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## 1. Interpretation

In this Agreement, unless a contrary intention appears:

- 1.1 “Account”** means your account established with us in accordance with clause 6.1 and includes an Online Trading Account;
- “Account Application”** means the form entitled “Client Application Form” that you must complete in order to open an Account;
- “Account Holder”** means the person(s) in whose name the Account is held, and where there is more than one joint Account Holder means all or any of them as the context requires;
- “Advising Participant”** means any person that is so designated by NZX and includes OMF;
- “Advisor”** means a person who may provide advice to you in relation to Financial Products and who is designated and approved by NZX as an NZX Advisor;
- “Agreement”** means the agreement constituted by the Account Application completed by you (including the Risk Disclosure Statement), these General Terms and Conditions, any amendment made in accordance with these General Terms and Conditions, and any other written agreement between you and us which we agree forms part of this Agreement;
- “AIL”** means approved issuer levy;
- “Applicable Securities Law”** means the Financial Markets Conduct Act 2013, the Financial Markets Conduct Regulations 2014, the Financial Advisers (Custodians of FMCA Securities) Regulations 2014, the Securities Act 1978, the Securities Regulations 2009, the Securities Markets Act 1988, the Futures Industry (Client Funds) Regulations 1990, the Financial Advisers Act 2008, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, the Anti-Money Laundering and Countering of Financing of Terrorism Act 2009, the Financial Transactions Reporting Act 1996, the Reserve Bank of New Zealand Act 1989, and the Companies Act 1993, as that legislation relates to us, and any other legislation to the extent applicable to Financial Products, and the Exchange Rules (including where any repealed legislation continues to apply during any applicable transition period);
- “ASX”** means the Australian Stock Exchange;
- “Authorisation Code”** or **“FIN”** means an alphanumeric identifier issued to a holder of Securities by NZX, an issuer listed on an Exchange, or a Securities registry for such an issuer, that provides authority to access the shareholders account at the registry;
- “Authorised Hedging Activity”** has the meaning given to that term in regulation 238(1) of the Financial Markets Conduct Regulations 2014;

**“Authorised Person”** means a person, who is not an Account Holder, who is authorised (including, without limitation, by power of attorney) to act on your behalf on matters in connection with the Account, and who is either named as Authorised Person in the Account Application or advised to be an Authorised Person in writing to us by you from time to time;

**“BaNCS”** means the TCS BaNCS system for the matching, clearing, settlement and registration of Trades in Securities on NZX markets;

**“Bought Option”** means an Option purchased by you pursuant to this Agreement;

**“Broker”** means:

- a. in respect of any Securities Traded on an NZX Exchange, the Securities Trading Participant;
- b. in respect of any Contract on an NZX Exchange, the F&O Executing Participant; and
- c. in respect of any Financial Products Traded Off-Exchange, any other broker with whom we may from time to time enter into a trading or broking agreement for the facilitation and performance of Trades in such Financial Products;

**“Business Day”** means a day (other than a Saturday or Sunday or public holiday) on which trading banks and foreign exchange markets are or will be open in New Zealand and NZX is open for processing settlement transactions;

**“C&S Entities”** means NZC, New Zealand Depository Limited, New Zealand Depository Nominee Limited (and any other person appointed by New Zealand Depository as its nominee under the Depository Rules), New Zealand Clearing and Depository Corporation Limited and NZX;

**“C&S Rules”** means the Clearing and Settlement Rules of NZC, or the equivalent rules of a relevant F&O Exchange, as amended from time to time;

**“Call Option”** gives its buyer the right, exercisable at any time until the Expiry Date, to require the seller of the Option to enter into a Contract with the buyer, whereby the seller agrees to sell a given amount of the Underlying Asset at the Strike Price of the Option, for delivery on the Value Date of the Contract created by the exercise of the Option;

**“CFD Contract”** or **“CFD”** means a Contract which is a Contract For Difference by reference to fluctuations in the price of the relevant Underlying Asset;

**“Clearing Participant”** means a person that NZC has allowed to be a clearing participant in the clearing house operated by NZC, or which operates in the same role in relation to a relevant F&O Exchange, in accordance with the C&S Rules;

**“Client Acknowledgement”** means the client acknowledgement incorporated in the Application Form;

**“Client Bank Account”** has the meaning given in the Futures Industry (Client Funds) Regulations 1990;

**“Client Equity Trust Account”** means an account held by us or our Securities Trading Participant that has the meaning given in section 77P of the Financial Advisers Act 2008;

**“Contract”** means a derivative as defined in section 8(4) of the Financial Markets Conduct Act 2013 and includes an FX Position, an Option and a CFD (and, to be clear is not limited by the definition of the same term in the NZX Derivatives Market Rules);

**“Contract Notes”** means, in respect of any Trade executed on an Exchange, written confirmation of that Trade issued to you in accordance with clause 6.7;

**“Corporation”** includes a body corporate, association (whether incorporated or not), governmental, semi-governmental or local authority or agency;

**“CSN”** or **“Common Shareholder Number”** means, in respect of any BaNCS-Traded Securities a unique alphanumeric identifier that identifies you as a Security holder on all Securities registries and to NZX;

**“Dealing”** has the meaning given to that term by section 6(1) of the Financial Markets Conduct Act 2013 and “deal” has the corresponding meaning;

**“Deal Confirmation”** means, in respect of any Contract, confirmation of that Contract issued to you in accordance with clause 2.5;

**“Debt Security”** means a debt security as defined in section 8(1) of the Financial Markets Conduct Act 2013 (and includes a debt security as defined in the NZX Participant Rules);

**“Default Event”** means any event described in clause 9.1;

**“Depository Entities”** means New Zealand Depository Limited, New Zealand Depository Nominee Limited (or any other person appointed by New Zealand Depository as its nominee under the Depository Rules);

**“Depository Participant”** means a person that New Zealand Depository Limited has designated as such under the Depository Rules;

**“Depository Rules”** means the Depository Rules of New Zealand Depository Limited, or in respect of any relevant F&O Exchange, as amended from time to time;

**“Derivatives Market”** means the derivatives market operated by NZX and conducted in accordance with the NZX Derivatives Market Rules;

**“Derivatives Trust Account”** means a “trust account” as defined in, and for the purposes of, regulations 238

to 250 of the Financial Markets Conduct Regulations 2014 (but includes a Client Bank Account during any applicable transitional period);

**“Disclosure Statement”** means a disclosure statement which we are required to give you by law (for example, under the Financial Advisers Act 2008 and the NZX Derivatives Market Rules) or which we elect to give you in relation to our services, and includes the Risk Disclosure Statement;

**“Discretionary Account”** means an Account for which you have authorised us to buy and/or sell Securities and/or Contracts without prior reference to you;

**“Equity Security”** means an equity security as defined in section 8(2) of the Financial Markets Conduct Act 2013 (and includes an equity security as defined in the NZX Participant Rules);

**“Excess Variation Margin”** means the amount of your Variation Margin plus your Unrealised Profits minus your Unrealised Losses at that time;

**“Exchange”** means a recognised exchange on which Financial Products are Traded (including, in respect of Contracts, an “F&O Exchange” as defined by the NZX Derivatives Market Rules);

**“Exchange Rules”** means the NZX Derivatives Market Rules, the NZX Participant Rules, the NZX FSM Market Rules, the C&S Rules, the Depository Rules, or any of them as the context may require;

**“Expiry Date”** in relation to an Option, is the last day upon which the Option may be exercised;

**“F&O Exchange”** means a market other than the Derivatives Market for trading Contracts which is recognised by NZX and as specified by NZX from time to time;

**“F&O Executing Participant”** means, in respect of an F&O Order, one of:

- a. Interactive Brokers LLC;
- b. Deutsche Bank AG;
- c. Credit Suisse AG; or
- d. any person who is authorised by a F&O Exchange to directly enter F&O Orders in that F&O Exchange, as the context requires;

**“F&O Order”** means an order to buy or sell a Contract placed by a Participant with a F&O Executing Participant of the relevant F&O Exchange for, or on behalf of, a client as a result of instructions received by that Participant from that client;

**“Financial Product”** means a Contract or Security entered into or Traded pursuant to this Agreement;

**“FSM”** means the Fonterra Shareholders’ Market operated by NZX and conducted in accordance with the NZX FSM Rules;

**“FX Position”** means a foreign exchange transaction entered into by you pursuant to this Agreement under which the parties agree to exchange an agreed amount of one currency for an agreed amount of another currency for settlement on the Value Date (and, for the avoidance of doubt, either agreed amount may be nil);

**“General Terms and Conditions”** means these terms and conditions (as amended from time to time);

**“Initial Margin”** means an amount required to be deposited by you with us under clause 4.1(c), including any increase arising under clause 4.1(d) (ii);

**“Insolvent”** means insolvent (or unable to pay indebtedness as it falls due), bankrupt, in liquidation, receivership or statutory management, under administration or reconstruction, struck off or removed from the register under the Companies Act 1993, wound up, dissolved, subject to any assignment for the benefit of creditors or subject to any arrangement or compromise with creditors, or any equivalent status or subject to any equivalent process in any jurisdiction and “insolvency” has the corresponding meaning;

**“Logon ID”** means, collectively, your identification number and password for using the Site and Online Trading facilities;

**“Managed Investment Product”** means a managed investment product as defined in section 8(3) of the Financial Markets Conduct Act 2013;

**“Margin”** means Initial Margin or Variation Margin or both;

**“Margin Call”** means any notice for further Margin given in accordance with clause 4.1(b);

**“Market Rate”** means at any time the rate of exchange which is quoted to us by a Participant dealing in the Relevant Market;

**“NRWT”** means Non-Resident Withholding Tax;

**“NZC”** means New Zealand Clearing Limited;

**“NZX”** means NZX Limited;

**“NZX Derivative Contract”** means any Contract which is entered into, acquired and/or disposed of on the Derivatives Market and conducted in accordance with the NZX Derivatives Markets Rules;

**“NZX Derivatives Market Rules”** means the NZX Derivatives Market Rules published by NZX and any procedures relating to the operation of the Derivatives Market and the activities of Participants, as amended from time to time;

**“NZX FSM Market Rules”** means the FSM Rules published by NZX and any procedures relating to the operation of the FSM and the activities of Participants in relation to the FSM, as amended from time to time;

**“NZX Participant Rules”** means the NZX Participant

Rules published by NZX and any procedures relating to the operation of NZX’s Securities markets and the activities of Participants under the NZX Participant Rules, as amended from time to time;

**“Off-Exchange”** means a market for trading a Contract when that Contract is not Traded through the Derivatives Market or a F&O Exchange, as defined by the NZX Derivatives Market Rules;

**“Online Trading”** means use of a computer, smartphone, tablet or any other comparable electronic device to connect you to us via the internet and carry out a range of transactions and obtain information about your Account;

**“Online Trading Account”** means an Account established with us in accordance with clause 11.2;

**“Option”** means a Call Option or a Put Option bought or sold pursuant to this Agreement;

**“Participant”** means a Trading Participant, an Advising Participant, an Advisor, or any other class of participant as defined in the relevant Exchange Rules;

**“Penny Stock”** means (but is not limited to) a security issued by a small company that is of low value or is a security issued by a private company where there is no active trading market. They may be exchange traded or over-the-counter securities. Penny Stocks are also Equity Securities.

**“Person”** includes any individual, firm, limited partnership, company, corporation, association of persons (corporate or not), trust, government agency (in each case whether or not having separate legal personality);

**“Prescribed Person”** has the same meaning as in the NZX Participant Rules, which are available at [www.nzx.com](http://www.nzx.com) and means:

- a. a Market Participant
- b. a director, a partner, a Managing Principal or Responsible Executive, shareholder or Employee of a Market Participant (“the restricted group”), and includes:
  - i. any one of the restricted group acting under a discretion conferred by any of the persons referred in paragraphs (c) to (e);
  - ii. any person over whom any one of the restricted group has influence for that person’s investment decisions except in the ordinary course of a client advising relationship; and
  - iii. any person where any one of the restricted group has direct or indirect beneficial interest in that person’s property;
- c. the Immediate Family of a person referred to in paragraphs (a) to (b);

- d. a Family Company and a Family Trust of a person referred to in paragraphs (a) to (b); and
- e. where a Market Participant or a person referred to in paragraphs (a) to (b) is a body corporate, any body corporate or other entity controlled by that body corporate, and for the purpose of this definition, shareholders of a Market Participant will not be Prescribed Persons, if that Market Participant is an Issuer.

**“Premium”** is the price of an Option as notified by us;

**“Put Option”** gives its buyer the right, exercisable at any time until the Expiry Date, to require the seller of the Option to enter into a contract with the buyer, whereby the seller agrees to buy a given amount of the Underlying Asset at the Strike Price of the Option, for delivery on the Value Date of the contract created by the exercise of the Option;

**“Realised Loss”** and **“Realised Profit”** each have the meaning given to those terms in clause 7.3;

**“Regulatory Authority”** includes the Financial Markets Authority, the Serious Fraud Office, and any other state or government and any governmental, semi-governmental, judicial, statutory, monetary, accounting or regulatory entity, authority, body or agency or any other person charged with the administration of any law or directive, the regulation of or supervision of dealing in Financial Products;

**“Relevant Clearing Participant”** means, in relation to a Trading Participant and a Trade or a Contract, means the person identified in the Trading System as the Clearing Participant for the purposes of the clearing and settlement of that Trade for that Trading Participant;

**“Relevant Market”** means:

- a. for FX Positions, the interbank foreign exchange market; and
- b. for all other Contracts, the relevant market on which the Underlying Asset is traded.

**“Risk Disclosure Statement”** means the risk disclosure statement incorporated in the Application Form;

**“Securities Trading Participant”** means First NZ Capital Securities Limited or any other Trading Participant appointed by us in relation to Securities from time to time;

**“Security”** or **“Securities”** means:

- a. any Equity Security;
- b. any Debt Security;
- c. any Managed Investment Product;
- d. any other “security” as defined under the Financial Markets Conduct Act 2013; and
- e. any other “security” as defined under the Securities

Act 1978, during any applicable transition period, but excludes a Contract;

**“Security Interest”** has the meaning given to that term in section 17 of the Personal Property Securities Act 1999;

**“Site”** means the internet website [www.omf.co.nz](http://www.omf.co.nz);

**“Short Sale”** and **“Short Selling”** have the meaning given to them in the NZX Participant Rules;

**“Sold Option”** means an Option sold by you pursuant to this Agreement;

**“Spot Date”** means the date on which a Contract falls due for settlement in accordance with prevailing conventions in the Relevant Market where the Contract is entered into for spot delivery;

**“Strike Price”** means the rate of exchange at which an Option may be exercised;

**“Trade”** means any transaction entered into for the sale or purchase of Securities or Contracts and includes Trade as defined in the NZX Participant Rules and the NZX Derivatives Market Rules;

**“Trading Participant”** means any person designated and approved by NZX or another relevant exchange as a trading participant;

**“Trading System”** means any electronic dealing, trading, order routing or other automated system linking you to us, any Exchange or its clearing house;

**“Underlying Asset”** means, in relation to any Contract, the underlying commodity, asset, Financial Product, or security the subject of the Contract;

**“Unrealised Losses”** and **“Unrealised Profits”** each have the meaning given to those terms in clause 2.11;

**“Value Date”** means the date, agreed at the time a Contract is entered into, to be the date of settlement of the Contract (specified in the Deal Confirmation) and in the case of a Contract created on exercise of an Option, two Business Days after the Option is exercised or such other date agreed at that time;

**“Variation Margin”** means an amount deposited by you with us under clause 4.1(b)(ii) including, in respect of Contracts, any increase or reduction therein arising under clause 7 on settlement of a closed out Contract;

**“Website Terms and Conditions”** means the terms and conditions entitled “Website Terms and Conditions” which may be downloaded from [www.omf.co.nz](http://www.omf.co.nz), as may be updated from time to time;

**“you”** or **“your”** means the Account Holder;

**“we”, “us”** or **“our”** means OM Financial Limited (“OMF”);

1.2 Except as otherwise defined in this Agreement all terms used in this Agreement which are defined in the Applicable Securities Law will bear the same meaning



as they bear in the Applicable Securities Law, and in the event any term bears more than one meaning in the Applicable Securities Law, we will determine which of those meanings will apply in the particular circumstances;

- 1.3 the singular includes the plural and vice versa;
- 1.4 words importing a gender include every other gender;
- 1.5 headings are for convenience of reference only and will not affect the construction of this Agreement;
- 1.6 a reference to any party to this Agreement or any other agreement or to any person in this Agreement includes its successors and permitted assignees and transferees;
- 1.7 a reference to any legislation or rule includes any statutory regulations, rules, orders or Financial Products made or issued pursuant to that legislation or rule and any amendment to, or re-enactment or replacement of, that legislation or rule; and
- 1.8 a reference in the definition of "FX Position" and "Value Date" to an exchange of currency and settlement and in this Agreement to amounts to be received by you or provided by you under a Contract will be construed as if that Contract were to be unwound by delivery.

## 2. Derivatives, CFD and FX Trading

- 2.1 **Quotations:** You may, in relation to any Contract, request us to quote the price at which you may enter into a Contract with us and the Initial Margin required (if any) by nominating:
  - a. the amount of the Underlying Asset and the currency against which it is to be exchanged;
  - b. the Value Date or, in the case of any Option, the Expiry Date, of the Contract;
  - c. in the case of any Option, the Strike Price; and
  - d. in the case of any FX Position, whether you wish to take delivery under the Contract.
- 2.2 **Contract:** If the quote is acceptable to you, you may immediately upon receiving the quote, instruct us to arrange the entry by you of a Contract equivalent to that for which the quote was sought. Receipt by us of your instruction will constitute an offer by you to us to enter into such a Contract.
- 2.3 **No Obligation:** We are under no obligation to accept your offer to enter into a Contract, and in particular, we are not obliged to accept your offer to enter into a Contract:
  - a. if you have exceeded or would exceed a limit applying to you under clause 2.7; or
  - b. until we have received the Initial Margin and/or the Premium required in respect of that Contract in cleared funds.

2.4 **Initial Margin and Premium:** The Initial Margin required in respect of a Contract or the Premium required in respect of a Bought Option (if not already received from you by us) will be immediately due and payable upon our accepting your offer to enter into a Contract or buy or sell an Option.

2.5 **Deal Confirmation:** If we accept your offer to enter into a Contract, we will issue to you a confirmation of that Contract promptly after it has been entered into in the form of a Deal Confirmation, but failure by us to issue a Deal Confirmation will not prejudice or affect that Contract and we will not have any liability as a result of a failure to issue a Deal Confirmation. If we decide not to accept your offer to enter into a Contract, we will advise you of that decision promptly. Unless required by Applicable Securities Law, we will only issue Online Trading Deal Confirmations if requested by you at the time the order is placed.

2.6 **Verification:** You undertake to examine the terms of each Deal Confirmation immediately upon receipt and, unless you notify us within (48) forty-eight hours disputing the Contract, you agree that the contents of the Deal Confirmation, in the absence of manifest error, will be conclusive evidence of the executed Contract. Upon receipt within (48) forty-eight hours of written notice as to a disputed Contract, we will investigate the matters disputed and you will co-operate with us in good faith to resolve the dispute.

You will, notwithstanding any such dispute, continue to satisfy your obligation to pay Margin Calls made by us in respect of that Contract as if the details contained in the Deal Confirmation were correct and not the subject of dispute.

2.7 **Limits:** We may, in our absolute discretion, limit the value of any Contract you may enter into or have outstanding under this Agreement and may at any time by notice to you set a limit:

- a. beyond which if you wish to enter into any further Contracts you must seek and obtain credit approval from us; and
- b. beyond which you may not enter into any further Contracts whatsoever;

2.8 **Options:** You may exercise an Option by notice to us between the hours of 8.30am and 5.00pm (Auckland time) on any Business Day until the Expiry Date for the Option. The exercise of an Option will, subject to the terms of this Agreement, create the rights and obligations between the parties that constitute the Contract contemplated by the Option. We are under no obligation to accept the exercise of a Bought Option until we have received the Premium and brokerage required in respect of the Option in cleared funds. If we exercise a Sold Option, we will credit the Premium advised to your Account.

- 2.9 Execution of Orders:** You agree and give standing instructions that we may put any orders for Contracts entered into on your behalf to market at our discretion by:
- a. delaying execution of client orders;
  - b. delaying orders to facilitate Cross Transactions (as defined in the NZX Derivatives Market Rules), and you may override the above standing instructions at the time you instruct us to arrange the entry by you into a Contract.
- 2.10 Delivery:** You undertake to advise us of your intention to take delivery under the Contract at the time you offer to enter into, or exercise an Option in respect of, a Contract and you agree that should you fail to advise of such intention, we may, in our absolute discretion, only allow you to unwind that Contract in accordance with the provisions of clause 7 below. Any notice to take delivery will be irrevocable.
- 2.11 Revaluations:** We may at any time, by reference to the Market Rate, revalue all Contracts. Such revaluation will be effected in the following manner:
- a. for the purpose of this clause 2.11:
    - i. an Option created by the sale by you to us of a Call Option (“Sold Option”) will be treated as a Contract under which the amount of the Underlying Asset specified in the Call Option will be regarded as that amount sold at the Strike Price of the Call Option; and
    - ii. an Option created by the sale by you to us of a Put Option (“Sold Option”) will be treated as a Contract under which the amount of the Underlying Asset specified in the Put Option will be regarded as that amount bought at the Strike Price of the Put Option; and
    - iii. any other Option will be referred to as a “Bought Option”.
  - b. We will ascertain:
    - i. in relation to each Contract or Sold Option the amount of the Underlying Asset which could be purchased with the amount of the currency specified for the exchange at the prevailing Market Rate; or
    - ii. in relation to each Bought Option, the rate at which we would repurchase the Option;
  - c. if such amount:
    - i. is greater than the amount of the Underlying Asset under the Contract or Sold Option or greater than the original Premium paid for a Bought Option, then the difference will represent an Unrealised Profit; and
    - ii. is less than the amount of the Underlying Asset under the Contract or Sold Option or less than

the original Premium paid for a Bought Option, then the difference will represent an Unrealised Loss;

- iii. the sum of each Unrealised Profit will be the “Unrealised Profits” and the sum of each Unrealised Loss will be the “Unrealised Losses”.

### **3. Trading In Securities and NZX Derivative Contracts**

- 3.1 Information:** Without limiting clause 10.14, before instructing us to buy or sell any Securities under this Agreement you will provide to us:
- a. your Authorisation Code and CSN; and
  - b. such personal information as we may require (including your IRD number, bank account details and photographic identification) to confirm your identity in accordance with Applicable Securities Law.
- 3.2 Disclosure of Trading Arrangements with Securities Trading Participant:** We have entered or will enter into a trading agreement with the Securities Trading Participant for the facilitation and performance of Securities Trades by the Securities Trading Participant on our behalf, including Trades which we agree to enter into and effect on your behalf under this Agreement. We will be responsible for the giving of instructions on your behalf to the Securities Trading Participant and the Securities Trading Participant is authorised to accept and act on such instructions and you are responsible for those instructions. The Securities Trading Participant is responsible for Trading in Securities on your behalf in accordance with your instructions given by us. In giving instructions to the Securities Trading Participant on your behalf, we act as agent for you and not as agent for the Securities Trading Participant. We have no actual, implied or ostensible authority to speak or act in any manner on behalf of, or as agent for the Securities Trading Participant.
- 3.3 Disclosure of Trading Arrangements with F&O Executing Participant:** We have entered or will enter into a trading agreement with the F&O Executing Participant for the facilitation and performance of Contracts (excluding NZX Derivative Contracts) by the F&O Executing Participant on your behalf, including Trades which we agree to enter into and effect on your behalf under this Agreement. We will be responsible for the giving of instructions on your behalf to the F&O Executing Participant and the F&O Executing Participant is authorised to accept and act on such instructions and you are responsible for those instructions. The F&O Executing Participant is responsible for Trading in Contracts (excluding NZX Derivative Contracts) on your behalf in accordance with your instructions given by us. In giving instructions to the F&O Executing Participant on your behalf, we act as agent for you and not as agent



for the F&O Executing Participant. We have no actual, implied or ostensible authority to speak or act in any manner on behalf of, or as agent for the F&O Executing Participant.

**3.4 Trading in NZX Derivative Contracts:** We will be responsible for the facilitation and performance of Trades as the Trading Participant in respect of NZX Derivative Contracts, in accordance with the instructions given by you.

**3.5 Authorisation Code:** Your Authorisation Code will be retained by us in an encrypted format for use by us in entering into and effecting any Trade on your behalf under this Agreement, until such time as you instruct us to delete it (whereupon we will do so as soon as reasonably practicable). You authorise us to provide your Authorisation Code to each Trading Participant and for the Trading Participant to provide your Authorisation Code to NZC. You agree to the Trading Participant and NZC retaining your Authorisation Code on the condition that your Authorisation Code is encrypted. You acknowledge that we, each Trading Participant and NZC will have unlimited access to your Securities or Contracts if your Authorisation Code is retained by us, the Trading Participant and NZC. The risks associated with us, the Trading Participant and NZC retaining your Authorisation Code include (but are not limited to) our, the Trading Participant and NZC having unlimited access to your Securities or Contracts and the potential for unauthorised access to your Securities or Contracts. We undertake that we will at all times use reasonable endeavours to protect your Authorisation Code from unauthorised use and/or unauthorised access.

**3.6 Execution of Orders:** You agree and hereby give standing instructions that we may put any Trades entered into on your behalf to market at our discretion by:

- a. accumulating or bundling client Trades coming to market;
- b. delaying execution of client Trades;
- c. delaying Trades to satisfy Crossings (as defined in the NZX Participant Rules), and you may override the above standing instructions at the time a Trade is entered into.

**3.7 Purchase:** You may from time to time instruct us to purchase Securities on your behalf. Where you instruct us to purchase Securities, you must pay the purchase price for the Securities (together with all brokerage, fees and charges payable to us or any Broker) to us no later than the first Business Day after the date that Trade takes place. All Trades must be settled in the currency of the market in which the Trade takes place and you authorise us to effect any currency conversions necessary on settlement in accordance with clause 6.

**3.8 Deposit:** We are under no obligation to purchase Securities on your instructions until we have received

in cleared funds payment in accordance with clause 4 of any deposit we may require in order to cover the purchase price of the Securities (and all brokerage, fees and charges).

**3.9 Sale:** You may from time to time instruct us to sell Securities on your behalf. We may require you to complete and return to us a transfer form for those Securities before we undertake the Trade. Following valid transfer, the proceeds of the Trade will be released (after deducting our fees and charges) in accordance with your instructions. If you have requested payment of any money owed to you under this clause, we will deduct that money from your Account and pay it to a bank account in your name that we have recorded for you or in such other manner as may be agreed between you and us. If you have not requested payment of any money so owed to you, it will be retained in your Account.

**3.10 Failure to Settle:** If payment of the purchase price (together with all brokerage, fees and charges payable to us or any Broker) on any Trade is not made when due under clause 3.6, you agree to pay us default interest on the outstanding sum in accordance with clause 5.8. In addition, if by the settlement date for any Trade you have not delivered to us scrip, holder identification particulars, or any other information or payment, which you are obligated to provide us under this Agreement then at our option we may:

- a. register a financing statement at the Personal Property Securities Register over your Securities;
- b. take possession of your Securities;
- c. buy back or sell on your behalf any of the Securities subject to a Trade; or
- d. sell any other Securities in our control or possession.

**3.11 Penny Stocks:** Where you choose to Trade Penny Stocks, you accept and acknowledge that there is a risk that your account could be subject to online fraud by unauthorised personnel due to the nature of Penny Stocks. If you choose to Trade Penny Stocks with OMF, you agree that:

- a. you understand that there is a risk of online fraud when Trading Penny Stocks;
- b. you indemnify OMF for any loss in the event of fraud on your Account arising in connection with your choice to Trade in Penny Stocks.

## **4. Margins**

### **4.1 Deposits and Margins:**

You agree and acknowledge that:

- a. whilst holding an open position in a Contract or Trade (including any Short Selling of Securities by you) you must provide us with telephone contacts

through which you may be called (24) twenty-four hours a day;

- b. we may make a Margin Call or call for the provision of other security as we, in our absolute discretion, consider appropriate in connection with the obligations incurred by us in respect of Financial Products or Trades entered into for your Account, notwithstanding that the Trading Participant or the F&O Executing Participant (as the case may be) for the same Financial Products has already made a call for payment or the provision of other security in respect of those Financial Products. In particular (and without limiting the circumstances in which a Margin Call may be made):
  - i. before you will be permitted to enter into or Trade any Financial Product, you will be required to deposit with us in cleared funds as Initial Margin in accordance with clause 2 or clause 3 (as the case may be);
  - ii. before we make any Short Sale of Securities on your behalf, you will be required to deposit with us in cleared funds a sum no less than the minimum Margin cover required by the Exchange Rules (being, as at the date of this Agreement, a minimum of 15% of the contract price of the Short Sale), as an Initial Margin;
  - iii. if there is a rise in the market price of a Security while holding an open Share Sale position on such Security, you will be required to deposit with us in cleared funds a sum no less than the minimum additional Margin cover required by the Exchange Rules (being, as at the date of this Agreement, a minimum of 10% of the increase in market price for that Security), as a Variation Margin;
  - iv. where Securities are provided as Margin cover by you under this clause in connection with any Short Selling, you will be required to deposit with us in cleared funds further additional Margin cover as a Variation Margin if:
    - 1. those Securities provided by you are suspended, delisted, placed in receivership or liquidation or the issuer of those Securities has its operations in any way restricted, either by NZX or the issuer of that Security or by any legal process, to the extent that the Margin cover has been reduced by the deduction of those Securities; or
    - 2. there is a fall in the market price of those Securities provided by you, to the extent required to make up the shortfall; and
  - v. if, in respect of any Contract or Trade, your Unrealised Losses at any time exceed the sum of your Unrealised Profits, we may give notice requiring you to deposit with us in cleared funds
- as a Variation Margin cash in an amount equal to such excess;
- c. positions in an Online Trading Account may automatically be closed if the equity in your Online Trading Account has been reduced due to the unrealised losses on the open positions, and you may not be given any warning or receive any Margin Calls prior to the position(s) being closed;
- d. liability to pay an Initial Margin accrues at the time the Contract or Trade is executed (regardless of when the call is made) and liability to pay a Variation Margin accrues at the time the Variation Margin comes into existence (regardless of when or if a call is made);
- e. we have the right whenever in our discretion we consider it appropriate to:
  - i. increase or lower the Margin or deposit requirements or any other requirements for the payment of money or provision of security; or
  - ii. increase the Initial Margin requirements applicable in respect of any Contract or Trade,
  - iii. which once established, may apply to existing Contracts or Trades as well as to new Contracts or Trades affected by such change. We may at any time give notice requiring you to deposit with us cash in an amount equal to such an increase;
- f. if we make a Margin Call, you acknowledge that we may refuse any request by you to enter into any further Contracts or Trades (other than to close out any existing Contracts) until we have confirmed receipt of the Margin Call in cleared funds;
- g. the time by which you must pay any amount called or provide security is of the essence and if no other time is stipulated by us when making a call then you are required to pay the amounts or provide the relevant security within (24) twenty-four hours of the Margin deficit occurring or call for payment (or, where circumstances of unusual market volatility or liquidity subsist, such shorter period as we may in our absolute discretion determine), or if you are not incorporated, resident or domiciled in New Zealand, within (48) forty-eight hours;
- h. failure by you to pay any amount called or provide security at the time stipulated by us will be a Default Event;
- i. where a Margin Call is made on a Contract and the Margin Call has not been received in cleared funds, we may pay into your Derivatives Trust Account (as advance bearing interest and due and owing by you to us subject to the terms of this Agreement) (i) an amount of money not less than the lesser of your liability under the Margin Call and the amount which we would be obliged to call on you at the

date the Margin Call was made, and (ii) any amount arising as a result of debit balances from realised losses or otherwise. We may withdraw those sums in accordance with Applicable Securities Law including the NZX Derivatives Markets Rules;

- j. you are responsible to pay in cash any deficit owing to us after closure and that if you default in payment of such deficit we may realise any securities held by us and apply the proceeds against that deficiency;
- k. you will only be entitled to a refund of a Margin, or part of a Margin, once your obligations under this Agreement are satisfied in full. We may, in our sole discretion, allow you to withdraw from your Account any Excess Variation Margin;
- l. we will call not less than the minimum deposit required by the relevant Exchange. Any decision by us as to the amount and the time for payment of a Margin Call will be final and binding on you;
- m. your liability in respect of Margin Calls is not limited to the amount, if any, deposited with us.

## 5. Payments

**5.1 Payments:** You must pay all transaction charges, fees, Margins, Premiums, settlements, interest and any other amounts due under this Agreement on demand by us in cleared funds, and in such currency as we may require or determine, or otherwise as required by the terms of this Agreement. A notice signed by any one of our directors, managers or other authorised employees, stating the amount of moneys due and payable by you will be prima facie evidence of the same.

**5.2 Authority:** You hereby irrevocably authorise us to make payments to our own account, from your funds held in a Derivatives Trust Account or Client Equity Trust Account of amounts due and payable from you to us following the settlement of any Trade or the close out or determination of any Contract (as the case may be), and any other amounts due and payable to us under this Agreement.

**5.3 No Deduction:** All payments by you under this Agreement are to be made without any set-off by you, counterclaim or condition and without any deduction or withholding for any tax or any other reason unless the deduction or withholding is required by applicable law. If you are required to make a deduction or withholding in respect of tax from any payment to be made or if we are required to pay any tax in respect of any payment made in relation to this Agreement at your request then you indemnify us against that tax and agree to pay to us an additional amount to ensure we receive a net amount (after payment of any such deductions) that is equal to the full amount we would have received had a deduction or withholding or payment of tax not been made.

**5.4 Interest Payable:** We are entitled to interest payable daily by you in respect of a borrowing by you of the currency to be received by you under a Contract from the Value Date of the Contract until the date that the Contract is closed out (or, in the case of any FX Position, unwound by delivery) in accordance with this Agreement, at the rate set by us from time to time.

**5.5 Interest Received:** You may be entitled to interest payable daily by us in respect of a borrowing by us from you of the currency to be received by you under a Contract from the Value Date of the Contract until the date that the Contract is closed out (or, in the case of any FX Position, unwound by delivery) in accordance with this Agreement, at the rate set by us from time to time.

**5.6 Payment of Interest:** Interest payments will be settled by us on each day by debiting or crediting your Account with the daily interest rate differential between the amount of interest payable by you under the Contract and the amount of interest payable by us to you under the Contract. In the event that there is insufficient Excess Variation Margin in your Account to meet the amount of the daily interest rate differential (if any) payable by you under the Contract, you acknowledge that any amount due under this clause is a debt due and owing by you to us in respect of which default interest will accrue and be payable in accordance with clause 5.8.

**5.7 Margin:** In debiting or crediting interest to your Account, we may charge or pay you interest at a rate different to the interest rate which we are charged or paid on equivalent borrowings of foreign currency by a bank and may retain the difference.

**5.8 Default Interest:** You agree to pay default interest and we are entitled to charge against your Account interest (before as well as after judgement) on any amount due to be paid to us by you under this Agreement, from the date the amount becomes due (irrespective of any grace period) until the date the amount together with interest under this clause is paid in full. Default interest will be calculated daily and compounded monthly at our standard rates as notified to you by us (including by publication on the Site or in a Disclosure Statement) from time to time.

**5.9 Commission, Fees and Expenses:** You agree to pay to us:

- a. commissions, brokerages, fees, taxes (both direct and indirect, other than tax on our income) and charges in connection with dealing in Financial Products for you at such rates as we determine from time to time and notify to you in writing from time to time;
- b. any charges, levies or penalties imposed by any agent, another broker or by NZX or any other exchange including (but not limited to) charges, levies or penalties imposed as a result of late or non-delivery of scrip, holder identification particulars or

any other information or requirements;

- c. all amounts payable as result of holding a Contract past value date, rolling a Contract, or making or taking delivery or making a cash adjustment in accordance with the terms of a Contract or Trade; and
- d. all amounts incurred by us as a result of your default under the terms of this Agreement (including without limiting the generality of the foregoing all legal costs and expenses on a solicitor/client basis). The Securities Trading Participant and the F&O Executing Participant may pay to us and you agree that we may retain a proportion of the commission or other fees paid by you to them in respect of Financial Products Traded on your behalf.

**5.10 Deductions:** If we are required by applicable law to make a deduction or withholding for any tax from any amount payable to you by us under this Agreement then we will notify you of this and pay the amount required to be deducted, withheld or paid to the relevant authority before the date on which penalties attach to that payment.

**5.11 Approved issuer levy:** Where you are an overseas tax resident without a New Zealand fixed establishment and you have elected in your Account Application for AIL to be paid in relation to interest payments we will:

- a. register your Agreement with Inland Revenue;
- b. pay AIL to Inland Revenue as required by applicable law; and
- c. be entitled to deduct from the interest payments amounts equal to the AIL paid by us.

## 6. Accounts

**6.1 Segregated accounts:** You agree and acknowledge that all money and property deposited with us or received by us on your behalf will be segregated by us in accordance with Applicable Securities Law. Upon entry into this Agreement, we will establish an Account in your name. Where two or more natural persons are named as the Account Holder the Account will be established in their names as joint Account Holders unless they specifically advise otherwise.

**6.2 Sub-accounts:** We may split your Account into different sub-accounts denominated in different currencies and references in this Agreement to your Account will be taken to include references to all such sub-accounts or the relevant sub-accounts (as the case requires).

**6.3 Acknowledgements:** You agree and acknowledge that:

- a. your moneys and the moneys of our other clients will be combined and deposited by us in a Derivatives Trust Account;

- b. your moneys received will be held in a Derivatives Trust Account and are assumed by us to be held in the course of our business dealing in Contracts;
- c. where you expressly advise us either in writing or verbally, that your moneys are not for use in the course of our business dealing in Contracts, you agree that your moneys will be combined and deposited by us in a Client Equity Trust Account; unless otherwise agreed in writing, we are entitled to any interest on money and property of yours deposited with us and segregated and invested by us;
- d. in the case of a Discretionary Account only, you authorise us to Trade in Contracts on the F&O Exchange or on any other exchange or market, at our absolute discretion and without further reference to, or approval by, you;
- e. you may at any time by written notice instruct us to transfer any open position from a Discretionary Account to a non-Discretionary Account of yours; and
- f. giving instructions pursuant to clause 6.3(d) above may result in losses to you.

**6.4 Records:** In accordance with Applicable Securities Law, our accounting records contain entries from day to day of all client money and property received by or in the possession or control of us. Records of all payments and disbursements of client money and property are also maintained. You can access information from these records in respect of your transactions, client money and client property through your Account on the Site. Our accounting records are independently audited by our auditors and subject to inspection by NZX, the Financial Markets Authority and any other regulatory body as required by law.

**6.5 Application:** We may at any time without prior notice to you, in order to discharge your liabilities (actual or contingent) under this Agreement, any Contract or any Trade entered into on your behalf:

- a. apply all or part of any currency held by us in your Account and any currency held by us for the purpose of your dealings in Financial Products in such order or manner as we think fit, whether such liabilities are actual or contingent, primary or collateral, joint or several;
- b. combine or consolidate all or any of your accounts with us (and in so doing may set off any debit and credit balances); and
- c. convert at a commercial rate currency held by us in your Account into a currency or currencies in which payments are due from you to us and without us being responsible to you for any loss resulting from such conversion.

**6.6 Currency:** In dealing in Financial Products on your

behalf, we may require the buying or selling of foreign currency and the exchange rate which will apply is the exchange rate applicable at the time your money is exchanged by our bankers or the clearing house (as the case may be), unless otherwise agreed in writing between you and us.

- 6.7 Contract Notes:** We will issue to you a written confirmation of each Trade and Contract promptly after it has been entered into in the form of a Contract Note, but failure by us to issue a Contract Note will not prejudice or affect that Trade or Contract (as the case may be) and we will not have any liability to you as a result of a failure to issue a Contract Note. You agree that Contract Notes for Trades and Contracts may be dispatched or provided to you electronically (including through your Account on the Site), in accordance with Applicable Securities Law.
- 6.8 Clearing and Settlement Requirements under the Exchange Rules:** You acknowledge and agree that:
- a. The Securities Trading Participant will carry out the clearing and settlement for all Securities Trades, we will act as Trading Participant and Clearing Participant for all NZX Derivative Contracts and the F&O Executing Participant will act as Trading Participant and Clearing Participant for Contracts on any F&O Exchange, in each case executed for you by us, in accordance with the C&S Rules and the Depository Rules. The main telephone number for the Securities Trading Participant is +64 (04) 474 4400 and its main business address is 14th Floor, 171 Featherston Street, Wellington 6140, New Zealand.
  - b. Under the C&S Rules, your rights and obligations under each Trade or Contract will be novated at the time of Trade to us, the Securities Trading Participant or the F&O Executing Participant and us, the Securities Trading Participant or the F&O Executing Participant will become the principal in the resulting settlement transaction and take on all of your rights and obligations for that settlement transaction (and you agree to this novation pursuant to and on the terms and conditions provided for under the C&S Rules to the full extent required by law).
  - c. Your rights and obligations in relation to the clearing and settlement of any settlement transaction for a Trade or Contract will be limited to rights against, and obligations to, the Securities Trading Participant or us (in the case of any Trade) and the F&O Executing Participant or us (in the case of any Contract) and you will not have any rights against, or obligations to, the Securities Trading Participant or the F&O Executing Participant (in their capacity as the Relevant Clearing Participant in relation to the clearing and settlement of that settlement transaction). The liability of the C&S Entities to any person (including you) is limited or excluded by, and is subject to, the provisions of section 8 of the C&S

Rules and section 9 of the Depository Rules, and the C&S Entities will be entitled to rely on this clause for the purposes of the Contract and Commercial Law Act 2017. You may not assert against any of the Depository Entities or any person acting on their behalf any proprietary, equitable, contingent, future or partial interest in any funds or Securities held in a Settlement Account or Depository Account (as those terms are defined in the Depository Rules).

- d. You grant to us at all times in relation to any Contracts full and exclusive rights, power and authority to act in all our activities relating to us (in relation to NZX Derivative Contracts) or the F&O Executing Participant to your exclusion, including the authority to bind you under any relevant clearing and settlement agreement and the C&S Rules, and to authorise the holding of, and dealings with, your funds in accordance with the Depository Rules.
  - e. You grant to the Securities Trading Participant at all times full and exclusive rights, power and authority to bind you under the C&S Rules and to authorise the application of funds held for you and your Securities:
    - i. for the purposes of the settlement of, or reimbursement in respect of the settlement of the purchase of Securities for you;
    - ii. in payment of the sale price for your Securities transferred into a Transfer Account (as defined in the Depository Rules);
    - iii. in payment to any other person (including us) for whom funds have been held in a segregated client funds account; and
    - iv. in payment of brokerage and other charges properly payable to us for transactions under paragraphs (i) and (ii) above.
- 6.9 NZX Depository Accounts:** Where any of your funds or Securities are held by us in an account in our name or the name of the Securities Trading Participant or the F&O Executing Participant with the Depository Entities, under the Depository Rules the Depository Entities must recognise us, the Securities Trading Participant or the F&O Executing Participant as the sole beneficial owner of funds or Securities held in that account and the Depository Entities must not (except as ordered by a court of competent jurisdiction or as is otherwise expressly provided for in the Depository Rules) be liable for, bound by or compelled in any way to:
- a. see to the execution of any trust or equity affecting the ownership of, or incidental rights to, any funds or Securities held in that account;
  - b. recognise us, the Securities Trading Participant or the F&O Executing Participant as holding any funds or Securities in that account on trust;



- c. recognise any proprietary, equitable, contingent, future or partial interest in any funds or Securities held in that account or any other right, except our, the Securities Trading Participant's or the F&O Executing Participant's beneficial right of ownership (as the Depository Participant under the NZX Participant Rules in whose name that account is held).

**6.10 Authorised Hedging Activities:** You authorise us to use money or property in your Account for Authorised Hedging Activities, subject to the Applicable Securities Law.

## 7. Close Out and Settlement of Contracts

**7.1 Matching and Opposite Contract:** Unless you have given a notice under clause 2.10 above, you may unwind a Contract at any time by notice to us that you wish the Contract to be closed out whereupon we will enter into a matching and opposite Contract on your behalf on or as soon as practicable after the later of:

- a. receipt from you of such notice; and
- b. any time and date specified in such notice at which you wish the close out to occur, for delivery on the later of the Value Date of the original Contract and the Spot Date in respect of the matching Contract. You acknowledge that if you give us standing instructions to enter into a Contract when a particular price level is reached in the Relevant Market the price at which the Contract is entered into might not be that exact price.

**7.2 Mandatory Close Out:** If the Unrealised Loss in relation to a Contract at any time exceeds the equity in your Account, we may close out that Contract as if that event were a Default Event.

**7.3 Realised Profits and Losses:** The difference (if any) between the amount to be received by you under the matching Contract and the amount to be provided by you under the original Contract, if positive will be a "Realised Profit" and, if negative, will be a "Realised Loss".

**7.4 Settlement:** When a Contract is closed out which:

- a. results in a Realised Profit, we will credit to your Account the Realised Profit; or
- b. results in a Realised Loss, you must (subject to clause 7.7) pay to us the Realised Loss in such currency as we may require in cleared funds within (24) twenty-four hours of being advised of the amount so payable.

**7.5 Disbursement:** If you have requested payment of any money owed to you under this clause, we will deduct that money from your Account and pay it to you by cheque or in such other manner as may be agreed between you and us. If you have not requested payment of any money so owed to you, it will be retained in

your Account.

**7.6 Set-Off:** We will set off any money owed to you under this clause against any money owed by you under this clause. Where such a set-off is made, references in this clause to Realised Profit or Realised Loss will be read as including the net amount of Realised Profit or Realised Loss (as the case may be) remaining after set-off. If there is then sufficient Excess Variation Margin any amount owing by you under this clause may be settled in whole or in part by debiting to your Account with us an amount up to the amount of the Excess Variation Margin.

**7.7 Close Out:** The closing out of a Contract in accordance with this clause will constitute a complete discharge of all our and your obligations to give or take delivery under that Contract and has the effect of immediately cancelling the Contract so that the only obligations that continue in respect of the Contract are those provided for in this clause. Where we exercise any right to close out a Contract under this Agreement, the closing out will be effected on your authority now given, at your risk and expense and in your name, in accordance with this clause as if you had given notice on the date that we exercised our right.

**7.8 Delivery of FX Positions:** If you have specified that delivery is required in a notice given under clause 2.10 in respect of an FX Position, you must pay to us on or before the Value Date that amount of the currency to be provided by you under the FX Position in cleared funds and following receipt by us of such amount, we will credit to your Account the currency to be received by you under the FX Position.

**7.9 Delivery against positions on non ASX and NZX markets:** You agree and acknowledge that:

- a. we do not permit clients to enter into delivery against futures or options positions on non ASX and NZX markets;
- b. in Contracts for which there is no cash settlement, you must close out all open positions in the current month, before the delivery period; and
- c. if no instructions to close out a position in the current month of a deliverable Contract have been received before the last trading day we may close out the position by entering into a Contract which is the opposite of the original Contract without consulting or contacting you.

## 8. Representations and Acknowledgements

**8.1 Representations and acknowledgements:** You represent, acknowledge and agree on a continuing basis that:

- a. all information you have provided to us, including through the Site, is true and complete;



- b. you have the necessary power, capacity and authority to deal in Financial Products, and you (or the person executing this Agreement on your behalf) has full power and authority to execute this Agreement; your obligations under this Agreement and each Contract or Trade entered into are legal, valid and binding and enforceable against you and all authorisations necessary to be obtained by you prior to the execution of this Agreement, and the entry into of each Contract and/or Trade have been obtained;
  - c. no steps have been taken or legal proceedings started or threatened against you for your insolvency;
  - d. in executing this Agreement and in giving effect to it and each transaction under it you will not infringe any provision of any deed or other document or agreement to which you are a party;
  - e. except as otherwise expressly disclosed in writing to us, you act as principal (and not as agent or trustee) in entering into this Agreement and each transaction under it and no one except you has an interest in your Account with us opened for the purposes of this Agreement;
  - f. where you consist of more than one individual then this Agreement will bind each and all of you severally and jointly, and we are entitled to accept instructions from any one of you individually;
  - g. you have given careful consideration to your objectives, financial situation and needs and have formed the opinion that dealing in Financial Products is suitable for your purposes;
  - h. you have read and understood:
    - i. the Client Acknowledgement and Risk Disclosure Statement in the Account Application (and the terms used in these documents have been explained to you by us);
    - ii. the document given to you which explains the nature of Contracts;
    - iii. details of the contract specifications for Contracts in which we will deal on your behalf, and have taken any independent legal and financial advice as you consider necessary prior to entering into this Agreement;
  - i. we have explained and you have understood our allocation policy (as set out in clause 10.6 below);
  - j. you are the legal owner of and have good title to all Financial Products held by us on your behalf, free and clear of any Security Interest;
  - k. you will not enter into or Trade a Financial Product as or by way of gaming or wagering;
  - l. no Default Event has occurred or is continuing; and
  - m. in respect of all payments requested by you under this Agreement you, declare and undertake to us that at the time of the relevant payment request the beneficiary or recipient of the payment is not a person, group or entity, or in or associated with a country, sanctioned by US laws and regulation, including those administered by the Office of Foreign Assets Control of the US Department of Treasury.
- 8.2 Dealings:** You acknowledge and agree that:
- a. you appoint us as your agent for the purpose of dealing in Financial Products in accordance with the terms of this Agreement;
  - b. we may also deal in Financial Products as principal on our own account;
  - c. our directors or employees and all other persons associated with us may deal in Financial Products on their own account;
  - d. we, our directors or employees and their Immediate Family are each a Prescribed Person for the purposes of (and as defined in) the Exchange Rules and may have a threshold interest, determined in accordance with the Exchange Rules, in Financial Products which you may buy or sell;
  - e. we may in certain circumstances either acting for another client or on our own account take the opposite position to you in a Contract or Trade, and you acknowledge our right to do so and to charge you such amounts as are permitted by this Agreement as if we had not taken the opposite position to you;
  - f. we may at any time in our sole discretion refuse to enter into, or to clear and settle (regardless of whether an order has been initially accepted by us), a Contract or Trade for you or may limit the Contracts or Trades we enter into or clear and settle for you, without any obligation to inform you of our reasons for doing so. We will inform you of any refusal or limitation at or before the time of you placing the order or as soon as practicable thereafter. Such refusal will be without prejudice to any other rights and powers under this Agreement;
  - g. we will deal, or will instruct third persons to deal on your behalf, in Financial Products on an Exchange and upon doing so, we incur obligations as principal, even though the Financial Product may have been entered into on your instructions, and where we instruct third persons to deal in Financial Products on an Exchange or to deal in other Financial Products:
    - i. those persons incur obligations as principal, even though the Financial Product may have been entered into on your instructions; and
    - ii. we may share the commission or such other

amounts relating to those Financial Products with those persons as we think fit;

- h. we will at all times be trading on an Exchange as a principal notwithstanding that the relevant Financial Product may have been entered into or Traded on the instructions of you and we will incur personal obligations when dealing in Financial Products as a result of instructions received from you;
- i. trading in Contracts may create an obligation to give or take delivery, or make a cash adjustment, in accordance with the terms of a Contract, and a Contract may be closed out without a physical exchange or delivery;
- j. any benefit or right obtained by us or the F&O Executing Participant upon registration of a Contract or Trade with the clearing house of any Exchange as a result of the assumption of liability or a guarantee by that clearing house, or any other legal result, is personal to us or the F&O Executing Participant (as the case may be) and the benefit of that benefit, right or legal result does not pass to you;
- k. you have no rights, whether by way of subrogation or otherwise, against any person other than us in respect of Financial Products Traded on an Exchange or Off-Exchange except to the extent (if any) provided by any applicable law; and
- l. trading in Financial Products incurs a risk of loss as well as a potential for profit, and may create an obligation to give or take delivery, or make a cash adjustment, in accordance with the terms of a Financial Product.

**8.3 Contracts:** You confirm that, where you instruct us to enter into any Contracts on your behalf, an assessment has been conducted of your suitability to engage in trading in the particular types of Contracts contemplated.

## 9. Default and Termination

**9.1 Default Event:** It is a Default Event, whether or not it is within your control, if:

- a. you fail to pay, or provide security for, amounts payable to us when they become due; or
- b. you fail to perform and comply with any obligation under or arising pursuant to this Agreement, any Contract or any Trade, or pursuant to the settlement of any Contract or any Trade; or
- c. any representation made by you or on your behalf is incorrect or misleading in any material way with the result that loss or damage is, or is likely to be, suffered by us; or
- d. you become insolvent; or
- e. you become subject to a recommendation by the

Financial Markets Authority or Reserve Bank of New Zealand to the relevant Minister supporting the appointment of a statutory manager or are declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, or a statutory manager is appointed to you; or

- f. you impose a moratorium on payments to creditors, stop payment of your debts or cease or threaten to cease carrying on business; or
- g. any Security Interest binding on you or your assets becomes enforceable and the holder of the Security Interest takes steps to enforce its security; or
- h. any indebtedness of you becomes immediately due and payable, or capable of being declared due and payable, prior to its stated maturity, by reason of your or any other person's default; or
- i. you, being a natural person, die or become of unsound mind or you or your estate is liable to be dealt with in any way under the law relating to mental health; or
- j. you or your business become subject to any investigation by any Exchange or regulatory authority in any part of the world; or
- k. any guarantee or other security provided by you to us is, without the consent of us, withdrawn or becomes ineffective; or
- l. in the absence of you making alternative arrangements acceptable to us, you are not contactable by us within any consecutive period of (24) twenty-four hours in order for us to obtain instructions or to give you notice of a Margin Call.

**9.2 Consequences of Default:** On or at any time after a Default Event occurs, we may, without prejudice to any other rights we may have, without giving prior notice to you, take any action, or refrain from taking action, which we consider reasonable in the circumstance in connection with Contracts or Trades entered into for you (including, without limitation, open positions arising from Contracts or Trades) and, without limitation, we may do any one or more of the following:

- a. terminate this Agreement;
- b. close out all or any Contracts held by us on your account, without further notice to you. The time within which that right is exercised, and the extent to which it is exercised, will be at our discretion. We will not be liable to you for any failure or delay in exercising that right;
- c. enter into one or more transactions to effect the close out of one or more open positions under any Contracts or Trades (even though the Value Date of any Contract, the Expiry Date of any Option or the settlement date of any Trade, as the case may be, may not have arrived) in accordance with the rules

and regulations of the Exchange on which those Financial Products are Traded;

- d. exercise one or more Financial Products that are Options in accordance with the rules and regulations of the Exchange on which those Financial Products that are Options are Traded;
- e. abandon any options not yet exercised or cover option positions by entering into further Financial Products;
- f. treat all or any Contracts as being wrongfully determined by you, whereupon we will be entitled to debit from your Account liquidated damages of an amount equal to any Realised Loss and you acknowledge that such liquidated damages are a genuine pre-estimate of our loss;
- g. cancel any outstanding orders in order to close your Account or accounts pursuant to which there are moneys owing to us or in respect of which Account or accounts there are insufficient funds deposited with us and available to us, to satisfy moneys owing to us;
- h. satisfy any obligation you may have to us out of any property, money or security belonging to you in our custody or control and for that purpose to enforce at your expense any asset or security held by us in such manner as we see fit;
- i. exercise any other power or right which we may have under the Exchange Rules, the rules and regulations of the Exchange on which any relevant Financial Products are Traded, the terms and conditions of an Financial Product Traded Off-Exchange or this Agreement or perform any other obligations arising under the Exchange Rules, the rules and regulations of the Exchange on which any relevant Financial Products are Traded, the terms and conditions of an Financial Product Traded Off Exchange or this Agreement, in any such case at your expense; or
- j. sell any Financial Products we hold on your behalf and deposit the net proceeds into your Account; or
- k. take such other action as a reasonably prudent derivatives or securities (as the case may be) broker would take in the circumstances to protect the personal obligation incurred when dealing on your behalf; and you must account to us as if those actions were taken on your instruction, and without limitation, you are liable for any deficiency and you are entitled to any surplus, which may result.

**9.3 Sale:** Any sale, purchase or other action authorised hereunder may be made at our absolute discretion on an Exchange or other market, at public auction or at private sale, without advertisement, and without prior demand or call of any kind upon you or upon your personal representatives. We may act on our own

behalf as vendor or purchaser in any such transaction without hereby incurring any liability of any kind to you and may buy or sell any property dealt with in accordance with the foregoing provisions free of any equity or right of redemption in you. A prior demand or call, or prior notice of the time or place of sale of purchase or other action will not be considered a waiver of our right to sell or buy or take other action without demand or notice as herein provided.

**9.4 Continuing Liability:** You will at all times be liable for payment of any debit balance owing in your Account(s) and in the event that the proceeds of any action taken by us under this clause or this Agreement are insufficient for the payment of all of your liabilities due to us, you will promptly pay, upon demand, the deficit, together with interest thereon at our standard rate as notified to you by us from time to time and all costs of collection or enforcement or other action taken by us hereunder (including reasonable legal fees on a solicitor and own client basis) and all other amounts due hereunder;

**9.5 Mark-to-market:** If any transactions are terminated in accordance with this clause, we will determine, as at the termination date, the mark-to-market value in New Zealand dollars of that terminated transaction. Such a determination will be made by us in good faith on the basis of the market quotations obtained by us. Each quotation will be for an amount, if any, that we would have to pay someone else (expressed as a negative number) or that someone else would have to pay us (expressed as a positive number) to assume your rights and obligations under the terminated transaction or transactions. Where a quotation is denominated in a currency other than New Zealand dollars, we may convert the quoted amount into New Zealand dollars using an exchange rate selected by us in good faith. Once the mark-to-market value of each terminated transaction has been determined, each value will be aggregated to obtain a final net amount. If this final net amount is negative then you must pay this amount to us. If this final net amount is positive then we must pay the absolute value of this amount to you. Any net amount payable to you will be subject to the right of set-off contained in clause 9.6 of this Agreement.

**9.6 Set-off on Default:** After a Default Event has occurred we are entitled to set-off any amount owed by us to you under this Agreement against any amount owed by you to us (whether or not owed under this Agreement, and irrespective of the currency, place of payment or booking office of the obligation) and in so doing we may in our absolute discretion combine or consolidate the balances (including setting off debit and credit balances) in all or any of your accounts with us, in any order and at any time we see fit without prior notice to you. Where an amount to be set-off under this clause is denominated in a currency other than New Zealand dollars, we may convert that amount into New Zealand dollars using an exchange rate selected by us in good

faith. This clause does not have any effect on any other rights of set-off we may have.

- 9.7 Delay:** We will not lose any of our rights under this clause 9 by reason of any delay and if we do exercise any such right we may do so at any time and in any manner.
- 9.8 Termination on Notice:** Either you or we may terminate this Agreement at any time by giving the other notice in writing to that effect. Termination will be effective upon receipt of the notice by the other party.
- 9.9 Close out on Termination:** Upon termination of this Agreement, we will close out all Contracts and will close out, abandon or exercise any Options not yet exercised, entered into by us for you in accordance with clause 7 unless, in accordance with a direction from you, those Contracts are transferred to another Participant in accordance with the Exchange Rules.
- 9.10 No Release:** Termination does not affect the existing rights and obligations of you and us at termination and will not release either you or us from any liabilities for any antecedent breach of any of the terms of this Agreement.
- 9.11 Illegality:** If any event occurs (including the introduction, implementation, operation or taking effect, of any law, regulation, treaty, order, official directive or ruling, or any change in any such law, regulation, treaty, order, official directive or ruling or in their interpretation or application by any regulatory authority or agent) which makes or declares it unlawful, impossible or impracticable for us to enter into Contracts or Trades with you under this Agreement then we may terminate this Agreement with immediate effect by notice to you, and close out all Contracts in accordance with clause 7 as if such illegality or impracticability were a Default Event for the purpose for that clause but any such termination will not relieve you of any obligations under this Agreement prior to such termination.
- 9.12 Death:** In the event of your death or that of a joint Account Holder:
- a. we may act on the instructions of any person claiming to intend to apply, or to have applied, for probate or letters of administration in relation to money or Financial Products held on your behalf. This clause 9 is binding on your personal representatives and successors in title. You (through your estate) agree to hold us harmless for acting on any such instruction;
  - b. we will act in accordance with any agreement between the joint holders of your Account and either:
    - i. transfer all joint holdings in Financial Products into the name of the surviving joint holder, in which case this Agreement will remain valid for the surviving security holder; or
    - ii. transfer your holdings in Financial Products to

your estate;

- c. if we have no knowledge of anyone legally authorised to complete any purchases or sales of Financial Products which you have ordered to be bought or sold on your behalf, and we have advised the F&O Executing Participant and the Trading Participant (as the case may be) of this, each of the F&O Executing Participant and the Trading Participant (as the case may be) is entitled with the approval of NZX to resell or repurchase or cause to be resold or repurchased (as the case may be) any outstanding Securities and you (or your estate) will be liable for any deficiency, and be entitled to any surplus, which may result.

## 10. Communications & Information

- 10.1 Instructions:** You confirm that we are authorised to act on instructions given or purported to be given by you or your Authorised Person in person, by telephone, facsimile, mail, email or other electronic means of transmission including through your Account on the Site (in each case, an “instruction”) regarding movements of funds in your Account including payment to third party beneficiaries. Our records of instructions will be conclusive evidence of those instructions.
- 10.2 Identity:** We have no obligation to make any enquiry as to the authenticity, validity or legality of any instruction by you or your Authorised Person notwithstanding that any instruction may subsequently be proven not to have been made, given, signed or authorised by the person purporting to give the instruction. The instruction will be valid until it is revoked in writing by you or your Authorised Person (as the case may be).
- 10.3 Electronic Instructions:** We are entitled to rely on any electronic instruction (including facsimile, email, or via the Site) without any enquiry as to the authority or identity of the sender of that message and you are bound by any such instruction. An instruction given by you or your Authorised Person electronically must be re-transmitted if you or your Authorised Person (as the case may be) receive a message or become aware that the instruction was received by us in an incomplete or garbled form. Any electronic instruction sent by you will only be deemed to have been received and will only then constitute a valid instruction and/or binding contract between us and you when such instruction has been recorded as executed by us and confirmed by us to you, and the mere transmission of an instruction by you will not constitute a binding contract between us and you.
- 10.4 No Discretion:** We will only act within the parameters of your or your Authorised Person’s instructions. We will not act on a discretionary basis on your behalf unless you enter into a discretionary authority agreement with us.

- 10.5 Liability:** We will use our best endeavours to execute or arrange the execution of your or your Authorised Person's instructions, but we will not be responsible for delays or errors in the transmission or execution of such instructions save through our own gross negligence, fraud or dishonesty.
- 10.6 Allocation Policy:** We undertake and you acknowledge that in respect of dealings in Financial Products, instructions received from you or your Authorised Person, and from other persons and orders on our own account will be executed by us in the sequence in which they are received and recorded, unless it would be fair and equitable to allocate Financial Products obtained in respect of similar orders on the same day on a different basis in which case we will allocate the relevant Financial Products to such orders at our discretion, taking into account our obligations to you under Applicable Securities Law and such other relevant factors as we may consider appropriate.
- 10.7 Authorised Person:** An Authorised Person may instruct us, communicate with us, and otherwise act on your behalf in relation to all matters relating to the Account, unless their authority is limited and you have given us written notice specifying the limitation. You or your Authorised Person must provide all information, make all payments, and do all such things as required under this Agreement and as we may otherwise require (including providing an up-to-date copy of any authorisation to act on your behalf) in connection with such instructions, communications and actions. You agree:
- that we retain our rights in relation to, and may act or refuse to act on, such instructions, communications and actions as if they were given or carried out by you;
  - that, subject to any agreed limitations of authority, we may liaise with one Authorised Person without reference to you or any other Authorised Person on all matters relating to the Account;
  - to ratify whatever your Authorised Person lawfully does or causes to be done; and
  - that you will be liable for any breach of this Agreement by your Authorised Person. You may from time to time notify us in writing of any change in the details (including identity) of your Authorised Persons. You must notify us immediately if you revoke or alter any authorisation given to an Authorised Person.
- 10.8 Manner of Communications:** All communications, including demands pursuant to this Agreement, may be made electronically (including through your Account on the Site) or by telephone, mail, facsimile or otherwise sent to the recipient at the address, telephone, post office box, email address or facsimile number most recently notified in writing by the recipient to the sender. Communications will be taken to be received:
- if delivered in person or by telephone, when delivered or spoken;
  - if made by mail, three Business Days from and including the date of postage;
  - if by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient;
  - if delivered through your Account on the Site, immediately on it becoming available for you to view; and
    - if given to you by email, on delivery (and a delivery report received by us will be conclusive evidence of delivery even if the communication is not opened by you);
    - if given to us by email, on being opened and acknowledged by us.
- 10.9 Recording of Communications:**  
You agree to and acknowledge the:
- electronic recording by us or by an Exchange or other market on behalf of us of your telephone conversations with us, with or without an automatic tone warning device. If there is a dispute or anticipated dispute between you and us, you have the right to listen to any recording of those conversations;
  - use of recordings or transcripts from such recordings for any purpose which we or the relevant Exchange deems desirable, including their use as evidence by either party in any dispute or anticipated dispute between you and us;
  - maintenance by us of a transaction log of all electronic communications. You agree not to dispute the validity or enforceability of electronic communications and waive any right to raise any defence based on the absence of writing.
- 10.10 Provision of information and advice:** While we believe that any information or advice provided to you is reliable, no warranty is given as to its accuracy and persons who rely on it do so at their own risk. In so far as any such information or advice contains material from other sources, we have not checked those sources and accept no responsibility for the accuracy of that material. You should satisfy yourself as to the correctness or otherwise of the statements contained in the material. All information and advice provided to you is for your private use and is not to be passed to any third party without our prior written consent.
- 10.11 Deal Confirmations, Contract Notes and other information:** We will furnish to you Deal Confirmations, Contract Notes and other information in relation to your Account from time to time as required by the Applicable Securities Law. You agree:



- a. for the purposes of regulation 6 of the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014, that we may provide to you transaction records, ledger entries in respect of client money, information on client property and fees information through your Account on the Site; and
- b. for all purposes, that we may provide any other information, reports, documents or disclosures required under this Agreement or the Applicable Securities Law, or which we choose to give you, through your Account on the Site or in any other fashion permitted by any applicable law.

**10.12 Disclosure of information:** You must take all reasonable steps to deliver information or documents to us, or cause information or documents to be delivered to us concerning Financial Products which are requested by a person having a right to request such information or documentation. You authorise us to produce the information or documents to the person making the request. Without limiting the generality of the above, you must deliver to us, and you authorise us to provide, such information as we see fit concerning your Account, this Agreement or any Contract or Trade entered into or proposed to be entered into by you to any proposed assignee or transferee of our rights under this Agreement or to any regulatory authority or Exchange in any part of the world or any other person (including our agents and subcontractors) having a right to request such information or documentation or where we reasonably consider that the disclosure is required either:

- a. to enable us to exercise our rights or carry out our obligations under this Agreement; or
- b. to verify your identity, conduct due diligence on you and if necessary to report suspicious transactions, in accordance with Applicable Securities Law;
- c. by law or any requirement of any regulatory authority, or by the Exchange Rules; or
- d. where it is necessary to protect our interests.

**10.13 Transaction Charges:** You agree that we may share all transaction charges and fees with other persons without being required to disclose that fact to you.

## 11. Online Trading

**11.1** We provide Online Trading facilities allowing you to efficiently deal in Contracts and trade in Securities on an execution only basis, which means that we will not advise you regarding the merits of a particular transaction and will merely carry out your instruction.

**11.2** To use OMF's Online Trading Facilities, you must establish an Online Trading Account and you acknowledge:

- a. positions in an Online Trading Account may automatically be closed if the equity in your Online

Trading Account has been reduced due to the unrealised losses on the open positions, and you may not be given any warning or receive any Margin Calls prior to the position(s) being closed;

- b. unless required by Applicable Securities Law, Deal Confirmations will not be automatically provided unless you elect to receive them if requested at the time the order to Trade is placed.

**11.3** We will provide you with a Logon ID for Online Trading. You must do the following in respect of your Logon ID:

- a. keep your Logon ID secure;
- b. not allow someone to observe you entering your Logon ID;
- c. except in the case of a business, for which limited exceptions apply (see clause 11.5), not disclose or allow your Logon ID to become known to anyone else; and
- d. not write down your Logon ID, record or store it anywhere in written or electronic form, including in a file on your computer or in any password saving facility or on your mobile device. You must never leave your computer, phone or mobile device unattended while you remain logged in to Online Trading.

**11.4** You are responsible for the confidentiality and use of your Logon ID. If you become aware of any loss or theft or unauthorised use of your Logon ID, you must notify us immediately and change your password. Your Logon ID may be cancelled at any time without notice, but we will notify you as soon as practicable after cancellation if this happens.

**11.5** Anyone accessing Online Trading by using your Logon ID will be able to effect transactions on your Account. We will have no obligation to verify any instruction received from you, or your Authorised Person, or appearing to be sent by you or another person authorised to operate your Account via Online Trading. You will be responsible for all information sent to us using your Logon ID. You will be liable to us for any Financial Products executed by means of your Logon ID, even if such use is unauthorised or wrongful.

**11.6** Where you use Online Trading for business purposes:

- a. You must ensure that your Logon ID is kept secure and are only used by those authorised in writing to do so for the purpose of your business. Whilst you may share your Logon ID with persons authorised to use it for the purpose of your business, you do so at your sole risk, and you are solely responsible for any use or misuse of your Logon ID by such persons. You must notify us and change your password immediately after you remove any persons authorised to sign on your Account accessible by Online Trading.
- b. You must monitor your instructions via Online



Trading regularly.

- c. You must initiate appropriate internal controls to minimise the risks of fraud.
- 11.7** We may stop, suspend or alter access to Online Trading facilities, or access may otherwise become unavailable, without notice.
- 11.8** You agree that third party providers of services to OMF, who are involved in delivering Online Trading facilities, may store Trade and Account information for future reference in the event of disputes.
- 11.9** You are responsible for using or having equipment that is compatible with Online Trading facilities. Any conditions of use, including charges associated with your use of that equipment, are your responsibility. You are responsible for remedying any forms of malicious software that are on that equipment before using that equipment for Online Trading.
- 11.10** You agree to pay any and all charges relating to using Online Trading facilities. These charges are subject to change and details of these charges are available in our Disclosure Statement, which is available on our website [www.omf.co.nz](http://www.omf.co.nz).
- 11.11** We will not be liable to you for any losses, expenses, costs, damages or liabilities due to any failure, hindrance or delay in performing our obligations under this Agreement where such failure, hindrance or delay arises directly or indirectly from circumstances beyond our reasonable control. Such events include but are not be limited to technical difficulties such as telecommunication failures or disruptions, non-availability of any Trading System due to downtime, unforeseen maintenance, civil unrest, terrorism, war, natural disasters, strikes, lock-outs, fire or other disturbance at our premises (notwithstanding that we are a party to the conflict and including cases where only part of our functions are affected by such events), or other cause beyond our control, or from any resultant failure to execute, process or report deals and Trades or similar errors whether or not the error is due to factors under our control.
- 11.12** Dealing, Trading or routing orders through electronic systems varies widely among the different Trading Systems. You should consult the rules and regulations of the relevant Exchange offering the Trading System and/or listing the Financial Product or routing the order to understand, among other things, the Trading System's order matching procedure, opening and closing procedures and prices, policies on error deals and trades, dealing or trading limitations or requirements, qualifications for access, grounds for termination and limitations on the types of orders that may be entered into the Trading System. Each of these matters may present different risk factors with respect to dealing or trading on or using a particular Trading System. Each Trading System may also present risks related to system access, varying response times, and security. In the case of internet based Trading Systems, there may be additional types of risks related to system access, varying response times and security, as well as risks related to service providers and the receipt and monitoring of email. All the risks identified in this clause are outside our control and therefore we cannot be held liable for any loss suffered by you as a direct or indirect consequence of them.
- 11.13** Dealing or Trading through a Trading System exposes you to risks associated with system or component failure. Since we do not control signal power, its reception or routing via the internet, configuration of your equipment or reliability of its connection, we cannot be responsible for communication failures, distortions or delays when you use Online Trading.
- 11.14** In the event of system or component failure, it is possible that, for a certain time period, you may not be able to Deal or Trade, including opening new positions, closing out existing positions, entering new orders, executing existing orders, or modifying or cancelling orders that were previously entered. System or component failure may also result in loss of orders or order priority.
- 11.15** You acknowledge that you understand the risks associated with the transmission of information using the internet and acknowledge that you agree to indemnify and hold us harmless from and against all losses, claims, expenses, costs, damages, fines or liabilities whatsoever suffered by us (including, without limitation, legal costs and expenses) arising out of the use of any Trading System by you, your employees, agents or contractors, or any act or omission of you, your employees, agents or contractors.
- 11.16** Some Financial Products offered on a Trading System may be dealt or traded electronically and non-electronically during the same dealing or trading hours. You should review the rules and regulations of the relevant Exchange to determine how orders will be executed.
- 11.17** Exchanges may have adopted rules to limit their liability, the liability of their members and/or registered brokers and software and communication system vendors and the amount of damages you may collect for system failure and delays. Exchanges have different limitations of liability provisions. In order to understand these limitations, you should consult the rules and regulations of the relevant Exchange(s).
- 11.18** We will not be liable to you for any loss you might suffer due to errors in quotes which are the result of typing errors committed by us or our erroneous perception of information entered into the Trading System by you. We are entitled to make the necessary corrections in your Account according to market value of the asset in question at the time when the error occurred.

**11.19** We may offer real-time tradable prices to you. Due to delayed transmission between you and us, the price offered by us may have changed before we receive an order from you. If automatic order execution is offered to you, we will be entitled to change the price on which your order is executed to the market value at the time at which the order from you was received.

**11.20** Regardless of the fact that the Trading System might confirm that an order is executed immediately, when you transmit instructions via the Trading System, the confirmation forwarded by us or made available to you on the Trading System constitutes our confirmation of an Financial Product deal or Trade.

**11.21** Any instruction sent via the Trading System by you will only be deemed to have been received and will only then constitute a valid instruction and/or binding contract between us and you when such instruction has been recorded as executed by us and confirmed by us to you, and the mere transmission of an instruction by you will not constitute a binding contract between us and you.

**11.22** Any particular Trading System may be available in several versions, which may be differentiated in various aspects including but not limited to, the level of security applied and the products and services available. We will not be liable to you for any loss, expense, cost or liability suffered or incurred by you due to you using a version different from our standard version with all available updates installed.

**11.23** If you have access to any Trading System for any Exchange, you acknowledge that:

- a. the data accessed via that Trading System is not our property and remains the property of the Exchange; and
- b. you are forbidden to publicly display, redistribute or re-transmit the data in any way without having entered into a written agreement with the relevant Exchange expressly permitting such activity.

**11.24** You agree to indemnify and protect us against all loss, costs, claims or damage suffered by us which results from your misuse of Online Trading facilities, or any errors you make in entering in the details of any trading messages which are entered into the Trading System, or your failure to comply with this Agreement or any law.

**11.25** Nothing in this clause 11 limits any other rights or indemnities we may have under any other part of this Agreement or the Website Terms and Conditions.

## **12. Limitation of Liability**

**12.1 Limitation of Liability:** You have read, understand and accept all of the terms of this Agreement. You agree that in entering into each Contract and/or each Trade you will rely only upon your judgement and we, our

employees and agents will have no responsibility or liability of any kind in respect of:

- a. any advice or recommendation given by us or our employees and agents to you;
- b. any delay in the communication of orders or the transmission of funds due to any breakdown or failure of transmission or communication facilities or for any other cause or causes beyond our reasonable control or anticipation;
- c. any failure to timely execute orders placed with us or to transact business or otherwise administer this Agreement in the manner contemplated by this Agreement for causes beyond our reasonable control or anticipation;
- d. any refusal by us to enter into, or limit applied to, a Contract or Trade under clause 8.2(f);
- e. any private dealing, contract, transaction or relationship between you and any of our employees or agents;
- f. any loss incurred by you in connection with any Contract or Trade; and
- g. any event of force majeure, including amongst other things, floods, extraordinary weather conditions, earthquakes, acts of God, fire, war, riot, labour disputes, accidents, actions of any government, communications or power failure, equipment or software malfunction, or any interruptions in data, information or message transmission,

in the absence of our gross negligence, fraud or dishonesty. Without limitation to any term of this Agreement, we will not be liable where we have taken reasonable endeavours to protect your FIN from unauthorised use and/or unauthorised access.

**12.2 Indemnity:** You hereby indemnify and agree to keep indemnified us and our employees, agents or representatives from and against all sums of money, actions, proceedings, suits, claims, demands, damages, costs, expenses and any other amounts whatsoever arising out of:

- a. the occurrence of any Default Event;
- b. the exercise by us of our rights and powers upon the occurrence of a Default Event;
- c. anything lawfully done by us in accordance with this Agreement;
- d. the execution of your instructions in relation to Contracts or Trades; or
- e. by reason of us complying with any direction, request or requirement of an Exchange or its clearing house or other regulatory authority in connection with this Agreement.

### 13. General

- 13.1 Applicable Securities Law:** You and we agree that the terms of our relationship in respect of Contracts and Trades and any dealings between us concerning Financial Products are subject to and bound by:
- Applicable Securities Law;
  - in the case of Financial Products Traded on an Exchange, the rules and regulations of the Exchange that Trades the relevant Financial Products;
  - in the case of Financial Products Traded Off-Exchange, the terms and conditions governing the relevant Financial Product;
  - this Agreement; and
  - the F&O Post Trade Agreement (as defined in the Exchange Rules) (if any), in so far as they apply to Financial Products and we are not required to act in accordance with your instructions where to do so would constitute a breach of any of the above.
- 13.2 Inconsistency:** To the extent any provision of this Agreement is inconsistent with any provision of the Applicable Securities Law then the inconsistent provision of this Agreement will be deemed to be modified so as to comply with the relevant provision in the Applicable Securities Law.
- 13.3 Appointment of Attorney:** You hereby irrevocably appoint:
- us and each of our directors, secretary and principal executive officer and each employee whose title of office includes the word “manager” severally as your attorney at any time and from time to time following the occurrence of a Default Event to execute and deliver all documents and to do all things which your attorney may consider necessary or desirable to give effect to the provisions of this Agreement; and
  - each relevant Exchange as your attorney to do all things necessary to transfer any open positions held by us on behalf of you to another Participant with access to that Exchange where our rights have been suspended other than as a result of default in meeting commitments to any clearing house.
- 13.4 Internet Access:** Subject to complying with our Website Terms and Conditions, we grant to you a right to access the Site for the purposes of exercising your rights and complying with your obligations under this Agreement. This right of access is for your use only. We reserve the right to withdraw or suspend your access to the Site at any time.
- 13.5 Consumer Guarantees Act:** If you are acquiring the services provided by us for the purposes of a business, you agree that:
- the conditions, warranties and guarantees of the Consumer Guarantees Act 1993 and any rights you may have which are implied by common law, statute or custom will not apply to this Agreement;
  - you will not claim any of the remedies set out in the Consumer Guarantees Act 1993 from us; and
  - we will not be liable to you for any consequential
- 13.6 Assignment:** Our successors (by merger, consolidation or otherwise) and assignees will have the benefit of this Agreement. We may assign to or take an assignment from any party of the benefit of this Agreement or any Contractor the balance of your Account. You acknowledge that you may not assign or transfer all or any part of your rights and benefit under this Agreement or any Contract without our prior written consent.
- 13.7 Amendment:** We may from time to time amend, substitute or supplement the terms of this Agreement by posting the amended terms on the Site. We will generally give 7 days’ notice on the Site before an amendment, substitution, or supplement comes into effect. We can, however, give a shorter or no period of notice if we reasonably believe that the change is not materially detrimental to you or we need to make the change urgently.
- 13.8 Time of Essence:** Time is of the essence under the terms of this Agreement.
- 13.9 Severability:** If any term or part thereof of this Agreement is invalid or not enforceable in accordance with its terms, all other terms or parts thereof which are self-sustaining and capable of separate enforcement without regard to the invalid or unenforceable term or part thereof will be and continue to be valid and enforceable in accordance with its terms. The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction does not affect its legality, validity or enforceability under the law of any other jurisdiction or the legality, validity or enforceability of any other provision.
- 13.10 Proper Law:** This Agreement is governed by and to be construed in accordance with the laws of New Zealand and each party submits to the non-exclusive jurisdiction of the Courts of New Zealand.
- 13.11 Trustee Covenants:** If the Account Holder(s) is/are the trustee(s) of a trust (the “Trust” and “Trustees”), each Account Holder jointly and severally represents and warrants to OMF that:
- the Trust has been duly constituted and is validly existing in compliance with all applicable laws;
  - the Trustees have the full power and authority as trustees to enter into the obligations and transactions contemplated by this Agreement, and all required resolutions, declarations and consents have been duly obtained;
  - unless otherwise agreed in writing, each Trustee has full authority to operate this Account individually

and OMF may act on the instructions of any one Trustee without referring to any other Trustee.

- d. each of the obligations under this Agreement are binding and fully enforceable against the Trustees and the Trust assets in accordance with their terms;
- e. they are the only trustee(s) of the Trust, and have an unrestricted right to be fully indemnified out of the Trust assets in respect of any losses or liabilities incurred by them and the Trust assets are sufficient to satisfy that right of indemnity; and
- f. unless otherwise expressly agreed in writing by OMF, each Trustee is personally liable under the terms of this Agreement except that the liabilities and obligations of an Independent Trustee shall be limited to the trustees' right of indemnity to Trust assets unless that trustee has acted in breach of trust, or in breach of any of the trustee warranties set out in these terms. For the purposes of this clause, an Independent Trustee shall mean a trustee that does not have a direct or indirect beneficial interest in the Trust assets.

you hereby waive your rights under sections 121, 125, 129, and 131 of the PPSA, and your right to receive a verification statement under the PPSA.

## 14. Collateral Security

14.1 Where you have granted us collateral over all or part of your assets (Collateral Assets) as security for the performance of any of your obligations under this Agreement, the following terms apply;

- a. we will separately identify and maintain such assets and shall hold the same in custody on your behalf subject to the terms of such collateral.
- b. the Collateral will be a running and continuing security interest over all Collateral Assets.
- c. OMF shall have all of the rights of a secured party with respect to any such Collateral and the Client will, at OMF's request, take such action as may be required to enable OMF to perfect or enforce any security interest and irrevocably appoint OMF as their attorney to take any such action on the Client's behalf.
- d. If you are in default we are entitled to take possession (to the extent we do not at the relevant time have possession) and sell any Collateral Assets and apply the sale proceeds in discharge of your obligations or otherwise enforce our Security Interest as provided by the Personal Property Securities Act 1999 (the "PPSA").

14.2 You agree that we can exercise any of our rights under this agreement even if we do not have priority over all other secured parties in respect of the Collateral. Sections 108, 109(1), 112 and 120(1) of the PPSA do not apply to the extent they are inconsistent with this clause. Nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Agreement or the Collateral, and

## Privacy Policy

### 1. Commitment to Privacy

- 1.1 OMF, its subsidiaries, partners and agents (either “OMF”, “we” or “us”) recognises its responsibility for, and is committed to, ensuring the privacy of your information.
- 1.2 This policy addresses privacy issues relevant to this Agreement, the Site, including Online Trading facilities and all services, programs and information that you use or otherwise access from time to time via the Site that are provided by OMF.
- 1.3 Should we change this privacy policy for any reason, such changes will always be posted to the Site. However, if you have any further questions relating to this privacy policy, please do not hesitate to email us.

### 2. Access to Personal Information

- 2.1 You may ask to see your personal information that is held via the Site or that we have otherwise collected at any stage by emailing us. Where the information can be readily retrieved you will have access to it. You may also ask us to correct or alter any details about you that we hold. It is your responsibility to ensure that information provided to us is accurate. Subject to the Privacy Act 1993 a fee for retrieval and correction may be charged.
- 2.2 We will enter into contracts with third parties to whom we have outsourced data storage functions which provide that the information shared with them will be readily accessible by us as and when needed.
- 2.3 You may delete your user details from the Site by emailing us.

### 3. Collection of Information

- 3.1 You authorise us to collect personal information about you, any Authorised Person and any Associated Person, for the purposes of carrying out your instructions, conducting our credit, identity verification and security checks, administering your Account, fulfilling our record keeping and other obligations under the law (including Applicable Securities Law), providing Online Trading facilities, and for other purposes relating to the Site and this Agreement. You agree that we may obtain this personal information from other sources as we reasonably require.
- 3.2 From time to time, OMF may collect additional personal information from you in connection with optional surveys, news updates or promotions. Providing this information is optional. Feedback from surveys will be used to improve the Site.
- 3.3 If you register with the Site, you will not be anonymous

to us. OMF collects personally identifiable information upon registration, and when you provide information for surveys, news updates or promotions. OMF logs your IP address (the location of your computer on the internet) and the pages you visit whenever you use the Site. This is for system administration, statistical and troubleshooting purposes.

- 3.4 We will always explicitly ask for any information that personally identifies you.

### 4. Use of Information

- 4.1 Your personal information will be used only for the purposes for which it is collected, and retained only for as long as is necessary to fulfil the purposes for which the information was collected (including any time that we are required by law to retain such information). We will not sell or rent your personal information to any third party.
- 4.2 You authorise us to hold and use information about your Account and personal information about you, any Authorised Person and any Associated Person, for the purposes for which it was collected. We may hold such information through third parties as provided for in clause 5 below.
- 4.3 The Site automatically generates logs regarding your sessions on the Site, such as the features you use, the actions that you take, and the information that you access. We generally use this information in statistical and aggregate formats to assess the effectiveness of the Site and to better understand your priorities and interests.

### 5. Disclosure of Information

- 5.1 You agree that we may transfer or disclose information about your Account and personal information about you, any Associated Person and Authorised Person:
  - a. where you have authorised us to, or where disclosure is connected to the purpose for which it was collected – e.g. Online Trading;
  - b. to third parties to whom we have outsourced data storage functions and these third parties may hold that information on our behalf for the purposes for which it was collected;
  - c. to our bankers in order to allow them to comply with, and to demonstrate their compliance with, Applicable Securities Law and, in agreeing to this transfer or disclosure, you acknowledge and agree that our bankers may be required to disclose such information to third parties in order to comply with, and demonstrate their compliance with, Applicable Securities Law; and
  - d. when required to, or permitted, by law (including

Applicable Securities Law).

- 5.2 Information about your Account and personal information about you, any Associated Person and Authorised Person collected on the Site may also be transferred or disclosed to other OMF offices or third parties to whom OMF outsources certain functions (including data storage) where it is necessary for the purposes for which it was collected. By submitting information to the Site, you consent to transmission of such information across national boundaries.

## 6. Cookies

- 6.1 A cookie is a small data file placed on your computer by our server. A cookie contains information about your visit to our Site. When you visit the Site again, our server will look for the cookie and structure itself based on the information provided. A cookie identifies your computer to our web server when you visit the Site. We do not use the cookie to collect or store personal information about you. OMF uses browser cookies to improve the speed and reliability of our security system.

## 7. Use of Email

- 7.1 We do not spam or endorse the use of spam. We will not send emails to you that are unrelated to the Site, and we will not authorise any third party to use your email address to send you unsolicited emails.
- 7.2 If you are a registered user of the Site, we may use your email address to advise you of any upgrades or changes to the Site.
- 7.3 You agree that we may use your email address (or any instant messaging or mobile text address) to periodically send promotional messages from OMF about products and services, offers or updates relating to recent developments in our services that may be relevant to you.

## 8. Security Procedures

- 8.1 To prevent unauthorised access, to maintain data accuracy and to ensure appropriate use of any information supplied by you, we have put in place physical, electronic and managerial processes to protect the information you provide on the Site.
- 8.2 Additionally, all stored user information is protected from unauthorised access through the use of secure passwords, user log-ons and other security procedures.
- 8.3 For more information about our security procedures, please email us.

## 9. Linked Sites

- 9.1 The Site may contain links to Linked Sites. OMF is not responsible for the privacy policies of such Linked Sites. This privacy policy applies solely to information collected in the Site by us.

## 10. Definitions

- 10.1 Unless otherwise defined, all terms used in this privacy policy have the same meanings as those terms are given in the Website Terms and Conditions or the Agreement.



