your Transactions:

- (a) you lose the protections given to a Trust Account of that kind;
- (b) you are an unsecured creditor of OANDA for its obligations on your Transactions; this includes exposure as an unsecured creditor for payment to you of the net Account balance (if any) after closing all your Open Positions;
- (c) the funds are no longer held beneficially for you.

15.10 If you pay moneys into any Trust Account maintained by OANDA in anticipation of you creating and meeting any liability, obligation or other Loss which you will owe to OANDA including to pay for your Financial Products (including payment for Margin), by these Terms you authorise and direct OANDA to withdraw those moneys to pay OANDA for any liability which later arises. Your payment into the Trust Account will be deemed to be subject to this direction unless you

tell OANDA (in writing) otherwise. You agree that these Terms are a sufficient written direction by you for the purposes of authorising and directing OANDA to make the withdrawal on these Terms, subject to any other written direction you give OANDA from time to time.

15.11 You acknowledge and agree that if there has been a Realised/Unrealised Profit on your Account after OANDA re-values your Account, OANDA will pay into or hold sufficient funds in the Trust Account and credit your balance in the Trust Account as Margin to reflect the adjustment for the Realised/Unrealised Profit so that those funds will be retained there for your benefit until dealt with in accordance with these Terms.

15.12 You acknowledge and agree that OANDA may revalue your Account at any time and from time to time but is not obliged to revalue your Account on any particular frequency or at any particular time, so OANDA is not obliged to commit to determine whether there has been any Realised/Unrealised Profit or Realised/Unrealised Loss on your Account at any particular time or from time to time.

15.13 All currency exchange risks regarding any payment instruction or any Order or Transaction entered into by you with OANDA is your responsibility. Any conversion from one currency to another required to be made for performing or executing any payment instruction, Order or Transaction may be effected by OANDA in the manner and at the time and at the exchange rates that OANDA, in its absolute discretion, decides.

15.14 You agree that these Terms are a sufficient written direction for the purposes of authorising and directing OANDA to make the withdrawals from the Trust Account on these Terms, subject to any other written direction you give OANDA from time to time which OANDA accepts.

## 16. Margin cover

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16.1 You agree and acknowledge with each of the following:

(a) Margin Cover refers to the amount paid or payable to OANDA as it requires (to protect against your liabilities on Transactions) and which is credited to your Account. The minimum amount of the Margin Cover is determined by OANDA in its absolute discretion.

(b) A Margin payment is the amount you pay OANDA for crediting your Account as Margin Cover.

(c) The time for your payment to maintain Margin Cover is of the essence.

(d) You must maintain at least the amount of Margin Cover required by OANDA whether or not OANDA gives any notice to you to make those payments or you have actual notice of the required amount. The required amount of Margin Cover can change continuously and can change automatically, including over the week-end or other non-trading days. Your obligation to maintain at least the required amount of Margin Cover is continuous.

(e) You must ensure that for so long that you have an Open Position, the Margin Cover must always remain positive. If not, your Open Position may be Closed Out by OANDA without prior notice to you.

(f) Your obligation to maintain Margin Cover arises at the time the Transaction is executed.

(g) It is solely your responsibility to monitor and to satisfy all Margin Cover requirements.

(h) A Margin payment is credited by OANDA at the time cleared funds have been received into the Trust Account and OANDA has applied the payment to your Account or such other time as allowed by OANDA, so a Margin Cover requirement for an OTC Contract or other OTC Transaction issued by OANDA is not satisfied unless and until your payment is received in cleared funds into the Trust Account and applied to your Account by OANDA.

(i) Without limiting any other right of OANDA, in respect of any Financial Product issued to you by OANDA acting as

principal to you, you authorise and direct, by these Terms, that all of the funds which you deposit into the Trust Account be immediately withdrawn and paid to OANDA for its own account, towards satisfying your obligations to pay Transaction Fees, Finance Charges, to maintain Margin Cover, to pay for Realised/Unrealised Losses, and to pay all other amounts owing under these Terms, even if:

- I. your payment (after deduction for Transaction Fees, Finance Charges and other amounts owing) is in an amount less than or more than the amount required to maintain the total amount of required Margin Cover;
- II. the required amount of Margin Cover reduces after your payment to a Trust Account;
- III. there is any delay between the time you make the payment to the Trust Account and when OANDA makes the withdrawal;
- IV. you purport to withdraw your authority and direction, but you still have at that time an obligation to OANDA to maintain an amount of Margin Cover which has not been satisfied; or
- V. you do not tell us your intended use of the Margin Cover which will be directed to your Account after your payment or you change your mind after you tell us and you deal in Financial Products for a lesser value than you told us or you do not deal.

(j) Your liability in respect of Margin requirements is not limited to the amount, if any, initially paid to OANDA for your Account. You are responsible to pay any deficit owing to OANDA after Close Out of a Transaction and if you default in payment of such deficit, OANDA may pay the deficit out of the Account or realise any Financial Products held by OANDA and apply the amounts or proceeds against that deficit and you are responsible for the full and prompt discharge of the deficit (which exceeds the value of the Account) by making payment in full to OANDA immediately when that deficit arises.

16.2 OANDA may (without notice to you) Close Out, but will not be obliged to Close Out or to attempt to Close Out, some or all Open Positions, at that time or any later time as OANDA determines (whether in its discretion or by automatic trading platform management) if:

(a) your Account Value falls below the Margin Closeout Level; or

(b) you fail to maintain the required Margin Cover; or

(c) at any time, and from time to time, OANDA determines that the value of all of your Open Positions (and not taking into account any cash balance in your Account) represents a substantial net unrealised loss to you such that, in OANDA's belief, the continued trading, or failure to Close Out, one or more of your Open Positions will or is likely to materially prejudice your Account Value.

16.3 Special Handling for Large Transactions If a Transaction or series of Transactions occurs in your Account which results in the immediate opening or Close Out of a Transaction or series of Transactions within a period of 10 seconds, in either case with an aggregate notional value that exceeds \$100,000,000 USD equivalent in any major currency pair as determined by OANDA from time to time (e.g., a pair comprised of any two of AUD, CAD, CHF, EUR, GBP, JPY, USD), or \$30,000,000 USD equivalent in any other Financial Product, then OANDA will execute your Transaction(s) at the price shown in the Electronic Trading Platform at the time of your Transaction(s) and subsequently may debit or credit your Account for the difference between the price shown in Electronic Trading Platform at the time of your Transaction(s) and an amount equal to 1.0 pip above OANDA's actual volume weighted cost of implementing such Transaction(s) (as determined by OANDA).

## 17. Rolling over of open positions

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17.1 In respect of each Open Position, subject to:

(a) prior Close Out of that Open Position;

(b) any express terms of the Transaction; or

(c) the express agreement of OANDA to settle that Open Position,

OANDA is by these Terms instructed:

(d) to vary the Open Position (in which case it will be deemed to be a new Transaction) so that its settlement date is deferred to a Business Day to be agreed between OANDA and you (and if there is no agreement by the Calculation Time on the Business Day immediately prior to the then applicable settlement date as agreed previously, it will be the following Business Day); and

(e) to Close Out the Open Position and enter into a new Transaction for the same Underlying Security and being the same bought or sold position except that the settlement date is to be one Business Day later and adjusted for any interest differential.

## 18. Information and advice

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18.1 OANDA may provide (but is under no obligation to provide) you with information or data concerning interest rates, securities, Derivatives, foreign currency, property, other Financial Products or markets generally. If such information or data is provided, it is provided on the basis that OANDA believes the sources to be reliable but has not verified that information. You acknowledge that OANDA is not responsible for the accuracy, completeness or currency of any information or data provided (including the sequence of trades) and that if you rely on that information or data you do so at your own risk. You acknowledge that no information or data provided by OANDA to you takes into account your objectives, your financial needs or situation or your special circumstances.

18.2 When OANDA provides services to you (including agreeing to provide Financial Products or financial services, open an Account, issuing to you, or dealing with you, as principal) OANDA is not by these Terms or those acts providing, required to provide, or liable for, advice or recommendations in relation to the Financial Products, financial services, Orders or Transactions, except to the extent required by Applicable Laws.

18.3 You represent and warrant to OANDA on a continuing basis that under these Terms, to the extent permitted by law:

(a) you are not relying on any communication (written or oral) from OANDA as financial services or other investment advice or as a recommendation to enter into, or vary or Close Out, any Transaction;

(b) you will not consider or treat the information and explanations relating to the terms of a Transaction to be financial services or other advice on, or a recommendation to, enter into, any Transaction; and

(c) you will not take any communication (written or oral) received from OANDA as an assurance or guarantee as to the expected results of any Transaction.

18.4 You acknowledge that you are responsible for all Orders you place, or choose not to place, with OANDA and it is your responsibility to obtain personal Financial Product advice (including legal, tax and financial advice) before making any investment or trading decision in respect of Financial Products.

18.5 To the extent that OANDA would be obliged (but for this clause) to give you a statement recording any advice to you, then to the extent permitted by Applicable Laws:

(a) you consent to receiving any such written statement of advice after having been given the advice;

(b) you consent to receiving any such written statement of advice after making the Transaction but within the period permitted by law; and

(c) OANDA does not need to give you a statement of advice.

## 19. Privacy and information

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19.1 You authorise us to collect your personal information from you when we provide services to you under these Terms. You authorise us to use any information we collect from you or from others, or such other relevant documents:

(a) to assess your request for us to provide our services to you;

(b) to provide our services to you in accordance with these Terms;

(c) for the purposes of complying with its obligations regarding your beneficial interests;

(d) to allow OANDA to communicate with third parties in connection with the matters contemplated by these Terms, such as in connection with the Account; and

(e) to ensure that legal and regulatory requirements under Applicable Laws are met.

19.2 You must notify us in writing when any of the information provided by you changes.

19.3 You authorise us to disclose personal information to:

(a) our related bodies corporate, whether in Australia or elsewhere;

(b) any clearing or settlement participant responsible for the clearing or settlement of your Transactions (if your OTC Transactions are ever cleared by a third party);

(c) our service providers (including marketing companies, data consultants and IT contractors);

(d) our agents, contractors, and external advisers;

(e) government and other regulatory bodies and authorities whether in Australia or elsewhere;

(f) payment system operators;

(g) other financial institutions and credit providers who provide services to you;

(h) on a confidential basis, a prospective purchaser of, joint venture partner of, or investor in, OANDA or a related body corporate or all or part of the business of OANDA or a related body corporate; and

(i) any other relevant person to the extent required by Applicable Laws.

19.4 You authorise OANDA to use and disclose the Tax file number which you provide to OANDA for all Accounts conducted by you with OANDA for the purposes of Transactions in accordance with any legal requirements.

19.5 You have a right to access any personal information that we hold about you. Sometimes there may be a reason why access will not be possible. If that is the case, you will be told why. To find out what kinds of personal information we may hold about you, or to request access to any personal information, please contact us.

19.6 You agree that your personal information can be used or disclosed by us as contemplated in these Terms. You agree to take all reasonable steps to deliver information or documentation to OANDA, or cause information or documentation to be delivered to OANDA concerning Transactions which are requested by a person having a right to request such information or documentation (including, without limitation, ASIC, ASX, ASX Clearing Corporation Limited or ASX Settlement Corporation Limited). You understand that if you do not provide any information requested by us or do not agree to us using your information as set out in this clause 18, we may not be able to provide our services to you.

19.7 You agree that we may make such enquiries as we think fit of any person, including your employer, bank or a credit agency, relating to your creditworthiness and disclose the result of those enquires and as a result of your disclosures to us (including your tax file number) to any credit rating agency or to any clearing or settlement participant responsible for the clearing or settlement of your Transactions for the purposes of our or that participant's risk assessment.

19.8 OANDA will comply with its obligations under the Privacy Act 1988 (Commonwealth) as amended from time to time, to

the extent that they are relevant to these Terms.

19.9 You must, upon the request of OANDA, take all reasonable steps to deliver to OANDA all information and documentation relevant to trading in Financial Products.

## 20. Disputes

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20.1 You agree to examine the terms of each Confirmation immediately upon receipt and you agree that the contents of a Confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal, unless within 48 hours of issue of a written Confirmation you notify OANDA of any disputed detail in the Confirmation received by you.

20.2 Complaints (which do not include disputed details) must be referred to us in accordance with the procedures set out in our FSG from time to time. Unresolved complaints will be referred to the Financial Ombudsman Service or an external dispute resolution scheme of which we are a participant.

## 21. Tape recordings

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21.1 You authorise OANDA to record any or all incoming and outgoing phone calls with you without making a disclosure to you of this nature each and every time you speak with a representative of OANDA. These calls may be recorded with or without an audible tone. You agree that OANDA may use such recordings for the purposes of monitoring and training its staff, monitoring compliance with you and OANDA's respective regulatory and contractual obligations and resolving disputes. If there is a dispute between OANDA and you, you have the right to listen to any recording of those conversations (if still available). Nothing in these Terms obliges OANDA to keep a recording or to notify you that we have eliminated a recording.

21.2 Recordings may be used to assess the performance of or to train OANDA's representatives, monitoring compliance with OANDA's respective regulatory and contractual obligations and resolving disputes.

21.3 OANDA is not obliged unless Applicable Laws require for it to keep any transcripts or copies of any telephone recording or conversation nor to tell you when it disposes of the record.

21.4 Subject to clause 21.3, OANDA may upon request, provide copies of any telephone recording or transcript relating to your dealings to you in if there is a dispute or anticipated dispute with respect to such dealings. You agree to pay any reasonable cost associated with providing any such transcript or copy.

## 22. Your capacity, representations and warranties

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22.1 We provide services under these Terms on the basis that you undertake as primary obligor all obligations arising on the execution of Transactions which we enter into with you regardless of your legal capacity.

22.2 You represent and warrant to us that you are:

(a) acting as principal;

(b) acting as an intermediary on another's behalf and you are specifically authorised to enter into Transactions on behalf of the other person and (if required) currently have all appropriate Australian financial services licence authorisations to do so; or

(c) acting in accordance with the terms of a trust deed (if you are a trustee of a trust).

22.3 If you are constituted by more than one person (including, for example, if you are acting in a partnership or joint venture), then each person constituting you are jointly and severally liable for the obligations under these Terms, and we may act on the instructions of any one of those persons.

22.4 If you are a corporation, you represent and warrant that:

- (a) you hold a valid ACN, ABN or ARBN (as applicable) under the Corporations Act;
- (b) you have full corporate power to enter into, and perform your obligations under, these Terms; and
- (c) you have taken all necessary corporate action to authorise the performance of your obligations under these Terms, and these Terms constitute the legal, valid and binding obligations, enforceable against you.

22.5 If you are acting as a trustee of a trust, a responsible manager of a managed investment scheme, a trustee of a superannuation fund or an agent under an investment management agreement, the additional representations, warranties and undertakings set out in Schedule 1 apply.

22.6 You represent and warrant that:

- (a) you have read and understood all documentation provided by OANDA to you in relation to the services provided by OANDA including, without limitation, any product disclosure statement;
- (b) you are a person with whom OANDA is lawfully entitled to deal pursuant to any Applicable Laws and that all dealings by you with OANDA or requested to be done by OANDA are and will be lawful under all Applicable Laws;
- (c) all information supplied on the Application Form or otherwise to OANDA is true, complete and accurate in all respects and you will notify OANDA immediately of any change in any information supplied (including but not limited to any change in your name, address, telephone number, facsimile number or e-mail address);
- (d) you will rely upon your own knowledge and judgment and will seek such advice (financial or otherwise) as may be prudent before placing an Order with OANDA and you assume full responsibility for any Order placed with OANDA;
- (e) you fully understand the relevant provisions of:
  - I. the prohibition of false or misleading markets and other market manipulation as described in Applicable Laws and section 1041A of the Corporations Act;
  - II. the prohibition of insider trading as described in section 1043A of the Corporations Act;
  - III. the prohibition of false trading and market rigging as described in sections 1041B and 1041C of the Corporations Act;
  - IV. the prohibition of misleading and deceptive conduct described in section 1041H of the Corporation Act; and
  - V. Applicable Laws and the Corporations Act which stipulate the conditions upon which short selling is permitted on the ASX and the disclosure obligations imposed on short sellers;
- (f) at all times you will be able to make payments and fulfil all commitments on your part arising under these Terms and under the conditions applicable to dealings between yourself and OANDA.

22.7 Apart from any warranties and representations which are implied by law and cannot be excluded, OANDA makes no warranties in relation to any service or information provided or made available to you in connection with these Terms. To the full extent permitted by law, OANDA excludes liability for all costs, expenses, damages and Losses (including consequential loss) arising in connection with such services or information, or these Terms (including, without limitation, liability for negligence).

22.8 All representations, warranties and acknowledgments given under this clause 22, Schedule 1 or elsewhere in these Terms are taken to have been made at the time you complete the Application Form and are taken to have been repeated by you:

- (a) each time you place an Order with us;
- (b) each time you enter into a Transaction with us; and

(c) each time we do anything or refrain from doing something under these Terms or as contemplated by these Terms in connection with your Account or any Transaction.

## 23. Anti-money laundering and counter-terrorism financing

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23.1 You acknowledge that:

(a) OANDA is subject to various anti-money laundering and counter-terrorism financing laws (AML/CTF Laws) which may prohibit us from offering services or entering into or conducting Transactions; and

(b) the AML/CTF Laws include prohibitions against any person dealing with the proceeds of or assets used in criminal activity (wherever committed) and from dealing with any funds or assets of, or the provision of finance to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act.

23.2 You agree that:

(a) OANDA is not required to take any action or perform any obligation under or in connection with these Terms if we are not satisfied as to your identity or if we suspect on reasonable grounds that by doing so we may breach the AML/CTF Laws;

(b) OANDA may delay, block or refuse to make any payment or to provide any service if we believe on reasonable grounds that to do so may breach any law in Australia or any other country, and we will incur no liability to you if we do so; and

(c) OANDA will not incur any liability to you for any loss you suffer (including consequential loss) however caused by reason of any action taken or not taken by us as contemplated in paragraph (a) or (b) above.

23.3 You agree to provide all information and documents to OANDA which we reasonably require to comply with any law in Australia or any other country, including any AML/CTF Laws. You agree that OANDA may disclose information which you provide to us, or about Transactions you have with us or which you seek to conduct with us, if we are required to do so by any law or Rule in Australia or in any other country.

23.4 You represent and warrant to OANDA that the payment of moneys by us in accordance with this document, or any instructions given by you, will not breach any law in Australia or any other country.

## 24. Limitation of liability, indemnities & payments

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24.1 Subject to those provisions of the Competition and Consumer Act 2010 (Commonwealth), the Australian Securities and Investments Commission Act 2001 (Commonwealth), the Corporations Act, any other legislation and any other rights, duties or other obligations imposed or implied by law which cannot be excluded by agreement between the parties, to the extent each of the following is not prohibited by those laws:

(a) we make no warranties either expressly or impliedly as to merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, currency, availability, completeness or quality), with respect to any services we provide under these Terms including, without limitation, the Online Service;

(b) OANDA excludes all liability in contract, tort or otherwise relating to or resulting from use of any services we provide under these Terms and for any Loss incurred by you directly or indirectly, including without limitation as a result of or arising out of:

- I. any inaccuracy, error or delay in or omission from any information provided to you under these Terms including the Online Service;
- II. any delays or failures or inaccuracies, or loss of access to, the provision of a service to you including, without limitation, any delay, failure or inaccuracy in, or the loss of access to, the Online Service or in respect of the transmission of Orders or any other information;
- III. any misinterpretation of your Orders or instructions which are unclear, ambiguous, or not specific;
- IV. any government restriction, Exchange or market rulings, suspension of trading, computer or telephone failure, unlawful access to our Online Service, theft, sabotage, war, earthquakes, strike, force majeure and,



without limitation, any other conditions beyond our control;

(c) OANDA is not liable in contract, tort (including negligence) or otherwise for any loss of prospective profits or expenses or special, indirect or consequential damages resulting from the supply of a service including, without limitation the Online Service;

(d) OANDA makes no representations or warranties either express or implied that:

- I. any Exchange System (or any part of it) or any service or any services performed in respect of it will meet your requirements or the requirements of any user; or
- II. the operation of, or services performed in respect of, any Exchange System will be uninterrupted or error-free;

(e) OANDA is not liable for any breach of a provision of any relevant legislation, negligence, injury, death, lost profits, loss of files data or use, economic loss, loss or reputation or losses or damages incidental or consequential to the operation of any Exchange System, except to the extent that it is caused by the negligence or dishonesty of OANDA or their employees, agents or representatives; and

(f) OANDA's liability to you is in any event limited to:

- I. in the case of goods, the replacement or repair of the goods; or
- II. in the case of services, the re- supply of the services.

24.2 To the fullest extent permitted by law, you release, discharge and indemnify and agree to keep OANDA and its respective officers, employees, agents and representatives indemnified from and against all Claims arising out of:

(a) any default, whether by your act or omission under these Terms or any Order or Transaction;

(b) any breach by you of any Applicable Laws;

(c) any representation or warranty made or given by you under these Terms proving to be untrue or incorrect;

(d) any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by you or by any of your clients, employees, agents or Authorised Persons, consultants or servants;

(e) any failure of any of your computer or electronic systems or networks to perform, be available or successfully transmit data to OANDA, or any error or inadequacy in the data or information input into such systems or networks by you;

(f) any delays in processing any Order including, for example (but not limited to), as a result of systems or market delays, or due to verification or filtering procedures or unauthorised processes, email delays or due to telephone call waiting time or adherence to internal policies and procedures;

(g) anything lawfully done by OANDA in accordance with, pursuant or incidental to these Terms;

(h) any instruction, request or direction given by you;

(i) by reason of OANDA complying with any direction, request or requirement of Applicable Laws, any Financial Market or CS Facility, any government body or any regulatory body having jurisdiction over OANDA or any Hedge Counterparty;

(j) arising from and in connection with or in any way related to OANDA in good faith accepting and acting on instructions received by facsimile transmission, email or by other means of any kind which are signed by or purported to be signed by you or any Authorised Person; or

(k) any failure or delay by a Hedge Counterparty to meet its obligations to OANDA in respect of or in relation to (including by corresponding with) your Transactions and any payments made in respect of them, except only to the extent attributable to

the breach of these Terms by OANDA or the gross negligence or fraud by OANDA.

24.3 If GST is payable on a taxable supply made by OANDA under, by reference to, or in connection with these Terms, you must also pay the amount of GST payable in respect of that taxable supply. This clause does not apply to the extent that consideration for a supply is expressly stated to you to be GST inclusive. Terms which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 have that meaning in these Terms.

24.4 You acknowledge that you are responsible for your own legal costs associated with entering into these Terms and for all Taxes and expenses incurred by you in connection with these Terms, including any Transaction made under it.

24.5 All payments by you under these Terms are:

(a) to be made without any set-off by you, counter claim or condition made by you and without you making any deduction or withholding for any Tax or any other reason unless the deduction or withholding is required by applicable law or the set-off arises by express application of the Terms; and

(b) payable in any currency that OANDA may require or determine.

24.6 If:

(a) you are required to make a deduction or withholding in respect of Tax from any payment to be made; or

(b) OANDA is required to pay any Tax (other than income tax) in respect of any payment made in relation to these Terms at your request, then you:

(c) indemnify OANDA against the Tax; and

(d) agree to pay to OANDA an additional amount to ensure OANDA receives a net amount (after payment of any Tax in respect of each additional amount) that is equal to the full amount OANDA would have received had a deduction or withholding or payment of Tax not been made.

## 25. Default

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25.1 Each of the following constitutes a Default:

(a) you breach these Terms, whether by act or omission (including, without limitation, giving us an Order in breach of clause 6.13);

(b) A Transaction is entered into, or an Open Position is Closed Out, by you in any circumstances in which OANDA reasonably believes that conduct is, or could be considered to be, in breach of the Corporations Act, the Rules or any other Applicable Laws (not restricted to those circumstances described in clause 6.13 in respect of Orders), whether or not you are aware that the Transaction could breach those laws or rules;

(c) you fail to pay, or to provide security for, amounts payable by you to OANDA;

(d) you fail to pay the amounts due in respect of any Transaction entered into pursuant to these Terms;

(e) you fail to perform any obligation arising pursuant to the settlement of a contract which arises pursuant to a Transaction;

(f) you fail to fulfil any settlement obligations in respect of a Transaction entered into pursuant to these Terms;

(g) you fail to comply with any limit or restriction imposed on you by OANDA in connection with your Account (for example, a restriction on the kind, volume or value of Transactions or outstanding liabilities);

(h) you deploy any abusive trading strategies outlined in clause 7 above.

- (i) a guarantee lodged by you, or lodged by a third party at your request (such as by a director of a Client) is withdrawn without the consent of OANDA or becomes ineffective and other replacement security acceptable to the beneficiary of the guarantee is not provided;
- (j) any security provided by you (to anyone) which is binding on your assets becomes enforceable and the holder of that security takes any step to enforce the security;
- (k) any representation or warranty which you give under or pursuant to these Terms is or becomes incorrect or misleading in any material way;
- (l) OANDA determines that you are unable, or you might not be able to meet your obligations to OANDA in respect of one or more Transactions, including, without limitation, strict compliance with any time limits for performance by you;
- (m) you become insolvent or bankrupt;
- (n) you enter into a composition or scheme of arrangement for the benefit of creditors;
- (o) if you are a body corporate:
- I. you go into liquidation, voluntarily or otherwise (except for the purpose of reconstruction), or you or another person appoint a liquidator, receiver, administrator or official manager in respect of your assets;
  - II. a director has not given (a reasonable time after requested by OANDA) a valid deed of guarantee and indemnity in respect of your obligations under these Terms in favour of OANDA and in a form acceptable to OANDA; or
  - III. you have not notified OANDA of a change of any director within seven (7) days of the change taking effect;
- (p) if you are acting on behalf of another person pursuant to authority provided by another person, the authority is varied in a way which (in OANDA's opinion) negatively impacts on your authority or legal or financial capacity to perform your obligations under these Terms;
- (q) if you are a trustee, the relevant trust of which you are trustee is terminated, vests or a distribution of capital of the trust or fund is made, or your rights of indemnification from trust assets or reimbursement is terminated, restricted or challenged, which would result in there being, in OANDA's opinion, insufficient assets of the trust or fund to meet your liabilities under these Terms or any Transaction;
- (r) if you are a natural person, you die or become of unsound mind or if you or your estate is liable to be dealt with in any way under any law relating to mental health;
- (s) you challenge or deny the applicability of the express governing law of these Terms, the non-exclusive jurisdiction of courts as provided in these Terms;
- (t) you impose a moratorium on payments to creditors or cease, or threaten to cease, carrying on business;
- (u) in the absence of making alternative arrangements, you are not immediately contactable by OANDA in order for OANDA to obtain instructions in relation to any of your Transactions; and
- (v) the occurrence of any other event referred to in a Schedule applicable to your Account as constituting a Default or which OANDA and you have agreed constitutes a Default.

25.2 If a Default occurs, OANDA may, in addition to any other rights which OANDA has or may have against you (including rights arising in other parts of the Terms), without giving prior notice to you, take any action, or refrain from taking action, which it considers reasonable in the circumstances in connection with Transactions entered into pursuant to these Terms and, without limitation, OANDA may do any one or more of the following:

- (a) cancel any outstanding Orders;
  - (b) enter into one or more Transactions to effect the Close Out of one or more unsettled Transactions or any Open Positions;
  - (c) settle any Transaction which has not at the time of Default settled;
  - (d) in the case of Open Positions which involve Underlying Securities which are option contracts or an equivalent, deal with the Transaction by exercising one or more of those option contracts or abandon any one or more option contracts not yet exercised;
  - (e) cancel a Transaction (whether or not it is an Open Position) and make consequential adjustments to your Account including reversing any previous Realised/Unrealised Profit or Realised/Unrealised Loss;
  - (f) cover in whole or in part Open Positions by entering into further Transactions;
  - (g) apply any money that you have deposited into a Trust Account and to which you are entitled, by way of set-off or withdrawal and payment to us any amount you owe us;
  - (h) immediately, or at a later time, terminate these Terms, one or more Schedules, one or more Accounts, one or more Transactions or any combination of these;
  - (i) realise or enforce any security or guarantee provided in respect of your obligations to OANDA;
  - (j) convert any or all amounts owing by you to OANDA or by OANDA to you in a foreign currency into Australian currency;
  - (k) calculate any or all amounts owing by you to OANDA and declare such amount immediately due and payable; or
- (l) exercise any other rights conferred by Applicable Laws or these Terms or perform any other obligations arising under Applicable Laws or these Terms in respect of your Transactions. In respect of any action which OANDA takes, or refrains from taking under this clause 25.2, you must account to OANDA as if OANDA took, or refrained from taking, the action on your instructions and, without limitation, you are liable for any deficiency and are entitled to any surplus which may result.

25.3 Nothing in these Terms limits your rights to claim a default by OANDA or for you to take any proper action you determine is appropriate to claim or to recover for any Loss arising from your claim. For example, we acknowledge that you may terminate these Terms if OANDA materially breaches these Terms. You agree that it is reasonable for you not to have specific rights following default and specific events of default by OANDA in order to avoid all Transactions of all of OANDA's clients prematurely terminating, which could cause irrevocable loss to some or all clients and those losses could be irrevocably increased by such an automatic termination.

## 26. Notices

26.1 Notices given by us may be sent to the address, fax number or email address specified in your application for an Account or later notified by you, or by posting the notice on our website or through any Online Service we provide to you. Unless otherwise specified in these Terms any notice given by us is taken to have been received or becomes effective on the Business Day following the transmission or posting of the notice, demand or Confirmation.

26.2 Notices given by you must be in writing and sent by post, facsimile transmission (fax) or email to our address, facsimile transmission (fax) number or email address specified by us in the FSG or on our website or as otherwise notified by us. A notice given by you is taken to have been given at the time it is actually received by us during business hours or, if after business hours, on the next Business Day during business hours.

26.3 If an Account is opened in the joint names of more than one person, each person agrees that we may discharge any obligation we have to give a notice or a document to those persons under these Terms or Applicable Laws by giving notice to any one of those persons.

26.4 OANDA may give notice to you of any change in its Transaction Fees or any rates, fees charges or other amounts payable by these Terms in any manner permitted by these Terms, including by posting to OANDA's website or to Online Services or platform administration service. OANDA must give the minimum period of notice required by the Corporations Act.

26.5 If no minimum period is required or is not stated elsewhere in these Terms, notice of a change in Transaction Fees, charges or roles may be effective immediately OANDA first generally publishes the information of any variation on its website or through Online Service or platform administration service.

## 27. Appointment of oanda as attorney

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27.1 In consideration of OANDA entering into the agreement on these Terms, you irrevocably appoint OANDA and each director, secretary and principal executive officer and each employee (which employee's title of office includes the word "Manager" or "Head") of OANDA and any other authorised representative of OANDA (including an authorised representative of a related body corporate of OANDA) severally as your attorney at any time and from time to time following a Default, to execute and deliver all documents and to do all things which your attorney may consider necessary or desirable to give effect to the provisions of these Terms, and in particular, without limitation, in connection with, or incidental to, the exercise of any of the rights and powers of OANDA under these Terms. Those powers may be exercised in the interests of OANDA notwithstanding any conflict with the interests of OANDA. This appointment survives termination of these Terms.

## 28. Termination

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28.1 Without limiting clause 25.2, you and OANDA may each terminate these Terms at any time by giving the other notice.

28.2 The termination of these Terms does not affect outstanding obligations under these Terms which remain undischarged at the time of termination, limitations of liability or recourse, indemnities provided for in these Terms or any other clause of these Terms which states or implies that they survive termination.

28.3 Each indemnity provided within these Terms survives the termination of these Terms.

28.4 You or OANDA may terminate a Schedule within these Terms at any time and for any reason by giving notice to the other, without terminating another Schedule of these Terms. Termination of a Schedule under this clause 28 does not affect outstanding obligations under these Terms which are undischarged at the time of termination, either under the terminated Schedule or otherwise. Each indemnity in these Terms survives the termination of any Schedule.

28.5 Upon termination of these Terms (or a relevant Schedule under clause 28.4), and without limiting clause 25.2, this clause survives and OANDA may do one or more of the following:

- (a) cancel any outstanding Orders;
- (b) enter into one or more Transactions to effect the Close Out of one or more unsettled Transactions or Open Positions (and determine the value at which the Transaction or Transactions will be Closed Out);
- (c) settle any Transaction which has not at the time of termination settled;
- (d) exercise any other rights OANDA has under these Terms; or
- (e) do, or refrain from doing, anything else which OANDA considers reasonable in the context of these Terms (or any part of them) having been terminated.

## 29. General

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29.1 OANDA may from time to time delegate any or all of its obligations, powers and discretions to anyone or more or all of its employees or any other authorised representative of OANDA (or a related body corporate of OANDA). OANDA remains responsible for the acts or omissions of its employees and any authorised representative of OANDA (including an authorised representative of a related body corporate of OANDA). A delegation by OANDA under this clause need not be in writing.

29.2 Complaints or disputes must be referred to us in accordance with our procedures from time to time for handling disputes. Unresolved complaints or disputes may be referred by you to the Financial Ombudsman Service or any other independent dispute resolution scheme of which we are a participant.

29.3 It is acknowledged that OANDA is not a market intermediary of ASX or of any other Exchange.

29.4 These Terms and any relevant Application Form completed by you contain the entire understanding between you and OANDA concerning the provision of the Financial Products or financial services and any other services referred to in or provided under these Terms, as later amended only in accordance with these Terms.

29.5 These Terms are governed by and construed in accordance with the laws in force in New South Wales, Australia and the parties submit to the non- exclusive jurisdiction of the courts of New South Wales, Australia.

29.6 We may vary these Terms by giving you notice of any variation by any combination of: document in writing, by updating our website to show the revised version of these Terms, by posting a message in the Online Service or by electronic mail.

The notice of variation is effective even if you are unaware of the notice. The minimum period of notice will be the lesser of:

(a) any minimum period of notice required by the Rules;

(b) if no such minimum period is required by the Rules, then not less than two (2) Business Days' notice (unless paragraph (c) applies); and

(c) subject to paragraph (a), if we believe a variation is necessary to maintain or restore the security of any Accounts or of our systems or to comply with any legal or regulatory requirement, we may make the variation without prior notice and will notify you of the change as soon as practicable after the change.

29.7 Each part of these Terms is severable from the balance of these Terms and if any part of these Terms is illegal, void, invalid or unenforceable, then that will not affect the legality, effectiveness, validity or enforceability of the balance of these Terms.

29.8 No failure by us to exercise, and no delay by us in exercising, any right, power or remedy in connection with these Terms will operate as a waiver of that right, power or remedy. No single or partial exercise of any right, power or remedy will preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy.

29.9 These Terms are not to be interpreted against our interests merely because we proposed these Terms or some provision in it or because we rely on a provision of these Terms to protect our interests.

29.10 You may not assign or otherwise transfer any of your rights under these Terms to another person without our prior written consent. OANDA may assign, novate or otherwise transfer any of its rights under these Terms to another person without your prior written consent including, without limitation, in connection with a sale or transfer of all or part of our business to another person

# Schedule 1

## Additional representations, warranties and undertakings

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1. Trustee of a trust If you are the trustee of a trust (Trust), you represent and warrant to OANDA that:

(a) the Trust has been duly constituted and is validly existing in compliance with all applicable laws and the trust deed constituting the trust (Trust Deed) has been duly executed and duly stamped, in each case in accordance with the laws of each State and Territory of Australia;

(b) the Trust Deed and its constituent documents enable you to enter into these Terms and any other of your agreements with OANDA despite any conflict of interest and duty which may arise on your part; and, if you are a company, any of your directors, when entering into the Transactions contemplated with OANDA;

(c) all necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the Trust Deed, any other document or any law for the entry into, observance and performance by it of its obligations under these Terms;

(d) each of your obligations under, and the Transactions contemplated by, these Terms constitute binding obligations and are completely and lawfully enforceable against you and the Trust's property in accordance with their terms;

(e) OANDA's rights under these Terms and any other of your agreements with OANDA have priority over the interests of the beneficiaries of the Trust;

(f) you are the only trustee of the Trust;

(g) no property of the Trust has been re- settled, set aside or transferred to any other trust or settlement;

(h) the Trust has not been terminated, nor has the date or any event for the vesting of the Trust's property occurred;

(i) no determination has been made to distribute the Trust's property on a date which is earlier than the latest date under the Trust Deed by which the Trust's property must be distributed;

(j) no action has been taken, or has been proposed, to remove you as trustee of the Trust, or to appoint additional or alternate trustees;

(k) there is no conflict of interest on your part in entering into these Terms and performing your obligations under them or the Transactions contemplated by them;

(l) (as appropriate) each of the manager and the investment manager of the Trust is authorised

(m) to act on your behalf and to instruct OANDA in relation to any dealing and in relation to all other matters arising under these Terms;

(n) you will be bound by any instructions given to OANDA by or any actions of the manager or the investment manager (as the case may be) as if the actions of the investment manager were your actions for the purpose of these Terms;

(o) you authorise each of the manager and the investment manager to accept any notices or documents on its behalf and if OANDA has an obligation to serve any document or notice on you pursuant to these Terms, or any law, service upon either the manager or the investment manager (as the case may be) will be effective service on you;

(p) you have an unrestricted right to be fully indemnified or exonerated out of the Trust's property in respect of any losses or liabilities incurred by you (except only in respect fraud or breach of the Trust Deed of or your trustee duties) and the Trust documents do not restrict the right of OANDA to have recourse to the assets of the Trust to satisfy and liability to OANDA properly incurred by you arising out of the Transactions contemplated with OANDA and the Trust's property is sufficient to satisfy that right of indemnity or exoneration;

(q) you have complied with your obligations in connection with the Trust;

(r) you are authorised to open bank accounts; and

(s) you are authorised to enter into contracts in relation to trust property, in your personal capacity.

2. Responsible entity of a fund If you are the responsible entity of a fund (Fund):

(a) You undertake that you must not retire as responsible entity of the Fund unless you give notice to OANDA of your intention to retire and upon satisfaction of the following conditions:

- I. the successor responsible entity must be acceptable to OANDA; and
- II. the successor responsible entity must execute whatever documents OANDA reasonably requires to ensure that these Terms are binding on it.

(b) You will (or will procure that the following will be done) in relation to the Fund, ensure that other than with OANDA's prior consent:

- I. the constitution of the fund (Fund Constitution) is not amended in any way which could have a material adverse effect on your ability to comply with your obligations under these Terms or could otherwise be prejudicial to OANDA;
- II. the Fund Constitution is not revoked;
- III. if you determine that the Fund Constitution, the compliance plan for the Fund, or any custodian or other agency agreement entered into by you in connection with the Fund is required by law to be changed or replaced, you promptly give to OANDA full details of the requirement and copies of the documentation you propose to enter into to comply with that requirement;
- IV. there is no re-settlement, setting aside or transfer of any asset of the Fund other than a transfer which complies with the Fund Constitution and these Terms;
- V. your obligations under the Fund Constitution and at law are fully complied with;
- VI. except in accordance with this clause 2 no other person is appointed responsible entity of the Fund;
- VII. subject to section 601FM of the Corporations Act and except if and to the extent that you have retired as responsible entity of the Fund in accordance with this clause 2 nothing is done which would cause or enable your removal as responsible entity of the Fund, nor retire as responsible entity;
- VIII. appoint a custodian or other agent to carry out any of your functions as responsible entity of the Fund;
- IX. terminate the appointment of any custodian or other agent appointed in accordance with paragraph 2(b) (viii) of this clause 2;
- X. the vesting date under the Fund Constitution is not changed or fixed;
- XI. subject to the Corporations Act nothing occurs which could limit, exclude or otherwise derogate from in any material way your right under the Fund Constitution and the general law to be indemnified out of the assets of the Fund; and
- XII. subject to the terms of the Fund Constitution and the general law, your lien over the property of the Fund will have priority over the rights of the members of the Fund.

(c) You represent and warrant in relation to the Fund as follows:

- I. the Fund has been duly constituted and is validly existing in compliance with all applicable laws and the Fund Constitution has been duly executed and duly stamped, in each case in accordance with the laws of each State and Territory of Australia;
- II. the Fund Constitution and its constituent documents give you power: a. to carry on all of the business activities now conducted by you in any capacity; b. to enter into and comply with your obligations under, and



to carry on the Transactions contemplated by, these Terms;

- III. all necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the Fund Constitution, any other document or any law for the entry into, observance and performance by you of your obligations under these Terms;
- IV. each of your obligations under, and the Transactions contemplated by, these Terms constitute binding obligations and are completely and lawfully enforceable against you and the Fund's property in accordance with their terms;
- V. you are the only responsible entity of the Fund;
- VI. no property of the Fund has been resettled, set aside or transferred to any other trust or settlement;
- VII. the Fund has not been terminated, nor has the date or any event for the vesting of the Fund's property occurred;
- VIII. no determination has been made to distribute the Fund's property on a date which is earlier than the latest date under the Fund Constitution by which the Fund's property must be distributed;
- IX. there is no conflict of interest on your part in entering into these Terms and performing your obligations under them or the Transactions contemplated by them;
- X. except as required by the Corporations Act and except to the extent expressly stated in the Fund Constitution, your rights under the Fund Constitution and the general law to be indemnified out of, and have a lien over, the assets of the Fund have not been limited in any way; and without limitation you have no liability which may be set-off against that right of indemnity; and
- XI. you have complied with your obligations in connection with the Fund.

### 3. Trustee of a Superannuation Fund

If you are a trustee of the superannuation fund (Fund), you represent and warrant to OANDA that:

(a) the Transactions contemplated by these Terms insofar as they concern the Fund:

- I. comply with all requirements of the Superannuation Industry (Supervision) Act 1993 (SIS Act);
- II. have been or are to be implemented in accordance with an investment strategy undertaken in accordance with the SIS Act;
- III. comply with all the requirements of the constitution of the Fund (Fund Constitution) and rules applicable to the Fund, in force at the date of these Terms; and
- IV. have been or are undertaken on an arm's length basis, for value and on commercial terms.

(b) the Fund has been duly constituted and is validly existing and the Fund Constitution has been duly executed and duly stamped, in each case in accordance with the laws of each State and Territory of Australia;

(c) the Fund Constitution and its constituent documents give you power:

- I. to carry on all of the business activities now conducted by you in any capacity;
- II. to enter into and comply with your obligations under, and to carry on the Transactions contemplated by, these Terms;

(d) all necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the Fund Constitution, any other document or any law for the entry into, observance and performance by you of your obligations under these Terms;

(e) each of your obligations under, and the Transactions contemplated by, these Terms constitute the Fund's binding obligations and are completely and lawfully enforceable against you and the property in accordance with their terms;

(f) you are the only trustee of the Fund;

(g) no property of the Fund has been re- settled, set aside or transferred to any other trust or settlement;

(h) the Fund has not been terminated, nor has the date or any event for the vesting of the property occurred;

- (i) no determination has been made to distribute the Fund's property on a date which is earlier than the latest date under the Fund Constitution by which the Fund's property must be distributed;
- (j) there is no conflict of interest on your part in entering into these Terms and performing your obligations under it or the Transactions contemplated by it;
- (k) you have an unrestricted right to be fully indemnified or exonerated out of the Fund's property in respect of any losses or liabilities incurred by you and the Fund's property is sufficient to satisfy that right of indemnity or exoneration; and
- (l) you have complied with your obligations in connection with the Fund.

#### 4. Agent under Investment Management Agreement

If you are an agent of a client (Investor) who has entered into an agreement relating to the holding and investment of assets (**Investment Management Agreement**):

- (a) you will ensure that, without OANDA's prior consent:
  - I. the Investment Management Agreement is not determined or amended in any way which could have a material adverse effect on your ability to comply with your obligations under these Terms or could otherwise be prejudicial to OANDA; and
  - II. your obligations under the Investment Management Agreement and at law are fully complied with;
- (b) you represent and warrant to OANDA that:
  - I. you have received written acknowledgment from each Investor to the effect set out in the remainder of this paragraph 2(a) and paragraph 2(b) of this Schedule and you are not aware of anything that causes you to suspect that anything in those paragraphs is incorrect;
  - II. the Investment Management Agreement is valid and binding on you and the Investor, respectively;
  - III. you have the power, as agent for the Investor under the Investment Management Agreement, to enter into and observe all the provisions and to carry on the Transactions contemplated by, these Terms as agent for the Investor;
  - IV. the Investor will be bound by instructions provided by you to OANDA as if the Investor were named in these Terms as you and will be bound by any Transaction entered into by OANDA on your instructions;
- (c) if an Investor is a trustee, the Investor has warranted to you and you reasonably believe that the Investor is empowered by the relevant trust deed and law:
  - I. to enter into and comply with its obligations under, and to carry on the Transactions contemplated by, the Investment Management Agreement and each Transaction entered into by you on its behalf in connection with these Terms; and each of its obligations under, and the Transactions contemplated by, the Investment Management Agreement constitute binding obligations and are completely and lawfully enforceable against it and the relevant trust's property in accordance with their terms;
  - II. to enter into and perform the Investment Management Agreement and each Transaction entered into by you on its behalf in connection with these Terms and to carry on the Transactions contemplated by these Terms;
  - III. to carry on the trust's business as now conducted or contemplated and to own the trust's assets, in its capacity as trustee of the relevant trust; and there are no restrictions or conditions on this; and
  - IV. all other procedures have been completed as required by the relevant trust deed for it to enter into and perform the Investment Management Agreement and Transactions entered into by you on its behalf in connection with these Terms (this includes all necessary resolutions and all consents and approvals); and
- (d) you enter into these Terms as agent of each of the Investors and in your personal capacity.

# Schedule 2

## GUARANTEE AND INDEMNITY

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### **Incorporation of terms into the deed of guarantee and indemnity**

1. The terms of this Guarantee and Indemnity are terms which are incorporated into the Deed of Guarantee and Indemnity made by the person who executes it as “guarantor” in the Application Form which expressly refers to and incorporates by reference these terms.

2. The Guarantor guarantees to OANDA the performance by the Client named in the Application Form of the Client’s obligations under the Terms and agrees to indemnify and to keep indemnified OANDA and its employees, agents and representatives against any and all liability or Loss (including any consequential loss or damage suffered by OANDA) arising from, and any reasonable costs (including any reasonable legal costs and expenses on a solicitor and own client basis), damages, charges and expenses incurred by OANDA arising out of any default, whether by act or omission, of the Client:

(a) to pay OANDA any moneys which are due and payable by the Client pursuant to the Terms; or

(b) to fulfil the Client’s obligations to OANDA under the Terms.

3. This guarantee and indemnity are continuing several obligations of each person who signs or adopts these terms as Guarantor notwithstanding termination of all or any part of the Terms of dealing and will not be affected in any way by:

(a) any indulgence, delay or period of grace allowed by OANDA to the Client or a Guarantor;

(b) any modification or variation of the Terms of dealing between the Client and OANDA, including any addition to Financial Products or financial services or change to the Terms applying to Financial Products or financial services or generally;

(c) any modification or variation of the fees and charges, however described, payable by the Client under the Terms;

(d) whether any other person has signed or adopted these terms as a “Guarantor” or given any other credit support to OANDA regarding the Client’s obligations to OANDA;

(e) any other thing that would otherwise affect the obligations of a Guarantor; or

(f) any change in the constitution of OANDA, the Client or the Guarantor.

4. To the extent permitted by law, this guarantee and indemnity are in addition to and will not merge with, or be affected by, any other security held by OANDA in respect of the obligations of the Client or the Guarantor, now or in the future, notwithstanding any rule of law or equity, or any statutory provision to the contrary.

5. The Guarantor acknowledges and agrees in favour of OANDA that:

(a) OANDA may in its sole discretion choose to enforce this document against any one or more persons who have signed this document or

(b) adopted its terms as “Guarantor” or other provider of credit support to OANDA regarding the Client’s obligations to OANDA;

(c) this guarantee and indemnity applies to the Terms from the time of commencement of the Terms even if before the date of this document;

(d) it will do everything to discharge its obligations under this guarantee and indemnity;

(e) whoever executes this document or adopts its terms on behalf of the Guarantor has the power and authority to do so;

(f) it has read the Terms; and

(g) it will pay on demand of OANDA a sum equal to all moneys due and payable by the Client to OANDA under the Terms and the amount of OANDA's loss suffered or liability incurred in relation to that without set-off or counter claim, whether or not the Guarantor is aware of the amount owed, the Transactions or the Financial Products or financial services used by the Client.

# Schedule 3

## Foreign exchange transactions

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### 1. Introduction

(a) The following terms will apply to you, and you agree to be bound by them, each time you place an Order with OANDA to deal in a Foreign Exchange Transaction (as defined in clause 2 of this Schedule 3).

(b) Any term not defined in this Schedule has the same meaning given to it in clause 2 of the Terms.

### 2. Interpretation

In this Schedule, the following terms have the following meanings:

**Authorised Person** means a person authorised pursuant to clause 5 to bind you under these Terms.

**Base Currency** is the first currency quoted in a currency pair, for example in the quote AUD/USD, the AUD is the Base Currency. This may have another similar name on the Online Service, OANDA's website or in a PDS.

**Deal** has the meaning given in the Corporations Act. Foreign Exchange Transaction means a Transaction in respect of Foreign Exchange.

**Market Rate** means the rate of exchange which OANDA determines in its discretion is its prevailing rate of exchange. OANDA is not obliged to obtain quotes or to derive it directly or indirectly from quoted prices by a bank dealing in the interbank foreign exchange market nor is OANDA obliged to substantiate its determination.

**Position** means a Foreign Exchange Transaction entered into by you pursuant to these Terms under which the parties agree to exchange an agreed amount of one currency for an agreed amount of another currency for cash settlement (not physical delivery) on the Value Date (and, for the avoidance of doubt, either agreed amount may be nil).

**Term Currency** is the second currency quoted in a currency pair, for example in the quote AUD/USD, the USD is the Term Currency. This may have another similar name on the Online Service, OANDA's website or in a PDS.

**Value Date** means the date agreed at the time the relevant deal is entered in to, to be the date of settlement of that deal (specified in the Confirmation).

### 3. Acknowledgements

In these Terms you acknowledge and agree to the following in favour of OANDA (and OANDA is bound by the following):

(a) A Foreign Exchange Transaction has enforceable terms for payment by you to us or us to you even though each Foreign Exchange Transaction is required by these Terms to be cash settled (or netted) with no physical exchange of the Underlying Security.

(b) Each Foreign Exchange Transaction is required by these Terms and is expected by you and us to be disposed of by being Closed Out and the Realised/Unrealised Profit or Realised/Unrealised Loss arising from that, posted to your Account in full settlement of your respective obligations in relation to those Foreign Exchange Transactions.

(c) the following prevail in the order listed below such that if the higher ranking obligations are for any reason held by a court to be unenforceable, invalid or otherwise incapable of being applied, then the next ranking obligations apply:

- I. first, the settlement of Foreign Exchange Transactions by way of Closing Out those Foreign Exchange Transactions and applying the resulting Realised/Unrealised Profit or Realised/Unrealised Loss (as the case may be) to your Account, in full settlement of our respective obligations in relation to those Foreign Exchange Transactions;

- II. secondly, the settlement obligations of each Foreign Exchange Transaction are set off so that only the single net amount of the difference arising from that set-off is the only amount owing as between us and the amount is applied to your Account (as a credit or debit amount, as the case requires) in full settlement;
- III. thirdly, the respective settlement amounts owing by you and us on each Foreign Exchange Transaction are applied to your Account (as a credit or debit amount, as the case requires) in full settlement);
- IV. fourthly, each payment obligation on each Foreign Exchange Transaction is applied to your Account (as a credit or debit amount, as the case requires) in full settlement); and
- V. fifthly, each payment obligation on each Foreign Exchange Transaction accrues and is enforceable on and from termination of the Foreign Exchange Transaction.

(d) There is no definitive term attached to a Foreign Exchange Transaction, such a contract will continue until the Closing Date.

(e) Anything OANDA is permitted to do in accordance with this Schedule may be done in its absolute discretion, and any opinion or view required to be formed by OANDA may be formed in its absolute discretion.

(f) A Position may be Closed Out without a physical exchange of the Base Currency for the Term Currency and references in the definition of Position to an exchange of currency and settlement and in the definitions of Base Currency and Term Currency to amounts to be received by you or provided by you under a Position will be construed as if that Position were to be unwound by delivery.

(g) Notwithstanding it has an agreed Value Date, each Position continues indefinitely until it is unwound by delivery or by being Closed Out and references in the definitions of Position and Value Date to settlement will be construed as if that Position were to be unwound by delivery.

(h) For the avoidance of doubt, nothing in this Schedule 3 affects clause 16.3.

#### **4. Entering into Positions**

(a) On any Business Day you may request OANDA by the Online Service or otherwise to quote:

- I. the rate at which you may enter a Position and the Initial Margin required by nominating the amount; or
- II. the amount and currency of either the Base Currency or the Term Currency, the currency against which it is to be exchanged.

(b) Immediately upon receiving the quote, you may by the Online Service or otherwise instruct OANDA to arrange the entry into by you of a Position equivalent to that for which the quote was sought. Receipt by OANDA of your instruction will constitute an offer by you to OANDA to enter into such a Position.

(c) OANDA is under no obligation to accept your offer to enter into a Position, and without limitation, is not obliged to accept your offer to enter into a Position:

- I. if you have exceeded or would exceed a limit applying to you as notified by OANDA; or
- II. until OANDA has received the Initial Margin required in respect of that Position into the Trust Account (or your Account has sufficient Margin Cover), in cleared funds.

(d) The Initial Margin required in respect of a Position will be payable prior to OANDA accepting your offer to enter into a Position.

(e) If OANDA accepts your offer to enter into a Position, OANDA may issue to you a written confirmation (or it may publish a written Confirmation available to you in your Online Service) of that Position promptly after it has been entered into, in the form of a deal confirmation, but failure by OANDA to issue or to publish a confirmation will not prejudice or affect that Position. OANDA will not have any liability as a result of a failure to issue or to publish a deal confirmation. If OANDA decides not to accept your offer to enter into a Position, OANDA will advise you of that decision as soon as is practicable, subject to Trading Conditions.

(f) You undertake to examine the terms of each Confirmation immediately upon receipt (or publication) and unless within 48 hours of issue of a confirmation you notify OANDA of any disputed detail in the confirmation, you agree that the contents of the confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal. Upon receipt within that 48 hours of written notice as to a disputed detail, OANDA will investigate the matters disputed and you must co-operate with OANDA in good faith to resolve the dispute. You must, notwithstanding any such dispute, continue to satisfy your obligation to maintain Margin Cover in respect of that Position as if the details contained in the confirmation were correct and not the subject of dispute.

(g) OANDA may, in its absolute discretion, limit the value of Positions you may have outstanding under these Terms:

- I. beyond which if you decide to enter into any further Positions, you must seek and obtain credit approval from OANDA; and
- II. beyond which you may not enter into any further Positions.

(h) OANDA may vary this limit at any time by notice to you.

## 5. Close Out of Positions

(a) Without affecting clause 6 of the Terms (regarding Orders), OANDA may from time to time permit you to give OANDA notice of your request to have all or any of your Positions Closed Out. OANDA, from time to time, may set limits and conditions on accepting your notice (whether or not it complies with the requirements for an Order). Following receipt of such a notice OANDA may at a time it chooses in its absolute discretion, enter into a matching opposite Position to Close Out those Transactions. Without limiting OANDA's discretion you acknowledge that this may occur as soon as practicable after the later of:

- I. receipt from you of such notice; and
- II. any time and date specified in such notice at which you request the Close Out to occur.

(b) The difference (if any) between the amount of the Base Currency under the matching Position and the amount of the Term Currency under the original Position if positive, will be a "Realised Profit" and, if negative, will be a "Realised Loss".

(c) The Closing Out of a Position in accordance with this Schedule will constitute a complete discharge of all obligations of OANDA and has the effect of immediately cancelling the Position so that the only obligations that continue in respect of the Position are those provided for under this Schedule.

(d) You acknowledge that if you give OANDA standing instructions to enter into a Position when a particular price level is reached, then the price at which the Position is entered into might not be that exact price.

## 6. Settlement of Closed Out Positions

(a) When a Position is Closed Out in accordance with this Schedule which:

- I. results in a Realised Profit, OANDA will credit your Account in an equivalent amount to the Realised Profit; or
- II. results in a Realised Loss, OANDA will deduct the amount of the Realised Loss from the funds you have paid into the Trust Account (or if that is insufficient, debit the amount from your Account).

(b) If there is then sufficient Margin any amount owing by you under this Schedule may be settled in whole or in part by debiting your Account with OANDA.

(c) If you have requested payment of any money owed to you under this Schedule, OANDA will (at its discretion) deduct that money from your Account and pay it to you electronically or in such other manner as may be agreed between OANDA and you. Prior to any payment made to you in your home currency, OANDA will convert any currency other than your home currency to your home currency in accordance with term 14.2 (i)

(d) OANDA may set off any money owed to you under this Schedule against any money owed by you in respect of a Foreign Exchange Transaction. If such a set-off is made, references in this Schedule to Realised Profit and Realised Loss will be

read as including the net amount of Realised Profit or Realised Loss (as the case may be) remaining after the setoff.

## **7. Revaluations**

OANDA may at any time, by reference to the Market Rate, revalue all Positions. Such revaluation will be affected in the following manner:

(a) In order to carry out a revaluation under this Schedule, OANDA will ascertain in relation to each Position, the amount of the Term Currency which could be purchased with the amount of the Base Currency at the Market Rate.

(b) If the amount calculated in accordance with sub-clause 7(a):

- I. is greater than the amount of the Term Currency under the Position, then the difference will represent an Unrealised Profit; and
- II. is less than the amount of the Term Currency under the Position, then the difference represents an Unrealised Loss; and

(c) the sum of each Unrealised Profit will be the "Unrealised Profits" and the sum of each Unrealised Loss will be the "Unrealised Losses".



# Schedule 4

## Contracts for difference

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### 1. Introduction

(a) The following terms will apply to you, and you agree to be bound by them, each time you place an Order with OANDA to deal in a Contract for Difference (as defined in clause 2 of this Schedule 4).

(b) Any term not defined in this Schedule has the same meaning given to it in clause 2 of the Terms.

### 2. Interpretation In this clause, the following terms have the following meanings:

**Adjustment Event** means, any event in respect of which OANDA considers in its absolute discretion an adjustment to the terms of a Contract for Difference is appropriate including, for example:

(a) if the Reference Asset is a share, debenture, unit or other security (or depositary receipt of any kind in respect of any of them)— a bonus issue for combination of rights issued, rights issue, stock split, share or other capital consolidation, security reclassification or subdivision return of capital, buy back, special dividend (however legal constituted), in specie distribution, takeover, scheme of arrangement or similar event or other corporate action event in respect of the security, whether or not the event triggers an adjustment to any Exchange traded derivative of it,

(b) a distribution to existing holders of additional shares or other securities or other Financial Products granting them the right to receive dividends or other proceeds equally and proportionately with payments made to holders of the underlying securities; or securities, rights or warrants granting the right to a distribution of shares or to purchase, subscribe, or receive shares, in any case for payment (in money cash or money's worth) at less than the prevailing market price per share as determined by OANDA;

(c) an event that has a dilutive or concentrative effect on the market value of the shares;

(d) If the Reference Asset is an index, a substantial adjustment to the composition of the index outside its own terms allowing for adjustments or weightings; a failure to publish the index or a suspension or cancellation of the index; and

(e) if the Reference Asset is a Derivative which is able to be traded on a Financial Market – any event in respect of which the operator of the Financial Market makes an adjustment to the terms of the Derivative

**Close of Business** means the normal time of close of trading of the relevant Exchange.

**Close Out**, in relation to an OTC Transaction, means discharging or satisfying your obligations to OANDA under the OTC Transaction and this includes:

(a) by delivering the amount or value of the Underlying Security (including a dollar multiple of an index) required in accordance with the terms of the OTC Transaction; or

(b) as a result of the matching up of the OTC Transaction with an OTC Transaction of the same kind under which you have assumed an offsetting opposite position;

(c) making adjustments for fees and charges.

**Closing Date** means the date on which the OTC Transaction is agreed to be Closed Out, or earlier, if actually or deemed to be Closed Out in accordance with the Terms or the Underlying Security expires according to its terms or the Rules governing its contract specifications.

**Closing Price** means the price of the Contract for Difference at the Closing Date.

**Closing Value** means the value determined by OANDA by multiplying the number of Contracts for Difference by the price (or, if an index, the level) of the Contract for Difference at the Closing Date.

**Contract for Difference** means a Financial Product, being a Derivative which derives its value from one or more Reference Assets, which may also be called a “CFD” or “OANDA CFD” on the Online Service or in a PDS.

**Contract Value** means the face value of the Contract for Difference, and is calculated by OANDA by multiplying the applicable price (or, if an index, the level) of the Contract for Difference by the number of Contracts for Difference.

**Hedge Contract** means a contract between OANDA and a Hedge Counterparty on the same, or substantially similar, terms as the Contract for Difference (including if one or more Contracts for Difference from you and other clients which in aggregate correspond with the Hedge Contract).

**OTC Transaction** means a Transaction in respect of one or more Contracts for Difference.

**Reference Asset** means an Underlying Security, as determined by OANDA and, in the case of an OTC Transaction, the Underlying Security specified in the Confirmation. The Reference Asset can refer to an index, in which cases, references in these Terms must be applied and interpreted with such changes as necessary to reflect an index instead of a Financial Product.

### 3. Acknowledgements

In these Terms you acknowledge and agree to the following in favour of OANDA (and OANDA is bound by the following):

(a) OTC Transactions have enforceable terms for payment by you to us or us to you even though each OTC Transaction is required by these Terms to be cash settled (or netted) with no physical exchange of the Underlying Security;

(b) each OTC Transaction is required by these Terms and is expected by you and us to be disposed of by being Closed Out and the Realised/Unrealised Profit or Realised/Unrealised Loss arising from that, posted to your Account in full settlement of your respective obligations in relation to those OTC Transactions;

(c) the following prevail in the order listed below such that if the higher ranking obligations are for any reason held by a court to be unenforceable, invalid or otherwise incapable of being applied, then the next ranking obligations apply:

- I. first, the settlement of OTC Transactions by way of Closing Out those OTC Transactions and applying the resulting Realised/Unrealised Profit or Realised/Unrealised Loss (as the case may be) to your Account, in full settlement of our respective obligations in relation to those OTC Transactions;
- II. secondly, the settlement obligations of each OTC Transaction are set off so that only the single net amount of the difference arising from that set-off is the only amount owing as between us and the amount is applied to your Account (as a credit or debit amount, as the case requires) in full settlement;
- III. thirdly, the respective settlement amounts owing by you and us on each OTC Transaction are applied to your Account (as a credit or debit amount, as the case requires) in full settlement);
- IV. fourthly, each payment obligation on each OTC Transaction is applied to your Account (as a credit or debit amount, as the case requires) in full settlement; and
- V. fifthly, each payment obligation on each OTC Transaction accrues and is enforceable on and from termination of the OTC Transaction; and

(d) there might be no definitive time to the life of a Contract for Difference, so such a contract will continue until the Closing Date (including when the Closing Date occurs by reason of the Underling Security expiring).

### 4. Opening and closing OTC Transactions

(a) All OTC Transactions are entered into between you and OANDA as principal. The acquisition of a Contract for Difference involves entering into, or opening, a Contract for Difference. The disposal of a Contract for Difference requires Closing Out an open OTC Contract.

(b) OANDA will from time to time state the prices or values at which it may enter into an OTC Transaction with you, either to open or to Close Out an OTC Transaction. If you wish to enter into an OTC Transaction you may submit an Order to OANDA (including by Online Service). OANDA is not bound to enter into any OTC Transaction with you and reserves the right to state another price or value at which it may deal with you.

- I. You may request on any given Business Day OANDA to quote a price at which OANDA may be prepared to enter into an OTC Transaction. You agree to and acknowledge that a price quotation pursuant to this request does not constitute an offer to enter into a new or close an existing OTC Transaction.
- II. Upon receiving the quote from OANDA, you may offer to enter into an OTC Transaction with OANDA at the price quoted by OANDA.
- III. OANDA is not obliged to accept your offer to enter into an OTC Transaction and, without limitation, is not obliged to accept your offer to enter into an OTC Transaction:

a. if you have exceeded or would exceed a pre-determined limit imposed on you under clause b(vii) below; or

b. until OANDA has received from you the Initial Margin required in the form of cleared funds or your Account has sufficient Margin Cover to enter into the respective OTC Transaction.

- IV. The Initial Margin required to enter into an OTC Transaction (or the amount of required Margin Cover), if not already received from you, will be payable to OANDA upon acceptance by OANDA of your offer to enter into the OTC Transaction.
- V. If OANDA accepts your offer to enter into an OTC Transaction, OANDA will issue to you an electronic Confirmation of the OTC Transaction entered into shortly after it has been entered into. Failure by OANDA to issue a Confirmation will not prejudice or affect the relevant OTC. OANDA will not bear any liability whatever resulting from the failure to issue a Confirmation. OANDA will promptly advise you if OANDA decides not to accept your offer to enter into an OTC Transaction.
- VI. You agree to examine the terms of each Confirmation immediately upon receipt and you agree that the contents of the Confirmation, in the absence of manifest error, will be conclusive evidence of the executed deal, unless within 48 hours of issue of a written Confirmation you notify OANDA of any disputed detail in the Confirmation received by you. Upon receipt of written notice within 48 hours of a disputed Transaction, OANDA will investigate the dispute and in cooperation with you must endeavour to resolve the dispute in good faith. Notwithstanding any such dispute, you must continue to satisfy your obligations to maintain Margin Cover in respect of the Contract for Difference as if the Confirmation was correct and the details contained in the Confirmation were not the subject of dispute.
- VII. In its absolute discretion, OANDA reserves the right to limit the value of Contracts for Difference you may have outstanding under these Terms. If you wish to enter into any further Contracts for Difference, you must seek and obtain approval from OANDA, beyond which you may not enter into any further OTC Transactions whatever.
- VIII. OANDA may vary the limit imposed at any time in its absolute discretion.

(c) If OANDA enters into an OTC Transaction with you for the acquisition of one or more Contracts for Difference:

- I. OANDA will issue to you a Confirmation in respect of the OTC Transaction setting out, among other things, the number of Contracts for Difference acquired and the amount or amounts which you are required to pay, or are entitled to receive, in connection with the acquisition of the Contract for Difference; and
- II. you or OANDA (as applicable), must pay the relevant amount referred to in paragraph (a) by the time specified in the Confirmation.

(d) If OANDA enters into an OTC Transaction with you for the disposal of one or more Contracts for Difference (by way of Closing Out that contract):

- I. OANDA will issue to you a Confirmation in respect of the OTC Transaction setting out, among other things, the number of Contracts for Difference disposed of and the amount or amounts which you are required to pay, or are entitled to receive, in connection with the disposal of the Contract for Difference; and
- II. you or OANDA (as applicable) must pay the relevant amount referred to in paragraph (i) by the time specified in the Confirmation or Trading Conditions, subject to this Schedule.

(e) All communications, notices, offers, statements and Orders for Contracts for Difference must be made by an Online Service unless OANDA expressly agrees that they may be made by telephone or otherwise.

## 5. Settlement of Difference

(a) OANDA may determine the Contract Value of the OTC Transaction as at any time and from time to time (including, without limitation, as at the Close of Business on each Business Day or the Calculation Time or each second during all or any part of each Business Day).

(b) If the Contract Value determined by OANDA in accordance with clause 5(a) above is higher than the Contract Value previously determined by OANDA, then the Short Party must pay to the Long Party the difference.

(c) If the Contract Value determined by OANDA in accordance with clause 5(a) above is lower than the Contract Value previously determined by OANDA, then the Long Party must pay to the Short Party the difference.

(d) In order to determine the Contract Value on which the OTC Transaction is entered into, the Contract Value will be determined by OANDA taking into account the Underlying Security Price at which OANDA and you agreed to enter into the OTC Transaction.

(e) If OANDA determines that the Contract Value of a Contract for Difference cannot be determined in accordance with clause 5(a) above for any reason, the Contract Value at Close of Business will be the value determined by OANDA in its sole discretion.

(f) Without limiting clause 5(a) if at any time trading on an Exchange is suspended or halted in any Underlying Security, OANDA will, when determining the Contract Value, at its discretion consider (but is not limited to) the last traded price before the trading suspension or halt.

## 6. Dividend payment and receipt

If the issuer of the Reference Asset makes a dividend in respect of the Reference Asset, OANDA has discretion whether to make an adjustment for an amount of the weighted proportion of the dividend, being an amount to be credited to your Account in respect of your long positions and debited from short positions. If OANDA makes the adjustment, ordinarily the Long Party will be credited with an amount equal to the gross unfranked amount of any dividend payable to the holder of the Underlying Security (as determined by OANDA) and the Short Party will ordinarily be debited with an amount equal to the gross unfranked amount of any dividend payable to the holder of the Underlying Security (as determined by OANDA).

## 7. Closing out a contract for difference

(a) At any time, you may give OANDA notice of your intention to close any Contract for Difference (whether in whole or part) by specifying the Underlying Security and the quantity of Contracts for Difference that you wish to close. This must be done by you placing an Order for OTC Transactions which, if accepted, would Close Out the Contracts for Difference that you wish to close.

(b) Upon receipt of notice of intent to close a Contract for Difference (by way of receiving your Order for Contracts for Difference), OANDA will use reasonable endeavours to provide a quote for the Closing Price (by way of indicating prices for Contracts for Difference which would, if agreed to, Close Out your open Contracts for Difference) and notify you of that quote (by the Online Service or otherwise). It is your obligation to notify OANDA as soon as possible as to whether you are willing to accept the Closing Price quote. If you accept the Closing Price quoted by OANDA, the Contract for Difference, or relevant portion of the Contract for Difference, will be closed by issuing you with a Contract for Difference which is equal but opposite to the open Contract for Difference, or relevant portion of the Contract for Difference, to be closed.

(c) If the Underlying Security for the Contract for Difference is on terms that provide for its redemption, exchange or termination and you do not give notice to OANDA of your intention to Close out the Contract for Difference or to roll it over on terms and by the time acceptable to OANDA (whether or not you have any prior notice of that), you will be deemed to have given notice to OANDA to Close Out that Contract for Difference at the Closing Price reasonably determined by OANDA. In

this case, OANDA will Close Out the Contract for Difference as at the time it determines.

(d) At the Close Out, subject to clauses 3 and 8 of this Schedule 4, if there is a difference between the Closing Value and the Contract Value of the Contract for Difference (or portion of it closed under clause 7(b)) it must be accounted for in the following way:

- I. if the Closing Value is greater than the Contract Value, the Short Party must pay to the Long Party the difference; and
- II. if the Closing Value is less than the Contract Value, the Long Party must pay to the Short Party the difference.

(e) If the issuer whose security represents the Underlying Security on which all or part of an OTC Transaction is based becomes externally administered in accordance with the meaning in the Corporations Act (or equivalent legislation), the OTC Transaction will be taken to have been Closed at that time. The Closing Price of the OTC Transaction will be determined by OANDA who may consider a number of factors it deems appropriate including, for example, the last traded price of the Underlying Security.

(f) If the Underlying Security on which the OTC Transaction is based ceases to be listed for quotation on an Exchange or is suspended from quotation for 5 consecutive Business Days, OANDA may, in its absolute discretion, without limiting clause 7(g) elect to terminate the relevant Contract for Difference Transaction. If OANDA elects to do so then:

- I. the Closing Date will be deemed to be the date which OANDA determines (Early Closing Date); and
- II. you will be treated as having given notice under clause 7(a) on the Early Closing Date.

(g) If OANDA determines that the Closing Value of an OTC Transaction cannot be calculated on or with effect on the Closing Date for any reason, the Closing Value will be the value determined by OANDA in its sole discretion.

(h) Without limiting clause 7(g), if at any time trading in the Underlying Security on an Exchange is suspended or halted at any time, OANDA will, in its absolute discretion in determining the Closing Value of an OTC Transaction, have regard to (but is not limited by) the last traded price before the suspension or halt.

(i) All calculations made by OANDA in accordance with these Terms in the absence of any manifest error will be binding on you.

## 8. Settlement of Positions

(a) Payments to be made to you with respect of any OTC Transaction must be made in accordance with this clause 8.

(b) If an OTC Transaction is Closed Out in accordance with clause 7 above, or settlement for difference being made in accordance with clause 5 above:

- I. OANDA will credit to your (relevant) Account any amount payable by OANDA to you; or
- II. subject to clause 8(c) below you must pay to OANDA any amount payable by you to OANDA in cleared funds in any such currency that OANDA may require immediately upon the payment request being made.

(c) If there is any surplus Margin in your Account, any amount owing by you in accordance with clause 8(b) above will be settled in whole or in part by debiting your Account with OANDA.

(d) If you request payment of any money owed to you under this clause 8, OANDA will deduct the amount of the requested payment from your Account and pay you, electronically or in any other manner as agreed. Money owed to you that has not been the subject of any payment request by you will remain in your Account. Before we pay any money to you in your home currency any net profits and losses that you have realised in currencies other than your home currency, we will convert these into your home currency in accordance with clause 14.2 (i)

(e) OANDA may offset any money owed to you under these Terms or any other agreement against any moneys owed by you under these Terms or any other agreement.

## 9. Adjustment Events

(a) If the Underlying Security on which a OTC Transaction is quoted is subject to an Adjustment Event or possible Adjustment Event, OANDA will determine the adjustment, if any, that will be made to the Contract Value of that Underlying Security, the related quantity (or both) that would have placed the parties in substantially the same economic position they would have been in had the event not occurred. OANDA will notify you as soon as practicable of the adjustment. In the absence of any manifest error any adjustment determined will be deemed to be conclusive and binding on you.

(b) OANDA may give you an opportunity to elect to participate in an adjustment to the OTC Transaction which corresponds with the Adjustment Event, but OANDA is not obliged to give you that opportunity, or give reasonable notice of it or make its terms correspond exactly with the Adjustment Event, nor is OANDA obliged to accept in part or at all any election you make to participate. Any adjustment will take effect at the time determined by OANDA.

(c) If the Underlying Security is subject to a take-over offer or similar event, OANDA may at any time prior to the closing date of the offer provide you notice of OANDA's intention to Close Out the OTC Transaction, in accordance with clause 7, with the Closing Price being the price notified to you by OANDA.

(d) If at any time an Adjustment Event occurs and it is not reasonably practicable as determined by OANDA in its absolute discretion to make an adjustment in accordance with clause 9(a) above, then without limiting 9(a) above, OANDA may at any time after the Adjustment Event give you notice of OANDA's intention to Close Out the OTC Transaction. If this occurs you will be taken to have been provided with closing notice in accordance with clause 7 above, with the Closing Price being the price notified to you by OANDA. (e) References to "offer", "take-over" and "closing date" in this clause 9(a) above will have the same meaning given to them in the Corporations Act 2001.

## 10. Margin Requirements

(a) This clause 10 supplements clause 15 of the Terms and only prevails over it to the extent of any inconsistency.

(b) Prior to entering into an OTC Transaction with OANDA you acknowledge that OANDA requires you to pay cleared funds into the Trust Account as an Initial Margin and to maintain the minimum Margin Cover determined by OANDA in its absolute discretion from time to time. The Margin Cover requirements may be determined automatically by an Online Service. The required Margin Cover may change at any time, including outside of trading hours and without prior notice to you. The amount of Initial Margin required by OANDA and the time at which it is required will be at the absolute discretion of OANDA. OANDA is not obliged to permit any offset of any Initial Margin required by OANDA.

(c) A Margin payment is credited by OANDA at the time cleared funds have been received into the Trust Account and applied by OANDA to your Account or such other time as allowed by OANDA so a Margin Cover requirement is not satisfied until your payment is received in cleared funds into the Trust Account and applied to your Account by OANDA.

(d) You have an absolute obligation to maintain the amount of Margin Cover required by OANDA from time to time. Your failure to maintain the required Margin Cover is automatically a Default.

(e) The Initial Margin requirement applicable in respect of any OTC Transaction may be increased by OANDA in its absolute discretion in respect of the time for payment and the amount of it. In the event of such an increase OANDA may require that you pay OANDA additional cleared funds equal to such an increase.

(f) Without affecting your obligation to maintain the required amount of Margin Cover, at any time in the discretion of OANDA you may be required by OANDA to pay additional Margin by paying OANDA cleared funds into the Trust Account.

(g) Without affecting your obligation to maintain the required amount of Margin Cover, if OANDA requires additional funds from you to maintain the required Margin Cover you must maintain the Margin Cover by the time required by OANDA, which could be immediately.

(h) Your payment into a Trust Account will not satisfy your obligation to make payment to OANDA in cleared funds, even

if OANDA temporarily waives reliance on this term. The payment obligation is not satisfied unless and cleared funds are received for the benefit of OANDA.

(i) In all respects, time is of the essence for all of your payment obligations to OANDA.

(j) If OANDA increases the required Margin Cover, you acknowledge and agree that OANDA may refuse any request by you to enter into any further Contract for Difference positions until OANDA has confirmed the receipt of the payment for more Margin in the form of cleared funds.

(k) Any net positive amount of Margin credited to your Account will not constitute a debt due by OANDA to you. Subject to you meeting all Margin Cover requirements, you are entitled to be paid by OANDA an amount equal to the Withdrawable Funds and, on being paid, there will be a corresponding reduction in the balance of your Account.

(l) You acknowledge that your liability with respect to maintaining Margin Cover is not limited to the amount you initially or later pay OANDA. You authorise OANDA to withdraw or otherwise apply funds or Financial Products held for your benefit by OANDA in any Account, or funds in any Trust Account, to satisfy partially or fully any liability you have to maintain Margin Cover.

(m) OANDA will have sole, absolute and unfettered discretion, as to the exercise of any power or right under this clause 10, including, without limitation, the calling of Margin.

(n) Any power or right exercised by OANDA under this clause 10 will be binding upon you.

(o) Any reference to time under this clause 10 includes weekends and public holidays.

#### **11. Actions Following a Default**

(a) Upon or after any Default occurs, OANDA, without prejudice to any other rights it may have under these Terms, has the right and power in its sole absolute and unfettered discretion and without necessity to give prior or any notice to you to do any one or more of the following:

- I. in accordance with clause 14 terminate these Terms;
- II. Close Out all or any open OTC Transaction you may have as if you had given a closing notice to OANDA and had accepted the Closing Price determined by OANDA in accordance with clause 7;
- III. in accordance with clause 11(d) treat all or any open OTC Transaction as having been terminated by you;
- IV. terminate any agreement or account whatever you have or may have with OANDA;
- V. in the event of there being insufficient funds in your Account to satisfy amounts owing to OANDA (including to maintain the Margin Cover), OANDA may cancel any outstanding Orders in order to close your Account;
- VI. satisfy obligations that you have to OANDA out of any property belonging to you including, money or security in OANDA's custody or control including, without limitation, the Trust Account or by selling securities lodged by you with OANDA or setting off obligations such that security transferred as collateral is not required to be returned but instead the value of them (as determined by OANDA) is applied in calculation of the set-off of obligations and to enforce any asset or security held by OANDA in such manner as it sees fit at your risk and expense;
- VII. transfer from your other accounts or the Trust Account, if any, such funds as may be required for that purpose to satisfy any obligation you may have to OANDA; and
- VIII. exercise any power or right that OANDA may have in accordance with these Terms or in law or equity or take any other form of action as the holder of an Australian financial services licence (AFSL) may be required to take.

(b) OANDA does not forgo any of the rights outlined in this clause 11 incurred as a result of a delay in the exercise of such rights. If OANDA does not exercise any of its rights, it reserves the right to do so at any time in the future.

(c) If OANDA exercises its rights under clause 11(a)(ii), you authorise OANDA to Close Out the OTC Transactions, at your

risk and expense as if you had given notice on the date that OANDA exercises its right, in accordance with clause 7.

(d) If OANDA treats an OTC Transaction as having been terminated by you and OANDA exercises its rights in accordance with clause 11(a)(iii), OANDA will calculate the amount owing by you or by OANDA as if you had been given a closing notice and you had accepted the Closing Price determined by OANDA in accordance with clause 7. OANDA may debit from your Account an amount equal to the amount which would have been payable by you to OANDA had the OTC Transaction been closed at the Closing Price. It is agreed that this amount represents a reasonable pre-estimate of the damages incurred by OANDA.

(e) Any action taken by OANDA in accordance with this clause 11 does not limit any other provision of these Terms and is without prejudice to any other rights which OANDA may have to any other remedy or damages.

## **12. Illegality**

If any event occurs which has the effect of making or declaring it unlawful or impracticable for OANDA to offer or to maintain Contracts for Difference to you in accordance with the terms outlined in these Terms, OANDA may immediately terminate these Terms by providing you written notice of that. A termination of these Terms will also result in the closure of all Contracts for Difference in accordance with clause 11(c) as if it were a Default. Any such termination will not relieve you of any obligations you may have to OANDA in accordance with these Terms prior to its termination.

## **13. Hedge Counterparty arrangements**

You acknowledge that if you acquire a Contract for Difference, you have no right to, or interest in, the Reference Asset or any Hedge Contract.

## **14. Termination of a Contract for Difference**

(a) You acknowledge that OANDA may terminate a Contract for Difference (apart from any other right to terminate) if:

- I. the Reference Asset ceases to be able to be traded on a relevant market or is subject to a trading suspension or trading halt for a period of more than five (5) Business Days;
- II. an Adjustment Event occurs and OANDA determines that it is not reasonably practicable to make an adjustment to the terms of a Contract for Difference under this Schedule;
- III. the relevant Hedge Contract, or OANDA's rights under the relevant Hedge Contract or in respect of the relevant Reference Asset, are Closed Out, suspended or terminated by the Hedge Counterparty (which may occur automatically under the terms of any agreement between OANDA and the Hedge Counterparty); or
- IV. OANDA considers, acting reasonably, that the Hedge Counterparty or issuer of the Reference Asset may not be able to meet its obligations to OANDA under the terms of the Hedge Contract or Reference Asset or other contracts between OANDA and the issuer of the Reference Asset or the Hedge Counterparty.

(b) If OANDA terminates a Contract for Difference under clause 14(a) or otherwise, OANDA will determine a termination value, payable by OANDA to you or by you to OANDA, which OANDA considers appropriate, acting reasonably, and having regard to the circumstances of termination, the value (if any) of the Reference Asset and the position as between OANDA and the Hedge Counterparty in respect of the Hedge Contract. The termination will take effect at the time determined by OANDA.



