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# **CLIENT AGREEMENT**

Eightcap Pty Ltd

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## ABOUT EIGHTCAP

Eightcap Pty Ltd (ABN 73 139 495 944) is a company incorporated in Australia and is referred to in this Client Agreement as “Eightcap”, “we” or “us”. We hold an AFSL (number 391441) and are regulated by the Australian Securities and Investments Commission (ASIC).

This Client Agreement is between you and Eightcap and contains the terms and conditions that govern all transactions in “Contracts for Difference” and other margin trading products (collectively referred to as CFDs), entered between you and Eightcap.

A CFD is an over-the-counter derivative product comprising an agreement under which one party is entitled to be paid an amount of money (profit) or has to pay an amount of money (loss), resulting from movements in the price or value of an Underlying Asset (without actually owning that Underlying Asset).

This Client Agreement takes effect when you agree to its terms and conditions as part of Eightcap’s Account Application process and will remain in force unless terminated under the terms set out below.

**CFDs involve a high level of risk and can result in significant losses. CFDs are not suitable for everyone. A full explanation of the risks associated with CFD trading is set out in the Eightcap Product Disclosure Statement and the Risk Disclosure Notice. You should read these documents and ensure you fully understand all the risks associated with our products and service offering before entering into this Client Agreement.**

## 1. DEFINITIONS AND INTERPRETATION

See below for the definition of the terms used in the Client Agreement:

“**Account Application**” means an application to open an Account with Eightcap.

“**AFCA**” means the Australian Financial Complaints Authority.

“**AFSL**” means an Australian Financial Services Licence granted by ASIC pursuant to section 913B of the Corporations Act.

“**Authorised Person**” means a person authorised by the client to give instructions relating to the Account.

“**Business Day**” means a day on which investment banks in Melbourne, Australia are open for business, except Saturday or Sunday.

“**CFD**” means a Contract for Difference, which is an over-the-counter derivative product comprising an agreement under which one party is entitled to be paid an amount of money (profit), or has to pay an amount of money (loss), resulting from movements in the price or value of an Underlying Asset (without actually owning that Underlying Asset).

“**Cleared Funds**” means the amount of funds that have been deposited or credited to your Account, for the purpose of maintaining open Positions, or any other permissible purpose.

“**Closing Date**” means the date on which you accept the Closing Price of the CFD, or on which a Closing Date is deemed to have occurred in accordance with this Client Agreement.

“**Closing Notice**” means the notice given by one party to close a CFD in accordance with clause 14.3 of this Client Agreement.

“**Closing Price**” means the price as determined by Eightcap at the time Eightcap receives the Closing Notice.

“**Contract**” means any contract for a CFD transaction (whether verbally or in writing), entered by you.

“**Common Reporting Standard (CRS)**” means the global reporting standard for the automatic exchange of information (AEOI) as enacted pursuant to the *Tax Laws Amendment (Implementation of the Common Reporting Standard) Act 2016* (Cth).

“**Corporations Act**” means the *Corporations Act 2001* (Cth).

“**Disputed Transaction**” means a dispute relating to any CFD transaction entered with Eightcap.

“**Equity**” means the cash balance of your Account including (after) any running losses and/or profits on open Positions. The account equity is an indication of the performance of a trading account as it considers your account balance and how each individual Position is performing.

“**Foreign Account Tax Compliance Act (FATCA)**” means section 1471 to 1474 of the US Internal Revenue Code of 1986 or any associated regulations and includes: any treaty, law or regulation of any other jurisdiction relating to an intergovernmental agreement between the US and any other jurisdiction, which facilitates the implementation of relevant laws or regulations; and any agreement pursuant to the implementation of any relevant treaty, law or regulation with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

“**FSG**” means the Financial Services Guide issued by Eightcap, as amended or supplemented from time to time.

“**Future or Forward**” means the price that a CFD is quoted at based on a future date. The quoted price of a Future or Forward contract includes financing costs and (if applicable)

dividends.

**"Hedging"** means a strategy used by Eightcap to manage exposure to Position(s), which involves the entering of its own positions with a Liquidity Provider(s).

**"Joint Account"** means an Account Application made for, and a Trading Account opened in the name of, two or more persons.

**"LEI"** means the Legal Entity Identifier or acceptable equivalent issued to a corporation, corporate trust, corporate trustee or any other person required to have an LEI.

**"Liquidity"** means the amount (by volume) of buy or sell orders at bid and ask prices.

**"Liquidity Provider(s)"** means an external counterparty (bank or other financial institution) that provides a buy and sell price in a CFD and can accept trades and orders for the purposes of Hedging. Also known as a Hedging counterparty.

**"Manifest Error"** means a manifest or obvious misquote by Eightcap, or any Liquidity Provider, exchange information source or official on whom we reasonably rely, having regard to the current market conditions at the time an order is placed. When determining whether a Manifest Error has occurred, Eightcap will consider all factors, including relevant market conditions and any error in, or lack of clarity of, any information source or announcement. Eightcap will act reasonably and fairly towards you in making its determination.

**"Market Maker"** means that Eightcap acts as counterparty with respect to your trading activity. Eightcap set the prices (bid and ask quotes) that are provided to you and may assume the risk of your trading activity.

**"Market Order"** means an order to enter a Position or close out a Position at the first price available (current market price) and as determined by the CFD price, market liquidity, and other factors that may impact on execution times.

**"Margin"** means the amount of money you are required to pay us or hold in your trading account to place an Order.

**"Margin Call"** means a demand for additional funds to be deposited into your trading Account, or the closing of your open position(s), to meet your Margin obligations.

**"Negative Balance Protection"** means that if you are a Retail Client and at any time you have a negative balance on your Account, we will waive our right to claim the deficit and will return the Account balance to zero, in accordance with the ASIC Product Intervention Order – Contract for Difference Instrument 2020/986 (Product Intervention Instrument) issued under section 1023D(3) of the Corporations Act. Where you have multiple Accounts with us, we may treat your Accounts as

aggregated for the purposes of offsetting a negative balance, by using funds on one Account to offset losses incurred on another.

**"Net Free Equity"** means the amount of money you would have left in your account should all of your open Positions be closed out at the current market price, taking into account any Swap Charge or Swap Credit, fees or transaction charges. Net Free Equity may be positive or negative.

**"Operating Rules"** means the rules, regulations, customs, and practices from time to time of any exchange, clearing house, or other organisation or market involved in the execution or settlement of any CFD transaction.

**"Order"** means an offer that you make to enter into a Contract with us under the Agreements.

**"PDS"** means the Product Disclosure Statement issued by Eightcap, as amended or supplemented from time to time.

**"Price Latency Arbitrage"** means the practice of exploiting disparities in the price of any CFDs, by taking advantage of the time it takes to access and respond to market information.

**"Politically Exposed Person"** has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* made under section 229 of the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth).

**"Position"** means a CFD contract you enter into under the Client Agreement and PDS.

**"Power of Attorney"** gives another person, nominated and appointed by you, the ability to act on your behalf. This means that the third party can take over responsibility for the Account, including but not limited to, the ability to place orders for you or on your behalf.

**"Related Body Corporate"** means a body corporate, and where that body corporate is a:

- a. holding company of another body corporate – that other body corporate;
- b. subsidiary of another body corporate – that other body corporate;
- c. subsidiary or a holding company of another body corporate – that other body corporate; or
- d. company forming part of the Eightcap brand, including irrespective of whether that company is a subsidiary of Eightcap Pty Ltd or not – that company forming part of the Eightcap brand.

**"Relevant Exchange"** means the financial market or exchange on which the reference price of the Underlying Asset is quoted.

**"Retail Client"** has the meaning given by sections 761G and 761GA of the Corporations Act. You are classified as a 'retail' client unless you meet the criteria to be classified as a

'wholesale' client under the Corporations Act.

**"Swap"** means the fee that your Trading Account is debited or credited if you hold a Position at 23:59:59 Platform Time through to the following Trading Day.

**"Swap Charge or Swap Credit"** means financing related credits or charges relating to the holding of a CFD at the close of the Trading Day.

**"Sub Accounts"** means additional Accounts that you have requested to open under the same name with Eightcap.

**"Trading Account"** or **"Account"** means the client's CFD account held with Eightcap, which is established in accordance with the terms and conditions of this Client Agreement, the Eightcap FSG, Eightcap PDS and any other terms and conditions or legal document published by us from time to time on our website or our Trading Platform.

**"Trading Day"** means Monday to Saturday, including public holidays. The close of the Trading Day occurs at 23:59:59 on the Trading Platform.

**"Trading Platform"** means Eightcap's online Meta Trader platform (MT4 or MT5), or an online trading facility provided by Eightcap.

**"Trust"** means where the Account is opened in the name of a trust, the trust identified in the Account Application.

**"Trust Deed"** means where you are a trustee, the Trust Deed governing the Trust.

**"Total Margin Requirement"** means the total Margin required to maintain all your open Positions.

**"Underlying Asset"** means the underlying security, exchange rate, index, commodity, or other financial asset type that trades in a financial market or Relevant Exchange to which the CFD relates.

**"Underlying Market"** means the security, exchange rate, index, commodity, or other financial asset type that trades in a financial market or Relevant Exchange to which the CFD relates.

**"Wholesale Client"** has the meaning given in section 761G of the Corporations Act.

Please note that headings are for convenience only and do not affect the construction and interpretation of this Client Agreement.

Reference to a person or individual includes corporate entities, trusts, partnerships and individuals.

## 2. CLIENT REPRESENTATIONS AND WARRANTIES

### 2.1. You represent and warrant to Eightcap that:

- a. You have read, understood and will comply with the terms of this Client Agreement.
- b. All Orders placed and transactions made by you under this Client Agreement are lawful.
- c. By entering into this Client Agreement, you do not and will not breach any other agreement to which you are a party (or any law or judgment/order binding on you).
- d. All decisions and instructions made pursuant to this Client Agreement are agreed by all parties to the Trading Account (if applicable and where required).
- e. You are not an employee or close relative of an employee of any Relevant Exchange participant.
- f. All information you provide to us in your Account Application form and thereafter is true and accurate.
- g. You understand Eightcap will act as principal and Market Maker for the purpose of dealing in CFDs in accordance with the terms of this Client Agreement.
- h. You are not insolvent. If you are a corporate client, no resolution has been passed or petition presented nor has an order been made for winding up or liquidation and there has been no appointment of a receiver or manager or an administrator or other insolvency official. If you are an individual, you have not taken any steps to have yourself declared bankrupt nor have any steps been taken against you to have you declared bankrupt and there has been no appointment of a receiver or manager or an administrator or other insolvency official to administer your estate.
- i. You acknowledge that you will be categorised as a Retail Client unless you specifically apply for a professional investor account and provide Eightcap with evidence that you meet the criteria to be re-classified as a Wholesale Client under the Corporations Act.
- j. You represent and warrant to Eightcap that you have the legal capacity and authority to enter into this Client Agreement and the transactions governed by it.
- k. You and Eightcap are bound by the applicable CFD laws and/or regulations, Corporations Act, applicable Operating Rules, customs, usages, and practices (as modified from time to time) of the Relevant Exchange and clearing houses where any dealing takes place.

### 2.2. Where you are a trustee (including the trustee of a superannuation fund):

- a. The Trust has been duly constituted, is valid, and complies with all applicable laws;
- b. The Trust Deed has been executed in accordance with the laws of the relevant State or Territory in which that Trust has been established;

- c. The property of the Trust has not been resettled, set aside, or transferred to any other trust or settlement and the Trust Deed has not been terminated and the date or any event for the vesting of the Trust's property has not occurred;
- d. The Trust Deed specifically permits the trustees to enter into CFD transactions, and CFDs form part of the Trust's investment strategy;
- e. Transactions performed under this Client Agreement constitute binding obligations and are enforceable against the Trust and its property;
- f. 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 in your dealings with Eightcap, and the Trust's property is enough to satisfy that right of indemnity or exoneration;
- g. You have complied with your obligations in connection with the Trust;
- h. There is no conflict of interest on your part in entering into transactions with Eightcap and performing your obligations under those transactions or otherwise under this Client Agreement; and
- i. If you are trustee of a superannuation fund, you have complied with all requirements outlined in the *Superannuation Industry (Supervision) Act 1993* (Cth).

### 2.3. Where you are an investment manager, the investment management agreement authorises transactions in CFDs and:

- a. The transactions are within the authorised ambit of the/each underlying client's investment strategy;
- b. You have the appropriate regulatory authorisation to trade on behalf of your underlying clients and have provided Eightcap with evidence of your authority to trade on behalf of your underlying clients;
- c. You will enter into transactions pursuant to the applicable investment management agreement as investment manager or responsible entity;
- d. You will only deal in CFD transactions when the funds or other assets under your control are sufficient to meet your obligations; and
- e. In the event of termination of your appointment as investment manager or responsible entity, you are authorised to arrange for the closing out of all contracts entered on behalf of your client prior to the date of such termination as soon as possible.

## 3. FAIR USAGE PRINCIPLES

- 3.1. We may apply limits to your use of, or access to, the

Trading Platform as we see fit in the circumstances.

- 3.2. Eightcap may apply the limits referred to in 3.1 above and/or limits to your usage of the services we provide, for various reasons. This includes but is not limited to: if usage of the Trading Platform is not considered by us as appropriate, lawful or fair, if it affects (or may affect) other clients' use of the Trading Platform, or if it is significantly different from the usage that we would expect from you.
- 3.3. If Eightcap decides to impose a limit on your access to the Trading Platform, we may, in our reasonable discretion, suspend, disable or terminate your Trading Platform access. We will not do so without giving you notice in accordance with clause 20 (except in limited circumstances where it is not reasonable to give you notice) and will only do so if it is reasonable in the circumstances.
- 3.4. To ensure that you are using the Trading Platform in accordance with the fair usage principles outlined in clause 3.2 above, Eightcap will monitor your order-to-trade ratio. Each order, cancellation, or modification message entered by a client is treated as an 'Order' for the purposes of calculating this ratio.
- 3.5. Where transaction ratios are exceeded, Eightcap will investigate the causes on a case-by-case basis and will contact you before taking any action (except in exceptional circumstances, such as in extreme adverse market conditions).

## 4. SEGREGATED ACCOUNTS

### 4.1. You agree and acknowledge that:

- a. All monies deposited by you with Eightcap will be credited to the Trading Account and will be paid into a segregated client bank account established and maintained by Eightcap and treated in accordance with applicable legal and regulatory requirements
- b. Segregation of your money does not protect you from the risk of loss;
- c. Whilst your money is segregated from Eightcap's money, it may be co-mingled with the money of other Eightcap clients. These monies will be treated as the legal property of Eightcap, subject to an obligation by Eightcap to transfer the equivalent back to you in accordance your rights under this Client Agreement;
- d. Eightcap is entitled to retain any interest earned on any segregated client money it holds;
- e. Eightcap does not use Retail Client money:
  - as capital, including working capital; or
  - for business purposes such as office rent, utilities and employee payroll; or

- for Hedging, counteracting or offsetting the risk Eightcap incurs with transactions it enters with you.
- f. Eightcap may, to the extent permitted by Part 7.8 of Division 2 of the Corporations Act, use Wholesale Client money for Hedging, counteracting or offsetting the risk we incur associated with transactions we enter with the Wholesale Client.

## 5. SUB ACCOUNTS

- 5.1. If you operate Sub Accounts and opposite Positions are opened on different Sub Accounts, the Positions will not cancel each other out. You acknowledge that unless each Position is closed manually, all open Positions may be rolled over on a continuous basis and thereby continue to pay or receive the applicable Swap Charge on each Position.
- 5.2. Keeping opposite Positions open on Sub Accounts (including opposite Positions within the same trading account) will result in both Positions being continuously rolled over. Each Position is therefore subject to applicable financing costs (Referred to as a Swap Charge or Swap Credit in the Trading Platform) until each Position is manually closed.
- 5.3. If you have opened more than one Trading Account, Margin deposited on one Trading Account does not provide Margin coverage on the other Trading Account(s). You may therefore receive Margin Calls and stop-outs on one account despite having additional Margin available on other Sub Accounts.
- 5.4. However, if you have deposited money on one Sub Account, Eightcap may, in its reasonable discretion, transfer money from one account to another (inter-account transfer), even if the transfer will necessitate the closing of trades on the Trading Account from which the transfer takes place. An example of when we might do this includes, but is not limited to, when a Sub Account's Equity is negative. You acknowledge, and will not hold us liable for, any losses incurred as a result of us exercising our discretion in accordance with this provision. Where Negative Balance Protection applies, we will utilise funds in your Sub Accounts before applying a credit in a Trading Account that is negative.

## 6. RISK DISCLOSURE AND ACKNOWLEDGEMENTS

### 6.1. You agree and acknowledge that:

- a. You have received, read, understood and accepted the CFD risk disclosures provided in the Risk Disclosure Notice, PDS and Client Agreement;

- b. You have received, read and understood our FSG;
- c. Trading in CFDs is speculative and carries a high level of risk, including the risk of losing the entirety of your initial expenditure;
- d. You do not own or have any rights to the Underlying Asset;
- e. The effect of leverage is that both gains and losses are magnified;
- f. You can lose more than you anticipate and/or what your stop loss or trading plan may indicate;
- g. You understand that Eightcap is not authorised to provide personal advice and will only provide general advice in relation to its products and services, even in circumstances where Eightcap collects information relating to your trading history, financial situation or otherwise for purposes of assessing your suitability to trade;
- h. You will consider your objectives, financial situation and needs and obtain any appropriate independent financial and/or taxation advice which you deem necessary before deciding that CFDs are suitable for you and before opening a Trading Account;
- i. You have or will take independent legal and/or financial advice as you consider necessary prior to opening a Trading Account at your own cost;
- j. You are willing and able to take the risk of trading CFDs which are high risk investments;
- k. The performance and/or rate of return of CFDs or your Trading Account is not guaranteed by Eightcap;
- l. It is your responsibility to ensure that you notify us of any changes to your contact details, including updating your LEI, where applicable. Any notice sent by us to your email address will be deemed to have been delivered at the time of sending.

## 7. GENERAL CLIENT ACKNOWLEDGEMENTS

### 7.1. You agree and acknowledge that:

- a. Eightcap may utilise the execution services and platforms of third parties to provide the services detailed in this Client Agreement. Eightcap will take reasonable steps to ensure that these third parties are appropriately licensed/authorised where applicable;
- b. Dealing in CFDs creates an obligation to make a cash adjustment in accordance with the terms of the relevant transaction;
- c. Where a CFD has no maturity date or defined term,

- open contracts will continue until they are closed;
- d. All CFD transactions pursuant to this Client Agreement are at the absolute discretion of Eightcap. Eightcap is entitled to take any action it considers necessary in its absolute discretion to ensure compliance with the Operating Rules and all other applicable laws and regulatory guidance;
  - e. Where more than one person is named as the holder of the Trading Account, the Trading Account will be established in your names as Joint Account holders. Joint Account holders are jointly (together) and severally (individually) liable under the Client Agreement;
  - f. Eightcap acts as principal and Market Maker and quotes you bid and ask prices. These prices may not necessarily reflect those of Eightcap's Liquidity Providers;
  - g. Eightcap may hold Positions that are contrary to your Position resulting in a potential conflict of interest;
  - h. Subject to applicable legal/regulatory requirements, Eightcap's directors, employees and associates may deal on their own account;
  - i. Eightcap reserves the right, in its sole discretion and without explanation, to refuse to provide services in relation to CFDs (other than closing out existing open Positions) or to limit the number of open Positions or both. Eightcap may, at its discretion, inform you of any refusal before, or as soon as practicable, after refusal;
  - j. Where errors have occurred in price quotes provided, or in the pricing of transactions quoted by Eightcap to you, Eightcap reserves the right to not be bound by such a quote or transaction where Eightcap is able to demonstrate to you that there was a Manifest Error at the time of the quote or transaction. Where this occurs in relation to the initial purchase of a CFD, Eightcap will not issue (or, if already issued, Eightcap will cancel) the contract and refund you accordingly. Where this occurs in relation to a price quote for an existing Position, Eightcap will reissue the price quote accordingly;
  - k. All determinations and calculations made by Eightcap under this Client Agreement will be binding on you in the event of a Manifest Error;
  - l. Unless we have agreed with you otherwise, your Trading Account will, by default, be set to immediate conversion of non-Base Currency balances standing on your Trading Account to your Base Currency. This means that, following a non-Base Currency Transaction being closed, rolled over or expiring, the profits or losses from that Transaction will be automatically converted to your Base Currency and posted to your Trading Account in that Base Currency. We will also, by default, automatically convert any non-Base Currency adjustments or charges (for example, funding charges or dividend adjustments) to your Base Currency, before such adjustments or charges are booked on your Trading Account and we will automatically convert any money received from you in a non-Base Currency into your Base Currency;
  - m. 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. Since Eightcap does not control signal power, its reception or routing via internet, configuration of your equipment or reliability of connection, Eightcap will not be liable to compensate you for any loss arising out of communication failures, distortions or delays when trading via the internet;
  - n. Eightcap is entitled, in its reasonable opinion, to determine that an emergency or an exceptional market condition exists. Such conditions include, but are not limited to: the suspension or closure of any Underlying Market or the abandonment or failure of any event to which Eightcap relates its quote or the occurrence of an excessive movement in the level of any margin trade and/or Underlying Market or Eightcap's reasonable anticipation of the occurrence of such a movement. In such cases Eightcap may increase its margin requirements, close any, or all, of your open margin trades, and/or suspend or modify the application of all or any of the terms, including but not limited to, altering the last time for trading a particular margin trade, to the extent that the condition makes it impossible or impracticable for Eightcap to comply with the term in question.

## 8. REPRESENTATIVES AND SERVICES

- 8.1. Eightcap seeks to act efficiently, honestly and fairly at all times. Eightcap will use reasonable endeavours to execute or arrange the execution of your instructions.
- 8.2. Eightcap will arrange execution-only transactions in CFDs.
- 8.3. Eightcap representatives are not permitted to provide personal advice to you. Any advice provided to you is general advice only, and does not take into account your objectives, financial situation, or needs.
- 8.4. Any transaction or market information or research provided by Eightcap to you is provided as information only and does not constitute and cannot be relied upon as a recommendation to trade. Eightcap makes no representation, warranty or guarantee, and accepts no liability for the accuracy or completeness of any such information; you rely on it at your sole risk.

## 9. ONLINE TRADING FACILITIES

- 9.1. Eightcap agrees to grant you access to one or more electronic terminals, including terminal access through your internet browser, for the electronic transmission of orders to your Trading Account with Eightcap.
- 9.2. Eightcap will allow you to monitor the activity and Positions in your Account by providing the Trading Platform. The Trading Platform may be a proprietary service offered by Eightcap or a third-party system.
- 9.3. Where the Trading Platform is provided by a third party, third party terms and conditions may apply which Eightcap may not necessarily have control over or be a party to. The onus is on you to ensure that you read and understand these terms and conditions.
- 9.4. Eightcap makes no representations or warranties regarding any services provided by any third party.
- 9.5. You agree that you will not distribute the Trading Platform to any third party.
- 9.6. The Trading Platform may be used to transmit, receive, and confirm the execution of orders, subject to market conditions and applicable Operating Rules and laws and regulations.
- 9.7. Transactions are not confirmed until Eightcap provides confirmation. The confirmation made available on the Trading Platform constitutes Eightcap's confirmation of a contract.
- 9.8. It is your responsibility to prevent unauthorised access and use of the Trading Platform. You accept liability for all trades executed through your Trading Account.
- 9.9. You must use the Trading Platform as permitted in accordance with this Client Agreement, our policies and any applicable laws and regulations.
- 9.10. Eightcap reserves the right to change any of its policies at any time relating to the use of the Trading Platform.
- 9.11. The Trading Platform may be available in several versions, which may have differences including, but not limited to the level of security, products and services available. Eightcap will not be liable in connection with you using a version different from the standard version with all available updates installed.
- 9.12. Eightcap may offer real-time tradeable prices to you. Due to delayed transmission between you and Eightcap the price offered may have changed before an order is received by us. If automatic order execution is offered to you, Eightcap will be entitled to change the price on which your order is executed to the market value at the time which the order form was received.
- 9.13. Eightcap does not warrant that access to, or use of, the Trading Platform will be uninterrupted or error free, or that the service will meet any criteria with respect to its performance or quality. Eightcap expressly disclaims all implied warranties, including, without limitation: warranties of merchantability, title, fitness for a particular purpose, non-infringement, compatibility, security, or accuracy.
- 9.14. You agree that under no circumstances, including negligence, will Eightcap, its employees and/or service providers be liable for any direct, indirect, incidental, special or consequential damages including, without limitation, business interruption or loss of profits that may result from the use of, or inability to use, the Trading Platform, including any loss or damages arising as a result of the Trading Platform being unavailable.
- 9.15. You agree not to hold Eightcap and any of its service providers liable for any form of damage arising as a result of the unavailability of the Trading Platform.
- 9.16. You agree that the use of the Trading Platform is at your risk and you assume full responsibility for any losses resulting from the use of software and/or any other materials obtained via the online trading facility. You also assume full responsibility for any losses resulting from the use of software and/or any other materials obtained by you via a third-party provider; including but not limited to Expert Advisors (EAs), signal/trade alert providers and trade copiers. Eightcap does not offer this software/material and accordingly does not provide technical support in relation to the use thereof.
- 9.17. Eightcap and its service providers will not accept any form of liability, including any loss or damage to you or to any other person, for:
  - a. Any inaccuracies, errors or delays or omissions of any data, information or message or transmission or delivery of any such data, information or message;
  - b. Non-performance;
  - c. Interruptions in data, information, or message transmission, due to any negligent act or omission, including any *force majeure* event or any other cause, whether or not within Eightcap's control – this includes but is not limited to: floods, extraordinary weather conditions, earthquakes, acts of God, fire, war, riot, labour disputes, accidents, actions of any government, communications or power failure, equipment or software malfunction.
- 9.18. The use and storage of any information provided or made available to you using the Trading Platform is for your use and is your sole risk and responsibility.
- 9.19. You are responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the Trading Platform, and for all communications service fees and charges you incur in accessing the Trading Platform.
- 9.20. You acknowledge that from time to time, and for any reason, the online trading facility may not be



operational or otherwise available for your use due to servicing, hardware malfunction, software defect, service or transmission interruption or any other cause.

- 9.21. You acknowledge that you always have alternative arrangements in place, for the transmission and execution of orders, if for any reason, circumstances prevent the transmission and execution of all, or any portion of, your orders through the Trading Platform. In the event of the Trading Platform not being operational, you agree that it is your responsibility to contact Eightcap to make alternative order entry arrangements. Such arrangements may be by telephone, or as otherwise agreed.
- 9.22. You may not, under any circumstances, use the Trading Platform to do any of the following:
- Publish, post, distribute or disseminate defamatory, infringing, obscene, or other unlawful or offensive material or;
  - Intercept or attempt to intercept any email correspondence;
  - adversely affect its availability or its resources to other users;
  - Send correspondence electronically or otherwise to other users for any purpose other than personal communication; or
  - Act, or fail to act, in a manner which may result in the violation of any laws or regulations.

## 10. AUTHORISATIONS AND INSTRUCTIONS

### General

- 10.1. You may communicate your instructions to Eightcap via the Trading Platform or by telephone. We will not accept orders or instructions through any other means, such as email, unless we have specifically agreed to do so.
- 10.2. In consideration of Eightcap agreeing to accept telephone instructions, you acknowledge that Eightcap is not obliged to accept/implement such instructions and will not be liable to you or any other party should such instructions be unauthorised, forged or fraudulently given.
- 10.3. It is possible for a third party to place orders on your behalf as an Authorised Person, provided that a written Power of Attorney has been received and accepted by us. Eightcap is entitled to act upon instructions which are, or appear to be, from you or an Authorised Person. It is your sole responsibility to notify Eightcap in writing if you wish to revoke the Power of Attorney.
- 10.4. Persons may also be appointed as Authorised Persons where they are an employee or director of a corporate entity via an Authorised Persons list. Eightcap is under no obligation to accept any instruction that is not made by an Authorised Person or to enquire as to the identity of any person providing the instruction if it reasonably believes the person is an Authorised Person.
- 10.5. Eightcap will not be liable for any act or omission as a result of an instruction which it reasonably believes has come from an Authorised Person or any person acting or purporting to act on your behalf who is not listed as an Authorised Person.
- 10.6. You will be responsible for all orders, and for the accuracy of any information, sent via the internet or on the Trading Platform using your name, password or any other personal identification means implemented to identify you. You are therefore obliged to keep all passwords secret and ensure that third parties do not obtain access to your Trading Account.
- 10.7. Eightcap may, in its sole discretion and without explanation, refuse to act upon any orders placed.
- 10.8. If you hold a Joint Account, Eightcap may act on instructions received from either Trading Account holder.

### Online Trading Activity

- 10.9. Eightcap will not be deemed to have any order or communication electronically transmitted by you until Eightcap has actual knowledge of any such order or communication. The mere transmission of an instruction by you will not constitute a binding contract between Eightcap and you. The terms of any order or communication electronically transmitted to you may be subject to change or correction. Although the Trading Platform might confirm that a Contract is executed immediately when you transmit instructions via the Trading Platform, the confirmation forwarded by Eightcap or made available on the Trading Platform constitutes Eightcap's confirmation of a Contract. Any instruction sent electronically will only be deemed to have been received and will only then constitute a valid instruction and/or binding contract between Eightcap and you when such instruction has been recorded as executed by Eightcap and confirmed by Eightcap to you, including through a deal confirmation and/or account statement.
- 10.10. You acknowledge and warrant that you have received a password granting you access to the Trading Platform; are the sole owner of the password provided; and accept full responsibility for any transaction that may occur on an account opened, held, or accessed through the use of the password provided to you by

Eightcap, even if such use may be unauthorised or wrongful. You agree to accept full responsibility for the use of the Trading Platform, for any orders transmitted through your Trading Account and for all communications and the accuracy of all information sent via the Trading Platform using your name, password, or any other personal identification means implemented to identify you.

10.11. You warrant and agree that any person who is in possession of any password is authorised by you, and you acknowledge that they will be responsible for any actions on your Trading Account associated with the use of your password. You agree to notify Eightcap immediately should you become aware of any unauthorised use, loss or theft of your username, password or account numbers; or inaccurate information with respect to the content of statements, including cash balances, open Positions, or transaction history.

## 11. ENTERING INTO A CFD TRANSACTION

11.1. You may use the Trading Platform to view market prices or ask for a quote over the telephone. You acknowledge that a price quotation does not constitute an offer to enter a new or close an existing CFD.

11.2. Upon receiving the quote from Eightcap, you may request to enter into a CFD transaction by placing an Order with Eightcap.

11.3. Eightcap is in no way obliged to accept your request to enter into a CFD transaction and, without limitation, is not obliged to accept your request to enter into a CFD transaction if you have exceeded or would exceed a predetermined limit imposed on you under this Client Agreement; or until Eightcap has received from you the initial Margin where required, in the form of Cleared Funds. The Trading Platform will advise you by rejecting the Order, should Eightcap decide not to accept your request to enter into a CFD transaction.

11.4. The initial Margin, if not already received from you, will be payable to Eightcap upon acceptance by Eightcap of your offer to enter into the CFD transaction.

11.5. Should Eightcap accept your request to enter into a CFD transaction, Eightcap will issue to you an electronic confirmation shortly after the CFD transaction has been entered into. This confirmation will be in the form of a deal confirmation via the Eightcap platform. Failure by Eightcap to issue a deal confirmation will not prejudice or affect the relevant CFD transaction. Eightcap will not bear any liability whatsoever resulting from the failure to issue a deal confirmation. It is your responsibility to immediately notify Eightcap if you do not receive a deal confirmation.

11.6. You agree to examine the terms of each deal confirmation immediately upon receipt and you agree that the contents of the deal confirmation, in the absence of Manifest Error, will be conclusive evidence of the executed deal, unless you notify Eightcap of any disputed detail in the deal confirmation received by you. Upon receipt of the disputed detail, Eightcap will investigate the dispute and, with your co-operation, will endeavour to resolve the dispute in accordance with its Complaints Management Policy. Notwithstanding any such dispute, you will be required to continue to satisfy any obligation to pay Margin calls made by Eightcap in respect of the transaction as if the deal confirmation was correct and its details were not the subject of dispute.

11.7. In its sole discretion, Eightcap reserves the right to limit the value of CFD transactions you may have outstanding under this Client Agreement.

11.8. If you provide Eightcap with standing instructions to enter into a CFD transaction when a particular price level is reached, you acknowledge that the price at which the CFD transaction is entered into may not be the same as the price requested by you, as Eightcap may elect not to enter into the CFD transaction until it has satisfied itself that it can hedge its exposure in the Underlying Market. You remain solely responsible for monitoring any pending orders.

11.9. Prior to entering into a CFD transaction, you must ensure that there are enough funds in the Trading Account to cover the initial Margin.

11.10. It is your responsibility to be aware of our Margin requirements and you agree to pay funds into your Trading Account to meet those requirements, at all times while your Position is open. If the money in your Trading Account is not enough to cover our Margin requirements, you must close your Position and/or transfer the necessary additional funds to your account.

11.11. It is your sole responsibility to ensure that you are aware of and meet any Margin Calls. To manage your open Positions and check for any Margin Calls, you are required to log onto the Trading Platform. You are responsible for monitoring and managing your Trading Account.

## 12. EXECUTION OF ORDERS

12.1. Eightcap undertakes, and you acknowledge, that in respect of dealings in the CFDs and in compliance with any applicable laws and regulatory requirements, Eightcap will execute all dealings in the sequence in which they are received and recorded, unless it would be fair and equitable to allocate such contracts on a different basis.

- 12.2. Eightcap will provide you with daily statements in accordance with applicable laws and regulation.
- 12.3. It is your sole responsibility to monitor and manage your open Positions and exposures, and to carefully check all transaction confirmations and statement documentation (whether received or accessed electronically or otherwise) and to bring any errors or omissions to the attention of Eightcap within 5 days of the date you receive such a statement. In the absence of such written objection within the period set out in this clause, the daily statements will be deemed correct in all respects.
- 12.4. Orders may be placed as Market Orders to buy or sell a CFD as soon as possible at the price obtainable in the market, or limit and stop orders to trade when the price reaches a predefined level, as applicable to the various CFDs offered. Limit orders to buy and stop orders to sell must be placed below the current market price, and limit orders to sell and stop orders to buy must be placed above the current market price. If the bid price for sell orders or ask price for buy orders is reached, the order will be filled as soon as possible at the price obtainable in the market. Limit and stop orders are thus not guaranteed to be executable at the level or amount specified by you, unless explicitly stated otherwise by Eightcap.
- 12.5. Eightcap may, in its sole discretion, execute a stop loss order in relation to any contract where there are reasonable grounds to believe that subsequent price movements may be adverse to you. Eightcap will not be liable to you for any failure to exercise this discretion. A stop loss order is triggered when you have a Sell (Short) Position and the Contract is traded at or above the stop loss price; or when you have a Buy (Long) Position and the CFD is traded at or below the stop loss price. Once a stop loss order is triggered or executed, it becomes a Market Order and Eightcap will use its best endeavours to execute the Market Order.
- 12.6. The acceptance of a stop loss order is not a guarantee or representation by Eightcap that the stop loss order can be executed at the stop loss price.
- 12.7. Eightcap may, in its discretion, aggregate your orders with its own orders or orders of associates and/or other clients. In addition, Eightcap may split your orders. Orders will generally be aggregated or split where Eightcap reasonably believes it to be in your overall best interests, but you acknowledge that on some occasions the consequence of the aggregation or splitting may result in a less favourable price than your order having been executed separately.
- a. Eightcap requires you to deposit Cleared Funds. The amount required by Eightcap and the time at which it is required will be at the absolute discretion of Eightcap;
- b. Eightcap reserves the right to, whenever it deems appropriate, raise or lower Margin requirements, which may apply to existing Positions as well as to new Positions. You will comply with and meet all such calls in accordance with this Client Agreement by depositing in Cleared Funds the sum requested within the time specified by Eightcap. Eightcap may determine the amount and time in its absolute discretion. Should Eightcap require that you deposit additional funds because of a Margin Call, you must pay the amount called by Eightcap immediately upon being given notice by Eightcap. In all respects, time will be of the essence for all your payment obligations;
- c. Should Your Trading Account be on Margin Call, you acknowledge and agree that Eightcap may refuse any request by you to enter into any further Positions until Eightcap has confirmed the receipt of the Margin Call amount in the form of Cleared Funds;
- d. Any exercise by Eightcap of any power or right under this clause, including, without limitation, the calling of Margin, will be binding on you;
- e. Margin Calls will be notified via the Trading Platform, and you are required to log in to the system regularly when you have open Positions to ensure you receive notification of any such Margin Calls. It is your sole responsibility to monitor and manage your open Positions and exposures, and ensure that Margin Calls are met as required;
- f. Where you have not checked the Trading Platform for Margin Call notifications, and so have not met them in a timely manner, all margined Positions will be closed out by Eightcap, without further reference to you;
- g. Liability for a deposit or Margin arises at the time it is executed, irrespective of the time at which any call is made, and such liability is not limited to the amount, if any, deposited with Eightcap;
- h. A Margin Call will not be considered to have been met unless and until Cleared Funds have been received by Eightcap in the nominated account (generally around 10AM on the following Business Day, but may vary according to the funding method used);
- i. Should you fail to meet a Margin Call, Eightcap may, without prejudice to any other rights or powers under this Client Agreement, and in its absolute discretion, close out, without notice, any or all of your over-the-counter CFDs or refuse any request by you to enter into any further contracts;
- j. No credit will be extended directly or indirectly to you

## 13. DEPOSITS AND MARGIN

### 13.1. You agree and acknowledge to us that:

by Eightcap, unless otherwise agreed in writing;

- k. Subject to you meeting all Margin obligations, Eightcap may permit you to withdraw from its account any excess Net Free Equity; and
- l. Margin deposited by you will not fall due for repayment by Eightcap until your obligations under this Client Agreement and under, or in respect of, any other Trading Account between Eightcap and you are satisfied in full. Until this time, Margin will not constitute a debt due from Eightcap to you nor will you have any right to receive payment of these funds.

- Consider it reasonably necessary for the protection of our rights under the Client Agreement. You do not have the power to direct us in the exercise of our discretions.

## 14. CFDs

### 14.1. Pricing

You agree and acknowledge to us that:

- a. Eightcap sets the price of the CFD that you use to open and close a Position;
- b. Prices provided on the Trading Platform are subject to Liquidity;
- c. Eightcap may contribute its own (internal) Liquidity when setting a price which may alter the spread between the bid and ask price, and/or the Liquidity available at each price; and
- d. An order may be rejected, partially executed, and/or executed based on a volume weighted average price.

**In certain circumstances, the price we set may be different from the current market price of the Underlying Asset and/or another issuer of CFDs.**

**In particular:**

- a. Where Out of Hours Trading is available, and we set the prices at which we are prepared to deal with you; and/or
- b. If we cannot determine a price because trading in the Underlying Market/Asset is limited, suspended, and/or a price cannot be determined by our Liquidity provider(s), then the price will be the price:
  - immediately preceding such limitation; and/or
  - determined by us in our sole discretion, acting reasonably, but having regard to the prevailing market conditions affecting trading.
- c. To close out all or part of your open Position, limit the total value of the Position you can open, refuse an order, or terminate the agreement between us if certain circumstances arise, including where we:
  - Decide at our sole discretion, provided we give you prior written notice of such decision; or

### 14.2. Financing Costs

You agree and acknowledge to us that:

- a. Where a CFD contract is held at the close of the Trading Day, a charge or credit is made to each Position. These charges or credits are referred to as 'Swaps' in the Trading Platform but may sometimes be referred to as interest, financing, rollover charges or credits. The PDS provides further information about Swaps;
- b. Swaps are charged or credited in accordance with the type of the CFD traded, and if you are buying or selling that CFD;
- c. Swaps are charged or credited to each individual trading Position, even if you have opposing Positions in the same CFD on the same Trading Account;
- d. Multiple (3-day) Swap Charges or Credits apply on all CFDs (other than CFD futures) to account for deferred settlement of your Positions. The day in which a 3-day Swap applies is set out on the Trading Platform or provided by an Eightcap representative; and
- e. Swap Charges and Credits also occur on public holidays, including when the Underlying Asset ceases to be quoted, or suspended from quotation, or subject to a trading halt.

### 14.3. Closing a CFD Contract

You agree and acknowledge to us that:

- a. At any time, you may give Eightcap an instruction (by telephone or on the Trading Platform) of your intention to close a Position (whether in whole or in part) by specifying the Position and the proportion of the Position that you wish to close;
- b. Upon receipt of a Closing Notice, Eightcap will use reasonable endeavours to provide a quote for the Closing Price and notify you of that quote. It is your obligation to notify Eightcap as soon as possible as to whether you are willing to accept the Closing Price. The Closing Price is not guaranteed as it is subject to market conditions and is therefore subject to change at short notice. Should you accept the Closing Price, the Position, or relevant portion of the Position, will be closed on the Closing Date at the Closing Price;
- c. If we cannot determine a price because trading in the Underlying Market is limited, suspended, and/or a price cannot be determined by our Liquidity provider(s), then the Closing Price may, at its discretion, be determined by Eightcap who may have regard to any factors it considers appropriate, including, for example, the last traded price of the

Underlying Market;

- d. Without limiting Eightcap's discretion, if any Position ceases to be quoted on a Relevant Exchange, or is suspended from quotation, or subject to a trading halt for 5 or more consecutive Business Days, or is removed from the Trading Platform, Eightcap may, in its sole discretion, elect to terminate the relevant Position by providing you with at least ten (10) Business Days' notice to you;
- e. It may not be possible to close out a Position if there is a suspension of trading, or a trading halt, in respect of the Underlying Market. In such a circumstance, Eightcap may decide, in its sole discretion, not to close a Position;
- f. Eightcap will close a Position(s) if your Equity only covers 50% of the Total Margin Requirement for your open Positions. Your worst offending Position (i.e. the contract with the largest loss) will be automatically closed at the first price available and as determined by the CFD price, liquidity, and other factors that may impact on execution times;
- g. Without limiting the above, if at any time trading on a Relevant Exchange is suspended or halted in any Underlying Market, Eightcap will, in determining the closing value of a Position and at its discretion, have regard to the last traded price before the time of suspension or halt; and
- h. All determinations and calculations made by Eightcap pursuant to this Client Agreement will be binding on you in the absence of Manifest Error.

#### 14.4. Settlement of Positions

You agree and acknowledge that payments to be made to you with respect to any CFD Contract will be made as follows:

- a. When a Position is closed and settlement occurs, a CFD Contract is closed out in accordance with this Client Agreement:
  - Eightcap will credit to your Trading Account any amount payable by Eightcap to you; or
  - Eightcap will debit your Trading Account with any amount payable by you to Eightcap.
- b. Eightcap reserves the right to offset any money owed to you against any money owed by you under this Client Agreement or any other agreement.

#### 14.5. Trade Strategies and Arbitrage Practices

14.5.1. You acknowledge and warrant to Eightcap that:

- a. you will not engage an electronic device, software, algorithm, or any other trading strategy, arbitrage practice on, or otherwise use, the online trading facility which:
  - manipulates, takes advantage of a delay or creates an unfair advantage in the way Eightcap constructs, provides, conveys or executes order

prices; or

- contravenes any law, including any law against 'insider' dealing or 'market manipulation' within the meaning of Division 3 of the Corporations Act.
  - b. you repeat the warranty under clause 14.5.1a for each order transaction entered into, in accordance with this Agreement; and
  - c. you will be deemed to breach the client warranty under clause 14.5.1(a) if any executed, or outstanding order(s), as applicable, do not subject you to any downside market risk.
- 14.5.2. Trading strategies which are used to return profits by taking advantage of internet latencies, delayed price feeds or through high volumes of transactions targeting tick fluctuations (rather than price movements) where trade position are opened and closed very quickly, are trading strategies that are not accepted by Eightcap as they do not expose you to any downside market risk and will be in breach of clause 14.5.1(a) above.
- 14.5.3. If you are in breach, or Eightcap reasonably suspects you are in breach, of clauses 14.5.1 and/or 14.5.2, Eightcap shall, in its sole discretion and without prior notice to you:
- a. withhold any funds suspected to have been derived from the breach, or suspected breach;
  - b. close an executed order(s) that you may have open at the time;
  - c. cancel any transaction order/offer you may have outstanding at the time;
  - d. refuse to accept transaction order(s).
- 14.5.4. If you are in breach, or Eightcap reasonably suspects you are in breach, of clauses 14.5.1 and/or 14.5.2, Eightcap shall, in its sole discretion and without prior notice to you:
- a. enforce all executed transaction/trade(s) against you that have incurred a loss;
  - b. treat all executed transactions as void from the outset if executed order(s) had incurred a profit;
  - c. terminate this Agreement Account as well as your access to the online trading platform.

#### 14.6. Adjustments

If it is suspected that you have attempted to manipulate our prices, our Trading Platform, or have committed any general exploitation of pricing and/or technology, (including the use of Price Latency Arbitrage), we may, in our sole discretion and without notice to you:

- a. Enforce the Position against you if it is a Position which results in you owing money to us;
- b. Treat all your Positions as void from the outset if they

are trades which result in us owing money to you, unless you produce conclusive evidence within 7 days of us giving you notice under this clause that you have not committed any breach of warranty, misrepresentation, or breach of undertaking under the Contracts;

- c. Withhold any funds suspected to have been derived from any such activities;
- d. Make any resultant corrections or adjustments to your Trading Account;
- e. Close your Trading Account;
- f. Take any other action that we consider appropriate.

#### 14.7. Share CFDs and Interest (Swap)

You agree and acknowledge that while your transaction remains open, Eightcap will value open transactions daily and calculate the amount of Swap based on the notional value of your Position. A different Swap rate will ordinarily apply to long and short positions.

As an illustration, the amount of Swap will be calculated and will accrue daily as follows:

- a. If you sell, interest will be either credited or debited to your Trading Account based on the reference interest rate plus mark-up; and
- b. If you buy, interest will be debited from your Trading Account.

#### 14.8. Share CFDs and Underlying Assets

You agree and acknowledge:

- a. That share CFDs do not entitle you to any voting rights or other benefits such as participation in shareholder purchase plans or discounts, attend meetings or receive the issuer's reports.
- b. That the Underlying Asset of share CFDs that are subject to corporate actions may be cancelled.
- c. That you could seek confirmation from Eightcap of any specific details that might affect the Underlying Asset of share CFDs.

#### 14.9. Share CFDs and Corporate Actions

You agree and acknowledge:

- a. If there is a corporate action that has a dilutive or concentrative effect on the Underlying Asset of share CFDs, Eightcap will ordinarily make an adjustment to the terms of the share CFD that places the share CFD in substantially the same economic position it would have been in had the corporate action not occurred, so as to preserve the economic equivalent of the rights and obligations of the parties in relation to this transaction. ;
- b. An adjustment will ordinarily be made pursuant to

the below corporate action(s) or similar on the Underlying Asset of share CFDs;

- c. Dividend declaration: Where an Underlying Asset in respect of which a dividend is paid, a dividend adjustment will be calculated in respect of open Positions held on the ex-dividend day for the relevant Underlying Asset. As an illustration, in a corporate action involving dividend declaration, the same are reflected as a cash credit/debit which means in Trading Accounts holding long positions, a dividend adjustment is credited to the account and in Trading Accounts holding short positions, a dividend adjustment is debited from your Trading Account;
- d. Eightcap has a discretion to determine the extent of the adjustment in the event of the below Corporation Action(s) or similar on the Underlying Asset of share CFDs;
- e. Stock splits or similar e.g., a subdivision, consolidation, redenomination or reclassification of shares, a share buy-back or cancellation, or a free distribution of shares to existing shareholders by way of a bonus, capitalisation or similar issue;
- f. Bonus shares or similar e.g., a distribution to existing holders of the right to payment of dividends and/or proceeds of liquidation of the issuer equally proportionately with such payments to holders of the Underlying Assets viz., shares, 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 cash or otherwise) at less than the prevailing market price per share as determined by us;
- g. Eightcap may also elect to close a Share CFD prior to the closing date in the case of a takeover offer or similar;
- h. If the Underlying Assets are the subject of a takeover offer, scheme of arrangement or other mechanism for change in control, it is possible that Eightcap may suspend the transaction and the Share CFD may become untradeable until the closing date of the takeover offer, at which point the transaction will be closed in accordance with the terms of the takeover offer; and
- i. Eightcap will be entitled to cancel or adjust the size and/or value and/or number of any transaction(s) (and/or the level of any Order) to reflect the takeover offer, and that any such cancellation or amendment will be conclusive and binding upon you.
- j. The US Internal Revenue Service (IRS) mandate that holders of US equity derivatives (which include US Share CFDs) are taxed in accordance with section 871(m) of the US Tax Code (Internal Revenue Code). This means we (or our Liquidity Provider) will need to withhold a tax for dividends that are paid on US Share CFDs.

## 15. COMMISSIONS, FEES, COSTS, EXPENSES AND CHARGES

15.1. You agree to pay:

- a. All fees and costs incurred by you associated with opening the Trading Account and all taxes and expenses incurred by you in connection with the services described in this Client Agreement;
- b. Commission (applicable to Eightcap Raw account type) upon the execution of any requested CFD transaction at such rate that is set by Eightcap, as well as an amount equal to any other fee charged or levied on Eightcap, or other expense incurred by Eightcap, arising from any action taken pursuant to this Client Agreement;
- c. If applicable, all duties and taxes (including GST) payable on or pursuant to this Client Agreement;
- d. All amounts incurred by Eightcap as a result of your default under the terms of this Client Agreement, including, without limitation, all reasonable legal costs on a solicitor/client basis;
- e. Interest, in respect of any unpaid amount due under this Client Agreement, at a rate of three (3) per cent per annum above LIBOR (at a minimum of 10% per annum), unless Negative Balance Protection applies. Such interest will accrue and be calculated daily from the date payment was due until the date you pay in full and will be compounded monthly; and
- f. Interest is calculated based on the negative Net Free Equity on each Trading account, unless specifically agreed otherwise. Interest will be charged on the full negative Net Free Equity on any Trading Account, regardless of whether you hold other Trading Accounts which have positive Net Free Equity. Please note that this means that if you hold multiple Trading Accounts, you may incur interest charges although the aggregate Net Free Equity Position of all your Trading Accounts may be positive.

15.2. You authorise Eightcap to appropriate, transfer, credit, apply, or pay monies that may be received by Eightcap from you in payment of any amounts which may be outstanding by you to Eightcap.

15.3. Where amounts are payable by one party to the other, netting principles will apply to enable the party owing the larger amount to pay the excess only to the other party. Amounts may be converted into the same currency in accordance with this Client Agreement.

15.4. Eightcap may, in its sole discretion, reduce or waive the minimum deposit amount, the minimum account balance or interest rates on debit balances, fees (including royalties or fees for third party services) or transaction charges, for individual clients or for groups of clients, for any length of time, with or without

conditions, without notice.

15.5. You acknowledge that should you effect a CFD transaction with Eightcap, you must pay all transaction charges, fees, Margins, settlements, interest and any other amounts due under this Client Agreement on demand by Eightcap in Cleared Funds or otherwise as required in accordance with the terms of this Client Agreement.

15.6. Payments by you to Eightcap in accordance with this Client Agreement must be made without any offset, counter claim or condition and without any deduction or withholding for any tax or any other reason unless the deduction or withholding is required by applicable law. Should you be required to make any form of deduction in respect of tax from any payment to be made, or if Eightcap is required to pay any tax in respect of any payment made in relation to this Client Agreement at your request, you agree to keep Eightcap indemnified against that tax and agree to pay to Eightcap any additional amounts required to ensure Eightcap receives the full net amount that is equal to the amount Eightcap would have received had a deduction, withholding, or payment of tax not been made.

15.7. You agree that Eightcap may at any time share transaction fees and charges with any other persons without being required to disclose the sharing of such fees and charges to you unless such disclosure is required by law.

## 16. DEFAULT

**16.1. You acknowledge and agree that where one of the following events occurs, Eightcap may take any such action provided in Clause 20 below:**

- a. you fail to meet a call for a deposit or Margin or make any other payment when due under this Client Agreement;
- b. you are not contactable by Eightcap (and have not made alternative arrangements) within the time specified by Eightcap for Eightcap to obtain instructions (where required);
- c. you become of unsound mind, or (if applicable) the partnership is dissolved or ceases to exist for any reason;
- d. you are no longer suitable to trade, as assessed by Eightcap in its sole discretion;
- e. you suspend payment of your debts, make any composition with your creditors, have a receiver appointed over some or all of your assets, take or have any proceedings taken against you in bankruptcy or take or allow any steps to be taken for your winding up (except for a solvent amalgamation

or reconstruction approved in advance in writing by Eightcap) or anything similar to any of these events happens to you anywhere in the world;

- f. you fail in any respect fully and promptly to comply with any obligations to Eightcap under this Client Agreement or otherwise, or if any of the representations or information supplied by you are or become inaccurate or misleading in any material respect;
- g. any guarantee, indemnity, or security for your obligations is withdrawn or becomes defective, insufficient, or unenforceable in whole or in part;
- h. It becomes, or may become, unlawful for Eightcap to maintain or give effect to all or any of the obligations under this Client Agreement or otherwise to carry on its business, or if Eightcap or you are requested not to perform or to close out a transaction (or any part thereof) by any governmental or regulatory authority, whether or not that request is legally binding; or
- i. Eightcap considers it necessary to do so for its own protection.

**16.2. If you become aware of the occurrence of any event referred to in clause 16.1 above, you will notify Eightcap immediately.**

**16.3. If any event referred to in Clause 16.1 takes place, Eightcap will, at its sole discretion and at your expense, be entitled, but not obliged to:**

- a. Immediately close Your Trading Account;
- b. Close out any or all of your Contracts;
- c. Cover Positions by entering into further Contracts;
- d. Cancel any outstanding orders in order to close your Trading Account;
- e. Convert any amount owed by you to Eightcap into Australian currency at any time on or after payment is due (until payment is received in full);
- f. Satisfy any obligation you may have to Eightcap out of any belonging to you in Eightcap's custody or control.
- g. Charge you with all the costs, expenses and losses incurred by Eightcap as a result of entering into, or closing out transactions pursuant to this Client Agreement; and
- h. Take any such action a reasonably prudent person would take in the circumstances.

## 17. INDEMNITY

17.1. You will indemnify and keep indemnified Eightcap and its employees, contractors, corporate authorised representatives or agents from and against any cost,

expense, claim, action, suit, loss, damage, or other amounts whatsoever arising out of any default, whether by act or omission, of you under this Client Agreement or anything lawfully done by Eightcap in accordance with this Client Agreement or by reason of Eightcap complying with any direction, request or requirement of an exchange or its clearing house or other regulatory authority.

- 17.2. Eightcap will not be responsible or liable in any way for any delay or error in the transmission or execution of any dealing by it under this Client Agreement caused by you or any other third party, including but not limited to: trading floor or exchange system operational failure or action, bank delay, postal delay, failure or delay of any fax or electronic transmission or delay caused by accident, emergency, or an act of God.
- 17.3. No warranty is provided by Eightcap in relation to information or advice sourced from third parties, and all information provided by Eightcap to you is for your private use and is not to be communicated to any third party without the prior written consent of Eightcap.
- 17.4. Eightcap makes no representation or warranty as to the results of dealing in the CFDs and will not be liable for any damage or loss suffered or incurred by you arising out of or in connection with any general advice, forecast, or opinion given to you in relation to price movements or Positions or to the likely profitability of any transaction.
- 17.5. These indemnities will survive any termination of the client relationship.

## 18. LIMITATION OF LIABILITY

- 18.1. You declare you have read, understood, and accepted all the terms and conditions outlined in this Client Agreement. You agree that when entering into a CFD transaction with Eightcap you are relying on your own judgment and, to the extent permitted by law, in the absence of gross negligence, fraud, or dishonesty by Eightcap or any of its employees, agents, and representatives in relation to Eightcap's activities as the holder of an AFSL, Eightcap will bear no responsibility or liability of any kind whatsoever with respect to any general advice given or views expressed to you, whether or not the general advice or views expressed was as a result of a request by you, nor will Eightcap be liable in any respect of any losses incurred by you resulting from dealing in any product or products offered by Eightcap.
- 18.2. Eightcap will bear no liability whatsoever in respect of any private dealings, contracts, transactions, or relationships between you and any of Eightcap's employees or agents.
- 18.3. Eightcap will bear no liability whatsoever in respect of



any impact on you caused directly or indirectly by the issuance of any instructions by you or an Authorised Person to Eightcap.

- 18.4. In the absence of gross negligence, fraud, dishonesty, or misconduct by Eightcap or any of its employees, agents, and representatives, and to the full extent of the law, Eightcap bears no responsibility or liability for any of your losses or damages whatsoever incurred as a result of any delay in transmitting or a failure to transmit funds caused by reasons outside the control of Eightcap or as a result of Eightcap's failure to execute orders in a timely manner or administer this Client Agreement in the manner contemplated by this Client Agreement for reasons beyond its control and, without limiting the indemnity in Clause 17, you indemnify and agree to keep Eightcap and its employees, agents, and representatives (for whom Eightcap acts as agent) indemnified and against all sums of money, actions, proceedings, suits, claims, demands, damages, costs, expenses, and other amounts whatsoever arising in respect of any such loss or damage. Reasons outside Eightcap's control may include, but are not limited to, exchange control or other government restrictions, exchange or market rulings, suspension of trading, power failure, telecommunication failure, strikes, or war.
- 18.5. Eightcap will not be liable for any losses or damages arising from or in connection with any CFD as the result of any moratorium, suspension or delisting of any Underlying Asset, or any other occurrence in relation to a Relevant Exchange.
- 18.6. All such available exemptions and limitations of liability will apply in respect of Eightcap's employees, officers, agents and representatives.

## 19. DISPUTES

- 19.1. If a dispute arises between Eightcap and you, in relation to any transaction, your dispute will be dealt with in accordance with our Complaints Management Policy (available on our website).
- 19.2. If a dispute arises between Eightcap and you, in relation to any transaction, Eightcap may close out or take any other action it considers appropriate in relation to the disputed transaction, without notice to and/or without having received an instruction from you. Eightcap will try to notify you (verbally or in writing) of what action it has taken, as soon afterwards as it practically can, but if it does not, the validity of its action will not be affected.
- 19.3. In an event where your dispute against Eightcap has been referred by you to the AFCA, you hereby consent to Eightcap disclosing such personal information about you (as defined by the *Privacy Act 1988* (Cth)) including, but not limited to, records of interactions between you

and Eightcap, for the purpose of resolving the dispute.

## 20. TERMINATION AND CLOSING YOUR ACCOUNT

- 20.1. Your Trading Account may be closed and all agreements and transactions between you and Eightcap may be terminated for any reason and at any time by either party, giving seven (7) Business Days' written notice to the other party (Termination Notice).
- 20.2. In the event of your Trading Account being closed in accordance with clause 20.1, a Closing Notice must be provided by you in respect of all open Positions. Such notice must be provided within the seven (7) Business Days period referred to in 20.1. Should you fail to unwind any open Position within the notice period, Eightcap reserves the right to close out Positions as if an event of default had occurred, in accordance with clause 16 of this Client Agreement.
- 20.3. The closing of your Trading Account will not release either party from any existing obligations or from any liabilities for any antecedent breach of any of the terms of this Client Agreement and will not relieve you of any obligations you may owe to Eightcap in accordance with this Client Agreement prior to its termination.
- 20.4. Rights under this Client Agreement can only be waived in writing, such waiver not to affect the waiving party's rights or entitlements in respect of subsequent breaches of the Client Agreement. Failure to compel performance will not be construed as a waiver.
- 20.5. If this Client Agreement is terminated, you acknowledge and agree that all open Positions must be closed within five (5) Business Days of the date of termination.
- 20.6. Eightcap reserves the right to terminate and close your Trading Account and/or any open Positions without notice to you where it cannot be reasonably be expected to notify you of such closure including, but not limited to, instances where it suspects illegal or fraudulent activity has occurred, where you have failed and/or refused to provide updated and accurate information relating to your account (including LEIs where applicable), where closing your account on notice would be in contravention of a legal or regulatory requirement imposed on Eightcap or where notifying you would cause harm to Eightcap or any of its clients.

## 21. SELF-EXCLUSION

Self-exclusion refers to a scenario whereby you choose to exclude yourself from trading CFDs offered by Eightcap. In addition to your right to self-exclude, Eightcap may also

choose to invoke this self-exclusion clause where it reasonably believes that it is in the client's interest to be excluded from trading CFDs. Eightcap may close any Positions and/or your Trading Accounts under circumstances which directly or indirectly indicate harm being caused to the client's wellbeing. Determinant to a client's wellbeing includes, but is not limited to, physical and psychological health and financial well-being. Exclusion may be for a period (time specific) or permanent. If you wish to self-exclude, please contact your Account Manager.

## 22. PRE-AUTHORISED CONSENT TO ASSIGN, TRANSFER OR NOVATE

You hereby acknowledge and agree that Eightcap may assign, transfer or novate as the case may be, your Account, client money and/or trading positions including any rights, remedies, powers, duties and obligations under this Agreement to a Related Body Corporate, without further consent from you. Eightcap will give you 21 Calendar Days' notice of any such assignment, transfer or novation with the option to 'opt-out' within a reasonable period of time as determined by Eightcap, where such assignment, transfer or novation may impact or differ from the rights you have as a retail client under this Agreement.

## 23. GENERAL

23.1. Eightcap may amend the terms of this Client Agreement at any time by giving written notice to you. We will notify you of any changes via email. You will be deemed to have accepted and agreed to the amendment(s) unless you notify us of any objection within ten (10) Business Days of receiving our written notice. If you do object to the amendment(s), the amendment(s) will not be binding on you, but your Trading Account will be suspended and Eightcap will close your Trading Account in accordance with clause 20. Eightcap may make changes to terms and conditions for various reasons, including but not limited to:

- a. making it clearer and easier to understand;
- b. making it more favourable to you;
- c. providing for the introduction of new systems, services, changes in technology and products;
- d. rectifying any errors that may be discovered;
- e. complying with a change in applicable regulation or law.

23.2. If any of the provisions contained in this Client Agreement are found to be invalid or unenforceable, such provisions will be deemed deleted, and the

validity and enforceability of the remaining provisions will continue unimpaired.

- 23.3. If a party fails to exercise, or delays in exercising, any right under this Client Agreement, by doing so it does not waive such right. The rights provided in this Client Agreement do not exclude other rights provided by law.
- 23.4. You may not assign or otherwise transfer your rights or obligations in respect of your Trading Account as described under this Client Agreement or any transaction, without the express written consent of Eightcap.
- 23.5. By engaging with us, you acknowledge and agree that we may record telephone or internet conversations with you and we may use such recordings as evidence in any dispute. You will be permitted access to these recordings if requested on reasonable grounds (and if still retained).
- 23.6. You acknowledge and agree that Eightcap is permitted to carry out an electronic database search and search credit reference agencies in order to verify your identity. Eightcap keeps records of the contents and results of such searches in accordance with our Privacy Policy and all current and applicable laws.
- 23.7. Eightcap reserves the right to collect such information as is necessary from you to meet its obligations under its various legal and regulatory obligations, including but not limited to the:
  - *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);
  - ASIC Derivative Transaction Rules (Reporting) 2013;
  - FATCA; and
  - CRS.
- 23.8. Eightcap may pass on, including to government authorities, information (personal or otherwise) collected from you for these purposes and relating to transactions as required by applicable laws and regulations and is under no obligation to inform you it has done so. Eightcap may undertake all such additional checks in relation to you (including sanction and Politically Exposed Persons lists) as deemed necessary or appropriate by Eightcap and reserves the right to take any action with regard thereto with no liability whatsoever.
- 23.9. Eightcap reserves the right to provide all such information regarding you, in accordance with its obligations, to relevant regulatory bodies (whether legally binding or not) or upon their request.

## 24. PRIVACY

24.1. To provide you with trading services, Eightcap needs to

collect personal information about you. If you do not provide the requested information or agree to the way Eightcap handles your personal information, Eightcap will not be able to provide the products and services outlined in this Client Agreement to you.

- 24.2. Eightcap has systems and processes in place to ensure it meets its obligations under the applicable privacy legislation. Please refer to the Eightcap Privacy Policy for more information about Eightcap's information handling practices.
- 24.3. Personal information that you provide will be used for identity verification purposes in accordance with our legislative and regulatory obligations. You must advise Eightcap of any changes to your personal information as soon as practicable.
- 24.4. You authorise Eightcap to collect, use, store, or otherwise process any personal information which enables Eightcap to provide its services. This may, on occasion, require the disclosure of personal information to our related entities, agents, service providers or other third parties. See our Privacy Policy for further information.
- 24.5. You acknowledge that our Privacy Policy may be updated from time to time. We will inform you of any material changes where we are required to do so by law. The current and applicable Privacy Policy will be made available on our website.

## 25. EIGHTCAP DOES NOT PROVIDE TAX ADVICE

You agree and acknowledge that:

- a. Eightcap does not provide taxation advice, or advice about Goods and Services Tax ("GST") or the *Foreign Account Tax Compliance Act 2010 (US)* ("FATCA").
- b. Your tax position when trading CFDs will depend on the individual circumstances and the trading strategies adopted.
- c. Eightcap recommends you seek independent professional advice for obligations related to taxation, GST or FATCA.
- d. Eightcap may request you provide certain information if you fall within FATCA as per the Inter-Government Agreement between the Australian and US Governments.

Where applicable, the US Internal Revenue Service ("IRS") mandate that holders of US equity derivatives (which include US Share CFDs) are taxed in accordance with section 871(m) of the US Tax Code (Internal Revenue Code). This means Eightcap needs to withhold a tax for dividends that are paid on US Share CFDs.

## 26. GOVERNING LAW

This Client Agreement is governed by and construed in accordance with the laws of the State of Victoria, Australia and the parties submit to the exclusive jurisdiction of the courts and tribunals in Victoria.