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## PART A: PERSHING EQUITIES TERMS & CONDITIONS

for clients of Escala Partners a Corporate Authorised Representative of MWH Capital Pty Limited  
ABN 64 136 888 956 AFS Licence. & AFSL No. 338141  
(INTERMEDIARY)

### TERMS OF YOUR AGREEMENT WITH PERSHING SECURITIES AUSTRALIA PTY LTD ABN 60 136 184 962 AFSL No 338264 (PERSHING)

#### 1. Your agreement with Pershing

Pershing is admitted as a Trading Participant of one or more Relevant Exchange. Pershing is also admitted as a Clearing Participant in accordance with the operating rules of ASX Clear Pty Limited ABN 48 001 314 503 (**ASX Clear**), a wholly owned subsidiary of ASX Limited ABN 98 008 624 691 (**ASX**).

By placing an Order with the Intermediary (as your agent) to purchase or sell Traded Products by means of a Transaction, you accept and agree to be bound by the terms and conditions set out below in this document (**Terms and Conditions**).

If you wish to buy or sell or otherwise deal in Traded Products on a Relevant Exchange, the Intermediary will (as your agent) communicate your Order to Pershing. Pershing will, subject to these Terms and Conditions, execute that Order on your behalf and will clear and settle the Transactions that result from the execution of your Orders.

Accordingly, Pershing will carry the obligations to complete the sale or purchase, together with all the obligations which are ancillary to the completion (**Settlement Obligations**). Pershing 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 Pershing and not to the Intermediary.

In the event that 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, Pershing 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.

#### 2. Conduct of Business

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 Relevant 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 Relevant 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 Traded Products approved for settlement by ASX Settlement, the ASX Settlement Rules.

#### 3. Orders and instructions

You agree that, if you wish to place any Order, you must do so with the Intermediary (such communications to be given in the form and manner agreed with the Intermediary from time to time), and you authorize the Intermediary, as your agent (and not as the agent of Pershing), to communicate your Order and other instructions or information to Pershing.

Pershing 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.

As a Participant of one or more Relevant Exchange, subject to your instructions, Pershing is required to handle and execute Orders in accordance with the Competition Market Integrity Rules. A copy of the Pershing Best Execution Policy as at the date of these Terms and Conditions is attached as Schedule 4. Pershing may from time to time amend its Best Execution Policy and make such amendments available on its website, or otherwise notify you of the amended Best Execution Policy.

Pershing may at any time, in its absolute discretion, refuse to accept any Order from, or execute Orders for you. For example, Pershing may refuse to accept your Order if it would require Pershing to act otherwise than in accordance with its Best Execution Policy.

Subject to any instructions from you, Pershing will generally execute Orders in the sequence in which they are received. However, you acknowledge and agree that:

- a. Your Order may be automatically crossed against other orders before reaching the Market;
- b. Pershing 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 Pershing 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 Market Integrity Rules. Unless you notify Pershing to the contrary, you will be taken to have consented to Pershing (and/or any 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 Pershing through the Intermediary; and

- c. you will be charged the normal rate of commission by the Intermediary for Orders which are crossed with Pershing's 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 Market Integrity Rules.

#### 4. Orders relating to sales

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.

Where your sale relates to a covered short sale, you must also inform the Intermediary at the time of placing the sale Order:

- a. the number of Traded Products to be sold that are to be delivered under the Securities Lending Arrangement;
- b. a description of the Traded Products (e.g. fully paid ordinary shares); and
- c. the name of the entity that issued the Traded Products (e.g. BHP Billiton Limited).

You acknowledge that Pershing 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 Pershing 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).

#### 5. Orders to purchase Warrants

If you place an Order to purchase Warrants, the terms in Schedule 1 will apply to you.

#### 6. Orders to purchase partly Paid Securities

If you place an Order to purchase Partly Paid Securities, the terms in Schedule 2 will apply to you.

#### 7. The Intermediary's use of a DMA Service

Pershing may provide a direct market access service (**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 that if Pershing provides a DMA Service to the Intermediary:

- 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. Pershing 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, Pershing 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 Pershing's) consent and that third parties (including persons on private networks) will have the ability to attach to your network; and

- f. Pershing may terminate the Intermediary's participation in the DMA Service at any time without notice to you.

#### 8. Client's use of a DMA Service

Pershing may provide a DMA Service to you under which you may place your Orders directly into the Trading Platform through an electronic automated client order process. You acknowledge that if Pershing provides the DMA Service to you, the terms in Schedule 3 will apply.

#### 9. Pershing's right to require the Intermediary to refuse to accept Orders

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

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

#### 10. Purchases and Sales

You must ensure that payment in full is received by Pershing (and not the Intermediary) before the Settlement Date and Time. Pershing will not accept payment in cash.

In accordance with the provisions of the Corporations Act 2001 (Cth) (**Corporations Act**), and the regulations made under the Corporations Act, pending settlement by you, these Terms and Conditions and the relevant Confirmation (if any) constitutes notice to you that Pershing may deposit the Traded Products purchased for you in a particular transaction as security for a loan if Pershing has received and paid for such Traded Products on your behalf.

You must deliver to Pershing (and not the Intermediary) 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 business days before the Settlement Date and Time.

All documentation and Security Holder Information must be sent to:

**Pershing Securities Australia Pty Ltd**  
Level 7  
1 Chifley Square  
Sydney NSW 2000

If you have entered into a Sponsorship Agreement with Pershing, you will be taken to have satisfied this obligation if you ensure that sufficient Traded Products are held in your Sponsored Holding with Pershing, those Traded Products are unencumbered and, if the consent of any third party is required before Pershing may withdraw those Traded Products, that consent has been obtained and communicated to Pershing.

You irrevocably authorise Pershing to apply any Traded Products held in your Participant Sponsored Holding to satisfy your Settlement Obligations arising from any Transaction executed by Pershing on your behalf.

Credits in respect of sales are not available until the latest of:

- the Settlement Date and Time;
- when all documents and Security Holder Information have been received by Pershing in deliverable form; and
- all amounts due and payable by you to Pershing or the Intermediary have been paid.

Unless Pershing has agreed alternative arrangements with you, Pershing will pay all sale proceeds directly to you.

#### 11. No Advice

You acknowledge that Pershing does not provide financial product advice, nor does it accept responsibility for any financial product advice given to you by the Intermediary. You must not represent to any person that Pershing has given any financial product advice to you.

#### 12. 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 are specified or no Confirmation is required to be given, the Settlement Date and Time is 9.00am (Sydney time) on the third Business Day after the execution of the Transaction. The Intermediary has no authority to extend the Settlement Date and Time.

#### 13. Warranties by the client

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

- you will be in a position to pay for any Traded Products purchased and have a presently exercisable and unconditional right to vest any Traded Products sold in the buyer, to enable settlement at the Settlement Date and Time; and
- if your Order relates to the purchase of a Partly Paid Security, you have made arrangements (to Pershing's satisfaction) to pay to Pershing a sufficient amount to cover any liability arising from all possible future calls in respect of the Partly Paid Securities.

#### 14. Settlement using BPAY facility

If you would like to make payment from your cheque or savings account by BPAY, please make arrangements with your participating financial institution. Please quote the Biller Code and your BPAY

reference number (see the front page of the relevant Confirmation (if any)).

#### 15. Confirmations

You will be given confirmations as required by the Corporations Act and the Market Integrity Rules (**Confirmation**).

You authorise Pershing (on its own behalf and on behalf of the Intermediary) to give Confirmations to you electronically to the email address notified to Pershing by the Intermediary on your behalf from time to time for this purpose. Pershing may not provide you with paper copies of Confirmations.

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.

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.

Where Pershing enters into multiple Transactions in order to complete your Order, you authorise Pershing to accumulate those Transactions (whether executed on the same Relevant 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, Pershing will, if required under the Market Integrity Rules, give you a statement of all the individual prices of the relevant transactions which are accumulated and averaged in a Confirmation.

If you are a Wholesale Client for the purposes of the Market Integrity Rules, Pershing may elect not to give any Confirmations to you in relation to Transactions executed for you. If Pershing so elects, these Terms and Conditions are taken to be the notification required to be given by Pershing to you under the Market Integrity Rules.

#### 16. Failure to Settle

You acknowledge that, if you fail to make any payment due to Pershing or deliver any documents or Security Holder Information to Pershing or otherwise comply with the Settlement Obligations that you owe to Pershing in relation to a Transaction in accordance with these Terms and Conditions or the relevant Confirmation, if any (**fail to settle**), Pershing may do any one or more of the following:

- charge an administration fee calculated by reference to the additional cost which may be incurred by Pershing (including any fail fees imposed by a Relevant Exchange or ASX Clear) as a result of your failure to settle;
- levy a default charge on the amount from time to time outstanding at a rate of up to 15.0% per annum;
- sell out (or procure the sellout of) any Traded 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 Pershing and to recover Pershing's costs in so acting;
- buy in (or procure the buy in of) any Traded Products sold (and you are fully responsible for any loss in connection with such purchase) and recover Pershing's costs in so acting;
- sell out (or procure the sellout of) any Traded 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 Pershing and to recover Pershing's costs in so acting;
- apply any cash held by Pershing or the Intermediary on your account or to which they have access, or payments received for or from you in reduction of your liability to Pershing; or
- cancel (or instruct the Intermediary to cancel) any of your unexecuted Orders;
- and you authorise Pershing and each of its directors and employees as your attorney to give instructions on your behalf in respect of your Traded Product holdings sponsored by Pershing (or a related body corporate or affiliate of Pershing) in CHES, or held by a related body corporate or affiliate of either of Pershing or the Intermediary in nominee holdings, and in respect of call deposit facilities or cash management trust accounts on which either Pershing or the Intermediary is authorised to give instructions, to enable Pershing to realise those Traded Products or funds and apply the proceeds in reduction of your liability to Pershing and to recover Pershing's costs in so acting.

If you fail to settle, Pershing may make arrangements on your behalf to ensure that your Settlement Obligations are performed (including by buying-in or borrowing the relevant Traded Products).

If you have not met your settlement obligations owed to Pershing in respect of a Transaction executed for you by Pershing by the date which is 5 Business Days after the date on which that transaction was executed, it is Pershing's policy (and Pershing may be obliged under the ASX Settlement Rules), without any notice to you:

- in the case of a purchase, to execute a Transaction to close out the failed purchase (by selling the relevant Traded Products); or

- b. in the case of a sale, to execute a Transaction to close out the failed sale (by buying-in the relevant Traded Products), and recover any resulting loss from you.

You must pay or reimburse Pershing any such administration fees and default charges (together with any GST payable on those amounts) immediately upon demand or at Pershing's option it may deduct such administration fees and default charges (and any GST) from any sale proceeds or other amounts otherwise payable to you.

The manner in which Pershing may exercise or not exercise, or the timing of or any delay in any exercise by Pershing of, any right of Pershing under this clause is not to be taken to be financial product advice by Pershing to you, and you must not represent to any person that it is financial product advice by Pershing.

Pershing will not be liable to you for any failure by Pershing to exercise (or any delay in the exercise by Pershing of) any right Pershing may have against you, or any loss incurred by you as a result of Pershing not exercising any of its rights against you immediately, or at all, following any failure by you to comply with your obligations.

The rights described in this clause 16 are in addition to any rights that are conferred to Pershing under the Exchange Rules and the ASX Clear Rules.

#### 17. Cancellations

Each Relevant Exchange has the power under the Exchange Rules to cancel or amend Transactions or Crossings. You authorise Pershing to, and agree that Pershing 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 Traded Products:

- if requested to do so by the Intermediary in the circumstances contemplated by the Market Integrity Rules (as if the Intermediary were a Trading Participant that executed that Order to which the Transaction or Crossing relates);
- if a Relevant Exchange exercises its power under the Exchange Rules to cancel or amend (or require the cancellation or amendment of) the Transaction or Crossing; or
- in the event of an Error or otherwise in the circumstances contemplated in the Exchange Rules.

Your obligations referred to in clause 10 of these Terms and Conditions, and Pershing's 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.

#### 18. Interest on Pershing's trust account

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

#### 19. Assignment to the Intermediary of debts owed by you to Pershing

If you have not paid any debt to Pershing, you acknowledge that Pershing 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) set out in clause 16 as if a reference to Pershing were a reference to the Intermediary.

#### 20. Instructions by fax or e-mail

You acknowledge and agree that:

- you are and will at all relevant times be authorised to make communications to the Intermediary (who will pass on those communications to Pershing on your behalf) (including as the case may be, to give instructions in respect of transactions in respect of Traded Products) by email and fax;
- communication by email and/or fax is not a secure means of communication and involves higher risks of distortion, manipulation and attempted fraud;
- fax communications may be of poor quality or unclear;
- you authorize the Intermediary and Pershing to accept and act without any inquiry upon, communications (including instructions) provided by email and/or fax which appear to the Intermediary or Pershing to have been provided by or for you; and
- you indemnify the Intermediary and Pershing 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 Pershing as a result of the Intermediary or Pershing acting on communications (including instructions) provided by email and/or fax.

#### 21. Indemnity

You must, to the maximum extent permitted by law, at all times and from time to time, indemnify and keep each of Pershing and its 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 transaction entered into by Pershing on your behalf;
- any failure by you to settle;
- any other breach by you of these Terms and Conditions;
- any breach by you of any other agreement with Pershing;
- any 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,

other than to the extent that the loss has resulted from Pershing's negligence, willful default or fraud.

#### 22. Credit references

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

#### 23. Information

You warrant that all information provided by you to the Intermediary or Pershing is, or will be when given, accurate, true and correct and further agree to immediately notify Pershing in writing upon becoming aware that such information is no longer accurate, true and correct.

You agree that Pershing and the Intermediary may share such information, as well as your account details and information regarding your transactions in Traded Products with each other and with Pershing's related bodies corporate on a confidential basis as Pershing considers appropriate. You also consent to Pershing and/or the Intermediary disclosing this information and your account details to any regulatory authority, and consent to Pershing and/or the Intermediary using such information and your account details for the purposes of monitoring compliance by you, the Intermediary and/or Pershing with their respective regulatory and contractual obligations, and resolving disputes. Your personal information may be disclosed to Credit Checking Agencies as permitted by law.

You may request access to the personal information that Pershing holds about you.

#### 24. Complaints

You have a right to complain about any aspect of your dealings with Pershing, and to have that complaint dealt with in accordance with Pershing's 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.

You have the right to have any complaint about the service you have received from Pershing, or any other aspects of your dealings with Pershing, investigated and dealt with as quickly as possible in accordance with Pershing's complaints resolution procedure.

To assist Pershing to respond appropriately to complaints, you are asked to set out complaints in writing, addressed to the Compliance Manager. You should include as much detail about the circumstances of your complaint as possible, including the name(s) of any Pershing staff involved. If available, copies of any background documentation should also be provided.

Following receipt of your complaint, the 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. The 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.

As Pershing is a member of the Financial Ombudsman Service (**FOS**), Pershing will advise you if you continue to have a complaint that you have the option to pursue your complaint with FOS. FOS's contact details are:

**Financial Ombudsman Service Limited**  
GPO Box 3  
Melbourne VIC 3001  
Telephone 1300 780 808  
Facsimile (03) 9613 6399

If you are not satisfied with the response to your complaint, you may wish to pursue the matter with the Relevant Exchange. The Australian Securities and Investments Commission also has a freecall Infoline on 1300 300 630 which you may use to make a complaint and obtain information about your rights.

#### 25. Compensation arrangements

As Pershing is a Participant of one or more Relevant Exchanges and a Clearing Participant of ASX Clear, you may be entitled to make a claim on a compensation fund (such as the National Guarantee Fund (**NGF**) or the Chi-X Fidelity Fund) 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:

- 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
- in relation to transactions on Chi-X, you can contact Chi-X.

The Chi-X Operating Rules require the following disclosure to be given to retail clients of Pershing:

*"Chi-X and ASX operate different compensation funds that provide protection for retail investors in the circumstances defined in the Corporations Act and Regulations.*

*The Chi-X compensation fund covers losses resulting from defalcation or fraudulent misuse of your money, property or authority by a Chi-X participant, subject to certain exceptions. In circumstances where your stockbroker is also an ASX participant, the following applies in relation to such a loss.*

*If you do not expressly or impliedly instruct your stockbroker, who is a Chi-X participant, to execute your trading instructions on the Chi-X market, and it is not reasonably apparent from the usual business practice of your stockbroker which of the ASX or Chi-X market the participant would use when acting for you, the Chi-X fund will not apply. In this case, the NGF may apply, provided the loss is connected to the ASX market and is covered by the NGF claims provisions. The NGF claims provisions are set out in Division 4 of Part 7.5 of the Corporations Act and Regulations (for further information see the legislation and the NGF Information Booklet available at [www.segc.com.au](http://www.segc.com.au)). Note that if your stockbroker is not an ASX participant, the NGF will not apply in any circumstance."*

Pershing takes no responsibility for the accuracy of this disclosure. If you have any queries concerning the content of the above disclosure, please contact Chi-X directly on (02) 8078 1700.

Pershing has professional indemnity insurance which Pershing considers is adequate having regard to:

- a. the volume and types of business carried on by it; the number and types of its clients; the number of its representatives; and
- b. any particular or potential claims that may arise pursuant to our participation in external dispute resolution schemes, including the FOS scheme.

Pershing considers that these compensation arrangements satisfy the requirements of s 912B of the Corporations Act and associated regulations.

## 26. Sponsorship

If you are not currently sponsored by Pershing, Pershing recommends that you enter into a Sponsorship Agreement with Pershing to enable easy transfer of your Traded Products under CHESS (**Clearing House Electronic Subregister System**).

## 27. 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 Pershing in relation to any purchase or sale of Traded Products or other matters to which these Terms and Conditions relate.

## 28. Amendment

These Terms and Conditions may be amended by Pershing from time to time. Pershing will give you 10 days notice of any amendment, after which time the amendment will become effective.

## 29. Governing law

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

## 30. Interpretation

In this document (including the Schedules), unless the contrary intention appears:

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

**ASX** means ASX Limited ABN 98 008 624 691.

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

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

**ASX Market Integrity Rules** means the *ASIC Market Integrity Rules (ASX Market) 2010* as amended from time to time.

**ASX Settlement** means ASX Settlement Pty Ltd ABN 49 008 504 532.

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

**Best Execution Policy** means the policy issued by Pershing and given to you in accordance with Chapter 3 of the Competition Market Integrity Rules that is attached to these Terms and Conditions as Schedule 4.

**Chi-X** means Chi-X Australia Pty Ltd ABN 47 129 584 667.

**Chi-X Market Integrity Rules** means the *ASIC Market Integrity Rules (Chi-X Australia Market) 2011* as amended from time to time.

**Clearing Participant** means a person admitted as a participant under the ASX Clear Rules.

**Competition Market Integrity Rules** means the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011*, as amended from time to time.

**Confirmation** has the meaning given to it in clause 15.

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

**Crossing** has the meaning given to it in the ASX Market Integrity Rules.

**Error** has the meaning given to it in the Exchange Rules and, in relation to Chi-X, has the meaning given to "error trade", in the Chi-X Operating Rules.

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

**Intermediary** means the AFSL holder or Corporate Authorised Representative of an AFSL holder with whom you instructed to buy/sell financial products on your behalf.

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

**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, that apply to a Relevant Exchange, including the ASX Market Integrity Rules, the Chi-X Market Integrity Rules and the Competition Market Integrity Rules.

**Order** means an order or instruction for the sale or purchase of Traded Products to be executed by Pershing.

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

**Partly Paid Security** means a financial product quoted on a Relevant 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.

**Relevant Exchange** means ASX or Chi-X, or the financial markets operated by them (as the context requires).

**Traded Products** has the meaning given to Cash Market Products in the ASX Market Integrity Rules and Equity Market Product in the Chi-X Market Integrity Rules (as the context requires).

**Trading Participant** has the meaning given to that term in the ASX Market Integrity Rules and to Market Participant in the Chi-X Market Integrity Rules.

**Transaction** has the meaning given to Cash Market Transaction in the ASX Market Integrity Rules or Equity Market Transaction in the Chi-X Market Integrity Rules (as the context requires).

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

**You** means the person or persons in whose name the account is opened with Pershing or named on the account opening or application forms 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.

Words expressed in the singular include the plural and vice versa. 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. Words used in this document (including in Schedule 1, Schedule 2, Schedule 3 and Schedule 4) have the meanings given to them in the Exchange Rules, ASX Clear Rules or the ASX Settlement Rules. If you require a copy of these definitions please contact the Intermediary.

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 this document is not exhaustive and agree to be bound by other policies and procedures which concern the operations of your account with Pershing as notified to you from time to time.

Pershing Securities Australia Pty Ltd

**A participant of ASX Group and Chi-X**

**ABN 60 136 184 962**

**AFSL 338264**

## **SCHEDULE 1 WARRANT CLIENT AGREEMENT**

The following terms and conditions apply if you are to purchase Warrants. You agree and acknowledge that:

- a. 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 at the following link: <http://www.asx.net.au/documents/products/understandingwarrants.pdf> or in paper form on request by contacting the Intermediary);
- b. a Warrant has a limited life and cannot be traded after its expiry date;
- c. 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;
- d. 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;
- e. admission to Trading Status of a Warrant does not imply that a Relevant Exchange or the Securities Exchanges Guarantee Corporation Limited gives any guarantee or warranty as to the viability of the Warrant-Issuer or Guarantor; and
- f. failure of the Warrant-Issuer or Guarantor (if applicable) to fulfill their obligations does not give rise to a claim against the Intermediary, Pershing, a Relevant Exchange, handling Market Participants or the Securities Exchanges Guarantee Corporation Limited.

## **SCHEDULE 2 PARTLY PAID SECURITY AGREEMENT**

The following terms and conditions apply if you are to purchase Partly Paid Securities. You agree and acknowledge that you are aware that:

- a. a Partly Paid Security is a security which may require you to make a further payment or payments at some time in the future;
- b. 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;
- c. you may be liable for further payments on a Partly Paid Security and that a failure to make a further payment by the specified date(s) may result in an Issuer of a Partly Paid Security or their associates or agents taking action, including legal action, against you to recover the outstanding payments and/or may result in the forfeiture of your entitlement to the Partly Paid Security;
- d. 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;
- e. you should monitor announcements made by the Issuer of a Partly Paid Security and that 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;
- f. the amount of a further payment may be unrelated to the financial performance of a Partly Paid Security and that the amount of the further payment may exceed the intrinsic value of a Partly Paid Security at the time a further payment falls due; and
- g. 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, Pershing, a Relevant Exchange, handling Market Participants or the Securities Exchanges Guarantee Corporation Limited.

## **SCHEDULE 3 DMA SERVICE TERMS**

The following terms and conditions apply if the Client is given access to the DMA Service.

### **1. ACCESS TO THE TRADING SYSTEM**

#### **1.1 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 Pershing (or the Intermediary) to the Client.

Pershing may in 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 nor 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 Pershing 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 Market Integrity Rules), directions, decisions and requirements of a Relevant Exchange relevant to the type of order submission facilities given to the Authorised Person by Pershing.

The Client must notify the Intermediary immediately once an Authorised Person ceases to be authorised by the Client to access the DMA Service on the Client's behalf.

#### **1.2 Security Information**

The Client acknowledges that the Security Information is confidential and agrees that it is responsible for maintaining its confidentiality.

The Client agrees that it must:

- a. only use the Security Information in accordance with these terms;
- b. 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;
- c. ensure that at all times, each Authorised Person maintains the confidentiality of the Security Information;
- d. notify Pershing 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
- e. 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.

### **2. USE OF THE SYSTEM**

The Client acknowledges that:

- a. the DMA Service is accessible through the DMA System;
- b. neither Pershing nor any related body corporate or affiliate of Pershing 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 Pershing nor the Intermediary nor any related body corporate or affiliate of Pershing 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 use of the DMA Service.

### **3. SUBMITTING ORDERS THROUGH THE DMA SERVICE**

#### **3.1 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.

#### **3.2 Responsibility for submitting Orders**

The Client:

- a. determines the time at which Orders are submitted through the DMA Service;
- b. 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;
- c. is bound by any agreement entered into on its behalf in reliance on such Orders;
- d. is liable for any reasonable expense incurred by Pershing in reliance on such Orders; and
- e. accepts the sole risk and responsibility for Orders submitted by it through the DMA Service, including any Order submitted in error.

#### **3.3 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 Pershing's principal orders being satisfied ahead of an Order.

#### **3.4 Acknowledgment about resubmitted purged Orders**

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

#### **3.5 No pre-arranged Orders**

The Client undertakes to ensure that any Orders placed through the DMA Service which match opposite orders placed by Pershing 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 Pershing, 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.

#### 4. ORDERS RELATING TO DERIVATIVES PRODUCTS

##### 4.1 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 Pershing as Buyer and a Derivatives Contract in the same Series or Delivery Month is registered in the Client's account with Pershing as Seller, Pershing 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.

##### 4.2 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 Pershing:

- a. 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
- b. 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 Pershing).

#### 5. TRADING RULES

##### 5.1 DMA Trading Limits

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

- a. the value or number of any buy Orders or trades;
- b. the value or number of any sell Orders or trades;
- c. the available cleared funds;
- d. the available sponsored stock;
- e. the net value of any buy Orders or trades less sell Orders or trades;
- f. the gross value of any buy Orders or trades and any sell Orders or trades;
- g. the value of any Order or trade; and
- h. the value of any Order submitted by one or more Authorised Person, or trade undertaken by such a person.

The Client must comply, and ensure that each Authorised Person complies, with all applicable DMA Trading Limits.

##### 5.2 Prohibited orders

The Client must ensure that:

- a. each Authorised Person accesses the DMA Service in a way that ensures fairness, efficiency and ongoing protection of market integrity;
- b. it does not place an Order through the DMA such that the beneficial ownership of the financial products which are the subject of the Order would not change if the Order was executed;
- c. 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 Pershing violating any Applicable Regulation, including without limitation, any Applicable Regulation in relation to:
  - i. market manipulation, false trading, market rigging, fictitious transactions, wash trading or matching of orders;
  - ii. insider trading;
  - iii. front running;
  - iv. fraud;
  - v. creation of a disorderly market or otherwise prejudicing the integrity or efficiency of the market; or
  - vi. misleading or deceptive conduct; and
  - vii. each Order is submitted in accordance with these terms or any policy or operational guideline published by Pershing from time to time in relation to the DMA Service.

##### 5.3 Filters

Pershing 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 4;
- 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 Relevant 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, the Applicable Regulations.

Pershing 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.

##### 5.4 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 Pershing to settle the original Order, until any relevant amendment or cancellation is effected; and
- c. Pershing 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.

##### 5.5 Pershing takes no responsibility

The Client acknowledges that Pershing 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.

#### 6. RECONCILIATION

The Client is responsible for reconciling end-of-day confirmations against its records on any given trading day, and must communicate to Pershing, any discrepancies found in this reconciliation before the market opens on the next trading day. The Client acknowledges that Pershing 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.

#### 7. PRINCIPAL TRADING BY PERSHING

The Client acknowledges that Pershing and/or any of Pershing's related bodies corporate or affiliates may:

- a. enter a transaction in securities, derivatives, warrants and other financial products on a Relevant Exchange as principal and, where permitted by law, may take the opposite position in any such transaction, acting either for a client or on Pershing's own account (and the Client consents to Pershing and/or Pershing's 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 Pershing's order may be filled before an Order due to it being entered into the relevant Trading Platform prior to the Order.

#### 8. PERSHING'S WARRANTIES AND LIABILITIES

8.1 No representations or warranties about the DMA Service  
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, Pershing 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 accuracy, currency, availability, completeness or quality) with respect to the DMA Service.

##### 8.2 Exclusion of liability

The Client acknowledges that the DMA Service is provided at its risk and that to the extent permitted by law, Pershing excludes all liability in contract, tort (including negligence) or otherwise relating to or resulting from use of the DMA Service, 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 the Client directly or indirectly, as a result of:

- a. any defect, delay, failure, inaccuracy in, use of or inability to use the DMA Service; or
- b. any government restriction, exchange or market rulings, suspension of trading computer or telephone failure, unlawful access to the DMA Service, theft, sabotage, war, earthquakes, strikes, force majeure and without limitation, any other conditions beyond Pershing's control.

##### 8.3 Limitation of liability in any event

Pershing's liability shall in any event be limited to:

- a. in the case of goods, replacement or repair of the goods; and
- b. in the case of services, re-supply of the services.

##### 8.4 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 Pershing or being lost, rejected or partially received or sent, such that they are not accurately received or sent by the Client or Pershing 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;
- v. 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 Pershing's) consent and that third parties (including persons on private networks) may have the ability to attach to the Client's network;
- vi. Orders and other communications relating to trading and execution and other data submitted to the DMA Service will not remain confidential;
- vii. the Client's system may not be compatible with the DMA Service or a Trading Platform, and that this incompatibility may lead to an unstable environment; and
- viii. 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, that trades which have not been authorised by the Client may be executed.

## 9. TERMINATION

Pershing may terminate the Client's participation in the DMA Service at any time by notice in writing.

The Client may terminate its participation in the DMA Service by request in writing to Pershing. The Client acknowledges that if the Intermediary's participation in the DMA Service is terminated, the Client's participation will also be terminated.

Termination of the Client's participation does not affect its outstanding obligations under this agreement or any other agreement you have with Pershing.

## 10. DEFINITIONS

**AFSL** means Australian Financial Services Licence

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

**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 Pershing, as the context requires.

**DMA System** means the on-line system through which the Client is able to connect to the DMA Service, and where applicable includes the software and hardware applicable to that system.

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

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

**Order** means an order for the purchase or sale of (or other dealing in) Traded Products made through the DMA Service using the Security Information provided to the Client and, as the context requires, includes (without limitation):

- a. an order or instruction to amend or cancel an existing order submitted through the DMA Service; or
- b. an order or instruction to open or close out a position in Derivatives Contracts.

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

**Trading Platform** has the meaning given to that term in the ASX Market Integrity Rules or the Chi-X Market Integrity Rules (as the context requires)

## SCHEDULE 4

### PERSHING BEST EXECUTION POLICY

#### 1. Introduction

Pershing is required to take reasonable steps to obtain the best possible outcome for clients in accordance with Part 3.1 of the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011*. This document sets out Pershing's approach to providing the best outcome in executing orders in equity market products (**Best Execution**) as required by the Rules.

When Pershing executes orders on behalf of both retail and wholesale clients, Best Execution will be determined on the basis of best purchase or sale price (**Best Price**).

Pershing will consider the respective merits of all order books of all licensed markets and will execute the order on the order book that offers the best price. As a participant of both the Australian Securities Exchange (**ASX**) and Chi-X Australia (**Chi-X**), Pershing will consider the order book(s) of both ASX and Chi-X and execute on the market that provides the best price. As more licensed markets emerge or order books become available, (i.e. ASX PureMatch). Pershing will also consider the merits of placing orders on these trading venues, always with the aim of achieving the best price for the client.

#### 2. Best Execution arrangements for retail clients

Pershing's Best Execution policy for retail clients is to obtain the Best Price for the executed order. This means the best displayed price on all order books.

#### 3. Best Execution arrangements for wholesale clients

Pershing will take into account (if directed by the wholesale client) outcomes relevant to a wholesale client when a wholesale client provides instructions to execute an order. These include, but are not limited to, price, execution costs, speed, likelihood of execution and settlement, size, nature or any consideration relevant to the execution of the order (**Relevant Outcomes**). Unless otherwise directed, Pershing's Best Execution policy will be to achieve Best Price. The trade off to a Best Execution policy which offers Best Price is of course some or all of the Relevant Outcomes may not be achieved.

#### 4. Automated Order Routing

Commencing within the first half of 2012, Pershing will use automated systems to route orders to the order book that offers the best price. Prior to this all orders will be automatically routed to ASX unless otherwise instructed by the client in which case Pershing will manually submit orders onto the client's preferred trading venue.

In practice, this means that prior to the second half of 2012, if a client wants their trade executed on a trading venue other than ASX's TradeMatch the client must (through their Financial Intermediary) provide these instructions to Pershing. In the second half of 2012, Pershing's infrastructure will allow it to automatically route orders through to the order book that offers the best price.

#### 5. Instructions that are inconsistent with Best Execution

Whenever there is a specific instruction from or on behalf of a client, Pershing will take all reasonable steps to execute the order in accordance with the specific instruction. Accordingly, complying with such an instruction may prevent Pershing from taking steps to obtain the best price. Pershing reserves the right to decline any order that includes instructions which are not consistent with obtaining Best Price. In addition, trading rules may however prevent Pershing from following the client's instructions or achieving Best Price.

#### 6. Order books

Pershing will provide best execution to both the order books of licensed market operators as well as those internal order books which comply with the pre trade transparency exemption. Initially, Pershing execute orders on both ASX and Chi-X, however as additional order books of licensed market operators (i.e. ASX PureMatch) and/or internal order books (i.e. internally crossing or liquidity pools) become available, Pershing will extend its execution at Best Price to these venues.

#### 7. Default routing to ASX Trade Match

In instances where an order cannot be satisfied on an alternative order book (i.e. symbol not available, no available quote/market), the execution of such orders will be routed automatically to ASX TradeMatch.

#### 8. Trading hours

Pershing will route orders to available order books to achieve Best Price consistent with the trading phases and market availability of those trading venues.



## PART B : CHESS SPONSORSHIP

For clients of Escala Partners a Corporate Authorised Representative of MWH Capital Pty Limited ABN 64 136 888 956 AFS Licence. & AFSL No. 338141 (Intermediary)

### PERSHING'S EXPLANATION OF CHESS SPONSORSHIP

#### 1. Explanation of Chess Sponsorship Agreement

This document explains the effect of the CHESS (Clearing House Electronic Subregister System) sponsorship agreement (Sponsorship Terms) if you (Client) enter into the Sponsorship Agreement with Pershing Securities Australia Pty Ltd (Pershing). It is important that you read this explanation and the Sponsorship Terms and understand their content before signing the Client Application Form (which includes the Sponsorship Terms). By signing the Client Application Form, you acknowledge that you have understood the effect of the Sponsorship Terms. You are entitled to receive a copy of the executed Sponsorship Terms. You can request a copy of the executed Sponsorship Terms by contacting the Intermediary.

#### 2. What is the purpose of the Sponsorship Terms?

The Sponsorship Terms appoint us as your "controlling participant" on CHESS. CHESS is a system of registering financial products on computer so instead of holding certificates to show that you own shares or other financial products, under CHESS you have financial products registered in your name to show that you own them. CHESS is operated by ASX Settlement Pty Ltd ABN 49 008 504 532 (ASX Settlement) under the ASX Settlement Rules. Only certain people may control financial products on CHESS (we fall under one of these categories). By signing the Client Application Form, you appoint us as your controlling participant to control your holding of financial products on CHESS. In other words, we "sponsor" your holdings of financial products on CHESS.

#### 3. Explanation of the Sponsorship Terms

##### a. Our authority and obligations: clause 2 Sponsorship Terms

In clause 2 you authorise us to act as your agent on CHESS in respect of your holding(s) of the financial products identified by your HIN on Client Application Form.

Clause 2 also sets out our obligations in relation to the transfer of financial products into or out of your holding. Importantly, we will not usually initiate any transfer or conversion of financial products into or out of your holding without your express authority. However, in limited circumstances, for example, if we ask that you pay for financial products and the purchase price for those financial products remains unpaid, we may sell those financial products at your risk and expense. Clause 2 also identifies the regulatory regime which applies to us and with which a homa complaint against us may be lodged.

##### b. Acknowledgements by you: clause 3 of the Sponsorship Terms

Clause 3 of the Sponsorship Terms contains certain acknowledgements by you. These acknowledgments are that:

- i. you have understood the effect of these Sponsorship Terms;
- ii. if you die or become bankrupt, your sponsored holdings will be locked (the "holder record lock");
- iii. if you die, the Sponsorship Terms remain in operation, with your legal representative authorised to administer your estate for up to three months after the removal of the holder record lock;
- iv. if we are not a Market Participant of ASX, neither ASX nor a Related Body of ASX has any responsibility for supervising or regulating the relationship between you and us (we note however that we are a Market Participant of ASX);
- v. in the event of your death or bankruptcy, where a joint holding exists, we will establish a new holder record in the name of your joint holder or take steps to protect the interest of the joint holder not subject to the bankruptcy order.
- vi. if a transfer of a financial product included in your holding is effected in accordance with the ASX Settlement Rules, then:
  1. you may not assert or claim against ASX Settlement or the relevant issuer of the financial product that we were not authorised by you to effect that transfer; and
  2. unless the transfer was taken to have been effected by a Market Participant of ASX or a Clearing Participant of ASX Clear, you have no claim arising out of the transfer against the national guarantee fund under the Corporations Regulations (again we note however that we are both a Market Participant of ASX and a Clearing Participant of ASX Clear).

##### c. Security, other interests and sub-positions: clause 4 of the Sponsorship Terms

If you instruct us to lodge financial products as cover for written position in relation to exchange traded options or advise us that an interest has been or will be created over financial products, you give us authority to give effect to your instructions. Note that we must always act within the ASX Settlement Rules.

##### d. Security, other interests and sub-positions: clause 4 of the Sponsorship Terms

You must promptly give us any information or documents we ask for to enable us to perform our obligations to act as your controlling participant or comply with the ASX Settlement Rules and requirements.

##### e. Security, other interests and sub-positions: clause 4 of the Sponsorship Terms

Clause 6 states that you must pay us fees under the Sponsorship Terms as advised by us from time to time. There are currently no fees payable by you in connection with the Sponsorship Terms.

In clause 6, you also indemnify us – that is, you agree to be responsible for and pay on our demand – for liabilities, losses or costs we suffer or incur:

- i. in connection with performing our obligations under the Sponsorship Terms;
- ii. in connection with us acting as your controlling participant or agent for the purposes of CHESS; or
- iii. if you do something you agree not to do, or don't do something you agree to do, under the Sponsorship Terms.

Under clause 6 you also authorise us to debit any amount you owe us to any account you have with us.

##### f. Suspension from CHESS: clause 7 of the Sponsorship Terms

If we are suspended from CHESS participation, you may instruct ASX Settlement to remove your sponsored holdings from the CHESS subregister or move them to another controlling participant in CHESS. If you do not give ASX Settlement such notice within 20 business days, ASX Settlement may change your CHESS sponsor.

##### g. Complaint procedures: clause 8 of the Sponsorship Terms

You have certain rights if you wish to claim compensation or make a complaint against us. In particular, if we breach the Sponsorship Terms, you may refer that breach to any regulatory authority including ASX Settlement. If we breach a provision of the Sponsorship Terms and you make a claim against us, our ability to satisfy that claim will depend on our financial position. If a breach by us of a provision of the Sponsorship Terms falls within the circumstances specified in Part 7.5, Division 4 of the Corporations Regulations, you may make a claim on the National Guarantee Fund for compensation.

##### h. Change of controlling participant: clause 9 of the Sponsorship Terms

Clause 9 contains provisions setting out what is to happen if there is a significant change to the organisational structure of our group or the whole of our business is to be transferred to another controlling participant. In particular, those provisions provide for the novation of the Sponsorship Terms to another controlling participant without the need for you to sign a new sponsorship agreement.

##### i. Termination: clause 10 of the Sponsorship Terms

The Sponsorship Terms are terminated if we become insolvent, if our participation on CHESS is terminated/suspended, if either party notifies the other that it wants to terminate the Sponsorship Terms, or if you give us a withdrawal instruction under rule 7.1.10(c) of the ASX Settlement Rules. Note that while one of these events will bring the Sponsorship Terms to an end, the rights and obligations which have occurred before that time are not affected.

##### j. ASX Settlement Rules: clause 11 of the Sponsorship Terms

If there is an inconsistency between a part of the Sponsorship Terms and the ASX Settlement Rules, the ASX Settlement Rules will prevail to the extent of that inconsistency.

You have the obligation under clause 11 not to do anything to prevent or hinder us from complying with our obligations under the ASX Settlement Rules.

##### k. Miscellaneous: clauses 12 to 18 of the Sponsorship Terms

These clauses deal with several important procedural and legal matters.

Clause 12 clearly sets out the procedure for formal communications between you and us. Importantly, if you give instructions to the Intermediary, we are not obliged to act in accordance with those instructions until they are actually passed on to us. Clauses 13 and 14 set out the procedure we will follow if we want to waive or vary a provision of the Sponsorship Terms. Note that we usually need your written consent if we want to vary a provision. Clauses 15 and 16 of the Sponsorship Terms state that you are entitled to receive a copy of the Sponsorship Terms executed by you and us, and that you instruct us not to send you a hard copy of the Sponsorship Terms executed by us. However, if you ask us at any time, we will send to you a hard copy executed by us. You can request a copy of the executed Sponsorship Terms by contacting your Adviser.

##### l. Meaning of words

At the end of the provisions section of the Sponsorship Terms is a dictionary which explains the meaning of key words which appear in the Sponsorship Terms.

If you have any questions about the Sponsorship Terms, please contact Pershing

## PERSHING SPONSORSHIP AGREEMENT

### Parties

The client named on the application form (**Client**); and  
Pershing Securities Australia Pty Ltd, ABN60 136 184 962, AFSL No. 338264 (**Pershing**)

#### 1. WHAT IS CHESS?

1.1 CHESS is a system of registering financial products on computer. It is operated by ASX Settlement under the ASX Settlement Rules. Instead of receiving a certificate in respect of your shares or other financial products, you receive a holding statement.

1.2 Only certain categories of people may control financial products on CHESS (Pershing falls within one of these categories). Other people who have financial products on CHESS need their holding "sponsored" by a "controlling participant" for the purposes of CHESS. These Sponsorship Terms relate to your appointment of us as your "controlling participant".

#### 2. PERSHING'S AUTHORITY AND OBLIGATIONS

2.1 The Client appoints Pershing as its Controlling Participant for CHESS to provide transfer and settlement services as agent for the Client with respect of the Client's holding with the Holder Identification Number (HIN) identified on the Client Application Form. A HIN is a number that is used to identify a holding in CHESS. The Client authorises Pershing as the Client's agent to do any act under CHESS relating to the Client's holding.

2.2 Pershing will not initiate any transfer or conversion into or out of the Client's holding sponsored under these Sponsorship Terms without the Client's express authority.

2.3 Subject to clause 2.4, Pershing is not obliged to transfer financial products into the Client's holding where payment for those financial products has not been received, until payment is received.

2.4 If Pershing demands that the Client pay for financial products, but the purchase price for those for financial products remains unpaid, Pershing may sell those financial products at the Client's risk and expense (including any brokerage, stamp duty, GST and other applicable charges).

2.5 If Pershing claims that the Client has not paid Pershing an amount lawfully owed to Pershing, Pershing can refuse to comply with the Client's withdrawal instructions (but only to the extent necessary to retain in the Client's holding sponsored under these Sponsorship Terms financial products with a value equal to 120% of the current market value of the amount claimed).

2.6 Subject to clauses 2.4 and 2.5, Pershing will initiate any transfer, conversion or other action necessary to give effect to withdrawal instructions within the scheduled time.

2.7 The regulatory regime which applies to Pershing is Chapter 7 of the Corporations Act, the ASIC Market Integrity Rules, the operating rules of ASX Clear and the ASX Settlement Rules. The Client can obtain information as to Pershing's status from ASIC, ASX, ASX Clear and ASX Settlement.

2.8 A complaint against Pershing may be lodged by the Client with Pershing, ASIC, ASX, ASX Clear, ASX Settlement or the Financial Ombudsman Service (whose postal address is GPO Box 3, Melbourne, VIC, 3001). The Client may lodge a claim for compensation with Pershing or, if the circumstances specified in Part 7.5, Division 4 of the Corporations Regulations apply, with the National Guarantee Fund.

#### 3. ACKNOWLEDGEMENTS BY THE CLIENT

3.1 The Client acknowledges that:

- (a) before the Client signs these Sponsorship Terms Pershing provided the Client with an explanation of the effect of these Sponsorship Terms and the Client understood the effect of these Sponsorship Terms;
- (b) if the Client dies or becomes bankrupt, a holder record lock will be applied to all the Client's holdings sponsored under these Sponsorship Terms in accordance with rules 8.15.8 to 8.15.11 of the ASX Settlement Rules (unless the Client's legally appointed representative or trustee elects to remove those holdings from the CHESS subregister);
- (c) if the Client dies, these Sponsorship Terms are deemed to remain in operation in respect of the legally appointed representative authorised to administer the Client's estate for a period of up to three calendar months after the removal of the holder record lock pursuant to rule 8.16.3 of the ASX Settlement Rules (unless the Client's legally appointed representative elects to remove the holdings sponsored under these Sponsorship Terms from the CHESS subregister); and

(d) if Pershing is not a Market Participant of ASX, neither ASX, nor a Related Party of ASX, has any responsibility for supervising or regulating the relationship between the Client and Pershing, other than in relation to the rules relating to sponsorship agreements.

3.2 If the Client is a joint holder, the Client also acknowledges that:  
(a) if one of the joint holders dies, all holdings under the joint holder record must be transferred into new holdings under a new holder record in the name of the surviving holder(s) (these Sponsorship Terms remains valid for the new holdings under the new holder record); and

- (b) if one of the joint holders becomes bankrupt, Pershing will:
  - (i) establish a new holder record in the name of the joint holder that is bankrupt, transfer that person's interest 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 (unless the legally appointed representative of the bankrupt holder elects to remove the holdings from the CHESS subregister); and
  - (ii) establish a new holder record in the names of the other joint holders and transfer their interest into new holdings under the new holder record.

3.3 The Client acknowledges that if a transfer is taken to be effected by the Client under rule 9 of the ASX Settlement Rules and the Source Holding for the transfer is a Participant Sponsored Holding under these Sponsorship Terms, then:  
(a) the Client may not assert or claim against ASX Settlement or the relevant Issuer that the transfer was not effected by Pershing or that Pershing was not authorised by the Client to effect the transfer; and  
(b) unless the transfer was taken to have been effected by a Market Participant of ASX or a Clearing Participant of ASX Clear, the Client has no claim arising out of the transfer against the National Guarantee Fund under Part 7.5, Division 4 of the Corporations Regulations.

#### 4. SECURITY, OTHER INTERESTS AND SUB-POSITIONS

4.1 If the Client instructs Pershing that financial products are to be lodged with ASX Clear as cover for written positions in the market for exchange traded options operated by ASX, the Client authorises Pershing to take whatever action is required by ASX Clear or the ASX Settlement Rules to give effect to that cover.

4.2 If Client instructs Pershing that a charge or other interest in financial products has been or is to be given to a person, then the Client authorises Pershing to take whatever action is reasonably required by that person in accordance with the ASX Settlement Rules to give effect to or record that interest.

4.3 Pershing may take steps to create a subposition over the Client's holding in the circumstances contemplated by clauses 4.1 or 4.2. Pershing may also create a subposition if the Client consents. If Pershing does this, the Client's ability to transfer, convert or otherwise deal with the financial products will be restricted in accordance with the ASX Settlement Rules.

#### 5. INFORMATION

5.1 The Client must promptly give Pershing any information or documents that Pershing asks for to enable Pershing to:

- (a) perform its obligations or to act as the Client's "controlling participant" or agent under these Sponsorship Terms; or
  - (b) comply with the requirements of ASX Settlement or the ASX Settlement Rules.
- 5.2 The Client must, in respect of each holder record (which exists or is to be created) for the Client, ensure that Pershing is advised of the registration details (including any applicable residency indicator).
- 5.3 The Client must ensure that the information referred to in clause 5.2 above is provided to Pershing:  
(a) as soon as possible after the Client places an order with a trading participant (including an order relating to FOR financial products) but in any event, not later than 2 business days prior to the scheduled settlement date of the relevant market transaction; and  
(b) if the Client's registration details have changed, as soon as possible after that time.
- 5.4 If the Client does not ensure that Pershing is advised of a residency indicator but Pershing has been provided with a street address, then Pershing will be taken to have been advised that, if the relevant street is:  
(a) a street located in Australia, a residency indicator of "D" (for domestic) applies with respect to that holder record; or  
(b) a street located outside Australia, a residency indicator of "F" (for foreign) applies with respect to that holder record.
- 5.5 If Pershing suffers any claim, liability, direct or consequential loss (including to ASX Settlement or an issuer) or incur any

- cost, charge or expense of any nature as a result of the Client providing (or procuring the provision) or being taken to provide inaccurate registration details, or failing to provide (or procure the provision of) accurate registration details, the Client must on demand fully indemnify Pershing and keep Pershing fully indemnified in respect of such claim, liability, loss, cost, charge or expense:
- (a) as soon as possible after the Client places an order with a trading participant (including an order relating to FOR financial products) but in any event, not later than 2 business days prior to the scheduled settlement date of the relevant market transaction; and
  - (b) if the Client's registration details have changed, as soon as possible after that time.
- 5.6 Information or documents the Client gives to Pershing may be disclosed:
- (a) to any person for these purposes;
  - (b) if required by any regulatory authority (including ASX Settlement) or if allowed or required by law; or
  - (c) to Pershing's officers, employees, advisers and agents; or
  - (d) with the Client's consent; or
  - (e) to enable Pershing to enforce its rights.
- 6. FEES AND INDEMNITIES**
- 6.1 The Client must pay Pershing fees in connection with these sponsorship arrangements as advised by Pershing from time to time.
- 6.2 If the Client does not pay Pershing an amount when it is due, Pershing can charge interest on the overdue amount. Pershing does this using the method and interest rate Pershing determines from time to time.
- 6.3 The Client indemnifies Pershing against, and the Client must therefore pay Pershing on demand for liability, loss or costs (including consequential or economic loss) Pershing suffers or incurs:
- (a) in connection with Pershing performing its obligations under these Sponsorship Terms; or
  - (b) in connection with Pershing acting as the Client's "controlling participant" or agent for the purposes of CHESS; or
  - (c) if the Client does something that the Client agrees not to do, or don't do something that the Client agrees to do, under these Sponsorship Terms.
- 6.4 The Client must pay to Pershing these amounts when Pershing asks. Pershing may also debit any of these amounts to any account the Client has with Pershing even if Pershing does not expressly ask the Client to pay Pershing.
- 6.5 The indemnity in clause 6.3 is a continuing obligation, independent of the Client's other obligations to Pershing. It continues even after these Sponsorship Terms are terminated. It is not necessary for Pershing to incur expense or make payment before enforcing a right of indemnity conferred by these Sponsorship Terms.
- 7. SUSPENSION FROM CHESS**
- 7.1 If Pershing is suspended from CHESS participation, (subject to the assertion of an interest in financial products controlled by Pershing, by the liquidator, receiver, administrator or trustee of Pershing) the Client has the right, within 20 business days of ASX Settlement giving notice of the suspension, to give a notice to ASX Settlement requesting that the Client's holdings sponsored under these Sponsorship Terms be removed either:
- (a) from the CHESS subregister; or
  - (b) from Pershing's control to the control of another Sponsoring Participant with whom the Client has entered into a valid sponsorship agreement pursuant to rule 12.19.10 of the ASX Settlement Rules.
- If the Client does not give ASX Settlement such a notice, ASX Settlement may effect a change of controlling participant under rule 12.19.11 of the ASX Settlement Rules, in which case the Client will be deemed to have entered into a new sponsorship agreement with the substitute controlling participant on the same terms as these Sponsorship Terms. Where the Client is deemed to have entered into a new sponsorship agreement in accordance with this clause, the controlling participant must enter into a sponsorship agreement with the Client within 10 Business Days of the change of controlling participant.
- 8. COMPLAINT PROCEDURES**
- 8.1 Except as referred to in clause 8.2, no external compensation arrangements apply to the Client in relation to this sponsorship agreement.
- 8.2 If Pershing breaches a provision of these Sponsorship Terms and the Client makes a claim for compensation pursuant to that breach, Pershing's ability to satisfy that claim will depend upon Pershing's financial circumstances.
- 8.3 If a breach by Pershing of a provision of this falls within the circumstances specified under Part 7.5, Division 4 of the Corporations Regulations, the Client may make a claim on the National Guarantee Fund for compensation.
- 8.4 If Pershing breach these Sponsorship Terms, the Client may refer that breach to any regulatory authority, including ASX Settlement.
- 9. CHANGE OF CONTROLLING PARTICIPANT**
- 9.1 If the Client receives a Participant Change Notice from Pershing of the Participant Sponsored Holding 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 controlling participant, the Client is under no obligation to agree to the change of controlling participant, and may choose to do any of the things set out in clauses 9.2 or 9.3.
- 9.2 The Client may choose to terminate these Sponsorship Terms by giving withdrawal instructions under the ASX Settlement Rules to Pershing indicating whether the Client wants to:
- (a) transfer the Client's Participant Sponsored Holding to another controlling participant; or
  - (b) transfer the Client's Participant Sponsored Holding to one or more Issuer Sponsored Holdings.
- 9.3 If the Client do not take any action to terminate the agreement in accordance with clause 9.3 above, and do not give any other instructions to Pershing which would indicate that the Client does not agree to the change of controlling participant then, on the Effective Date, these Sponsorship Terms will have been taken to have been novated to the new controlling participant and will be binding on all parties as if, on the Effective Date:
- (a) the new controlling participant is a party to these Sponsorship Terms in substitution for the existing controlling participant; and
  - (b) the existing controlling participant is released by the Client from any obligations arising on or after the Effective Date.
- 9.4 The novation in clause 9.3 will not take effect until the Client has received a notice from the new controlling participant confirming that the new controlling participant consents to acting 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.
- 9.5 The Client will be taken to have consented to the events referred to in clause 9.4 by the doing of any act which is consistent with the novation of these Sponsorship Terms 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.
- 9.6 These Sponsorship Terms continues for the benefit of the existing controlling participant in respect of any rights and obligations accruing before the Effective Date and, to the extent that any law or provision of any agreement makes the novation in clause 9.3 not binding or effective on the Effective Date, then these Sponsorship Terms will continue for the benefit of the existing controlling participant until such time as the novation is effective, and the existing controlling participant will hold the benefit of these Sponsorship Terms on trust for the new controlling participant.
- 9.7 Nothing in clauses 9.1 to 9.6 will prevent the completion of CHESS transactions by the existing controlling participant where the obligation to complete those transactions arises before the Effective Date and these Sponsorship Terms will continue to apply to the completion of those transactions, notwithstanding the novation of these Sponsorship Terms to the new controlling participant under clauses 9.1 to 9.6.
- 10. TERMINATION**
- 10.1 Subject to the ASX Settlement Rules, these Sponsorship Terms are terminated:
- (a) if either party notifies the other in writing that it wants to terminate these Sponsorship Terms (in which case these Sponsorship Terms are terminated from the time the notice is received unless a later time is specified in this notice);
  - (b) if Pershing becomes insolvent;
  - (c) if Pershing's status as a Participant of CHESS is terminated or suspended; or
  - (d) upon the giving of a withdrawal instruction by the Client to Pershing in accordance with rule 7.1.10(c) of the ASX Settlement Rules.
- 10.2 The termination of these Sponsorship Terms does not affect any rights or obligations that have accrued before that time.
- 11. ASX SETTLEMENT RULES**
- 11.1 These Sponsorship Terms are subject to the ASX Settlement Rules. The Client must not do anything that would prevent or hinder Pershing from complying with its obligations under the ASX Settlement Rules.

- 11.2 If these Sponsorship Terms are inconsistent with the ASX Settlement Rules, the ASX Settlement Rules prevail to the extent of the inconsistency.
- 12. MISCELLANEOUS**
- 12.1 Unless otherwise required or permitted by Pershing or by the ASX Settlement Rules, notices and other communications (each a Notice) under these Sponsorship Terms must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
- delivered to that person's address;
  - sent by pre-paid mail to that person's address;
  - transmitted by facsimile to that person's address; or
  - transmitted by electronic mail to that person's address.
- 12.2 A Notice given to a person in accordance with this clause is treated as having been given and received:
- if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
  - if it is sent by pre-paid mail on the third Business Day after posting;
  - if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day; and
  - if transmitted by electronic mail to a person's e-mail address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- 12.3 Where the Client is a joint holder, Pershing may treat a notice or other communication (including instructions) signed or received from one of the joint holder's as binding on all of them.
- 13. WAIVER AND VARIATION**
- 13.1 Pershing can vary these Sponsorship Terms by giving the Client written notice of the variation. Pershing will give you:
- at least 8 business days notice of the variation of the variation is, in Pershing's reasonable opinion, to remove any inconsistency between these Sponsorship Terms and the ASX Settlement Rules; and
  - at least 20 business days notice in other cases.
- 13.2 Subject to clause 13.1, a provision of these Sponsorship Terms, or a right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.
- 14. SET OFF**
- 14.1 Pershing may set off any amount Pershing owes the Client against any amount the Client owes Pershing or any of Pershing's related companies.
- 15. APPLICABLE LAW**
- 15.1 These Sponsorship Terms are governed by the laws in force in New South Wales. The Client and Pershing submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 16. COPIES OF THESE SPONSORSHIP TERMS**
- 16.1 The Client is entitled to receive a copy of these Sponsorship Terms executed by Pershing. By returning one copy signed by the Client, the Client instructs Pershing not to send to it a hard copy of these Sponsorship Terms executed by Pershing. However, if the Client asks Pershing to, Pershing will provide the Client at any time with a hard copy of these Sponsorship Terms executed by both parties.
- 17. MEANING OF WORDS**
- ASX Clear** means Australian Clearing House Pty Limited ASX ABN 48 001 314 503.
- ASIC** means the Australian Securities and Investments Commission.
- ASX Settlement** means ASX Settlement Pty Limited (ABN 49 008 504 532) and its agents appointed under the ASX Settlement Rules.
- ASX Settlement Rules** means the business rules of ASX Settlement for CHESS.
- ASX** means ASX Limited ABN98 008 624 691.
- bankrupt** means being in a state of "bankruptcy" as that term is defined in the ASX Settlement Rules.
- business day** has the meaning given in the ASX Settlement Rules. Generally, it means any day other than a Saturday, Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day and a day that Australian Stock Exchange Limited declares is not a business day.
- CHESS** stands for Clearing House Electronic Subregister System and has the meaning given in the ASX Settlement Rules. It is a system of registering financial products on computer.
- CHESS subregister** has the meaning given in the ASX Settlement Rules. Generally, it means that part of a register of financial products that is administered by ASX Settlement.
- controlling participant** has the meaning given to it in the ASX Settlement Rules. Generally it means a person who has the capacity in CHESS to transfer financial products in and out of a sponsored holding.

**conversion** has the meaning given in the ASX Settlement Rules. Generally, it means the movement of financial products from one holding on one subregister to another holding on another subregister without a change in legal ownership.

**costs** includes charges and expenses (including stamp duty and other government charges); and costs, charges and expenses in connection with legal and other advisers on a full indemnity basis.

**financial products** has the meaning given in the ASX Settlement Rules.

**FOR financial products** has the meaning given in the ASX Settlement Rules. In general, it refers to financial products which, because of legislation or a governing instrument, must not be owned beyond a specified limit by foreign persons.

**holder record** has the meaning given in the ASX Rules. Generally, it means the details recorded by securities clearing house in CHESS for the purpose of operating one or more holdings.

**holder record lock** has the meaning given in the ASX Settlement Rules. Generally, it means the facility in CHESS for preventing financial products from being deducted from a holding.

**holding** has the meaning given in the ASX Settlement Rules. Generally, it means a holding of financial products by a person, including, when introducing an example does not limit the meaning of the word to which the example relates to that example of examples of a similar kind.

**issuer** has the meaning given in the ASX Settlement Rules.

**market transaction** has the meaning given in the ASX Settlement Rules.

**Registration Details** has the meaning given in the ASX Settlement Rules. In general, it refers to the Client's name, address and a Residency Indicator.

**residency indicator** has the meaning given in the ASX Settlement Rules. In general, it refers to a code (being "D" for domestic, "F" for foreign and "M" for mixed) used to indicate the status for the purposes of the relevant legislation or governing instrument of the ultimate beneficial owner of FOR Financial Products in a holding on CHESS.

**scheduled time** has the meaning given in the ASX Settlement Rules. The scheduled time varies depending on the act to which it relates.

**subposition** has the meaning given in the ASX Settlement Rules. Generally, it means an arrangement under which activity relating to the financial products may be restricted and access to the financial products given to a person other than the Client's normal sponsor.

**trading participant** has the meaning given in the ASX Settlement Rules.

**transfer** has the meaning given in the ASX Settlement Rules. Generally, it means a transfer of financial products to or from a holding on CHESS.

**withdrawal instructions** has the meaning given in the ASX Settlement Rules. Generally, it means the instructions by a person who is sponsored on CHESS for the withdrawal of financial products from the sponsored holdings.

Certain definitions refer to the ASX Settlement Rules. The Client should read those rules for the full terms of the definitions. The definition may change from time to time if the ASX Settlement Rules are changed.

The singular includes the plural and vice versa.

A reference to:  
 a document (including the ASX Settlement Rules) or agreement includes any variation or replacement of it;  
 law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them); and any thing includes the whole and each part of it.

## PART C: PERSHING DIRECT DEBIT REQUEST AND SERVICE AGREEMENT

### DIRECT DEBIT REQUEST

If you complete Section 13 on the Application Form and sign the Application Form in the manner required, you:

- (a) request and authorise Pershing (Debit User Identification number 227738) to arrange for any amount which you owe to Pershing from time to time to be debited through the Bulk Electronic Clearing System and paid to Pershing from the account you have nominated on the Application Form;
- (b) authorise Pershing to debit in accordance with the Direct Debit Agreement the account nominated by you in the Application Form with any amount Pershing may debit or charge you; and
- (c) acknowledge having read and understood, and agree to be bound by, the terms in the Direct Debit Agreement below.

### DIRECT DEBIT REQUEST SERVICE AGREEMENT

#### 1. DEFINITIONS

In this Direct Debit Agreement:

**Account** means the account identified as the direct debit account in Part 13 of the Application Form, but only if that account is held with a Financial Institution.

**Banking day** means a day other than a Saturday or a Sunday or a public holiday listed throughout Australia, or where there is a public holiday simultaneously in Victoria and New South Wales.

**Debit Day** means the day that payment is due from you to Pershing.

**Debit Payment** means a particular transaction where a debit is made.

**Direct Debit** means the direct debit request which you make to Pershing by completing Part 13 of the Application Form and signing the Application Form.

**Financial Institution** means a financial institution with whom Pershing has a direct debit facility arrangement. Please contact your adviser to check whether Pershing has a direct debit facility arrangement with Your Financial Institution.

**Your Financial Institution** means the Financial Institution at which the Account is kept.

#### 2. DEBITING THE CLIENT'S ACCOUNT

- 2.1 By completing Section 13 of the Application Form and signing the Application Form in the manner prescribed, you authorise Pershing to arrange for funds to be debited from the Account and you warrant and represent that you are duly authorised to request the debiting of payments from the nominated bank account.
- 2.2 Pershing will only arrange for funds to be debited from the Account as authorised in the direct debit request.
- 2.3 If the Debit Day falls on a day that is not a Banking day, Pershing may direct Your Financial Institution to debit the account on the following Banking day. If you are unsure about the day on which the Account has or will be debited, you should ask Your Financial Institution.

#### 3. YOUR OBLIGATIONS

- 3.1 It is your responsibility to ensure that there are sufficient clear funds available in the Account to allow a Debit Payment to be made in accordance with the Direct Debit Request.
- 3.2 If there are insufficient funds in the Account to meet a Debit Payment:
  - (a) you may be charged a fee and/or interest by Your Financial Institution;
  - (b) you may also incur fees or charges imposed or incurred by Pershing; and
  - (c) you must arrange for the Debit Payment to be made by another method or arrange for sufficient clear funds to be in the Account by an agreed time so that Pershing can process the Debit Payment.
- 3.3 You should check the Account statement to verify that the amounts debited from the Account are correct.
- 3.4 If Pershing is liable to pay goods and services tax (**GST**) on a supply made in connection with this agreement, then you agree to pay Pershing on demand an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

#### 4. CHANGES

- 4.1 You may request deferment of, or alteration to, suspension of these direct debit arrangements or stop any debit item by providing signed written instructions to your financial adviser.
- 4.2 You may also cancel your authority for Pershing to debit the Account by providing notice to your financial adviser.
- 4.3 Pershing may make changes or terminate these arrangements at any time by giving 14 days notice in writing to you.

#### 5. DISPUTE

- 5.1 If you believe that there has been an error in debiting the Account, you should notify Pershing directly on (02) 8999 4000 and confirm that notice in writing as soon as possible by faxing to (02) 8999 4099 or positing to GPO Box 5343, Sydney NSW 2001.
- 5.2 If Pershing concludes as a result of our investigations that the Account has been incorrectly debited Pershing will arrange for Your Financial Institution to adjust the Account accordingly. Pershing will also notify you in writing of the amount by which the Account has been adjusted.
- 5.3 If Pershing concludes as a result of our investigations that the Account has not been incorrectly debited Pershing will provide you with reasons and any evidence for this finding.
- 5.4 Any queries about an error made in debiting the Account should be directed to Pershing in the first instance (and not to Your Financial Institution) so that Pershing can attempt to resolve the matter with you. If the matter cannot be resolved in this manner Pershing may refer it to Your Financial Institution which will obtain details from you of the disputed transaction.

#### 6. ACCOUNTS

Pershing recommends that you:

- (a) confirm with Your Financial Institution whether direct debiting through the Bulk Electronic Clearing System (BECS) is available from the Account as direct debiting may not be available on all accounts offered by Your Financial Institution; and
- (b) check that the Account details provided to Pershing are correct by checking them against a recent Account statement.

#### 7. CONFIDENTIALITY

- 7.1 Pershing will keep any information (including Account details) in your Direct Debit confidential.
- 7.2 Pershing will only disclose information that it has about you:
  - (a) to the extent specifically required by law; or
  - (b) for the purposes of this Direct Debit Agreement (including disclosing information in connection with any query or claim); or
  - (c) as permitted by the Terms.

#### 8. GOVERNING LAW

These terms are governed by the laws in force in New South Wales

## PART D: PRODUCT DISCLOSURE STATEMENT (PDS)

### EXCHANGE TRADED OPTIONS

Issued by Pershing Securities Australia Pty Ltd  
 ABN 60 136 184 962 AFSL No 338 264

#### 1. Terms used in this PDS

ASX Clear: ASX Clearing Pty Limited ABN 48 001 314 503, a wholly owned subsidiary of ASX  
 AFSL: Australian Financial Services License  
 ASX: ASX Limited ABN 98 008 624 691 or the market operated by it, as the context requires  
 ETOs: Exchange Traded Options  
 Correspondent: An AFSL holder who has engaged Pershing to execute and clear transactions on ASX.  
 FOS: Financial Ombudsman Service  
 FSG: Financial Services Guide  
 Pershing, we, us, our: Pershing Securities Australia Pty Ltd, ABN 60 136 184 962 AFSL No. 338264  
 PDS: Product Disclosure Statement  
 You: The client that has been given this PDS

#### 2. Purpose of this PDS

This PDS has been prepared by Pershing Securities Australia Pty Ltd (**Pershing**) as the broker who is taken to be the issuer of the exchange traded options. The information in this PDS does not take into account your personal objectives, financial situation and needs. Before trading in the products referred to in this PDS you should read this PDS and be satisfied that any trading you undertake in relation to those products is appropriate in view of your objectives, financial situation and needs. We recommend that you consult your Correspondent or obtain other independent advice before trading in ETOs. Pershing does not provide any financial product advice.

#### 3. What products does this PDS cover?

This is a PDS for ETOs which are able to be traded on the financial market operated by ASX Limited (**ASX**). It deals with exchange traded equity options and index options but not Low Exercise Price Options. Exchange traded equity options are options over quoted securities (or other securities) of a range of different entities listed on ASX. Exchange traded index options are options over a select group of stock exchange indices. A complete list of securities and indices over which ETOs are traded can be found on the ASX website at <http://www.asx.com.au/asx/markets/optionPrices.do>

#### 4. Who is Pershing?

Pershing is licensed under the Corporations Act (Australian Financial Services Licence (**AFSL**) No 338 264) to provide financial services and is a Trading Participant of ASX, a Participant of Chi-X, a General Participant of ASX Clear Pty Ltd ABN 48 001 314 503 (**ASX Clear**) and a Settlement Participant of ASX Settlement Pty Ltd ABN 49 008 504 532 (**ASX Settlement**).

Pershing is a wholly owned subsidiary of Pershing Group LLC, a Bank of New York Mellon Company, headquartered in New Jersey, USA. The Pershing Group provide execution, clearing, settlement, custody and technology infrastructure products and services to financial services firms and others servicing the global financial services industry.

Pershing has authorised the distribution of this PDS.

To place an order for ETOs you must contact your Correspondent and place your order with them. Your Correspondent will communicate your order to Pershing on your behalf. Pershing may then execute your order for you.

#### 5. About exchange traded options

Exchange traded options are a versatile financial product which can allow you to:

- increase the income earned from your portfolio
- protect your portfolio by hedging against fluctuations in your underlying share portfolio
- profit from speculation.

ETOs are flexible because they allow you to both buy and sell ETOs and undertake multiple positions targeting specific movements in the overall market and individual equities. Using ETOs as part of your overall investment strategy can allow you to take advantage of rising, falling and sideways moving markets. However, both the purchase and sale of ETOs involves risks which are discussed below in the section called "Risks of trading in ETOs".

Specific concepts which should be understood before engaging in an ETO strategy are:

- The liquidity of an ETO series, the role of market makers, and the effect this may have on your ability to exit an open ETO position
- How volatility in the market, both up and down, may change the result from an ETO
- How to calculate margins and worst-case scenarios for an ETO position
- The effect time has on any one position or option strategy
- The likelihood of early exercise and the most probable timing of such an event
- The effect of dividends and capital reconstructions on an ETO positions.

When buying an ETO the initial outlay of capital may be small relative to the total contract value so that transactions are "geared" or "leveraged" or. This means that both profits and losses can be magnified. When selling an ETO the initial income may seem attractive but the liability attached to the ETO can be unlimited. It is advisable to have risk minimisation strategies to mitigate losses when a position does not move as anticipated when selling the ETO. Trading in ETOs should only be done by investors who understand the nature and extent of their rights, obligations and risks associated with trading ETOs.

While this PDS provides information about the characteristics of and benefits and risks associated with ETOs, investors should inform themselves and, if necessary, obtain financial advice from their Correspondent or other financial adviser about the specific risks, characteristics and benefits of the ETO they intend to trade and the relevant ASX rules.

Before trading in ETOs through Pershing, you are required to read the ASX Understanding Options Trading booklet, which can be found at the following website:

[http://www.asx.com.au/documents/products/understanding\\_options.pdf](http://www.asx.com.au/documents/products/understanding_options.pdf)

If you place an order to buy or sell an ETO through Pershing, you will be taken to have read and understood this document.

We also recommend that you read the other educational booklets that relate to trading in ETOs provided by ASX which can be found at this website:

<http://www.asx.com.au/resources/publications/booklets.htm#Options>

The educational booklets available here include:

- Equity Options
- Index Options
- Options - A simple guide
- Options Strategies
- Options - Margin Lending
- Margins
- Taxation treatment of options

ASX also provides other important tools and information relating to trading in ETOs which can be found at this website:

<http://www.asx.com.au/products/futures/equities/index.htm>

Pershing suggests that you read and understand all of the information referred to in this section before you trade in ETOs.

#### 6. Benefits of trading in ETOs

<b>Speculate</b>	ETOs do not require a rising market to make money. You can potentially profit from rising, falling and flat markets depending on the strategy you have employed. Strategies may be complex and strategies will have different levels of risk associated with each strategy.
<b>Earn Income</b>	Write call options over securities you already own and receive the premium immediately. The risk is that the writer may be exercised against and be required to deliver their securities to the taker at the exercise price.
<b>Manage risk</b>	You can hedge (protect) your portfolio from a drop in value by using put options. Put options can lock in the value of your securities.
<b>Increase gains with leverage</b>	The initial outlay for an ETO is usually much less than where purchasing the underlying securities. This allows you to profit from a change in the price of the underlying securities without having to purchase the securities, potentially increasing your profits. Leverage can also multiply your losses if your view of the market proves incorrect.
<b>Gain time to decide</b>	By buying (taking) a call option, the purchase price for the underlying securities is locked in. This gives you time to decide whether or not to exercise the option and buy the underlying securities. The holder has until the expiry date to make his/her decision. Likewise the Buyer (taker) of a put option has time to decide whether or not to sell the underlying securities.
<b>Trade in a regulated market</b>	Unlike some other derivatives, ETOs are standardised and traded through a registered clearing and settlement facility. This gives you the potential benefits of greater certainty of the terms of the relevant option, and the ability to seek to close out a position without having to deal with the other party in the original contract.

## 7. Risks of trading in ETOs

The risk of loss in trading in ETOs can be substantial. Trading in options is suitable for experienced investors who have an appetite for risk and can access cash or securities to meet margin requirements. It is important that you carefully consider whether trading in ETOs is appropriate for you in light of your investment objectives and financial circumstances. Trading in ETOs is not suitable for you if you have a low risk tolerance. You should only trade in ETOs if you understand the nature of the products and the extent of your exposure to risks.

This PDS does not cover every aspect of risk associated with ETOs. For further information concerning risks associated with ETO trading please refer to the ASX Understanding Options Trading booklet, and in particular the section entitled "Risks of options trading". This booklet is available at the link provided in section 5 above.

In deciding whether or not you should trade in ETOs, you should be aware of the following matters relating to risk:

<b>Gearing or leverage</b>	While the high level of gearing or leverage that is obtainable in trading in ETOs (due to the low level of initial capital outlay) can multiply your profits when you invest successfully, it can also multiply your losses.
<b>Limited life</b>	ETOs have a limited life span as their value erodes as the option reaches its expiry date. It is therefore important that the ETO you select meets your investment objectives.
<b>Market movement</b>	ETOs are subject to movements in the underlying market. ETOs may fall in price or become worthless at or before expiry.
<b>Difficulty closing positions</b>	When the market moves against you, you may find it difficult or impossible to close an ETO position. Examples of when this may happen are if there is a significant change in the price of the underlying securities over a short period of time, if there is an absence or reduction in the number of willing Buyers (takers) and Sellers (writers) in either the ETO market or the market in the underlying securities, or if the market is suspended or disrupted for any reason.
<b>Unlimited loss for Sellers</b>	When you write an uncovered (or naked) call option, your potential losses are unlimited if the market moves against your open position. Although your potential losses when writing a put option are limited (since the price of the underlying share can't fall below zero), there is a risk of substantial losses, given that markets tend to fall more sharply than they rise. To ensure you can meet the obligations of writing a call or put option you will be required to pay to Pershing margins
<b>Loss of premium for Buyers</b>	The maximum loss in buying (taking) an ETO is the amount of premium paid plus transaction costs. If the option expires worthless, the Buyer (taker) will lose the total value paid for the option (the premium) plus transaction costs.
<b>Loss of margin</b>	Sellers of ETOs could sustain a total loss of margin funds or other cover deposited with Pershing where the market moves against the option position. In addition, the Seller (writer) may be obligated to pay additional margin funds or provide other additional cover (which may be substantial) to maintain the option position or upon settlement of the contract.
<b>Capital loss</b>	By trading in ETOs, you are exposed to the risk of losing capital. You should be careful not to risk more capital than you can afford to lose. A good general rule is never to speculate with money which, if lost, would alter your standard of living or otherwise affect your ability to meet your liabilities as they fall due.
<b>Contingent orders difficult</b>	The placing of contingent orders (such as a "stop-loss" order) may not always limit your losses to the amounts that you may want. Market conditions may make it impossible to execute such orders. For example, if the price of the underlying securities moves suddenly, your order may not be filled, or may be filled at a different price to that specified by you, and you may suffer losses as a result.
<b>Trade amendments and cancellations</b>	Pershing may pursuant to its terms and conditions amend or cancel your trade. This could cause you to suffer loss or increase your loss. A trade executed on your behalf can also be amended or cancelled even where the trade has been confirmed to you.
<b>Trading disputes</b>	There could be a dispute in relation to your ETO transaction. When a trade is subject to a dispute, ASX has powers, in accordance with the ASX Operating Rules, to request that a broker amend or cancel a trade, which will in turn result in the contract with the client being amended or cancelled. In some situations, ASX may also exercise powers to cancel or vary, or direct the cancellation or variation, of transactions.
<b>ASX powers</b>	ASX and ASX Clear have discretionary powers in relation to the market and the operation of the clearing facility. They have power to suspend the market operation, or lift market suspension in options while the underlying securities are in trading halt if the circumstances are appropriate, restrict exercise, terminate an option position or substitute another underlying security (or securities), impose position limits or exercise limits or terminate contracts - all to ensure fair and orderly markets are maintained as far as practicable. These actions can affect an investor's ETO positions.
<b>System outages</b>	Trades effected on ASX are traded on an electronic trading platform and cleared through ASX Clear, which also relies on electronic systems. As with all such electronic platforms and systems, they are subject to failure or temporary disruption. If the system fails or is interrupted we will have difficulties in executing all or part of your order according to your instructions. Your ability to recover certain losses in these circumstances will be limited given the limits of liability imposed by ASX and ASX Clear.

## 8. How do ETOs work?

An ETO is a contract between two parties which gives the buyer (the taker) the right, but not the obligation, to buy or sell the securities underlying the ETO at a specified price (exercise price) on or before a predetermined date. To acquire this right, the taker pays a premium to the writer (seller) of the contract.

### American and European style options

ETOs may be American or European style exercise. American style options can be exercised at any time before the expiry day.

European options can only be exercised on the expiry day and not before.

Most ETOs that are traded on ASX are American style options.

ETOs which are index options are normally European style options.

### Paying the premium

The taker will always pay the writer a price (called the **premium**) to enter into the ETO. The writer receives and keeps the premium but has the obligation to buy from or deliver to the taker the underlying securities at the exercise price if the taker exercises the ETO. The amount of the premium is not a standardised feature of an ETO and is established between the taker and writer at the time of the trade. See the discussion on premium below for more information.

### Writers and takers

ETO sellers are referred to as **writers** because they underwrite (or willingly accept) the obligation to deliver or accept the securities covered by an ETO. Similarly, buyers are referred to as **takers** of an ETO as they take up the right to buy or sell a parcel of securities. Every ETO has both a taker and a writer.

### Call options and put options

There are two types of ETOs – call options and put options. Call options give the taker the right, but not the obligation, to buy a standard quantity of underlying securities at a predetermined price on or before a predetermined date. If the taker exercises their right to buy, the seller (writer) is required to sell a standard quantity of securities at the predetermined exercise price. Put options give the taker the right, but not the obligation to sell a standard quantity of underlying securities at a predetermined price on or before a predetermined date. If the taker exercises their right to buy, the seller (writer) is required to buy a standard quantity of securities at the predetermined exercise price. The premium is the price of the ETO agreed to by the buyer and seller through the market.

### Long position and short position

All option positions consist of either a bought call and a sold call, or a bought put and a sold put. A long (or bought) option position is created by the purchase of a call or put. A short (or sold) position is created by the sale of a call or put. By combining two or more of these basic positions, an investor can create a trading strategy that meets a range of investment objectives, including the protection of an existing portfolio of securities. Information relating to different trading strategies using ETOs is available from the ASX website in the sections highlighted earlier in this PDS.

### Standardised Contracts

ETOs are created by the exchange on which the underlying equity or index is listed. Pershing allows you to trade ETOs in relation to entities and indices listed on ASX. The ASX website provides a list of securities and indices over which ETOs are traded at <http://www.asx.com.au/asx/markets/optionPrices.do> ASX determines the key contract specifications for each series of ETOs listed, including:

- the underlying security or underlying index
- the contract size (where 1 option contract on ASX usually represents 1000 underlying securities)
- the exercise price (or **strike price**), which is the specified price at which the taker (buyer) of an equity option can buy or sell the underlying securities. ASX sets the range of exercise prices at specific intervals according to the value of the underlying securities. It is important to note that the exercise price of an equity option may change during the life of an option if the underlying securities are subject to a bonus or rights issue or other form of capital reconstruction. The number of underlying securities may also be subject to an adjustment
- the expiry date. ETOs have a limited pre-determined life span and generally follow one of three cycles, namely:
  - January/April/July/October;
  - February/May/August/November; or
  - March/June/September/December.

ASX may, in accordance with the ASX Operating Rules, make an adjustment to any of the above specifications if the listed entity which is the issuer of the underlying securities to which the ETO relates makes a pro-rata change to its ordinary capital structure (e.g. Bonus issues or special dividends or other special distributions are made). If ASX does make an adjustment it will endeavour to preserve the open positions of takers and writers at the time of the adjustment as best as possible. ASX has issued an Explanatory Guide for Option Adjustments which can be found at [http://www.asx.com.au/documents/products/explanatory\\_note\\_option\\_adjustments.pdf](http://www.asx.com.au/documents/products/explanatory_note_option_adjustments.pdf) which provides further information regarding ASX ETO adjustments.

Full details of all ETOs listed on ASX and expiry date information can be found on the ASX website at

<sup>1</sup> Is an order that becomes a market order (and hence executed) when the ETOs market reaches the designated price.

[http://www.asx.com.au/products/options/trading\\_information/expiry\\_calendar.htm](http://www.asx.com.au/products/options/trading_information/expiry_calendar.htm) or alternatively through information vendors or newspapers. A list of current ETO codes and delayed price information is available on the ASX website at <http://www.asx.com.au/asx/markets/optionPrices.do>. Details of the previous day's trading are published in summary form in the Australian Financial Review and more comprehensively in The Australian. If you cannot access the above information, please contact the Intermediary who may be able to arrange to provide you with the information.

Details of contract specifications for ETOs are published by ASX on its website. The contract specifications detail the key standardised features of ETOs traded on ASX.

#### **Deliverable settled or cash settled**

ETOs are either deliverable or cash settled. Most equity ETOs are deliverable, which requires the physical delivery of the underlying securities when exercised. Index ETOs are cash settled, which means cash settlement is required when they are exercised. Cash settlement occurs in accordance with the ASX Clear Operating Rules against the Opening Index Price Calculation (OPIC) as calculated on the expiry date.

#### **Premium**

The premium (price of the ETO) is not set by ASX. It is negotiated between the buyer and seller of the ETO through the market. The premium for an equity option is quoted on a cents per underlying securities basis so the dollar value payment is calculated by multiplying the premium amount by the number of underlying securities in the contract (usually 1,000). For example, if you buy a call option with a premium quoted at 20c per share, the total premium will be \$200.00 (i.e. \$0.20 x 1,000). The premium for an index option is calculated by multiplying the premium by the index multiplier. For example, a premium of 50 points, with an index multiplier of \$10, represents a total premium cost of \$500 per contract.

ETO premiums will fluctuate during the ETO's life depending on a range of factors including the exercise price, the price of the underlying securities or the level of the index, the volatility of the underlying securities or the underlying index, the time remaining to expiry date, interest rates, dividends and general risks applicable to markets.

Most ETO pricing involves the use of a mathematical formula which includes calculating the intrinsic and time value of the particular ETO. You should refer to the section entitled "Option pricing fundamentals" in the ASX Booklet "Understanding Option Trading" for more information regarding the pricing ETOs. ASX also provides a pricing calculator on the ASX website at <http://www.asx.com.au/opc/OpcStart?Mode=T>

You can obtain current price information from the Intermediary.

#### **No Dividends or Entitlements**

ETOS do not entitle investors to dividends, distributions or other entitlements paid by the issuer of the underlying securities, unless the investor exercises the ETO in sufficient time to become the holder of the underlying securities at or before the relevant date for dividend or entitlement purposes.

#### **Opening an ETO position**

The establishment of a contract is referred to as opening a position. Once the taker of an ETO has an open position they have three alternatives:

- to exercise the ETO
- to hold the ETO to expiry and allow it to lapse
- to close out their position by writing (selling) an ETO in the same series as originally taken and instructing their broker to "close out" the earlier open position.

The writer of an ETO has two alternatives:

- to let the ETO go to expiry and risk having the ETO exercised against them (if it is not exercised against the writer, it will expire without any further obligation or liability on the writer)
- to close out the ETO by taking (buying) the ETO in the same series as originally taken (provided it has not been already exercised against them).

#### **Closing out of ETO contracts**

An ETO position may be "closed out" by placing an order equal and opposite in effect to your original order – this effectively cancels out the open position. You may want to close out an ETO contract:

- when there is a risk of unwanted early exercise (unless an index option as they can only be exercised on expiry day)
- to take a profit
- to limit a loss.

It is important that you advise the Intermediary if you are seeking to close out an existing position when placing your order. Closing out can be achieved without reference to the original party to the trade because of the process of novation. ASX Clear is able to substitute

a new buyer as the contract party when an existing buyer sells to close their position. The process of novation is discussed in more detail below in the section entitled "Execution and clearing of ETOs".

#### **Expiry**

ETOs have a limited life span and every option within the same series, which has not already been exercised, will expire on the expiry day. The expiry day is a standard day set by ASX. For equity ETOs the option expires on the Thursday preceding the last Friday in the month, as long as both the Thursday and Friday are business days. Therefore if the last day of the month is a Thursday the option will expire on the Thursday prior. For index options, expiry is usually the third Friday of the contract month. Expiry day information is available on the ASX website at

[http://www.asx.com.au/products/options/trading\\_information/expiry\\_calendar.htm](http://www.asx.com.au/products/options/trading_information/expiry_calendar.htm)

#### **Exercise**

ETO takers make the decision to exercise the option contract. This means that an equity option writer may be exercised against at any time before expiry. ASX Clear will "randomly" allocate a writer for every exercised taken position. This means that if the taker wants to exercise an ETO and either buy or sell (depending on whether it is a call or a put option) at the predetermined price, then ASX randomly allocates a writer of that ETO and allocates the exercise against them. The writer must then accept the securities at a predetermined price for a call option or sell the securities at the predetermined price for a put option. The taker of an ETO will generally only exercise for a profit and therefore the exercise may result in a loss to the writer of the ETO, depending on their initial costs. Once a writer has been allocated, the writer has lost the opportunity to close out their position and must effect the delivery or cash settlement obligations for the particular equity option contract.

#### **Automatic exercise**

In the event that an ETO is at or in the money, the ETO will be automatically exercised.

For call options, the ETO will be at or in the money when the exercise price is at or below the price of the underlying securities. For put options the ETO will be at or in the money when the exercise price is at or higher than the price of the underlying securities. All unexercised ETOs will expire on the expiry date (unless rolled for a further term).

#### **Settlement**

Payment for, and the delivery of underlying securities, on exercise of an open ETO occurs via the Clearing House Electronic Subregister System (CHES) within three business days of the exercise of the ETO (T+3). Pershing is obliged to make payment to ASX within this timeframe. For cash settled index options, a cash settlement amount calculated having regard to the opening price index calculation on expiry day, is paid to exercising takers on the day following the expiry date. The level used for settling index options is determined by a special formula. If you intend investing in index options you should take the time to understand these arrangements. For more information on settlement of index options see the ASX Booklet "Understanding Options Trading" section on "Trading index options".

You are required to settle with us within two business days from the time that the trade occurred for all cash positions which arise from premiums, interest, and other cash financial transactions. This requirement is reflected in the terms of our client agreement with you.

#### **Margin Payments**

As ASX Clear contracts with us as principal, where we have an exposure under an ETO contract to ASX Clear, it will call for amounts of money known as "cover" or "margin". Margins are generally a feature of all exchange traded derivative products and are designed to protect ASX Clear against default. A margin is the amount calculated by ASX Clear as necessary to cover the risk of financial loss on an ETO contract due to an adverse market movement.

The total margin called by ASX Clear for ETOs is made up of two components, in each case, determined by ASX Clear:

- Premium margin – this is determined by reference to the market value of the underlying securities at the close of business each day.
- Risk margin – this is the potential change in the price of the option contract assuming a maximum probable inter-day price move in the price of the underlying securities or index.

Amounts of margin are determined daily by ASX Clear, following the close of trading each day. In times of extreme volatility an intra day margin call may be made by ASX Clear.

We will, under the terms of our client agreement with you, call from you all amounts of margin which ASX Clear calls from us in respect of positions which we have entered into for you. We may also call for greater amounts of margin if we regard this as appropriate.



## Collateral

ASX Clear margin obligations may be met by paying cash or by providing certain types of eligible collateral (eg. ASX quoted shares or other securities). Securities (held by you) which are acceptable to ASX Clear may be lodged with ASX Clear as collateral for margin obligations relating to ETO positions. When securities are lodged with ASX Clear, they are held as "third party security" in the sense that they represent collateral provided by you to secure our obligations to ASX Clear. The lodged securities cannot be used by us in relation to our dealings or for our other clients in relation to their dealings unless authorised by you.

As a risk management tool, ASX Clear may apply a "haircut" in relation to the value of collateral lodged. For example, if you lodge \$20,000 worth of collateral and ASX Clear applies a 30% haircut, only \$14,000 will be considered as collateral cover for any margin obligations.

The margining process used by ASX Clear is explained in detail in the ASX booklet "Margins" which is available on the ASX website at: <http://www.asx.com.au/documents/resources/UnderstandingMargins.pdf>

You must pay margin to us, or provide alternative collateral which is acceptable to us, by 4pm on the business day following a call for margin.

## 9. Fees and charges for trading in ETOs

The exact cost of your transaction will be disclosed on your Confirmation but will consist of the charges disclosed below. There may also be certain amounts that are (or may become) payable in respect of ETOs, which are disclosed below. Some fees that we charge may be tax deductible. You must confirm this with your own Tax Adviser or Accountant, in relation to your specific situation.

### Costs – Brokerage and GST

Pershing will charge the Correspondent fees for executing and/or clearing transactions. The fees that Pershing may charge the Correspondent may be a fixed monthly fee, a fee per trade, a fee per service and/or other fees. You may also be charged commission or other fees for the transfer of underlying securities following the exercise of an ETO at a rate determined by Pershing and advised to you from time to time. All or part of this fee or commission may be passed on to the Correspondent.

You may be charged fail fees by Pershing where you fail to perform your settlement obligations in respect of a transaction that has been executed on your behalf. Fail fees may include a fee imposed by ASX, an administrative fee and a default charge on the amount outstanding from time to time.

The impact of transaction costs on profitability is often greater for options transactions than for transactions in the underlying interests because these costs are often greater in relation to options premiums than in relation to the prices of underlying interests.

Transaction costs are especially significant in option strategies calling for multiple purchases and sales of options, such as spreads and straddles. Investors should always discuss transaction costs with their Financial Adviser before engaging in options transactions. GST will be charged on all brokerage and fees at the prevailing rate (currently 10%). All GST charges will be shown on your Confirmation.

### Costs – ASX Clear Fees

ASX Clear charges a transaction fee of \$1.43 per ETO contract, including GST. If you exercise a share option, ASX Clear charges an exercise fee of \$0.55 per contract, including GST. In the case of index options, ASX Clear charges \$0.39 per contract including GST, for both the transaction fee and the exercise fee. ASX Clear fees are payable by you to Pershing in addition to our brokerage charges and will be shown on your Confirmation.

### Amounts Payable – Margins

The Intermediary will communicate to you all margin amounts required to be paid. You are required to pay these margin amounts within 24 hours of being advised of the margin amount by us.

### Amounts Payable – Late Settlement or Margin Payments

Any interest or charges levied on you due to late settlement and margin payments is due and receivable at the time the amount is levied and must be paid within 1 business day of a demand being made of you by Pershing or the Intermediary.

## 10. Other things you need to know

### Execution and clearing of ETOs

ETOs are traded on the ASX's trading platform and cleared through ASX Clear. As Pershing will both execute and clear and settle your ETO transactions, it must comply with the ASIC Market Integrity, ASX Operating Rules and the ASX Clear Rules. ASX Clear is a licensed clearing and settlement facility under the Corporations Act. Although we may act on your instructions or for your benefit, upon registration of the ETO with ASX Clear in our name as the Clearing Participant, we incur obligations to ASX Clear as principal, even though the ETO may have been entered into on your instructions.

## Client trust accounts

In order for us to trade an ETO for you, we require you to provide us with money or property to enable us to manage the risks associated with our dealings for you in ETOs. Client money and property paid or given by you in connection with our advising or dealing in ETOs must be held by us in trust in accordance with the Corporations Act and the ASIC Market Integrity Rules. You may also set up your own Cash Management Trust account from which we can withdraw your monies as required in accordance with the Corporations Act. Money is held on trust for you in a trust account. However, money paid to reimburse us for payments we have had to make to ASX Clear (e.g. margin calls) in respect of dealings for you is not trust money. The Corporations Act provides that money held in the trust account can be used for specific purposes such as meeting margin obligations, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives. Pershing may retain the interest (if any) earned on any moneys held for you in its trust account.

### Collateral

CHESS securities (held by you) may be lodged in your name with ASX Clear as collateral for margin obligations relating to ETO trades. When CHESS securities are lodged with ASX Clear, the securities are held by ASX Clear as a "third party collateral". The lodged securities cannot be used by us in relation to our dealings or for our other clients in relation to their dealings unless authorised by you as third party collateral. Securities in a client's superannuation fund cannot be used as third party collateral for any other account.

## 11. Significant Taxation Implications

The information below is based on existing tax law and established interpretations as at the date of this PDS.

The taxation information provided below is intended as a summary only and does not cover every aspect of taxation related with the use of ETOs. The information applies to Australian resident investors only. It is important to note that your tax position when trading ETOs will depend on your individual circumstances, in particular whether you are on revenue or capital account. More information in relation to the taxation treatment of options can be found on the ASX website.

Pershing does not provide tax advice, and this PDS is not, nor can it be relied upon, as providing tax advice. Accordingly, it is recommended that you seek your own independent professional tax advice.

The main tax implications are:

- Premiums received by the writer of the ETO will either be assessable on a due and receivable basis (on revenue account) or will be a capital gain under the Capital Gains Tax (CGT) rules;
- Premiums paid by the buyer of the ETO will either be an allowable deduction on a due and payable basis (on revenue account) or will not have implications under CGT rules;
- Any subsequent margin calls should have no tax implications when they are deposited by the writer;
- Interest received on margin accounts is assessable income on a due and receivable basis;
- Where a physically settled ETO on revenue account is exercised, the strike price will either form part of the acquisition tax cost or disposal proceeds for the underlying assets; and
- Where a physically settled ETO on capital account is exercised, the purchase or grant of the ETO and the subsequent exercise is treated as one transaction under the CGT rules. The strike price will either form part of the tax cost base or consideration received on disposal of the underlying securities. Where the underlying securities have been held for more than 12 months, the seller may be eligible for the CGT discount.

Some fees that we charge may be tax deductible. You must confirm this with your own Tax Adviser or Accountant, in relation to your specific situation.

## 12. Complaints and Dispute Resolution

Pershing is dedicated to providing quality service and as part of our service commitment to clients, it is important to provide an efficient and accessible system for resolving disputes.

Should you be of the opinion that the service provided by Pershing is not at an acceptable level, you have the right to complain and this complaint will be dealt with as promptly as possible. Pershing will aim to resolve any complaint quickly and fairly.

If you have a complaint, put your complaint in writing and address it to:

**Pershing Securities Australia Pty Ltd**

**Head of Compliance**

**Level 7, 1 Chifley Square**

**Sydney NSW 2000**

**Ph: (02) 8999 4000**

**Fax: (02) 8999 4099**

You should try to include as much detail about the circumstances of the complaint as possible including the names of any Pershing employees involved and include any supporting documentation. Following receipt of your complaint, Pershing's Head of Compliance will acknowledge receipt of your complaint in writing and provide you with an estimate of the time it will take to investigate the issues you have raised. A full investigation will be undertaken which will include reviewing all the supporting documentation, speaking to you and interviewing relevant Pershing employees. You will be provided with a detailed written response once the investigation of the complaint has been finalised.

If we do not resolve the complaint to your satisfaction, you have the option of pursuing your complaint with the Financial Ombudsman Service (FOS).

FOS' contact details are:

**Financial Ombudsman Service**  
GPO Box 3  
Melbourne, Vic 3001  
Telephone: 1300 78 08 08  
Fax: (03)9613 6399

Web: [www.fos.org.au](http://www.fos.org.au)

Alternatively you may also be able to pursue the matter with ASX. ASX has offices in all capital cities and their details are available on [www.asx.com.au](http://www.asx.com.au).

Alternatively, the Australian Securities & Investments Commission (ASIC) also has a free call information line (1300 300 630) that you may use to make a complaint and obtain information about your rights.

If your complaint relates to a service provided to you by the Correspondent (rather than Pershing), you should seek to have your complaint dealt with in the manner advised by the Correspondent in its FSG or otherwise.

### 13. Compensation Arrangements

Pershing has arranged for Professional Indemnity insurance cover which it considers to be adequate, having regard to the following:

- Pershing's maximum liability under the Financial Ombudsman Service of which Pershing is a member;
- volume and nature of Pershing's business;
- number and kind of its clients; and
- the number of representatives and Authorised Representatives it has.

If you require further information about our compensation arrangements please contact Pershing's Head of Compliance.

### 14. Privacy

Pershing and/or its agents may use personal information collected from you for the following purposes:

- to provide you with services, products and/or information that you have requested or may reasonably expect to receive;
- to conduct research, product development, marketing, risk assessment and modelling; or
- to comply with our rights and obligations and under relevant laws and regulations.

Pershing and/or its agents may also disclose the information collected from you to third parties such as mailing houses or others who provide services to us. Pershing will not disclose your information to any other person except where that disclosure is authorised or permitted by the National Privacy Principles or by law. Pershing takes all reasonable steps to ensure that information we have collected from you is secure. All stored personal information is protected from unauthorised access by user login requirements, passwords or other security procedures.

You are able to access and update the personal information Pershing. Please contact your Correspondent to do so.

If you have any questions about privacy, please contact Pershing's Privacy Officer by writing to:

**Pershing Securities Australia Pty Ltd**  
Privacy Officer  
GPO Box 5343  
Sydney NSW 2001

### 13. Contact Details

Our contact details are as follows:

**Pershing Securities Australia Pty Ltd**  
Level 7, 1 Chifley Square  
SYDNEY NSW 2000  
Ph: (02) 8999 4000  
Fax: (02) 8999 4000

## PART E: PERSHING DERIVATIVES CLIENT AGREEMENT

between a client of Escala Partners a Corporate Authorised Representative of MWH Capital Pty Limited ABN 64 136 888 956AFS Licence. & AFSL No. 338141 (Intermediary) and

**PERSHING SECURITIES AUSTRALIA PTY LTD**  
ABN 60 136 184 962 AFSL No. 338264 (Pershing)

### 1. INSTRUCTIONS

#### 1.1 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**).

#### 1.2 Authorisation of additional ASX Derivative Products

If the Client gives instructions to the Intermediary to deal in an ASX Derivative Product in which the Intermediary is not authorised to deal under this clause, those instructions are taken to vary this agreement to authorise the Intermediary to deal in that ASX Derivative Product under this clause.

#### 1.3 Orders and instructions

If the Client places an Order with the Intermediary, the Intermediary, as the Client's agent (and not as the agent of Pershing), will communicate the Client's Order to Pershing and other instructions or information to Pershing as appropriate.

Pershing 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.

Pershing may at any time, in its absolute discretion, refuse to accept any Order from, or execute Orders for, the Client.

Subject to any instructions from the Client, Pershing will generally execute Orders in the sequence in which they are received.

However, the Client acknowledges and agrees that:

- (a) the Client's Order may be automatically crossed against other orders before reaching the Market;
- (b) the Client will be charged the normal rate of commission by the Intermediary for Orders which are crossed with Pershing's principal orders; and
- (c) Pershing 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 Pershing 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.

#### 1.4 Right to refuse to deal

The Client acknowledges that:

- (a) **[ASX Minimum Term 4, ASIC Minimum Term 3.1.7(1)(d)(vi) and ASX Clear Minimum Term 4]** Pershing may at any time refuse to deal in, or may limit dealings in, ASX Derivative Products for the Client. Pershing will notify the Client of any refusal or limitation as soon as practicable. Pershing 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; and
- (b) unless the Client has authorised Pershing to accept and act without any inquiry upon instructions provided (including Orders placed) by fax or email which appear to Pershing to have been given by or for the Client, and has indemnified Pershing in respect of any losses or expenses that Pershing may suffer or incur as a result of so acting, Pershing will refuse to accept instructions it receives by fax or email in respect of the Client.

#### 1.5 Intermediary's use of a DMA Service

Pershing may provide a direct market access service (**DMA Service**) to the Intermediary under which the Intermediary may place the Client's Orders directly into the Trading Platform through an electronic automated client order process. The Client acknowledges that if Pershing provides a DMA Service to the Intermediary:

- (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) the Client remains 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) Pershing 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, Pershing 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 the Client's data may not be protected, and there are risks that other users of the DMA Service, institutions or brokers may be able to see the Client's Orders and other communications relating to trading and execution without the Client's (or Pershing's) consent and that third parties (including persons on private networks) will have the ability to attach to the Client's network; and
- (f) Pershing may terminate the Intermediary's participation in the DMA Service at any time without notice to the Client.

## **2. CLEARING ARRANGEMENTS AND RELATIONSHIP WITH ASX AND ASX CLEAR**

### **2.1 The Client's relationship with Pershing**

The Client's primary relationship will be with the Intermediary. The Client's relationship with Pershing will be limited to the execution of Orders placed with Pershing by the Intermediary on behalf of the Client and to the clearing and settlement of Derivatives Transactions. The Client acknowledges that Pershing 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.

### **2.2 Nature of Pershing's obligations [ASIC Minimum Term 3.1.7(1)(d)(i) and ASX Clear Minimum Term 4]**

The Client acknowledges that:

- (a) notwithstanding that Pershing 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 Pershing as principal; and
- (b) upon registration of a Derivatives Contract with ASX Clear in the name of Pershing, Pershing incurs obligations to ASX Clear as principal, even though the Derivatives Contract may have been entered into on the Client's instructions.

### **2.3 Obligations of Client owed to Pershing**

On execution of a Derivatives Transaction by Pershing (or another Trading Participant where the Derivatives Transaction is allocated or transferred to Pershing as contemplated by clause 8.3) on behalf of the Client:

- (a) Pershing (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 Pershing in relation to that Derivative Transaction including the obligations set out in this agreement.

Where the Client owes an obligation to deliver funds, security or information to Pershing that obligation will not be satisfied by delivery to the Intermediary.

### **2.4 Rights of Client [ASX Clear Minimum Term 4]**

The Client acknowledges that any benefit or right obtained by Pershing 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 Pershing 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 Pershing (or any other Market Participant or Clearing Participant) in any Derivatives Contract.

### **2.5 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 Pershing commits an event of default.

## **2.6 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]**

The Client and Pershing 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.

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.

## **3. MARGIN CALLS AND COVER**

### **3.1 Pershing may call for funds or security [ASX Clear Minimum Term 6]**

Pershing may call for payment of money or the provision of other security (Pershing **Cover**) which Pershing considers, in its absolute discretion, appropriate in connection with the obligations incurred by Pershing in respect of Derivative Contracts entered into for the account of the Client. The Client acknowledges that Pershing is entitled to call for Pershing Cover under this clause 3.1 of an amount or value which exceeds the amount of the Cover which Pershing 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.

### **3.2 Application of funds or financial products to satisfy calls**

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

### **3.3 Authority to provide Cover**

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

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

### **3.4 Interest on Cover**

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

### **3.5 Pershing may use moneys as Cover**

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

## **4. COMMISSIONS AND FEES [ASX Minimum Term 2, ASIC Minimum Term 3.1.7(1)(d)(iii) and ASX Clear Minimum Term 8]**

The Client must pay to Pershing:

- (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 Pershing from time to time and notified to the Client in writing.

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

Commission charged by the Intermediary to the Client is also collected by Pershing on behalf of the Intermediary. Pershing will account to the Intermediary for such commission after deducting fees which Pershing charges to the Intermediary.

## **5. MONEYS AND DEFAULT**

### **5.1 Client funds and property [ASX Clear Minimum Term 15]**

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

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

## 5.3 Set Off

Pershing is entitled to set off any monies received from the sale of financial products on the Client's behalf against any monies due to Pershing by the Client on any account.

## 5.4 Default [ASX Clear Minimum Term 7]

If:

- (a) the Client fails to pay, or provide security for, amounts payable to Pershing or fails to perform any obligation arising pursuant to the exercise or settlement of a Derivatives Contract;
- (b) 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;
- (c) 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 Pershing;
- (d) in the absence of the Client making alternative arrangements, the Client is at any time not contactable by the Intermediary immediately in order for Pershing to obtain instructions or call for payment of money or the provision of other security;
- (e) 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;
- (f) the Client fails to complete a contract for the transfer of Underlying Financial Products following the exercise of an Option CCP Contract;
- (g) a guarantee or other security provided by the Client to Pershing is withdrawn or becomes ineffective and other replacement security acceptable to Pershing is not provided;
- (h) the Client "fails to settle" for the purpose of the terms of the Client's agreement with Pershing in relation to the execution, clearing and settlement of transactions in financial products quoted on ASX or other Market Transactions; or
- (i) any other event occurs which Pershing and the Client have agreed in this agreement constitutes a default,
- (each a **default**), Pershing 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, Pershing may:
- (j) 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 Pershing sees fit) to effect the close out of one or more Derivatives Contracts in accordance with the ASX Clear Rules;
- (k) exercise one or more Derivatives Contracts in accordance with the ASX Clear Rules;
- (l) enter into or execute any Cash Market Transaction or Derivatives Transaction (including a Futures Market Transaction) as Pershing sees fit, whether or not the Client is permitted under clause 1.1 to place an Order in respect of that kind of transaction);
- (m) sell or cause to be sold:
- (i) any or all of the Client's property, including any security lodged with Pershing (whether the property or security had been lodged with Pershing in connection with this agreement or for any other reason) or held by Pershing or its Related Bodies Corporate on behalf of the Client or in a Holding in respect of which Pershing, its nominee company or a Related Body Corporate of Pershing is the Controlling Participant; and
- (ii) any financial products held by Pershing in an account for the Client or otherwise held (including any financial products in a Holding in respect of which Pershing, its

nominee company or a Related Body Corporate of Pershing is the Controlling Participant);

- (n) exercise any other power, right or remedy which Pershing may have under this agreement or in law or equity;
- (o) 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;
- (p) charge an administration fee calculated by reference to the additional cost which may be incurred by Pershing as a result of the default;
- (q) levy a default charge on the amount of up to 15% per annum;
- (r) apply any cash held by Pershing 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 Pershing; or
- (s) cancel any of the Client's unexecuted orders, and the Client must account to Pershing 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.

In relation to any of the rights exercisable for the benefit of Pershing in the event of a default, the Client authorises Pershing 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 a respect of which Pershing, its nominee company or a Related Body Corporate of Pershing is the Controlling Participant, or held by Pershing, its nominee company or by their Related Bodies Corporate in nominee holdings, and in respect of all deposit facilities or cash management trust accounts on which they are authorised to give instructions, to enable Pershing to realise those financial products or funds and apply the proceeds in reduction of the Client's liability to Pershing and to recover Pershing's costs in so acting.

The Client must pay or reimburse Pershing any such administration fees and default charges (together with any GST payable on those amounts) immediately upon demand or at Pershing's option it may deduct such administration fees and default charges (and any GST) from any proceeds of 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.

Pershing will not be liable to the Client for any failure by Pershing to exercise (or any delay in the exercise by Pershing of) any power under this clause, or any loss incurred by the Client as a result of Pershing not exercising any of its powers under this clause 5 immediately, or at all, following an event of default by the Client.

The Client acknowledges that Pershing, in exercising any of its rights under this clause 5.4, 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.

## 5.5 Effect of liquidation of contract following default

Upon close out of any Derivatives Contract in accordance with clause 5.4, the Client is liable to pay to Pershing any amount owing to Pershing in respect of that contract. If the Client fails to make that payment within the time specified by Pershing (which time is of the essence), Pershing may deal with any of the Client's money or other property held by Pershing and apply the proceeds against that amount.

## 5.6 Assignment to the Intermediary of amounts owing

If the Client has not paid any amount due to Pershing under this agreement, in addition to its rights under clause 5.4, Pershing may assign that debt to the Intermediary and the assigned debt will become an obligation of the Client's 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 clause 5 as if a reference to Pershing were a reference to the Intermediary.

## 5.7 Method of Payment

Where money is payable to Pershing by the Client (for example where Pershing has called for payment of money under clause 3.1 or has notified the Client of commissions and fees in accordance with clause 4), the Client:

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

## 5.8 Release

In consideration of Pershing entering into this agreement with the Client, the Client releases Pershing (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 Pershing of any of its rights under this clause 5.

## 6. ACKNOWLEDGMENTS AND WARRANTIES

### 6.1 Change of Participant [ASX Clear Minimum Term 16]

If the Client receives a Participant Change Notice from Pershing 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 in accordance with clause 10.1 or by giving instruction to Pershing, 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 Pershing 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:

- the new Participant is a party to these this agreement in substitution for Pershing;
- any rights of Pershing are transferred to the new Participant; and
- Pershing 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:

- 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;
- 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 Pershing Cover) provided to Pershing 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 clause 3 of 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 Pershing's 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 can not take effect until the Client has received a notice from the new Participant confirming that the new Participant consents to acting as the Participant for the Client. The Effective Date may as a result be later than the date set out in the Participant Change Notice.

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 Pershing 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 Pershing 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 6.1 will prevent the completion of Derivatives Transactions or Derivatives Contracts by Pershing 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 6.1.

### 6.2 Explanatory Booklet and other documents [ASIC Minimum Term 3.1.7(1)(b) and ASX Clear Minimum Term 3]

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 a Wholesale Client. 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).

### 6.3 Risk and investment in ASX Derivative Products [ASX Clear Minimum Term 3]

The Client acknowledges that trading in ASX Derivative Products incurs a risk of loss as well as a potential for profit.

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.

### 6.4 Dealing as Principal and Pershing taking opposite position [ASIC Minimum Term 3.1.7(1)(d)(ii) and ASX Clear Minimum Term 5]

The Client acknowledges that Pershing 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.

### 6.5 Confirmations

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

- the terms and conditions of this agreement;
- 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;
- the customs and usages of the Market (as defined in the ASIC Market Integrity Rules); and
- the correction of errors and omissions.

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

### 6.6 Cancellation of trades

The Client authorises Pershing, and agrees that Pershing 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:

- 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);
- 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
- 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 Pershing 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.

## 7. INFORMATION

### 7.1 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 Pershing, or cause information or documentation to be delivered to Pershing concerning Derivatives Transactions which are requested by a person having a right to request such information or document. Pershing is authorised to produce the information or documentation to the person making the request.

### 7.2 Tape recording of conversations [ASIC Minimum Term 3.1.7(1)(d)(iv) and ASX Clear Minimum Term 9]

The Client agrees that Pershing may record telephone conversations between the Client and Pershing. The Client also agrees that Pershing 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 Pershing, the Client has the right to listen to any recording of those conversations. Nothing in

this agreement obliges Pershing to keep a recording longer than 90 days.

## **8. ALLOCATION (GIVE UP)**

### **8.1 Pershing must consent to any give up**

The Client acknowledges and agrees that Pershing is obliged as principal and has the Clearing Obligations in respect of all transactions in relation to ASX Derivative Products which are executed by Pershing (or by another Trading Participant and then allocated or transferred to Pershing as contemplated by clause 8.3 below) 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) Pershing has consented to the allocation of the Derivatives Contract to that other Participant;
- (c) Pershing 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.

### **8.2 Pershing ceases to have Clearing Obligations following give up**

Clauses 3.1 and 5.4 do not apply in relation to an Allocated Trade, where the Client directs that trades be allocated to a Participant (who is not Pershing) 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 Pershing to the other Participant in accordance with the ASX Clear Rules.

### **8.3 Give up to Pershing and similar arrangements**

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

- (a) allocated to Pershing as Clearing Participant for that Trading Participant;
- (b) allocated to Pershing as contemplated by ASX Clear Operating Rule 11.1; or
- (c) transferred to Pershing 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 Pershing under any such arrangements, unless the Client and Pershing have entered into a separate agreement in respect of any such Derivatives Contracts.

## **9. INDEMNITY**

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

- (a) Pershing 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 Pershing 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 given by the Client under this agreement proving to be untrue or incorrect; or
- (e) any Allocated Trade.

## **10. TERMINATION OF AGREEMENT**

### **10.1 Termination by notice [ASIC Minimum Term 3.1.7(2) and ASX Clear Minimum Term 11]**

Either the Client or Pershing 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.

### **10.2 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 Pershing at or prior to termination. Upon termination of this agreement, Pershing will close out all Derivatives Contracts held by Pershing for the account of the Client, unless, in accordance with a direction from the Client, the registration of those contracts are transferred to another Participant in accordance with the ASX Operating Rules or ASX Clear Rules.

## **11. AMENDMENT**

### **11.1 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 Pershing had entered into an agreement containing the New Terms.

### **11.2 Pershing to provide Client with copy of changes [ASX Minimum Term 7 and ASX Clear Minimum Term 14]**

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

## **12. SET OFF**

Without limiting clause 5.3, Pershing may, without notice to the Client, combine any account that the Client holds at any branch or office (in Australia or elsewhere) of Pershing with, or set off any amount in any currency that is or may become owing in any currency by Pershing (or any Related Body Corporate or Pershing) to the Client against, any amount owing by the Client to Pershing (or any Related Body Corporate of Pershing). For this purpose Pershing 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 Pershing's usual practice; and
- (c) do anything (including execute any document) in the name of the Client that Pershing considers necessary or desirable.

This clause 12 overrides any other document or agreement to the contrary.

## **13. NOTICES**

Any confirmation, statement or other written notice (including legal process) served by Pershing on the Client, or served by the Client on Pershing 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 Pershing on the Client need not be in writing. In particular, a call under clause 3.1 may be made by telephone to the Client by Pershing or by the Intermediary on Pershing's behalf. Pershing may arrange for any notice to be given by Pershing to the Client under this agreement or the ASX Clear Rules to be given to the Client by the Intermediary acting as Pershing's agent. Pershing may also provide the Intermediary with a copy of any such communication or notice given to the Client by (or on behalf of) Pershing.

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

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

### **14. 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 Australian financial services licence under the Corporations Act held by the Client;
  - (ii) a trust deed (if the Client is a trustee); or
  - (iii) an agency contract.

## **15. REPRESENTATIONS AND WARRANTIES AS TO CAPACITY**

The Client represents and warrants to Pershing 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 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 Pershing Cover unless it disposes of them in accordance with this agreement;
    - (iii) Pershing 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.

## 16. INSTRUCTIONS AND AUTHORISED REPRESENTATIVES

### 16.1 Powers of Authorised Representatives

The Client agrees that each of the persons stated in the application form (or otherwise notified by the Client to Pershing) 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 Pershing in relation to Pershing Cover of the Client or in relation to the Derivatives Transactions or Derivatives Contracts including to directing or consenting to dealing by Pershing in any Pershing 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 16.

### 16.2 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.

### 16.3 Revocation of Power

The Client may revoke an Authorised Representative's powers by notice in writing to Pershing. 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.

### 16.4 Indemnity

The Client hereby indemnifies each of Pershing against any liability, damage, cost or expense incurred by Pershing 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 Pershing from the Client or any person purporting to be the Client or the Client's Authorised Representative or agent.

## 17. NO ADVICE

### 17.1 Pershing does not provide financial product advice

The Client acknowledges that Pershing does not provide financial product advice, and Pershing does not accept responsibility for any financial product advice given to the Client by the Intermediary, and the Client must not represent to any person that Pershing has given any financial product advice to the Client.

If the Client is to trade in ASX Derivative Products on the basis of advice given to the Client by the Intermediary, the Client must provide the Intermediary with:

- (a) all information (and documentation) regarding the Client's financial situation, investment objectives and particular needs sufficient and necessary for the Intermediary to give informed financial product advice;
- (b) any relevant new information (and documentation) as soon as it becomes available; and
- (c) details of or any change in the Client's financial situation, investment objectives and particular needs as soon as such change occurs.

### 17.2 Manner in which Pershing exercises its rights is not to be taken to be advice

Pershing has various rights under this agreement, including:

- (a) the right under clause 3 to require the Client to provide Pershing Cover; and
- (b) various rights under clause 5 if a default occurs in relation to the Client.

The manner in which Pershing may exercise or not exercise, or the timing of or any delay in any exercise by Pershing of, any right of Pershing under this agreement is not to be taken to be financial product advice by Pershing to the Client, and the Client must not represent to any person that it is financial product advice by Pershing.

## 18. GENERAL

### 18.1 Costs and Taxes

The Client will pay Pershing 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 Pershing or payable by Pershing 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.

### 18.2 Entire agreement

This agreement 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 agreement and has no further effect.

### 18.3 Statements by Pershing

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

### 18.4 Exercise of rights

No failure or delay on the part of Pershing in exercising any right, power or remedy under this agreement and no course of dealing between Pershing 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 other exercise of that or any other right, power or remedy.

### 18.5 Amendments

Except as provided in this agreement (including in clause 11):

- (a) this agreement may only be amended in writing;
- (b) Pershing may amend this agreement at any time by giving written notice to the Client; and
- (c) an amendment will take effect on and from the date specified by Pershing in the notice being a date not less than 10 Business Days after the date of the notice.

### 18.6 Assignment

The rights and obligations of the Client under this agreement are not capable of assignment. Pershing may assign or transfer its rights under this agreement or in relation to any Pershing 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, Pershing 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.

### 18.7 Giving effect to agreement

Each party must do anything (including sign or give effect to any document) that Pershing may reasonably require, to give full effect to this agreement or the transactions contemplated by this agreement (including the provisions of clause 5).

The Client appoints Pershing and each officer of Pershing 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.

### 18.8 Joint and several liability

If the Client constitutes more than one person then each of those persons is jointly and severally bound by this agreement and Pershing are entitled to act on the instructions of any one of those persons.

### 18.9 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Client in connection with this agreement, Pershing Cover with the result that Pershing's 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.

### 18.10 No withholding

All payments to be made to Pershing must be made without deduction or withholding. If the Client is obliged by law to deduct or

withhold any amount from any payment to be made under this agreement the Client will concurrently pay to Pershing such additional amount as will result in Pershing receiving the full amount which would have been received if the deduction or withholding had not been made.

#### 18.11 Currency

All payments under this agreement are to be made in Australian dollars, except as Pershing 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 Pershing in another currency which, upon conversion of the other currency into Australian dollars, is less than the amount which would have been received by Pershing if paid in Australian dollars, then the Client must as an independent obligation indemnify Pershing on demand against the deficiency.

#### 18.12 Recovery of GST

If GST has application to any Supply made under or in connection with this agreement, Pershing may in addition to any amount or consideration payable to it under this agreement, recover from the Client an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the Client to it at the prevailing GST rate.

Any additional amount on account of GST recoverable from the Client under this clause shall be calculated without any deduction or set-off of any other amount and is payable by the Client upon demand of Pershing, whether such demand is by invoice or otherwise. To the extent that any party to the Terms (**Supplier**), is or becomes liable to pay GST in connection with any Supply made under this agreement:

- the Supplier may add an amount in respect of that GST to the agreed price of the supply;
- any party paying consideration for the Supply will pay the agreed price plus the amount in respect of GST; and
- where required by the GST Law, the Supplier will issue a tax invoice which enables the person receiving the invoice, if permitted by the GST Law, to claim an input tax credit or refund of GST.

#### 18.13 Governing law

This agreement are governed by the law in force in New South Wales and the Client, Pershing submit to the non-exclusive jurisdiction of the courts of New South Wales and courts which may hear appeals from those courts.

### 19. DEFINITIONS AND INTERPRETATION

#### 19.1 Definitions

In this agreement unless the contrary intention appears:

**Allocated Trade** has the meaning given to it in clause 8.1.

**ASIC Market Integrity Rules** means ASIC Market Integrity Rules (ASX Market) 2010 made by ASIC under section 798G(1) of the Corporations Act.

**ASX** means ASX Limited ABN 98 008 624 691 or, where the context requires, the market operated by it.

**ASX Clear** means ASX Clear Pty Ltd (formerly known as Australian Clearing House Pty Ltd or ACH) ABN 48 001 314 503.

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

**ASX Derivative Product** has the meaning given to it in clause 0.

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

**ASX Settlement** means ASX Settlement Pty Ltd (formerly known as ASX Settlement and Transfer Corporation Pty Ltd or ASTC) 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 Representative** means each of the persons stated in the application form (or subsequently notified by the Client to Pershing in a form acceptable to Pershing) 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.

**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.

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

**Derivatives Contract** means a Derivatives Market Contract or Derivatives CCP Contract (each as defined in the ASX Clear Rules)

or the corresponding contract between the Intermediary and the Client, 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.

**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.

**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.

**Order** means an order or instruction in respect of a client or the Intermediary as principal (as the case may be) in relation to a Derivatives Transaction, and includes, without limitation, an order or instruction to:

- open or close a position in relation to a Derivatives Contract;
- submit an Exercise Notice to ASX Clear in relation to a Derivatives Contract; and
- buy or sell an Underlying Financial Product.

**Pershing Cover** has the meaning given to it in clause 3.1.

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

**Security Interest** means any bill of sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation.

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

Other words and phrases defined in the ASIC Market Integrity Rules, the ASX Operating Rules, the ASX Clear Rules or the ASX Settlement Rules have the meaning given in the corresponding rules. The Client may inspect a copy of these rules at Pershing's offices on request.

#### 19.2 Interpretation

In this agreement unless the contrary intention appears:

- each gender includes the other genders;
- 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;
- a reference to this agreement or another agreement includes any variation or replacement of them;
- the word person includes a firm, a body corporate, an unincorporated association or an authority;
- a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- a reference to any thing (including any amount and Pershing 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;
- 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
- the singular includes the plural and vice versa.

#### 19.3 Headings

Headings are for convenience only and do not affect the interpretation of this agreement.

#### 19.4 Banking Days

If any payment falls due on a non-Banking Day it will be made on the succeeding Banking Day.

#### 19.5 Clients

Where the Client comprises more than one person, the obligations of those persons under this agreement shall be joint and several, a notice or demand given to one such person shall be deemed to have been given to all such persons, and, unless expressly agreed with Pershing to the contrary, each such person shall be deemed to be the agent of the others.



## PART F: PERSHING PRIVACY STATEMENTS

### Privacy Statement for Individuals

Pershing Securities Australia Pty Ltd and its related entities (Pershing) will handle your personal information, including sensitive information (as defined in the Privacy Act), to enable us to provide you with financial services and products offered by Pershing and to provide you with information about these services and products (the Services).

You understand that if you fail to provide any personal information requested of you, we may not be able to provide with the Services that you require.

In providing you with the Services we may, from time to time, disclose your personal information to State or Commonwealth regulatory authorities (including ASX Settlement and Transfer Corporation Pty Limited), our employees, advisers, agents, contractors and our third party service providers, such as mailing houses or financial planners. We may also share your personal information with other entities in the wider Pershing group and their party service providers. Some of the foregoing may be located overseas.

You can request access to any personal information that Pershing may hold about you. On occasion, we may not provide access. In this case we will explain why.

If you want to know more about our approach to privacy, want to access your personal information or do not want us to use your personal information in any of the ways set out above, you can contact us at

#### PERSHING SECURITIES AUSTRALIA PTY LTD

##### Head of Compliance

Level 7, 1 Chifley Square

Sydney NSW 2000

Ph: 02 8999 4000

Fax: 02 8999 4099

### Privacy Statement for Corporate Clients

We may from time to time collect personal information about your employees, agents or contractors for the purpose of conducting business with you.

We may disclose that personal information to State or Commonwealth regulatory authorities (including ASX Settlement and Transfer Corporation Pty Limited), our employees, advisers, agents, contractors and our third party service providers such as mailing houses. We may also share that personal information with other entities in the wider Pershing group and their third party service providers. Some of the foregoing may be located overseas.

You must advise your employees, agents and contractors of the fact that we collect the personal information and the use we make of it. You must also let them know how they can contact us to request access to any personal information that we hold about them or if they do not want us to use their personal information in any of the ways set out above.

## PART G: PERSHING'S FINANCIAL SERVICES GUIDE (FSG)

Issued by Pershing Securities Australia Pty Ltd  
ABN 60 136 184 962  
Australian Financial Services Licence No. 338 264  
Date FSG was prepared: 03 January 2012

### 1. Terms used in this FSG

<b>AFSL</b>	Australian Financial Services Licence
<b>ASX</b>	ASX Limited ABN 98 008 624 691 or the market operated by it, as the context requires
<b>Broker</b>	A Participant of one or more Relevant Exchanges which has engaged Pershing to clear transactions executed by the Broker on a Relevant Exchange.
<b>Chi-X</b>	Chi-X Australia Pty Limited ABN 47 129 584 667 or the market operated by it, as the context requires
<b>Client</b>	Clients are considered 'wholesale' or 'retail' as defined under the Corporations Act.
<b>Correspondent</b>	Your Broker or Financial Intermediary, as the case may be.
<b>ETOs</b>	Exchange Traded Options
<b>Financial Intermediary</b>	An AFSL holder who has engaged Pershing to execute and clear transactions on a Relevant Exchange.
<b>FOS</b>	Financial Ombudsman Service
<b>FSG</b>	Financial Services Guide
<b>IDPS</b>	Investor Directed Portfolio Services
<b>International Securities Trader</b>	A Pershing group entity or a third party authorised to provide securities dealing and/or custody services on an international market.
<b>MDA</b>	Managed discretionary accounts, being a service which a Correspondent may provide to you under which you authorise the Correspondent to manage an investment portfolio on your behalf and to make investment decisions in relation to the portfolio in accordance with an investment program agreed with you.
<b>PDS</b>	Product Disclosure Statement
<b>Pershing, we, us, our</b>	Pershing Securities Australia Pty Ltd ABN 60 136 184 962; AFSL No. 338 264
<b>Pershing Nominees</b>	Pershing Australia Nominees Pty Ltd ACN 137 911 730, a wholly owned subsidiary of Pershing, or another nominee company appointed by Pershing
<b>Relevant Exchange</b>	ASX or Chi-X, or the financial markets operated by them (as the context requires).

### 2. Purpose of this FSG

This FSG provides information about:

- Who we are;
- What relationships and associations we have;
- The services we provide;
- How you may provide us with instructions;
- The remuneration that may be paid to us or to other relevant persons for the services we provide;
- The documents you may receive from us;
- How we handle complaints;
- Your privacy and how we use your personal information

This FSG has been prepared by Pershing and was prepared on 03 January 2012 to assist you in deciding whether to use the services we provide. You should read it carefully and make sure you understand it.

Together with this FSG, you will have received an FSG from the Correspondent. You should read both documents before deciding whether to use the services that we provide.

### 3. Who is Pershing?

Pershing is licensed under the Corporations Act (Australian Financial Services Licence (AFSL) No 338 264) to provide financial services and is a Trading Participant of ASX, a Participant of Chi-X, a

General Participant of ASX Clear Pty Ltd ABN 48 001 314 503 (**ASX Clear**) and a Settlement Participant of ASX Settlement Pty Ltd ABN 49 008 504 532 (**ASX Settlement**).

Pershing is a wholly owned subsidiary of Pershing Group LLC, a Bank of New York Mellon Company, headquartered in New Jersey, USA. The Pershing Group provide execution, clearing, settlement, custody and technology infrastructure products and services to financial services firms and others servicing the global financial services industry.

Pershing has authorised the distribution of this FSG.

#### 4. The services offered by Pershing

Pershing is authorised under its AFSL to:

a) deal in (including arranging to deal in) the following financial products:

- Securities (such as shares, options and warrants that can be traded on a Relevant Exchange);
- Interests in managed investment schemes (other than IDPS), such as units in ASX listed trusts;
- Derivatives, such as ASX Exchange Traded Options (ETOs);
- Foreign exchange contracts; and

b) provide a custodial or depository scheme service (other than IDPS),

to wholesale and retail clients.

Pershing provides/arranges to provide execution, clearing, settlement and nominee services. You have received a copy of this FSG because the Correspondent has arranged for Pershing to provide one or more of the following services:

##### a) Clearing services for transactions in securities and interests in managed investment schemes executed on a Relevant Exchange

Pershing may be engaged by a Broker to clear the transactions in securities and interests in managed investment schemes executed on a Relevant Exchange by the Broker. If you are a client of one of those Brokers and you effect a transaction in securities or interests in managed investment schemes on a Relevant Exchange through the Broker, Pershing (as clearer) will carry the settlement obligations in respect of that transaction.

For this purpose, you will become a client of Pershing and you will owe your settlement obligations in respect of that transaction directly to Pershing and not to the Broker. If you are a client of one of those Brokers, you will be provided with a Disclosure Statement which contains more information concerning the clearing services Pershing provides and the terms of your agreement with Pershing in respect of the those services.

##### b) Execution and clearing services for transactions in securities and interests in managed investment schemes executed through a Relevant Exchange

Pershing may also be engaged by a Financial Intermediary to provide to clients of the Financial Intermediary, execution and clearing services in securities and interests in managed investment schemes. This means that Pershing will execute the transaction on a Relevant Exchange for you and clear and settle those transactions.

As a client of one of those Financial Intermediaries, you may effect a transaction in securities or interests in managed investment schemes on a Relevant Exchange by providing instructions to the Financial Intermediary. The Financial Intermediary will then, as your agent, communicate your instructions to Pershing who may then execute the transaction on a Relevant Exchange for you. For this purpose, you will become Pershing's client.

In addition, Pershing will also clear all transactions in securities or interests in managed investment schemes that Pershing has executed on your behalf under this arrangement. Accordingly, Pershing will carry the settlement obligations in respect of those transactions. For this purpose, you will become a client of Pershing and you will owe your settlement obligations in respect of those transactions directly to Pershing and not to the Financial Intermediary.

If you are a client on one of those Financial Intermediaries, you will be provided with a document that summarises Pershing's Best Execution Policy and explains how we handle and execute your orders, as required under the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011*.

##### c) Clearing services for transactions in Exchange Traded Options executed on ASX

Pershing may also be engaged by a Broker to clear the transactions in ETOs executed on ASX by the Broker.

If you are a client of one of those Brokers and you effect a transaction in an ETO on ASX through the Broker, Pershing (as

clearer) will carry the settlement obligations in respect of that transaction. For this purpose, you will become a client of Pershing and you will owe your settlement obligations in respect of that transaction directly to Pershing, not to the Broker.

If you are a client of one of those Brokers, and wish to trade in ETOs on ASX through it, you will need to enter into a Derivatives Client Agreement with Pershing.

You may also need to enter into a Derivatives Client Agreement with the Broker, and the Broker may be required to give you a Product Disclosure Statement (PDS) in relation to the ETOs that you may trade. The PDS will contain information concerning ETOs to assist you in deciding whether those products are appropriate for your needs.

##### d) Execution and clearing services for transactions in Exchange Traded Options executed on ASX

Pershing may also be engaged by a Financial Intermediary to provide to clients of the Financial Intermediary execution and clearing services in ETOs. This means that Pershing will execute transaction in ETOs on ASX for you and clear and settle those transactions.

If you are a client of one of those Financial Intermediaries and you wish to deal in ETOs on ASX, you may do so by communicating an order to deal in ETOs to the Financial Intermediary. The Financial Intermediary (as your agent) will communicate that order to Pershing who will execute the transaction on ASX on your behalf. For this purpose, you will become a client of Pershing.

In addition, Pershing will also clear all transactions in ETOs that are executed by Pershing on your behalf. Accordingly, Pershing will carry the settlement obligations in respect of those transactions. For this purpose, you will become a client of Pershing and you will owe your settlement obligations in respect of those transactions directly to Pershing and not to the Financial Intermediary.

If you are a client of a Financial Intermediary and wish to trade in ETOs on ASX, you will need to enter into a Derivatives Client Agreement with Pershing.

We may also be required to give you a PDS in relation to the ETOs that you may trade. The PDS will contain information concerning ETOs to assist you in deciding whether those products are appropriate for your needs. The Correspondent may also be required to give you a PDS in relation to the ETOs that you may trade.

##### e) Clearing services for transactions in Exchange Traded Options "given up" to Pershing on ASX

Pershing may clear a transaction in ETOs executed on ASX by another Participant of ASX Group if the transaction is "given up" to Pershing. If Pershing accepts the "give up" of such a transaction executed for you, Pershing will carry the settlement obligations in respect of that transaction. For this purpose, you will become a client of Pershing and you will owe your settlement obligations in respect of that transaction directly to us and not to the other Participant.

Before Pershing can accept the "give up" to it of a transaction in ETO executed for you, you will need to enter into a Derivatives Client Agreement with Pershing. Again, you may be provided with a PDS relating to ETOs.

##### f) Execution, clearing and settlement services for transactions in securities on international markets

Pershing may also be engaged by a Correspondent to arrange execution, clearing and settlement services in securities on international markets for clients of the Correspondent. This means that Pershing will arrange for the execution, clearing and settlement of the transaction with an entity which holds the appropriate authorisation to do so in that market (**International Securities Trader**). The International Securities Trader may be a Pershing group entity or a third party entity.

As a client of one of those Correspondents, you may effect an international securities transaction on an international market by providing instructions to the Correspondent. The Correspondent, acting as your agent, will then communicate your instructions to Pershing who, in acting for you, will communicate them to the International Securities Trader for fulfilment through Pershing's Account with that International Securities Trader. Securities traded on your behalf using Pershing's Account will be traded beneficially for you by Pershing. For this purpose, you will become Pershing's client, but not the client of the International Securities Trader.

Pershing will also arrange for the International Securities Trader to clear and settle all transactions in securities that it has executed on your behalf under this arrangement. Accordingly, Pershing will carry the settlement obligations in respect of those transactions. For this purpose, you will become a client of

Pershing and you will owe your settlement obligations in respect of those transactions directly to Pershing and not to the Correspondent or the International Securities Trader.

**g) Settlement and nominee services - general**

Pershing may also be engaged by a Correspondent to provide to clients of the Correspondent settlement services in securities and interests in managed investment schemes. This means that Pershing will settle transactions arranged for you by the Correspondent and executed on a Relevant Exchange for you by a Trading Participant of a Relevant Exchange (other than Pershing and the Correspondent).

However, Pershing will only settle such transactions if, in the case of a purchase, the necessary funds are made available to Pershing and, in the case of a sale, the financial products sold are made available to Pershing, in each case in sufficient time before the time the transaction is to be settled.

As part of this service, Pershing will also arrange for your securities and interests in managed investment schemes to be held as nominee by Pershing Nominees as nominee for you. For the purpose of settlement and nominee services, you will become Pershing's client.

**h) Settlement and nominee services – MDA accounts**

Pershing may be engaged to provide settlement and nominee services as described in paragraph 4 f) above to clients of the Correspondent in connection with the provision to the Client by the Correspondent of managed discretionary account (MDA) services. In that event, Pershing will be responsible only for the following services:

- the settlement of transactions which the Correspondent has arranged to be executed on a Relevant Exchange on your behalf (provided that Pershing will only settle such transactions if, in the case of a purchase, the necessary funds are made available to Pershing and, in the case of a sale, the financial products sold are made available to Pershing, in each case in sufficient time before the time the transaction is to be settled);
- the holding by Pershing Nominees as nominee for you of securities and interests in managed investment schemes which are acquired or otherwise form part of your investment portfolio (**Investments**) which the Correspondent manages for you as part of the MDA services;
- as Pershing Nominees will be the registered holder of your Investments:
  - it will receive any dividends or other distributions in respect of those Investments and will deal with them in accordance with instructions from the Correspondent;
  - it will be entitled to cast any votes in respect of your investments and will do so in accordance with instructions from the Correspondent
- Pershing if required to do so under relevant regulatory requirements will provide you with an activity statement in respect of any transactions which it settles on your behalf unless you are deemed to be a wholesale client;
- any other services to be provided by Pershing to you under the Nominee and Settlement Services Agreement entered into with you.

The Correspondent will be responsible for the following:

- management of your Investments based on an investment program agreed between you and the Correspondent, including the making of all investment decisions on your behalf in connection with your Investments;
- arranging for transactions to be executed on a Relevant Exchange for you by a Trading Participant of a Relevant Exchange (other than Pershing and the Correspondent);
- giving instructions to Pershing in connection with the settlement of transactions executed on a Relevant Exchange for you and the distributions and rights in respect of the Investments held by Pershing Nominees on your behalf; and
- any other services required in connection with the provision of MDA services to you which are not to be provided by Pershing.

**i) CHES Sponsorship services**

Pershing may act as a CHES Sponsoring Participant of the clients of its Correspondents. Clients that are to be CHES sponsored by Pershing must enter into a Sponsorship Agreement with Pershing.

**j) Nominee and custody services**

Pershing may arrange for its wholly owned subsidiary, Pershing Nominees and/or another entity to provide nominee and other custody services for clients of the Correspondents for whom it provides clearing services and other clients. If you want Pershing to arrange for Pershing

Nominees to provide nominee or custody services to you, you will need to enter into an agreement for this purpose.

**k) Other services**

Pershing acts as agent for the clients of Correspondents in providing settlement services for the client in respect of transactions executed by the client or on behalf of the client by another person.

Pershing does not provide financial product advice and is not authorised under its AFSL to provide financial product advice.

**5. Capacity in which Pershing acts**

The capacity in which Pershing acts depends on the service to be provided as follows:

**a) Clearing services for transactions in securities and interests in managed investment schemes executed on a Relevant Exchange**

Pershing acts as principal in relation to the clearing and settlement of transactions in securities and interests in managed investment schemes executed on a Relevant Exchange on your behalf. However, there may be certain activities in which Pershing will perform as agent for another person (such as the despatch by Pershing of confirmations to clients as agent for the Broker that executed the transaction).

In clearing the transaction, Pershing acts as agent for the client for whom the transaction was executed. However, Pershing will owe the settlement obligations in respect of that transaction to ASX Clear as principal.

**b) Execution and clearing services for transactions in securities and interests in managed investment schemes executed on a Relevant Exchange**

Pershing acts as principal in relation to the execution of your orders which are communicated to it by the Financial Intermediary for execution on a Relevant Exchange on your behalf.

We act as principal (and not as agent for the Financial Intermediary) in relation to the clearing and settlement of such transactions. However, there may be certain activities in which we will perform as agent for another person (such as the despatch by us of confirmations to clients as agent for the Financial Intermediary that arranged for the execution of the transaction). In clearing the transaction, Pershing acts as agent for the client for whom the transaction was executed. However, we will owe the settlement obligations in respect of that transaction to ASX Clear as principal.

**c) Execution and clearing services for transactions in securities on international markets**

When Pershing enters into a contract with you to arrange for the execution, clearing and settlement of international securities transactions on a foreign market by an International Securities Trader for you, it does so as principal on its own behalf, and not as someone's agent.

When Pershing arranges for the provision of international securities trading services to you in accordance with this contract, Pershing acts as agent for you.

In order to provide these services to you, Pershing (as principal), has entered into agreements with an International Securities Trader, and will owe obligations in relation to any transactions directly to the International Securities Trader. (It is then your contract with Pershing which enables Pershing to ultimately call upon you to satisfy these obligations).

**d) Clearing services for transactions in Exchange Traded Options executed on ASX**

Pershing acts as principal in relation to the clearing and settlement of transactions in ETOs executed on ASX on your behalf. Pershing also acts as principal in respect of the clearing and settlement of transactions in ETOs executed on ASX on your behalf for which Pershing accepts the "give up".

However, there may be certain activities in which Pershing will perform as agent for another person (such as the despatch by Pershing of confirmations to clients as agent for the Broker that executed the transaction).

The rights of Pershing against the ASX Group in respect of any transaction in ETOs executed on ASX for which Pershing has the settlement obligations will be personal to Pershing, and the benefit of those rights will not pass to the client for whom the transaction was executed. Accordingly, in clearing the transaction and being the registered holder of the ETO, Pershing acts as principal and not as an agent or trustee for the client. However, Pershing will owe corresponding obligations to the client as a principal.

**e) Execution and clearing services for transactions in Exchange Traded Options executed on ASX**

Pershing acts as principal in relation to the execution of your orders which are communicated to it by the Financial Intermediary for execution on ASX on your behalf. We act as principal (and not as agent for the Financial Intermediary) in relation to the clearing and settlement of such transactions. Pershing also acts as principal in respect of transactions in ETOs executed on ASX on your behalf for which Pershing accepts the "give up".

However, there may be certain activities which Pershing will perform as agent for another person (such as the despatch by Pershing of confirmations to clients as agent for the Financial Intermediary who arranged for that transaction to be executed). The rights of Pershing against the ASX Group in respect of any transaction in ETOs executed on ASX for which Pershing has the settlement obligations will be personal to Pershing, and the benefit of those rights will not pass to the client for whom the transaction was executed. Accordingly, in clearing the transaction and being the registered holder of the ETO, Pershing acts as principal and not as an agent or trustee for the client. However, we will owe corresponding obligations to the client as a principal.

**f) Settlement and nominee services**

Pershing acts as your agent in relation to the settlement of transactions in securities and interests in managed investment schemes which the Correspondent has arranged for another Trading Participant to execute on a Relevant Exchange on your behalf.

Pershing acts as agent for Pershing Nominees when arranging for it to provide nominee services to clients. Pershing Nominees acts as nominee or trustee for the client in providing the service.

**g) Sponsorship services**

Pershing acts as principal in providing sponsorship services to clients.

**h) Nominee and custody services**

Pershing acts as your agent when arranging for Pershing Nominees and/or another entity to provide nominee and other custody services to you. Pershing Nominees as agent of Pershing, or the other entity, will act as nominee or trustee for you in providing the service.

**i) Other services**

Pershing acts as agent for the client in providing settlement services for the client in respect of transactions executed by the client or on behalf of the client by another person.

**6. How you may provide instructions**

To provide instructions to Pershing, you must contact the Correspondent (and not Pershing directly).

**7. How we are remunerated**

**a) Remuneration for execution, clearing and settlement services**

Pershing will charge the Correspondent fees for executing and/or clearing transactions, and for providing settlement and nominee services to clients.

The fees that Pershing may charge the Correspondent may be a fixed monthly fee, a fee per trade, a fee per service and/or other fees.

You may be charged fail fees by Pershing where you fail to perform your settlement obligations in respect of a transaction that has been executed on your behalf. Fail fees may include a fee imposed by a Relevant Exchange, an administrative fee and a default charge on the amount outstanding from time to time. You may also be charged brokerage or commission or other fees by Pershing on a contract for the transfer of underlying securities following the exercise of an ETO at a rate determined by Pershing and advised to you from time to time. All or part of this fee or commission may be passed on to the Correspondent. The Correspondent will also charge you brokerage or commission and/or other fees agreed with you in respect of the services that it provides to you. Information concerning such brokerage, commission and fees may be obtained from the Correspondent.

**b) Remuneration for CHES sponsorship services**

Pershing may charge you a fee for providing you with CHES sponsorship services. You will be advised in writing of the fee (if any) to be charged by Pershing before you agree to receive sponsorship services from Pershing.

Pershing may also charge the Correspondent fees relating to the provision of sponsorship services to you.

**c) Remuneration for nominee and custody services**

Pershing may charge you a fee for providing nominee or custody services. The fees that we charge the Correspondent may

include fees relating to the provision of nominee and/or sponsorship services to you.

**8. Commission, Remuneration and other Benefits received by Pershing**

Pershing is remunerated by the fees it charges the Correspondent for the services it provides to them. Pershing is also remunerated by the fees that it may charge clients, as described above.

Pershing may also earn and retain interest on moneys held for clients in our trust accounts.

Pershing may also receive commissions, trailing commission or other benefits from other entities. As a guide, Pershing may receive the following:

Entity	Commission / Benefits
Margin Lenders	Ongoing commission can range from 0.25% per annum to 0.75% per annum of the margin lending facility
Cash Management Trusts Providers	Ongoing commissions can range from 0.15% pa to 0.65% per annum on balance invested

**9. How our representatives are remunerated**

Our representatives are remunerated by way of salary and they do not directly receive any remuneration calculated by reference to the amount of fees or commissions received by Pershing.

They may also be entitled to a bonus or other employment benefits based upon performance and achievement of various objectives by both the representative and Pershing.

**10. Referral fees**

Pershing will not pay a third party a fee for referring you to us. Similarly, Pershing will not be paid a fee for referring you to the Correspondent.

**11. Relationships or associations with financial product providers**

Pershing may enter into arrangements with financial product providers. Therefore, we may receive commissions, trail fees or other benefits as a result of your investing or dealing in any such product. See paragraph 7 in this FSG for further details.

**12. Documents you will receive**

**a) Clearing services for transactions executed by the Correspondent**

You will receive a Disclosure Statement which will contain more information relating to the clearing service provided by Pershing and the terms and conditions of those services where Pershing is to clear transactions executed for you by a Correspondent through a Relevant Exchange.

**b) Execution and clearing services**

You will receive our Equities Client Terms which will contain more information relating to the execution and clearing services provided by Pershing and the terms and conditions of those services where Pershing is to execute and clear transactions on a Relevant Exchange for you. You will also be provided with a summary of our Best Execution Policy, which explains how we handle and execute your orders, as required under the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011*. Where Pershing is to arrange for the execution and clearing of securities on a foreign market by an International Securities Trader, you will receive our International Securities Trading Terms which will contain information and the terms and conditions on which Pershing will arrange for those services to be provided to you.

**c) Transactions in ETOs**

If you wish to transact in ETOs, you will need to enter a Derivatives Client Agreement with Pershing. Depending on whether Pershing or the Correspondent is to execute your trades in ETOs on ASX, you will be provided with an ETO Product Disclosure Statement by Pershing or the Correspondent. The ETO Product Disclosure Statement will contain important information regarding trading ETOs, including the fees charged by ASX Clear. If the Correspondent (and not Pershing) is to execute your trades in ETOs on ASX, you will also be required to execute a Derivatives Client Agreement with the Correspondent.

**d) Settlement and nominees services - general**

If Pershing is to settle transactions in securities and interests in management investment schemes which the Correspondent arranges for another Trading Participant to execute on a Relevant Exchange for you, you will need to enter into a Nominee and Settlement Services Agreement with Pershing which will contain more information relating to the settlement and nominee services provided by Pershing and the terms and conditions of those services.

**e) Settlement and nominees services – MDA accounts**

If Pershing is engaged to provide settlement and nominee services to you in connection with the provision to you of MDA services by the Correspondent, you will need to enter into a

Nominee and Settlement Services Agreement with Pershing which will contain more information relating to the settlement and nominee services provided by Pershing and the terms and conditions of those services.

**f) CHES S Sponsorship Services**

If Pershing is to act as your CHES S Sponsoring Participant, you will need to enter into a Sponsorship Agreement with Pershing.

**g) Nominee and custody services**

If Pershing is to arrange for Pershing Nominees or another entity to provide nominee or other custody services to you, you will need to enter into an agreement with Pershing for this purpose.

**h) Advice**

You will not receive a Statement of Advice from Pershing as we do not provide any financial product advice.

If you receive personal financial product advice from the Correspondent, the Correspondent may be required to give you a Statement of Advice.

**13. Dispute Resolution and Complaints**

Pershing is dedicated to providing quality service and as part of our service commitment to clients, it is important to provide an efficient and accessible system for resolving disputes.

Should you be of the opinion that the service provided by Pershing is not at an acceptable level, you have the right to complain and this complaint will be dealt with as promptly as possible. Pershing will aim to resolve any complaint quickly and fairly.

If you have a complaint, put your complaint in writing and address it to:

**Pershing Securities Australia Pty Ltd**  
**Head of Compliance**  
**Level 7, 1 Chifley Square**  
**Sydney NSW 2000**  
**Ph: 02 8999 4000**  
**Fax: 02 8999 4099**

You should try to include as much detail about the circumstances of the complaint as possible including the names of any Pershing employees involved and include any supporting documentation. Following receipt of your complaint, Pershing's Head of Compliance will acknowledge receipt of your complaint in writing and provide you with an estimate of the time it will take to investigate the issues you have raised. A full investigation will be undertaken which will include reviewing all the supporting documentation, speaking to you and interviewing relevant Pershing employees. You will be provided with a detailed written response once the investigation of the complaint has been finalised.

If we do not resolve the complaint to your satisfaction, you have the option of pursuing your complaint with the Financial Ombudsman Service (FOS). FOS' contact details are:

**Financial Ombudsman Service**  
**GPO Box 3**  
**Melbourne, Vic 3001**  
**Telephone: 1300 78 08 08**  
**Fax: (03)9613 6399**  
**Web: [www.fos.org.au](http://www.fos.org.au)**

Alternatively you may also be able to pursue the matter with a Relevant Exchange. ASX has offices in all capital cities and their details are available on [www.asx.com.au](http://www.asx.com.au). Chi-X' contact details are available on [www.chi-x.com/australia/](http://www.chi-x.com/australia/).

Alternatively, the Australian Securities & Investments Commission (ASIC) also has a free call information line (1300 300 630) that you may use to make a complaint and obtain information about your rights.

If your complaint relates to a service provided to you by the Correspondent (rather than Pershing), you should seek to have your complaint dealt with in the manner advised by the Correspondent in its FSG or otherwise.

**14. Compensation Arrangements**

Pershing has arranged for Professional Indemnity insurance cover which it considers to be adequate, having regard to the following:

- Pershing's maximum liability under the Financial Ombudsman Service of which Pershing is a member;
- volume and nature of Pershing's business;
- number and kind of its clients; and
- the number of representatives and Authorised Representatives it has.

If you require further information about our compensation arrangements please contact Pershing's Head of Compliance.

**15. Privacy**

Pershing and/or its agents may use personal information collected from you for the following purposes:

- to provide you with services, products and/or information that you have requested or may reasonably expect to receive;
- to conduct research, product development, marketing, risk assessment and modelling; or

- to comply with our rights and obligations and under relevant laws and regulations.

Pershing and/or its agents may also disclose the information collected from you to third parties such as mailing houses or others who provide services to us (but we will not do so for marketing purposes). Pershing will not disclose your information to any other person except where that disclosure is authorised or permitted by the National Privacy Principles or by law.

Pershing takes all reasonable steps to ensure that information we have collected from you is secure. All stored personal information is protected from unauthorised access by user login requirements, passwords or other security procedures.

You are able to access and update the personal information Pershing. Please contact your Correspondent to do so.

If you have any questions about privacy, please contact Pershing's Privacy Officer by writing to:

**Pershing Securities Australia Pty Ltd**  
**Privacy Officer**  
**GPO Box 5343**  
**Sydney NSW 2001**

**16. Contact Details**

Our contact details are as follows:

**Pershing Securities Australia Pty Ltd**  
**Level 7, 1 Chifley Square**  
**Sydney NSW 2000**  
**Ph: 02 8999 4000**  
**Fax: 02 8999 4099**