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# **Client Agreement**

## Digital Assets Brokerage Services

Beaufort Fiduciaries Pty Ltd (ACN 162 139 871)

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Date:

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## Background

- A Beaufort Fiduciaries Pty Ltd (ACN 162 139 871) (**Beaufort**) holds an AFSL (AFSL 545124) authorising it to provide advice, dealing and custodial or depository services, including in relation to Derivatives, to Wholesale Clients only in Australia.
- B Beaufort provides the Services via the Platform. The Services include Brokerage Services and Custody Services.
- C You wish to engage Beaufort to provide the Services.

### **The parties agree**

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## 1 Introduction

- (a) This Agreement governs the Services, which are intended for Wholesale Clients only in Australia. By using the Services you agree to be bound by this Agreement. You should read this Agreement carefully before you decide to use the Services.
  - (b) The Services may not be suitable for everyone and you agree you have considered the risk notices in Schedule 2.
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## 2 The Services

### 2.1 Brokerage Services

- (a) The Brokerage Services are provided in accordance with this Agreement including the trading terms in clause 4.
- (b) The Brokerage Services are provided on a no-advice basis and you agree that, unless otherwise stated in this Agreement, Beaufort is under no obligation:
  - (i) to advise you on the merits of any particular Derivative or Order;
  - (ii) to satisfy itself about the suitability of any Derivatives for you; or
  - (iii) to monitor or advise you on the status of any Derivatives or your interest in them.
- (c) You are solely responsible for any trading decisions that you make when you use the Platform and Services. Beaufort will not provide you with any investment, legal, tax or other form of advice, nor can you rely on any statements made by Beaufort.

### 2.2 Custody Services

On and from the Effective Date, you appoint Beaufort as your custodian to provide the Custody Services. The Custody Services are provided in accordance with the terms of this Agreement.

### 2.3 Third party services

Your use of the Services may require you to access, or link through to third party service providers that are not associated with the Services provided by Beaufort under this Agreement. Third party service providers may have their own separate terms of use,

privacy policy and related agreements. You acknowledge and agree that Beaufort is not responsible for the operation or performance of third-party services in connection with the Services.

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### 3 Accounts and access to the Services

#### 3.1 Access to the Services

- (a) To access the Services you must have a Platform Account and apply to open an Account with Beaufort (via the Platform). Once you successfully open an Account you will be granted access to the Brokerage Services, which will appear as additional functionality accessible via your Platform Account.
- (b) When you apply to open an Account, you acknowledge that your Platform Account is subject to separate terms of use which are agreed between you and Bit Trade and to which Beaufort is not a party.
- (c) Your receipt of the Services is subject to:
  - (i) you satisfying all onboarding, due diligence and any other requirements that apply to your Platform Account, in accordance with the terms of use which are agreed between you and Bit Trade; and
  - (ii) the terms of this Agreement, including the eligibility criteria in clause 3.2.

#### 3.2 Account eligibility

- (a) To be eligible to open an Account you must:
  - (i) be a Wholesale Client;
  - (ii) provide any documentation required by Beaufort to satisfy Beaufort that you are a Wholesale Client; and
  - (iii) satisfy any other eligibility criteria applicable to Accounts, which are available on the Website, which criteria may be updated from time to time.
- (b) Beaufort may accept or reject your application to open an Account and use the Services in its sole discretion. If Beaufort rejects your application, Beaufort will use reasonable endeavours to inform you of the reasons why, to the extent permissible under Applicable Laws.

#### 3.3 Account types and Authorised Users

- (a) There are two types of Platform Accounts that are permitted to open an Account, as follows:
  - (i) *Individual accounts*: These are registered in the name of one natural person who is at least 18 years old and who is, and will continue to be, the only person authorised to take any action in the Account. By opening an individual account, you represent and warrant that you are and will at all times continue to be the sole beneficial owner of the Account and user of all Services.
  - (ii) *Corporate accounts*: These are owned by a company, association, partnership, government body or other legally recognised entity or

incorporated group (**Entity**) holding an Account in any capacity other than an individual capacity.

- (b) If you have a Platform Account as an Entity, you may nominate representatives to access and operate your Account, including to submit Orders on your behalf (**Authorised User**).
- (c) To nominate an Authorised User, you must provide Beaufort with the full legal name of the representative in writing and keep us updated on any changes regarding the identity of Authorised Users.
- (d) Any Authorised Users that you nominate will be bound by this Agreement as if they were you. You acknowledge and agree that you will be liable and bound by the actions of any Authorised Users that you nominate, or otherwise allow to access your Account and Beaufort will not be liable for any Losses associated with such access.
- (e) You authorise your Authorised Users to give Orders to Beaufort on your behalf for the purposes of this Agreement and to sign on your behalf all notices, certificates, communications, instructions, confirmations and other documents required by or contemplated by this Agreement.
- (f) Subject to any authentication protocol that Beaufort requires in respect of an Authorised User's use of an Account, Beaufort is entitled to rely on instructions (including in respect of Orders) given or purported to be given by you or an Authorised User and Beaufort is not liable for any Losses arising from such reliance.
- (g) Authorised Users represent, warrant and agree, on behalf of the relevant Entity, as well as on their own behalf, that the Authorised User:
  - (i) is fully authorised to bind the Entity, execute all documents and do all things necessary to otherwise meet Beaufort's requirements in relation to an Account, in the Authorised User's stated capacity; and
  - (ii) will provide documents to demonstrate authority and complete other requirements as Beaufort may request from time to time.
- (h) Beaufort is not required to act on any Order or other instruction which it reasonably believes not to be an Order or instruction, or which are illegal or would expose Beaufort to any Losses. Beaufort will notify you as soon as reasonably practicable if it proposes not to act on any Order or instruction.

### **3.4 Account access**

- (a) You are not permitted to create multiple Accounts.
- (b) Beaufort does not permit Platform Accounts which are held jointly (ie, in the names of two or more persons) to open an Account. You alone are the owner of any Assets held in your Account in connection with the Services.
- (c) You are solely responsible for managing and maintaining the security of the Security Information associated with your Account, which includes your login credentials. You must notify Beaufort immediately if you suspect that your Account has been accessed without your permission.
- (d) You understand and agree that Beaufort is not responsible for any unauthorised access to, or use of your Account, unless such unauthorised access or use is caused or contributed to by Beaufort, its representatives or agents.

### 3.5 Inactive Accounts

- (a) Beaufort may mark any Account as dormant if it has been inactive for at least one (1) year.
- (b) If you have positive Asset balances in a dormant Account, it will remain your property (or if you die it will form part of your estate).

### 3.6 Closing your Account

- (a) At your request, Beaufort will tell you how you can close your Account. We will notify you if your Account is subject to certain closure processes.
- (b) If you close your Account, your Platform Account will remain open but you will no longer be able to access the Services. If you wish to close your Platform Account, you must contact Bit Trade.

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## 4 Brokerage Services

### 4.1 Orders

- (a) To use the Brokerage Services, you must submit an Order and Beaufort will undertake transactions on your behalf in accordance with such Orders, including acquiring, entering into or closing a position in a Derivative.
- (b) When you place an Order, you acknowledge and agree that to give effect to that Order Beaufort will engage with a Market Participant.
- (c) You acknowledge and agree that:
  - (i) neither you (via the Platform or your Account) nor Beaufort is a Participant with access to any Financial Market trading mechanism for the purpose of executing Orders;
  - (ii) you will have no direct relationship with any Market Participant or Financial Market;
  - (iii) Orders are executed by a Market Participant;
  - (iv) no Market Participant is resident or based in Australia;
  - (v) no Financial Market has any operations located in Australia;
  - (vi) whether Beaufort is able to process an Order on your behalf is not within Beaufort's control, and the execution of the Order will depend on:
    - (A) whether the Market Participant accepts the Order; and
    - (B) the Market Participant's ability to execute an Order, in relation to which the Market Participant (and no other party) will have direct legal responsibility as a Participant for any transactions associated with the Order made through the relevant Financial Market;
  - (vii) Beaufort may, for the purposes of providing the Services, enter into arrangements with Market Participants that are:
    - (A) related bodies corporate of Beaufort; or

- (B) not licensed or otherwise regulated in Australia or any other jurisdiction.
- (d) Beaufort will handle your Orders in accordance with the order handling procedures detailed on the Website.
- (e) Beaufort will determine in its sole discretion whether to accept any Order. Beaufort will notify you if an Order is rejected and is not required to provide reasons for the rejection of any Order.
- (f) Each Order that you submit is binding on you and represents your agreement to use the Services in accordance with the terms of this Agreement.
- (g) Beaufort may be required to reject or cancel your Order, or close out a Derivative, because of a request from a third party or a regulatory authority. You acknowledge and agree that Beaufort has no liability for any Losses incurred by you in respect of any Orders that are cancelled or not executed, or that are closed out, pursuant to this clause 4.1.

#### **4.2 Cancelling or modifying Orders**

- (a) Beaufort may, in its sole discretion, modify or cancel any Orders that have been submitted and accepted. This may occur:
  - (i) if Beaufort has reasonable grounds to believe that the Order:
    - (A) has been submitted erroneously;
    - (B) may constitute market abuse;
    - (C) may unduly influence market prices,
    - (D) may cause Beaufort to breach Applicable Laws; or
    - (E) may have adverse implications for, or adversely affect, Beaufort's arrangement with a Market Participant; and
  - (ii) in order for Beaufort to perform scheduled maintenance and system upgrades associated with the Services.
- (b) To the extent permitted by Applicable Laws, Beaufort is not liable for any Loss you may suffer as a result of any modification or cancellation under this clause 4.2, unless caused by Beaufort's gross negligence, fraud or misconduct.

#### **4.3 Collateral**

- (a) The terms upon which Beaufort will deal with collateral, leverage and margin in relation to Derivatives held by Beaufort on your behalf will appear on the Kraken Futures Support Page, as amended from time to time. This clause 4.3 is a summary of such matters and in the event of a conflict or inconsistency between this clause 4.3 and the Kraken Futures Support Page, the Kraken Futures Support Page will prevail.
- (b) You are solely responsible for identifying the collateral, leverage and margin requirements in relation to any Derivatives held by Beaufort on your behalf that apply at any time.

- (c) You are required to provide collateral for any obligations you owe to Beaufort in connection with the Brokerage Services. The collateral on your Account can comprise any of the following:
- (i) Digital Assets or fiat currency deposited or held in your Account. Beaufort may determine in its sole discretion the Digital Assets or fiat currency eligible to be used as collateral;
  - (ii) realised profit or loss from past positions in Derivatives, that are now closed;
  - (iii) profit and loss from Derivatives positions that are currently open and held by Beaufort,

**(Collateral).**

- (d) You must provide Collateral for:
- (i) each open long and short Derivative position;
  - (ii) each open Order to buy or sell a Derivative that would establish a position or further increase an existing position size; and
  - (iii) as otherwise specified on the Kraken Futures Support Page: <https://support.kraken.com/hc/en-us/categories/360001977131-Futures>,

**(Collateral Requirement).**

- (e) Beaufort will calculate the profit and loss of the open positions in the Derivatives held by Beaufort on your behalf based on a proprietary model (**P&L Model**).
- (f) Beaufort will choose the specification of the P&L Model that reflects its view of the fair market price of the Derivative and may change the specification at its sole discretion at any time.
- (g) Beaufort will determine your Collateral Requirement using a variety of third party indices and benchmarks. Beaufort has no control over these indices and benchmarks and makes no representation as to their accuracy or completeness.
- (h) You are responsible for monitoring your Collateral and ensuring that you hold Collateral that is equal to or higher than your Collateral Requirement at any given time.
- (i) If your Collateral is lower than your Collateral Requirement, Beaufort may, on your behalf, in its sole discretion and at any time without prior notice, cancel your open Orders and/or arrange for the liquidation of some or all open positions in Derivatives, in whole or partially (**Position Liquidation**) at the best available price at the time of the Position Liquidation and you agree to accept this price. The Position Liquidation process may vary depending on the type of Derivative and other factors, further details of which are available on the Platform and/or Website, including the following the Kraken Futures Support Pages:
  - (i) 'Liquidation FAQ' (see [here](#));
  - (ii) 'Equity Protection Process' (see [here](#)); and
  - (iii) 'Leverage & Margining in Derivatives' (see [here](#))

- (j) If Beaufort cannot liquidate some or all open positions in Derivatives held by Beaufort on your behalf, it may, at its sole discretion and without prior notice, arrange on your behalf for the assignment of some or all remaining open positions (**Position Assignment**). Beaufort will select the price at which positions are assigned such that your remaining Collateral is zero. Further details of how Position Assignment operates can be found in the 'Assignment Program' section of the Kraken Futures Support Page:  
<https://support.kraken.com/hc/en-us/sections/360005997091-Assignment-Program>.
- (k) If Beaufort cannot assign some or all of the open positions in Derivatives (for example, if there is insufficient demand for Position Assignment) Beaufort may at its sole discretion without prior notice, arrange on your behalf for the unwinding of some or all of the open positions (**Position Unwind**). The open positions in Derivatives will then terminate at the unwind price, determined at Beaufort's sole discretion, for each of the open positions such that:
- (i) if you are subject to Position Unwind, all of your remaining Collateral is split equally between the relevant counterparties in proportion to the size of the open positions with each relevant counterparty; or
  - (ii) if the open positions in the Derivative of a counterparty to the trade is subject to Position Unwind, the remaining collateral of the counterparty is split equally between claimant counterparties, including you, in proportion to the size of the open positions held by each claimant counterparty. As a claimant counterparty, you may receive a payment that may or may not cover the whole liability the counterparty has. You agree to forfeit any claims in excess of this payment.
- (l) Beaufort does not gain any benefit from Position Liquidations, Position Assignments or Position Unwinds other than in the form of fees.
- (m) Beaufort applies identical rules and procedures in the calculation of the P&L Model, the calculation of Collateral, Collateral Requirement, Position Liquidation, Position Assignment and Position Unwind. Further details and examples of these concepts can be found in the 'Equity Protection Process' section of the Kraken Futures Support Page:  
<https://support.kraken.com/hc/en-us/articles/360022835671-Equity-Protection-Process>.
- (n) When you hold an open position which is marked at a loss, Beaufort reserves the right at any time and without prior notice to convert any Collateral that is deposited in a currency which is not the margin currency of the Derivative as stated on the Website into that stated margin currency. If a currency conversion is required, Beaufort may use the services of third party, which may result in additional fees being charged to your Account. Beaufort's choice of third party service provider and acceptance of additional fees are at its sole discretion. Further details can be found in 'Fees & Charges for Multi-Collateral Futures' section under the sub-heading 'Conversion Fees' section of the Kraken Futures Support Page:  
<https://support.kraken.com/hc/en-us/articles/4844392809620-Fees-Charges-for-Multi-Collateral-Futures>.
- (o) You acknowledge and agree that Beaufort's calculations and decisions associated with Brokerage Services, in particular, but not limited to, the use of the P&L Model, calculation of any Collateral Requirement, and use of Position Liquidation, Position Assignment and/or Position Unwind will be made in its sole discretion and are final and binding. Beaufort may change the methodology by which it makes any such calculations (and may update the Kraken Futures Support Page accordingly), at its sole discretion. Where that change has a material effect on your rights under this Agreement, Beaufort will give you reasonable prior notice to such change

becoming effective in any case at least 10 Business Days. Notwithstanding the forgoing sentence, in the case of Haircuts for multi-collateral Derivatives, the applicable Haircut for each applicable Asset will be updated from time to time in the 'Futures Collateral Currencies' section of the Kraken Futures Support Page: <https://support.kraken.com/hc/en-us/articles/4843323030164-Futures-Collateral-Currencies>. You acknowledge and agree that you are responsible for confirming the applicable Haircut in relation to such transactions on your Account and that Beaufort will have no other obligation to separately notify you in relation to Haircuts for multi-collateral Derivatives.

- (p) You acknowledge and agree that Beaufort has the right to change the methodologies by which it calculates the P&L of open positions in Derivatives, Collateral, Collateral Requirements, Position Liquidation, Position Assignment, and Position Unwind and all other rules and processes associated with operating the Brokerage Services, as set out in the Kraken Futures Support Page and outlined in this Agreement. Beaufort will provide notice of any such change where it materially affects you.

#### **4.4 Depositing, holding and withdrawing Collateral**

- (a) Before placing any Orders, you must deposit sufficient Collateral into your Account. Instructions on how to deposit Collateral, and further applicable terms are on the Kraken Futures Support Page, which includes a list of Collateral that is considered eligible. Any attempt to deposit funds that are not an eligible form of Collateral will be rejected. You will bear the sole risk of any transfer of funds into your Account.
- (b) When you deposit Collateral into your Account and submit Orders, Beaufort will be required to post Collateral for trades entered into on your behalf to give effect to your Order.
- (c) You instruct Beaufort to hold any Collateral deposited or credited to your Account.
- (d) Any Digital Assets you deposit as Collateral may be held by Beaufort or its Sub-custodian(s) in an omnibus account, such that it is co-mingled with Digital Assets of other clients of Beaufort or its Affiliates. You acknowledge and agree that your redelivery rights in respect of any Digital Assets deposited in your Account are not necessarily for the exact same Digital Assets as you deposited as Collateral, but will instead be in respect of an equal amount of Digital Assets which is based on the same cryptographic protocol of the deposited Digital Asset. The treatment of any shortfall of Digital Assets in the event of Beaufort's or its Sub-custodian's insolvency will be determined by Applicable Laws.
- (e) Subject to clause 4.4(f), you may submit a request to withdraw Digital Assets or fiat currency from your Account at any time. Instructions for submitting withdrawals will be displayed in your Account. The timeframe to process a withdrawal will depend on the method selected, which can be viewed in the support centre on the Website.
- (f) You cannot withdraw any Digital Assets or fiat currency required to cover your losses or that is being used as Collateral for open Derivatives held by Beaufort on your behalf. Beaufort will only transfer withdrawn Digital Assets or fiat currency to the same account or wallet that you used to deposit those Assets into your Account. Any withdrawals may take up to 48 hours and will be conducted on a best-efforts basis. You acknowledge and agree that Beaufort may not be able to immediately execute any withdrawal request and that Beaufort is not liable for any Losses incurred due to a delay in executing your withdrawal request.
- (g) Only the Account holder can deposit funds into their Account. No third party Digital Assets or fiat currency will be allowed to be deposited in your Account. You will not

be able to withdraw any Digital Assets or fiat currency from your Account to an account or wallet that does not belong to or is not controlled by you.

#### **4.5 Regulatory reporting**

- (a) Beaufort may be obliged under Applicable Laws to make public certain information regarding our transactions with you. You acknowledge and agree that Beaufort is entitled to disclose this information and that the information held by Beaufort is its sole and exclusive property. You agree to provide Beaufort with all information that it may reasonably request for the purpose of complying with its obligations under Applicable Laws and you consent to Beaufort providing to any third party information about you and your relationship with Beaufort under this Agreement (including but not limited to Assets in your Account) as Beaufort considers, acting reasonably, appropriate or as required to comply with any Applicable Laws or this Agreement.
- (b) If you are a legal entity, you agree that Beaufort may in certain circumstances request that you provide your LEI and that Beaufort may disclose this information as required.

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## **5 Custody**

### **5.1 Appointment of custodian**

On and from the Effective Date, Beaufort agrees to provide the Custody Services and accepts its appointment as custodian.

### **5.2 Sub-custodian**

Beaufort may, in its sole discretion and without your prior consent, engage or appoint a Sub-custodian, agent or any other service provider in connection with the Custody Services.

### **5.3 General duties and obligations**

As custodian, Beaufort must:

- (a) hold the Derivatives (or beneficial interest in Derivatives and any documents evidencing legal title to the Derivatives where a Sub-custodian is appointed) on the terms and conditions of this Agreement;
- (b) ensure that the Derivatives are clearly identified in its records as property of the relevant person;
- (c) act honestly;
- (d) on a timely basis:
  - (i) receive all income and other payments due in respect of the Derivatives; and
  - (ii) credit such income and payments to the relevant Account;
- (e) subject to this Agreement and Applicable Law, act in accordance with your instructions;

- (f) perform its functions and duties under this Agreement to the standard that could reasonably be expected of a professional custodian performing Custody Services of the type contemplated by this Agreement;
- (g) have available adequate resources (including financial, technological and human resources) to perform its duties and functions under this Agreement and maintain its competence to do so;
- (h) on your request, formally acknowledge the manner in which your interest in Derivatives is held by Beaufort;
- (i) comply with Applicable Laws in performing its duties and functions under this Agreement; and
- (j) keep timely and accurate records in connection with Derivatives transactions. Beaufort must maintain accurate records of the Custody Services as required by Applicable Laws and in accordance with Beaufort's internal document retention policies. Beaufort's records will at all times provide for the separate identification of Derivatives.

#### **5.4 Record keeping**

- (a) Beaufort will keep records of:
  - (i) the Derivatives and how they are held;
  - (ii) each transaction in relation to the Derivatives;
  - (iii) all of the functions performed by Beaufort under this Agreement; and
  - (iv) by whom, what means and when the transactions are authorised,
    - in a form, and for a time, agreed by Beaufort and you (and in the absence of agreement, for at least seven (7) years) and in accordance with Applicable Laws.
- (b) Beaufort will maintain appropriate books and records to document the number and value of Derivatives and will present your balance in respect of your Account via the Platform.

#### **5.5 Verification of records**

- (a) Beaufort will keep records that enable it to readily identify the Derivatives that it holds on your behalf. The records must include information about the value of Derivatives in your Account.
- (b) Beaufort will apply reasonable verification procedures for the appropriately frequent reconciliation of the Derivatives which are held in accordance with this Agreement.

#### **5.6 Inspection of records**

You may, at all reasonable times and upon reasonable notice, inspect and audit Beaufort's records relating to you and the Derivatives held by Beaufort on your behalf.

#### **5.7 Provision of records and information**

Beaufort must promptly on your request provide such information and copies of documents relating to Derivatives and the transactions and functions referred to in clause

5.4(a) to enable you to comply with your legal, compliance and reporting obligations under Applicable Laws.

#### 5.8 Examination of records

- (a) You will examine the record of transactions and Account balances made available by Beaufort via the Platform and notify us as soon as practicable of any discrepancy between instructions given by you and the position shown on the Platform and of any other errors known to you.
- (b) You consent to receiving any reports that Beaufort may make available by electronic means via the Platform and acknowledge that your access to and use of such reports are subject to this Agreement.

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## 6 Market data

- (a) Subject to clause 4.1, Beaufort may, in its sole discretion, make available via the Platform market data, prices, news, research and other information prepared by third parties (**Market Data**). Market Data is provided by third parties. Any Market Data displayed on the Platform is of a general nature and will not take into account your specific circumstances. Beaufort makes no solicitation with respect to the Market Data. You should consult a professional advisor before making any investment decisions.
- (b) Your reliance on Market Data, including to inform Orders, is at your own risk and Beaufort:
  - (i) is not responsible for its accuracy, timeliness, or completeness;
  - (ii) does not owe you any obligations with respect to the provision of Market Data; and
  - (iii) will not be liable for Losses arising from your use of Market Data except in the case of Beaufort's gross negligence, fraud or misconduct in connection with making Market Data available on the Platform.
- (c) You agree not to reproduce, distribute, sell or commercially exploit Market Data in any manner and acknowledge that Beaufort may, in its sole discretion, cease the availability of Market Data on the Platform.

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## 7 Client money

- (a) If you are a sophisticated investor for the purposes of section 761GA of the Corporations Act, Beaufort must deal with any fiat currency which you pay or give to Beaufort, or which is otherwise received by Beaufort for the Services, in accordance with the Client Money Rules. You acknowledge and agree:
  - (i) Beaufort will pay these monies into a segregated account or into a trust account which complies with the requirements of the Corporations Act;
  - (ii) your client money and the monies of other clients of Beaufort may be combined and deposited by Beaufort in a client's segregated account or a trust account;
  - (iii) that Beaufort may, and you authorise Beaufort in accordance with Applicable Laws to, withdraw any or all monies to which you are entitled in the client

segregated account or trust account maintained by Beaufort for the purposes of section 981B of the Corporations Act:

- (A) to meet any liability, obligation or other Loss which you owe to Beaufort; or
  - (B) to pay to another financial services licensee who holds client money for Beaufort in its client segregated account or trust account maintained for the purposes of section 981B of the Corporations Act;
- (iv) Beaufort is entitled to, and will retain, all interest and income accrued or paid by authorised deposit-taking institution service providers and financial service licensees in respect of the client money held by Beaufort. Under certain circumstances, Beaufort may in its sole discretion elect to pass through some or all of the interest accrued on your uninvested, fully settled and instantly available fiat currency balance in your account;
- (v) if you instruct Beaufort to pay an amount to you, Beaufort will pay the amount to which you are entitled under this Agreement directly to you and not to any third party, unless you have otherwise instructed Beaufort to do so and Beaufort has agreed. You must provide the relevant account details for payment instructions for payments to be made by Beaufort to you. While Beaufort will take reasonable steps to comply with your payment instructions, Beaufort accepts no responsibility for any failure to comply with those instructions and, if a failure occurs, the relevant monies will continue to be held by Beaufort in accordance with the Corporations Act and Applicable Laws; and
- (vi) the money concerned may also be used for the purpose of meeting obligations incurred by Beaufort in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives by Beaufort (including dealings on behalf of people other than you).
- (b) If you are a Wholesale Client that is not a sophisticated investor for the purposes of section 761GA of the Corporations Act, you agree that Beaufort is not required to deal with any fiat currency which you pay or give to Beaufort, or which is otherwise received by Beaufort for the Services, in accordance with the Client Money Rules.
- (c) You acknowledge and agree that:
- (i) all currency exchange risks regarding any payment instruction that Beaufort receives from you is your responsibility. Any conversion from one currency to another required to be made for performing any payment instruction may be effected by Beaufort in the manner and at the time and at the exchange rates that Beaufort in its absolute discretion decides; and
  - (ii) fiat currency paid by you or Beaufort to a Market Participant or other service provider outside Australia, or received by such a person outside Australia in connection with the Services, may not be subject to the Applicable Laws in Australia governing client money, but instead may be subject to the Applicable Laws of the relevant jurisdiction.

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## 8 Default

- (a) A default by you under this Agreement occurs automatically, without prior notice being provided to you, upon:

- (i) your breach or repudiation of this Agreement which results in Losses incurred by you, Beaufort or a Market Participant;
- (ii) your failure to provide assurance satisfactory to Beaufort of performance of an obligation, after a request from Beaufort in Beaufort's sole discretion;
- (iii) proceedings by or against you under any bankruptcy, insolvency, or similar law;
- (iv) assignment for the benefit of your creditors;
- (v) appointment of a receiver, trustee, liquidator or similar officer for you or your property;
- (vi) your representations being untrue or misleading when made or later becoming untrue;
- (vii) legal incompetence of you;
- (viii) proceedings to suspend your business or license by any regulator or organisation; or
- (ix) Beaufort having reason to believe that any of the above is likely to occur imminently,

**(Default).**

- (b) You unconditionally agree that, upon a Default, Beaufort may terminate any or all of its obligations to you under this Agreement and Beaufort has the right in its discretion but not the obligation without prior notice, to liquidate all or any part of your positions in any Account at any time and in any manner and through any market or dealer. You will reimburse and hold Beaufort harmless for all Losses associated with any of your Default or Derivatives incurred by Beaufort upon Default. For any action which Beaufort takes, or refrains from taking under this Agreement, you must account to Beaufort as if Beaufort took or refrained from taking, the action on your instruction and, without limitation, you are liable for any deficiency and are entitled to any surplus which may result.
- (c) Beaufort may, in its sole discretion, suspend or freeze the Account or any privileges of the Account, freeze or liquidate your Assets, or utilise any of the remedies in this Agreement for a Default including satisfaction of an indemnity granted by you under this Agreement directly from your Account, if Beaufort reasonably believes that your Account has, or may be:
  - (i) involved in any fraud or crime or violation of any Applicable Laws,
  - (ii) accessed unlawfully, or
  - (iii) involved in any suspicious activity (whether victim or perpetrator or otherwise).

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## 9 Fees

- (a) The fees you are required to pay to Beaufort can be accessed at the Website and must be paid in accordance with the procedures notified via the Platform.

- (b) By entering this Agreement, you agree to the fees that apply to you and acknowledge and agree that the fees payable to Beaufort by you may change as notified to you from time to time.

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## 10 Acknowledgements

- (a) You acknowledge and agree that:
- (i) your Account is to be used as the primary method of communication with Beaufort, and all information about your Account, Orders, and any other messages will be via your Account;
  - (ii) you are only permitted to access and use your Account via your Platform Account, using your designated email address, username, mobile number, password or other login credentials (**Security Information**);
  - (iii) Beaufort is entitled to rely on all instructions or Orders given, or apparently given, by you or on your behalf, which have been provided as a result of access to your Account using the Security Information for your Platform Account and you are bound by any dealing, action or omission for your Account;
  - (iv) there may be delays in the processing, execution, amendment or cancellation of an Order or an instruction entered through your Account;
  - (v) an Order may be wholly or partly filled before an instruction for its amendment or cancellation is processed;
  - (vi) the execution of an Order may be prevented or delayed by filters or other electronic features of the Platform;
  - (vii) Beaufort is not responsible for the processing, execution or cancellation of any Orders or instructions submitted through your Account, regardless of who enters the Orders or instructions, and regardless of whether or not there is an error in the Order or instruction entry or for any delays;
  - (viii) the speed of information provided through your Account is subject to a number of factors including, but not limited to, the speed of your internet connection, your settings and the volume of information being received and sent by the Platform;
  - (ix) there are risks in trading through your Account because the Brokerage Services are provided by means of computer and shared telecommunications systems and facilities (even where generally accepted industry standards and practices are followed). These risks include that:
    - (A) the information you send to, and receive from, your Account may be accessible by third parties;
    - (B) other users of the Platform may be able to see your Orders or instructions or other communications relating to trading and execution without your (or Beaufort's) consent; and
    - (C) third parties may have access to your network without your (or Beaufort's) consent;
  - (x) you will notify Beaufort immediately if you become aware of any inaccurate information being transmitted through your Account, or over the Platform

including, for example, inaccurate content as to Orders, Derivatives, Market Data or Account balances;

- (xi) you will only use your Account for your own business and investment purposes. You are responsible for reading, understanding and keeping up to date with the details of the operational aspects of your Account;
- (xii) Orders will be processed on your behalf at the prices stated on the relevant Financial Market (subject to any limit specified in the Order). You acknowledge and agree that:
  - (A) the market price may move and be different from the price at which the relevant Derivative was trading when the Order was placed by you through your Account; and
  - (B) Beaufort is not liable for any Losses incurred by you by reason of any movement in market price;
- (xiii) you are responsible for the consequences associated with:
  - (A) any unauthorised disclosure or use of the Security Information;
  - (B) a failure to prudently keep Security Information secure (including but not limited to changing the Security Information as necessary); and
  - (C) any actions or omissions of an Authorised User.
- (b) Beaufort may suspend, terminate or impose conditions on the use by you or any Authorised User of your Account at any time without notice to you.
- (c) If you are uncertain as to whether your Order or instruction has been received, you must make all reasonable attempts to verify whether the Order or instruction has been received, approved and effected prior to taking further action. You agree to issue, and are responsible for the issuance of, specific cancellation or amendment instructions for an existing Order and not to attempt to effect changes by placing a second or duplicate Order. You are solely responsible and liable for any duplicate instruction that you place.

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## 11 Disclaimer

- (a) Beaufort has no obligation to investigate the truthfulness of the identity of the registered mobile phone number's owner and will not take any responsibility for any Losses arising from opening an Account on the Platform with stolen, fraudulently used or misuse of an individual mobile phone number.
- (b) By opening an Account, you must comply with Applicable Laws and this Agreement, and your use of your Account should not involve the release of politically related harmful information, pornographic contents, false advertising, violence, insulting or slandering comments, breach of privacy requirements, nor should you engage in activities which infringe a third party's intellectual property rights and other legal rights and interests. You bear all Losses arising from a breach of this clause 11(b) and Beaufort is not responsible for such breach.
- (c) Beaufort is not liable for any punitive, indirect, occasional, special or associated Losses, including but not limited to, indirect personal damage, loss of business profit, interruption of trade or loss of business information.

- (d) Investment associated with Derivatives has risk of loss (see Schedule 2), Beaufort is not liable for any profit or Losses or any risks related to your investments through the use of the Brokerage Services.
  - (e) Beaufort will publish content which relates to the Services on the Platform, Website and other places, such as news and information provided by third parties, with the information provider being noted. Beaufort does not carry out censoring or revision of the contents provided and does not guarantee its accuracy or reliability.
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## 12 Privacy

- (a) When you open an Account or use the Services, you may give us personal information. Our privacy notice contains further details about our information handling practices (see [here](#)).
  - (b) If you give Beaufort personal information, you must make sure that you have the right to disclose it to us, and for us to use and disclose that personal information as described in our privacy policy. This includes that you must make any notifications and obtain any consents required to allow you to disclose, and allow us to use and disclose, that personal information.
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## 13 Confidentiality

### 13.1 Confidential Information

Each of you and Beaufort:

- (a) acknowledges that Confidential Information is passed to and received by it in the strictest confidence;
- (b) must use the Confidential Information only for the purposes set out in this Agreement;
- (c) subject to clause 13.2, must not disclose the Confidential Information to any person;
- (d) must take reasonable efforts to ensure that any person who has access to Confidential Information does not make any unauthorised use, modification, reproduction or disclosure of that information and that Confidential Information is protected against loss;
- (e) must notify the other as soon as practicable after it becomes aware of a breach by it or its representative of its obligations under this clause 13; and
- (f) must cooperate with the other in any reasonable action which it may take to protect the confidentiality of its Confidential Information.

### 13.2 Permitted disclosures

Each of you and the Beaufort may disclose Confidential Information:

- (a) on a need-to-know basis to any of its representatives or agents (including legal advisers) for the purposes of this Agreement and on the basis that its representative or agents will keep the Confidential Information confidential;
- (b) upon request by a regulator;

- (c) to the extent specifically required by Applicable Laws and must as soon as reasonably practicable notify the other if it becomes aware that such disclosure may be required; and
- (d) with the prior written consent of the other provided that the person to whom the Confidential Information is to be disclosed, releases and indemnifies the other from Losses arising out of or in connection with such disclosure or with the use by that person of that Confidential Information.

### 13.3 Return of Confidential Information

At any time at the request of the party (**first mentioned party**), the other party (**second mentioned party**) must at its own expense:

- (a) deliver to the first mentioned party, or with the first mentioned party's prior written consent, destroy or erase, all documents and media in which any Confidential Information is recorded or from which it may be reproduced (including any copies) and which are in the possession, power, custody or control of the second mentioned party or its representatives; and
- (b) certify in writing to the first mentioned party that to the best of its information and belief and after making enquiries, there is no longer any Confidential Information in the possession, power, custody or control of the second mentioned party or any representative of the second mentioned party.

### 13.4 No release

Return of the material forms of Confidential Information under clause 13.3 to a party does not release the other party or its representatives from obligations under this clause 13.

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## 14 Legal Disclosures

- (a) You are the beneficial owner of the Assets in your Account. and will ensure that the source and use of the Assets is legitimate, and that the procedures for the deposit and currency exchange is consistent with Applicable Laws of your jurisdiction (including but not limited to Australia).
- (b) Any dispute arising from the ownership and legality of your Assets or any associated fines or Losses will be settled by you.

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## 15 Limitation of Liability

- (a) To the maximum extent (and subject to Beaufort's liability in respect of any right you have under applicable consumer protection laws against providers of goods and services under the Competition and Consumer Act or the ASIC Act), Beaufort excludes all liability relating to your use of the Services, including Losses (without limitation) which are a result of or are in connection with:
  - (i) any inaccuracy, error or delay in or omission of any information provided to you by third parties under this Agreement, including through the Platform;
  - (ii) any delay or failure or inaccuracy, or loss of access to the provision of a Service which is associated with:
    - (A) your loss of access to the Platform, your Platform Account or your Account; or

- (B) the transmission of Orders, instructions or other information,  
which is a result of a Service Disruption Event;
- (iii) a network failure associated with your software system that shows a payment is successful while Beaufort's software system does not receive your instruction, which leads to the risk of you failing to submit Orders, or causes Beaufort's software system receiving and transmitting Orders or instructions twice, leading to duplicate transactions;
  - (iv) any misinterpretation of your Order or instructions, which are unclear, ambiguous, or not specific;
  - (v) your software system suffering an illegal attack or virus infection, leading to failure of an Order, instruction or payment;
  - (vi) your software system being incompatible with Beaufort's, causing failure of an Order, payment or instruction;
  - (vii) failure of payment caused by your improper operation of the Platform;
  - (viii) Losses arising from circumstances including that your Platform Account, password, personal information, or trading information are released or your identity is counterfeited, due to your neglect, fraud or misconduct;
  - (ix) your use of the Services to conduct any illegal activity, or to infringe other's rights and interests, causing Losses to you or a third party;
  - (x) Beaufort's suspension or termination of your Account, or the suspension of your Platform Account by Bit Trade;
  - (xi) a failure of the Services due to a Force Majeure Event;
  - (xii) any failure associated with conduct that is outside of Beaufort's control (eg, where the cause is due to a technical failure in a Digital Asset protocol, the fork of a Digital Asset protocol, or is attributable to an action by another client or a third party);
  - (xiii) any loss of prospective profits or expenses or special, indirect or consequential loss resulting from the supply of the Services via the Platform.
- (b) Beaufort will be liable under clause 15(a) only where any such Loss is a direct result of:
- (i) Beaufort's breach of this Agreement, or
  - (ii) Beaufort's gross negligence, fraud or misconduct,

and then is only liable to the amount of fees Beaufort has received from you during the 30 days preceding the date on which the act or omission giving rise to the liability.

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## 16 Indemnification

- (a) Except as otherwise expressly agreed under this Agreement, you indemnify Beaufort for any action, claim, demand, Loss, Liability or expense of any nature, arising out of:

- (i) any default (including a Default), whether by your act or omission under this Agreement or any Order or instruction;
  - (ii) any breach by you of any Applicable Laws;
  - (iii) any representation or warranty made or given by you under this Agreement which is untrue or incorrect;
  - (iv) any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by you or by any of your Authorised Users, clients, employees, agents or authorised persons, consultants or servants;
  - (v) any failure of any of your computer or electronic systems or networks to perform, be available or successfully transmit data to Beaufort, or any error or inadequacy in the data or information input into such systems or networks by you;
  - (vi) any delays in processing any Order or instruction including, for instance, as a result of systems or market delays, or due to verification procedures or unauthorised processes or due to call waiting time or adherence to internal policies and procedures;
  - (vii) anything lawfully done by Beaufort in accordance with this Agreement;
  - (viii) any Order, instruction, request or direction given by you;
  - (ix) Beaufort complying with any direction, request or requirement of an Applicable Law, any Financial Market, any government body or any regulatory body having jurisdiction over Beaufort;
  - (x) in connection with or in any way related to Beaufort in good faith accepting and acting on instructions received via the Platform, by email or by other means which are signed or approved, or purported to be signed or approved, by you or any Authorised User;
  - (xi) arising out of Beaufort's observance of this Agreement, and out of Beaufort or a Sub-custodian holding any Derivatives in its name; or
  - (xii) payable in connection with the acquisition of any Derivative or for any calls or demands for payments (including unpaid capital) for them.
- (b) Your liability will be proportionally reduced to the extent that Beaufort caused or contributed to the relevant action, claim, demand, Loss, Liability or expense.
- (c) Beaufort indemnifies you, and must keep you indemnified for Losses incurred under clause 15(b), in accordance with the limitation set out in that clause.

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## 17 Force majeure

- (a) Where Beaufort is unable, wholly or in part, to carry out any of its obligations under this Agreement because of a Force Majeure Event and it uses all reasonable endeavours to minimise the impact of any Force Majeure Event as quickly as possible, that obligation is suspended for the duration of the delay arising out of that Force Majeure Event.
- (b) The affected party will not, by reason only of having failed to perform that obligation on time, be liable for breach of that obligation. Without limiting the affected party's

obligation to seek to mitigate the effect of the Force Majeure Event, any time period relevant to that obligation will be extended by a period equal to the period the obligation is suspended.

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## 18 Amendment and Termination

### 18.1 Notice of amendment

- (a) Beaufort may make changes to this Agreement from time to time and will provide not less than 30 days' notice of any material changes to this Agreement.
- (b) Any amendments to the Agreement will be sent by email to the address associated with your Account.

### 18.2 Acceptance of amendments

- (a) If you do not accept the Agreement, or any amendment(s) to it, you must notify Beaufort immediately and stop using the Services.
- (b) If you continue to use the Services after being given notice of amendment to this Agreement, your continued use of the Services constitutes acceptance of the amended Agreement.

### 18.3 Termination

- (a) This Agreement will commence on the Effective Date and will continue unless otherwise terminated in accordance with its terms.
- (b) Beaufort may terminate this Agreement:
  - (i) at any time by providing 14 days' written notice using the contact details on your Account;
  - (ii) immediately, where:
    - (A) you Default, or are otherwise in breach of this Agreement; or
    - (B) Beaufort reasonably suspects that you are involved in any fraudulent or criminal activity.
- (c) If Beaufort exercises its rights under this clause 18.3, it may terminate your Account immediately, freeze the balances in your Account, cancel all open Orders and close out all Derivatives, as at the date of termination.
- (d) If Beaufort terminates this Agreement, you must settle any Liabilities that you owe in respect of the Services, which includes but is not limited to any fees incurred in connection with closing your Account and any positions. You will need to withdraw any Digital Assets and fiat currency balances from your Account as soon as possible after Beaufort notifies you of termination, and in any event by no later than 14 days following the date of that notification.
- (e) Beaufort otherwise reserves the right to take action against you if it terminates this Agreement in accordance with this clause.
- (f) You may terminate this Agreement:

- (i) at any time, by providing 14 days' written notice to Beaufort by email to: [support.kraken.com/hc/en-us/requests/new](mailto:support.kraken.com/hc/en-us/requests/new);
- (ii) immediately, where:
  - (A) you have reasonable grounds to believe that Beaufort or any other person engaged by Beaufort to provide Custody Services (eg, a Sub-custodian), will not, or is unlikely to, comply with the minimum standards in ASIC Regulatory Guide 133; or
  - (B) Beaufort commits a material breach of a term in this Agreement which you have provided Beaufort written notice of and which has not been remedied in a reasonable period of time.
- (g) Your right to terminate under clause 18.3(f) is subject to the settlement of any Liabilities that you owe in respect of the Services, which includes but is not limited to any fees incurred in connection with closing your Account and any positions.

#### **18.4 Claims and termination**

The termination of this Agreement does not affect any:

- (a) transaction properly entered into prior to termination;
- (b) claim by Beaufort in respect of accrued fees or expenses incurred in respect of the period prior to termination; or
- (c) other claim which either party may have against the other.

#### **18.5 Transfer of Assets**

- (a) On termination of this Agreement by:
  - (i) you, Beaufort will transfer the Assets to the same account or wallet that you used to deposit those Assets into your Account; or
  - (ii) Beaufort, you must promptly notify Beaufort of details of the new custodian.
- (b) If such details are not provided during the notice period, Beaufort may elect either to retain the Assets on the terms and conditions of this Agreement until it receives such details, or to deliver the Assets to you.

#### **18.6 Amounts owing and return of Assets**

- (a) On termination of this Agreement, Beaufort is entitled to deduct from the Assets any amounts owing to it prior to the delivery of the Assets.
- (b) Subject to Beaufort being paid all outstanding Liabilities that you owe in respect of the Services, within 10 Business Days of termination, Beaufort will:
  - (i) transfer the possession and control of the Assets to you or a new custodian as directed by you;
  - (ii) transfer all Asset records to you or any person nominated by you; and
  - (iii) provide all reasonable cooperation to any successor of the Assets.
- (c) The costs of transferring the Assets are to be paid by:

- (i) if this Agreement is terminated under clause 18.3(b)(ii), you; or
- (ii) in all other cases, Beaufort.

### 18.7 Survival

Clauses 12, 13, 15, 16, and 21, survive termination of this Agreement.

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## 19 Representations and warranties

- (a) You represent and warrant to Beaufort:
  - (i) when you use the Services, you are acting as principal;
  - (ii) if you are constituted by more than one person (including, for example, if you are a partnership or joint venture), each person constituting you is jointly and severally liable for the obligations under this Agreement, and Beaufort may act on the instructions of any one of those persons, without the necessity to refer to, or notify, any other person;
  - (iii) if you are a corporation, you represent and warrant that:
    - (A) you hold a valid ACN, ABN or ARBN (as applicable) under the Corporations Act;
    - (B) you have full corporate power to enter into, and perform your obligations under, this Agreement; and
    - (C) you have taken all necessary corporate actions to authorise the performance of your obligations under this Agreement, and this Agreement constitutes the legal, valid and binding obligations, enforceable against you;
  - (iv) if you are a corporation and you have appointed Authorised Users in accordance with clause 3.3, you will ensure that:
    - (A) your Authorised Users comply with applicable provisions of this Agreement when accessing the Services;
    - (B) your Authorised Users have appropriate skills, knowledge and expertise to use the Platform to access the Services;
    - (C) each Authorised User has the appropriate authority to bind you to Orders made under this Agreement; and
    - (D) that none of your Authorised Users is a resident of or otherwise located in any Prohibited Country;
  - (v) if you are acting as a trustee of a trust, a responsible manager of a managed investment scheme, a trustee of a superannuation fund or an agent under an investment management agreement, you represent and warrant that:
    - (A) you are properly appointed as the sole trustee of the relevant trust and are not in breach of trust;
    - (B) (if required) currently have all appropriate AFSL authorisations;

- (C) the trust is validly subsisting and properly established;
- (D) you have the right to be fully indemnified out of the trust assets for any obligations incurred under this Agreement before any trust beneficiary's claim and this right has not been limited or reduced in any way;
- (E) you are authorised under the trust deed for the trust to acquire the interests in Derivatives using the Services under this Agreement and perform obligations under this Agreement; and
- (F) if the trust is a superannuation fund, the interests in Derivatives that it acquires under this Agreement:
  - I. comply with all laws, prudential standards and regulator issued guidelines applicable to the operation of superannuation funds, including the *Superannuation Industry (Supervision) Act 1993 (Cth) (SIS Act)*, *Superannuation Industry (Supervision) Regulations 1994 (Cth)* and the Australian Prudential Regulation Authority prudential standards;
  - II. have been or are to be acquired in accordance with an investment strategy prepared in accordance with the SIS Act;
  - III. comply with all the requirements of the trust deed and governing rules of the trust; and
  - IV. have been acquired on an arms' length basis, for value and on commercial terms;
- (vi) you are the legal and beneficial owner of any Digital Assets and fiat currency that you deposit into your Account;
- (vii) you have read and understood all documentation provided by Beaufort to you for the Services provided by Beaufort including, without limitation, any disclosure documents;
- (viii) you are a person with whom Beaufort is lawfully entitled to deal under any Applicable Laws and that all dealings by you with Beaufort or requested to be done by Beaufort on your behalf are and will be lawful under all Applicable Laws;
- (ix) all information supplied to Beaufort is true, complete and accurate in all respects and you will notify Beaufort immediately of any change in any information supplied (including but not limited to any change in your name, address, telephone number or e-mail address);
- (x) you will rely upon your own knowledge and judgment and will seek such advice (financial or otherwise) as may be prudent before placing an Order or instruction with Beaufort and you assume full responsibility for any Order or instruction placed with Beaufort;
- (xi) at all times you will be able to make payments and fulfil all commitments on your part arising under this Agreement and under the conditions applicable to dealings between yourself and Beaufort;
- (xii) that you are free to deal with all assets of any kind, whether they are Assets or otherwise, that you transfer to Beaufort and that such assets are free from all encumbrances, liens, charges or other security interests of any kind

- however expressed (excluding any such interest in that arises under this Agreement);
- (xiii) any Assets deposited into your Account do not constitute the proceeds of crime;
  - (xiv) using the Services does not infringe any local law of your country of incorporation, residence or location;
  - (xv) you hold all necessary authorisations, licences, permissions and consents to use the Services where applicable;
  - (xvi) you will not use the Services to engage in any activity that is fraudulent, deceptive, misleading, manipulative, abusive, causes disorderly trading conditions or otherwise brings Beaufort into disrepute;
  - (xvii) you have read the risk notice in Schedule 2 of this Agreement and understand the risks associated with trading Derivatives; and
  - (xviii) you are a Wholesale Client for the purposes of section 761G of the Corporations Act.
- (b) Apart from any warranties and representations which are implied by law and cannot be excluded, Beaufort makes no warranties for any Service or information provided or made available to you in connection with this Agreement.
- (c) All representations, warranties and acknowledgments given in this Agreement are taken to have been made at the time you complete an application for an Account and are taken to have been repeated by you:
- (i) each time you place an Order or an instruction with Beaufort;
  - (ii) each time a Derivative is acquired on your behalf using the Brokerage Services; and
  - (iii) each time Beaufort does anything or refrains from doing something under this Agreement or as contemplated by this Agreement in connection with your Account or any Derivative.

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## 20 Anti-money laundering and counter-terrorism financing

- (a) You acknowledge that:
- (i) Beaufort is subject to AML/CTF Laws which may prohibit Beaufort from providing Services to you; and
  - (ii) the AML/CTF Laws include prohibitions against any person dealing with the proceeds of or assets used in criminal activity (wherever committed) and from dealing with any funds or assets of, or the provision of finance to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act.
- (b) You agree that:
- (i) Beaufort is not required to take any action or perform any obligation under or in connection with this Agreement if Beaufort is not satisfied as to your

identity or where Beaufort suspects on reasonable grounds that by doing so Beaufort may breach the AML/CTF Laws;

- (ii) Beaufort may delay, block or refuse to make any payment or to provide any Service if Beaufort believes on reasonable grounds that to do so may breach Applicable Laws in Australia or any other country, and Beaufort will incur no liability to you if it does so; and
  - (iii) Beaufort will not incur any liability to you for any Losses you suffer (including consequential loss) however caused by reason of any action taken or not taken by Beaufort as contemplated in clause 20(b)(i) or 20(b)(ii) above.
- (c) You agree to provide all information and documents to Beaufort which Beaufort may reasonably require to comply with any law in Australia or any other country, including any AML/CTF Laws. You agree that Beaufort may disclose information which you provide to Beaufort or information about your use of the Services or your use of the Services, where Beaufort is required to do so by any law in Australia or any other country.
- (d) You represent and warrant to Beaufort that payments made by you to Beaufort in accordance with this Agreement, or any instructions given by you, will not breach any law in Australia or any other country.
- (e) You represent, declare and confirm that, to the best of your knowledge, you have not been charged or convicted of any serious financial crimes, and undertake that you will notify Beaufort immediately upon any such charge or conviction (or any development reasonably likely to result in any such charge or conviction).

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## 21 Breach reporting

Without imposing any obligation upon either party to monitor the other party's compliance with this Agreement, each party must provide written notice of any breach of this Agreement of which it is aware by it or the other party within a reasonable time of becoming aware of the breach. The notice must contain reasonable particulars of the breach, including without limitation (but in the case of a breach by the non-notifying party, only to the extent the notifying party is aware), the date of the breach, subject matter of the breach, cause of the breach, and any steps proposed to be taken to rectify the breach, and any relevant supporting documentation (to the extent applicable).

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## 22 Complaints

- (a) Beaufort is committed to providing a high standard of Service. If you are dissatisfied with the Service, you have received and wish to raise a complaint then please submit your complaint to: [support.kraken.com/hc/en-us/requests/new](https://support.kraken.com/hc/en-us/requests/new).
- (b) Please provide the following details in order for Beaufort to be able to process your complaint:
  - (i) your name;
  - (ii) the email address you used to register your Account;
  - (iii) a clear description of your concern or complaint;
  - (iv) details of what you would like Beaufort to do to rectify the complaint; and

- (v) copies of any relevant correspondence.
- (c) Beaufort will provide you with an acknowledgement of your complaint within five (5) Business Days of receipt and will aim to resolve your complaint within two (2) weeks of receipt. If Beaufort is unable to address the complaint within two (2) weeks then Beaufort will write to you to explain the status of your complaint. Within four (4) weeks, Beaufort will send you a final response.

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## 23 Relationship

You acknowledge and agree that this Agreement does not create any relationship (contractual or otherwise) between you and any:

- (a) Market Participant;
- (b) Financial Market or Financial Market operator; or
- (c) third party (including Affiliates), including those that Beaufort has an arrangement with to support the provision of the Services.

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## 24 General

### 24.1 Governing law

This Agreement will be governed by the laws of the state of New South Wales, Australia.

### 24.2 Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the state of New South Wales, Australia including, for the avoidance of doubt, the Federal Court of Australia sitting in New South Wales, Australia.

### 24.3 Invalidity

- (a) If a provision of this Agreement or a right or remedy of a party under this Agreement is invalid or unenforceable in a particular jurisdiction:
  - (i) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
  - (ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- (b) This clause is not limited by any other provision of this Agreement in relation to severability, prohibition or enforceability.

### 24.4 Survival of indemnities

Each indemnity contained in this Agreement is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity.

### 24.5 Entire agreement

This Agreement supersedes all previous agreements, understandings, negotiations, representations and warranties about its subject matter and embodies the entire agreement between the parties about its subject matter.

## **24.6 Precedence**

You may be required to execute other agreements, which are intended to be consistent with this Agreement and each other, but in the event of conflict with this Agreement, this Agreement will prevail. In the event of any translation of this Agreement or the Services, the English version shall prevail.

## **24.7 Survival**

All provisions contained in this Agreement, which by their nature extend beyond the expiration or termination of this Agreement, will continue to be binding and operate after the termination or expiration of this Agreement.

## **24.8 Waiver**

- (a) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by an authorised officer of Beaufort. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy.
- (c) Failure to exercise or delay in exercising a right or remedy under this Agreement, does not operate as a waiver or prevent further exercise of that or any other right or remedy.

## **24.9 Cumulative rights**

Except as expressly provided in this Agreement, the rights of a party under this Agreement are in addition to and do not exclude or limit any other rights or remedies provided by law.

## **24.10 Counterparts**

- (a) This Agreement may be executed in any number of counterparts, each of which:
  - (i) may be executed electronically or in handwriting; and
  - (ii) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document.
- (b) Without limiting the foregoing, if the signatures on behalf of one party are on more than one copy of this Agreement, this shall be taken to be the same as, and have the same effect as if all of those signatures were on the same counterpart of this Agreement.

## **24.11 Severability**

Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.

## **24.12 Costs and expenses**

Each party acknowledges that it is liable for the payment of its own costs and expenses involved in the preparation, negotiation and execution of this Agreement.

#### **24.13 Costs of performance**

A party must bear the costs and expenses of performing its obligations under this Agreement, unless otherwise provided in this Agreement.

#### **24.14 Further assurances**

Except as expressly provided in this Agreement, each party must, at its own expense, do all things reasonably necessary to give full effect to this Agreement and the matters contemplated by it.

#### **24.15 Assignment, novation and other dealings**

- (a) You must not assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of Beaufort, which consent is not to be unreasonably withheld.
- (b) Beaufort may assign or novate this Agreement to another broker, trader or futures broker, or otherwise deal with the benefit of it or a right under it, or purport to do so, upon providing a notice of assignment to you.

#### **24.16 Compliance with Custody Law**

If and to the extent from time to time the Corporations Act or any ASIC Regulatory Guides (**Custody Law**) require that this Agreement contains a particular provision or amendment to an existing provision in order for Beaufort or you to be compliant with the Custody Law then such provision or amendment shall be deemed to be included in this Agreement on and from the time such provision or amendment is required by the Custody Law.

### 1      Dictionary

A term or expression starting with a capital letter that is not otherwise defined in this Dictionary has the meaning given to it in the Corporations Act.

In this Agreement:

**Account** means your account with Beaufort through which you use the Services.

**Affiliate** means for an entity or other person, an entity or other person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the entity or other person.

**AFSL** means Australian financial services licence.

**AML/CTF Laws** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) and any regulations and guidance published pursuant to, or in connection with, that Act.

**Applicable Laws** means, for a matter, all laws, legislation, regulation and subsidiary regulation, instruments and orders of a regulatory authority or a court, which apply to the relevant matter in the relevant jurisdiction.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth).

**ASIC Regulatory Guides** includes:

- (a) ASIC Regulatory Guide 133 Funds management and custodial services: Holding assets;
- (b) ASIC Regulatory Guide 166 AFS licensing: Financial requirements;
- (c) any supplementary, replacement or additional regulatory guides issued by ASIC; and
- (d) any instruments issued by ASIC in connection with or relating to those regulatory guides.

**Assets** means any fiat currency, Digital Assets, Derivatives or interests in Derivatives.

**Authorised User** has the meaning given to it in clause 3.3(b).

**Bit Trade** means Bit Trade Pty Limited (ACN 163 237 634), an Affiliate of Beaufort.

**Brokerage Services** means non-advised, execution only services where Beaufort is instructed by you to acquire or dispose of Derivatives on your behalf in accordance with your Orders.

**Business Day** means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in New South Wales, Australia.

**Client Money Rules** means the client money rules contained within Part 7.8 of the Corporations Act.

**Collateral** has the meaning given to it in clause 4.3(c).

**Collateral Requirement** has the meaning given to it in clause 4.3(d).

**Competition and Consumer Act** means the *Competition and Consumer Act 2010* (Cth).

**Confidential Information** means:

- (a) all information relating to the business or affairs of the disclosing party disclosed, communicated or delivered to, learnt by, developed by or otherwise which comes into the knowledge of or into the possession of, the receiving party under or in connection with this Agreement; and
- (b) the terms of this Agreement (which are Confidential Information to both parties),

but excludes any such information which the receiving party can establish:

- (c) is or became generally available in the public domain other than through a breach of confidence;
- (d) was independently developed by the receiving party; or
- (e) was rightfully received by the receiving party from a third party who is under no obligation of confidentiality in respect of that information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the disclosing party.

**Corporations Act** means the *Corporations Act 2001* (Cth), and any regulations and guidance published pursuant to, or in connection with, that Act.

**Custody Services** mean means custody services provided to you by Beaufort when Beaufort holds Derivatives on your behalf.

**Default** means a default by you of this Agreement as defined in clause 8(a).

**Derivatives**, as defined under section 761D of the Corporations Act, means derivatives acquired, held or disposed of by Beaufort on your behalf in connection with the Brokerage Services.

**Digital Asset** means any digital asset (including cryptocurrency, virtual currency, digital currency, or virtual commodity) which is a digital representation of value based on (or built on) a digital asset network.

**Effective Date** means the date of this Agreement.

**Entity** has the meaning given to it in clause 3.3(a)(ii).

**Financial Market** means a financial market (as defined under section 767A the Corporations Act) to which Orders may be transmitted for execution.

**Force Majeure Event** means any of the following events or circumstances, including but not limited to, war, communication fault, natural disaster, strike and the actions taken by the government department, which:

- (a) is not within the reasonable control of the affected party or any of its Affiliates;

- (b) alone or when taken together with any other such events, causes the affected party to fail to perform on time any of its obligations under this Agreement; and
- (c) is not reasonably able to be prevented by the affected party taking reasonable precautions and cannot reasonably be circumvented by the affected party.

**Haircut** means the lower-than-market value placed on an Asset when it is being used as Collateral as further described at <https://support.kraken.com/hc/en-us/articles/204585998-Collateral-currency>.

**Kraken Futures Support Page** means the support pages available here: <https://support.kraken.com/hc/en-us/categories/360001977131-Futures>, including the following:

- (a) Liquidation FAQ: <https://support.kraken.com/hc/en-us/articles/4402283092244-Liquidation-FAQ>;
- (b) Leverage & Margining: <https://support.kraken.com/hc/en-us/sections/360005933152-Leverage-Margining>;
- (c) Assignment Program: <https://support.kraken.com/hc/en-us/sections/360005997091-Assignment-Program>;
- (d) Equity Protection Process: <https://support.kraken.com/hc/en-us/articles/360022835671-Equity-Protection-Process>;
- (e) Fees & Charges for Multi-Collateral Futures: <https://support.kraken.com/hc/en-us/articles/4844392809620-Fees-Charges-for-Multi-Collateral-Futures>; and
- (f) Futures Collateral Currencies: <https://support.kraken.com/hc/en-us/articles/4843323030164-Futures-Collateral-Currencies>.

**LEI** means your Legal Entity Identifier, being the standard 20-character identification code used across markets and jurisdictions to uniquely identify a legal entity that engages in a financial transaction that is registered on the centralised Global LEI system.

**Liabilities** mean:

- (a) Taxes, costs, expenses, liabilities, fees or any other amount (including, without limitation, legal and other professional service fees) incurred or payable by Beaufort under this Agreement; and
- (b) Beaufort's fees.

**Losses** means all losses, liabilities, damages and claims, and all related costs and expenses (including any and all reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties).

**Market Data** has the meaning given to it in clause 6(a).

**Market Participant** means a Participant with whom Beaufort has an arrangement (as determined by Beaufort) for execution of Orders on or through a Financial Market by such Participant on behalf of Beaufort.

**Order** means an instruction provided by you to Beaufort via your Account on the Platform (in a form and including such information required by Beaufort and notified to you) for Beaufort to undertake transactions in Derivatives on your behalf.

**Participant** has the meaning given in section 767A(4) of the Corporations Act.

**P&L Model** has the meaning given to it in clause 4.3(e).

**Platform** means the platform operated by Bit Trade accessed at pro.kraken.com or via API.

**Platform Account** means your account on the Platform with Bit Trade through which you access your Account.

**Position Assignment** has the meaning given to it in clause 4.3(j).

**Position Liquidation** has the meaning given to it in clause 4.3(i).

**Position Unwind** has the meaning given to it in clause 4.3(k).

**Prohibited Country** means any prohibited country as listed on the Website.

**Security Information** has the meaning given to it in clause 10(a)(ii).

**Service Disruption Event** means an event or circumstance which is not within the control of Beaufort, including, any Force Majeure Event, acts of any third party, exchange or market rulings, suspension of trading, computer or telephone failure, unlawful access to the Platform, lock outs or other obstruction of Beaufort's usual business operation, trade or business embargoes impacting Beaufort's business whether directly or indirectly, government or quasi-governmental restrictions, actions or inactions and, without limitation, any other conditions which is beyond Beaufort's control.

**Services** means the services provided by Beaufort to you under this Agreement, including the Brokerage Services, Custody Services and ancillary services relating to the provision of those services.

**SIS Act** has the meaning given to it in clause 19(a)(v)(F).

**Sub-custodian** means any person appointed by Beaufort to hold Derivatives as a custodian for Beaufort, which may be an Affiliate of Beaufort, and any sub-custodian appointed by Beaufort's custodian.

**Website** means the Kraken website accessed at www.kraken.com.

**Wholesale Client** has the meaning given in sections 761G and 761GA of the Corporations Act.

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## 2 Interpretation

In this Agreement the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;

- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be interpreted as, words of limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Agreement;
  - (vi) this Agreement includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
  - (viii) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (ix) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) in determining the time of day, where relevant to this Agreement, the relevant time of day is:
  - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
  - (ii) for any other purpose under this Agreement, the time of day in the place where the party required to perform an obligation is located; and
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

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## Schedule 2 Risk Notices

Beaufort provides Services in relation to Derivatives where the underlying assets are Digital Assets. Derivatives are complex, regulated financial products that are difficult to understand and may not be suitable for inexperienced investors.

By using the Services, you could lose your entire investment. You should not deposit Assets that you cannot afford to lose. You should seek advice from an independent and suitably licensed financial advisor and ensure that you have the risk appetite, relevant expertise, experience and knowledge before you decide to use the Services.

You should not use the Services to acquire Derivatives unless you understand the nature of Derivatives and the extent of your exposure to risk. You should also be satisfied that Derivatives are suitable for you having regard to your circumstances and financial position.

This risk notice provides you with important information about some of the risks associated with the Services provided under this Agreement. This risk notice does not constitute an exhaustive list of all the risks associated with the Services. You must read this risk notice carefully before you commence use of the Services. If you are in any doubt as to the appropriateness or suitability of the Services, you should seek independent and appropriate professional advice.

Beaufort is regulated by the Australian Securities and Investments Commission and holds an AFSL to provide the Services (ASFL 545124). Beaufort does not provide any legal, tax or financial advice and you are strongly advised to obtain legal, tax and financial advice from an appropriately qualified professional advisor prior to making any financial decision, including acquiring and holding Derivatives. Beaufort does not make any offers, recommendations, or invitations for you to deal in Derivatives or use any Services, and does not take into account your personal circumstances, objectives, financial situation or needs.

Acquiring Derivatives or using a broker to acquire Derivatives involves an element of risk and may not be suitable for everyone. The value of Derivatives may rise or fall such that you may get back less than your initial investment or lose your entire initial investment.

Where you acquire Derivatives that are leveraged, leverage can enhance your profits or exacerbate losses. Because of the possibility for rapid movements in the price of Derivatives and the impact that this can have on a leveraged position, Beaufort may request that you provide additional Collateral with little or no prior notice to avoid liquidation.

Prior to and when using the Services, it is your responsibility:

- (a) to familiarise yourself with Digital Assets and the specifications of the Derivatives;
- (b) to monitor your open positions and to reduce your position or deposit additional Collateral to ensure compliance with your Collateral Requirement to avoid a losing position being closed out;
- (c) not to deposit more than you can afford to lose; and
- (d) not to build positions that are beyond your financial capacity to maintain.

By using the Services, you acknowledge that you have understood the associated risks and that you accept these risks, in particular that:

- (a) Digital Assets are a highly volatile asset class and are based on decentralised protocols which are still in an experimental stage and may change at any time;
- (b) the legal and regulatory status of Digital Assets is uncertain and may be subject to change;
- (c) Derivatives expose you to market risk. This is the risk that you suffer a loss as a result of a position moving against you. If you hold a long position and the Digital Asset price declines or if you hold a short position and the Digital Asset price increases, you may lose the full value of your investment;
- (d) Derivatives expose you to credit risk. This is the risk that a counterparty may have insufficient funds and default such that you lose up to the full amount of your investment;
- (e) Derivatives expose you to liquidity risk. This is the risk that you suffer a loss because you cannot close out a position because there is no demand to take the other side of that position;
- (f) Derivatives expose you to operational risk. This is the risk that you suffer a loss because of a temporary malfunction arising in connection with the Services for example resulting from scheduled or unscheduled downtimes, matching system failures, database failures, Digital Asset transfer or storage failure, failure or malfunction of the Platform, hacker attacks or other failure or malfunction; and
- (g) Derivatives expose you to regulatory risk. This is the risk that you suffer a loss because we have to restrict or terminate elements of our Services in response to regulatory action.