

Terms subject to change with notice on website at <http://www.optionsxpress.com.au>

## General Conditions of Use

### optionsXpress Australia User Agreement

When used in this agreement "OXA", "OXA Group", "we", "us", "our", or "ours" means optionsXpress Australia Pty Limited ACN 085 258 822 and any related party including, for these purposes, optionsXpress, Inc with whom OXA has an agreement to provide services or perform any action to execute instructions issued by you.

The financial services provided by optionsXpress Australia Pty Limited ACN 085 258 822 in Australia are provided under OXA's Australian Financial Services licence (No 246743).

In consideration of our accepting and maintaining an account for you, you hereby agree that you have read, understand and agree to the following terms and conditions. You further understand that your use of the site, your placing of any order to effect transaction(s), your placement of assets in an OXA account (or any account held with a third party engaged by OXA pursuant to this User Agreement), and/or your use of OXA public or private services, constitutes assent to the User Agreement then posted and in effect on the OXA site. There will be occasions where we need to change terms of this User Agreement. Where that is the case, you will be alerted to those changes on entry into the OXA website.

The investment choices and services on publicly available portions of the OXA site are provided as general information only and are not intended to provide investment, tax, or legal advice. Under no circumstance is the information contained herein to be used or considered as an offer to sell or a solicitation of an offer to buy any particular investment.

The information and services provided by OXA are not based on knowledge of any client's investment objectives, financial situation or particular needs. You should consider the suitability of investment choices for your own investment needs. Because OXA have not considered specific client's investment objectives, financial situation or needs, an investment adviser should be consulted before any investment decision is made. The information provided is not a substitute for obtaining professional advice from a qualified person, firm or corporation. Consult the appropriate professional advisor for more complete and current information.

While information provided is based on the information from sources which are considered reliable, OXA, its directors, employees and consultants do not represent, warrant or guarantee, expressly or implied, that the information is complete or accurate. OXA is not responsible for any recommendation, solicitation, offer or agreement or any information about any transaction, customer account or account activity contained in this communication. OXA does not accept any responsibility to inform you of any matter that subsequently comes to its notice, which may affect any of the information contained in this document. Product offers, rates, terms and other information provided herein are subject to change without notice.

The products and services described in pages of this web site are only offered in jurisdictions where they may be legally offered for sale. Not all securities, products, or services described are available in all countries, and nothing on this site constitutes an offer or solicitation of these securities, products, or services in any jurisdiction where their offer or sale is not qualified or exempt from registration.

## **Systems Are Subject to Occasional Congestion, Technological Problems or Outage**

System response and access times may vary due to market conditions, system performance, and other factors. High volumes of trading and volatility may result in executions at prices significantly away from the price quoted or displayed at the time of order entry.

OXA maintains sophisticated systems and employs experienced personnel to receive and process your transactions over the Internet. Information processing and communications systems, both our own and those of third parties on whom we depend, are subject to occasional congestion, technological problems, or in extreme cases, outage.

Beyond our proprietary systems, third party providers include, but are not limited to market centres that execute orders and quote vendors. Failure of a critical system for a significant period of time could limit our ability to rapidly and accurately process transactions.

OXA or its delegates clears through a clearing agent pursuant to a clearing agreement. Links to other web sites or references to other products, services or publications are provided as a matter of convenience and do not imply the endorsement or approval of such web sites, products, services or publications by OXA.

## **Trademarks Belonging to OXA.**

OXA is the copyright owner of all text and graphics contained on this website, except as otherwise indicated. Other parties' trademarks and service marks that may be referred to herein are the property of their respective owners. You may print a copy of the information contained herein for your personal use only, but you may not reproduce or distribute the text or graphics to others or substantially copy the information on your own server, or link to this website, without prior written permission of OXA or the owner of the trademark. Permission to use and reproduce documents and related graphics available from this website is granted, provided that: 1. the below copyright notice appears in all copies and that both the copyright and this permission notice appear; 2. use and reproduction of documents and related graphics available from this website is limited to personal, non-commercial use; 3. no documents or related graphics, including logos, available from this website are modified in any way; and 4. no graphics, including logos, available from this website are used separate from accompanying text. Use or reproduction for any other purpose is expressly prohibited by law, and may result in civil and criminal penalties.

Violators will be prosecuted to the maximum extent possible.

## **optionsXpress Australia Account Terms and Conditions**

In consideration of our accepting and maintaining an Account for you, you hereby agree that you have read, understand and agree to the following Terms and Conditions. You further understand that your use of the site, your placing of any order to effect transaction(s), your placement of assets in an OXA account, and/or your use of OXA public or private services, constitutes assent to the Terms and Conditions then posted and in effect on the OXA site.

### **1. Parties**

1.1 This document ("Agreement") contains important information regarding the terms and conditions which apply to you and your account (each referred to as "you" "your" and/or "Account"). Where you wish

to trade securities in more than one jurisdiction we will generally require that a separate Account be established and operated exclusively for each jurisdiction. All rights conveyed under the terms and provisions of this Agreement apply to OXA and any related party with whom OXA has an agreement to provide services or perform any action to execute instructions issued by you and you agree to do anything required by OXA (including appointing it as attorney) to give effect to this provision.

1.2 Any provision of this agreement that operates to grant any right, discretion or benefit to optionsXpress Australia is taken to also operate to grant an equivalent right, discretion or benefit to any related entity or agent or nominee of optionsXpress Australia including optionsXpress Inc. and any Clearing Participant.

1.3 OXA shall be entitled to assign the benefits under the terms of this Agreement in conjunction with any sale or transfer by OXA of the whole of its business, goodwill, other assets or part thereof.

## **2. The Terms "Securities" and "Property"**

For the purposes of this Agreement, the terms "securities" and "property" shall include, but are not limited to, currencies, securities, options contracts, financial instruments, derivatives, commodities of every kind and nature, and all contracts and options relating thereto, whether for present or future delivery.

## **3. Applicable Rules and Regulations**

All transactions shall be subject to all then applicable laws rules and regulations in the jurisdiction in which the trade is executed and cleared. For the avoidance of doubt, that jurisdiction is deemed to be the jurisdiction in which the trade is executed, not the jurisdiction in which the Client is located. All transactions shall be subject to the applicable constitution, rules, customs and usages of the applicable exchange, association, market or clearing house, and the customs and usages of those transacting business on such exchange, market or clearing house where transactions, custody or business of the Accounts are done.

## **4. Headings are Descriptive**

The heading of each provision hereof is for descriptive purposes only and shall not be deemed to modify or qualify any of the rights or obligations set forth in each such provision.

## **5. Amendments**

5.1 We may at any time amend this Agreement, by modifying or rescinding any of our existing provisions or conditions or by adding any new provision or condition, by conspicuously posting notice of such amendment on our web site or by providing written notice to you, and by our updating and maintaining such agreements in a publicly-accessible place on our website. Continued use of OXA's sites or services after such notice and posting will constitute acknowledgment and acceptance of such amendment.

5.2 If the relevant Clearing House prescribes amended minimum terms for a Client Agreement for the purposes of its Business Rules (the "New Terms"), to the extent of any inconsistency between these minimum terms and the New Terms, the New Terms will override the terms of this Agreement and apply as if the Customer and OXA had entered into an agreement comprising the New Terms.

5.3 OXA will make New Terms available on its website.

## 6. Entire Agreement

This Agreement represents the entire agreement between you and us concerning the subject matter herein. Certain supplements, policies and/or procedures ("Postings") may be further outlined on the OXA web site and by your use of our web site and services, you agree to be bound by any and all Postings. You may not assign any right or obligations hereunder without first obtaining the prior written consent of an authorised officer of OXA.

## 7. Other agreements Apply

You agree and understand that other specific disclosures, terms and conditions apply to your use of the site and your Account. It is your continuing obligation to understand such terms, and you agree to be bound by such terms as are in effect at the time of your use or maintenance of your Account as they apply. Such agreements include, but are not limited to agreements relating to:

- Futures Accounts
- Margin Accounts
- Options Accounts
- Short Option Trading
- Exchange Data Use Agreements
- Electronic Delivery of Documents and Services
- Terms and Risks relating to Stop Orders, Spreads, NBBO and Expiration / Daily Assignments etc.
- Privacy Statement

## 8. Clearing Status

OXA introduces your Account and transactions on a fully disclosed basis. OXA (or its delegate) has entered into a clearing arrangement with a clearing agent hereinafter referred to as the "Clearing Agent" or "agent", to perform certain execution, transaction processing, clearing and custodial and financing functions with respect to your Account and the Clearing Agent is carrying your Account as a clearing broker pursuant to such clearing agreement. However, the Clearing Agent has no supervisory authority or responsibility under the clearing arrangement or otherwise, with respect to the activities of OXA. Additional terms relating to the responsibilities of OXA and of its Clearing Agent are detailed in a separate document available on the OXA web site.

You understand and agree that any rights that either the Clearing Agent or OXA has under this Agreement may be exercised by either the Clearing Agent or OXA or may be assigned to the other, including, but not limited to, the right to collect any debit balance or other obligations owing in your Account, and that the Clearing Agent and OXA may collect from you or enforce any other rights under this Agreement independently or jointly.

## 9. Current Information

You agree to always provide OXA with accurate information which you update when your circumstances change. You represent and warrant that the information you supply in your new Account documentation, your Account profile, and all other information requested by us and provided by you is accurate and truthful. You further understand that you have a duty to immediately update such information if your information or financial circumstances change.

## 10. Security Interest and Lien

All securities and other property now or hereafter held, carried or maintained by us in our possession or control, for any purpose, in or for the benefit of any of your Accounts, now or hereafter opened, including any Account in which you may have an interest, shall be subject to a continuing first lien and first priority perfected security interest in favour of us for the discharge of all indebtedness and your other obligations to us, and are to be held by us as security for the payment of any liability or indebtedness of yours to us in any of your Accounts.

You authorise us the right to transfer securities and other property so held by us from or to any other of your Accounts held by us, whenever, in our judgment, we consider such transfer necessary for our protection. In enforcing our lien and security interest, we shall have the right and discretion to determine which securities and properties are to be sold and which contracts or positions are to be closed.

## 11. Account Restriction or Breach

You understand that we may at any time, at our sole discretion and without prior notice to you; prohibit or restrict your access to the use of the web site or related services and your ability to trade, we may refuse to accept any of your transactions, we may refuse to execute any of your transactions, and/or we may terminate your Account. The closing of an Account will not affect the rights and/or obligations of either party incurred prior to the date the Account is closed.

## 12. Payment of Indebtedness Upon Demand.

You shall at all times be liable for the payment, upon our demand, of any debit balance or other obligations owing in Accounts of yours with us, and you shall be liable to us for any deficiency remaining in any such Accounts in the event of the liquidation thereof, in whole or in part, by us or by you; and, you shall make payment for such obligations and indebtedness upon demand by us.

In the event of a breach or default by you under this Agreement, we shall have all rights and remedies available to a secured creditor under all applicable laws and in addition to the rights and remedies provided herein.

## 13 Sending Wire Transfers

The following provisions apply to wire transfers you send through us. If you have a specific agreement with us for wire transfer services, these provisions supplement but don't contradict that agreement. This Sending Wire Transfers section does not apply to Automated Clearing House (ACH) system funds transfer services, which are subject to separate terms and conditions set forth below.

A wire transfer is the process of carrying out payment orders that lead to paying a beneficiary. The payment order is the instruction you give us regarding a wire transfer. The beneficiary is the person who receives the payment. The person to whom your Account is registered is the only permissible beneficiary of a wire transfer. You agree that the information you provide about your account at another financial institution is accurate. We may charge fees for sending a wire transfer. For current fees, call us toll-free at 1300 781 132. By entering or providing us a payment order in a form acceptable to us, you authorize us to act on your behalf to initiate a wire transfer. After receiving a payment order from you by the applicable cutoff time, we will act on the payment order by transmitting payment instructions to the applicable bank. We have cutoff times for processing payment orders. We may treat payment orders we receive after a cutoff time as if received the next Business Day. We tell you our cutoff times upon request.

We may provide you with one or more numbers, passwords, tokens, challenge questions, and/or other means of identification and authentication (collectively, a 'Password') in connection with our wire transfer service. You agree to maintain the security and confidentiality of your Password and to notify us immediately if you have any reason to believe its security or confidentiality has been or may be breached. We may elect to verify the authenticity and content of any payment order by contacting the authorized signer on your account. If we are unable to verify a payment order with the authorized person, we may refuse to execute the order. We also may reject any instruction that is not confirmed in accordance with any other security procedure that you and we agree upon. You agree that our confirmation process of a wire instruction (or our reliance on any Password or other security procedure that you and we agree upon) shall be deemed to be a commercially reasonable security procedure, in light of the anticipated size, type, and frequency of your wire transfers.

We may process any payment order we believe is transmitted or authorized by you if we act in compliance with the agreed upon security procedure. You agree to be bound by any wire instruction, whether or not authorized, that is issued in your name and accepted by us in compliance with the security procedure.

Our security procedures are designed to verify the authenticity of wire instructions, not to detect any errors in their transmission or content. We assume no responsibility to detect errors in your instructions (e.g., duplicate transfers), even if we may take certain actions from time to time to do so.

We may reject payment orders. Any notice of rejection (whether given orally, electronically, or in writing) will be effective when given. We will not be liable to you for the rejection or obligated to pay you interest for the period before you receive the notice of rejection. Pursuant to government regulations, we may be unable to send a wire transfer you requested to certain countries. You agree that optionsXpress will not be liable for any losses in any of these circumstances.

We may select any intermediary bank, funds transfer system, or means of transmittal to send your payment orders. Our selection may differ from that indicated in your instructions.

It is important that you provide us with accurate and complete payment information. The beneficiary's bank may make payment to the beneficiary based solely on the account or other identifying number you provide, even if the name on the payment order differs from the name on the account. We, or an intermediary bank, may send a payment order to an intermediary bank or a beneficiary's bank based solely on the bank identifying number, even if you provide us with a different bank name. Neither we nor any other bank has a duty to determine whether a payment order contains an inconsistent name and number. This means that you may not rely on the name of the person or bank that you provide us to ensure payment to the correct person. If you provide incorrect information, you could lose the amount transferred.

### **Terms Applicable to Sending Domestic Wire Transfers and Non-Consumer Foreign Wire Transfers**

You agree to indemnify us against, hold us harmless from, and defend us against any losses, claims, costs, expenses, damages, or liabilities (including, but not limited to, attorneys' fees) arising out of or resulting from any action taken or omitted by us in accordance with this Agreement or your instructions. This obligation will survive the termination of this Agreement.

You must notify us at once if you think a wire transfer shown on your Account statement or other notice is incorrect or unauthorized. If you fail to notify us in writing within 10 calendar days after we send or make available to you the first notice or statement on which the problem or error appears, you agree that the transfer information set forth on the statement or notice will be deemed correct, and that you will be precluded, to the greatest extent permitted by law, from asserting any claim against optionsXpress in

connection with, and waive any right to recover any losses resulting from, any unauthorized or erroneous transfer.

You have no right to amend or cancel a payment order after we receive it. If you ask us to do this, we may make a reasonable effort to act on your request. But we will not be liable to you if, for any reason, a payment order is not amended or canceled. You agree to reimburse us for any costs, losses, indemnity claims, or damages that we incur in connection with your request to amend or cancel a payment order.

If your payment order requires us to convert one type of currency to another (for example, from U.S. dollars to euros), your funds will be exchanged for such other currency at the current rate of exchange according to our standard procedures. Currency exchange rates fluctuate over time, and you acknowledge and accept the risks of such fluctuations between the time you send us a payment order and the time the wire transfer is final.

### **Terms Applicable to Certain Consumer Foreign Wire Transfers**

If you initiate a wire transfer that is subject to Regulation E primarily for personal, family, or household purposes to a recipient in a foreign country (a 'consumer foreign wire transfer'), we will provide you with a disclosure of the details of the transaction, as well as information about your error resolution and cancellation rights. Note: Certain transfers made in connection with the purchase or sale of securities are not covered by Regulation E or this section.

### **What to do if you think there has been an error or problem with your consumer foreign wire transfer:**

If you think there has been an error or problem with your wire transfer:

Call: 1300 781 132  
Write: optionsXpress Australia.  
Attn: Compliance Department  
5/4 Skyline Place  
Frenchs Forest NSW 2086

You must contact us within 180 days of the date we promised to you that funds would be made available to the recipient. When you do, please tell us:

1. Your name and address and/or telephone number;
2. The error or problem with the transfer and why you believe it is an error or problem;
3. The name of the person receiving the funds and, if you know it, his or her telephone number or address;
4. The dollar amount of the transfer; and
5. The confirmation code or number of the transaction.

We will determine whether an error occurred within 90 days after you contact us, and we will correct any error promptly. We will tell you the results within three Business Days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of any documents we used in our investigation.

**What to do if you want to cancel a consumer foreign wire transfer:**

You have the right to cancel a consumer foreign wire transfer and obtain a refund of all funds paid to us, including any fees. In order to cancel, you must contact us at the phone number above within 30 minutes of payment for the transfer.

When you contact us, you must provide us with information to help us identify the transfer you wish to cancel, including the amount and location where the funds were sent. We will refund your money within three Business Days of your request to cancel a transfer as long as the funds have not already been picked up or deposited into a recipient's account.

**14. Cheque Deposits**

You understand and agree that we may hold funds deposited by you for any length of time until payment is made and the deposit has cleared. Alternatively, we may offer the privilege of trading against cheque deposits before collection of the proceeds, and in any case, if a deposited cheque is dishonoured by the bank on which drawn or the privilege is otherwise abused, we may, at any time in our sole discretion without notice, revoke this privilege and/or liquidate all securities positions in your Account that were purchased/sold short using the uncollected funds without incurring any liability on our part, any trading gains resulting from trading against uncollected funds represented by a deposited cheque or other financial instruments are our property unless and until the funds represented by that instrument (not a substitute or supplemental instrument) are collected by us, and you remain responsible to us for any losses resulting from such trading, in addition to your responsibility to make good any dishonoured cheque.

In addition, you acknowledge and give approval that we may, at our discretion and without further prior notice, utilise an electronic cheque process or Automated Clearing House (ACH) facility to draft funds in the amount of any of your cheques payable to OXA, its agents or assigns.

**15. Joint / Multi-party Accounts**

If you maintain a joint or multiparty Account, unless you notify us otherwise and provide such documentation as we require, your Account shall be held in joint tenancy with rights of survivorship. Each joint tenant irrevocably appoints the other as attorney-in-fact to take all action on his or her behalf and to represent him or her in all matters with respect to this agreement. You agree to indemnify us and we shall be fully protected in acting upon the instructions of either of you. This includes the sending of confirmations, statements, notices or other communications to either of you, or in making delivery to any of the joint owners of any and all securities and other property in the Account, or making payments to any of the joint owners of any or all monies in the Account as any of the joint owners may order and direct, or specifically fulfilling obligations pertaining to and/or as a result of any cheque writing privileges of either joint tenant. We shall be under no obligation to inquire as to the purpose of any such demand for deliveries and payments. However, you understand that we may request at our sole discretion that each party or person authorise a specific transaction, including deposits or withdrawals, although we may not be required to do so. Each of you shall be jointly and severally liable for any amounts due to us pursuant to this Agreement, whether incurred individually or by both of you.

In the event of the death of any of the joint owners, the surviving joint owner(s) shall immediately give OXA prompt written notice thereof, and we may, before or after receiving such notice, take such actions, require such documents, and restrict transactions in the Account as we deem advisable, in our sole discretion. The estate of any deceased joint owner shall be liable and each survivor will be liable, jointly and severally, to us for any debt or loss in the Account resulting from the completion of transactions initiated prior to our receipt of a written notice of death, or for debt or loss incurred in the liquidation of the

Account or the adjustment of the interests of the joint owners. Any taxes or other expense becoming a lien against or being payable out of the Account subsequent to the death of any of the joint owners shall be chargeable against the interest of the surviving joint owner(s) as well as against the interest of the deceased joint owner's estate.

#### **16. No Advice Online**

You understand that we, through our web site, provide no tax, legal or investment advice of any kind, nor do we give advice or offer any opinion with respect to the nature, potential value or suitability of any particular securities transaction or investment strategy. You further understand that while you may be able to access investment research reports through the Internet from our web site, including computerised online services, the availability of such information does not constitute a recommendation to buy or sell any of the securities discussed therein or to engage in any of the investment or trading strategies presented therein. Any investment decisions you make will be based solely on your own evaluation of your financial circumstances and investment objectives and the suitability for you of any security or any investment or trading strategy. Customer's accounts are self-directed and neither optionsXpress Australia nor any Clearing Participant provides any recommendations or advice. Notwithstanding the foregoing, to the extent that anything on the optionsXpress Australia site is deemed general advice, such research or market or other information furnished to Customer by optionsXpress Australia are incidental to the conduct of optionsXpress Australia's business as a futures commission merchant and do not constitute a recommendation or an offer to sell (or buy) or the solicitation of an offer to buy (or sell) any financial product; any such recommendation and/or information, although based upon sources deemed by optionsXpress Australia to be reliable, does not take into account the Customer's personal situation and is not personal advice and may be incomplete or unverified and may be changed by optionsXpress Australia without notice to Customer, and accordingly, optionsXpress Australia makes no representation, warranty or guaranty as to the accuracy or completeness of information furnished to Customer; Therefore, the Customer should before acting on that advice consider its appropriateness having regard to the Customer's objectives, financial situation or needs and consider obtaining independent advice. If the advice relates to the acquisition or possible acquisition of a particular financial product, the Customer should obtain any relevant disclosure document (such as a Product Disclosure Statement) prepared in respect of that product and consider that document before making any decision about whether to acquire the product.

#### **17. Authority for OXA to deal with third parties**

You acknowledge that OXA may engage third parties, such as the Clearing Agent, to deliver some or all of the services relating to your Account to you, including services relating to the execution and clearing of trades. You authorise OXA to contract in its absolute discretion with whatever third parties it considers necessary and desirable for the provision of facilities and services to OXA to, in turn, enable OXA to deliver services to you under these Terms and Conditions. You authorise OXA to pass such information relating to you, your trading positions and habits, your Accounts and such financial information as OXA holds to third parties as OXA in its absolute discretion considers necessary or desirable.

#### **18. Third Party Access**

The use or the grant of access to your Account by or to any third party to access information or place transactions in your Account is at your sole risk. If you authorise or allow third parties to gain access to our services, including your Accounts, you will cooperate in defending and indemnifying us against any liability, costs or damages arising out of claims or suits by such third parties based upon or relating to such access and use. OXA does not warrant against loss of use or any direct, indirect or consequential damages or losses to you caused by your assent, expressed or implied, to a third party access to your Account or information, including access provided through software communication "API" users,

aggregators or any other third party systems or sites. Any requests or orders entered using your access shall be deemed a request or order by you or your duly authorized designee's.

## **19. Order Entry**

You understand that all orders submitted or entered by you, either electronically or otherwise, are based upon your investment decisions, are unsolicited and are your sole responsibility, and you will not hold, nor seek to hold, OXA or any of our officers, directors, employees, agents, subsidiaries or affiliates, liable for any trading losses or other losses incurred by you. You understand that entering an order with us, including market orders, either electronically or otherwise, does not guarantee execution of the order, and you agree that OXA shall not be responsible for any order that is not executed. You understand that OXA, the Clearing Agent, or any regulatory body, exchange or clearing agent, has the right to cancel or break any executed transaction on the grounds that it was, according to their rules, "clearly erroneous". We shall not be deemed to have received any order electronically transmitted by you until we have actual knowledge of such order. You understand that all electronic orders are only acceptable through order entry screens provided by us. All orders marked Good-until-Cancelled, or "GTC" are submitted to the marketplace as Day Orders, cancelled after the close, held on our systems overnight and resubmitted each new market day until filled or cancelled. In the event that you wish to place an order "GTC" with the marketplace directly you must contact us to place that order through a representative. Many exchanges, however, do not accept GTC orders.

You acknowledge that if you do not cancel an open GTC order, the transaction may be completed based on your original instructions, as described above. All GTC orders will be accepted and handled exclusively on a "do not reduce" or "do not increase" basis. This means that optionsXpress will not adjust open GTC orders for dividends. We will cancel orders in securities subject to forward or reverse splits. Contingent orders will likewise not be adjusted. To adjust your open GTC orders, you should cancel your order and reenter it at the adjusted price. Open GTC orders will be automatically cancelled at the close of business on the 60<sup>th</sup> calendar day after the date the order was entered or on the next Business Day thereafter if the 60<sup>th</sup> day is a weekend or holiday.

## **20. Cancellation Requests**

When you place a request to cancel an order, the cancellation of that order is not guaranteed. Your order will only be cancelled if your request is received in the marketplace and matched up with your order before your order is executed. During market hours, it is rarely possible to cancel your market order as market orders are subject to immediate execution. Do not assume that any order has been executed or cancelled until you have received a transaction confirmation from us via e-mail or the OXA web site.

## **21. Late and Corrected Reports**

From time to time, we receive late reports from exchanges and market makers reporting the status of transactions. Accordingly, you may be subject to late reports related to orders that were previously unreported to you or reported to you as being expired, cancelled or executed. In addition, any reporting or posting errors, including errors in execution prices, will be corrected to reflect what actually occurred in the marketplace or exchange.

## **22. Transactions and Settlements**

All orders for the purchase and sale of securities and other property will be authorised by you and executed with the understanding that an actual purchase or sale is intended and that it is your intention and obligation, in every case, to deliver certificates to cover any and all sales or to pay for transactions upon our demand. If we make a sale of any securities and/or other property at your direction, and if you

fail to deliver to us any securities and/or other property that we have sold at your direction, we are authorised to borrow or otherwise obtain the securities and other property necessary to enable us to make delivery, and you agree to be responsible for any cost or loss we may incur, including the cost of borrowing and obtaining the securities and other property. You agree that OXA acts as your agent to complete all such transactions and is authorised to make advances and expend monies as required.

### **23. Execution of Orders**

Though orders are usually routed to the marketplace or exchange within seconds, certain orders, at our sole discretion, may be subject to manual review and entry, which may cause delays in the processing of your orders. optionsXpress Australia uses automated systems to route and execute most customer orders. When a customer order is received, optionsXpress Australia automatically routes that order to an exchange, marketplace, or third party liquidity provider. Orders routed to a marketplace or exchange may be executed against orders of our affiliated broker-dealer, OX Trading. You also understand that with respect to any order, you will receive the price at which your order was actually executed in the marketplace or exchange, which may be different from the price at which the security or option is trading when your order is entered into our system. Consistent with the overriding principle of best execution and subject to applicable regulatory requirements, you agree that we may use our discretion in selecting the market or exchange in which to enter your orders.

### **24. Purchases of Securities**

Cash transactions must be paid for in full, and any securities sold must be available for delivery by settlement date or we may, as required by law or in our discretion, delay settlement or cancel or otherwise liquidate transactions without prior notice. Day Trading, as defined by regulation, is not permitted in "cash accounts" unless the aggregate cash required to pay for all purchases is available, not including the sales proceeds from the day-traded shares.

### **25. Excess Purchases**

To process orders to purchase securities we generally require that your Account contain buying power equal to or greater than the purchase price of the securities prior to trade date. However, you may not rely on our software controls and you have an obligation to refrain from, cancel and immediately report any transaction that provides evidence of an over-purchase or excess equity requirement. Any order accepted and executed without sufficient funds in the Account will be subject to cancellation or liquidation at our discretion. You are responsible for review of your orders, including any orders which exceed available funds in your Account. If full funds are not available in the Account and an order is processed, you must contact us and arrange to provide prompt payment via wire or personal cheque, cashier's cheque or money order. If payment is not received by settlement date, or as market conditions warrant, positions may be liquidated according to procedures contained elsewhere herein, and you will remain liable for any resulting losses and all associated costs incurred.

### **26. Sales of Securities - Long and Short Sales**

We require that securities be deposited into an Account and in good deliverable form prior to the acceptance of a long sale order. Any sell order will be deemed a long sale unless, at the time the order was entered, you expressly request and receive permission from OXA to place the order as a short sale. In order to complete a short sale, we must be able to borrow the security you sold and did not own. In the event that we are unable to borrow the security you have sold short, you will be subject to a buy-in of the security for your Account without prior notice and at your expense. You understand that although you may receive confirmation of a "locate" in order to sell short, you remain subject to buy-in at any time in the

event that the shares become no longer available for borrowing or loan. Short selling is only permissible in accordance with the requirements of the particular exchange on which an order is to be executed.

## **27. Confirmations, Statements, Notices and Other Communications**

You acknowledge that OXA delivers both binding and non-binding Communications to you regarding your Account. OXA uses its best efforts to identify each Communication as either binding (also described as official notices) or non-binding (often "real-time" or online account information). Despite the nature or method of conveying this information, you are responsible for promptly reporting any. You understand that OXA delivers real-time information about the status of your orders by email along with providing online ledgers and order status information which are non-binding upon OXA, its agents and assigns; and that such information may be changed based on market corrections and resolution of discrepancies among other factors. We may accept or refuse amendments to orders in our discretion and no amendment may be made to an order which has already been executed.

## **28. Information Review**

You understand that it is your responsibility to review, upon first receipt, whether delivered to you by U.S. Postal mail, orally, by e-mail, or electronically, all confirmations, statements, notices and other binding and non-binding communications, including but not limited to, margin and maintenance calls, and prospectuses ("Communication"). You agree that Communications sent to you by mail or electronically or left for you on your voicemail, or otherwise, shall be deemed to have been delivered to you when sent, whether actually received by you or not. All information contained therein shall be binding upon you, if you do not object, either in writing or via electronic mail, within forty-eight (48) hours after any Communication has been delivered to you. In all cases, we reserve the right to determine the validity of your objection to the transaction.

## **29. Payment for Order Flow**

The Securities and Exchange Commission (the "SEC") and the Financial Industry Regulatory Authority ("FINRA") require that all broker/dealers inform their customers, when a new Account is opened, on an annual basis thereafter, and on confirmations of transactions, of payment for order flow practices (compensation received for placing orders through "market makers", third-party liquidity providers and specialists on registered U.S. exchanges). In addition, your orders may be executed against orders of our affiliated broker-dealer, OX Trading. Consistent with the requirement to seek best execution, and the pursuit of price improvement or liquidity enhancement for your order, orders placed through us will be routed to primary exchanges and other market centers, including regional securities exchanges, dealers that make markets over-the-counter ("OTC"), Alternative Trading Systems, and Electronic Communication Networks ("ECNs"). In an effort to obtain best execution, we may consider several factors, including, but not limited to, price improvement opportunities (executions at prices superior to the then prevailing inside market on OTC or national best bid or offer for listed securities), whether we will receive cash or non-cash payments for routing order flow, and reciprocal business arrangements. Further information about the source and nature of the compensation for a particular transaction will be provided upon written request.

## **30. Customer's Responsibility Regarding Certain Securities**

Certain securities may grant the holder thereof valuable rights that may expire unless the holder takes action. These securities include, but are not limited to, options, warrants, stock purchase rights, convertible securities, bonds and securities subject to a tender or exchange offer. You are responsible for knowing the rights and terms of all securities in your Account. We are not obligated to notify you of any upcoming expiration or redemption dates, or to take any other action on your behalf, without specific

instructions from you, except as required by law and applicable rules of regulatory authorities. However, if any such security is about to expire worthless or be redeemed for significantly less than its fair market value, and we have not received instructions from you, we may, at our discretion, sell (or transact in) the security and credit your Account with the proceeds. Similarly, you are responsible for knowing about reorganisations related to securities which you hold, including, but not limited to, stock splits and reverse stock splits. We are not obligated to notify you of any such reorganisation. If, due to a reorganisation or bookkeeping or data entry error, you sell more shares of a security than you own, or if you become uncovered on an options position, or if you become otherwise exposed to risk requiring us to take market action in your Account, we will not be responsible for any losses you may incur. Overselling is an "unauthorised" and "prohibited" short sale and may result in your Account being restricted.

### **31. "Control" or "Restricted" Securities**

Prior to depositing or placing an order in connection with the sale or transfer of any securities restricted by statute or the exchange rules in any jurisdiction you must advise OXA of the status of the securities, receive our express permission for such transaction, and you must furnish us with the necessary documents including applicable opinions of legal counsel to clear legal transfer. Even if the necessary documents are furnished in a timely manner, there may be delays with the processing of such securities. We, at our sole discretion, may require that such securities not be sold or transferred until they clear legal transfer. You are responsible for all costs associated with compliance or failure to comply with all legal requirements relating to the restricted securities including any fees associated with the administration, processing or negotiation of such securities by us or any agent. You acknowledge unless you disclose the status of securities as control or restricted, you are representing and warranting that the securities are negotiable.

### **32. Lost Securities**

If your periodic statement indicates that securities were forwarded to you and you have not received them, you should notify us immediately.

### **33. Fees and Charges**

You understand that we may charge commissions and other fees for execution or any other transaction or service furnished to you, and you agree to promptly pay such commissions and fees at our then prevailing price or rates. You acknowledge and agree that such commission rates and fees are determined and set solely by us and are subject to change at any time by posting such notice on our web site, and you agree to be bound thereby. You also agree to pay any applicable exchange and ECN fees, including the CBOE Options Regulatory Fee. You further agree to pay all applicable federal, state and local fees and taxes.

### **34. Margin Requirements and Margin Interest Charges**

You agree that you will maintain such securities and other property in your Account as collateral as required by all applicable statutes, rules, regulations and procedures or as we in our sole discretion deem necessary or advisable. You agree to promptly satisfy all margin and maintenance calls upon demand. You understand that the interest charge made to your Account at the close of a charge period will, unless paid, be added to the opening balance for the next charge period and that interest will be charged upon such opening balance, including all interest so added.

You will be charged interest on the daily amount of credit extended to you (your margin balance). Your interest rate will be a percentage rate above (or below) the current Base Rate. The Base Rate is an internally calculated rate set with reference to commercially recognized interest rates, industry conditions

related to the extension of credit and general credit market conditions. Your rate of interest will change automatically and without prior notice with changes in the Base Rate. The interest charge will appear on your account statement. You may contact customer service to check the current Base Rate. We reserve the right to negotiate the interest rate for credit extended to any customer and/or charge different categories of customers different rates. We will provide you at least 30 days' prior written notice of changes in the interest rate, other than the Base Rate.

Interest charges are calculated on the daily net debit balance in your Account based upon a sliding scale of a percentage rate above and below the Base Rate. Interest will be posted monthly to your Account and is calculated on a 360-day year. Note that the use of a 360-day year results in a higher effective rate of interest than if a year of 365 days were used. Interest charged can be verified by using the following formula as noted below:

[Average debit balance] x [interest rate] x  
[number of days Account was in a debit for the interest period] / divided by [360 days]

### **35. Consent to Loan or Pledge of Securities in Margin Accounts**

Within the limits of applicable law and regulations, you hereby authorise the Clearing Agent to lend, either to itself, us or to others, any securities held by the Clearing Agent for your Account, together with all rights of ownership, and to use all such property as collateral for our general loans. Any such property, together with all attendant rights of ownership, may be pledged, repledged, hypothecated or rehypothecated either separately or in common with other such property for any amounts due to us thereon or for greater sum, and the Clearing Agent shall have no obligation to retain a like amount of similar property in our possession and control. In connection with such securities loans, we may receive and retain certain benefits to which you will not be entitled. You understand that, in certain circumstances, such loans could limit your ability to exercise voting rights, in whole or part, with respect to the securities lent.

### **36. Calls for Additional Collateral and Liquidation**

If we, at our sole discretion, consider it necessary for our own protection, we may require you to immediately deposit cash or collateral into your Account. If you do not provide the additional collateral, you understand and acknowledge that we have the right to sell any or all securities and other property in your Account; buy any or all securities and other property which may be short in your Account; cancel any or all open orders; and/or close any or all outstanding contracts.

### **37. Liquidation without Prior Notice**

In addition, you understand and agree that we may exercise any or all of the above rights without demand for additional collateral, or notice of sale or purchase, or other prior notice or advertisement. Any such sales or purchases may be made at any time at our discretion on any exchange or other market where such business is usually transacted, or at public auction or private sale, or we may be the purchaser/seller for our own Account. It is understood that our giving of any prior demand or call or prior notice of the time and place of such sale or purchase shall not be considered as a waiver of our legal right to sell or buy without any such demand, call or notice, nor are we bound by such prior demand or notice to forestall action to buy or sell.

### **38. Free Credit Balances**

You hereby direct OXA and/or our agents to use any free credit balance awaiting investment or reinvestment in your Account in accordance with all applicable rules and regulations and to pay interest thereon at such rate or rates and under such conditions as are established by us from time to time.

### **39. Market Data**

You understand that each participating national securities exchange or association asserts a proprietary interest in all of the market data it furnishes to parties that disseminate said data. You understand that neither OXA nor any participating national securities exchange or association nor any supplier of market data guarantees the timeliness, sequence, accuracy, completeness, reliability or content of market information, or messages disseminated to or by any party. You understand that neither OXA nor any participating national securities exchange or association nor any supplier of market data warrants that the service will be uninterrupted or error-free. You agree that your use of our web site or any OXA service is at your sole risk. The OXA service is provided on an "as is", "as available" basis without warranties of any kind, either express or implied, including, without limitation, those of merchantability and fitness for a particular purpose, other than those warranties which are implied by and incapable of exclusion, restriction or modification under the laws applicable to this agreement.

### **40. Exchange Provided Terms (OPRA)**

You acknowledge and agree that neither any relevant stock exchange nor OXA ("Disseminating Parties") guarantees the timeliness, sequence, accuracy or completeness of Market Data or of other market information or messages disseminated by any Disseminating Party.

#### *40.1 Waiver of Liability*

In relation to securities traded on any exchange, you understand and acknowledge that each securities exchange (including any that is a participant in the Options Price Reporting Authority (US) ("OPRA Plan") ("OPRA Participant")) has a proprietary interest in the Market Data that originates on or derives from it or its markets. For the purposes of this Section only, "Market Data" means (a) options last sale reports, (b) options quotation information, (c) such index and other market information as the OPRA Participants or any other exchange may from time to time make available, and (d) all information that derives from any such information. Neither you nor any other person shall hold any Disseminating Party liable in any way for (a) any inaccuracy, error or delay in, or omission from, (i) any such data, information or message or (ii) the transmission or delivery of any such data, information or message, or (b) any loss or damage arising from or occasioned by (i) any such inaccuracy, error, delay or omission, (ii) non-performance or (iii) interruption in any such data, information or message, whether due to any negligent act or omission by any Disseminating Party, or to any "force majeure" (e.g., flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labour dispute, accident, action of government, communications or power failure, equipment or software malfunction) or other cause beyond the reasonable control of any Disseminating Party.

#### *40.2 No Right to Re-disseminate*

You shall use real-time quotes only for your individual use and shall not furnish such data to any other person or entity. You understand and agree that you shall use Market Data only for your own personal or business use, and shall not furnish Market Data to any other person. You further understand and agree that, at any time, an OPRA Participant or other exchange may discontinue disseminating any category of Market Data, may change or eliminate any transmission method and may change transmission speeds or other signal characteristics. You shall not hold the relevant OPRA Participant or other exchange liable for any resulting liability, loss or damage that may consequently arise. You understand and acknowledge that this Section confers third-party beneficiary status on OXA. In authorising us to take any action, or to receive any communication, this Section authorises us to act on our own behalf and on behalf of the relevant OPRA Participant or other exchange.

#### *40.3 Enforceability of OPRA Rights*

You understand that the terms of this Agreement may be enforced directly against you by the national securities exchanges, associations and others providing market data. Any OPRA Participant or other exchange may enforce this Section as to Market Data that originates on or derives from its markets, by legal proceeding or otherwise, against you and may likewise proceed against any person that obtains such Market Data other than as this Section contemplates. No act or omission on our part and no other defence that might defeat our recovery against you shall affect the rights of the Disseminating Parties as third-party beneficiaries under this Section. You shall pay reasonable legal fees that any Disseminating Party incurs in enforcing this Section against you.

#### *40.4 Perpetuity to this Clause*

This specific Section shall remain in effect for so long as you have the ability to receive Market Data as contemplated by this Agreement and all terms relating to limitation of liability shall survive the termination of this Agreement.

#### *40.5 Limitation of Liability, Force Majeure*

Neither we nor any disseminating party shall be liable, and you agree to indemnify and hold harmless OXA and such disseminating party, for any inaccuracy, error or delay in, or omission of, (1) any such data, information or message, or (2) the transmission or delivery of any such data, information or message; or any loss or damage arising from or occasioned by (i) any such inaccuracy, error, delay or omission, (ii) non-performance, or (iii) interruption in any such data, information or message, due either to any act or omission by OXA or any Disseminating Party or to any "force majeure" (as defined above) or any other cause beyond the reasonable control of OXA or any Disseminating Party.

### **41. Disclosure of Affiliated Persons**

You represent that, except for your notification of such status in writing, neither you nor any member of your immediate family are an employee of any exchange, any corporation of which any exchange owns a majority of the capital stock, a member of any exchange or self regulatory agency, a member of any firm or member corporation registered on any exchange, a bank, trust company, insurance company or any corporation, firm or individual engaged in the business of dealing either as broker or as principal in securities, bills of exchange, acceptances or other forms of commercial paper. You understand and agree that you will promptly notify us in writing if you or a member of your immediate family become so employed or become registered or employed in any of the above capacities.

### **42. Disclosure by Professionals and Insiders**

You agree to promptly notify us in writing if you are now or if you become: (a) registered or qualified with any securities agency, any securities exchange or association, or any commodities or futures contract market or association anywhere in the world; (b) an investment advisor; or (c) employed by a bank or other organisation exempt from registration under federal and state securities laws to perform functions that would require you to be so registered or qualified if you were to perform such functions for an organisation not so exempt; (d) an officer, director or 10% stockholder of any publicly traded company.

#### **43. Disclosures to Issuers**

OXA and its business partners may be required to disclose to an issuer the name, address, and position of its customers who are beneficial owners of that issuer's securities unless you object. If you do not notify us of such objection in writing, we will make such disclosures to issuers.

#### **44. Impartial Lottery Allocation System**

You agree that in the event we hold securities on your behalf which are callable, either in whole or in part, you will participate in the impartial lottery allocation system of the called securities in accordance with the provisions of the rules of the appropriate self-regulatory body. You understand that when any such call is favourable, no allocation will be made to any Account in which OXA has actual knowledge that our affiliates, directors, officers or employees have a financial interest until all other customers are satisfied on an impartial lottery basis.

#### **45. Additional Options Provision**

Options "Style," Exercise Assignment Notices. If you trade option contracts, you are aware of and agree to be bound by all laws and rules applicable to the trading of option contracts. In particular, you, either acting alone or in concert with others agree not to violate either directly or indirectly (through the Clearing Agent or its affiliates as broker or otherwise), or contribute to the violation of the position or exercise limits of the applicable Exchange, which limits can be obtained by contacting OXA. You acknowledge that the "style" of an option refers generally to when that option is exercisable. Specifically, (i) an "American-style" option is an option that may be exercised at any time (ie on a business day in which the option Exchange on which the option trades is open for trading) prior to its expiration, (ii) a "European-style" option is an option that may be exercised only on a specified exercise date (or expiration date) or during a specified time period before the option expires, and (iii) a "capped" option is an option that is automatically exercised prior to expiration if the Exchange on which the option trades determines that the value of the underlying interest at a specified time has reached the "cap price" for the option. You understand that exercise assignment notices for option contracts are allocated among customer short positions, including positions established on the day of assignment. The Clearing Agent uses a pro-rata option exercise allocation methodology to allocate short exercise assignments. You understand and agree that the Clearing Agent may change its allocation method at any time, upon notice to OXA. You further understand that all short-positions in American-style options are liable for assignment at any time. A more detailed description of this allocation procedure is available upon request to OXA.

#### **46. Limitation of Access**

You acknowledge, represent and warrant that you have received a password which provides access to your Account and that you are the sole and exclusive owner and are the only authorised user of such password and accept sole responsibility for use, confidentiality and protection of the password as well as for all orders, requests and information changes (i.e., change of address) entered into your Account using such password.

You accept full responsibility for the monitoring and safeguarding of your Accounts and access to your accounts. You will immediately notify us in writing, delivered via e-mail and certified/return receipt requested mail, if you become aware of: (i) any loss, theft or unauthorised use of your password, Account number or access; (ii) any failure by you to receive a message from us indicating that an order was received and executed; (iii) any failure by you to receive an accurate written confirmation of an execution; (iv) any receipt by you of confirmation of an order and/or execution which you did not place; or (v) any inaccurate information in or relating to your Account balances, deposits, withdrawals, securities positions, or transaction history.

If you fail to notify us immediately upon your knowledge, actual or constructive, when any of the above conditions or other disclosure of access details occurs, neither we nor any of its officers, directors, employees, agents, affiliates or subsidiaries can or will have any responsibility or liability to you or to any other person whose claim may arise through you for any claims with respect to the handling, mishandling or loss of any order, including by way of example, but not limitation, orders to execute, transfer or withdrawal.. Under no circumstances, including negligence, shall we or anyone involved in creating, producing, delivering or managing our services be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the service, or out of any breach of any warranty. This exclusion or limitation of liability will not apply to the extent that any applicable statute prohibits such exclusion or limitation of liability. To the extent that any applicable statute applies which modifies the above, our liability shall not include any hypothetical gains or losses, and it is agreed that the trier of fact shall only consider the actual acts, or lack thereof, of the parties to this agreement. The use and storage of any information including, without limitation, the password, portfolio information, transaction activity, Account balances and any other information or orders available on your personal computer is at your own risk and is your sole responsibility. You are responsible for providing and maintaining the communications equipment (including personal computers, firewalls, anti-virus and other software, and modems) and telephone or alternative services required for accessing and using the web site or related services, and for all communications service fees and charges incurred by you in accessing our web site or related services.

#### **47. Limitations, Restrictions and Termination of Services**

You are authorised to use materials which are made available by OXA for your own needs only, and you are not authorised to resell access to any such materials or to make copies of any such materials for sale or use to and by others without the written permission of a duly authorised officer of OXA. You will not delete copyright or other intellectual property rights notices from printouts of electronically accessed materials.

#### **48. Monitoring and Recording Telephone Conversations and E-mail, Credit Investigation.**

For our mutual protection and as a tool to correct misunderstandings, you understand, agree and authorise us, at our discretion, and without further prior notice to you, to monitor and record any or all telephone conversations between you and us and between you and any of our employees or agents and to monitor electronic communications conducted by you or your Account with us. You authorize us, at our discretion, to make and obtain reports concerning your identity, credit standing, legal and/or business conduct.

#### **49. Information and Privacy Consent**

You agree that we and any members of the OXA Group can exchange with each other any information about you including:

1. Any information provided by you when registering an Account.
2. Transaction details or transaction history arising out of your arrangements with OXA or a member of the OXA Group.
3. Anything about your creditworthiness, credit standing, credit history or credit capacity which may, under Australian privacy laws may lawfully be exchanged.
4. Any other information you provide to OXA or a member of the OXA group or which they otherwise lawfully obtain about you. (collectively "Personal Information"). If we engage anyone (a "Service Provider") to do something on our behalf (for example, an Australian or overseas broker to execute trades and clear trades, a mailing house, data process or settlement agent) then you agree that we may

exchange Personal Information with the Service Provider. We may disclose Personal Information to entities other than the OXA Group or Service Providers where it is required or allowed by law, where in our opinion it is desirable to enable us to better provide services to you or where you have otherwise consented. Entities that we may be required to disclose information to include any government, regulatory body or authority that is involved in the regulation of securities trading and clearing. You agree that Personal Information can be used by OXA, a member of the OXA Group and any Service Provider for establishing your trading Account, ongoing administration of your trading Account, including for the purpose of effecting execution and settlement of your orders and for providing the services to you, planning, product development and research purposes. You understand that you can access most Personal Information that we or other members of the OXA Group hold about you (sometimes there will be a reason why that is not possible, in which case you will be told why). You understand that if you fail to provide any information requested for your Account registration, or do not agree to any of the possible exchanges or uses of the Personal Information detailed above, your Account registration may not be accepted by us. You agree that when your Personal Information changes you will promptly notify us in writing of your new details. Members of the OXA Group and our Service Providers would like to be able to contact you or send you information, regarding other products and services. If you do not wish to receive this information, please send an email to [info@optionsxpress.com.au](mailto:info@optionsxpress.com.au) stating you "do not wish to receive any information referred to in clause 46.8 of the OXA Use Agreement".

#### **50. Liability for Costs of Collection and Arbitration**

You agree to pay and shall be liable for the costs and expenses of collection of a debit balance or any unpaid deficiency in your Account with us, including, but not limited to, legal fees, court costs and any other costs incurred or paid by us. This liability shall include fees and expenses, including legal fees, for any arbitration or other proceeding brought against you by us or brought against us by you where such arbitration results in a finding in our favour. You agree that we may, in our sole discretion, use and share any information about you, whether provided by you to us or otherwise acquired by us in the course of business, in furtherance of collection of losses or debts owed to us or in prevention of future losses.

#### **51. Investor Education and Protection**

Under the US Public Disclosure Program, the Financial Industry Regulatory Authority in the US (FINRA) provides certain information regarding the disciplinary history of FINRA members and their associated persons in response to written inquiries, electronic inquiries or telephone inquiries via FINRA Regulation's toll-free telephone number, 1-800-289-9999 (in the US). Additional information may be obtained from the FINRA Regulation web site at <http://www.finra.org/>. An investor brochure describing the Public Disclosure Program is available from OXA.

#### **52. Arbitration Provisions**

You understand and agree to the following:

1. Arbitration is final and binding on the parties.
2. The parties are waiving their right to seek remedies in court, including the right to a jury trial.
3. Pre-arbitration discovery is generally more limited than and different from court proceedings.
4. The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or seek modification of rulings by the arbitrators is strictly limited.
5. The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

### 53. Agreement to Arbitrate Controversies

You agree that any and all controversies which may arise between you and OXA or any of our officers, directors, employees, agents, subsidiaries or affiliates including but not limited to those involving transactions of any kind made on your behalf by, through or with OXA, our officers, directors, employees, agents, subsidiaries or affiliates and the construction, performance or breach of this or any other agreement between you and us shall be determined by arbitration conducted before the FINRA in Chicago, Illinois (in relation to a US dispute) or (in relation to an Australian dispute) the Financial Ombudsman Service Limited (FOS) in Australia in accordance with its arbitration rules then in force in respect of each organisation. You specifically agree that a controversy arising in the US or in respect of a trade executed in the US is a "US dispute" and that a controversy arising in Australia or in respect of a trade executed in Australia is an "Australian dispute". The laws of the State of Illinois will govern the interpretation and enforcement of the terms of this Agreement in respect of any US dispute. The laws of the State of New South Wales will govern the interpretation and enforcement of the terms of this Agreement in respect of any Australian dispute. In all cases, the choice of arbitrators will be made by the parties jointly or, if they cannot agree within 10 business days of being asked to do so, the arbitrators will be chosen by the FINRA or the FICS as applicable. In relation to all disputes, judgment upon any award of the arbitrators may be entered in any court, state or federal, having jurisdiction thereof. No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.

### 54. Account Protection

*US Securities held are by the Clearing Agent who is a member of the Securities Investor Protection Corporation (SIPC).*

This clause 53 applies to cash and securities held in US trading Accounts only.

Cash and securities held in your US trading Account are protected by SIPC up to \$500,000 per customer, of which, a maximum of \$100,000 can be un-invested cash. Assets held by other custodial institutions or you are not covered. The Clearing Agent maintains an additional \$10 million in excess of the SIPC insurance coverage through a private insurer which may apply. Further details are available on its website. Assets held by other custodial institutions or by you are not covered.

SIPC coverage and the additional coverage are provided to afford certain protections against loss to customers resulting from broker-dealer failure. The US trading Account protection applies when SIPC member firms fail financially and are unable to meet obligations to securities customers. It neither protects against losses from the rise and fall in the market value of investment(s) nor is it a guarantee against the bankruptcy or default of the issuer of an investment security purchased by a customer.

### 55. Representation as to Capacity and Access

You represent that you are of required legal age and capacity to enter into this Agreement and that you have the legal standing and are empowered to enter into contracts and agreements for the transactions requested and performed in this account. You understand that you have an obligation to notify us in the event that you lack capacity. You further represent that you are willing, able and agree to access and use current technology, including the internet, firewalls and any anti-virus or other software to access your account online, receive information, receive and send email, and place any necessary transactions in

your Account; and that you possess a computer and/or otherwise have access to the internet on a regular basis.

#### **56. Legally Binding**

You hereby agree that this agreement and all the terms herein shall be binding upon you and your estate, heirs, executors, administrators, personal representatives, successors and assigns. You agree that all purchases and sales shall be for your Account in accordance with your oral or written instructions. This Agreement shall inure to the benefit of us and our successors, assigns and agents. We may assign our rights and duties under this Agreement to any of our subsidiaries or affiliates without giving you notice, or to any other entity upon prior written notice to you. You hereby waive any and all defences that any such instruction or agreement was not in writing as may be required by the Statute of Frauds or any other similar law, rule or regulation.

#### **57. Extraordinary Events/Technical Difficulties**

You specifically agree to hold us harmless from any and all claims, and agree that we shall not be liable for any loss, actual or perceived, caused directly or indirectly by any force majeure, exchange or market regulation, suspension of trading, equipment failure, communication line failure, system failure, security failure on the Internet, unauthorised access, theft, or any problem, technological or otherwise, that might prevent you from entering or OXA from executing an order, including by way of example, but not limitation, order to execute, transfer or withdrawal, or other conditions beyond our reasonable control.

You further agree and understand that you will not be compensated by us for "lost opportunity," e.g., you were unable to enter an order due to technical difficulties and the security you wished to purchase increased in value. Furthermore, in a technical environment, should an error occur with respect to the tracking of any Account holding or order entry, the true, actual and correct transaction or position may be restored. It is your responsibility to ensure Account correctness and accuracy and to contact OXA immediately with any discrepancies.

High volumes of trading and volatility may result in executions at prices significantly away from the price quoted or displayed at the time of order entry. Information processing and communications systems, both our own and those of third parties on whom we depend are subject to occasional congestion, technological problems, or in extreme cases, outage. Beyond our proprietary systems, third party providers include market centres that execute orders and quote vendors. Failure of a critical system for any period of time could limit our ability to rapidly and accurately process transactions.

#### **58. Breach, Bankruptcy or Default**

Any breach of this Agreement, or the filing of a petition or other proceeding in bankruptcy, insolvency, or for the appointment of a receiver by or against you, the levy of an attachment against your Account(s) with us, or your death, mental incompetence or dissolution, or any other grounds for insecurity, as determined by us in our sole discretion, shall constitute, a default by you under all agreements we may then have with you, whether heretofore or hereafter entered into.

In the event of default, you authorise us and we reserve the right to sell, without prior notice to you, any and all property in which you have an interest, held by or through us or any of our affiliates, to buy in any or all property which may have been sold short, to cancel any or all outstanding transactions and to purchase or sell any other securities or property to offset market risk, and to offset any indebtedness you may have (either individually or jointly with others), after which you shall be liable to us for any remaining deficiency, loss, costs or expenses sustained by us in connection therewith. Such purchases and sales may be effected publicly or privately without notice or advertisement in such manner as we may in our

sole discretion determine. At any such sale or purchase, we may purchase or sell the property free of any right of redemption. In addition, we shall have the right to set off and apply any amount owing from us or any of our affiliates to you against any indebtedness in your Accounts, whether matured or not matured.

### **59. Waiver/Assignment**

Except as specifically permitted in this Agreement, no provision or condition of this Agreement can be, nor should be deemed to be, waived, altered, modified or amended unless agreed to in writing by an authorised officer of OXA. Neither our failure to insist at any time upon strict compliance with this Agreement or with any of the terms herein, nor any continued course of such conduct on our part shall constitute or be considered a waiver by us of any of our rights or privileges herein.

### **60. Severability**

If any provision or condition of this Agreement shall be held to be invalid or unenforceable by reason of any law, rule, administrative order or judicial decision by any court, or regulatory or self-regulatory agency or body, such invalidity or unenforceability shall attach only to such provision or condition. The validity of the remaining provisions and conditions shall not be affected thereby and this Agreement shall be carried out as if any such invalid or unenforceable provision or condition were not contained herein.

### **61. Power of attorney**

By agreeing to these terms you are deemed to have appointed OXA or any director or officer as your attorney to instruct any person including any related party to do anything necessary or incidental to the operation of your Account, including:

1. effecting any trade or transfer, action, or settlement in the securities (as defined in clause 2) ordered by a customer, effected to protect OXA from risk; or
2. remitting monies to optionsXpress, Inc, its delegates or agents; or
3. the appointment of any delegate or agent, including any clearing or other market participant.

### **62. GST**

Notwithstanding any other provision of this Agreement

If GST has application to any supply made by us under or in connection with this Agreement we may, in addition to any consideration payable pursuant to this Agreement recover from you an additional amount on account of GST, such amount to be calculated by multiplying the relevant amount or consideration payable by you for the relevant supply by the prevailing GST rate.

Without limiting clause 60, if we are not entitled to an input tax credit in respect to the amount of any GST charged to or recovered from us by any person, or payable by us, or in respect of any amount which is recovered from us by way of reimbursement of GST referable to any supply made under or in connection with this Agreement, we will be entitled to increase any amount or consideration payable by you on account of such input tax and recover from you the amount of any such increase.

Any additional amount on account of GST, or on account of an amount for which we are not entitled to an input tax credit, recoverable from you pursuant to clause 60 is to be calculated without any deduction or set-off of any other amount and is payable by you upon demand by us whether such demand is by invoice or otherwise.

### **63. Commission Disclosure**

You acknowledge that we may receive commissions from issuers of securities, suppliers of information services, banking services and clearing services in respect of the services provided to you from time to time and that we are entitled to retain such commissions for our own benefit.

### **64. Warranties and undertakings**

64.1 The Customer warrants that it is an Australian or New Zealand resident or citizen and primarily accesses the services of optionsXpress Australia while in Australia or New Zealand.

64.2 Where the Customer is a responsible entity of a fund, the Customer makes the further warranties and undertakings contained in Schedule 1.

64.3 Where the Customer is a trustee of a trust, the Customer makes the further warranties and undertakings contained in Schedule 2.

64.4 Where the Customer is a trustee of a Superannuation fund, the Customer makes the further warranties and undertakings contained in Schedule 3.

64.5 Where the Customer is acting as an agent for investors, the Customer makes the further warranties and undertakings contained in Schedule 4.

### **65. Anti-Money Laundering and Counter-Terrorism Financing**

65.1 To the extent that OXA must comply with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ("AML Act") and any subsequent amendments to it and any other relevant antimoney laundering regulations, the Customer agrees to comply with any reasonable request made by OXA for the purposes of fulfilling its obligations under the AML Act and the relevant anti-money laundering regulations.

### **66. Version**

User/Customer Account Terms and Conditions (OBATAC0811).

## **Appendix A - Margin Account Terms**

In consideration of your opening one or more Margin Accounts with OXA, and maintained at the Clearing Agent you understand and agree to the following additional terms and conditions:

### **(i) Liquidation of Collateral**

We may sell any or all property held in any of your accounts and cancel any open orders for the purchase or sale of any property without notice whenever, in our discretion, we consider it necessary for our protection. In such event we may also borrow or buy in all property required to make delivery against any sale, including a short sale. Such sale or purchase may be made in such manner as we may in our discretion determine. No demands, calls, tenders or notices which we may make or give in any of one or more instances shall invalidate the foregoing waiver on our part. At any such sale we may purchase the property free of any right of redemption and you shall be liable for any deficiencies in your account.

**(ii) Disclosures Regarding Liquidations and Covering Positions**

You clearly understand that, notwithstanding a general policy of giving customers notice of a margin deficiency, we are not obligated to request additional margin from you in the event your account falls below minimum maintenance requirements. More importantly, there may or will be circumstances where we will liquidate securities and/or other property in the account without notice to you to ensure that minimum maintenance requirements are satisfied.

**(iii) Liquidations and Covering Positions**

We shall have the right, in accordance with our general policies regarding margin maintenance requirements, to require additional collateral or the liquidation of any securities and other property whenever in our sole discretion we consider it necessary for our protection, including in the event of, but not limited to: the failure of you to promptly meet any call for additional collateral; the filing of a petition in bankruptcy by or against you; the appointment of a receiver is filed for or against you; an attachment is levied against any account of yours or in which you have an interest in such account(s); or your death. In such event We are authorised to sell any and all securities and other property in any account of the undersigned whether carried individually or jointly with others, to buy all securities or other property which may be short in such account(s), to cancel any open orders and to close any or all outstanding contracts, all without demand for margin or additional margin, other notice of sale or purchase, or other notice or advertisement each of which is expressly waived by you. Any such sales or purchases may be made at our discretion on any exchange or other market where such business is usually transacted or at public auction or private sale and we may be the purchaser for our own account. It is understood a prior demand, or call, or prior notice of the time and place of such sale or purchase shall not be considered a waiver of our right to sell or buy without demand or notice as herein provided.

**(iv) Loans**

We may, at our discretion, make loans to you for any purpose, including the purchasing, carrying or trading in securities. The minimum and maximum amount of any particular loan may be established by us regardless of the amount of collateral delivered to us and we may change such minimum and maximum amounts from time to time.

You agree to maintain in all accounts with us such positions and margins as required by all applicable statutes, rules, regulations, procedures and customs, or as you deem necessary or advisable. You agree to promptly satisfy all margin and maintenance calls.

**(v) Payment of Loans on Demand**

You agree to pay on demand any balance owing with respect to any of your accounts, including interest, commissions and any costs of collection (including attorney's fees). You understand we may demand full payment of any balance due in your accounts plus any interest charges accrued thereon, at our sole option, at any time without cause or whether or not such demand is made for our protection. You agree that we may, at our sole option, apply payments of interest, dividends, premium and principal received on any of the collateral, whether pursuant to the terms of such collateral or on the sale of the collateral, to the payment of any balance due in your accounts or pay such amounts to you.

**(vi) Maintenance of Collateral**

The properties in your account may be carried in our general loans and may be pledged or hypothecated by us separately or in common with other properties. The pledge or hypothecation by us may secure your indebtedness equal to or greater than the amount owed to us by you. You agree to deposit additional collateral, as we may in our discretion require from time to time in the form of cash or securities. In the

event you no longer retain a debit balance or an indebtedness to us it is understood that we will fully segregate all securities in your accounts in our safekeeping or control (directly or through a clearing house) and/or deliver them to you upon your request.

**(vii) Security Interest**

As security for the payment of all loans and liabilities made under this or any other agreement between us, you grant us a secured interest in any and all property belonging to you or in which you have an interest, held by us or created in any of your accounts (individual or multiple owner). All properties shall be subject to such security interest as collateral for the discharge of your obligations to us, wherever or however arising and without regard to whether or not we have made loans with respect to such property. In enforcing such security interest we shall have discretion to determine which property is to be sold, the order in which it is to be sold, and shall have all the rights and remedies available to a secured party under law and regulation.

**(viii) Interest Charges and Payments**

You agree to pay interest upon all amounts advanced and other balances due in your accounts in accordance with our usual custom, which may include the compounding of interest. Our customs, which may change from time to time, will be set forth in the disclosure of credit terms, which is incorporated herein. By entering into any transactions with us after you receive the disclosure of credit terms, you acknowledge you have read and agreed to the disclosure of credit terms for all past and future transactions in your account. We may, in our discretion, not deem any cheque, or other remittance, to constitute payment until it has been paid by the drawee and the funds representing such payments have become available to us.

**(ix) Disclosure of Credit Terms in Margin Transactions**

The basic facts governing a margin account cleared by the Clearing Agent on behalf of OXA are as follows:

- A. **Your account will be charged interest for any credit extended to you for the purpose of purchasing, carrying, or trading in any security.**
- B. **Annual rate of interest which your account will be charged:**

You agree that you will maintain such securities and other property in your Account as collateral as required by all applicable statutes, rules, regulations and procedures or as we in our sole discretion deem necessary or advisable. You agree to promptly satisfy all margin and maintenance calls upon demand. You understand that the interest charge made to your Account at the close of a charge period will, unless paid, be added to the opening balance for the next charge period and that interest will be charged upon such opening balance, including all interest so added.

You will be charged interest on the daily amount of credit extended to you (your margin balance). Your interest rate will be a percentage rate above (or below) the current Base Rate. The Base Rate is an internally calculated rate set with reference to commercially recognized interest rates, industry conditions related to the extension of credit and general credit market conditions. Your rate of interest will change automatically and without prior notice with changes in the Base Rate. The interest charge will appear on your account statement. You may contact customer service to check the current Base Rate. We reserve the right to negotiate the interest rate for credit extended to any customer and/or charge different categories of customers different rates. We will provide you at least 30 days' prior written notice of changes in the interest rate, other than the Base Rate.

Interest charges are calculated on the daily net debit balance in your Account based upon a sliding scale of a percentage rate above and below the Base Rate. Interest will be posted monthly to your Account and is calculated on a 360-day year. Note that the use of a 360-day year results in a higher effective rate of interest than if a year of 365 days were used. Interest charged can be verified by using the following formula as noted below:

[Average debit balance] x [interest rate] x  
[number of days Account was in a debit for the interest period] / divided by [360 days]

### **C. Calculation of interest**

Interest is accrued on the amount of credit extended to you on a daily basis. If you maintain a cash account with a free credit balance and a margin account balance, the free credit balance in your cash account will be used to reduce the amount of credit extended you in your margin account for the purpose of calculating interest. The effect will be an interest charge on the net amount of your indebtedness.

### **D. Liens and additional collateral**

Any securities in any of your accounts held individually, jointly or with others, are collateral for any credit extended to you. A lien is created by the extension of credit to secure the amount of money owed to the Clearing Agent (and/or OXA). This means that in accordance with the terms of the Customer's Agreement which you have signed, securities in your account can be sold to reduce or to eliminate any extension of credit in your account.

If there is a decline in the market value of your securities which are the collateral for the credit extended to you, it may be necessary for us to request additional margin. Ordinarily, a request for additional margin will be made when the equity in the account falls below 30 percent of the market value of all securities in the account. (The equity is the excess market value of the securities in the account over the amount of credit extended). However, OXA and/or the Clearing Agent retains the right to require additional margin any time it deems it desirable. These margin calls can be met by delivery of either additional securities or cash.

### **E. Interest on short sales**

Any and all short positions in your account will be kept "marked-to-the-market". This term simply means that on a daily basis the value of securities you sold short will be adjusted to reflect their current market value. These adjustments will increase or decrease the balance used in determining your interest charge. For example, if you sold short 100 XYZ for \$5,000 (credit) and its current market value is \$4,000, the balance used to determine your interest charge would be reduced by \$1,000 thus decreasing the amount of interest you will be charged. If on the other hand, the current market value of XYZ is \$6,000, the balance used to determine your interest charge would be increased by \$1,000 thus increasing the amount of interest you will be charged.

### **F. Nature of special charges**

There are no special charges imposed on a margin account.

**(x) Margin Account Additional Notices (FINRA Disclosure)**

OXA is providing these basic facts about purchasing securities on margin, and to alert you to the serious risks involved with trading securities in a margin account. Before trading stocks in a margin account, you should carefully review the margin agreement provided by OXA.

When you purchase securities, you may pay for the securities in full or you may borrow part of the purchase price from OXA. If you choose to borrow funds from OXA, you will open a margin account with OXA. The securities purchased are OXA's and the Clearing Agent's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the Clearing Agent and/or OXA can take action, such as issue a margin call and/or sell securities in your account, in order to maintain the required equity in the account.

It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

**A. You can lose more funds than you deposit in the margin account.**

A decline in the value of securities that are purchased on margin may require you to provide additional funds to OXA (who has made the loan) to avoid the forced sale of those securities or other securities in your account.

**B. OXA and/or the Clearing Agent can force the sale of securities in your account.**

If the equity in your account falls below the maintenance margin requirements under the law, or the firm's higher "house" requirements, OXA can sell the securities in your account to cover the margin deficiency. You also will be responsible for any shortfall in the account after such a sale.

**C. OXA and/or the Clearing Agent can sell your securities without contacting you.**

Some investors mistakenly believe that a firm must contact them for a margin call to be valid, and that the firm cannot liquidate securities in their accounts to meet the call unless the firm has contacted them first. This is not the case. Most firms will attempt to notify their customers of margin calls, but they are not required to do so. However, even if the firm has contacted a customer and provided a specific date by which the customer can meet a margin call, the firm can still take necessary steps to protect its financial interests, including immediately selling the securities without notice to the customer.

**D. You are not entitled to choose which security in your margin account is liquidated or sold to meet a margin call.**

Because the securities are collateral for the margin loan, OXA has the right to decide which security to sell in order to protect its interests.

**E. OXA and/or the Clearing Agent can increase its "house" maintenance margin requirements at any time and is not required to provide you with advance written notice.**

These firms' changes in policy often take effect immediately and may result in the issuance of a maintenance margin call. Your failure to satisfy the call may cause the member to liquidate or sell securities in your account.

**F. You are not entitled to an extension of time on a margin call.**

While an extension of time to meet margin requirements may be available to customers under certain conditions, a customer does not have a right to the extension.

**(xi) Version**

OBMAT0811

## Appendix B - optionsXpress Australia Options Account Terms

You hereby agree to the following terms and conditions which govern equity and index option trading:

**(i) You understand that options contain a high degree of risk and are often speculative in nature.**

You acknowledge that, based on your investing experience and financial situation, you fully understand and are fully prepared financially to undertake such risks and withstand any losses incurred. You certify that we may rely on the information you furnished to us relative to your investing experience and financial condition. And further, you agree to promptly advise us, in writing, of any change in your financial condition or investment objectives that may affect, in any way, the suitability of your trading options.

**(ii) You have read and understand "Characteristics and Risks of Standardized Options" as issued by the Options Clearing Corporation ("OCC").**

You agree that each option transaction is subject to the rules and regulation of, the exchange or market where such transaction is executed, and various other state and federal regulatory entities specific to the jurisdiction in which the trade is executed. You understand that you must comply with all applicable duties and responsibilities. You should obtain further information in relation to trading options from the Australian Stock Exchange and, in particular, its publication entitled "Understanding Options Trading".

**(iii) You understand that due to the short-term nature of options it is likely that you will be trading options more frequently than stocks or bonds.**

You understand and agree that you will be charged a commission each time you trade. You also understand that although a spread order may be entered on our order screen as one net debit/credit, you will be charged a commission on each leg of the order.

**(iv) You understand that you bear full responsibility for taking action to exercise a valuable option.**

You understand that national securities and associations and/or marketplaces have established exercise cutoff times and your options will become worthless in the event you do not deliver instructions in a timely manner. You understand we will use our best efforts to exercise valuable options on your behalf provided that you have enough buying power to support the resulting position. In all instances, you agree to assume full and complete financial responsibility and liability for all exercise and/or assignments. You are responsible for understanding the consequence of expiration style and risks related to expiration. The writer of an American-style option is subject to being assigned an exercise at any time after he has written the option until the option expires. By contrast, the writer of a European-style option is subject to exercise assignment only during the exercise period.

**(v) You understand that OXA, through its Clearing Agent, uses a random method for the assignment of exercise and assignment notices.**

All short options positions, including a leg of a spread, are liable for assignment. The Clearing Agent's method for random assignment is available upon request by contacting OXA.

**(vi) You hereby agree to observe all Exchange established position limits and will not purposely on your own or in concert with others violate such limits.**

You expressly authorise us to liquidate or close-out any of your options positions, without notice to you and without your consent, in our sole and absolute discretion, if and when your open positions exceed

applicable position limits so as to reduce such open positions to a level that is in compliance with such limits. You will bear and be solely responsible for any losses associated with such a reduction or liquidation. You also acknowledge and agree that under applicable rules and regulations we may be required to provide options exchanges, markets or clearing organisations with information concerning your options positions and related data.

**(vii) Special notice to owners of "long" fully paid-for options.**

You MUST have the necessary assets so that margin Account has at least 50% of the new purchase or exercise in cash or good marginable assets for the exercise of fully paid-for in the money options in order to exercise the position, or we, at our discretion, may close out your position prior to the close of business on the last day before exercise.

You understand that it is your responsibility to manage your positions. The above provision is a right of OXA to protect itself from undue risk and NOT a benefit you may rely on to excuse your obligation to manage your Account prudently. Over-leveraged Accounts are subject to this provision, and may be liquidated in order to protect OXA. Over-leveraged is defined as any Account below 40% equity.

**(vii) Special Statement For Uncovered Options Writers.**

There are special risks associated with uncovered option writing, which expose the investor to potentially significant loss. Therefore, this type of strategy may not be suitable for all customers approved for options transactions.

The potential loss of uncovered call writing is unlimited. The writer of an uncovered call is in an extremely risky position, and may incur large losses if the value of the underlying instrument increases above the exercise price.

As with writing uncovered calls, the risk of writing uncovered put options bears a risk of loss if the value of the underlying instrument declines below the exercise price. Such loss could be substantial if there is a significant decline in the value of the underlying instrument.

Leverage minimums on uncovered options may be exceeded by volatile market movements, creating risk in excess of available collateral. This may create a loss of assets beyond account value.

Uncovered options writing is suitable only for a knowledgeable investor who understands the risks, and has the financial capacity and willingness to incur potentially substantial losses, and has sufficient liquid assets to meet applicable margin requirements. If the value of the underlying instrument moves against an uncovered writers option position, we may request significant additional margin payments. If an investor fails to make such margin payments, OXA may liquidate stock or options in the investor's Account, with little or no prior notice in accordance with the investor's margin agreement.

For combination writing, where the investor writes both puts and calls on the same underlying instrument, the potential risk is unlimited.

It is expected that you have read and understood "Characteristics and Risks of Standardized Options" issued by the US Options Clearing Corporation (OCC) and your attention is directed to the chapter entitled Risk of Buying and Writing Options.

This statement is not intended to enumerate all of the risks entailed in writing uncovered options.

**(viii) Special Statement for Combination and Spread Traders.**

Options spread traders must understand the additional risks associated with this type of trading and before using OXA's spread and combination orders and systems.

While it is generally accepted that spread trading may reduce the risk of loss of the trading of the outright purchase of a standardised option contract, an investor/trader MUST understand that the risk reduction can lead to other risks.

*(A) Early Exercise And Assignment Can Create Risk And Loss.*

Spreads are subject to early exercise or assignment that can remove the very protection that the investor/trader sought. This can lead to margin calls and greater losses than anticipated when the trade was entered.

*(B) Execution Of Spread Orders Is Often "Not Held" and at the Discretion of Marketplace.*

Spreads are not standardised contracts as are exchanged traded put and calls. Spreads are the combination of standardised put and call contracts. There is NO spread market in securities that are subject to such benchmarks such as "time and sales" or "NBBO" (National Best Bid/Offer) and therefore the "market" cannot be "held" to a price.

*(C) Spreads Are Executed Differently Than "Legged" Orders.*

Spreads are used by strategists as examples of risk protection, profit enhancement and as a basis for results and return on investments. However, these strategies assume that the trade can actually be executed as a spread when market forces may and can make the actual execution impossible. Spreads entered through OXA screens are submitted as spreads and as such are subject to the market risk and may be affected by conditions related to human execution of dual or combination orders.

*(D) Spreads are a bona-fide trades and not "legged" or "paired" of individual separate trades.*

For example: options prices on crossed-markets are misleading for the spread trader. An option may be offered on one exchange and bidden on another exchange that can lead the trader to believe that their spread trade should be filed, when, in fact, the bids and offers must be on the SAME exchange. As all bona-fide spreads are routed and executed on "one" exchange.

*(E) Spreads Are Generally Entered On A Single Exchange And Are Acted Upon By A Market Maker or Floor Broker.*

Spreads are executed at the discretion of a market maker or floor broker and when cancelled or filled require that the market maker take manual action and require manual reporting at times. Delays for reporting of fills and cancels may create additional risks, especially in fast or changing markets.

*(F) Closing Transactions May Not Be Possible.*

If a secondary market in options were to become unavailable, investors could not engage in closing transactions, and an option writer would remain obligated until expiration or assignment.

*(G) Style of Expiration Poses Unique Risks.*

American Style options may be exercised against the writer at any time, which may create unexpected risks and requirements. If a short option is assigned against your account, action may be required to avoid losses and for other reasons. By contrast, European style options may create risks at expiration when exercised.

## **Schedule 1**

### **1. Where the Customer is a responsible entity of a Fund, the Customer:**

1.1 represents and warrants to optionsXpress Australia that:

1. the Customer is the only responsible entity of the Fund; and
2. the Fund have not been terminated, nor has the date of any event for the vesting of the Fund's property occurred; and
3. no property of the Fund has been re-settled, set-aside or transferred into any other trust or settlement; and
4. no determination has been made to distribute the Fund's property on a date which is earlier than the latest date under the Fund Constitution by which the property of the Fund must be distributed; and
5. you have complied with your obligations with respect to the Fund; and
6. the Fund Constitution give you power and full capacity, as the responsible entity to:
  - a. carry on all the business activities now conducted by it in any capacity;
  - b. enter into this agreement and comply with your obligations under this agreement;
  - c. confer on us such authorities as are necessary so that these Terms will be binding upon you;
7. all necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the Fund Constitution and any other document for the entry into observance and performance by you of your obligations under this agreement; and each of your obligations under this agreement constitute binding obligations, and are completely and lawfully enforceable against you and the Fund's property in accordance with their terms;
8. there is no conflict of interest on your part in entering into this agreement and performing its obligations under it; and
9. the Fund have been properly constituted and validly exist in compliance with all applicable laws, and the Fund Constitution has been properly executed and properly stamped in accordance with the applicable laws of Australia.

1.2 The Customer undertakes to optionsXpress Australia that:

1. The Client must not retire as responsible entity of the Fund unless it has given 30 days written notice to optionsXpress Australia of its intention to retire and upon satisfaction of the following conditions:
  - a. the successor responsible entity must be acceptable to optionsXpress Australia (acting reasonably); and
  - b. the successor responsible entity must execute whatever documents optionsXpress Australia reasonably requires to ensure that this agreement is binding on it.
2. The Client agrees with optionsXpress Australia that it will (or will procure that the following will be done):
  - a. in relation to the Fund, ensure that other than with optionsXpress Australia's prior consent:

- i. the Fund Constitution is not amended in any way which could have a material adverse affect on the ability of the Client to comply with its obligations under this agreement or could otherwise be prejudicial to optionsXpress Australia;
- ii. the Fund's Constitution is not revoked;
- iii. where it determines that the Fund Constitution, the compliance plan for the Fund, or any custodian or other agency agreement entered into by it in connection with the Fund is required by law to be changed or replaced, promptly give optionsXpress Australia full details of the requirement and copies of the documentation it proposes to enter into to comply with that requirement;
- iv. there is no re-settlement, setting aside or transfer of any asset of the Fund other than a transfer which complies with the Fund's Constitution and this agreement;
- v. the Client's obligations under the Fund Constitution and at law are fully complied with;
- vi. with;
- vii. except in accordance with clause 1.2 of this schedule 1 no other person is appointed responsible entity of the Fund;
- viii. subject to section 601FM of the Corporations Act and except where and to the extent that the Client has retired as responsible entity of the Fund in accordance with clause (1) of this schedule 1 nothing is done which would cause or enable the removal of the Client as responsible entity of the Fund, nor retire as responsible entity; not without optionsXpress Australia's prior written consent (such consent not to be unreasonably withheld); appoint a custodian or other agent to carry out any of its functions as responsible entity of the Fund; or terminate the appointment of any custodian or other agent appointed in accordance with sub paragraph (a); the vesting date under the Fund Constitution is not changed or fixed; subject to section 601GA(2) of the Corporations Act ensure that nothing occurs which could limit, exclude or otherwise derogate from in any material way the Client's right under the Fund's Constitution and the general law to be indemnified out of the assets of the Fund; and subject to the terms of the Fund Constitution and the general law, the Client's lien over the property of the Fund will have priority over the rights of the members of the Fund.

## 2. In this schedule:

"Fund" means the fund identified in the Application form.

"Fund Constitution" means the constitution governing the Fund, as varied, substituted, supplemented or resettled from time to time.

## Schedule 2

### 1. Where the Customer is the trustee of a Trust, the Customer:

- 1.1 represents and warrants to optionsXpress Australia that:
1. the Trust was validly created, is in existence at the date of this Agreement and the Trust Deed has been duly stamped by the appropriate authorities;
  2. the Customer was validly appointed as trustee of the Trust and is presently the sole trustee;
  3. the Trust is solely constituted by the Trust Deed;
  4. the Customer:
    - a. has full, complete, valid and unfettered authority and power under the Trust Deed to enter into this Agreement; and
    - b. has the power to enter into and observe all the provisions in this Agreement;

1.2 undertakes to optionsXpress Australia that:

1. (i) it will notify optionsXpress Australia immediately in writing if:
  - a. the Customer ceases for any reason or at any time to be the sole trustee of the Trust;
  - b. the Trust is determined or for any other reason ceases to exist; or
  - c. the Manager ceases to be the manager of the Trust; and
2. (ii) a distribution of any of the capital of the Trust will not be made which would result in there being insufficient assets of the Trust to meet the Customer's liabilities under outstanding Contracts and this Agreement.

## **2. In this schedule:**

"Trust" means the trust identified in the Application form.

"Trust Deed" means the trust deed governing the Trust, as varied, substituted, supplemented or resettled from time to time.

## **Schedule 3**

### **1. Where the Customer is a trustee of a Superannuation Fund, the Customer:**

1.1 represents and warrants to optionsXpress Australia that:

1. the Superannuation Fund has been duly constituted and is validly existing in compliance with all applicable laws and the Fund Constitution has been duly executed and duly stamped, in each case in accordance with the laws of each State and Territory of Australia;
2. the Fund Constitution and its constituent documents give it power:
  - a. to carry on all of the business activities now conducted by it in any capacity;
  - b. to enter into and comply with its obligations under, and to carry on the transactions contemplated by, this agreement;
  - c. all necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the Fund Constitution, any other document or any law for the entry into, observance and performance by it of its obligations under this agreement;
  - d. each of its obligations under, and the transactions contemplated by, this agreement constitute binding obligations and are completely and lawfully enforceable against it and the Trust's property in accordance with their terms;
  - e. it is the only trustee of the Superannuation Fund;
3. no property of the Superannuation Fund has been re-settled, set aside or transferred to any other trust or settlement;
4. the Superannuation Fund has not been terminated, nor has the date or any event for the vesting of the Trust's property occurred;
5. no determination has been made to distribute the Superannuation Fund's property on a date which is earlier than the latest date under the Fund Constitution by which the Superannuation Fund's property must be distributed;
6. there is no conflict of interest on the Client's part in entering into this agreement and performing its obligations under it or the transactions contemplated by it;
7. it has an unrestricted right to be fully indemnified or exonerated out of the Superannuation Fund's property in respect of any losses or liabilities incurred by it and the Superannuation Fund's property is sufficient to satisfy that right of indemnity or exoneration;
8. it has complied with its obligations in connection with the Superannuation Fund.

1.2 The Client represents and warrants to optionsXpress Australia that the transactions contemplated by this agreement insofar as they concern the Superannuation Fund:

1. comply with all requirements of the Superannuation Industry (Supervision) Act 1993 (the "Act");
2. have been or are to be implemented in accordance with an investment strategy undertaken in accordance with Act, as contemplated by section 52(2)(f) of the Act;
3. comply with all the requirements of the Fund Constitution and rules of the Superannuation Fund, in force at the date of this agreement; and
4. have been or are undertaken on an arm's length basis, for value and on commercial terms.

1.3 In this schedule:

"Superannuation Fund" means the Superannuation Fund identified in the Application form,

"Fund Constitution" means the constitution governing the Superannuation Fund, as varied, substituted, supplemented or resettled from time to time.

#### **Schedule 4**

Where the Customer is acting as an agent for other investors, (including an investment manager) the Customer agrees with optionsXpress Australia that

1.4 it will ensure that other than with optionsXpress Australia's prior consent:

1. the Investment Management Agreement is not determined or amended in any way which could have a material adverse affect on the ability of the Client to comply with its obligations under this agreement or could otherwise be prejudicial to optionsXpress Australia;
2. the Client's obligations under the Investment Management Agreement and at law are fully complied with.

1.5 The Client represents and warrants to optionsXpress Australia that:

1. it has received written acknowledgment from each Investor to the effect set out in the remainder of section 1.5 of this Schedule and the Customer is not aware of anything that causes it to suspect that anything in those paragraphs is not correct.
2. the Investment Management Agreement is valid and binding on the Customer and the Investor, respectively;
3. it has the power, as agent for the Investor under the Investment Management Agreement, to enter into and observe all the provisions and to carry on the transactions contemplated by, this Agreement as agent for the Investor;
4. the Investor will be bound by instructions provided by the Customer to optionsXpress Australia as if the Investor were named in this Agreement as the Customer and will be bound by any Contract entered into by optionsXpress Australia on instructions from the Client.
5. where an Investor is a trustee, the Investor has warranted to the Customer and the Customer believes that the Investor is empowered by the relevant trust deed and law:
6. to enter into and comply with its obligations under, and to carry on the transactions contemplated by, the Investment Management Agreement and each Contract entered into by the Customer on its behalf in connection with this Agreement;
7. each of its obligations under, and the transactions contemplated by, the Investment Management Agreement constitute binding obligations and are completely and lawfully enforceable against it and the relevant trust's property in accordance with their terms to enter into and perform the

Investment Management Agreement and each contract entered into by the Customer on its behalf in connection with this agreement and to carry on the transactions contemplated by this agreement; and

- a. to carry on the trust's business as now conducted or contemplated and to own the trust's assets, in its capacity as trustee of the relevant trust. There are no restrictions or conditions on this; and
  - b. all other procedures have been completed as required by the relevant trust deed for it to enter into and perform the Investment Management Agreement and each contract entered into by the Customer on its behalf in connection with this agreement. This includes all necessary resolutions and all consents and approvals.
8. the Customer enters into this Agreement as agent of each of the Investors and in its personal capacity.

Ver. 8.8.2016

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