



Eightcap Embedded Client Agreement



HIGH RISK INVESTMENT WARNING

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

Eightcap is committed to promoting responsible trading practices. If you believe you are experiencing issues and/or addiction with speculative trading, gambling or other addictive behaviours you have the right to self-exclude from your Eightcap account (see clause 4).

1 About Eightcap

- 1.1 Eightcap Pty Ltd (ACN 139 495 944) is the product issuer for Swyftx Pty Ltd (ABN 72 623 556 730). By applying for a Derivatives Trading Account with Swyftx, you agree to be bound by the terms of this Embedded Investing Solution Client Agreement (**'Client Agreement'**).
- 1.2 Eightcap Pty Ltd (ACN 139 495 944) is a company incorporated in Australia and is referred to in this Agreement as **"Eightcap"**, **"we"** or **"us"**. We hold an AFSL (number 391441) and are regulated by the Australian Securities and Investments Commission (ASIC).
- 1.3 Swyftx Pty Ltd is a company incorporated in Australia and is referred to in this Client Agreement as **"Swyftx"** or **"Distributor"**. Swyftx is an Australian Financial Services Licensee (**"AFSL"**) (AFSL Number: 568543). Swyftx acts as a Distributor of the Derivatives Trading Platform, providing you general financial product advice and arranging for CFD Contracts issued by us to be made available for you to trade.
- 1.4 Eightcap is the product issuer for Swyftx under a commercial arrangement between themselves, which facilitates your access to Eightcap's CFD products distributed through the Embedded Investing Solution. Eightcap and its Associated Entities are the developers and operators of the Embedded Investing Solution.
- 1.5 By accessing CFD products through Swyftx, you are engaging with and are a client of Eightcap for these products and are governed by this Client Agreement.
- 1.6 This Client Agreement is an integral part of our Legal Documents and is effective on and from the date Swyftx accepts your application to establish a Derivatives Trading Account.
- 1.7 You acknowledge and agree that Swyftx provides its platform access and any general financial product advice strictly under its own AFSL. Accordingly, you agree to release Eightcap from all liability whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, loss of opportunity, economic loss or for indirect or consequential loss caused by, or arising in connection with, the services, the platform infrastructure, advice, acts or omissions provided to you by Swyftx and Eightcap accepts no responsibility or liability for the conduct or services of Swyftx acting in its capacity as Distributor.
- 1.8 Eightcap's official language is English and all correspondence between you and Eightcap, will primarily be in English. Eightcap may choose to correspond with you in another language for convenience, but English remains the official and primary language for all matters between you and Eightcap. The acceptance of the Legal Documents includes this Client Agreement and constitutes a binding legal agreement between you and Eightcap.

2 Definitions and Interpretation

2.1 Interpretation

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

Bolded or UPPERCASE clauses within this Agreement are bolded and/or are in uppercase for clarity/to draw attention to their contents and should not be taken to alter the meaning or effect of the applicable clause.

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

Reference to the singular includes the plural and vice versa as the context requires.

Reference to the expressions “include” or “including” are not words of limitation.

2.2 Definitions

Account Application means an application to open a Trading Account with Eightcap and includes applications for Joint, Corporate or Trust Account(s).

AFCA means the Australian Financial Complaints Authority.

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

Agreement means this agreement between you and Eightcap Pty Ltd.

Applicable Laws means the laws of the Commonwealth of Australia and its states and territories as in force from time to time.

Authorised Person means a person duly authorised to act as an agent of the client under clause 6, including to give instructions and receive information relating to the Account.

Base Currency means the currency in which your Trading Account is denominated on the Trading Platform.

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

CFD means a Contract for Difference, which is an over-the-counter derivative product comprising an agreement under which one party is entitled to be paid an amount of money (profit), or has to pay an

amount of money (loss), resulting from movements in the price or value of an Underlying Asset (without actually owning that Underlying Asset).

Change in Control Event means any event which will/does result in the effective change of control of a publicly listed company.

Cleared Funds means the amount of funds that have been deposited or credited to your Account which is available for use, for the purpose of maintaining open Positions, or any other permissible purpose.

Closing Date means the date on which you accept the Closing Price of the CFD, or on which a Closing Date is deemed to have occurred by us.

Closing Notice means the notice given by one party to close a CFD in accordance with clause 12.9 of this Agreement.

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

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

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

Complaint Management Policy means the policy available from Eightcap’s ‘Legal Documents & Disclosures’ page titled ‘Complaint Management Policy’, located at - <https://www.Eightcap.com/en/legal-documents-disclosures/>.

Corporate Account means a Trading Account opened and maintained by a corporate entity.

Corporate Action means a Change in Control Event or any other action taken by a publicly listed company that has an impact on its shareholders with respect to the number of shares they hold, the amount of capital invested, or how and

where securities can be traded, including: stock splits, subdivision, consolidation, redenomination/reclassification of shares, a buy-back or cancellation scheme, or a free distribution of shares to existing shareholders, or capitalisation.

Corporations Act means the Corporations Act 2001 (Cth).

Credit Header Data means data used to identify you which may be found in your credit report, including, but not limited to, name, address and date of birth.

Disclosure Documents means the documents legally required to be provided to a Retail Client under the Corporations Act and includes the PDS and FSG.

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

Disqualified Person means any person prohibited from managing corporations, providing financial services, receiving/using financial services, engaging in credit activities or in some other way prohibited by a domestic or foreign regulatory body from engaging in certain activities that would make it unlawful for you to acquire our products and use our services.

Distributor means a regulated person (as defined in section 994A(1) of the Corporations Act 2001.

Equity means the Account balance including (after) any Unrealised Profit and/or Unrealised Loss on open CFD Positions. Equity is an indication of the overall performance of an Account as it considers the Account balance and how each individual Position is performing.

Event of Default means the events listed in clause 15.1 of this Agreement.

Extended Hold Admin Fee means the fee which begins accruing at 11:00pm UTC on the 14th day after a Client opens a Position and is charged at 11:00pm UTC (or another time as determined by us at our sole discretion) on the 21st day and every 7 days thereafter.

Force Majeure Event includes, but is not

limited to: floods, extraordinary weather conditions, earthquakes, acts of God, fire, war, riot, labour disputes, accidents, pandemics/epidemics, actions of any government, communications or power failure, equipment or software malfunction.

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

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

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

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

Inactive means a situation where all of your Trading Accounts, with available Equity, have had no activity within the previous twelve (12) months, such that no material events have been recorded against your Trading Accounts ledgers.

Inactivity Fee refers to a monthly administration fee charged to any Inactive Account. This fee is deducted directly from your available Equity on or about the first Business Day following the month in which the Account became Inactive until your available Equity is reduced to zero.

Joint Account means an Account Application made for, and a Trading Account opened in the name of, two or

more persons.

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

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

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

Manifest Error means a manifest or obvious misquote made by Eightcap, a Liquidity Provider, an exchange information source or official on whom we reasonably depend, having regard to the current market conditions at the time an order is placed. Whether a Manifest Error has occurred will be determined by Eightcap in its discretion. When determining whether a Manifest Error has occurred, Eightcap will consider all factors, including relevant market conditions and any error in, or lack of clarity of, any information source or announcements. Eightcap commits to acting reasonably and fairly towards you in making this determination.

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

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

Margin means the amount of money you are required to pay us or hold in your Trading Account to place an Order.

Margin Call means a demand for additional funds to be deposited into your Trading Account, or the closing of your open

Position(s), to meet your Margin obligations.

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

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

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

Order means a request that you make to enter a Contract with us under this Agreement.

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

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

Privacy Policy means the policy available from Eightcap's 'Legal Documents & Disclosures' page titled 'Privacy Policy'.

Politically Exposed Person has the same meaning as in the Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Cth) and its associated rules.

Position means a CFD contract you enter into under this Agreement.

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

Raw Account means a Trading Account type made available by Eightcap which has lower spreads than a Standard Account but charges you commission on the opening and closing of a Position.

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

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

Relevant Exchange means the relevant financial market or exchange on which the reference buy or sell price of the Underlying Asset is quoted or formed (which may include a decentralised marketplace).

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

Risk Disclosure Notice means the risk disclosure notice available from Eightcap's 'Legal Documents & Disclosures' page titled 'Risk Disclosure Notice'.

Standard Account means a Trading Account type made available by Eightcap which has higher spreads than a Raw

Account but charges no commission on the opening and closing of a Position.

Stop Loss Order means an order that is triggered when you have a:

- (i) short Position that is trading at or above the stop loss price; or
- (ii) a long Position that is trading at or below the stop loss price.

Swap means the fee that your Trading Account is debited or credited if you hold a Position at 23:59:59 platform time (or at a time nominated by Eightcap) through to the following Trading Day.

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

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

Trading Day means Monday to Saturday including public holidays for CFDs excluding cryptocurrency CFDs; or Monday to Sunday including public holidays for cryptocurrency CFDs. The close of the Trading Day occurs at 23:59:59 on the Trading Platform.

Trading Platform means any software, application or platform Eightcap provides to you as a trading platform through the Embedded Investing Solution to facilitate web and mobile trading activities to you and other Clients, and/or which are used by to obtain information on Underlying Markets/Assets in real-time, to make technical analysis of the markets, make Transactions, place / delete / modify Orders, and/or to receive notices from Eightcap and keep record of Transactions. This includes any updated versions of the Trading Platform, or another trading platform provided by Eightcap.

Trust means where the Account is opened in the name of a trust identified in the

Account Application.

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

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

Underlying Asset means the instrument or asset (i.e., currency pair, cryptocurrency, commodity, share, or index) whose value or price, or change in value or price, determines the potential value of the CFD.

Underlying Market means the market (regardless of its form) in which an Underlying Asset is traded (for example, a formally regulated securities exchange such as the ASX or a decentralised over-the-counter market).

Unrealised Loss means the amount of floating loss on an open Position. This is a loss that has not yet been realised by closing the Position.

Unrealised Profit means the amount of floating profit of an open Position. This is a profit that has not yet been realised by closing the Position.

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

Wholesale Client Application means the application a Retail Client makes to become a Wholesale Client under clause 5.7.

3 Retail Only

By submitting the completed Account Application to Swyftx, you acknowledge and agree that the services under this Agreement will be provided to you as a Retail Client.

Retail Clients who wish to become Wholesale Clients may request to be reclassified as a Wholesale Client under clause 5.7.

4 Self-Exclusion

- 4.1 Self-exclusion refers to a scenario where you choose to exclude yourself from trading CFDs offered by Eightcap.

- 4.2 In addition to your right to self-exclude, Eightcap may also choose to invoke this self-exclusion clause where it reasonably believes that it is in the client's interest to be excluded from trading CFDs.

- 4.3 Where we or you invoke your right to self-exclusion under this clause 4, Eightcap will waive any termination notice period under clause 17. Any obligations existing at the time of the self-exclusion are still owed by you to us.

- 4.4 Self-exclusion may result in any (or all) of the following:

- (a) a ban on trading products for a specified, indefinite or permanent basis;
- (b) restricting your ability to deposit more funds or make an Account Application; or
- (c) restrict your access to the Trading Platform.

- 4.5 You may make a request for self-exclusion by contacting your account manager or our customer service team.

5 Account Applications

5.1 For Retail Clients:

Upon submission of your Account Application, the agreement between us and you is constituted by the following documents, and form a singular agreement:

- (a) your Account Application;
- (b) this Agreement;
- (c) any additional terms and conditions issued by us and notified to you; and
- (d) any Disclosure Documents.

5.2 Entity Accounts

- (a) **Joint Accounts** – both individuals must submit an Account Application separately. If you are both approved, you must then notify us that you wish to open a Joint Account and comply with any additional requests for information from us;

- (b) **Corporate Accounts** – the primary or controlling director must submit an Account Application. If approved, you must notify us that you wish to open a Corporate Account and comply with any additional request for information from us; and
- (c) **Trust Accounts** – a single trustee must submit an Account Application. If approved, you must notify us that you wish to open a Trust Account and comply with any additional requests for information from us.

5.3 Eightcap does not accept Account Applications from self-managed superannuation funds.

5.4 Eightcap reserves the right to reject any Account Application (including any request made under clause 5.2) in its absolute discretion.

5.5 **Account Applications generally**

By submitting your Account Application to Swyftx you acknowledge and agree that:

- (a) you have read and understood all documentation provided to you by us (or Swyftx), including this Agreement, the Disclosure Documents and Privacy Policy and you authorise us to open an Account for you in your capacity as a Retail Client;
- (b) before approving your Account Application, Swyftx or an external service provider may take steps to perform checks required under the Applicable Laws to:
 - (i) confirm your identity, including through the use of Credit Header Data;
 - (ii) confirm your source of funds or wealth;
 - (iii) determine your status as a Disqualified Person, politically exposed or sanctioned person;
 - (iv) understand your criminal history (if any);
 - (v) substantiate and confirm the information you provided in your Account Application; and

- (vi) determine your suitability to trade our products;

- (c) you are not a citizen or tax resident of the United States of America;
- (d) we or Swyftx may request further information from you to satisfy our obligations under the Applicable Laws. You are not obliged to comply with such requests, however, if you fail to provide the requested information, we may reject your Account Application and prevent you from applying for or acquiring our products in the future;
- (e) if you are a corporate entity, you must provide (and maintain) a valid LEI;
- (f) you must notify Swyftx immediately if there is a material change in your circumstances, such that the information you declared in your Account Application is no longer true and accurate or you may no longer be suitable to use our products;
- (g) if we accept your Account Application, you will be categorised as a Retail Client;
- (h) Eightcap acts as principal and Market Maker for the purpose of dealing in CFDs in accordance with the terms of this Agreement;
- (i) Eightcap may hold Positions that are contrary to your Position, resulting in a potential conflict of interest; and
- (j) Eightcap or Swyftx may reject your Account Application for any reason whatsoever without further notice or explanation to you.

5.6 **Representations and warranties in respect of Account Applications**

By submitting your Account Application, you represent and warrant that:

- (a) by entering into the Agreement, you do not and will not breach any other agreement to which you are a party, or any law, judgment or court order that is binding on you;
- (b) you are not acting in the capacity as a trustee of a self-managed superfund;

- (c) only you will trade on the Trading Account unless you provide us notice and we consent for some other third party to act on your behalf;
- (d) you are not an employee or contractor to Eightcap or any of its Related Body Corporates, nor a close relative of any such person;
- (e) all information you provided in the Account Application is true and accurate;
- (f) you are not personally insolvent in any jurisdiction (both domestic or foreign) or otherwise subject to, or will likely be subject to, a petition or arrangement under the *Bankruptcy Act 1966* (Cth);
- (g) you have the legal capacity and authority to enter into this Agreement and any transactions governed by it;
- (h) you and Eightcap are bound by the Applicable Laws and regulations as they relate to the Operating Rules, customs, usages, and practices (as modified from time to time) of the Relevant Exchange and clearing houses where any dealing takes place;

if you are applying for a Corporate Account:

- (i) no resolution has been passed, petition presented, or order made for the winding up, liquidation or administration of the corporate entity;
- (j) you are not under the management of a receiver, manager, administrator or other insolvency official;
- (k) you will apply for and keep current an LEI;

if you are a trustee and applying for a Trust Account:

- (l) the Trust has been duly constituted, is valid and complies with the Applicable Laws;
- (m) you are the controller of the Trust and its settled assets;
- (n) you have an unrestricted right to be fully indemnified out of the Trust's property in respect of any losses or liabilities incurred by you in your

dealings with us, and the Trust's assets are enough to satisfy that right of indemnity;

- (o) the Trust Deed has been executed in accordance with the laws of the relevant State or Territory in which the Trust is constituted;
- (p) the property of the Trust has not been resettled, set aside or transferred to any other trust or settlement and the Trust Deed has not been terminated and the date or event for the vesting of the Trust's property has not occurred;
- (q) you have the authority to enter into transactions and acquire financial products of the kind offered by Eightcap;
- (r) you are not the subject of any action brought by the objects or beneficiaries of the Trust; and
- (s) there is no conflict of interest on your part in entering into transactions with Eightcap and performing your obligations under the trust.

5.7 Wholesale Accounts

- (a) After acceptance of your Account Application, you may notify Swyftx at any time of your intention to become a Wholesale Client.
- (b) Your classification as a Wholesale Client will depend on you demonstrating that you meet the applicable requirements under the Corporations Act and our own internal policies. In providing us this information, you represent and warrant that all information you provide is true, accurate and complete.
- (c) If you are successfully classified as Wholesale on the basis of your wealth or income and the certificate you provided us expires, your Wholesale Client status is taken to be revoked with immediate effect. Any open Positions or Orders will be closed on the date of the certificate's expiry and any Account settings will be reverted to Retail Client conditions. You agree to hold Eightcap harmless for any loss or

harm you may suffer because of this clause 5.7(c).

6 Authorised Persons

6.1 Joint Accounts

- (a) Where more than one person is named as the holder of the Trading Account, the Trading Account will be established in your names as Joint Account holders. Joint Account holders are jointly (together) and severally (individually) liable under this Agreement.
- (b) Each client who is a party to the Joint Account is considered an Authorised Person to the other.

6.2 Authorised Persons of individuals

- (a) Subject to clause 6.1(a), if you are an individual, Eightcap may allow a third party to act on your behalf as an Authorised Person.
- (b) To appoint an Authorised Person, you must provide Swyftx with a written Power of Attorney which defines the scope of the Authorised Persons authority. Eightcap and Swyftx reserve the right to reject a request to appoint Power of Attorney for any reason whatsoever without explanation to you.
- (c) You acknowledge and agree where we accept your request to appoint an Authorised Person by way of Power of Attorney, we and Swyftx are entitled to act upon instructions which are, or appear to be, from you or your Authorised Person.

6.3 Authorised persons of corporate entities

- (a) Any employee or director of a corporate entity may be appointed as an Authorised Person, where you provide a list of those Authorised Persons to us.
- (b) Eightcap and Swyftx are under no obligation to accept any instruction that is not made by an Authorised Person or to enquire as to the identity of any person providing the instruction if it reasonably believes the person is an Authorised Person.

- (c) You acknowledge and agree where you provide a list of Authorised Persons, in accordance with clause 6.3(a), Eightcap and Swyftx are entitled to act upon instructions which are, or appear to be, from you or your Authorised Person.

6.4 Representations and warranties in respect of Authorised Persons

You represent and warrant that, when appointing an Authorised Person under this clause 6:

- (a) the Authorised Person(s) are not a Disqualified Person;
- (b) you will take all necessary steps to monitor the Authorised Person(s) actions;
- (c) the Authorised Person(s) will at all times act in a manner consistent with this Agreement;
- (d) you will notify Eightcap and Swyftx immediately if an Authorised Person ceases to be authorised or if their circumstances change in a way that impacts their ability to act as an Authorised Person; and
- (e) all information you provide about the Authorised Person(s) is true, accurate and complete in every material respect.

6.5 Liability for Authorised Person(s) acts and omissions

- (a) You acknowledge and agree that at all times you remain solely and fully liable for all acts, omissions, instructions and dealings of any Authorised Person(s) acting on your behalf in relation to your Trading Account(s) and any other services provided by us.
- (b) Eightcap will not be liable for any loss, damage, cost or expense incurred by you or any third party arising from, or in connection with, the actions or omissions of any Authorised Person(s), even if such acts or omissions exceed, or are outside the scope of, the authority granted by you to the Authorised Person(s).

7 Services and Representatives

7.1 Our services and products

- (a) Eightcap seeks to act efficiently, honestly and fairly at all times in the provision of its CFD products. We will take reasonable steps to execute your instructions and obtain the best possible result for you in accordance with any applicable regulatory requirements. This is subject to any specific instructions provided by you, which will take precedence.
- (b) Eightcap will arrange execution-only transactions in CFDs.
- (c) Swyftx may make transaction, market, or research information available to you via our website or through other communication channels. This information is for educational purposes only and should not be taken to constitute a recommendation to trade our products or the products/Underlying Assets contained in that material. Eightcap makes no representation, warranty or guarantee as to the accuracy or completeness of any such material.
- (d) Where you use third party tools or plug-ins (**'Tools'**) on the Swyftx Platform, you must abide by that third-party's terms and conditions when using those services. Eightcap does not warrant or represent that access to, use of, and output of these Tools will be uninterrupted or error free. You should always take steps to confirm the veracity of any material provided to you by these Tools.

7.2 Restrictions on services provided

- (a) Eightcap, and its representatives (including Swyftx) will only provide you with general financial product advice. This advice does not take into account your objectives, financial situation or needs.
- (b) Eightcap and/or Swyftx will, however, assess your objectives, financial situation and needs when assessing your Account Application. Any determination Eightcap or Swyftx makes in respect of your Account

Application must not be relied on or construed as a representation by us that our products are suitable for your specific circumstances.

- (c) You acknowledge and agree that Eightcap does not provide taxation advice whatsoever. Your tax position when trading CFDs will depend on your own individual circumstances and the trading strategies you adopt. We strongly recommend that you seek independent professional advice for obligations relating to your tax affairs.

8 Deposits, Withdrawals and Client Money Handling

8.1 Deposits

- (a) The terms of this clause 8.1 are subject to the terms of clause 11.
- (b) You may, at any time, deposit money into your Trading Account by transferring fiat from your Spot Wallet to your Derivatives Wallet.
- (c) You acknowledge and agree that you must deposit funds as and when required by Eightcap to maintain an adequate level of Margin (as determined by Eightcap) in your Account.
- (d) Eightcap or Swyftx may, in its discretion, impose a minimum deposit amount. To successfully deposit into your Derivatives Wallet, you must deposit a sum greater than or equal to that minimum deposit amount.
- (e) If you are a trustee of a Trust or director of a corporate entity, you represent and warrant that the funds you deposit with Eightcap:
 - (i) are the property of the Trust and/or corporate entity;
 - (ii) have not been misappropriated such that the payment is unlawful or against the constituent documents of the Trust or corporate entity; and
 - (iii) have not otherwise been obtained by reason of a breach of your fiduciary duties to the Trust and/or

corporate entity.

- (f) Eightcap makes no representation or warranty in respect of any specific timeframe for the processing of deposits you make, which may be subject to internal risk reviews, banking delays and system processing windows.

8.2 Withdrawals

- (a) Subject to the terms of this clause 8.2, Eightcap and/or Swyftx may permit you to withdraw from your Trading Account(s) any funds not used to cover Margins and/or other obligations as imposed by this Agreement. You may only withdraw from your Derivatives Wallet to your Spot Wallet on the Swyftx Platform. However, Eightcap may require you to hold additional funds to withstand any unrealised losses on your open Position(s), and/or any changes to your Margin requirement.
- (b) The circumstances in which we may reject your withdrawal request, include, but are not limited to, where:
 - (i) we are required by law to freeze your assets or otherwise restrict your ability to gain access to the funds;
 - (ii) you refuse to comply with any reasonable request for information related to the withdrawal;
 - (iii) we have reason to believe that the funds are the proceeds of crime, money laundering or terrorism-financing activity;
 - (iv) there is a Disputed Transaction or other pending dispute where it is reasonable that we withhold your funds;
 - (v) we have reason to believe that the withdrawal request has been made by a third party;
 - (vi) an account, wallet, card or payment facility to which the withdrawal is requested, is owned by a third-party;
 - (vii) the withdrawal request's amount, at the time the request is processed, exceeds the Net

Balance in the Trading Account, or would otherwise put you into a Margin Call;

- (viii) you have outstanding Margin obligations on one or more other Trading Account(s); or
- (ix) the withdrawal amount would place you at risk of failing to meet your Margin obligations, including meeting any Margin Call which may arise from time to time.

- (c) Eightcap makes no representation or warranty in respect of the timeframe for processing any withdrawal request you make which may be subject to internal risk reviews, banking delays and system processing windows.

8.3 Client money handling

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

offsetting the risk Eightcap incurs in connection with transactions entered into with Retail Clients.

- (f) Eightcap may, to the extent permitted by Part 7.8 of Division 2 of the Corporations Act, use Wholesale Client money for Hedging, counteracting or offsetting the risks associated with transactions entered into with the Wholesale Client.

8.4 Unclaimed client money

- (a) If your Account becomes Inactive, your Account is terminated, or you close your Account without making a final withdrawal, we will attempt to contact you for a period of no less than 12 months. If we do not hear from you or you do not withdraw your funds, Eightcap may pay any remaining Equity in your Account to the Victorian State Revenue Office ('**SRO**') as unclaimed money. In remitting funds to the SRO, Eightcap reserves the right to deduct any reasonable fees or expenses it incurs as result of attempting to contact you to withdraw your funds.
- (b) To reclaim any money paid to the SRO under clause 8.5(a), you will need to contact the SRO and comply with any of their requirements. Eightcap will not be liable for any loss you suffer as a result of the SRO denying you access to funds we remit to them.

9 CFDs

9.1 Underlying Assets

You agree and acknowledge that:

- (a) we may make any number of Underlying Assets available to you to trade CFDs;
- (b) share CFDs do not entitle you to any voting rights or other benefits such as participation in shareholder purchase plans or discounts, attend meetings or receive the issuer's reports;
- (c) you do not have any other legal or equitable interest in any Underlying Asset made available by us to trade on the Swyftx Platform;
- (d) Underlying Assets may be made available by us at our sole discretion. If the Underlying Asset is a share, where a corporate action occurs, the Underlying Asset may be removed from the Trading Platform by us with no notice to you; and
- (e) if you are unsure of Eightcap's treatment of a particular corporate action in respect of a share CFD, you can contact us to seek clarification.

9.2 Share CFDs and Corporate Actions

You agree and acknowledge that:

- (a) if there is a corporate action that has:
 - (i) a dilutive or concentrative effect; or
 - (ii) any other effect,on the value of a share CFD's Underlying Asset, Eightcap may make an adjustment to the terms of the share CFD that places it in substantially the same economic position it would have been in had the corporate action not occurred; and
- (b) where a dividend is paid on an Underlying Asset, a dividend adjustment will be calculated in respect of open Positions held on the ex-dividend day. For example, in an Account holding a long Position, a dividend adjustment is credited to the Account; in an Account holding a short Position, a dividend adjustment is debited from your Account;

9.3 Share CFDs and Takeovers

- (a) If the Underlying Assets are the subject of a proposed Change in Control Event, Eightcap may:
 - (i) suspend your open Position until the closing date of the Change in Control Event, at which point your Position will be closed in accordance with the terms of that Change in Control Event; or
 - (ii) close your Position prior to the closing date of the Change in Control Event.
- (b) Eightcap will be entitled to cancel or adjust the size, value, number of any

transaction(s) and/or the level of any Order to reflect the Change in Control Event. Any such cancellation or amendment will be final and binding on you.

9.4 Product Pricing Acknowledgements

You acknowledge and agree that:

- (a) Eightcap sets the price of the CFD that you use to open and close a Position. These prices are sourced from independent third-party market feeds to align with its best execution practices;
- (b) prices provided on the Swyftx Platform are subject to Liquidity;
- (c) Eightcap may contribute its own internal Liquidity when setting a price which may alter the spread between the bid and ask price, or the Liquidity available at each price;
- (d) an Order may be rejected, partially executed, or fully executed based on a volume weighted average price; and
- (e) in some circumstances, we may set a price that is different from the price of the Underlying Asset in the Underlying Market, in particular:
 - (i) where out of hours trading is available, and we set the prices at which we are prepared to deal with you;
 - (ii) if we cannot determine a price because trading in the Underlying Market or Underlying Asset is limited, suspended or a price cannot be determined by our Liquidity Provider(s), then the price will be that:
 - (A) immediately preceding such limitation; or
 - (B) determined by Eightcap (acting reasonably), by having regard to the prevailing market conditions affecting trading;
- (f) where we are unable to determine a price for, or there are low levels of Liquidity in, the Underlying Asset, Eightcap may:

- (i) close out all or part of your open Position;
- (ii) limit or adjust the total value of the Order you can place; or
- (iii) refuse an Order;

- (g) where an error has occurred in the pricing of an Underlying Asset or a CFD, or in the calculation, application, or settings of any swap or rollover rates, Eightcap reserves the right not to be bound by such price or rate where that price is a result of a Manifest Error. Where this occurs in relation to the initial purchase of a CFD or the maintenance of an open Position, Eightcap may:
 - (i) close your open Position; or
 - (ii) make any other necessary adjustments to your open Positions or Trading Account ledger (including retrospectively debiting or crediting your Account to reflect the correct swap rate); and
- (h) unless a Manifest Error has occurred, all determinations and calculations made by Eightcap under this Agreement will be final and binding on you.

9.5 Payments from CFD Positions

- (a) Subject to clause 8, when you or your Authorised Person close a Position and settlement occurs under this Agreement, the following will occur:
 - (i) if you make a profit – Eightcap will credit your Account the profit payable, less any fees, costs or charges incurred under this Agreement; or
 - (ii) if you make a loss – Eightcap will debit from your Account any amount payable by you to us.
- (b) Eightcap reserves the right to offset any money owed to you under this clause 9.5 with any amount payable by you under this Agreement or any other agreement between you and us.

RETAIL CLIENTS: more information about fees, costs and charges can be found in the PDS.

10 Fees, Costs and Charges

10.1 Fees, costs and charges generally

You must pay all transaction charges, fees, Margins, settlements, interest, taxes, costs and expenses for each CFD transaction you enter into with us.

10.2 Swap fees generally

Subject to clauses 10.3 and 10.4, you acknowledge and agree that:

- (a) where a CFD is held at the close of the Trading Day, a charge or credit is made to each Position. These charges or credits are generally referred to as 'Overnight Charge/Credit' in the Swyftx Platform but may sometimes be referred to as interest, financing, rollover charges, credits or similar term;
- (b) Overnight Charge/Credits are charged or credited according to:
 - (i) the CFD traded; and
 - (ii) whether you are buying or selling the CFD.
- (c) Overnight Charge/Credit are charged or credited to each individual trading Position, even if you have opposing Positions in the same CFD on the same Trading Account;
- (d) multiple (3-day) Swap Charges or Credits apply on most CFDs (other than CFD futures) to account for deferred settlement of your Positions. The day in which a 3-day Swap applies may be set out on the Swyftx Platform or can be provided to you by a Swyftx representative; and
- (e) Overnight Charge/Credits also occur on public holidays, including when the Underlying Asset ceases to be quoted, is suspended from quotation, or subject to a trading halt.

10.3 Share CFD Overnight Charge/Credit

- (a) You agree and acknowledge that while

your Position remains open, Eightcap will value your Position daily and calculate the amount of Overnight Charge/Credit based on its notional value. A different Overnight Charge/Credit rate will ordinarily apply to long and short Positions.

- (b) The Overnight Charge/Credit may be calculated and accrue daily as follows:
 - (i) if you sell: the Overnight Charge/Credit will be credited or debited to your Trading Account, based on the reference Overnight Charge/Credit rate received from our counterparties, plus any applicable markup; and
 - (ii) if you buy: the Overnight Charge/Credit will be debited from your Trading Account.

10.4 Other Fees and charges

Eightcap may charge:

- (a) an Extended Hold Admin Fee for any Position you hold for 21 days or more;
- (b) an Inactivity Fee; and
- (c) any applicable partner fees or introducing broker commissions associated with your Trading Account.

10.5 Tax

- (a) If an executed Order incurs any duty or tax (including GST), this cost will be payable by you.
- (b) Payments made by you to Eightcap must be made without any offset, deduction or withholding for tax, unless the deduction or withholding is required by Applicable Laws.

10.6 Withholding Tax on US Equities

In the event that there is a dividend declaration on a US share Underlying Asset, and we make an adjustment under clause 9.2, Eightcap may be required to withhold tax for any credit paid to you which, in substance, is substantially equivalent to a dividend. This charge will be debited from the payment owed to you before it is paid into your Account.

10.7 Costs associated with events of default

In accordance with clause 15, you will be liable for any costs Eightcap incurs as a result of an event of default caused (whether directly or indirectly) by you, including, all reasonable legal costs incurred by Eightcap.

10.8 **Changes to fees, costs, and charges for Retail Clients**

You acknowledge and agree that Eightcap may:

- (a) increase its fees, costs and charges periodically and will provide you at least thirty (30) calendar days' notice informing you of that increase. When the increase takes effect, Eightcap may make changes to the Disclosure Documents in accordance with the Applicable Laws; or
- (b) change its fees, costs and charges, including, decreasing any amounts incurred by you or removing them entirely. If this is the case:
 - (i) Eightcap (or Swyftx) will attempt to provide you notice before the change takes effect; and
 - (ii) if this is not possible, Eightcap (or Swyftx) will inform you as soon as reasonably practicable but in any event no later than three (3) months after the change takes effect.

10.9 **Non-Base Currency fees, costs and charges**

Eightcap may automatically convert any non-Base Currency adjustments or charges (for example, funding charges or dividend adjustments) to your Account's Base Currency.

11 **Margin**

11.1 **Margin Generally**

- (a) You are required to maintain an adequate level of Margin in your Account to cover your open Positions. Eightcap will determine the Margin required from time to time
- (b) Eightcap reserves the right to change Margin requirements in relation to any Positions.

(c) You must, at the direction of Eightcap, deposit Cleared Funds into your Account to cover any of your Margin obligations (including Margin Calls) under this Agreement.

(d) You must attend to the deposit obligations set out in clause 11.1(c) immediately.

11.2 **Margin Calls**

- (a) Eightcap may, in respect of any of your open Positions, make a Margin Call from time to time.
- (b) If your Trading Account is on Margin Call or you fail to meet a Margin Call, Eightcap may refuse any Orders you make until Eightcap has confirmed receipt of the Margin Call amount in the form of Cleared Funds.
- (c) A Margin Call is taken to arise at the time your Trading Account enters a Margin Call.
- (d) **It is solely your responsibility to monitor and satisfy all Margin requirements (including Margin Calls).**
- (e) Eightcap will not be liable for any loss or damage you sustain as a result of you failing to meet a Margin Call or if we are unable to notify you in making a Margin Call.
- (f) While Eightcap may from time to time, provide alerts or notices on Margin Calls, any alerts/notices sent by us are provided on a courtesy basis only. **You are explicitly discouraged from relying on these alerts/notices and must actively monitor your Trading Account independently.** We do not guarantee the delivery, accuracy or timeliness of any alerts or notification and accept no liability if we are unable to notify you or if an alert fails to reach you.
- (g) If you fail to meet a Margin Call, Eightcap may close any of your margined Positions without further notice to you.

11.3 **Margin lending and repayment of Margin deposits**

Unless otherwise agreed in writing, Eightcap will not extend you directly or indirectly any Margin credit or facility.

12 The Trading Platform

12.1 Trading Platform

- (a) Upon the acceptance of your Account Application, Eightcap will grant you access to the Trading Platform for the transmission of Orders to your Trading Account.
- (b) You must use the Trading Platform in accordance with this Agreement and the Applicable Laws.
- (c) You may use the Trading Platform to transmit, receive, and confirm the execution of Orders, subject to market conditions and applicable Operating Rules.
- (d) Eightcap may offer real-time tradeable prices to you through the Trading Platform. Due to delayed transmission between you and Eightcap the price offered may have changed before an Order is received by us.
- (e) If Eightcap provides you with automatic Order execution, Eightcap will be entitled to change the price at which your Order is executed to the market value at the time we receive that Order.
- (f) Where a community forum or other method of posting or communicating to other persons is available to you via the Trading Platform, you acknowledge and agree that you must not:
 - (i) publish, post, distribute or disseminate defamatory, infringing, obscene, pornographic or other unlawful or offensive material;
 - (ii) intercept or attempt to intercept any email correspondence;
 - (iii) adversely affect its availability for other users;
 - (iv) send correspondence electronically or otherwise to other users for any purpose other than personal communication; and/or
 - (v) act, or fail to act, in a manner which

may result in the violation of any Applicable Laws.

- (g) The Trading Platform may be automatically updated from time to time, or you may be required to update the Trading Platform manually. Updates may lead to differences in the Trading Platform, including, the level of security, products, and services available.
- (h) If you use an outdated version of the Trading Platform, errors in the transmission of Orders may occur. Eightcap will not be liable for losses incurred by you in connection with your use of an out-dated version of the Trading Platform.
- (i) You agree that the use of the Trading Platform is at your own risk, and you assume full responsibility for any losses resulting from the use of materials sourced from the Trading Platform.
- (j) You also assume full responsibility for any losses resulting from your use of software or other materials obtained via a third-party, including:
 - (i) expert advisors;
 - (ii) signal/trade alert providers; and
 - (iii) trade copiers,Eightcap does not offer this software/material and accordingly does not provide technical support in relation to that use.

12.2 No warranty for third party Online Trading Facilities

Eightcap makes no representations or warranties regarding any services provided by any third party. Including, but not limited to, the provision of the Trading Platform by a third party to you.

12.3 Unauthorised access to your Trading Account(s)

- (a) It is your sole responsibility to prevent unauthorised access to and use of the Trading Platform.
- (b) You will be responsible for all Orders, and the accuracy of any information, sent via the Trading Platform (or

otherwise) using your Trading Account Credentials.

- (c) You must take all necessary steps to keep your Trading Account Credentials secret and confidential.
- (d) You warrant and agree that any person who is in possession of your Trading Account(s) Credentials is an Authorised Person.
- (e) You must notify Eightcap immediately should you become aware of any unauthorised use, loss or theft of your Trading Account credentials.

12.4 Interruptions to Trading Platform usage

- (a) The Trading Platform(s) may experience periods where it is not available to you (**'Outage'**). Where an Outage is planned, Eightcap will provide you with notice before the Outage period. You will be responsible for managing your own risk, including by ensuring that there is adequate Margin in your Account or your Positions are closed before the Outage.
- (b) Eightcap does not warrant that access to, or use of, the Trading Platform will be uninterrupted or error free, or that the service will meet any criteria with respect to its performance, service levels or quality. To the extent permitted by the Applicable Laws, Eightcap expressly disclaims all implied warranties, including: warranties of merchantability, title, fitness for a particular purpose, non-infringement, compatibility, security, or accuracy.
- (c) Eightcap and its service providers will not accept any form of liability, including for loss or damage to you or to any other person, for:
 - (i) any inaccuracies, errors or delays or omissions of any data, information or message or transmission or delivery of any such data, information or message; or
 - (ii) interruptions in data, information, or message transmission, due to any negligent act or omission, including any Force Majeure Event

or any other cause, whether or not within Eightcap's control.

12.5 Trading Conditions

Eightcap reserves the right to:

- (a) acting reasonably, modify your leverage limits at any time without prior notice, including due to market volatility, account equity thresholds, or risk management policies; and
- (b) at its sole discretion, reallocate your Trading Account to an alternative server for reasons including, optimising platform performance or maintaining security.

12.6 Orders

- (a) For the purposes of this clause 12, Eightcap will not be deemed to have received an Order placed by you on the Trading Platform until Eightcap has actual knowledge of that Order or communication.
- (b) We will not be bound by an Order you place until it is confirmed by us via the Trading Platform or some other means and you acknowledge and agree that:
 - (i) Failure by Eightcap to issue a deal confirmation will not prejudice or affect the relevant CFD transaction. Eightcap will not bear any liability whatsoever resulting from the failure to issue a deal confirmation.
 - (ii) It is your responsibility to immediately notify Eightcap if you do not receive a deal confirmation.
 - (iii) You must examine the terms of each deal confirmation upon receipt. The contents of the deal confirmation, in the absence of Manifest Error, will be conclusive evidence of the executed deal, unless you notify Eightcap of any incorrect detail in the confirmation.
 - (iv) Upon receipt of your dispute, Eightcap will investigate the and, with your co-operation, will endeavour to resolve the dispute in accordance with its Complaint Management Policy. Notwithstanding any such dispute, you will be required to continue to

satisfy any obligation to pay Margin calls made by Eightcap in respect of the CFD.

- (c) Eightcap may, in its discretion, execute a Stop Loss Order in relation to any Position where there are reasonable grounds to believe that subsequent price movements may be adverse to you. Eightcap will not be liable to you for any failure to exercise this discretion. Once a Stop Loss Order is triggered or executed, it becomes a Market Order.
- (d) You may place an Order via the Trading Platform. We will not accept an Order made through any other means.
- (e) Notwithstanding the terms of this clause 12.5, Eightcap may, in its discretion (acting reasonably), refuse to accept an Order you place without further notice to you.

12.7 Execution of Orders

Where you place an Order, the following will apply:

- (a) Eightcap undertakes, and you acknowledge, that subject Applicable Laws, we will execute the Orders in the sequence we receive them, unless it would be fair and equitable to execute them on a different basis;
- (b) Eightcap may, in its discretion:
 - (i) aggregate your Orders; or
 - (ii) split your Orders,with its own Orders or those of its associates or other clients. You acknowledge that on some occasions the consequence of the aggregation or splitting may result in a less favourable price than if your Order was executed as we received it.
- (c) Eightcap will provide you with statements summarising the activity on your Trading Account(s), including any Orders received and executed. You must bring any errors or omissions to our attention within 5 days of the date you receive that statement. In the absence of your written objection, the statements we provide will be deemed

correct in all respects and consequently binding on you.

12.8 Maintaining multiple Trading Accounts

- (a) Eightcap may allow you to open any number of Accounts to facilitate your trading on the Trading Platform.
- (b) If you operate multiple Accounts, you acknowledge and agree that:
 - (i) where you open opposite positions on different Accounts, the Positions will not cancel each other out. Unless you close each Position manually, all open Positions may be rolled over on a continuous basis and continue to pay or receive the applicable Swap Charge on each Position (see clause 10.2(c)); and
 - (ii) Margin you deposit in one Trading Account does not provide Margin coverage on the other Trading Account(s). Therefore, you may receive Margin Calls and stop-outs on one account despite having additional Margin available on other Account(s).

12.9 Entering a Position

- (a) You may use the Trading Platform to view market prices. You acknowledge that a price quotation does not constitute an offer to open or close a Position for you.
- (b) Upon receiving the quote from Eightcap, you may request to enter into Position by placing an Order on the Trading Platform.
- (c) Orders may be placed as:
 - (i) Market Orders to buy or sell a CFD as soon as possible at the price obtainable in the market; or
 - (ii) limit and stop orders to trade when the price reaches a predefined level you set. Limit orders to buy and stop orders to sell must be placed below the current market price, and limit orders to sell and stop orders to buy must be placed above the current market price. If the bid price for sell orders or ask price for buy orders is reached, the Order

will be filled as quickly as possible at the next obtainable price in the market. Limit and stop orders are therefore not guaranteed to be executable at the level or amount specified by you, unless explicitly stated otherwise by Eightcap.

- (d) the acceptance of a stop order under clause 12.8(c)(ii) is not a guarantee or representation by Eightcap that the stop order can be executed at the specified price.
- (e) To protect our interests or yours, Eightcap reserves the right to limit the value of Positions you may have outstanding or are able to enter into.
- (f) If you provide Eightcap with a standing Order to enter into a Position when a particular price level is reached, you acknowledge that the price at which the Position is entered into may not be the same as the price you requested. You remain solely responsible for monitoring any pending Orders.

12.10 Closing a Position

You acknowledge and agree that, where you or your Authorised Person close a Position:

- (a) upon receipt of a Closing Notice, Eightcap will provide you with a quote for the Closing Price. You must notify Eightcap as soon as possible whether you are willing to accept the Closing Price. If you accept the Closing Price, the Position (or portion of the Position) will be closed on the Closing Date at the Closing Price, subject to market liquidity and conditions;
- (b) without limiting clause 9.4(e), if any Position:
 - (i) ceases to be quoted on a Relevant Exchange;
 - (ii) is suspended from quotation;
 - (iii) subject to a trading halt of five (5) or more Business Days; or
 - (iv) is removed from the Trading Platform,
 Eightcap may elect to close the affected Position immediately; and

- (c) following you closing a non-Base Currency Position (or if it is rolled over or expires), the profits or losses from that Position will be automatically converted to your Trading Account's Base Currency and paid to your Trading Account.

12.11 Automatic closure of your Position(s)

- (a) Unless otherwise agreed by Eightcap in writing, Eightcap will close some or all of your open Position(s) if your Equity is at or below 50% of your Margin. This is generally expressed as "margin level" on the Trading Platform. For example, when your Equity is at or below 50%, we will close some or all of your open Position(s), in Order of the open Position(s) with the largest loss or any other Position(s) Eightcap, in its discretion, deems appropriate.
- (b) Positions under clause 12.10(a), will be closed out at the first available price and any Position closed will be treated as an Order and is not a guarantee or representation by Eightcap that the Order will be executed at the current quoted price.
- (c) The percentage under clause 12.10(a) is subject to change and may be amended by Eightcap, but will not be set at a level below 50% for Retail Clients.
- (d) Without limiting clauses 12.10(a) to 12.10(c) and without prejudice to clause 9.4(e), if at any time trading on a Relevant Exchange, is suspended or halted in any Underlying Market, Eightcap will, in determining the Closing Price of a Position, have regard to the last traded price before the time of that suspension or halt.
- (e) All determinations and calculations made by Eightcap pursuant to this clause 12.10 will be binding on you in the absence of Manifest Error.

12.12 Limiting your use or access to the Trading Platform – fair usage principles

- (a) We may apply limits to your use of, or access to, the Trading Platform.
- (b) The limits described in clause 12.11(a), may be applied for various reasons. This

includes, where your use of the Trading Platform:

- (i) is not appropriate, fair, or lawful;
 - (ii) affects or has the potential to affect other clients' use of the Trading Platform; or
 - (iii) is significantly different from the usage/trading activity we would expect from you.
- (c) If we impose a limit on your use or access to the Trading Platform, we may suspend, disable or terminate your access entirely. We will provide you with prior notice unless it is not reasonable or lawful to do so.
- (d) To ensure that your use of the Trading Platform is fair, we will monitor your order-to-trade ratio. Each Order, cancellation or modification request by you is treated as an Order for the purposes of calculating this ratio.
- (e) Eightcap may investigate where you exceed your order-to-trade ratio. Such investigations may take an indefinite period of time, continuing for as long as we reasonably require to complete the investigation. We may, but are not obliged to, contact you before taking further action under this clause 12.11.

12.13 Trading strategies and arbitrage

- (a) You acknowledge and agree that with respect to your trading strategies and arbitrage practices:
- (i) you will not use an electronic device, software, algorithm or any other trading strategy, or arbitrage practice, on the Trading Platform which:
 - (A) manipulates, takes advantage of a delay, uses duplicate transfers or deposits, or otherwise creates an unfair advantage in the way Eightcap constructs, provides, conveys or executes Order prices, costs, fees or charges (including Price Latency Arbitrage); or
 - (B) contravenes the Applicable Laws.

- (b) Trading strategies that Eightcap considers to be in breach of clause 12.12(a)(i) are not accepted by Eightcap. Any use of these strategies is a material breach of this Agreement.
- (c) If you are in breach, or Eightcap reasonably suspects you are in breach of clause 12.12(a)(i), Eightcap may, in its sole discretion and without prior notice to you:
- (i) withhold any funds suspected to have been derived from the breach, or suspected breach;
 - (ii) close any of your open Positions;
 - (iii) cancel any Order you may have outstanding at the time;
 - (iv) refuse to accept Order(s);
 - (v) enforce all Positions against you that have incurred a loss;
 - (vi) treat all Positions as void from the outset if they incurred a profit; and/or
 - (vii) terminate this Agreement and your Account as well as your access to the Trading Platform(s) with immediate effect.

13 Disputes

13.1 Disputes Generally

- (a) If a dispute between you and Eightcap arises in relation to our products, services (trade execution, pricing or margin issues), or the handling of a previous dispute, your dispute will be dealt with in accordance with our Complaints Management Policy. For any disputes relating to general product advice provided by Swyftx or any operational issues, including, regarding the technology, availability or performance of the Derivatives Trading Platform (not directly caused by an act of omission of Eightcap), you must lodge your complaint directly with Swyftx to be handled under their internal dispute resolution process.
- (b) If your dispute relates to a Disputed Transaction, Eightcap may restrict your

access to the Trading Platform until the dispute is investigated and resolved.

- (c) Subject to clause 8.2, Eightcap, will not unduly withhold or prevent you from accessing the funds in your Trading Account, unless your Trading Account is subject to an ongoing investigation under this Agreement or where we are otherwise permitted or required to restrict access under Applicable Laws, or acting reasonably to mitigate risk.

13.2 Retail Client dispute escalation

- (a) Where, in Eightcap's opinion a resolution of your dispute is reached or substantial steps have been taken to reach a resolution, but you have not acted in good faith and/or have been unreasonable, Eightcap may take all actions necessary in relation to the dispute or Disputed Transaction, including but not limited to, closing out your Positions, cancelling your Orders, terminating this Agreement, providing compensation, and/or reversing losses/profits. Nothing in this provision derogates from the rights and protections afforded to you under the Applicable Laws, or from your ability (or ours) to refer the dispute to AFCA.
- (b) In an event where your dispute against Eightcap has been referred by you to AFCA, you consent to Eightcap disclosing personal information about you including, but not limited to, records of interactions between you and Eightcap and Swyftx, for the purpose of resolving the dispute.

14 Privacy

- 14.1 To provide you with trading services, Eightcap needs to collect personal information about you. If you do not provide the requested information or agree to the way Eightcap handles your personal information, Eightcap will not be able to provide the products and services outlined in this Agreement to you.
- 14.2 Eightcap has systems and processes in place to ensure it meets its obligations under the Applicable Laws as they relate to privacy. Please refer to the Eightcap Privacy

Policy for more information about Eightcap's information handling practices.

- 14.3 Personal information that you provide will be used for identity verification purposes in accordance with our legislative and regulatory obligations. You must advise Eightcap of any changes to your personal information as soon as practicable.
- 14.4 You authorise Eightcap to collect, use, store, or otherwise process any personal information which enables Eightcap to provide its services. This may, on occasion, require the disclosure of personal information to our related entities, agents, service providers or other third parties. Specifically, you agree that Eightcap and Swyftx will share and exchange your personal information, onboarding data, and trading activity records with each other to facilitate the operation of your Trading Account, manage risks and comply with their respective product design, distribution and reporting obligations under Applicable Laws. See our Privacy Policy for further information.
- 14.5 By engaging with us, you acknowledge and agree that Eightcap and Swyftx may record telephone or internet conversations with you. We and Swyftx may exchange and use such recordings for training, compliance or quality purposes, as well as for evidence in a dispute. You will be permitted access to these recordings if you request this from us, subject to Applicable Laws.
- 14.6 Eightcap may pass on, including to government or regulatory authorities, information (personal or otherwise) collected from you to comply with the Applicable Laws. This includes exchanging data with Swyftx to fulfil mandatory reporting requirements under the DDO framework. Eightcap is under no obligation to inform you if it has done so.
- 14.7 You acknowledge that our Privacy Policy may be updated from time to time. We will inform you of any material changes where we are required to do so by the Applicable Laws. The current and applicable Privacy Policy will be made available on our website.

15 Default

15.1 Events of Default

You acknowledge and agree that where one (or more) of the following Event of Default(s) takes place, Eightcap may take any such action provided in clause 15.3:

- (a) you fail to meet a call for a deposit or Margin or make any other payment when due under this Agreement;
- (b) you cannot be contacted by us (and have not made alternative arrangements), within the time specified by us, to obtain instructions (where required);
- (c) you become of unsound mind;
- (d) you are no longer suitable to trade, as assessed by Eightcap in its sole discretion;
- (e) you suspend payment of your debts, make any composition with your creditors, have a receiver appointed over some or all of your assets, take or have any proceedings taken against you in bankruptcy or take or allow any steps to be taken for your winding up (except for a solvent amalgamation or reconstruction approved in advance in writing by Eightcap) or anything similar to any of these events happens to you anywhere in the world;
- (f) you fail in any respect to comply with any obligations you have to Eightcap under this Agreement or otherwise, or if any of the representations or information supplied by you are or become inaccurate or misleading in any material respect;
- (g) any guarantee, indemnity, or security for your obligations is withdrawn or becomes defective, insufficient, or unenforceable in whole or in part;
- (h) it becomes, or may become, unlawful for Eightcap to maintain or give effect to all or any of the obligations under this Agreement or otherwise to carry on its business, or if Eightcap or you are requested not to perform or to close out a transaction (or any part thereof)

by any governmental or regulatory authority, whether or not that request is legally binding; or

- (i) Eightcap considers it necessary to do so for its own protection.

15.2 Obligation to notify us of event of default

You must notify Eightcap immediately if you become aware of any event referred to in 15.1.

15.3 Eightcap's rights on Event of Default

If any event referred to in 15.1 occurs, Eightcap will, at its sole discretion and at your expense, be entitled, but not obliged to:

- (a) immediately close your Trading Account;
- (b) terminate this Agreement;
- (c) close out any or all of your Contracts;
- (d) cover Positions by entering into further Contracts;
- (e) cancel any outstanding Orders required to close your Trading Account;
- (f) convert any amount owed by you to Eightcap into Australian currency at any time on or after payment is due (until payment is received in full);
- (g) satisfy any obligation you may have to Eightcap out of any funds belonging to you in Eightcap's custody or control;
- (h) charge you with all the costs, expenses and losses incurred by Eightcap as a result of entering into, or closing out transactions pursuant to this Agreement; and/or
- (i) take any such action a reasonably prudent person would take in the circumstances, including adjusting your initial capital to the extent necessary to offset any losses, damages, operational costs or administrative fees incurred as a result of your breach.

16 Indemnity and Limitation of Liability

16.1 Indemnity

- (a) You will indemnify and keep indemnified Eightcap and its employees, contractors, corporate authorised representatives or agents from and against any cost, expense, claim, action, suit, loss, damage, or other amounts whatsoever arising out of any Event of Default (whether by act or omission) of you under this Agreement or anything lawfully done by Eightcap in accordance with this Agreement or by reason of Eightcap complying with any direction, request or requirement of an exchange or its clearing house or other regulatory authority.
 - (b) Eightcap will not be responsible or liable in any way for any delay or error in the transmission or execution of any dealing by it under this Agreement caused by you or any other third party, including but not limited to:
 - (i) trading floor or exchange system operational failure;
 - (ii) bank delay, postal delay, or other failure;
 - (iii) delay of any fax or electronic transmission or delay caused by accident or emergency; or
 - (iv) a Force Majeure Event.
 - (c) No warranty is provided by Eightcap in relation to information or advice sourced from third parties, and all information provided by Eightcap to you is for your private use and is not to be communicated to any third party without the prior written consent of Eightcap.
 - (d) Eightcap makes no representation or warranty as to the results of dealing in CFDs and will not be liable for any damage or loss suffered or incurred by you arising out of or in connection with any general advice, forecast, or opinion given to you in relation to price movement, Positions or to the likely profitability of any Position.
 - (e) These indemnities will survive termination of this Agreement.
- (a) You declare you have read, understood, and accepted all the terms and conditions outlined in this Agreement.
 - (b) You agree that when entering into a CFD transaction with Eightcap you are relying on your own judgment and, to the extent permitted by law, in the absence of gross negligence, fraud, or dishonesty by Eightcap or any of its employees, agents, and representatives in relation to Eightcap's activities as the holder of an AFSL, Eightcap will bear no responsibility or liability of any kind whatsoever with respect to any general advice given or views expressed to you, whether or not the general advice or views expressed was requested by you, nor will Eightcap be liable for losses incurred by you resulting from dealing in any product(s) offered by Eightcap.
 - (c) In the absence of gross negligence, fraud, dishonesty, or misconduct by Eightcap or any of its employees, agents, and representatives, and to the full extent permitted by law, Eightcap will bear no liability whatsoever in respect of:
 - (i) any private dealings, contracts, transactions, or relationships between you and any of Eightcap's employees or agents;
 - (ii) any impact on you caused directly or indirectly by the issuance of any instructions by you or an authorised person to Eightcap;
 - (iii) your losses or damages incurred as a result of any delay in transmitting or a failure to transmit funds caused by reasons outside Eightcap's control;
 - (iv) our failure to execute orders in a timely manner or administer this Agreement in the manner contemplated by this Agreement for reasons beyond our control; and
 - (v) losses or damages arising from or in connection with any CFD as the result of any moratorium, suspension or delisting of any underlying asset, or any other occurrence in relation to a relevant exchange.

16.2 Limitation of Liability

- (d) 'Reasons outside Eightcap's control' may include, but are not limited to, exchange control or other government restrictions, exchange or market rulings, suspension of trading, power failure, telecommunication failure, strikes, or war.
- (e) All such available exemptions and limitations of liability will apply in respect of Eightcap's employees, officers, agents and representatives.

17 Termination

- 17.1 Your Trading Account(s) may be closed and all agreements and transactions between you and Eightcap may be terminated for any reason by us, by giving five (5) Business Days' written notice to the other party.
- 17.2 In the event of your Trading Account being closed in accordance with clause 17.1, a Closing Notice will be taken to have been provided by you in respect of all open Positions. Should you fail to unwind any open Position within the five (5) Business Day notice period, Eightcap reserves the right to close out your Positions. Any losses, profits, fees, costs or charges you incur because of us closing those Positions will be binding on you.
- 17.3 You may terminate this Agreement at any time by providing us written notice. Such termination will take effect immediately. If you have open Positions at the time of your termination, you consent to Eightcap closing those Positions on your behalf at a time convenient to us, but no later than five (5) Business Days after you provide us written notice of termination. Any losses, profits, fees, costs or charges you incur because of us closing those Positions will be binding on you.
- 17.4 Notwithstanding the terms of this clause 17, Eightcap reserves the right to terminate your account with immediate effect one day after your account is deemed Inactive. Any funds remaining in the Account(s) at the time of closure will be dealt with in accordance clause 8.5.
- 17.5 The Termination of this Agreement by either party will not release Eightcap or you from any existing obligations or from any

liabilities for an antecedent breach of the terms of this Agreement.

- 17.6 Eightcap reserves the right to terminate and close your Trading Account and/or any open Positions without notice to you where it would not be reasonable to notify you of such closure including, where:
 - (a) it suspects illegal or fraudulent activity has occurred;
 - (b) you have failed and/or refused to provide updated and accurate information relating to your account (including LEIs where applicable);
 - (c) closing your account on notice would be in contravention of the Applicable Laws; or
 - (d) notifying you would cause harm to Eightcap or any of its clients.
- 17.7 Eightcap may also terminate this Agreement in accordance with clause 17.1 where it reasonably believes it is in the best interests of the Client, including where:
 - (a) Eightcap forms the belief that a Client can no longer withstand sustained financial losses;
 - (b) is financially vulnerable or a victim of abuse;
 - (c) is suffering from an addiction;
 - (d) does not meet the conditions of Eightcap's Target Market Determination; or
 - (e) any other circumstance, of which Eightcap has knowledge, that could lead to an allegation of unconscionable conduct if Eightcap were to continue to provide you with our services.

18 Assignment, Novation and Transfers

- 18.1 You acknowledge and agree that Eightcap may assign, transfer or novate your Account, client money and/or Positions including any rights, remedies, powers, duties and obligations under this Agreement to a Related Body Corporate, without further consent from you.

18.2 Eightcap will give you 21 calendar days' notice of any assignment, transfer or novation with the option to 'opt-out' within a reasonable period of time, if, in the opinion of Eightcap, the assignment, transfer or novation would result in you receiving a significantly lower level of protection than that afforded to you under the Applicable Laws.

19 General

- 19.1 Eightcap may amend the terms of this Agreement, at any time by giving written notice to you. Such changes may take effect immediately or upon a specified future date. We will notify you of any changes (including their effective date) via email and/or in the client portal. You will be deemed to have accepted and agreed to the amendment(s) unless you notify us of any objection within five (5) Business Days of receiving our written notice. If you do object to the amendment(s), the amendment(s) will not be binding on you, but your Trading Account will be suspended and Eightcap will close your Trading Account in accordance with clause 17.
- 19.2 If any of the provisions contained in this Agreement are found to be invalid or unenforceable, such provisions will be deemed deleted, and the validity and enforceability of the remaining provisions will continue unimpaired.
- 19.3 Unless specified otherwise, each party may set-off any amount owing by it to the other against an amount owed by the other party.
- 19.4 If a party fails to exercise, or delays in exercising, any right under this Agreement, by doing so it does not waive such right. The rights provided in this Agreement do not exclude other rights provided by law.

20 Governing Law

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

21 Miscellaneous

- 21.1 **(Assignment)** You are not permitted to assign, novate or transfer your rights and obligations under this Client Agreement or any counterpart legal document without the Eightcap's express prior written consent.
- 21.2 **(Further acts)** The parties will do all things and execute all documents required to permit or facilitate the actions contemplated by this Agreement.
- 21.3 **(No merger)** A party's rights and obligations do not merge on completion of any transaction under this Agreement.
- 21.4 **(No waiver)** A failure or delay to exercise a power or right is not a waiver of that right, and the exercise of a power or right does not preclude the future exercise of that or any other power or right. A waiver of a power or right must be in writing and signed by the party giving the waiver.
- 21.5 **(Entire agreement)** Subject to clause 5.1, this Agreement contains the entire agreement between you and us as to its subject matter. It supersedes all prior agreements, representations, conduct and understandings. Any representations or warranties made by us before you establish your Trading Account do not have any effect unless expressly set out in this Agreement.

