

## Marketing Partner Agreement

This Marketing Partner Agreement (the “**Agreement**”) is entered into by and between OANDA Labs Assessment Limited, company registration number C106331, with its registered office at 171 Old Bakery Street, Valletta VLT 1455, Malta (“**OANDA**”) and the entity or individual whose details have been provided on the Marketing Partner application (the “**Partner**”), each as set forth on the signature page below (OANDA and Partner are hereinafter jointly referred to as the “**Parties**” and each separately as a “**Party**”), as of the date set forth on the signature page below (the “**Effective Date**”).

WHEREAS, OANDA conducts an assessment to identify users of its services who meet certain requirements that demonstrate their ability to generate profit from online trading of foreign exchange and commodities contracts and other financial instruments (the “**OANDA Services**”);

NOW, THEREFORE, the Parties have agreed:

### 1. Introductions

1.1 The Partner (which may be referred to as an affiliate in some jurisdictions) may advertise (either on-line or by other means including without limitation seminars or face-to-face interactions) the OANDA Services to potential users (a “**Target User**”) in accordance with the terms of this Agreement by publishing, pre-approved by OANDA, marketing information and links to the OANDA website (the “**Partner Services**”). For purposes of this Section, “**Hyperlink**” means a unique identification code supported by tracked links provided by OANDA that is assigned to a Partner’s account resulting in all referred traffic and earnings being tracked and linked to the Partner for the purpose of calculating the Fee pursuant to the terms of this Agreement. A Target User who: (a) has purchased an assessment offered through the OANDA Services (a “**Challenge**”); (b) has entered a Challenge, and; (c) is not a Partner or a Partner’s employee, will be referred to herein as a “**Challenge Taker**”.

1.2 OANDA will inform the Partner of the criteria for Target Users to whom such Partner may provide the Partner Services from time to time. OANDA may in its sole discretion, without giving any reasons for any such decision, accept or reject or otherwise decline to deal with any Target User and has no obligation to provide the OANDA Services to any Target User. OANDA will not enroll any Target User into a Challenge if: (i) such person is a resident of a country from which the

Partner Services are prohibited by Applicable Law or (ii) OANDA has internal policies prohibiting business activity with residents of such country.

1.3 For purposes of this Agreement "**Applicable Law**" means all laws, regulations, guidelines, statements and best practices applicable to the Partner, OANDA, and Target Users, as applicable, including but not limited to those relating to trading in financial instruments, anti-money laundering and terrorist financing, anti-fraud, consumer protection, protection of personal data, anti-spam, areas of business activities, location of offices, citizenship and residence.

1.4 Nothing in this Agreement shall prevent OANDA from accepting introductions from any other marketing partner.

1.5 The Partner agrees, subject to relevant Applicable Law, that each Target User's data shall become the property of OANDA, and OANDA may contact Target Users directly and without restriction (subject to Applicable Law). This data use right will survive the expiry of this Agreement.

1.6 The Partner shall not approach any Target Users or distribute any Marketing Materials except as specifically permitted by this Agreement.

1.7 The Partner's activities under this Agreement shall only be directed to residents of the countries listed as Approved Jurisdictions in **Appendix no. 1**. OANDA may grant the Partner additional restrictions on the location or nationality of Target Users at any time during the term of this Agreement.

1.8 The Partner agrees to provide true, accurate and complete information to OANDA in its registration form and at all times.

1.9 OANDA may, in its sole and absolute discretion, either accept or reject any application for any reason and is under no obligation to disclose any such reasons.

1.10 OANDA shall deliver any forms and/or documents as required for onboarding directly to Target Users.

1.11                   The Partner:

1.11.1 shall use its best efforts to actively and effectively advertise, market and promote the relevant OANDA Services subject to and in accordance with Applicable Law and the terms of the Agreement, in order to maximize the benefit to the Parties;

1.11.2 shall direct Target Users to OANDA's website (as determined and instructed by OANDA from time to time) in accordance with the terms and conditions of the Agreement;

1.11.3 may advertise (either on-line or by other means including without limitation seminars or face-to-face interactions) the OANDA Services to Target Users by publishing pre-approved, by OANDA, Marketing Materials and links to OANDA's website, thereby enabling OANDA to communicate with Target Users once registered;

1.11.4 shall not use any Confidential Information to market or promote any entity, individual, or website other than OANDA;

1.11.5 shall not promote OANDA in any manner which results in the Partner competing with OANDA or any of its Connected Persons in relation to the promotion of OANDA, unless otherwise approved by OANDA (including OANDA's name or any material from OANDA);

1.11.6 shall be responsible for content of all material (i) provided by the Partner at a seminar or during face-to-face interactions or (ii) appearing on any website operated by the Partner and for the development, operation, and updating and maintenance of such website;

1.11.7 shall not enter into any obligation on behalf of OANDA or make any declaration on behalf of OANDA, including declarations of will;

1.11.8 shall not accept any payments in consideration of the OANDA Services;

1.11.9 shall not participate in the enrollment of Target Users to OANDA Services or complete any documentation in connection therewith on such Target User's behalf; and

## **2. Regulation and Registration**

2.1 The Partner represents and warrants that it carries on business only in the countries accepted (as per Section 1.7). Without prejudice to the generality of Section 6 of this Agreement, the Partner has advised OANDA, and represents and warrants, that it

2.1.1 has, and will maintain throughout the term of this Agreement, all legal and regulatory approvals, permissions, licenses and consents required, if any, for it to comply with its obligations under this Agreement;

2.1.2 will immediately on request provide evidence of such authorisation and/or licencing to OANDA or otherwise provide evidence that it does not require any such permissions; and

2.1.3 will comply at all times with Applicable Law and shall not take any action (or make any omission) which has the effect of causing OANDA to breach any Applicable Law.

2.2 The Partner shall educate, apprise and constantly update itself on Applicable Law and ensure compliance with the same when carrying out its obligations under this Agreement. The Partner acknowledges that it is its sole duty and responsibility to be so acquainted, apprised and updated with all Applicable Law and, where necessary, to engage its own professional advisers to advise on its legal and regulatory obligations to carry out its obligations under this Agreement.

## **3. No Agency or Partnership**

3.1 The Partner will not hold itself out as an agent, tied agent, representative or employee of OANDA or as being authorized to bind OANDA in any transaction or agreement. Any correspondence issued by the Partner will be in the Partner's own name and on the Partner's own stationary.

3.2 Each Party is entering into and will perform its obligations under this Agreement for its own individual account as independent principals. Nothing in this Agreement or its implementation is intended to create or imply the existence of a partnership or joint venture of any form or type or for any purpose whatsoever, a relationship of principal and agent or a relationship of employer and employee between the Parties.

#### 4. Fees

4.1 Subject to Applicable Law, in consideration of the Partner providing the Partner Services OANDA will pay the Partner the amounts specified in **Appendix no. 2** (the “**Fee**”); provided that the Partner (a) meets the **Minimum Activity Threshold** (as set forth in **Appendix no. 2**) and (b) has cleared a KYC/AML review conducted by OANDA (or a third-party vendor), such clearance to be determined by OANDA in its sole discretion.

4.2 Subject to the Partner satisfying the requirements of 4.1(a) and (b), the Fee will be payable by OANDA to a verified bank account in the Partner’s name on a monthly basis inclusive of all applicable taxes. If any tax (withholding or otherwise) is payable on the Fee, such amount of tax will be for the Partner’s account and will not be paid by OANDA. In the event OANDA is legally obliged to deduct or withhold any taxes,

public burden or other amount from the Fee, then the Fee shall be decreased so that after making all required deductions and withholdings, the Partner shall receive an amount reduced by such deductions or withholdings and the Partner shall not be entitled to reclaim such withheld or deducted amounts from OANDA.

4.3 Fees will be calculated in USD, and will be paid in AUD, USD, GBP or EUR depending on the denomination of the Partner’s identified bank account for receipt of payments, using OANDA’s prevailing month-end exchange rate. The Partner shall be responsible for the payment of any and all bank charges in respect of the payment of the Fee. The Fee shall be converted at the exchange reference rate of the European Central Bank, using the average rate from the month in which commissions were generated.

4.4 OANDA shall advise the Partner within twenty (20) days of the last day of the calendar month (excluding a Saturday, a Sunday and bank holidays in the jurisdiction relevant to OANDA) of the Fee due and

payable in respect of that calendar month via the Partner Portal, and such amount shall become due and payable to the Partner within thirty (30) days of the end of such calendar month. If the Partner disputes the Fee amount specified in the monthly report the Partner shall as soon as possible (and in any event within thirty (30) days of the date of the monthly report) send OANDA written notice of such dispute, otherwise the right to dispute shall be deemed waived and the Partner shall have no claims in such regard. OANDA reserves the right, in its sole and absolute discretion, to at any time change, modify, add or remove any qualifying criteria on terms applicable to Fee payments, including without limitation, setting any minimum deposits or thresholds or requirement(s) for receiving any Fee under this Agreement.

4.5 If the total payment due to the Partner in respect of any calendar month is less than USD 250 (or the equivalent of this amount in another currency), the balance will be carried forward to the following calendar month.

4.6 OANDA will use reasonable endeavors to track each Challenge Taker; however, payment of Fees will only apply to Challenge Takers and that the conditions indicated in **Appendix no. 2** have been met.

4.7 The Partner shall only receive the Fee for a Challenge Taker introduced to OANDA via websites or communication channels previously disclosed to OANDA.

4.8 No Fee will be payable by OANDA to the Partner in respect of any Target User if OANDA considers, in its sole discretion:

4.8.1 the Partner fails to provide any required information in respect of, OANDA's know-your customer, anti-money laundering or other internal checks, or any of the information provided by the Partner is found to be incomplete, inaccurate or misleading;

4.8.2 OANDA is unable to accept such Target User as a participant in the OANDA Services for any reason whatsoever, including as a result of Applicable Law;

4.8.3 such Target User was procured by means of fraud, deception, manipulation or any other illegal activity (including but not limited to spam, false advertising,

deposits generated by stolen credit cards, manipulation of the service by fake redirects, automated software, robots or other similar multi-optimisation methods) ("**Fraudulent Traffic**");

4.8.4 any such Fee is prohibited under Applicable Law or the Partner is in breach of its obligations under this Agreement or of Applicable Law;

4.8.5 a Target User has been identified as having abused or acted in bad faith or conducted any abusive trading activity; or

4.8.6 a Target User acts contrary to the contractual documentation linking such Target User with the OANDA Services.

4.9 The Partner shall be solely responsible for all risks, costs and expenses incurred by it in connection with the Partner Services provided by it under this Agreement.

4.10 In the event that the Partner is in breach of its obligations under this Agreement, OANDA shall be entitled (without prejudice to any other remedies that may be available to OANDA in relation to such breach) to withhold payment of part or all of the Fee that would otherwise be due to the Partner until such time as the breach has been remedied.

4.11 Reserved.

4.12 If any amount of Fees are withheld as contemplated by Section 4.10, the Partner agrees that OANDA's obligation to pay to the Partner such withheld Fee shall be extinguished if, in OANDA's sole determination, the Partner's breach is incapable of remedy.

4.13 In the event of any regulatory or legal investigation into the commercial affairs of the Partner, OANDA will be entitled in its absolute discretion to either (i) withhold payment of the Fee that would otherwise be due to the Partner until such investigation is concluded or (ii) terminate this Agreement with immediate effect (in which case, for the avoidance of doubt, no further Fee will be paid or become payable after the Termination Date).

4.14 In the event that it becomes unlawful for OANDA to make any payment of Fees to the Partner, the Partner agrees that it shall not be entitled to receive any further Fee.

4.15 The Partner agrees that it shall not offer any bonus payments, rebates or commissions or other promotional payments to Target Users in consideration of such Target Users enrolling in the OANDA Services.

4.16 In the event that any dispute arises as to the amount of Fee payable by OANDA to the Partner, the dispute shall be referred to OANDA's auditors or an auditor selected by both Parties jointly (provided that in this case the costs of the auditor are borne by the Partner) for settlement. The decision of the auditor, save in the case of manifest error, shall be final and binding on both Parties.

4.17 The Partner shall be solely responsible for the accuracy of payment details provided to OANDA. The Partner is obliged to inform OANDA of any change of payment details and is solely responsible for any error in payment details provided to OANDA.

4.18 The Parties allow the possibility of mutual settlements through set-off arrangements to the extent permitted by Applicable Law.

## **5. Duration and Termination**

5.1 This Agreement shall come into force on the Effective Date and (unless terminated earlier in accordance with its terms) shall continue until terminated by either Party at any time by giving to the other Party not less than one month's notice (by post or e-mail), in which case this Agreement shall terminate at the end of that notice period (the "**Termination Date**").

5.2 In the event of termination of the Agreement OANDA shall have no further obligation to pay any Fees with effect from the Termination Date.

5.3 This Agreement may be terminated by OANDA immediately by written notice to the Partner at any time:

5.3.1 if the Partner fails to obtain, or ceases to hold, any license and/or authorisation required to carry out the activities contemplated by this Agreement;



5.3.2 If the Partner breaches any provision of this Agreement deemed by OANDA to be material;

5.3.3 if the Partner breaches any Applicable Law or becomes subject to any enforcement proceedings or regulatory investigation in any jurisdiction, whether or not related to the Partner Services;

5.3.4 if the Partner has not provided any promotional services pursuant to Section 1.1, or no new Target Users have been enrolled in the OANDA Services as a result of such promotional services, within 3 months from the date of this Agreement;

5.3.5 in the event of the insolvency, bankruptcy or administration of the Partner, or if a resolution is passed or an order is made for the winding up of the Partner, or if the Partner ceases or threatens to cease to carry on business, or if there is a change of control of the Partner to which OANDA reasonably objects (or any analogous event);

5.3.6 if OANDA considers in its sole discretion that the Partner has been providing the Partner Services through Fraudulent Traffic;

5.3.7 in the event of the death of the Partner (if the Partner is an individual);

5.3.8 if the Partner breaches any representation or warranty given under this Agreement; or

5.3.9 in accordance with Section 4.13.

5.4 If, at any time following the six (6) month anniversary of from the Effective Date, the Fees payable by OANDA to the Partner during any three (3) month period is less than an average of USD 500 per month, then OANDA may pay the amount of Fees owed and terminate this Agreement by giving one (1) month's written notice to the Partner.

5.5 Upon termination of this Agreement:

5.5.1 the Partner shall not instruct nor encourage any Target User to alter any relationship it may have with OANDA or

promote any competitor as a replacement for OANDA as a service provider of any kind;

5.5.2 all rights and licenses granted to the Partner under this Agreement shall immediately terminate;

5.5.3 the Partner releases OANDA from all obligations and liabilities occurring or arising after the Termination Date; and

5.5.4 the Partner shall cease all use of, and remove from the Partner's website, all Marketing Materials and intellectual property within seven (7) days of the Termination Date. Any Marketing Material domain that contains OANDA trademarks or other intellectual property shall be immediately returned or transferred to OANDA on the Termination Date.

5.6 Notwithstanding the termination of this Agreement for any reason, this Section 5, and Sections 7, 8, and 11 hereof, shall survive such termination and shall remain in full force and effect.

## **6. Representations and Undertakings**

6.1 By executing this Agreement, the Partner hereby confirms, represents and warrants that:

6.1.1 In case of corporate entity - it is a company duly organized and validly existing under the laws of its country of incorporation;

6.1.2 it has the full capacity and power to enter into and perform its obligations under this Agreement, including any requisite authorizations applicable to it in order to offer the Partner Services, and has taken all necessary action to authorize the execution, delivery and performance of the Agreement;

6.1.3 by entering into this Agreement, the Partner will not breach any current or future obligation that the Partner have, or may have, with any third party;

6.1.4 all information it has provided, and will provide, to OANDA is true, accurate, complete and not misleading, and it shall notify OANDA if any information in its application form or otherwise

provided to OANDA changes or is false, inaccurate or misleading in any respect and shall update such information without undue delay (and in any case no later than seven (7) days from the date of the change);

6.1.5 the Partner and its shareholders, Board of Directors and key employees, as applicable, have not been subject to any legal or regulatory investigations or been subject to any sanctions or fines or other penalties for breaches of Applicable Law;

6.1.6 the Partner is not bankrupt or subject to any administrative, insolvency order, tax or other proceedings;

6.1.7 the Partner has not been convicted for any criminal activity or been subject to any sanctions, regulatory or other investigations, for unlawful or unethical conduct or breach of Applicable Law other than minor traffic offenses (not related to the performance of this Agreement);

6.1.8 it shall obtain OANDA's prior written consent for all websites and communication channels from which it is referring Target Users to OANDA's website and shall regularly update such information;

6.1.9 it shall comply with Applicable Law in connection with the promotion and referrals to OANDA's websites and use of the Marketing Materials in accordance with the terms of this Agreement;

6.1.10 it shall not do anything or fail to do anything which would or may constitute a breach of Applicable Law;

6.1.11 it shall promptly notify OANDA of any investigations or proceedings that are initiated against it including any regulatory investigation of a regulatory authority in any jurisdiction and whether or not related to Partner Services;

6.1.12 if required by Applicable Law, it has disclosed its practices for receiving Fees to Target Users and such Target

Users have consented in writing to the Partner receipt of such Fees should such Target User become a Challenge Taker;

6.1.13 if required by Applicable Law, it shall periodically provide Challenge Takers with a statement describing the amount of Fees that it has received in relation to each such Challenge Taker's accounts;

6.1.14 it is familiar with Applicable Law and operates its business in compliance therewith;

6.1.15 it shall comply with any request(s) from any regulatory authority to which OANDA (or its Connected Persons) are subject, whether such request comes directly from the relevant regulatory authority or from OANDA;

6.1.16 it shall disclose to OANDA any information of which it is aware that may affect the relationship OANDA may have with any Target User;

6.1.17 it shall not issue any advertisement or distribute any promotional material, whether on the internet or otherwise, about OANDA except OANDA's own promotional material without OANDA's prior written consent, and any advertisement that, directly or indirectly, promotes the OANDA Services will be fair and not misleading (clearly identifying OANDA) and will include the appropriate risk warning (where required by Applicable Law);

6.1.18 it shall only advertise the OANDA Services to Target Users of good reputation and good standing, and whose assets are, to the best of the Partner's knowledge, not of illegal origin;

6.1.19 it shall not contact Target Users without a valid legal basis for contact and shall conduct marketing activities in accordance with Applicable Law;

6.1.20 it shall provide a manner for Target Users to unsubscribe to the Partner Services, allowing them to opt out of receiving communications from the Partner in accordance with Applicable Law;

6.1.21 it shall not use high pressure sales tactics or similar techniques with respect to Target Users;

6.1.22 it shall not use malware, spyware techniques, peer-to-peer distribution methods and paid to clicks networks, or doorway pages opening the OANDA website, or use any other aggressive advertising or marketing methods in any of its dealings relating to the Agreement;

6.1.23 it shall not provide or offer to Target Users any investment, tax, legal or any other advice, opinion or information (whether oral, written, and regardless of the method of its delivery); and

6.1.24 it shall not represent to any Target User or otherwise create an impression that such Target User is guaranteed to become a successful Challenge Taker.

6.2 In the event of termination of this Agreement for any reason, the Partner shall promptly destroy all of the information and materials supplied by OANDA in respect of this Agreement, or any material used by the Partner to promote OANDA delivered or accepted by OANDA, in any form, including but not limited to banners, graphics, images, artwork or text links and any similar or derived form (the “**Marketing Materials**”), or any parts thereof, that may then be in its possession in any form and in any medium, and the Partner shall remove any Marketing Materials from any website operated by the Partner or any third party website on which the Marketing Materials may have been published or used and shall deactivate any links maintained by the Partner to the OANDA website. For the avoidance of doubt, any permissions granted under this Agreement shall have no force or effect as of the Termination Date.

6.3 The Partner shall not promote OANDA or use the Marketing Materials on any website engaged, directly or indirectly, in conduct that OANDA, in its sole discretion, deems to be illegal, improper, unfair or otherwise adverse to the operation or reputation of OANDA, including without limitation, directly or indirectly:

6.3.1 in the operation of an illegal business;

6.3.2 in an illegal activity or offering of any illegal good or service;

6.3.3 containing or promoting content that is libelous, defamatory, obscene, abusive, violent, bigoted, hate-oriented, illegal, pornographic or that links to a website that does so;

6.3.4 in indiscriminate or unsolicited commercial advertising emails;

6.3.5 involving placing links to the OANDA website in spam or unsolicited promotions, banner networks, counters, guest books, internet relay chat channels or through similar Internet resources; or

6.3.6 causing or enabling any transactions to be executed through Fraudulent Traffic.

6.4 The Partner shall not actively target any marketing activities relating to OANDA to persons under the age of eighteen (18).

6.5 The Partner shall not use any Confidential Information to market or promote any entity, individual, or website other than OANDA.

6.6 The Partner shall not utilize any third party's intellectual property (included, but not limited to, trademarks) without proper authorization.

6.7 The Partner shall not market directly or indirectly to Target Users on any website through which OANDA actively promotes the OANDA Services and/or in any manner which OANDA deems in its sole discretion competes with OANDA.

6.8 The Partner shall provide OANDA immediately upon request copies of all materials issued to Target Users in connection with this Agreement.

6.9 Without prejudice to the foregoing, the Partner shall provide to OANDA such information as OANDA (or any regulator of OANDA) may request from time to time, including without limitation information concerning the financial status of the Partner and the marketing activities conducted by the Partner pursuant to this Agreement.

6.10 The Partner shall not offer any Target Users, whether directly or indirectly, any kind of incentive or inducement which would be inconsistent with the Applicable Law.

6.11 The Partner shall not utilize the OANDA website address, legal name (including any variation thereof including any misspelling, modification, or derivative thereof), or register any domain names, keywords, search

terms or other identifiers for use in any search engine, portal, sponsored advertising service or other search or referral service that incorporate such terms or any other intellectual property owned by OANDA. For the avoidance of doubt, any marketing activity regarding OANDA requires the appropriate prior consent from OANDA as per this Agreement.

6.12 The Partner shall not send any solicited or unsolicited marketing communications relating to OANDA via SMS, WhatsApp, Influencers, e-mail, pop-over, pop-under or any similar channel without the prior written consent of OANDA and shall not engage in indiscriminate or unsolicited commercial advertising emails and SMS referring to the marketing partner program in breach of Applicable Law.

6.13 The Partner is responsible for notifying OANDA of any malfunctions of the Hyperlink or other problems with its participation in the marketing partner program. The Partner shall not modify or change the Hyperlink. For purposes of determining the Fee only a Hyperlink generated by OANDA will be tracked.

6.14 To the extent permitted by Applicable Law, OANDA provides no warranty and makes no representations that the OANDA website, Hyperlink and Marketing Materials are accessible or free of errors, viruses or security threats.

6.15 The Partner undertakes that its marketing activity and any content to be posted or published on the Partner's websites shall not be directed toward minors or any other person who is not part of OANDA stated target market, and shall not engage in any other practices which may affect adversely the credibility or reputation of OANDA and the OANDA Services, including without limitation promoting sexually explicit materials, violence, discrimination based on race, sex, religion, nationality, disability, sexual orientation or age and/or any illegal activities or otherwise objectionable content, include material that is in breach of or infringes any intellectual property rights of any third party (including any material copied from third parties without their

permission) or including any false, misleading or disparaging representations or statements.

6.16 There must be no changes made to the pre-approved Marketing Materials. The Partner shall submit to OANDA for authorization all websites and information channels that the Partner intends to use pursuant to this Agreement. The Partner shall disseminate Marketing Materials using websites and information channels previously approved by OANDA.

6.17 The Partner grants OANDA an unlimited right to audit the Partner with regard to the performance of its obligations under the Agreement with seven (7) days advance notice. The costs of any such audit shall be borne by OANDA. OANDA may inform the Partner of any changes to the Partner websites that Partner should make to ensure that the Partner maintains compliance with this Agreement. Failure by the Partner to make the requested changes in accordance with OANDA's request within a reasonable time (no longer than fourteen (14) calendar days) constitutes a material breach of this Agreement and will allow OANDA to terminate this Agreement with immediate effect.

## **7. Data Protection & Confidentiality**

7.1 Both Parties will process Personal Data for agreed purposes, which will include: (i) the Partner providing details of the Target Users and the Partner's employees contact details to OANDA in line with this Agreement; (ii) OANDA providing the OANDA services to the Target Users, passing the details and providing contact details of OANDA employees to the Partner in line with this Agreement ("Agreed Purpose").

7.2 When processing Personal Data, Parties shall respect the obligations set out in this agreement, the obligations set out in the Applicable Law and regulations and the obligations as set out in the privacy statement of the respective Party.

7.3 Parties are considered separate controllers with each Party being able to determine the purpose and means of processing the Personal Data held under its control in accordance with its privacy statement. The Partner shall not do anything that will cause OANDA to be in breach of any provision or requirement under Applicable Law.



7.4 With respect to the separate controllership of Parties and without the intention of entering into a joint-controllership as defined in article 26 of Regulation (EU) 2016/679 (“GDPR”), this section 7 sets out the framework for the sharing of Personal Data between the Parties and defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other. The Partner shall indemnify OANDA from and against all losses, damages, costs, liabilities and expenses (including legal expenses) arising out of or in connection with the Partner’s breach of this Section 7.

7.5 Each party shall:

7.5.1 ensure that it has all necessary consents and notices in place to enable lawful transfer of the Personal Data for the Agreed Purposes. Specifically, the Referring Party shall ensure that it has all necessary consents and notices in place to enable lawful transfer of the Personal Data to OANDA and for the onward lawful processing of the Personal Data;

7.5.2 give full information to any data subject whose personal data may be processed under this Agreement of the nature of such processing. This includes giving notice that, on the termination of this Agreement, personal data relating to them may be retained by or, as the case may be, transferred to OANDA

entities, their successors and assigns;

7.5.3 process the shared Personal Data only for the Agreed Purposes;

7.5.4 not disclose or allow access to the shared Personal Data to anyone other than the parties to this Agreement and the OANDA Group, the employees of each party and the OANDA Group and any third parties engaged to perform obligations in connection with this Agreement (“Permitted Recipients”);

7.5.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this Agreement;

7.5.6 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;

7.5.7 in case of cross border data transfer, ensure that the transferring party complies with its obligations under data

protection legislation, especially ensuring that there are appropriate safeguards in place as required by the applicable data protection legislation.

7.7 For the duration of the Agreement and for the purposes as listed above, Parties may share the following (types of) Personal Data with each other:

7.7.1 The Partner shall provide the following personal data to the OANDA: Partner Employees contact details.

7.7.2 OANDA shall provide the following details to the Partner: OANDA employees' contact details

7.8 Each party ensures that the shared Personal Data is accurate. Parties will notify each other with undue delay if they become aware of inaccuracies in shared Personal Data. The Partner acknowledges that OANDA has published information about how OANDA processes Personal Data. The Partner shall inform about OANDA's processing of Personal Data.

7.9 Parties agree that the shared Personal Data will only be processed as far as is necessary according to the purposes and in order to fulfill the obligations as set out in the Agreement.

7.10 The Partner agrees (acknowledges and consents) that OANDA may use and share with its third-party service provider(s) any personal data (information) provided by the Partner for the purpose of conducting the Partner verification process that OANDA deems necessary or appropriate.

7.11 The Partner agrees (acknowledges and consents) that OANDA may use and share with its third-party service provider(s) any personal data (information) provided by the Partner for the purpose of conducting the Partner verification process that OANDA deems necessary or appropriate.

7.12 The Partner shall assist OANDA in complying with all applicable requirements of the applicable data protection legislation. In particular, each party shall:

- 7.12.1 consult with OANDA about any notices given to data subjects in relation to the Personal Data prepared in connection with this Agreement;
- 7.12.2 provide OANDA with reasonable assistance in complying with any data subject access request;
- 7.12.3 assist OANDA in responding to any request from a data subject and in ensuring compliance with its obligations under the applicable data protection legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 7.12.4 notify OANDA without undue delay on becoming aware of any breach of the data protection legislation connected with this Agreement;
- 7.12.5 at the written direction of the OANDA, delete or return Personal Data and copies thereof to the OANDA on termination of this Agreement unless required by law to store the personal data;
  
- 7.12.6 use compatible technology for the processing of Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- 7.12.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 7; and
- 7.12.8 provide OANDA with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the data protection legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the data protection legislation.

7.13 The Partner agrees that the data of each Target User shall become the property of OANDA, and OANDA may contact Target Users directly and without restriction (subject to Applicable Law).

7.14 The Partner agrees that OANDA shall not be obliged to provide the Partner with data constituting professional secrets nor the personal data of Target Users. OANDA shall provide the Partner only with such anonymised data which in OANDA's sole and absolute discretion enables the Partner to compute the Fees due.

7.15 Each Party hereby agrees that the terms of this Agreement and any information that it may receive from the other Party, which information is not otherwise obtainable in the public domain, will be maintained by such receiving Party in the strictest confidence and not released to any third party without the consent of the sending Party; provided, however, that the receiving Party shall be permitted to provide such information to any governmental or regulatory authority or other party that it is required by Applicable Law to provide.

7.16 The Partner (including its directors, officers, employees, authorized representatives and advisors) agrees that it shall not disclose, directly or indirectly, in whole or in part, to any other person any Confidential Information received from OANDA. As used herein, “**Confidential Information**” shall mean all information or data received by the Partner from OANDA pursuant to this Agreement (including, without limitation, the terms and conditions of this Agreement), including, but not limited to, information about OANDA’s operations, processes, know-how, plans, products, technology, intellectual property, markets, customers, suppliers, partners, or finances, which is not: (i) in the public domain (other than as a result of a disclosure directly or indirectly by OANDA); (ii) otherwise already known by the Partner; or (iii) independently developed by the Partner during the term hereof without reliance upon any Confidential Information. In the event of unauthorized disclosure of Confidential Information by the Partner, the Partner will be obliged to pay OANDA a contractual penalty of USD 2,000 for each case of breach. The payment of the contractual penalty does not exclude the possibility of claiming liability in the amount exceeding the amount of the contractual penalty. The obligation to protect Confidential Information shall continue for a period of five (5) years after the Termination Date.

7.17 The Partner will not disclose Confidential Information except as required by Applicable Law; provided that in the case of legally-required disclosure the Partner shall (i) to the extent permitted by Applicable Law promptly notify OANDA of such required disclosure, (ii) reasonably cooperate with OANDA to seek confidential treatment of any Confidential Information that it is required to disclose and (iii) only disclose such portion of the Confidential Information that it is legally required to disclose.

7.18 Upon the termination of this Agreement, or at any time upon a request by OANDA, the Partner shall promptly (no later than within

seven (7) days) return all Confidential Information, or shall promptly destroy any materials containing such Confidential Information (and any copies, extracts, and summaries thereof) and shall provide OANDA with confirmation of such return or destruction upon request. Notwithstanding the foregoing, the Partner shall not be required to destroy any automated archival backup of such Confidential Information to the extent required by the Applicable Law.

## **8. Indemnity and Limitation of Liability**

8.1 The Partner shall indemnify and hold OANDA and its Connected Persons harmless from all costs (including legal fees), liabilities and claims arising from:

8.1.1 any breach by the Partner of the terms of this Agreement;

8.1.2 the Partner's misuse of the Marketing Materials;

8.1.3 any claim related to the Partner's website, operations or services;  
and/or

8.1.4 the Partner Services to the extent such activities result in any breach of Applicable Law.

8.2 For the avoidance of doubt, the Partner shall indemnify OANDA for any and all direct or indirect losses, costs, fines or penalties how-so-ever arising which OANDA incurs as a result of any breach by the Partner of its obligations under this Agreement.

8.3 In no event shall OANDA, any of its affiliates, its parent corporation or other related entities, successors and permitted assigns, and their respective officers, directors, shareholders, employees, service providers or suppliers (collectively, the "OANDA Indemnified Parties") be liable for lost profits or data, or any special, incidental or consequential damages arising out of or in connection with the Partner Services or this Agreement (however arising, including negligence), and including, without limitation, as a result of any failure or malfunction of any software, hardware, communication technology or other system.

8.4 To the fullest extent permitted under Applicable Law, OANDA disclaims all warranties, express or implied, including but not limited to all implied warranties of non-infringement, merchantability and fitness

for a particular purpose, with respect to the marketing partner program, and that the OANDA website(s) and links in the website(s) are free of errors, viruses or security threats.

8.5 The Partner agrees to indemnify and hold the OANDA Indemnified Parties free and harmless from any and all claims, liabilities, or damages, including attorneys' fees and costs incurred in defense of any action, including the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing insurance coverage, related to or arising from (i) any breach by the Partner of any of its obligations under this Agreement, and any of its covenants, representations or warranties hereunder, and/or (ii) any allegations that the Partner is infringing the intellectual property rights (including, without limitation, copyrights, patent rights, trade secrets, trademarks, service marks, and rights of publicity) of a third party.

8.6 OANDA shall not be responsible for any losses resulting from a failure of the Partner to inform OANDA about changes relating to personal data and other information provided to OANDA in connection with the performance of this Agreement or for damages resulting from any OANDA action based on incorrect or outdated information provided by the Partner.

8.7 The liability of the OANDA Indemnified Parties to the Partner or any third parties in any circumstance is limited to the greater of:

- (a) the aggregate of the Fees paid by OANDA to the Partner in the twelve (12) months prior to the act or omission giving rise to the liability; and
- (b) USD 2,000.

8.8 The Partner shall promptly inform OANDA of any information known to the Partner related to any Target Users that may reasonably lead to a claim, demand or liability of or against OANDA by any third party.

8.9 Neither Party shall be liable to the other for any delay or failure to perform its obligations under this Agreement if such delay or failure arises from a cause beyond the reasonable control of and is not the fault of such Party, including but not limited to labor disputes, strikes, industrial disturbances, acts of terrorism, floods, lightening, utility or communication failures, earthquakes or other casualty. If such a force

majeure event occurs, the non-performing Party is excused from whatever performance is prevented by the force majeure event to the extent prevented for so long as such event persists.

## 9. Non-assignment and Sub-contracting

9.1 Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.

9.2 Without prejudice to Section 9.1, the Partner shall not sub-contract any of its obligations under this Agreement without the prior written consent of OANDA. For the avoidance of doubt, Target Users may only be introduced to OANDA for the purposes of this Agreement by the Partner, and not by any other marketing partners or brokers (whether Connected Persons of the Partner or otherwise).

## 10. Miscellaneous

10.1 Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Agreement.

10.2 Any notice, request, demand or other communication required or permitted hereunder shall be sufficiently given only if in writing and only if delivered by hand or sent by registered mail (or its equivalent), courier, or email addressed to the other Party at the address set out in the Partner Portal or to such other person or address as the Parties may from time to time designate pursuant to this Section. OANDA may give any notice, demand, request, or other communication required by this Agreement pursuant to the requirements of this Section or otherwise, including but not limited to notice given by placing such notice on the OANDA website and by using any messaging feature available through OANDA's online site.

10.3 For the purposes of this Agreement, "**Connected Person**" means when used with reference to a Party, any entity that directly or indirectly controls or is controlled by or is under common control with such Party.

10.4 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

10.5 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts will together constitute one agreement.

10.6 This Agreement constitutes the entire agreement and understanding between the Partner and OANDA with regard to the matters set forth herein. This Agreement supersedes all previous agreements, representations or arrangements whether made orally, by e-mail or in writing.

10.7 OANDA reserves the right to amend this Agreement at any time upon the provision of one month's prior written notice to the Partner. In the event that the Partner does not accept the amended terms then the Partner must provide notice of termination to OANDA. If such notice is not received by OANDA prior to the effective date of the amendment, the Partner will be deemed to have accepted the amendment.

10.8 No failure by either Party hereto to exercise and no delay in exercising any rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder by either Party preclude any other or future exercise of that right or any other right hereunder by such Party.

## **11. Intellectual Property**

11.1 OANDA hereby grants the Partner a limited, revocable, non-exclusive, non-transferable, non-assignable, non-sub-licensable, royalty-free license during the term of this Agreement to use the Marketing Materials for the purposes of this Agreement.

11.2 All copyright, trademark, trade secrets and other intellectual property rights in the Marketing Materials (the "OANDA Intellectual Property")

shall remain at all times the sole and exclusive property of OANDA and the other OANDA Indemnified Parties and the Partner shall have no right or interest in the Marketing Materials or in any other OANDA Intellectual Property.



11.3 The Partner shall comply with OANDA's marketing guidelines at all times and shall not modify the Marketing Materials or other OANDA Intellectual Property without OANDA's prior written consent. In the event OANDA grants such consent, the Partner hereby assigns and transfers to OANDA all of its right, title and interest in and to any modifications, amendments or developments to such Marketing Materials or other OANDA Intellectual Property.

11.4 The Partner may not use or promote, whether directly or indirectly, any of the OANDA Intellectual Property unless approved in advance by OANDA and, and in no event may the Partner modify or change the OANDA Intellectual Property in any way or take any action that may prejudice OANDA's rights in the OANDA Intellectual Property.

11.5 The Partner agrees not to adopt, use or attempt to register any trademarks, service marks or trade names that are confusingly similar to the Marketing Materials or any other OANDA Intellectual Property.

11.6 OANDA reserves the right to modify any of the OANDA Intellectual Property including its logo, and the Partner agrees to modify them accordingly within ten (10) days of notice provided by OANDA to the Partner regarding such modification.

## **12. Governing Law**

12.1 This Agreement shall be governed by the laws of Malta, and the Parties hereby submit to the exclusive jurisdiction of the courts of Malta.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed on the last or only date of signatures below by their duly authorized officers.

[counterpartyName\_Hr7uUww]

OANDA Labs Assessment Limited

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

### Appendix no. 1 - Approved Jurisdictions

Algeria	Côte D'ivoire	Lesotho	Sao Tome & Principe
Angola	Curaçao	Liberia	Saudi Arabia
Antarctica	Djibouti	Macau	Saint Kitts & Nevis
Antigua & Barbuda	Dominica	Macedonia	Saint Lucia
Argentina	Dominican Republic	Madagascar	Saint Vincent & Grenadines
Armenia	Ecuador	Malawi	Samoa
Aruba	Egypt	Malaysia	Serbia
Azerbaijan	El Salvador	Maldives	Seychelles
Bahamas	Equatorial Guinea	Marshall Islands	Sierra Leone
Bahrain	Eritrea	Mauritania	Solomon Islands
Bangladesh	Ethiopia	Mauritius	Sri Lanka
Belize	Fiji	Mayotte	Suriname
Benin	Gabon	Mexico	Swaziland
Bermuda	Gambia	Micronesia Moldova	Taiwan
Bhutan	Georgia	Mongolia	Tajikistan
Bolivia	Ghana	Montenegro	Thailand
Bosnia & Herzegovina	Greenland	Morocco	Timor-Leste
Botswana	Grenada	Nauru	Togo
Bouvet Island	Guatemala	Nepal	Tokelau
Brazil	Guinea	New Caledonia	Tonga
Brunei	Guinea-Bissau	Niger	Tunisia
Burundi	Guyana	Niue	Turkmenistan
Cape Verde/ Cabo Verde	Honduras	Oman	Tuvalu
Central African Republic	Hong Kong	Palau	Ukraine
Chad	Iceland	Papua New Guinea	United Arab Emirates
Chile	Indonesia	Paraguay	Uruguay
Cocos (Keeling) Islands	Israel	Peru	Uzbekistan
Colombia	Kazakhstan	Philippines	Venezuela
Comoros	Kiribati	Pitcairn	Wallis & Futuna Island
Cook Islands	Kosovo	Qatar	Western Sahara
Costa Rica	Kuwait	Rwanda	Zambia
	Kyrgyzstan	Saint Helena, Ascension & Tristan Da Cunha	
	Lebanon		

**Appendix no. 2 to the Marketing Partner Agreement Fees**

Prior to receiving a payment of Fees under this Agreement, the Partner must meet the following requirement (“**Minimum Activity Threshold**”):

Introduce Target Users who become Challenge Takers and the related Fees payable to the Partner equal or exceed \$250.

Subject to meeting the Minimum Activity Threshold and clearing the KYC/AML review pursuant to Section 4.1(a) and (b), respectively, the Partner will be paid Fees by OANDA as detailed below:

- a) OANDA will pay the Partner a Fee equal to the percentage of the purchase price of the Challenge as set forth below (the “**Fee Schedule**”) as may be modified by the Parties in writing from time-to-time; and
- b) Fees shall be paid to the Partner in respect of each Target User who becomes a Challenge Taker as a result of the Partner Services subject to the terms of this Agreement; and

**Fee Schedule:**

The Fee equal to the percentage of the purchase price of the Challenge applicable as of the date of this Agreement (such percentage may be modified by the Parties in writing as of any given date):	[Percentage]
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