

# Product Issuer Agreement

Dated

OnePath Funds Management Limited (ABN 21 003 002 800) (“**OPFM**”)

OnePath Custodians Pty Limited (ABN 12 008 508 496) (“**OPC**”)

The company specified in schedule 1 (“**Licensee**”)

# Product Issuer Agreement

## Contents

<b>Details .....</b>	<b>1</b>
<b>General terms.....</b>	<b>2</b>
<b>1 Interpretation .....</b>	<b>2</b>
1.1 Definitions.....	2
1.2 References to certain general terms .....	3
1.3 Next day .....	4
1.4 Next Business Day .....	4
1.5 Headings .....	4
<b>2 Commencement and relationships.....</b>	<b>4</b>
2.1 Commencement .....	4
2.2 Nature of relationships .....	5
2.3 Nature of obligations .....	5
<b>3 Activities and remuneration .....</b>	<b>5</b>
3.1 Activities of Licensee .....	5
3.2 Disclosure documents .....	5
3.3 Issuers: investment products.....	5
3.4 Applications and requests .....	5
3.5 Licensee warranties.....	6
3.6 Prohibited amounts.....	6
3.7 Excluded products .....	6
3.8 Issuer discretion .....	6
<b>4 Licensee’s responsibilities.....</b>	<b>6</b>
4.1 Issuers not responsible .....	6
4.2 Undertakings .....	6
4.3 Representatives.....	7
<b>5 Indemnity.....</b>	<b>8</b>
5.1 Licensee’s indemnity .....	8
5.2 Issuer’s indemnity.....	8
<b>6 Insurance.....</b>	<b>8</b>
6.1 Maintenance of insurance .....	8
<b>7 Attestation .....</b>	<b>8</b>
7.1 Attestation requirement .....	8
<b>8 Termination .....</b>	<b>9</b>
8.1 By notice – without cause.....	9
8.2 By notice – for cause .....	9
8.3 Without notice.....	9
8.4 Obligation on termination .....	9
<b>9 GST .....</b>	<b>10</b>
9.1 Definition.....	10
9.2 Addition of GST .....	10
9.3 Adjustment.....	10
9.4 Calculation of amounts.....	10
9.5 Recipient Created Tax Invoices .....	10
<b>10 Confidentiality and privacy.....</b>	<b>11</b>
10.1 Acknowledgement .....	11
10.2 Exceptions .....	11

10.3	Use and disclosure .....	11
10.4	Privacy principles.....	11
10.5	Personal information.....	11
10.6	Indemnity .....	12
10.7	References to parties .....	12
<b>11</b>	<b>Dispute resolution .....</b>	<b>12</b>
11.1	No arbitration or court proceedings .....	12
11.2	Notification .....	12
11.3	Parties to resolve Dispute.....	12
11.4	Appointment of mediator .....	12
11.5	Role of mediator .....	13
11.6	Confidentiality .....	13
11.7	Costs .....	13
11.8	Termination of process.....	13
<b>12</b>	<b>Notices.....</b>	<b>13</b>
12.1	Form - all communications .....	13
12.2	Form - communications sent by email.....	13
12.3	Delivery.....	13
12.4	When taken to be received.....	14
<b>13</b>	<b>General .....</b>	<b>14</b>
13.1	Assignment.....	14
13.2	Variation and waiver .....	14
13.3	Indemnities .....	14
13.4	Entire agreement .....	14
13.5	Severability .....	14
13.6	Governing law.....	14
13.7	Counterparts.....	15
13.8	Set-off .....	15
13.9	Survival .....	15
	<b>Schedule 1 – Licensee .....</b>	<b>16</b>
	<b>Schedule 2 – Remuneration.....</b>	<b>17</b>
	<b>Schedule 3 – AML provisions.....</b>	<b>19</b>
	<b>Signing page .....</b>	<b>26</b>

# Product Issuer Agreement

## Details

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<b>Parties</b>	<b>OPFM, OPC and the Licensee</b>	
<b>OPFM</b>	Name	<b>OnePath Funds Management Limited</b>
	ABN / AFSL	21 003 002 800 / 238 342
	Address	242 Pitt Street, Sydney NSW 2000
	Email	APS@onepath.com.au
	Attention	Company Secretary
<b>OPC</b>	Name	<b>OnePath Custodians Pty Limited</b>
	ABN / AFSL	12 008 508 496 / 238 346
	Address	242 Pitt Street, Sydney NSW 2000
	Email	APS@onepath.com.au
	Attention	Company Secretary
<b>Licensee</b>	The company specified in schedule 1	
<b>Recitals</b>	<b>A</b>	Each of OPFM and OPC is an issuer of Financial Products.
	<b>B</b>	The Licensee is a provider of Financial Services including Financial Product Advice.
	<b>C</b>	The parties wish to record the terms and conditions upon which the Licensee will perform activities in relation to the Financial Products issued by OPFM and OPC.

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# Product Issuer Agreement

## General terms

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### 1 Interpretation

#### 1.1 Definitions

These meanings apply unless the contrary intention appears:

**ANZ** means Australia and New Zealand Banking Group Limited ABN 11 005 357 522.

**AFSL** means an Australian financial services licence issued under the Corporations Act.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Sydney.

**Confidential Information** has the meaning it has in clauses 10.1 and 10.2.

**Controller** has the meaning it has in the Corporations Act.

**Corporations Act** means the Corporations Act 2001 (Cwlth).

**Financial Product** has the meaning it has in the Corporations Act.

**Financial Product Advice** has the meaning it has in the Corporations Act.

**Financial Service** has the meaning it has in the Corporations Act.

**Government Agency** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

**GST** has the meaning it has in clause 9.1.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

**GST Amount** has the meaning it has in clause 9.2.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection

with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or

- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Input Tax Credit** has the meaning it has in the GST Act.

**Issuer** means each of OPFM and OPC severally.

**Issuer Group** means the Issuer and its Related Bodies Corporate.

**One-off Adviser Service Fee** is a fee for a service provided by the Licensee to the client where the fee is not charged on an ongoing basis.

**Ongoing Adviser Service Fee** is a fee for a service provided by the Licensee to the client where the fee is charged on an ongoing basis.

**RCTI** has the meaning it has in clause 9.5.

**Receiving Party** has the meaning it has in clause 9.2.

**Related Body Corporate** has the meaning it has in the Corporations Act.

**Remuneration** means One-off Adviser Service Fees and Ongoing Adviser Service Fees.

**Representative** of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor or sub-contractor of that party or of a Related Body Corporate of that party.

**Retail Product Distribution Conduct** has the meaning it has in the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019 (Cwlth).

**Superannuation Product** has the meaning it has in the Corporations Act.

**Supplying Party** has the meaning it has in clause 9.2.

**Target Market Determination** has the meaning it has in the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019 (Cwlth).

**Tax Invoice** has the meaning it has in the GST Act.

**Working Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place to which the postal article was addressed.

## 1.2 References to certain general terms

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;

- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in, or annexure or schedule to, this agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them) and includes any election made by an Issuer under any law;
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (i) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (j) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (k) **(time of day)** time is a reference to Sydney time.

### 1.3 Next day

If an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day.

### 1.4 Next Business Day

If an event under this agreement must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

### 1.5 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

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## 2 Commencement and relationships

### 2.1 Commencement

This agreement commences upon execution by all of the parties and will continue in force unless and until it is terminated in accordance with clause 8.

## **2.2 Nature of relationships**

Nothing in this agreement, or arising out of the performance by the parties of their obligations under this agreement, creates a relationship of principal and agent or a partnership or joint venture between any of the parties, and the Licensee does not act on behalf of any Issuer (except as specified in schedule 3).

## **2.3 Nature of obligations**

The obligations of the Issuers under or in connection with this agreement are several and:

- (a) each obligation of an Issuer owed to the Licensee is its own separate and independent obligation; and
- (b) no Issuer will be responsible for the performance by any other Issuer of the other Issuer's obligations.

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# **3 Activities and remuneration**

## **3.1 Activities of Licensee**

The Licensee may provide Financial Services to its clients, in respect of Financial Products issued, or available to be issued, by the Issuer.

## **3.2 Disclosure documents**

The applicable Issuer will provide the Licensee with the Issuer's disclosure documents and promotional materials (if any) for the Issuer's Financial Products as the Licensee reasonably requests including an electronic copy.

## **3.3 Issuers: investment products**

The applicable Issuer will pay the Licensee Remuneration in accordance with schedule 2 where the Licensee acts on behalf of the relevant client, the law permits and all of the following occur:

- (a) acceptance by the applicable Issuer of any instruction by the client to deduct an Ongoing Adviser Service Fee or a One-off Adviser Service Fee from the Financial Product;
- (b) the Issuer receiving (and becoming entitled to use) the amounts (including product fees) that are intended by it to be used in order to fund the Remuneration; and
- (c) the Licensee satisfying any relevant requirements for the deduction of Remuneration from accounts that apply under the law or that are determined by an Issuer.

## **3.4 Applications and requests**

The Licensee agrees that an Issuer may:

- (a) accept, accept subject to conditions or reject an application or request of the kinds referred to in clause 3.3(a); and
- (b) impose conditions on its acceptance of an application or request as it sees fit, including conditions which provide for Remuneration on terms other than those set out in this agreement (including by reducing it to zero).



Where an Issuer proposes to impose, in accordance with this clause, conditions which provide for Remuneration on terms other than those set out in this agreement, the Issuer must notify the Licensee of those terms at least two Business Days before proceeding to accept the application or request unless it is not reasonably practicable to provide such advance notice or the amendment is made in response to misconduct by the Licensee or one or more of its Representatives.

### **3.5 Licensee warranties**

The Licensee represents and warrants that, where any amount is payable to it under this agreement in relation to a particular client of the Licensee, the Licensee has obtained the clear written consent of its client to the relevant Issuer paying the amount to the Licensee.

### **3.6 Prohibited amounts**

Notwithstanding any other provision of this agreement:

- (a) an amount is not payable under this agreement in relation to an Issuer's Financial Product if, in the Issuer's opinion, it would cause the Issuer or the Licensee to breach the law; and
- (b) if an amount is paid under this agreement in relation to an Issuer's Financial Product and, in the Issuer's opinion, it caused the Issuer or the Licensee to breach the law, the Licensee must repay the amount to the Issuer on demand.

### **3.7 Excluded products**

For the avoidance of doubt and notwithstanding any other provision of this agreement, an amount is not payable under this agreement in relation to:

- (a) OneCare Super or any other life risk superannuation product; or
- (b) the Grow Wrap Super and Pension Service.

### **3.8 Issuer discretion**

For the avoidance of doubt and notwithstanding any other provision of this agreement, the applicable Issuer may refuse to accept any instruction by the client to deduct an Ongoing Adviser Service Fee or a One-off Adviser Service Fee from a Financial Product.

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## **4 Licensee's responsibilities**

### **4.1 Issuers not responsible**

The Licensee agrees that, as between itself and the Issuers, it is wholly responsible for the conduct of its Representatives regardless of whether they act within the scope of their actual, apparent or ostensible authority. No Issuer has any responsibility for, or accepts any liability for, any Financial Service provided by, or anything else done by, the Licensee or its Representatives in relation to the Financial Products.

### **4.2 Undertakings**

The Licensee agrees:

- (a) to comply with the laws applying to the conduct or operations of its business in relation to the subject matter of this agreement;

- (b) to comply with any licence (including any AFSL), guide, policy or code issued by any Government Agency applying to the conduct or operation of its business in relation to the subject matter of this agreement;
- (c) to comply with the applicable Issuer's notices given from time to time which are consistent with this agreement, the law and any guide, policy or code as referred to above and which are reasonably necessary in order for the Issuer:
  - (i) to comply with the law or its AFSL; or
  - (ii) to deal with any issues, enquiries or complaints (including by any Government Agency) arising in connection with this agreement or the provision of Financial Services in relation to the Issuer's Financial Products;
- (d) to fairly and accurately represent the applicable Issuer's Financial Products;
- (e) where the Issuer has made a Target Market Determination for a Financial Product, to only engage in Retail Product Distribution Conduct in relation to the Financial Product that is consistent with the Target Market Determination;
- (f) not to use any OnePath or Issuer Group name or logo other than as expressly authorised by an Issuer in writing;
- (g) not to contract for or hold itself out as being capable of contracting for or on behalf of any Issuer;
- (h) not to alter the terms upon which any Issuer's Financial Products are offered or any disclosure document or promotional material supplied by an Issuer;
- (i) to ensure that the relevant application forms for the Issuer's Financial Product which a client may be seeking to acquire are completed and to promptly remit completed forms and all monies related to an Issuer's Financial Products without deduction;
- (j) to promptly notify:
  - (i) the Issuers of any withdrawal, cancellation or variation of its AFSL;
  - (ii) the Issuers if it is subject to a winding up application or has an administrator appointed or becomes Insolvent;
  - (iii) the Issuers if it is convicted of an indictable offence or any of the directors or officers of that party is convicted of an indictable offence; and
  - (iv) the relevant Issuer or Issuers of any complaint by or dispute with a client or proposed client which may give rise to a claim against the Issuer or Issuers; and
- (k) to comply with the provisions of schedule 3.

### 4.3 Representatives

The Licensee agrees to ensure that its Representatives comply with clause 4.2 (except for clause 4.2(j)(i)) as if references in that clause to the Licensee were references to its Representatives.

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## **5 Indemnity**

### **5.1 Licensee's indemnity**

The Licensee agrees to indemnify each Issuer against any demand, claim, cause of action, verdict, judgment, damage, loss, expense or cost arising directly or indirectly from:

- (a) any breach by the Licensee of this agreement;
- (b) any fraud, negligence or misconduct by or of the Licensee or its Representatives;
- (c) any breach by the Licensee of its AFSL; or
- (d) any breach or failure to comply with any requirements of the law, by the Licensee or its Representatives,

except to the extent that it is contributed to by any breach, fraud, negligence, misconduct or other failure of the applicable Issuer or its Representatives.

### **5.2 Issuer's indemnity**

Each Issuer severally agrees to indemnify the Licensee against any demand, claim, cause of action, verdict, judgment, damage, loss, expense or cost arising directly or indirectly from:

- (a) any breach by the Issuer of this agreement;
- (b) any fraud, negligence or misconduct by the Issuer or its Representatives (excluding the remaining Issuers);
- (c) any breach by the Issuer of its AFSL; or
- (d) any breach or failure to comply with any requirements of the law, by the Issuer or its Representatives (excluding the remaining Issuers),

except to the extent that it is contributed to by any breach, fraud, negligence, misconduct or other failure of the Licensee or its Representatives.

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## **6 Insurance**

### **6.1 Maintenance of insurance**

Each party agrees:

- (a) to effect and maintain such insurances as required by law and any other insurance which is appropriate having regard to its activities, including professional indemnity insurance; and
- (b) to notify the other parties immediately where it does not maintain such insurances in accordance with paragraph (a).

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## **7 Attestation**

### **7.1 Attestation requirement**

The Licensee must provide to the Issuers, once per calendar year or at such other frequency as the Issuers consider appropriate, a written certificate which attests that, at all times during the period to which the certificate relates:

- (a) the Licensee has provided the services for which a One-off Adviser Service Fee or an Ongoing Adviser Service Fee was charged.
- (b) the services the Licensee has provided for which any One-off Adviser Service Fee or any Ongoing Adviser Service Fee was charged to a Superannuation Product related only to the client's superannuation and insurance obtained through superannuation.
- (c) the Licensee has complied with its obligations under schedule 3; and
- (d) the Licensee has or has not done anything that an Issuer determines is necessary for the Issuer to consider compliance by the Licensee or the Issuer with the law.

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## **8 Termination**

### **8.1 By notice – without cause**

The Licensee or any Issuer may terminate this agreement by giving the other parties 22 Business Days' written notice.

### **8.2 By notice – for cause**

The Licensee or any Issuer may terminate this agreement immediately by written notice if any of the following events occurs:

- (a) the “**other party**” (being any Issuer, where the Licensee is giving the termination notice; or the Licensee, where any Issuer is giving the termination notice) becomes bankrupt or enters into a scheme with creditors generally;
- (b) the other party is subject to a winding up application or has an administrator appointed or becomes Insolvent;
- (c) the other party is convicted of an indictable offence or any of the directors or officers of that party is convicted of an indictable offence;
- (d) the other party fails to perform or breaches a material obligation under this agreement and, if the non-performance or breach is capable of remedy, fails to rectify such non-performance or breach within 10 Business Days of being notified in writing of the non-performance or breach.

### **8.3 Without notice**

This agreement terminates immediately if the Licensee's AFSL is withdrawn, varied or cancelled in a manner which prevents it from complying with this agreement or from continuing to provide the same Financial Services to its clients.

### **8.4 Obligation on termination**

Upon termination of this agreement, all information and material in the possession of one party which belongs to another party must be returned to the other party as soon as practicable, or destroyed at the direction of, or with the consent of, the other party.

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## 9 GST

### 9.1 Definition

“**GST**” means any consumption tax imposed by a government whether at the point of sale or at some other specified occurrence, by whatever name, which operates during the term of this agreement and includes a goods and services tax, a broad-based consumption or indirect tax and a value added tax.

### 9.2 Addition of GST

Subject to this clause, where GST is payable on any taxable supply made under this agreement by a party (“**Supplying Party**”) to the other party (“**Receiving Party**”) and the consideration for that taxable supply under this agreement is not stated to be inclusive of GST, the receiving party must pay an additional amount calculated by multiplying that consideration by the prevailing GST rate (“**GST Amount**”). The GST Amount:

- (a) is in addition to the consideration for the taxable supply;
- (b) must be paid at the same time as the consideration; and
- (c) unless a relevant party relies on clause 13.8, must be paid without set off or deduction.

### 9.3 Adjustment

If the amount recovered on account of GST pursuant to clause 9.2 differs from the amount of GST payable at law in respect of the supply (excluding any consideration that is stated to be inclusive of GST in determining the amount of GST payable) the Supplying Party will:

- (a) provide a corresponding refund or credit to the Receiving Party; or
- (b) be entitled to receive the amount of that difference from the Receiving Party.

Except where the Receiving Party issues a Tax Invoice under clause 9.5, the Supplying Party must provide the Receiving Party with an adjustment note within 5 Business Days of becoming aware of any GST adjustment.

### 9.4 Calculation of amounts

Any consideration under this agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any Input Tax Credit to which an entity is entitled for its acquisition to which that cost, expense or other amount relates.

### 9.5 Recipient Created Tax Invoices

The following provisions apply as to payment of GST by an Issuer on any service which the Licensee supplies to the Issuer under this agreement:

- (a) the Issuer will issue Recipient Created Tax Invoices (“**RCTIs**”) in respect of any such supplies;
- (b) the Licensee agrees not to issue Tax Invoices in respect of those supplies;
- (c) the Licensee confirms that it is registered for GST and will notify the Issuer if it ceases to be registered or ceases to satisfy the Australian Taxation

Office ruling on RCTIs;

- (d) the Issuer confirms that it is registered for GST and will notify the Licensee if it ceases to be registered or ceases to satisfy the Australian Taxation Office Ruling on RCTIs;
- (e) the Issuer agrees to indemnify the Licensee for any liability for GST and any penalty or fine that may arise from an understatement or misstatement of GST payable on any supply for which the Issuer issues a RCTI.

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## **10 Confidentiality and privacy**

### **10.1 Acknowledgement**

Each party acknowledges that during the term of this agreement, it will have access to, or may otherwise become aware of, confidential information (both oral and written or other material form, and including commercial and technical information and trade secrets) relating to another party or its clients ("**Confidential Information**").

### **10.2 Exceptions**

The parties agree that the term "Confidential Information" does not include any information that is:

- (a) generally available to or known by the public (other than as a result of a disclosure by the receiving party in breach of this agreement or in breach of a duty of confidentiality whether under this agreement or otherwise);
- (b) available to the receiving party on a non-confidential basis from a source other than the party supplying the information;
- (c) information that the supplying party designates in writing as no longer confidential; or
- (d) legally required to be disclosed.

### **10.3 Use and disclosure**

A party may use the Confidential Information of another party for the purpose of performing its obligations under this agreement. A party may disclose the Confidential Information to its Representatives. Confidential Information may only be disclosed to third parties (other than Representatives) with the express consent of the other party or as required by law (including the privacy legislation) and these obligations continue after termination of this agreement.

### **10.4 Privacy principles**

The Licensee must comply with, and ensure that its personnel (including employees, contractors, agents, subcontractors and third party service providers) involved in performing services under this agreement, comply with the Australian Privacy Principles in the Privacy Act 1988 (Cwlth) and any other applicable privacy laws or codes when accessing, collecting, storing, using or otherwise handling personal information in connection with this agreement including in the same way and to the same extent as the Issuers would have been bound if the Issuers had done the act or engaged in the practice.

### **10.5 Personal information**

Where an Issuer (or any other member of the Issuer's Group) discloses or provides access to personal information to the Licensee in connection with this agreement, the

Licensee must:

- (a) only collect that personal information where it is necessary for the purposes of this agreement;
- (b) only use or disclose that information for the purposes for which it was provided;
- (c) treat the information in a manner that is compatible with the Issuer Group's publicly available privacy policy (as amended from time to time) and comply with any reasonable and lawful direction issued by an Issuer in respect of that information; and
- (d) not transfer that personal information to a person outside of Australia, or allow any person who is located outside of Australia to access that personal information, without the prior written consent of the Issuers.

## **10.6 Indemnity**

The Licensee must indemnify the Issuers and other Issuer Group members and hold them harmless against any loss, damage, cost, expense, claim or liability suffered or incurred by them in connection with any act or practice involving the personal information referred to in clause 10.5 engaged in by persons located outside of Australia where that act or practice would constitute a breach of privacy laws if engaged in within Australia.

## **10.7 References to parties**

Neither the Licensee nor the Issuers will, except with each other's written consent, refer to each other either expressly or by implication in any publication or advertisement, whether printed or electronic.

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# **11 Dispute resolution**

## **11.1 No arbitration or court proceedings**

If a dispute arises out of this agreement (**Dispute**), a party must comply with this clause 11 before starting arbitration or court proceedings (except proceedings for interlocutory relief).

## **11.2 Notification**

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

## **11.3 Parties to resolve Dispute**

During the 14 days after a notice is given under clause 11.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

## **11.4 Appointment of mediator**

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 11.3, the chairman of LEADR or the chairman's nominee will appoint a mediator.

### **11.5 Role of mediator**

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing.

### **11.6 Confidentiality**

Any information or documents disclosed by a party under this clause 11:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

### **11.7 Costs**

Each party to a Dispute must pay its own costs of complying with this clause 11. The parties to the Dispute must equally pay the costs of any mediator.

### **11.8 Termination of process**

A party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 11.1 to 11.3. Clauses 11.6 and 11.7 survive termination of the dispute resolution process.

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## **12 Notices**

### **12.1 Form - all communications**

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be:

- (a) in writing; and
- (b) marked for the attention of the person identified in the Details or schedule 1 (as applicable) or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### **12.2 Form - communications sent by email**

Communications sent by email need not be marked for attention in the way stated in clause 12.1. However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.

### **12.3 Delivery**

Communications must be:

- (a) left at the address set out or referred to in the Details or schedule 1 (as applicable);
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details or schedule 1 (as applicable);
- (c) sent by email to the address set out or referred to in the Details or schedule 1 (as applicable); or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or email



address, then communications must be to that address or email address.

#### **12.4 When taken to be received**

Communications are taken to be received:

- (a) if sent by prepaid post and posted from a place inside Australia to another place inside Australia, on the seventh Working Day after having been posted; or
- (b) if sent by email;
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever happens first.

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### **13 General**

#### **13.1 Assignment**

The Licensee may not assign or otherwise transfer all or any part of its rights or obligations under this agreement without the prior written consent of the Issuers. An Issuer may (in respect of one or more Financial Products) assign or otherwise transfer all or any part of its rights or obligations under this agreement to a related body corporate at its absolute discretion.

#### **13.2 Variation and waiver**

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

#### **13.3 Indemnities**

Subject to this agreement the indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

#### **13.4 Entire agreement**

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

#### **13.5 Severability**

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

#### **13.6 Governing law**

This agreement is governed by the law in force in New South Wales. Each party submits

to the non-exclusive jurisdiction of the courts of that place.

### **13.7 Counterparts**

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

### **13.8 Set-off**

An Issuer is entitled to set-off any Remuneration or other money owing to the Licensee against any debt, damages or amount due by the Licensee to the Issuer or any other Issuer.

### **13.9 Survival**

The parties agree that clauses 5, 8.4 and 10 survive termination of this agreement.

**EXECUTED** as an agreement

# Product Issuer Agreement

## Schedule 1 – Licensee

Name .....

ABN .....

AFSL .....

Address .....

Email .....

Attention .....

# Product Issuer Agreement

## Schedule 2 – Remuneration

- 1.1 Remuneration payable is disclosed in the Issuer's disclosure documents for the relevant products, which are published and updated regularly in the adviser section of the following website:

[www.onepath.com.au](http://www.onepath.com.au)

Where an Ongoing Adviser Service Fee or a One-off Adviser Service Fee is payable to the Licensee, the Licensee and the client need to agree the amount, notify the relevant Issuer of the agreed amount and meet all the requirements of the relevant Issuer (including those the Issuer must meet under relevant law) before the relevant Issuer will deduct the amount from the client's account and pay it to the Licensee.

(Note: An adviser must register before being able to access the adviser section of the website; instructions on how to register are included in the website.)

- 1.2 An Issuer may amend any Remuneration rate (including by reducing it to zero) at any time by written notice to the Licensee. An amendment will apply from the time specified in the notice (which may be prior to the Licensee's receipt (including deemed receipt) of that notice. An amendment may apply in respect of the Issuer's Financial Products issued to or in respect of a client prior to the Licensee's receipt (including deemed receipt) of that notice.
- 1.3 If any Financial Product, any class or kind of Financial Product or any "product" that is marketed as such by an Issuer, is altered or replaced by another Financial Product, another class or kind of Financial Product or another "product", with a consequential impact on the Issuer's resources available as originally intended to fund the associated Remuneration that would otherwise be payable, the Remuneration payable will be such amount (if any) as the Issuer considers to be reasonable in all of the circumstances.
- 1.4 The Licensee's entitlement to an Ongoing Adviser Service Fee will end:
- (a) if the Licensee's AFSL is withdrawn, varied or cancelled in a manner which prevents it from complying with this agreement or from continuing to provide the same Financial Services to its clients;
  - (b) upon the Issuer's receipt of a notice from the relevant client to cease payment;
  - (c) if the Licensee ceases to act on behalf of the client in respect of the Issuer's Financial Product; or
  - (d) on the death of the client.
- 1.5 The Licensee acknowledges that an Issuer may or must act in accordance with a notice provided to the Issuer from the Licensee's client in relation to an amount that would otherwise be payable under this agreement in relation to that client, including a notice to reduce the amount or to cease paying it.

- 1.6 The applicable Issuer will remit at least monthly by electronic funds transfer to a bank account nominated by the Licensee (or by cheque at the discretion of the Issuer) a consolidated payment made up of all Remuneration payable to the Licensee since the previous Remuneration payment to the Licensee (if any). The Issuer will provide the Licensee with a written list of all One-off Adviser Service Fees and Ongoing Adviser Service Fees included in the consolidated payment.
- 1.7 If any Financial Product is cancelled during a statutory cooling-off period, no Remuneration will be payable by the Issuer, and the Licensee must repay any Remuneration previously paid by the Issuer in respect of that Financial Product.
- 1.8 The Issuer may at any time correct errors in the calculation or payment of Remuneration and include the resulting adjustment in any future consolidated payment. If there is no further consolidated payment in which the adjustment can be included, the Licensee must pay the Issuer an amount equal to the adjustment.

# Product Issuer Agreement

## Schedule 3 – AML provisions

### 1. DEFINITIONS

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**AML/CTF Act** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

**AML/CTF Legislation** mean the AML/CTF Act, any regulations passed under that Act and the AML/CTF Rules.

**AML/CTF Rules** mean the rules made under section 229 of the AML/CTF Act, being the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

**Application** means an application that is made by a Customer to an Issuer requesting an Issuer to provide a Designated Service under the AML/CTF Act.

**Customer** means a prospective customer of an Issuer that wishes to receive a Designated Service from an Issuer on or after the date of this agreement.

**Customer Type** means a type of customer or other person in respect of whom the AML/CTF Legislation sets specific compulsory minimum KYC information collection and verification requirements.

**Designated Service** has the meaning given to that term in section 5 of the AML/CTF Act.

**Issuers' AML/CTF Program** means the standard or joint anti-money laundering and counter-terrorism financing program adopted by the Issuers and updated from time to time.

**KYC information** means the different types of 'know your customer information' as described in Part 1.2 and in Chapter 4 of the AML/CTF Rules.

**KYC Schedules** means a set of 'schedules' prepared by the Issuers, which sets out the requirements for the collection and verification of KYC information about a particular Customer Type, including procedures for collection and verification of Customer KYC information.

**ML/TF risk** has the meaning given to that term in the AML/CTF Rules.

**Reporting Entity** has the meaning given to the term under section 5 of the AML/CTF Act.

## **2. APPOINTMENT BY ISSUERS OF LICENSEE AS AGENT FOR CUSTOMER IDENTIFICATION**

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### **2.1. Appointment as agent**

The Issuers appoint the Licensee to act as their agent to perform identification of Customers (and their agents and beneficial owners, if any) by collecting KYC information and verifying KYC information, in each case in accordance with the requirements of this schedule.

### **2.2. Agreement of Licensee**

The Licensee agrees to perform identification of Customers (and their agents and beneficial owners, if any), by collecting and verifying KYC information, in each case in accordance with the requirements of this schedule, in relation to the services provided by the Licensee.

## **3. LICENSEE ACKNOWLEDGEMENTS**

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### **3.1. Licensee's acknowledgements**

- (a) The Licensee acknowledges that before the Issuers provide a Designated Service to a Customer, the Issuers are required to identify the Customer, and to verify the identity of that Customer, in each case in accordance with requirements of the AML/CTF Legislation and the Issuers' AML/CTF Program.
- (b) The Licensee agrees to perform the Issuers' obligations under the AML/CTF Legislation in respect of the collection of KYC information about Customers (and their agents and beneficial owners, if any) and the verification of the KYC information, in each case in accordance with the requirements of this schedule.
- (c) The Licensee has accepted this appointment and agrees that it will act as the agent of Issuers for the purposes of conducting the Customer identification, and the verification of the KYC information, that the Licensee is required by this schedule to undertake.

### **3.2. Limitation on Licensee appointment**

Subject to anything contrary in any other document, the Licensee acknowledges that its appointment as an agent of the Issuers is limited and confined to the terms of the appointment set out in paragraph 2.1. The Licensee must not represent to any person that it is the agent of the Issuers for any other purpose and will not purport to act as the agent for the Issuers for any other purpose.

## **4. OBLIGATIONS OF THE LICENSEE IN RELATION TO APPLICATIONS**

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### **4.1. Submissions of Applications generally**

Subject to the terms of this schedule, whenever a Licensee is authorised to do so by a Customer, the Licensee may submit an Application to the Issuers (being an Application in which the Customer requests the Issuers to provide a Designated Service).

### **4.2. General requirements for Applications**

Before submitting any Application to the Issuers, the Licensee must ensure that the original of the completed Application:

- (a) is in a form that is currently approved by Issuers;
- (b) accurately records the Customer's instructions;
- (c) is signed by each Customer making the Application;

- (d) where applicable, is signed by the Licensee, or by an authorised representative of the Licensee, to confirm and certify to the Issuers the matters required to be confirmed and certified by the Licensee in the Application; and
- (e) if the original of the completed Application is submitted to the Issuers by the Licensee, the Licensee must retain a full and complete copy of the Application for a period of 7 years.

#### **4.3. Collection of KYC information**

- (a) Before an Application is submitted to Issuers, the Licensee must ensure that:
  - (i) it collects all KYC information about the Customer in accordance with the procedures and requirements of the Issuers' AML/CTF Program and applicable KYC Schedules;
  - (ii) any discrepancies in the information provided by the Customer have been identified and resolved to the satisfaction of the Licensee.
- (b) A party must inform the others immediately if it becomes aware that any information provided to the others contains errors.
- (c) The Licensee must retain all records relating to KYC information for a period of 7 years.

#### **4.4. Verifying KYC information in an Application**

The Licensee must verify the KYC information it collects and such verification must be conducted in accordance with the requirements and procedures of the Issuers' AML/CTF Program and the applicable KYC Schedules.

#### **4.5. Issuers are not obliged to accept a Customer**

The Licensee acknowledges that the Issuers are not under any obligation to accept a Customer or to provide a Designated Service. The Licensee further acknowledges that an Issuer is under no obligation to provide the reasons why it rejects a Customer submitted to it by the Licensee, although such reason may include a situation where an Issuer has not received, or has a reasonable concern with, a Customer's identification or verification.

### **5. OBLIGATIONS OF THE LICENSEE IN RELATION TO THE SEPARATE KYC SCHEDULES**

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#### **5.1. Use of KYC Schedules**

The instructions in each applicable KYC Schedule detail the minimum KYC information that the Licensee is required to collect and verify when using the applicable KYC Schedule.

#### **5.2. Collection of KYC information**

Before submitting an Application of a Customer to an Issuer, the Licensee (or its authorised representative) must:

- (a) identify the KYC Schedule or Schedules applicable to that Customer (as determined by the Customer Type and the instructions in the applicable KYC Schedule);
- (b) confirm with the Customer that the Customer Type described in the selected KYC Schedule matches the capacity in which the Customer wishes to receive a Designated Service from the Issuers; and
- (c) once this has been done, the Licensee must collect from the Customer the



KYC Information about that Customer that is required by the applicable KYC Schedule or Schedules for that Customer Type; and

- (d) verify the KYC information collected about the Customer (and their agents and beneficial owners, if any) in accordance with the requirements of the applicable KYC Schedule.

### **5.3. Requirements applicable to the KYC Schedules**

In collecting and recording the KYC Information required to be collected by the applicable KYC Schedule or schedules, the Licensee (or its authorised representative) must:

- (a) collect from the Customer the KYC information that is required to be collected by the applicable KYC Schedule or schedules;
- (b) record the collected KYC information; and
- (c) verify the KYC information collected, in the manner described in the applicable KYC Schedule or schedules as amended from time-to-time.

### **5.4. Additional requirements**

In collecting and verifying the KYC information relevant to any Customer, the Licensee must also comply with any applicable procedures set out in the KYC Schedules as amended from time to time and with all relevant laws applying to the Licensee and/or to Issuers that deal with the collection or verification of information about the Customer.

### **5.5. Record keeping**

The Licensee must retain all AML/CTF related records for a minimum period of 7 years.

### **5.6. Provision of Customer Type Schedules by the Licensee to the Issuers**

Each identification record must be provided to the Issuer with the Application or as otherwise stipulated by the Issuers from time-to-time.

### **5.7. Changes to KYC Schedules**

The Issuers may amend the KYC Schedule at any time and will notify the Licensee of any change made to the KYC Schedule. The Licensee must comply with the KYC Schedules as amended from time to time.

## **6. REPORTING OF UNUSUAL OR SUSPICIOUS ACTIVITY**

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### **6.1. Reporting requirements**

Notwithstanding that the Licensee is itself a Reporting Entity under the AML/CTF Legislation, in the event that the Licensee identifies any matter or activity by the Customer (and/or their agents, if any) that the Licensee considers to be of an unusual or suspicious nature in the course of exercising its duties under this schedule as agent of the Issuers, such as submitting an Application or collecting or verifying the KYC information pursuant to this schedule, the Licensee must prepare a report of the facts giving rise to the concern regarding identity and provide the report to the relevant Issuer as soon as practicable.

### **6.2. Obligation not to disclose unusual or potentially suspicious matters**

The Licensee must provide the report as required by paragraph 6.1 to the relevant Issuer in accordance with the notification procedure as nominated by the Issuers from time to time and must not disclose any details of that report to any other person without the approval of the Issuer, including the Customer, AUSTRAC, the other Issuer any other personnel of the Licensee or the Issuer.

### **6.3. Suspicious matter report to AUSTRAC**

Upon receiving a report from the Licensee under paragraph 6.1, the relevant Issuer will consider the matter and determine whether a suspicious matter report is required to be made to the relevant regulator in accordance with AML/CTF Legislation.

## **7. STANDARDS FOR THE PROVISION OF SERVICES**

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### **7.1. Representations and warranties of the Licensee**

The Licensee represents and warrants that:

- (a) (legislation, standards) in performing its obligations under this schedule, specifically obtaining Customer KYC information and documentation and verification of the same, it will do so in accordance with the AML/CTF Legislation, the KYC Schedules and the Issuers' AML/CTF Program;
- (b) (directions) in performing its obligations under this schedule it will comply with any additional identification checks or procedures or other reasonable directions which the Issuers may reasonably request from time to time in connection with the services; and
- (c) (work) in performing its obligations under this schedule the work performed will be done competently and to a high standard in accordance with best practice.

### **7.2. Provision and storage of identification records by the Licensee to the Issuers**

- (a) The identification record for a Customer (and their agent, if any) must be provided within the timeframe requested by the Issuers from time to time but in any case in accordance with the AML/CTF Legislation.
- (b) The Licensee will provide to the Issuers any information gathered in accordance with this paragraph 7.2 for the Issuers to maintain on their files for the relevant statutory period and the Licensee must use reasonable endeavours to assist the Issuers to comply with any request by a regulatory or law enforcement agency or a court of competent jurisdiction within the time specified by such agency or court.
- (c) The Licensee must retain all records relating to KYC information for a period of 7 years.

### **7.3. General obligations of the Licensee**

The Licensee must:

- (a) not, in connection with the provision of the services, knowingly deal with any person or asset where to do so would cause it or the Issuer, to breach any AML/CTF Legislation or the Issuer's AML/CTF Program;
- (b) comply with any reasonable instruction given by Issuer in relation to matters referred to in this schedule; and
- (c) conduct employee training which meets the Issuer's requirements and the requirements of the Issuer's AML/CTF Program;
- (d) promptly provide to the Issuers, on request, a copy of any policy or program adopted by the Licensee relating to the carrying out of activities contemplated by this schedule on behalf of the Issuer.

### **7.4. Continuing obligations**

The obligations of the Licensee under this paragraph 7 are continuing obligations that

will not cease in respect of a Customer without the Issuers' written agreement.

## **8. LICENSEE'S RESPONSIBILITY**

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### **8.1. Use of all skill and care**

The Licensee agrees that it and its representatives will use all reasonable skill and care in the performance of its obligations under this schedule.

### **8.2. Delegation**

The Licensee remains responsible to the Issuers at all times for the full and proper performance of its obligations under this schedule.

The Licensee may not delegate any of its responsibilities under this schedule to any third party and may not arrange for any third party (other than an authorised representative) to perform any of the obligations of the Licensee under this schedule.

## **9. PROVISION OF CO-OPERATION AND ASSISTANCE BY THE LICENSEE**

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### **9.1. Acknowledgement of the Issuers' reliance on the Licensee**

The Licensee acknowledges that:

- (a) the Issuers have (and will have) a range of obligations and continuing obligations under the AML/CTF Legislation, including in relation to:
  - (i) the correct identification and verification of the identity of a Customer (including before agreeing to provide a Designated Service to a Customer and at any later time that there is any cause for doubt about the Customer's identity); and
  - (ii) the identification, mitigation and management of any ML/TF risk that might attach to a Customer at any time or that might arise in relation to the provision of any Designated Services by the Issuers; and
- (b) other members of the Issuers' designated business group will also be relying on the Issuers to conduct customer identification and verification, and accordingly, each of the Issuers and the other members of its designated business group will be relying on the Licensee to perform the Licensee's duties in accordance with its obligation under this schedule.

### **9.2. Obtaining additional KYC information from the Customer**

In this paragraph 9.2, a reference to a Customer means a Customer with respect to whom the Licensee undertook any customer identification and verification of KYC information as agent for the Issuers and includes the Customer after they became a current customer of the Issuers. Where requested to do so by the Issuers, the Licensee will provide all reasonable assistance in seeking any:

- (a) additional KYC information from a Customer that the Issuers may request;
- (b) clarification or explanation from a Customer of any KYC information collected and verified by the Licensee;
- (c) clarification about a potential or subsequent discrepancy in the KYC information collected by the Licensee about the Customer.

### **9.3. Assistance with investigations and enquiries**

Where an Issuer is subject to any enquiries, investigations or other action by a regulator in relation to a Customer identified and verified by the Licensee and in relation to the Issuers' compliance with the AML/CTF Legislation, the Licensee will provide all

reasonable assistance and support that the Issuer may require to assist it to respond to or otherwise deal with such enquiries, investigations or actions. The assistance of the Licensee will include access to relevant information and documents and access to relevant representatives of the Licensee who have verified and certified any KYC information and any reasonably necessary assistance to locate and achieve the co-operation and assistance of such representatives (including former employees or contractors).

**9.4. Audit of compliance with Procedures**

Upon reasonable notice, the Licensee will permit the Issuers to conduct an audit of the Licensee's compliance with its obligations under this schedule.

Where an Issuer requests such an audit, the Licensee will make all relevant records available to the Issuer and provide all other co-operation that may reasonably be requested by the Issuer.

**9.5. Notification of failure to comply**

The Licensee agrees to promptly notify the Issuers of any failure by the Licensee (or its authorised representative) to comply with matters referred to in paragraphs 3, 4, 5, 6, 7, 8 and 9.

# Product Issuer Agreement

## Signing page

DATED: \_\_\_\_\_

**SIGNED** on behalf of **ONEPATH FUNDS MANAGEMENT LIMITED** by its authorised representative in the presence of: )  
)  
) .....  
) Signature of authorised representative  
)  
)  
) .....  
) Signature of witness  
) Name of authorised representative  
)  
)  
) .....  
) Name of witness  
) Position  
)  
)

**SIGNED** on behalf of **ONEPATH CUSTODIANS PTY LIMITED** by its authorised representative in the presence of: )  
)  
) .....  
) Signature of authorised representative  
)  
)  
) .....  
) Signature of witness  
) Name of authorised representative  
)  
)  
) .....  
) Name of witness  
) Position  
)  
)

**EXECUTED** by **LICENSEE** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors: )  
)  
)  
)  
) .....  
) Signature of director  
) Signature of director/company secretary\*  
) \*delete whichever is not applicable  
)  
) .....  
) Name of director (block letters)  
) Name of director/company secretary\*  
) (block letters)  
) \*delete whichever is not applicable