

# CMC Markets Stockbroking Limited

ABN 69 081 002 851 and AFSL No. 246381

## Terms and Conditions

14 September 2023



## Important terms you should be aware of

Below is a high-level overview of key provisions of the Terms and Conditions (including any Annexure) applying to you. Reading the information below should not be taken to be a substitute for reading the Terms and Conditions in full. Capitalised words and expressions used below have the meaning given to them in the Terms and Conditions (including any Annexure applicable to you).

- **Limitation of liability:** Subject to limited exceptions, CMC excludes liability for any Loss arising in connection with certain events and circumstances which appear in **clauses 7.2, 11.3, 18.2(c), 19.3, 23.3, 29.1, 34.3, 35.2, 37.2, 37.3(d), 37.5(b), 80.3, 84.2(c), 85.1, 85.3, and clause 5.2 of the Schedule of Terms – Additional Terms for Alerts Service**. These include, among other things:
  - delays or errors in the transmission or execution of your instructions;
  - defaults made by the Cash Account or Bank Account provider;
  - any circumstances or conditions beyond CMC's control;
  - any breach of laws, negligence, injury, death, lost profits, loss of files, data or use, economic loss, reputational loss or losses consequential to the operation of any Exchange System;
  - any delay in the dissemination of market information or the processing of any Order or instruction to amend or cancel an Order;
  - any movement in market price; and
  - any action, omission, fraud or negligence of any third-party service provider acting on CMC's behalf or any Sub-Custodian, or the insolvency of the Sub-Custodian, or any sub-custodian appointed by the Sub-Custodian.
- **Your liability to and release of CMC:** You remain solely liable for *all* acts and omissions of your Authorised Agent(s) (**clause 5.5**) and release CMC from any Claim which may arise in connection with any act or omission of your Authorised Agent(s), to the extent outlined in **clause 5.6**. You also release CMC from any Claim which may arise in connection with the exercise of any power pursuant to any Rules (**clause 9.3**).
- **Your indemnity of CMC:** You release, discharge and/or indemnify CMC (and in certain circumstances its representatives) from and against all Losses and/or other claims (as detailed in the Terms and Conditions) arising out of the circumstances set out in **clauses 14.2, 28.1 and 67.2**. These include, among other things:
  - any settlement failure, including insufficient cleared funds, resulting in a negative balance;
  - any default under the Agreement, any Order or transaction;
  - your breach of any applicable law;
  - any representation or warranty you make being incorrect;
  - any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act made by you or anyone for whom you are responsible; and
  - any instruction given by you.
- **Deduction and set off:** You authorise CMC to:
  - debit any amounts you owe to it under the Terms and Conditions from or to the Cash Account and/or the Bank Account (**clause 11.5**);
  - in certain circumstances, deduct amounts incurred as a result of any settlement failure from any sale proceeds or other amounts otherwise payable to you (**clause 14.3**);
  - appropriate any credits, payments, receipts or amounts to which you are entitled (**clause 12.3(a)**); and
  - set off those credits, payment, receipts or amounts against any amount due or owing by you to CMC (**clause 12.3(b)**).
- **Failure to settle any Transaction:** Failure to settle any Transaction, or a failure or suspected failure to comply with a term may give rise to a range of matters set out in **clause 14**, including that, among other things, CMC may:
  - pass onto you all costs resulting from that failure;
  - charge fees or interest in respect of debit balances in a Cash Account or Bank Account;
  - sell out securities or other financial products held on your Trading Account; or
  - close your Trading Account.
- **Termination:** CMC may terminate all or any part of the Agreement at any time and for any reason including without any notice where it is reasonable in the circumstances to do so (**clause 24.1**).
- **Disclosure of personal information:** CMC may disclose information, including personal information about you, which is collected by CMC from the Application Form, your financial services provider(s), or your Trading Account to third parties for the purposes outlined in **clauses 17.4, 17.5, 18.3 and 76.2**.

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# Terms and Conditions

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This agreement is made between the Broker and the Client (**Agreement**). This Agreement comes into effect when the Broker accepts an Application Form from the Client to open a Trading Account in the name of the Client.

This Agreement comprises a number of separate parts:

## Part A General Terms and Conditions

This part applies to all Trading Accounts.

## Part B Online Trading

This part applies if the Broker allows the Client to use its Online Service.

## Part C Conditional Orders

This part applies if the Broker allows the Client to use its Conditional Order service.

## Part D Trading in ASX Derivatives Products

This part applies if the Client opens an account with the Broker for the trading of ASX Derivatives Products (as defined in Part D).

## Part E Warrant Agreement

This part applies if the Client instructs the Broker to deal in Warrants.

## Part F Partly Paid Securities

This part applies if the Client instructs the Broker to deal in Partly Paid Securities.

## Part G CHESS Sponsorship Agreement

This part applies if the Client wishes to appoint the Broker as its Controlling Participant to establish and control holdings of financial products for the Client in CHESS.

## Part H Trading in International Securities

This part applies if the Client instructs the Broker to deal in International Securities.

## Schedule of Terms – Additional Terms for Market Data

This schedule applies if the Client uses the Market Data Service (as defined in the Schedule of Terms – Additional Terms for Market Data) available on the Client's Trading Account.

## Schedule of Terms – Additional Terms for Alerts

This schedule applies if the Client uses the Alerts Service (as defined in the Schedule of Terms – Additional Terms for Alerts) available on the Client's Trading Account.

## Annexures

Additional services, products or features may be made available on a Trading Account, at the Broker's discretion and subject to the terms and conditions contained in an Annexure to this Agreement, relating to such services, products or features, available on the Website. This Agreement, its Schedules and any applicable Annexure, comprise the set of terms applying to a Trading Account.

## A. General Terms and Conditions

### 1 Definitions

In this Agreement the following terms have the meanings set out below:

**Application Form** means the application form or application forms completed by the Client and given to the Broker, requesting that the Broker open one or more Trading Accounts.

**AQUA Product** means an Approved Financial Product that is admitted under the ASX Operating Rules, and is a Managed Fund Product (as defined in the ASX Operating Rules) which form part of a "simple managed investment scheme"

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

**ASIC Rules** means the ASIC Market Integrity Rules (Securities Markets) 2017 as amended or replaced from time to time.

**ASX** means the ASX Limited (ABN 98 008 624 691).

**ASX Clear** means ASX Clear Pty Ltd (ABN 48 001 314 503) or another clearing facility approved to clear Transactions.

**ASX Clear Rules** means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX Clear, as amended from time to time.

**ASX Rules** means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX, as amended from time to time.

**ASX Settlement** means ASX Settlement Pty Ltd (ABN 49 008 504 532) or another settlement facility approved to settle Transactions.

**ASX Settlement Rules** means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX Settlement, as amended from time to time.

**ASX Transaction** means a transaction to which the ASX Rules and the ASIC Rules apply.

**Authorised Agent** means any person that is authorised as an authorised agent by the Client in the Application Form, or any other person notified by the Client to the Broker pursuant to clause 5.

**Authorised Agent Form** means a physical or electronic document in a form prescribed by the Broker from time to time, pursuant to which the Client authorises an Authorised Agent to operate the Client's Trading Account.

**Automated Order Processing** means the process by which the Client's Orders are registered in the Broker's system, and if accepted for submission into the relevant Exchange System by the Broker, submitted as corresponding trading messages without being re-keyed by a designated trading representative (DTR) of the Broker.

**Bank Account** means an account (that may be opened or closed by the Broker on behalf of the Client) with an authorised deposit-taking institution (within the meaning of the *Banking Act 1959*(Cth)) (other than the Cash Account) that can be linked to the platform.

**Broker, we or us** means CMC Markets Stockbroking Limited (ABN 69 081 002 851) trading as CMC Markets Invest.

**Business Day** means a day other than:

- (a) a Saturday, Sunday or any declared public holiday in New South Wales, Australia; or
- (b) any other day that the ASX (or its related bodies corporate) advise is not a business day or is a day that the ASX (or its related bodies corporate) is not open for business.

**Cash Account** means:

- (a) the "ANZ Cash Account" bank account opened or closed by the Broker (on behalf of the Client) with the Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) (ANZ), in which the Broker will deposit and hold funds on trust on behalf of the Client; or
- (b) the "CMC Markets Cash Account" bank account as further described in CMC Markets Cash Account Product Information Statement or Product Disclosure Statement (as applicable) available on the Website that may be opened or closed by the Broker on behalf of the Client,

as applicable.

**Cash Cover** has the meaning given to it in the ASX Clear Rules and means the cash balance credited by ASX Clear to a Participant to satisfy the amount determined by ASX Clear under ASX Clear Rule 14.6.1.

**Cboe** means Cboe Australia Pty Ltd (formerly known as Chi-X Australia Pty Ltd).

**Cboe Rules** means the operating rules, procedures, directions, requirements, customers, usages and practices of Cboe, as amended from time to time.

**Cboe Transaction** means a transaction to which the Cboe Rules and the ASIC Rules apply. **CHESS** means the Clearing House Electronic Sub-register System, operated by ASX Settlement.

**CHESS Holding** means the Client's holding of one or more financial products in CHESS which holding is identified by a HIN which the Client has provided to the Broker or which is notified in writing by the Broker to the Client after this Agreement commences.

**Claim** means a claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Clearing Participant** has the meaning given to it in the ASX Settlement Rules.

**Client or you** means the person or persons described as the client in the Application Form.

**Collateral** has the meaning given to it in the ASX Clear Rules and means property acceptable to ASX Clear, secured by any person in favour of ASX Clear in respect of some or all of the obligations of a Participant to ASX Clear (such as the Broker) and includes Cover as defined under the ASX Settlement Rules.

**Conditional Order** means an instruction the Client gives to the Broker to place an Order to enter into a Transaction on the Client's behalf:

- (a) when the Trigger occurs; and
- (b) in accordance with the Specified Instructions.

**Confirmation** means a trade confirmation issued by the Broker in respect of a Transaction.

**Corporations Act** means the *Corporations Act 2001* (Cth) and any regulations made under it as amended and in force from time to time.

**Cover** has the meaning given to it in the ASX Clear Rules and generally means Cash Cover and Collateral.

**Currency Conversion** means the purchase of foreign currency by the Broker on behalf of the Client when entering into Transactions of International Securities.

**Custodian** means the Broker.

**Default** has the meaning given to it in clause 23.1.

**Derivatives CCP Contract** means a contract which arises as between the Broker and ASX Clear under the ASX Clear Rules when a Derivatives Transaction is registered with ASX Clear.

**Derivatives Products** has the meaning given to that term in Part D of this Agreement.

**Derivatives Transactions** means transactions in Derivatives Products.

**Disclosure Documents** means the Broker's Financial Services Guide, the Broker's Best Execution Policy, the Broker's Exchange Traded Options Product Disclosure Statement, and any other regulated disclosure document required under the Corporations Act, ASIC Rules or ASX Rules.

**Discretionary Order** means an Order in which the Client has requested that the Broker exercises discretion as to certain conditions of the Order (i.e. price and/or volume).

**Exchange** means ASX, Cboe, SSX and any International Exchange.

**Exchange System** means any computer system utilised by ASX, Cboe, SSX, ASX Clear or ASX Settlement in connection with trading, matching, price reporting, clearing, settlement or registration.

**GST Law** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST** has the same meaning as in the GST Law except that it includes any related interest, penalties, fines or other changes which arise as a result of a default of the recipient.

**Intellectual Property Rights** means any and all:

- (a) intellectual property rights, including copyright and related rights, patents, utility models, trademarks, service marks, trade names, domain names, moral rights, trade secrets, rights to inventions, logos, rights in get-up, goodwill and the right to sue for passing off and unfair competition, rights in computer software (including to the source code and object code), inventions, semi-conductor topography rights, database rights, rights in databases, rights in designs, design rights, know-how and confidential information whether in software or otherwise and whether registered or unregistered;
- (b) applications for registration, and the right to apply for registration, renewal or extension of any of these rights, the rights to claim priority from any such rights; and
- (c) any and all other intellectual property and proprietary rights and equivalent forms of protection or of similar effect existing, now or in the future, anywhere in the world.

**International Exchange** means an Exchange other than ASX, Cboe and SSX in which we are able to accept Orders of International Securities from time to time. A list of International Exchanges is available on our Website.

**International Exchange Transaction** means a transaction to which the rules of an International Exchange apply.

**International Securities** means securities listed on an International Exchange upon which the Broker allows the Client to enter into buy and sell Orders.

**Limit Price** means the minimum price at which the Broker is instructed to sell, or the maximum price at which the Broker is instructed to purchase.

**Linked Order** means a Conditional Order which is linked to a previous order.

**Loss** in relation to a person means a damage, loss, cost, expense or liability incurred by the person, however it arises and whether it is present or future, fixed or unascertained, actual or contingent and includes any loss of profit and opportunity cost.

**Mandatory Corporate Action** means an action taken by a company which affects all holders of International Securities in that company.

**NGF** means the National Guarantee Fund administered by SEGC.

**One Cancels the Other Order** means a pair of Conditional Orders either of which will cancel the other Order in the pair if it meets the Trigger.

**Online Service** means the online trading and information service provided by the Broker to the Client and includes the Automated Order Processing facility.

**Order** means any order placed by the Client with the Broker to purchase or sell or otherwise deal in a Transaction.



**Partly Paid Security** means a financial product quoted on an Exchange for which the holder may be liable to pay a call or instalment in accordance with the terms of issue and for which an amount remains unpaid, but does not include a quoted product issued by a no liability company or a Derivatives Product.

**Rules** mean the ASX Rules, the Cboe Rules, the SSX Rules, the ASIC Rules, the ASX Clear Rules and the ASX Settlement Rules (as applicable) and the rules of any relevant International Exchanges.

**Schedule of Terms** means terms, read in conjunction with this Agreement, which apply to additional services that are made available, at the Broker's sole discretion, on a Trading Account.

**Security Information** means any of the Client's logon code, password or trading PIN.

**SEGC** means Securities Exchange Guarantee Corporation Limited (ABN 19 008 626 793).

**Settlement Account** means a Cash Account, a Bank Account, a margin lending facility with a supported lender, or a delivery versus payment (DvP) settlement facility with an authorized settlement participant, which may be used to settle the obligations of the Client arising out of Transactions made by or on behalf of the Client in connection with this Agreement.

**Settlement Date** in relation to a Transaction means the date specified on the relevant Confirmation, or if no date is specified, the date determined in accordance with the Rules.

**Settlement Time** in relation to a Transaction means the time on the Settlement Date specified on the relevant Confirmation, or if no time is specified, the time determined in accordance with the Rules.

**Specified Instructions** means, in relation to a Conditional Order, the instruction as to the price at which an Order is to be placed when the Trigger occurs, which may be an instruction to place an Order:

- (a) at a **Limit Price**;
- (b) at **market**; or
- (c) on any other basis permitted by the Broker.

**SSX** means the Sydney Stock Exchange (previously APX or Asia Pacific Stock Exchange).

**SSX Rules** means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of SSX, as amended from time to time.

**SSX Transaction** means a transaction to which the SSX Rules and the ASIC Rules apply.

**Sub-Custodian** means BNP Paribas SA or any other sub-custodian named on the Website. A reference to the Sub-Custodian includes a reference to any sub-custodian appointed by the Sub-Custodian.

**Sub-position** has the meaning given to it in the ASX Settlement Rules.

**Trading Account** means the Client's trading account with the Broker.

**Transaction** means an ASX Transaction, Cboe Transaction, a SSX Transaction or an International Exchange Transaction.

**Trigger** means criteria (for example a price or some other fact or event) specified by the Client that is acceptable to the Broker, which, when satisfied, causes the Broker to place an Order to enter into a Transaction.

**Website** means cmcmarkets.com.au.

## 2 Interpretation

**2.1** The following rules apply when interpreting this Agreement:

- (a) Headings are for reference only and do not in any way affect

the meaning of this Agreement.

- (b) Unless the context requires otherwise or a word is defined in this Agreement, words defined in the Corporations Act, or the Rules have the same meaning in this Agreement.
- (c) The single includes the plural and vice versa.
- (d) Unless the context otherwise requires, a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under that legislation or legislative provision.
- (e) Each part of this Agreement is severable from the balance of this Agreement and if any part of the Agreement is illegal, void, invalid or unenforceable, then that will not affect the legality, effectiveness, validity or enforceability of the balance of this Agreement.
- (f) No failure by the Broker to exercise, and no delay by the Broker in exercising, any right, power or remedy in connection with this Agreement will operate as a waiver of that right, power or remedy. No single or partial exercise of any right, power or remedy will preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy.
- (g) This Agreement is not to be interpreted against the Broker's interests merely because the Broker proposed these provisions or because the Broker relies on a provision of this Agreement to protect themselves.
- (h) Unless the context otherwise requires, expressions used to denote persons generally (such as "person", "someone", "third party" and "other party"), include body corporate as well as individual.

**2.2** Where any term of Part A of this Agreement is inconsistent with a specific provision in Parts B, C, D, E, F, G, H, any Schedule of Terms or Annexures which is part of the Agreement between the Broker and the Client, the specific provision shall prevail over the term in Part A with which it is inconsistent, to the extent of the inconsistency.

## 3 Rules and regulations

The Client and the Broker agree that the terms of their relationship in respect of Transactions (including this Agreement) and any dealings between them concerning Transactions are subject to, and that they are bound by, the Corporations Act and the Rules.

## 4 Appointment of Broker

**4.1** The Client appoints the Broker as its agent for the purpose of executing Orders as instructed by the Client from time to time, clearing and settling such Transactions, and to do all things necessary or incidental to the execution, clearing and settlement of those Transactions in accordance with the terms of this Agreement. The Client authorises the Broker to:

- (a) open one or more Trading Accounts for the Client, as requested in the Application Form or otherwise in writing; and
- (b) act on the instruction of the Client or any person appointed as an Authorised Agent in accordance with clause 5.

## 5 Appointment of Authorised Agents

**5.1** The Client may authorise another person (i.e. an '**Authorised Agent**') to give instructions and place Orders on the Client's behalf. The Client must notify the Broker in the Application Form, an Authorised Agent Form, or otherwise in writing in a form acceptable to the Broker, of any such authorisation, setting out the name, and where the Authorised Agent is a specified natural person, the specimen signature of the relevant Authorised Agent.

**5.2** If the Client appoints any Authorised Agent, the Client authorises:

- (a) the Broker to provide access to any Authorised Agent to personal information (which includes but is not limited to

transaction data and account identifier data, related to, or in connection with, the Client's Trading Account and Settlement Account); and

- (b) any Authorised Agent to collect, use and disclose the information specified in clause 5.2(a) on behalf of the Client.

**5.3** The Client may at any time, by notice to the Broker in a form acceptable to the Broker, revoke the appointment of an Authorised Agent.

**5.4** The Broker may treat a communication given, or apparently given by an Authorised Agent as having been given by the Client, and rely on that communication without further enquiry.

**5.5** The Client is and remains solely liable and responsible for all acts and omissions of any of its Authorised Agents notwithstanding the act or omission of any such Authorised Agent was:

- (a) outside their actual or ostensible authority; or
- (b) in error, fraudulent, negligent, in breach of its fiduciary duties or criminal, but only to the extent the Broker was not actually aware such Authorised Agent was acting outside authority or aware of any fraud, negligence or breach.

**5.6** The Client agrees not to make, and releases the Broker from any right the Client may have to make, any Claim against the Broker for any Loss incurred or suffered by the Client which may arise in connection with any act or omission by any Authorised Agent but only to the extent the Broker was not actually aware such Authorised Agent was acting outside authority or of any error, fraud, negligence or breach.

## 6 Joint accounts

If more than one person constitutes the Client (including for example if the relevant Trading Account is a joint account, or if the Client is a partnership or otherwise comprises more than one person), then each person constituting the Client is jointly and severally liable under this Agreement, and the Broker may act on the instructions of any one of those persons.

## 7 Instructions and Orders

**7.1** The Client may from time to time place Orders with the Broker to enter into Transactions. Subject to this Agreement, the Broker will deal (or will instruct third parties to deal) on the Client's behalf in financial products in accordance with the Client's instructions, or, where no specific instructions are provided, at the discretion of the Broker in accordance with applicable Rules and any applicable policies of the Broker.

**7.2** The Broker will use its reasonable endeavours to execute or arrange the execution of the Client's instructions in accordance with the Broker's Best Execution Policy, available on the Website. Without limiting clause 29, the Broker will not be responsible for delays or errors in the transmission or execution of the Client's instructions (except to the extent that responsibility cannot be excluded by law).

**7.3** The Broker may, acting reasonably, decline instructions provided by or on behalf of the Client at any time. The Broker is not required to provide a reason for declining any instructions.

**7.4** The Client acknowledges that the Broker has no obligation to resubmit any Orders purged from any trading facility operated by an Exchange.

**7.5** The Client acknowledges that unexecuted Orders in respect of some financial products (such as Warrants and Derivatives Products) may be purged by an Exchange at the end of the relevant Business Day.

**7.6** The Client must not instruct the Broker to submit an Order to enter into a Transaction which would breach or cause the Broker to breach the Corporations Act, any other applicable laws or the Rules including, without limitation, any law or rules in relation to:

- (a) market manipulation, false trading, market rigging, fictitious transactions, wash trading or matching of orders;

- (b) insider trading;
- (c) short selling (including any requirement referred to in clause 16);
- (d) creating a disorderly market or otherwise prejudicing the integrity or efficiency of the market; or
- (e) misleading or deceptive conduct.

**7.7** The Client undertakes to ensure that it does not knowingly give to the Broker an Order that, if executed, will result in there being no change of beneficial ownership of the relevant financial product that is the subject of the Order.

## 8 Confirming Transactions

**8.1** The Broker will confirm the execution of Transactions in accordance with the requirements of the Corporations Act and the Rules.

**8.2** The Broker is authorised to, but not required to, send Confirmations electronically, if the Client has requested in writing (for example, in the Application Form) that the Broker does so and has not revoked that request.

**8.3** Where your Order is executed by multiple Transactions, including across multiple Exchanges, you authorise the Broker to accumulate those Transactions on a single Confirmation and specify the volume weighted average price for those Transactions.

**8.4** All Confirmations are subject to the Rules and the correction of errors and omissions. The Client must promptly check the accuracy of every Confirmation received from the Broker. The Client must immediately notify the Broker if the Client becomes aware that there is an error in the Confirmation. If the Broker does not receive any such notification from the Client within 24 hours, the Client will be taken to have accepted the accuracy of the Confirmation.

**8.5** The Broker may, at any time, reissue a Confirmation in order to correct any errors or omissions.

## 9 Cancellation of orders and Transactions

**9.1** The Broker may request, agree to or effect the cancellation of any Order or Transaction without the consent of the Client in circumstances where:

- (a) the Broker considers the cancellation appropriate, having regard to its obligations as a participant of ASX, Cboe, SSX, ASX Clear or ASX Settlement or as the holder of an Australian Financial Services Licence or the desirability of maintaining a fair and orderly market;
- (b) ASX, Cboe, SSX, ASX Clear or ASX Settlement requests or directs that the Order or Transaction be cancelled;
- (c) the Rules require or contemplate that the Order or Transaction will be cancelled;
- (d) the security or other financial product the subject of the Order has been subject to a trading halt and the Client has not reconfirmed instructions;
- (e) the Broker reasonably believes there has been a clear error on the part of the Broker and/or the Client;
- (f) the Broker suspects on reasonable grounds that the Client has not complied or is unable to comply with any other term of this Agreement; or
- (g) reasonably required in order for the Broker to comply with its regulatory, legal or other obligations.

**9.2** The obligations of the Client and the Broker under this Agreement in relation to the settlement of a Transaction which is cancelled in accordance with clause 9.1, cease to apply in respect of that cancelled Transaction from the time it is cancelled (whether or not the Broker has given the Client a Confirmation in respect of the Transaction).

**9.3** The Client acknowledges that under the Rules applicable to an Exchange, the Exchange has a range of powers including the power to cancel or amend a Transaction. The Client agrees not to

make, and releases the Broker from any right the Client may have to make, any Claim against the Broker for any Loss incurred or suffered by the Client which may arise in connection with the exercise of any power pursuant to any Rules (whether or not the Broker has given the Client a Confirmation in respect of the Transaction).

## 10 Brokerage, fees and commission arrangements

**10.1** The Client must pay to the Broker or as the Broker directs:

- (a) brokerage at such rates as the Broker may determine and notify the Client from time to time; and
- (b) any fees, taxes, stamp duty or other charges as may from time to time be levied on or in connection with any dealings in financial products entered into on the Client's behalf.

The amount of brokerage payable by the Client to the Broker in respect of any Transaction will be set out in the Confirmation of that Transaction or as otherwise notified by the Broker to the Client.

**10.2** The Client acknowledges that:

- (a) the Broker may receive commissions and/or other benefits from other parties in relation to Transactions the Broker enters into on the Client's behalf including for example, commissions or benefits from the operator of any Cash Account and/or Bank Account or the issuer of various financial products, such as Warrants. The Broker is entitled to retain such commissions and benefits;
- (b) if the Broker opens a Cash Account or Bank Account on the Client's behalf, the Broker may be entitled to interest earned on the Cash Account or Bank Account. Any interest (if applicable) received by the Broker will vary depending on the applicable rate at the time and the portion the Broker determines to retain or pass on to the Client;
- (c) if the Client has been referred to the Broker by another broker or other third party, that broker or third party may receive benefits in the form of a commission or rebate from the Broker; and
- (d) pursuant to clause 20.2, the Broker may receive commissions on Transactions between the Client and the Broker's other clients (from both parties) and from Transactions between the Client and the Broker as "Principal" (as defined in the ASIC Rules).

## 11 Bank Account and Cash Account

**11.1** The Broker may, on written notice to the Client open or close a Cash Account or a Bank Account on behalf of the Client for the purposes of facilitating the settlement of Transactions entered into by or on behalf of the Client. For the avoidance of doubt, this includes instances where the opening and/or closing of a Cash Account or a Bank Account is as a result of such account being transferred to a different authorised deposit taking institution, or moving to a different type of account. In such circumstances and following deductions made pursuant to clause 11.2, the Broker will transfer the available balance in a Cash Account or Bank Account (if any).

**11.2** The Broker will not withdraw funds from the Cash Account or Bank Account except at the direction of the Client, other than to:

- (a) deduct funds for miscellaneous items such as fees, expense reimbursements and taxes; or
- (b) debit any amounts or charges owed by or due from the Client to the Broker.

**11.3** The Broker is not liable for any Loss suffered by the Client as a result of any default by the provider of the Cash Account or the Bank Account.

**11.4** The Broker is not obliged to execute any instructions provided by or on behalf of the Client unless the Client has opened a Cash Account or a Bank Account.

**11.5** The Client authorises the Broker to:

- (a) debit any amounts owing to the Broker, or credit any amounts the Broker owes to the Client, under these terms and conditions from or to the Cash Account and / or the Bank Account; and
- (b) access information about your Cash Account or Bank Account from the Cash Account or Bank Account provider.

**11.6** The Client acknowledges that funds may only be deposited into an ANZ Cash Account by electronic transfer and not over the counter at an ANZ branch.

## 12 Settlement of purchases

**12.1** The Client agrees to and must ensure that all funds required by the Broker to settle a Transaction for the purchase of a financial product, and all brokerage, taxes, costs, duties and charges in respect of that Transaction, are paid to or otherwise made available for use by the Broker at the time the Order in respect of that Transaction is processed unless otherwise agreed by the Broker and in any event prior to the Settlement Time. Payment in cash is not acceptable.

**12.2** On the execution of a Transaction for the purchase of a financial product, the Client acknowledges that that amount may be 'locked' in the Settlement Account of the Client. From that time, the Client will not be entitled to withdraw those 'locked' funds from the Settlement Account. Only the Broker will be entitled to use those funds for the purposes of settling the relevant Transaction or otherwise as permitted under this Agreement.

**12.3** The Client authorises the Broker to:

- (a) appropriate any credits, payments, receipts or amounts to which the Client is entitled (including amounts standing to the credit of any Cash Account or Bank Account); and
- (b) set off those credits, payment, receipts or amounts against any amount due or owing by the Client to the Broker, whether under this Agreement or otherwise.

**12.4** The Broker is not required to transfer to the Client any securities or other financial products acquired or purchased by the Broker on behalf of the Client, until the Broker has been paid all amounts payable by the Client in respect of the relevant acquisition or purchase.

**12.5** Pending settlement by the Client, in accordance with the provisions of the Corporations Act, the relevant Confirmation constitutes notice to the Client that the Broker may deposit the securities or other financial products described in the Confirmation as security for a loan if the Broker has received and paid for them on behalf of the Client.

## 13 Settlement of sales

**13.1** The Client must provide all documents and security holder information (including its HIN or personal identification number and, if applicable, shareholder reference number) to the Broker prior to the Settlement Time.

**13.2** If the Client has appointed the Broker as the Client's CHESS Participant under a Sponsorship Agreement on the terms of Part G to hold financial products in CHESS, the Client irrevocably authorises the Broker to apply any financial products held in the Client's CHESS Holding with the Broker to settle any Transaction for the sale of those financial products.

**13.3** Credits in respect of sales will not be made available to the Client until the latest of:

- (a) the Settlement Time;
- (b) the time at which all documents and security holder information (required by clause 13.1) have been received by the Broker; and
- (c) all amounts due and payable by the Client to the Broker have been paid.

**13.4** All proceeds of sale to which the Client is entitled under this



Agreement will be paid directly to the Client, and not to any third party, unless the Client gives different instructions to the Broker.

## 14 Failure to settle or other breach

**14.1** If the Client fails to settle any Transaction in accordance with the relevant Confirmation and this Agreement, or if the Client fails to comply, or the Broker suspects on reasonable grounds that the Client is unable to comply, with any other term of this Agreement, the Broker may do one or more of the following:

- (a) pass on to the Client all costs incurred as a result of that failure;
- (b) in the case of a sale of financial products by the Client, buy any financial products sold in order to cover the settlement (with the Client being fully responsible for any Loss in connection with such purchase) and recover any costs in so acting from the Client and the Client acknowledges and agrees that the Broker may be obliged to do so under the Rules if the Client failed to settle the sale or ensure that the sale is settled by the fifth Business Day after the relevant sale Order was executed;
- (c) charge an administration fee calculated by reference to the additional cost which may be incurred by the Broker as a result of the Client's failure to settle;
- (d) levy a default charge on the amount from time to time outstanding at a rate of up to the rate which the Broker would be required to pay on an overdraft facility with its then current bankers;
- (e) charge interest on any debit balances in any Cash Account or Bank Account;
- (f) use its own securities or other financial products or obtain securities or other financial products from third parties (by an on-market purchase or otherwise) and use those securities or financial products to settle any sale executed by the Broker on behalf of the Client;
- (g) sell any securities or other financial products purchased on behalf of the Client at the risk and expense of the Client;
- (h) sell out any securities or other financial products otherwise held on behalf of the Client and apply the proceeds to reduce the Client's liability to the Broker and to recover the Broker's costs in so acting;
- (i) apply any cash held by the Broker or to which the Broker has access, or payments received for or from the Client, to reduce the Client's liability to the Broker;
- (j) cancel any unexecuted Orders of the Client;
- (k) close the Client's Trading Account and/or terminate this Agreement by providing notice to the Client.

**14.2** Without limiting clause 28, the Client is responsible for and indemnifies the Broker against all Losses arising in connection with any settlement failure referred to in clause 14.1 including, without limitation, brokerage, stamp duty, taxes, penalties, interest and legal costs (on a full indemnity basis).

**14.3** The Client must pay or reimburse the Broker any amounts covered by the indemnity under clause 14.2 (together with any GST payable on those amounts) immediately upon demand. The Broker may deduct any of those amounts (and any GST) from any sale proceeds or other amounts otherwise payable to the Client.

## 15 No personal advice provided

**15.1** The Client acknowledges that the Broker provides an execution and settlement only service, and does not provide personal financial product advice.

**15.2** The Client acknowledges that:

- (a) any material or information made available or provided (whether in writing, electronically, orally, through the Online Service or otherwise) to the Client, has not been prepared taking into account or to take into account the particular

investment objectives, financial situation or needs of the Client, is not personal financial product advice and is not suitable to be relied upon by the Client as personal advice;

- (b) it is the Client's responsibility to obtain personal financial product advice before making any investment or trading decision; and
- (c) no warranty or representation is or has been made by or on behalf of the Broker as to the current or future accuracy, completeness or currency of that material or information.

## 16 Short selling and disclosures in respect of sale Orders

**16.1** The Client acknowledges that:

- (a) the Broker does not endorse nor provide the facility for the Client to execute short sales of securities or other financial products unless otherwise agreed by the Broker and in accordance with applicable Rules; and
- (b) when placing an Order to sell financial products, the Client (or an Authorised Agent of the Trading Account) must provide the Broker with all relevant information as required by the Corporations Act, any other applicable laws or the Rules.

**16.2** When the Client places a sell Order with the Broker, the Client must notify the Broker, whether the sale is a long sale or a covered short sale. For this purpose:

- (a) a **long sale** is a sale of financial products that the Client already owns at the time the Client places the sale Order (but does not include financial products which the Client has borrowed from a securities lender); and
- (b) a covered **short sale** is a sale of financial products where the Client has, at the time of placing the sell Order, a legally binding commitment from a securities lender to lend the financial products to the Client.

**16.3** The Client acknowledges that the Broker will not be permitted to execute a sale Order unless the Client has informed the Broker of the relevant category of sale in clause 16.2 to which the Order relates.

**16.4** The Client agrees that, each time the Client places a sale Order and notifies the Broker of the relevant category of sale to which the sale Order relates, the Client will be taken to have warranted and represented to the Broker that the sale falls within the relevant category.

**16.5** If the Client places the sale Order with the Broker by telephone, the Client may satisfy their disclosure obligations by advising the Broker whether the sale is a 'long sale' or a 'short sale' under an exemption.

**16.6** If the Client places the sale Order through the Broker's Online Service, the Client will need to satisfy their disclosure obligations as set out in clause 16.2 by clicking on the mandatory fields provided through the Online Service software.

**16.7** The Client also agrees that if the Client sells financial products as a result of the exercise of an exchange traded call option sold (written) by the Client or an exchange traded put option bought (taken) by the Client, the Client must inform the Broker whether or not the sale is a long sale; that is whether or not the Client has a presently exercisable and unconditional right to vest the financial products in the buyer of the securities at the time the relevant option is exercised. The Client must notify the Broker of this:

- (a) if the Client requests the Broker to exercise the option – at the time the request is made; or
- (b) otherwise – as soon as practicable after the Client becomes aware that the option has been exercised.

## 17 Information, telephone recording and privacy

**17.1** The Client authorises the Broker to record any telephone conversation between the Client and the Broker, with or without an audible tone warning device. The Client agrees that the Broker may

use such recordings for the purposes of monitoring compliance with the Client's and the Broker's respective regulatory and contractual obligations, and resolving disputes. If there is a dispute between the Broker and the Client, the Client has the right to listen to any recording of any conversation between the Broker and the Client. Nothing in this Agreement obliges the Broker to keep a recording longer than 90 days.

**17.2** The Client authorises the Broker, to the extent permitted by law, to make any inquiries regarding the Client's credit worthiness from any person including, without limitation, any bank or credit reporting agency or the Client's employer.

**17.3** The Client agrees that it has reviewed and understood the Broker's privacy policy available on the Website and that information about the Client is collected for the purposes of this Agreement, including, without limitation:

- (a) to assess the Client's application to open a Trading Account, a Cash Account or Bank Account;
- (b) to effect purchases and sales of financial products;
- (c) to effect the transfer of funds and payments;
- (d) where applicable, for the purposes of acting as Controlling Participant in respect of a CHESS Holding;
- (e) to allow the Broker to communicate with third parties in connection with the matters contemplated by this Agreement; and
- (f) to ensure that legal and regulatory requirements are met.

**17.4** The Broker may use or disclose any information about the Client which is collected by the Broker from the Application Form, from the Client's financial services providers, or otherwise in accordance with an authority or consent given by the Client. Without limiting the above, the Client specifically acknowledges and agrees that the Broker may:

- (a) use the information to assess the application of the Client to open a Trading Account;
- (b) disclose the information to a third party, (including an overseas recipient or the operator of any Settlement Account), in connection with the opening of a Settlement Account or in connection with any other services provided or made available through the Client's Trading Account. The Broker may refer or provide the Client with further information on the disclosure of personal information to a third party;
- (c) use or disclose any such information to the extent required by law or the Rules or otherwise required to be used or disclosed by a regulator;
- (d) disclose any personal information (which includes but is not limited to transaction data and account identifier data, related to, or in connection with, the Client's Settlement Account) to the Client's financial services providers and/or any of the Client's Authorised Agents, as relevant;
- (e) disclose any tax file number(s) provided by the Client to any relevant person or share registry;
- (f) provide the Client's name and credit rating to such credit reporting agencies;
- (g) unless the Client otherwise indicates on the Application Form or at any later time in writing to the Broker, disclose (including to third parties) or use the information for marketing purposes; and
- (h) provide the information on a confidential basis to a prospective purchaser of, or investor in, the Broker or all or part of the business of the Broker.

**17.5** The Client acknowledges and authorises the Broker to disclose any Trading Account information (including, without limitation, the Client's name, address, contact and other personal details; each Authorised Agent's name, address, contact and other

personal details; details of orders placed and trades and other transactions entered into by a Client or on their behalf; other activities or dealings conducted by a Client or on their behalf by, through or in connection with the services made available by the Broker; copies of trade confirmations; details of payments made by or to a Client; the Client's Trading Account number; details as to the state of the Client's Trading Account; the Client's CHESS holdings; and details of the Client's Settlement Accounts);

- (a) to any third parties that make available services to the Client or the Broker in connection with the Client's Trading Account, including, without limitation, any of the Client's Authorised Agents or any of the Client's financial services providers; and
- (b) to the extent required by law or the Rules or otherwise required by a regulator.

**17.6** The Client will take all reasonable steps to deliver information or documentation to the Broker, or cause information or documentation to be delivered to the Broker concerning Transactions which are requested by a person having a right to request such information or documentation (including, without limitation, ASIC, ASX, Cboe, SSX, ASX Clear or ASX Settlement). The Broker is authorised to produce the information or documentation to the person making the request.

**17.7** The Broker agrees to comply with its obligations under the *Privacy Act 1988* (Cth) as amended from time to time, to the extent that they are relevant to this Agreement.

## **18 Anti-money laundering and counter-terrorism financing**

**18.1** The Client acknowledges that:

- (a) the Broker is subject to various anti-money laundering and counter-terrorism financing laws (**AML/CTF Laws**) which include among other things 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 services to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act; and
- (b) the AML/CTF Laws may prohibit the Broker from providing services to the Client as contemplated by this Agreement.

**18.2** The Client agrees that:

- (a) the Broker is not required to accept or execute any Order, or take any other action or perform any obligation under, or in connection with, this Agreement if the Broker is not satisfied as to the Client's identity, or if the Broker suspects on reasonable grounds that by doing so the Broker may breach the AML/CTF Laws;
- (b) the Broker may delay, block or refuse to make any payment, or refuse to release any funds that the Broker holds on the Client's account, if the Broker believes on reasonable grounds that to do so may breach any law in Australia or of any other country including, without limitation, the AML/CTF Laws; and
- (c) the Broker will incur no liability to the Client for any Loss the Client suffers (including consequential loss) however caused by reason of any action taken or not taken by the Broker as contemplated in paragraph (a) or (b) above.

**18.3** The Client agrees to provide all information and documents to the Broker which the Broker reasonably requires to comply with any law in Australia or of any other country, including any AML/CTF Laws and agrees that the Broker may disclose information which the Client provides to the Broker, or about Transactions the Client conducts, or seek to conduct, with the Broker where the Broker is required to do so by any such laws.

## **19 Representations and warranties**

**19.1** Each time the Client places an Order with the Broker, the Client represents and warrants that the Order is placed by:

- (a) the Client as principal; or
- (b) if not, the Client has full power and authority (including

meeting the relevant regulatory requirements) to place the Order for the person for whom the Order is placed.

**19.2** The Client represents and warrants that at the time the Client completes the Application Form and at all times during the term of this Agreement:

- (a) the Client has read and understood all documentation provided by the Broker to the Client in relation to the services provided by the Broker including, without limitation, any Disclosure Documents or other legal documents;
- (b) the Client is a person with whom the Broker is lawfully entitled to deal pursuant to any statute, law, rule or regulation applicable to this Agreement and that all dealings by the Client with the Broker or requested to be done by the Broker on the Client's behalf are and will be lawful;
- (c) all information supplied on the Application Form or otherwise to the Broker is true, complete and accurate in all respects and the Client will notify the Broker immediately of any change in any information supplied (including but not limited to any change in the Client's name, address, telephone number, facsimile number or email address);
- (d) the Client will rely upon the Client's own knowledge and judgment and will seek such advice (financial or otherwise) as may be prudent before placing an Order with the Broker, and the Client assumes full responsibility for any Order placed with the Broker;
- (e) at all times the Client will be able to make payments and fulfill all commitments on the Client's part arising under this Agreement and under the conditions applicable to dealings between the Client and the Broker;
- (f) if the Client is a natural person, the Client represents and warrants that he or she is 18 years of age or over;
- (g) if the Client is acting as trustee of a trust or responsible entity of a managed investment scheme, the Client has authority to be bound by this Agreement as trustee or responsible entity, and agrees that it is liable under this Agreement both in its capacity as trustee or responsible entity and in its personal capacity;
- (h) if the Client is a corporation, the Client holds a valid company registration number in accordance with the legislative requirements in the Client's principal place of residence; and
- (i) if the Client is a natural person, the Client is of sound mind and the Client's estate is not liable to be dealt with in any way under any law relating to mental health.

**19.3** Apart from any warranties and representations which are implied by law and cannot be excluded, the Broker makes no warranties in relation to any service or information provided or made available to the Client in connection with this Agreement. To the full extent permitted by law, the Broker excludes liability for all costs, expenses, damages and Losses arising in connection with such services or information, or this Agreement, except where such liability arises as a result of the Broker's negligence, fraud or willful misconduct.

## 20 Principal trading by Broker

**20.1** The Broker and its related bodies corporate may enter into Transactions in securities and other financial products as "Principal" (as defined in the ASIC Rules). Where permitted by law, the Broker may take the opposite position in any such a Transaction with the Client, acting either for another client or on its own account.

**20.2** The Client consents to the Broker and its related bodies entering into such Transactions with the Client. In relation to commission on such Transactions:

- (a) the Broker is entitled to receive commission from both parties, where the Client's Order matches an existing order placed by another client of the Broker; and
- (b) the Client consents to the Broker charging the Client a

commission, where the Client is a wholesale client (as defined in the Corporations Act) and the Client's Order matches an existing order placed by the Broker as a principal trade.

## 21 Allocation policy

**21.1** The Broker will deal with Orders in accordance with the allocation policy set out in this clause 21. The Broker reserves the right to amend the allocation policy at any time. The Broker may inform the Client of any updates to the policy from time to time and will provide the Client with the current allocation policy at the Client's request.

**21.2** The Broker will deal fairly and in due turn with all Client orders and orders placed on the Broker's own account having regard to any Australian regulatory requirements and market practices.

**21.3** To the extent that it is reasonably practicable to do so, the Broker will allocate all Transactions (including Transactions effected pursuant to orders placed on the Broker's own account) in the sequence in which the Broker receives those orders, subject to any delay or technical faults connected with or arising through the use of the Broker's systems or any other delay that is outside the control of the Broker.

**21.4** If the Broker receives several orders (including orders placed on the Broker's own account) on the same terms and in respect of the same financial product, the Broker will generally allocate the Transactions to those orders having regard to the time at which the orders were received and generally in accordance with the following priority of allocation:

- (a) first priority will be given to an 'at market order' being an Order in which the Client has requested that the Transaction is effected at the prevailing market price;
- (b) second priority will be given to a 'limit order' being an Order in which the Client has requested that the Transaction is effected only if specific conditions (i.e. price and volume) are satisfied and in relation to the priority of multiple limit orders, the Broker will prioritise them in the sequence in which it considers that Transactions satisfying the relevant conditions are likely to be effected having regard to the prevailing market price;
- (c) third priority will be given to a 'Discretionary Order'; and
- (d) in the case of Conditional Orders priority will be given having regard to clause 42.

**21.5** The priority of allocation specified in this clause 21 is generally applied and may be subject to variation.

## 22 Variation

**22.1** Subject to any minimum notice period required by law, the Broker may vary this Agreement or Disclosure Documents by giving the Client and/or any of its Authorised Agents not less than ten (10) Business Days' notice of any variation, in writing, by:

- (a) **(email)** sending a weblink to the updated Agreement and/or Disclosure Documents via electronic mail;
- (b) **(post)** sending notice of the updated Agreement and/or Disclosure Documents via post;
- (c) **(platform notification)** publishing a notice of the updated Agreement and/or Disclosure Documents on the platform; or
- (d) **(website)** updating the Website with the updated Agreement and/or Disclosure Documents.

**22.2** By continuing to deal with the Broker (or, with respect to a Client who has appointed an Authorised Agent in accordance with clause 5, by continuing to allow an Authorised Agent to deal with the Broker on the Client's behalf), the Client agrees to be bound by the terms and conditions of this Agreement and the Disclosure Documents (including any variations to this Agreement or the Disclosure Documents that are made in accordance with clause 22.1).

**22.3** If the Broker reasonably believes a variation is necessary to maintain or restore the security of any accounts or of its systems

or to comply with any legal or regulatory requirement, the Broker may make the variation without notice. In relation to a variation of Part G (Sponsorship Agreement), clause 73 applies.

**22.4** For the avoidance of doubt, the Client agrees that the Broker may vary and provide amended Disclosure Documents by the methods set out in clause 22.1 and otherwise in accordance with this clause 22.

## 23 Default

**23.1** Each of the following constitutes a Default:

- (a) the Client breaches, whether by act or omission, a term of this Agreement;
- (b) the Client fails to pay, or provide security for, amounts payable to the Broker;
- (c) the Client fails to pay the amounts due in respect of a Transaction;
- (d) the Client fails to perform any obligation arising pursuant to the exercise or settlement of a Derivatives CCP Contract;
- (e) the Client fails to fulfill any settlement obligations in respect of a Transaction under this Agreement;
- (f) a guarantee lodged by the Client, or lodged by a third party at the request of the Client, in favour of the Broker or ASX Clear is withdrawn without the consent of the Broker or becomes ineffective and other replacement security acceptable to the Broker is not provided;
- (g) the Client makes any representation that is incorrect or misleading in any material way, with the result that Loss is, or is likely to be, incurred by the Broker;
- (h) the Broker believes that the Client may not be able to meet its obligations to the Broker in respect of one or more Transactions, including, without limitation, strict compliance with any time limits;
- (i) the Client becomes bankrupt or insolvent;
- (j) the Client enters into a composition or scheme of arrangement for the benefit of creditors;
- (k) the Client, if a company, goes into liquidation, voluntarily or otherwise (except for the purpose of reconstruction), or the Client or another person appoints a liquidator, receiver, administrator or official manager in respect of the Client or its assets;
- (l) the Client, if a natural person, dies or becomes of unsound mind or if the Client or the Client's estate is liable to be dealt with in any way under any law relating to mental health;
- (m) the Client imposes a moratorium on payments to creditors or ceases, or threatens to cease, carrying on business;
- (n) in the absence of making alternative arrangements, the Client is not contactable by the Broker within 24 hours in order for the Broker to obtain instructions in relation to any Transactions registered in the Client's Trading Account; or
- (o) any other event occurs which the Broker and the Client have agreed constitutes a Default.

**23.2** If a Default occurs, the Broker may, in addition to any other rights which the Broker may have against the Client (including rights in other Parts of this Agreement), without giving prior notice to the Client, take any action, or refrain from taking action, which it considers reasonable in the circumstances, the Broker may:

- (a) enter into one or more transactions to effect the close out of one or more Derivatives CCP Contracts in accordance with the ASX Clear Rules;
- (b) exercise one or more Derivatives CCP Contracts in accordance with the ASX Clear Rules;
- (c) abandon any one or more Derivatives CCP Contracts not yet exercised;
- (d) cover in whole or in part open positions by entering into further Derivatives CCP Contracts;

- (e) take any other action a reasonably prudent broker might take in the circumstances to protect the Broker's personal obligation incurred when dealing on the Client's behalf;
- (f) sell (or arrange for the sale of) any or all of the Client's property (including, but not limited to any Collateral lodged with ASX Clear or the Broker, any property that is sponsored by the Broker in a CHESS Holding or held by the Broker), in accordance with the terms of this Agreement and apply the proceeds towards satisfaction of monies owing by the Client to the Broker;
- (g) apply any Cash Cover or other monies that the Client has deposited with ASX Clear or the Broker by way of set-off; or
- (h) exercise any other rights conferred by the Rules or this Agreement or perform any other obligations arising under the Rules or this Agreement in respect of those Derivatives CCP Contracts.

In respect of any action which the Broker takes, or refrains from taking under this clause 23.2, the Client must account to the Broker as if the Broker took, or refrained from taking, the action on the instructions of the Client and, without limitation, the Client is liable for any deficiency and is entitled to any surplus which may result.

**23.3** In relation to Derivatives CCP Contracts, the Broker may sell (or arrange for the sale of) any Collateral:

- (a) either by public auction, private treaty or tender;
- (b) for cash or on credit;
- (c) in one lot or in parcels;
- (d) with or without special conditions or stipulations as to title or time or mode of payment or purchase money or otherwise;
- (e) with power to allow the whole or any part of the purchase money to be deferred (whether with or without any security);
- (f) whether or not in conjunction with the sale of any property to any person; and
- (g) upon such other terms and conditions as the Broker may consider appropriate.

The Broker is not liable for any Loss occasioned by a sale of the Collateral.

**23.4** Upon any sale purporting to be made in the exercise of the powers conferred by this Agreement or otherwise, no purchaser will be:

- (a) bound to ask whether any default has been made or otherwise as to the propriety or regularity of any sale; or
- (b) affected by express notice that any such sale is unnecessary or improper.

Despite any irregularity or impropriety in any such sale, the sale will be deemed to be authorised by such powers, as regards the protection of the purchaser or other party to any such dealing or disposal, and will be valid accordingly.

## 24 Termination

**24.1** Subject to the Rules, the Broker may terminate all or any part of this Agreement at any time and for any reason by giving reasonable notice to the Client, provided that the Broker may terminate all or any part of this Agreement immediately on shorter notice or without any notice where the Broker reasonably believes that it is necessary to protect the Broker's legitimate interests, is required by law, or it is reasonable in the circumstances to do so.

**24.2** The Client may terminate all or any part of this Agreement, including Part G, at any time and for any reason by giving notice to the Broker.

**24.3** Termination does not affect outstanding obligations under this Agreement which are undischarged at the time of termination. Each indemnity in this Agreement survives the termination of this Agreement.



## 25 Notices

**25.1** Notices given by the Broker may be sent to the address or email address specified in the Application Form or later notified by the Client, or by posting the notice on its Website or on the platform. Any notice or Confirmation given by the Broker is taken to have been received on the Business Day following the transmission or posting of the notice, demand or Confirmation. Any notice or Confirmation given by the Broker to any Authorised Agent of the Client is taken to have been given to the Client.

**25.2** Notices given by the Client must be in writing and sent by post or facsimile to the address or fax number of the Broker specified in the Application Form or later notified by the Broker. A notice given by the Client is taken to have been given at the time it is actually received by the Broker.

**25.3** Where a Trading Account is opened in the joint names of more than one person, each person agrees that the Broker may discharge any obligation it has to give a notice or a document to one or more of those persons under this Agreement or the Corporations Act by giving notice to any one of those persons.

## 26 GST

**26.1** If GST is or will be payable on a supply made under or in connection with this Agreement, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST on the supply:

- (a) the consideration otherwise provided for that supply is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided within 5 Business Days of receiving a written demand from the supplier.

**26.2** If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, the supplier as appropriate:

- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving 7 days written notice; or
- (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply; and
- (c) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to recipient within 28 days of becoming aware of the adjustment.

**26.3** The right of the supplier to recover any amount in respect of GST on a supply under this Agreement is subject to the issuing of the relevant tax invoice or adjustment note to the recipient.

**26.4** Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this Agreement must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit, and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

## 27 Non-Australian GST

**27.1** In this clause 27, the expression **Non-Australian GST** means any goods and services tax, value added tax or similar transactional tax, however described, imposed on the supply of goods or services (however defined) under the law of any jurisdiction outside Australia, together with any related interest, penalties, fines or other charges which arises as a result of the default of the recipient of the relevant supply.

**27.2** If any supply under or in connection with this Agreement gives rise to a liability to any non-Australian GST, clause 26 will

apply mutatis mutandis to that supply.

## 28 Indemnity

**28.1** To the fullest extent permitted by law, the Client releases, discharges and indemnifies and agrees to keep the Broker and its respective officers, employees, agents and representatives indemnified from and against all sums of money, actions, proceedings, suits, claims, demands, Losses and any other amounts whatsoever arising out of:

- (a) any default, whether by the Client's act or omission under this Agreement or any Order or transaction (including any Transaction);
- (b) any breach by the Client of any applicable law including the Corporations Act and the Rules;
- (c) any representation or warranty made or given by the Client under this Agreement proving to be untrue or incorrect;
- (d) any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by the Client or by any client, employee, agent or Authorised Agent, consultant or servant of the Client;
- (e) any failure of any of the Client's computer or electronic systems or networks to perform, be available or successfully transmit data to the Broker, or any error or inadequacy in the data or information input into such systems or networks by the Client;
- (f) anything lawfully done by the Broker in accordance with, pursuant or incidental to this Agreement;
- (g) any instruction, request or direction given by the Client;
- (h) the Broker complying with any direction, request or requirement of the Rules or the Corporations Act or of ASIC, ASX, Cboe, SSX, ASX Clear or ASX Settlement or any other regulatory body having jurisdiction over the Broker; or
- (i) the Broker in good faith accepting and acting on instructions received by facsimile transmission which are signed by or purported to be signed by the Client or any Authorised Agent, provided that this clause 28.1 shall not apply to any Losses to the extent caused by the negligence, fraud or willful misconduct of the Broker or its officers, employees, agents or representatives.

## 29 Limitation of liability

**29.1** Subject to those provisions of the *Competition and Consumer Act 2010* (Cth), the *Australian Securities and Investments Commission Act 2001* (Cth) and any other rights implied by law, which cannot be excluded by agreement between the Broker and the Client:

- (a) The Broker makes no representations or warranties either express or implied as to merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, currency, availability, completeness or quality), with respect to the goods or services supplied under this Agreement including, without limitation, the Online Services.
- (b) Except where liability arises as a result of the Broker's negligence, fraud or willful misconduct, the Broker excludes all liability in contract, tort or otherwise relating to or resulting from use of a Service and for any Loss incurred by the Client directly or indirectly including, without limitation, as a result of or arising out of:
  - (i) any inaccuracy, error or delay in or omission from any information provided to the Client in connection with a Service;
  - (ii) any delay, failure or inaccuracy in, or the loss of access to, the provision of a Service to the Client including, without limitation, any delay, failure or inaccuracy in, or the loss of access to, the Online Service or in respect of



the transmission of the Client's Orders or instructions or any other communications;

- (iii) any misinterpretation of the Client's Orders or instructions which are unclear, ambiguous, or not specific; or
  - (iv) any government restriction, Exchange or market ruling, suspension of trading computer or telephone failure, unlawful access to the Online Service, theft, sabotage, war, earthquakes, strikes, force majeure and without limitation, any other conditions beyond the Broker's control.
- (c) The Broker is not liable in contract, tort or otherwise for any loss of prospective profits or expenses or special, indirect or consequential damages resulting from the supply of a Service including, without limitation the Online Service.
- (d) The Broker makes no representations or warranties either express or implied that:
- (i) any Exchange System (or any part of it) or any service or any services performed in respect of it will meet the requirements of the Client or any user; or
  - (ii) the operation of, or services performed in respect of, any Exchange System will be uninterrupted or error-free.
- (e) The Broker is not liable for any breach of a provision of any relevant legislation, negligence, injury, death, lost profits, loss of files, data or use, economic loss, loss of reputation or losses or damages incidental or consequential to the operation of any Exchange System, except to the extent that it is caused by the negligence or dishonesty of the Broker or their employees, agents or representatives.
- (f) The Broker's liability shall in any event be limited to:
- (i) in the case of goods, the replacement or repair of the goods; or
  - (ii) in the case of services, the re-supply of the services.

## 30 Complaints and Compensation Arrangements

**30.1** Complaints should be referred to the Broker in accordance with the procedures set out in the Broker's Financial Services Guide. Unresolved complaints will be referred to an independent dispute resolution scheme of which the Broker is a participant.

**30.2** As the Broker is a Market Participant of ASX, you may make a Claim on the NGF in the circumstances specified under Part 7.5 of the Corporations Act. (For more information on the circumstances in which you may make a Claim on the NGF or for information on the NGF generally, contact SEGCG). As the Broker is a participant of SSX, you may also have the right to make a Claim on the SSX Compensation Fund in the circumstances set out in section 9 of the SSX Business Rules. As the Broker is a participant of Cboe, you may also have the right to make a claim on the Cboe fidelity fund in the circumstances set out in section 11 of the Cboe Operating Rules.

## 31 Assignment

**31.1** The Client consents to any assignment or novation by the Broker of any rights and obligations under this Agreement (or, if applicable, a part of this Agreement) and agrees that the Broker may affect any such assignment or novation at any time, provided that the Broker gives the Client reasonable notice prior to the assignment or novation taking effect.

**31.2** The Client may not assign or novate any of their rights and obligations under this Agreement or any part of this Agreement without the Broker's prior written consent.

## 32 Entire agreement

This Agreement, including all Schedule of Terms, Annexures and any relevant Application Form completed by the Client contain the entire understanding between the Client and the Broker concerning

the provision of the services referred to in this Agreement.

## 33 Governing law and language

**33.1** This Agreement is governed by the laws of the State of New South Wales and the Client submits to the jurisdiction of the Courts of that State in relation to any Claim or dispute arising out of the performance of this Agreement.

**33.2** This Agreement and all communications under or in connection with this Agreement shall be in the English language. Any translation or language assistance provided shall be for convenience only and to the extent there is a conflict between the English version and any translation, the English version shall prevail.

## B. Online trading (including Automated Order Processing)

The terms and conditions in this Part B apply if the Broker allows the Client to use the Online Service. The Client is taken to have agreed to the terms and conditions in this Part B when the Client or an Authorised Agent next accesses the Online Service.

## 34 Security information

**34.1** Before the Broker allows the Client access to the Online Service, the Broker will provide Security Information to the Client.

**34.2** The Client agrees that:

- (a) the Client must not use the Online Service (or permit or procure any other person to use the Online Service) until the Security Information has been provided by the Broker;
- (b) the Security Information is confidential;
- (c) the Client is responsible for the confidentiality and use of that Security Information at all times and must procure that any Authorised Agent maintains the confidentiality of the Security Information;
- (d) the Client will not permit, consent or allow any person to use the Security Information or to access or use the Online Service using that Security Information;
- (e) the Client will not provide, disclose or make available the Security Information to any person;
- (f) the Client must notify the Broker immediately upon becoming aware of any unauthorised use of the Security Information or the Online Service; and
- (g) the Client will:
  - (i) only use the data provided through the Online Service for its own trading purposes;
  - (ii) recognise the Intellectual Property Rights of the Broker, the Exchange and all data providers;
  - (iii) not remove any proprietary or copyright notices or labels on the Online Service;
  - (iv) not re-distribute, re-sell or sub-licence any content or data provided through the Online Service; and
  - (v) not use the data provided through the Online Service for any illegal purpose.

**34.3** Unless otherwise indicated, the Online Service including the Website and all of its software, algorithms, design, text, content, data, arrangement, organisation, graphics, compilation, magnetic translation, digital conversion, equipment, and any and all other electronic, computer, technical and information communications technology devices and equipment, networks, servers, applications, codes (including source and object codes) and data centres which are contained in or relate to the Website, together with all technical documentation and information necessary for the use of any of the above (**Elements**) are protected under applicable Intellectual Property Rights and we and/or our licensors are the owner or the licensee (as applicable) of all such Intellectual Property Rights in the Website and the Elements. All such rights are hereby reserved. The posting of the Website and any Elements on the Website does not

constitute a waiver of any right in the Website or such Elements. Except as expressly granted in the Agreement, you do not acquire any rights, title or interest in or to the Website or the Elements.

We hereby grant you a personal, non-exclusive, royalty-free revocable and non-transferable licence, to access and make personal and non-commercial use of the Website for the limited purpose of trading in accordance with the Agreement. No other rights are granted in respect of the Website. In the event you do or attempt to do any of the prohibited matters set out in this section or we reasonably suspect that you have done or attempted to do any of these prohibited matters, the terms of this licence and the Agreement shall be automatically revoked and you shall have no further rights in or to the Website or any of the Elements.

You must not:

- (a) copy, reproduce, translate, duplicate, or use the Website except as expressly provided for in the Agreement;
- (b) permit any other person to copy, reproduce, translate, duplicate or use the Website except as expressly permitted in the Agreement;
- (c) create or develop any hyperlink or other form of internet weblink to the Website except with our express prior written consent;
- (d) modify, adapt, alter, translate, enhance, reverse engineer, decompile, decode, disassemble or reverse assemble (except and solely to the extent an applicable law expressly and specifically prohibits such restrictions), or create derivative works of the Website or any of the Elements (or cause or permit any of the foregoing);
- (e) modify, adapt or alter the operation of the Website in any way (other than as intended by the Agreement);
- (f) distribute, re-distribute, sell, re-sell, transmit, re-transmit, publish, make available, re-produce, sub-licence, transfer, rent, lend, re-circulate, repackage, disclose, display or make commercial use of the Website, any of the Elements or any of the materials provided by us in relation to the Agreement (either in whole or in part);
- (g) download or copy your account information other than if required to do so by law or for personal use in accordance with the provisions of the Agreement;
- (h) download or copy account information relating to any other Client;
- (i) carry out any data collection, or use data mining, screen-scraping, optical recognition software, image makers, robots or any other similar or like data gathering and extraction tools on the Website or the Elements;
- (j) use any software, algorithm, robot, applications, tools, codes or computer or electronic devices or equipment on the Website for non-human and/or high frequency trading;
- (k) make use of the Website or any of the Elements for automated purposes;
- (l) knowingly introduce any software viruses, trojans, worms, logic bombs, time bombs, "back doors" or back door devices, "drop dead devices", malware, or any other material, software or code which:
  - (i) is or is likely to be malicious or technologically harmful, destructive, or disabling or anything analogous to the foregoing to the Website or any of the Elements;
  - (ii) damages, disrupts, impairs, erases or adversely affects the normal operation of the Website or any of the Elements;
  - (iii) assists in or enables theft or alteration of data or content from the Website or any of the Elements; or
  - (iv) provides unauthorised access to the Website or any of the Elements.
- (m) permit or cause unauthorised access or attempt to gain

unauthorised access to the Website or any of the Elements, including the server on which the Website or any of the Elements is stored or any server, computer or database connected to the Website or any of the Elements;

- (n) attack the Website via a denial-of-service attack or a distributed denial-of-service attack; or
- (o) do, or permit, any act or thing (or omit to do any act or thing) analogous to any of the foregoing.

We will not be liable for any Loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Website or to your downloading of any material posted on it, or on any Website linked to it.

**34.4** The Client is responsible to the Broker for the consequences of any unauthorised disclosure or use of the Security Information or where biometric information of someone other than the Client has been registered to unlock a device through which it is possible to trade on the Trading Account.

## 35 Online trading rules

**35.1** A Client is only permitted to access the Online Service, using the Security Information.

**35.2** The Broker is entitled to rely on all instructions given by, on behalf of, or apparently on behalf of, the Client using the Security Information. Despite any other provision of this Agreement, the Broker is not liable for any Loss caused by the Broker acting on instructions or other communications using the Security Information.

**35.3** The Client must not place an Order through the Online Service if:

- (a) in respect of an Order to purchase, there are not sufficient cleared funds to settle the purchase;
- (b) in respect of an Order to sell, the Client does not own the relevant securities or other financial products and have them available to sell, or otherwise have a presently exercisable and unconditional right to vest them in a buyer;
- (c) any resulting Transaction would not result in a change in beneficial ownership of the securities or other financial products; or
- (d) that Order would contravene clause 7.6.

**35.4** The Broker may at any time withdraw or restrict the Client's or any Authorised Agent's access to the Online Service if it is reasonable in the circumstances to do so.

## 36 Additional trading rules for Automated Order Processing

**36.1** The Client may place Orders through the Automated Order Processing facility which is part of the functionality of the Online Service. The Client is solely responsible for placing Orders and for all errors made in placing Orders through the Automated Order Processing facility.

**36.2** An Order placed through the Automated Order Processing facility will only be taken to have been authorised by the Broker at the time the Broker accepts the order for Automated Order Processing, and not before that time.

**36.3** If the Client wishes to amend or cancel an Order placed through the Automated Order Processing facility, the Client must give the Broker specific instructions for the amendment or cancellation of that order.

**36.4** If an Order has been partially filled before it is cancelled, the Client is responsible for settling that part of the Order which has been filled.

## 37 Electronic communications

**37.1** The Client agrees that electronic communications between the Client and the Broker will be considered valid and enforceable,

and that the Broker will retain records of such communications. However, nothing in this Agreement prevents the Client from raising a genuine dispute in relation to the validity or enforceability of electronic communications, provided that such dispute is made in good faith and in compliance with applicable laws.

**37.2** If a failure, interruption or malfunction of electronic communication between the parties prevents an Order from being placed, cancelled or amended, without limiting clause 29, neither party shall be liable to the other party for any Loss caused by that failure, interruption or malfunction.

**37.3** The Client acknowledges that, in using the Online Service:

- (a) there may be delays in the dissemination of market information or in processing an order or instruction to amend or cancel an Order;
- (b) an Order may be wholly or partly filled before an instruction for its amendment or cancellation is processed;
- (c) the Client remains liable for the original Order until any relevant amendment or cancellation is effected in the trading facility of the Exchange; and
- (d) without limiting clause 29, the Broker will not be liable for any Loss incurred by the Client arising from any delay in the dissemination of market information or the processing of any Order or instruction to amend or cancel an Order.

**37.4** The Client acknowledges that the speed of information provided through the Online Service is subject to a number of factors including, but not limited to, the speed of the user's internet connection, the user's settings, the number of concurrent users accessing the Online Service and the volume of information being received and sent by the Online Service.

**37.5** Orders placed through the Online Service will be executed at the market price available on the Exchange (subject to any limit specified in the Order). The Client acknowledges that:

- (a) the market price may move and be different from the price at which the security or other financial product was trading when the Order was placed by the Client through the Online Service; and
- (b) the Broker is not liable for any Loss incurred by the Client by reason of any such movement in market price.

## C. Conditional Orders

The terms and conditions in this Part C apply if the Broker allows the Client to use its Conditional Order service. The Client is taken to have agreed to the terms and conditions in this Part C when the Client or an Authorised Agent next places a Conditional Order with the Broker.

### 38 Placing a Conditional Order

**38.1** When placing a Conditional Order, the Client acknowledges and agrees that:

- (a) the Broker is not obliged to accept the Conditional Order, and is not obliged to provide any reason to the Client for not accepting the Conditional Order;
- (b) the Client must specify the Specified Instruction;
- (c) the Conditional Order is not valid until the Broker has informed the Client that the Broker has accepted the Conditional Order; and
- (d) the Conditional Order remains valid in the event of a trading halt in respect of the relevant financial product, unless the Exchange purges orders for the relevant financial product.

### 39 Variation or cancellation of a Conditional Order

**39.1** The Broker may cancel a Conditional Order which relates to a financial product:

- (a) in circumstances contemplated under clause 9.1; or
- (b) if orders in respect of that financial product are purged from

the market by the Exchange, for example, if:

- (i) the financial product goes ex-dividend;
- (ii) the financial product becomes subject to a reconstruction of capital such as a share split or consolidation; or
- (iii) the issuer of the financial product announces a rights issue.

**39.2** The Client may request the Broker to vary, cancel or reinstate a Conditional Order. Any request for a variation, cancellation or reinstatement of a Conditional Order will be treated as a new Conditional Order for the purposes of this Agreement.

**39.3** The Broker may charge a fee for a cancellation, variation or reinstatement of a Conditional Order.

### 40 Linked Orders

**40.1** The Broker may in its absolute discretion allow the Client to place Linked Orders.

**40.2** A Linked Order will only become active when the previous Order that it is linked to has been completely filled. If the previous Order is only partially filled, any subsequent Linked Orders will not be activated.

**40.3** If the Client or the Broker cancels an Order which has subsequent Linked Orders linked to it, the Order and all subsequent Linked Orders will be cancelled. If any Order has been partially filled before it is cancelled, the Client is responsible for settling that part of the Order that has been filled.

### 41 One Cancels the Other Orders

**41.1** The Broker may in its absolute discretion allow the Client to place a pair of One Cancels the Other Orders.

**41.2** Where a Client has placed a pair of One Cancels the other Orders, when one Order of the pair has been triggered the other Order in the pair will be cancelled.

### 42 Triggering a Conditional Order

**42.1** The Broker will use its reasonable endeavours to place an order arising from a Conditional Order in accordance with the Specified Instructions on or as soon as practicable following the occurrence of the relevant Trigger for that Conditional Order. However, the Broker reserves the right to review an Order that results from a triggered Conditional Order and to refuse to place that Order on the market in certain circumstances including (but not limited to) one or more of the following:

- (a) if the basis for quotation for the financial product has changed and the Client has not varied the Client's Conditional Order;
- (b) if the financial product has been subject to a trading halt and the Client has not varied the Client's Conditional Order;
- (c) if the Broker reasonably believes that the Client's instructions are ambiguous, incomplete or unclear; or
- (d) if the Broker reasonably believes that the instruction may contravene this Agreement or another agreement between the Broker and the Client, the Corporations Act, the Rules or may result in an unfair or disorderly market.

**42.2** If the Conditional Order is a sell Order and a Trigger occurs, the Broker will only place the Order in respect of that number of financial products which the Broker controls in respect of a CHESS Holding of the Client. The Client will be taken to have represented to the Broker that the Order, as submitted, constitutes a long sale for the purposes of clause 16. To the extent that the Conditional Order related to a larger number of financial products, the balance of the Conditional Order will be cancelled.

**42.3** If the Conditional Order is a buy Order and a Trigger occurs, the Broker will only place the Order in accordance with the Specified Instructions where the full amount required by the Broker to settle the Transaction for the purchase of financial products,

together with all brokerage, taxes, costs, duties and charges in respect of that Transaction, is available for use in the Settlement Account of the Client, at the time the Trigger occurs.

**42.4** If at the time the Trigger occurs, the full amount required by the Broker to settle the Transaction together with all brokerage, taxes, costs, duties and charges in respect of that Transaction, is not available for use in the Settlement Account of the Client, the Broker may place the Order in respect of that number of financial products which, excluding all brokerage, taxes, costs, duties and charges in respect of that Transaction, is equal to the value of approximately 90% of the available balance of the Settlement Account of the Client (or such other percentage as determined by the Broker), at the time the Trigger occurs.

**42.5** If a Trigger specifies price as the criteria for the Trigger, and that criteria is satisfied in the closing price auction effected by an Exchange under the Rules, the Trigger will be deemed not to have occurred and no Order for the financial products will be placed by the Broker as a result of the criteria having been satisfied in the closing price auction.

**42.6** The Client acknowledges that where multiple Conditional Orders are received, each with the same or similar Trigger conditions, and a Trigger occurs in respect of the Conditional Orders, the Orders will be placed into the market as expeditiously as possible, however the placement into the market, and the resulting allocation of the Orders, may not necessarily be in the same order as the Orders were placed or created.

**42.7** The Client acknowledges that an error, failure, delay or malfunction in the Broker's systems or the Exchange Systems may result in an order not being entered in accordance with the terms of the Conditional Order. For example, a Conditional Order may not be triggered if the relevant Trigger occurred during an error, failure, delay or malfunction in the Broker's systems or the Exchange Systems. The Broker may cancel a Conditional Order where there has been a system error, failure, delay or malfunction.

## D. Trading in Derivatives Products

The terms and conditions in this Part D apply to Derivatives Transactions where the Broker accepts the Client's application to open a Trading Account with the Broker to deal in exchange traded options or other exchange traded derivatives (other than Warrants) **(Derivatives Products)**.

A term used in this Part D which is defined in the ASX Clear Rules has the meaning given in the ASX Clear Rules. If the Client requires a copy of these definitions, please contact the Broker.

### 43 Application of Rules

**43.1** The Client and the Broker agree that the terms of their relationship in respect of Derivatives CCP Contracts and any dealings between them concerning Derivatives CCP Contracts are subject to, and that they are bound by the Corporations Act, the Rules, and the procedures, customs, usages and practices of ASX Clear and its related entities, as amended from time to time in so far as they apply to, Derivatives CCP Contracts.

### 44 Client documentation and acknowledgments

**44.1** The Client acknowledges that they have read and understood the documents (if any) given to them by the Broker as may be required by the Rules.

**44.2** The Client acknowledges that Derivatives Transactions give rise to a risk of loss as well as a potential for gain.

**44.3** The Client acknowledges that the Client has given consideration to the Client's objectives, financial situation and needs and has formed the opinion that dealing in Derivatives Transactions is suitable for the Client's purposes.

**44.4** The Client agrees not to breach, either alone or in concert with others, any position or exercise limits imposed by an Exchange or ASX Clear under their respective Rules or of which the Broker

otherwise notifies the Client.

**44.5** The Client acknowledges that they may only enter into Derivatives Transactions if they are not a U.S. person as that term is defined in Rule 902(k) of Regulation S under the Securities Act 1933 (United States).

### 45 Authority

The Client acknowledges that when the Client enters into Derivatives Transactions, the Client is either:

- (a) acting as principal; or
- (b) acting as intermediary on another's behalf and are specifically authorised to enter into Derivatives Transactions, by the terms of:
  - (i) an Australian Financial Services Licence held by the Client;
  - (ii) a trust deed (if the Client is a trustee); or
  - (iii) an agency contract.

### 46 Nature of the Broker's obligations

**46.1** Notwithstanding that the Broker may act in accordance with the instructions of, or for the benefit of, the Client in relation to Derivatives Transactions, the Client acknowledges that any Derivatives Transaction arising from any order submitted to an Exchange is entered into by the Broker as principal.

**46.2** Upon registration of a Derivatives Transaction with ASX Clear in the name of the Broker (at which time a Derivatives CCP Contract is created for each contract the subject of the Derivatives Transaction), the Client acknowledges that the Broker incurs obligations to a ASX Clear as principal, even though the Broker may have entered into the Derivatives Transaction on the Client's instructions.

### 47 Rights of client

The Client acknowledges that any benefit or right obtained by a Broker upon registration of a Derivatives Transaction with ASX Clear by novation of a contract under the ASX Clear Rules or any other legal result of registration is personal to the Broker and the benefit of that benefit, right or legal result does not pass to the Client. The Client has no rights, whether by way of subrogation or otherwise, against an Exchange or ASX Clear in relation to any transactions by the Broker in the Derivatives Transactions.

### 48 Dealing as principal

Without limiting clause 20, the Client acknowledges that the Broker may, in certain circumstances, be permitted under the Corporations Act and the Rules, take the opposite position in a Derivatives Transaction, either acting for another client or on its own account.

### 49 Client funds and property

**49.1** The Broker must deal with any money and property paid or given to the Broker in connection with Derivatives Transactions in accordance with the Corporations Act and the Rules. The Client acknowledges that the Client's monies and the monies of other clients of the Broker may be combined and deposited by the Broker in a trust account or clients' segregated account. The Client acknowledges that all monies credited to the clients' segregated account maintained by the Broker may be used by the Broker to meet the default of any client of the Broker.

**49.2** The Client agrees to maintain cleared funds in the Client's Cash Account or Bank Account for such sum as shall from time to time be required to settle the Client's obligations or such other sum as may otherwise be required by the Broker.

### 50 Deposits and margins

**50.1** The Broker may call for payment of money by the Client or the provision of other security by the Client, which the Broker considers, in its absolute discretion, appropriate in connection with



the obligations incurred by the Broker in respect of Derivative Transactions entered into on the Client's account.

**50.2** The Client becomes liable to provide to the Broker for:

- (a) any initial margin which ASX Clear requires from the Broker under the ASX Clear Rules in respect of any Derivatives Transaction at the time the transaction is entered into, regardless of when a call is made by the Broker under clause 50.1; and
- (b) any variation margin which ASX Clear requires from the Broker under the ASX Clear Rules in respect of any Derivatives Transaction at the time the Broker becomes liable to pay that amount to ASX Clear, regardless of when or whether a call is made by the Broker under clause 50.1.

**50.3** The time by which the Client must pay any amount called under clause 50.1 or provide security is of the essence. The Client must pay the amounts called, or provide the relevant security as soon as possible and otherwise within 12 hours of the call for payment.

**50.4** The Broker may, in its absolute discretion, vary its own initial margin and variation margin requirements, provided that the Broker calls the minimum amounts required by ASX Clear.

**50.5** It is important that you monitor your margin requirements, as they vary daily and must be covered at all times. You are responsible for managing your Account and having sufficient collateral readily available to support open positions. If the Client fails to meet the call or lodge security, or provide evidence as determined by the Broker in its sole discretion of their ability to meet margin as required under this clause 50, then the Broker may, without prejudice to any other rights or powers under this Agreement and in its absolute discretion (but is not obliged to) close out, without notice, all or some of the Client's positions in Derivative Products.

**50.6** The Client authorises the Broker to withdraw or otherwise apply funds or financial products held on the Client's behalf by the Broker, or funds in the Settlement Account, to partially or fully satisfy any call under clause 50.1.

**50.7** The Broker reserves the right to conduct daily stress tests on Client positions. The Broker may alter the Client's margin requirements at any time and in its sole discretion. Where the Client fails to provide adequate security, the Broker may in its absolute discretion, close out, without notice, all or some of the Client's positions in Derivative Products.

**50.8** The Client's liability for calls under clause 50.1 is not limited to the amount, if any, deposited with the Broker or in the Settlement Account.

## 51 Cover

**51.1** If the Client lodges any Cover with the Broker at any time, the Client represents and warrants to the Broker that:

- (a) the Client is the beneficial owner of that Cover; and
- (b) the Client's title to the Cover has not been restricted or limited in any way.

**51.2** The Client authorises the Broker to make any financial products lodged with, or otherwise held by, the Broker available to ASX Clear as Cover.

**51.3** The Client must not, without the prior consent of the Broker:

- (a) sell or dispose of the Cover;
- (b) create or allow to exist a security interest over, or any other interest in, the Cover or this Agreement; and
- (c) assign or transfer all or any part of its rights in, or obligations under, the Cover or this Agreement.

**51.4** The Client agrees that no interest is payable on any Cover provided to the Broker.

## 52 Equitable mortgage of Collateral

**52.1** If the Client has lodged uncertificated financial products as

Collateral, the Client authorises the Broker to effect a reservation of those financial products in the Broker's name or in the name of ASX Clear in a CHESS Holding in accordance with the ASX Settlement Rules.

**52.2** Upon lodgement of financial products with the Broker under clause 52.1 until ASX Settlement reserves those financial products in a subposition (in accordance with the ASX Settlement Rules), the financial products will be subject to an equitable mortgage from the Client to the Broker.

**52.3** The Client authorises the Broker to effect a release of the financial products from the subposition at any time in accordance with the ASX Settlement Rules. Upon such release, the financial products will again be subject to an equitable mortgage from the Client to the Broker.

**52.4** The equitable mortgage created under clauses 52.2 and 52.3 will secure:

- (a) any initial margin or variation margin obligations that arise in respect of the Trading Account; and
- (b) any amount which is owed by the Client to the Broker as a result of a Default.

**52.5** If new rights arise in relation to the Collateral lodged under this clause 52, the rights are to be held, renounced and transferred on the same basis under this Agreement as the financial products in the relevant CHESS Holding and will become subject to an equitable mortgage in favour of the Broker.

**52.6** If there is a Default, then the Broker may deal with the Collateral and rights or interests attaching to the Collateral in accordance with the terms of this Agreement.

**52.7** The Broker will release the equitable mortgage granted under this clause 52 in respect of any or all Collateral upon satisfaction of the Client's obligations under this Agreement.

## 53 Collateral to be sponsored by the Broker

**53.1** The Client must appoint the Broker as their Controlling Participant for the purposes of CHESS in relation to financial products that are to be lodged with the Broker as Collateral from time to time.

**53.2** All Collateral the Client lodges with the Broker will be subject to the Sponsorship Agreement.

**53.3** In registering financial products with the Broker as Collateral, the Client acknowledges and agrees that:

- (a) the Collateral will be subject to a fixed charge (**Charge**) in favour of ASX Clear from the time they are reserved to ASX Clear and will remain subject to the Charge until ASX Clear permits the financial products to be withdrawn;
- (b) the Charge secures all amounts and obligations owing by the Broker to ASX Clear in connection with the Client's Trading Account;
- (c) they have read and understood the ASX Clear Rules and ASX Settlement Rules, in so far as those rules relate to the Collateral and the Charge, including ASX Clear's power to deal with the Collateral on default by the Broker in respect of the Client's Trading Account and in particular, the ASX's power of sale in relation to the Collateral without notice to the Client;
- (d) the Client acknowledges and agrees that unless ASX Clear otherwise agrees in writing, the Collateral is not and may not be subject to any other security interest, other than a security interest provided to a margin lender, which provides that the Charge in favour of ASX Clear has priority over the margin lender's security interest or a security interest as permitted under the ASX Clear Rules or ASX Settlement Rules; and
- (e) financial products held as Collateral will only be released by ASX Clear if replacement Cover is provided, which may impact settlement obligations and/or the ability to participate in certain corporate actions, such as buy back offers.



## 54 Appointment of ASX Clear and its directors and managers as agent

The Client irrevocably appoints severally ASX Clear, and every director, manager and assistant manager for the time being of ASX Clear, at the option of ASX Clear to do all acts and execute all documents on the Client's behalf for the purpose of exercising the powers conferred on ASX Clear under the ASX Clear Rules including, without limitation, the power to transfer or close out Derivatives CCP Contracts if the Broker commits an event of default under the ASX Clear Rules.

## 55 Right to refuse to deal

The Client acknowledges that the Broker may at any time refuse to deal in, or may limit dealings in, Derivatives Products for the Client. The Broker is not required to act in accordance with the Client's instructions where to do so would constitute a breach of the Rules or the Corporations Act. The Broker will notify the Client of any refusal or limitation as soon as practicable.

## 56 Termination of Part D of this Agreement

Upon termination of this Part D in accordance with clause 24 of this Agreement, the Broker will close out all Derivatives CCP Contracts held by the Broker and registered in the Client's Trading Account, unless, in accordance with a direction from the Client, the registration of those Derivative CCP Contracts is transferred to another Broker in accordance with the Rules. Termination does not affect the existing rights and obligations of the Client or the Participant prior to termination.

## 57 Revised terms prescribed by an Exchange or ASX Clear

**57.1** If an Exchange or ASX Clear prescribes amended minimum terms for a Client Agreement for Derivatives Transactions for the purposes of the Rules (New Terms), to the extent of any inconsistency between the terms in this Part D and the New Terms, the New Terms will override the terms of this Part D and apply as if the Client and the Broker had amended this Agreement to include the New Terms.

**57.2** The Broker will provide a copy of the New Terms to the Client as soon as practicable after an Exchange or ASX Clear prescribes the New Terms.

## 58 Change of Participant

**58.1** If the Client receives a Participant Change Notice from the Broker and the Participant Change Notice was received at least twenty (20) Business Days prior to the date proposed in the Participant Change Notice for the change of Participant, the Client is under no obligation to agree to the change of Participant, and may choose to do any of the things set out in clauses 58.2 or 58.3.

**58.2** The Client may choose to terminate this Part D in accordance with clause 56 or by giving instructions to the Broker, indicating that the Client wishes to transfer its Derivatives CCP Contracts to another Participant.

**58.3** If the Client does not take any action to terminate this Part D and does not give any other instructions to the Broker which would indicate that the Client does not agree to the change of Participant then, on the Effective Date, this Part D will have been taken to be novated to the new Participant and will be binding on all parties as if, on the Effective Date:

- (a) the new Participant is a party to this Part D in substitution for the Broker;
- (b) any rights of the Broker are transferred to the new Participant; and
- (c) the Broker is released by the Client from any obligations arising on or after the Effective Date.

**58.4** The novation in clause 58.3 will not take effect until the Client has received notice from the new Participant confirming that the new Participant consents to acting as the Participant for the Client.

The Effective Date may as a result be later than the date set out in the Participant Change Notice.

**58.5** The Client will be taken to have consented to the events referred to in clause 58.3 by the doing of any act which is consistent with the novation of this Part D to the new Participant (for example by giving an instruction to the new Participant), on or after the Effective Date, and such consent will be taken to be given as of the Effective Date.

**58.6** Part D continues for the benefit of the Broker in respect of any rights and obligations accruing before the Effective Date and, to the extent that any law or provision of any agreement makes the novation in clause 58.3 not binding or effective on the Effective Date, then this Part D will continue for the benefit of the Broker until such time as the novation is effective, and the Broker will hold the benefit of this Part D on trust for the new Participant.

**58.7** Nothing in clause 58 will prevent the completion of Derivatives Transactions and Derivatives CCP Contracts by the Broker where the obligation to complete those transactions arises before the Effective Date and this Part D will continue to apply to the completion of those transactions, notwithstanding the novation of this Part D to the new Participant under this clause 58.

## E. Warrant Agreement

The terms and conditions in this Part E apply where the Client instructs the Broker to deal in Warrants.

## 59 Acknowledgements by Client

The Client acknowledges the following in relation to any Transactions in respect of Warrants:

- (a) that they have read and understood the documents (if any) given to them by the Broker as may be required by the Rules;
- (b) that the Client is aware that a Warrant has a limited life and cannot be traded after its expiry date;
- (c) that the Client is aware that Warrants do not have standardised terms of issue and acknowledges that it is the responsibility of the Client to become aware of the terms of issue of any Warrant in which the Client chooses to invest;
- (d) that the Client is aware that Warrants may be subject to adjustments after their initial issue and it is the responsibility of the Client to become aware of any adjustments which may have been made to any Warrant in which the Client chooses to invest;
- (e) that the Client is aware that admission to trading status of a Warrant does not imply that an Exchange or SEGC gives any guarantee or warranty as to the viability of the Warrant-issuer or any Guarantor; and
- (f) The Client acknowledges that the failure of the Warrant-issuer or the guarantor (if applicable) to fulfil their obligation does not give rise to a Claim against an Exchange, handling Market Participants or SEGC.

## F. Dealing In Partly Paid Securities

The terms and conditions in this Part F apply to Transactions relating to Partly Paid Securities, as defined below.

## 60 Meaning of Partly Paid Security

In this Part F, a Partly Paid Security means a financial product quoted on an Exchange for which the holder may be liable to pay a call or instalment in accordance with the terms of issue and for which an amount remains unpaid, but does not include a quoted product issued by a no liability company or a Derivatives Product.

## 61 Acknowledgements by Client

If the Client instructs the Broker to deal in Partly Paid Securities on the Client's behalf, the Client acknowledges and agrees that the

following terms apply in respect of those dealings:

- (a) the Client is aware that a Partly Paid Security is a financial product which may require the Client to make a further payment or payments at some time in the future;
- (b) the Client is aware that it is the Client's responsibility to obtain and read a copy of any prospectus, product disclosure statement or information memorandum issued by an issuer which sets out the particular features of, and rights and obligations attaching to, a Partly Paid Security before the Client places an Order to buy a Partly Paid Security;
- (c) the Client is aware that the Client may be liable for further payments on a Partly Paid Security and that a failure to make a further payment by the specified date(s) may result in an issuer of a Partly Paid Security or their associates or agents taking action, including legal action, against the Client to recover the outstanding payments and/or may result in the forfeiture of my entitlement to the Partly Paid Security;
- (d) the Client is aware that in certain circumstances the Client may be liable to make a further payment on a Partly Paid Security despite the fact that the Client may have disposed of a Partly Paid Security prior to the date that a further payment falls due;
- (e) the Client is aware that the Client should monitor announcements made by the issuer of a Partly Paid Security and that it is the Client's responsibility to inform itself/themselves of the date or circumstances that a further payment falls due and the last day that the Client can dispose of the Partly Paid Security before the Client is liable for a further payment;
- (f) the Client is aware that the amount of a further payment may be unrelated to the financial performance of a Partly Paid Security and that the amount of the further payment may exceed the intrinsic value of a Partly Paid Security at the time a further payment falls due; and
- (g) the Client acknowledges that an obligation on the Client in relation to a Partly Paid Security, including an obligation to make a further payment, does not give rise to a claim against an Exchange or the SEGC.

## G. CHESS Sponsorship Agreement

The terms and conditions in this Part G apply if the Client wishes to appoint the Broker as its Controlling Participant to establish and control CHESS Holdings of financial products for the Client in CHESS.

### 62 Interpretation

A term used in this Part G (also referred to as the Sponsorship Agreement) which is defined in the ASX Settlement Rules has the meaning given in the ASX Settlement Rules. If the Client requires a copy of these definitions, please contact the Broker.

### 63 Acknowledgements by Client

**63.1** The Client acknowledges that before agreeing to be bound by this Sponsorship Agreement, the Client:

- (a) had the opportunity to view the terms and conditions of this Sponsorship Agreement;
- (b) was provided with a written explanation of the effect of this Sponsorship Agreement;
- (c) understood the effect of this Sponsorship Agreement; and
- (d) was provided with telephone contact details which enabled the Client to obtain an explanation of the effect of the Sponsorship Agreement from the Broker.

**63.2** The Client acknowledges that if a transfer of financial products is taken to be effected by the Broker under Section 9 of the ASX Settlement Rules and the source holding for the transfer is a CHESS Holding under the Sponsorship Agreement, then the Client

may not assert or Claim against ASX Settlement or the relevant issuer that the transfer was not effected by the Broker or that the Broker was not authorised by the Client to effect the transfer.

### 64 Broker's and Client's rights and obligations

**64.1** The Client appoints the Broker as its Controlling Participant with respect to the Client's CHESS Holding, and authorises the Broker to do any act in accordance with the ASX Settlement Rules for the purposes of:

- (a) performing its obligations;
- (b) acting as Controlling Participant or agent in relation to that Holding; and
- (c) converting the mode of holding of the relevant financial products.

**64.2** Where the Client authorises the Broker to buy financial products, the Broker is not obliged to transfer financial products into the CHESS Holding of the Client until payment for those financial products has been received.

**64.3** If the Client has not paid for the purchase of financial products and the Broker has made a demand that the Client pays for the financial products, the Broker may sell those financial products at the Client's risk and expense (including brokerage and GST).

**64.4** If the Broker claims that an amount lawfully owed to it by the Client has not been paid, the Broker may refuse to comply with the Client's Withdrawal Instructions. The Broker may only refuse to the extent necessary to retain financial products with a value equal to 120% of the current market value of the amount claimed, in the Client's CHESS Holding.

**64.5** Subject to clauses 64.3 and 64.4 the Broker will initiate any Transfer, Conversion or other action necessary to give effect to Withdrawal Instructions within two (2) Business Days of the date of the receipt of the Withdrawal Instructions.

**64.6** The Broker will not initiate any Transfer or Conversion into or out of the Client's CHESS Holding without the express written authority of the Client.

**64.7** The regulatory regime which applies to the Broker includes the Corporations Act, and the Rules. The Client can obtain information as to the status of the Broker under these regulatory regimes from the relevant regulatory authorities, including ASIC, ASX, Cboe, SSX, ASX Clear and ASX Settlement. The Client may lodge a complaint against the Broker or any Claim for compensation with these regulatory authorities.

### 65 Information

The Client must supply all information and supporting documentation which is reasonably required to permit the Broker to comply with the registration requirements, as are in force from time to time, under the ASX Settlement Rules.

### 66 Exchange Traded Options, pledging and sub-positions

**66.1** Where the Client informs the Broker of an arrangement with ASX Clear to lodge financial products in its CHESS Holding as Cover under the ASX Clear Rules, the Client:

- (a) authorises the Broker to reserve the financial products in Sub-position so that the financial products come under the control of ASX Clear and are subject to the security interest granted in favour of ASX Clear to secure performance by the relevant Clearing Participant of its obligations to ASX Clear under and in accordance with the ASX Clear Rules 14.6.7;
- (b) authorises any subsequent dealing (including, without limitation, any transfer) of the reserved Financial Products in accordance with the Rules and ASX Clear Rules;
- (c) acknowledges that the financial products will remain subject to that security interest for so long as those financial products remain reserved in Sub-position in accordance with ASX Clear Rules 14.6.7; and

- (d) authorises the Broker to take whatever other action is reasonably required by ASX Clear in accordance with the ASX Clear Rules and ASX Settlement Rules to give effect to that arrangement.

**66.2** Where the Client informs the Broker that a charge or any other interest in financial products in the Client's CHESS Holding has been given, the Client authorises the Broker to take whatever action is reasonably required by the person in accordance with the ASX Settlement Rules to give effect to or record that interest.

**66.3** Where the Broker, in accordance with this Agreement or the ASX Settlement Rules, initiates any action which creates a sub-position over financial products in the Client's CHESS Holding, the Client acknowledges that the right of the Client to transfer, convert or otherwise deal with those financial products is restricted in accordance with the ASX Settlement Rules.

**66.4** Nothing in this Sponsorship Agreement operates to override any interest of ASX Clear in the financial products.

## **67 Fees and indemnities**

**67.1** The Client will pay all Brokerage fees and associated transactional costs within the period prescribed by the Broker.

**67.2** The Client indemnifies and must keep the Broker indemnified and held harmless against, and must pay the Broker for any liability, loss, cost (including legal costs on a full indemnity basis), expense, charge, tax or duty suffered, incurred or payable by the Broker in connection with:

- (a) performing its obligations under this Sponsorship Agreement;
- (b) acting as Controlling Participant or agent in relation to that CHESS Holding; or
- (c) any breach of this Sponsorship Agreement by the Client.

## **68 Change of Controlling Participant**

**68.1** If the Client receives a Participant Change Notice from the Broker and the Participant Change Notice was received at least twenty (20) Business Days prior to the date proposed in the Participant Change Notice for the change of Controlling Participant, the Client is under no obligation to agree to the change of Controlling Participant, and may choose to do any of the things set out in clauses 68.2 or 68.3.

**68.2** The Client may choose to terminate this Sponsorship Agreement by giving Withdrawal Instructions under the ASX Settlement Rules to the Broker, indicating whether the Client wishes to:

- (a) transfer the Client's CHESS Holding to another Controlling Participant; or
- (b) transfer the Client's CHESS Holding to one or more Issuer Sponsored Holdings.

**68.3** If the Client does not take any action to terminate this Sponsorship Agreement in accordance with clause 68.2 above, and does not give any other instructions to the Broker which would indicate that the Client does not agree to the change of Controlling Participant then, on the Effective Date, this Sponsorship Agreement will have been taken to be novated to the New Controlling Participant and will be binding on all parties as if, on the Effective Date:

- (a) the New Controlling Participant is a party to this Sponsorship Agreement in substitution for the Broker;
- (b) any rights of the Broker are transferred to the New Controlling Participant; and
- (c) the Broker is released by the Client from any obligations arising on or after the Effective Date.

**68.4** The novation in clause 68.3 will not take effect until the Client has received notice from the New Controlling Participant confirming that the New Controlling Participant consents to acting as the Controlling Participant for the Client. The Effective Date may as a result be later than the date set out in the Participant Change

Notice.

**68.5** The Client will be taken to have consented to the events referred to in clause 68.3 by the doing of any act which is consistent with the novation of this Sponsorship Agreement to the New Controlling Participant (for example by giving an instruction to the New Controlling Participant), on or after the Effective Date, and such consent will be taken to be given as of the Effective Date.

**68.6** This Sponsorship Agreement continues for the benefit of the Broker in respect of any rights and obligations accruing before the Effective Date and, to the extent that any law or provision of any agreement makes the novation in clause 68.3 not binding or effective on the Effective Date, then this Sponsorship Agreement will continue for the benefit of the Broker until such time as the novation is effective, and the Broker will hold the benefit of this Sponsorship Agreement on trust for the New Controlling Participant.

**68.7** Nothing in clause 68 will prevent the completion of CHESS Transactions by the Broker where the obligation to complete those Transactions arises before the Effective Date and this Sponsorship Agreement will continue to apply to the completion of those Transactions, notwithstanding the novation of this Sponsorship Agreement to the New Controlling Participant under clause 68.3.

**68.8** If the Client wishes to transfer their CHESS Holdings (which comprise AQUA Products) to another Controlling Participant, the notice of change will only be accepted if the new Controlling Participant is accredited in accordance with the settlement of AQUA Products.

## **69 Complaints and compensation**

**69.1** Except as referred to in this clause 69, no compensation arrangements apply to the Client in relation to this Sponsorship Agreement.

**69.2** The Client acknowledges that if the Broker breaches the Sponsorship Agreement:

- (a) and the Client makes a Claim for compensation from the Broker, the ability of the Broker to satisfy that claim will depend on the financial circumstances of the Broker;
- (b) the Client may make a Claim on the Cboe fidelity fund in the circumstances set out in section 11 of the Cboe Operating Rules;
- (c) the Client may make a Claim on the SSX fidelity fund in the circumstances set out in section 9 of the SSX Business Rules;
- (d) the Client may make a Claim on the National Guarantee Fund (NGF) for compensation in the circumstances specified under Part 7.5, of Division 4 of the Corporations Act and the Corporations Regulations 2001 (Cth)
- (e) the Client with holdings that comprise AQUA Products may make a Claim under the relevant compensation arrangements; and
- (f) the Client may refer that breach to any regulatory authority, including ASX Settlement.

(For more information on the circumstances in which the Client may or may not be eligible to make a Claim on the NGF or for information on the NGF generally, contact SEGC.)

**69.3** The Client may lodge a complaint against the Broker or any claim for compensation with ASIC, ASX, Cboe, SSX, ASX Clear, ASX Settlement or the Australian Financial Complaints Authority.

**69.4** The complaints and compensation schemes outlined in this clause, with the exception of the Australian Financial Complaints Authority, do not cover International Securities.

## **70 Suspension from CHESS**

**70.1** If the Broker is suspended from CHESS participation, then subject to the assertion by the liquidator, receiver, administrator or trustee of that Broker of an interest in financial products controlled by the Broker the Client may within twenty (20) Business Days of

ASX Settlement giving Notice of Suspension, give notice to ASX Settlement requesting that any of the Client's CHESS Holdings be removed either:

- (a) from the CHESS Subregister; or
- (b) from the control of the suspended Broker to the control of another Participant with whom they have concluded a valid Sponsorship Agreement pursuant to ASX Settlement Rule 12.19.10.

If the Client does not give such notice, ASX Settlement may effect a change of Controlling Participant under ASX Settlement Rule 12.19.11 and the Client will be deemed to have entered into a new Sponsorship Agreement with that Participant on the same terms as this Sponsorship Agreement. Where the Client is deemed to have entered into a Sponsorship Agreement, the new Controlling Participant must enter into a Sponsorship Agreement with the Client within ten (10) Business Days of the change of Controlling Participant.

## 71 Loss of legal capacity

71.1 The Client acknowledges that:

- (a) in the event of the Client's death or bankruptcy, a Holder Record Lock will be applied to all of the Client's CHESS Holdings in accordance with the ASX Settlement Rules unless the Client's legally appointed representative or trustee elects to remove the Client's CHESS Holdings from the CHESS Subregister; and
- (b) in the event of the death of the Client, this Sponsorship Agreement is deemed to remain in operation in respect of the legally appointed representative authorised to administer the Client's estate, subject to the consent of the legally appointed representative, for a period of up to twelve calendar months after the removal of a Holder Record Lock applied pursuant to clause 71.1(a) unless the Client's legally appointed representative or trustee elects to remove the Client's CHESS Holdings from the CHESS Subregister.

71.2 If the Client is a joint Holder, the Client acknowledges that:

- (a) where one of the Holders dies, the Broker will transfer all of the Client's CHESS Holdings under the Joint Holder Record into new CHESS Holdings under a new Holder Record in the name of the surviving Holder/s, and that this Sponsorship Agreement will remain valid for the new CHESS Holdings under the new Holder Record; and
- (b) in the event of the bankruptcy of one of the Holders, the Broker will:
  - (i) establish a new Holder Record in the name of the bankrupt Client, transfer the interest of the bankrupt Holder into new CHESS Holdings under the new Holder Record and request that ASX Settlement apply a Holder Record Lock to all Holdings under that Holder Record (unless the legally appointed representative of the bankrupt Holder elects to remove the CHESS Holdings from the CHESS Subregister); and
  - (ii) establish a new Holder Record in the name/s of the remaining Holder/s and Transfer the interest of the remaining Holders into new CHESS Holdings under the new Holder Record.

## 72 Termination

72.1 Subject to the ASX Settlement Rules, this Sponsorship Agreement will be terminated under the following circumstances:

- (a) by notice in writing from either the Client or the Broker to the other;
- (b) upon the Broker becoming insolvent;
- (c) upon the termination or suspension of the Broker from CHESS Sponsorship; or
- (d) upon the giving of Withdrawal Instructions by the Client to

the Broker in accordance with ASX Settlement Rule 7.1.10(c).

72.2 Termination of this Sponsorship Agreement under clause 72.1(a) will be effective upon receipt of Notice by the other party.

72.3 Termination of this Sponsorship Agreement does not affect the existing rights and obligations of the Client or the Broker at termination, and does not terminate any other Part of this Agreement.

## 73 Variation

73.1 The Broker may vary this Sponsorship Agreement by giving the Client written notice of the variation. The Broker must give at least seven (7) Business Days written notice of the variation if, in the reasonable opinion of the Broker, the variation is to remove any inconsistency between this Agreement and the Rules.

73.2 Except to the extent that clause 73.1 applies, this Sponsorship Agreement may be varied by the Broker giving the Client not less than seven (7) days' notice to the Client by electronic mail or by updating its Website.

## 74 Broker's contact details

The Contact Details for a responsible officer of the Broker who can explain the effect of the Sponsorship Agreement are as follows:

Email: [brokingservice@cmcmarkets.com.au](mailto:brokingservice@cmcmarkets.com.au)

Phone: 1300 360 071

## 75 Availability of executed Sponsorship Agreement

The Broker acknowledges that it is obliged to provide the Client with access to an executed version of the Sponsorship Agreement (which may be an electronic version posted on the Website or emailed to the Client) showing the details of execution, within three (3) Business Days after execution of the Sponsorship Agreement.

## H. Trading in International Securities

The terms and conditions in this Part H apply to International Securities where the Broker accepts the Client's application to enter into International Securities and describes important terms between you and the Broker, in its capacity as the provider of the international share trading, nominee and custody service.

## 76 Applications and documentation

76.1 The Broker may request additional documentation from the Client including identification, residency and taxation documentation before allowing the Client access to trade International Securities.

76.2 The Client authorises the Broker to provide personal information to third parties as required to comply with applicable laws of relevant foreign jurisdictions and to enable the Client to enter into International Securities Transactions.

76.3 The Client agrees to be bound by and comply with the procedures, Rules, customs, usages and practices of the relevant International Exchange (which will prevail in the event of any inconsistency with this Agreement) and the applicable laws of the relevant foreign jurisdiction.

76.4 The Broker may, in its absolute discretion, refuse to allow the Client to enter into International Securities Transactions including, but not limited to, where the Bank Account is unable to be cash vetted.

## 77 Service Providers

77.1 The Client appoints the Broker to arrange for execution of trades in International Securities (including associated Currency Conversions) and to provide, or otherwise procure, any associated settlement, nominee and custody services.

77.2 The Client acknowledges that the Broker has appointed service providers to perform aspects of its obligations under this Part including, but not limited to, execution, settlement and



custodial services in respect of any International Securities.

## 78 Orders

**78.1** The Client may from time to time place Orders with the Broker to enter into International Securities Transactions.

**78.2** The Broker may, acting reasonably decline or delay instructions provided by the Client at any time. The Broker is not required to provide a reason for its actions. The Broker may decline or delay an instruction in circumstances where, including but not limited to:

- (a) there are no available International Securities;
- (b) there is insufficient cleared funds deposited in the Client's Cash Account or Bank Account;
- (c) the Order falls outside terms allowed on the relevant International Exchange;
- (d) the Order does not meet the minimum Order size of the relevant International Exchange or service provider;
- (e) the Broker suspects the Order would contravene rules of the relevant International Exchange; or
- (f) the Broker suspects the Order would contravene laws or regulations in any jurisdiction.

**78.3** Orders may also be cancelled or amended by the relevant International Exchange, the Broker or any third party acting on the Broker's behalf.

**78.4** The Broker will use its reasonable endeavours to arrange the execution of the Client's Orders. The Client acknowledges that international time differences may lead to delays in execution.

**78.5** The Client may instruct the Broker to vary or cancel an Order on an International Security. The cancellation or variation will not be completed until the Broker notifies the Client

**78.6** The Broker will confirm the execution of a Transaction on an International Security.

## 79 Custodian

**79.1** The Client appoints the Broker as its Custodian in respect of International Securities and acknowledges that the Broker will hold a beneficial interest in the International Securities on the Client's behalf. The Client authorises the Custodian to appoint a Sub-Custodian. The Custodian will, on request, acknowledge the manner in which the International Securities are held.

**79.2** Legal ownership of International Securities will be in the name of the relevant Sub-Custodian, and the relevant Sub-Custodian's name will appear on the share registry.

**79.3** The Client acknowledges that the names of the Custodian, the Sub-Custodian and any sub-custodian that the Sub-Custodian appoints, will be named on the Website.

**79.4** The Client will retain beneficial ownership of their International Securities. The Client's International Securities will be held in an account with other Clients' International Securities. The Client acknowledges that they do not have any legal interest in and may not exercise any voting rights attached to the International Securities and agrees that they will not assert any interest in any International Securities or other products or cash in any way that would prevent the transfer of title.

**79.5** All communications regarding International Securities will be received by the Custodian or a Sub-Custodian, including notice of shareholders meeting, dividend information and corporate events. The Client acknowledges that the Custodian or Sub-Custodian is not obligated to pass any of this information on to the Client.

**79.6** A Sub-Custodian may appoint additional sub-custodians to act on their behalf.

**79.7** The Custodian will ensure that:

- (a) records of the International Securities held on the Client's behalf, including any associated transactions and how, by whom and when they were authorized will be retained; and

- (b) appropriately regular verifications for the reconciliation and checking of the International Securities will be conducted.

**79.8** The Custodian will report to the Client in respect of the International Securities as required by law. The Client may obtain information about the International Securities at any time by accessing the platform or contacting the Custodian.

**79.9** The Custodian must have in place and maintain adequate arrangements to enable it to provide the service under this Agreement in any contingency for which it should reasonably plan, having regard to the nature, scale and complexity of the Custodian's business.

**79.10** Subject to any disclosures the Client has agreed to under this Agreement, the Custodian will keep any information of a confidential nature in confidence, apart from any disclosure to ASIC or as permitted by law.

**79.11** The Custodian is prohibited from taking or granting any charge, mortgage, lien or other encumbrance over, or in relation to, the International Securities held by the Custodian, Sub-Custodian or any sub-custodian appointed by the Sub-Custodian, other than:

- (a) for expenses and outlays made within the terms of this Agreement other than any unpaid fees of the Custodian; or
- (b) in accordance with the Client's written instructions.

**79.12** If this Agreement is terminated or the Client is no longer allowed to trade International Securities under this Part H subject to any lien in accordance with this Agreement or any written instructions of the Client:

- (a) the International Securities held on the Client's behalf must be transferred (at the Client's expense) to the Client or in accordance with the Client's lawful direction within a reasonable time, subject to payment by the Client of all outstanding charges and expenses; and
- (b) if the Client fails to transfer all the International Securities within a reasonable time, the Broker may at its sole discretion acting reasonably proceed to sell any remaining International Securities held by it on behalf of the Client and apply the proceeds of any such sale to reduce the Client's liability (if any) to the Broker and to recover the Broker's costs in so acting.

**79.13** The Client acknowledges and agrees that the execution of trades in International Securities may only be held and dealt with as contemplated under this clause 79 and in no circumstance are trades in International Securities convertible to depository or custody receipts.

## 80 Corporate Actions

**80.1** The Broker will not notify the Client of any proposed corporate actions, notices of general meetings or annual reports or company announcements on International Securities.

**80.2** The Broker will not accept any Client's instructions to act on a corporate action.

**80.3** The Broker is not liable for any failure to act on the Client's behalf in a corporate action.

**80.4** In the event of a Mandatory Corporate Action in relation to International Securities held by the Client, the Broker will assign the Client to the default position, and where relevant, credit dividends or other payments into the Client's Cash Account or Bank Account or allocate International Securities to the Client's Trading Account.

**80.5** Where the Client is entitled to a fraction of an International Security following a Mandatory Corporate Action the fraction will be rounded down to the nearest whole number. Any surplus International Securities will be sold and distributed to Clients where possible.

## 81 Fees and Currency Conversions

**81.1** The Client is liable for the fees associated with entering into International Securities Transactions. These fees may include a foreign exchange spread, conversion fee, custody fee, market fees



and market data fees. Fees are further explained in the Financial Services Guide.

**81.2** When a Client places an Order, the Client will receive an indicative quote for the relevant Currency Conversion. The Currency Conversion will include an additional buffer on buy Orders as displayed on the platform to assume that sufficient funds are available to settle the Transaction in the event of a fluctuation in the exchange rate between the Australian dollar and the relevant international currency. By proceeding with the Order, the Client agrees to the Currency Conversion at an exchange rate which may differ from the indicative quote depending on fluctuations in the market.

**81.3** The Client acknowledges that:

- (a) they are unable to enter into an International Security Transaction without a Currency Conversion.
- (b) they are unable to withdraw foreign currency from their Cash Account or Bank Account; and
- (c) the Client's funds may be sent to a third party located in a foreign jurisdiction, where the legal and regulatory protection afforded to Australian funds may not apply.

## 82 Cash Account and Bank Account

**82.1** On placement of a buy Order of an International Security, the Client acknowledges that the relevant amount including fees and the Currency Conversion buffer may be 'locked' in the Client's Cash Account or Bank Account. From that time, the Client will not be able to withdraw those 'locked funds'. Only the Broker will be entitled to use those funds for the purposes of settling the relevant Transaction or as otherwise permitted under this Agreement.

**82.2** On execution of a sell Order on an International Security, or any other payment to which the Client is entitled, the Broker will arrange a Currency Conversion where necessary before crediting the converted amount into the Client's Cash Account or Bank Account in AUD.

**82.3** Clause 14 of this Agreement will also apply to any failure to settle an **International Securities Transaction**.

**82.4** The Client must maintain a minimum \$100 balance in their Cash Account or Bank Account if the Client is holding any International Securities in their Trading Account.

## 83 Tax

**83.1** Where the Client has submitted taxation and residency documentation, the Broker will withhold tax at the rate applicable under local laws in the jurisdiction in which the International Securities are traded.

**83.2** The Client is aware that tax treatment may differ according to personal circumstances and the tax legislation in the relevant jurisdiction for International Securities. The Client may also be liable for other taxes and charges that are not imposed or withheld by us. The Client is solely responsible for the timely payment of such taxes and charges. The Client should seek independent advice if the Client is in any doubt as to what taxes and charges may apply as a result of trading activities.

## 84 Client warranties and acknowledgements

**84.1** The Client warrants and represents that:

- (a) all information supplied under clause 76.1 is true, complete and accurate in all respects and the Client will immediately notify the Broker of any change in any information supplied;
- (b) the Client is a resident for taxation purposes of the country noted in their Application Form or if tax residency is not specified, the Client is an Australian resident for tax purposes unless otherwise notified in writing to the Broker;
- (c) the Client is authorised to enter into International Securities Transactions;
- (d) the Client will comply with the procedures, Rules, customs,

usages and practices of each relevant International Exchange;

- (e) the Client will not create or assert any security interest or encumbrance over the International Securities;
- (f) the Client will not place any Order in the circumstances outlined in clause 78.2;
- (g) the Client will not place any Order to deal with International Securities on behalf of any third parties unless the Client is authorised to do so by the Broker; and
- (h) the Client will notify the Broker if they become a substantial shareholder in any jurisdiction.

**84.2** The Client acknowledges that:

- (a) the Broker provides the services contemplated under this Agreement in Australia and are subject to the laws, rules and regulations of Australia;
- (b) the Broker may at any time cease to trade International Securities and/or International Exchanges. Where the Client holds an International Security that is no longer supported by the Broker, the Broker will provide reasonable notice of the sale of the International Security;
- (c) where an International Security is delisted, or otherwise withdrawn the Broker will endeavour to sell the International Security and credit the proceeds into the Client's Cash Account or Bank Account. The Broker will not be liable for any failure to sell a delisted International Security;
- (d) the rights and powers under this Agreement extend to any third party service provider appointed to act on the Broker's behalf;
- (e) the Broker may aggregate Orders for International Securities. The Client will be liable to pay the fees applicable for a stand-alone Order even where there is a reduction in fees due to the aggregation of Orders;
- (f) the complaints and compensation schemes outlined in clause 30 other than in relation to the Australian Financial Complaints Authority do not apply to trading in International Securities; and
- (g) Orders may be purged if unfulfilled after the close of the trading day in each International Exchange. Where the Client's Order hasn't expired or been executed, the Client will need to resubmit it on the following trading day. Expiry types will be noted on the platform.

## 85 Limitation of liability for International Securities

**85.1** In addition to clause 29, but subject to this clause 85, and to the full extent permitted by law, the Broker excludes all liability in contract, tort or otherwise relating to or resulting from any action, omission, fraud or negligence of any third party service provider acting on the Broker's behalf or any Sub-Custodian, except to the extent there has been negligence, fraud or wilful misconduct on the part of the Broker.

**85.2** Subject to clause 85.3, the Custodian will be liable to the Client if the Client suffers Loss due to a failure by the Custodian, the Sub-Custodian or any sub-custodian appointed by the Sub-Custodian to comply with its duties under this Agreement or to observe reasonable standards generally applied by providers of custodial or depository services for holding International Securities.

**85.3** The Custodian will not be liable to the Client for any Loss which arises from the insolvency of the Sub-Custodian or any sub-custodian appointed by the Sub-Custodian if the Custodian has taken reasonable care in engaging and monitoring compliance by the relevant entity.

## Schedule of Terms – Additional Terms for Market Data

### 1 Additional Definitions

In addition to the Definitions section in the General Terms, capitalised terms used in this Schedule of Terms shall have the meanings set out below:

<b>Data Delivery Type</b>	means the following methods of delivering Market Data Services to a Trading Account:  (a) streaming or streamed; or (b) click to refresh.
<b>Data Type</b>	means the following types of Market Data:  (a) live; or (b) delayed.
<b>Market Data</b>	means price and trade related data for financial products offered on venues, available through the Online Service.
<b>Market Data Services</b>	means the customised Market Data service made available by the Broker on a Trading Account, comprised of Data Delivery Type and Data Type selections for the Client.

### 2 General

- 2.1** The Client agrees that this Schedule of Terms shall apply when using the Market Data Services on a Trading Account.
- 2.2** Subject to availability on a particular market, the Client may select the Data Type and the Data Delivery Type to which different fees may apply.

### 3 Fees

- 3.1** The fees charged for the Market Data Services are displayed when using the Online Service and in the Broker's Financial Services Guide. These may be updated from time to time.
- 3.2** With the exception of the delayed Data Type, Clients may be required to pay a monthly fee per Trading Account ("Monthly User Fee") to use the Market Data Service, as notified by the Broker from time to time.
- 3.3** The Client authorises the Broker to deduct the Monthly User Fee from the Client's Trading Account for each month that the Monthly User Fee is payable.
- 3.4** If the Client has access to more than one Trading Account, the Client must nominate the Trading Account from which it would like the Broker to deduct the Monthly User Fee for a particular month at any time before the end of that month.
- 3.5** The Broker will notify the Client of each Monthly User Fee payable by:
- (a) electronically sending each Client an invoice for the Client's Monthly User Fee; and
  - (b) storing an electronic copy of the invoice on the Online Service, accessible using each Client's Security Information, within 5 days after the end of each month during which the Monthly User Fee is payable.
- 3.6** The Broker will deduct the Monthly User Fee from the Client's Trading Account within 1 Business Day after providing an invoice under paragraph 3.5 of this Schedule.
- 3.7** If the Client begins using the Market Data Service any time on or after the first day of a calendar month, the Monthly User Fee

is payable for the entire month.

- 3.8** The Monthly User Fee is not payable for any month that the Client does not access the Online Service at any time in that month.
- 3.9** The Client may change the Market Data Service by changing the Data Delivery Type or Data Type on their Trading Account at any time by giving notice to the Broker:
- (a) through the Online Service; or
  - (b) by telephone.
- 3.10** By changing or selecting a different Market Data Service, by changing the Data Delivery Type or Data Type, the Client agrees that different fees may apply and the Client must pay the higher relevant Monthly User Fee for the calendar month in which the Market Data Service is changed.

## Schedule of Terms – Additional Terms for Alerts Service

This Schedule of Terms applies when the Client uses the Alerts Service (as defined in this Schedule) available on a Client's Trading Account. For the avoidance of doubt, such terms apply in addition and supplemental to any other terms in the Part A General Terms and Conditions (**General Terms**).

In the event of an inconsistency between this Schedule of Terms, the General Terms and any other term or document referred to in either document, the terms of this Schedule of Terms shall prevail.

### 1 Additional Definitions

In addition to the Definitions section in the General Terms, capitalised terms used in this Schedule of Terms shall have the meanings set out below:

<b>Alert</b>	means a notification sent to the Client by way of SMS, Push Notification, email and/or browser message, when a Client opts in to the Alerts Service.
<b>Alerts Service</b>	means the Alerts made available by the Broker on a Trading Account.
<b>Push Notification</b>	A notification generated by the CMC Markets Invest application on your device.

### 2 How Alerts will be sent

- 2.1 Each time an Alert is sent to the Client, the Broker will send it to the Client's nominated method:
- by SMS to your mobile phone;
  - by Push Notification, provided you have installed the CMC Markets Invest application on your device and enabled notifications;
  - by e-mail; or
  - as a browser message.

### 3 Criteria for generation of an Alert

- 3.1 The Client may request that the Broker send the Client an Alert message of the type that we indicate in clause 2.1 are available from time to time (**Alert Type**). You can make a request for an Alert in one of two ways on the platform:
- on the 'My Alerts' page; or
  - hover over any ASX listed stockcode and select the type of alert from the 'Add Alerts' menu.

### 4 Cancellation

- 4.1 The Broker may suspend the Client's access to the Alerts Service or cease to use the Alerts Service at any time for any reason.

#### 85.4 Availability

- 4.2 The Client acknowledges that the Client's access to Alert messages depends on factors outside the Broker's control, including any disruption, failure or malfunction in any part of the Internet or an SMS network. Access to the Alerts Service may also be limited or unavailable during periods of peak demand, systems interference, damage or maintenance, or for other reasons.
- 4.3 The Broker accepts no liability if for any reason an Alert message is not sent by the Broker or not received by the Client.

### 5 SMS Message Security and Delivery

- 5.1 Sending SMS messages to the Client's mobile phone depends on electronic transmission of data across networks operated by mobile phone service providers. The Broker does not control the SMS networks for mobile phones and does not guarantee the security of mobile phone data transmissions.
- 5.2 The Client is responsible for ensuring that the Client's mobile phone can receive SMS messages, and that it is working correctly, turned on and within signal range of the mobile phone network.
- 5.3 The Client is responsible for all SMS network and message service charges.

### 6 Alert message content

- 6.1 The Broker accepts no responsibility for the content of any Alert.
- 6.2 An Alert (or the fact that the Broker has sent an Alert to the Client) does not constitute a recommendation by the Broker or advice in relation to the subject matter of the Alert.

### 7 Liability

- 7.1 To the maximum extent permitted by law, every other condition, warranty, term, provision, representation or undertaking (express, implied, written, oral, collateral, statutory or otherwise) relating to the Alerts except these Alert System Terms and Conditions is excluded altogether or (to the extent exclusion is unlawful) is limited to the payment of the cost of having the services supplied again.

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