



## Client agreement

Openmarkets Australia Limited (ABN 38 090 472 012, AFSL 246705)  
is a Market Participant of ASX, Cboe Australia and NSX, and an ASX  
Clear and Settlement Participant

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# Your agreement with us

These are the terms and conditions (**Terms** or **Terms and Conditions**) on which Openmarkets Australia Limited (ABN 38 090 472 012, AFSL 246705) (**Openmarkets**) and if we provide any nominee services, Openmarkets Nominees Pty Ltd (ABN 38 090 472 012, Authorised Rep No. 1267031, a Corporate Authorised Representative of Openmarkets) (**Openmarkets Nominees**), and Openmarkets Trading Pty Ltd (ABN 48 619 836 314 ) (all of which may be referred to collectively and each individually as we, us and our) provide services to Clients (referred to as you or your). We may provide services both directly to you and through Intermediaries which have an agreement with you and with us (either jointly or separately). The Terms apply to all dealings between you and us.

By applying to us, or through your Intermediary, for our services and for all services that we may provide to you from time to time, you acknowledge and agree that you have read, understood, and are bound by the Terms. If you do not accept these Terms, you must not use or receive our services, either directly or through your Intermediary.

These Terms constitute a legally binding agreement between you and us.

## Contents of Terms

The Terms are made up of the following parts which generally apply as summarised below, with further details of their application at the start of each Part:

- **Part A: General Terms** – These terms apply to all dealings with you and all services that we provide to you, directly or through your Intermediary.
- **Part B: General equities trading Terms** – These terms apply to all equity trading activities made by us through your Intermediary or by your use of Direct Market Access.
- **Part C: CHESS Sponsorship agreement** – These terms apply to all clearing activities we undertake in relation to your trades settled through CHESS.
- **Part D: Derivatives terms** – These terms apply to all of your derivatives trading.
- **Part E: Nominee terms** – These terms apply to nominee/custodial services that we provide for your securities.
- **Part F: International Securities** – These terms set out details of our arrangements with a third-party provider of execution and settlement services for International Securities, that you will need to enter into a client relationship with for such transactions.

## Changes to Terms

We may from time-to-time review and update these Terms, including to take account of new laws, regulations, changes to Securities Exchanges' rules, products, or technology. Your use of our services will be governed by the most recent Terms posted on our website at [openmarkets.com.au/legals](https://openmarkets.com.au/legals). You agree that by posting updates to the Terms on our website we are giving you notice of the changes to those Terms. By continuing to use any of our services, either directly or through an Intermediary, you agree to be bound by the most recent Terms which are available on our website. It is your responsibility to check the website regularly for updated versions of the Terms.

We have discretions under these Terms which can affect your dealings with us. You do not have any power to direct how we exercise our discretions. When exercising our discretion, we will

comply with our legal obligations. We will have regard to our policies and to managing all risks (including financial, credit and legal risks) for ourselves and all our clients, our obligations to our counterparties, market conditions and our reputation.

Capitalised terms used throughout these Terms are defined in the schedule to this agreement:

***Schedule – Definitions and Interpretation.***

We strongly encourage you to regularly review our website at [openmarkets.com.au/legals](https://openmarkets.com.au/legals) for any updates or changes to these Terms, or any other documents referred to in these Terms including but not limited to, our Privacy Policy, Financial Services Guide, and Best Execution Policy.

## **Contact us**

You can contact our Client Services team for any issues relating to the services we provide to you by any of the following means.

- Email: [service@openmarkets.com.au](mailto:service@openmarkets.com.au)
- Website: [openmarkets.com.au/contact](https://openmarkets.com.au/contact)
- Phone: 1300 769 433



# Part A: General Terms and Conditions

## Section 1: Communication with you

### A1. Your instructions

- (a) Any instructions which you give to us must be in writing unless otherwise accepted by us.
- (b) Without in any way limiting any other form of acceptance by you of these Terms and Conditions, you will be deemed to have accepted these Terms and Conditions by providing instructions to us, either directly or through an Intermediary.
- (c) We are not required to act on your instructions where any monies are owed by you to us.
- (d) Where you are more than one person or entity, we may act on the written instructions of each of you without the necessity to refer to or notify any other person in connection with those instructions. Signatures of all joint account holders will be required to give directions relating to payments to third parties unless otherwise permitted by us.
- (e) if you are a company, unless otherwise specified in writing, we may act on the instructions of any one of the directors of the company as advised by you without the necessity to refer to or notify any other person in connection with those instructions.

### A2. Instructions by email

You acknowledge and agree that:

- (a) you are and will at all relevant times be authorised to make communications to the Intermediary (who will pass on those communications to us on your behalf) (including as the case may be, to give instructions in respect of transactions in respect of Financial Products) by email;
- (b) communication by email is not a secure means of communication and involves higher risks of distortion, manipulation and attempted fraud;
- (c) you authorise the Intermediary and us to accept and act without any inquiry upon, communications (including instructions) provided by email which appears to the Intermediary or us to have been provided by or for you; and
- (d) you indemnify the Intermediary and us in respect of any and all claims, liabilities, direct or consequential losses, costs, charges or expenses (of any nature) incurred or suffered by the Intermediary or us as a result of the Intermediary or us acting on communications (including instructions) provided by email.

### A3. Telephone recording

You agree and consent to:

- (a) the electronic recording by us of the telephonic conversations between you and us with or without an automatic tone warning device;
- (b) the use of recordings or transcripts from such recordings for any purpose which Openmarkets deems desirable, including their use as evidence by either party in any dispute or anticipated dispute between us, the Intermediary or you; and
- (c) Openmarkets keeping the recording for as long as it sees fit.

#### A4. Electronic correspondence

You hereby nominate your email address (as provided to us or the Intermediary from time to time) for the purpose of receiving all communications and consent to receiving (and authorise us to use your email address to send to you) any Disclosure Document we are required to provide to you including any updates to these documents.

You agree that Openmarkets may:

- (a) provide you with a link to a Disclosure Document such that you are able to access the document electronically;
- (b) provide to you a Disclosure Document by means of an electronic portal or application service by which you are able to access the documents;
- (c) arrange for the Intermediary to provide to you electronically (as agent for Openmarkets) any of the Disclosure Documents by any means set out in this clause. You may opt out of receiving a Disclosure document electronically by giving notice to the Intermediary within 7 days of agreeing to these Terms and Conditions and the Intermediary will arrange for you to receive a hard copy of the documents. You agree that you will retain a copy of each Disclosure Document provided to you by downloading or otherwise making a copy of the document.

## Section 2: Fees

#### A5. Fees and payment

- (a) Openmarkets will receive payment from Clients of commission or fees. You agree that where you use our services through an Intermediary, it is typically the Intermediary (and not Openmarkets) that is to charge you fees or commission in respect of Transactions contemplated by this agreement (other than any fee or charge payable directly to Openmarkets as set out herein or in our Financial Services Guide, available at: [openmarkets.com.au/legals/financial-services-guide](https://openmarkets.com.au/legals/financial-services-guide)) and Openmarkets receives such money as the agent of (and not as trustee for) the Intermediary.
- (b) We are entitled to charge fees notified by us to you from time to time and may vary the fees payable by you by giving you reasonable notice of such imposition or change prior to its occurrence.
- (c) You must pay us on demand all stamp duty or any other duty imposed by state or federal legislation and registration fees (if any) payable on or in connection with this agreement and any documents executed under or in connection with this agreement and all legal costs (on a solicitor and own client basis) and expenses of or in connection with the enforcement or attempted enforcement of this agreement and all costs and expenses including financial institutions duty and debits tax (whether payable directly by us or payable by us by way of reimbursement to the party liable to pay the same) in relation to all transactions (including payments, receipts and banking thereof) and all matters connected with or arising out of or contemplated by this agreement.
- (d) We may debit any account maintained on your behalf by Openmarkets or any of its Related Bodies Corporate with:
  - (i) all fees and other money payable to us by you under these terms and conditions;

and

- (ii) any other money owing or paid in respect of any Financial Product held in custody.
- (e) Openmarkets must not take or grant a charge, mortgage lien or other encumbrance (**Encumbrance**) over or in relation to the Financial Products unless such Encumbrance is for expenses and outlays made within the terms of this agreement (other than unpaid fees owed by you to us) or such Encumbrance is otherwise in accordance with your written instructions. You hereby agree and instruct Openmarkets that if any amount owing or payable by you to us on any account is not paid by the due date for payment we may (without prejudice to any other rights of us under these terms and conditions or at law) sell any Financial Products held by us in custody for you. We shall not be liable or responsible for any loss or damage so caused. Openmarkets may apply the proceeds in the reduction of your liability to us.
- (f) You must pay all fees and associated transactional costs within the period prescribed by us, as outlined in our Financial Services Guide and these Terms.

#### **A6. Interest in Openmarkets' trust account**

You acknowledge that Openmarkets will retain the interest (if any) earned on monies held in its trust account from time to time.

#### **A7. GST**

- (a) If the supply of any goods or services to you by us under this agreement is a taxable supply, then unless advised otherwise, you must pay us an amount equal to the amount of the GST at the same time as the consideration is due for the supply.
- (b) Unless expressly stated otherwise, all fees, charges and other consideration to be provided under these Terms and Conditions are GST inclusive. If a fee is expressly stated to be exclusive of GST, then payment to us must also include the GST amount.
- (c) If GST is payable on anything supplied to you under these Terms, we will provide you with a Tax Invoice on request or as required by law.
- (d) Words defined in the A New Tax System (Goods & Services Tax) Act 1999 have the same meaning in this clause.

#### **A8. No withholding**

All payments to be made to Openmarkets must be made without deduction or withholding. If you are obliged by law to deduct or withhold any amount from any payment to be made under this agreement the Client will concurrently pay to Openmarkets such additional amount as will result in Openmarkets receiving the full amount which would have been received if the deduction or withholding had not been made.

#### **A9. Currency**

All payments under this agreement are to be made in Australian dollars, except as Openmarkets otherwise agrees. If for any reason (including any judgment or order) any amount payable by the Client under this agreement is received or recovered by Openmarkets in another currency which, upon conversion of the other currency into Australian dollars, is less than the amount which would have been received by Openmarkets if paid in Australian dollars, then the Client must as an independent obligation indemnify Openmarkets on demand against the deficiency.

## Section 3: Liability

### A10. Personal advice

Openmarkets is authorised under its AFSL to provide (amongst other things) the following financial services:

- (a) financial product advice, both general and personal;
- (b) dealings in particular financial products (e.g. securities and derivatives) by issuing, applying for, acquiring, varying or disposing of those financial products; and
- (c) dealing in particular financial products (e.g. securities and derivatives) on behalf of others.

Openmarkets and its authorised representatives are committed to providing advice appropriate to your personal circumstances and based on our comprehensive market and financial knowledge. Our aim is to work with you to determine, develop and maintain a tailored personal investment strategy.

We may not always provide personal advice, and in some cases, we may provide general advice that does not consider your personal circumstances or execute transactions according to your directions.

We recommend you review our Financial Services Guide for particular services we are authorised to provide to Clients (available at: [openmarkets.com.au/legals/financial-services-guide](https://openmarkets.com.au/legals/financial-services-guide)).

### A11. Openmarkets' warranties and liabilities

Subject to those provisions of the Competition and Consumer Act (Cth) and any other rights implied by law, which cannot be excluded by agreement between the parties, Openmarkets makes no representations or warranties express or implied, including without limitation, any implied warranties as to merchantability, quality or fitness for a particular purpose or otherwise (including as to the accuracy, currency, availability, completeness or quality) with respect to any services that we provide to you.

### A12. Indemnity

- (a) You must, to the maximum extent permitted by law, at all times and from time to time, indemnify and keep each of us and our Related Bodies Corporate and any of their respective directors, officers, contractors, agents and employees (each an **Indemnified Person**) harmless from and against all liabilities, losses, damages, costs or expenses directly or indirectly suffered by the Indemnified Person and from and against all actions, proceedings, claims for damages made against the Indemnified Person as a result of any:
  - (i) Transaction entered into by us on your behalf or by you using our services;
  - (ii) delay in the execution of an Order;
  - (iii) failure by you to settle;
  - (iv) breach by you of these Terms;
  - (v) breach by you of any other agreement with us;
  - (vi) breach by you of any representation or warranty made or taken to have been made by you (including without limitation in relation to any disclosure to be made in respect of sale Orders) not being true or correct;
  - (vii) instruction given to us by an Intermediary on your behalf; and
  - (viii) act or omission of an Intermediary relating to your Cash Account, Trading Account

or any Order (whether or not the Order was received by Openmarkets), other than to the extent that the loss has resulted from Openmarkets' negligence, wilful default or fraud.

- (b) Each indemnity in these Terms (including in this clause, for nominee services and otherwise):
  - (i) is a continuing obligation, which is independent of and separate from your other obligations; and
  - (ii) survives the termination of these Terms.

### **A13. Assignment to the Intermediary of debts owed by you to us**

If you have not paid any debt to us, you acknowledge that we may (by notice to you and the Intermediary) assign that debt to the Intermediary and the assigned debt will become an obligation of yours owed to the Intermediary. In the event of such an assignment, the Intermediary (and each of its directors and employees) will have the rights and powers (and may do all the things) that we had under this agreement, as if a reference to us were a reference to the Intermediary.

### **A14. Liability and indemnity for nominee services**

- (a) To the maximum extent permitted by law, in no event shall Openmarkets Nominees, any of its Related Bodies Corporate, or any of their officers, directors, agents, representatives or employees be liable for any damage, claim or loss (including, without limitation, incidental loss, indirect or consequential loss, exemplary damages, loss of profits or loss of revenue) incurred by you in connection with or arising from:
  - (i) any failure by you to comply with these Terms;
  - (ii) Openmarkets Nominees holding your Financial Products,unless due to the negligence, fraud or dishonesty of Openmarkets Nominees.
- (b) In addition to any other indemnities provided by you under these Terms, you agree to indemnify and hold Openmarkets Nominees, all of its Related Bodies Corporate, and any of their officers, directors, agents, representatives, or employees (**Indemnified Parties**) harmless against any losses, actions, costs, claims, damages, demands, expenses, proceedings, and liabilities paid, suffered or incurred by the Indemnified Parties directly or indirectly because of:
  - (i) any of the Indemnified Parties acting under, or in connection with, these Terms, except to the extent that any loss is caused by the negligence, fraud or dishonesty of any Indemnified Party;
  - (ii) any breach by you of these Terms; or
  - (iii) Openmarkets Nominees holding of your Financial Products,and you agree to pay any such costs or the amount of loss or damage to the relevant Indemnified Party on demand.
- (c) Openmarkets Nominees is not obliged to supervise your investment in the Financial Products purchased or provided by you, or to advise on them.
- (d) Openmarkets Nominees is not liable to you for any loss or damage suffered by you as a consequence of or related to Openmarkets Nominees' handling of your account, Financial Products or Transactions except where the loss or damage was directly caused by

Openmarkets Nominees' gross negligence, fraud or dishonesty.

#### **A15. Exclusion of liability for Trading Services**

- (a) You acknowledge that all services that we provide to you that allow you to directly trade Financial Products, including any direct market access service or access to an API for trading (**Trading Services**), is provided at your risk and that to the extent permitted by law, we exclude all liability in contract, tort (including negligence) or otherwise relating to or resulting from the use of those services, including without limitation, liability for any loss or damage (including incidental, indirect and consequential loss and damage, loss of prospective profits, or expenses) incurred or suffered by you directly or indirectly, as a result of:
- (i) any defect, delay, failure, inaccuracy in, use of or inability to use the Trading Services; or
  - (ii) any government restriction, exchange or market rulings, suspension of trading computer or telephone failure, unlawful access to the service, theft, sabotage, war, earthquakes, strikes, force majeure and without limitation, any other conditions beyond our control.
- (b) In any event, our liability for the supply of Trading Services to you shall be limited to the resupply of those services.

#### **A16. Failure to Settle**

- (a) You acknowledge that, if you or your Intermediary fail to make any payment or deliver any documents or security holder information required by us or otherwise fail to comply with Settlement Obligations in relation to a Transaction made in accordance with these Terms and Conditions or a relevant Confirmation, Openmarkets may (and may be obliged under the relevant settlement rules of a Securities Exchange) without notice to you do any one or more of the following:
- (i) charge an administration fee calculated by reference to the additional cost which may be incurred by us (including any fail fees imposed by a Securities Exchange or ASX Clear) as a result of your failure to settle;
  - (ii) levy a default charge on the amount from time to time outstanding at a rate of up to 15% per annum;
  - (iii) sell out (or procure the sell out of) any Financial Products purchased (and you are fully responsible for any loss in connection with such sale) and apply the proceeds in reduction of your liability to us and to recover our costs in so acting;
  - (iv) buy in (or procure the buy-in of) any Financial Products sold (and you are fully responsible for any loss in connection with such purchase) and recover our costs in so acting;
  - (v) sell out (or procure the sell out of) any Financial Products otherwise held on your behalf (and you are fully responsible for any loss in connection with such sale) and apply the proceeds in reduction of your liability to us and to recover our costs in so acting;
  - (vi) apply any cash held by us or the Intermediary (or to which they have access ) on your account (including in a Cash Account or Trading Account), or payments received for or from you in reduction of your liability to us;
  - (vii) do all things reasonably necessary to recover any loss in connection with the



Transaction from you and your Intermediary; or

- (viii) cancel (or instruct the Intermediary to cancel) any of your unexecuted Orders, and you authorise us and each of our directors and employees as your attorney to give instructions on your behalf in respect of your Traded Product holdings sponsored by us (or our affiliates) in CHESS or held by us or an affiliate of us or the Intermediary in nominee holdings and in respect of call deposit facilities or cash management trust accounts on which either the Intermediary or us is authorised to give instructions, to enable us to realise those Financial Products or funds and apply the proceeds in reduction of your liability to us and to recover our costs in so acting.
- (b) If you fail to settle, we may make arrangements on your behalf to ensure that your Settlement Obligations are performed (including by buying-in or borrowing the relevant Financial Products). If you have not met your Settlement Obligations owed to us in respect of a Transaction executed for you by the Business Day nominated by the Securities Exchange after the relevant Order was executed, it is our policy (and we may be obliged under the rules of the relevant Securities Exchange), without any notice to you:
  - (i) in the case of a purchase, to execute a Transaction to close out the failed purchase (by selling the relevant Financial Products); or
  - (ii) in the case of a sale, to execute a Transaction to close out the failed sale (by buying-in the relevant Financial Products), and recover any resulting loss from you.
- (c) You must pay or reimburse us any such administration fees and default charges (together with any GST payable on those amounts) immediately upon demand or at our option, we may deduct such administration fees and default charges (and any GST) from any sale proceeds or other amounts otherwise payable to you.
- (d) The manner in which we may exercise or not exercise, or the timing of or any delay in any exercise by us of, any of our rights under this clause is not to be taken to be financial product advice by us to you, and you must not represent to any person that it is financial product advice by us.
- (e) We will not be liable to you for any failure by us to exercise (or any delay in the exercise by us of) any right we may have against you, or any loss incurred by you as a result of us not exercising any of our rights against you immediately, or at all, following any failure by you to comply with your obligations.
- (f) The rights described in this clause are in addition to any rights that are conferred to us under the Exchange Rules, ASX Clear Rules and any applicable rules of a Securities Exchange.

## **A17. Online security**

If you have a secure login for the purpose of accessing your Trading Account or using any of our services (including any direct market access service or access to an API for trading), you agree:

- (a) to keep your login details confidential and to not disclose these details to anyone. you and are solely responsible for the use of any login details and for keeping them secure;
- (b) to set your password to contain characters unique or unusual, and not common or predictable in any way;
- (c) to change your password regularly or when prompted;
- (d) to make reasonable efforts to maintain security over any computer through which you log

on to your Trading Account;

- (e) we make no representation or warranty as to the security of data stored either on our web server or on the web servers of parties engaged by us to provide all or part of our services; and
- (f) upon becoming aware of a breach of security, you must notify us immediately and suspend the use of all electronic communications until we are satisfied that appropriate steps have been taken to ensure the security of electronic communications with you.

## Section 4: Your information

### A18. Information

You warrant that all information provided by you to the Intermediary or us is, or will be when given, accurate, true and correct and further agree to immediately notify us in writing upon becoming aware that such information is no longer accurate, true and correct. You agree that Openmarkets and your Intermediary may share such information, as well as your account details and information regarding your transactions in Financial Products with each other and with Openmarkets' Related Bodies Corporate on a confidential basis as we consider appropriate. You also consent to us and the Intermediary disclosing this information and your account details to any regulatory authority or otherwise in accordance with our Privacy Policy (available at: [openmarkets.com.au/privacy-policy](https://openmarkets.com.au/privacy-policy)) and consent to us and your Intermediary using such information and your account details for the purposes of monitoring compliance by you, the Intermediary and us with respective regulatory and contractual obligations, and resolving disputes. You may request access to the personal information that we hold about you.

### A19. Electronic identity verification

- (a) We may use the personal information collected about you for the purposes of verifying your identity in accordance with obligations under anti-money laundering and counter-terrorism laws that apply to any trading activities undertaken on your behalf or other services provided to you. Conducting an electronic verification of your identity may involve us disclosing your personal information which you provide to us to the issuer of your identity record (e.g. driver's license or passport) via third-party providers which utilises the government managed Document Verification System (**DVS**).
- (b) We will receive a report from the issuer of your identity record through the DVS. When conducting customer identification we may disclose personal information about you to a credit reporting agency for the purposes of providing an assessment as to whether the personal information matches (in whole or part) personal information contained in a credit information file in the possession or control of the credit reporting agency. The credit reporting agency may provide us with the assessment and the credit reporting agency may use the personal information about you including your name, residential address and date of birth contained in the credit information files of other individuals, for the purpose of preparing the assessment. By agreeing to these Terms and Conditions, you consent to electronic identity verification and to us providing your personal information to a credit reporting agency.

### A20. Tax file number

Quotation of your Australian tax file number (**TFN**) is optional. Openmarkets is an Australian financial service licensee that is authorised by law to request your TFN. Where you have

contracted the Intermediary's and Openmarkets' services in the course of an enterprise carried on by you, your Australian Business Number (**ABN**) if applicable, may be supplied in addition to or instead of your TFN. You are not required to provide your TFN. If Openmarkets is unable to quote your TFN, ABN or exemption to registries, they may be obliged to take tax at the highest marginal rate from any dividends, distributions, interest and payments to which you are entitled, and you may wish to seek independent advice in this regard. For joint accounts, each individual must supply a TFN or ABN, otherwise, the account will be taxed as if no TFN has been supplied. By providing a TFN and applying for our services you appoint Openmarkets as your agent and request and authorise Openmarkets to:

- (a) provide your TFN to all investment bodies with whom Openmarkets acts on your behalf;
- (b) apply your TFN to any investment or account which you may in future make or open with or through Openmarkets (and its Related Bodies Corporate) to which your TFN or ABN may lawfully be applied,

and you acknowledge that this authority will apply until such time as it is revoked in writing to Openmarkets.

#### **A21. Credit references**

You agree that Openmarkets may make such enquiries as it thinks fit of any person, including your employer, your bank or a credit agency relating to your creditworthiness.

### **Section 5: Complaints and compensation**

#### **A22. Complaints**

- (a) You have a right to complain about any aspect of your dealings with Openmarkets, and to have that complaint dealt with in accordance with Openmarkets' complaint resolution procedures. A summary of those procedures is set out below. However, if your complaint relates to services provided by the Intermediary, your complaint should be dealt with in accordance with the Intermediary's complaint resolution procedures. If you have such a complaint, please contact the Intermediary.
- (b) You have the right to have any complaint about the service you have received from Openmarkets, or any other aspects of your dealings with Openmarkets, investigated and dealt with as quickly as possible in accordance with Openmarkets' complaints resolution procedure. To assist Openmarkets to respond appropriately to complaints, you are asked to set out complaints in writing, addressed to our Compliance Manager. You should include as much detail about the circumstances of your complaint as possible, including the name(s) of any Openmarkets staff involved. If available, copies of any background documentation should also be provided.
- (c) Following receipt of your complaint, our Compliance Manager will acknowledge receipt of it in writing and provide an estimate of the time it will take to investigate the circumstances. The Compliance Manager will fully investigate your complaint and follow up if further information is required from you. Our Compliance Manager will then prepare a detailed written response to you after consideration of all relevant documents and following interviews with the involved employees and their manager(s) if required. The written response will be mailed or delivered to you.
- (d) As Openmarkets is a member of the Australian Financial Complaints Authority (**AFCA**), Openmarkets will advise you if you continue to have a complaint that you have the option

to pursue your complaint with AFCA. AFCA's contact details are:

**Australian Financial Complaints Authority**

- Phone: 1800 931 678
- Website: [afca.org.au](https://www.afca.org.au)

- (e) If you are not satisfied with the response to your complaint, you may wish to pursue the matter with the relevant Securities Exchange. ASIC also has a free call Infoline on 1300 300 630 which you may use to make a complaint and obtain information about your rights.

**A23. Compensation arrangements**

- (a) As Openmarkets is a participant of one or more Securities Exchanges and a Clearing Participant of ASX Clear, you may be entitled to make a claim on a compensation fund being the National Guarantee Fund (**NGF**) in the circumstances specified under Part 7.5 of the Corporations Act and the Corporations Regulations 2001 (Cth). For more information on the circumstances in which you may make a claim on a compensation fund contact:

- (i) in relation to transactions on ASX and the NGF, you can contact ASX or the Securities Exchanges Guarantee Corporation Limited ABN 19 008 626 793; or
- (ii) in relation to transactions on another Securities Exchange, you can contact that Securities Exchange.

- (b) The Cboe Operating Rules require the following disclosure to be given to clients of Openmarkets:

- (i) There are two different compensation arrangements that may provide protection for retail investors trading on Cboe Australia: NGF Arrangements or Division 3 Arrangements. This is because, on 26 October 2020, Cboe Australia became a member of the Securities Exchanges Guarantee Corporation (**SEGC**), which operates the NGF.
- (ii) From 26 October 2020, the NGF may apply in the circumstances set out in Division 4 of Part 7.5 of the Corporations Act 2001 and Corporations Regulations 2001. Transitional arrangements apply and these are set out on the SEGC's website at [segc.com.au](https://www.segc.com.au). For further information on the National Guarantee Fund and what it covers, please contact SEGC, see the SEGC website and refer to Division 4 of Part 7.5 of the Corporations Regulations 2001 (Cth).
- (iii) When do the Division 3 Compensation Arrangements apply? Where a retail investor suffers a loss in respect of conduct, a transaction or insolvency that occurred before 26 October 2020, that loss may be covered by the Division 3 compensation arrangements. Section 11 of the Cboe Operating Rules outlines the Division 3 compensation arrangements, including the cessation of the arrangements on 25 October 2027 and the requirement, while the arrangements are in place, to make a claim no later than six months after becoming aware of the loss to which the claim relates. Section 11 also outlines that the losses covered by Division 3 are those resulting from defalcation or fraudulent misuse of your money, property or authority by a Cboe Australia participant.

- (c) Openmarkets has professional indemnity insurance which Openmarkets considers is adequate having regard to the:

- (i) the volume and types of business carried on by it; the number and types of its

- clients; the number of its representatives; and
  - (ii) any particular or potential claims that may arise pursuant to our participation in external dispute resolution schemes, including the AFCA scheme.
- (d) Openmarkets considers that these compensation arrangements satisfy the requirements of s912B of the Corporations Act and associated regulations.

## Section 6: Termination

### A24. Termination

- (a) Openmarkets may terminate all or any part of this agreement or any service we provide to you at any time and for any reason and close your account by giving written notice to you and such notice may be communicated to the Intermediary. This may occur if Openmarkets' agreement with a key third party ends. For example, we may terminate services if we provide you International Securities related services and our agreement with an international broker ends. You acknowledge that if the Intermediary stops using our service, your participation will also be terminated. Termination of the your participation does not affect your outstanding obligations under this agreement or any other agreement you have with Openmarkets. Except for nominee services (to which subclause (b) below applies), you may terminate this agreement and close your account by giving written notice to Openmarkets. The termination of this agreement does not affect any rights or obligations of the parties which may have accrued prior to the termination of this agreement.
- (b) Subject to the completion of any outstanding obligations, you may terminate the nominee services that we provide to you by giving not less than seven days written notice to Openmarkets Nominees. On termination of the nominee services, the Intermediary will close your account, and unless directed otherwise by the Intermediary, Openmarkets Nominees will sell the Financial Products it holds on your behalf and transfer the cash proceeds and any other cash balances it holds on your behalf to you, or as directed by the Intermediary as your agent, in accordance with these Terms and within a reasonable time.

## Section 7: General

### A25. Software

- (a) If we make any Software available to you for your use or access as a part of our services provided to you or your Intermediary, then the Terms in this clause also apply to your use of that Software. We grant you a limited, revocable, non-exclusive, non-transferable right to use that Software for your use on any computer or mobile device that you own or control, for personal, non-commercial use and only for the purposes for which the Software is made available to you by us. You may not
- (i) sublicense, distribute or transmit the Software;
  - (ii) copy, decompile, reverse engineer, disassemble, attempt to derive the source code, modify, or create derivative works of the Software; or
  - (iii) use or permit anyone to use the Software for any unlawful or unauthorised purpose.
- (b) We give no warranties express or implied about the Software, including but not limited to warranties of merchantability, fitness for a particular purpose, or non-infringement. The

Software is made available to you on an "as is" basis and we do not warrant that the Software will meet your needs, that your use will be uninterrupted, timely, secure or error-free, or that the Software or information generated by it will be accurate, complete or reliable. We are under no obligation to rectify any defects or inaccuracies in the Software.

- (c) If you link to third party content through the use of the Software, we are not responsible for the content of any third party sites or any transactions undertaken on them.
- (d) All right, title and interest in the Software and any derivative work created from or containing any of the Software is the sole property of us and our third party licensors. You have no rights, title or interests in the Software except as expressly set out above.
- (e) We may alter the Software or suspend or terminate your use of the Software at any time and for any reason without having to give notice to you. Upon termination of your use of the Software, you shall cease all use of it and destroy all copies, full or partial, of the Software that you may have.
- (f) To the maximum extent permitted by law, and in addition to any other limitations of our liability in these Terms, in no event shall we or any of our officers, directors, agents, representatives or employees be liable for any damage, claim or loss (including, without limitation, incidental loss, indirect or consequential loss, exemplary damages, loss of profits or loss of revenue) incurred by you in connection with loss or corruption of data, loss of access to data, viruses, operator errors, unauthorised access, other security breaches, failure of equipment or communications lines or business interruption, arising out of or related to the use or inability to use the Software, however caused.

#### **A26. Joint Holder**

If you are a joint holder, these Terms and Conditions bind each person jointly and severally, and each person is authorised to issue instructions to your Intermediary and give receipts to Openmarkets in relation to any purchase or sale of Financial Products or other matters to which these Terms and Conditions relate.

#### **A27. Account for trust**

You warrant that if you enter into this agreement with Openmarkets as a trustee, you have the authority to enter into these Terms and Conditions and any related agreement to these terms (including the CHESS Sponsorship Agreement) in both your personal capacity and as a trustee.

#### **A28. Warranty**

You warrant and represent that it is authorised to enter into these Terms and Conditions and to do any action contemplated by this agreement and that all necessary corporate or other action has been taken to make this agreement valid and binding.

#### **A29. Waiver**

No waiver of any breach of the Terms will be effected unless the waiver is in writing and signed by the party against whom the waiver is claimed.

#### **A30. Entire agreement**

This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.



### **A31. Statements by Openmarkets**

A statement by Openmarkets on any matter relating to this agreement (including any amount owing by the Client) is conclusive unless clearly wrong on its face.

### **A32. Exercise of rights**

No failure or delay on the part of Openmarkets in exercising any right, power or remedy under this agreement and no course of dealing between Openmarkets and the Client shall operate as a waiver of any breach or default by the Client nor shall any single or partial exercise of any such right, power or remedy preclude any further or another exercise of that or any other right, power or remedy.

### **A33. Assignment**

The rights and obligations of the Client under this agreement are not capable of assignment. Openmarkets may assign or transfer its rights under this agreement or in relation to any Openmarkets Cover without the consent of the Client and free from any rights of set-off or counterclaim. Subject to the ASX Operating Rules, the ASX Clear Rules and the ASX Settlement Rules, Openmarkets may assign or transfer its rights under this agreement without the consent of the Client and free from any rights of set-off or counterclaim.

### **A34. Giving effect to the agreement**

- (a) Each party must do anything (including sign or give effect to any document) that Openmarkets may reasonably require, to give full effect to this agreement or the transactions contemplated by this agreement.
- (b) The Client appoints Openmarkets and each officer of Openmarkets for the time being (each an Attorney) jointly and each of them severally to be the attorney of the Client with power in the Client's name and on behalf of the Client to execute any document or sign any agreement on the Client's behalf necessary or to give full effect to this agreement or the transactions contemplated by this agreement.

### **A35. Supervening legislation**

Any present or future legislation which operates to vary the obligations of the Client in connection with this agreement, Openmarkets Cover with the result that Openmarkets' rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### **A36. Governing law**

These Terms and Conditions are governed by the law in force in New South Wales and you and Openmarkets submit to the non-exclusive jurisdiction of the courts of New South Wales and courts which may hear appeals from those courts.

# Part B: Equities terms and conditions

## Section 1: General terms

### B1. Your trading account and agreement with Openmarkets

- (a) By completing an application form with an Intermediary or receiving any trading services provided to you (whether directly or through your Intermediary), you:
  - (i) establish a Trading Account with Openmarkets through which you can place Orders to transact on a Securities Exchange; and
  - (ii) accept and agree to be bound by the terms and conditions set out in this Part B which becomes part of the legally binding agreement between you and Openmarkets.
- (b) You must read and understand these Terms and Conditions. If you do not understand these Terms and Conditions, or any part of them, we recommend you obtain advice from your lawyer before you agree to them.

### B2. Role of Openmarkets and our relationship with you

- (a) Openmarkets is a Trading Participant of one or more Securities Exchanges. Openmarkets is also admitted as a Clearing Participant in accordance with the operating rules of ASX Clear, a wholly owned subsidiary of ASX. If you wish to buy or sell or otherwise deal in Financial Products on a Securities Exchange, the Intermediary will (as your agent) communicate your Order to Openmarkets. Openmarkets will, subject to these Terms and Conditions, execute or facilitate that Order on your behalf and will clear and settle the Transactions that result from the execution or facilitation of your Orders. Accordingly, Openmarkets will carry the obligations to complete the sale or purchase, together with all the obligations which are ancillary to the completion, regardless of whether you hold the shares in your name or they are held by us as your nominee (**Settlement Obligations**). Openmarkets must also settle such Transactions as principal with ASX Clear or the relevant counterparty even though the Transaction was entered into on your behalf. Accordingly, your clearing and settlement obligations under the sale or purchase contract are owed directly to Openmarkets and not to the Intermediary.
- (b) If you fail to complete a contract in accordance with the ASX Clear Rules or fail to pay the amounts due in respect of a Transaction, Openmarkets has direct rights against you, including rights of sale under the Exchange Rules and ASX Clear Rules and those described in these Terms and Conditions.

### B3. Application of Securities Exchange rules

You acknowledge and agree:

- (a) to comply with these Terms and Conditions, all applicable laws, the Exchange Rules, ASX Clear Rules and ASX Settlement Rules and the directions, decisions and requirements of each Securities Exchange and the customs and usages of the Market. Upon request, you are able to inspect copies of the Exchange Rules, ASX Clear Rules and ASX Settlement Rules at the Intermediary's offices; and
- (b) that all Transactions are subject to the Exchange Rules, ASX Clear Rules, the directions, decisions and requirements of a Securities Exchange and the customs and usages of the Market, the correction of errors and omissions and if the sale or purchase is in relation to

Financial Products approved for settlement by ASX Settlement, the ASX Settlement Rules.

#### **B4. Orders and instructions**

- (a) You agree that:
- (i) if you wish to place any Order or provide any instructions in respect of your Trading Account, you must do so with the Intermediary (such communications are to be given in the form and manner agreed with the Intermediary from time to time), and you authorise the Intermediary, as your agent (and not as the agent of Openmarkets), to communicate your Order and other instructions or information to Openmarkets;
  - (ii) any Order is subject to terms agreed between Openmarkets and the Intermediary in relation to the execution and processing of Orders;
  - (iii) Openmarkets may provide communications to you through the Intermediary and not directly to you.
- (b) You represent and warrant to Openmarkets that you have authorised the Intermediary to communicate and provide instructions to Openmarkets on your Trading Account on your behalf and have access to all and any information relating to the Trading Account or services provided by Openmarkets. Openmarkets will not act on any Orders or other instructions, or information communicated directly to it by you (and not the Intermediary). You may only terminate the Intermediary's authority to act on your behalf by terminating this agreement.
- (c) As a participant of one or more Securities Exchanges, subject to your instructions, Openmarkets is required to handle and execute Orders in accordance with the ASIC Market Integrity Rules. A copy of the Openmarkets Best Execution Policy is available at [openmarkets.com.au/legals/best-execution-policy](https://openmarkets.com.au/legals/best-execution-policy) or is available from the Intermediary in hard copy. Openmarkets may from time to time amend its Best Execution Policy and make such amendments available on its website or through the Intermediary, or otherwise, notify you of the amended Best Execution Policy.
- (d) Openmarkets may at any time, in its absolute discretion, refuse to accept any Order from, or execute Orders for you. For example, Openmarkets may refuse to accept your Order if it would require Openmarkets to act otherwise than in accordance with its Best Execution Policy.
- (e) Subject to any instructions from you, Openmarkets will generally execute Orders in the sequence in which they are received. However, you acknowledge and agree that:
- (i) your Order may be automatically crossed against other orders before reaching the Market;
  - (ii) Openmarkets may not be aware of principal orders that are being (or may be) executed, and that direct market access arrangements and program trading may make it impossible to prevent principal orders from being executed at the same time as (or before) your Order. Accordingly, you agree that Openmarkets may execute principal orders where your Order on the same terms is outstanding and that these Terms and Conditions constitute disclosure as required by the ASIC Market Integrity Rules. Unless you notify Openmarkets to the contrary, you will be taken to have consented to Openmarkets (and all of its Related Bodies Corporate) trading as Principal with you and agree to pay such commission (if any) on such transactions, each time you place an order with Openmarkets through the

Intermediary;

- (iii) you will be charged the normal rate of commission by the Intermediary for Orders which are crossed with Openmarkets' principal orders unless, if you are a retail client (as defined in the Corporations Act), we are not permitted to do so under the Corporations Act or the ASIC Market Integrity Rules;
  - (iv) an Order once accepted by Openmarkets may not be transacted and an Order to transact an AQUA Product through the ASX Managed Fund Settlement Service is subject to acceptance by the issuer of the product and an application for issue or redemption of a product may be rejected; and
  - (v) an Order to transact in an AQUA Product is not traded on a Securities Exchange and comprises an application by you to the relevant product issuer.
- (f) You acknowledge and agree that:
- (i) Openmarkets does not control and cannot procure the issue or redemption of AQUA Products or the processing of requests for issue or redemption of, or switch between, AQUA Products; and
  - (ii) Openmarkets has no liability to you or the Intermediary with respect to any action or failure to take action by an issuer or other Settlement Participant in connection with a request for issue, redemption or switch of AQUA Products including (without limitation) an issuer's failure to issue or redeem AQUA Products or make available redemption monies or to deliver AQUA Products.

## **B5. Orders relating to sales**

- (a) You agree that whenever you place a sale Order with the Intermediary, you must notify the Intermediary whether or not your sale Order is a covered short sale – i.e. a sale where you have, at the time you place the sale Order with the Intermediary, a legally binding commitment from a securities lender to lend the securities to you under a securities lending arrangement (**Securities Lending Arrangement**). Where your sale relates to a covered short sale, you must also inform the Intermediary at the time of placing the sale Order:
- (i) the number of Financial Products to be sold that are to be delivered under the Securities Lending Arrangement;
  - (ii) a description of the Financial Products (e.g. fully paid ordinary shares); and
  - (iii) the name of the entity that issued the Financial Products.
- (b) You acknowledge that Openmarkets will not be permitted to execute a sale Order for you unless you have informed the Intermediary whether or not the sale Order relates to a covered short sale. You agree that each time you place a sale Order with the Intermediary and notify the Intermediary that the sale Order relates to a covered short sale, you will be taken to have warranted and represented to Openmarkets and the Intermediary that the sale will meet the requirements and conditions of the Corporations Act, Corporations Regulations and ASIC Class Orders (if any) (as amended from time to time) relating to covered short sales, (including without limitation that you have obtained a legally binding commitment from a securities lender to lend the relevant securities to you under a Securities Lending Arrangement).

## **B6. The Intermediary's use of a DMA Service**

Openmarkets may provide a direct market access service (or access to an automated order processing system) (**DMA Service**) to the Intermediary under which the Intermediary may place your Orders directly into the Trading Platform through an electronic automated client order process. You acknowledge and agree that if Openmarkets provides a DMA Service to the Intermediary (and regardless of any obligations that we may have to you if you had used those DMA Services directly):

- (a) there may be delays in the processing, execution, amendment or cancellation of an Order entered through the DMA Service and:
  - (i) an Order may be wholly or partly filled before an instruction for its amendment or cancellation is processed; and
  - (ii) you remain liable to settle the original Order until any relevant amendment or cancellation is effected;
- (b) the execution of an Order placed through the DMA Service may be delayed by filters or other electronic features of the electronic system;
- (c) Openmarkets is not responsible for the processing, execution or cancellation of any Orders submitted through the DMA Service, regardless of who enters such Orders and regardless of whether or not there is an error in the Order entry or for any delays in relation to the same;
- (d) except as required by law, Openmarkets makes no representations or warranties express or implied with respect to the DMA Service;
- (e) there are significant risks in trading through a DMA Service because it is serviced by means of computer and telecommunications systems, even where generally accepted industry standards and practices are followed, including that your data may not be protected, and there are risks that other users of the DMA Service, institutions or intermediaries may be able to see your Orders and other communications relating to trading and execution without your (or Openmarkets') consent and that third parties (including persons on private networks) will have the ability to attach to your network; and
- (f) Openmarkets may terminate the Intermediary's participation in the DMA Service at any time without notice to you.

## **B7. Openmarkets' right to require the Intermediary to refuse to accept Orders**

You acknowledge that Openmarkets may at any time in its absolute discretion direct the Intermediary to:

- (a) refuse to accept you as a client or not to accept Orders from you; or
- (b) refuse to accept a particular Order from you.

## **B8. Linked Cash Account**

- (a) To settle transactions through your Trading Account, other than transactions settled through a third party approved by Openmarkets (e.g. via Delivery versus Payment or a margin lending provider) you must have a linked cash account (**Cash Account**) with one of our approved providers. When you open a Trading Account with us, you instruct Openmarkets open for you a Cash Account with a provider selected by you from our approved list. You appoint Openmarkets with the authority to operate this Cash Account

on your behalf subject to these Terms.

- (b) You agree to comply with the Cash Account provider's terms and conditions, appoint us with general transaction authority on the Cash Account and provide other account-related information to Openmarkets and to the Cash Account provider. You authorise Openmarkets to have access to Your Cash Account to:
  - (i) verify the Cash Account balance and any other details we require;
  - (ii) display the daily balance of the Cash Account through your Trading Account;
  - (iii) withdraw and deposit funds for the settlement of a Transaction;
  - (iv) withdraw funds to pay to us amounts you owe us under these Terms (including our fees and any fees charged by a related third party); and
  - (v) deposit funds from automatic dividend crediting (if applicable) and any other credits.
- (c) Funds held by Openmarkets will be held by Openmarkets pursuant to the client money rules of Part 7.8 of the Corporations Act and in accordance with these Terms.
- (d) You direct Openmarkets to facilitate payments to and from your Cash Account in accordance with Part 7.8 of the Corporations Act.
- (e) You acknowledge, agree and direct that:
  - (i) any cash balances in a trust account will be held in the name of Openmarkets;
  - (ii) Openmarkets may hold any cash balances held for you with cash balances held for others in accordance with Part 7.8 of the Corporations Act; and
  - (iii) Openmarkets may transfer cash balances held in a trust account to another trust account held by Openmarkets.

## **B9. Purchases and Sales**

- (a) You must ensure that payment in full is received by Openmarkets (and not the Intermediary) before the Settlement Date and Time. Unless we agree otherwise, you must ensure there are sufficient funds in your Cash Account (in the case of a purchase) and sufficient Financial Products in your Trading Account (in the case of a sale) to meet your Settlement Obligations before an Order is placed and Openmarkets may assess whether your Cash Account or Trading Account has such funds or products before accepting and Order from you. You agree you will not transfer funds out of your Cash Account before the Settlement Date if such a transfer would result in you being unable to meet your Settlement Obligations.
- (b) In accordance with the provisions of the Corporations Act and the regulations made under the Corporations Act, pending settlement by you, these Terms and the relevant Confirmation (if any) constitute notice to you that Openmarkets may deposit the Financial Products purchased for you in a particular transaction as security for a loan if Openmarkets has received and paid for such Financial Products on your behalf.
- (c) You must deliver to Openmarkets all documents and security holder information (including the holder identification number or personal identification number and, if applicable, holder reference number) (Security Holder Information) no later than two (2) Business Days before the Settlement Date and Time. Credits in respect of sales are not available



until the latest of:

- (i) the Settlement Date and Time;
  - (ii) when all documents and Security Holder Information have been received by Openmarkets in deliverable form; and
  - (iii) all amounts due and payable by you to Openmarkets or the Intermediary have been paid.
- (d) Unless Openmarkets has agreed to alternative arrangements with you, Openmarkets will pay all sale proceeds directly to you.

#### **B10. Settlement Date and Time**

The “Settlement Date and Time” for sales or purchases is the date and time that is specified on the front of the relevant Confirmation. If no date and time is specified or no Confirmation is required to be given, the Settlement Date and Time is 9.00am (Sydney time) on the second (2<sup>nd</sup>) Business Day after the execution of the Transaction. The Intermediary has no authority to extend the Settlement Date and Time.

#### **B11. Warranties by the client**

You represent and warrant that before placing any Order with the Intermediary:

- (a) you will be in a position to pay for any Financial Products purchased and have a presently exercisable and unconditional right to vest any Financial Products sold in the buyer, to enable settlement at the Settlement Date and Time; and
- (b) if your Order relates to the purchase of a Partly Paid Security, you have made arrangements (to Openmarkets’ satisfaction) to pay to Openmarkets a sufficient amount to cover any liability arising from all possible future calls in respect of the Partly Paid Securities; and
- (c) you will not place an Order for an AQUA Product unless you have received and read the Product Disclosure Statement relating to the product and the ASX Fact Sheet in relation to the ASX Managed Fund Settlement Service.

#### **B12. Confirmations**

- (a) You will be given Confirmations as required by the Corporations Act, the Exchange Rules and the ASIC Market Integrity Rules (**Confirmation**). You authorise Openmarkets (on its own behalf and on behalf of the Intermediary) to give Confirmations to you electronically to the email address notified to Openmarkets by the Intermediary on your behalf from time to time for this purpose. If the Trading Account is for joint holders and an email address is not provided for a joint holder, that joint holder authorises Openmarkets to send any Confirmation to that joint holder at the email address provided for the Trading Account and by so sending the Confirmation Openmarkets will be taken to have sent the email to that joint holder at the email address provided for the Trading Account and by so sending the Confirmation Openmarkets will be taken to have sent the email to that joint holder. Openmarkets may not provide you with paper copies of Confirmations.
- (b) You agree to promptly check the accuracy of every Confirmation sent to you and to notify the Intermediary immediately of any error that you consider may have occurred. In the absence of such notification from you within 24 hours, you will be taken to have accepted the accuracy of the Confirmation.
- (c) A Confirmation may at any time be re-issued to you in order to correct any errors or

omissions and the terms and conditions of the original Confirmation will apply in relation to the reissued Confirmation.

- (d) Where Openmarkets enters into multiple Transactions in order to complete your Order, you authorise Openmarkets to accumulate those Transactions (whether executed on the same Securities Exchange or otherwise) on a single Confirmation and to specify the volume weighted average price for those Transactions on that Confirmation. If requested by you, Openmarkets will, if required under the ASIC Market Integrity Rules, give you a statement of all the individual prices of the relevant transactions which are accumulated and averaged in a Confirmation.
- (e) If you are a Wholesale Client for the purposes of the ASIC Market Integrity Rules, Openmarkets may elect not to give any Confirmations to you in relation to Transactions executed for you. If Openmarkets so elects, these Terms are taken to be the notification required to be given by Openmarkets to you under the ASIC Market Integrity Rules.

### **B13. Cancellations**

- (a) Each Securities Exchange has the power under the Exchange Rules to cancel or amend Transactions or Crossings. You authorise us to and agree that we may, without your consent, cancel or amend (or request or agree to the cancellation or amendment of) any Transactions or Crossing relating to the sale or purchase (as the case may be) of Financial Products:
  - (i) if requested to do so by the Intermediary in the circumstances contemplated by the ASIC Market Integrity Rules (as if the Intermediary were a Trading Participant that executed that Order to which the Transaction or Crossing relates);
  - (ii) if a Securities Exchange or a participant of the Securities Exchange exercises its power under the Exchange Rules to cancel or amend (or require the cancellation or amendment of) the Transaction or Crossing; or
  - (iii) in the event of an error or otherwise in the circumstances contemplated in the Exchange Rules.
- (b) Your obligations referred to in clause B9. *Purchases and Sales* and our obligations in relation to the settlement of a Transaction, will no longer apply in respect of a cancelled transaction from the time it is cancelled or, in the case of an amended Transaction, apply as amended.

## **Section 2: Special product terms**

### **B14. Warrants**

- (a) In addition to the other Terms of this agreement, the terms in this *Section 2* apply if you purchase Warrants.
- (b) You agree and acknowledge that:
  - (i) you have received and read a copy of the Explanatory Booklet issued by ASX in respect of Warrants (“Understanding Trading and Investment Warrants”, available electronically on the ASX website and at [openmarkets.com.au/legals](https://openmarkets.com.au/legals), or in paper form on request by contacting the Intermediary);
  - (ii) a Warrant has a limited life and cannot be traded after its expiry date;
  - (iii) you are aware that Warrants do not have standardised Terms of Issue and it is your

responsibility to become aware of the Terms of Issue of any Warrant in which you invest;

- (iv) Warrants may be subject to adjustments after their initial issue. You acknowledge that it is your responsibility to become aware of any adjustments which may have been made to any Warrant in which you choose to invest;
- (v) admission to the Trading Status of a Warrant does not imply that a Securities Exchange or the Securities Exchanges Guarantee Corporation Limited gives any guarantee or warranty as to the viability of the Warrant-Issuer or Guarantor; and
- (vi) failure of the Warrant-Issuer or Guarantor (if applicable) to fulfil their obligations does not give rise to a claim against the Intermediary, Openmarkets, a Securities Exchange, handling Market Participants or the Securities Exchanges Guarantee Corporation Limited.

### **B15. Partly Paid Securities**

- (a) The following terms and conditions apply if you are to purchase Partly Paid Securities.
- (b) You agree and acknowledge that you are aware that:
  - (i) a partly paid security is security that may require you to make a further payment or payments at some time in the future;
  - (ii) it is your responsibility to obtain and read a copy of the 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 placing an order to buy a partly paid security;
  - (iii) you may be liable for further payments on a partly paid security and 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 you to recover the outstanding payments and/or may result in the forfeiture of your entitlement to the partly paid security;
  - (iv) in certain circumstances you may be liable to make a further payment on a partly paid security despite the fact that you may have disposed of a partly paid security prior to the date that a further payment falls due;
  - (v) you should monitor announcements made by the issuer of a partly paid security and it is your responsibility to inform yourself of the date/s or circumstances that a further payment falls due and the last day that you can dispose of the partly paid security before becoming liable for a further payment;
  - (vi) 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
  - (vii) an obligation on you in relation to a partly paid security, including an obligation to make a further payment, does not give rise to a claim against the Intermediary, Openmarkets, a Securities Exchange, handling Market Participants or the Securities Exchanges Guarantee Corporation Limited.

## Section 3: DMA Service terms

### B16. DMA Services

The following terms and conditions also apply if you are given access to the DMA Service.

### B17. Access by Authorised Persons only

No person other than an Authorised Person may at any time submit an Order for the Client (whether as principal or as agent for the Client) through the DMA Service using the Security Information provided by Openmarkets (or the Intermediary) to the Client. Openmarkets may at its discretion at any time limit the number of Authorised Persons who are permitted to submit Orders for the Client through the DMA Service. The Client must not authorise, allow or permit any person other than an Authorised Person to access or use the DMA Service using the Security Information. The Client acknowledges and agrees that Openmarkets may, in its absolute discretion:

- (a) refuse to approve as an Authorised Person any person nominated by the Client for that purpose;
- (b) revoke its approval of an Authorised Person at any time; and
- (c) from time to time test whether an Authorised Person has adequate knowledge of the DMA Service and the Dealing Rules (as defined in the ASIC Market Integrity Rules), directions, decisions and requirements of a Securities Exchange relevant to the type of order submission facilities given to the Authorised Person by Openmarkets. The Client must notify the Intermediary immediately once any Authorised Person ceases to be authorised by the Client to access the DMA Service on the Client's behalf.

### B18. Security Information

- (a) The Client acknowledges that the Security Information is confidential and agrees that it is responsible for maintaining its confidentiality.
- (b) The Client agrees that it must:
  - (i) only use the Security Information in accordance with these terms;
  - (ii) not disclose the Security Information (or any part of it) to any person or persons (including its employees, contractors, agents and consultants) other than to an Authorised Person;
  - (iii) ensure that at all times, each Authorised Person maintains the confidentiality of the Security Information;
  - (iv) notify Openmarkets immediately upon becoming aware that any Security Information has been or may be used or disclosed in a manner that is not consistent with these terms; and
  - (v) regularly review and, if necessary, upgrade the security of its network through which it accesses the DMA Service to ensure that only Authorised Persons are able to access or use the DMA Service.

### B19. Use of the system

The Client acknowledges that:

- (a) the DMA Service is accessible through the DMA System;
- (b) neither Openmarkets nor any Related Body Corporate or affiliate of Openmarkets makes

any representation or warranty, express or implied, to the Client or to any other person regarding the DMA System, nor provides any guarantee with respect to the DMA System, including without limitation, with respect to the operation, functionality, effectiveness, accuracy, reliability, merchantability, quality or fitness for purpose;

- (c) neither Openmarkets nor the Intermediary nor any Related Body Corporate or affiliate of Openmarkets or the Intermediary is in any way responsible or liable to the Client or any person claiming through the Client, for any loss that results from the Client's use of the DMA System, or from any failure, error or defect of or in the DMA System;
- (d) the Client is solely responsible for assessing the adequacy of the DMA System and for deciding whether or not to access it; and
- (e) it is the Client's responsibility to obtain, at its own expense, all hardware and software to be used by the Client in connection with the use of the DMA Service.

## **B20. Submitting orders through the DMA Service**

### **(a) Permission to submit Orders using Security Information.**

The Client acknowledges and agrees that it (and/or any Authorised Person) is permitted to submit Orders through the DMA Service only if it or they do so using the Security Information.

### **(b) Responsibility for submitting Orders to the Client:**

- (i) determines the time at which Orders are submitted through the DMA Service;
- (ii) is responsible for all Orders submitted through the DMA Service using the Security Information, regardless of who enters such Orders and regardless of whether or not there is an error in the Order entry;
- (iii) is bound by any agreement entered into on its behalf in reliance on such Orders;
- (iv) is liable for any reasonable expense incurred by Openmarkets in reliance on such Orders; and
- (v) accepts the sole risk and responsibility for Orders submitted by it through the DMA Service, including any Order submitted in error.

### **(c) Order priority**

The Client acknowledges that all Orders submitted by it through the DMA Service are, subject to any Filters, entered on a Trading Platform in the sequence in which they are received, and otherwise as expeditiously as practicable, and this may result in Openmarkets' principal orders being satisfied ahead of an Order.

### **(d) Acknowledgment about resubmitting purged Orders**

The Client acknowledges that Orders purged from a Trading Platform by the Securities Exchange will not be resubmitted to that Trading Platform by Openmarkets or the Intermediary.

### **(e) No pre-arranged Orders**

The Client undertakes to ensure that any Orders placed through the DMA Service which match opposite orders placed by Openmarkets in a Trading Platform, either as agent or principal, will be of an accidental nature, meaning that no pre-arrangement of the matched orders will have taken place with Openmarkets, and will not detract in any way from the Client's Orders transacting in a Trading Platform under strict rules of time and price

priority.

## **B21. Orders relating to derivatives products**

### **(a) Closing Out Derivatives Contracts**

If, as a result of Orders submitted by the Client through the DMA Service, a Derivatives Contract registered in the Client's account with Openmarkets as Buyer and a Derivatives Contract in the same Series or Delivery Month is registered in the Client's account with Openmarkets as Seller, Openmarkets will use its best endeavours to ensure that the corresponding Derivatives Contracts registered with ASX Clear are closed out by ASX Clear in accordance with ASX Clear Rule 13.2. However, the Client acknowledges and agrees that the Client's obligations in relation to those Derivatives Contracts continue in force until ASX Clear has closed out the corresponding Derivatives Contracts registered with it in accordance with ASX Clear Rule 13.2.

### **(b) Exercise of a Derivatives Contract**

The Client acknowledges that, if the Client wishes to exercise a Derivatives Contract registered in the Client's account with Openmarkets:

- (i) the Client is not able to do so through the DMA Service (whether or not that Derivatives Contract was bought through the DMA Service); and
- (ii) the Client must contact the Intermediary directly in order to communicate the Client's instruction to exercise that Derivatives Contract (and the Intermediary in turn will be responsible for communicating the Client's instruction to Openmarkets).

## **B22. Trading rules**

### **(a) DMA Trading Limits**

Openmarkets may at any time through the DMA Service impose, and from time to time vary, DMA Trading Limits. Without limitation, Openmarkets may impose DMA Trading Limits on any or all of the following:

- (i) the value or number of any buy Orders or trades;
- (ii) the value or number of any sell Orders or trades;
- (iii) the available cleared funds;
- (iv) the available sponsored stock;
- (v) the net value of any buy Orders or trades less sell Orders or trades;
- (vi) the gross value of any buy Orders or trades and any sell Orders or trades;
- (vii) the value of any Order or trade; and
- (viii) the value of any Order submitted by one or more Authorised Persons, or trade undertaken by such a person. The Client must comply, and ensure that each Authorised Person complies, with all applicable DMA Trading Limits.

### **(b) Prohibited orders**

The Client must ensure that:

- (i) each Authorised Person accesses the DMA Service in a way that ensures fairness, efficiency and ongoing protection of market integrity;
- (ii) it does not place an Order through the DMA Service such that the beneficial ownership of the financial products which are the subject of the Order would not



- change if the Order were executed;
- (iii) it does not take any action, fail to take any action or place any Order through the DMA Service where that Order (or the resulting transaction) would violate or cause or result in the Client, the Intermediary or Openmarkets violating any applicable regulation, including without limitation, any applicable regulation in relation to:
    - A market manipulation, false trading, market rigging, fictitious transactions, wash trading or matching of orders;
    - B insider trading;
    - C front running;
    - D fraud;
    - E creation of a disorderly market or otherwise prejudicing the integrity or
    - F the efficiency of the market; or
    - G misleading or deceptive conduct; and
  - (iv) each Order is submitted in accordance with these terms, or any policy or operational guideline published by Openmarkets from time to time in relation to the DMA Service.

### **B23. Filters**

Openmarkets may impose Filters to restrict the placement of any Orders or the execution of any trades through the DMA Service, including (without limitation) Filters whose object is to:

- (a) prevent a breach of the provisions set out in this paragraph 5;
- (b) prevent Orders being registered with a Trading Platform where the price at which the Order is submitted through the DMA Service is too far from the prevailing market price for the relevant security or financial product;
- (c) ensure that the DMA Service does not interfere with the efficiency and integrity of the market conducted by a Securities Exchange;
- (d) ensure that the DMA Service does not interfere with the proper functioning of any Trading Platform; or
- (e) facilitate compliance with, and prevent breaches of, applicable regulations. Openmarkets has, and accepts, no responsibility or liability to the Client or any person claiming through the Client for failing to submit such Orders to a Trading Platform.

### **B24. Delays**

The Client acknowledges that there may be delays in the processing or execution of an Order placed through the DMA Service, and:

- (a) an Order may be wholly or partly filled before an instruction for its amendment or cancellation is processed;
- (b) The Intermediary and the Client remain liable to Openmarkets to settle the original Order until any relevant amendment or cancellation is effected; and
- (c) Openmarkets will not be liable for any loss or damage to the Client by reason of any delay in processing any Order submitted through the DMA Service.

### **B25. Processing and delays**

- (a) The Client acknowledges that Openmarkets takes no responsibility for the processing,

execution or cancellation of any Orders placed through the DMA Service or for any delays in relation to the same.

## **B26. Reconciliation**

The Client is responsible for reconciling end-of-day Confirmations against its records on any given trading day and must communicate to Openmarkets, any discrepancies found in this reconciliation before the market opens on the next trading day. The Client acknowledges that Openmarkets is not responsible in any circumstances for the losses of any kind of the Client that occur through errors that go undetected as a result of the failure of the Client to perform this reconciliation.

## **B27. Principal trading by Openmarkets**

The Client acknowledges that Openmarkets and/or any of Openmarkets' Related Bodies Corporate or affiliates may:

- (a) enter a transaction in securities, derivatives, warrants and other financial products on a Securities Exchange as principal and, where permitted by law, may take the opposite position in any such transaction, acting either for a client or on Openmarkets' own account (and the Client consents to Openmarkets and/or Openmarkets' Related Bodies Corporate and affiliates entering such transactions and taking such positions); and
- (b) place principal orders on the same terms as any Order, and that Openmarkets' order may be filled before an Order due to it being entered into the relevant Trading Platform prior to the Order.

## **B28. Intellectual property**

You acknowledge that all intellectual property rights in the DMA Service and the DMA System and the components thereof are owned by Openmarkets or are procured by Openmarkets for the use of the Client and nothing in this agreement confers any right of ownership, transfer of ownership to, or another right to the intellectual property in the Client.

## **B29. System and trading risks**

The Client acknowledges that there is significant risk in trading through a system, including the DMA Service, which is serviced by means of computer and telecommunications systems, even where generally accepted industry standards and practices are followed, including that:

- (a) the access to and use of the DMA Service cannot be operated in all circumstances without error including, without limitation, errors in computer programs and telecommunications systems. These errors may result in, among other things:
  - (i) a delay in telecommunications services;
  - (ii) interrupted service and faults, such that the DMA Service may not remain accessible at all times during the trading day and there may be problems affecting the stability of the DMA Service that could cause the Client to be unable to enter Orders via the DMA Service during normal trading hours;
  - (iii) Orders and other communications relating to trading and execution not reaching Openmarkets or being lost, rejected or partially received or sent, such that they are not accurately received or sent by the Client or Openmarkets and are not representative of the original content of the Orders and other communications

- relating to trading and execution;
- (iv) inaccuracies in the provision of the DMA Service and generally;
  - (b) the Client's data may not be protected, and there are risks that other users of the DMA Service, institutions or holders or an Australian financial services licence will be able to see Orders submitted by the Client and other communications relating to trading and execution without the Client's (or Openmarkets') consent and that third parties (including persons on private networks) may have the ability to attach to the Client's network;
  - (c) Orders and other communications relating to trading and execution and other data submitted to the DMA Service will not remain confidential;
  - (d) the Client's system may not be compatible with the DMA Service or a Trading Platform, and this incompatibility may lead to an unstable environment; and
  - (e) Orders may be placed through the DMA Service without the Client's authority by a person using the Security Information given to the Client and accordingly, trades that have not been authorised by the Client may be executed.

## **Section 4: ASX Bookbuild Client Agreement**

### **B30. Agreement with Openmarkets**

The provisions of this *Section 4* apply if you wish to instruct for a Bid to be placed on your behalf in relation to an offer of Financial Products on ASX BookBuild. By placing an Order with Intermediary (as your agent) for a Bid to be placed on your behalf in relation to an offer of Financial Products on ASX BookBuild, you agree to also be bound by the terms and conditions of this Section 4 of Part B. This Section 4 forms part of the Terms and Conditions and is to be read as a part of the Terms and Conditions.

### **B31. Application of ASX Operating Rules**

You and Openmarkets are bound by the ASX Rules, the Corporations Act, customs, usages and practices of ASX and its related entities, as amended from time to time, in so far as they apply to ASX BookBuild and any allocation of Financial Products in an offer on ASX BookBuild.

### **B32. Right to refuse to deal**

You acknowledge that Openmarkets may at any time refuse to deal in, or may limit dealings in, the Financial Products offered under ASX BookBuild for you. Openmarkets is not required to act in accordance with your instructions when it would constitute a breach of the ASX Rules or the Corporations Act. Openmarkets (or the Intermediary on Openmarkets' behalf) will notify you of any refusal or limitation as soon as practicable.

### **B33. Wholesale clients**

You agree that, if you are not a Wholesale Client for the purposes of the ASIC Market Integrity Rules, you will not place an Order in relation to an offer of Financial Products on ASX BookBuild where that offer is limited to Wholesale Clients.

### **B34. Offers in the U.S. or to U.S. persons where terms of offer are silent**

If the terms of the offer are silent on whether offers and issues of Financial Products are prohibited in the United States or to U.S. persons, then you acknowledge that the following terms of the offer will apply:

- (a) the Financial Products have not been, and will not be, registered under the US Securities Act of 1933 (**Securities Act**), and may not be offered, sold or resold in the United States, or to or for the account or benefit of U.S. persons, except in accordance with an exemption from, or in a transaction not subject to, the registration requirements of the US Securities Act;
- (b) expressions used but not defined in these terms have the meanings set forth in Regulation S under the US Securities Act.

### **B35. Warranty**

When you instruct Openmarkets (including where you instruct the Intermediary to instruct Openmarkets) to enter a Bid in an offer of Financial Products you warrant that:

- (a) you are aware of and agree to the Investment Cap and the terms of the offer;
- (b) you are entitled, under the Investment Cap and the terms of the offer, to enter that Bid and to subscribe for any Financial Products allocated to you under ASX Rule 4930.

### **B36. Allocation and settlement obligations**

You acknowledge and agree that:

- (a) where you have received an allocation of Financial Products as a result of a Bid entered by Openmarkets on your behalf for the allocation of the relevant Financial Products under the applicable offer:
  - (i) you have an obligation to subscribe for the number of Financial Products allocated to you at the final BookBuild Price on the terms of that offer; and
  - (ii) where Openmarkets settles the subscription for those Financial Products through ASX Settlement or otherwise on your behalf, you owe your Settlement Obligations in respect of that subscription directly to Openmarkets and not to the Intermediary or the relevant BookBuild Issuer;
- (b) you may not receive any allocation of Financial Products including where a bookbuild is cancelled. In the event that you fail to comply with your Settlement Obligations, Openmarkets will have rights against you under these Terms and Conditions (including without limitation under those clauses of these Terms and Conditions relating to a failure to settle by you), the ASX Rules and the ASX Settlement Rules (including without limitation a power of sale), and Openmarkets is not obliged to register any of the relevant Financial Products in your name or in accordance with your instructions unless and until you have complied with your Settlement Obligations in full.

### **B37. Divestment**

When you have received an allocation of Financial Products in an offer on ASX BookBuild which:

- (a) represents a percentage of Financial Products in that offer that exceeds the Investment Cap; or
- (b) results, or together with allocations to other persons result, in the voting power in the BookBuild Issuer of you or any other person increasing from a percentage at or together with allocations to other persons result, in the voting power in the BookBuild Issuer of you or any other person increasing from a percentage at or below the Investment Cap to a percentage above the Investment Cap, you acknowledge that such allocation was outside of the parameters established by the BookBuild Issuer for the offer on ASX BookBuild and

that the BookBuild Issuer may, at its election, require that you divest such number of Financial Products allocated in the offer on ASX BookBuild up to the number required for the relevant person to no longer exceed the Investment Cap. For the purposes of this clause, a person's voting power in the BookBuild Issuer has the meaning given by s610 of the Corporations Act. You also acknowledge that damages are not an adequate remedy for a breach of clause B36. *Allocation and settlement obligations*) and that the BookBuild Issuer can require specific performance of this clause.

#### **B38. Enforceability by BookBuild Issuer**

You acknowledge that the warranties and acknowledgments in clauses B35. *Warranty*), B36. *Allocation and settlement obligations*) and B37. *Divestment*) above can be enforced by the BookBuild Issuer.

#### **B39. Effect of termination**

Termination does not affect the existing rights and obligations of you or Openmarkets at termination.

#### **B40. Revised terms prescribed by ASX**

If ASX prescribes amended minimum terms for an ASX BookBuild Client Agreement for the purposes of the Rules (**New Terms**), to the extent of any inconsistency between this Schedule and the New Terms, the New Terms will override the terms of this Schedule and apply as if you and Openmarkets had entered into an agreement containing the New Terms.

#### **B41. Openmarkets to provide you with a copy of the changes**

Openmarkets (or the Intermediary on Openmarkets' behalf) will provide a copy of the New Terms to you as soon as practicable after ASX prescribes the New Terms.

## Part C: CHESS Sponsorship Agreement

- (a) All ASX, Cboe Australia and NSX trades transacted through us are settled by the Clearing House Electronic Subregister System (**CHESS**), which is operated by ASX Settlement. This means all Trading Accounts established through us must be CHESS Sponsored by us in order to facilitate the buying and selling of Financial Products through our Services.
- (b) By applying for a new Holder Identification Number (**HIN**) or requesting a transfer of your existing HIN in the Account Application (**Application**), you agree to be CHESS Sponsored by Openmarkets in accordance with the ASX Settlement Rules on the terms and conditions set out in this *Part C: CHESS Sponsorship Agreement* and *Part A: General Terms and Conditions (Sponsorship Agreement)*.

### Explanation of CHESS Sponsorship

- (a) The exchange of legal ownership of Financial Products (for example shares) bought and sold on the market for money is called a settlement, which is managed by CHESS. To access CHESS and settle trades on your behalf you need to be sponsored in CHESS by an authorised broker.
- (b) Openmarkets is both a Settlement and Clearing Participant of the ASX and therefore an authorised sponsoring broker.
- (c) In addition to performing settlement, CHESS electronically registers the title (name and ownership) of Financial Products on its subregister. You retain the legal and beneficial ownership of the holdings at all times, subject to these Terms.
- (d) Once your Trading Account is CHESS Sponsored by us, you will be allocated a HIN by CHESS. Your HIN uniquely identifies you as the holder of your Financial Products as referred to as your **Sponsored Holdings**. You should protect this number and not disclose it to anyone unless required to do so in your exchange with our Services or by law.
- (e) Having your Sponsored Holdings attached to one HIN means you can buy and sell shares more quickly than if those shares were individually Issuer Sponsored. It also means you can view and track your portfolio and its market values using our portfolio tools via our electronic trading facilities.
- (f) Once you are CHESS Sponsored by Openmarkets, you will need to ensure that you notify us in writing of any changes to your registered details, such as your registered address.
- (g) Under this agreement, we are entitled to charge you the fees that CHESS charges us or for information, we obtain at your request, such as a Securities Reference Number (**SRN**) for a holding.
- (h) If you would like to discuss the Terms of CHESS Sponsorship with us, please contact us (our contact details are provided at the start of this agreement).

#### C1. Interpretation

Any terms used in this Sponsorship Agreement, which are defined in the ASX Settlement Rules, have the meaning given in those Rules. If you require a copy of those definitions, please contact us.

#### C2. Our rights and obligations

- (a) Where you authorise us to buy Financial Products, you will pay for those Products by the



Settlement Date.

- (b) Subject to *clause C2(c)* below, we are not obliged to Transfer Financial Products (i.e. settle buy orders) into your Sponsored Holding (i.e. HIN) if we have not received payment for that Product.
- (c) Where a contract for the purchase of Financial Products remains unpaid after we have made a demand that you pay for the Financial Products, we may sell those Financial Products that are the subject of that contract at your risk and expense and that expense will include brokerage and stamp duty. Renounceable rights that relate to the Financial Products in your HIN will be treated in the same manner as the products themselves.
- (d) If we claim that an amount is lawfully owed to us and has not been paid by you, we have the right to refuse to comply with your Withdrawal Instructions, but only to the extent necessary to retain Financial Products of the minimum value held in a Sponsored Holding (where the minimum value is equal to 120% of the current market value the amount claimed).

### **C3. Your rights and obligations**

- (a) Subject to clause C2 (*Our rights and obligations*) we will initiate any Transfer, Conversion or other action necessary to give effect to Withdrawal Instructions within one (1) Business Day of the date of the receipt of the Withdrawal Instructions.
- (b) We will not initiate any Transfer or Conversion into or out of the Sponsored Holding without your express authority.
- (c) The regulatory regimes which apply to us include the Corporations Act, Market Integrity Rules and any Exchange Rules. You may obtain information as to our status from ASIC, ASX Settlement, ASX Clear, or any Securities Exchange.
- (d) You may lodge a complaint against us or any claim for compensation with ASIC, ASX Settlement, ASX Clear, a Securities Exchange or AFCA.

### **C4. Other rights and duties - supply of information**

You will supply all information and supporting documentation that is reasonably required to permit us to comply with the registration requirements, as are in force from time to time under the ASX Settlement Rules.

### **C5. Exchange-traded options, pledging and subpositions**

- (a) Where you arrange through us with ASX Clear to lodge Financial Products in its Sponsored Holding as Derivatives Cover under the ASX Clear Rules or otherwise inform us of that arrangement, you:
  - (i) authorise us to reserve the Financial Products in the ASX Clear Subposition 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 the performance by the relevant Clearing Participant of its obligations to ASX Clear under and in accordance with ASX Clear Operating Rule 14.6.7;
  - (ii) authorise any subsequent dealing (including, without limitation, any transfer) of the reserved Financial Products in accordance with the Rules and ASX Clear Operating Rules;
  - (iii) acknowledge that the Financial Products will remain subject to that security interest for so long as those Financial Products remain reserved in the ASX Clear

Subposition in accordance with ASX Clear Operating Rule 14.6.7; and

- (iv) authorise us to take whatever action is reasonably required by ASX Clear in accordance with the ASX Clear and ASX Settlement Rules to give effect to that arrangement.
- (b) Where you inform us that a charge or any other interest in financial products in your Sponsored Holding has been given, you authorise us 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.
- (c) Where we, in accordance with this Sponsorship Agreement or the ASX Settlement Rules, initiate any action which creates a sub-position over Financial Products in your Sponsored Holding, you acknowledge that your right to transfer, convert or otherwise deal with those Financial Products is restricted in accordance with the ASX Settlement Rules.
- (d) Nothing in this Sponsorship Agreement operates to override any interest of ASX Clear in the financial products.

## **C6. Brokerage fees**

You must pay all Brokerage fees and associated transactional costs within the period prescribed by us.

## **C7. Mandatory notifications and acknowledgments**

- (a) You acknowledge that if we are not a Market Participant of an Approved Market Operator, neither the Approved Market Operator nor any related entity of the Approved Market Operator has any responsibility for regulating the relationship between you and us, other than in relation to the rules relating to the Sponsorship Agreement.
- (b) You acknowledge that if a Transfer is taken to be effected by us under Section 9 of the ASX Settlement Rules and the Source Holding for the Transfer is a Sponsored Holding under the Sponsorship Agreement, then:
  - (i) you may not assert or claim against ASX Settlement or the relevant Issuer that the Transfer was not effected by us or that we were not authorised by you to effect the Transfer; and
  - (ii) unless the Transfer is also taken to have been effected by a Market Participant of an Approved Market Operator or a Clearing Participant of ASX Clear, you have no claim arising out of the Transfer against the compensation arrangement applicable to the Approved Market Operator or the Clearing Participant of ASX Clear under the Corporations Act and Corporations Regulations.
- (c) In the event that we breach any of the provisions of this Sponsorship Agreement, you may refer that breach to any regulatory authority, including ASX Settlement.
- (d) In the event that we are suspended from CHES participation, subject to the assertion of an interest in Financial Products controlled by us, or by any liquidator, receiver, administrator or trustee appointed:
  - (i) you have the right, within twenty (20) Business Days of ASX Settlement giving notice of suspension, to give notice to ASX Settlement requesting that any Sponsored Holdings be removed either:
    - A from the CHES Subregister; or
    - B from the control of the suspended Participant to the control of another

Participant with whom they have concluded a valid Sponsorship Agreement pursuant to Rule 12.19.10; or

- (ii) where you do not give notice under clause C7(d)(i) above, ASX Settlement may effect a change of Controlling Participant under Rule 12.19.11 and you will be deemed to have entered into a new Sponsorship Agreement with the substitute Participant on the same terms as the existing Sponsorship Agreement. Where you are deemed to have entered into a Sponsorship Agreement, the new Participant must enter into a Sponsorship Agreement with you within ten (10) Business Days of the change of Controlling Participant.
- (e) You acknowledge that before you executed this agreement, we provided you with an explanation as to the effect of this agreement which you understood.
- (f) You acknowledge that in the event of your death or bankruptcy, a Holder Record Lock will be applied to all Sponsored Holdings in accordance with the ASX Settlement Rules unless your legally appointed representative or trustee elects to remove the Sponsored Holdings from the CHES Subregister.
- (g) You acknowledge that in the event of your death, this Sponsorship Agreement is deemed to remain in operation, in respect of the legally appointed representative authorised to administer your estate, subject to the consent of the legally appointed representative, for a period of up to three calendar months after the removal of a Holder Record Lock applied pursuant to clause C7(f).

#### **C8. Joint holdings**

- (a) You acknowledge that for joint holdings in the event of the death of one of the Account Holders, we will transfer all Sponsored Holdings under the joint Holder Record into new Sponsored Holdings under a new Record in the name of the surviving Account Holder(s) and that this Sponsorship Agreement will remain valid for the new Holdings under the new Holder Record.
- (b) You acknowledge that in the event of the bankruptcy of one of the joint Holders we will:
  - (i) establish a new Holder Record in the name of the bankrupt Holder (unless your legally appointed representative elects to remove the Sponsored Holdings from the CHES Subregister), transfer the interest of the bankrupt Holder into new Holdings under the new Holder Record and request that ASX Settlement apply a Holder Record Lock to all Holdings under that Holder Record; and
  - (ii) establish a new Holder Record in the name(s) of the remaining Holder(s) and Transfer the interest of the remaining Holder(s) into new Holdings under the new Holder Record.

#### **C9. Change of controlling participant**

- (a) In the unlikely event that we can no longer serve you as the Controlling Participant (the authorised broker sponsoring you in CHES) of your Sponsored Holdings, then we will issue you a "Participant Change Notice".
- (b) If you receive a Participant Change Notice at least twenty (20) Business Days prior to the date proposed in the notice, you are under no obligation to agree to the change of Controlling Participant and may choose to do any of the things set out in clause C9(c) and otherwise clause C9(d) will apply.
- (c) You may choose to terminate this Sponsorship Agreement by giving written Withdrawal

Instructions under the ASX Settlement Rules indicating whether you wish to:

- (i) transfer your Sponsored Holding to another Controlling Participant; or
  - (ii) transfer your Sponsored Holding to one or more Issuer Sponsored Holdings.
- (d) If you do not take any action to terminate this Sponsorship Agreement in accordance with clause C9(c) above and do not give any other instructions to us which would indicate that you do 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:
- (i) the New Controlling Participant is a party to this Sponsorship Agreement in substitution for us;
  - (ii) any rights of ours are transferred to the New Controlling Participant; and
  - (iii) we are released by you from any obligations arising on or after the Effective Date.
- (e) The novation in this clause will not take effect until you have received notice from the New Controlling Participant confirming that the New Controlling Participant consents to act as the Controlling Participant for you. The Effective Date may as a result be later than the date set out in the Participant Change Notice.
- (f) You will be taken to have consented to the events referred to in this clause 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.
- (g) This Sponsorship Agreement continues for our benefit of us in respect of any rights and obligations accruing before the Effective Date. To the extent that any law or provision of any agreement makes the novation in this clause not binding or effective on the Effective Date, then this Sponsorship Agreement will continue for the benefit of us until such time as the novation is effective. We will hold the benefit of this Sponsorship Agreement on trust for the New Controlling Participant.
- (h) Nothing in this clause will prevent the completion of CHES transactions by us where the obligation to complete those transactions arises before the Effective Date. 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 this clause.
- (i) In the event that any of the transferred holdings comprise AQUA Products, the new Controlling Participant will be accredited in accordance with Section 18 of the rules to facilitate the settlement of AQUA products.

#### **C10. Complaints and compensation**

- (a) The following compensation arrangements apply to you:
- (i) Should you have a complaint, please contact us (our contact details are provided at the front of this agreement).
  - (ii) You may lodge a complaint against us or any claim for compensation with ASIC, the relevant Securities Exchange (ASX, Cboe Australia or NSX), ASX Clear, ASX Settlement or AFCA.
- (b) If we breach a provision of this Sponsorship Agreement and you make a claim for compensation pursuant to that breach, our ability to satisfy that claim will depend on our

financial circumstances at the time.

- (c) If a breach by us of a provision of this Sponsorship Agreement falls within the circumstances specified in the compensation arrangements applicable to the Approved Market Operator or the Clearing Participant of ASX Clear under the Corporations Act and Corporations Regulations, you may make a claim under the relevant compensation arrangements.

#### **C11. Termination**

- (a) Subject to the ASX Settlement Rules, this Sponsorship Agreement will be terminated under the following circumstances:
  - (i) by notice in writing from either you or the Broker to the other;
  - (ii) upon the Broker becoming insolvent;
  - (iii) upon the termination or suspension of the Broker; or
  - (iv) upon the giving of Withdrawal Instructions by you to the Broker in accordance with ASX Settlement Rule 7.1.10(c).
- (b) Termination of this Sponsorship Agreement under this clause will be effective upon receipt of notice by the other party.
- (c) Termination of this Sponsorship Agreement does not affect the existing rights and obligations of you or the Broker at termination and does not terminate any other Part of this agreement.

#### **C12. Variation**

Should any of the provisions in this Sponsorship Agreement be inconsistent with the provisions in the ASX Settlement Rules, we will, by giving you not less than 7 Business Days written Notice, vary the Sponsorship Agreement to the extent to which in our reasonable opinion is necessary to remove any inconsistency.

#### **C13. Copy of executed Sponsorship Agreement**

You authorise us to input your HIN into the executed Sponsorship Agreement and you do not require a copy of the agreement. Please contact us if you would like us to send you a copy of your Sponsorship Agreement.

## Part D: Derivatives Client Agreement

The Terms in this Part D apply to any services that we provide in relation to dealings in ASX Derivative Products (as defined below) in addition to the other Terms of this agreement.

### Section 1: Instructions

#### D1. ASX Derivative Products

The Client may from time to time instruct the Intermediary to deal in the following kinds of derivatives which are traded on ASX:

- (a) Options Market Contracts (sometimes referred to as Exchange Traded Options); and
- (b) other kinds of derivatives traded on ASX,

but not including Futures Market Contracts (**ASX Derivative Products**).

#### D2. Orders and instructions

- (a) If the Client places an Order with the Intermediary, the Intermediary, as the Client's agent (and not as the agent of Openmarkets), will communicate the Client's Order to Openmarkets and other instructions or information to Openmarkets as appropriate. In placing an Order the Client is acting as principal or as an Intermediary on another's behalf (and if acting as an Intermediary the Client is specifically authorised to transact the ASX Derivatives Products by terms of a licence held by the Client, a trust deed or an agency contract).
- (b) Openmarkets will not act on any Orders or other instructions, or information communicated directly to it by the Client (and not through the Intermediary). The Client may only terminate the Intermediary's authority to act on the Client's behalf by terminating this agreement. A reference in this agreement to an Order or instruction from the Client is a reference to an Order or instruction from the Intermediary as the Client's agent.
- (c) Openmarkets may at any time, in its absolute discretion, refuse to accept any Order from, or execute Orders for, the Client.
- (d) Subject to any instructions from the Client, Openmarkets will generally execute Orders in the sequence in which they are received. However, the Client acknowledges and agrees that:
  - (i) the Client's Order may be automatically crossed against other orders before reaching the market;
  - (ii) the Client will be charged the normal rate of commission by the Intermediary for Orders which are crossed with Openmarkets' principal orders; and
  - (iii) Openmarkets may not be aware of principal orders that are being (or may be) executed, and that direct market access arrangements and program trading may make it impossible to prevent principal orders from being executed at the same time as (or before) the Client's Order. Accordingly, the Client agrees that Openmarkets may execute principal orders where the Client's Order on the same terms is outstanding and that this agreement constitutes disclosure as required by ASIC Market Integrity Rule 5.1.8.



### **D3. Right to refuse to deal**

***[ASX Minimum Term 4, ASIC Minimum Term 3.1.7(1)(d)(vi) and ASX Clear Minimum Term 4]***

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

## **Section 2: Clearing Arrangements and Relationship With ASX and ASX Clear**

### **D4. The Client's relationship with Openmarkets**

- (a) The Client's primary relationship will be with the Intermediary. The Client's relationship with Openmarkets will be limited to the execution of Orders placed with Openmarkets by the Intermediary on behalf of the Client and to the clearing and settlement of Derivatives Transactions.
- (b) The Client acknowledges that Openmarkets will not provide financial product advice, or legal, tax, financial or accounting advice or make any financial product recommendations to the Client as part of the service to be provided to the Client by them.

### **D5. Nature of Openmarkets' obligations**

***[ASIC Minimum Term 3.1.7(1)(d)(i) and ASX Clear Minimum Term 4]***

The Client acknowledges that:

- (a) notwithstanding that Openmarkets or the Intermediary may act in accordance with the instructions of, or for the benefit of, the Client, any Derivatives Contract arising from any order submitted to ASX is entered into by Openmarkets as principal; and
- (b) upon registration of a Derivatives Contract with ASX Clear in the name of Openmarkets, Openmarkets incurs obligations to ASX Clear as principal, even though the Derivatives Contract may have been entered into on the Client's instructions.

### **D6. Obligations of Client owed to Openmarkets**

On execution of a Derivatives Transaction by Openmarkets (or another Trading Participant where the Derivatives Transaction is allocated or transferred to Openmarkets as contemplated by clause D34 Give up to Openmarkets and similar arrangements) on behalf of the Client:

- (a) Openmarkets (and not that other Trading Participant or its Clearing Participant) is obliged as principal and has the Clearing Obligations (as defined in the ASX Operating Rules) for that transaction (including upon registration, obligations to ASX Clear as principal) even though the transaction has been entered into on the Client's behalf; and
- (b) the Client owes obligations to Openmarkets in relation to that Derivative Transaction including the obligations set out in this agreement.
- (c) Where the Client owes an obligation to deliver funds, security or information to Openmarkets that obligation will not be satisfied by delivery to the Intermediary.

## D7. Rights of Client

### **[ASX Clear Minimum Term 4]**

The Client acknowledges that any benefit or right obtained by Openmarkets upon registration of a Derivatives Contract with ASX Clear by novation of a contract under the ASX Clear Rules or any other legal result of registration is personal to Openmarkets 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 ASX or ASX Clear in relation to any transactions by Openmarkets (or any other Market Participant or Clearing Participant) in any Derivatives Contract.

## D8. Appointment as agent

### **[ASX Clear Minimum Term 10]**

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 (as applicable) 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 ASX Clear Operating Rule 15 including, the power to transfer or close out Derivatives Contracts if Openmarkets commits an event of default.

## D9. Application of ASX Operating Rules and ASX Clear Rules

### **[ASX Minimum Term 1, ASIC Minimum Term 3.1.7(1)(d)(vii) and ASX Clear Minimum Term 1]**

- (a) The Client and Openmarkets agree that the terms of their relationship in respect of Derivatives Contracts, and any dealings between them concerning Derivatives Contracts are subject to and that they are bound by the Corporations Act, the ASIC Market Integrity Rules, the ASX Operating Rules, the ASX Clear Rules and the procedures, customs, usages and practices of ASX, ASX Clear and their related entities, as amended from time to time, in so far as they apply to Derivatives Contracts.
- (b) The Client acknowledges that each Derivatives Contract registered with ASX Clear is subject to the ASX Clear Rules and the practices, directions, decisions and requirements of ASX Clear.

## Section 3: Margin Calls and Cover

### D10. Openmarkets may call for funds or security

#### **[ASX Clear Minimum Term 6]**

Openmarkets may call for payment of money or the provision of other security (**Openmarkets Cover**) which Openmarkets considers, in its absolute discretion, appropriate in connection with the obligations incurred by Openmarkets in respect of Derivative Contracts entered into for the account of the Client. The Client acknowledges that Openmarkets is entitled to call for Openmarkets Cover under this clause of an amount or value which exceeds the amount of the Cover that Openmarkets is required to provide to ASX Clear in respect of the Derivative Contracts registered with ASX Clear in a Client Account in respect of the Client. The time by which the Client must pay any amount called or provide security is of the essence. The Client must pay the amounts, or provide the relevant security, within 24 hours of the call for payment.

#### **D11. Application of funds or financial products to satisfy calls**

The Client authorises Openmarkets to withdraw or otherwise apply funds or financial products held on the Client's behalf to partially or fully satisfy such calls.

#### **D12. Authority to provide Cover**

If the Client makes money or financial products available to Openmarkets as Openmarkets Cover (whether by delivery to Openmarkets or application by Openmarkets under this agreement), the Client:

- (a) warrants that the Client is legally entitled and authorised to do so, and that the Openmarkets Cover is free from all Encumbrances; and
- (b) authorises Openmarkets to pay the money and/or make the financial products available to ASX Clear as Cover.

#### **D13. Interest in Cover**

No interest is payable on money or other security provided by the Client to Openmarkets under this clause.

#### **D14. Openmarkets may use money as Cover**

Openmarkets may itself provide money or other financial products to ASX Clear as Cover for its Clearing Obligations and Openmarkets will retain any interest it receives on such money.

### **Section 4: Commissions and Fees**

#### **D15. Amounts Payable**

***[ASX Minimum Term 2, ASIC Minimum Term 3.1.7(1)(d)(iii) and ASX Clear Minimum Term 8]***

The Client must pay to Openmarkets:

- (a) (as agent for the Intermediary) commissions, fees, charges and taxes, charged by the Intermediary in connection with dealings for the Client in ASX Derivative Products at the rates determined by the Intermediary from time to time and notified to the Client in writing; and
- (b) commissions, fees, charges and taxes in connection with dealings for the Client in ASX Derivative Products (including for the transfer of Underlying Financial Products following the exercise of an Options CCP Contract) at the rates determined by Openmarkets from time to time and notified to the Client in writing.

Commission is payable to Openmarkets on a contract executed by Openmarkets for the transfer of Underlying Financial Products following the exercise of a Derivatives Contract. Openmarkets will pass on part of that commission to the Intermediary.

The commission charged by the Intermediary to the Client is also collected by Openmarkets on behalf of the Intermediary. Openmarkets will account to the Intermediary for such commission after deducting fees that Openmarkets charges to the Intermediary.

## Section 5: Money and Default

### D16. Client funds and property

#### **[ASX Clear Minimum Term 15]**

Openmarkets must deal with any money and property paid or given to Openmarkets in connection with the Openmarkets/Client relationship in accordance with the Corporations Act and the ASX Clear Rules.

### D17. Combination, deposit and use of funds

#### **[ASX Clear Minimum Term 15]**

- (a) The Client acknowledges that the Client's monies and the monies of other clients of Openmarkets may under the ASX Clear Rules be combined and deposited by Openmarkets in a trust account or clients' segregated account. The Client acknowledges that all monies credited to the clients' segregated account maintained by Openmarkets may be used by Openmarkets to meet the default of any client of Openmarkets.
- (b) Despite the above clause, Openmarkets agrees that it will only pay the Client's monies into a trust account.

### D18. Set-off

Openmarkets is entitled to set-off any monies received from the sale of Financial Products on the Client's behalf against any monies due to Openmarkets by the Client on any account.

### D19. Default

#### **[ASX Clear Minimum Term 7]**

- (a) If:
  - (i) the Client fails to pay, or provide security for, amounts payable to Openmarkets or fails to perform any obligation arising pursuant to the exercise or settlement of a Derivatives Contract;
  - (ii) the Client becomes bankrupt or enters into a composition or arrangement for the benefit of creditors or, being a company, a liquidator is appointed to the Client or an administrator, receiver, receiver and manager or official manager is appointed over all or a part of the Client's property or an encumbrancer or its agent takes possession of all or part of the Client's property or the Client enters into any scheme of arrangement with creditors under Part 5.1 of the Corporations Act;
  - (iii) the Client makes any representation that is incorrect or misleading in any material way with the result that loss or damage is, or is likely to be, suffered by Openmarkets;
  - (iv) in the absence of the Client making alternative arrangements, the Client is at any time not contactable by the Intermediary immediately in order for Openmarkets to obtain instructions or call for payment of money or the provision of other security;
  - (v) the conduct of the Client is such that a reasonably prudent Intermediary would be of the view that the Client would be unable to comply with all the Client's obligations under this agreement, including strict compliance with any time limits;
  - (vi) the Client fails to complete a contract for the transfer of Underlying Financial

Products following the exercise of an Option CCP Contract;

- (vii) a guarantee or other security provided by the Client to Openmarkets is withdrawn or becomes ineffective and another replacement security acceptable to Openmarkets is not provided;
- (viii) the Client "fails to settle" for the purpose of the terms of the Client's agreement with Openmarkets in relation to the execution, clearing and settlement of transactions in financial products quoted on ASX or other Market Transactions; or
- (ix) any other event occurs which Openmarkets, and the Client have agreed in this agreement constitutes a default,

(each a **default**), Openmarkets may, in addition to any other rights which it may have against the Client, without giving prior notice to the Client, take any action, or refrain from taking action, which it considers reasonable in the circumstances in connection with Derivatives Contracts registered in the Client Account or otherwise entered into for the account of the Client (including, Derivatives Contracts arising from those contracts) and, Openmarkets may:

- (x) enter into one or more transactions (whether on-market or by private contract, together or in lots for cash or credit and for a price or prices upon such terms and conditions in all respects as Openmarkets sees fit) to effect the close out of one or more Derivatives Contracts in accordance with the ASX Clear Rules;
  - (xi) exercise one or more Derivatives Contracts in accordance with the ASX Clear Rules;
  - (xii) enter into or execute any Cash Market Transaction or Derivatives Transaction (including a Futures Market Transaction) as Openmarkets sees fit, whether or not the Client is permitted under this agreement to place an Order in respect of that kind of transaction);
  - (xiii) sell or cause to be sold:
    - A any or all of the Client's property, including any security, lodged with Openmarkets (whether the property or security had been lodged with Openmarkets in connection with this agreement or for any other reason) or held by Openmarkets or its Related Bodies Corporate on behalf of the Client or in a Holding in respect of which Openmarkets, its nominee company or a Related Body Corporate of Openmarkets is the Controlling Participant; and
    - B any financial products held by Openmarkets in an account for the Client or otherwise held (including any financial products in a Holding in respect of which Openmarkets, its nominee company or a Related Body Corporate of Openmarkets is the Controlling Participant);
  - (xiv) exercise any other power, right or remedy which Openmarkets may have under this agreement or in law or equity;
  - (xv) exercise or cause to be exercised any other rights conferred by the ASIC Market Integrity Rules, ASX Operating Rules, the ASX Clear Rules or this agreement or perform any other obligations arising under the ASIC Market Integrity Rules, ASX Operating Rules, the ASX Clear Rules or this agreement in respect of any Derivatives Contracts or Derivatives Transactions;
- (b) charge an administration fee calculated by reference to the additional cost which may be

incurred by Openmarkets as a result of the default;

- (c) levy a default charge in the amount of up to 15% per annum;
- (d) apply any cash held by Openmarkets or the Intermediary on the Client's account or to which they have access (including any amount held), or payments received from the Client in reduction of the Client's liability to Openmarkets; or
- (e) cancel any of the Client's unexecuted orders,

and the Client must account to Openmarkets as if those actions were taken on the instructions of the Client and, is liable for any deficiency and is entitled to any surplus which may result.

- (f) In relation to any of the rights exercisable for the benefit of Openmarkets in the event of a default, the Client authorises Openmarkets and each of its directors and employees as the Client's attorney to give instructions on behalf of the Client in respect of the Client's holdings of financial products in an in respect of which Openmarkets, its nominee company or a Related Body Corporate of Openmarkets is the Controlling Participant or held by Openmarkets, its nominee company or by their Related Bodies Corporate in nominee holdings, and in respect of call deposit facilities or cash management trust accounts on which they are authorised to give instructions, to enable Openmarkets to realise those financial products or funds and apply the proceeds in reduction of the Client's liability to Openmarkets and to recover Openmarkets' costs in so acting.
- (g) The Client must pay or reimburse Openmarkets any such administration fees and default charges (together with any GST payable on those amounts) immediately upon demand or at Openmarkets' option it may deduct such administration fees and default charges (and any GST) from any proceeds of the sale, or proceeds from the close out or exercise of rights in relation to a Derivatives Contract, or other amounts otherwise payable to the Client.
- (h) Openmarkets will not be liable to the Client for any failure by Openmarkets to exercise (or any delay in the exercise by Openmarkets of) any power under this clause, or any loss incurred by the Client as a result of Openmarkets not exercising any of its powers under this clause immediately, or at all, following an event of default by the Client.
- (i) The Client acknowledges that Openmarkets, in exercising any of its rights under this agreement, is entitled to act to protect its own interests and is under no obligation to subordinate the protection of its own interests to those of the Client.

#### **D20. Effect of liquidation of contract following default**

Upon close out of any Derivatives Contract in accordance with this agreement, the Client is liable to pay to Openmarkets any amount owing to Openmarkets in respect of that contract. If the Client fails to make that payment within the time specified by Openmarkets (which time is of the essence), Openmarkets may deal with any of the Client's money or other property held by Openmarkets and apply the proceeds against that amount.

#### **D21. Assignment to the Intermediary of amounts owing**

If the Client has not paid any amount due to Openmarkets under this agreement, in addition to its rights under this agreement, Openmarkets may assign that debt to the Intermediary and the assigned debt will become the Client's obligation to the Intermediary, and the Intermediary (and each of its directors and employees) will have the rights and powers (and may do all the things) set out in this agreement as if a reference to Openmarkets were a reference to the Intermediary.



## D22. Method of Payment

Where money is payable to Openmarkets by the Client (for example where Openmarkets has called for payment of money or has notified the Client of commissions and fees under these Terms), the Client:

- (a) is not permitted to make payments in cash; and
- (b) will be entitled to make payment from a cheque or savings account by BPAY, where the relevant document provided by Openmarkets or the Intermediary (such as a confirmation or notice as the case may be) bears a BPAY Biller Code. Payment by this means will only be acceptable to Openmarkets if the Client quotes the relevant BPAY Biller Code and reference number.

## D23. Release

In consideration of Openmarkets entering into this agreement with the Client, the Client releases Openmarkets (and its Related Bodies Corporate and their respective directors, officers, employees and agents) (the Released Parties) in respect of all present or future claims the Client may have against the Released Parties or any of them arising out of or in connection with the exercise by Openmarkets of any of its rights under this clause.

## Section 6: Acknowledgments and Warranties

### D24. Change of Participant

#### ***[ASX Clear Minimum Term 16]***

If the Client receives a Participant Change Notice from Openmarkets and the Participant Change Notice was received at least 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 below.

The Client may choose to terminate this agreement as provided for in this agreement or by giving instruction to Openmarkets, indicating that the Client wishes to transfer its Derivatives Contracts to another Participant.

If the Client does not take any action to terminate this agreement and does not give any other instructions to Openmarkets which would indicate that the Client does not agree to the change of Participant then, on the Effective Date, this agreement 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 these this agreement in substitution for Openmarkets;
- (b) any rights of Openmarkets are transferred to the new Participant; and
- (c) Openmarkets is released by the Client from any obligations arising on or after the Effective Date,

and the Client will also be taken to have consented to and authorised:

- (d) the transfer to the new Participant of all the Client's open Derivatives Contracts as at the Effective Date so that they will be registered with ASX Clear in the new Participant's name;
- (e) the payment or transfer to the new Participant (or a Controlling Participant or nominee nominated by the new Participant) on the Effective Date of all money and other security (including all Openmarkets Cover) provided to Openmarkets under this agreement before

the Effective Date to be held by the new Participant (or by the nominee or in a Holding in respect of which the new Participant (or another Controlling Participant nominated by the new Participant) is the Controlling Participant as the case may be) under this agreement as novated,

and, if the Client has executed before the Effective Date a Registered Holder Collateral Cover Authorisation under which the Client authorised a Controlling Participant to reserve (or withdraw) financial products registered in the Client's name in the ASX Clear Subposition as Collateral Cover for obligations in respect of Derivatives Contracts registered with ASX Clear in Openmarkets' name in a Client Account in respect of the Client, the Client is also taken to have appointed the new Participant and each director, secretary and officer of the new Participant for the time being as the Client's attorney to complete and execute a Registered Holder Collateral Cover Authorisation under which the Client authorises that Controlling Participant to reserve (or withdraw) financial products registered in the Client's name in the ASX Clear Subposition as Collateral Cover for obligations in respect of Derivatives Contracts registered with ASX Clear in the new Participant's name in a Client Account in respect of the Client.

The novation cannot take effect until the Client has received a notice from the new Participant confirming that the new Participant consents to act 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.

The Client will be taken to have consented to the events referred to above by the doing of any act which is consistent with the novation of this agreement 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.

This agreement continues for the benefit of Openmarkets 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 not binding or effective on the Effective Date, then this agreement will continue for the benefit of Openmarkets until such time as the novation is effective, and the existing Participant will hold the benefit of this agreement on trust for the new Participant.

Nothing in this clause will prevent the completion of Derivatives Transactions or Derivatives Contracts by Openmarkets where the obligation to complete those transactions or contracts arises before the Effective Date and this agreement will continue to apply to the completion of those contracts, notwithstanding the novation of this agreement to the new Participant under this clause.

## **D25. Explanatory Booklet and other documents**

### ***[ASIC Minimum Term 3.1.7(1)(b) and ASX Clear Minimum Term 3]***

- (a) The Client has received and read a copy of the current explanatory booklet published by ASX in respect of each ASX Derivative Product. This does not apply in relation to a Client that is Wholesale Client.
- (b) The Client acknowledges that it has read and understood the documents (if any) given to it under ASX Clear Operating Rule 7.1.1(b).

## **D26. Risk and investment in ASX Derivative Products**

### ***[ASX Clear Minimum Term 3]***

- (a) The Client acknowledges that trading in ASX Derivative Products incurs a risk of loss as

well as a potential for profit.

- (b) The Client acknowledges that it has given consideration to its objectives, financial situation and needs and has formed the opinion that dealing in ASX Derivative Products is suitable for its purposes.

## **D27. Dealing as Principal and Openmarkets taking opposite positions**

### ***[ASIC Minimum Term 3.1.7(1)(d)(ii) and ASX Clear Minimum Term 5]***

The Client acknowledges that Openmarkets may, in certain circumstances permitted under the Corporations Act and the ASX Operating Rules, or the ASX Clear Rules, take the opposite position in a Derivatives Contract, either acting for another client or on its own account.

## **D28. Confirmations**

The Client acknowledges that each Derivatives Transaction executed by Openmarkets, and each confirmation (contract note/daily statement) dispatched to the Client by Openmarkets on its own behalf or on behalf of the Intermediary is subject to:

- (a) the terms and conditions of this agreement;
- (b) the directions, decisions and requirements of ASX, the ASIC Market Integrity Rules, the ASX Operating Rules, the ASX Clear Rules and where relevant, the ASX Settlement Rules;
- (c) the customs and usages of the Market (as defined in the ASIC Market Integrity Rules); and
- (d) the correction of errors and omissions.

The Client authorises Openmarkets to provide any confirmation electronically. If the Client is a Wholesale Client for the purposes of the ASIC Market Integrity Rules, Openmarkets may elect not to give any confirmation to the Client in relation to Derivatives Transactions executed for the Client.

## **D29. Cancellation of trades**

The Client authorises Openmarkets, and agrees that Openmarkets may, without the Client's consent, cancel or amend (or request or agree to the cancellation or amendment of) any Derivatives Contract to which a confirmation relates:

- (a) if requested to do so by the Intermediary in circumstances contemplated by the ASX Operating Rules (as if the Intermediary were a Trading Participant that executed the Order to which the Derivatives Transaction relates);
- (b) if ASX exercises its power under the ASX Operating Rules to cancel or amend (or require the cancellation or amendment of) the Derivatives Transaction or Derivatives Contract; or
- (c) in the event of an error (as defined in the ASX Operating Rules) or otherwise in the circumstances contemplated in the ASX Operating Rules.

The obligations of Openmarkets and the Client relating to the settlement of a transaction cease to apply in respect of a cancelled transaction from the time it is cancelled.

## **D30. OTC**

### ***[ASX Clear Minimum Term 17]***

The Client acknowledges that it may only transact in OTC Options Market Transactions if it is not a U.S. person as that term is defined in Rule 902(k) of Regulation S under the Securities Act 1933 (United States.)

## Section 7: Information

### D31. Provision of Information

**[ASX Minimum Term 3 and ASX Clear Minimum Term 2]**

The Client will take all reasonable steps to deliver information or documentation to Openmarkets, or cause information or documentation to be delivered to Openmarkets concerning Derivatives Transactions which are requested by a person having a right to request such information or document. Openmarkets is authorised to produce the information or documentation to the person making the request.

### D32. Tape recording of conversations

**[ASIC Minimum Term 3.1.7(1)(d)(iv) and ASX Clear Minimum Term 9]**

The Client agrees that Openmarkets may record telephone conversations between the Client and Openmarkets. The Client also agrees that Openmarkets may use such recordings for the purposes of resolving disputes, and monitoring compliance by the Client or the Intermediary with their regulatory and contractual obligations. If there is a dispute between the Client and Openmarkets, the Client has the right to listen to any recording of those conversations. Nothing in this agreement obliges Openmarkets to make or keep a recording.

## Section 8: Allocation (Give Up)

### D33. Openmarkets must consent to any give up

The Client acknowledges and agrees that Openmarkets is obliged as principal and has the Clearing Obligations in respect of all transactions in relation to ASX Derivative Products which are executed by Openmarkets (or by another Trading Participant and then allocated or transferred to Openmarkets) on behalf of the Client, unless, in relation to a specified Derivatives Contract (**Allocated Trade**):

- (a) the Client has consented to the allocation of the Derivatives Contract to another Participant;
- (b) Openmarkets has consented to the allocation of the Derivatives Contract to that other Participant;
- (c) Openmarkets has provided that consent prior to the Derivatives Contract being registered with ASX Clear;
- (d) that other Participant has accepted the allocation of that Derivatives Contract in accordance with the ASX Clear Rules; and
- (e) that other Participant has entered into a Client Agreement with the Client which complies with the ASX Clear Rules.

### D34. Openmarkets ceases to have Clearing Obligations following give up

Clauses *D10. Openmarkets may call for funds or security* and *D18. Default* do not apply in relation to an Allocated Trade, where the Client directs that trades be allocated to a Participant (who is not Openmarkets) for registration in the relevant Client Account of that other Participant and the other Participant accepts the allocation of those trades for registration, and the trade is allocated by Openmarkets to the other Participant in accordance with the ASX Clear Rules.

### **D35. Give up to Openmarkets and similar arrangements**

The Client acknowledges that Openmarkets and the Intermediary may make arrangements under which Derivatives Contracts executed by a Trading Participant other than Openmarkets on behalf of the Client, are:

- (a) allocated to Openmarkets as Clearing Participant for that Trading Participant;
- (b) allocated to Openmarkets as contemplated by ASX Clear Operating Rule 11.1; or
- (c) transferred to Openmarkets as contemplated by ASX Clear Operating Rule 13.1.

The Client agrees that the provisions of this agreement will apply to any Derivatives Contracts which are allocated or transferred to Openmarkets under any such arrangements unless the Client and Openmarkets have entered into a separate agreement in respect of any such Derivatives Contracts.

## **Section 9: Indemnity**

### **D36. Our loss**

The Client agrees to indemnify and keep indemnified Openmarkets from all claims, losses, liabilities, damages and costs (including legal costs on a solicitor and client basis) whatever and however arising suffered or incurred by Openmarkets directly or indirectly arising out of or in connection with:

- (a) Openmarkets acting as Trading Participant or Clearing Participant for the purposes of the ASIC Market Integrity Rules, ASX Operating Rules or the ASX Clear Rules as contemplated by this agreement;
- (b) the performance by Openmarkets of its obligations under this agreement;
- (c) any failure by the Client to strictly comply with, or to perform any of its obligations under, this agreement;
- (d) any representation or warranty is given by the Client under this agreement proving to be untrue or incorrect; or
- (e) any Allocated Trade.

## **Section 10: Termination of Agreement**

### **D37. Termination by notice**

#### ***[ASIC Minimum Term 3.1.7(2) and ASX Clear Minimum Term 11]***

Either the Client or Openmarkets may terminate this agreement at any time by giving notice in writing to the other. Termination will be effective upon receipt of the notice by the other party.

### **D38. Effect of termination**

#### ***[ASX Minimum Term 5 and ASX Clear Minimum Term 12]***

Termination does not affect the existing rights and obligations of the Client or Openmarkets at or prior to the termination. Upon termination of this agreement, Openmarkets will close out all Derivatives Contracts held by Openmarkets for the account of the Client, unless, in accordance with a direction from the Client, the registration of those contracts is transferred to another Participant in accordance with the ASX Operating Rules or ASX Clear Rules.

## Section 11: Amendment

### D39. Revised Terms prescribed by ASX or ASX Clear

#### *[ASX Minimum Term 6 and ASX Clear Minimum Term 13]*

If ASX or ASX Clear prescribes amended minimum terms for a Client Agreement for the purposes of the ASX Operating Rules or ASX Clear Rules (New Terms), to the extent of any inconsistency between this agreement and the New Terms, the New Terms will override this agreement and apply as if the Client and Openmarkets had entered into an agreement containing the New Terms.

### D40. Openmarkets to provide Client with a copy of changes

#### *[ASX Minimum Term 7 and ASX Clear Minimum Term 14]*

Openmarkets will provide a copy of the New Terms to the Client as soon as practicable after ASX Clear or ASX prescribes the New Terms.

## Section 12: General

### D41. Set-off

Without limiting any other clause of this agreement, Openmarkets may, without notice to the Client, combine any account that the Client holds at any branch or office (in Australia or elsewhere) of Openmarkets or its Related Parties Corporate with, or set-off any amount in any currency that is or may become owing in any currency by Openmarkets (or any Related Body Corporate of Openmarkets) to the Client against, any amount owing by the Client to Openmarkets (or any Related Body Corporate of Openmarkets). For this purpose, Openmarkets may:

- (a) change the terms (including the repayment date) of any account or other payment obligation between the parties;
- (b) convert amounts into different currencies in accordance with Openmarkets 's usual practice; and
- (c) do anything (including executing any document) in the name of the Client that Openmarkets considers necessary or desirable.

This clause overrides any other document or agreement to the contrary.

### D42. Notices

Any confirmation, statement or other written notice (including legal process) served by Openmarkets on the Client, or served by the Client on Openmarkets pursuant to this agreement will be deemed to have been duly served and received:

- (a) if given by hand, at the time left at the relevant party's last known place of residence or business;
- (b) if given by mail, 2 Business Days after it is posted where the recipient party's last known address is in Australia, and ten Business Days after it is posted by airmail where the



recipient party's last known address is outside Australia;

- (c) if given by telex, upon receipt of the recipient party's answer back;
- (d) if given by telegram, six hours after dispatch to the recipient party;
- (e) if given by facsimile transmission, at the time of transmission to the recipient party's last known facsimile number, or upon acknowledgment by the recipient party; or
- (f) if given electronically, upon receipt of a confirmation of delivery by the party giving the notice of the electronic mail message to the last known electronic mail address of the recipient party.

Unless otherwise specified in this agreement, notices served by Openmarkets on the Client need not be in writing. In particular, a call may be made by telephone to the Client by Openmarkets or by the Intermediary on Openmarkets' behalf.

Openmarkets may arrange for any notice to be given by Openmarkets to the Client under this agreement or the ASX Clear Rules to be given to the Client by the Intermediary acting as Openmarkets' agent. Openmarkets may also provide the Intermediary with a copy of any such communication or notice given to the Client by (or on behalf of) Openmarkets.

The Client hereby indemnifies Openmarkets against any liability, damage, cost or expense incurred by Openmarkets arising out of Openmarkets acting (or declining to act) upon a facsimile request or instruction received by Openmarkets whether directly or through a request made of an officer or employee of any Related Body Corporate of Openmarkets from the Client or any person purporting to be the Client or the Client's Authorised Representative or agent.

Openmarkets may reserve the right to refuse any instruction transmitted by facsimile.

#### **D43. Authority**

[ASIC Minimum Term 3.1.7(1)(c)]

The Client acknowledges that the Client is either:

- (a) acting as principal; or
- (b) acting as an Intermediary on another's behalf and is specifically authorised to transact the ASX Derivative Products, by the terms of:
  - (i) an AFSL held by the Client;
  - (ii) a trust deed (if the Client is a trustee); or
  - (iii) an agency contract.

#### **D44. Representations and Warranties as to Capacity**

The Client represents and warrants to Openmarkets that:

- (a) where the Client is a body corporate, the Client is (and will remain) duly incorporated under the laws of the place of its incorporation and has full power and authority to enter into this agreement and deal in ASX Derivative Products, and any person executing this agreement has full power and authority to execute this agreement on behalf of the Client;
- (b) where the Client is a partnership, the Client has full power and authority to enter this agreement and to deal in ASX Derivative Products, and the person executing this agreement has full power and authority to execute this agreement on behalf of the Client;
- (c) where the Client is a natural person, the Client has the legal capacity to execute this

agreement; and

- (d) in any of the above cases, where the Client enters this agreement as trustee, the Client has full power and authority as such trustee to enter this agreement and to deal in ASX Derivative Products and:
  - (i) it has the right to be indemnified out of the assets of the trust for all liabilities incurred under this agreement;
  - (ii) it will remain the owner of the Openmarkets Cover unless it disposes of them in accordance with this agreement;
  - (iii) Openmarkets can be subrogated to its right of indemnity;
  - (iv) the transactions contemplated by this agreement are for the benefit and in the best interests of the beneficiaries of the trust; and
  - (v) it has properly exercised its trust powers and has full authority under the trust to enter into the document containing this agreement.

## **Section 13: Instructions and Authorised Representatives**

### **D45. Powers of Authorised Representatives**

The Client agrees that each of the persons stated in the application form (or otherwise notified by the Client to Openmarkets) to be an Authorised Representative of the Client has power for and on behalf of the Client and in the Client's name to:

- (a) give instructions to Openmarkets in relation to Openmarkets Cover of the Client or in relation to the Derivatives Transactions or Derivatives Contracts including to directing or consenting to deal by Openmarkets in any Openmarkets Cover, Derivatives Transactions or Derivatives Contracts of the Client and any application of the proceeds of any such dealing;
- (b) request and accept drawings;
- (c) do all other acts and things (including completing, executing and delivering documents) as the Authorised Representative thinks necessary or desirable to give effect to the above powers or otherwise in connection with this agreement; and
- (d) appoint other persons (each a Delegate) with power to exercise all or any of the powers of the Authorised Representative conferred by this clause.

### **D46. Ratification of Decisions**

The Client agrees to ratify and confirm anything done by the Authorised Representative or a Delegate in the exercise of the above powers.

### **D47. Revocation of Power**

The Client may revoke an Authorised Representative's powers by notice in writing to Openmarkets. A declaration by an Authorised Representative to the effect that his or her powers have not been revoked is conclusive evidence of that fact and binding on the Client.

#### **D48. Indemnity**

The Client hereby indemnifies each of Openmarkets against any liability, damage, cost or expense incurred by Openmarkets arising out of it acting upon an oral request received by it whether directly or through a request made of an officer or employee of any Related Body Corporate of Openmarkets from the Client or any person purporting to be the Client or the Client's Authorised Representative or agent.

## Part E: Nominee Terms

If you have directed that Openmarkets Nominees Pty Ltd ACN 603 716 089 (**Nominee**) hold Financial Products on your behalf as bare trustee, then the Terms of this Part E apply to our custodian services. Nominee is a Related Body Corporate of Openmarkets. You provide, and Nominee will hold, your Financial Products on your behalf in accordance with the following terms and conditions (as well as in accordance with regulation 7.6.01(1)(v) of the *Corporations Regulation 2001* (Cth) where applicable):

### E1. Appointment of Nominee as bare trustee

- (a) You instruct Nominee to act as bare trustee in respect of Financial Products which you deal in through your Intermediary (via Transactions) from time to time.
- (b) You instruct Nominee to act as your agent to register the Financial Products in its name.
- (c) Nominee will register the Financial Products so as to be recorded as the holder of the legal title to the Financial Products, but You will retain all beneficial ownership and interest in the Financial Products.
- (d) Subject to these Nominee Terms:
  - (i) Notwithstanding that Nominee holds legal title to the Financial Products it must not exercise any rights attached to the ownership of the Financial Products, dispose of or otherwise deal with the Financial Products unless otherwise directed to do so by You; and
  - (ii) You can at any time direct Nominee in writing (through your Intermediary) to transfer the legal ownership of all or some of your Financial Products to You or at your direction and Nominee must transfer those Financial Products within ten (10) business days of receipt of Your written instructions.
- (e) You consent to the Financial Products being held on your behalf by the Nominee being co-mingled in a common pool with other Financial Products held by the Nominee on behalf of other clients in the manner prescribed in, and in accordance with, the Corporations Act.

### E2. Your instructions

- (a) Any instructions which You give to Nominee must be in writing unless otherwise accepted by Nominee.
- (b) Without in any way limiting any other form of acceptance by You of these terms and conditions, You will be deemed to have accepted the terms and conditions of these Nominee Terms by providing instructions to Nominee or Openmarkets to hold Financial Products on your behalf.
- (c) Nominee and Openmarkets are not required to act on your instructions where any monies are owed by You to them.

### E3. Joint accounts

- (a) Where You are more than one person or entity, these terms and conditions bind each of you jointly and severally.
- (b) Nominee may act on the written instructions of each of you without the necessity to refer to or notify any other person in connection with those instructions. Signatures of all joint account holders will be required to give directions relating to payments to third parties

unless otherwise permitted by Nominee or Openmarkets.

#### **E4. Company accounts**

If You are a company, unless otherwise specified in writing, Nominee or Openmarkets may act on the instructions of any one of the directors of the company as advised by You without the necessity to refer to or notify any other person in connection with these instructions.

#### **E5. Authority to disclose details of ownership**

- (a) Nominee will disclose your name, address, and the number and type of Financial Products it holds on your behalf, together with any other relevant information should it be required to do so by law or as requested by an issuer of a particular Financial Product.
- (b) As a bare trustee Nominee will not and must not lodge substantial security holder notices (where applicable), unless expressly directed to do so by way of written instruction from You and only after You have paid in advance any fees that Nominee estimates may be incurred by it in undertaking those instructions.

#### **E6. Record keeping**

- (a) Nominee will maintain records of:
  - (i) the property to which these Nominee Terms relate which clearly identify that the property is held on your behalf; and
  - (ii) all dealings in relation to that property, including by whom, when and how those dealings were authorised.
- (b) Nominee will apply verification procedures for the appropriately frequent reconciliation and checking of the Financial Products the subject of these Nominee Terms.
- (c) All records in relation to your Trading Account will be kept and maintained by Nominee and made available to you upon request, including details of:
  - (i) the verification procedures in relation to the reconciliation and checking of the balances of customer assets held by the Nominee; and
  - (ii) Nominee's reporting requirements.

#### **E7. Corporate Actions**

- (a) Your Intermediary will arrange for you to have access to electronic copies of any annual accounts, notices of meetings, and other documents or information provided to Nominee with respect to your Financial Products and you expressly disclaim any obligation for Nominee to provide such documentation or information.
- (b) However, you acknowledge that the Intermediary reserves the right to take no action in relation to any Corporate Action for legitimate business, prudential or regulatory reasons, or if it would otherwise be impractical for the Intermediary to pass on any such Corporate Action and that the Nominee is free from any liability in respect of such action (or inaction) by the Intermediary.
- (c) Additional terms and conditions may apply to individual Corporate Actions and such terms and conditions will be provided to you by the Intermediary.
- (d) Your Intermediary may not provide access to Voluntary Corporate Actions and/or Mandatory Corporate Actions With Choice. In those scenarios, Nominee will take no further action in respect of that Voluntary Corporate Action or Mandatory Corporate Actions With Choice and you expressly disclaim liability in relation to such inaction by the

Nominee or Openmarkets.

- (e) When you acquire Financial Products via your Intermediary, you may be asked to make a default election in respect of certain:
  - (i) Voluntary Corporate Actions; and
  - (ii) Mandatory Corporate Actions With Choice.
- (f) If Nominee holds Financial Products in an entity on your behalf and that entity proposes to undertake a Voluntary Corporate Action, then:
  - (i) if Nominee has received an instruction from the Intermediary as to whether you wish to participate in that Voluntary Corporate Action, Nominee will use its reasonable endeavours to give effect to that instruction; and
  - (ii) if the Intermediary has not instructed Nominee as to whether you wish to participate in that Voluntary Corporate Action, Nominee will take no further action in respect of that Voluntary Corporate Action.
- (g) Certain Intermediaries may not provide access to dividend or distribution reinvestment plans. In those scenarios, the Nominee will direct any dividend or distribution amounts to be paid in cash to the clearing account.
- (h) If Nominee holds Financial Products in an entity on your behalf and that entity proposes to undertake a Mandatory Corporate Action With Choice, then:
  - (i) if Nominee has received an instruction from the Intermediary as to whether you wish to participate in that Mandatory Corporate Action With Choice, Nominee will use its reasonable endeavours to give effect to that instruction; and
  - (ii) if Nominee has not received an instruction from the Intermediary as to whether you wish to participate in the Mandatory Corporate Action With Choice, Nominee will use its reasonable endeavours to act in accordance with the default terms put forward by the relevant entity in respect of that Corporate Action, except if Nominee has otherwise specified an alternative default option.
- (i) If Nominee holds Financial Products in an entity on your behalf and that entity proposes to undertake a Mandatory Corporate Action Without Choice:
  - (i) Nominee will be required to participate in that Corporate Action on your behalf; and
  - (ii) you will not be able to make an election in respect of that Corporate Action.

## **E8. General**

- (a) If, because of a Corporate Action, you are entitled to:
  - (i) a fraction of a security; or
  - (ii) a fraction of a cent (for example, following payment of a dividend, distribution or otherwise),

Nominee will round that fraction down to the nearest whole number or the nearest whole cent, as applicable. If, as a result of the operation of this clause, Nominee holds surplus Financial Products, it may sell these Financial Products and distribute the proceeds of the sale proportionally to clients (including you). Nominee and/or the Intermediary reserves the right to retain or sell fractional Financial Products and not distribute them at its discretion, for legitimate business, prudential or regulatory reasons. Nominee and/or the Intermediary will be entitled to and will retain, any amounts collected.

- (b) If the terms of a Corporate Action require an election to be made on behalf of the



Nominee's entire nominee holding in an entity, Nominee reserves the right not to pass on that Corporate Action to the Intermediary, where it is reasonable to do so. Nominee will use its best endeavours to give you an alternative option in respect of that Corporate Action, but it cannot guarantee that this will match the options offered by that entity.

- (c) Any cash proceeds allocated to you because of a Corporate Action will be credited to your Cash Account as soon as reasonably practicable after the date on which those cash proceeds are credited to the Openmarkets clearing account.
- (d) Any Financial Products allocated to you arising because of a Corporate Action will be distributed to your Portfolio as soon as reasonably practicable after the date on which the Financial Products allocation is received by Nominee.
- (e) Some Corporate Actions may have withholding tax applied, in which case:
  - (i) withholding tax will be deducted from your Cash Account; or
  - (ii) Nominee may sell down your Financial Products to recover the withholding tax amount.
- (f) Upon notification of a Financial Product being removed from the official list of a Securities Exchange, the Nominee reserves the right to transfer the respective Financial Product out of your Portfolio into the name of the Intermediary with the respective share register prior to the date of delisting. Where possible, Nominee will make reasonable endeavours to notify the Intermediary of the delisting.

## **E9. Voting**

The Intermediary will not provide instructions to Nominee to exercise any voting rights attached to the Financial Products it holds on your behalf.

## **E10. Substantial holder notices**

As a bare trustee, Nominee is not required to lodge substantial holder notices on your behalf. You acknowledge and agree that it is your responsibility to lodge a substantial holder notice (or any other equivalent notice in other jurisdictions) in accordance with the Corporations Act (or other relevant law in other jurisdictions).

## **E11. Charges**

- (a) You will, in accordance with Nominee's instructions:
  - (i) pay to Nominee any fees charged in relation to your dealings, including without limitation the nominee service fees which will be advised to You from time to time; and
  - (ii) reimburse Nominee for any miscellaneous costs it incurs in relation to any dealings on your behalf under these Nominee Terms.
- (b) You authorise Nominee to deduct any amounts payable to Nominee from monies held by Nominee for You.
- (c) You agree that any notice signed by a director or authorised employee of Nominee which sets out an amount due and payable by You to Nominee is prima facie evidence of the same.
- (d) If You fail to pay any amount within 7 calendar days after a written demand for payment is sent to the address provided by You, then Nominee is authorised without further notice to sell the Financial Products on your behalf and apply the proceeds of any such sale, in

payment or reduction of any outstanding amounts owed by You to Nominee or Openmarkets.

#### **E12. Sub-Nominees**

- (a) You acknowledge and agree that Nominee may, without your prior written consent, appoint and use the services of any other person or service provider as a sub-custodian in respect of your Financial Products (**Sub-Nominee**).
- (b) Nominee has agreed to take reasonable care in the selection, appointment, and periodic review of any Sub-Nominee that it appoints and procure that any Sub-Nominee will comply with the provisions of these Nominee Terms in relation to your Financial Products.
- (c) Without limiting any other limitation of our liability set out in the Terms, provided Nominee has complied with its obligations under these Nominee Terms, Nominee has no liability for the bankruptcy or insolvency of a Sub-Nominee, or for the acts or omissions of a Sub-Nominee.
- (d) Nominee will provide written notice to the Intermediary of, and contact information for, any Sub-Nominee appointed or to be appointed by Nominee to hold your Financial Products. Your continued trading through the Intermediary is acceptance of any variation in these Nominee Terms, including appointing or changing a Nominee or Sub-Nominee.
- (e) If Nominee is compelled to appoint a replacement Sub-Nominee on an urgent basis following events beyond its reasonable control, Nominee will provide notice of the appointment of such Sub-Nominee as soon as is reasonably practicable after such appointment.

#### **E13. Instructions**

Instructions in respect of your Financial Products must be given to the Intermediary, in accordance with their terms and conditions. The Intermediary will act as your agent to communicate your instructions to Nominee.

#### **E14. No personal advice**

You acknowledge that Nominee does not give personal advice or make personalised recommendations. It is therefore your responsibility, before ordering the purchase or sale of any Financial Products via the Intermediary, to assess and evaluate the proposed Financial Products Transaction considering your financial situation, investment objectives and particular needs.

#### **E15. Encumbrances**

Nominee will not take or grant a charge, mortgage, lien or other encumbrance over, or in relation to, your Financial Products unless it is:

- (a) for expenses and outlays made in accordance with these Nominee Terms (other than any unpaid fees of Nominee); or
- (b) entered in accordance with your prior written consent.

#### **E16. Confidentiality**

Nominee must not disclose any confidential information relating to you, apart from any disclosure:

- (a) to ASIC or any other regulatory body as required by law; or
- (b) as required or permitted by law or by you in writing.

## Part F: International Securities trading terms

If you are trading in International Securities, then the terms in this Part F apply in addition to the other terms of this agreement.

We have an intermediary agreement with Phillip Capital Limited (**PCL**), which means that all execution and settlement services provided for International Securities will be provided to you by PCL.

Prior to your use of those services, you will need to complete PCL's client opening forms that we will obtain from you on behalf of PCL as its agent. You will also need to agree to PCL's terms and conditions. Information about documents required by PCL and its terms and conditions are accessible by following this link: [terms.openmarkets.com.au](https://terms.openmarkets.com.au)

Once you have completed the required forms and accepted PCL's terms and conditions you will become a client of PCL for the sole purpose of PCL providing you execution and settlement services for International Securities.

Details of PCL's responsibilities and liabilities to you for the provision of its execution and settlement services for International Securities, and your rights and obligations to PCL, are set out in PCL's terms and conditions. You must accept those terms and conditions before PCL provides any services to you.

Execution and settlement services for International Securities are not provided by us and we have no responsibility or liability to you or any other person for the provision of those services or any harm or loss caused in connection with those services. Our liability to you for execution and settlement services for International Securities is excluded to the maximum extent permitted by law.

# Schedule: Definitions and Interpretation

## Definitions

In this agreement, the following terms have the following meanings and otherwise, to the extent that Exchange Rules, ASX Clear Rules or ASX Settlement Rules apply to the relevant Transaction or dealing between us, terms have the meanings given to them in those rules:

**AFSL** means Australian Financial Services Licence.

**Allocated Trade** has the meaning given to it in clause D32. Openmarkets must consent to any give up.

**API** means application programming interface.

**ASIC Market Integrity Rules** means ASIC Market Integrity Rules (made by ASIC under section 798G(1)) of the Corporations Act as amended from time to time.

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

**ASX Clear** means ASX Clear Pty Ltd ABN 48 001 314 503.

**ASX Clear Rules** means the operating rules of ASX Clear as amended from time to time.

**ASX Derivative Products** has the meaning given to it in clause D1 (*ASX Derivative Products*).

**ASX Operating Rules** means the operating rules of ASX.

**ASX Rules** means the operating rules of ASX, including the procedures made under those rules, as amended from time to time.

**ASX Settlement** means ASX Settlement Pty Ltd ABN 49 008 504 532, and its agents appointed under the ASX Settlement Rules.

**ASX Settlement Rules** means the operating rules of ASX Settlement as in force from time to time.

**Authorised Person** means a person who is nominated and permitted by Openmarkets to submit Orders through the DMA Service using the Security Information provided by Openmarkets or the Intermediary.

**Authorised Representative** means each of the persons stated in the application form (or subsequently notified by the Client to Openmarkets in a form acceptable to Openmarkets) to be an Authorised Representative of the Client.

**Banking Day** means a day (other than a Saturday or Sunday) on which banks are open for business in Melbourne. **Business Day** means a day that is both a Trading Day under the ASX Operating Rules and a Business Day under the ASX Clear Rules.

**Cash Market Transaction** has the meaning given to it in the ASIC Market Integrity Rules and the ASX Operating Rules.

**Clearing Participant** has the meaning given to it in the ASIC Market Integrity Rules and the ASX Operating Rules.

**Client** means the person or persons in whose name the account is opened with Openmarkets or named on the account opening or application form as the client. If that is more than one person,

means each of them separately and every two or more of them jointly and includes their successors and assigns.

**Confirmation** has the meaning given to it in clause B12 Confirmations.

**Controlling Participant** has the meaning ascribed to it by ASX Settlement Rules and includes a person who upon a change of Controlling Participant would be a Controlling Participant.

**Corporate Action** means an action taken by an entity in which the Nominee holds Financial Products on your behalf which has a direct effect on the holdings of that entity's security holders. A Corporate Action includes a Voluntary Corporate Action and a Mandatory Corporate Action.

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

**Crossing** has the meaning given to it in the ASIC Market Integrity Rules and has the equivalent meaning for any Securities Exchange to which those rules do not apply.

**Derivatives Contract** has the meaning given to Options Market Contract or Derivatives CCP Contract, each as defined in the ASX Clear Rules or the corresponding contract between the Client and Openmarkets, as the context requires.

**Derivatives Transaction** has the meaning given to Derivatives Market Transaction in the ASIC Market Integrity Rules and the ASX Operating Rules and where the context requires includes the sale or purchase of financial products following the exercise of a Derivatives Contract.

**Disclosure Documents** includes any financial services disclosures under the Corporations Act, Exchange Rules or other applicable law such as (without limitation) a Financial Services Guide, Confirmation, policy documents, Product Disclosure Statement, CHESS Sponsorship Agreement, client agreement and these Terms and Conditions (including any part thereof).

**DMA Service** means the automated client order processing service to be provided by Openmarkets to you on the terms contained in this agreement or to an Intermediary under which the user is able to enter Orders directly into the Trading Platform relating to Financial Products.

**DMA System** means the on-line system through which the user is able to connect to the DMA Service, and where applicable includes: (a) the software and hardware applicable to that system; (b) any Trade Facilitation Software.

**DMA Trading Limits** means the limits that Openmarkets may place on the Orders that may be submitted and/or the trades that may be undertaken through the DMA Service.

**Encumbrance** means any Security Interest, notice under sections 218 or 255 of the Income Tax Assessment Act 1936 (Cth) or under any similar provision of a State, Territory or Commonwealth law, profit a prendre, equity, interest, garnishee order, writ of execution, right of set-off, assignment of income or monetary claim, and any agreement to create any of them or allow them to exist.

**Exchange Rules** means the operating rules of each Securities Exchange and the ASIC Market Integrity Rules.

**Fail to settle** and **failure by you to settle** includes failure by you to comply with your Settlement Obligations.

**Filters** mean the restrictions Openmarkets imposes, whether by automated or manual means, to limit the Client's ability to place Orders through the DMA Service.

**Financial Products** means the financial assets (which may include shares, interests in managed investment schemes, options, other derivatives and convertible instruments) in which Orders may be placed, and includes Traded Products, International Securities and financial products offered for acquisition through ASX BookBuild.

**Futures Market Transaction** has the meaning given to it in the ASIC Market Integrity Rules.

**GST** means a goods and services tax, or any similar tax imposed in Australia.

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

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

**Intermediary** means an AFSL holder or an authorised representative of the AFSL holder who the Client instructs to place an Order with Openmarkets.

**International Securities** means securities listed on a global securities exchange and include but are not limited to stocks, shares, units, bonds, debentures or other debt securities, notes, rights, units, options and any other instruments representing rights to receive purchase or subscribe for same.

**International Transaction** means the purchase or sale or other transaction in International Securities which Openmarkets arranges to be executed on behalf of you.

**Mandatory Corporate Action** means a Corporate Action that is not discretionary and affects all security holders. Examples of Mandatory Corporate Actions include cash dividends, capital repayments, share splits, bonus issues, capital reconstructions, and compulsory acquisitions of Financial Products.

**Mandatory Corporate Action With Choice** means a Mandatory Corporate Action that provides you with a choice of alternative options.

**Mandatory Corporate Action Without Choice** means a Mandatory Corporate Action that does not provide you with a choice of alternative options.

**Market Integrity Rules** means any market integrity rules made by ASIC in accordance with Part 7.2A of the Corporations Act, as amended from time to time, which apply to a Securities Exchange, including, without limitation, the ASIC Market Integrity Rules, the Cboe Market Integrity Rules.

**Market** means the market operated by the Market Operator under the ASIC Market Integrity Rules.

**NSX** means National Stock Exchange of Australia Limited ABN 11 000 902 063.

**Openmarkets Cover** has the meaning given to it in clause D10 Openmarkets may call for funds or security.

**Order** includes an order or instruction to acquire Financial Products and includes an order to enter, amend or cancel a Bid in relation to such Financial Products.

**Participant Sponsored Holding** has the meaning given to it in the ASX Settlement Rules. Partly Paid Security means a financial product quoted on a Securities 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.

**Portfolio** means the Financial Product(s) that the Nominee holds in trust for you as a bare trustee.



**Proscribed Person** means a person who appears to us either: (a) to be a proscribed person or entity under the Charter of the United Nations Act 1945 (Cth); (b) to be in breach of the laws of any jurisdiction relating to money laundering or counterterrorism; (c) to appear in a list of persons with whom dealings are proscribed by the government or a regulatory authority of any jurisdiction; or (d) to act on behalf, of or the benefit of, persons listed in the above subclauses (a), (b) and (c).

**Purchase** includes the acquisition of Financial Products as a result of an allocation of Financial Products to you through ASX BookBuild.

**Related Body Corporate** has the meaning given to it in section 50 of the Corporations Act.

**Securities** means any means securities listed on any securities exchange (either in Australia or global) and includes but is not limited to stocks, shares, units, bonds, debentures or other debt securities, notes, rights, units, options and any other instruments representing rights to receive purchase or subscribe for same.

**Securities Exchange** means ASX or Cboe Australia or NSX and, without limitation, any other exchange on which Openmarkets transacts Orders, or the financial markets operated by them (as the context requires).

**Security Information** means the user code, user name and password given to the Client by us or the Intermediary in connection with use of the DMA Service.

**Settlement Obligations** include the obligation to pay for and complete the acquisition of Financial Products either as a legal holder or beneficial holder allocated to you as a result of a bid placed by you or on your behalf in relation to an offer of Financial Products on a Securities Exchange.

**Software** means all APIs and applications (whether downloaded or hosted by us or our service providers) that we make available to you as a part of our services together with any updates, associated data, files, user manuals, programming guides and other related documentation provided by us.

**Sponsored Holding** has the meaning given in the introduction to Part C: CHESS Sponsorship Agreement.

**Sponsorship Agreement** has the meaning given to that term in Part C: Sponsorship Agreement.

**Supply** has the meaning given to it in the GST Law.

**Terms and Terms and Conditions** means the terms and conditions set out in this document and includes each applicable part of this document and this schedule.

**Trade Facilitation Software** means software provided by Openmarkets to the Client for the purpose of the Client creating Orders including trading algorithms (including trading algorithms procured from a third party for use by the Client).

**Traded Products** has the meaning given to Cash Market Products in the ASIC Market Integrity Rules (and includes an AQUA Product) and Equity Market Product in the Cboe Market Integrity Rules and for other Securities Exchanges, means the cash equities products (excluding derivatives) admitted for a quotation on the relevant market as described in the relevant Exchange Rules or Market Integrity Rules (as the context requires) for that Securities Exchange.

**Trading Account** means a trading account opened for you by Openmarkets through which you may buy or sell Financial Products.

**Trading Participant** has the meaning given to that term in the ASIC Market Integrity Rules and to Market Participant in the Cboe Australia, APX or NSX Market Integrity Rules.

**Trading Platform** has the meaning given to that term in the ASIC Market Integrity Rules or the Cboe Market Integrity Rules (as the context requires) and for other Securities Exchanges, has the meaning given to it in the relevant Exchange Rules or Market Integrity Rules (as the context requires) for that Securities Exchange.

**Transaction** has the meaning given to Cash Market Transaction in the ASIC Market Integrity Rules or Equity Market Transaction in the Cboe Market Integrity Rules and for other Securities Exchanges, has the meaning given to transaction in cash equities products (excluding derivatives) admitted for a quotation on the relevant market as described in the relevant Exchange Rules or Market Integrity Rules (as the context requires) for that Securities Exchange, and includes a transaction which is not executed on a relevant Securities Exchange or reported to a relevant Securities Exchange, or another transaction in respect of which we do not carry the clearing obligations (such as primary market transactions and International Transactions).

**Unexecuted Order** includes a Bid that has been placed on your behalf in relation to an offer of Financial Products on ASX BookBuild which may be withdrawn or cancelled.

**Voluntary Corporate Action** means a Corporate Action that is discretionary, being a Corporate Action in which a security holder may elect to participate.

**Warrant** has the meaning given to it in the ASIC Market Integrity Rules.

**You** means the person or persons in whose name the account is opened with Openmarkets or named on the account opening or application form as the client. If that is more than one person, "you" means each of them separately and every two or more of them jointly. "You" includes your successors and assigns.

## Interpretation

In this agreement, unless the contrary intention appears:

- (a) each gender includes the other genders;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) a reference to this agreement or another agreement includes any variation or replacement of them;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (f) a reference to any thing (including any amount and Openmarkets Cover) is a reference to the whole and each part of it and a reference to a group of persons (including the Client) is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (g) if an example is given of anything (including a right, obligation or concept), the example does not limit the scope of that thing. For example, a reference to "including" means

"including without limitation"; and

- (h) the singular includes the plural and vice versa.
- (i) Headings are for convenience only and do not affect the interpretation of this agreement.
- (j) If any payment falls due on a non-Banking Day it will be made on the succeeding Banking Day.
- (k) Unless the context otherwise requires, a reference to a document or agreement includes any variation or replacement of it and 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.
- (l) You agree that in the event of any inconsistency between this document and any applicable laws, the Exchange Rules, ASX Clear Rules or ASX Settlement Rules, the latter will prevail to the extent of the inconsistency. You acknowledge that these Terms are not exhaustive and agree to be bound by other policies and procedures which concern the operations of your account with Openmarkets as notified to you from time to time.