

**X TRADE**

## CLIENT AGREEMENT

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### 1. Introduction

1.1. This Agreement is entered by and between Xtrade.AU Pty Ltd ACN 140 899 476 AFSL 343628, with registered address Suite 3, 135 Macquarie Street, Sydney, NSW 2000 (hereinafter called the “Company” or “we” or “us”), on the one part, and the Client (“Client” or “you” or “user”), on the other part (together, “the Parties”).

If you decide to download our software to use the trading demonstration then your obligations hereunder contained within this Client Agreement (to the extent relevant) apply to you as well even if you do not enter any transactions with us at all.

1.2. This Client Agreement together with any Appendices added thereto and the following documents, as amended from time to time: “Conflicts of Interest Policy”, “Summary of Best Interest and Order Execution Policy” and “Risk Disclosure and Warnings Notice” (together, the “Agreement”) set out the terms upon which the Company will offer Services to the Client and also include important information which we are required as a holder of an Australian Financial Services Licence (“AFSL”) to provide to our prospective Clients. By registering as a user, you are consenting to the terms and conditions of all the above-mentioned documents and it means that in the event that you are accepted by us as our Client you shall be bound by these terms and conditions. For this reason, you are advised to read all the above mentioned documents which form the Agreement and any other letters or notices sent by the Company carefully, as well as the various documents found on our Website such as the “Privacy Policy” “Counterparty Hedging Policy”, “Terms and Conditions for the use of the Website” and “TMD (Target Market Determination) document” and make sure that you understand and agree with them.

1.3. The Company is authorised and regulated by the Australian Securities and Investments Commission (“ASIC”) to provide advice, dealing and market-making services in derivatives and foreign exchange contracts, pursuant to AFSL 343628. Xtrade Au Pty Ltd

1.4. The Agreement overrides any other agreements, arrangements, express or implied statements made by the Company or any Introducer(s).

1.5. The Agreement shall be binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns.

### PART ONE – THE PLATFORM

#### 2. Restrictions on the Users

2.1. Without prejudice to the Company's right to refuse to provide Services hereunder or make its Platform available to any person, the Platform is not intended for use by a person:

- (a) who is under the age of 18 years old or is not of legal competence or of sound mind;
- (b) who resides in any country where such use would be contrary to local law or regulation or religion. The Platform and our Service hereunder are not intended to persons residing in any country where CFD trading activity or other such services would be contrary to local law or regulation or religion. It is your responsibility to comply with any local law or regulation to which you are subject to;
- (c) who is a citizen or resident of the United States of America;
- (d) who is an employee, director, associate, agent, affiliate, relative, or otherwise connected to the Company or any affiliate thereto.

### **3. License and Provision of Platform**

3.1. Subject to the Client's obligations under the Agreement being fulfilled, the Company hereby grants the Client a limited licence, which is personal, non-transferable, non-exclusive and fully recoverable, to use the Platform(s) (including the use the Website and any associated downloadable software available on our Website from time to time), solely for personal use and benefit in order to place Orders in a particular Financial Product(s) in accordance with the terms of this Agreement. Should the Agreement be terminated for any reason, the licence will automatically be revoked and the Platform software must no longer be used by the Client.

3.2. If any third-party software is included within the Platform, then such third-party software shall be provided subject to the terms of this Agreement. The Client shall fully comply with the terms of any third-party software licences that the Company may provide them with from time to time.

3.3. The Company reserves any and all rights to the Platform not expressly granted to the Client by this Agreement. Rights to the Platform are licensed to the Client by the Company and not sold. All rights to the Platform shall remain the property of the Company.

3.4. The Company has the right to shut down the Platform(s) at any time for maintenance purposes without prior notice to the Client. This will be done only on weekends, unless not convenient or in urgent cases. In these cases, the Platform(s) will be inaccessible.

3.5. From time to time, acting reasonably, the Company shall have the right to add to, modify, or remove any of the Platform or parts of it without liability under this Agreement. In such a case, it shall use reasonable endeavours to replace any part of the Platform with an equivalent where practicable.

### **4. Intellectual Property**

4.1. The Platform(s), all copyrights, trademarks, patents, service marks, trade names, software code, icons, logos, characters, layouts, trade secrets, buttons, color scheme, graphics and data names are the sole and exclusive Intellectual Property (IP) of the Company or of third parties and are protected by local and international intellectual property laws and treaties. This Agreement does not convey an interest in or to the Platform(s) but only a right to use the Platform(s) according to the terms of this Agreement. Nothing in this Agreement constitutes a waiver of the Company's IP rights.

4.2. Under no circumstances shall the Client obscure or remove any copyright, trademark or any other notices from any of the Company's IP or Website or Platform(s).

4.3. It is understood that the Company may offer its Services under different trademarks and websites. The Company owns all the images displayed on its websites, the Platform(s) and downloadable software and material. The Client may not use these images in any way other than the manner which the Company provides them for.

4.4. The Client is permitted to store and print the information made available to them through the Company's Website or Platform(s) including documents, policies, text, graphics, video, audio, software code, user interface design or logos. The Client is not permitted to alter, modify, publish, transmit, distribute, otherwise reproduce commercially exploit that information, in whole or in part, in any format to any third party without the Company's express written consent.

## **5. Use of the Platform**

5.1. The Clients agrees that they:

- (a) may only use the Platform for so long as they are authorised to do so under the terms of the licence granted hereunder;
- (b) will use the Platform only for lawful purposes;
- (c) may not use the Platform for any purpose other than for the purpose for which it has been provided under this Client Agreement;
- (d) is responsible for all transactions effected on their Client Account via the Platform and the use of the Platform (including the Access Data); and
- (e) will logout from the Platform should their access terminal be left unattended, to prevent unauthorised access to their Client Account.

5.2. It is absolutely prohibited for the Client to take any of the following actions in relation to the Platform(s):

- (a) Use any software, which applies artificial intelligence analysis to the Company's systems and/or Platform(s).
- (b) Intercept, monitor, damage or modify any communication which is not intended for them.
- (c) Use any type of spider, virus, worm, Trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete,

damage or disassemble the Platform(s) or the communication system or any system of the Company.

- (d) Send any unsolicited commercial communication not permitted under applicable law or Applicable Regulations.
- (e) Do anything that will or may violate the integrity of the Company computer system or Platform(s) or cause such system(s) to malfunction or stop their operation.
- (f) Unlawfully access or attempt to gain access, reverse engineer or otherwise circumvent any security measures that the Company has applied to the Platform(s).
- (g) Perform any action that could potentially allow the irregular or unauthorised access or use of the Platform(s).
- (h) Carry out any commercial business on the Platform, unless specifically allowed by us in writing.

5.3. Should the Company reasonably suspect that the Client has violated the terms of clause 5.2, it is entitled to take one or more of the counter measures of clause 14.2 of this Client Agreement.

5.4. The Client is solely responsible for providing and maintaining the compatible equipment necessary to access and use the Platform(s), which includes at least a personal computer or mobile phone or tablet (depending on the Platform used), internet access by any means and telephone or other access line. Access to the internet is an essential feature and the Client shall be solely responsible for any fees necessary in order to connect to the internet.

5.5. The Client represents and warrants that they have installed and implemented appropriate means of protection relating to the security and integrity of their computer or mobile phone or tablet and that they have taken appropriate actions to protect their system from computer viruses or other similar harmful or inappropriate materials, devices, information or data that may potentially harm the Website, the Platform(s) or other systems of the Company. The Client further undertakes to protect the Company from any wrongful transmissions of computer virus or other similarly harmful or inappropriate material or device to the Platform(s) from their personal computer or mobile phone or tablet.

5.6. The Company makes no express or implied representations:

- (a) that the Platform will be available for access all the time, or at any time on a continuous uninterrupted basis. Access to the Platform may be affected, for example, by routine maintenance, repairs, reconfigurations or upgrades;
- (b) as to the operation, quality or functionality of the Platform;
- (c) that the Platform will be free of errors or defects; or
- (d) that the Platform is free from viruses or anything else that has contaminating or destructive properties including where such results in loss of or corruption to Client data or other property.

5.7. The Company will not be liable to the Client should their computer system or mobile phone or tablet fail, damage, destroy and/or format their records and data. Furthermore, if the Client incurs delays and any other form of data integrity problems that are a result of their hardware configuration or mismanagement, the Company shall not be liable.

5.8. The Company will not be liable for any such disruptions or delays or problem in any communication experienced by the Client when using the Platform(s).

5.9. The Company agrees to hold harmless the Client from losses on their Client Account in the event that the Platform is 'hacked', or any unauthorised use of a Client Account's Access Data occurs which is due to the negligence of the Company. Likewise, the Client shall hold harmless the Company from losses in the event that their Client Account is hacked or associated unauthorised use of their Access Data occurs due to their negligence.

## **6. Security**

6.1. When you first access the Platform you will be asked to enter your Access Data, which are confidential and you agree to keep secret and not to disclose to any third person.

6.2. The Client agrees to notify the Company immediately if they know or suspects that their Access Data or Client Account number have or may have been disclosed to any unauthorised person. The Company will then take steps to prevent any further use of such Access Data and will issue replacement Access Data. The Client will be unable to place any Orders until they receive the replacement Access Data.

6.3. The Client agrees that they will co-operate with any investigation the Company may conduct into any misuse or suspected misuse of their Access Data.

6.4. The Client acknowledges that the Company has no responsibility if unauthorised third persons gain access to information, including electronic addresses, electronic communication, personal data and Access Data when the above are transmitted between the Parties using the internet or other network communication facilities, post, telephone, or any other electronic means.

6.5. If the Company is informed from a reliable source that the Access Data of the Client may have been received by unauthorised third parties, the Company may, at its discretion without having an obligation to the Client, deactivate the Client Account.

## **PART TWO – CLIENT ACCEPTANCE AND PROVISION OF FINANCIAL SERVICES**

### **7. Application and Commencement**

7.1. After the Client fills in and submits the Account Opening Application Form together with all the required identification documentation required by the Company for its own internal checks and to satisfy applicable anti-money laundering/counter-terrorism financing laws and regulations, the Company will send them a notice informing them whether they have been accepted as a Client of the Company. It is understood that the Company is not to be required (and may be unable under Applicable Regulations) to accept a person as its Client until all documentation it requires has been received by the Company, properly and fully completed by such person and all internal Company checks (including without limitation anti-money laundering/counter-terrorism financing checks, appropriateness or suitability tests as the case may be) have been satisfied. It is further understood that the Company reserves the right to impose additional due diligence requirements to accept Clients residing in certain countries due to the requirement under Applicable Regulations for a licensee or reporting entity to take a risk based approach when performing due diligence on Clients.

7.2. The Agreement shall take effect and commence upon the receipt by the Client of a notice sent by the Company informing the Client that they have been accepted as the Company's Client or that a Client Account has been opened for him.

7.3 The Client acknowledges, recognises and understands that trading and investment in the Financial Products is speculative, may involve an extreme degree of risk and significant loss, and is appropriate only for persons who can assume risk of loss of their margin deposit.

### **8. Client Classification**

8.1. According to Applicable Regulations, Clients are defined as either Wholesale or Retail clients. Please note that the Company treats all of its Clients as Retail Clients. The Company nevertheless reserves the right to classify you as a Wholesale Client if you meet the criteria as prescribed by the Corporations Act and Corporations Regulations. It may in its absolute discretion and without creating any obligation to, notify you if you are classified as a Wholesale Client.

8.2. Retail Clients are entitled to more protections under the Corporations Act and Corporations Regulations, than Wholesale Clients. In summary, these protections are as follows (the list may not be exhaustive):

- (a) A Retail Client is entitled to receive a Financial Services Guide and a Product Disclosure Statement which provide disclosures regarding the Company, its services, the Financial Products, the nature and risks of such Financial Products, our costs, commissions, fees and charges and



the storing of Client funds.

A Retail Client will also receive a TMD, and we recommend reading this document as it outlines the target market, class of consumers, key attributes and other information relating to the issuance and/or distribution of the products by Xtrade.

- (b) Where the Company is providing services in relation to over-the-counter (“OTC”) derivative contracts to Retail Clients, we will ask a Retail Client to provide information and complete a suitability questionnaire regarding their knowledge and experience relevant to the specific type of product or service offered or demanded, so as to enable the Client to self-reflect and assess whether trading in OTC derivatives is appropriate for them. In case the Company considers, on the basis of the information or questionnaire score received, that the Client does not have the necessary skills or experience, it shall remind the client of the risks of CFD trading and direct them to the appropriate educational resources. The Client must not proceed with their account opening without acknowledging the risk reminder.

On the other hand, the Company shall be entitled to assume that a Wholesale Client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the Client is classified as a Wholesale Client. Consequently, and unlike the situation with a Retail Client, the Company will not need to obtain additional information from the Client for the purposes of the assessment of appropriateness for those products and services for which they have been classified as a Wholesale Client.

- (c) The Company must inform Clients of any material difficulties relevant to the proper carrying out of their order(s) promptly upon becoming aware of the difficulty.
- (d) The Company is obliged to enter into a written basic agreement with Clients, setting out the essential rights and obligation of both parties.

8.3. It is understood that under the Corporations Act and Corporations Regulations, the Company has the right to change its policy and accept other categories of Clients as well and hence review the Client’s Classification and change their Classification if this is deemed appropriate (subject to Applicable Regulations and appropriate agreement with the Client). The Company is not under any obligation to notify you should your classification as a Client change, however may notify you in its absolute discretion as a courtesy. It is your responsibility at all times to obtain your own independent advice and to proactively seek from the Company your classification as a Client.

## **9. Assessment**

9.1. In providing execution of Client Orders services to the Client, as per clause 8.2(b) herein, the Company is obliged under Applicable Regulations to

ascertain a potential Client's knowledge and experience relevant to the specific type of service or OTC Financial Product offered or demanded, so as to enable the Client to self-reflect whether it is appropriate for the Client. Where a Client elects not to provide the information regarding their knowledge and experience, or where they provide insufficient information regarding their knowledge and experience, or where they fail to satisfactorily complete the suitability

questionnaire, the Company may still provide the Client with services. The Company shall assume that information about their knowledge and experience provided from the Client to the Company is accurate and complete and the Company shall have no responsibility to the Client if such information is incomplete or misleading or changes or becomes inaccurate and the Company will be deemed to have performed its obligations under Applicable Regulations, unless the Client has informed the Company of such changes.

## **10. Services**

10.1. Trading with the Company involves the provision of the following investment and ancillary services from the Company to the Client, subject to the Client's obligations under the Agreement being fulfilled:

- (a) The Investment service of Execution of Orders on an own account basis.
- (b) Cash/Margin management, according to PART THREE below.
- (c) Foreign Currency Services provided they are associated with the provision of the services of clause 10.1(a) and (b).

10.2. It is understood that when trading in CFDs, the Company shall not hold any Financial Products of the Client and shall not be providing safekeeping and administration of Financial Products for the account of Client or custodianship.

## **11. Advice and Commentary**

11.1. The Company will not give the Client any form of personal advice which takes into account the Client's personal financial circumstances, needs or objectives, and the Client acknowledges that the Services do not include the provision of personal advice in Financial Products or the Underlying Markets or Assets. The Client alone will decide how to handle their Client Account and place Orders and take relevant decisions based on their own judgment.

11.2. The Company will not provide the Client with any legal, tax or other advice relating to any Transaction. The Client should seek independent advice from a licensed professional before entering into a Transaction.

11.3. The Company may, from time to time and at its discretion, provide the Client over the telephone, on its website, in disclosure documents or in newsletters which it may post on its Website or provide to subscribers via its Website or otherwise, with general advice, information, news, market commentary or other information but not as part of its Services to the Client. Where it does so:

- (a) The Company will not be responsible for such information.
- (b) The Company gives no representation, warranty or guarantee as to the accuracy, correctness or completeness of such information or as to the tax or legal consequences of any related Transaction.
- (c) This information is general advice only and cannot be relied upon as personal advice and does not amount to investment advice or unsolicited financial promotions to the Client.
- (d) If the document contains a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, the Client agrees that they will not pass it on to any such person or category of persons.
- (e) The Client accepts that prior to dispatch, the Company may have acted upon it itself to make use of the information on which it is based. The Company does not make representations as to the time of receipt by the Client and cannot guarantee that they will receive such information at the same time as other clients.

11.4. It is understood that market commentary, news, or other information provided or made available by the Company are subject to change and may be withdrawn at any time without notice.

11.5 Unless otherwise expressly agreed, the Company will provide services on an execution only basis in accordance with the Client's instructions.

11.6 The Company does not provide managed discretionary account services.

## **12. Placement and Execution of Orders**

12.1. The Company may from time to time accept Client Orders in different ways such as on the Platform, via telephone call, and any other methods in the Company's discretion.

12.2. The Client may place Orders with the Company on the Platform and via telephone call, by using their Access Data and provided all the Essential Details are given in both cases.

12.3. The Company will be entitled to rely and act on any Order placed on the Platform(s) or via telephone call by using the Access Data, without any further enquiry to the Client and any such Orders will be binding upon the Client.

12.4. Orders are executed according to the “Summary Best Interest and Order Execution Policy”, which is binding on the Client.

12.5. The Company will use reasonable efforts to execute an Order, but it is agreed and understood that despite the Company’s reasonable efforts transmission or execution may not always be achieved at all for reasons beyond the control of the Company.

12.6. The Client hereby acknowledges and agrees that the Company may, in its sole discretion, add, remove or suspend from the Platform, any Financial Product, on any type of Underlying Asset or Market, from time to time in the event of a stock transformation event (for example as the result of a takeover, share consolidation/split, merger, spinoff, nationalization, de-listing, etc.) or if no Client Positions are held in a particular Financial Product at that time.

12.7. Orders may be placed within the normal trading hours of the Company, available on the Platform and/or the Website, as amended from time to time.

### **13. Decline of Client’s Orders**

13.1. Without prejudice to any other provisions herein, the Company is entitled and in some circumstances may be required by law, at any time and at its discretion or requirement, without giving any notice or explanation to the Client to restrict the Client’s trading activity, to cancel Orders, to decline or refuse to transmit or execute any Order of the Client, and the Client has no right to claim any damages, specific performance or compensation whatsoever from the Company, in any of the following cases:

- (a) Internet connection or communications are disrupted.
- (b) In consequence of request of regulatory or supervisory authorities of Australia or a court order or antifraud or anti-money laundering/counter-terrorism financing authorities.
- (c) In consequence of the requirements of our regulator as prescribed by the ASIC Order.
- (d) Where the legality or genuineness of the Order is under doubt.
- (e) A Force Majeure Event has occurred.
- (f) In an Event of Default of the Client as described in clause 14.1 below.
- (g) The Company has sent a notice of Termination of the Agreement to the Client.
- (h) The system of the Company rejects the Order due to trading limits imposed.
- (i) Under abnormal market conditions.
- (j) The Client does not hold adequate funds in their Balance for the specific Order or the Balance goes below zero.

- (k) Benefits, Takeovers and Transformations (including events such as share consolidations/splits, mergers, takeovers, spinoffs, IPOs, delistings, etc.).

Depending on the circumstances of each event, the Company may close out any Open Positions at the market price immediately prior to such an event taking place.

## **14. Abusive Trading Practices**

14.1. Without prejudice to any other provisions herein, the Company is entitled to disable trading for abusive trading practices. Clients should be aware that some electronic advisor or signal trading strategies are not allowed by the Company. The Company will not allow strategies that harm our systems infrastructure or takes unfair advantage of the way we construct our Bid/Offer prices. Clients must ensure that they do not or allow others (whether authorised to do so or not) to use such a strategy on their accounts. The Company has discretion in determining if a strategy is abusive or takes unfair advantage of our systems. The Company may block your IP address from accessing our servers, disable trading without notice to you and cancel trades from the outset or make adjustments to reflect the market value.

## **15. Events of Default**

15.1. Each of the following constitutes an “Event of Default”:

- (a) The failure of the Client to perform any obligation due to the Company.
- (b) If the Client becomes insolvent or subject to a winding up or liquidation order or petition, or a receiver or administrator is appointed or any procedure which is similar or analogous to any of the above is commenced in respect of the Client.
- (c) Where any representation or warranty made by the Client in clause 28 is or becomes untrue.
- (d) The Client (if the Client is an individual) dies or is declared absent or becomes of unsound mind.
- (e) Any other circumstance where the Company reasonably believes that it is necessary or desirable to take any action set out in clause 14.2.
- (f) An action set out in clause 15.2 is required by a competent regulatory authority or body or court.
- (g) An action set out in clause 15.2, particularly subclause (b), is required by clause 7 of the ASIC Order.
- (h) The Company reasonably considers that the Client involves the Company in any type of fraud or illegality or breach of Applicable Regulations or the Company is placed at risk of being involved in any type of fraud or illegality or breach of Applicable Regulations if it continues offering Services to the Client, even when this is not due to the Client’s wrongdoing.
- (i) The Company reasonably considers that there is a material violation by the Client of the requirements established by Australian legislation or other countries having jurisdiction over the Client or their trading

activities, such being materiality determined in good faith by the Company.

- (j) If the Company suspects that the Client is involved in money laundering activities, terrorist financing, card fraud or other criminal activities.
- (k) The Company reasonably suspects that the Client performed a prohibited action as set out in clause 5.2.
- (l) The Company reasonably suspects that the Client performed abusive trading such as, but not limited to, Snipping, Scalping, Pip-hunting, Hedging, placing “buy stop” or “sell stop” Orders prior to the release of financial data, arbitrage, manipulations or a combination of faster/slower feeds.



- (m) The Company reasonably suspects that the Client opened the Client Account fraudulently.
- (n) The Company reasonably suspects that the Client performed forgery or used a stolen card to fund their Client Account.

15.2. If an Event of Default occurs the Company may, at its absolute discretion, at any time and without prior Written Notice, take one or more of the following actions as deemed appropriate under the circumstances:

- (a) Terminate this Agreement immediately without prior notice to the Client.
- (b) Cancel any Open Positions.
- (c) Temporarily or permanently bar access to the Platform(s) or suspend or prohibit any functions of the Platform(s) until the Company can reasonably determine that an Event of Default occurred.
- (d) Reject or decline or refuse to transmit or execute any Order of the Client until the Company can reasonably determine that an Event of Default occurred.
- (e) Restrict the Client's trading activity until the Company can reasonably determine that an Event of Default occurred.
- (f) In the case of fraud, forgery or use of stolen cards reverse the funds back to real owner or according to the instructions of the law enforcement authorities of the relevant country, or of the credit card company or of another financial institution.
- (g) Cancel or reverse any profits gained through: abusive trading of clause 14.1 (k) and (m); or the application of artificial intelligence on the Client Account; or in case of the use of stolen cards, forgery, fraud; or when the Client engaged in a criminal activity such as money laundering.
- (h) Take legal action for any losses suffered by the Company.

## **16. Trade Confirmations**

16.1. The Company shall provide the Client with adequate reporting on their Orders. For this reason, the Company will provide the Client with an online access to their Client Account via the Platform(s), which will provide them with sufficient information in order to comply with applicable laws in regard to Client reporting requirements.

16.2. If the Client has a reason to believe that the Confirmation is wrong or if the Client does not receive any Confirmation when they should, the Client shall contact the Company within 48 hours of placing the Order. If the Client expresses no objections during this period, the content is considered as approved by them and shall be deemed conclusive.

## **PART THREE – CLIENT MONEY AND CLIENT ACCOUNT**

### **17. Client Money Handling Rules**

17.1. The Company places any Client money it receives into one or more segregated account(s) with an Australian ADI and the Client funds will be segregated from the Company's own money and cannot be used in the course of its business.

17.2. Please note that such segregation of the Client's money may not fully protect the Client's money from the risk of loss.

17.3. The Company may hold Client money and the money of other clients in the same account (omnibus account).

17.4. The Company shall not pay to the Client any interest earned on Client money (other than profit gained through trading Transactions from their Client Account(s) under this Agreement) and the Client waives all right to interest.

17.5. The Company may deposit Client money in overnight deposits and will be allowed to keep any interest.

17.6. It is agreed that the Company shall have the right to transfer the Client Money to successors or assignees or transferees or buyers, with 15 Business Days prior Written Notice to the Client for the purposes of clause 33.2 of the Client Agreement.

17.7. The Company shall have a general lien on all funds held by the Company or its Associates or its nominees on the Client's behalf until the satisfaction of their obligations.

### **18. Client Accounts, Deposits and Withdrawals**

18.1. The Company shall open one Client Account for the Client to allow them to place Orders in particular Financial Products.

18.2. It is understood that the types of the different Client Accounts offered by the Company and the characteristics of such Client Accounts are found on the Website and are subject to change at the Company's discretion and according to clause 24 hereunder.

18.3. The Client Account shall be activated upon the Client depositing the minimum initial deposit, as determined by the Company in its discretion from

time to time. The minimum initial deposit may vary according to the type of Client Account offered to the Client and is found on the Website.

18.4. All Client Accounts are denoted in USD. In the event that you deposit or withdraw in a currency other than USD, the moneys will first be converted into USD before entering the Client Account. This may expose you to foreign exchange risk.

18.5. The Client may deposit funds into the Client Account at any time during the course of this Agreement. Deposits will be made via the methods and in the currencies accepted by the Company from time to time. The detailed information about deposit options is shown on the Website.

18.6. The Company shall have the right to request the Client at any time to provide documentation to confirm the source of funds deposited into the Client Account. The Company shall have the right to reject a deposit of the Client and/or block the Client Account in any of the following cases:

- (a) if the Company is not duly satisfied as to the legality of the source of funds;
- (b) if the Client fails to provide the Company with any relevant documents it requests from the Client for client identification purposes or for any other reason;
- (c) if the Company reasonably suspects or has concerns that the submitted documents may be false or forged;
- (d) if the Company reasonably suspects that the Client is involved in illegal or fraudulent activity;
- (e) if the Company is informed that the credit or debit card (or any other payment method used by the Client) has been lost or stolen;
- (f) where the Company reasonably considers that there is a chargeback risk for any other reason;
- (g) when the Client deposits AUD \$10,000 or more (in one or more separate deposits) and the Company is unable to verify the source;
- (h) where the deposit comes from an account that is not an account in the Client's name (ie. deposits from a third party); or
- (i) when the acquiring bank, issuer bank or any third-party processor or payment service provider rejected the transaction.

18.7. If the funds sent by the Client are not deposited in the Client Account when they were supposed to, the Client shall notify the Company and authorise the Company to initiate a banking investigation of the transfer. The Client agrees that any charges of the investigation shall be paid by the Client and deducted from their Client Account or paid directly to the bank undertaking the investigation. The Client understands and agrees that in order to handle the investigation the Client shall have to provide the Company with the requested documents and certificates.

18.8. The Company shall make withdrawals of Client funds upon the Company receiving a relevant request from the Client by fax or email or in any other method accepted by the Company from time to time.

18.9. Upon the Company receiving an instruction from the Client to withdraw

funds from the Client Account, after the Client completed the withdrawal process, the Company shall pay the said amount within one to five Business Days, if the following requirements are met:

- (a) the withdrawal instruction includes all required information and identification details of the Client as may be required by the Company;
- (b) the instruction is to make a transfer to the originating account (whether that is a bank account, a payment system account etc) from which the money was originally deposited in the Client Account or at the Client's request to a bank account belonging to the Client;
- (c) the account where the transfer is to be made belongs to the Client;
- (d) at the moment of payment, the Client's Balance exceeds the amount specified in the withdrawal instruction including all payment charges;
- (e) there is no Force Majeure event which prohibits the Company from effecting the withdrawal;
- (f) the Client does not have any Open Positions or in the case the Client has any Open Positions the remaining Balance in the Client Account after the withdrawal shall be at least double the necessary Maintenance Margin required to keep the positions open. The Company in its absolute discretion can change the multiple of the Maintenance Margin, or the Maintenance Margin itself, it may require before allowing the withdrawal; or
- (g) the Client sends the withdrawal instruction in a signed form by fax or email or in any other approved method by the Company from time to time.

18.10. It is agreed and understood that the Company will not accept third party or anonymous payments in the Client Account and will not permit withdrawals to any other third party or anonymous account.

18.11. The Company reserves the right to reasonably decline a withdrawal request of the Client asking for a specific transfer method and the Company has the right to suggest an alternative.

18.12. All payment and transfer charges of third parties will be borne by the Client and the Company shall debit the relevant Client Account for these charges.

18.13. Mistakes made by the Company during transfer of funds shall be refunded to the Client. It is understood that should the Client provide wrong instructions for a transfer; the Company may be unable to correct the mistake and the Client may have to suffer the loss. It is further understood that the Company shall not be liable for any errors of third-party payment service providers.

## **19. Currency Conversions**

In the event that the Client deposits money in a different currency from that of the Currency of the Client Account then the Company shall convert the sum

deposited into the Currency of the Client Account. The Company shall do this at reasonable market rate and/or rate of exchange that it considers appropriate. The Company shall be entitled to charge the Client a fee for the currency conversion or impose a spread from the exchange rates for arranging such conversion as the Company may from time to time specify to the Client and publish on the Platform and/or the Website. The Company shall be entitled to charge to the Client and obtain from the Client Account or from the deposited amount the expenses incurred with regard to currency conversions for the Client, including commissions to banks, money transfer fees, commissions to intermediaries.

19.1. Depending on the currency used to deposit money in the Client Account, the Company may charge an amount in the form of a percentage (as a fixed spread) of the amount deposited. If the Client pays in their card currency, the Company will be allowed to charge a fixed spread of 3% for not like/like currencies, or so-called exotic currencies. In relation to what is called like/like currencies (GBP, USD, EUR, CHF, JPY, CAD, DKK, AUD), the Company does not charge any conversion fees when the Client pays in these currencies.

19.2. In the event of currency fluctuations, the Company will have no liability for any losses or damages incurred on the Client.

## **20. Inactive and Dormant Client Accounts**

20.1. If the Client Account has not featured any trading, open positions, withdrawals or deposits, it will be considered inactive on the calendar day after the last trade, withdrawal, deposit or closed position (the 'Inactive Date'). Where a Client Account remains inactive for a continuous period of three months after the Inactive Date, we may charge a monthly Inactivity Fee.

20.2. As of the date of this Agreement, the Inactivity Fee is USD\$10 per calendar month, paid in arrears. For the avoidance of doubt, the monthly fee for a given calendar month will be deducted notwithstanding the fact that the account was only considered inactive for part of that month. In the event that there are insufficient funds in your trading account to meet this fee, Xtrade reserves the right to charge a lower fee or close your account.

20.3. If the Client Account is inactive for one year or more from the Inactive Date, the Company may cease charging the Inactivity Fee and reserves the right to suspend the Client Account and render it dormant. Money in the dormant account shall remain owing to the Client and the Company shall make and retain records and return such funds upon request by the Client at any time thereafter. The Company may charge a fee during the period when the Account is dormant.

20.4. As of the date of this Agreement, a dormant account may be charged a fee of USD\$60 per calendar month, paid in arrears. In the event that there are insufficient funds in your Client Account to meet this fee, Xtrade reserves the right to charge a lower fee or close your account.

20.5. These fees are subject to change with immediate effect by notice on the Website. Please refer to the Website for the latest inactivity and dormant

account fees. It is the Client's responsibility to frequently visit the Website to review any changes to the fees and charges applicable to the Client Account. It is your sole responsibility to ensure you terminate your account if you no longer wish to trade with Xtrade. We may notify you that your account has become inactive out of courtesy but are under no obligation to do so.

## **21. Netting and Set-Off**

21.1. If the aggregate amount payable by the Client is equal to the aggregate amount payable by the Company, then automatically the mutual obligations to make payment are set-off and cancel each other to the maximum extent allowable by law and the ASIC Order.

21.2. If the aggregate amount payable by one party exceeds the aggregate amount payable by the other party, then the party with the larger aggregate amount shall pay the excess to the other party and all obligations to make payment will be automatically satisfied and discharged to the maximum extent allowable by law and the ASIC Order.



## **PART FOUR – GENERAL TERMS ABOUT OUR RELATIONSHIP**

### **22. Language**

22.1. The Company's official language is the English language and the Client should always read and refer to the main Website for all information and disclosures about the Company and its activities. Translation or information provided in languages other than English is for informational purposes only and do not bind the Company or have any legal effect whatsoever, the Company having no responsibility or liability regarding the correctness of the information therein.

### **23. Communications and Written Notices**

23.1. The Client shall be able to call the Company within its normal working hours. The Company may contact the Client outside its normal working hours.

23.2. In order to communicate with the Company, the Client may use the contact details of the Company available on its Website or notified to the Client in any other way.

23.3. In order to communicate with the Client, the Company will use the contact details provided by the Client whilst opening the Client Account or as updated later on. Hence, the Client has an obligation to notify the Company immediately of any change in the Client's contact details. Should the Client fail to do so, the Company shall have no liability should any important notices or cheques issued in their name become lost when sent by the Company at their last known details.

23.4. The following methods of communication are considered as Written Notice from the Company to the Client: email, Platform's internal mail, facsimile transmission, post, commercial courier service, air mail or the Company's Website. The following methods of communication are considered as Written Notice from the Client to the Company: email, facsimile transmission, post, commercial courier service or air mail or commercial courier.

23.5. Without prejudice to clause 22.6, any communications sent to either Party, as applicable, (documents, notices, confirmations, statements, reports etc.) are deemed received:

- (a) If sent by email, within one hour after emailing it and provided the email has left from the sender's outlook.
- (b) If sent by the Platform's internal mail, immediately after sending it.
- (c) If sent by facsimile transmission, upon receipt by the sender of a transmission report from its facsimile machine confirming receipt of the message by recipient's facsimile machine.



- (d) If sent by telephone call, once the telephone conversation has finished.
- (e) If sent by post, seven calendar days after posting it.
- (f) If sent via commercial courier service, at the date of signing of the document on receipt of such notice.
- (g) If sent by air mail, eight Business Days after the date of their dispatch.
- (h) If posted on the Company Webpage, within one hour after it has been posted.

23.6. Any Written Notices sent to the Company shall have to be received within the working hours of the Company. Notwithstanding clause 22.5, any Notices received outside the normal working hours shall be treated as being received the following Business Day.

23.7. Faxed documents received by the Company may be electronically scanned and reproduction of the scanned version shall constitute conclusive evidence of such faxed instructions.

## **24. Personal Data, Confidentiality, Recording of Telephone Calls and Records**

24.1. The Company may collect Client information directly from the Client (in their completed Account Opening Application Form or otherwise) or from other persons including, for example, the credit reference agencies, fraud prevention agencies, banks, other financial institutions, third-party authentication service providers and the providers of public registers.

24.2. Client information which the Company holds is to be treated by the Company as confidential and will not be used for any purpose other than in connection with the provision, administration and improvement of the Services, anti-money laundering/counter-terrorism financing and due diligence checks, for research and statistical purposes and for marketing purposes. Information already in the public domain, or already possessed by the Company without a duty of confidentiality will not be regarded as confidential.

24.3. The Company has the right to disclose Client information (including recordings and documents of a confidential nature, card details) in the following circumstances:

- (a) Where required by law or a court order by a competent Court.
- (b) Where requested by ASIC or any other regulatory authority having control or jurisdiction over the Company or the Client or their associates or in whose territory the Company has Clients.
- (c) To relevant authorities to investigate or prevent fraud, money laundering or other illegal activity.
- (d) To such an extent as reasonably required so as to execute Orders and for purposes ancillary to the provision of the Services.

- (e) To credit reference and fraud prevention agencies, third-party authentication service providers, banks and other financial institutions for credit checking, credit card checks, fraud prevention, anti-money laundering/counter-terrorism financing purposes, identification or due diligence checks of the Client. To do so they may check the details the Client supplied against any particulars on any database (public or otherwise) to which they have access. They may also use Client details in the future to assist other companies for verification purposes. A record of the search will be retained by the Company.
- (f) To the Company's professional advisors provided that in each case the relevant professional shall be informed about the confidential nature of such information and commit to the confidentiality herein obligations as well.
- (g) To other service providers who create, maintain or process databases (whether electronic or not), offer record keeping services, email transmission services, messaging services or similar services which aim to assist the Company collect, storage, process and use Client information or get in touch with the Client or improve the provision of the Services under this Agreement.
- (h) To a Trade Repository.
- (i) To other service providers for statistical purposes in order to improve the Company's marketing, in such a case the data will be provided in an aggregate form.
- (k) Where necessary in order for the Company to defend or exercise its legal rights to any court or tribunal or arbitrator or Ombudsman or government authority.
- (l) At the Client's request or with the Client's consent.
- (m) To an Affiliate of the Company or any other company in the same group of the Company.
- (n) To successors or assignees or transferees or buyers, with 15 Business Days prior Written Notice to the Client, and for the purposes of clause 33.2 of the Client Agreement.
- (o) Client Information is disclosed in relation to US taxpayers to the IRS of the US according to the Foreign Account Tax Compliance Act (FATCA) of the USA.

24.4. If the Client is a natural person, the Company will use, store, process and handle personal information provided by the Client in connection with the provision of the Services in accordance with the *Privacy Act 1988* (Cth). The Company is obliged to supply the Client, on request, with a copy of personal data which it holds about the Client (if any), provided that the Client pays a reasonable administrative fee.

24.5. By entering into this Agreement, the Client will be consenting to the transmittal of the Client's personal data outside Australia, according to the Australian Privacy Principles for the reasons specified in clauses 23.2 and 23.3.

24.6. Telephone conversations between the Client and the Company may be recorded and kept by the Company and recordings will be the sole property of

the Company. The Client accepts such recordings as conclusive evidence of the Orders or conversations so recorded.

24.7. The Client accepts that the Company may, for the purpose of administering the terms of the Agreement, from time to time, make direct contact with the Client by telephone, SMS, fax, email, or post.

24.8. The Client accepts that the Company or any Affiliate of the Company or any other company in the same group of the Company may make contact with the Client, from time to time, by telephone, fax, email or post for marketing purposes to bring to the Client's attention products or services that may be of interest to them or to conduct market research. This right is exercised in relation to Clients who are natural persons only when they provide their specific consent to that effect.

24.9. Under Applicable Regulations, the Company will keep records containing Client personal data, trading information, Client Account opening documents, communications and anything else which relates to the Client for at least seven years after termination of the Agreement.

## **25. Amendments**

25.1. The Company may upgrade the Client Account, convert Client Account type, upgrade or replace the Platform or enhance the services offered to the Client if it reasonably considers this is to the Clients advantage and there is no increased cost to the Client.

### ***Amendments of the Agreement***

25.2. The Company may also change any terms of the Agreement for any of the following reasons:

- (a) Where the Company reasonably considers that:
  - the change would make the terms of the Agreement easier to understand or are more complete; or
  - the change would not be to the disadvantage of the Client.
- (b) To cover:
  - the involvement of any service or facility the Company offers to the Client; or
  - the introduction of a new service or facility; or
  - the replacement of an existing service or facility with a new one; or
  - the withdrawal of a service or facility which has become obsolete, or has ceased to be widely used, or has not been used by the Client at any time in the previous year, or it has become very expensive for the Company to offer.
- (c) To enable the Company to make reasonable changes to the services offered to the Client as a result of changes in:
  - the banking, investment or financial system; or
  - technology; or
  - the systems or Platform used by the Company to run its business or offer the Services hereunder.

- (d) As a result of a request of ASIC or of any other authority or as a result of change or expected change in Applicable Regulations.
- (e) Where the Company finds that any term in the Agreement is inconsistent with Applicable Regulations. In such a case, it will not rely on that term but treat it as if it did reflect the relevant Applicable Regulations and shall update the Agreement to reflect the Applicable Regulations.

25.3. The Company may change any of the terms of the Agreement for any serious reason not listed under clause 24.2. Where the Client is a natural person they shall have the right to object to the change.

25.4. For any change made under clauses 24.2 and 24.3, the Company shall provide the Client with advance notice of at least 10 Business Days. However, the Client acknowledges that a change which is made to reflect a change of Applicable Regulations may, if necessary, take effect immediately.

24.5 For any change made under (a), (d) and (e) of clause 24.2, the notice of the Company shall be a Written Notice including a post on the Company's Website. For any other change of the Client Agreement the Company, where the Company elects to provide such Written Notice via a post on the Website, the Company shall also provide the said Written Notice with an additional means of Written Notice.

24.6. The Client shall be treated as accepting the change on the date notified unless, before then, the Client informs the Company that they wish to object the change. Client shall not have to pay any charges as a result of terminating their account in this case, other than costs due and payable for Services offered until the termination.

### ***Review of Costs***

24.7. Unless differently provided for elsewhere in this Agreement, the Company shall have the right to review its costs, fees, charges and commissions, from time to time, in its discretion. Such changes shall be affected on the Platform and/or the Website and the Client is responsible to check for updates regularly. In the absence of a Force Majeure event, the Company shall provide the Client with advance notice on its Website of at least ten Business Days. Swaps may be changed without prior notice.

### ***Review of Classification***

24.8. The Company shall have the right to review the Client's Classification according to Applicable Regulations. Notwithstanding clause 24.1, changing the Client's Classification may also mean changing the type of Client Account of the Client. The Client shall be treated as accepting the change on 2 business days after the Client is informed of their change in account unless, before then, the Client informs the Company that the Client wishes to terminate the Agreement and not accept the change.

## **26. Termination and Results of Termination**

26.1. The Client may terminate this Agreement with Written Notice to the Company at any time. Without prejudice to the Company's rights under this Agreement to terminate it immediately without prior notice to the Client, the Company may terminate the Agreement by giving at least 15 Business Days Written Notice to the other Party.

26.2. Termination by any Party will not affect any obligation which has already been incurred by either Party or any legal rights or obligations which may already have arisen under the Agreement or any Transactions made hereunder.

26.3. Upon termination of this Agreement, all amounts payable by the Client to the Company will become immediately due and payable including (but without limitation) all outstanding costs and any other amounts payable to the Company, any charges and additional expenses incurred or to be incurred by the Company as a result of the termination of the Agreement.

26.4. Once notice of termination of this Agreement is sent and before the termination date:

- (a) the Client will have an obligation to close all their Open Positions, unless otherwise required by the ASIC Orders. If they fail to do so, upon termination, the Company will close any Open Positions at current prices;
- (b) the Company will be entitled to cease to grant the Client access to the Platform(s) or may limit the functionalities the Client is allowed to use on the Platform(s);
- (c) the Company will be entitled to refuse to accept new Orders from the Client;
- (d) the Company will be entitled to refuse to the Client to withdraw money from the Client Account and the Company reserves the right to keep Client's funds as necessary to close positions which have already been opened and/or pay any pending obligations of the Client under the Agreement.

26.5. Upon Termination any or all the following may apply:

- (a) The Company has the right to close the Client Account;
- (b) The Company has the right to convert any currency;
- (c) The Company has the right to close out the Client's Open Positions at current prices;
- (d) In the absence of illegal activity or suspected illegal activity or fraud of the Client or instructions from the relevant authorities, if there is Balance in the Client's favour, the Company will (after withholding such amounts that in the Company's absolute discretion considers appropriate in respect of future liabilities) pay such Balance to the Client as soon as reasonably

practicable and supply the Client with a statement showing how that Balance was arrived at and, where appropriate, instruct any Nominee or/and any Custodian to also pay any applicable amounts. Such funds shall be delivered in accordance to the Client's Instructions to the Client. It is understood that the Company will affect payments only to an account in the name of the Client. The Company has the right to refuse, at its discretion, to effect third-party payments.

## **27. Force Majeure**

27.1. A Force Majeure Event includes without limitation each of the following:

- (a) Government actions, the outbreak of war or hostilities, the threat of war, acts of terrorism, national emergency, riot, civil disturbance, sabotage, requisition, or any other international calamity, economic or political crisis that, in the Company's opinion, prevents it from maintaining an orderly market in one or more of the Financial Products in respect of which it deals on the Platform;
- (b) Act of God, earthquake, tsunami, hurricane, typhoon, accident, storm, flood, fire, epidemic or other natural disaster making it impossible for the Company to offer its Services;
- (c) Labour disputes and lock-outs which affect the operations of the Company;
- (d) Suspension of trading on a market or the liquidation or closure of any market, or the fixing of minimum or maximum prices for trading on a market to which the Company relates its Quotes, or the imposition of limits or special or unusual terms on the trading in any such market or a regulatory ban on the activities of any party (unless the Company has caused that ban), decisions of state authorities, governing bodies of self-regulating organisations, decisions of governing bodies of organised trading platforms;
- (e) A financial services moratorium having been declared by appropriate regulatory authorities or any other acts or regulations of any regulatory, governmental, supervisory, regulatory or supranational body or authority;
- (f) Breakdown, failure or malfunction of any electronic, network and communication lines (not due to the bad faith or willful default of the Company);
- (g) Any event, act or circumstances not reasonably within the Company's control and the effect of that event(s) is such that the Company is not in a position to take any reasonable action to cure the default;
- (h) The occurrence of an excessive movement in the level of any transaction and/or Underlying Asset or Market or the Company's anticipation (acting reasonably) of the occurrence of such a movement;
- (i) The failure of any relevant supplier, Financial Institution intermediate broker, Liquidity Provider, agent or principal of the Company, custodian, sub-custodian, dealer, Exchange, clearing house or regulatory or self-regulatory organisation, for any reason, to perform its obligations.



27.2. If the Company determines in its reasonable opinion that a Force Majeure Event exists (without prejudice to any other rights under the Agreement) the Company may without prior notice and at any time take any or all of the following steps:

- (a) Suspend or modify the application of any or all terms of the Agreement to the extent that the Force Majeure Event makes it impossible or impractical for the Company to comply with them.
- (b) Take or omit to take all such other actions as the Company deems to be reasonably appropriate in the circumstances with regard to the position of the Company, the Client and other clients;
- (c) Shut down the Platform(s) in case of malfunction for maintenance or to avoid damage;
- (d) Cancel any Client Orders and Refuse to accept Orders from Clients to the extent that the Force Majeure Event makes it impossible or impractical for the Company to comply with them or to avoid losses to the Client;
- (e) Inactivate the Client Account to avoid damage;
- (f) Close out any or all Open Positions at such prices as the Company considers in good faith to be appropriate to avoid losses for the Client;
- (g) Increase Spreads, increase Margin requirements, decrease Leverage without notice to avoid damages.

27.3. Except as expressly provided in this Agreement, the Company will not be liable or have any responsibility for any type of loss or damage arising out of any failure, interruption, or delay in performing its obligations under this Agreement where such failure, interruption or delay is due to a Force Majeure event.

## **28. Limitations of Liability and Indemnity**

28.1. In the event the Company provides information, recommendations, news, information relating to transactions, market commentary or research to the Client (or in newsletters which it may post on its Website or provide to subscribers via its Website or otherwise), the Company shall not, in the absence of its fraud, willful default or gross negligence, be liable for any losses, costs, expenses or damages suffered by the Client arising from any inaccuracy or mistake in any such information given.

28.2. The Company will not be held liable for any loss or damage or expense or loss incurred by the Client in relation to, or directly or indirectly arising from but not limited to:

- (a) Any error or failure or interruption or disconnection in the operation of the Platform(s), or any delay caused by the Client Terminal or Transactions made via the Client Terminal, any technical problems, system failures and malfunctions, communication line failures,

equipment or software failures or malfunctions, system access issues, system capacity issues, high internet traffic demand, security breaches and unauthorised access, and other similar computer problems and defects;

- (b) Any failure by the Company to perform any of its obligations under the Agreement as a result of Force Majeure Event or any other cause beyond its control;
- (c) The acts, omissions or negligence of any third party;
- (d) Any person obtaining the Client's Access Data that the Company has issued to the Client prior to the Client's reporting to the Company of the misuse of their Access Data;
- (e) Unauthorized third persons having access to information, including electronic addresses, electronic communication, personal data and Access Data when the above are transmitted between the Parties or any other party, using the internet or other network communication facilities, post, telephone, or any other electronic means;
- (f) Any of the risks in the Risks Disclosure and Warnings Notice;
- (g) Currency risk materialising;
- (h) Any changes in the rates of tax;
- (i) The occurrence of Slippage;
- (j) The Client relying on functions such as Trailing Stop, Expert Advisor and Stop Loss Orders;
- (k) Abnormal Market Conditions;
- (l) Any actions or representations of the Introducer;
- (m) Any acts or omissions (including negligence and fraud) of the Client and/or their Authorised Representative;
- (n) The Client's or their Authorised Representative's trading decisions;
- (o) Orders given through and under the Client's Access Data;
- (p) The contents, correctness, accuracy and completeness of any communication spread by the use of the Platform(s);
- (q) The Client engaging in social trading, under which the client is automatically following other traders' Orders;
- (r) The solvency, acts or omissions of any third party referred to in clause 16.5.
- (s) A situation of clause 16.6. arising.



28.3. If the Company, its Directors, Officers, employees, Affiliates, or Agents incur any claims, damage, liability, costs or expenses, which may arise in relation to the execution or as a result of the execution of the Agreement and/or in relation to the provision of the Services and/or in relation to the use of the Platform(s), that the Company, its Directors, Officers, employees, Affiliates, or Agents bear no responsibility whatsoever, it is the Client's responsibility to indemnify the Company for such.

28.4. The Company shall in no circumstances be liable to the Client for any consequential, special, incidental or indirect losses, damages, loss of profits, loss of opportunity (including in relation to subsequent market movements), costs or expenses the Client may suffer in relation to the Agreement, the provision of the Services or the use of the Platform(s).

28.5. The Company's cumulative liability to the Client shall not exceed the fees paid to the Company under this Agreement in relation to the particular Client for the Provision of the Services and use of the Platform(s).

## **29. Representations and Warranties**

29.1. The Client represents and warrants to the Company the following:

- (a) The Client is at least 18 years old, or the age of legal consent for engaging in financial investment activities under the laws of any jurisdiction that applies to him;
- (b) The Client is of sound mind and capable of taking decisions for their own actions;
- (c) There are no restrictions on the markets or financial products in which any Transactions will be sent for execution, depending on the Client's nationality;
- (d) All actions performed under the Agreement will not violate any law or rule applicable to the Client or to the jurisdiction in which the Client is resident, or any agreement by which the Client is bound or by which any of the Client's assets or funds are affected;
- (e) The Client will not use the IP or the Platform or Website in contravention to this Agreement, or for unauthorised or unlawful purposes and that they will use the IP, Platform and Website only for the benefit of their Client Account and not on behalf of any other person;
- (f) The Client is duly authorised to enter into the Agreement, to give Orders and to perform its obligations hereunder;
- (g) The Client is the individual who has completed the Account Opening Application Form or, if the Client is a company, the person who has completed Account Opening Application Form on the Client's behalf is duly authorised to do so;
- (h) The Client is acting as a principal and not as agent or representative or trustee or custodian on behalf of someone else. The Client may act on behalf of someone else only if the Company specifically consents to this in writing and provided all the documents required by the Company for this purpose are received;

- (i) The information provided by the Client to the Company in the Account Opening Application Form and at any time thereafter is true, accurate and complete and the documents handed over by the Client are valid and authentic.
- (j) The Client has read and fully understood the terms of the Agreement;
- (k) where the Client is more than one person, that all decisions made, and instructions issued, pursuant to this Agreement, are made on a fully informed and agreed basis by all the parties to the account;
- (l) all information supplied to the Company by the Client is, or at the time it is supplied will be, accurate in all material respects and the Client will not omit or withhold any information which would make such information inaccurate in any material respect;
- (m) the Client is not insolvent, and if the Client is a corporate client, no resolution has been passed and no petition has been presented or order made for the Client's winding up or liquidation or the appointment of a receiver or a receiver and manager or an administrator or other insolvency official to the Client or any of its assets;
- (n) The Client funds used for trading are not in any direct or indirect way the proceeds of any illegal activity or used or intended to be used for terrorist financing;
- (o) The Client is not a Politically Exposed Person and does not have any relationship (for example relative or business associate) with a person who holds or held in the last twelve months a prominent public position. If the above statement is untrue and, in the event, that the Client has not disclosed this already in the Account Opening Application Form, they will inform the Company as soon as possible and will notify the Company if at any stage during the course of this Agreement they become a Politically Exposed Person;
- (p) The Client is not from the USA, Cuba, Iran, Syria, Democratic People's Republic of Korea, Algeria, Ecuador, Indonesia, Myanmar (or any other countries included in this list from time to time at the Company's sole discretion). The Company does not accept Clients from these countries;
- (q) The Client has read and understood the Product Disclosure Statement, Financial Services Guide, and the "Risks Disclosure and Warnings Notice" found on the Website;
- (r) The Client consents to the provision of the information of the Agreement by means of a Website or email;
- (s) The Client confirms that they have regular access to the internet and consents to the Company providing them with information, including, without limitation, information about amendments to the terms and conditions, costs, fees, this Agreements, policies and information about the nature and risks of investments by posting such information on the Website or email. Should the Client wish, they may request for these to be sent by post or fax;
- (t) If the Client is funding their account using superannuation funds, they will notify the Company as this may impact their Wholesale client and Retail client status;
- (u) The Company relies on representations and warranties made by the Client. These representations and warranties and those contained

- elsewhere in this Agreement, survive the entering into of this Agreement and are repeated in respect of each financial product transaction: and
- (v) You acknowledge to us that you have received or downloaded, and read and understood the TMD document and you agree that you are within the class of consumers described in our TMD.

### **30. Complaints and Disputes**

30.1. If the Client wishes to report a complaint, they must send an email at [compliance@xtrade.com.au](mailto:compliance@xtrade.com.au) with the completed “Complaints Form” found on our Website. The Company will acknowledge receipt of your complaint within 1 business day. The Company will try to resolve it without undue delay and within 30 calendar days of having received the complaint, according to the Company’s Internal dispute resolution policy for Clients, unless Xtrade advises that they reasonably require more time due to the nature of the complaint or other reasonable consideration.

30.2. If a situation arises which is not expressly covered by this Agreement, the Parties agree to try to resolve the matter on the basis of good faith and fairness and by taking such action as is consistent with market practice.

30.3. Where a Client is dissatisfied with the outcome of our dispute resolution process or the complaints handling process, you have the right to lodge a complaint with the Australian Financial Complaints Authority, an approved external dispute resolution scheme, of which we are a member.

### **31. Applicable and Governing Law and Applicable Regulations**

31.1. If a settlement is not reached by the means described in clause 29, all disputes and controversies arising out of or in connection with the Agreement shall be finally settled in court in New South Wales.

39.2. This Agreement is governed by the Laws of New South Wales.

30.3. All transactions on behalf of the Client shall be subject to Applicable Regulations and any other public authorities which govern the operation of the Company, as they are amended or modified from time to time. The Company shall be entitled to take or omit to take any measures which it considers necessary to ensure compliance with the Applicable Regulations, the relevant market rules. Any such measures as may be taken shall be binding on the Client.

30.4. All rights and remedies provided to the Company under the Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

### **32. Severability**

32.1. Should any part of this Agreement be held by any Court of competent jurisdiction to be unenforceable or illegal or contravene any rule, regulation or by law of any Market or regulator, that part will be deemed to have been

excluded from this Agreement from the beginning, and this Agreement will be interpreted and enforced as though the provision had never been included and the legality or enforceability of the remaining provisions of the Agreement or the legality, validity or enforceability of this provision in accordance with the law and/or regulation of any other jurisdiction, shall not be affected.

### **33. Non-Exercise of Rights**

33.1. Either Party's failure to seek redress for violations, or to insist upon strict performance, of any condition or provision of this Agreement, or its failure to exercise any or part of any of right or remedy to which that Party is entitled under this Agreement, shall not constitute an implied waiver thereof.

#### **34. Assignment**

34.1. The Company may at any time sell, transfer, assign or novate to a third party any or all of its rights, benefits or obligations under this Agreement or the performance of the entire Agreement subject to providing 15 Business Days prior Written Notice to the Client. This may be done without limitation in the event of merger or acquisition of the Company with a third party, reorganisation of the Company, winding up of the Company, lapse of its CIF licence or sale or transfer of all or part of the business or the assets of the Company to a third party.

34.2. It is agreed and understood that in the event of transfer, assignment or novation described in clause 33.1 above, the Company shall have the right to disclose and/or transfer all Client Information (including without limitation personal data, recording, correspondence, due diligence and client identification documents, files and records, the Client trading history) transfer the Client Account and the Client Money as required, subject to providing 15 Business Days prior Written Notice to the Client.

34.3. The Client may not transfer, assign, charge, novate or otherwise transfer or purport to do so the Client's rights or obligations under the Agreement.

#### **35. Introducer**

35.1. In cases where the Client is introduced to the Company through a third person such as a business introducer or associate or affiliate ("Introducer"), the Client acknowledges that the Company is not responsible or accountable for the conduct, representations or the accuracy, completeness or correctness of the contents of any promotions or marketing material of the Introducer or any other third-party, even if these are given or appear to be given in the name of the Company, and the Company is not bound by any separate agreements entered into between the Client and the Introducer.

35.2. The Client acknowledges and confirms that their agreement or relationship with the Introducer may result in additional costs, since the Company may be obliged to pay commission fees or charges to the Introducer. If such apply they will be disclosed to the Client as provided under Applicable Regulations.

#### **36. Authorised Representative**

36.1. The Company may in certain cases accept an Authorised Representative on behalf of the Client to place Orders to the Company or to handle any other matters related to the Client Account or this Agreement, provided the Client notifies the Company in writing of the appointment of an Authorised

Representative and this person is approved by the Company fulfilling all of the Company specifications for this.

36.2. Unless the Company receives a written notification from the Client for the termination of the authorisation of Authorised Representative, the Company, without prejudice to clause 35.4 herein below, has the right to continue accepting Orders and/or other instructions relating to the Client Account by the Authorised Representative on the Client's behalf and the Client will recognise such orders as valid and binding to them.

36.3. The written notification for the termination of the authorisation of the Authorised Representative has to be received by the Company with at least 5 days' notice prior the termination of the authorisation date.

36.4. The Company has the right (but NOT an obligation to the Client) to refuse to accept Orders and/ or other instructions relating to the Client Account from the Authorised Representative in any of the following cases:

- (a) if the Company reasonably suspects that the Authorised Representative is not legally allowed or properly authorised to act as such;
- (b) an Event of Default occurred;
- (c) in order for the Company to ensure compliance with the relevant market rules and or practices, Applicable Regulations or other applicable laws; or
- (d) in order to protect the interest of the Client.

### **37. Multiple Account Holders**

37.1. Where the Client comprises two or more persons, they will be deemed joint tenants, and their liabilities and obligations under the Agreement shall be joint and several. Any warning or other notice given to one of the persons which form the Client shall be deemed to have been given to all the persons who form the Client. Any Order given by one of the persons who form the Client shall be deemed to have been given by all the persons who form the Client.

37.2. In the event of the death or mental incapacity of one of the persons who form the Client, all funds held by the Company or its Nominee, will be for the benefit and at the order of the survivor(s) and all obligations and liabilities owed to the Company will be owed by such survivor(s).

### **38. Fees, Taxes and Inducements**

38.1. The provision of the Services by the Company is subject to payment of fees found on the Company's fee schedule on the Platform and/or the Website (as the case may be).

38.2. It is agreed and understood that the Client shall be solely responsible for all filings, tax returns and reports which should be made to any relevant authority, whether governmental or otherwise, and for payment of all taxes



(including but not limited to any transfer or value added taxes), arising out of or in connection with their trading activity with the Company hereunder.

38.3. The Client undertakes to pay all applicable stamp expenses relating to this Agreement and any documentation which may be required for the carrying out of the transactions under this Agreement.

38.4. Should the Company pay or receive any fees or inducements for the introduction of the Client, it shall notify the Client according to Applicable Regulations.

## **39. Miscellaneous**

### **PART FIVE – DEFINITIONS**

#### **40. Interpretation of Terms**

40.1. In this Agreement:

“Access Data” shall mean the Login and Password of the Client, which are required so as to have access on and use the Platform(s) and the telephone password and Client Account number, which are required so as to place Orders via phone and any other secret codes issued by the Company to the Client.

“Account Opening Application Form” shall mean the application form/questionnaire completed by the Client in order to apply for the Company’s Services under this Agreement and a Client Account, via which form/questionnaire the Company will obtain amongst other things information for the Client’s identification and due diligence, their categorisation and appropriateness or suitability (as applicable) in accordance with the Applicable Regulations.

“Affiliate” shall mean in relation to the Company, any entity which directly or indirectly controls or is controlled by the Company, or any entity directly or indirectly under common control with the Company; and “control” means the power to direct or the presence of ground to manage the affairs of the Company or entity.

“Agreement” shall mean this “Client Agreement” together with its Appendix 1 and any other Appendices added thereto and the “Conflicts of Interest Policy”, “Summary Best Interest and Order Execution Policy” and “Risk Disclosure and Warnings Notice”, as amended from time to time.

“Applicable Regulations” shall mean (a) ASIC Regulatory Guides or any other rules of a relevant regulatory authority having powers over the Company; (b) any applicable rules of the relevant Market; and (c) all other applicable laws, rules and regulations of Australia.

“ASIC” shall mean the Australian Securities and Investments Commission, which is the Company’s supervisory authority.

“ASIC Order” shall mean the *ASIC Corporations (Product Intervention Order – Contracts for Difference) Instrument 2020/896*.

“Ask” shall mean the higher price in a Quote at which the price the Client may buy.

“Authorised Representative” shall mean the person of clause 35.1 of the Client Agreement.

“Balance” shall mean the total financial result in the Client Account after the last Completed Transaction and depositing/withdrawal operation at any period of time.

“Base Currency” shall mean the first currency in the Currency Pair against which the Client buys or sells the Quote Currency.

“Bid” shall mean the lower price in a Quote at which the Client may sell.

“Business Day” shall mean any day, other than a Saturday or a Sunday, or the 25th of December, or the 1st of January or any other Australian or international holidays to be announced on the Company’s Website.

“Client Account” shall mean the unique personalised account of the Client consisting of all Completed Transactions, Open Positions and Orders in the Platform, the Balance of the Client money and deposit/withdrawal transactions of the Client money. Our Website and communication may use the term trading account or account, which mean Client Account.

“Closed Position” shall mean the opposite of an Open Position.

“Completed Transaction” in a CFD shall mean two counter deals of the same size (opening a position and closing a position): buy then sell and vice versa.

“Contract for Differences” (“CFD”) shall mean a contract, which is a contract for difference by reference to variations in the price of an Underlying Asset. A CFD is a Financial Product under the Applicable Regulations.

“Contract Specifications” shall mean the principal trading terms in CFD (for example Spread, Swaps, Lot Size, Initial Margin, Necessary Margin, Hedged Margin, the minimum level for placing Stop Loss, Take Profit and Limit Orders, financing charges, charges etc) for each type of CFD as determined by the Company from time to time and found on our Website and/or Platform.

“Corporations Act” shall mean the *Corporations Act 2001 (Cth)*.

“Corporations Regulations” shall mean the *Corporations Regulations 2001 (Cth)*.

“Currency of the Client Account” shall mean the currency that the Client Account is denominated in.



“Currency Pair” shall mean the object or Underlying Asset of a CFD Transaction based on the change in the value of one currency against the other. A Currency Pair consists of two currencies (the Quote Currency and the Base Currency) and shows how much of the Quote currency is needed to purchase one unit of the Base Currency.

“Equity” shall mean the Balance plus or minus any Floating Profit or Loss that derives from an Open Position and shall be calculated as:  $Equity = Balance + Floating Profit - Floating Loss$ .

“Essential Details” shall mean the required details in order for the Company to be able to place the Order for example but not limited to Opening Position/Closing Position/Cancelling/Amending, the Underlying Asset, style/name of the Order, volume, market direction, price, validity, Stop Loss/Take Profit (if desired).

“Event of Default” shall have the meaning given in clause 14.1 of the Client Agreement.

“Expert Advisor” shall mean a mechanical online trading system designed to automate trading activities on an electronic trading platform such as the Company’s Platform. It can be programmed to alert the Client of a trading opportunity and can also trade their Client Account automatically managing all aspects of trading operations from sending orders directly to the Platform to automatically adjusting stop loss, trailing stops and take profit levels.

“Financial Product” shall mean the Financial Products under the Company’s AFSL which can be found on our Website.

“Floating Profit/Loss” in a CFD shall mean current profit/loss on Open Positions calculated at the current Quotes (added any commissions or fees if applicable).

“Force Majeure Event” shall have the meaning as set out in clause 26.1 of the Client Agreement.

“Free Margin” shall mean the amount of funds available in the Client Account, which may be used to open a position or maintain an Open Position. Free Margin shall be calculated as:  $Equity \text{ less (minus) Necessary Margin}$  [Free margin =  $Equity - Necessary Margin$ ].

“Hedged Margin” for CFD trading shall mean the necessary margin required by the Company so as to open and maintain Matched Positions.

“Initial Margin” for CFD trading shall mean the necessary margin required by the Company so as to open a position.

“Introducer” shall have the meaning as set put in paragraph. 34.1 of the Client Agreement.

“Leverage” for CFD trading shall mean a ratio in respect of Transaction Size and Initial Margin. 1:20 ratio means that in order to open a position, the Initial Margin is twenty times less than the Transactions Size.

“Long Position” for CFD trading shall mean a buy position that appreciates in value if underlying market prices increase. For example, in respect of Currency Pairs: buying the Base Currency against the Quote Currency.

“Lot” shall mean a unit measuring the Transaction amount specified for each Underlying Asset of a CFD.

“Lot Size” shall mean the number Underlying Assets in one Lot in a CFD.

“Maintenance Margin” shall mean the level of equity required to be in your Client Account for each Open Position in order to maintain that Open Position. The Maintenance Margin requirements are specific to each Financial Product and are displayed on the Website.

“Margin” shall mean the necessary cleared funds so as to open or maintain Open Positions in a CFD Transaction.

“Margin Call” shall mean the situation when the Company informs the Client to deposit additional Margin when the Client does not have enough Margin to open or maintain open positions. Please note that a Margin Call will not be considered to have been met unless and until cleared funds have been received by the Company in our nominated account.

“Margin Level” for CFD trading shall mean the percentage of Equity to Necessary Margin ratio. It is calculated as:  $\text{Margin Level} = (\text{Equity} / \text{Necessary Margin}) \times 100\%$ .

“Margin Trading” for CFD trading shall mean Leverage trading when the Client may make Transactions having less funds on the Client Account in comparison with the Transaction Size.

“Matched Positions” for CFD trading shall mean Long and Short Positions of the same Transaction Size opened on the Client Account for the same CFD.

“Necessary Margin” for CFD trading shall mean the necessary margin required by the Company so as to maintain Open Positions.

“Normal Market Size” for CFD trading shall mean the maximum number of units of the Underlying Asset that are transmitted by the Company for execution.

“Open Position” shall mean any open contract (call and / or put) which has not been closed. In relation to CFD trading this may be a Long Position or a Short Position which is not a Completed Transaction.

“Order” shall mean an instruction from the Client to trade in CFDs.

“Parties” shall mean the parties to this Client Agreement – i.e. the Company and the Client.

“Pip Hunting” shall mean the situation when the Client opens a position and closes it in a very short time (once there is a profit of one pip).

“Platform” shall mean the electronic mechanism operated and maintained by the Company consisting of a trading platform, computer devices, software, databases, telecommunication hardware, programs and technical facilities, which facilitates trading activity of the Client in Financial Products via the Client Account. It is understood that the Company may use different Platforms depending on the Financial Product.

“Politically Exposed Persons” (‘PEPs’) shall mean individuals who occupy a prominent public position or functions in a government body or international organisation, both within and outside Australia. This definition also extends to their immediate family members and close associates.

There are three categories of PEPs:

- *Domestic PEPs* are individuals who hold a prominent public position or function in an Australian government body
- *Foreign PEPs* are individuals who hold a prominent public position or function in a government body of a foreign country.
- *International organisation PEPs* are individuals who hold a prominent public position or function in an international organisation.

“Order Level” for CFD trading shall mean the price indicated in the Order.

“Quote” shall mean the information of the current price for a specific Underlying Asset, in the form of the Bid and Ask prices.

“Quote Currency” shall mean the second currency in the Currency Pair which can be bought or sold by the Client for the Base Currency.

“Quotes Base” in relation to CFD trading shall mean Quotes Flow information stored on the Server.

“Quotes Flow” shall mean the stream of Quotes in the Platform for each CFD.

“Retail Client” shall mean a “Retail Client” as defined in sections 761G and 761GA of the Corporations Act 2001 (Cth).

“Scalping” shall mean the situation where the Client opens too many positions at the same time and closes them in a very short time (for example up to three minutes) or buying at Bid price and selling at Ask price, so as to gain the Bid/Ask difference.

“Services” shall mean the services to be offered by the Company to the Client under this Agreement, as set out in clause 10.1 of the Client Agreement.

“Short Position” for CFD trading shall mean a sell position that appreciates in

value if underlying market prices fall. For example, in respect of Currency Pairs: selling the Base Currency against the Quote Currency. Short Position is the opposite of a Long Position.

“Slippage” shall mean the difference between the expected price of a Transaction in a CFD, and the price the Transaction is actually executed at. At the time that an Order is presented for execution, the specific price requested by the Client may not be available; therefore, the Order will be executed close to or a number of pips away from the Client’s requested price. If the execution price is better than the price requested by the Client, this is referred to as positive slippage. If the executed price is worse than the price requested by the Client, this is referred to as negative slippage. Slippage often occurs during periods of higher volatility (for example due to news events) making an Order at a specific price impossible to execute, when market orders are used, and also when large Orders are executed when there may not be enough interest at the desired price level to maintain the expected price of trade.

“Spread” for CFD trading shall mean the difference between Ask and Bid of an Underlying Asset in a CFD at that same moment.

“Swap or Premium Rollover” for CFD trading shall mean the interest added or deducted for holding a position open overnight.

“Trailing Stop” in CFD trading shall mean a stop-loss order set at a percentage level below the market price - for a long position. The trailing stop price is adjusted as the price fluctuates. A sell trailing stop order sets the stop price at a fixed amount below the market price with an attached "trailing" amount. As the market price rises, the stop price rises by the trail amount, but if the pair price falls, the stop loss price doesn't change, and a market order is submitted when the stop price is hit.

“Transaction” shall mean transaction of the Client in a CFD.

“Transaction Size” for CFD trading shall mean Lot Size multiplied by number of Lots.

“Underlying Asset” shall mean the object or underlying asset in a CFD may be Currency Pairs, Forwards, Futures, Options, Metals, Equity Indices, Commodities, Shares or as determined by the Company from time to time and made available on the Platform or the Website.

“Underlying Market” shall mean the relevant market where the Underlying Asset of a CFD is traded.

“Website” shall mean the Company’s website at **[www.xtrade.com.au](http://www.xtrade.com.au)** or such other website as the Company may maintain from time to time.

“Wholesale Client” shall mean a “Wholesale Client” pursuant to sections 761G and 761GA of the Corporations Act 2001 (Cth).

“Written Notice” shall have the meaning set out in clause 22.4 of the Client Agreement.

40.2. Words importing the singular shall import the plural and vice versa. Words importing the masculine shall import the feminine and vice versa. Words denoting persons include corporations, partnerships, other unincorporated bodies and all other legal entities and vice versa.

40.3. Paragraph headings are for ease of reference only.

40.4. Any reference to any Act or Regulation or law shall be that Act or Regulation or law as amended, modified, supplemented, consolidated, re-enacted or replaced from time to time, all guidance noted, directives, statutory instruments, regulations or orders made pursuant to such and any statutory provision of which that statutory provision is a re-enactment, replacement or modification.



## **APPENDIX ONE – CFD TRADING TERMS**

### **1. Scope**

1.1. This Appendix is applicable only to those Clients trading in the Financial Products of CFDs.

### **2. Types of CFD Orders**

2.1. The following CFD Orders may be placed with the Company: market orders and pending orders.

### **3. Execution of Orders**

3.1. In order to open a position on the Platform, the Client must either open a Buy or a Sell, at the price quoted on the Platform at the time of such Transaction. In order to close a position, the Client must either offer to Sell (in the case of a Buy), or purchase (in the case of a Sell), the Underlying Asset covered by such Open Position, at the price quoted on the Platform at the time of such closing. It is understood that every time the Client places an Order, the Company executes such an Order itself as a counterparty. However, the Company has the right to hedge Client Orders with another third party.

3.2. The Platform provides a Buy quote and a Sell quote for each Underlying Asset traded on the Platform. The Client acknowledges that upon opening a Buy or closing a Sell (or vice versa), they may only do so at the price quoted on the Platform to purchase such Underlying Asset.

3.3. Orders can be placed and (if allowed) changed within the Trading Hours for each type of Underlying Asset appearing on the Platform and/or the Website, as amended from the Company from time to time.

3.4. On the Platform, the Client shall be entitled to make an offer to open a Position at the best available price on the Platform (“Market Order”) at the time of opening such a position, unless the Client specifies a particular price in which to make an offer to open a position (“Limit Order”). With respect to a Market Order, the price at which a Transaction is completed may not always be at the exact rate displayed when the Order is placed. The Client agrees that their offer to open a Market Order may be accepted at a lower price or higher price than the price indicated by them in their Market Order, within a certain range as specified on the Platform from time to time. If the Client chooses to open a Market Order, their offer will be accepted at the best possible price offered on the Platform.

3.5. With respect to a Limit Order, the price at which a Transaction is completed may not always be at the exact price displayed when the Order is placed. The Client agrees that their offer to open a Limit Order may be accepted

at a lower price if a Buy, or higher price if a Sell, than the price indicated by them in their Limit Order as specified on the Platform from time to time. If the Client offers to open a Limit Order, their offer may be accepted at the price indicated by them in their offer. At any time prior to acceptance of a Limit Order, the Client may cancel the Limit Order without any further liability. If the Client open a Limit Order, their offer will be accepted at the best possible price offered on the Platform.

3.6. The Client agrees that the Company may hedge or otherwise offset any Transaction with other third parties in order to offset any liability or risk associated with any of the Client's Transaction(s). In the event that the Company is unable to hedge the Client's Transactions with other third parties, the Company reserves the right to amend the content or terms of an CFD Order including the expiry date, the trading hours or any other parameters in the product details tab.

3.7. Pending Orders, not executed, shall remain effective through the next trading session (as applicable).

3.8. Market Orders not executed because there is not enough volume to fill them, will not remain effective and will be cancelled.

3.9. All open spot positions will be rolled over (Premium) to the next Business Day at the close of business in the relevant Underlying Market, subject to the Company's rights to close the open spot position. Any open forward positions will be rolled over at the expiry of the relevant period into the next relevant period subject to the Company's rights to close the open forward position.

3.10. Orders shall be valid in accordance with the type and time of the given Order, as specified by the Client. If the time of validity of the Order is not specified, it shall be valid for an indefinite period. However, the Company may delete one or all Pending Orders if the Client Account Equity reaches zero.

3.11. The Orders cannot be removed once placed. Pending Orders may be deleted or modified before they are executed.

3.12. The Client may change the expiration date of Pending Orders before it is executed by cancelling it and placing a new Order.

3.13. Stop loss and Take Profit orders may be changed as long as they are higher in distance than a specific level (depending on the trading symbol).

3.14. For an open CFD position that the Client holds in relation to a particular Underlying Asset and then subsequently closes partially, this position will be closed on a First in, first out basis (commonly known as FIFO) in relation to the multiple trades undertaken to build the particular position.

3.15. The Company is under no obligation, unless otherwise agreed in the Agreement, to monitor or advise the Client on the status of any Transaction or to close out any Client's Open Positions. When the Company decides to do so, this will be done on a discretionary basis and will not be considered an undertaking of an obligation to continue. It is the Client's responsibility to be aware of their positions at all times.

#### **4. Quotes**

4.1. In the event that the Company is unable to proceed with an Order, with regard to price or size or other reason, depending in the type of the Client Account, the Company will send a re-quote. The number of re-quotes appears on the Platform.

4.2. The Quotes appearing on the Client's terminal are indicative and are based on the relevant Underlying Markets. However, if there is high volatility in the Underlying Market the execution of the Order may change and the Client may obtain the first price that will be available in the market and not the market they requested.

4.3. The Company provides Quotes by taking into account the Underlying Asset price, but this does not mean that these Quotes are within any specific percentage of the Underlying Asset price. When the relevant Underlying Market is closed, the Quotes provided by the Company will reflect what the Company thinks to be the current Bid and Ask price of the relevant Underlying Asset at that time. The Client acknowledges that such Quotes will be set by the Company at its absolute discretion.

## **5. Stop Loss Orders, Trailing Stop and Expert Advisor**

5.1. The Client agrees that trading operations using additional functions of the Client Trading Terminal such as Trailing Stop and/or Expert Advisor are executed completely under the Client's responsibility, as they depend directly on their trading terminal and the Company bears no responsibility whatsoever.

5.2. The Client agrees that placing a Stop Loss Order will not necessarily limit losses to the intended amounts, because market conditions may make it impossible to execute such an Order at the stipulated price and the Company bears no responsibility whatsoever.

5.3. The Client may add "Close at Loss" price or "Close at Profit" at any stage when the position is Open.

5.4. Upon the Client placing a limit Order, the Client authorises the Company to close the Transaction at the Close at Loss price or Close at Profit price, as applicable, and as agreed in the Order, without further instruction from or notification to the Client. The Company may close the Transaction when the price quoted by the Company on the Trading Platform equals or exceeds the price accepted by it for such an Order.

5.5. The Client acknowledges that the original price level set forth in a Close at Loss may be amended as the market on the Platform moves in their favour. Whilst their trailing Close at Loss is still in effect, the Client agrees that each change in the market by at least one hundredth of a percentage point (referred to as "Pips" on the Platform) in their favour shall constitute a new offer by the Client to raise the level of their trailing "Close at Loss" by one hundredth of one percentage point. Changes in a Pip will be rounded to the nearest absolute value in the Currency of the Client Account.

5.6. The Client acknowledges and agrees that due to market volatility and factors beyond the Company's control, the Company cannot guarantee that an Order will be executed at the level specified in the Client Order, for example, an Order may be closed at a worse price than as originally specified by the Client in such an Order. In such an event, the Company will close the Transaction at the next best price. For example, with respect to a Close at Loss, in the case of a Buy to close, the price of an Underlying Asset may suddenly increase above the Close at Loss price, without ever reaching such price. In the case of a Sell to close, the price of an Underlying Asset may suddenly decrease below the Close at Loss price, without ever reaching such price.

5.7. With respect to a Close at Profit where the price for an Underlying Asset moves to the Client's advantage (for example, if the price goes down as the Client Buys or the price goes up as the Client Sells), the Client agrees that the Company can pass such price improvement on to the Client.

5.8. Guaranteed Stop Orders are only available on certain Underlying Assets, as indicated in the product details tab. If the Client places a Guaranteed Stop on a new Order the Company guarantees that when its bid or offer quoted price reaches or goes beyond the close at loss price specified by the Client, it will close the position at exactly the price the Client specified in the Guarantee Stop Order. An open position can be closed in accordance with this Agreement prior to reaching the Guaranteed Stop Order price level.

5.9. A Guaranteed Stop Order is subject to the following additional conditions:

(a) A Guaranteed Stop Order can be requested only on a new Order and is only available on close at loss conditions;

(b) A Guaranteed Stop Order can be activated or edited only when there is trading and an eligible Underlying Asset is available on the Platform;

(c) Once a Guaranteed Stop Order is accepted by us it cannot be removed - only the price can be changed;

(d) A Guaranteed Stop Order must be placed a minimum distance (as determined by the Company) away from the current Underlying Asset price being quoted by the Company;

(e) As the Company guarantees to close out price, the spread is adjusted for the additional charge when placing the Guaranteed Stop Order. The adjusted spread is displayed in the Underlying Asset details tab for each eligible Product at the time the Guaranteed Stop Order is placed.

## **6. Expiry**

6.1. The Company may set an Expiry Date and time for a specific Underlying Asset. Such shall be displayed on the Platform. The Client agrees that it their responsibility to check for the Expiry Date and time.

6.2. If the Client does not close an open Position with respect to an Underlying Asset which has an Expiry Date, prior to such Expiry Date, the Open Position shall automatically close upon the Expiry Date. The Open Position shall close at a price which will be the last price quoted on the Platform immediately prior to the applicable Expiry Date and time.

6.3. The Client acknowledges that certain Underlying Markets may become volatile or illiquid without warning. In such circumstances it may not be possible to execute Client Orders, particularly in the period shortly before an expiry.

## **7. Swaps / “Premium” – rollover interest**

7.1. Any Open Position at the end of the trading day or over the weekend, shall automatically be rolled over to the next business day to avoid an automatic close and settlement of the Transaction. The Client acknowledges that when rolling such Transactions to the next business day, a Swap will be either added or subtracted from their Client Account with respect to such Open Position. Information concerning the Swap for each Underlying Asset is displayed on the Platform. In deciding whether to open a position, the Client acknowledges that they are aware of the Swap.

7.2. The Swap is charged daily on the Client Account. The operation is conducted at 22:00 (21:00 DST) (GMT time) and can take several minutes.

7.3. The Client authorises the Company to add or subtract the Swaps fees to or from the Client Account for any open Transactions that have accrued such a fee, in accordance with the applicable rate thereto, each day at the time of collection specified on the Platform for each Underlying Asset, as applicable.

7.4. The Company has the right to amend in its discretion from time-to-time the calculation days or percentages of Swaps. Such changes shall be affected on the Platform and/or the Website and the Client is responsible to check for updates regularly.

## **8. Spreads**

8.1. All CFDs available with the Company have spreads which appear on the Platform and/or the Website. The Company has the right to amend its spreads in its discretion from time to time. Such changes shall be affected on the Platform and/or the Website and the Client is responsible to check for updates regularly.

## **9. Margin Requirements**

9.1. The Client shall provide and maintain the Initial Margin and/or Hedged Margin in such limits as the Company, at its sole discretion and in line with the ASIC Order, may determine at any time under the Contract Specifications for each type of CFD.

9.2. It is the Client’s responsibility to ensure that they understand how Margin requirements are calculated.

9.3. Unless a Force Majeure Event has occurred, the Company has the right to change the Margin requirements, giving to the Client ten (10) Business Days Written Notice prior to these amendments for open positions. For new positions the Company may amend the Margin Requirements with one (1) Business Day’s Written Notice. All changes shall be affected on the Platform and/or the Website and the Client is responsible to check for updates.

9.4. The Company has the right to change Margin requirements without prior notice to the Client in the case of Force Majeure Event. In this situation the



Company has the right to apply new Margin requirements to the new positions and to the positions which are already open.

9.5. For avoidance of doubt, the Company will ensure that the Margin requirements are in line with the ASIC Order and has no discretion to lower Margin requirements below the level mandated by the ASIC Order.

9.6. Without prejudice to clause 13.1 of the Client Agreement, the Company has the right to close and or limit the size of Client open positions (New or Gross) and to refuse Client orders to establish new positions in any of the following cases:

- (a) The value of Client collateral falls below the minimum margin requirement.
- (b) At any time, the net equity of the Client Account is less than the higher of the amount required by the ASIC Order (the aggregate close out protection amount) or that required by the Company, to be held in the Client Account for the Client's Open Positions at that time that are connected to the Client Account.
- (c) The Company makes a Margin Call and the Client fails to meet it.

9.7. The Company may make Margin Calls to the Client automatically via the Platform when the Margin in their Client Account has reached a certain percentage. When the Platform warns the Client that it reached a certain percentage of the Margin in the Client Account, the Client should take any or all of the three options to deal with the situation:

- (a) Limit their exposure (close trades); or
- (b) Hedge their positions (open counter positions to the ones they have right now) while reevaluating the situation; or
- (c) Deposit more money in their Client Account.

The Client is required to log-in to the Platform on a daily basis when they have open positions to ensure they receive notification of any such Margin Calls. It is the Client's sole responsibility to monitor and manage their open positions and exposures, and ensure Margin calls are met as required. Where the Client has not checked the trading platform for Margin call notifications, and so has not met them in a timely manner, all margined positions will be closed out by the Company, without further reference to the Client;

9.8. If the Client fails to take action according to clause 9.7 or when the Client reaches 50% of the Margin in the Client Account, their positions will start closing automatically (Stop Out level of 50%) starting with the most losing Order and the Company has the right to refuse any new Orders. The Company is required to take this action as a consequence of the ASIC Order.

9.9. Margin shall be paid in monetary funds in the Currency of the Client Account. Should the client deposit money in a different currency the Company shall make a conversion into the Currency of the Client Account according to clause 18 of the Client Agreement.



9.10. The Client undertakes neither to create nor to have outstanding any security interest whatsoever over, nor to agree to assign or transfer, any of the Margin transferred to the Company.

Termination takes place. It is the Client's responsibility to ensure the required level of Margin exists for each Client Account separately.

## **10. Negative Balance Protection**

10.1. If the Client, being a Retail Client for the purposes of this clause 10, incurs a liability through trading CFDs, our recourse is limited to the money in the Client's Client Account, whether;

- (a) deposited by the Client; or
- (b) paid into the Client Account by the CFD issuer in relation to dealing in a CFD by the Client; or
- (c) received or deposited into the Client Account, irrespective of whether this was associated with CFD trading.

## **11. Deal Protection Feature**

By enabling the feature "Deal Protection", the client agrees to the following conditions which are applicable upon clicking the SELL or BUY button.

11.1 The fee paid for the Deal protection feature is non-refundable.

11.2 Premium fee cannot be more than the available balance.

11.3 The premium fee paid only covers the duration specified when the deal was opened and cannot be extended.

11.4 The premium fee calculation is based on the realised volatility of the selected product.

11.5 Deal protection cover cannot be renewed and/or amended once it is expired or exercised.

11.6 The client must choose one of the following trade time (hereinafter referred to as "expiry time"):

- a. 1 hour
- b. 3 hours
- c. 6 hours

11.7 The above mentioned three different expiry times will vary on their charges.

11.8 The Deal protection choices may vary based on instrument selected.

11.9 A deal covered with Deal protection can be closed at any time before the expiration time.

11.10 A deal will end at one of the following occasions and/or events, except if any unauthorized activity is observed:

- a) "Closing Deal" initiated by the client;
- b) Margin Call.

- c) Stop loss
- d) Take Profit

11.11 A deal will be cancelled if closed for any reason, at a negative P&L while it is covered by Deal protection feature. This includes if the deal is closed by a Stop Loss.

11.12 If a deal is charged a rolling fee, this fee will not be refunded if the deal is cancelled with Deal protection.

11.13 Deal protection can only be used from the Xtrade trading platform.

11.14 Deal protection can only be purchased at the time the deal is opened.

11.15 Deal protection and/or cancellation cover cannot be transferred to other deals and/or to other accounts.

11.16 When a deal is closed before the expiration of Deal protection, the system shall refund 100% from the loss of the specific deal and this amount will be added to the balance of the account.

11.17 Deal protection is available for demo trading and live trading.

11.18 The Company retains the right to disable the feature at its discretion at any time without prior notice.

At any time, without prejudice to the Company's right, the Company retains the right to amend these terms and conditions.