

# Wealth Management Australia Account Opening Terms and Conditions



# Contents

|  |    |  |    |
|--|----|--|----|
| Information and Disclosures                        | 5  | 22. Tax compliance   | 56 |
| <hr/>  |    |  |    |
| Part A:  |    | 23. Costs on enforcement   | 57 |
| Terms and Conditions –                             |    | 24. Assignment/Transfer  | 57 |
| Definitions and Interpretation                     | 6  | 25. Amendments   | 57 |
| <hr/>  |    |  |    |
| 1. Definitions                                     | 6  | 26. Severability   | 58 |
| 2. Interpretation                                  | 16 | 27. No waiver  | 58 |
|  |    | 28. Illegality   | 58 |
|  |    | 29. Governing law and jurisdiction   | 58 |
|  |    | 30. Complaints resolution  | 59 |
|  |    | 31. Australian Financial Complaints Authority (AFCA)                               | 60 |
| Part B:  |    | 32. If you need financial help   | 60 |
| Privacy notification and Consent                   | 18 | 33. Client introduction and cross-referral   | 60 |
| <hr/>  |    |  |    |
| Part C:  |    | 34. Conflicts of interest, fees, soft commissions, cash rebates and other benefits | 61 |
| Terms and Conditions for Accounts                  | 22 | 35. PPSA Clauses   | 62 |
| <hr/>  |    |  |    |
| 1. Interpretation and Construction                 | 22 | 36. Anti-Money Laundering  | 64 |
| 2. Mandate   | 22 | 37. Sanctions  | 65 |
| 3. Joint Account and Partnership                   | 24 | 38. Confidentiality and information sharing  | 65 |
| 4. Availability of Services                        | 26 | 39. Whole Agreement  | 66 |
| 5. Communications                                  | 27 |  |    |
| 6. Instructions and Confirmations                  | 27 | Part D:  |    |
| 7. Deposits and withdrawals                        | 30 | Risk Disclosure Statement  | 67 |
| 8. Statements                                      | 32 | <hr/>  |    |
| 9. Suspension of Account                           | 33 | Part E:  |    |
| 10. Termination of business relationship           | 33 | Digital Services   | 76 |
| 11. Payment by the Client to the Bank              | 35 | <hr/>  |    |
| 12. Charges, costs, interest, taxes and commission | 35 | 1. Application   | 76 |
| 13. Non-discretionary Asset Management             | 36 | 2. Access to Digital Services  | 77 |
| 14. Discretionary asset management                 | 41 | 3. Digital Services Instructions and Client Transactions                           | 77 |
| 15. Custody services                               | 42 | 4. Transfer of funds   | 78 |
| 16. Disclosure requirements                        | 45 | 5. Obligations to exercise due diligence on the part of Digital Services users     | 78 |
| 17. Indemnity                                      | 46 | 6. Security with Digital Services; non-liability on the part of the bank           | 79 |
| 18. Exclusion from liability                       | 47 | 7. Obtaining account balance and Client Transaction history                        | 82 |
| 19. Rights of set-off, consolidation and lien      | 49 | 8. Market Data   | 82 |
| 20. Representations, warranties and undertakings   | 51 |  |    |
| 21. Price-sensitive information                    | 56 |  |    |

|   |   |     |            |  |
|---|---|-----|------------|--|
| 9.  | Blocking  | 83  |            |  |
| 10.   | Foreign legal provisions/restrictions   | 83  |            |  |
| 11.   | Cancellation and discontinuance of Digital Services                           | 83  |            |  |
| 12.   | Evidence and records  | 83  |            |  |
| 13.   | Intellectual property rights  | 84  |            |  |
| 14.   | Exclusion of liability  | 84  |            |  |
| <b>Part F:</b>  |   |     |            |  |
| <b>Transactions</b>   |   |     | <b>85</b>  |  |
| <hr/>   |   |     |            |  |
| 1.  | Interpretation and construction   | 85  |            |  |
| 2.  | General   | 85  |            |  |
| 3.  | General payment and delivery obligation                                       | 85  |            |  |
| 4.  | Orders  | 86  |            |  |
| 5.  | Exercise of options   | 87  |            |  |
| 6.  | Margin  | 87  |            |  |
| 7.  | Transactions and limits   | 88  |            |  |
| 8.  | Fees and payments   | 88  |            |  |
| 9.  | Default   | 88  |            |  |
| 10.   | Confirmations   | 90  |            |  |
| 11.   | Trading on ASX 24   | 90  |            |  |
| 12.   | Close-out netting   | 92  |            |  |
| 13.   | Early Close-Out amount  | 92  |            |  |
| 14.   | Payment netting   | 93  |            |  |
| <b>Part G:</b>  |   |     |            |  |
| <b>Terms and Conditions for Credit Facilities</b>   |   |     | <b>94</b>  |  |
| <hr/>   |   |     |            |  |
| 1.  | Definitions   | 94  |            |  |
| 2.  | Facilities  | 94  |            |  |
| 3.  | Utilisation conditions  | 95  |            |  |
| 4.  | Fixed advances  | 95  |            |  |
| 5.  | Overdraft facility  | 95  |            |  |
| 6.  | Issue of guarantees   | 95  |            |  |
| 7.  | Trading facilities  | 97  |            |  |
| 8.  | Interest and service charges  | 97  |            |  |
| 9.  | Payment provisions  | 98  |            |  |
| 10.   | Application of moneys   | 99  |            |  |
| 11.   | Events of default and termination   | 99  |            |  |
| 12.   | Costs and expenses  | 102 |            |  |
| 13.   | General security  | 102 |            |  |
| 14.   | Representations and warranties  | 103 |            |  |
| 15.   | Undertakings  | 104 |            |  |
| 16.   | Indemnity   | 104 |            |  |
| 17.   | Exclusion from liability  | 105 |            |  |
| 18.   | Conflict  | 105 |            |  |
| <b>Part H:</b>  |   |     |            |  |
| <b>Special conditions for the acquisition, delivery and safekeeping of non-traditional investment products ("NTIP") by UBS AG, Australia Branch</b> |   |     | <b>106</b> |  |
| <hr/>   |   |     |            |  |
| 1.  | Scope   | 106 |            |  |
| 2.  | Risk disclosure   | 106 |            |  |
| 3.  | Selection and subscription of the NTIP  | 107 |            |  |
| 4.  | NTIP Product Documentation  | 107 |            |  |
| 5.  | Nominee structure   | 107 |            |  |
| 6.  | Conditions of purchase  | 108 |            |  |
| 7.  | Confirmation as "Restricted Person" and "Benefit Plan Investor"               | 109 |            |  |
| 8.  | Disclosure of information – provision of additional disclosures and documents | 109 |            |  |
| 9.  | Client Identity   | 110 |            |  |
| 10.   | Within the Bank   | 110 |            |  |
| 11.   | Executing the Client's orders   | 110 |            |  |
| 12.   | Transfer of rights/units  | 111 |            |  |
| 13.   | Corporate actions and additional product information                          | 111 |            |  |
| 14.   | Terms and special agreements inconsistent with the Product Documentation      | 112 |            |  |
| 15.   | Conflicts of interest   | 112 |            |  |
| 16.   | Indemnification   | 112 |            |  |
| 17.   | Due diligence and liability   | 113 |            |  |
| 18.   | Fees  | 113 |            |  |
| 19.   | Termination of this Agreement   | 113 |            |  |
| 20.   | Concluding provisions   | 113 |            |  |
| 21.   | Place of performance and applicable law                                       | 113 |            |  |
| <b>Addendum 1</b>   |   |     | <b>114</b> |  |
| <hr/>   |   |     |            |  |
| Definition of Restricted Person pursuant to FINRA Rule 5130 and 5131  |   |     | 114        |  |
| <b>Addendum 2</b>   |   |     | <b>116</b> |  |
| <hr/>   |   |     |            |  |
| Definition of Benefit Plan Investor   |   |     | 116        |  |
| <b>Addendum 3</b>   |   |     | <b>117</b> |  |
| <hr/>   |   |     |            |  |
| Explanation of normal terms of operation for transactions in NTIP   |   |     | 117        |  |
| <b>Addendum 4</b>   |   |     | <b>119</b> |  |
| <hr/>   |   |     |            |  |
| Definition of Non-U.S. Investor   |   |     | 119        |  |

|  |     |  |     |
|--|-----|--|-----|
| Addendum 5   | 120 | Electronic mail<br>("e-mail") authorisation  | 125 |
| Risk Disclosure – Special Risks regarding<br>Non-traditional Funds (Hedge Funds and<br>Offshore Funds) | 120 | Annex  | 127 |
| Part I:<br>Terms and Conditions for Indirect<br>clearing in EU markets                                 | 121 | Financial Services Guide   | 128 |
| 1. Application   | 121 | 1. Our business  | 129 |
| 2. Clearing services for relevant transaction  | 121 | 2. Our financial products and services   | 129 |
| 3. Relationship with intermediate<br>clearing brokers  | 121 | 3. UBS offers products of other issuers  | 130 |
| 4. Choice of account   | 122 | 4. Do we provide custodial or<br>depository services?  | 130 |
| 5. Information   | 122 | 5. How do you pay us for our services?   | 130 |
| 6. Change of account   | 122 | 6. How are fees calculated?  | 130 |
| 7. Termination of matching transactions  | 122 | 7. Further information about the remuneration<br>and fees that we may receive                            | 131 |
| Additional Conditions for Traded<br>Options (Options Annex)  | 123 | 8. Relationship with other providers   | 131 |
| 1. General   | 123 | 9. Remuneration or other benefits<br>received by the Bank and associates<br>for other financial services | 131 |
| 2. Risk disclosure   | 123 | 10. What commissions, fees or other benefits<br>does your representative receive?                        | 131 |
| 3. Purchase of options   | 123 | 11. Remuneration or other benefits<br>received by us   | 131 |
| 4. Sale of options   | 123 | 12. Compensation Arrangements  | 132 |
| 5. Exercise and closing out of options   | 124 | 13. Complaints handling and dispute resolution   | 132 |
| 6. Assignments   | 124 | 14. How to instruct and contact us   | 132 |
| 7. No voting rights  | 124 | 15. Privacy  | 132 |
|  |     | 16. For more information please contact us   | 133 |

# Information and Disclosures

## **About UBS AG, Australia Branch**

Any financial or credit services offered will be provided to you by a representative of UBS AG, Australia Branch, its affiliates, sub-custodians such as HSBC or third parties as otherwise separately documented from time to time. UBS AG, Australia Branch is a branch of UBS AG (incorporated in Switzerland) which is a subsidiary of UBS Group AG. UBS AG, Australia Branch holds an Australian Financial Services Licence number 231087, Australian Credit Licence number 231087 and is an authorised deposit-taking institution (**ADI**), which authorises it to offer these products/accounts to you. The accounts which are the subject of this document are held in Australia with UBS AG, Australia Branch.

UBS AG, Australia Branch operates as a branch of UBS AG which is a foreign ADI. Please note deposits with UBS AG, Australia Branch are not guaranteed by the Australian Government's Financial Claims Scheme and therefore are not eligible for the Government Deposit Guarantee of up to AUD 250,000 per Account Holder per bank in the event that the institution fails. Information about the Financial Claims Scheme can be obtained at [fcs.gov.au](https://www.fcs.gov.au).

## **Account Eligibility**

The financial products and services referred to in this document are available to wholesale clients and sophisticated or professional investors as defined in the Corporations Act 2001 (Cth). These services are not available to retail clients as defined in the Corporations Act 2001 (Cth).

## **Your account terms and conditions**

This document and the UBS AG, Australia Branch Schedule of Charges and Sales Disclosure sets out the terms and conditions of your account relationship. You should read them carefully. When you open or use an account, you agree to these terms and conditions. For a copy of the Schedule of Charges and Sales Disclosure please contact your Relationship Manager.

## **Financial services guide**

Contained within these terms and conditions on page 157 is a financial services guide. This is only provided to you where you are, or are likely to be, provided a financial service in relation to (i) where you are not a client of the Bank, general financial product advice and/or (ii) a superannuation product and you are neither a person who is:

- a. the trustee of a superannuation fund, an approved deposit fund, a pooled superannuation trust or a public sector superannuation scheme (within the meaning of the Superannuation Industry (Supervision) Act 1993) (Cth) that has net assets of at least \$10 million; or
- b. an RSA provider (within the meaning of the Retirement Savings Accounts Act 1997) (Cth).

# Part A: Terms and Conditions – Definitions and Interpretation

## 1. Definitions

1.1 In this Agreement, the following terms shall have the meaning set out below unless otherwise defined or the context requires otherwise:

**“Acceptable Currency”** means, subject to availability, one of the acceptable currencies listed and set out in the relevant Facility Letter (as the same may be amended or varied by the Bank from time to time);

**“Access Procedures”** means all user IDs, passwords, secure IDs, Digital Services log-on codes, Digital Services PINs, smartcards, digital certificates, digital signatures, electronic keys, logon identifiers, passwords, passbooks, tokens, devices and other PINs, codes and access procedures (including any access procedures involving the use of third party biometric recognition features) issued and/or approved by the Bank or any other person specified by the Bank from time to time in order to enable the Client to access and/or use Digital Services and the Service(s);

**“Account”** means each Client’s account with the Bank, and may, as the context requires, include any account (including any Investment Account, trust account, margin lending account, custodian or trading account and any sub-account of any description) opened and maintained in the name or on behalf of the Client by the Bank;

**“Account Holder”** means each person or entity in whose name the account is held;

**“Account Application”** means the application form completed by the Client when opening their Account(s) with the Bank;

**“Aggregate Close-out Threshold”** means the aggregate of the Equivalent Amount of the Close-out Threshold of each Secured Asset;

**“Aggregate Collateral Value”** means the aggregate of the Equivalent Amount of the Collateral Value of each Secured Asset;

**“Agreement”** means the Terms and Conditions, the Account Application and any other agreement entered into for specific Services and/or Client Transactions (including any agreement entered into between the Bank and the Client for the purpose of executing Transactions pursuant to Part F and any Facility Letter) and any relevant Confirmation;

**“American Style Option”** means an option which may be exercised in accordance with this Agreement on any Business Day up to and including the Expiration Day;

**“Anti-Money Laundering Laws”** means all financial record keeping and reporting requirements and money laundering statutes, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Authority;

**“Applicable Laws”** means all relevant or applicable statutes, laws, acts, decrees, ordinances, subsidiary or subordinate legislation, orders, rules, regulations, constitutional provisions, treaties, conventions, rules of civil or common law or equity, directives and circulars of any jurisdiction or any governmental or regulatory body or authority, whether or not having the force of law and shall also include tax laws and regulations, rules, requirements, customs and practices of any exchange, clearing house, trading registration, trade repository and central depository of any jurisdiction;

**“Assets”** means stocks, shares, securities, cash, precious metal, currencies, units, bonds, notes, certificates of deposit, financial and debt instruments, commodities, financial futures, foreign exchange contracts, options, warrants, swaps and futures contracts of all kinds and any other assets of the Client, as may be delivered and transferred by the Client to or to the order of the Bank for safe custody or discretionary portfolio management in accordance

with the Agreement. Where the Client is a trustee opening and maintaining an Account for the purposes of a trust, as expressly known to and acknowledged by the Bank, references to Assets shall be construed to include references to the Assets of such trust, notwithstanding that beneficial ownership of those Assets may vest in the beneficiaries of the trust;

**"ASX Clear (Futures)"** means ASX Clear (Futures) Pty Ltd (ABN 91 050 651 864) or the clearing house that is operated by that entity and known as ASX Clear (Futures), as the context requires;

**"ASX 24"** means the Australian Securities Exchange Limited (ABN 83 000 943 377) or the market that is operated by that entity and known as ASX 24, as the context requires;

**"ASX 24 Rules"** means all laws, regulations and rules applicable to transactions on ASX 24 or ASX Clear (Futures), including the ASX 24 Operating Rules, the ASX Clear (Futures) Operating Rules and the ASIC Market Integrity Rules (Futures Market) 2017;

**"Australian Dollars"** and **"AUD"** mean the lawful currency of the Commonwealth of Australia;

**"Authorised Signatory"** means, at any particular time in relation to the Client, a person appointed by the Client under the Account application or under any power of attorney or other letter, document or instrument to give instructions with respect to the operation of any Account or any Client Transaction, in such form as may be acceptable to the Bank, which has been validly executed by the Client and received by the Bank and in respect of which person the Bank has not received from the Client any written notice of revocation or termination of such person's appointment, powers or authority;

**"Authorised User"** means all persons for the time being authorised by the Client to operate, access and/or receive information relating to, any or all of the Client's Account(s) and who have been designated as authorised users of the Digital Services at the Bank's discretion;

**"Authority"** means any national, supranational, regional or local government or governmental, administrative, fiscal, judicial, government-owned, quasi-governmental, intergovernmental or supranational body or any department, commission, authority, tribunal, agency or instrumentality thereof, or central bank (or any person, whether or not government-owned and howsoever constituted or called, that exercises the function of a central bank) or other entity of any kind exercising executive, legislative, judicial, regulatory or administrative functions of government;

**"Bank"** means UBS AG acting through its Australia Branch, its permitted successors and assigns;

**"Bank Base Rate"** means, in relation to any relevant period, the rate determined by the Bank at its sole and absolute discretion as the costs chargeable to borrowing clients. The Bank may at its sole and absolute discretion include or take into account, without limitation and without obligation to give an account of the different components, the following components: applicable reference rates, costs in connection with liquidity and funding arrangements, costs arising from capital, reserve, special deposit or other internal or regulatory requirements with respect to the amount in question, and any other costs and provisions. Each component of Bank Base Rate may fluctuate (individually or relatively) from time to time and if any such component of Bank Base Rate is determined by the Bank to be less than zero, the Bank shall have the right (but is not obliged) to assign a zero rate to such component.

**"Bank Deposit"** means money that has been paid to the Bank to be held as a "deposit product" in the Client's name for the purposes of section 989A(3) of the Corporations Act.

**"Bank Opening Day"** means any day (not being a Sunday or Saturday or public holiday in Australia) on which the Bank is open for business in Sydney and Melbourne;

**"Borrower"** means any person to whom the Bank may, at the Client's request, grant or continue to grant such Facilities as the Bank may agree, and shall in each case include any personal representatives, permitted assignees and successors thereof;

**"Branch"** means a branch of UBS AG;

**"Business Day"**, where referred to in the Section entitled "Terms and Conditions for Financial Transactions", means a day specified as such in the relevant Confirmation or, if no day is specified, a day which is a Bank Opening Day and:

- a. in relation to any day on which a payment is required, a day on which commercial banks effect payment of the relevant currency in the place specified in the relevant confirmation or, if no place is so specified, in the principal financial centre for such currency; and
- b. in relation to any day on which a delivery is required, a day on which commercial banks are open for business in the place specified in the relevant Confirmation or, if no place is so specified, in the financial markets relevant to the delivery;

**"Business Day"**, where referred to in these Terms and Conditions other than in the Section entitled "Terms and Conditions for Financial Transactions", has the meaning set out in the term sheet for the relevant Transaction of, if no definition is included,

means any trading day on which banks in Sydney and Melbourne, and, if payment in a currency other than Australian Dollars is involved, in the principal financial centre for that currency, are open for business (but excluding Saturday, Sunday and any gazetted public holiday in Sydney or Melbourne);

**“Call Option”** means the right but not the obligation (except upon exercise) of the buyer to purchase from the seller at the Exercise Price a specified quantity of the Underlying;

**An amount payable on “Cash Settlement” shall be computed as follows:**

- a. Call Options for Underlyings: The last transacted price (or such other price as may be otherwise agreed by the parties to the Call Options) in respect of the Underlying at the Reference Exchange at the close of business on the Exercise Day minus the Exercise Price, multiplied by the number of Underlyings for which an option has been exercised; and
- b. Put Options on Underlyings: The Exercise Price minus the last transacted price (or such other price as may be otherwise agreed by the parties to the Put Options) in respect of the Underlying at the Reference Exchange at the close of business on the Exercise Date, multiplied by the number of Underlyings for which an option has been exercised;

**“Claims”** means any and all claims, actions, suits, proceedings, demands, orders, claims for an account or equitable compensation or equitable lien of whatsoever nature and howsoever arising”

**“Client Transaction”** means any transaction executed or effected by the Bank with or for the Client on or in relation to an Account, including without limitation:

- a. any Transaction;
- b. any transaction where the Facilities are utilised;
- c. any transaction in Securities;
- d. any Transaction(s) in NTIP; and
- e. any Precious Metal Transaction;

**“Close-Out Ratio”** in relation to each Secured Asset, means the close-out ratio for the relevant category or class of assets to which that Secured Asset belongs, as stipulated by the Bank from time to time in accordance with the Annex (as the same may be amended, varied or revised by the Bank from time to time in its sole discretion),

or such other ratio as the Bank may stipulate for such Secured Asset from time to time;

**“Close-Out Threshold”** in relation to each Secured Asset, means the amount determined by the Bank to be equivalent to the market value of that Secured Asset (as conclusively determined by the Bank) multiplied by its applicable Close-Out Ratio;

**“Collateral Value”** in relation to each Secured Asset, means the amount determined by the Bank to be equivalent to the market value of that Secured Asset (as conclusively determined by the Bank) multiplied by its applicable Lending Ratio;

**“Confirmation”** means a written notice (including notices delivered by e-mail, fax and/or by any other means or methods, including via Digital Services) containing some or all of the specific terms, conditions and characteristics of a Client Transaction entered into by the Client, whether or not it (i) refers to the Agreement or any ancillary agreements, or (ii) requires affirmation by the Client (in writing or otherwise);

**“Content”** has the meaning given to that term in Clause 11.1(b) of Part E: Digital Services;

**“Corporations Act”** means the Corporations Act 2001 (Cth);

**“Countervalue”** means, in relation to a Notional Quantity of a Precious Metal, the amount which the Bank determines, in its absolute discretion, to be the amount in the agreed reference currency which would have been required to be paid to purchase that Notional Quantity (in the case of a purchase) of such Precious Metal from the market or the amount which would have been realizable from the market upon the sale of that Notional Quantity (in the case of a sale) of such Precious Metal, in each case net of all expenses of sale;

**“Currency”** means money denominated in the lawful currency of any jurisdiction or the Euro;

**“Digital Services”** has the meaning given to it in Clause 1.3 of Part E: Digital Services;

**“Digital Services Instruction(s)”** has the meaning given to it in Clause 1.3 of Part E: Digital Services;

**“Dormant Account”** has the meaning given to it in Clause 10.4 of Part C: Terms and Conditions for Accounts;

**“Drawing”** means a drawing made or to be made by the Client on the Overdraft Account or, as the case may be, the amount of such drawing for the time being outstanding;



**“Early Close-Out Amount”** means, in relation to terminated Transactions, the amount determined as the Early Close-Out Amount in respect of those Transactions as calculated in accordance with Clause 13 of the Section entitled “Terms and Conditions for Financial Transactions”;

**“Early Termination Date”** means, in relation to all Transactions, the date determined as the Early Termination Date in accordance with Clause 12.1 of Part F: Transactions;

**“Equivalent Amount”** means at any time, in relation to any amount in a Reference Currency, that amount in the Reference Currency, and in relation to any amount in any Acceptable Currency other than the Reference Currency, the amount in the Reference Currency converted from that amount in such Acceptable Currency at the Bank’s then prevailing exchange rate (as solely determined by the Bank) for the purchase of that Reference Currency against such amount of that Acceptable Currency;

**“Euro”** means the currency introduced at the start of the third stage of European economic and monetary union pursuant to the Treaty on the Functioning of the European Union, as amended;

**“European Style Option”** means an option which may only be exercised on the Expiration Day;

**“Event of Default”** means any one of the following:

- a. the occurrence of any of the events specified in Clause 11.1 of Part G: Terms and Conditions for Credit Facilities; or
- b. the Client fails to pay or deliver on time any amount due under these Terms and Conditions; or
- c. the Client fails to deliver the Underlying in respect of any Transaction (if required); or
- d. the Client moves, transfers or converts or attempts to move, transfer or convert any cash or assets over which the Bank has been granted a Security Interest in accordance with Clause 5.6 of Part F: Transactions without the consent of the Bank; or
- e. the Client fails to observe or perform any of the other provisions of these Terms and Conditions; or
- f. a material obligation of the Client ceases to be binding and enforceable against the Client in accordance with these Terms and Conditions; or
- g. any necessary license, authorisation or consent of a party required by the Client, including any Australian financial services license or exemption from holding such a license, is revoked, not renewed or suspended; or

- h. an Extraordinary Event, Adjustment Event or Price Disruption Event occurs and in the Bank’s opinion it is not possible and/or desirable to deal with the occurrence of that event under Clause 9.2 of Part F: Transactions; or
- i. the Bank reasonably believes that the ability of the Client to comply with these Terms and Conditions or a particular Transaction has been reduced due to a change in its business, assets or financial position; or
- j. if the Client is a natural person the Client dies, becomes insane or is declared incapable of administering its affairs; or
- k. in the Bank’s reasonable opinion, the value of any cash or assets provided to the Bank as security is materially adversely affected and in the Bank’s reasonable opinion it is not possible and/or desirable to deal with it under Clause 13 of Part G: Terms and Conditions for Credit Facilities; or
- l. these Terms and Conditions are or become wholly or partly void, voidable or unenforceable or is claimed to be so, by either the Client or anyone on the Client’s behalf; or
- m. any event occurs which with the giving of notice, lapse of time or fulfilment of any condition would be likely to become an Event of Default under this Clause; or
- n. the Client creates, attempts to create or allows to exist any Security Interest over any of the cash or assets provided to the Bank as security without obtaining the Bank’s prior consent; or
- o. in the Bank’s reasonable opinion, it appears that the Client has engaged in fraud, theft or other similar illegal activities; or
- p. in respect of any trading on ASX 24, in the absence of having made any other arrangements, the Bank is unable to contact the Client or any Authorised Signatory to obtain instructions for a period of not less than twenty-four (24) hours; or
- q. the occurrence of any other default (however described) occurs under these Terms and Conditions;
- r. a creditor takes possession of all or any part of the business or assets of the Client or the Secured Assets or any execution, seizure, attachment or other legal process is levied or enforced upon or threatened against any of the property or assets of the Client or the Secured Assets;
- s. any legal proceedings, suit or action of any kind whatsoever (whether criminal or civil) is instituted against the Client, whether in the

Jurisdiction or elsewhere, and the Bank is of the reasonable opinion that it will or could materially and adversely affect the Client's ability to perform and observe any of its obligations towards the Bank or any of its affiliates;

t. the Client:

- i. enters, or takes any step with a view to entering, into any amalgamation, merger, reorganisation, consolidation or reconstruction, or any scheme of arrangement, general assignment or compromise with or for the benefit of its creditors, or such an amalgamation, merger, reorganisation, consolidation, reconstruction, scheme of arrangement, general assignment or compromise is proposed;
- ii. stops, suspends or threatens to stop or suspend payment of all or substantially all of its debts or commences negotiations or takes proceedings or any other steps with a view to rescheduling or deferring all or substantially all of its indebtedness;
- iii. is unable or under Applicable Law is deemed to be unable or admits its inability to pay its debts as they fall due; or
- iv. is declared or becomes insolvent or bankrupt;

u. in the case where the Client is a corporation:

- i. any step (other than one which is, in the opinion of the Bank, frivolous or vexatious) is taken by any person with a view to the winding-up or liquidation of the Client or for the appointment of a liquidator, receiver, receiver and manager, judicial manager, trustee, administrator or similar officer of the Client or over any part of the assets of the Client or any analogous proceeding is taken against the Client in any other jurisdiction; or
  - ii. the Client suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business or disposes of all or a substantial part of its business or assets, or proposes to do any of the foregoing;
- v. in the case where the Client is a limited liability partnership, any step (other than one which is, in the opinion of the Bank, frivolous or vexatious) is taken by any person with a view to the winding-up or liquidation of the Client or for the appointment of a liquidator, receiver, receiver and manager or similar officer of the Client or over any part of the assets of the Client or any analogous proceeding is taken against the Client in any other jurisdiction;

- w. in the case where the Client is an individual, any step (other than one which is, in the opinion of the Bank, frivolous or vexatious) is taken by any person with a view to the bankruptcy of the Client or for the appointment of a receiver, trustee, administrator or similar officer of the Client or over any part of the assets of the Client or any analogous proceeding is taken against the Client in any other jurisdiction, or the Client dies, becomes of unsound mind or is placed under custody;
- x. in the case where the Client is a partnership, any step (other than one which is, in the opinion of the Bank, frivolous or vexatious) is taken by any person with the view to the dissolution of the Client or for the appointment of a receiver, receiver and manager, trustee or similar officer of the Client or over any part of the assets of the Client or any analogous proceeding is taken against the Client in any other jurisdiction or any partner of the Client dies or any step (other than one which is, in the opinion of the Bank, frivolous or vexatious) is taken by any person with a view to the bankruptcy of any partner of the Client or the Client;

**"Exercise Day"** means the day specified in the Confirmation on which the exercise of the option becomes effective. If the agreed Exercise Day is not a Business Day, the Exercise Day shall be the next following Business Day;

**"Exercise Price"** or **"Strike Price"** means the price per unit of the Underlying specified in the Confirmation, at which the Underlying may be purchased or sold upon exercise of the related option. In the case of debt instruments, any accrued interest shall be added in accordance with the calculation rules applicable for the Underlying, unless otherwise specified in the Confirmation;

**"Expiration Day"** means the specified in the Confirmation being the (last) day on which an option can be exercised. If the agreed Expiration Day is not a Business Day, the Expiration Day shall be the next following Business Day;

**"Exposure Level"** means at any time:

- a. the Equivalent Amount of the aggregate outstanding principal amounts of all utilisations under the Facilities including the liabilities of the Bank (whether actual or contingent) in relation to unsettled or unmatured Guarantees issued by the Bank under the Facilities;
- b. the aggregate of any minimum maintenance margin of all unsettled or unmatured transactions entered into by the Borrower in respect of the Security Trading Facility and Currency Trading Facility; and

- c. the aggregate unsettled realised and unrealised losses of all unsettled or unmatured transactions entered into by the Borrower in respect of the Facilities, in each case, as applicable;

**“Extraordinary Event”** means any event which the Bank determines, in its absolute discretion, acting reasonably, is beyond the reasonable control of the Bank and shall include, without limitation, any form of exchange control restriction or requirement of whatsoever nature affecting availability, convertibility, credit or transfers of currencies, commodities, securities, financial instruments or funds, any form of debt or other moratorium on jurisdictions, individuals or entities, or any devaluation, redenomination or demonetization of the underlying currencies, commodities, securities or instruments;

**“Facilities”** means overdraft, credit, banking and trade finance facilities and accommodation in its widest sense (including such facilities as from time to time amended, modified or supplemented) made available by the Bank to the Client and reference to **“Facility”** shall mean any one of them;

**“Facility Letter”** has the meaning given to that term in Clause 2.1 of Part G: Terms and Conditions for Credit Facilities;

**“Facility Documents”** means any or all of the Facility Letters, the Terms and Conditions, any documents specified as such in the relevant Facility Letter (including any Security Document) and any other documents which the Bank may from time to time require to be completed, executed and/ or delivered in connection with the Facilities;

**“Fixed Advance”** means a fixed advance made or to be made available, under the terms of the Facility Documents, by the Bank to the Client, in such Acceptable Currency, of such amount and for such period as may be agreed to and accepted by the Bank;

**“Force Majeure Event”** means any event, circumstance, effect, occurrence or state of affairs or any combination of them (whether existing or occurring on or before the date of the Agreement or arising or occurring afterwards) which the Bank in good faith believes to have a material adverse effect on a Client Transaction and/or which the Bank determines, whether in relation to an affected party or otherwise, in its sole and absolute discretion, acting reasonably, is beyond the reasonable control of the bank and the effect of which is beyond the Bank’s reasonable power to avoid and shall include without limitation (a) any Extraordinary Event, (b) any breakdown, malfunction or failure of transmission or power, communication or computer facilities or systems, strikes or industrial actions, lockout, unavailability of any energy source or utility, (c) war, act of foreign enemy, hostility (whether

war has been declared or not), civil war, invasion, rebellion, revolution, insurrection, riot, malicious damage, civil commotion, civil strife, terrorist acts, sabotage or other blockade or embargo, (d) exercise of military or usurped powers, (e) the imposition, introduction, amendment or change (including a change in interpretation) of any Applicable Laws or any failure or delay by a Governmental Authority or Regulator in enforcing such Applicable Laws; (f) acts or defaults of any telecommunications network operator, any suspension or disruption of postal services and circumstances where communication lines for the Bank’s computer systems (whether in the Jurisdiction or otherwise) cannot be used for reasons attributable to third-party communication carriers;

**“Foreign Currency”** means any currency other than Australian Dollars.

**“GBP”** means the lawful currency of the United Kingdom;

**“Government Official”** means any officer, employee or any other person acting in an official capacity for an Authority or political party or official of an Authority or any candidate for political office;

**“GST”** means a goods and services tax or similar value added tax levied or imposed under the GST Law or otherwise on a supply and includes any related interest, penalties, fines or other charges;

**“GST Law”** means the same as “GST Law” means in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**“Guarantee”** means any guarantee, SBLC or any other credit or any other instrument whatsoever from time to time issued or entered into by the Bank for or at the request of the Client pursuant to the Facilities under which the Bank incurs a liability to a third party (including, without limitation, another branch of UBS AG);

**“Hedge Fund Access Premium”** has the meaning given it in Clause 6 of Part I: Terms and Conditions for Hedge Fund Access;

**“HF Access”** means the Bank making available to the Client investment opportunities in HFA Funds;

**“HF Custody Account”** has the meaning given to it in Clause 2.2 of Part I: Terms and Conditions for Hedge Fund Access;

**“HFA Funds”** means any hedge funds, investment vehicles with hedge fund exposure, or other such investments that have hedge fund features, as contained in a list maintained from time to time by the Bank in its absolute discretion;

**"HKD"** means the lawful currency of Hong Kong, Special Administrative Region of the People's Republic of China;

**"Identity Information"** means any information relating to any Ultimate Owner or any party connected with any Client Transaction, including such person's identity, occupation, address, contact details, nature and scope of business activity, source of funds, business structure, shareholdings and other information;

An option which is **"In-the-Money"** means an option which has a positive Intrinsic Value;

The **"Intrinsic Value"** of an option is the amount by which the value of the Underlying, as determined by the Bank, exceeds (in the case of a Call Option) or falls short of (in the case of a Put Option) the Exercise Price;

**"Investment Account"** means the account or sub-account for which the Client effects Transactions pursuant to this Agreement;

**"Jurisdiction"** means the jurisdiction in which the Bank, acting through a Branch, opens and maintains an Account and provides the Services.

**"Key Person"** in relation to a Trust, refers to the settlors, grantors, asset contributors, protectors, investment advisors, enforcers and beneficiaries of the Trust;

**"Lending Ratio"** in relation to each Secured Asset, means the Lending Ratio for the relevant category or class of assets to which that Secured Asset belongs stipulated by the Bank from time to time in accordance with the Annex (as the same may be amended, varied or revised by the Bank from time to time at its discretion), or such other ratio as the Bank may stipulate for such Secured Asset from time to time;

**"Loss"** means any and all losses, damage, costs, charges, duties, taxes, levies, penalties, interest, service charges and/or expenses of whatsoever nature and howsoever arising including foreign exchange losses, legal fees on a full indemnity basis (to the extent permitted under Applicable Laws) and any GST or other taxes or duties), the cost of funding and loss or cost incurred as a result of the termination, liquidation, or re-establishment of any hedge or related trading position;

**"Margin"** means any currencies, cash, and at the Bank's sole discretion, financial products, commodities, securities, precious metals or other property (including, without limitation, funds, bonds, notes and other financial instruments or other interests of the Client) deposited with or held by the

Bank or its nominees as security or credit support for any Transaction or the Client's obligations under this Agreement, and includes any other collateral which the Bank may from time to time, in its absolute discretion, accept from the Client and **"Available Margin"** means such portion of the Margin which the Bank deems to be available for use as security or credit support for Transactions or any of them;

**"Mortgage Memorandum"** means the mortgage memorandum produced by the Bank and provided to the Client that forms part of a real property mortgage Facility.

**"Notification"** means any notices sent by the Bank to the Client by short message service, email, Digital Services or such other means, including any automated notices and Alerts as defined in Clause 6.4 of Part E: Digital Services;

**"Notional Quantity"** means, in respect of a Precious Metal Transaction or Option, the quantity designated as such in the relevant Confirmation as the quantity of the relevant Precious Metal by reference to which the amount due to be paid under such Precious Metal Transaction or Option is calculated;

**"OFAC"** means the Office of Foreign Assets Control of the US Department of Treasury;

**"Order"** means any offer to enter into a Transaction, or any request, application or order (in form and manner acceptable to the Bank) of the Client to the Bank or which the Bank reasonably believes to be the request, application or order of the Client and includes any request or order to revoke, ignore or vary any previous request or order;

**"Overdraft Account"** means a current Account of the Client with the Bank which the Bank agrees may be overdrawn under the terms of the Facility Documents;

**"Permitted Security Interest"** means:

- a. a Security Interest created in favour of the Bank;
- b. an interest that is a Security Interest by virtue only of the operation of section 12(3) of the PPSA; or
- c. a Security Interest created with the prior written consent of the Bank;

**"PPS Register"** means the Personal Property Securities Register established under the PPSA;

**"PPS Security Interest"** means a security interest subject to the PPSA;

**"PPSA"** means the Personal Property Securities Act 2009 (Cth);

**“Precious Metal”** means gold, silver, platinum, palladium and any other commodity stipulated by the Bank from time to time to be a Precious Metal;

**“Premium”** means the purchase price of an option to be paid by the buyer to the seller of the option which, unless otherwise agreed between the buyer and the seller, is due on the second Business Day following the entry into a Transaction;

**“Put Option”** means the right but not the obligation (except upon exercise) of the buyer to sell to the seller of the Put Option at the Exercise Price a specified quantity of the Underlying;

**“Reference Currency”** means, in relation to any Facility, the Acceptable Currency specified as such in the relevant Facility Letter in relation to that Facility;

**“Reference Exchange”** means:

- a. the principal market the rules of which, in respect of trading in Underlyings or the computation and publication of the index, shall apply pursuant to the agreement by the parties in the Confirmation. In the case of unlisted Underlyings, the applicable rules (settlement, calculation of closing price etc.) shall be specified in the Confirmation; and/or
- b. the principal market the rules of which, in the case of adjustments upon a corporate action (e.g. dilution, share split, merger, capital restructuring, market disruption etc.), shall apply pursuant to the agreement of the parties in the Confirmation;

**“Relevant Information”** means any information given or to be given by the Client or any Third Party Relevant Information Provider or in the possession of the Bank relating to or connected to the Client (including but not limited to information relating to or connected to an Authorised Signatory, director, officer, manager or partner of the Client), any third party (including but not limited to third parties providing guarantees or other collateral), any Key Persons, any Ultimate Owner, any controlling persons, owners of the Client (at any level), any Account, any Service, any agreements between the Bank and the Client, any Client Transaction and shall include Identity Information, Personal Data and information collected from Digital Services;

**“Relevant Jurisdiction”** means in respect of any obligor:

- a. (in the case of an individual) its country of domicile or residence or (in the case of an entity) its jurisdiction of incorporation;
- b. any jurisdiction where any asset subject to or intended to be subject to a Security Document entered into by it is situated;

- c. the jurisdiction whose laws govern the perfection of any Security Document entered into by it; and/or
- d. any jurisdiction where it conducts its business.

**“Reserve Costs”** means, in relation to the funding by the Bank of any amount in an “Acceptable Currency”, the costs to the Bank occasioned by or attributable to complying with reserves, liquidity, deposit or other requirements imposed on the Bank internally and/or by any relevant authority (as conclusively determined by the Bank);

**“Restricted Country”** means any country or territory that is the target of country- or territory-wide Sanctions, currently non-government controlled Ukrainian territory (e.g., Crimea and eastern parts of Ukraine under Russian military control), Cuba, Iran, North Korea, Syria and any other country so designated from time to time by a Sanction Authority;

**“Sanctioned Country”** means any country or jurisdiction that is the subject of any comprehensive Sanctions from time to time, currently non-government controlled Ukrainian territory (e.g., Crimea and eastern parts of Ukraine under Russian military control), Cuba, Iran, North Korea and Syria;

**“Sanctioned Person”** means a person that is:

- a. listed on, or owned or controlled by a person listed on, any Sanctions list or a person acting on behalf of such a person; or
- b. located, domiciled or resident in, incorporated under the laws of, or owned or controlled by a person located, domiciled or resident in or organised under the laws of a Sanctioned Country; or
- c. government of a Sanctioned Country; or
- d. otherwise a target of Sanctions.

**“Sanctions”** means any trade, economic or financial sanctions laws, regulations or embargoes enacted or enforced by a Sanctions Authority;

**“Sanctions Authority”** means:

- a. the United States;
- b. the United Nations;
- c. the European Union;
- d. the United Kingdom;
- e. Switzerland;
- f. Hong Kong;

- g. Singapore;
- h. Australia;
- i. the respective governmental institutions and agencies of any of the foregoing, including without limitation, the Office of Foreign Assets Control (OFAC) of the US Department of Treasury, the US Department of State, Her Majesty's Treasury, the Secretariat for Economic Affairs of Switzerland, the Swiss Directorate of International Law, the Hong Kong Monetary Authority, the Monetary Authority of Singapore, and the Department of Foreign Affairs and Trade and/ or any other body notified in writing by the Bank from time to time;

**"Sanctions List"** means the "Specially Designated Nationals and Blocked Persons" list publicly issued by OFAC, the "Consolidated List of Financial Sanctions Targets in the UK" publicly issued by Her Majesty's Treasury, or any similar list issued or maintained and made public by, or any public announcement of a Sanctions designation made by, any Sanctions Authority;

**"SBLC"** means a standby letter of credit;

**"Secured Asset"** means any:

- a. cash or time deposit standing to the credit of an Account in an Acceptable Currency;
- b. marketable security;
- c. Surety Instrument; or
- d. other asset whether given in addition to or in lieu of any of the foregoing, acceptable to the Bank and provided in favour of the Bank as Security from time to time;

**"Securities"** (in this plural form only), where referred to in the Section entitled "Terms and Conditions for Accounts", means any shares, stocks, bonds, Units, notes, certificates, structured products, and other interests, rights or property (in each case whether in the form of an instrument or otherwise) commonly known as "securities";

**"Securities Trading Facility"** means the security options trading facility which may be made available to the Borrower under the terms of a Facility Letter;

**"Security"** means any Security Interest created in favour of the Bank pursuant to a Security Document to secure the Total Outstandings;

**"Security Documents"** means each and every security document creating or evidencing a Security Interest, guarantee or other assurance granted in favour of the Bank in connection with the Facilities

or otherwise to ensure the performance by the Client of its obligations under any of the Facility Documents and any and every other document from time to time executed to guarantee, secure or otherwise assume the performance of the obligations of the Client under or in connection with the Facilities and each of the Facility Documents, and for the avoidance of doubt, includes the Mortgage Memorandum;

**"Security Interest"** means:

- a. a PPS Security Interest;
- b. any other mortgage, pledge, lien or charge; or
- c. any other interest or arrangement of any kind that in substance secures the payment of money or performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property;

**"Security Party"** means the Borrower or any other persons or entities furnishing security for the Facilities or any party to any Security Document and **"Securities Parties"** means all or any two or more of them;

**"Service Part"** means each of the following Parts of these Terms and Conditions:

- a. Part E (Digital Services);
- b. Part F (Transactions);
- c. Part G (Credit Facilities);
- d. Part H (Non-traditional Investment Products);
- e. Part I (Hedge Fund Access); and
- f. Part J (Indirect clearing in EU markets);
- g. Part J (Exchange-Traded Derivatives);

**"Services"** means the services made, or to be made available, by the Bank, or any of its Affiliates of the Bank (as may be withdrawn, added to or modified by the Bank from time to time in its discretion), which includes any services such as financial, banking, custody, execution or other services, provision of products, information, functions and Facilities which may be offered by the Bank and/or accessed through Digital Services from time to time, and also includes Client Transactions entered into under the Agreement;

**"Strike Price"** – see the definition of "Exercise Price".

**"Supplement"** means, in relation to the relevant Jurisdiction, the set of terms and conditions

which form(s) part of these Terms and Conditions and is/are designated as a "Supplement";

**"Surety Instrument"** means a guarantee, standby letter of credit or other similar instrument, issued by a bank or other financial institution acceptable to and approved by the Bank, to secure or as subject of security for the repayment of the Total Outstandings;

**"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

**"Termination Currency"** means the currency nominated at the relevant time for that purpose by the Bank in its discretion;

**"Termination Currency Equivalent"** means, in respect of any amount denominated in the Termination Currency, that Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the **"Other Currency"**), the amount in the Termination Currency determined by the Bank in a manner consistent with the ordinary conduct of its business as being required to purchase that amount of the Other Currency as at the relevant Early Termination Date (or if the Early Close-Out Amount is determined at a later date, that later date) and applying such rates of exchange as the Bank determines in a manner consistent with the ordinary course of its business;

**"Terms and Conditions"** means these terms and conditions and shall include each Part, and relevant supplement(s) and annex(es);

**"Third Party Relevant Information Provider"** as "any third party as may be prescribed by the Bank from time to time (including any third parties providing guarantees or other collateral to the Bank) to supply, the Bank with Relevant Information in connection with the opening or maintenance of an Account or provision of a Service or generally the Client's relationship with the Bank".

**"Total Outstandings"** means at any time the aggregate Equivalent Amount of:

- a. all sums (whether principal, interest, fees, costs, charges, expenses, commissions or otherwise) which are or at any time may be or become due from or owing by the Borrower to the Bank or which the Borrower has covenanted to pay or discharge, whether actually or contingently, under or in connection with any of the Facilities; and
- b. all other liabilities and moneys which now are or at any time hereafter may be or become due from or owing by, or be incurred by, the Borrower to the Bank, in whatever currency the same shall

be denominated or owing, whether alone or jointly with any other person and on any account whatsoever, whether current or otherwise, and whether present, future, actual or contingent and whether as principal debtor, guarantor, surety or otherwise howsoever, including (without limitation) interest and all liabilities in connection with paying, accepting, endorsing or discounting any cheques, notes or bills, or under any Guarantee (whether a claim or demand has been made on the Bank under or in connection therewith);

**"Transaction"** means any:

- a. foreign exchange transaction,
- b. over-the-counter derivative transaction (including a swap, option, cap, collar or floor) relating to an Underlying,
- c. forward or futures transaction,
- d. Precious Metal transaction;
- e. traded option transaction,
- f. combination of one or more of any of the foregoing, and
- g. other transaction as the Bank may from time to time permit.

**"UBS Group"** includes UBS AG and its successors and any persons controlled, directly or indirectly, by UBS AG; any person that controls, directly or indirectly, UBS AG; and any person directly or indirectly under common control with UBS AG;

**"Ultimate Owner"** means any ultimate beneficial owner of any Account, any person ultimately responsible for originating the instructions in respect of the Account or any Client Transaction and/or the person that stands to gain the commercial or economic benefit of the Account or any Client Transaction and/or bear its commercial or economic risk;

**"Underlying"** means any:

- a. currency,
- b. interest rates,
- c. FX rate,
- d. financial product or instrument (including any share, stock, unit trust, mutual fund, debenture, bond, note, bill, managed investment scheme or other security),
- e. Precious Metal,

- f. agricultural, energy or other commodity,
- g. indices on any of the foregoing or a group thereof or other benchmark,
- h. combination of one or more of any of the foregoing, and
- i. any other item or thing as the Bank may from time to time permit;

**“Value Day”** or **“Settlement Day”** means a date specified in the relevant Confirmation for payment or delivery under a Transaction;

**“We, Our, Us”** means UBS AG, Australia Branch, ABN 47 088 129 613, AFSL 231087, ACL 231087 located at Level 31, 1 Macquarie Place, Gateway Building, NSW 2000 and Level 16, 8 Exhibition Street, Melbourne VIC 3000;

**“Wholesale Client”** has the meaning given to that term in the Corporations Act; and

**“You, Your, Client”** means each Account Holder. Where there is more than one Account Holder, it refers to each Account Holder separately and all Account Holders jointly.

## 2. Interpretation

2.1 In the Terms and Conditions:

- a. words denoting the singular number shall include the plural and vice versa;
- b. words denoting any gender shall also include the other gender;
- c. “including” means including without limitation (and related expressions shall be interpreted accordingly);
- d. “person” includes any individual, company, corporation, firm, foundation, partnership, limited liability partnership, joint venture, association, organization, trustee, trust, state or agency of a state (in each case, whether or not having separate legal personality);
- e. “affiliate” in relation to any body corporate includes any related body corporate in relation to that body corporate (as defined in the Corporations Act) and any related entity in relation to that body corporate (as defined in the Corporations Act); and

- f. headings of clauses have been inserted for guidance only and shall not be deemed to form any part of the context or be taken into consideration in the interpretation thereof or of the Terms and Conditions.

2.2 The expression **“Bank”** in the Terms and Conditions shall where the context admits include its successors and assigns. The provisions hereof shall remain binding on the Client notwithstanding any amalgamation that may be effected by the Bank with any other company or companies and notwithstanding any reconstruction by the Bank involving/by the formation of and transfer of, all or any of the Bank’s assets to a new company and notwithstanding the sale of all or any part of the Bank’s undertaking and assets to another company to the intent that the undertakings and agreement herein contained shall remain valid and effectual in all respects and the benefit hereof and all rights hereby conferred upon the Bank may be assigned to and enforced by any such company or companies as if such company or companies had been named herein instead of the Bank and the Terms and Conditions shall apply to all credit facilities and other accommodation extended to the Client by any amalgamated company as aforesaid or the Bank as reconstructed or any company to which the Bank shall have sold all the Bank’s undertaking and assets in like manner as if the Bank as reconstructed or such company were named herein instead of the Bank.

2.3 Where the Client comprises more than one person, the undertakings and obligations of the Client set out in these Terms and Conditions or in any Facility Documents or otherwise shall be construed as the joint and several undertakings and obligations of each such person, and all references to the Client shall where the context so admits also be construed as a reference to any one or more of the persons constituting the Client.

2.4 Where the Client comprises one or more trustees opening and maintaining an Account for the purposes of a trust, as expressly known to and acknowledged by the Bank, any liability of or indemnity given by or any other obligation of the Client shall be on the basis that the Bank has full recourse to all the Assets of such trust, as well as any assets of the Trustee and including all amounts standing to the credit of the Accounts.

2.5 Where the Client is a partnership (other than a partnership that has separate legal personality), references herein to the **“Client”** shall include all of the person or persons from time to time and at any time carrying on business in the name of such partnership jointly and severally and notwithstanding any changes in the name of the partnership or any change or changes in the numbers of such partnership by death, retirement or introduction of a partner or partners or any other change in the



constitution of such partnership and the liabilities of all such persons shall continue and be binding on the Client notwithstanding any such change.

2.6 No person constituting the Client shall be discharged, nor shall such person's liability be affected by, any discharge, release, time, indulgence, concession, waiver or consent at any time given or affected in relation to any one or more of the other persons constituting the Client.

2.7 Words defined in the GST Law have the same meaning in clauses concerning GST unless the context requires otherwise.

2.8 If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

2.9 In the Terms and Conditions, unless the context requires otherwise, the following terms have the meanings given to them in the PPSA:

- a. amendment demand;
- b. attaches;
- c. chattel paper;
- d. control;
- e. financing change statement;
- f. financing statement;
- g. intermediated security;
- h. investment instrument;
- i. personal property;
- j. purchase money security interest;
- k. registration;
- l. serial number; and
- m. verification certificate.

# Part B: Privacy notification and Consent

## Disclosure of Information

We are serious about our responsibility to protect your privacy. We do this by handling “personal information” in a responsible manner and in accordance with the Privacy Act 1988 (Cth) (the **“Privacy Act”**).

In this Privacy Notification and Consent ‘we/ us’ means UBS AG (the **“Bank”**) and related companies that assist us to provide our products and services. Unless otherwise indicated, terms used in this disclosure have the same meaning as given in the Privacy Act or the UBS Privacy and Credit Reporting Policy. To the extent of any inconsistency between this disclosure and the UBS Privacy and Credit Reporting Policy, the latter will prevail to the extent of the inconsistency.

### **Purposes for which we collect, hold, use and disclose your personal and credit information**

We collect, hold, use and disclose your personal information (including sensitive information that relates to your health or political, professional or trade associations and criminal history) and credit information for a number of purposes which may include:

- to process and assess applications or requests to open an account and for future banking products and financial services (including verifying your identity for these purposes) and to administer your account and related services;
- to conduct reviews of your account, banking products and financial services;
- to evaluate and monitor credit worthiness and assist other financial institutions to conduct credit checks and monitoring to ensure your ongoing creditworthiness;
- to assist any claim by you for double taxation treaty relief under any applicable reduced withholding tax rate on your return of investment in jurisdictions with withholding tax regime;
- to enable an actual or potential counterparty to any participation or sub-participation in relation to, or to any other instrument or transaction under which payments are to be made by reference to, any actual or proposed Facility or Client Transaction to obtain information on or evaluate the Client Transaction or Facility;
- to assist professional advisers, third party service providers, or contractors, or any of their affiliates (**“third party providers”**) in connection with providing services to the client or the Bank;
- to facilitate:
  - a. the introduction and/or referral arrangements (including for the purposes of calculation or payment of commission, and in connection with any disclosures as may be required or requested for the introduction and/or referral arrangements) between the Bank and the person to which the Bank refers or introduces the Client, wherever situated, such as trust companies, brokers, insurers or lawyers (**“Referee”**), and which for the avoidance of doubt may be for the provision of non-banking services (including referrals to insurance brokers and/or insurers); and
  - b. revenue-sharing arrangements between the Bank and any third party;
- for credit risk management purposes (including without limitation conducting credit checks, credit review and/or assessing credit risk) by UBS Group Entities (whether for relationship(s) and/or account(s) directly or indirectly related you held with UBS Group Entities);
- to hedge the Bank’s exposure to any Transaction entered into by you and/or any Facility;
- to comply with Applicable Laws both in Australia and overseas including the National Consumer Credit Protection Act 2009 (Cth), the Anti-Money Laundering and Counter- Terrorism Financing Act 2006 (Cth), the Personal Property Securities Act 2009 (Cth) and State and Territory real property and security interests laws, the Banking Act 1959

(Cth), the Financial Sector (Collection of Data) Act 2001 (Cth) and the Corporations Act 2001 (Cth);

- to comply with any request for information (including requests for voluntary compliance) or demands from regulatory, governmental or tax authorities or agencies in Australia and overseas, whether made or applicable directly to the Bank, any other UBS Group Entity or otherwise. This may include information that is not directly the subject of the request but is held by us in trades or internally generated reports with the requested information;
- to facilitate voluntary disclosure in the Bank's discretion to a governmental or regulatory agency (including the police and other law enforcement authorities) acting in an official capacity, whether in the jurisdiction or elsewhere, and whether or not such governmental or regulatory agency is in the same jurisdiction as or regulates the disclosing branch;
- facilitating the opening of new account(s) at Clients' requests (irrespective of the UBS Group Entity or Jurisdiction in which such account is to be opened), conducting periodic due diligence checks in relation thereto for compliance with the UBS Group Entities' or the Bank's know-your-client and anti-money laundering policies and procedures (or other relevant policies and procedures), and provision of any services to such Clients at the UBS Group Entity or Jurisdiction where the account is opened or to be opened;
- to comply with requests from nominees, sub-custodians, issuers, funds, business trusts, real estate investment trusts and/or their respective agents, service providers, fund administrators or trustees (as the case may be), including for the purposes of assisting nominees, subcustodians, issuers, funds, real estate investment trusts and/or their respective agents (including any share registrar or tax agent), service providers, fund administrators or trustees (as the case may be) to comply with Applicable Laws, their internal policies and requirements and/or guidelines or guidance given or issued by any self-regulatory or industry body or association;
- for conducting statistical analysis, customer profiling or other form of data analysis for the purpose of learning about and understanding market trends, customer behaviour and preferences, improving or enhancing the Bank's products and services and identifying the Bank's products and services that may be suitable for you;
- for commencing, defending or otherwise taking any step in, participating in or assisting with any actual or prospective legal or administrative proceedings, actions, applications (including,

without limitation, probate applications) or inquiry before any court or governmental authority;

- to comply with any request from any correspondent bank (including any correspondent bank of a beneficiary bank) or beneficiary bank directly or indirectly in connection with any Client Transaction, including where such requesting bank is making such a request for its own compliance with Applicable Laws or its own internal policies or procedures, for reputational or risk management purposes, or as a condition for proceeding with the relevant Client Transaction. In addition, where such a request is received by the Bank, the Bank shall be entitled to request (and the Client shall comply with such request) for such additional information as may be necessary for the Bank to comply with the relevant request;
- to comply with any obligations, requirements, policies, procedures, measures or arrangements for sharing data and information within UBS Group AG and/or any other use of data and information in accordance with any group-wide programmes for business purposes, compliance with sanctions or prevention or detection of money laundering, terrorist financing or other unlawful activities; and
- for any purpose directly relating to any of the above and for other purposes as listed in our UBS Privacy and Credit Reporting Policy.

We usually collect your personal and credit information directly from you. However, sometimes we may need to collect personal and credit information about you from third parties for the purposes described above. The circumstances in which we may need to do this include, for example, where we need information from a third party to assist us to process your application (such as to verify information you have provided or to assess your circumstances) or to assist us to locate or communicate with you.

If you do not provide us the information we request we may not be able to provide or administer the banking and financial services that you are seeking.

#### **Disclosure of your personal and credit information to third parties**

We may disclose to, and obtain from various organisations, personal and credit information about you for the purposes described above (as well as otherwise permitted by the Privacy Act). Such organisations may or may not be located in Australia or overseas and include:

- any person or organisation to whom disclosure of your personal information is necessary in order for us to validly provide, manage,

- administer and/or enforce any services or transactions requested or authorised by you;
- our related UBS companies and third party organisations in Australia and overseas that carry out functions on our behalf;
  - UBS Group Entities other than the wealth management arm of the Bank in connection with the provision of the full suite of the Bank's services and expertise to wealth management clients of the Bank;
  - third parties in connection with investments held by the Bank as custodian on your behalf including in response to tracing notices and/or requests for shareholder, unitholder or investors details made by or on behalf of third fund managers or product issuers, registrars or custodians. Relevant Information may be made available in public domains (such as a register accessible by the general public) where required by Applicable Laws;
  - regulatory and tax authorities in Australia and overseas who may share information with relevant foreign authorities (with or without notice to you) and where otherwise required by relevant law or regulation;
  - organisations wishing to acquire an interest in any part of our business from time to time. Your personal information and account details may be disclosed to any other person to whom the Bank assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement;
  - organisations that maintain UBS's information systems (including information systems of third parties) both within Australia and overseas on which your personal information and account details will be stored (provided that your personal information and account details are protected by appropriate confidentiality and security measures);
  - credit reporting bodies such as Illion for the permitted purposes under Part IIIA of the Privacy Act including to obtain your credit information file or to disclose default information or if you commit a serious credit infringement;
  - any person or organisation to whom we consider appropriate in order to allow you to claim double taxation treaty relief under any applicable reduced withholding tax rate upon your return of investment in countries with withholding tax regimes;
  - an executor or administrator, or prospective executor or administrator (as well as their legal advisers or authorised representatives) or someone who the Bank has reasonable grounds to believe to be your executor or administrator (as the case may be), if relevant;
  - any person who, in accordance with the Bank's records (which for avoidance of doubt may include records up to the time prior to the closure of the relevant Account only) or as the Bank reasonably believes:
    - i. is or was an advisor to, agent of, or other authorised representative of the Client (including as a director or ex-director);
    - ii. has or had any interest in the Client's Account (including as a beneficial owner or exbeneficial owner); or
    - iii. is or was a liquidator, receiver or other insolvency practitioner appointed in respect of the Client.
- For the avoidance of doubt, the Bank shall have no duty to verify the identity or authority of any such persons; and
- other organisations as listed in the UBS Privacy and Credit Reporting Policy.

#### **Overseas Disclosures**

Some of the above recipients of personal or credit information may be located outside of Australia. It is not reasonably practicable to list all of the countries to which your information may be transmitted from time to time but it is likely that such countries will include countries in which the UBS Group has offices globally but could include countries or jurisdictions unrelated to the branch or jurisdiction in which your account, banking product or financial service you received from us is provided. A list of countries in which UBS Group Entities operate is available through the locations page on the UBS website.

#### **UBS Australia – Privacy and Credit Reporting Policy – How to access and correct information and make a complaint**

You can view the UBS Privacy and Credit Reporting Policy at: <https://www.ubs.com/global/en/legal/privacy.html> or obtain a copy by emailing the UBS Group Data Protection Officer. The UBS Privacy and Credit Reporting Policy includes information about how you can access the personal or credit information that we may hold about you or ask us to correct it and how to complain about a breach by us of the Privacy Act and how we will deal with such a complaint. If you have any questions or comments about this Policy, please contact the Group Data Protection Office at [dpo-apac@ubs.com](mailto:dpo-apac@ubs.com). Contact details of the Group Data Protection Officer can be found at <https://www.ubs.com/global/en/legal/privacy.html>

## Marketing

By making an application for an account, product or service you agree that the Bank may use your personal information (including your telephone number, regardless of whether it is listed on the Do Not Call Register, and your email or other electronic addresses) to keep you informed about other products and services which may be of interest to you. We may do this by phone, mail, email and SMS or other electronic messages. These consents operate indefinitely and shall remain in effect unless and until you notify us in writing or by phone that you do not wish to receive these communications. Your telephone calls with the Bank and its related companies may be recorded and monitored for the purpose of verification.

## Declaration

By signing a Bank account application form you:

- a. acknowledge that you have read and understood this Notification and Consent and the UBS Privacy and Credit Reporting Policy;
- b. authorise the Bank to collect, use and disclose your personal information as described in this notification and the UBS Privacy and Credit Reporting Policy;
- c. consent to the Bank using your personal information to keep you informed about other products and services which may be of interest to you;
- d. declare that you are aware that the laws and regulations of overseas jurisdictions may require disclosure of Information (as defined below) relating to the beneficial owners of financial products governed by the laws of that jurisdiction. For the purposes of this declaration, **"Information"** means:
  - i. your personal information (as defined by the Privacy Act);
  - ii. your Account details;
  - iii. the details of the financial product which is the subject of this declaration (including, but not limited to, the ISIN and quantity of the financial product); and
  - iv. any other information as may be required under relevant law or regulation;
- e. authorise the Bank to disclose the Information (as defined above) as reasonably required or considered appropriate to the relevant regulatory authority in any overseas jurisdiction in which you are or have become the beneficial owner of a financial product governed by the laws of that jurisdiction;
- f. confirm that the Bank is not violating any Australian laws (including, but not limited, laws relating to confidentiality and privacy) in disclosing the Information and irrevocably waive any claim against the Bank in relation to any such disclosure of Information;
- g. confirm your understanding that all Transactions in financial products in an overseas jurisdiction will be governed by the laws and regulations applicable at the time of the Transaction. You undertake to comply with these laws and regulations. Without limitation to any other indemnity provision within the Terms and Conditions, you indemnify the Bank against any loss or damage that the Bank may suffer as a result of your failure to comply with these laws and regulations; and
- h. acknowledge and agree that the recipients to whom the Information is disclosed or transferred will be entitled to store such Information at their respective premises;
- i. confirm that you are responsible for all consequences resulting from the disclosure and dissemination of the Information and release, to the fullest extent permitted by Australian and overseas law, the Bank and its officers and employees from any loss, harm or damage that you may suffer as a result of such disclosures. This declaration remains valid even in the event of your death or incapacity.

# Part C: Terms and Conditions for Accounts

## 1. Interpretation and Construction

1.1 Unless otherwise defined in this Section, terms and references defined or construed in Part A: Terms and Conditions – Definitions and Interpretation have the same meaning and construction in this Section.

1.2 The Client represents and warrants to the Bank that it is a Wholesale Client in relation to any of the Services that may be provided by the Bank or a UBS Group member under these Terms and Conditions. This includes, without limitation, any representation or warranty to the effect that the Client is a “professional investor” (as that term is defined in the Corporations Act). The Client undertakes to notify the Bank immediately of any change to this representation and warranty, and acknowledges that the Bank may immediately cease to deal with the Client in the event that the Client is no longer a Wholesale Client.

1.3 The Agreement shall take effect from the time the Bank first completes its internal procedures and processes (including the Bank’s internal know-your-client and anti-money laundering procedures) to open the Client’s Account(s) with the Bank, and the Bank opens the Account.

1.4 The Agreement is applicable to each and every Account of whatever nature now or subsequently opened with the Bank and all Services made available by the Bank, and will apply to and govern the relationship between the Bank and the Client.

1.5 The Client acknowledges and accepts that, unless otherwise expressly agreed in writing with the Bank, neither the Bank nor any other entity or business unit of UBS Group AG provides legal, tax or accounting advice. Unless otherwise expressly agreed in writing with the Client, the Client acknowledges and accepts that the Bank is not a fiduciary of the Client for any purpose whatsoever and that the Client does not rely on the Bank as a fiduciary for any purpose whatsoever. Save as expressly set out herein or as otherwise expressly agreed in writing, the Client agrees that the Bank is not an agent or custodian

of the Client. Further, the Client acknowledges and agrees that, the Bank may recommend or solicit investments or Client Transactions to the Client from time to time. Unless the Client has executed a discretionary portfolio management agreement with the Bank, the Client is responsible for making all investment and trading decisions and all Client Transactions and investments will only be made at the Client’s instruction (irrespective of whether the Bank has made a solicitation or recommendation). Unless otherwise expressly agreed in writing with the Bank, the Bank will not monitor the investments in the Client’s Account and/or advise the Client on an ongoing or holistic basis on the making and disposal of investments and the entering into or unwinding of Client Transactions in the Client’s Account.

1.6 The Bank enters into the Agreement for itself and as agent for all its offices, Branches, affiliates and associated companies, and subject to Applicable Laws, the terms of the Agreement and all of the rights of the Bank under the Agreement shall apply to, and be conferred on, those offices, other Branches and affiliates or associated companies of the Bank, all of which shall be entitled to enforce and enjoy the benefit of the Agreement for the purposes of any applicable third party rights legislation. Notwithstanding the foregoing and for the avoidance of doubt, the Client is only a Client of the Bank for regulatory purposes. Nothing in the foregoing sentences shall affect the Bank’s right to amend, terminate or rescind the Agreement in its sole discretion.

## 2. Mandate

2.1 On the Client’s request, the Bank may in its absolute discretion open or maintain an Account or Accounts in the Client’s name, and at any time subsequently to open such further Account or Accounts of whatever nature in the Client’s name as the Client may direct or as the Bank may in its absolute discretion deem fit. The opening of any such Account or Accounts

may be subject to the Client completing such documentation as the Bank may specify.

2.1.1. All money paid to, or received by, the Bank for the account of the Client in connection with the Services provided under these Terms and Conditions will be held as a Bank Deposit (unless expressly provided otherwise). The Client acknowledges that the client money protections set out in the Corporations Act will not apply to such money.

2.2 If the Client is an individual or non-corporate institution, the initial deposit to any Account (or any funds accepted by the Bank) must be not less than **AUD 250,000**.

2.3 The Client authorises the Bank at its absolute discretion and until the Bank receives from the Client notice in writing to the contrary:

- a. to honour and comply with the following in connection with an Account or Accounts, provided that the same appear to the Bank have been provided by the Client or any Authorised Signatory(ies) in accordance with requirement of this Agreement:
  - i. all cheques, drafts, orders to pay, bills of exchange, promissory notes and all other orders for payment expressed to be drawn, signed, accepted, endorsed or made by the Client or on behalf of the Client drawn upon or addressed to or made payable at the Bank whether the Account or Accounts is or are in credit or in debit or becomes overdrawn in consequence or otherwise (but without prejudice to the Bank's right to refuse to allow any overdraft or increase of overdraft beyond any specified overdraft limit from time to time or any particular form of payment); and
  - ii. any orders to withdraw any or all money on such Account or Accounts or with instructions to deliver, dispose of or deal with any securities, deeds or documents or other property (including security boxes and their contents) whatsoever from time to time in the Bank's possession for the Account or Accounts whether by way of security or safe custody or otherwise;
- b. to accept and act on the following provided that the same appear to the Bank to have been provided by the Client or an Authorised Signatory(ies) in accordance with the requirements of the Agreement with regard to:
  - i. any instructions the purchase or sale of or other dealings in Assets or any Foreign Currency;

- ii. any application or request for the issue of any letter of credit, guarantee, indemnity or counter-indemnity and any instructions in relation to any letter of credit, guarantee, indemnity or counter-indemnity;
- iii. any instruction with regard to any other transactions of any kind or with regard to any of the Accounts in every case whether any of the Accounts is or are in credit or in debit or may in consequence become overdrawn or otherwise (but without prejudice to the Bank's right to refuse to allow any overdraft or increase of overdraft beyond any specified overdraft limit from time to time); and
- iv. any application or request for Facilities and for any extension of such Facilities; and

- c. to grant overdraft, loan or other Facilities or accommodation for the Accounts or any of them, and by way of security to accept as duly signed or executed on behalf of the Client, any document creating or evidencing any Security Interests whatsoever over or in respect of any securities, deeds, documents or other property whatsoever from time to time in the Bank's possession for the Account or Accounts whether by way of security or safe custody or otherwise, provided that each of the same are signed by or, in the determination of the Bank, appear to be signed by, the Client or the Client's Authorised Signatory(ies).

2.4 Without in any way limiting the foregoing general authority in Clause 2.3, the Bank is authorised at its absolute discretion and until the Bank receives from the Client notice in writing to the contrary:

- a. to carry out instructions countermanning payment of or to revoke cheques, bills of exchange, promissory notes or orders or instructions authorising payment before payment is effected when such instructions are given and signed by the Client or in the determination of the Bank, appear to be signed by, the Client or the Client's Authorised Signatory(ies) in accordance with the requirements of the Agreement;
- b. to deliver on the instructions of the Client or the Client's Authorised Signatory(ies) any money, financial products, securities, deeds, proxies and parcels and their contents and property of any description held in the Client's name; and
- c. to place to the credit of the Account or Accounts all amounts, including dividends, interest and capital sums arising from financial products received or collected by the Bank for the credit of the Client.

2.5 The Client hereby agrees:

- a. that if the Client gives any instructions, or several instructions, the total amount of which exceeds its credit balance or the limit of Facilities granted to it, the Bank may (but shall not be obliged to) carry out any of the instructions at its absolute discretion, in whole or in part, irrespective of the date they bear or the date of their receipt by the Bank (and in such case may be subject to additional terms, as agreed between the Client and the Bank);
- b. that the Client shall be liable for all withdrawals from any Account and shall be responsible for the repayment of all Facilities or accommodation which may be granted on any Account with all interest, goods and services tax, commission and other banking charges and expenses (including, without limitation, legal costs on a full indemnity basis) and to assume full responsibility for the genuineness of all instructions given in connection therewith; and
- c. that nothing in the arrangements between the Bank and the Client shall be treated as constituting an implied agreement restricting or negating or in any way prejudicing any Security Interest, right of set-off or other right that the Bank may have existing or implied by law.

2.6 Any reference in the Agreement to instructions from or signatures of the Client, however expressed, shall include instructions from or signatures of the Client's Authorised Signatory(ies), save where otherwise expressly indicated.

2.7 The Client agrees and acknowledges that it will ratify and confirm any instruction given or purported to be given by an Authorised Signatory if such instructions are given by the Authorised Signatory and the Bank has acted upon such instructions before the Bank receives notice of revocation of the authorisation of the Authorised Signatory and has acted upon such notice of revocation. The Bank shall be entitled to assume that each Authorised Signatory is properly authorised to request any Service and/or to execute all Client Transactions and that the Client shall be responsible for ensuring that each Authorised Signatory acts within the scope of its authority, without requiring verification by the Bank.

2.8 The Bank may at any time, without any liability and without giving any reasons to the Client:

- a. refuse to carry out any instructions including where the Bank suspects that any fraud and/or illegality is involved or where the Bank is in receipt of conflicting instructions from joint Account Holders or Authorised Signatories; and/or

- b. acting reasonably, reject or cease to recognise the appointment of or cease to act on the instructions of any Authorised Signatory.\

2.9 The Client acknowledges that the Bank is subject to the anti-money laundering, suppression of terrorist financing, suspicious transaction reporting laws and regulations of Australia, Singapore, Switzerland and any other applicable jurisdiction as well as the internal policies of the Bank. The Client agrees and undertakes to provide any information requested by the Bank for the purposes of complying with any such laws, regulations and policies in respect of any of the Client Transactions, the Accounts and/or the Services.

2.10 Any standing instructions in respect of the operation of any Account shall cease to have any effect upon the Bank receiving actual notice of the death, incapacity, bankruptcy or liquidation of the Client (or, if the Account is opened in joint names of more than one client, the death, incapacity, bankruptcy or liquidation of any such joint Client) where the Bank has reasonable grounds to believe that any further implementation of such standing instruction would be inappropriate or inconsistent with Applicable Laws.

### 3. Joint Account and Partnership

3.1 Subject to Clause 3.9, if an Account is opened in the joint names of more than one Client (whether in their own respective capacities or in their capacities as trustees for a beneficiary), each Client in whose joint names such Account is opened jointly and severally agrees to the Agreement and shall be jointly and severally liable for all obligations and liabilities incurred on or in respect of such Account and (without limitation to the generality of the foregoing) each such Client shall be jointly and severally liable for all rights and obligations in connection with the Services, Facilities or accommodation which may be granted on such Account, together with all interest, goods and services tax, commission and other banking charges and expenses (including, without limitation, legal costs on a full indemnity basis and all goods and services tax thereon). The liability of each Client of such Account shall not be discharged or affected in any way by the death, mental incapacity or other incapacity to act of any other Client of such Account. An Event of Default in respect of any Client of a joint account shall constitute an Event of Default in respect of the Account.



### 3.2

- a. Subject to Clause 3.9, where such Account is operated on the instructions of any single Client or Authorised Signatory, instructions from and documents executed by any one such Client or Authorised Signatory (including, for the avoidance of doubt, instructions from and documents executed by any one such Client or Authorised Signatory in relation to any of the matters set out in Clause 2 for Accounts and/or instructions for the closure or termination of such Account) will be accepted by the Bank and will be binding on the Client of such Account.
- b. If such Account is operated on the instructions of a specified number of Clients or Authorised Signatories acting jointly, only instructions from and documents executed in accordance with such authority will be accepted by the Bank and binding on the Client of such Account.

3.3 Notwithstanding the foregoing and without limiting Clause 2.8, each Client agrees that the Bank may, in its sole discretion:

- a. require joint instruction from some or every Client or Authorised Signatories before taking action under the Agreement; and
- b. if the Bank receives instructions from any Client or Authorised Signatory that are, in the Bank's opinion, in conflict with instructions received from any other Client or Authorised Signatory, decline to comply with any of these instructions and/or advise each Client of the apparent conflict and/or take no action as to any of these instructions until it receives instructions from any or every Client or Authorised Signatories that are satisfactory to it.

3.4 Subject to Clause 3.9, in the event of the death, mental incapacity or other incapacity to act of any Client of such Account (as evidenced by the death certificate or medical certificate of the Client or such other records or documents as may be required by the Bank):

- a. the Bank may continue to operate the Account in such manner as jointly directed and instructed by all the surviving or non-incapacitated Clients of such Account who are not Minors (notwithstanding the existing signing authorities governing the Account), without having to request any additional documents or take any additional steps to ascertain the authority of such surviving or non-incapacitated Clients. However, following the death, mental incapacity or other incapacity to act of a Client of such Account, the Bank may, in its sole discretion, decline to act on any further instructions and/or request copies of the will and probate documents, medical certificates or other records or documents or take

such other additional steps for the purposes of deciding whether and how to act on instructions, and/or require the performance of such other deeds, indemnities and actions by the surviving or nonincapacitated Client of such Account, as determined by the Bank in its sole and absolute discretion. Circumstances in which the Bank may decline to act on any further instructions and/or request copies of probate or other documentation or take other additional steps for the purposes of deciding whether and how to act on instructions include without limitation where the Bank has received a revocation of declaration of intention as to a joint account in respect of the Account, where none of the surviving Clients of such Account are above the age which they are permitted to contract, where the Bank determines (in its sole and absolute discretion) that there is a competing claim (or potential competing claim) to the assets in, or to the control of, the Account, where there is an apparent dispute between the surviving Client(s) of such Account (whether the Bank is put on notice or is aware of any apparent dispute between the estate or family members of a Client) and where the operation of the Account in accordance with the aforesaid procedures may be prejudicial to the Bank's interests;

- b. subject to Clause 3.4, any valid Enduring Power of Attorney under Applicable Laws and/or any order, direction or appointment by a competent court or governmental authority under Applicable Laws, each Client of such Account agrees that all money for the time being standing to the credit of such Account and all securities, deeds, documents and other property whatsoever held by the Bank, whether by way of security or for safe custody or collection or any purpose whatsoever, shall be held to the order of the surviving or nonincapacitated Client(s) of such Account, subject strictly and at all times to the full and satisfactory production of all requisite documentation (including the relevant will and probate instruments or medical certificate or records or documents) and performance of such other deeds and actions by the surviving or non-incapacitated Client(s) of such Account, as determined by the Bank in its sole and absolute discretion. This shall be without prejudice to any right the Bank may have in respect of such money, securities, deeds, documents and other property arising out of any lien, charge, pledge, set-off, counterclaim or otherwise or to any step the Bank may consider desirable to take in view of any claim by any person other than the surviving or non-incapacitated Client(s) of such Account;
- c. where the Bank has received a revocation of declaration of intention as to joint accounts in respect of the Account, each Client of such Account agrees that all money for the time being standing to the credit of such Account and all

securities, deeds, documents and other property whatsoever held by the Bank, whether by way of security or for safe custody or collection or any purpose whatsoever, shall be held subject to the will and probate documents or other relevant documentation relating to the death or incapacitation of the Client. In such case the Bank may, in its sole discretion, request copies of will and probate documents, medical certificates or other records or documents or take such other additional steps for the purposes of verifying how property on the Account is to be held, and require the performance of such other deeds and actions by the surviving or non-incapacitated Client(s) of such Account, as determined by the Bank in its sole and absolute discretion.

3.5 Remittances received in favour of one Client of such Account may automatically be credited to such Account unless the Bank has received specific instructions to the contrary.

3.6 Subject to Clause 3.9, any obligation the Bank may have to notify the Client of any matter relating to such Account shall be discharged if the Bank notifies any one Client. The Bank may, without prejudice to its rights and remedies against any of the Clients of such Account, settle or vary the liability of or grant time or other indulgence to any one of them.

3.7 Subject to Clauses 3.3 and 3.9 and unless otherwise agreed by the Bank, the Orders, instructions or agreement of any one Client of an Account shall be deemed to be the Orders, instructions or agreement of all Clients of that Account and any statement (defined in Clause 8), notice or communication addressed and sent by the Bank to any one Client of an Account or to the specified mailing address set out in the Account application shall be deemed to have been addressed and sent to all the persons constituting the Client and where any such person shall have received or is deemed to have received any such statement, notice or communication, all Clients of that Account shall be deemed to have received the same.

3.8 If the Client is, and an Account is opened in the name of, a partnership (other than a partnership having separate legal personality), any change or changes in the name of the partnership or any change or changes in the members of the partnership by death, mental incapacity, other incapacity to act, retirement or introduction of a partner or partners, or any other change in the constitution of the partnership shall not affect the liabilities of the Client, all of which liabilities shall continue and be binding on the Client and all such partners from time to time constituting the partnership which is the Client. The Bank shall be entitled to debit that Account at any time in respect of any sum howsoever due or owed to the Bank by any of the persons from time to time constituting the partnership which is the Client.

3.9 Where, under Applicable Laws, one or several of the Clients is under the age at which he/she is permitted to contract (a **"Minor"**), at least one other Client must be the Minor's (or Minors') natural guardian or a guardian appointed by a court of competent jurisdiction (a **"Guardian"**). Until the Minor(s) attain(s) the age at which he/she/they is/ are permitted to contract under Applicable Laws, only the Guardian(s) shall have authority to operate the Account on behalf of the Minor(s). Upon the Minor(s) attaining the age at which he/she/they is/ are permitted to contract under Applicable Laws, the Minor(s) shall notify the Bank in writing, ratify his/her/ their obligations as a Client in respect of the Account and this Clause shall thereafter cease to apply in respect of the relevant Minor(s). If the Guardian dies or becomes mentally incapacitated before the Minor(s) attain(s) the age at which he/she/they is/ are permitted to contract under Applicable Laws, the Bank shall have full and absolute discretion to suspend the Account until such time as the Minor(s) attain(s) the age at which he/she/they is/ are permitted to contract under Applicable Laws or another Guardian is appointed in respect of the Minor(s). Any obligation the Bank may have to notify all Clients of any matters arising in respect of such Account shall be discharged if the Bank notifies the Guardian.

3.10 This Clause 3 governs the legal relationship between the Clients of an Account and the Bank exclusively, irrespective of the internal relationship between the Clients of that Account or their successors, and regardless of their respective rights of ownership of the Assets in that Account.

## 4. Availability of Services

4.1 All Services set out in the Agreement are available to the Client at the Bank's sole and absolute discretion. The Bank may in its absolute discretion, at any time, without liability or disclosing any reasons to the Client, refuse to provide or continue to provide any Services.

4.2 All requests for Services will be subject to the terms and conditions in the Agreement and the Bank's acceptance of such requests, which will be treated as occurring on the opening of the relevant Accounts for the requested Services, and the completion of the procedures and processes for the requested Services, or confirmation from the Bank to the Client to this effect.

4.3 The continued availability of any Service shall be subject to the Bank's consent, in its sole discretion (acting reasonably), and to the Client's fulfilment of certain conditions (including the execution of further agreements or documents) as the Bank may require

from time to time. Where the Client in relation to any Account comprises more than one person any notice, demand and correspondence shall be deemed to be received by all of the persons comprising that Client if it is received (or deemed received) by one such person (whether or not it is forwarded to or received by any other person(s) comprising the Client).

## 5. Communications

5.1 Unless otherwise agreed between the Client and the Bank in writing, any confirmation, notice to or demand on the Client and all correspondence from the Bank to the Client shall (without prejudice to any other effective mode of making it) be treated as having been received:

- a. served on or delivered to the Client (or the Client's trustee in bankruptcy or legal personal representative or liquidator or any Authorised Signatory or other duly appointed representative, agent, or attorney) personally;
- b. if sent by post, fax or e-mail to the Client (or the Client's trustee in bankruptcy or legal personal representative or liquidator or Authorised Signatory or other duly appointed representative, agent or attorney) at the last address, fax number or Client's specified e-mail address (as defined in Clause 6.1(e) below) provided to the Bank by the Client: or
- c. sent as a Notification to the Client (or the Client's trustee in bankruptcy or legal personal representative or liquidator or any Authorised Signatory or other duly appointed representative, agent or attorney) via such means as may be prescribed by the Bank from time to time and/or, where applicable, to such contact details provided to the Bank by the Client.

5.2 Any Confirmation, notice to, demand on the Client or correspondence from the Bank to the Client shall be deemed to have been received:

- a. if served personally, at the time of delivery;
- b. if served by post, two days after the date of postmark (or, in the case of airmail or overseas courier delivery, seven days) or at the time the postal service, airmail service or courier service has confirmed delivery thereof, whichever is the earlier; and/or
- c. if sent by e-mail, fax or as a Notification, at the time of sending.

5.3 Any Confirmation, notice to, demand on the Client by the Bank or correspondence from the Bank to the Client shall be effective on and from:

- a. the date or as the case may be, time of deemed receipt of; or
- b. the date or as the case may be, time (if any) specified by the Bank in such notice or demand (whichever is the latest),
- c. notwithstanding the fact that such Confirmation, notice to, demand on the Client or correspondence from the Bank to the Client, if sent by post, fax or e-mail or as a Notification, may be returned through the post office or be otherwise undelivered.

5.4 Any notice to or demand on the Bank and any correspondence from the Client to the Bank in relation to an Account shall be delivered in writing to the Bank's address as set out at the end of this Agreement. Any such notice or demand shall only be effective when the Bank actually receives it.

5.5 The Client is responsible for reconciling any notice or any certificate from the Bank as to the amount due and owing by the Client to the Bank and must notify the Bank of any concerns in a reasonable time after which it shall become conclusive and binding. It is the Client's obligation to check the accuracy of all notices or any certificate and must notify the Bank within a reasonable time of any apparent or possible error such as an incorrect fee or amount debited from an Account, or a payment that should have been made to the Client.

5.6 The Client agrees that the Bank shall be entitled to deliver a product disclosure statement, or any other disclosure document, in relation to a financial product, in electronic form including by providing a link to a website where the product disclosure statement or other disclosure document is available.

## 6. Instructions and Confirmations

6.1 The Bank is authorised (but is not obliged) to rely upon and act in accordance with any instruction in relation to the operation of the Account (including, without limitation, making transfers of funds from the Account to any person (including, without limitation, any Client who is a joint Account Holder of the Account or any Authorised Signatory) or securities/payment orders or closing the Account) given in the following manner:

- a. instructions given to the Bank given orally, whether by telephone or otherwise (each an **"oral instruction"**);
- b. instructions sent to the Bank by post or delivered to the Bank by hand containing the signature(s) of the Client(s) or Authorised Signatory(ies) authorising its issue;
- c. instructions: (i) transmitted to the Bank by fax or similar means and containing the signature(s) of the Client(s) or the Authorised Signatory(ies) authorising his/her issue (each a **"fax instruction"**), unless the Client has not opted in or has opted out of the right to provide fax instructions; (ii) given as Digital Services Instructions; or (iii) instructions sent to the Bank via short message service which are referable to the Client's contact details based on the Bank's records at the relevant time, or which are otherwise referable to a Client's contact details as may be informed to the Bank from time to time; or
- d. unless the Client has not opted in or has opted out of the right to provide e-mail instructions (as defined below):
  - i. instructions sent by e-mail from any of the Client's e-mail addresses specified in the Account Application, the last e-mail address provided by the Client to the Bank, the e-mail addresses of any Authorised Signatory (if any) (the **"Client's specified email address"**); or
  - ii. instructions sent to the Bank by e-mail containing the signature(s) of the Client(s) or Authorised Signatory(ies) authorizing its issue, provided that the e-mail address (not being the Client's specified e-mail address) from which instructions are sent is registered with the Bank,
  - ii. each such instruction described in sub-paragraphs (i) and (ii) above an **"e-mail instruction"**; or
- f. instructions sent by any means as may be prescribed by the Bank from time to time, without any further authority from the Client or any further notice to or from the Client, or without any inquiry by the Bank as to the authority or identity of the person giving or authorising or purporting to give or authorise such instruction or the authenticity of such instruction, regardless of the circumstances prevailing at the time of such instruction or the nature of the Service and notwithstanding any error, misunderstanding, fraud or lack of clarity in the terms of such instruction, and whether or not such instruction was made or given with the authority of the Client.

6.2 The Bank shall rely exclusively on the specimen signatures of the Client and its Authorised Signatories provided by the Client to the Bank from

time to time to verify the Client's instructions. The Bank shall examine with reasonable care the signatures of its Clients and their Authorised Signatories appearing in any instructions from the Client against such specimen signatures but shall not be bound to make further examination with respect to identity. The Client agrees that the Bank shall have full discretion to allow for any variation between such specimen signatures and the signatures of the Client and its Authorised Signatories appearing on any instructions is acceptable to the Bank shall be binding on the Client.

6.3 The Client agrees that the Bank has the discretion and is not obliged (unless specifically required under Applicable Law) to, in relation to the operation of an Account and/or any Client Transaction, send any Confirmation, communication, Notification or other correspondence to the Client at the Client's specified e-mail address (each an **"e-mail correspondence"**), unless the Client has opted out of receiving such e-mail correspondence. For the avoidance of doubt, notwithstanding anything to the contrary:

- a. any e-mail correspondence from the Bank sent in accordance with this Clause 6.3 shall be treated as having been received by the Client and shall be effective on and from the date of such e-mail correspondence or the date specified in the e-mail correspondence (if any), whichever is the latest; and
- b. the Client's opting out of receiving such e-mail correspondence does not affect any provision in this Clause 6 relating to oral instruction, fax instruction, e-mail instruction or such other instructions provided in this Clause 6.

6.4 The Client also agrees that the Bank may consider any person who identifies himself/herself by using the Client's specified e-mail address or such other contact details of the Client based on the Bank's records from time to time as being entitled to:

- a. receive and/or verify any e-mail correspondence; and/or
- b. provide instructions to, send information to and/or request information from the Bank in relation to the Client's Account via such e-mail address or contact details (as the case may be). The Bank is not required to, but may, act upon any instructions that are transmitted in a manner that is inconsistent with Clause 6.1.

6.5 For the avoidance of doubt, the Client's opting out of providing fax instructions and/or e-mail instructions to the Bank does not prohibit the Bank from:

- a. communicating with the Client and/or any Authorised Signatory via fax and/or e-mail;
- b. (in its absolute discretion) acting upon any instruction which is transmitted by the Client via fax and/or e-mail, and whereupon such instruction shall be binding on the Client; and
- c. sending Confirmations or other Notification or correspondence to the Client at any e-mail address provided by the Client, and any such communication from the Bank sent to any such e-mail address provided by the Client shall be treated as having been received by the Client and shall be effective on and from the date and time of such e-mail communication or the date and time specified in the e-mail communication (if any).

6.6 Where several Authorised Signatories who have joint signing authority provide instructions/requests to the Bank, the Bank will only act upon such instructions/requests where all relevant Authorised Signatories have provided their joint instructions/requests. Where several Authorised Signatories who have joint signing authority wish to send the Bank instructions/requests, each of them must separately confirm such instruction / request or send the same instruction / request in substance to the Bank e.g. in respect of email instructions, each of them must send an e-mail instructing/ approving the same instruction/request in substance from the Client's specified e-mail address(es) to the same recipient in the Bank, or otherwise follow the relevant procedures as the Bank may put into effect at the time.

6.7 Without limiting the generality of Clause 17, the Client acknowledges that he/she is aware of all risks and damage which could result or arise from the use of postal services, telephone, fax, email, Digital Services, other electronic modes of communication and other acceptable forms of communication with the Bank (including the risks set out in Clause 6.12 below) and agrees to bear all such risks. Such risks include, those resulting from delayed receipt or notice, suspension or disruption of postal services, errors in transmission, technical defect, power failure, fraud, forgery, illegality, misunderstanding, unintended disclosure or unauthorised interception or manipulation by third parties or the occurrence of any Force Majeure Event or Event of Default.

6.8 Without limiting the generality of Clause 17 below or any other terms of this Clause 6, the Client undertakes to indemnify and hold harmless the Bank on demand and to keep the Bank indemnified and held harmless against all Losses and Claims incurred or sustained by the Bank of whatever nature and howsoever arising out of or in connection with the Bank (except to the extent that such Loss or Claim is caused directly by the Bank's fraud, wilful default or gross negligence):

- a. sending any e-mail correspondence to the Client and Authorised Signatory or third party; and/or
- b. acting in accordance with any instructions, and in respect of such instructions, the Client agrees to perform and ratify any contract entered into or action taken by the Bank as a result of such instructions. In any event, the Bank is entitled to not accept or comply with any instructions without providing reasons to the Client, and may, but shall not be obliged to, require the Client to verify the authenticity of such instructions to the satisfaction of the Bank, prior to the Bank executing such instructions. In so doing, the Bank shall not be liable or responsible for any Losses or Claims incurred or suffered by the Client.

6.9 The Client authorises the Bank (but the Bank shall not be obliged) to record or monitor oral instructions from the Client and communications between the Bank and the Client (including telephone conversations and face-to-face conversations and communications carried out via Digital Services, and other acceptable modes of communication) by audio or electronic recording devices and/or in writing. The Bank shall not be obliged to cause any of its officers or such officers of such offices or affiliated companies to make any note of any oral instruction or communication and the failure to make any such note shall not in any way affect the authorisation this Clause 6.9 contained or prejudice the rights of the Bank under the Agreement. Any such recording shall be the property of the Bank and not of the Client. In relation to oral instructions and communications, the Bank may, subject to Applicable Laws, if it deems appropriate (at its sole and absolute discretion), grant any request by the Client to listen to any recording of such oral instructions and communications, but is not in any way obliged to provide a copy of the same to the Client. The Client may be required to execute certain documents in connection with such request and the Bank shall be entitled to charge an administrative fee in that regard.

6.10 Subject to Applicable Laws, the Bank shall not be under any duty to assess the prudence or otherwise of any instruction. If the Bank determines that any instruction from the Client or other circumstances may create (whether directly or indirectly) any Losses or Claims to the Bank, it has the right to suspend the operation of any or all of the Accounts by giving reasonable notice to the Client and/or to require an indemnity from the Client or any third party before continuing to operate any or all of the Accounts or complying with such instruction.

6.11 Instructions given by the Client or any Authorised Signatory to the Bank shall be effective only upon actual receipt by the Bank and shall be acknowledged by the Bank unless the Bank advises the Client otherwise. Each of the Client and each Authorised Signatory acknowledges that

the processing and execution of instructions take place during normal business hours on a Business Day and under normal business procedures. Each of the Client and each Authorised Signatory further acknowledges that the time required for the Bank to process or execute, or to arrange for the processing or execution, of instructions depends on the nature of the requested Client Transaction, and that, depending on when the Bank receives the instructions, it may not always be possible for instructions to be processed or executed, or for the requested Client Transaction to be effected, by a specific deadline. The Bank does not accept liability for any instruction which is not processed or executed on time or for Losses or Claims incurred as a result, except and except only for direct loss or damage incurred by the Client directly caused by the Bank's gross negligence where the Bank has been found to have been grossly negligent in a final decision made by a court in the Jurisdiction.

6.12 Each of the Client and each Authorised Signatory acknowledges that information transmitted by e-mail is carried on a publicly accessible network (for example, the internet) and may be in an unencrypted form. The Bank therefore does not accept any liability if (a) a third party discovers the relationship between the Client and the Bank and/or (b) the contents of the e-mail have been read or altered. Each of the Client and each Authorised Signatory understands and accepts the possible risks and potential misuse of e-mails, which include: (i) a stranger fraudulently assuming the Client's or an Authorised Signatory's identity via e-mail; (ii) leakage of the Client's or Authorised Signatory's signature shown in any e-mail attachment; (iii) an intruder interfering, intercepting or diverting the Client's specified e-mail address so as to receive the Client's information or any e-mail correspondence or send out fraudulent information or instructions to the Bank in relation to an Account; (iv) any other instance of fraud, forgery, unintended disclosure, unauthorised interception and/or manipulation by a third party, illegality or misunderstanding; and (v) technical risks such as errors in transmission, technical defect, power failure, and the Bank therefore does not accept any liability for any Loss or Claims incurred or suffered by the Client as a result of or in connection with any such risk materialising.

6.13 Where the Client has opted (a) for the right to provide e-mail instructions and/or fax instructions and/or (b) to receive e-mail correspondence, the Client or an Authorised Signatory may update or change an existing authorised fax number or a Client's specified e-mail address (as the case may be) by written notice to the Bank, or by any other means prescribed by the Bank. The use of any such new fax number(s) or Client's specified e-mail address(es) (as the case may be) shall be subject to the terms and conditions set out in the Agreement. The right to (a) give and receive fax instructions

and/or e-mail instructions and/or (b) receive e-mail correspondence may be terminated by either the Client or the Bank at any time by written notice.

6.14 The Bank reserves the right at all times and in its absolute discretion, should it identify any security or other risks, to suspend the use by the Client or any Authorised Signatory of e-mail or any other method of communication for correspondence and instructions until the Bank is satisfied that such risk has been controlled, dealt with or eliminated, as the case may be.

## 7. Deposits and withdrawals

7.1 Deposits and withdrawals can be made by the Client in such manner as the Bank may prescribe from time to time. Notwithstanding the foregoing, the Bank may in its absolute discretion at any time (acting reasonably), without liability or disclosing any reasons to the Client, refuse to accept any deposit for or, as the case may be, allow any withdrawal from, the Account, limit the amount that may be deposited or, as the case may be, withdrawn, or return all or any part of the deposit.

7.2 Cash deposits which are not verified immediately are subject to being counted by the Bank. In the event that the amount on the deposit ticket or receipt ticket differs from that of the Bank's cash count, the Bank's cash count shall be final and conclusive in the absence of any obvious or manifest error. Receipts for deposits, and deposit slips, are not valid receipts unless they are validated by the Bank's machine stamp or computer terminal or signed by the Bank's duly authorised signatory.

7.3 The Client shall only be entitled to draw on the Account with a credit balance or with pre-approved Facilities granted by the Bank to the Client (subject to the Bank's pre-approved limit) at the Branch in the Jurisdiction, and shall not be entitled to draw on another Branch, subsidiary or affiliate of UBS AG. Unless otherwise agreed by the Bank, no deposit in any currency into the Account, howsoever made, shall be available for withdrawal until the Bank has received actual payments of funds into such Account.

7.4 In relation to an Account for deposits:

- a. deposits shall be in such currency permitted by the Bank and may be subject to such minimum initial deposit, subsequent placements and minimum maturity period as the Bank may determine from time to time. The Bank shall provide the Client with notice of the minimum balance required for such Account and any applicable charges if the balance falls below such

prescribed minimum balance. Withdrawal of certain deposits (whether wholly or partly) may be subject to a minimum notice period and/or consent of the Bank (in its absolute discretion);

- b. deposits may or may not be interest bearing (and subject to prevailing market conditions, may attract negative interest rates) and in respect of interest bearing deposits, the interest payable shall be calculated based on such rate as the Bank may determine from time to time, on either a 360-day or a 365-day year, depending on the currency involved, and will be paid at such time and intervals as the Bank may prescribe from time to time;
- c. unless otherwise agreed by the Bank, no deposit in an Account for deposits, howsoever made, shall be available for withdrawal until the Bank has actually received such deposit and credited such deposit into that Account;
- d. if a deposit matures on a day which is not a Business Day, the maturity date shall be extended to the next Business Day, unless otherwise determined by the Bank. For the purposes of this paragraph (d), "Business Day" in relation to a deposit means any day on which banks in the principal financial centre for the currency of that deposit, are open for business (but excluding Saturday, Sunday and any gazetted public holiday).

7.5 In the event that the Client has drawn on any deposit in the Account when no actual payment has been received by the Bank or credited into such Account, the Client authorises the Bank to reverse the credit entries relating to such Account and to take any other necessary steps (with or without further notice to the Client) necessary to rectify the entries in that Account. Any such reversal of entries and such other action taken by the Bank shall be binding on the Client.

7.6 If the Client instructs the Bank to credit an Account with the equivalent in the currency in which that Account is maintained (the "**currency of the Account**") of any Foreign Currency deposits, the Bank will have the right to use such rate of exchange for conversion as the Bank may conclusively determine and shall be entitled to recover any Losses (including exchange Losses, funding costs and interest) if the Bank fails to receive the requisite payment subsequently or if the payment in Foreign Currency deposits received by the Bank is less than the Equivalent Amount in the currency of the Account credited by the Bank. The Client shall bear the cost of such conversion and the Bank is authorised to debit the Account with all costs, charges, Losses or exchange losses incurred by the Bank in connection with such conversion.

7.7 Subject to Clause 7.1, withdrawal from any Account shall be made only by drafts, cheques or telegraphic transfers in the currency of the Account. The Bank may, at the Bank's absolute discretion, pay the Client in any other currency as it deems fit or, upon the occurrence of an Extraordinary Event, any currency which the Bank considers appropriate. The conversion of the currency of the Account to the currency of payment shall be at such rate of conversion as the Bank, at the Bank's absolute discretion, considers appropriate, which for the avoidance of doubt, may be the rate of conversion quoted by financial institutions in any financial centre selected by the Bank in its absolute discretion.

7.8 The Bank's assets corresponding to the Client's credits in any Foreign Currency may be deposited with correspondents established either in the country of origin of the relevant currency or in another country. The Client shall bear (to the extent of its proportion of the Bank's assets corresponding to the assets of all its clients) all the economic and legal consequences which may affect all or any of the Bank's corresponding assets in the country of origin of the relevant currency or in another country where the funds are invested, which result from measures adopted by these countries or by other countries or which result from any event beyond the reasonable control of the Bank, including events of force majeure, exchange controls, moratorium, insurrection, war, acts of terrorism or other acts beyond the Bank's control. The Client expressly represents that it complies with all Applicable Laws relating to exchange controls and movement of cash/assets.

7.9 The Bank shall validly fulfil its obligations arising from Accounts in foreign currencies by crediting or debiting accounts held with the Bank, a correspondent bank or a bank named by the Client. In relation to a bank named by the Client, the Client shall bear the risk of insolvency of that bank.

7.10 The Bank may inform the Client of the usual time for it to clear drafts, cheques or similar instruments. In the event of non-payment of any drafts, cheques or similar instruments, the amount of which have been previously credited or discounted by the Bank, the Bank shall be entitled to debit the Account from such amount previously credited or discounted. Pending the settlement of any outstanding debit balance, the Bank retains a claim to payment of the total amount of such draft, cheque or other instrument, including any related claims against any party liable under such draft, cheque or other instrument, whether such claims emanate from such draft, cheque or other instrument or exist for any other legal reason.

7.11 The Bank shall apply its prevailing selling rate of the relevant currency on the date of debit when it charges back or claims reimbursement for such previously credited amount in the

event that such credited amount is in a currency other than the currency of the Account.

7.12 The Bank may return dishonoured, unpaid or returned drafts, cheques or other instruments to the Client by ordinary post at the Client's risk and expense.

7.13 The Client and each of the Client's affiliates authorises the Bank (including on behalf of any affiliate of the Bank) to extend or renew any existing deposits from time to time at the Bank's sole discretion and without reference to the Client or any of the Client's affiliates, on such terms and conditions as determined by the Bank at the point of extension or renewal. For the avoidance of doubt, the Client and each of the Client's affiliates confirms that in the event of the extension or renewal of the existing deposits, any renewed deposit advice or other renewed evidence of deposit shall continue to be held by the Bank or any affiliate of the Bank on substantially the same or similar terms (as determined by the Bank in its sole discretion) as the original advice or other original evidence of deposit.

## 8. Statements

8.1 The Bank shall issue to the Client a statement of account in relation to each Account at monthly intervals or such other intervals as the Bank decides, or in accordance with Applicable Laws. The Bank shall have full discretion in the manner in which the statement of account is issued to the Client. The Client agrees that the issuance of such statement of account may, to the extent permitted under Applicable Laws, be subject to such charges as set out in the Schedule of Charges (which for the avoidance of doubt is a Surviving Provision under this Agreement and as may be amended from time to time) or as otherwise communicated by the Bank to the Client notwithstanding termination of the Agreement.

8.2 The Client is responsible for examining all statements of account, bank statements or any other statements, advices, printed forms, deposit slips, credit advice notes, Confirmations, transaction advices and other documents and whether provided to the Client by hand or sent to the Client via e-mail, fax, post, Digital Services or any other form of communication (collectively **"Statements"** and individually a **"statement"**) supplied by the Bank verifying the Bank's receipt of instructions, or setting out or recording any Client Transactions on any of the Accounts. The Client acknowledges and agrees that it must notify the Bank of any concerns in a reasonable time after which the Client shall, subject to Applicable Laws, be treated as conclusively having:

(a) approved and accepted, as true and accurate in all respects, all the matters contained in such Statement (including all entries contained, as well as any reservations mentioned, in the Statement) which shall be conclusive and binding against the Client; and (b) understood, acknowledged and accepted the terms of any disclaimers as may be set out in the Statement. However, the Bank may at its discretion at any time rectify an error in any Statement (including but not limited to an error in any valuation) on the part of the Bank or other party without notice to the Client in any manner as the Bank thinks fit to the extent permitted under Applicable Laws. In the event of any error in any Statement, to the extent permitted under Applicable Laws, the Bank may but shall not be obliged to send a rectified Statement to the Client.

8.3 The Bank will send or make available Statements:

- a. in hard copy to the Client's relevant mailing address, as it appears in the Bank's records;
- b. in electronic copy to the Client via Digital Services; and/or
- c. in such means as may be prescribed by the Bank from time to time, in the Bank's sole and absolute discretion. For the avoidance of doubt, the Bank shall have the discretion to determine whether and which Statements may be made available or delivered via Digital Services (whether by default or otherwise), and may cease to make available or deliver such Statements via Digital Services at any time.

8.4 Except as provided in this Clause 8, the Bank shall be free from all Claims in respect of the Account and details of the Client Transactions contained in any Statement.

8.5 If the Client has authorised the Bank to hold statements on its behalf, this Clause 8 shall apply as if the Client had received each such statement on the date stated.

8.6 For the avoidance of doubt, any instruction given or authorised, if accepted by the Bank, is accepted at the time of such instruction being given or authorised and not at the time of issuance of the relevant Statement.

8.7 The Client agrees that any valuation of its holdings as specified in any statement is indicative only and should not be construed as the Bank's confirmation of the validity, accuracy or completeness of the valuation in relation to any Asset in whole or in part. The Bank may rely upon or utilise valuations, prices, price indications, rates and/or exchange rates from the issuer and/or other third parties including but not limited to market data sources for the purposes of reporting to the Client the value of its



Assets. The price, price indication, value, rates and/or exchange rate utilised by the Bank shall be at its discretion and may but shall not always be the last price, price indication, value, rate and/or exchange rate available to it in the market determined by the Bank at its discretion, or in the absence of market reference prices, price indications, values, rates and/or exchange rates which the Bank believes to be reliable, the Bank may at its discretion assign a nominal price, price indication, value, rate and/or exchange rate or qualify or comment on the relevant information in the relevant statement. The Bank gives no assurance that the prices, price indications, values, rates and/or exchange rates utilised for valuation are at fair value nor the latest realisable prices, price indications, values, rates and/or exchange rates and due to time differences between markets and regions, the prices, price indications, values, rates and/or exchange rates will not always reflect the prices, price indications, values, rates and/or exchange rates available on the last business day of the specified period in certain markets and regions. For the avoidance of doubt, the Bank may also utilise such conversion or other exchange rate as it may determine, including but not limited to onshore or offshore rates for the relevant currency, where applicable. The Client shall not rely on any prices, price indications, valuations, rates or exchange rates in any statement, and the Bank shall not be responsible or liable for any Losses or Claims arising out of or in connection with the Client's use of or reliance on any prices, price indications, valuations, rates or exchange rates in any statement. Under no circumstances shall the Bank be under any duty to seek to verify the validity, accuracy, completeness or otherwise of such prices, price indications, valuations, rates or exchange rates. The Bank does not make any representation or warranty as to the accuracy, completeness or validity of prices, price indications, values, rates or exchange rates or information in any Statement.

## 9. Suspension of Account

9.1 The Bank may in the Bank's absolute discretion suspend operations of the Account or Service relating to any Account at any time for any reason whatsoever including but not limited to:

- a. any circumstances caused by force majeure, acts of God, calamity, natural disaster, industrial actions, power failure, computer breakdown, war, acts of terrorism, civil strife or sabotage;
- b. the Client notifying the Bank of any new information relating to the Client which was not contained in the Account Application or which has not otherwise previously been supplied by or on behalf of the Client to the

Bank in connection with the Agreement and which the Bank, in its absolute discretion, considers to require verification for the purposes of its internal know-your-client, anti-money laundering or other on-boarding procedures prior to the Bank continuing to make the relevant Account or Service available to the Client;

- c. the Client refusing or being unable to comply with the Bank's request for any information relating to the Client's Authorised Signatories and/or , to the Bank's satisfaction; or
- d. in the event that the Bank is made aware of the death, mental incapacity or other incapacity of a Client who is a natural person.

9.2 In any event, upon the occurrence of an Extraordinary Event, the Bank shall have the sole discretion to determine any adjustments or action necessary in relation to an Account, or Service in connection with any Account, or any Client Transaction. Such adjustments or actions may include altering or varying the quantities of currencies, securities or commodities or instruments or the exchange rates or specifications (including price, spread, expiry dates or any other relevant terms and conditions) of currencies, securities or commodities or instruments bought or sold in respect of a Client Transaction, or terminating the Service in question or some or all Services, or otherwise and the Client agrees to be bound by such adjustment or action.

## 10. Termination of business relationship

10.1 The Bank reserves the right at any time for any reason and at its own discretion to close any Account and terminate any Service and any existing business relationships with the Client (including without limitation cancellation of any Facility) and furthermore to demand repayments of debts of any nature without further notice to the Client and without any obligation to disclose such reason(s) to the Client. The Client acknowledges that termination will not affect accrued rights, existing commitments or any contractual provisions intended to survive termination. For the avoidance of doubt, the closure of any Account or the termination of any Service or business connection or relationship shall not affect the continued operation, validity, enforce- ability and/or applicability of any of the Agreement (including in relation to indemnities, rights, powers and benefits of the Bank) in respect of any other Account, Service or business connection or relationship which is retained as between the Client and the Bank notwithstanding such termination, to the extent allowed under Applicable Laws.

10.2 The Client may close the Account(s) and terminate the Services with immediate effect by giving notice in writing to the Bank. The Client acknowledges and accepts that the Bank may require a transition period in order to transfer assets as directed by the client (subject to the balance of this Agreement and/or to settle existing transactions).

10.3 Upon closure of any Account or termination of any Service or in the event of any dispute between the Client and the Bank, and without prejudice to any other rights to the Bank under the Agreement and/or otherwise under Applicable Laws, any sum due and payable to the Bank in respect of the relevant Account(s) or Service(s), including the Total Outstandings, all fees or any other sums which are periodically payable (such amounts being correspondingly proportionate to the period which has elapsed prior to the date of termination), shall immediately be paid by the Client to the Bank. The Bank shall immediately or at any time afterwards, in its absolute discretion, have the right to do one or more of the following:

- a. terminate, close out or otherwise realise the outstanding positions with respect to, without notice or further liability to the Client, all or part of any Client Transaction or any other commitments made on behalf of the Client or with the Client by determining its value in good faith as of the date of the closeout or as soon as practicable after the close-out;
- b. suspend, indefinitely or otherwise, or terminate any Account opened and maintained in the name of the Client or the Bank's relationship with the Client and accelerate any or all liabilities of the Client to the Bank so that they shall become immediately due and payable;
- c. liquidate any or all of the Client's positions, whether these positions are long or short, open or otherwise;
- d. demand the Client to forthwith return all unused cheques to the Bank;
- e. liquidate or otherwise convert any of the Client's Assets into monies in such manner as the Bank considers appropriate; and
- f. apply any amounts of any type standing to the credit of the Client's Account(s) against any amounts which the Client owes to the Bank, or generally to exercise the Bank's right of consolidation and/or set-off against the Client, and/or afterwards demand any shortfall from the Client, and/or hold any excess pending full settlement of any obligations of the Client.

10.4 If the Bank determines that there have been no Client Transactions conducted by the Client in connection with the Account for an extended period, the duration of such period to be

determined by the Bank from time to time in its sole discretion, the Bank may designate such Account as a dormant account ("**Dormant Account**").

10.5 Upon the designation by the Bank of any Account as a Dormant Account, the Client acknowledges and accepts that the Bank shall:

- a. not be obliged to send any further statement of accounts to the Client, unless otherwise required by Applicable Laws;
- b. be entitled to impose charges in accordance with Clause 12.1 or otherwise to maintain the Dormant Account on such terms as the Bank considers appropriate;
- c. be entitled to take such reasonable steps and to deal with the Client's assets held in the Dormant Account as the Bank considers necessary in its sole and absolute discretion; and
- d. be entitled to suspend and/or close such Dormant Account.

No interest will accrue or be paid by the Bank on unclaimed balances from a closed account.

10.6 Subject to Applicable Laws but without limitation to the generality of the foregoing, upon closure of any Account, the Bank may discharge the Bank's entire liability with respect to the Account by notice in writing to the Client (at the address of the Client for correspondence last known to the Bank) giving, together with such notice a draft or cheque in the currency of the Account without recourse to the Bank as drawer, payable to the Client's order, in the amount of the credit balance in the Account as at the date of such notice together with such other documents (if any) as may be necessary to transfer to the Client such claims as the Bank may have on such funds. The Bank shall thereafter be released from any further obligations in relation to that Account. All acts performed by the Bank before the Client's receipt of any notice resulting in the closure of any Account or termination of any Service or business relationship with the Client will be valid and binding upon the Client, its representatives, successors and assigns. The Client may suffer Losses as a result of these acts and the Client acknowledges and agrees that the Bank shall not be liable to the Client for such Losses, except to the extent that such Loss is caused directly by the Bank's fraud, wilful default or gross negligence.

10.7 Notwithstanding the foregoing, closure of the Account or Accounts or termination of all of the Services shall not affect the provisions relating to indemnities and the rights, powers and benefits of the Bank set out in the Terms and Conditions including any accrued rights, existing commitments or any contractual provisions intended to survive termination.

## 11. Payment by the Client to the Bank

11.1 Payments due to the Bank from the Client shall be made in the currency in which they are due, on same day or, as the case may be to such accounts as the Bank shall notify the Client, and without any set-off or counterclaim. Payments shall be free and clear of and without deduction or withholding for any present or future taxes imposed by the jurisdiction of the Client's domicile or any other jurisdiction. If the Client shall be required to make any such deduction or withholding, the sum payable shall be increased insofar as necessary so that after making all required deductions, the Bank receives the actual amount due to the Bank.

11.2 The Client shall on demand pay to the Bank any sums or such part whatsoever owing by the Client to the Bank in respect of the following:

- a. monies advanced or paid to or for the Client's use;
- b. an Account or any charge incurred on an Account either actually or contingently;
- c. negotiable instruments drawn, accepted or endorsed by or on the Client's behalf and discounted or paid or held by the Bank either at the Client's request or in the course of business or otherwise; or
- d. monies which the Client shall become liable to pay to the Bank in any manner whatsoever. This includes monies owing or liabilities incurred by the Client on contracts for the sale or purchase of financial products and instruments, currency notes and coins and whether any such moneys or liabilities shall be owing or incurred by the Client alone or jointly with any other person or persons, corporation or company together with interest at such rate and at such periodic rates as may from time to time be notified by the Bank to the Client in writing or in such other manner as the Bank may deem fit with such periodical rates as the Bank may decide based on the number of days elapsed and a 365 or 360-day year (as may be decided by the Bank), fees, commission, usual or customary bank charges and all other costs and expenses in connection therewith).

11.3 Upon the occurrence of a Force Majeure Event affecting, or which may affect the currency of the Account, the Bank may, at the Bank's absolute discretion, convert the currency of the Account to another currency (such as a freely transferable currency at the time) selected by the Bank in its absolute discretion (the **"new currency"**) and every payment for the Account shall be in the new currency. The Client shall bear the cost of such conversion.

11.4 Except as otherwise agreed to in writing between the Client and the Bank, every payment received by the Bank (whether for credit into any Account or in payment of any sum due to the Bank) in a currency other than that of such Account may be converted by the Bank at the Bank's absolute discretion at such rate of exchange as the Bank may conclusively determine into the currency of the Account for credit to such Account or the currency in which the payment is to be made, as the case may be, and the Client shall bear the cost of such conversion. The Bank is authorised to debit the Account with all Losses and Claims incurred by the Bank in connection with such conversion.

## 12. Charges, costs, interest, taxes and commission

12.1 The Bank may impose such charge and/or fee for any Service provided by the Bank or action taken by the Bank in carrying out any instruction relating to an Account, including charges and/or fees in connection with early withdrawals and certain deposits, at such rate and on such basis and interval as determined by the Bank, which may in respect of deposits result in the Client receiving less than the principal amount in the currency of deposit, and/or the Client earning less or no interest. The Bank reserves the right to impose a charge for any service that it reasonably provides, whether at the request of the Client or not, regardless of whether the Account is closed at such time or the Account is designated by the Bank as a Dormant Account or if the Account has a balance below the minimum amount from time to time prescribed by the Bank. In determining such charges and/or fees, the Bank may refer to the Schedule of Charges and Sales Disclosure, and such charges and/or fees may vary from the charges and/or fees imposed by any other affiliate for the same or similar type of product. The Client acknowledges that, unless it has notified the Bank otherwise in writing, it will be deemed to have received, read, understood and agreed to the Bank's published scale of fees from time to time.

12.2 The Client shall pay to the Bank on demand and in accordance with any other applicable terms and conditions, interest, commissions, charges, costs and expenses on such overdraft or other Facilities or accommodation granted to the Client and any of its advances outstanding or sums overdrawn on the Account from time to time calculated at such rate and for such periods as the Bank may specify. The Bank shall have the right to alter its interest and commission rates at any time as the Bank may (but shall not be obliged to) advise the Client thereof by way of circular letter or in any other suitable form, and the Client shall be bound by such rates with effect from the date of

such alteration, as determined by the Bank (regardless of whether the Bank has advised the Client thereof).

12.3 Unless otherwise specifically agreed, the interest on any money due and owing to the Bank (including capitalised interest) shall, at the end of each calendar month, be capitalised and added for all purposes to the principal sum then due and owing and shall from then bear interest at the rate stipulated by the Bank and be secured, if security has been provided, and payable accordingly (notwithstanding that the relationship of banker and client may have ceased) by a demand for monies and/or interest by the Bank or otherwise until the date full payment is received by the Bank (after as well as before judgment) and all the covenants and conditions express or implied in the Agreement and in any other applicable terms and conditions and all the powers and remedies conferred by law or by the Agreement or otherwise, and all rules of law or equity in relation to the said money due and owing and interest shall equally apply to such capitalised interest and to interest on such arrears.

12.4 Any stamp duty, financial transaction tax, other taxes (including indirect taxes such as GST), disbursements, charges, costs and expenses and any liability of any nature, whether in the Jurisdiction or elsewhere, in respect of any Account or Service shall be borne by the Client. Income and/or profit derived from trading in any products, investments and Client Transactions with the Bank may be subject to with- holding tax, capital gains tax and/or any other form of taxes of the country of the provider of such products, investments and transactions or the country in which such products, investments and Client Transactions are traded. In such event, the Client shall only receive the income and/or profit less any applicable withholding tax, capital gains tax and/or any other form of tax unless the provider of such products, investments and Client Transactions agrees to gross up the income and/or profit received by the Client. The Bank may, at its sole and absolute discretion, determine the timing and quantum of the deduction. The Bank shall also not have any obligation to assist the Client to avoid or minimise any withholding tax under any circumstances.

12.5 The Client, where applicable, shall pay to the Bank on demand any GST which is payable, or costs associated with not being entitled to full input tax credits (together, "GST Costs") as a consequence of any supply or acquisition made or deemed to be made or other matter or thing done in respect of or in connection with the Account, the Services or any Transaction or other transaction, together with any fine, penalty or interest payable but only because of a default of the Client. The amount paid by the Client to the Bank on account of GST Costs must be sufficient to ensure that the economic benefit to the Bank, the Account, the Service or Transaction or other transaction remains the same whether GST

applies or not. The Client shall pay any amount it is required to pay under this Clause 12.5 inclusive in full and without deduction, notwithstanding any entitlement that it may have to a credit or offset.

12.6 The Client authorises the Bank to deduct any interest, commissions, fees, charges, costs, expenses and any other amounts due to the Bank under the Agreement from any of the Client's Accounts and, if necessary, to make the currency conversions at such rates as the Bank may determine.

## 13. Non-discretionary Asset Management

13.1 This Clause 13 shall apply in respect of any Account opened by the Client with the Bank save for Account(s) in relation to which the Client has executed a discretionary asset management agreement. Where this Clause 13 applies, the Client agrees that:

- a. the Bank may recommend or solicit specific investments or Client Transactions to the Client from time to time. Unless otherwise expressly agreed in writing with the Client, the Bank will not monitor the Client's Assets in the Account and/or advise the Client on an ongoing or holistic basis on the making and disposal of Assets and/or the entering into or unwinding of Client Transactions; and
- b. the Client is responsible for making investment decisions and the Client's Assets shall be held by the Bank which shall invest and re-invest such Assets only in accordance with the Client's specific instructions, subject to Clause 2.10 or unless those instructions amount to an uncovered (or naked) short selling order or a short selling order (as defined under Applicable Laws) or violate the relevant information memorandum or other offering document or subscription agreement relating to an Asset (in such cases, the Bank may disregard those instructions, unwind the Client Transaction or take any other step which it deems suitable).

13.2 All instructions given by the Client to the Bank to acquire or dispose of any Asset shall (subject to Applicable Laws) be irrevocable and binding on the Client, and any allocation given to the Client shall be binding on the Client, notwithstanding any change in market conditions or other circumstances after the time of the Client's instructions. However, subject to Applicable Laws, the Bank may in its sole discretion decline to act or stop acting on any instructions, without prior notice. In such circumstances, the Bank shall notify the Client as

soon as reasonably practicable, but shall not be obliged to disclose any reason for its decision.

13.3 The Bank reserves the right, in its sole discretion and without giving any reason, to refuse to take custody of any of the Client's Assets and/or to act for the Client on any particular Client Transaction.

13.4 Subject to Part F: Terms and Conditions for Financial Transactions (where applicable), each Client Transaction shall be a separate and independent transaction and shall be subject to the rules, regulations, by-laws, customs and usages of the place where the Client Transaction was entered into, of the relevant exchange market and clearing house, and to the Applicable Laws.

13.5 The Client acknowledges and agrees that:

- a. the Bank may place orders for the Client's Account through those brokers or dealers, including the Bank itself or any of its affiliates, as the Bank in its sole discretion shall determine, and where such brokers or dealers are outside the Australia, the Client Transactions or Services undertaken may not be covered by Applicable Laws in Australia and as a result the Client may not be protected in the same way. In the event of a shortfall arising on the money due and payable by such brokers or dealers, the Client's claim will be restricted to the money held by the Bank in respect of Client Transactions carried out through the broker or dealer and to any money received from the broker or dealer relating to those Client Transactions; and
- b. subject to Applicable Laws, the Client's Assets may, at the Bank's discretion, be at any time held or registered in the name of the Bank or such person as the Bank may direct including the Bank's appointed nominee company or in a sub-account maintained with any securities depository or depository agent.

13.6 The Client agrees that the Bank may act as, and shall have absolute discretion to decide whether to act as, either principal or agent in effecting Client Transactions:

- a. where the Bank acts as principal, the Bank shall assume the role of the counterparty to any Client Transaction and the Bank shall be absolutely entitled to all gains, profits and benefits derived from any such Client Transaction;
- b. where the Bank acts as the Client's agent for the Client's account in any Client Transaction:
  - i. such Client Transaction shall be entered into at the Client's risk;
  - ii. the Bank may effect such Client Transaction with or through counterparties, brokers

or agents as specified on an internal preapproved list used by the Bank (while such list has been prepared and will be updated from time to time by the Bank with reasonable care to ensure that such counterparties, brokers or agents are reliable, the Bank has no responsibility for any acts or omissions of any of such parties);

- iii. if such Client Transaction is entered into by the Bank with or through a counterparty, broker or agent (including a counterparty that is an affiliate of the Bank), the Client shall indemnify the Bank on demand and hold the Bank harmless from any and all Losses and liabilities that the Bank may incur or suffer arising from or otherwise in connection with entering into such Client Transaction; and
- iv. notwithstanding any netting, offsetting, exchange, liquidation or closing out of obligations as may be applicable, the Client shall pay to the Bank upon its demand and indemnify the Bank on demand for any amount which may arise in connection with any position which would have been off-set under the foregoing provisions, but for any act, omission or insolvency on the part of any counterparty to or broker or agent in respect of any of the relevant contracts.

13.7 The Client represents, warrants and undertakes as follows:

- a. that the Client's Assets are and shall remain in the sole beneficial ownership of the Client (other than where the Client is/are a trustee(s) opening and maintaining an Account for the purposes of a trust, or a manager of a managed investment scheme or discretionary account opening and maintaining an Account for the purposes of managed investment scheme or discretionary account, as expressly known to and acknowledged by the Bank, in which case the Client represents and warrants that it is the sole legal owner of the Assets duly authorised by the beneficial owner(s) of the Assets to deliver and transfer the Assets to or to the order of the Bank for management or safe-custody of the Assets), and are and shall remain free from any claims and any Security Interest other than a Permitted Security Interest;
- b. that the Client will pay all calls and make all other payments due in respect of such Assets held by the Bank when due; and
- c. that the Client shall maintain in full force, validity and effect all governmental and other approvals, authorities, licenses and consents required in connection with the operating Account or otherwise;

- d. it has read and understood the Risk Disclosure Statements (as set out in Part D and/ or any other part of the Agreement);
- e. it has received, read and understood the information memorandum or other offering document, subscription agreement and any similar documents issued in relation to any Asset and setting out the terms and conditions and risks associated with such Asset which it intends to acquire;
- f. where, pursuant to a recommendation or solicitation from the Bank, the Client instructs the Bank or otherwise agrees to enter into a Client Transaction or invest in an Asset, the Client does so on the basis that:
  - i. it is satisfied with the information provided by the Bank in connection with such Client Transaction or Asset, including explanations of its risks and features; and
  - ii. the Client had an opportunity to ask questions and seek independent advice;
- g. where the Client instructs the Bank or otherwise agrees to enter into a Client Transaction or invest in an Asset (whether such Client Transaction or investment was recommended or solicited by the Bank or not), the Client does so on the basis that:
  - i. the Client understands the nature and risks of such Client Transaction or investment; and
  - ii. the Client enters into such Client Transaction or invests in the Assets at its own risk;
- h. it is eligible to acquire the Asset, that the acquisition is not in breach of any applicable taxation, exchange control, legal or regulatory requirement applicable to it; and
- i. it shall not give any instructions to the Bank which are in conflict with Clause 13.7(h).

All representations and warranties made by the Bank on behalf of the Client (for example, in relation to the Employee Retirement Income Security Act of the U.S., net-worth, citizenship etc.) shall be made solely based on information received from the Client, and the Client shall indemnify the Bank on demand in accordance with Clause 17 for any representation or warranty not being true at any relevant time.

13.8 For the avoidance of doubt, the Bank shall be entitled to exercise any and all of the powers set out in Clause 15.2 for the purposes of its holding of the Client's Assets in accordance with this Clause 13.

13.9 Unless the Bank otherwise agrees, the Bank will effect orders for the acquisition of Assets (on

behalf of the Client or on the instructions of the Client or otherwise) only if the Client has sufficient funds in the Account, or (subject to prior agreement with the Bank) if the Client has otherwise arranged in advance to make sufficient funds available, for such acquisition and related costs, expenses and amounts. The Bank will only effect orders for the disposal of Assets if such Assets are in the Client's Account free from all Security Interests other than Security Interests in favour of the Bank. Unless the Bank agrees otherwise, orders given are good only for the day on which the relevant orders were given to the Bank. The agreement of the Bank to provide a Service to the Client is subject to the Client giving any warranties and indemnities requested by the Bank. In the event of any shortfall of funds, the Bank reserves the right (but is not obliged), to sell or liquidate the Assets which the Client had contracted to buy at such price and in such quantities as the Bank may think fit and recover from the Client any Loss suffered or incurred by the Bank without any prejudice to any other right which the Bank may have against the Client. In the event that the Client does not own sufficient Assets which the Client has contracted to sell, the Bank reserves the right (but is not obliged) to buy-in the Assets and/or to recover Losses and penalty charges, if any, from the Client.

13.10 Subject to Applicable Laws, the Bank may aggregate the Client's orders (including Orders) with: (a) orders of persons connected with the Bank; or (b) orders of other persons. Such aggregation may on some occasions operate to the Client's advantage and on other occasions to the Client's disadvantage. If the aggregation results in the Client obtaining a less favourable price than would otherwise be the case, the Bank may (but shall not be obliged to) allocate and apportion the elements and pricing of the trade between the Client and other investors, at the Bank's sole and absolute discretion. The Bank may retain any benefit arising from aggregation in cases where it is not clear whether the benefit belongs to the Client rightfully or where the benefit is, in the Bank's opinion, too small. Market conditions may not permit the Client's aggregated orders to be executed at once or in a single transaction. The Bank may, therefore, execute orders over such period as the Bank considers appropriate and may report to the Client a volume weighted average price for a series of transactions so executed instead of the actual price of each transaction and the Client authorises the Bank to do so accordingly.

13.11 The Bank may (but shall not be obliged to) from time to time at its discretion temporarily advance moneys to the Client to enable the completion of purchase contracts to take place on or as soon as may be practicable after any due settlement date or to meet management or other charges which fall to be debited to the Accounts on such terms as may be agreed between the Bank and the Client. Such advances shall be repaid

on demand (and may at the Bank's discretion be debited from the Accounts) together with accrued interest which shall be charged at such rate as may be agreed between the Bank and the Client. The Bank expressly excludes all responsibility and liability for any breach by the Client of Applicable Laws or regulatory non-compliance that may result from the Bank's action under this Clause 13.11, and the Client acknowledges and agrees that it is solely responsible for its compliance with any prohibition regarding its ability to borrow or accept any advance of money from the Bank.

13.12 Upon receipt by the Bank of any sale proceeds or other payments (including, without limitation, interest, income or dividend) for the account of the Client, subject to any exercise by the Bank of its rights under Clause 13.10 or to the Client having given to the Bank any specific written instruction (including a standing instruction) to do otherwise (while such instruction remains in force and has not been withdrawn), the Bank is hereby authorised and directed to credit such sums to the Account.

13.13 Without limitation of any of the Bank's rights under the Application, and subject to Clause 13.19 and provided that any withdrawal of Assets is not in conflict with any Applicable Laws or the terms of the relevant subscription agreement, information memorandum or other offering document relating to an Asset or the terms of any document or agreement entered into between the Client and the Bank:

- a. the Client may withdraw all or any part of the Client's Assets on giving written notice to the Bank in a form satisfactory to the Bank ("**withdrawal notice**");
- b. any withdrawal, if in cash, shall, if necessary, be made from the proceeds of the sale of such Assets by the Bank (on such terms as the Bank consider appropriate, in its sole and absolute discretion) and shall be forwarded to a bank account nominated by the Client in the withdrawal notice; and
- c. if the Client wishes to withdraw Assets other than in cash, the Bank shall arrange for such Assets or for certificates evidencing the same to be forwarded to a financial institution or person nominated by the Client unless such certificates have not yet been received by the Bank, in which case the Bank will arrange for the Client to be so notified and for the certificates to be forwarded to the party nominated by the Client as soon as practicable after the receipt thereof by the Bank.

13.14 The Bank is expressly authorised and directed to deduct any amount due and owing to it by the Client from any moneys received by it for and on behalf of the Client or from any moneys standing to the credit of an Account of the Client. If the Client

fails to pay such amount within seven days after demand by the Bank (or within such other period as notified by the Bank), the Bank is hereby authorised, without notice to the Client or any other person, to sell by public or private sale all or any of such Assets upon such terms and conditions as it may deem fit and to apply the proceeds of any such sale, after deduction of the related expenses thereof, in payment or reduction of such amount. The Client agrees and acknowledges that the Bank may dispose of the Client's Securities or Securities collateral in settlement of any liability owned by or on behalf of the Client to the Bank or a UBS Group member.

13.15 The Client hereby irrevocably appoints the Bank and its nominees, agents and authorised officers severally (individually) to be the agent and attorney for the Client and in the name and on behalf and as the act or deed of the Client or otherwise, without any reference to or consent from the Client, to execute all documents and to do all things as may be required for the full exercise of all or any of the powers hereby conferred by the Agreement on the Bank or as it may consider expedient in connection with the Agreement.

13.16 At the request of the Bank, the Client shall execute such documents and deeds and perform such acts as the Bank may consider expedient, reasonably necessary or desirable in connection with the Bank's holding of the Client's Assets and executing the Client's instructions in accordance with the Agreement.

Without limitation to the generality of Clauses 17 and 18, to the extent permitted by law, the Bank and any agent appointed by the Bank shall not be liable for, and the Client agrees to indemnify and hold the Bank harmless from:

- a. any taxes or duties payable on or in respect of the Client's Assets;
- b. any reduction in the value of such Assets or the failure to secure a particular level of income or capital gain;
- c. any call, instalment or other payment relating to such Assets held by the Bank or any agent appointed by the Bank, or in relation to any such Asset arising or offered by way of redemption, bonus, preference, option or otherwise;
- d. any Losses of any kind which may be incurred by the Client as a result of the custody of such Assets and/or executing the Client's instructions unless due to the wilful default of the Bank or its agents or any of their officers or employees (in which case, the liability of the Bank shall not exceed the market value of such Assets at the time of discovery of such wilful default but in no circumstances

whatsoever shall the Bank be liable to the Client for any indirect, special or consequential damage whether or not the Bank is aware, or is advised of the possibility, of such damage);

- e. any Loss, damage, expense or liability which may be incurred by the Client as a result of the custodian services which may be provided by the Bank. The Bank shall not be liable for any act or omission of any broker or agent selected by it in good faith including any bank or depository used by it; and
- f. any expense, Loss or damage suffered by or occasioned to the Client by:
  - i. any act or omission or insolvency of any person not associated with the Bank (including without limitation, a third party, nominee or bank or depository used by the Bank);
  - ii. the collection or deposit or crediting to an Account of invalid, fraudulent or forged Assets or any entry in an Account which may be made in connection therewith;
  - iii. any malfunction of or error in the transmission of information caused by any electrical or mechanical machine or system or any interception of communication facilities, abnormal operating conditions, labour difficulties, acts of God, or any similar or dissimilar causes beyond the control of the Bank; and
  - iv. any Extraordinary Event.

Each agent appointed by the Bank shall be entitled to enforce and enjoy the benefit of this Clause 13.16 to the fullest extent allowed by the law. Nothing in the foregoing sentence shall affect the Bank's right to amend the Agreement in its sole discretion.

13.17 The Bank shall be under no duty or obligation to insure the Client's Assets for the Client (including without prejudice to the generality of the foregoing, against the risk of loss, damage, destruction or misdelivery of such Assets or any part thereof), and shall not be liable for any loss, damage or destruction howsoever caused.

13.18 Any termination of the Account or the relationship between the Bank and the Client and any return of the Client's Assets by the Bank to the Client, whether or not following termination, shall be without prejudice to the right of the Bank to settle any Client Transactions entered into or to settle any liability incurred by the Client hereunder or by the Bank or any agent on behalf of the Client prior to termination. The Bank shall promptly return any of the Client's Assets held by it to the Client after all Transactions and liabilities have been settled.

13.19 The Bank shall, in compliance with Applicable Laws

- a. as soon as practicable after carrying out any specific instructions given by the Client or an Authorised Signatory, issue a transaction advice confirming to the Client that such instructions were carried out; and
- b. render statements of account to the Client at such intervals as shall be agreed between the Bank and the Client; and

13.20 Where Applicable Laws allow the waiver of the requirement to issue a Confirmation and such waiver is obtained, the Bank may nonetheless issue a Confirmation to the Client and the Client acknowledges and agrees that such Confirmation may not necessarily be issued in accordance with the content, timing and other requirements which would apply under Applicable Laws if such waiver had not been obtained. The Client acknowledges and agrees that, subject to Applicable Laws, the Bank accepts no responsibility to send to the Client any information memorandum or other offering document and the Bank takes no responsibility for the contents of any third party information memorandum or other offering document, subscription agreement or any similar document or information in relation to any Asset. The Bank also makes no representation as to the performance or future performance of any Asset, and the Client acknowledges that it has not relied on any information, views or advice provided by the Bank or its employees or agents in making any decision to invest in or sell any Asset.

13.21 The Bank reserves the right to make allocations in such manner as it reasonably determines in its absolute discretion. Any allocations given by the Bank to the Client shall be binding on the Client. The Client acknowledges that it may not be allocated the full amount which it has requested. The Bank will not accept requests to alter or waive allocations after the allocations have been made.

13.22 The Bank may from time to time and at its sole and absolute discretion provide the Client directly or indirectly with reports, analysis, notices, correspondence (including e-mails) or other materials and information ("**Materials**") in relation to Assets or generally in relation to investments or markets. The Client understands and agrees that:

- a. any Materials provided to the Client are strictly for the Client's own use and will not constitute an offer or invitation to the Client to acquire any Assets or execute any Client Transaction;
- b. subject to the Applicable Laws, the Bank is not obliged to provide the Client with any Materials or give any advice or recommendation;



- c. it is solely responsible for keeping itself fully apprised of market prices and conditions and the effect of the same on any investments and margin positions held by it and that, other than as prescribed by Applicable Laws, the Bank shall accept no responsibility or liability for the performance of, monitoring of, or dealing with, such investments held in the Account;
- d. the Client is advised to seek its own independent professional financial advice before making any investment decision;
- e. the Client is capable of making its own decision to invest in any Asset and as to whether such investment is appropriate for the Client based upon the Client's judgement and advice received from such independent advisers as the Client deems necessary;
- f. any decision to invest in any Asset or execute any Client Transaction will be made on the Client's own risk; and
- g. to the extent permitted by Applicable Law, the Bank or its employees and agents shall not be responsible or liable for the accuracy and completeness of any such Materials, and the performance or outcome of any investment made or Client Transaction entered into by the Client after receipt thereof nor any advice or recommendation provided by the Bank or any of its employees or agents, irrespective of whether or not such report, analysis or other material or information, or advice or recommendation was provided at the Client's request. Accordingly any risk associated with and any Losses suffered as a result of the Client entering into any Client Transaction or investment in any Asset are for the Client's account.

13.23 Where the Bank effects any Transactions and/or acts on instructions given by the Client to the Bank, the settlement of which fails to occur on the specified date due to circumstances which the Bank has no meaningful control over, or primary responsibility for (including but not limited to cases involving third party brokers, exchanges, clearing houses and/or their respective platforms), the Bank does not accept any liability for a Transaction failing to actually settle in these circumstances. The Bank may, to the extent permitted under Applicable Laws, in its sole and absolute discretion provisionally credit and/or debit the Client's Account on such specified date as if the Transaction had in fact settled. However, at any time after the Bank has provisionally credited and/or debited the Client's Account and at the Bank's sole and absolute discretion, the Bank may, subject to Applicable Laws, reverse this provisional credit and/or debit on the Client's Account and adjust any interest

accrued accordingly to reflect that the settlement in fact did not take place on the specified date.

13.24 Despite anything else in these Terms and Conditions, to the extent permitted by Applicable Laws, the Bank does not accept any responsibility for any documents and/or information which are not prepared by the Bank, and further does not make any representations as to the accuracy, reliability or completeness of such documents and/or information.

13.25 The Client acknowledges and agrees that, where it provides an instruction to the Bank to invest in any Asset or execute a Client Transaction, the Client is capable of making its own decision to invest in the Asset or enter into the Client Transaction after having given due consideration as to whether such investment in the Asset or Client Transaction is appropriate and proper for the Client having regards to its financial situation, investment experience and investment objectives and all risks associated with the investment in the Asset or Client Transaction, based upon the Client's judgement and advice received by the Client from its own independent advisers (as the Client deems necessary). Where the Bank suggests to the Client that the Client's proposed course of action is not appropriate for the Client but the Client nevertheless wishes to proceed with the investment in the Asset or Client Transaction, the Client accepts and agrees that it undertakes such investment or Client Transaction solely at its own risk and that the Bank may proceed to execute the investment and/or the Client Transaction (subject to Applicable Laws) for and on behalf of the Client.

## 14. Discretionary asset management

14.1 The Bank may, at the request of the Client, upon execution of all relevant documentation and performance of such other actions by the Client (including but not limited to the deposit by the Client of the minimum required sum and provision of sufficient collateral as required by the Bank) agree to provide the Client with discretionary asset management services in accordance with the terms and conditions set out in such documentation.

14.2 In the unfortunate event of the death of the Client, the Portfolio Manager (as defined in the relevant discretionary asset management agreement) may continue to:

- a. rebalance the portfolio from time to time to optimise the chosen discretionary portfolio mandate until such time as the executor of the Client's estate is in a position

to provide the Bank and the Portfolio Manager with further instructions; and

- b. charge fees in accordance with the terms of the relevant discretionary asset management agreement.

## 15. Custody services

15.1 The Bank shall keep custody of Securities which the Client may place with the Bank from time to time in accordance with this Clause 15 and Applicable Laws. In any event, the Bank may, at its sole and absolute discretion, refuse to accept any particular Securities (including any physical scrip Securities) for custody. In the event that the Bank accepts physical scrip Securities for custody, the Bank shall not be responsible for the provision of any banking, processing or custodial services described in the Agreement, save as expressly set out herein or as otherwise expressly agreed in writing. Notwithstanding the foregoing, the Bank shall have the absolute discretion not to accept any or all of the Securities submitted by the Client for deposit. In connection with the custody of the Client's Securities in an Account on and subject to the terms of this Clause 15, the Bank shall provide the following services:

- a. the physical care of the Assets, where applicable;
- b. the collection of interest, dividends and principal amounts on maturity or sale of the Assets;
- c. the payment of moneys so collected to such account as may be designated by the Client in accordance with the Client's instruction;
- d. the furnishing of periodic statements in respect of the Client's Assets; and
- e. subject to Clause 15.13, the notification to the Client of redemptions, rights, issues, bonus issues and matters relating to corporate actions.

15.2 The Client hereby consents to the Bank taking and authorises the Bank to take such steps the Bank may consider expedient, reasonably necessary or desirable to enable it to hold and administer the Client's Assets in accordance with the Agreement and, without limitation, the Bank is authorised to exercise the following powers:

- a. to open and maintain one or more Accounts in the name of the Client;
- b. to exercise voting or other right for the Client and subject to the Client's instructions, exercise any voting and other rights attaching to or derived from Assets (provided that the Bank shall be

under no obligation to exercise voting or other rights for the Client, investigate, participate in or take affirmative action concerning any voting or other rights, including attending any meeting or exercising any voting or other rights);

- c. to comply with all Applicable Laws including the constitution, rules, regulations and by-laws of any stock exchanges, clearing houses, securities trading or central depository systems or regulatory authorities affecting any dealing functions or which impose or purport to impose on a holder of any Securities a duty to take or refrain from taking any action in connection with any such Securities or with any payment or distribution in respect of any Securities;
- d. to use the services of any agent of the Bank's choice (including the appointment of a sub-custodian on such terms as the Bank considers appropriate, including terms which allow the sub-custodian to sub-delegate the performance of some or all of the sub-custodian's duties);
- e. to register documents of title and other instruments relating to such Assets in such name(s) and to keep the same in such location(s) as the Bank shall think fit;
- f. to return to the Client such Assets being Assets of equivalent quantity, type and description which may not have the same serial number or other identification as those originally delivered to or received by the Bank;
- g. to the extent permitted by Applicable Laws, to commingle such Assets with the property of other persons in accordance with prevailing market practice;
- h. to request payment of, collect and receive all interest, dividends, payments or other distributions in respect of any Securities and, in connection therewith, the Client shall provide such indemnities as the Bank may in its absolute discretion require;
- i. to surrender any Assets against receipt of moneys payable at maturity or on redemption if called prior to maturity or against other Assets or such other form of investments delivered upon any exchange of the aforementioned Assets;
- j. collect moneys payable in respect of any Assets (including all interest, dividends, payment or other distribution in respect of such Assets) in such currency as the Bank may in its absolute discretion determine and pay such moneys to such account as may be designated by the Client in accordance with the Client's instruction;

- k. to exchange any Assets in interim or temporary form for other Assets or such other form of investments in definitive form and (where applicable) to deliver physical scrips to any central depository or other similar system set up for the purpose of scripless trading;
- l. in the case of scripless Assets, to effect the acquisition or disposal of such Assets through the Client's account or sub account maintained with any central depository or other similar system set up for the purpose of scripless trading;
- m. to deliver the documents of title and any other instruments relating to such Assets to the Client at the risk of the Client; and
- n. to comply with any Applicable Law which imposes a duty to take or refrain from taking action in connection with such Assets.

The Bank may choose on behalf of the Client to receive a distribution in cash or in kind, in its absolute discretion, unless the Client has expressly instructed the Bank in writing to select its preferred type of distribution prior to acquisition of the Securities by the Bank on the Client's behalf. The Bank shall be entitled to deduct from payments received on behalf of the Client all retrocessions received from any Assets in accordance with market practice, and all present or future direct and indirect taxes and other fiscal charges levied in Australia or elsewhere prior to the payment of such amounts to the Client.

15.3 The Client hereby represents and warrants that the Assets or any applicable title or other documents placed with the Bank to be held on and subject to this Clause 15 are authentic, valid and/or correct in every respect, and are and shall remain free from any Security Interest whatsoever other than any Permitted Security Interest and, in addition to any other provision of the Agreement, (without limitation to the generality of Clause 17), the Client hereby agrees to fully indemnify and hold harmless the Bank on demand against any liabilities, Losses, damages and costs that the Bank may suffer in reliance due to or arising out of the above warranties and representations being untrue or incorrect in any respect.

15.4 The Client understands and agrees that the Bank is not at any time under any duty or responsibility to: (a) supervise or monitor the investment of; or (b) subject to Applicable Laws, advise or make any recommendations for any Client Transaction to the sale, purchase or disposal of Assets held by the Bank in custody unless specifically provided for by way of a separate written mandate and agreement. In particular, in relation to (b) above, the Client acknowledges and agrees that it is capable of making its own decision to enter into any such Client Transaction and as to whether such Client Transaction is appropriate for the Client based upon the Client's judgement and

advice received from such independent advisers (as the Client deems necessary) and that it will enter into any such Client Transaction at its own risks. For any transfer-in of Assets other than in cash, the Client acknowledges and agrees that (i) the Client has the relevant experience and understanding of the features and risks of any such Asset at the time of executing the transaction; and (ii) the inclusion of the Asset in the Client's portfolio may affect the portfolio's suitability. The Client should seek full independent professional advice to the extent that it does not understand the features and/or risk associated with any particular Asset.

15.5 The Client acknowledges and agrees that the Securities may at the Bank's discretion be at any time held or registered in the name of the Bank or such person as the Bank may direct, including without limitation the Bank's appointed nominee company (the "**Nominee**") or in a sub account maintained with any securities depository or depository agent.

15.6 The Client acknowledges that the Bank is under no obligation to request or obtain, or to otherwise procure or ensure that it obtains or receives, any notices or communications from third parties in respect of Securities held by the Bank for the Client. Where the Bank receives any such notice or communication, it will take reasonable steps to forward it, as soon as practicable after receipt, to the Client at the address registered in the Bank's records unless otherwise instructed by the Client in writing, or unless the said notice or communication relates to a class action notice or mini tender offer. Other than to the extent required under this Clause 15 or Applicable Laws, the Bank shall be under no obligation to forward any notice or communication in relation to the Client's Securities or other Assets to the Client. The Client further acknowledges that the forwarding by the Bank of such notices or communications to the Client shall not constitute a solicitation, recommendation or advice on the part of the Bank (whether in relation to investment activity or any other activity or service) and that the Bank shall have no liability to the Client for the content of such notices or communications. The Client acknowledges and agrees that, except in the case of wilful neglect, neither the Bank nor the Nominee shall have no liability for any Loss suffered by the Client due to or in connection with any failure to forward any notices or communications received in respect of the Assets held by the Bank correctly or promptly or in sufficient time for instructions to be given with regard to any matters referred to in such notice or communication.

15.7 The Client acknowledges and agrees that the Assets may be held outside of Australia in a jurisdiction where it is not permissible or practicable to hold the assets on trust under the laws of the relevant foreign jurisdiction. In such circumstances the Assets may not be held on trust.

15.8 In the absence of prior contrary instructions from the Client, the Bank shall have discretion on behalf of the Client to exercise any rights or satisfy any liabilities arising from or in respect of the holding of Assets as the Bank may think fit, the Bank may debit any of the Client's Accounts with the costs involved, and the Bank shall not be under any liability to account for any Loss occasioned by the exercise of such rights or the satisfaction of such liabilities or the failure to do so.

15.9 Without limiting the generality of Clause 15.6, upon the occurrence of a corporate action (including any actual or proposed takeover, offer, sale, merger, compromise, arrangement, bankruptcy, insolvency or administrative proceeding affecting or in relation to any Securities or the issuer of any Securities or in relation to any rights for conversion, transfer or exchange of Securities) in respect of which this Clause 15 does not specifically prescribe a course of action or impose an obligation on the Bank, the Bank shall have full discretion to decide whether or not to take any particular action in respect of such corporate action and to carry out any instruction from the Client in relation thereto. For the avoidance of doubt, the fact that the Bank decides not to take any action with respect to such corporate action (including any enforcement action in relation to any Securities and/or any legal proceedings involving holders of such Securities) shall not prejudice the Bank's rights under any security document executed by the Client in favour of the Bank. The Client acknowledges and agrees that the Bank shall have no liability for any Loss suffered by the Client due to or in connection with any such action taken or not taken by the Bank or the Bank's refusal to carry out any instructions under this Clause 15.9, except to the extent that such Loss is caused directly by the Bank's fraud, wilful default or gross negligence.

15.10 The Bank shall have no other fiduciary or other obligations in respect of the Client's Securities which are kept in safe custody by the Bank except for those set out expressly in this Clause 15 or as otherwise expressly agreed in writing.

15.11 For the Services to be rendered by the Bank in relation to the custody of Assets, the Client agrees to pay the Bank's fees in accordance with the Bank's published scale of fees in force at the relevant time and the Agreement (or such other terms and conditions applicable to such Accounts as the Bank may specify from time to time). The Client acknowledges and agrees that, unless it has notified the Bank otherwise in writing, it will be deemed to have received, read, understood and agreed to the Bank's published scale of fees from time to time.

15.12 The Bank is hereby authorised by the Client to execute, as custodian, any necessary declarations or certificates of ownership under any tax laws now or hereafter in effect. Without limitation to

the generality of Clause 17, the Client agrees to be responsible for and fully indemnify and hold harmless the Bank from and against all Losses, liabilities, claims and demands arising and against any expenses, taxes and other charges which the Bank is required to pay in connection therewith.

15.13 Without limitation to the generality of Clause 17, where the Bank holds Assets pursuant to this Clause 15 which are Securities registered in the name of the Bank, the Nominee or agents, including without limitation pursuant to Clause 15.2(d), the Client undertakes to hold the Bank and the Nominee and agents harmless from any liability or penalty whatsoever as holder of record.

15.14 Assets deposited with the Bank may at the Bank's discretion be re-deposited with correspondent banks or in any central clearing facility or securities depository, sub-custodian, Nominee or agent (including any depository agent) selected by the Bank in the name of the Bank or such person as the Bank may direct, but for the Client's account and at the Client's sole risk. Subject to Applicable Laws, the Bank shall not be responsible for any act, omission or default for the insolvency of such correspondent banks, any central clearing facility, securities depository, sub-custodian (with the exception of Credit Suisse (Schweiz) AG (and any successor entity to it) which the Bank accepts liability for any of its acts, omissions or defaults), Nominee or agent (including the depository agent). Securities deposited with the Bank or held by any third party in the name of the Bank or such person as the Bank may direct may be held on a tangible basis or commingled with securities belonging to other parties. The Client understands and agrees that identification by distinctive numbers of Securities owned by the Client may not be possible and that the Client's interests in such Securities may not be identifiable by separate certificates or other physical documents or equivalent electronic records. In any such case the Bank shall maintain its own account(s) recording the Client's interests in such Securities.

15.15 In respect of the Custodian Account, the Bank will be responsible for the performance of only such duties as are set out in this Clause 15 or as are otherwise agreed in writing. The Bank will use the same care with respect to the custody of Securities held by the Bank pursuant to this Clause 15 as the Bank uses in respect of its own similar property. All collections of funds or other property paid or distributed in respect of Securities held pursuant to this Clause 15 will be made at the Client's own risk. The Bank will not be responsible for any act or omission, or for the solvency of any broker or agent selected by the Bank to effect any Client Transaction for or in relation to the Securities held by the Bank pursuant to such Securities. The Client warrants its authority to deposit in the relevant

Account all such Securities received by the Bank hereunder and to give instructions relative thereto.

15.16 Unless the Bank has been granted a Security Interest in the Securities and provided that this is not in conflict with any Applicable Laws or the terms of the relevant subscription agreement, information memorandum or other offering document relating to any Securities, the Securities deposited with the Bank's custody are subject at all times to the Client's control.

15.17 The Bank or the Client may terminate the provision of Services under this Clause 15 at any time. Upon termination, the Bank will, subject to the release and discharge of any Security Interests in favour of the Bank in such Securities, deliver directly to the Client all Securities held in the Bank's custody forthwith upon the Client satisfying all amounts due and payable to the Bank under or in connection therewith. The Client acknowledges the Bank's right to exercise its lien in respect of the Securities until payment in full is made to the Bank. In the event that the Bank determines (whether due to any legal, operational or any other form of restriction or constraint) that it is not able to deliver the Securities to the Client upon termination of the Service under this Clause 15, to the extent permitted by Applicable Laws, it shall have the right to sell or liquidate any such Securities at the prevailing market prices (as determined by the Bank in its sole discretion) and the delivery of the sale proceeds from the sale or liquidation of such Securities to the Client shall fully discharge the Bank from all obligations and duties that the Bank may have towards the Client with respect to such Securities.

15.18 The Bank nor any sub-custodian or agent holding the Securities on behalf of the Client shall be bound to return Securities bearing serial numbers or other identification marks corresponding to those deposited or transferred so long as the Securities returned are of the same class, denomination, and nominal amount and rank pari passu with those originally deposited or transferred (subject always to any capital reorganisation which may have occurred in the meantime).

15.19 The Client acknowledges that withholding or other tax may have to be deducted from payments or income on Securities under Applicable Laws. The Client undertakes to inform the Bank forthwith regarding the Client's tax status or change thereof that has an impact on whether tax has to be deducted from any payments or income due to the Client or in such other circumstances as may be required by the Bank.

15.20 The Bank is authorised by the Client to execute, as custodian, any necessary declarations or certificates of ownership under any tax

laws now or in future in effect. In addition to any other provision of the Agreement:

- a. the Client agrees to be responsible for and indemnify the Bank on demand from and against all losses, liabilities, claims and demands arising and against any expenses, taxes and other charges which the Bank is required to pay in connection with those declarations and certificates; and
- b. where the Securities kept in the Bank's custody are registered in the name of the Bank, the Nominee or their agents, the Client undertakes to hold the Bank, the Nominee and their agents harmless from any liability or penalty whatsoever as the registered holder of record.

15.21 The Client (on behalf of itself and each Ultimate Owner) acknowledges and agrees that the Bank may be required under Applicable Laws to force sell Securities in the Client's Account, and that the Bank is authorised without further notice to the Client or any other person to sell by public or private sale all or any of such Securities upon such terms and conditions as it may consider appropriate, or as may be prescribed by Applicable Laws, and the Bank shall not be responsible or liable to the Client for any Losses or Claims incurred or suffered arising out of or in connection therewith.

15.22 In this Clause 15, references to the "Bank" include, where the context so permits, the Nominee (in addition to the Bank's successors and assigns).

## 16. Disclosure requirements

16.1 In consideration of the Bank (or an affiliate of the Bank) acting on the Client's instructions either to:

- a. acquire or subscribe for shares and/or other interests in a company for and on the Client's behalf and/or to do so on behalf of persons connected to or authorised by the Client, in which company the Client or an affiliate of the Client is holding a directorship or any position connected to that company which could be deemed as a reportable or disclosable position under any relevant laws, rules and/or regulations (the "**Connected Company**"); and/or
- b. acquire, grant or facilitate (either as principal or for and on the Client's behalf) any derivative instrument or debt or credit facility in connection with an interest in or over shares and/or other interests in the Connected Company (including any margin loan in relation to such shares and/or interests); and/or

- c. directly or indirectly hold or custody shares in the Connected Company for and on the Client's behalf and/or to do so on behalf of persons connected to or authorised by the Client, or otherwise in connection with a transaction contemplated by Clauses (a) or (b) above;

(collectively the **"Transactions"** and individually a **"Transaction"** in this Clause 16), the Client irrevocably and unconditionally undertakes and declares to ensure to every extent possible, the strict adherence and due compliance with all relevant and applicable share disclosure requirements according to the applicable legislation, rules and/or regulations (including the rules of any applicable securities exchange) in force from time to time in relation to the Transaction(s) (the **"Legislation"** in this Clause 16).

16.2 In relation to any Client Transaction(s), the Client further understands and agrees irrevocably and unconditionally, and declares, warrants and represents to the Bank, that:

- a. it has the sole responsibility for ensuring that any necessary individual or corporate reporting and disclosure requirements and shareholding restrictions under the Legislation (and including requirements and restrictions arising in relation to or imposed on affiliates of the Client, to the extent those requirements and restrictions relate to the shares and/or interests that subject of the Transaction(s)) ("Disclosure Requirements" in this Clause 16) (if any) are strictly complied with and it is aware and agrees that the structure used to keep custody of the Assets may require the disclosure of information under Applicable Laws even if the Client's individual shareholding does not cross a shareholder threshold;
- b. it is the sole legal and beneficial owner of the shares or interests or positions in the Client Transaction(s) (unless full information on the legal or beneficial ownership has otherwise been disclosed in writing to the Bank). The Client further agrees to provide the Bank from time to time if required, instruction and documentation to enable the Bank to disclose its obligations if any to verify the beneficial owner of the Client under Applicable Laws and it shall cooperate with the Bank, governmental and regulatory authorities and/or other parties in respect of any disclosure and/or reporting requirements;
- c. that for the duration of the relationship with the Bank, it has complied and will comply with all Disclosure Requirements to which the Client is subject for the duration of the Agreement;
- d. it will personally ensure that the Disclosure Requirements are continually kept in compliance and adhered to as may be required by the

Applicable Laws and/or any relevant governmental or regulatory authority, and that the Bank need not enquire into or verify any such actions;

- e. the Bank and/or any of its affiliated companies and other entities may make such disclosure and/or reporting as may be required by the Legislation to any relevant supervising or regulatory authority enquiring into any Transaction(s) and/or in relation to the Bank's role as the custodian;
- f. it shall indemnify on demand and hold the Bank harmless from all claims, liabilities, losses, costs, expenses and fees (on a full indemnity basis) that it may howsoever incur as a result of any breach or alleged breach of the Disclosure Requirements; and
- g. that the Bank need not at any time, enquire and/or remind the Client of the Disclosure Requirements.

## 17. Indemnity

17.1 Each of the Client and the Security Parties agrees to hold the Bank and all of its officers, employees, correspondents, nominees, Affiliates and agents harmless, and shall indemnify each of them promptly on demand on a full indemnity basis or to the extent permitted under Applicable Law, from and against any and all Losses and Claims of **whatever nature and howsoever arising**, except where directly caused by the Bank's gross negligence, fraud or wilful default where the Bank has been found to have been grossly negligent, fraudulent or in wilful default in a final decision made by a court in the Jurisdiction, which the Bank may incur or sustain arising out of or in connection with the Agreement or arising out of or in connection with providing Services to the Client and/or any Security Party, or operating the Account, including the following:

- a. the Bank acting upon or carrying out any instructions which the Bank has reasonable grounds to believe to be given to the Bank pursuant to the Agreement;
- b. the Bank using any system or means of transmission, communication, transportation or otherwise in carrying out such instructions (including by reason of loss, delay, misunderstandings, mistakes, distortions or duplications);
- c. default in repayment of any advances upon demand or interest accrued on them or any sum payable under the Agreement or under any other agreement, security document, facility document or any other document whatsoever

- entered into pursuant to the Agreement or otherwise entered into by the Client and/or any Security Party in relation to its obligations in favour of the Bank (including any Losses or Claims sustained or incurred by the Bank in liquidating any of the Bank's time deposits (whether in Australian Dollars or other foreign currencies) or any foreign exchange contracts, or in taking proceedings under the Agreement or under any such agreement or security document, facility document or other document);
- d. any change in Applicable Laws relating to the Account or affecting the Agreement;
  - e. the collection of any cheque, bill, note, draft, dividend, warrant, or other instrument presented by the Client for collection or the guaranteeing of any endorsement or discharge of the same and in connection with all or any of the matters or Services in respect of the Account;
  - f. the Bank acting pursuant to the Agreement before its receipt of written notice of the termination or revocation of the Agreement whether by operation of law applicable to the Client or otherwise;
  - g. the Bank enforcing or attempting to enforce any rights it may have against the Client and/or any Security Party pursuant to the Agreement;
  - h. the Bank complying with requests or orders from any Governmental Authority or Regulator in any jurisdiction;
  - i. any breach by the Client and/or any Security Party of any of the Agreement or such other terms and conditions as are applicable to the Services provided or to be provided by the Bank to the Client;
  - j. the Bank complying with requests or orders from any Governmental Authority or Regulator in any jurisdiction;
  - k. the Bank taking any action in respect of a Client Transaction undertaken pursuant to an uncovered (or naked) short selling order or a short selling order (as defined under Applicable Laws) placed by the Client with the Bank (including reversing or cancelling the Client Transaction, or purchasing or borrowing Securities or taking other action to allow the Bank to execute the Client Transaction);
  - l. the Bank taking any action in respect of a Client Transaction which violates the relevant information memorandum or other offering document or subscription agreement relating to that Asset (in such case, the Bank may disregard the Client's instructions,

unwind the Client Transaction or take any other step which it deems suitable); or

- m. the occurrence of any Event of Default

17.2 The Bank enters into this Clause 17 as agent for the Bank's employees, correspondents, nominees, affiliates and agents. The terms of this Clause 17 and all of the rights of the Bank under it shall apply to, and be conferred on, each of the Bank's employees, correspondents, nominees, affiliates and agents, all of whom shall be entitled to enforce and enjoy the benefit of this Clause 17 to the fullest extent allowed by Applicable Laws. Nothing in the foregoing sentence shall affect the Bank's right to amend this Agreement in its sole discretion in accordance with this Agreement.

## 18. Exclusion from liability

18.1 The Bank shall not be responsible for or liable to the Client, the Borrower or any Security Party for any Loss or damage which may be suffered by the Client, the Borrower and/or any Security Party in any way in relation to any Service covered or contemplated under the Agreement (including without limitation any Loss or damage arising as a result of the Bank disregarding instructions, unwinding a Client Transaction or taking any other step which it deems suitable pursuant to the Agreement), howsoever caused, except for any such Loss or damage which is due to the Bank's fraud, wilful default or gross negligence. Under no circumstances shall the Bank be liable to the Client, the Borrower or any Security Party or any other person for any incidental, consequential, indirect, special or exemplary damages of any kind or nature whatsoever or for any loss of revenue, loss of profit, loss of business, loss of opportunity or loss of goodwill arising from any representation, any breach of implied term or any duty at common law or under any statute or express term of the Agreement, and whether such liability is asserted on the basis of contract, tort or otherwise, whether or not foreseeable, even if the Bank has been advised or was aware of the possibility of such indirect damages.

18.2 Without limitation to the generality of the foregoing, the Bank (and agents appointed by the Bank) shall not be responsible for or liable to the Client for:

- a. any drawings made under any lost cheques or cheques on which fraudulent alterations or forgeries have been made or any related Loss suffered by the Client;
- b. any delay or Loss or reduction in the value of any funds (including but not limited

to any funds credited to the Account) due to any reason whatsoever (including, without limitation, the occurrence of any Extraordinary Event) and whether arising in Australia or in any place in which the Bank has deposited such funds or otherwise;

- c. any Loss or damage suffered by the Client as a result of fraudulent instructions or information in relation to the Account received by the Bank from an intruder having interfered, intercepted or diverted the Client's or an Authorised Signatory's instructions or communications (whether sent by e-mail, fax or other methods of communication) or with the Client's or an Authorised Signatory's communications systems (including the Client's or Authorised Signatory's e-mail address); and
- d. the consequences of falsifications or faulty identification which, despite the exercise of due care, the Bank is unable to detect.

18.3 No delay on the Bank's part in exercising any power of sale or any other rights or options hereunder and no notice or demand which may be given to or made upon the Client by the Bank with respect to any power of sale or other right or option hereunder, shall constitute a waiver thereof, or limit or impair the Bank's right to take any action or to exercise any power of sale or any other rights or options hereunder without notice or demand, or prejudice the Bank's rights as against the Client or any Security Party in any respect or render the Bank responsible for any Loss or damage arising from doing so.

18.4 The Bank may grant time or other indulgence to the Client or the Borrower or any of them or any other person, without impairing or affecting in any way any of the Bank's rights as against the Client or the Borrower or any such other persons.

18.5 All obligations of the Bank and their performance by the Bank shall be excused by events beyond the reasonable control of the Bank (including, without limitation: (i) the imposition, introduction, amendment or change (including a change in interpretation) of any Applicable Laws or any failure or delay by a governmental or regulatory authority in enforcing such Applicable Laws; (ii) circumstances caused by force majeure, acts of God, calamity, natural disaster, industrial actions, power failure, computer breakdown, war, acts of terrorism, civil strife, sabotage, acts or defaults of any telecommunications network operator and circumstances where communication lines for the Bank's computer systems (whether in the Jurisdiction or otherwise) cannot be used for reasons attributable to third-party communication carriers or the occurrence of any Extraordinary Event). In addition, the Bank and its correspondents and agents shall not be responsible or liable for mutilation, interruptions,

omissions, errors or delays in the issue or remittance of drafts, as a result of the occurrence of such events.

18.6 Without limitation to the generality of the foregoing, the Bank shall not be liable to the Client for the unavailability of funds credited to the Account(s) or for any Loss, damage, delay or failure to perform any obligations arising from or in connection with the occurrence of any Extraordinary Event which restricts or controls the availability, convertibility or transfer of any funds of the Client or any other person, whether before, on or after maturity and whether in Australia, in the country of origin of the currency of such funds or elsewhere. In the event of the occurrence of any such Extraordinary Event, the Bank may in its sole discretion (but shall not be obliged to) discharge its obligations with respect to such funds by paying to the Client or to the Client's order such funds at any time (whether before, on or after maturity), in any currency (whether in the currency in which such funds are denominated or in any other currency), at any rate and in any manner (whether by way of draft or cash or by applying such funds towards satisfaction of any of the obligations of the Client or any person to the Bank), in each case as the Bank may determine in its sole discretion. The Client agrees that any such payment or application of such funds by the Bank in accordance with this Clause shall constitute good and valid discharge of the Bank's obligations to the Client with respect to such funds.

18.7 No other UBS Group Member shall be responsible or liable for any of the liabilities or obligations of the Bank hereunder or for the Bank's failure to meet the Client's demand for the withdrawal of any amounts from the Account arising from any cause whatsoever whether or not beyond the control of the Bank. Without limitation to the generality of the foregoing, the Bank shall not be liable for any acts, errors, neglects or defaults, actions or omissions, insolvency or failure in business of any of the Bank's correspondents, contractors, sub-agents or other agents or of their employees.

18.8 The Bank shall not be liable for any Loss or damage suffered by the Client or any other party where a cheque, in respect of which (a) instructions to stop or countermand payment had been given by the Client and (b) the Bank had in good faith followed the usual procedures for handling such instructions, nevertheless, for any reason whatsoever, be paid or certified by the Bank and the Bank shall be entitled to debit from the Client's Account the full amount of any such cheque paid notwithstanding such instructions.

18.9 The Bank shall not be liable for any Loss which may be suffered by the Client or any other party arising from any action taken by the Bank which it believed to be in its interests (including any



disclosure made by the Bank to any governmental or regulatory authority in any jurisdiction).

18.10 As between the Client and the Bank, the Client shall be liable for any damage resulting from the Client's mental incapacity or other incapacity of whatever nature to act. The Client shall also be liable in all cases for any damage or Loss resulting from the mental incapacity or other incapacity of whatever nature to act on the part of the Client's Authorised Signatory or representative or other third party.

18.11 In the event of damage resulting from the non-execution or late execution of instructions (with the exception of instructions relating to Client Transactions on the stock exchange), the Bank's liability shall be limited to an amount equal to the loss of interest, unless its attention has been expressly directed to the risk of more extensive damage at the time of and in respect of such instructions.

18.12 If the Bank thinks fit, the Bank may place the Client's orders for execution and/or settlement with or through another person (who may be connected with the Bank) as the Bank shall in its discretion select, subject to whatever terms the Bank may agree with such person. In particular, orders will be placed on the basis that such person will be solely responsible for the execution of the Client Transaction and the Bank shall not be responsible for such execution or any default of such person in connection with such execution.

18.13 The Client agrees that any action or omission taken or suffered, and any delay in acting by the Bank, or by any of the Bank's agents, employees or correspondents, under or in connection with any relevant credit or instruments, documents or property, if in good faith, and in conformity with such Applicable Laws as the Bank or any of the Bank's agents or correspondents may consider applicable, shall be binding upon the Client.

18.14 The Bank shall not be under any obligation or liability to engage in litigation and/or any proceedings or actions relating to disputes about, to the recovery of, or to claims to, any of the Client's Assets. In such cases, the Client may instruct the Bank to transfer such Assets to the Client or to a third party designated by the Client. The Bank does not assume any responsibility for refusal by the issuer or counterparty of any Assets to transfer the Assets to the Client or the designated third party. The obligation to pursue any claim or dispute in relation to the Client's Asset's shall be the sole responsibility of the Client.

18.15 The terms of this Clause 18 and all of the rights of the Bank shall apply to, and be conferred on, each of the Bank's employees, correspondents, nominees and agents, all of whom shall be entitled to enforce and enjoy the benefit of this Clause 18 to the

fullest extent allowed by Applicable Laws. Nothing in the preceding sentence shall affect the Bank's right to amend the Agreement in its sole discretion.

18.16 Nothing in the Agreement shall operate so as to exclude liability for death or personal injury, or remove, exclude or restrict any rights of the Client or obligations or liability of the Bank, insofar as prohibited under Applicable Laws.

## 19. Rights of set-off, consolidation and lien

19.1 The parties agree that:

- a. in addition to any rights the Bank may be entitled to under Applicable Laws or otherwise (including any right of set off which the Bank may have under general law), the Bank may at its discretion at any time and from time to time without prior notice to the Client and/or any Security Party or any Client Affiliate, combine, consolidate or merge or set off the balances on all or any of the Accounts and/or with UBS AG or any account of the Security Party with the Bank (whether held individually or jointly) or any account with any UBS AG Affiliate held at any branch of UBS AG or with any UBS AG Affiliate whether located in Australia or any other country (notwithstanding that any fixed deposit has not matured or any of the conditions applicable to any Account have not been satisfied);
- b. further, the Bank's right of set-off shall include a continuing right at any time and without any prior notice or demand immediately to transfer, debit and set-off all or any part of any balance standing to the credit of any Account (whether held individually or jointly and including noncurrency Accounts) in the name of the Client and/or any Security Party or any Client Affiliate with any branch of UBS AG or any account in the name of the Client and/or any Security Party or any Client Affiliate with any UBS AG Affiliate (the **"Deposits"**) and to apply the same in or towards payment or satisfaction of all present and future indebtedness and liabilities (including, without limitation, any Early Close-Out Amount, all costs, charges and expenses incurred by the Bank and all goods and services tax and other duties and taxes payable thereon) of the Client and/or any Security Party or any Client Affiliate to the Bank or any UBS AG Affiliate and/or of any person to the Bank or any UBS AG Affiliate for which the Client and/or any Security Party or any Client Affiliate is liable, whether as surety or otherwise, whether owing individually, jointly

or jointly and severally, present or future, actual or contingent on any current or other account and all interest and bank charges (hereinafter collectively referred to as the **"Liabilities"**);

- c. the Client and/or any Security Party agrees that the authorisation given in this Clause is irrevocable so long as any Liabilities are due from the Client and/or any Security Party or any Client Affiliate to the Bank or any UBS AG Affiliate. Such transfer, debit or set off (as referred to in (b) above) shall not be deemed to be a payment of the amount due (except to the extent of any amount standing to the credit of the relevant account of the Client and/or any Security Party or Client Affiliate) or a waiver of any Event of Default relating to the Facilities;
- d. if such transfer, debit or set out (as to in (b) above) debiting causes the Client's Account and/or account of any Security Party to be overdrawn, interest shall be payable accordingly on the overdrawn amounts;
- e. if an obligation is unascertained, the Bank may in good faith estimate that obligation and set-off in respect of that estimate; and
- f. none of the Client and/or any Security Party or any Client Affiliate may set off any amount owed by it to the Bank or any UBS AG Affiliate against any indebtedness or liabilities owed to it by the Bank or any UBS AG Affiliate.

19.2 If any of the Liabilities is in a different currency from the amounts standing to the credit of such Accounts of the Client or any accounts of any Security Party or any Client Affiliate over which the Bank may exercise a right of set-off, the Bank is hereby authorised to effect any necessary conversion, at such rate of exchange as it may conclusively determine, in order to exercise such right of set-off (and the costs of such conversion shall be borne by the Client). Where the Account is a metal claim account, the Bank may, in exercising its right of set-off, convert the relevant metal value into any currency value at the prevailing market rate of the metal at the time of such set-off.

19.3 The Client and each Client Affiliate hereby authorises the Bank (including on behalf of any UBS AG Affiliate) to extend or renew any of the Deposits from time to time at the Bank's sole discretion and without reference to the Client or any Client Affiliate and for the removal of doubt the Client and each Client Affiliate confirms that in the event of the extension or renewal of the Deposits any renewed deposit advice or other renewed evidence of deposit shall continue to be held by the Bank or any UBS AG Affiliate on the same terms as the original advice or other original evidence of deposit.

19.4 In addition and without prejudice to the Bank's general right of set-off under law, herein or otherwise, the Bank and each UBS AG Affiliate is deemed to have exercised its right of set-off upon the happening of any of the following events:

- a. the presentation of a bankruptcy or winding-up petition, a petition for the appointment of a judicial manager or similar officer in relation to the Client or any Security Party or any Client Affiliate, or other similar process, or the passing of a resolution to effect the same; and
- b. any execution is issued against or levied upon any of the Accounts or any account held with any UBS AG Affiliate.

For the avoidance of doubt, nothing in the Agreement shall prevent the Bank from exercising any general right of set-off which it may be able to exercise, under law, the Agreement or otherwise, including upon the occurrence of an Extraordinary Event or Event of Default or in the event of the death, mental incapacity or other incapacity to act of the Client (or, if the Account is opened in the joint names of more than one Client, of any such joint Client).

19.5 The Bank has a right of lien over all Assets it may hold from time to time for any Account of the Client, whether in the Bank's own custody or placed elsewhere in the name of and/or under the control of a third person, in respect of all claims which the Bank or any affiliate of the Bank may have against such Client, regardless of the due dates of such claims or the currencies in which they are expressed or whether the Facilities have been granted unsecured or against security. Upon the occurrence of an Event of Default, the Bank shall be entitled without further notice to dispose, either by enforced sale or in the open market, of any Assets over which the Bank has a right of lien, and to apply the proceeds of such disposal in or towards paying or satisfying any liabilities of the Client to the Bank which shall include all costs, expenses and charges incidental to such disposal. The Bank shall not be responsible for any resultant Loss (howsoever arising) if it has used reasonable endeavours to sell or dispose of the Assets over which the Bank has a right of lien, in whole or in part, at the then available market price or such other price that the Bank deems appropriate in the circumstances. The Client remains liable for any deficiency if the net proceeds of sale or disposal are insufficient to cover all of the outstanding liabilities owed by the Client to the Bank. The Client agrees, at the request of the Bank, to perform all such acts as may be necessary for the purpose of maintaining, protection or perfecting the Bank's right of lien.

19.6 If any security or payment to the Bank or any UBS AG Affiliate is avoided or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation for the time being in force, any

settlement, assignment, payment, release or discharge between the Bank and/or any UBS AG Affiliate and the Client and/or any Client Affiliate shall be wholly void and the Bank and any UBS AG Affiliate shall be entitled to exercise all its rights against the Client and/or any Security Party and/or Client Affiliate as if such settlement, assignment, payment, release or discharge had never been granted, given or made.

19.7 Nothing in the Agreement shall be treated as constituting any restriction or waiver of any rights or remedies to which the Bank is or may at any time be entitled by law or otherwise.

19.8 The Bank enters into this Clause 19 as agent for all offices, other branches, affiliates and associate companies of UBS AG (in this Clause 19, the **"UBS AG Affiliates"**), and the terms of this Clause 19 and all of the rights of the Bank hereunder shall apply to, and be conferred on, those offices, other branches and affiliate or associate companies of UBS AG, all of which shall be entitled to enforce and enjoy the benefit of this Clause 19 to the fullest extent allowed by the law. Nothing in the foregoing sentence shall affect the Bank's right to amend these Terms and Conditions in its sole discretion in accordance with these Terms and Conditions.

19.9 The Client enters into this Clause 19 as agent for all offices, other branches, affiliates and associate companies of the Client (in this Clause 19, the **"Client Affiliates"**), and the terms of this Clause 19 and all of the obligations on, the Client hereunder shall apply to, and be binding on, any of those offices, other branches and affiliate or associate companies of the Client, all of which shall be bound by this Clause 19 to the fullest extent allowed by the Applicable Laws.

## 20. Representations, warranties and undertakings

20.1 So long as the Accounts are maintained with the Bank, the Client undertakes:

- a. to comply, at the Client's own cost, with all Applicable Laws in respect of all Services (including without limitation Applicable Laws relating to tax legislation, capital transfer or foreign exchange restrictions and controls, capital controls and personal information in respect of any personal information transferred or otherwise provided to the Bank, including obtaining the consent of or making the required notification to, where necessary, the individuals to whom the personal information relates);
- b. to comply with all terms and conditions of the documents relevant to all Client Transactions, Facilities or other transactions that it enters into in respect of an Account or in connection with a Service;
- c. that it is aware of the tax implications and the reporting, registration and/or disclosure obligations (if any) to any Regulator, exchange, clearing house or other body or institution that may arise in respect of any Service and further undertakes that it shall be and will continue to be solely responsible for, and acknowledges that the Bank shall in no way be responsible or liable for, the satisfaction of and the compliance with all tax laws and regulations, reporting, registration and/or disclosure obligations applicable to the Client;
- d. to execute such documents, provide such security to the Bank and do such acts or deeds at the Client's own cost as may be reasonably required by the Bank at any time in connection with any Service provided or any Transactions between the Client and the Bank; and
- e. to provide the Bank with all information regarding, among other things, the Client's financial situation, investment experience and investment objectives, to allow the Bank to comply with its contractual obligations to the Client as well as Applicable Laws. The Client acknowledges and agrees that if the Client does not provide the Bank with such information or explanations (whether personalised or not), the Bank may not take into account all information relevant to the Client;
- f. to notify the Bank in writing of:
  - i. any change in the Client's particulars (including without limitation the Client's name, address, domicile and telephone, facsimile and Client's specified e-mail address (and if applicable, any of its Authorised Signatories)),
  - ii. (if the Client is a corporation) corporate documentation, any other official document which uniquely identifies the Client and any Relevant Information previously provided to the Bank));
  - iii. any change in the particulars of any Authorised Signatory (including name, address, domicile and telephone and fax numbers, the Authorised Signatory's specified e-mail address); and
  - iv. any other material change (including, but not limited to, changes to the Client's financial situation, investment experience and investment objectives);

- g. to carefully consider any information or explanations provided by the Bank (whether personalised or not) in connection with any Client Transaction or investment (including explanations of the risks and features of the Client Transaction or investment) and to seek independent advice where it deems it appropriate;
- h. to promptly notify the Bank if the Client does not understand any information or explanations (whether personalised or not) provided by the Bank to the Client and/or if it considers that such information or explanations do not appropriately take into account the Client's financial situation, investment experience or investment objectives;
- i. if it is not trading on its own behalf, to immediately (and in any event, no later than two Business Days after the Bank's request), provide all requested information of the Ultimate Owner (including any personal information) to the Bank (or any Regulator) or such Relevant Information as required by the Bank; and
- j. that, unless it has specifically notified the Bank in advance and obtained the Bank's consent (which consent may be withheld in the Bank's absolute discretion), then none of its sale orders will be covered short sales to which section 1020AE(b) of the Corporations Act will apply.

20.2 To the extent applicable the Client and the Security Parties represent and warrant to the Bank, at all times from the date that the Client requests to open an Account or be provided with Services under the Agreement, that:

- a. all information provided by the Client or on its behalf to the Bank in respect of opening an Account with the Bank or otherwise in relation to the Agreement, any Facility Document, any Security Document and/or any other document(s) which the Bank may from time to time require to be completed, executed and/or delivered in connection with the Services is true, complete and accurate and the Bank is entitled to rely on such information until the Bank has received notice in writing from the Client and/or Security Party in respect of changes to that information;
- b. the Client has the full power, capacity and authority to enter into the Agreement, any Facility Document, any Security Document and/or any other document(s) which the Bank may from time to time require to be completed, executed and/or delivered in connection with the Services, to receive each Service (including enter into any Client Transaction, Facility or other transaction entered into in respect of an Account or in connection with a Service) and (where applicable) it has taken all necessary corporate actions required under its constitutive

documents and all Applicable Laws to enter into and perform its obligations under the Agreement and in connection with each Service;

- c. all relevant and necessary authorisations, approvals, licenses, consents, exemptions and requirements of governmental or regulatory authorities required for or in connection with the execution or delivery and performance of the Agreement and receipt of each Service (including entry into any Client Transaction, Facility or other transaction entered into in respect of an Account or in connection with a Service) have been duly obtained or fulfilled by it and are and will remain in full force and effect, and any conditions to which it is subject have been satisfied and the Bank need not enquire and/or confirm the legality and/or validity of such authorisations, approvals, licenses, consents, exemptions and requirements;
- d. its obligations under the Agreement, any Facility Document, any Security Document and/or any other document(s) which the Bank may from time to time require to be completed, executed and/or delivered in connection with the Services are legal, valid, binding and enforceable and all acts, conditions and things required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations under the aforementioned documents, to make such documents admissible in evidence in the country of its incorporation or domicile (as applicable) and in Australia, to enable it to create Security under any Security Document and to ensure that the relevant Security has and will have the priority and ranking which it is expressed to have in such Security Document, and/or to render the terms of any Facility Document its legal, valid, binding and enforceable obligations, have been taken, obtained, fulfilled and done and are in full force and effect;
- e. the entering into or the performance of its obligations under the Agreement, the receipt of any Service (including the entry into any Client Transaction, Facility or other transaction entered into in respect of an Account or in connection with a Service) and the giving of any instruction to the Bank will not breach or cause to be breached any undertaking, agreement, contract, by-law or other organisational document or any Applicable Laws, and will not conflict with or constitute a default or exceed any limitation under any Applicable Laws, judgment, order, license, concession, permit, consent or regulation applicable to it, any provision or any powers granted under its constitutive documents (if applicable) or any agreement or instrument binding upon it or any of its assets, nor (except for any Security created under any Security Document) result in the existence of, or oblige it to create, any Security over any

of its assets. In particular, neither the Client nor any Security Party is domiciled or resident in or a national of any country or jurisdiction which would restrict it from (as applicable):

- i. opening an Account with the Bank;
- ii. receiving, purchasing, subscribing for or holding any Services or products which it has requested to receive, acquired or intends to acquire; and/or
- iii. entering into any Client Transaction, Facility or other transaction in respect of an Account or in connection with a Service which it has entered into or intends to enter into.

The Client and any Security Party will promptly inform the Bank if it becomes subject to any such restrictions;

- f. all Authorised Signatories have been duly authorised by the Client to act on its behalf;
- g. it has the full and unqualified right to transfer Margin and collateral to the Bank as required under the Agreement and any such transfer will be free from any claims and any lien, pledge, mortgage, charge, security or proprietary interest or other encumbrance whatsoever other than any security interest conferred in favour of the Bank;
- h. the Client complies with all Applicable Laws (including tax laws and regulations, exchange controls and capital controls), all relevant restrictions and offering documents in respect of any Client Transaction, Facility or other transaction entered into in respect of an Account or in connection with a Service;
- i. the Client is in compliance with all Applicable Laws relating to client identification and money laundering such as the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Rules (Cth), and undertakes to provide the Bank all information that is necessary or appropriate to comply with such laws (including any Relevant Information), and if the Bank is subject to a regulatory inquiry it will provide the Bank, the relevant regulator or competent law enforcement agency with all necessary information to satisfy the request, and confirms that any such information provided by it is complete, accurate and not misleading.;
- j. no litigation, arbitration or administrative proceedings of or before any court, tribunal, arbitral or administrative body or government agency has been commenced or threatened against or otherwise affecting the Client;
- k. no legal or other proceedings have been initiated or threatened and no meeting has been convened for the bankruptcy, dissolution, liquidation, winding-up, termination of existence or reorganization of, or for the appointment of a receiver, manager (judicial or otherwise), assignee, liquidator, trustee or similar officer of the Client or in respect of any or all of the Client's assets;
- l. it is and will continue at all times to be the absolute and sole beneficial owner of any and all present or future Assets, other than where the Client is (i) a trustee opening and maintaining an Account for the purposes of a trust, or (ii) the manager of a collective investment scheme or discretionary account opening and maintaining an Account for the purposes of managing the collective investment scheme or discretionary account, in either case as expressly known to and acknowledged by the Bank, in which case the Client represents and warrants that it is and will continue at all times to be duly authorised by the beneficial owner(s) of the Assets that are the subject of any security created under the Agreement, and such Assets are free from all liens, charges, options, mortgages, liens and any other security interests, encumbrances and third party rights whatsoever, except those which have been previously disclosed to the Bank in writing prior to its entry into Facility Documents, for which the prior written consent of the Bank has been obtained, or which have been created pursuant to the Agreement, and (in the case of any Security Party) there are no charges, mortgages, pledges or liens in respect of any of its property or assets except those which have been previously disclosed to the Bank in writing prior to its entry into the Facility Documents to which it is a party or for which the prior written consent of the Bank has been obtained;
- m. it is responsible for entering into a Client Transaction, Facility or other transaction in respect of an Account or in connection with a Service and it understands the nature and risks of such Client Transaction, Facility or other transaction in respect of an Account or in connection with a Service as well as the fact that the Bank has no responsibility or obligation regarding the satisfaction of any condition by or the action of any third party in connection with entering into such Client Transaction, Facility or other transaction;
- n. if: (i) the Client is acting on its own behalf, the Client Transaction, Facility or other transaction entered into in respect of an Account or in connection with a Service are legitimate and all monies and assets applied to such Client Transaction, Facility or other transaction are the result of bona fide activities; and (ii) the Client is acting on behalf of one or more persons (the identities of which have not been disclosed to

- the Bank), it has conducted and satisfactorily completed its internal know-your-client and anti-money laundering procedures on that or each person in accordance with Applicable Laws and will continue to comply with such procedures in relation to that or each person;
- o. all Assets deposited by it into any Account or which it instructs the Bank to sell or dispose of, and any Margin or other collateral provided to the Bank are fully paid with valid and good title and are and shall remain free from any claims and any lien, pledge, mortgage, charge, security or proprietary interest or other encumbrance whatsoever other than any security interest conferred in favour of the Bank or any security interest created pursuant to the Agreement;
  - p. it has not had any action or steps taken against it which amounts to or is likely to amount to an event specified in paragraphs (r) to (x) of the definition of "Event of Default" in Part A: Terms and Conditions – Definitions and Interpretation and is not entering into any Client Transaction, Facility or other transaction in respect of an Account or in connection with a Service with the intent to hinder, delay or defraud any person to which it is, or may become, indebted;
  - q. if the Client is a limited liability partnership or (as the case may be) a corporation, it is duly registered or (as the case may be) incorporated and validly existing under the laws of its place of registration or incorporation and has the power to own its assets and carry on its business as it is being conducted; and
  - r. if the Client is acting as trustee:
    - i. that it is duly appointed and is the current Sole trustee of the trust (**Trust**) and no meeting has been called or any action taken to remove it as trustee;
    - ii. the trust is duly and properly constituted as a trust in accordance with all applicable laws;
    - iii. that the trustee has full and valid power and authority under the trust, and all necessary resolutions, consents, authorisations and procedures have been obtained or duly satisfied, in order for the trustee to enter into all documentation evidencing the opening of the trust Account;
    - iv. it is authorised under the trust deed for the Trust to enter into Transactions and perform its obligations under these Terms and Conditions;
    - v. it has the right to be fully indemnified out of the Trust's assets for any obligation incurred
- under these Terms and Conditions before any Trust beneficiary's claim and this right has not been limited or reduced in any way;
- vi. that it acknowledges and confirms that the Bank will have no liability imposed on it in the event that the actions of the trustee are challenged by a third party and agrees to indemnify the Bank where any such liability was in fact imposed on the Bank;
  - vii. that it complies with all of its duties as trustee of the trust and warrants that there has been no assertion or allegation made by any person that it has breached its duties as trustee of the trust and it is not in breach of trust; and
  - viii. that the trust has not vested or been terminated and no action has been taken or is proposed to be taken to vest or terminate the trust or distribute the assets of the trust.
- s. where the Client has confirmed that they:
    - i. are the beneficial owner of the Account;
    - ii. are a resident of the specified country within the meaning of the income tax treaty between that country and the United States of America; and
    - iii. have placed reliance to claim treaty benefits on an applicable limitation of benefits provision,
- then the Client is certifying to the Bank that the Client has met the requirements of the respective treaty provisions including those dealing with any limitation of benefits. Further reference is made to the Internal Revenue Service internet site: <https://www.irs.gov/individuals/international-taxpayers/tax-treaties>;
- t. it has satisfied itself and will continue to satisfy itself as to the tax implications in relation to the Agreement (including any Client Transaction, Facility or other transaction into in respect of an Account or in connection with a Service);
  - u. no Event of Default has occurred, is continuing or might reasonably be expected to occur as a result of the Client entering into the Agreement and/or entering into any Client Transaction, Facility or other transaction in respect of an Account or in connection with a Service;
  - v. it has fully complied with all Applicable Laws in respect of any personal information transferred or otherwise provided to the Bank, including obtaining the consent of or making the required notification to, where necessary, the individuals to whom the personal information relates to

disclosure and use of that personal information for the purposes set out in the Agreement;

The Client must notify the Bank immediately in writing if any of the representations and warranties in Clause 20.2 ceases to be true at any time.

20.3 The Client undertakes to co-operate with the Bank to the fullest extent possible in the prosecution or defence of any action or proceeding brought by or against the Bank or by or against any third party in relation to any Service.

20.4 Without prejudice to any provision in the Agreement:

- a. if the Client effects a Client Transaction, Facility or other transaction in respect of an Account or in connection with a Service for a collective investment scheme, discretionary account or discretionary trust the Client shall:
  - i. immediately upon request by the Bank, disclose to the Bank (or any governmental or regulatory agency): (A) any Relevant Information of the scheme, account or trust; and (B) any Relevant Information of the person who, on behalf of the scheme, account or trust, ultimately originated the instructions to effect such Client Transaction, Facility or other transaction; and
  - ii. as soon as practicable, inform the Bank when the discretion to invest on behalf of the scheme, account or trust of the person referred to in (B) above has been overridden, and in such event, immediately upon request by the Bank, disclose to the Bank (or any governmental or regulatory agency) the Relevant Information of the person(s) who has or have ultimately originated the instruction in relation to such Client Transaction, Facility or other transaction;
- b. if the Client effected a Client Transaction, Facility or other transaction for its client and is aware that such client is acting as intermediary for its underlying clients but the Client does not have the Relevant Information of such underlying clients for whom such Client Transaction, Facility or other transaction was effected and/or the Relevant Information of the person who ultimately originated the instructions in respect of such Client Transaction, Facility or other transaction, the Client undertakes and confirms that:-
  - i. it has arrangements in place with such client which entitle the Client to obtain the Relevant Information of: (A) the person ultimately responsible for originating the instruction for the Client Transaction, Facility or other transaction; and (B) the person

that stands to gain the commercial or economic benefit of the Client Transaction, Facility or other transaction and/or bear its commercial or economic risk, from such client immediately upon request or procure that it be promptly so obtained; and

- ii. it will, on request from the Bank in relation to such Client Transaction, Facility or other transaction, promptly request the Relevant Information set out in (b)(i) above from such client on whose instructions such Client Transaction, Facility or other transaction was effected, and provide that information to the Bank (or any Regulator) as soon as received from such client or procure that it be so provided;
- c. the Client undertakes and confirms that it consents and has obtained (where necessary) all relevant consents and/or waivers from the Ultimate Owners, its clients, collective investment schemes, discretionary accounts or discretionary trusts for whose account a Client Transaction, Facility or other transaction in respect of an Account or in connection with a Service may be effected to release to the Bank (or any Regulator) the Relevant Information of such Ultimate Owners, clients, collective investment schemes, discretionary accounts or discretionary trusts, and of the persons that stand to gain the commercial or economic benefit of such Client Transaction, Facility or other transaction and/or bear its commercial or economic risk, and (if different) of the person ultimately responsible for originating such Client Transaction, Facility or other transaction;
- d. the Client undertakes that it has obtained, recorded and retained sufficient and proper evidence of the Relevant Information, and is satisfied as to the source of funds being used to open the Account and passing through the Account; and
- e. the Client undertakes that it is not subject to any law which prohibits its performance of this Clause 20.4, or, if it is subject to such law, that it or its clients, as the case may be, have waived the benefit of such law and consented in writing to the performance of this Clause 20.4.

20.5 The Bank is authorised (but not obliged to), at its absolute discretion in accordance with the Agreement, to:

- a. conduct enquiries to verify the Relevant Information provided;
- b. appoint or use any nominee or agent of the Bank's choice; and

- c. take such steps as it may consider necessary or expedient to carry out the acts described in (a) and (b) above, to comply with any Applicable Laws and/or to exercise its powers, rights or remedies under the Agreement.

20.6 If for whatever reason the Client is or appears to be unable or unwilling to provide to the Bank the Relevant Information requested by the Bank (including pending receipt of Relevant Information or if Relevant Information is not received within any time period specified by the Bank), the Bank may, at its discretion, not act on or give effect to any instruction at any time and/or suspend or terminate any Service or the operation of any Account.

## 21. Price-sensitive information

21.1 The Client acknowledges that in the event that it is a connected person or it may be a connected person, as defined under Applicable Laws, in possession of price-sensitive information (“PSI”) in relation to a corporation listed on any exchange, the use or disclosure of such PSI may be regulated or prohibited by Applicable Laws. The Client undertakes not to use or disclose, and to procure that its affiliates do not use or disclose, the PSI for any unlawful purpose.

21.2 Without limiting the generality of the foregoing, access to PSI may render the Client an insider in relation to the corporation listed on an exchange, and this fact may restrict the Client’s ability to disclose such information, to trade, to counsel or procure others to trade, or to carry out other activities in relation to the Securities in question. The Client needs to make an independent evaluation of any such potential restrictions and ensure compliance with all Applicable Laws.

21.3 The Client represents and warrants that, in respect of entering into any Client Transaction, it is in compliance with all Applicable Laws relating to insider dealing and the use or disclosure of PSI, and undertakes to notify the Bank immediately if this is not the case. The Client further undertakes that it will give the Bank such information and/or assurances in relation to compliance with all Applicable Laws relating to insider dealing and the use or disclosure of PSI as the Bank may require from time to time.

## 22. Tax compliance

The Client represents and warrants to the Bank for itself and for each of the Client’s beneficial owners that:

- a. it is solely responsible for its own tax affairs and obligations and as far as aware, it is not under any ongoing investigation by any tax authority;
- b. any Assets deposited, or to be deposited, in its Account(s) with the Bank do not represent the proceeds of any serious criminal conduct (including serious tax crimes (such as tax evasion)) and that such Assets have been, and will continue to be, declared to the relevant tax authorities;
- c. it shall promptly notify the Bank upon any change in the accuracy of the above or in its ability to give the representations and warranties at (a) and (b) above;
- d. it has obtained or will obtain a confirmation from all current and future beneficial owners that it will adhere to all applicable provisions of law (including applicable tax law) at all times with respect to any Assets held, or to be held, in the Account, and any income and capital gains derived from such Assets. In particular, it confirms on behalf of all current and future beneficial owners that any Assets held or to be held as well as any income and capital gains derived from such Assets held in the Account have been or will be duly disclosed to the competent tax authorities, if such a disclosure is required by the applicable law;
- e. it accepts and acknowledges and shall ensure that each beneficial owner accepts and acknowledges in respect of any data that the Bank may disclose to competent tax authorities as set out in this Agreement, notwithstanding that the recipient’s place of business is Australia, such information following disclosure may be collected, held, processed or used by such recipient in whole or in part outside Australia where there may not be in place data protection and banking confidentiality laws which are substantially similar to, or serve the same purpose as, the data protection and banking confidentiality laws in Australia. This means that, to the extent permitted by applicable laws, the information may not be protected to the same or similar level as in Australia;
- f. the Client and each beneficial owner is aware of its own possible disclosure obligations under the applicable tax laws with respect to any Assets held, or to be held, with the Bank in the Account, and any income and capital gains derived from such Assets, and confirms that it complies with all known obligations at all times.



- g. the Bank (all of its affiliates and agents, and their respective employees) is not responsible, and shall have no liability whatsoever, for the Client's tax affairs and obligations, and/ or any duty to the Client's beneficial owner;
- h. each of the Client's beneficial owners has authorised the Client to make the above representations and warranties for them; and
- i. the declarations contained in this Clause 22 will not expire in the event of the Client's liquidation and will instead remain in force, including after the closing of the Account. This declaration shall remain in effect until such time as the Bank receives written notification from the Client that it has been revoked. A revocation of this declaration shall have no impact on the legitimacy of the data disclosure made according to this Agreement up to the date of such revocation.

in connection with any Account without the Client's or Security Party's consent, and may deliver all or any of the property then held as security for any of them therefore, to its transferee(s), who shall thereupon become vested with all the powers and rights in respect thereto given to the Bank herein, under the Facility Documents or in the instrument(s) transferred, and the Bank shall thereafter be relieved and fully discharged from any related liability or responsibility with respect thereto, but, for the avoidance of doubt, the Bank shall retain all rights and powers hereby given with respect to any and all instrument(s), rights or property not so transferred. For the avoidance of doubt, any transfer of the Bank's rights and obligations to a transferee shall be on the same basis as under the Agreement, the relevant instrument, Facility or Account (as applicable), and the Client and each Security Party shall be treated for all purposes on a continuing basis as having consented to any such transfer of obligations. The Client and each Security Party agree that they will sign or otherwise effect any document which the Bank requires in order to transfer its obligations pursuant to this Clause 24.2.

## 23. Costs on enforcement

The Client and any Security Party will pay to the Bank on demand all costs, expenses, fees and charges (including, without limitation, legal fees on a full indemnity basis and all goods and services tax and other duties or taxes payable on such costs, expenses, fees and charges) incurred in or incidental to or in contemplation of the enforcement or protection of any of the Bank's rights or resolution of any dispute relating to the Accounts or any Facility or a Facility Document in connection with an act or omission of the Client (whether by judicial proceedings or otherwise).

24.3 The Bank may at any time and from time to time change the office or branch from or through which any Service is provided or made available or at which any Client Transaction is booked, recorded or effected, or through which it makes or receives payments or deliveries for the purpose of any Service.

24.4 The Client undertakes to execute all such instruments or documents and do all such acts or deeds (at the Client's own cost) as may be required by the Bank in connection with any such assignment, transfer or change referred to in this Clause 24.

## 24. Assignment/Transfer

24.1 The Agreement shall be binding and enure to the benefit of the Bank and the Client and their respective successors and assigns. Notwithstanding Clause 24.2, that the Client's rights and obligations under the Agreement (including, without limitation, the credit balance of the Account and the rights and obligations of) any Secured Party under the Facility Documents to which it is a party, cannot in any way be assigned, transferred or charge to any third party whether by way of security or otherwise howsoever.

24.2 The Bank may at any time and from time to time assign or transfer any or all of the Bank's rights and obligations under the Terms and Conditions or Facility Documents, or any relevant instrument(s) in connection therewith (including under any Facility) or

## 25. Amendments

The Bank shall have the right, by at least two Business Days' notice in writing (unless a shorter notice period is required by reason of any Applicable Law or regulation or regulatory requirement), to add to, alter, vary, supplement or modify the Agreement or any part thereof at any time at its absolute discretion, and such additions, alterations, variations, supplements or modifications ("amendment") shall be effective on and from the date specified by the Bank in its notice (such notice by the Bank includes, but is not limited to, Notification by way of e-mail or via applicable Digital Services or posting the changes online on any of the Bank's websites) or, if no such date is specified, on and from the date of such notice, subject to the relevant notice period (if any) as set out in the relevant Supplement. Without prejudice to the above, the Client's continued maintenance of the Account and use of the Bank's Services after

such amendment shall also be treated as the Client's acceptance and agreement to the amendment.

## 26. Severability

26.1 If at any time any provision of the Agreement is or becomes invalid, illegal, unlawful or unenforceable in any respect under the law of any jurisdiction, neither the validity, legality, lawfulness and enforceability of the other provisions contained herein nor the validity, legality or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

26.2 Without prejudice to Clause 26.1, if at any time any part of the Agreement is or becomes invalid, illegal, unlawful or unenforceable in any respect under the law of any jurisdiction, this part shall apply with whatever deletion or modification is necessary so that such part is valid, legal, lawful and enforceable and gives effect to the commercial intention of the parties under the law of such jurisdiction.

26.3 To the extent it is not possible to delete or modify the part of the Agreement, in whole or in part, under Clause 26.2, then such part shall, to the extent that it is invalid, illegal, unlawful or unenforceable, be deemed not to form part of the Agreement and the validity, legality, lawfulness and enforceability of the remainder of the Agreement shall, subject to any deletion or modification made under Clause 26.2, not be affected.

## 27. No waiver

Any failure to exercise or enforce, delay in exercising or enforcing, any part or early exercise or enforcement on the part of the Bank its rights under any of the Terms and Conditions or any Facility Documents or any other applicable terms and conditions shall NOT operate as a waiver thereof nor shall it in any way prejudice or affect the right of the Bank afterwards to act strictly in accordance with the powers conferred on the Bank under the Agreement or such other applicable terms and conditions.

## 28. Illegality

Notwithstanding any other provision herein, if by reason of any Applicable Law or regulation or regulatory requirement (whether or not having the force of law) or any change therein or judicial decision relating thereto or the interpretation or administration or application thereof, it shall become (or it shall appear to the Bank that it has or will become) unlawful or otherwise prohibited for the Bank to maintain or give effect to any of its obligations under the Agreement, the Bank shall thereupon notify the Client to that effect (which may include a termination of any Accounts and Services as contemplated by Clause 10.1), whereafter, the Client shall immediately upon receipt of such notification from the Bank pay the whole of all moneys owing to the Bank by the Client at such time.

## 29. Governing law and jurisdiction

29.1 The Agreement and all relations between the Client (and the Client's Assets), each Security Party and the Bank shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia and the Client and each Security Party hereby irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales, Australia. For the avoidance of doubt, this Clause 29.1 is for the benefit of the Bank only, and nothing in this Clause 29 shall limit the right of the Bank to bring any proceedings arising out of or in connection with the Agreement and the relations between the Client (and the Client's Assets), each Security Party and the Bank in any court elsewhere nor shall the bringing of any proceedings in any jurisdiction preclude the Bank from bringing any such proceedings in any other jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

29.2 All deposits and their payment are governed by and subject to the laws in effect from time to time in the place in which the Bank is situated, which shall be the sole place of payment notwithstanding any instructions for the remittance or transfer of funds to or through correspondent banks. No other branch, subsidiary or affiliate of UBS AG shall be liable to repay any deposits.

29.3 Subject as aforesaid, the Agreement and all the Client's, the Security Party's and the Bank's rights and obligations hereunder shall also be subject to any laws, rules, regulations, directives or sanctions which

may from time to time be issued and/or imposed by the Government of Switzerland on UBS AG, or in any way in relation to its operations and assets in any part of the world, or on the Bank by the government and/or regulatory authorities of Singapore or Australia.

29.4 Where the Client and/or any Security Party does not have an address in Australia, the Client and/or Security Party undertakes to nominate an agent with an address in Australia to accept service of any legal process in Australia on its behalf. Such agent shall acknowledge in writing to the Bank its appointment as such agent and service of legal process on such agent shall be deemed to constitute service on the relevant Client and/or Security Party. The Client and/or the Security Party shall inform the Bank in writing of any change in the address of such agent promptly, and in any event within fourteen days of such change. If such agent ceases to be able to act as a process agent (whether because of liquidation, cessation of business or otherwise) or to have an address in the Australia, the Client and/or the Security Party shall promptly, and in any event within fourteen days of such event, appoint a substitute process agent in the Australia and shall advise such agent of its appointment and shall procure its acknowledgement of such appointment in writing to the Bank.

29.5 The Client and each Security Party further irrevocably consent to the service of process out of the courts of the State of New South Wales, Australia in any proceedings in Accordance with Applicable Laws. The Client and each Security Party agree that the service of legal process on the Client and/or Security Party may be effected by the mailing of copies thereof by registered or certified prepaid airmail post to the relevant Client and/or Security Party, to the address last notified by the Client and/or Security Party in writing to the Bank or such other address last known address to the Bank, and such service to become effective 7 days after such mailing regardless whether or not it has been returned or unclaimed by the Client and/or the Security Party. Nothing herein shall affect the Bank's right to serve process in any other manner permitted by law.

29.6 The Client and each Security Party hereby acknowledge the competence of the courts of any jurisdiction in which the Bank brings proceedings with respect to the Agreement, and agree that a final judgment in any such proceedings brought in such courts shall be conclusive and binding upon the Client and/or Security Party. If proceedings are brought in the courts of the State of New South Wales, Australia and final judgment is obtained in respect thereof, the Client and each Security Party agree that such final judgment may be enforced against the Client and/or Security Party in any other courts under which jurisdiction the Client is or may be subject by a suit upon such final judgment. A certified copy of such final judgment shall be conclusive evidence of the fact and of the amount of the Client's and/or Security Party's indebtedness, as the case may be. The Client and each Security Party hereby

irrevocably waives any objection which it may now or hereafter have to the venue of any proceeding arising out of or relating to the Agreement selected by the Bank and hereby further irrevocably waives any claim that the venue so selected is not a convenient forum for any such proceeding.

The Client and each Security Party hereby irrevocably agrees that should the Bank take any proceedings anywhere (whether for an injunction, specific performance, damages or otherwise), no immunity (to the extent that it may at any time exist whether on the grounds of sovereignty or otherwise) from those proceedings or from attachment (whether in aid of execution before judgment or otherwise) of its assets or from execution of judgment shall be claimed by it or on its behalf or with respect to its assets, any such immunity being irrevocably waived, and irrevocably agrees that it and its assets are and shall be subject to such proceedings, attachment or execution in respect of its obligations under any of the Facilities and/or the Agreements.

## 30. Complaints resolution

30.1 If the Client has a complaint including where it relates to a matter involving Credit Suisse AG, Sydney Branch which was absorbed by the Bank), please do not hesitate to contact the Bank's designated Responsible Officer at: (612) 8205 4400 or [SH-AUWM\\_Complaint\\_Management@ubs.com](mailto:SH-AUWM_Complaint_Management@ubs.com).

30.2 To enable the Bank to fully investigate and resolve the Client's complaint, the Client should provide the following information when you are making a complaint:

- a. the Client's name, address and a daytime telephone number and/or address where we can contact you;
- b. a clear description of the Client's concern or complaint;
- c. details of what the Client would like the Bank to do to resolve the complaint; and
- d. copies of any relevant documents.

30.3 Any complaint submitted to the Bank shall be treated confidentially. The Bank's designated staff will acknowledge the Client's complaint in writing. Such acknowledgement of receipt will include the name or job title and contact details of the person handling the Client's complaint as well as details of the Bank's internal complaints handling procedures. Where the Bank receives and acknowledges the Client's complaint over the phone, the Bank may,

but is not required to, send the Client a written acknowledgement of the Client's complaint.

## 31. Australian Financial Complaints Authority (AFCA)

If you have been through our internal complaint process without a satisfactory resolution, you may depending on the dispute, be able to take the matter to the Australian Financial Complaints Authority. This service offers an independent dispute resolution process to customers.

Online: [afca.org.au](http://afca.org.au)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Mail: Australian Financial Complaints Authority  
GPO Box 3, Melbourne VIC 3001

Phone: 1800 931 678 (free call)

## 32. If you need financial help

If you are experiencing any financial hardship, you should let us know as soon as possible so we can try to help you. For further information, please contact your relationship manager at the Bank.

## 33. Client introduction and cross-referral

The Client acknowledges, understands and agrees that, to the fullest extent permitted by Applicable Laws:

- a. the Bank shall have the unconditional right, but not the obligation, to introduce and/or crossrefer the Client to any of its affiliated divisions, companies or business units within UBS Group AG or a Referee. A Referee may not be regulated and may not therefore be subject to Applicable Laws for the protection of investors, including such rules and regulations in respect of clients'

money or assets held or received for clients by such Referees, and accordingly such money or assets may not be protected as effectively as if such rules and regulations applied. The Bank will not be under any obligation to make introductions and/or crossreferrals that may conflict with any contract, arrangement or understanding with third parties or which may result in a violation of Applicable Laws. Any such introduction and/or crossreferral of the Client will be at all times made at the sole and absolute discretion of the Bank;

- b. the Client may elect to engage the Referee to provide any form of services in its sole discretion and that the Client is personally and solely responsible for complying with the Referee's licensing, legal, regulatory, compliance and business requirements (including but not limited to any contractual arrangements) as determined by Applicable Laws;
- c. in introducing and/or cross-referring the Client to the Referee, the Bank has acted in the capacity of an independent contractor. This means the Bank is not and shall not at any time be treated as an agent, employee, trustee and/or representative of the Referee due to the mere fact of making the introduction or referral. The Client acknowledges that the Bank is not recommending or advising the Client on any product or service provided by the Referee, and that the Client must make its own assessment as to the appropriateness or suitability of any such product or service for the Client. Further, the Bank is not responsible or liable for any Loss arising out of or in connection with an introduction and/or cross-referral, including any Loss arising out of the Referee's acts or omissions;
- d. at no time does the Referee have the authority to bind or otherwise make any commitments and/or enter into any obligations for and on behalf of the Bank;
- e. any prevailing and/or potential conflicts of interest arising from the introduction and/or crossreferral between the Bank and the Referee will be unconditionally waived by the Client in favour of the Bank and the Referee;
- f. the Bank is fully authorised to disclose personal information to the Referee concerning the Client's Account as maintained with the Bank, solely in connection with facilitating the introduction or referral arrangements between the Bank and the Referee, such disclosure deemed to be authorised by the Client without any further reference or consent; and
- g. the Bank, its directors, officers and employees (including the relationship manager and/or other staff of the Bank) effecting the introduction and/or cross-referral may be entitled to receive

payments, fees, commissions and/or other benefits from the Referee in connection with the introduction and/or cross-referral without further reference and/or consent from the Client, and that in receiving such payments the Bank, its directors, officers and employees involved in effecting the introduction and/or cross-referral may be acting in conflict with the Client's interests.

## 34. Conflicts of interest, fees, soft commissions, cash rebates and other benefits

34.1 To the extent permitted by Applicable Laws, the Client understands and agrees that the Bank is entitled to:

- a. act in any capacity for any other person or for the Bank's own account, buy, sell, hold, deal in any Securities, even if similar Securities are held in the Client's Account or covered by an instruction from the Client;
- b. purchase for or on behalf of the Client, Securities held or owned by the Bank or other clients of the Bank;
- c. purchase for the Bank's own account Securities forming part of the Client's Account;
- d. match the Client's instruction with that of another client of the Bank by acting on that client's behalf as well as on the Client's behalf;
- e. take the opposite position to the Client's instruction whether it is on the Bank's own account or on behalf of other clients of the Bank;
- f. deal in Securities for the Client where the Bank, its affiliates or their connected persons is involved in a new issue, rights issue, takeover or similar transaction concerning such Securities; and
- g. advise or recommend to the Client a product, investment or Client Transaction in which the Bank, its affiliates or their connected persons may:
  - i. have an interest, relationship or arrangement that is material (including acting as arranger, structurer or selling agent);
  - ii. be dealing as principal for its own account when dealing in the product, investment or Client Transaction concerned with the Client;

- iii. be acting as agent or trustee or intermediary for the counterparty or issuer, or any of their respective agents;
- iv. take positions opposite to the Client; or
- v. be in competition with the Client to acquire the same or similar positions, provided that, in relation to (a) to (g) above, the terms of the Client Transaction in which the Client is involved are not less favourable than they would have been had the Client Transaction been entered into at arm's length on the day in question. Subject to Applicable Laws, the Bank shall not be liable to account to the Client for, or disclose to the Client, any commissions, profits or other benefits whatsoever resulting from the Bank carrying out any of the above actions or entering into any of the above Client Transactions. The Bank may retain such commissions, profits or other benefits for its own account.

34.2 Except as specifically agreed from time to time, the Client acknowledges that the Bank may act as principal or agent in relation to any Transaction.

34.3 The Client understands, agrees and consents that, to the extent permitted by Applicable Laws and subject to the Bank undertaking all necessary steps required under Applicable Laws, that:

- a. the Bank and any of its agents shall be entitled to solicit, accept and keep, for its or their own account, and without the need for further disclosure or consent, referral fees and other commissions from any broker or any other sub-agent (whether or not such other broker or sub-agent is another division or business unit of the Bank, a group company or affiliate of the Bank or a third party) in respect of any business conducted with such broker or subagent by the Bank on behalf of the Client and/or in respect of the Account;
- b. the Bank and/or its affiliates may (whether directly or indirectly and/or whether by itself or themselves or acting through its or their agents), from time to time receive and retain monetary, non-monetary or non-cash benefits (including commissions, soft dollars and cash or money rebates) from, or pay or provide the same to, a third party in relation to any of the Services provided under the Agreement. The Client should be aware that where the third party is an entity within UBS Group AG, there may also be an internal allocation of discretionary benefit (i.e. non-cash item) in recognition of efforts made in respect of such Services (e.g. the marketing and distributing of certain products), which may ultimately have an impact on any intragroup payments payable to the Bank, its affiliates and/or

their respective employees or business units. The existence of such monetary and non-monetary benefits will be disclosed as required by Applicable Laws; and

the Bank shall be entitled to make and retain gains by entering into Client Transactions for or with the Client (whether or not such Client Transactions were entered into at prices which are different to the prices at which the Bank entered into similar transactions with any other person).

In connection with (b) above, soft dollars may include goods and services such as research and advisory services, economic and political analysis, portfolio analysis including valuation and performance measurement, market analysis, market data and quotation services, computer hardware and software incidental to the above goods and services, clearing and custodian services and/or investment-related publications. Such goods and services do not, however, include travel, accommodation, entertainment, general administrative goods or services, general office equipment or use of premises, membership fees, employee salaries or direct money payments.

34.4 The Bank and/or its affiliates (each a **"UBS Group Entity"** and together, the **"UBS Group Entities"**) are engaged in a broad range of banking, investment banking, wealth management and asset management services both for the Bank's/ their account and for the account of the Bank's/ their clients, which may involve interests that differ from, and may conflict with, the Client's interests. UBS Group Entities may from time to time engage in cross-divisional referral activities that facilitate products and transactions for, with or on behalf of clients. The Client understands, agrees and consents that, to the extent permitted by Applicable Laws and subject to the Bank undertaking all necessary steps required under Applicable Laws, such cross-divisional referral activities may result in the generation of a discretionary benefit that is attributed to the relevant UBS Group Entities' divisions and/ or employees in recognition of such activities. For the avoidance of doubt, unless required under Applicable Laws, the Client is not entitled to be notified of the amount of such discretionary benefit (whether expressed as a range, a specific number or otherwise) or to receive such discretionary benefit arising from efforts made in respect of Services. The discretionary benefit may (among other things) guide the Bank in its decision-making in respect of employee remuneration, but does not represent any payment obligation to the Bank's employees.

## 35. PPSA Clauses

### 35.1 PPS Security Interests

- a. The Client acknowledges that these Terms and Conditions, give rise, or may give rise, to one or more PPS Security Interests.
- b. To the extent that the Bank has a PPS Security Interest in any of the Client's property, the Client must do anything that the Bank (or any person who has agreed to act on the instructions of the Bank) may require to enable the Bank to perfect its PPS Security Interest in whatever way the Bank requires.
- c. Without limiting paragraph (b), to the extent that any collateral is an intermediated security for the purposes of the PPSA, the Client agrees that, pursuant to the Terms and Conditions, the Bank (or someone who has agreed to act on the Bank's instructions) is able to initiate or control the sending of electronic messages or electronic communications by which the intermediated security may be transferred or otherwise dealt with.
- d. Without limiting paragraph (b), to the extent that any collateral is an intermediated security for the purposes of the PPSA, the Client agrees that the intermediary that maintains the securities account in relation to that intermediated security:
  - i. must not comply with instructions given by the Client in relation to the intermediated security without seeking the Bank's consent (or the consent of a person who has agreed to act on the Bank's instructions); and
  - ii. must comply with instructions (including instructions to debit the securities account) given by the Bank in relation to the intermediated security without seeking the Client's consent (or the consent of any person who has agreed to act on the Client's instructions).
- e. The Bank (or any person who has agreed to act on the instructions of the Bank) may notify any intermediary in relation to any intermediated security of the provisions of this Clause 35. If required by the Bank, the Client must notify the intermediary of the provisions of this Clause 35.

- f. Without limiting paragraph (b), to the extent that any collateral is an investment instrument that is not evidenced by a certificate as contemplated in the PPSA, the Client agrees that the Bank (or someone who has agreed to act on the Bank's instructions) may:
  - i. initiate or control sending instructions by which the investment instrument could be transferred or otherwise dealt with; or
  - ii. initiate or control the sending of some or all electronic messages or other electronic communications by which the investment instrument could be transferred or otherwise dealt with.
- g. Without limiting paragraph (b), to the extent that any collateral is an investment instrument for the purposes of the PPSA that is evidenced by a certificate, the Client must deliver to the Bank the instrument and the Bank (or any person who has agreed to act on the instructions of the Bank) has the right and power to deal with the instrument (including, to transfer the instrument to the Bank or a third party).
- h. To the extent that any such PPS Security Interest is over personal property of a type referred to in section 340(5) of the PPSA, the Client must do anything required by the Bank, to enable it to control that property for the purposes of section 340(2)(b) of the PPSA.
- ii. Bank's PPS Security Interest; and
  - ii. The Bank's PPS Security Interest continues in that property.
- b. The Client must give the Bank:
  - i. prompt notice of any transfer of any property subject to a PPS Security Interest in favour of the Bank or an interest in it in breach of these Terms and Conditions; and
  - ii. any information requested by the Bank in relation to the transferee to enable the Bank to perfect the Security Interests granted in these Terms and Conditions as against the transferee.
- c. The Client acknowledges that any notification under Clause (b) does not cure the relevant breach of these Terms and Conditions.

### 35.5 Authority to register and waiver of right to receive verification statements

The Client acknowledges that the Bank may, at the Client's cost, register one or more financing statements in relation to any PPS Security Interests provided for by these Terms and Conditions. If permitted by the PPSA, the Client waives its rights under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.

### 35.6 PPSA information undertakings

- a. The Client will give the Bank at least 30 Business Days' prior notice:
  - i. of any change to its name, together with details of the proposed new name; and
  - ii. before anything happens in respect of it or any of its property over which the Bank has a Security Interest that would cause any information in a financing statement in relation to the Security Interests granted in these Terms and Conditions to be different if it were re-registered.
- b. The Client must provide the Bank with all information that the Bank requires to ensure that any registration on the PPS Register that perfects a PPS Security Interest in favour of the Bank is, and remains, fully effective to perfect that PPS Security Interest, and that the PPS Security Interest has the priority required by the Bank.

### 35.7 PPSA confidentiality

- a. In this Clause 35.7, all references to sections are to sections in the PPSA.

### 35.2 No postponement of attachment

Nothing in these Terms and Conditions may be taken as an agreement that any PPS Security Interest provided for by these Terms and Conditions attaches later than the time contemplated by section 19(2) of the PPSA.

### 35.3 Acknowledgment of no subordination

The Client acknowledges that the Bank has not agreed to subordinate any PPS Security Interest provided for by these Terms and Conditions in favour of any third party.

### 35.4 PPS Security Interest continues despite dealing

- a. If, in breach of these Terms and Conditions, the Client attempts to dispose of or otherwise deal with any property that is subject to a PPS Security Interest in favour of the Bank, the Client acknowledges that, despite the disposal or dealing:
  - i. The Bank has not authorised the disposal or agreed that the dealing would extinguish the

- b. The Bank and the Client agree not to disclose information of the kind mentioned in section 275(1), except in the circumstances required by sections 275(7)(b) to (e). The Client must obtain the Bank's consent before authorising the disclosure of information under section 275(7)(c) or requesting information under section 275(d). Nothing in this Clause 35.7(b) prevents any disclosure by the Bank that it believes is necessary to comply with its other obligations under the PPSA.
- c. To the extent that it is not inconsistent with Clause 35.7(b) constituting a "confidentiality agreement" for the purposes of section 276(6)(a), the Client agrees that the Bank may disclose information of the kind mentioned in section 275(1) to the extent that the Bank is not doing so in response to a request made by an "interested person" (as defined in section 275(9)) pursuant to section 275(1).

### 35.8 Contracting out of the PPSA

To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Bank of any PPS Security Interest the Bank has in the Client's property under these Terms and Conditions, the parties agree that the following provisions of the PPSA do not apply, to the extent that the PPSA allows them to be excluded:

- a. **(enforcement methods)** sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 136(3) and 136(4) (Retaining collateral free of interests), 137 (Persons entitled to notice may object to proposal) and 138B(4) (Seizure and disposal or retention of crops);
- b. **(notices)** sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice of disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
- c. **(rights to remedy)** sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).

### 35.9 PPSA indemnity

The Client agrees to pay or reimburse the Bank on demand for all of the Bank's costs, charges and expenses in connection with any action taken by the Bank under or in relation to the PPSA, including any registration, or any response to an amendment demand or a request under section 275 of the PPSA.

## 36. Anti-Money Laundering

### 36.1 The Client undertakes to the Bank that it or its business:

- a. will ensure that its operations are at all times in compliance with all applicable Anti-Money Laundering Laws in each of its Relevant Jurisdictions, and no proceeding by or before any Authority involving it with respect to Anti-Money Laundering Laws is pending, threatened or contemplated;
- b. has not and (if applicable) none of its respective officers, directors or employees, agents or representatives has in the course of its actions for itself or on behalf of any of its affiliates:
  - i. used any corporate funds for any unlawful contribution, gift, entertainment or unlawful expense relating to political activity;
  - ii. violated any provision of the United States Foreign Corrupt Practices Act of 1977, as amended, the Bribery Act 2010 (UK), as amended, or any applicable anti-bribery or anti-corruption laws or regulation of any jurisdiction; or
  - iii. paid any bribe, rebate, pay-off, influence payment, kick-back or other unlawful payment;
  - iv. offered, paid, promised to pay, or authorised the payment of any money, or offered, gave, promised to give, or authorised the giving of anything of value, to any Government Official or to any person under circumstances where it is aware that all or a portion of such money or thing of value would be offered, given or promised to any Government Official, for the purpose of:
    - influencing any act or decision of such Government Official in his official capacity, (2) inducing such Government Official to do or omit to do any act in relation to his lawful duty, (3) securing any improper advantage, or (4) inducing such Government Official to influence or affect any act or decision of any Authority, or
    - in order to assist any of its affiliates in obtaining or retain of its affiliates.



## 37. Sanctions

### 37.1 Sanctions representations

- a. The Client represents to the Bank that it or its business, and anyone on whose behalf it acts, are not:
  - i. a Sanctioned Person and are not acting (directly or indirectly) on behalf of a Sanctioned Person;
  - ii. engaging in any transaction or conduct that could result in the Client or any other person becoming a Sanctioned Person;
  - iii. subject to any ongoing claim, proceeding or formal investigation with respect to Sanctions;
  - iv. engaging in any transaction that evades or avoids, or may evade or avoid, or has the purpose of evading or avoiding, or breaches or attempts to breach, directly or indirectly, any Sanctions;
  - v. engaging in, directly or indirectly, any trade, business or other activities with or for the benefit of any Sanctioned Person; or
  - vi. in violation of any Sanctions.
- b. The Client represents that it will:
  - i. comply in all respects with any and all Sanctions both now and at all times in the future; and
  - ii. to the extent permitted by law, promptly upon becoming aware of them supply to the Bank details of any violation of any Sanction or any claim, action, suit, proceedings or investigation against it with respect to Sanctions by any authority.

### 37.2 Sanctions compliance

- a. The Client and its business: a. shall comply with any trade, financial or other Sanctions regime including, without limitation, Sanctions and embargos imposed by:
  - i. the United Nations, European Union, the State Secretariat for Economic Affairs of Switzerland, the Swiss Directorate of International Law, the Hong Kong Monetary Authority, the Monetary Authority of Singapore, the United Kingdom or United States (including regimes administered by the United States Department of the Treasury, OFAC and Her Majesty's Treasury);

- ii. any other such regime or Sanctions Authority which applies in relation to the Client or its business; and
- iii. any other such Sanctions Authority the Client shall be notified of in writing by the Bank from time to time; and

- b. undertake not to use the funds provided or generated by the Bank, or the services provided to the Client or its business by the Bank, for business or other activities that are subject to Sanctions, restrictions or embargos administered by any of the Sanctions Authorities or that relate to a Restricted Country or Countries or a Sanctioned Person or Persons nor to provide any benefit of the funds or services provided or generated by the Bank to a Sanctioned Person or Persons.

### 37.3 Termination right

37.4 The Bank shall be entitled, without notice, to terminate this Agreement with immediate effect, and immediately cease to act in respect of any Instruction, where the Client is in violation of any Sanctions.

## 38. Confidentiality and information sharing

38.1 The Client consents to the Bank disclosing or transferring any information regarding the Client's orders, Transactions, settlement instructions, relationship with the Bank or other related information concerning the Client including personal information ("**Client Information**") to:

- a. the Bank's employees, director, officers or representatives;
- b. the Bank's affiliates and their employees, directors and officers;
- c. the professional advisers, third party service providers including cloud service providers, or contractors, or any of their affiliates ("**Third Party Providers**") of the Client, or the Bank or its affiliates; and
- d. a government regulatory authority or agency, Reference Exchange operator, clearing or settlement facility operator or trade repository, on a need to know basis or as required by Applicable Laws,

and in accordance with this Clause 38, for the purposes of providing the Services under these Terms and Conditions.

38.2 For the purposes of Clause 38.1, the Client acknowledges that the Bank may:

- a. collect, use and disclose the Client Information to assist it in relation to the internal administration and operations of the Bank;
- b. disclose the Client Information to a government regulatory authority or agency or Reference Exchange operator, clearing or settlement facility operator or trade repository;
- c. disclose the Client Information to Third Party Providers, who may collect, process, use, disclose or transfer the Client Information in connection with providing services to the Client or the Bank;
- d. collect and use the Client Information to maintain the Bank's relationship with the Client; and
- e. use and disclose the Client Information for compliance and in accordance with Applicable Laws.

The disclosure or transfer contemplated in this Clause 38.2 may include disclosure or transfers of Client Information overseas to a jurisdiction in which the relevant Bank representatives, affiliates, or Third Party Providers are located.

38.3 Subject to Clause 38.1 and 38.2, each of the Bank and the Client agree not to disclose any information that is provided by the other which relates to the business, assets or affairs of the party and is by its nature confidential (or the receiving party knows or ought to know is confidential) ("**Confidential Information**"), except:

- a. where the Confidential Information was already in possession of the recipient prior to disclosure to it by the other party;

- b. where that Confidential Information becomes public other than through a breach of this Clause 38;
- c. with the other party's consent; or
- d. as required by Applicable Laws, including at the request or direction of any government regulatory authority or agency, or any Reference Exchange operator.

## 39. Whole Agreement

39.1 The Agreement contains the whole agreement between the Client and the Bank relating to the subject matter of the Agreement to the exclusion of any terms implied by Applicable Laws which may be excluded by contract.

39.2 The Client agrees and acknowledges that:

- a. in entering into the Agreement, it is not relying on any representation, warranty or undertaking not expressly incorporated into it;
- b. its only right and remedy in relation to any representation, warranty or undertaking made or given in connection with the Agreement shall be for breach of the terms of the Agreement and it waives all other rights and remedies (including those in tort or arising under Applicable Laws) in relation to any such representation, warranty or undertaking.

39.3 Nothing in this Clause 39 excludes or limits any liability for fraud.

# Part D: Risk Disclosure Statement

## Client Agreement

1. **Introduction:** The objective of this Risk Disclosure Statement (this “**Statement**”) is to explain to the Client, briefly, certain risks relating to investments or Transactions (as defined below) of which the Client should be aware prior to undertaking such investments or Transactions. In particular, **the Client must be aware that the risk of loss in respect of investments or Transactions, and especially trading treasury and derivatives transactions or contracts, can be substantial. Before entering into the Transactions described below, the Client should consider their financial situation, objectives and needs and seek independent advice to determine whether these transactions are suitable for the Client.**

Unless otherwise defined in this Statement, terms and references defined in the definitions section of the Terms and Conditions shall have the same meaning and construction in this Statement.

2. **General Conditions:** The Terms and Conditions are applicable to investments or transactions involving equities, foreign exchange, precious metals, bonds, commodities, interest rates, securities, market indices and any combination of any of these, and any spot, forward contracts, swaps, options or other derivatives transactions thereof including any structured products incorporating any (or any combination of any) of the same as well as any other investments or transactions which the Bank and the Client may from time to time enter into.

Where the Client’s counterparty is the Bank, the Client acknowledges that the Bank deals with the Client at arm’s length as the Client’s counterparty. In such a case, the Bank is not the Client’s fiduciary, nor does it accept any fiduciary obligations to the Client. The Client should be aware that any dealing, trading or engagement or transaction with the Bank by the Client could result in a loss to the Client and a gain to the Bank and the Bank may still charge brokerage and any other relevant fees under the Terms and Conditions. The Bank does not and will not give the Client any advice or recommendation, whether written or oral, other than the representations which

will be expressly set forth in the relevant agreement, and any confirmation which may be signed or executed by the Client after negotiations with the Bank as the Client’s counterparty.

The Client acknowledges that the Bank has been engaged solely to provide the Services described in the Terms and Conditions. In providing the Services, the Bank will act as an independent contractor, and the Bank owes its duties arising out of this engagement solely to the Client and to no other person. The Client acknowledges that nothing in these Terms and Conditions is intended to create duties to the Client beyond those expressly provided for in these Terms and Conditions, and the Bank and the Client specifically disclaim the creation of any partnership, joint venture, fiduciary, or non-contractual relationship between, or the imposition of any partnership, joint venture, fiduciary, or non-contractual duties on, either party.

The Bank may make a profit from certain Transactions with the Client whatever the result of the Transaction, whether or not the Client makes a profit.

The Bank is not obliged to give advice or make recommendations and notwithstanding that it may do so on request by the Client or otherwise, such advice or recommendations are given or made (and the Client acknowledges and agrees that such advice or recommendation is so given or made) without any responsibility on the part of the Bank and on the basis that the Client will nevertheless make the Client’s own assessment and rely on the Client’s own judgment. Any such advice will be “general advice” only.

The Bank is part of a large international financial group and acts simultaneously for a large number of clients, as well as for its own account. Accordingly, conflicts of interest cannot be completely avoided. Accordingly, the Client acknowledges that the Bank and its affiliates may (subject to Applicable Laws): (a) be the issuer of any investments, (b) combine the Client’s orders with its/their own orders or the orders of other clients, (c) make investments or effect Transactions for the Client through the agency of and/or with a counterparty which is a related organization or a person otherwise associated with

it/them; (d) have a position or a direct or indirect interest in any investments or Transactions even if the position is opposite to that taken by the Client, (e) have bought or sold any investments or entered into any Transactions as principal or for its/their other clients; or (f) have other banking, advisory or any other corporate relationships with companies whose investments are held for the Client's account or are purchased and sold for the Client and its/their officers and directors may be officers and directors of such companies. The Bank and its affiliates shall not be liable to account or specifically disclose to the Client any profit, charge or remuneration made or received from any such transaction or other connected transactions unless otherwise required by Applicable Law.

The Services provided by the Bank to the Client are non-exclusive and the Bank shall be under no obligation to account to the Client for any benefit received for providing services to others or to disclose to the Client any fact or thing which may come to the notice of the Bank in the course of providing services to others or in any other capacity or in any manner whatsoever otherwise than in the course of providing services to the Client under the Terms and Conditions.

**3. Bank Base Rate:** In general, Bank Base Rate is used as the base reference interest rate for Facilities from the Bank. As set out in the definition of Bank Base Rate in Part A of this Agreement, when computing Bank Base Rate applicable for Facilities, the Bank may at its sole and absolute discretion include or take into account, without limitation, the following components: applicable reference rates, costs in connection with liquidity and funding arrangements, costs arising from capital, reserve, special deposit or other internal or regulatory requirements with respect to the amount in question, and any other costs and provisions. Each component of Bank Base Rate may fluctuate (individually or relatively) from time to time and if any such component of Bank Base Rate is determined by the Bank to be less than zero, the Bank shall have the right (but is not obliged) to assign a zero rate to such component. Overall, the Bank is not obliged to disclose to the Client (in any manner) of the different components of Bank Base Rate.

**4. Value Changes:** Specific market movements of the underlying instruments, e.g. fluctuations in foreign exchange rates, interest rates, movement in commodities prices and securities prices and indices etc., cannot be predicted accurately. The Client acknowledges and accepts that it may sustain a total loss in excess of the committed amount and any margin or additional margin deposited with the Bank.

**5. Risk-reducing Orders or Strategies:** Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit the Client's

losses to the intended amounts, as it may be difficult or impossible to execute such orders either in accordance with the Client's instructions, or at all, under certain market conditions. Accordingly, the Client accepts and bears the risk, and hereby releases and discharges the Bank from all liability, arising out of the execution or the non-execution of a "stop-loss" or "stop-limit" order and pursuant to such acceptance authorises the Bank, should any such circumstances occur, to execute any order at such rate and in such manner as the Bank may deem appropriate. Strategies using combinations of positions, such as "spread" and "straddle" positions, may be as risky as taking simple "long" or "short" positions.

**6. Leverage and Margin Cover:** The degree of leverage and/or arbitrage which is obtainable in connection with Transactions can work against as well as for the Client. The Client acknowledges and accepts that the use of leverage and/or arbitrage can lead to large losses as well as gains. Such leveraging may be by way of a loan, trading on a margin, or may be embedded within an instrument such as a structured note.

Where the Client transacts with the Bank on a margin basis, the Client must provide the Bank with an initial margin cover before entering into any of the Transactions. The required amount of initial margin cover ("**Margin Cover**") varies with each type of Transaction and is determined by the Bank, from time to time, in its absolute discretion and may be changed at any time.

The Margin Cover shall be secured by such assets ("**collateral**") and in such manner as may be determined and specified by the Bank from time to time. In some cases, while the amount of the initial margin deposit may be small in relation to the value of any Transaction, a small market movement may have a proportionately larger impact on the funds deposited with the Bank as margin could work for or against the Client. Consequently, the Margin Cover provided by the Client may fall below the amount required by the Bank. Further, if the market moves against the Client, the Client acknowledges and accepts that the Client may not only sustain a total loss of its Margin Cover and any additional funds deposited with the Bank to maintain the Client's position, but the Client may also incur further liability to the Bank or sustain further or additional losses.

If the Bank, in its absolute discretion, determines that the Margin Cover is inadequate or has been totally lost at any time, the Bank may take such action as the Bank in its sole discretion deems fit. This may include, but is not limited to, calling upon the Client to "top-up" the Margin Cover by substantial amounts at short notice to maintain the Client's position, failing which the Bank may liquidate the Client's position at a loss and the Client would be liable for

any amount as the Bank may certify to be necessary to compensate it for any loss or expense incurred in closing-out the Client's position or in terminating any such arrangement in respect thereof. If after such "topping-up", the amount of Margin Cover is still not adequate to meet the Client's obligations to the Bank, the Client shall be liable to the Bank for the difference.

Accordingly, the Client should not commit itself to any Transaction which is beyond the Client's means.

**7. Risks of Options: Transactions in options involve a high degree of risk and are not suitable for many people or entities.** Such Transactions should be entered into only by people or entities who fully understand and have familiarised themselves with the type of options, style of exercise, the nature and extent of rights and obligations and the associated risks. The Client should carefully calculate the price which the underlying contract would have to reach for the option position to become profitable. This price would include amounts by which the underlying contract would have to rise above or fall below the Strike Price to cover the sum of the Premium and all other costs incurred in entering into and exercising or closing the option position or performing the Client's obligations under the option. The Client acknowledges that exercising any option results either in a cash settlement, or in the acquisition or delivery of the underlying contract.

- a. **Risks involved in buying Options:** The Client should not purchase any option unless it is able to sustain a total loss of the Premium and transaction costs of purchasing the option. Under certain adverse market conditions when the market moves against an option position, the purchased option can expire worthless. A Client who purchases, or intends to purchase, an option should be aware that:
- i. in order to realise any value from the option, it will be necessary either to offset the option position or to exercise the option; and
  - ii. some option contracts may provide only a limited period of time for exercise of the option, and some option contracts may provide for the exercise of the option on a specified date only.

If the Client is contemplating purchasing deep-out-of-the-money options, they should be aware that ordinarily, the chance of such options becoming profitable is remote. If the option is a call option over a futures contract or leveraged foreign exchange transaction, the Client may on exercise be required to acquire a futures contract or leveraged foreign exchange position, as the case may be, with associated liabilities for margin.

Certain exchanges in some jurisdictions may permit deferred payment of the Premium, limiting the liability of the buyer to margin payments not exceeding the amount of the Premium. The Client acknowledges that the Client, as a buyer, is still subject to the risk of losing the Premium and transaction costs. When the option is exercised or expires, the Client is responsible for any unpaid Premium outstanding at that time.

- b. **Risks involved in selling Options:** The risks associated with selling ("**writing**" or "**granting**") an option are generally greater than purchasing an option. It is important for the Client to understand the risks to which the Client, as an option seller, would be exposed if the purchaser exercises the option and the Client is obliged to either settle the option in cash, or acquire or deliver the underlying contract. If the option is a put option over a futures contract or leveraged foreign exchange transaction, the Client, as the option seller, may be required on exercise to acquire a futures contract or leveraged foreign exchange position, as the case may be, with associated liabilities for margin. The risk may be mitigated (to a greater or lesser degree, depending on the facts) if the option is "covered" by a corresponding position in the underlying contract, instrument or another option. Conversely, if the option is not covered, then the possible loss may be unlimited. An option is described as "covered" if the option seller already has a corresponding quantity of the relevant underlying instrument at its disposal.
- i. **Risk of selling (writing) covered call options:** The seller (writer) of a covered call option sells (writes) the call option for an underlying instrument which they already have available. If the option is exercised by the buyer, the writer does not profit from the price growth of the underlying instrument in excess of the exercise price. Thus a potential profit is foregone by the writer of a covered call option. The profit foregone is reduced only by the Premium received. If the call option is not exercised by the buyer, the writer bears the full risk of a decline in the price of the underlying instrument. The decline in the price of the underlying instrument is offset only by the amount of the Premium received.
  - ii. **Risk of selling (writing) uncovered call options:** The seller (writer) of an uncovered call option sells (writes) the call option without already having the underlying instrument available in the event it has to be delivered. The writer of an uncovered call option is required to deposit a security margin. If the price of the underlying instrument rises, the security margin increases. The writer firstly bears the risk of having to provide additional collateral to the Bank at any time in order

to meet the increased margin requirements. Secondly, if the call option is exercised by the buyer, the writer bears the risk of having to purchase the underlying instrument to be delivered at a market price which is higher than the exercise price. Since there is no limit to the amount by which the market price of the underlying instrument may exceed the exercise price, the writer of an uncovered call option runs the risk of incurring an unlimited loss. The loss thus arising is offset only by the amount of the Premium received.

- iii. **Risk of selling (writing) put options:** The writer of a put option is required to deposit a security margin. If the price of the underlying instrument falls, then the security margin to be provided will increase. The writer runs the risk of being called upon at any time by the Bank to furnish additional collateral to satisfy the increased margin requirements. If the buyer exercises the put option, the writer runs the risk of having to purchase the underlying instrument offered to him at the exercise price which is higher than the market price of the underlying instrument. The exercise price may be considerably higher than the market price of the underlying instrument. The risk to the writer of a put option lies in the difference between the exercise price of the put option and the market price of the underlying instrument and is therefore limited to the amount of the exercise price (which may still be substantial). Any loss thus arising is offset only by the amount of the Premium received. If the buyer does not exercise the put option before its expiry, the security margin provided by the writer is released and the writer of the put option no longer faces the risk of having to purchase the underlying instrument at a price exceeding the market price. The writer of the put option retains the Premium received.
- c. **Combinations:** An acquisition of two or more options, based on the same underlying contract, which differ in either the option type (call or put), the quantity, the Strike Price, the expiration date or the type of position (buy or sell), is referred to as a combination. Given the large number of possible combinations, the Client should before entering into any such Transaction, obtain independent advice so as to understand and be familiar with the particular risks involved.
- d. **Exotic Options:** Unlike "plain vanilla" put and call options described above, exotic options are subject to additional conditions and agreements. There is no limit to the structures exotic options may take. Exotic options come in the form of tailor-made, over-the-counter options or as warrants. Given the special composition of exotic options, their price movements can vary markedly from those of "plain vanilla" options. The Client should be aware that larger Transactions can trigger price movements even shortly before expiration and that these can render an option worthless.
- This Statement is not an exhaustive guide on the risks involved in any particular option Transaction. The Client is strongly advised to seek full and independent advice about the particular risks involved in relation to any of the Transactions referred to above.
- 8. Forwards and Futures:**
- a. Forwards and futures entail an obligation to deliver or take delivery on a specified expiration date of a defined quantity of an underlying asset at a price agreed on the contract date. Futures are standardised contracts traded on an exchange. Forwards are traded over-the-counter. Forwards and futures may **involve high degrees of risk and may not be suitable for many members of the public.**
- b. When buying or (short) selling an underlying asset by way of a futures or forward contract, a specified initial margin must often be supplied at the beginning of the contract. This is usually a percentage of the total value of the contract. The Bank may require additional margin to be provided periodically or at any time during the life of the contract. This usually corresponds to the notional profit or loss arising from any change in value in the contract or underlying assets.
- c. For forward sales, the underlying asset must be delivered at the Strike Price agreed even if its market value has risen since the contract date. The seller thus risks losing the difference between the market value of the underlying assets and the agreed Strike Price. Theoretically, there is no limit to how far the market value of the underlying asset can rise and hence, potential losses are unlimited and can substantially exceed the margin requirements.
- d. For forward purchases, the buyer must take delivery of the underlying asset at the Strike Price agreed even if its market value has fallen since the contract date. The buyer's potential loss is thus the difference between the agreed Strike Price and the market value of the underlying assets. The maximum loss corresponds to the Strike Price (which may still be substantial). Potential losses can substantially exceed margin requirements.
- 9. Risks of FRAs:** A Client entering into a forward rate agreement contracts to pay or receive interest at an agreed rate over a period commencing at a future date regardless of the level of interest rates prevailing at that future date. For uncovered contracts, there is an unlimited interest rate risk, computed on the full amount(s) contracted.

**10. Risks of Interest Rate Swaps:** An interest rate swap is an agreement between two parties to make reciprocal payments over a specific period of time. The payments are determined by reference to a notional principal amount and fixed or floating rate(s) of interest. Floating rates are typically based on some published index of market rates.

The Client may be a receiver of fixed rate interest and payer of floating rate interest, or vice versa. In either case, movements in the referenced rates could have a significant impact on the Client's cash flow as well as on the cost of unwinding the swap position.

For uncovered contracts, there is an unlimited interest rate risk, computed on the full amount(s) contracted.

**11. Risks of Swaps:** Different instruments may be swapped, resulting in an exchange of future payment streams, and occasionally also an exchange of principal on commencement and/or maturity date (more frequently if the Transaction is an amortizing swap). The risk that one of the parties to the swap will default or otherwise fail to perform its obligations is typically greater in swaps where both principal and income streams are exchanged.

For an uncovered contract, there is a risk which is directly related to the risks of the different instruments swapped. It is important to note that these risks may not be offsetting in effect, and should be viewed instead in aggregate.

**12. Other Transactions and Combinations:** Combinations refer to a situation when at least two different instruments – either in identical or different classes – are bought and/or sold (written) at the same time. By closing or exercising individual parts of a combination Transaction, the risks involved can materially change.

Given the large number of possible combinations, the Client should, before entering into any such Transaction, obtain independent advice so as to understand and be familiar with the particular risks involved.

**13. Currency Risks:** Fluctuations in Foreign Currency rates have an impact on the Client's profit/ loss where the Transaction is denominated in a Foreign Currency or in a currency different from an original financial investment or transaction, or where the Client carries on its ordinary business or keeps its accounts in a currency other than the base currency in which the Transaction is denominated.

The Client is strongly advised to seek full and independent taxation advice about the implications of such Transactions.

**14. Liquidity and Marketability Risks:** The Client acknowledges and agrees that at certain times

or under certain market conditions, the Client may find it difficult or impossible to liquidate a position, to assess value or to determine a fair price. Certain equity or debt securities and money market instruments and, in particular, structured notes or customised products may not be readily realizable or marketable. There can be no certainty that market traders will be prepared to deal in them and the Client should be aware that proper information for determining their current value may not be available. Furthermore, the Client acknowledges and agrees that certain investment instruments, particularly alternative investments, can include instruments with a longer-term investment horizon. Consequently, they may be subject to lock-up periods, or may be redeemable only periodically or on certain dates, i.e. they may not be liquid at all times. In such cases, early redemption can result in a lower price and additional charges.

**15. Counterparty and Credit Risk:** To the extent necessary or possible, the Client should ensure that it is aware of the identity of, and finds acceptable, the contractual counterparty with whom the Client may be matched. As the Client will often be purchasing an unsecured obligation of the counterparty (as opposed to an obligation of a central clearing corporation in the case with exchange traded futures and options), the Client should evaluate the comparative credit risk.

Where the Client purchases a debt instrument, such as a note or a bond, the Client takes the credit risk of both its contractual counterparty as well as the issuer of the debt instrument. The Client should be aware that, depending on the product, the capital protection component of a product can be well under 100% of the capital invested and that capital protection does not mean 100% repayment of the purchase price for every product. Where the redemption price of a product is indicated at 100% (100% capital protection), it should be noted that this represents no guarantee by the issuer or the Bank that 100% of the purchase price of the product will be paid out at maturity. Capital protection only protects the Client from the downside- risk of the Transaction itself but not from the credit risk of the counterparty and the issuer.

**16. Deposited Property and Cash:** The Client should also familiarise himself/herself with the extent of the protections accorded to money or other property that the Client deposits for domestic and foreign Transactions, particularly in the event of an insolvency or bankruptcy of the issuer, custodian or intermediary. The extent to which the Client may recover its money or property may be governed by local rules and regulations. In some jurisdictions, property which had been specifically identifiable as the Client's own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

**17. Transaction Costs:** Before making any Transaction or investment, the Client should obtain a clear explanation of all commissions, fees and other charges for which the Client will be liable. The Client's net returns from any Transaction or investment will also be affected by the transaction costs (i.e. commission, fees and other charges) charged by the Bank or third parties and any relevant tax liabilities. These costs must be considered in any risk assessment made by the Client. In some cases, managed accounts may be subject to substantial charges for management and advisory fees. It may be necessary for those accounts that are subject to these charges to make substantial trading profits to avoid depletion or exhaustion of their assets.

**18. Tax risks:** Before entering into any Transaction, the Client should understand the tax implications (including the implications of any applicable income tax, goods and services or value added taxes, stamp duties and other taxes) of acquiring, entering into, holding and disposing of the relevant investment or Transaction. Different Transactions may have different tax implications. The tax implications of any Transaction are dependent upon the nature of the Client's business activities and the Transaction in question. The Client should, therefore, consult the Client's independent tax advisor to understand the relevant tax considerations.

**19. Exchange Traded Instruments and the Impact of Electronic Trading:** For Transactions involving underlying contracts or instruments which are traded on stock or futures exchanges, disruption of the normal market operations or conditions of such exchanges and/or the rules of operation of such exchanges (e.g. discretion on the part of the exchange to suspend or limit trading of certain contracts or instruments because of price limits or "circuit breakers") may increase the risk of loss by making it difficult or impossible to close out the Transactions or liquidate positions. If the Client has sold options, this may increase the risk of loss.

The Client shall also note that under certain circumstances, the specifications of outstanding contracts may be modified by the exchange or clearing house to reflect changes in the underlying interest.

In addition, normal pricing relationships between the underlying instrument and the futures contract, and the underlying interest and the option, may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge "fair" value.

Trading on an electronic trading system may differ not only from trading in an open-outcry market but also from trading on other electronic trading

systems. Further, for Transactions in which the underlying contracts or instruments are supported by electronic trading facilities at the exchanges, e.g. computer-based component systems for order-routing, execution, matching, registration, or clearing of trades, any temporary disruption or power/system failure of such electronic trading facilities could result in a disruption in the trading activities at the exchange and an unavailability of reference prices for the relevant Transaction. In such circumstances, the Client's order may not be executed according to the Client's instructions or at all, which may lead to losses to the Client. It is likely that such losses will not be recoverable from the relevant exchange as the rules thereof invariably exempt them from such liabilities. The Client should ask the Bank when conducting Transactions for details in this respect.

**20. Non-Transferability and Non-Marketability:** A structured or over-the-counter Transaction generally cannot be assigned or transferred without the consent of the other party. The Bank is not obliged to repurchase a Transaction from the Client or terminate a Transaction at the Client's request. Because Transactions are customised and not fungible, engaging in a Transaction with another dealer to offset a Transaction the Client has entered into with the Bank will not automatically close out those positions (unlike the case of equivalent exchange-traded futures and options) and will not necessarily function as a perfect hedge. Off-exchange Transactions may also be less regulated or subject to a separate regulatory regime. Before undertaking such Transactions, the Client should familiarise itself with the applicable rules and attendant risks.

**21. Price Indications in Statements for Derivative Transactions and Non-listed Instruments in General:** For financial derivative Transactions and non-listed financial instruments, in particular in "combined" or "structured" transactions, the absence of a "market" or "common" reference price may make it impossible for the Bank to provide the precise value of the Transaction. Therefore the Client should be aware that price indications by the Bank are always based on the latest available market prices of the underlying instrument or have arrived from sources believed to be reliable. Consequently, price indications might only reflect historic prices and may not reflect the final proceedings where the Transaction is terminated or assigned immediately, if this is possible at all. The Bank does not make any representation as to the accuracy or completeness of price indications for Transactions and does not accept liability for any loss arising from the use thereof. Because the prices and characteristics of over-the-counter Transactions are individually negotiated and as there is no central source for obtaining prices, there are inefficiencies in transaction pricing. The Bank consequently cannot and does not warrant that the Bank's prices or the prices the Bank secures for the Client are or will at any time be the best price available to the Client.



## 22. Transactions in Other Jurisdictions:

Transactions on markets in other jurisdictions, including markets formally linked to the Client's domestic market, may expose the Client to additional risks. Such markets may be subject to rules which may offer different or diminished investor protection. Before entering into any Transaction or investment, the Client should enquire about any rules relevant to the Client's particular Transaction or investment. The Client's local regulatory authority may be unable to compel the enforcement of rules of the regulatory authorities or markets in other jurisdictions where the Client's Transactions have been effected. The Client should enquire about the types of redress available in both the Client's home jurisdiction and other relevant jurisdictions before the Client enters into a Transaction or investment.

## 23. Emerging Markets Financial Instruments:

Emerging markets are defined as markets in countries with moderate to low per capita national income. While investments in emerging markets can yield large gains, they can also be highly risky as they could be unpredictable and there may be inadequate regulations and safeguards available to investors. For instance, investments may not be readily saleable and information to determine their current value may not be available in emerging markets. Besides the risks inherent in all investments, those associated with emerging markets include, but are not limited to, country risk where government intervention in markets, perhaps in the form of exchange control laws or restrictions in the repatriation of profits, may affect the value of an investment or the Client's ability to enjoy its benefits. In addition, events (for instance, natural disasters, fluctuations in commodity prices and/or exchange rates and political upheavals) which may have a minor or limited effect in more mature markets could affect emerging markets profoundly.

In these circumstances, investments by the Client in emerging markets financial instruments (for instance, bank certificates of deposit, debt or equity securities issued by public or private sector institutions available in emerging markets) need careful and independent assessment of each investment and the risks in relation thereto (including, without limitation, sovereign risk, issuer risk, price risk, political risk, and liquidity risk).

The Client should make an independent appraisal of, and investigations into, and should, from time to time, review the financial condition and creditworthiness of the relevant issuer of the emerging market financial instruments. The Client should be aware of and be able to weigh the diverse risks, some of which are identified above, before investing in emerging market financial instruments.

## 24. Non-traditional Funds (Hedge Funds and Offshore Funds):

Non-traditional funds are

investment companies which differ from traditional equity and bond investments on account of their investment style. The most common form of a non-traditional fund is the hedge fund, which, despite its name, does not necessarily have anything to do with hedging. Many hedge funds aim to make a profit and sometimes take on very high levels of risk. Hedge funds include all types of investment funds, investment companies, partnerships and limited liability partnerships which use derivatives for investment rather than hedging purposes, which can carry out short sales or which can attain significant leverage from the investment of borrowed capital. Additional features of hedge funds are their free choice of investment categories, markets (including emerging markets) and trading methods. Hedge funds generally demand high minimum investments. They offer no more than limited subscription and redemption rights with lengthy notice periods. Portfolio managers of hedge funds receive performance-linked bonuses and often have a personal stake in the fund. The Client acknowledges that performance fees may be charged in relation to an investment in a non-traditional fund, and this may be affected by way of deduction of securities held by the Bank on behalf of the Client, which will reduce the holdings of the Client accordingly.

These investment strategies are often high-risk. Due to leverage, a small movement in the market can lead to a major gain, but any losses will also be magnified sharply. The Client acknowledges and accepts that for such investments the entire amount of the Client's investment can, under certain circumstances, be lost. It is not uncommon for there to be little information available concerning a non-traditional investment. Moreover, many investment strategies are highly complex and very difficult to understand. The Client should be aware that changes in strategy which can lead to a substantial increase in the level of risk are often overlooked, accorded too little attention or noticed too late. The liquidity and tradability of non-traditional investments can vary a great deal. Hedge fund issues and redemptions are often only monthly, quarterly or annually. Fixed holding periods lasting many years are not unusual. Provisions regarding trading frequency and holding periods may change frequently and rapidly. Liquidations can stretch over many years. Many funds in this category have an offshore domicile which earns them the name offshore funds. They are subject to less stringent legislation and supervision, which in turn offers poorer investor protection. Problems or delays may also arise in the settlement of buy and sell orders for units in such funds. There is no guarantee that an investor's legal rights will be enforceable.

Non-traditional investments can take countless different forms and involve a high degree of risk. Before making any such investments, the Client should seek independent advice about the particular risks involved and carefully study the key

documentation such as the information memorandum and subscription agreement and other available information on the relevant investments. The Client should fully understand and agree to assume the risks involved and the exposure to potential loss (which could involve the complete loss of the investments).

**25. Structured Products:** Structured products are formed by combining two or more financial instruments, including one or more derivatives. **Structured products may carry a high degree of risk and may not be suitable for many members of the public,** as the risks associated with the financial instruments may be interconnected. As such, the extent of loss due to market movements can be substantial. Prior to engaging in structured product Transactions, the Client should understand the inherent risks involved. In particular, the various risks associated with each financial instrument should be evaluated separately as well as taking the structured product as a whole. Each structured product has its own risk profile and given the unlimited number of possible combinations, it is not possible to detail in this Statement all the risks which may arise in any particular case. Nonetheless, this Statement attempts to provide a general description of the features and some of the risks applicable to a few common types of structured products. The Client should note that with structured products, buyers can only assert their rights against the issuer. Hence, particular attention needs to be paid to issuer risk. The Client should therefore be aware that a total loss of his investment is possible if the issuer should default.

a. **Structured products with a capital return feature:** Structured products with a capital return component often consist of an option combined with a fixed income instrument (e.g. a bond). The capital return component is provided by the bond and determines how much is paid out as a fixed sum when the structured product matures. The Client should note that the capital return can be well under 100 per cent of the capital invested, depending on the product. The capital return is also linked to the nominal value rather than the issue price or the secondary market price. Capital return does not therefore mean 100 per cent repayment of the purchase price for all products. The option component determines how and to what extent the buyer benefits from price movements in the underlying asset. In other words, it establishes the buyer's potential return above the capital return component. The risk this component entails corresponds to those of other options or option combinations. Depending on the underlying asset's market value, it can expire without value. The market value of a structured product can fall below the level of its capital protection, which can increase the potential loss on a sale before maturity. In other words, capital return is only available if the buyer holds the structured product until maturity. Structured products are complex and it is important for you to understand how the

investment would perform under a range of market situations before making the decision to invest. The disclosure documents for each structured product will provide a full list of the risks each structured product is exposed to.

- b. **Dual currency investments:** Dual currency investments (also known as dual currency deposits) (or "DCIs") are exchange-rate-related instruments that enable the buyer to obtain a higher return than on a money market instrument. When a DCI matures, the buyer will receive payment of principal and interest either in the primary or the alternative currency. If payment is in the alternative currency, the strike rate will be used for conversion. A DCI can be viewed as a bond combined with a grant of a short call option on the reference currency. If on maturity, the option is out-of-the-money, the buyer will receive the principal plus interest in the primary currency. On the other hand, if the option is in-the-money, the issuer of the DCI will exercise the call option and pay the holder of the DCI in the alternative currency. DCIs are suitable for buyers who wish to see a high return on their investments and accept the risk of repayment in the alternative currency at the strike rate. The higher the potential earnings, the greater the risk that payment will be made in the alternative currency at the Strike Price.
- c. **Equity-linked notes:** Equity-linked notes (or "ELNs") may be viewed as combining a debt instrument with an option that allows a bull (rising), bear (falling) or range bet. The return on an ELN is usually determined by the performance of a single security, a basket of securities or an index. A bull ELN combines a traditional deposit with the Premium received from writing a put option on the chosen securities. If the value of these securities falls to a level less than the Strike Price minus the Premium received, the buyer will suffer a loss. The maximum potential loss could be the entire capital sum. A bear ELN combines a deposit with the Premium received by selling a call option on the chosen securities. Upon maturity, the amount that the issuer of a bear ELN will repay the investor depends on the Strike Price and the market value of the securities at maturity. Buyers of a bear ELN must feel comfortable with the risk of losing the entire capital invested, in the event that the market value of the securities is above the Strike Price. A range ELN combines a traditional deposit with the Premium received by selling both a put option and a call option on the chosen securities. The Client should also note that the return on investment of an ELN is predetermined, so that even if the Client's view of the direction of the underlying market is correct, the Client will not gain more than the specified amount. The Client should also note that there is no guarantee that the Client will derive any return on the Client's investment in an ELN. In addition, there is a limited secondary market for outstanding ELN issues.

**26. Private Equities:** Private equities (“PE”) are participations into private companies and/or funds. The purpose of such participations is to provide such companies with capital in order to finance projects that are expected to generate higher returns involving higher risks (“Projects”). The PE participations are made either by a single payment or in other cases, by several payments over a certain period of time, known generally as “capital calls” by the private companies involved, which you are legally bound to honour when called. PE are less liquid than other securities and in certain cases, fund holdings of PE cannot be sold and/or transferred freely. If transferred, this might take place at a discount. Returns on private equity generally occur in several ways such as: (i) a sale of the participations through eventual public listings on stock exchanges; (ii) mergers with other companies, sale to another interested party; or (iii) a recapitalization amongst others. Considerable losses, or even a total loss over the investments into PE might take place, when such private companies and/or funds are either wound up or declared insolvent, should the Projects fail and/or should commercial interest in the business of the private companies or Projects cease to exist.

**27. GEM of Hong Kong:** GEM has been established in Hong Kong as a market designed to accommodate companies to which a high investment risk may be attached. In particular, companies may list on GEM with neither a track record of profitability nor any obligation to forecast future profitability. There may be risks arising out of the emerging nature of companies listed on GEM and the business sectors or countries in which the companies operate.

There are intrinsic risks of investing in such companies and the Client should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of GEM mean that it is a market more suited to professional and other sophisticated investors.

Given the emerging nature of companies listed on GEM, there is a risk that securities traded on GEM may be susceptible to higher market volatility compared to securities traded on the main board and no assurance is given that there will be a liquid market in the securities traded on GEM.

The principal means of information dissemination on GEM is publication on the internet website operated by the Stock Exchange of Hong Kong. Companies listed on GEM are not generally required to issue paid announcements in gazetted newspapers. Accordingly, the Client needs to have access to up-to-date information on GEM-listed companies as published on the GEM website.

**28. Other Related Documentation:** The Bank will, in appropriate cases, furnish the Client with term sheets or confirmations setting out the material terms,

associated obligations, underlying assumptions, pricing basis and sensitivity analysis to illustrate the impact of market movements on the proposed Transaction (in particular, the profit and loss which the Client may be exposed to with fluctuations in market rates) and/or such other information regarding the said Transaction as the Bank may think relevant. Any sensitivity analysis which may be provided is for the purpose of illustration only and is not to be treated as the Bank’s view on how the market will move in the future. The Client is strongly advised to study and should fully understand the relevant term sheet before executing any specific Transaction. The provision of such term sheets and/or confirmations shall not, however, detract from the Client’s duty to take all such steps and make all such enquiries as may be necessary or desirable to ensure that the Client fully understands and is familiar with the Transaction concerned.

The term sheets, confirmations and all annexures and supplementals hereto or thereto from time to time shall together be incorporated into and form a part of this Statement. The Client is advised to contact the Bank if any part of this Statement is omitted or incomplete.

**29. Acknowledgement:** By entering into any Transaction, the Client confirms that the Client has read and fully understood the Risk Disclosure Statement, the term sheets and all annexures pertaining to the Transaction, the nature of the Transaction and the Terms and Conditions governing the Transaction as well as the margin requirements, if applicable. The Client acknowledges that in entering into any Transaction, the Client has made its own assessment of the Transaction and its own objectives, knowledge, experience, financing risk capacity and ability to monitor the Transaction, based on such independent financial, tax, legal or other advice as the Client considers appropriate. The Client further acknowledges that it:

- a. understands, is familiar with and is fully aware of the risks related to the Transaction;
- b. is willing to take all such risks; and
- c. is capable of bearing a full loss of the amounts invested as a result of or in connection with any Transaction entered into with the Bank and any additional loss over and above the initial amounts invested.

The Client accordingly agrees that it is and shall at all times be fully responsible for any Transaction it chooses to enter into.

The Client also confirms that it is aware of and fully understands all Applicable Laws, regulations and directives to which it is subject and that it is entitled and/or authorised under or by such laws, regulations and/or directives to enter into any Transaction it chooses to enter into.

# Part E: Digital Services

## 1. Application

1.1 The provisions contained in this Part E: Digital Services shall, in conjunction with other parts of the Agreement, apply to Digital Services.

1.2 In the event of any conflict or inconsistency between this Part E and any other parts of this Part E shall prevail insofar as the conflict or inconsistency relates to Digital Services.

1.3 In this Part E, the following terms shall have the meanings set out below unless otherwise defined or the context requires otherwise:

**“Access Procedures”** means all user IDs, Passwords, secure IDs, Digital Services log-on codes, Digital Services PINs, smartcards, digital certificates, digital signatures, electronic keys, logon identifiers, passwords, passbooks, tokens, devices and other PINs, codes and access procedures (including any access procedures involving the use of third party biometric recognition features) issued and/or approved by the Bank or any other person specified by the Bank from time to time in order to enable the Client to access and/or use Digital Services and the Services;

**“Authorised Users”** means all persons for the time being authorised by the Client to operate, access and/or receive information relating to, any or all of the Client’s Accounts and who have been designated as authorised users of the Digital Services at the Bank’s discretion;

**“Bank IT Systems”** means electronic and information technology systems (including computer systems, internet and network infrastructure and telecommunications networks), wherever located, and any hardware or software (including any plug-ins), which support the Bank’s operations, whether or not, directly or indirectly, owned or operated by the Bank;

**“Compromised Access Procedure”** has the meaning given to it in Clause 5.3 of Part E;

**“Content”** has the meaning given to it in Clause 13.1 of Part E;

**“Data”** has the meaning given to it in Clause 6.2(j) of this Part E;

**“Digital Services”** means the service of making available any one or more channels of electronic access or other channels of self-service access to any of the Services, which channels may include, but are not limited to, the Bank’s digital capabilities or other Digital Services platform, websites, computers, telephones, mobile telephones, wireless data networks, e-mails, mobile devices (including personal digital assistants), in or outside the Jurisdiction and/or any other channels and/or means as may be determined by the Bank from time to time;

**“Digital Services Terms”** means the application form for Digital Services (if any) and the Account Application, read together with Part E and any other terms and conditions applicable to Digital Services which may be prescribed by the Bank from time to time;

**“Digital Services Instruction(s)”** means any instructions, communications, orders or requests transmitted through Digital Services and authenticated, whether individually or collectively, with the Access Procedures in accordance with the Bank’s prescribed procedures and requirements and shall include all applications which have been submitted in electronic form via Digital Services;

**“IT Systems”** means any hardware, device (including any mobile device) or software (including any plug-ins and any third party biometric recognition software) and internet, network connection or infrastructure, directly or indirectly relating to or in connection with accessing, using, supporting or running Digital Services;

**“Malware”** means any software, virus, trojan horse, worm, bot, cyber-attacks, phishing emails, spyware, bombs and/or macro or other harmful component that may interfere in any way with the use of Digital Services or disrupts computer usage (including via the web browser or the computer system of the Bank, the Client, any Authorised User or the network provider used to access Digital Services);

**“Market Data”** has the meaning given to it in Clause 6.2(j) of this Part E;

**“Related Images and Instruments”** has the meaning given to it in Clause 6.2(j) of this Part E;

**“Security Notification”** has the meaning given to it in Clause 5.3 of this Part E;

Any capitalised terms not defined in this Part E shall have the same meaning as set out in the Agreement.

## 2. Access to Digital Services

2.1 Access to Digital Services is subject to this Part E and the Client agrees that the Bank may grant access to persons who have identified themselves by using the Access Procedures issued or as designated by the Bank and by complying with the Bank’s instructions and procedures regarding the use of such Access Procedures.

2.2 The Bank strongly recommends that any Password(s) provided to the Client (and its Authorised Users) be changed periodically. The Client shall, and shall procure that its Authorised Users shall, follow the password and security management instructions displayed in the Digital Services user log-on or PIN entry web page.

2.3 The Bank is authorised to act upon any Digital Services Instructions referable to Access Procedures of a Client or Authorised User. The Bank shall neither be liable for acting upon such Digital Services Instructions nor be obliged to investigate the authenticity or authority of the person effecting such Digital Services Instructions or verify the accuracy and completeness of such Digital Services Instructions. The Bank may at its absolute discretion refuse to act on any Digital Services Instructions without notice to the Client, its Authorised Users or its agents and/or assigning any reasons therefor.

2.4 Notwithstanding the forgoing, the Bank may at its sole and absolute discretion and without stating reasons require that the Client and each Authorised User identifies himself/herself by alternative means (by signature or in person), to provide further proof that the Digital Services Instructions are duly authorised by the Client and/or validly sent by the Client or Authorised User, and/or to give confirmation of the Digital Services Instructions (in each case whether in writing or otherwise and in such form and substance as prescribed by the Bank from time to time) before the Bank proceeds to act on such Digital Services Instructions.

2.5 The Client unconditionally accepts that all Client Transactions via the Accounts accessible through Digital Services which were carried out using Digital Services in connection with the Client’s or an Authorised User’s form of identification and without a written order are irrevocable and binding on, and valid and enforceable against, the Client, unless indicated otherwise in, and subject to, the provisions of the Agreement. The Client agrees and accepts that nothing contained in the Content shall be construed as an offer by the Bank to sell, buy, give, take, issue, allot, or transfer, or as the giving of advice by the Bank in respect of any Client Transactions.

2.6 Without prejudice to any other provision in the Agreement, the Client acknowledges and understands that the transmission of Digital Services Instructions to the Bank through Digital Services may not be received, or completely or accurately received, by the Bank for reasons beyond the Bank’s reasonable control, including mechanical, software, computer, telecommunications, system, technical network or electronic failure or otherwise. The Client acknowledges and agrees that the Bank shall not be liable to the Client in any way for any Losses or Claims whatsoever or howsoever caused arising out of, directly or indirectly, or in connection with directly or indirectly, the transmission, failure of transmission, or incomplete, inaccurate or delayed transmission of Digital Services Instructions to the Bank through Digital Services or any lack of confirmation of receipt of any Digital Services Instructions by the Bank for whatever reason.

2.7 If, in the Bank’s sole and absolute opinion, the Bank believes that there is a dispute between the Bank and the Client about a Digital Services Instruction (such as the number of Securities the Client has asked the Bank to buy or the bid price of those Securities), the Bank may take any action which the Bank considers, in its sole and absolute discretion, necessary to close any open position that is the subject of the dispute without any prior notice to the Client.

## 3. Digital Services Instructions and Client Transactions

3.1 The Client accepts and acknowledges that Digital Services Instructions may not be processed immediately or around the clock at any time of the day but that processing is dependent, among other things, on the time and day that such Digital Services Instructions are received by the Bank, on the business days and hours of any

relevant third parties such as stock exchanges or managers of Funds (where applicable) and the public holidays and working hours of the Bank.

3.2 The Client or an Authorised User shall, before providing the Bank with any Digital Services Instructions to sell Securities or sell (redeem) Units in Funds, ensure that there are sufficient Securities or Units (as the case may be) in the Account.

3.3 The Client agrees that proof of any transmission of Digital Services Instructions by the Client or an Authorised User via Digital Services shall not constitute proof of receipt thereof by the Bank.

3.4 The Bank shall not be responsible or liable for Digital Services Instructions in respect of Client Transactions which are not executed on time or for any Losses or Claims incurred or suffered arising therefrom or in connection therewith (including Losses and Claims in relation to pricing in the case of Digital Services Instructions relating to sale and purchase of Securities and Units in Funds).

## 4. Transfer of funds

4.1 The transfer of funds from the Account(s) to any account including third party account(s) with the Bank or any other banks, as specified by the Client, is subject to such limits and/or conditions as may be fixed or specified by the Bank from time to time in its sole and absolute discretion.

4.2 The Bank is not obliged to make such transfers as instructed by the Client or an Authorised User if the Client has not maintained sufficient funds in the Account(s) as specified by the Client or an Authorised User at the time the Client Transaction is instructed. The Client or an Authorised User shall, before instructing the Client Transaction, ensure that there are sufficient funds in the specified Account with the Bank at the time of the Client Transaction.

4.3 Where fund transfers are made to other banks and/ or organisations, the Bank shall not be responsible or liable for any Losses or Claims incurred or suffered by the Client arising from or in connection with non-acceptance or rejection by the receiving banks, or any failure, delay or error by the receiving banks in crediting the account of the Client's payee.

4.4 Upon the receipt of a Digital Services Instruction for any Client Transaction given by the Client or an Authorised User, the Bank is entitled to debit forthwith the Account and shall not be responsible or liable for any missing funds and/or misuse and/ or mismanagement of funds except and except only direct loss or damage incurred by the Client

directly caused by Bank's gross negligence or wilful default, where the Bank has been found to have been grossly negligent or in wilful default in a final decision made by a court in the Jurisdiction.

## 5. Obligations to exercise due diligence on the part of Digital Services users

5.1 The Client and each Authorised User acknowledge their obligations to keep the Access Procedures secure and confidential, exercise reasonable care and take all necessary and suitable precautions to protect them against misuse or fraud by unauthorised persons. In particular, the Password may not be stored in any way unprotected, including on the computer of the Client or an Authorised User, or in a written form on or near any device used for accessing Digital Services. The Client and each Authorised User shall destroy the original printed copy of the Password and establish adequate controls and security arrangements to prevent any other person from using their Access Procedures. The Client shall bear all risks and all Losses suffered by the Client arising from the disclosure of the Access Procedures or the failure to properly safeguard the Access Procedures due to any fraudulent act or gross negligence of the Client or each Authorised User (including failing to take all necessary precautions to protect and keep the Access Procedures secure and confidential).

5.2 The obligation of confidentiality in Clause 5.1 applies to the Client and each Authorised User. The Client shall thus also be responsible and liable for and shall bear all and any Losses and Claims arising from or in connection with any Authorised User misusing any other Authorised User's identification codes.

5.3 If there is reason to suspect that unauthorised third parties have knowledge of the Client's or any Authorised User's Access Procedure has been compromised in any other way ("**Compromised Access Procedure**"), the Client or any Authorised User must immediately cease to use such Compromised Access Procedure and notify the Bank immediately of such compromise or suspected compromise ("**Security Notification**"). Any Security Notification given verbally shall be confirmed in writing by the Client and actually received by the Bank, failing which the Bank shall not be obliged to act upon the Security Notification. The Bank shall be under no obligation to proceed, and shall have no liability in relation to not proceeding, on any pending Digital Services Instructions after the Bank has received a Security Notification.

5.4 In the event that a Security Notification has been given by the Client, the Client understands that it is the Client's responsibility to ascertain which Digital Services Instructions that have not been processed are valid and if the Client wishes such valid Digital Services Instructions to be carried out, the Client shall re-instruct the Bank, by notice in writing or sent by fax or post, to the Bank, to carry out those Digital Services Instructions.

5.5 The Client acknowledges that the Bank shall be entitled to deactivate or revoke the use of any one or more of the Access Procedures at any time without assigning any reason and without prior notice to the Client.

5.6 The Client acknowledges and confirms that the Client shall be bound by all Digital Services Instructions and Client Transactions resulting from any Digital Services Instructions made which are referable to any Compromised Access Procedure until such time as the Bank has received the Security Notification from the Client and has effected cancellation of the Compromised Access Procedure. Accordingly, the Client agrees that the Client will be liable for all such Client Transactions which were processed by the Bank prior to or at the time of such cancellation, or of which the Bank, notwithstanding its reasonable endeavours, was unable to stop the processing.

5.7 The Client agrees that the Bank shall not be responsible nor liable in contract, tort (including negligence or breach of statutory duty) or otherwise, for any Losses or Claim whatsoever (whether direct or indirect, or whether foreseeable or not) suffered or incurred by the Client arising out of or in connection with:

- a. any Client Transaction resulting from any Digital Services Instruction made by the Client or any Authorised User purportedly made by the Client or Authorised User referable to such Compromised Access Procedure and which was processed by the Bank prior to or at the time of cancellation of the Compromised Access Procedure, or of which the Bank, notwithstanding its reasonable endeavours, was unable to stop the processing; or
- b. any failure by the Bank to carry out any Digital Services Instruction referable to a Compromised Access Procedure which was outstanding at the time the Bank was cancelling such Compromised Access Procedure and of which the Bank had stopped the processing.

5.8 For the purposes of this Clause 5, a Digital Services Instruction shall have been "processed" where the Bank has commenced carrying out the Digital Services Instruction and it is no longer reasonably able to cancel or revoke the Digital Services Instruction without causing

prejudice to the Bank as determined by the Bank in its sole and absolute discretion, and a Digital Services Instruction is "outstanding" where it is at any stage prior to being processed.

## 6. Security with Digital Services; non-liability on the part of the bank

6.1 The Client and each Authorised User shall be responsible for obtaining and using, at his/her own expense, the necessary web browser, other software, hardware and/or equipment necessary to obtain access to Digital Services, and for ensuring that his/her web browser, other software, hardware and/or equipment used to obtain access to Digital Services is free in all circumstances from Malware or errors that could affect the proper functioning of Digital Services. If new or different versions of the web browser, other software, hardware and/or equipment necessary for the operation of Digital Services become available, the Bank reserves the right not to support any prior version of the web browser, other software, hardware or equipment. If the Client and/or any Authorised User fails to upgrade the relevant software and/or web browser or to use the enhanced version of the relevant software, web browser, hardware or equipment as required by the Bank:

- a. the Bank may not receive the Digital Services Instructions or communication; or
- b. the Bank may reject any Digital Services Instructions or communication; or
- c. the Bank may process the Digital Services Instructions incorrectly; or
- d. the Client and/or any Authorised User may not be able to obtain access to all features
- e. and/or services available, and the Bank shall not be held liable as a result thereof.

6.2 The Client acknowledges the following risks:

- a. insufficient technical knowledge and lack of safety precautions can make it easier for unauthorised persons to access the system (e.g. insufficiently protected storage of data on the hard disk, file transfers, monitor emissions, etc.). It is the Client's and each Authorised User's responsibility to inform himself/herself of the necessary security precautions. The possibility that the network provider (e.g. internet provider) may profile the Client's or each Authorised User's characteristics

- cannot be ruled out, i.e. the provider being able to identify when the Client and/or any Authorised User makes contact with them;
- b. latent danger that third parties could gain unnoticed access to a computer system of the Client or any Authorised User during an Internet session (e.g. via a Java application etc.). There is also the possibility that third parties may record communications with the Bank;
  - c. danger of intrusion or attack by any person or hardware, or by any Malware;
  - d. the following operational risks:
    - i. the Bank uses Bank IT Systems to deliver services to and perform transactions on behalf of Clients as well as for back office operations. The Bank, therefore, depends on the performance, capacity and reliability of Bank IT Systems to support the Bank's operations, day-to-day business communications and the delivery or provision of its products and services in relation to Digital Services or otherwise; and
    - ii. the Bank may not be prepared to address all contingencies that could arise in the event of a major disruption of services or remedy any interruption in a timely or satisfactory manner or at all, as the Bank is partly dependent on third parties for the implementation and maintenance of Bank IT Systems and some causes of interruptions to them are beyond the Bank's control;
  - e. the Bank is dependent on software, equipment and services provided or managed by third parties in the operation and provision of products, services or features in relation to Digital Services or otherwise. In the event that there are problems relating to the performance of such software, equipment or services, or any arrangements with any of these third parties are terminated, the Bank may not be able to use or have access to such software, equipment or services on a reliable or timely basis or on commercially acceptable terms, or at all. In these circumstances, Digital Services or any of its services or features may be disrupted or become unavailable;
  - f. the Bank may use authentication or verification technologies, services or measures as the Bank deems necessary, desirable or appropriate. There can be no assurance that such authentication technologies, services or measures will be completely secure, adequate or successful to prevent unauthorised access to or use of Digital Services, hacking or identity theft;
  - g. the following risks relating to security of information and access:
    - i. physical or electronic break-ins, security breaches, service disruption and other disruptive problems caused by the increased use of the internet or any power disruption could also affect the security of information stored in or transmitted through Bank IT Systems. Notwithstanding that the Bank employs certain security measures designed to minimise the risk of security breaches, there can be no assurance that these security measures will be adequate or successful;
    - ii. Digital Services will be accessed on devices in the Client's or Authorised User's possession. Accordingly, the Client and its Authorised Users should take adequate steps (for example, installing all security precautions or software from reliable sources) to minimise or prevent unauthorised access to the their IT Systems and any security breaches, attacks or intrusions by Malware or other similar harmful components interfering with the use of Digital Services. There is also a risk that third parties could gain access to the Client's or its Authorised Users' IT Systems before, during or after the Client or its Authorised Users access Digital Services, and the third parties may thereby gain access to any information including information which the Client or any of its Authorised Users choose to download via Digital Services and store on its IT Systems;
    - iii. where the Client or any of its Authorised Users has registered biometric identification that is not its own via third party biometric recognition features on its IT Systems (for example, other people's fingerprints registered as part of the "Touch ID" feature of the User's "Apple" mobile device), the Bank strongly cautions against the Client or any of its Authorised Users enabling use of and access to Digital Services by such biometric recognition features;
    - iv. the Bank strongly cautions against Digital Services being downloaded, installed or used on a device where any of the security features devised by the operating system or manufacturer have been modified at any time (including a device which has been "jailbroken" or "rooted"). Doing so risks the effective and reliable use of Digital Services and may cause interferences with the use of Digital Services and data security breaches. If any Digital Services are downloaded, installed or used on such a device, the Client and its Authorised Users are deemed to be fully aware of and understand the risks of doing



so and the Bank shall not be responsible for any consequences of such use;

- h. the following risks in relation to communications and transmissions:
  - i. any information, notification, data, document or software transmitted via Digital Services, e-mail or SMS is carried through or on publicly accessible networks and through applicable internet or telephone service providers, is dependent on IT Systems and may be in an unencrypted form.
  - ii. accordingly, the possible risks of such communications and transmissions should be understood; these include: (i) another person assuming (fraudulently or otherwise) the Client or any of its Authorised Users' identity or the Bank's identity, as the case may be; (ii) leakage of any confidential information or profiling of the Client or any of its Authorised Users' behaviour; (iii) errors in transmission and technical default or power failure of networks, service providers or IT Systems; (iv) delays or time lags in transmission or communications; (v) an intruder or third party interfering with or intercepting any information, notification, data, document, or software so as to receive the Client or any of its Authorised Users' information or send out unauthorised information, communications or instructions to or from the Bank; and (vi) a third party discovering the relationship between the Client or any of its Authorised Users and the Bank.
- i. the Bank handles Personal Data in relation to the provision of its products and services through or as a result of Digital Services or otherwise. The controls that the Bank has implemented to protect the confidentiality of Personal Data, including those designed to meet the strict requirements of any applicable banking secrecy laws, may not always be effective in preventing unauthorised disclosure of Personal Data;
- j. the following risks in relation to Market Data:
  - i. information, news, articles, data, analysis, research or other similar information, in any form, whether financial in nature or otherwise, relating to securities, markets, companies, industries or events, whether sourced from or arranged by the Bank and its Affiliates or from third parties, whether in relation to the Client's Account(s) or portfolio(s) of cash and investments or more generally, may be made available via or in connection with Digital Services, and shown or listed according to any criteria, including by risk exposure levels (the **"Data"**); and

- ii. Digital Services also uses metadata, which is sourced from third parties, to embed or otherwise associate images, and to select financial instruments for display, within, with or alongside the Data (the **"Related Images and Instruments"** and, together with the Data, **"Market Data"**). Notwithstanding any headings or titles, the accuracy or appropriateness of the Data and presentation of Related Images and Instruments is not assured by the Bank or such third parties and may result in the presentation of Related Images and Instruments which do not bear any true, direct or appropriate connections with the Data.

It is important that the Client and each Authorised User only downloads and uses software from reliable sources.

6.3 The Client's and/or any Authorised User's user name, Password and secure ID and any other relevant Access Procedure issued by the Bank may be dispatched by the Bank by registered mail to the last known address of the Client or the Authorised User or in such manner as may be advised by the Client or the Authorised User, as the case may be, at the Client's or each Authorised User's risk.

6.4 The Bank does not warrant or represent that any Content, information or data transmitted via Digital Services is accurate, complete and/or not misleading in any way. The Bank assumes no responsibility whatsoever for the accuracy, timeliness and completeness of Digital Services data which it transmits, in particular information regarding Accounts and Client Transactions (including balances, statements and generally available information such as stock market prices and foreign exchange rates is to be regarded as non-binding.

6.5 The Bank shall in no event be responsible or liable for any Losses (which for the avoidance of doubt include direct, indirect, special or consequential damage, or economic Losses) or Claims arising from or in connection with:

- a. transmission errors, technical faults, malfunctions, illegal intervention in network equipment, network overloads, Malware or any form of malicious blocking of access by third parties, Internet malfunctions, interruptions or other deficiencies on the part of the network providers; or
- b. any software it may have supplied (e.g. via CD-ROM or download), or for consequences resulting from or occurring during the transport of the software via the Internet.

6.6 The Bank may from time to time upgrade, modify or alter the Digital Services at any time and at its sole discretion. The Bank shall not be liable

if any such upgrade, modification or alteration prevents the Client and/or any Authorised User from fully accessing and/or using Digital Services.

6.7 The Client acknowledges that any website for accessing Digital Services may contain links to, or may otherwise enable access to, websites and resources controlled or offered by third parties. Such links or access are provided for the Client's information only and the Bank shall have no liability for any information, materials, products or services posted or offered on any such third-party website or in any such third-party resource. By creating a link or enabling access to such third-party website or resource, the Bank does not endorse or recommend any product or service offered or information contained on such website or in such resource (including any stock quotes, foreign exchange rates or other financial references or benchmarks), nor shall the Bank be responsible or liable for any failure of, or Losses or Claims incurred or suffered by the Client by, arising out of or in connection with, products or services offered or advertised by, on or in any such third-party website or resource.

## 7. Obtaining account balance and Client Transaction history

The data or information relating to the Accounts (including but not limited to statements and Client Transactions) provided by the Bank via Digital Services may not be conclusive as to the latest current balance, as deposits, withdrawals, buy/sell orders may be made or items charged without the relevant entry being made in time when the data or information is provided. The data or information provided is therefore not binding unless it is explicitly declared as such.

## 8. Market Data

8.1 Market Data is obtained from sources the Bank believes to be reliable. However, all Market Data is provided "as is" and there may be delays, omissions and inaccuracies in such Market Data. Neither the Bank nor its agents, Affiliates or third party providers or anyone else involved in creating, producing, delivering or managing the delivery of such Market Data, information or services (collectively, the "**Disseminating Parties**") can guarantee the correctness, quality, accuracy,

sequence, timeliness, currentness, reliability, performance, completeness, continued availability, merchantability, satisfactory quality, fitness for a particular purpose, title or noninfringement or otherwise of any Market Data or third party provider services. The Bank and the Disseminating Parties disclaim any such express or implied warranties.

8.2 Unless caused by the negligence, fraud or wilful omission on the part of the Bank or the Disseminating Parties, the Bank and the Disseminating Parties shall not be responsible or liable to the Client or to anyone else for any Losses or Claims, whether or not caused in whole or in part by the negligence or omission on the part of the Bank or the Disseminating Parties in procuring, compiling, editing, writing, reporting or delivering any Market Data or by any Force Majeure Event or other cause beyond the control of the Bank or the Disseminating Parties. The Bank and the Disseminating Parties shall also not be responsible nor liable to the Client or anyone else for any decision made or action taken by the Client in reliance on such Market Data or for Losses (which for the avoidance of doubt include direct, indirect, incidental, special, consequential, punitive or any other Losses) or Claims whatsoever even if the Bank has been advised of the possibility of such Losses or Claims.

8.3 The Client acknowledges and agrees that the Market Data is provided by the Bank for the personal use of the Client or its agent and undertakes not to redistribute or transmit all or any of the Market Data to any third party (whether free of charge or for consideration, in any manner or form whatsoever), without the prior written approval of the Bank.

8.4 At the Bank's discretion, the Bank may upon the Client's or any Authorised User's request allow the Client or that Authorised User to receive specific and timely prompts (collectively "**Alerts**", individually, an "**Alert**") in respect of certain information provided by the Bank from time to time. Each Alert may be notified via e-mail or by pop-up screen in the Client's or any Authorised User's browser and/or mobile phone (supported by certain mobile phone service provider(s) only), subject to the relevant terms and charges of the Client's or the Authorised User's network provider(s) or mobile phone service provider(s). The Client agrees and acknowledges that each Alert may be delayed or prevented by factor(s) affecting the relevant network provider(s), mobile phone service provider(s), stock exchange(s), currency market(s) and such other relevant entities, and that the Bank guarantees neither the delivery nor accuracy of the contents of each Alert. The Client also acknowledges that the information in respect of any Alert may be subject to certain time lags and/or delays.

8.5 The Bank reserves the right to vary the features of any Alert and/or to terminate any request for any Alert at any time. The Bank shall not be responsible

nor liable to the Client or anyone else for Losses or Claims arising from or in connection with:

- i. the non-delivery, delayed delivery or wrong delivery of an Alert;
- ii. inaccuracy in the content of an Alert; or
- iii. the use or reliance by the Client on the contents of any Alert for any purposes including investment and business purposes.

## 9. Blocking

The Bank may in its sole and absolute discretion block access by the Client and/or one or all of the Authorised Users to individual or all Services at any time without stating reasons and without prior notification, and shall not be liable or responsible for any Losses or Claims incurred or suffered by the Client or arising out of or in connection with or by reason of such blockage.

## 10. Foreign legal provisions/restrictions

10.1 The Client acknowledges and accepts that due to the laws of some countries, the Client and/or any Authorised User:

- i. may not be able to access or use Digital Services from these countries;
- ii. may be infringing the laws of these countries (including any import and export restrictions governing encryption algorithms) when accessing Digital Services from these countries; or
- iii. may be prevented by the Bank from accessing or using some or all of the services of Digital Services in such countries as the Bank may determine from time to time.

10.2 The Client acknowledges that it is the Client's and/or each Authorised User's duty to ascertain whether any laws will be infringed and will not hold the Bank liable for any infringement or inability to access or use such services of Digital Services.

## 11. Cancellation and discontinuance of Digital Services

The Bank may at its absolute discretion at any time cancel or discontinue Digital Services for the Client or any Authorised User or generally without prior notice to the Client or any Authorised User. After cancellation or discontinuance, Digital Services may be reinstated in such manner and form on such terms and conditions as the Bank may determine at its absolute discretion.

## 12. Evidence and records

12.1 The Client agrees that:

- i. all Digital Services Instructions in electronic form are deemed to be written documents. The Client shall not dispute or challenge the validity or enforceability of any Digital Services Instruction on the grounds that it is not a written document and the Client waives any such right the Client may have at law; and
- ii. all Digital Services Instructions in electronic form are original documents, and that the Client will not challenge the admissibility of any Digital Services Instruction on the grounds that it is made in electronic form.

12.2 The Client acknowledges and agrees that the Bank's records of the Digital Services Instructions, communications, operations or Client Transactions made or performed, processed or effected through Digital Services and/or the Service(s) by the Client or any Authorised User or any person purporting to be the Client, acting or purportedly acting on behalf of the Client, with or without the Client's or that Authorised User's consent, and any record of any Client Transactions maintained by any relevant person authorised by the Bank relating to or connected with Digital Services and/or the Service(s) shall be binding and conclusive on the Client for all purposes whatsoever and shall be conclusive evidence of the Client Transactions and the Client's liability to the Bank unless the Client notifies the Bank of any concerns with such records in a reasonable time. The Client agrees that all such records are admissible in evidence and that the Client shall not challenge or

dispute the admissibility, reliability, accuracy or the authenticity of the contents of such records merely on the basis that such records were incorporated and/or set out in electronic form or were produced by or are the output of a computer system, and waives any of the Client's rights (if any) to so object.

## 13. Intellectual property rights

13.1 The Client acknowledges that:

- i. the content, including text, software (including any html, Java script, java, CGI script or any other computer code), music, sound, photographs, video, graphics, graphical user interface, face, forms, diagrams, logos or other material, used in connection with, incorporated or contained in or presented to the Client through Digital Services; and
- ii. any materials (including any software or computer code of any kind and user manuals) and/ or information presented to the Client through Digital Services, (all such content and/ or materials to be collectively referred to in the Agreement as **"Content"**) are the exclusive property of the Bank and/or its third party licensors.

13.2 The Client acknowledges and agrees that the Client is only permitted to use the Content as expressly authorised by the Bank. This Part E does not transfer any right, title or interest in Digital Services or the Content to the Client and the Client may

not copy, reproduce, modify, distribute, publish or commercially exploit the Content or create derivative works from this Content without expressly being authorised to do so by the Bank. The Client agrees that it shall not decompile, reverse engineer, input or compile any of the Content or attempt to do so.

## 14. Exclusion of liability

Without limiting or otherwise prejudicing any rights of the Bank under the Agreement, the Client shall be responsible and liable for and shall bear, and the Bank shall not be responsible or liable for any and:

- a. all Losses and Claims if the Client or any Authorised User has acted fraudulently;
- b. all Losses and Claims if the Client or any Authorised User has acted with gross negligence (this may include cases where the Client knowingly allows the use by others of Access Procedures); and
- c. all Losses and Claims if the Client or any Authorised User fails to follow the safeguards set out in this Part E and/or issued by the Bank from time to time and such failure has caused the Losses or Claims.

# Part F: Transactions

## 1. Interpretation and construction

Unless otherwise defined in this Section, terms and references defined or construed in Part A: Terms and Conditions – Definitions and Interpretation have the same meaning and construction in this Section.

## 2. General

2.1 Except as provided to the contrary in any Confirmation, this Agreement shall only apply to any Transaction entered into between the Client and the Bank. Each Transaction is entered into by the Bank in reliance on the fact that all such Transactions (and to the extent any of the terms of such Transaction are recorded in a Confirmation, each such Confirmation) shall constitute a single agreement between the Bank and the Client, and on the basis that the Bank would not otherwise enter into such Transaction.

2.2 In the event of any inconsistency between:

- a. this Part F and any other section of the Terms and Conditions, this Part F shall prevail; or
- b. this Agreement and any Confirmation, the Confirmation shall prevail.

2.3 All Transactions entered into by the Bank with or on behalf of the Client shall be subject to Applicable Laws, including those relating to position limits and other limits. The Client hereby undertakes to observe these limits. The contract specifications (if any) published by the Reference Exchange where the Transactions are executed are also binding on the Client.

- a. Unless otherwise notified by the Bank to the Client, the Bank shall assume the role of the counter-party to any contract or Transaction which the Bank has been instructed to effect and the Bank shall be absolutely entitled to all gains,

profits and benefits derived from any such contract or Transaction of the Client with the Bank.

2.4 The Bank may undertake Transactions through or introduce the Client to intermediate brokers, settlement agents and other third parties outside Australia and the Client may also deal with affiliates of the Bank outside Australia and, in such cases, the Transactions or Services undertaken may not be covered by Applicable Laws in Australia and the Client may not be protected as effectively as a result. In the event of a shortfall arising on the money available to meet the claims of such intermediate brokers, settlement agents and other third parties outside Australia, the Client's claim will be restricted to the money held by the Bank in respect of Transactions carried out through the broker or settlement agent, and to any money received from the broker relating to those Transactions.

## 3. General payment and delivery obligation

3.1 Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement. Payments shall be made on each relevant Value Day or Settlement Day for value on that date specified in the relevant Confirmation or otherwise pursuant to this Agreement. Where settlement is by delivery, such delivery will be made for receipt on the Value Day or Settlement Day in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

3.2 Unless the Bank otherwise agrees with the Client, each obligation of the Bank to make any payment or delivery to the Client under this Agreement is subject to the condition precedent that there is no Event of Default subsisting and the condition precedent that no Early Termination Date has occurred or been effectively designated.

3.3 Unless otherwise specified, all time deadlines are with reference to Sydney time. The Bank reserves the right to change this reference.

3.4 Notwithstanding anything contained in this Agreement and except where the Bank otherwise agrees, there shall be no physical delivery by the Bank or the Client in respect of any Precious Metal Transaction. Accordingly, the Bank shall:

- a. in respect of a purchase of Precious Metal, credit the amount of Precious Metal purchased by a client in the Bank's records as a Notional Quantity bought and held for the Client and debit the Account of the Client for the Countervalue; and
- b. in respect of a sale of Precious Metal, credit to the Account of the Client for the Countervalue, and debit from the Bank's records the Notional Quantity of Precious Metal sold on behalf of the Client.

3.5 If, at any time, the Client fails to deliver to the Bank any property previously sold by the Bank on the Client's behalf, or the Client fails to deliver any property in compliance with any contract or in cases where the Bank shall be required or shall deem it advisable (whether by reason of the requirements of any exchange, clearing organization or otherwise) to replace any property theretofore delivered by the Bank for the Client's account with other property of like or equivalent kind or amount, the Client authorises the Bank in its absolute discretion to borrow or to buy any property necessary to make delivery thereof or to replace any such property previously delivered and deliver the same to such purchaser or other party to whom delivery is to be made and the Bank may subsequently repay the loan thereof with property purchased or otherwise acquired for the Client's account, and the Client shall pay the Bank for any cost, loss and damages which the Bank may be required to pay thereon and for any cost, loss and damages (including consequential costs, loss, penalties, fines and damages) which the Bank may sustain from its inability to borrow or buy such property.

3.6 The Bank may, in its absolute discretion, and without prior notice to the Client, arrange for any Transactions to be effected in whole or in part by the sale to, or the purchase from, the Client of the relevant investments by another customer, either of the Bank or of an affiliate of the Bank. If the Bank does so, the Bank or any of its affiliates may charge, or otherwise take remuneration from, both the Client and such customers and retain the charges or other remuneration for its own account. The Bank and its affiliates shall not be bound to account to either the Client or such customers in this regard, except to the extent required by Applicable Laws.

## 4. Orders

4.1 Nothing in this Agreement obliges the Bank to provide a Service or to enter into any Transaction with the Client, and the Bank may refuse to provide a Service or enter into any Transaction or otherwise act on any Order without giving any reason.

4.2 In the event that the Bank decides to act on any Order or is otherwise under an obligation to act on any Order, the Bank shall be allowed such amount of time to act and implement any Order as may be reasonable having regard to the systems and operations of the Bank and the other circumstances then prevailing and shall not be liable for any loss arising from any delay on the part of the Bank in acting on any such Order.

Without prejudice to the generality of any other provision of the Terms and Conditions, where any Order is ambiguous or inconsistent with any other Order, the Bank shall be entitled (but shall not be obliged) to rely and act upon any Order in accordance with any reasonable interpretation thereof which any officer or employee of the Bank believes in good faith to be the correct interpretation.

4.3 Without prejudice to the generality of any other provision of the Terms and Conditions, the Bank shall not be liable to the Client for any and all loss incurred by the Client arising from any loss, delay in the transmission or wrongful interception of any Order through any equipment or system, including any equipment or system owned and or operated by or for the Bank.

4.4 Subject to Applicable Laws, the Bank may aggregate a Client's Orders with (i) the Bank's own orders, (ii) orders of persons connected with the Bank; or (iii) orders of other persons. Such aggregation may on some occasions operate to the Client's advantage and on other occasions to the Client's disadvantage. If the aggregation results in the Client obtaining a less favourable price than would otherwise be the case, the Bank will be responsible for allocating and apportioning the elements and pricing of the trade between the Client and other investors, at the Bank's sole and absolute discretion. Market conditions may not permit the Client's aggregated order to be executed at once or in a single transaction. The Bank may, therefore, execute it over such period as the Bank deems appropriate and may report to the Client a volume weighted average price for a series of transactions in a single report so executed instead of the actual price of each transaction in individual reports and the Client authorises the Bank to do so accordingly.

4.5 The Bank undertakes and the Client acknowledges that where required by Applicable Laws, in respect of dealings in financial products, the Bank shall execute all Transactions, orders from other persons and orders on the Bank's own account in the sequence in which they are received and recorded, unless it would be fair and equitable to allocate such Transactions on a different basis.

## 5. Exercise of options

5.1 A European Style Option can only be exercised on the Expiration Day agreed in advance, until two hours prior to the regular close of business at the Reference Exchange.

5.2 An American Style Option can be exercised at any time during the exercise period specified in the Confirmation, until two hours prior to the regular close of business on the Expiration Day at the Reference Exchange; notices of exercise coming in less than two hours prior to the close of business on a day prior to the Expiration Day are deemed to be exercised on the following Business Day.

5.3 In the case of unlisted Underlyings, the applicable rules for exercise of the option shall be agreed upon in the Confirmation.

Unless otherwise provided in the relevant Confirmation, Transactions providing for Cash Settlement which are In-the-Money based on the prices at the close of business on the Expiration Day are deemed to be automatically exercised.

5.4 Physical Underlyings shall be delivered upon the exercise of an option, unless the parties agree on Cash Settlement. The Underlyings to be delivered upon the exercise of an option shall be delivered to the party entitled thereto on the Value Day or Settlement Day specified in the relevant Confirmation or, if no day is specified, on the day for settlement following the Exercise Day customarily applicable at the Reference Exchange.

5.5 As security for the exercise of the Order, the Client hereby grants a PPS Security Interest to the Bank (to the extent that it may do so) over such Underlyings (and all its rights in them which come into existence at any time after the date on which these Terms and Conditions are entered into with the Bank) (the "**Secured Underlyings**"), and will enter into any further agreements, including a CHES sponsorship agreement, as necessary to perfect the Bank's interest under this Clause 5.5. The Client hereby expressly authorises the Bank to further grant a PPS Security Interest over such Secured Underlyings to the Bank's correspondents,

the options exchange or its clearing house. If the options are not exercised by the time they expire or when the position is closed out, any such Security Interests lapse and are discharged automatically.

5.6 An over-the-counter option Transaction may only be exercised in whole, unless otherwise agreed in the relevant Confirmation. An exchange traded option may be partially exercised, subject to the rules of the relevant Reference Exchange.

## 6. Margin

6.1 The Client shall deposit and/or maintain in the Investment Account, or otherwise as the Bank directs, Margin in compliance with all margin levels imposed by the Bank from time to time. No previous margin levels shall set a precedent or bind the Bank thereto.

6.2 Subject to Applicable Laws, the Bank may deposit Margin provided by the Client with third parties, or grant a Security Interest over such collateral to third parties, as necessary to facilitate the Transactions contemplated in this Agreement. Where the Bank wishes to use collateral for the purposes referred to above, the collateral in question shall be simultaneously released from the Security Interests created by or pursuant to this Agreement and transferred by the Client to the Bank in accordance with the provisions of this Clause. The Client authorises the Bank to take such steps to deliver or credit the relevant collateral to itself (or, as appropriate, the third party in question) and authorises the Bank (for and on behalf of the Client) to execute, and agrees to the Bank so executing, such instruments of transfer or the like as the Bank considers necessary or desirable to vest the full legal and beneficial right, title and interest in and to the collateral in the Bank (or, as the case may be, the third party).

6.3 If the Margin is considered by the Bank to be insufficient, the Client agrees to deposit additional Margin with the Bank forthwith upon demand and, in any event, within such time limit as the Bank may specify. If the funds required to meet the Margin call are not provided to the Bank within the time so specified, the Bank is immediately entitled, but not obliged, to set-off its Margin call with other funds or Assets credited to the Client's Accounts and/or to close out the position.

6.4 All Margins shall be subject to the Bank's general rights in respect of the Client's Assets as provided in the Terms and Conditions.

6.5 The Bank is hereby authorised by the Client, at any time and from time to time, without prior

notice to the Client, to transfer or cause to be transferred any of the Client's funds, securities and/or other property to, between or among any Accounts which Client has with the Bank or any of its affiliates, if in the Bank's commercially reasonable judgment such transfer may be required to avoid or reduce a margin call, eliminate or reduce any debit balance or otherwise satisfy any obligation owing to the Bank or its affiliates.

6.6 Where the Bank is required to pay an amount of money or provide other security to any person as margin or collateral in relation to any dealings entered into by Bank for the account of the Client, the Client indemnifies the Bank against this obligation and the Bank may debit any account of the Client in whole or partial discharge of the Client's indemnity obligation under this Clause 6.6.

6.7 To the extent that the Bank makes a call for the payment of money by the Client under Clause 6.1 or Clause 6.3 and the Bank has met its obligations to the person referred to in Clause 6.6 before the Client meets any corresponding margin call made on it by the Bank under Clause 6.1 or Clause 6.3 (as applicable), the Client acknowledges that in these circumstances the payment of money by it under Clause 6.1 or Clause 6.3 (as applicable) constitutes a reimbursement by the Client to the Bank of the amounts paid by the Bank to that person.

## 7. Transactions and limits

7.1 The Client shall not breach any position or Transaction limits imposed by the Bank from time to time. Such limits may include minimum sizes for Transactions.

7.2 The Bank may vary any position or Transaction limits or margin levels at any time in its absolute discretion. The Client acknowledges, in certain circumstances, the effect thereof may be an immediate change in limits or levels and/or require additional Margin to be deposited immediately.

## 8. Fees and payments

8.1 Without prejudice to the generality of any other provision in the Terms and Conditions, the Client shall promptly pay all the Bank's fees and/or other charges at such rates and in such manner as the Bank may impose and stipulate from time to time with respect to the execution, performance

and/or settlement of any Transaction or otherwise for the maintenance of any Investment Account or the provision of any Service or Facility to the Client or in connection with any Investment Account.

8.2 The Bank shall be entitled to charge interest on any sum or payment due to the Bank from the Client in respect of any Transaction at such rate and calculated and/or compounded in such manner as the Bank may impose and determine from time to time (acting reasonably) and to debit any Investment Account in respect of the interest due.

8.3 If for any reason the Bank cannot effect payment or repayment to the Client in respect of any Transaction in a particular currency in which payment or repayment is due, the Bank may effect payment or repayment in the equivalent in any other currency selected by the Bank based on the rate of exchange quoted by the Bank in respect thereof at the relevant time.

8.4 All payments to the Client in respect of any Transaction will be made solely at the Branch where an Investment Account is maintained or such other branch or elsewhere as the Bank may in its absolute discretion permit.

## 9. Default

9.1 It is a condition of this Agreement that an Event of Default does not occur. Without prejudice to any other right of the Bank hereunder or otherwise at law, on the occurrence of an Event of Default the Bank may (but is not obliged to) immediately or at any time thereafter do any one or more of the following:

- a. suspend (indefinitely or otherwise) or terminate any Investment Account, any and all other Account(s), or the Bank's relationship with the Client and accelerate any and all liabilities of the Client to the Bank so that they shall become immediately due and payable;
- b. terminate all outstanding Transactions (including any Transaction which has yet to be settled on the day on which the Bank terminates such Transaction) and (without limitation) the provisions of Clause 12 and Clause 13 will apply;
- c. close-out or exercise (or abandon, in the case of options) any one or more Transactions by whatever means the Bank considers appropriate;
- d. cover positions by trading or entering into further Transactions on behalf of the Client;



- e. take such other action as a reasonably prudent person would take in the circumstances to protect the Bank's position;
- f. liquidate the Margin or part thereof at a price which the Bank deems appropriate in the circumstances;
- g. exercise any other power or right which the Bank may have under the law, the rules of any relevant Reference Exchange or the Agreement;
- h. apply any amounts of whatsoever nature standing to the credit of the Client (including any Margin) against any amounts which the Client owes to the Bank (of whatsoever nature and howsoever arising, including any amounts due and unpaid under any Transaction and any contingent amounts), or generally to exercise the Bank's right of set-off against the Client; and/or
- i. after any amounts standing to the credit of the Client are applied against any amounts which the Client owes to the Bank or generally after the exercise of the Bank's right of set-off against the Client pursuant to Clause 9.1(h) of these Terms and Conditions for Financial Transactions above, demand any shortfall from the Client, hold any excess pending full settlement of any other obligations of the Client, or pay any excess to the Client by way of cheques to the last known address of the Client.

Without limiting the above, the Bank shall also be entitled, without further notice, to dispose, either by enforced sale or in the open market, of any Assets over which the Bank has a right of lien, and to apply the proceeds of such disposal in or towards paying or satisfying any liabilities of the Client to the Bank or any affiliate of the Bank which shall include all costs, expenses and charges incidental to such disposal. The Bank shall not be responsible for any resultant Loss (howsoever arising) if it has used reasonable endeavours to sell or dispose of the Assets over which the Bank has a right of lien, in whole or in part, at the then available market price or such other price that the Bank deems appropriate in the circumstances. The Client remains liable for any deficiency if the net proceeds of sale or disposal are insufficient to cover all of the outstanding liabilities owed by the Client to the Bank or any affiliate of the Bank. The Client agrees, at the request of the Bank, to perform all such acts as may be necessary for the purpose of maintaining, protection or perfecting the Bank's right of lien.

9.2 If there occurs in relation to any Transaction or otherwise in relation to an Investment Account an Extraordinary Event, Adjustment Event or a Price Disruption Event (each as defined below), the Bank shall have the sole discretion to determine any adjustments or action necessary in relation to such

Transaction or any or all Transactions or otherwise to an Investment Account or Investment Accounts in view of the Extraordinary Event, Adjustment Event or Price Disruption Event. Such adjustments or actions may include determining, altering or varying the quantities of currencies, securities or commodities or instruments or the exchange rates or specifications (including price, expiry date and any other terms and conditions) of currencies, securities or commodities or instruments bought or sold in respect of such Transaction or some or all Transactions, or terminating the Transaction in question or some or all Transactions, or the terms of a Transaction or an Investment Account or Investment Accounts or otherwise. Provided the Bank undertakes such action in good faith, any such adjustment or action shall be binding on the Client who shall be liable for any additional loss, damages, costs, charges and/or expenses incurred by the Bank on the account of the Client or for which the Client is consequently liable as a result of such adjustment or action.

In this Part F: Terms and Conditions for Financial Transactions, an **"Extraordinary Event"** means, in relation to any Transaction, any event which the Bank in good faith believes to have a material adverse effect on that Transaction and/or which the Bank determines, in its absolute discretion, is beyond the reasonable control of the Bank and shall include without limitation any form of exchange control restriction or requirement of whatsoever nature affecting availability, convertibility, credit or transfers of currencies, commodities, securities, financial instruments or funds, any form of debt or other moratorium on jurisdictions, individuals or entities, any devaluation, redenomination or demonetization of the underlying currencies, commodities, securities or instruments of that Transaction and/or any form of restriction or requirement which in the Bank's good faith opinion adversely alters or changes the rights or obligations which the Bank undertook upon the establishment of that Transaction.

An **"Adjustment Event"** means any event occurring in respect of an Underlying:

- a. which would ordinarily give rise to any adjustment of the Strike Price (including, but not limited to, any adjustment or change to any hedge arrangement entered into by the Bank);
- b. which would ordinarily give rise to any adjustment of the total number of Underlyings the subject of the Transaction;
- c. if relevant, which would require the Reference Exchange to make an adjustment under the rules of that exchange as if the Transaction was traded through the Reference Exchange;
- d. the relevant Underlying being subdivided, consolidated, or reconstructed;

- e. the entity that issued the Underlying making a bonus issue, a distribution by way of return of capital or a rights issue or a special distribution (such as a special dividend) or otherwise alters its capital structure;
- f. the entity that issued the Underlying is the subject of a takeover or is to merge or consolidate with another entity or a scheme of arrangement or transfer all or substantially all of its assets to another entity;
- g. a call is made on partly paid shares;
- h. the Bank is unable to, or unable to continue to, hedge its exposure (or the Bank will incur a materially increased amount of tax, duty, expense, fee or cost as a result of holding or continuing to hold a hedge arrangement); or
- i. which the Bank, in its discretion (acting reasonably), determines is an Adjustment Event.

A **"Price Disruption Event"** means any event which the Bank in good faith believes to have affected the calculation or determination of the settlement amount for any Transaction and shall include without limitation the splitting of currency exchange rates into dual or multiple currency exchange rates, unavailability of currency exchange rates and/or any form of price disruption which in the Bank's good faith opinion adversely alters or changes the rights or obligations which the Bank undertook at the time of entering into such Transaction.

9.3 The Bank or the Client may terminate any Investment Account in accordance with any right given to the Bank or the Client under the Agreement. Before the termination of any Investment Account, the Client shall instruct the Bank as to the proper disposal or transfer of money and other properties of the Client. If the Client fails to do so, the Bank may exercise any of its rights under Clauses 9.1 and 9.2 as if an Event of Default had occurred.

9.4 Any settlement or discharge between the Bank and the Client shall be conditional upon no security provided to, or payment to, the Bank being avoided or reduced or required to be paid away by virtue of any requirement (whether or not having the force of law) or enactment, whether relating to bankruptcy, insolvency, liquidation, judicial management or administration or otherwise, at any time in force or by virtue of any obligation to give any preference or priority and in any such event the Bank shall be entitled to recover the value or amount of any security or payment from the Client as if such settlement or discharge had not occurred.

## 10. Confirmations

After agreeing upon a Transaction, the Bank shall produce a Confirmation. The Client acknowledges and agrees that it is responsible for reviewing the contents of any Confirmation, and must notify the Bank of any concerns or objections with a reasonable time period otherwise it shall be conclusive evidence of those contents. The risks inherent in a retention of correspondence arrangement (if any) shall be borne by the Client.

## 11. Trading on ASX 24

11.1 Any capitalised terms used in this Clause 11, but not otherwise defined will have the meaning given in the ASX 24 Rules.

11.2 The Client and the Bank are bound by, and any dealing between them is subject to, the Corporations Act, the ASX 24 Rules and the customs, usages and practices of ASX 24. Nothing in this Clause 11.2 shall be construed to change the proper law of these Terms and Conditions.

11.3 In relation to the Client's trading on ASX 24, the Client will upon the Bank's request, provide all information and documentation relevant to that trading, to the Bank and the Bank is authorised by the Client to provide the information and documentation to ASX 24 or a regulatory body, or such other person with a right to request such information.

11.4 The Bank will incur a personal obligation when Dealing in Contracts on behalf of the Client, and any benefit or right obtained by the Bank upon registration of a Contract with ASX Clear (Futures) by way of assumption of liability of ASX Clear (Futures) under any contract or any other legal result of such registration is personal to the Bank and the benefit or right does not pass to the Client.

11.5 In relation to all trades conducted on ASX 24 by the Bank and all Contracts registered by the Bank with ASX Clear (Futures) the Client has no rights whether by way of subrogation or otherwise, against any person or corporation other than the Bank.

11.6 The Client irrevocably appoints the Managing Director of ASX Clear (Futures) as the Client's Attorney to do all things necessary to transfer any Open Position held by the Bank on the Client's behalf to another Participant where the Participant status of the Bank has been suspended or terminated.

11.7 The Client acknowledges that:

- a. data made available to the Client by access to electronic order entry facilities is not the property of the Bank and remains the valuable property of ASX 24;
- b. the Client is prohibited from publicly displaying, redistributing or re-transmitting the data in any way without having executed the market data distribution agreement or similar agreement with ASX 24.

11.8 The Client acknowledges that its telephone conversations with the Bank can be recorded by the Bank or ASX 24 with or without an automatic warning device. The Client has the right to listen to any recording in the event of a dispute or anticipated dispute.

11.9 The Client acknowledges that the Bank reserves the right to refuse to deal on behalf of the Client in relation to any Dealings in Contracts (other than closing-out existing Open Positions held in the Bank's account on behalf of the Client) or limit the number of Open Positions held on behalf of the Client or both. The Bank will inform the Client of any refusal at the time of the Client placing the order or as soon as possible thereafter.

11.10 The Client acknowledges that:

- a. without affecting any existing obligations or liabilities, either the Client or the Bank may terminate the Terms and Conditions, Services and Transactions to the extent they relate to trading on ASX 24 at any time by giving the other notice in writing to that effect; and
- b. upon termination of this Agreement, unless otherwise agreed in writing the Bank will Close Out all of the Client's Futures Contracts and Close Out, abandon or exercise any Options not yet exercised.

11.11 With respect to any Contracts prescribed by ASX 24 as being able to be pre-negotiated, the Client authorises the Bank to pre-negotiate trades on behalf of the Client. The Client acknowledges that where the Bank receives an Order from the Client which can be executed as pre-negotiated business under the ASX 24 Rules, the Bank shall at its option be entitled to:

- a. withhold transmission of the Client's Instructions in order to solicit orders from other clients and market participants;
- b. disclose details of the Client's Instructions; and
- c. aggregate orders received from clients in satisfaction of a Client Order.

11.12 The Client authorises the Bank to execute any Block Trade Order on the Client's behalf, in accordance with the ASX 24 Rules. The Client also acknowledges in respect of executing its Block Trade Orders that:

- a. the price quoted for the Block Trade Order may or may not be the prevailing market price;
- b. the price at which the Block Trade is executed will not be used in establishing Settlement Prices;
- c. Block Trades shall have no impact on the Trading Platform market data; and
- d. Block Trades will be separately reported to the market.

11.13 The Client authorises the Bank to enter into exchange for physical transactions on the Client's behalf, as permitted by the ASX 24 Rules. The Client undertakes to ensure that whenever an exchange for physical transaction is entered into:

- a. a bona fide physical transaction in a commodity, instrument or other transaction as determined by ASX 24 is completed whereby physical delivery takes place at the time of the transaction or is intended by both parties to take place at a later time; and
- b. at or about the same time a Contract, opposite in effect, is traded for the same or similar quantity or amount of the commodity or a substantially similar commodity or instrument on behalf of the parties to the physical transaction.

11.14 The Client acknowledges and undertakes that they shall provide to the Bank full details of the physical transaction (including documentary evidence) which attach to exchange for physical transactions effected by the Bank on behalf of the Client.

11.15 The Client acknowledges that upon request, this information must be provided to the Bank to ensure the Bank's compliance with the ASX 24 Rules.

11.16 The Client understands that failure to comply with the provisions of Clauses 11.14 and 11.15 of these Terms and Conditions for Financial Transactions may result in a disciplinary action by ASX 24 against the Bank.

11.17 The Client acknowledges that:

- a. the Bank may call for payment of Margin such money or property (or Call for the lodgment of Approved Securities in lieu thereof) as the Bank, in its absolute discretion, feels is necessary to protect itself from the personal obligation incurred by Dealing in Contracts on behalf of the Client;

- b. should the Client fail to meet the Call (or lodge Approved Securities) then the Bank may (without prejudice to any other rights or powers under these Terms and Conditions) in its absolute discretion, and without creating an obligation to do so, Close Out, without notice, all or some of the Client's Contracts;
- c. the time for payment of Margin is of the essence and if no other time is stipulated by the Bank prior to calling the Margin then the Client is required to comply within twenty-four (24) hours;
- d. liability to pay the Initial Margin accrues at the time the trade is executed regardless of when a Call is made;
- e. liability to pay Margin accrues at the time the Margin comes into existence regardless of when a Call is made; and
- f. the Client is responsible to pay in cash any deficit owing to the Bank after closure and if the Client defaults in payment of such deficit, the Bank may realise any securities held by the Bank and apply the proceeds against that deficiency.

11.18 The Bank agrees to segregate all money and property in respect of trading on ASX 24 only (unless otherwise prescribed by the Operating Rules or the Corporations Act) deposited by or on behalf of the Client and invest it in accordance with the law and the ASX 24 Rules.

## 12. Close-out netting

12.1 If the Bank wishes to exercise its discretion under Clause 9 of this Part F to terminate and/or close-out all Transactions, then:

- a. it may by notice to the Client designate a day not earlier than the day such notice is effective as the Early Termination Date in respect of all Transactions, and that Early Termination Date will occur on the date so designated by the Bank, whether or not the Event of Default on which basis that designation was made is then continuing; and
- b. the amount (if any) payable in respect of that Early Termination Date will be determined pursuant to this Clause 12 and Clause 13 of this Part F.

12.2 Without prejudice to the other provisions of the Agreement (including the obligation to pay any Early Close-Out Amount and any provisions of the Agreement applying to that Early Close-Out Amount), on the occurrence of the Early

Termination Date in relation to the Transactions, those Transactions will be terminated and no further scheduled payment or delivery in respect of those terminated Transactions (or any default interest in respect of those scheduled payments or deliveries) will be required to be made by any party.

12.3 For all terminated Transactions, the Bank will calculate the Early Close-Out Amount (whether positive or negative) in accordance with Clause 13 of this Part F, and give the Client written notice of that Early Close-Out Amount and date for payment of that amount.

12.4 If:

- a. the Early Close-Out Amount is a positive number, the Client must pay that amount to the Bank; or
- b. the Early Close-Out Amount is a negative number, the Bank must pay the absolute value of that amount to the Client,

and that payment must be made in the Termination Currency on the date for payment identified in the notice of the Early Close-Out Amount given under Clause 12.3 of this Part F, together with interest on that amount for the period from and including the Early Termination Date to (but excluding) the date of payment at the interest rate notified to the Client by the Bank for that purpose and calculated by the Bank in a manner consistent with the ordinary course of its business.

## 13. Early Close-Out amount

13.1 The Early Close-Out Amount in respect of terminated Transactions is, as determined by the Bank in a manner consistent with the ordinary conduct of its business:

- a. the Termination Currency Equivalent of the total amount of losses or costs of the Bank that are or would be incurred (expressed as a positive number) or total gains of the Bank (expressed as a negative number), in each case as determined by the Bank in its discretion, in relation to those terminated Transactions, and including any loss of bargain, cost of funding, loss or cost incurred as a result of the Bank terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them), and any losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of any applicable condition precedent) on or before the Early Termination Date and not made; less

- b. if the amount determined under paragraph (a) is a positive number – the Termination Currency Equivalent of any Margin which the Bank wishes to apply against such losses or costs to the Bank.

13.2 The Bank will calculate any Early Close-Out Amount as at the Early Termination Date or, if not practicable to do so, at the earliest date after the Early Termination Date.

13.3 The Bank and the Client agree that any Early Close-Out Amount is a reasonable pre-estimate of loss and not a penalty, and such amount is payable for the loss of bargain and the loss of protection against future risks and, except as otherwise provided in these Terms and Conditions, the Client will not be entitled to recover any additional damages as a consequence of such losses.

## 14. Payment netting

14.1 If, on any date, amounts would otherwise be payable in the same currency in respect of two or more Transactions entered into under these Terms and Conditions, then, on such date:

- a. each party's obligation to make payment of such an amount will be automatically discharged and satisfied; and
- b. if the aggregate amount that would otherwise have been payable by the one party exceeds the aggregate amount that would otherwise have been payable by the other party, the discharged obligations are replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the amount by which the larger aggregate amount exceeds the smaller aggregate amount.

# Part G: Terms and Conditions for Credit Facilities

## 1. Definitions

Unless otherwise defined in this Section, terms and references defined or construed in Part A: Terms and Conditions – Definitions and Interpretation have the same construction and meaning when used in this Section.

## 2. Facilities

2.1 This Part G form a part of and are be deemed to be incorporated in the provisions of each letter of offer from the Bank to the Client (each a **“Facility Letter”**) and in each agreement entered into between the Bank and the Client pursuant to a Facility Letter. The terms and conditions on which the Facilities may be made available to the Client are subject to these Terms and Conditions and the other Facility Documents. In the event of any conflict or inconsistency:

- a. between this Part G and the terms contained in any Facility Letter and/or standard facility terms and conditions, the terms contained in such Facility Letter and/or standard facility terms and conditions shall prevail; and
- b. between this Part G and any other Part, this Part G shall prevail insofar as the conflict or inconsistency relates to any Facility

2.2 The Facilities are uncommitted and, accordingly, the availability of the Facilities or any part thereof is subject to the Bank’s absolute discretion. The Facilities are established and made available on the basis that the Bank has no obligation whatsoever to make or continue to make available to the Client all or any part of the Facilities or to allow any particular utilization of the Facilities.

2.3 The Bank may, at its sole and absolute discretion, review the Facilities at any time and from time to time and may, pursuant to such review, vary, amend or extend the availability or repayment period, or terminate the Facilities or any part by giving notice to the Client. Upon any such termination the Facilities shall cease to be available for utilization and, upon notice of such termination being given by the Bank:

- a. the Total Outstandings shall become immediately due and payable and the Bank will have the right to require immediate repayment of all sums owing to it by the Client under or in connection with the Facilities (unless the Bank gives notice otherwise); and
- b. the Client shall procure the release and discharge of the Bank from all Guarantees and any other contingent and/or unmatured liabilities owing, sustained or incurred by the Bank pursuant to the utilization by the Client of any of the Facilities, and pending such release or discharge, shall place the Bank in funds by paying to the Bank, for credit to a suspense or other account or accounts as the Bank may decide, the amount required by the Bank to satisfy in full each of such Guarantees and other contingent and/or unmatured liabilities, and any costs and expenses in relation thereto.

2.4 Unless otherwise agreed in writing (for example, in a Facility Letter and/or loan application), where the Bank makes the Facilities available to the Client, the Client undertakes to use the Facility proceeds wholly or predominantly for a business or investment purpose (other than investment in residential property) or both. The Bank may, but is not obliged to, monitor whether the proceeds are actually applied in accordance with this Clause 2.4 Without limiting this Clause 2.4, the Bank reserves the right to require the Facilities to be used/not used for a specified purpose, which shall be stated in a Facility Letter.

### 3. Utilisation conditions

3.1 Any utilization by the Client of any of the Facilities will be subject to the prior approval of the Bank and will be governed by the terms of the relevant Facility Document(s) and the Agreement. Each utilization of the Facilities will be subject to the completion, execution and delivery of such documents as the Bank may require.

3.2 Each utilization of the Facilities will be subject to, and the Borrower warrants, represents and undertakes on a continuing basis that each utilization of a Facility complies with, the following additional conditions (and such other conditions as the Bank may, at its sole discretion, specify from time to time):

- a. each request for utilization shall be made in such form and manner, and must be received by the Bank at such time before such utilization as the Bank may prescribe from time to time;
- b. the representations and warranties set out and required in each Facility Letter and in the Terms and Conditions will be in compliance and correct as if repeated on the date of such utilization;
- c. no breach of or default, including an Event of Default (however described) under any term or condition of any Facility Documents shall have occurred and no breach or default will (or would be likely to) be caused by, or result from, such utilization; and
- d. there shall have been no material adverse change in the condition (financial or otherwise), prospects or assets of the Client and each Security Party (if any).

3.3 Any Fixed Advance, Drawing or other advance, drawing, payment or transfer of property made by the Bank to the Client under the Agreement is made in consideration for the Client's agreement to comply with these Terms and Conditions and not as consideration or security for the transfer of any property (or a beneficial interest in any property) by the Client to the Bank.

### 4. Fixed advances

The Client may, subject to receiving the prior approval of the Bank, request a Fixed Advance by executing and delivering to the Bank a notice in such form as the Bank may specify or otherwise agree (whether in any Facility Letter or otherwise), not later than 10:00 a.m. on the second Business

Day (or such later time agreed to by the Bank) prior to the drawdown date specified in such request or in such other manner as may be agreed by the Bank. The Bank shall, at any time, have the right to refuse to make any Fixed Advance requested by the Client. Each Fixed Advance, together with any interest, commission, discount and other bank charges (if any), shall be repaid or paid in the manner and at the times stipulated in the Facility Letter.

### 5. Overdraft facility

The Client may, subject to receiving the prior approval of the Bank, draw on the relevant Overdraft Account(s) in accordance with the terms of the Facility Documents. The Bank shall, at any time, have the right to refuse to allow any Drawings of any amount from any Overdraft Account. Interest on all Drawings shall be payable monthly, at the end of the calendar month, in arrears (unless otherwise provided in the relevant Facility Letter). All Drawings together with any unpaid interest thereon, commission, discount and other bank charges (if any) are repayable, and shall be repaid in full by the Client, on demand.

### 6. Issue of guarantees

6.1 The Client may, subject to receiving the prior approval of the Bank (including, without limitation, prior approval of the Bank to the terms and conditions and the form and duration of the relevant Guarantee), request for the issue of a Guarantee by executing and delivering to the Bank, not later than 3 Business Days before the proposed date of issue of such Guarantee, such documents (including an application for the issue of the Guarantee and any related undertaking to indemnify and reimburse the Bank in respect of the Bank's obligations under the Guarantee) and any approvals and consents which the Bank may require in connection with such issue.

6.2 In consideration of the Bank issuing, at the Client's request, Guarantees from time to time (whether as surety, principal debtor, primary obligor or otherwise), the Client hereby agrees:

- a. that the Bank need not check or verify the use or purpose of any Guarantee which the Client requests be issued under the Facilities;
- b. if the Bank notifies the Client that a beneficiary or any other person entitled to receive payment under a Guarantee (the "**Beneficiary**") has made a claim or demand on the Bank to pay

any sum under that Guarantee, the Client shall immediately upon receipt of such notice (unless otherwise specified in that notice), pay to the Bank all amounts payable by the Bank under or in connection with that Guarantee (whether or not the Bank has already paid such sum), notwithstanding that at the time of such claim or demand the Bank is not liable or required by law to make any payment under or in connection with that Guarantee and notwithstanding any fact or circumstance which may constitute a defense or discharge to the Bank in respect of the claim or demand made against it under or in connection with that Guarantee; and

- c. that the Bank may at all times immediately pay, discharge and satisfy any amounts claimed or demanded by the Beneficiary under or in connection with any Guarantee without reference to or further authority from the Client and without further investigation or enquiry and, notwithstanding that the Client disputes the validity of any such demand or payments (whether or not such dispute is disclosed or known to the Bank). The Bank need not concern itself with the propriety of any claim made or purported to be made under or in connection with any Guarantee and it shall not be a defense to any demand made by the Bank of the Client in relation to any Guarantee, nor shall any of the Client's obligations hereunder be affected or impaired by, the fact that the Bank was or might have been or be justified in refusing payment, in whole or in part, of any such amounts claimed or demanded.

6.3 The Client further undertakes to indemnify and hold harmless the Bank, its parent, affiliates, subsidiaries and correspondents and their respective directors, officers, employees and agents (each, including the Bank, an **"Indemnified Person"**) from and against any and all claims, suits, judgments, costs, losses, fines, penalties, damages, liabilities, expenses, fees, charges and disbursements (including, but not limited to, that of any counsel or expert witness) and any Taxes (together, **"Costs"**) sustained or incurred by any Indemnified Person and arising out of, in connection with, or as a result of, any Guarantee, including, without limitation, any Costs arising out of any action for injunctive relief or other judicial or administrative relief or arbitration arising out of or in connection with any Guarantee.

6.4 Unless otherwise expressly agreed by the Bank in writing, and notwithstanding any automatic reduction clause in any Guarantee, the obligation of the Client to indemnify the Bank for the full amount of the Bank's liability under any Guarantee shall not be reduced by reason of any partial performance of the contract between the Beneficiary of that Guarantee and the Client.

6.5 In the event that, at the request of the Client, the Bank agrees to amend any Guarantee so as to extend the expiry of that Guarantee or the time within which claims may be presented under that Guarantee, or to modify any other terms of that Guarantee or to increase the amount of that Guarantee, the obligations of the Client under the Facility Documents shall, notwithstanding any such amendment, be binding on the Client with regard to that Guarantee as so amended and to any action taken by the Bank or any of the Bank's agents or correspondents pursuant to such amendment.

6.6

- a. Unless the Bank agrees otherwise, each Guarantee issued under the Facilities as a SBLC shall be subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (incorporating all amendments made in subsequent revisions thereof) and to the extent not inconsistent therewith, will be governed by the laws of the State of New South Wales, Australia.
- b. The Bank is authorised to accept or, as the case may be, to pay all drafts or documents purporting to be drawn or presented under any SBLC.
- c. The Client shall, as applicable, accept and pay, or accept upon presentation and pay at maturity, all documents presented or drafts drawn in accordance with the terms of any SBLC.
- d. The Bank may restrict negotiations under any SBLC to the other branches or offices of UBS AG or to any correspondents or agents of its choice and the Bank is authorised to accept and/or pay for the account of the Client all drafts purporting to be drawn upon the Bank, any of the other branches or offices of UBS AG, or any correspondents or agents of the Bank (as the case may be) under such SBLC.
- e. In relation to the tender of documents under any SBLC, it shall be a sufficient and proper compliance with the terms thereof if the documents purport to be in order and, taken as a whole, contain the description of the obligations as given in the SBLC and appear complete and regular on their face under general scrutiny and none of the Bank, the other branches or offices of UBS AG, of any correspondents and agents of the Bank shall be responsible for the genuineness, correctness or form of documents or any endorsements thereon or any misrepresentation therein as to any matter.
- f. The Client shall hold the Bank, the other branches or offices of UBS AG, or any correspondents and agents of the Bank free from any liability



or responsibility for the consequences (which shall not, in any way, affect the rights of the Bank hereunder) arising from delay or loss in transit, transmission or otherwise of any message, letter, document, draft or the proceeds thereof or the delay, interruption, mutilation, omission or other error in the transmission or delivery of any messages, by mail, facsimile or otherwise, or any error in translation or interpretation of technical terms or arising from any ambiguity in instructions from the Client and the Bank shall have the right to transmit the terms of any SBLC without translating them.

- g. The Client shall indemnify the Bank, the other branches or offices of UBS AG, or any correspondents and agents of the Bank in respect of any claim, loss, liability or expense sustained or incurred by it and howsoever arising from or in connection with any SBLC or the related documents, property or proceeds.

6.7 None of the Bank, the other branches or offices of UBS AG, or any correspondents and agents of the Bank shall be responsible for the following and none of the following shall, in any way, affect the rights of the Bank hereunder:

- a. the form, legal effect, correctness, validity, sufficiency or genuineness of documents even if such documents should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged;
- b. failure of any draft to bear any reference or adequate reference to the relevant SBLC, or failure of documents to accompany any draft at negotiation, or failure of any person to send documents apart from drafts as required by the terms of the SBLC or failure of any person to note the amount of any draft on the reverse of a SBLC or to surrender or take up a SBLC; and
- c. any consequences arising from causes beyond the control of the Bank.

6.8 No invalidity or unenforceability of all or any part of this Clause shall affect any rights of indemnity or otherwise (whether from the Client or any other person) which the Bank could or may have in the absence of or in addition to this Clause. The indemnity in this Clause shall continue until all the terms, covenants and conditions of the Facility Documents have been fully and completely performed by the Client or otherwise discharged and the Bank has been irrevocably and completely discharged from all its obligations under each of the Guarantees.

## 7. Trading facilities

The Client may, subject to receiving the prior approval of the Bank, utilise any of the trading facilities for any Client Transaction provided that the duration of any Client Transaction shall, unless otherwise agreed by the Bank, not exceed a period of twelve months or such other period as may be determined from time to time by the Bank in its absolute discretion. All Client Transactions entered into by the Client shall be governed by the Agreement.

## 8. Interest and service charges

8.1 Interest shall be charged in respect of any Facility at such rate and calculated and compounded on such basis as the Bank may in the Bank's absolute discretion (but acting reasonably) determine from time to time or, if applicable, at such rate as may be stipulated in the relevant Facility Letter or other document pertaining to such Facility provided always that notwithstanding the foregoing the Bank shall be entitled at any time and from time to time (by notice to the Client) to vary the rate of interest, the basis on which such interest is compounded or its method of calculation, at its absolute discretion. Such variation will take effect and be binding on the Client from the date of the notice to the Client, unless otherwise specified in that notice.

8.2 The Bank shall be entitled to charge default interest at such rate as the Bank may determine in its absolute discretion (acting reasonably) from time to time above the interest rate then applicable to the relevant Facility which default interest shall be calculated on a monthly compounded basis or, at such rate or rates and calculated on such basis as the Bank may determine (acting reasonably) from time to time, on any moneys (whether principal, interest, default interest, fees, charges, expenses, commissions or otherwise) not paid by the Client when due from the due date(s) until payment of such moneys after as well as before judgement.

8.3 Interest (including default interest) shall continue to be charged, and the Bank shall be entitled to continue to capitalise interest in relation to outstanding amounts owed in respect of any Facility or on any other moneys (as applicable),

notwithstanding the termination of any account or Facility or the Client's relationship with the Bank, until payment in full of all sums owing by the Client to the Bank after as well as before judgment.

8.4 Interest (including default interest) charged in respect of any Facility (where applicable) shall be calculated on the basis of the actual number of days elapsed and a 365 day year (for AUD, SGD, HKD, GBP, Euro and such other currency as the Bank may elect and notify the Client) or a 360-day year (for other currencies which are Acceptable Currencies).

8.5 Guarantee commission shall not be refundable in respect of any period following the discharge, release or cancellation, for any reason whatsoever, of the relevant Guarantee.

8.6 A service charge may be charged by the Bank in respect of any Facility granted to the Client in such quantum or such rate as the Bank may in the Bank's absolute discretion determine from time to time. The Bank reserves the right to charge for any excess Drawings above the stipulated limit (if any) at rates to be determined by the Bank from time to time.

## 9. Payment provisions

9.1 The Client shall pay to the Bank on demand all fees, exchange expenses, interest, commissions, bankers' charges, disbursements and all other expenses whatsoever due to or incurred by the Bank, the other branches or offices of UBS AG, or any agents and/or correspondents of the Bank in relation to the Facilities, the Services or any related transactions provided by the Bank and such other entities to the Client. In connection with the issuance of any Guarantee and the provision of any Facility, Service or any related transaction by the Bank, the Client shall pay to the Bank, on demand, any increased costs resulting from the application of any law or regulation at any time applicable in connection with such Guarantee, Facility, Service or related transaction.

9.2 All payments to be made to the Bank shall be made on the date it is due or, as the case may be, immediately on demand, in the currency in which the amount is outstanding and in immediately available freely transferable funds to such account as the Bank may from time to time designate.

9.3 If any payment falls due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and all calculations of interest, commission and fees shall be adjusted accordingly, provided that in the case of the payment of any Fixed Advance and/or the interest accruing

thereon only, if such next succeeding Business Day falls in another month of the year, such payment shall be made on the immediately preceding Business Day and all calculations of interest, commission and fees shall be adjusted accordingly.

9.4 If any Facility is terminated under any provision of any Facility Document, any sum which is payable under the Facilities or that Facility on a date falling after the date of such termination and all calculations of interests, commission and fees shall be adjusted accordingly. The Client shall in every such case indemnify Bank for any broken funding cost sustained or incurred by the Bank as a result of each such prepayment.

9.5 Without in any way prejudicing or reducing the Bank's rights or the Client's obligations under the Facility Documents or any other provision of the Terms and Conditions, the Client hereby agrees that:

- a. all payments to the Bank shall be made in full without any set-off, deduction or withholding whatsoever. If the Client is required by law to make any deduction or withholding from any such sum on account of tax or the Bank is required to make a payment for Tax on any such sum received or receivable by it from the Client, the sum payable shall be increased by such amount as may be necessary so that after making such required deduction, withholding or payment for Tax, the Bank receives, on the due date for payment of such sum, a net amount equal to the sum the Bank would have received had no such deduction, withholding or payment for Tax been required to be made; and
- b. any amount received or recovered by the Bank in respect of any sum expressed to be due to it from the Client under any Facility Document in a currency other than the currency in which such sum is denominated (the "**Contract Currency**") whether as a result of, or for the purpose of the enforcement of, a judgment or order of a court or tribunal of any jurisdiction shall only constitute a discharge to the Client to the extent of the amount in the Contract Currency which the Bank is able, in accordance with its usual practice, to purchase with the amount so received or recovered in such other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that amount in the Contract Currency is less than the amount in the Contract Currency due to the Bank under the relevant Facility Document, the Client shall indemnify the Bank against any loss sustained by it in that event. In any event, the Client shall indemnify the Bank against the cost of making any such purchase.

9.6 Each of the indemnities in this Clause constitute a separate and independent obligation from the other obligations of the Client under any of the Facility Documents or otherwise and shall give rise to a separate and independent cause of action, apply irrespective of any indulgence granted by the Bank and continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due hereunder or under any judgment or order.

## 10. Application of moneys

If any sum paid or recovered in respect of any part of the Total Outstandings is less than the Total Outstandings at such time, the Bank may, subject to any Applicable Laws to the contrary (for example, section 140 of the PPSA where relevant) apply that sum to expenses, interest, fees, commission, principal or any amount due in such proportions and order and generally in such manner as the Bank thinks fit or may credit the same or part thereof to a suspense account if the Bank thinks fit.

## 11. Events of default and termination

11.1 Without limiting the definition of Event of Default in Part A: Terms and Conditions – Definitions and Interpretation, each of the following events is an Event of Default:

- a. the Client does not pay in the manner provided in any Facility Document to which it is a party, any sum payable under that Facility Document when due;
- b. any of the Security Documents becomes enforceable in accordance with the terms thereof or the Client defaults in the due performance of or compliance with, or breaches, any undertaking, condition or obligation on its part to be performed and observed under any Facility Document to which it is party (other than the payment of any sum due as described in paragraph (e) above);
- c. any other indebtedness of any nature (whether owed to the Bank or not) in respect of borrowed money of the Client is not paid when due or becomes capable of being rendered due and payable before its normal maturity;
- d. the Client does not perform or comply with any one or more of its obligations under any of the Facility Documents to which it is a party;
- e. any default or event of default, however described, occurs under any document, security, guarantee, indemnity or otherwise executed pursuant to any Facility granted by the Bank;
- f. any legal proceedings, suit or action of any kind whatsoever (whether criminal or civil) is instituted against the Client, whether in Australia or elsewhere, and the Bank is of the opinion that it will or could materially and adversely affect the Client's ability to perform and observe its obligations under any of the Facility Documents to which it is a party;
- g. the Client:
  - i. enters, or takes any step with a view to enter, into any amalgamation, merger, reorganisation, consolidation or reconstruction, or any scheme of arrangement, general assignment or compromise with or for the benefit of its creditors, or such an amalgamation, merger, reorganisation, consolidation, reconstruction, scheme of arrangement, general assignment or compromise is proposed;
  - ii. stops, suspends or threatens to stop or suspend payment of all or substantially all of its debts or commences negotiations or takes proceedings or any other steps with a view to rescheduling or deferring all or substantially all of its indebtedness;
  - iii. is unable or under Applicable Law is deemed to be unable or admits its inability to pay its debts as they fall due; or
  - iv. is declared or becomes insolvent or bankrupt;
- h. in the case where the Client is a corporation:
  - i. any step (other than one which is, in the opinion of the Bank, frivolous or vexatious) is taken by any person with a view to the winding-up or liquidation of the Client or for the appointment of a liquidator, receiver, receiver and manager, judicial manager, trustee, administrator or similar officer of the Client or over any part of the assets of the Client or any analogous proceeding is taken against the Client in any other jurisdiction; or
  - ii. the Client suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business or disposes of all or a substantial part of its business or assets, or proposes to do any of the foregoing;

- i. in the case where the Client is a limited liability partnership, any step (other than one which is, in the opinion of the Bank, frivolous or vexatious) is taken by any person with a view to the winding-up or liquidation of the Client or for the appointment of a liquidator, receiver, receiver and manager or similar officer of the Client or over any part of the assets of the Client or any analogous proceeding is taken against the Client in any other jurisdiction;
  - j. in the case where the Client is an individual, any step (other than one which is, in the opinion of the Bank, frivolous or vexatious) is taken by any person with a view to the bankruptcy of the Client or for the appointment of a receiver, trustee, administrator or similar officer of the Client or over any part of the assets of the Client or any analogous proceeding is taken against the Client in any other jurisdiction or the Client dies, becomes of unsound mind or is placed under custody;
  - k. in the case where the Client is a partnership, any step (other than one which is, in the opinion of the Bank, frivolous or vexatious) is taken by any person with the view to the dissolution of the Client or for the appointment of a receiver, receiver and manager, trustee or similar officer of the Client or over any part of the assets of the Client or any analogous proceeding is taken against the Client in any other jurisdiction or any partner of the Client dies or any step (other than one which is, in the opinion of the Bank, frivolous or vexatious) is taken by any person with a view to the bankruptcy of any partner of the Client or the Client;
  - l. any representation or warranty made or given to the Bank at any time by the Client whether in relation to any Facility, Account or otherwise is or becomes incorrect or is breached;
  - m. any event occurs or circumstances arise (including, where the Client is a corporation, a partnership or a limited liability partnership, changes in the financial condition, operating environment, management or directorship or (as the case may be) partners of the Client) which in the opinion of the Bank would materially affect the ability of the Client to perform or comply with any one or more of its obligations to the Bank, including its obligations under any document, security, guarantee, indemnity or otherwise executed pursuant to any Facility granted by the Bank;
  - n. any governmental or other authority (whether de jure or de facto) nationalises, compulsorily acquires, expropriates or seizes all or a material part of the business or assets of the Client or the Secured Assets;
  - o. any of the events specified in sub-paragraphs (a), (b), (c) and (e) through (o), inclusive, occurs in relation to any Security Party;
  - p. any security furnished to secure any of the obligations or liabilities of the Client to the Bank is or becomes invalid or unenforceable in any respect or in the opinion of the Bank is in jeopardy;
  - q. the Client, a Security Party or any of their respective affairs become(s) for whatever reason the subject of investigation by any governmental or regulatory department or authority, in Australia or any other jurisdiction, or legal proceedings, suits or actions of any kind whatsoever (civil or criminal) are instituted against the Client or a Security Party which the Bank determines would materially and adversely affect the Client's or a Security Party's ability to perform and observe its obligations to the Bank;
  - r. it is or will become unlawful for the Client or any Security Party to perform or comply with any one or more of its obligations under any Facility Document to which it is a party or for the Bank to exercise all or any of its rights and remedies under any Facility Documents;
  - s. any consents, authorisations or approvals referred to in Clause 14(b):
    - i. is modified in a manner unacceptable to the Bank;
    - ii. is wholly or partly revoked, withdrawn, suspended or terminated;
    - iii. expires and is not renewed; or
    - iv. otherwise fails to remain in full force and effect,
- and such circumstances may have a material adverse effect on the ability of the Client or a Security Party to perform its obligations under any Facility Document to which it is a party or on the ability of the Bank to exercise or enforce any of its rights under a Facility Document;
- t. any situation arises (including any political, financial or economic condition in or in respect of Australia or any other country in which any security furnished to secure any of obligation or liability of the Client to the Bank is located or traded), which in the opinion of the Bank gives grounds for believing that the ability of the Client and/or a Security Party to perform or comply with its obligations under a Facility Document could be materially and adversely affected, or that their respective businesses could (in the opinion of the Bank) be in jeopardy if there is any other material adverse change in the operations or financial

condition or business of the Client and/or any Security Party and/or any material adverse change in the international capital and/or money markets;

- u. the Client or any Security Party rescinds or purports to rescind or repudiates or purports to repudiate any Facility Document or evidences an intention to rescind or repudiate any Facility Document;
- v. any event or circumstance occurs which the Bank reasonably believes has or is reasonably likely to have a material adverse effect on the validity or enforceability of, or the attachment, perfection, effectiveness or priority of any Security Interest granted or purporting to be granted pursuant to any Facility Document or the rights or remedies of the Bank under any Facility Document;
- w. any of the Security coverage or other Security maintenance obligations contained in the Facility Letter falls below the level prescribed therein or is breached and/or the Client and/or any Security Party fails or refuses to rectify the same within any time period specified by the Bank;
- x. any of the events specified in the subparagraphs above, (a) through (r) inclusive, occurs in relation to any Security Party; or
- y. any law, regulation or order, or any change in any law or regulation, does or purports to vary, suspend, terminate, or excuse performance by the Client or any Security Party of any of its obligations under any Facility Document.

11.2 Without prejudice to the rights of the Bank to, at its absolute discretion, terminate the Facilities or any part thereof at any time, the Bank may upon the occurrence of an Event of Default by notice (whether written or otherwise) to the Client:

- a. declare the whole or any part of the Total Outstandings, whether accrued or contingent, to be immediately due and payable whereupon they shall become immediately due and payable;
- b. declare the Bank's obligations under the Facilities to be terminated whereupon they shall immediately terminate; and/or
- c. require the Client to procure the release and discharge of the Bank from all Guarantees and other contingent and/or unmatured liabilities owing, sustained or incurred by the Bank pursuant to the utilization by the Client of any of the Facilities, whereupon the Client shall be obliged to immediately do so and, pending such release or discharge, shall provide cash collateral to the Bank in such amounts as shall be sufficient to fully satisfy all such liabilities and any costs and expenses in relation thereto and/or place the Bank in funds by paying to

the Bank, for credit to a suspense or other account(s) as the Bank may decide, such amounts as shall be sufficient to fully satisfy all such liabilities of the Bank and any costs and expenses in relation thereto (which cash collateral and/or amounts shall only be released to the Client if and to the extent that all such liabilities of the Bank are fully and irrevocably released and discharged and all such costs and expenses are paid in full).

11.3 Upon the giving of any notice under Clause 11.2, the Bank shall (without limitation to all its other rights and remedies) and without reference to the Client, any Security Party or any other person, be entitled to:

- a. exercise all its rights, powers and remedies under any of the Security Documents, other Facility Documents or these Terms and Conditions, in such manner and order as the Bank may, in its absolute discretion, deem fit;
- b. enforce or realise its securities under any of the Security Documents, other Facility Documents or these Terms and Conditions in such manner as the Bank may, in its absolute discretion, deem fit and apply all proceeds from such enforcement and realization in such manner and order as the Bank may in its absolute discretion deem fit towards the full or partial discharge of the Total Outstandings and all other liabilities of the Client under the Facility Documents; and
- c. combine or consolidate the Client's accounts and liabilities with or to the other branches of UBS AG anywhere in the world or transfer any sum or sums standing to the credit of one or more of such accounts in or towards satisfaction of any of the liabilities of the Client to the Bank or any other branches of UBS AG on any other account or accounts anywhere in the world or in any other respect whether such liabilities be actual or contingent, primary or collateral, several or joint, notwithstanding that the credit balances on such accounts and liabilities on any accounts may not be expressed in the same currency and the Bank is hereby authorised to effect any conversions at the Bank's then prevailing exchange rate for the purposes of combining or consolidating the Client's accounts and liabilities as provided above.

11.4 In the event that the Borrower fails to provide additional collateral to support the Facilities when required by the Bank and/or the value of the collateral provided as charged assets falls to a level that entitles the Bank to immediately declare an Event of Default, the Bank may, at its sole and absolute discretion, declare a preliminary Event of Default but not terminate the Facilities. Upon the declaration of such a preliminary Event of Default, the Bank may exercise any of the rights under Clause 9, to correct the collateral shortfall position. Upon the

determination by the Bank that the collateral shortfall position has been rectified to its satisfaction, the preliminary Event of Default shall then be remedied and shall cease to constitute an Event of Default.

## 12. Costs and expenses

12.1 Without prejudice to the generality of any other provision in the Terms and Conditions, all costs, expenses and Taxes incurred by the Bank (including without limitation, fees and expenses of the Bank's legal and other professional advisors and any Tax thereon) arising in relation to any Facility granted or extended to the Client (whether or not such Facility is cancelled prior to drawing or utilization thereof), and all charges, costs and expenses, including legal costs (on a full indemnity basis), incurred or paid by the Bank in preserving, protecting, exercising or enforcing any security furnished to secure any part of the Total Outstandings or any right, power or remedy of the Bank for the recovery of any sum due or owed by the Client to the Bank or by any Security Party to the Bank, shall be paid on demand to the Bank by the Client and until payment in full shall bear interest at such rate and on such basis as the Bank may stipulate from time to time. In addition, where the Client is in default of payment of taxes (including GST or other similar taxes), duties, levies, charges or obligations whatsoever charged or falling due, or is in default of payment of any insurance premium, legal or inspection or valuation fees, stamp duty or any expenses of any kind whatsoever, the Bank may in its discretion meet such expenses and shall be reimbursed by the Client in accordance with the preceding sentence.

12.2 The Client shall bear the full cost of doing or refraining from doing any act, matter or thing which it is required to do or refrain from doing under or in connection with any Facility Document.

12.3 The Client must pay all Tax in relation to the execution, delivery, registration, performance, release, discharge, variation, enforcement or attempted enforcement of or otherwise in respect of the Facility Documents (other than a tax imposed on the overall net income of the Bank), and including any related interest, expense, fine, penalty or other charge on those amounts. The Client indemnifies the Bank against all claims, losses, liabilities, damages, costs and expenses (on a full indemnity basis) in respect of any amount payable under this Clause.

12.4 The Client shall pay to the Bank on demand any GST which is payable, or costs associated with

not being entitled to full input tax credits (together, "GST Costs") as a consequence of any supply or acquisition made or deemed to be made or other matter or thing done under or in connection with any Facility Document by the Bank, together with any fine, penalty or interest payable but only because of a default of the Client. The amount paid by the Client to the Bank on account of GST Costs must be sufficient to ensure that the economic benefit to the Bank of the Facility remains the same regardless of whether GST applies or not. The Client shall pay any amount it is required to pay under this Clause 12.4 in full and without deduction or withholding, notwithstanding any entitlement that it may have to a credit or offset.

## 13. General security

13.1 Where Facilities are required to be secured by the granting of one or more Security Interests over any real property or other assets or supported by Surety Instruments or other guarantees, the Client agrees to execute or to procure that the owner(s) of the real property or assets (as applicable) or the appropriate parties execute and deliver the relevant security documents and/ or Surety Instruments or other guarantees in form containing such terms, covenants and conditions as shall be required by the Bank. If required by the Bank, the Client shall deliver legal opinions and supporting documents certifying the legality and enforceability of any security document or Surety Instruments or other guarantee, together with any necessary consents, licenses, approvals or authorisation, in form and substance satisfactory to the Bank. The acceptability of any real property or other assets (including as to the title thereof) offered as security is to be determined by the Bank in its absolute discretion.

13.2 Any Security Interest, Surety Instrument or other guarantee taken by or given to the Bank or money deposited at the Bank shall continue to be held by the Bank and not released or withdrawn until the Total Outstandings have been fully repaid to the Bank and any expired Guarantees or any instruments whatsoever from time to time issued by the Bank for the Client's account have been returned to the Bank for cancellation.

13.3 The Client shall and where applicable or if required by the Bank, will procure that every Security Party does, furnish upon demand such security or additional security in such form and value (including cash collateral) as may be required by the Bank from time to time in amounts and/or values

sufficient at all times in the opinion of the Bank to secure all or any part of the Total Outstandings whether contingent, future or otherwise and, if required by the Bank, shall and where applicable, will procure that every Security Party does, register or procure the registration thereof with the appropriate authority at the expense of the Client.

13.4 The Client shall maintain at all times the loan to collateral ratio or security margin stipulated in the relevant Facility Documents.

13.5 In any event, if the loan to collateral ratio is exceeded or the market value of any security falls below the stipulated security margin and/or what the Bank considers to be an adequate security margin, the Bank may (at its absolute discretion) require the Client or, if applicable, the relevant Security Party, to furnish the Bank with further security acceptable to it and subject to such terms and conditions as the Bank may stipulate, and/or to reduce or prepay the outstanding loan or indebtedness as the Bank may notify the Client from time to time. Such further security or prepayment must be made within such time limit as may be specified by the Bank in its said notification of such requirement. All expenses and charges incurred thereby (including those incurred as a result of the prepayment of any advance(s) and those incurred in any currency conversions) shall be borne by the Client on a full indemnity basis.

13.6 The Bank may monitor the maintenance of any loan to collateral ratio or security margin at such intervals as it sees fit at its absolute discretion. The Bank reserves the right (at its absolute discretion and at any time) to vary the loan to collateral ratio or security margin upon giving written notice to the Client.

13.7 The Bank's determination of the loan to collateral ratio or security margin (including its valuation of the collateral) at any time shall be final and conclusive on the Client. All costs incurred in valuing the collateral shall be borne by the Client.

## 14. Representations and warranties

The Client and each Security Party (if applicable) represents and warrants, at all times during the availability of the Facilities and so long as any sum remains payable by the Client under or in connection with any of the Facility Documents or by the Bank under any Guarantee or any contingent and/or unmatured liability, by reference to the facts then existing, that:-

- a. (where it is a limited liability partnership or (as the case may be) a corporation) it is a limited liability partnership or (as the case may be) corporation, duly registered or (as the case may be) incorporated and validly existing under the laws of its country of registration or incorporation and has the power to own its assets and carry on its business as it is being conducted and to enter into and deliver, and perform the transactions contemplated by, each of the Facility Documents to which it is a party;
- b. its obligations in each of the Facility Documents to which it is a party, and the obligations of each Security Party under each of the Security Documents to which it is a party, are legal, valid, binding and enforceable and all acts, conditions and things (including, but not limited to, the obtaining of all consents, authorisations, approvals, licenses, registrations or filings and the taking of all corporate action) required or desirable to enable it and each Security Party lawfully to enter into, exercise its rights and comply with its obligations under each of the Facility Documents to which it is a party, to make each of the Facility Documents to which it is a party admissible in evidence in its country of incorporation and in Australia, to enable it and each Security Party to create the Security Interests under each of the Security Documents to which it is a party and to ensure that the relevant Security Interests have and will have the priority and ranking which they are expressed to have in the relevant Security Document, have been taken, obtained, fulfilled and done and are in full force and effect;
- c. its execution and delivery of, and performance of the transactions contemplated by, each Facility Documents to which it is party does not and will not conflict with or constitute a default or exceed any limitation under any law, judgment, order, license, concession, permit, consent or regulation applicable to it, any provision or any powers granted under its constitutive documents (if applicable) or any agreement or instrument binding upon it or any of its assets or the Secured Assets, nor (other than for a Permitted Security Interest) result in the existence of, or oblige it to create, any Security Interest over any of its assets or the Secured Assets;
- d. there are no Security Interests in respect of any of its assets or the Secured Assets other than Permitted Security Interests;
- e. no litigation, arbitration or administrative proceedings of or before any court, tribunal, arbitral or administrative body or government agency has been started or threatened against or otherwise affecting it; and

- f. no legal or other proceedings have been initiated or threatened and no meeting has been convened for the bankruptcy, dissolution, liquidation, winding-up, termination of existence or reorganization of, or for the appointment of a receiver, manager (judicial or otherwise), assignee, liquidator, trustee or similar officer of it or in respect of any or all of its assets.
- g. not sell, dispose or part with possession of, declare a trust over or otherwise create or permit to be created any Security Interest (other than a Permitted Security Interest) or any other interest in, and shall not enter into any agreement for any of the same in, all or any of the Secured Assets and shall procure that none of the same shall in any case or in any manner arise or affect any or all of the Secured Assets; and

## 15. Undertakings

The Client and each Security Party (if applicable) undertakes that, at all times during the availability of the Facilities and so long as any sum remains payable by the Client under or in connection with any of the Facility Documents or by the Bank under any Guarantee or contingent and/ or unmatured liability, that it shall:-

- a. conduct its business in accordance with all Applicable Laws and regulations binding upon it and its operations or assets and shall promptly pay all taxes assessed against it or any of its assets;
- b. provide the Bank with the Client's financial statements (including the Client's last audited balance sheet and profit and loss account) and all other information and documents, as may reasonably be required by the Bank promptly after any request by the Bank for the same;
- c. immediately notify the Bank in the event of any material change in any information provided by the Client or the Security Party to the Bank in connection with any Facility;
- d. promptly give notice to the Bank of the occurrence of any Event of Default or any event which may potentially constitute an Event of Default;
- e. promptly, upon the request of the Bank, execute, acknowledge, deliver and register at the Client's own expense all such additional documents and perform such other acts as shall be necessary or appropriate for the purposes of any of the Facilities;
- f. at the Client's (or, if applicable, Security Party's) own cost, comply with all laws, rules and government regulations required for all transactions contemplated under or in connection with the Facilities whether in Australia or elsewhere, and maintain, and comply with any conditions attaching to, all consents, authorisations or approvals referred to in Clause 14(b);

- h. if the Client or a Security Party is or could be a secured party in respect of any PPS Security Interest, it will implement, maintain and comply with procedures (which the Bank reasonably requires or which are prudent for a person conducting a similar business) to identify and perfect those PPS Security Interests. These include procedures to ensure that those PPS Security Interests are continuously perfected, including all steps necessary:
  - i. for the Client or Security Party (as applicable) to obtain the highest ranking priority possible in respect of the PPS Security Interest (such as perfecting a purchase money security interest or perfecting a PPS Security Interest by control), except to the extent the Bank has agreed it is reasonable not to do so, taking into account the costs and risks involved; and
  - ii. to minimise the risk of a third party acquiring an interest free of the PPS Security Interest (such as including serial numbers in a financing statement).

## 16. Indemnity

16.1 The Client agrees to hold the Bank and all of its officers, employees, correspondents, nominees and agents harmless, and shall indemnify each of them promptly on demand on a full indemnity basis, from and against any and all losses, claims, demands, actions, suits, proceedings, orders, damages, costs and expenses (including foreign exchange-losses, loss of profit, loss of business, loss of opportunity, loss of goodwill, all duties, Taxes and other levies, interest, service charges, legal costs and disbursements on a full indemnity basis) and any and all other liabilities of whatsoever nature or description howsoever arising, unless arising solely from the Bank's fraud, wilful default or gross negligence, which the Bank may incur or sustain from or by reason of:

- a. the Bank acting upon or carrying out any instructions purportedly given to the Bank pursuant to a Facility or any Facility Document;



- b. the Bank using any system or means of transmission, communication, transportation or otherwise in carrying out such instructions (including by reason of loss, delay, misunderstanding, mistake, distortion or duplication);
- c. the Bank's provision of any services to the Client (including any transaction contemplated under or pursuant to a Facility);
- d. the failure by the Client to drawdown an advance for any reason (including the failure to satisfy a condition precedent but excluding default by the Bank);
- e. any default in repayment of any advances upon demand or interest accrued thereon or any sum payable under a Facility, Security Document or any other document whatsoever entered into pursuant to a Facility or otherwise entered into by the Client in relation to its obligations in favour of the Bank (including any loss or expense sustained or incurred by the Bank in liquidating any of the Bank's time deposits (whether in Australian Dollars or other foreign currencies) or any foreign exchange contracts, or in taking proceedings hereunder or under any such agreement, Security Document or other document);
- f. any change in any existing law, regulation or official directive relating to a Facility or any related transaction;
- g. the Bank enforcing or attempting to enforce any rights it may have against the Client pursuant to a Facility Document; or
- h. any breach by the Client of any term or conditions of a Facility Document, any Event of Default or any event which would become an Event of Default with the giving of notice, the making of a determination or the passage of time (or any combination of the aforesaid events).

16.2 The terms of this Clause and all of the rights of the Bank hereunder shall apply to, and be conferred on, each of the Bank's employees, correspondents,

nominees and agents, all of whom shall be entitled to enforce and enjoy the benefit of this Clause to the fullest extent allowed by Applicable Laws.

## 17. Exclusion from liability

17.1 The Bank shall not be responsible for or liable to the Client for any loss or damage which may be suffered by the Client in any way in relation to any transaction covered or contemplated by a Facility Document, howsoever caused, except for any such loss or damage which is due to the Bank's fraud, wilful default or gross negligence.

17.2 The Bank may grant time or other indulgence to the Client or a Security Party or any of them or any other person, without impairing or affecting in any way any of the Bank's rights as against the Client or the Security Party or any such other persons.

17.3 All obligations of the Bank and the performance thereof by the Bank shall be excused by events beyond the control of the Bank (including circumstances caused by force majeure, acts of God, calamity, natural disaster, industrial actions, power failure, computer breakdown, war, acts of terrorism, civil strife, sabotage or the occurrence of any Extraordinary Event).

## 18. Conflict

In the event of any conflict or inconsistency between (i) any of the provisions of the Terms and Conditions and (ii) the terms contained in any application form, letter of offer, Facility Letter or any Security Document, the terms of the documents described in sub-paragraph (ii) will prevail over the provisions of the Terms and Conditions in respect of the Facilities made available under the terms of the relevant document or secured by that Security Document.

# Part H: Special conditions for the acquisition, delivery and safekeeping of non-traditional investment products ("NTIP") by UBS AG, Australia Branch

## 1. Scope

This agreement is applicable to the execution of instructions for the subscription, redemption, receipt, custody and the transfer ("Transactions") of Non-Traditional Investment Products ("NTIP") on behalf of and for the account of the Client by and in the name of UBS AG, Australia Branch ("Bank"), one of its depositaries or nominee companies. The Bank's Account Opening Terms and Conditions (the "Bank's Terms") in force from time to time are hereby incorporated by reference and shall form an integral part of this Agreement. Any defined terms used in this Agreement shall have the meaning given in the Bank's Terms, unless otherwise indicated. Should there be any conflict or ambiguity between the terms of this agreement, and the Bank's Terms, this Agreement shall prevail to the extent of the conflict in relation to the relevant transaction. The NTIP covered by this agreement are hedge funds, funds of hedge funds, other funds typically with an offshore domicile (Cayman Islands, British Virgin Islands, Bahamas, etc.) and/or other third-party investment funds with distribution restrictions. Your investment in these funds may be characterised as an interest in a managed investment scheme or a security or some other form of financial product.

The Client accepts that the Bank's services associated with this agreement are essentially provided only under the terms of a pure safekeeping account relationship (so-called Execution- Only). This agreement, however, also covers Transactions executed on the basis of certain advisory services, in case such services are provided by the Bank to the Client. These advisory services may consist of general information, details about investment opportunities, markets, rates/market prices and also specific recommendations with respect to NTIP. Irrespective of whether or not the Bank has performed advisory services, all Transactions are performed only at the express wish of the Client on the basis of the Client's own risk assessment of the NTIP.

## 2. Risk disclosure

The Bank does not conduct any quality or risk analysis or make any recommendations in relation to NTIP. Exceptions are only those NTIP for which the Client has received advisory services from the Bank in individual cases and executed the Transaction on this basis.

The Client irrevocably and unconditionally represents and warrants that the Client has received and read and fully understood the "Risk Disclosure Statement" set out in the Bank's Terms and the Risk Disclosure – Special Risks regarding Non-traditional Funds (Hedge Funds and Offshore Funds) set out in Addendum 5 (collectively the "Risk Disclosure"). The Client also confirms that it has read the relevant fund documentation (offering and subscription documentation, Product Documentation) of all NTIP that the Client wishes to subscribe through the Bank or have deposited at the Bank, as well as Addendum 3 to this Agreement, and has understood all features, terms and conditions and risks mentioned therein. The Client hereby acknowledges and agrees that having read and fully understood the contents of the Bank's Terms, this Agreement (including addenda), the Risk Disclosure and Product Documentation, the Client:

- understands and accepts all the terms and risks in connection with the investment and/or the transaction;
- is willing to take all such risks;
- releases the Bank from its obligation to explain further risks associated with this product category in general or with a specific NTIP;
- is capable of bearing a full loss of the amounts invested and any additional loss over and above the initial amounts invested;
- has considered its financial situation, objectives and needs, and has determined that investing in NTIP is suitable for its purposes; and
- acknowledges that the Client has been advised to seek full and independent legal, tax or other professional advice in respect of any such investment and/or transaction.

### 3. Selection and subscription of the NTIP

The Client confirms that it will select the NTIP to be subscribed/deposited with the Bank on the Client's own assessment (where necessary with the assistance of the Client's external independent advisor) and has the experience, knowledge and risk tolerance/capacity required to do so. All transactions executed by the Bank on behalf of and for the account of the Client shall thus be undertaken exclusively on the Client's initiative (exceptions

being cases where the Bank provides the Client with advisory services) and at the Client's risk.

Moreover, the Client accepts that all investment decisions concerning NTIP are the Client's responsibility, even if the decision to purchase is based on advisory services furnished by the Bank.

The Client must bear all the risks and consequences associated with a Transaction. The Client accepts and confirms that neither the Bank (including its depositaries or nominee companies) nor any of its assigned third parties can be held liable for the investment decisions and the consequences arising therefrom.

## 4. NTIP Product Documentation

To enable the Bank to execute Client instructions in time, the Client or its appointed third party will provide the Bank with the current Product Documentation of the NTIP, which the Client wishes to subscribe through the Bank or deposit at the Bank, with sufficient lead time (at least 10 bank working days prior to the relevant execution date). Exceptions are NTIP for which the Client used advisory services of the Bank prior to the instruction being placed by the Client with the Bank.

## 5. Nominee structure

The Client is aware that NTIP Transactions are executed through a nominee structure. In this process, the units of the NTIP are held in collective custody in the name of the Bank or of its depositaries with the issuer of the NTIP. This structure, where the Bank or one of its depositaries is the registered unit holder, contains operational and legal implications for the Client, especially compared to the Client being registered directly with the NTIP. The Client hereby authorises and officially appoints the Bank to appear as a unit holder formally acting on behalf of and for the account of the Client. The Bank must fulfill the required duty of due diligence in the selection, instruction and monitoring of the appointed third parties. Under no circumstances will the Bank be held liable in the case of slight negligence on the part of agents or associates as defined under art. 101 para. 2 and 3 of the Swiss Code of Obligations.

## 6. Conditions of purchase

The Client confirms that the Product Documentation is binding. The Client will not issue any instructions to the Bank that contravene the terms in the Product Documentation or the applicable legislation. Moreover, the Client will only give instructions for Transactions of those NTIP for which the Client satisfies all suitability criteria as an investor of the NTIP in accordance with the Applicable Laws, regulations and in particular the terms stated in the Product Documentation. In addition, the Client confirms that the Client is-not a U.S. person, as defined in Addendum 4. Once the instruction is issued, the Client supplies, or has supplied, to the Bank all relevant details which are required according to the Product Documentation for the purpose of the Transaction (e.g. client declarations, options). The Bank has no obligation to execute incomplete instructions. The Client confirms to the Bank that these details are complete and correct, and reports any alterations that might have occurred to the Bank, if, at any time, the Client no longer satisfies the terms of the NTIP as set out in the Product Documentation, the Bank may arrange for the NTIP to be returned to the issuer or its agents ("**Issuer**") without first consulting the Client. If the NTIP is not redeemable on the primary market, the Bank reserves the right to have the units registered directly with the Issuer in the name of the Client. Without limitation to the foregoing, the Client acknowledges and accepts that the Bank may refuse to accept any of the Client's order if in its absolute discretion it considers appropriate.

The Client irrevocably and unconditionally represents, warrants and undertakes that:

- a. the Client is and will continue to be a Wholesale Client, or alike in accordance with the laws of any other relevant jurisdiction(s) where the NTIP is offered or communicated to the Client, and the Client hereby confirms and agrees to be treated as such;
- b. where applicable, the Client has the necessary corporate power under its constitutive documents to execute, and to perform its obligations under, this Agreement and has taken all necessary corporate actions required under its constitutive documents to authorise its execution of this Agreement and the performance of its obligations under this Agreement;
- c. the Client's obligations under this Agreement do and will not conflict with the law, rules and regulations, or where relevant, constitutive or corporate documents applicable to the Client;
- d. all relevant and necessary authorisations, approvals, licenses, consents, exemptions and requirements of governmental, public and other bodies and authorities, required for or in connection with the execution or delivery and performance of this Agreement have been duly obtained or fulfilled and are and will remain in full force and effect and that any conditions to which they are subject have been satisfied and that the Bank need not enquire and/or confirm the legality and/or validity of such authorisations, approvals, licenses, consents, exemptions and requirements;
- e. the Client undertakes:
  - i. not to circulate and/or distribute the Product Documentation for the NTIP and any other document or material in connection therewith; and
  - ii. not to offer, transfer or sell or make the subject of an invitation for subscription or purchase, whether directly or indirectly, the NTIP,to any other person, unless permitted by the Bank and in accordance with the terms of the relevant Product Documentation and Applicable Laws and regulations of the relevant jurisdiction(s);
- f. the Client enters into the transaction as principal solely for its own account for investment purposes and not with a view to, or for resale in connection with, any distribution or any disposition thereof, and no other person has or will have a direct and/or indirect beneficial interest in the NTIP (except for the client acting as trustee, nominee or agent for any person(s) ("**Beneficial Owner**") who has or have a direct or indirect beneficial interest in the Client's Account as duly disclosed to and accepted by the Bank);
- g. the investment in the NTIP and the execution and delivery of this Agreement and related documents have been duly authorised by the Client and (as the case may be) the Beneficial Owner and this Agreement has been duly executed and delivered by the Client;
- h. the Client has been and shall continue to be solely responsible for making its own full and independent appraisal of the financial condition, creditworthiness, status and affairs of the Issuer and each company that has issued financial products referenced in the NTIP (each a "**Reference Company**");
- i. the Issuer and/or any affiliate of UBS may be in possession of information in relation to a Reference Company which is or may not be known to the general public or the Client. The Issuer and/or any affiliate of UBS may

have existing or future business relationships with any Reference Company and will pursue actions and take steps that it deems or they deem necessary or appropriate to protect its or their interests arising therefrom. The NTIP do not create any obligation on the part of the Issuer or any affiliate of UBS to disclose to the Client any such relationship or information (whether or not confidential); and

- j. the Client shall notify the Bank and the Issuer (if required) in writing immediately if any of the representations and undertakings contained in this Agreement, the Product Documentation or related documents cease to be true and correct at any time.

## 7. Confirmation as “Restricted Person” and “Benefit Plan Investor”

To ensure instructions are executed in time, the Client must include the status disclosures usually required for NTIP regarding Restricted Person and Benefit Plan Investor (see Addendum 1 and 2).

- a. For the purpose of purchasing New Issues of securities, the Client is NOT defined as a “Restricted Person” within the meaning of Rule 5130 and 5131 of the US Financial Industry Regulatory Authority (“**FINRA**”) (please refer to Addendum 1 for the definition of “Restricted Persons”); and
- b. The Client is NOT a “Benefit Plan Investor” and does not invest any monies that can or might be construed as such (please refer to Addendum 2 for the definition of a “Benefit Plan Investor”), unless the Bank is expressly informed by the Client in writing to the contrary at least ten Business Days before the relevant date for execution of the Client’s orders.

## 8. Disclosure of information – provision of additional disclosures and documents

### 8.1 Third Parties

The Client hereby authorises the Bank, all Issuers of NTIP, their assignees (including liquidators,

administrators, bankruptcy administrators and individuals or authorities with similar functions) and third parties (including domestic and foreign authorities) together with any agents (an “**Information Recipient**”), which assert an actual or legal interest and to which a transfer of information (as defined below) is deemed appropriate by the Bank for averting potential damage to itself or to its Clients, to provide on request all relevant information concerning units of the respective NTIP held by the Client, including the fact that a business relationship exists or existed between the Client, any third party beneficiary and the Bank (“**Information**”).

If the Bank demands that details or documents concerning the Client, which are not in its possession, have to be disclosed to an Information Recipient, the Client shall be obliged to provide to the Bank, at its request, such information immediately and thereby declares his consent to the Bank disclosing such details and/or documents to an Information Recipient.

If an Information Recipient demands that the Bank has to disclose details of a third party beneficiary, the Client shall provide such information to the Bank immediately upon its request. The Client is solely responsible for providing notice to or obtaining consent from a third party beneficiary in regard to such disclosures. Each Client confirms to the Bank that whenever such Information is provided to the Bank, they shall inform the third party beneficiary about the disclosure of such Information to the Information Recipient and/or that they have received the consents required to do so.

The following applies in this context:

- a. The Client consents that the information and/or documents relating to the Client, which the Bank has disclosed to an Information Recipient, being passed on, processed and stored/ retained by the Information Recipient abroad. This includes in particular data about Clients or third party beneficiaries, Transaction and credit data (“**Data**”).
- b. The Client acknowledges that all Data disclosed in connection with this approval to the Information Recipient in the respective country of domicile is governed by the laws of the Information Recipient’s country of domicile, and is not protected by Australian legal provisions, including Australian privacy legislation.
- c. Foreign legislation and provisions do not necessarily guarantee the same level of confidentiality, banking confidentiality or data protection as Australian law, and can stipulate that the Information Recipient, and/or the Bank has to disclose the Information, either in whole or in part, to authorities or other third parties.

- d. The Bank will make reasonable efforts to provide the Data to the Information Recipient at its request without delay, but does not accept any responsibility for the Data being transmitted within a certain period of time. The Client exempts the Bank from any liability and waives the right to claim any potential losses in connection with the provision of data by the Bank to the Information Recipient. The consequences and losses, damages or costs which might be incurred at any time:
  - i. owing to the use of such data by the Information Recipient; or
  - ii. due to the Client neglecting to provide the Data to the Bank immediately upon its request.
- e. This consent applies to all NTIP held by the Bank on behalf of the Client, and will remain valid until revoked in accordance with the notification requirements in this agreement or until this agreement is terminated pursuant to Clause 18. The Client takes note and accepts that, if this consent is revoked or this agreement is terminated, any Data relating to the period prior to the revocation or termination can still be disclosed. If, after a revocation or termination, the Information Recipient demands that the Bank provides this information or documents about the Client, and such information and documents are not yet in its possession and relate to the period prior to the revocation or termination, the Client shall also be obliged to provide this information and/or documents to the Bank immediately upon its request.
- f. The Client agrees in particular that if he revokes this consent, the Bank shall be entitled, at its own discretion and without prior notification to the Client, to return immediately all or individual NTIP, which the Bank holds on behalf of the Client, and to retain any related proceeds, insofar as the Client continues to further refuse his consent as described. For the avoidance of doubt, any revocation of this authorisation by the Client will be effective only after the Bank has successfully redeemed/transferred the NTIP on behalf of the Client (including but not limited to the receipt of the contract note and the redemption proceeds).

## 9. Client Identity

- a. Many Issuers set a contractual obligation for investors to disclose the identity of the beneficial owner of the NTIP units to the Issuer (or a third party) on request. If the Client does not wish to disclose its identity and/or the identity of the

Beneficial Owner, it shall only issue the Bank orders for NTIP that do not include any such explicit or implicit disclosure obligation. If the Client has authorised a third party to issue orders to the Bank on its behalf, it shall ensure that such third party takes such non-disclosure requirement into account when selecting the NTIP. In all other cases, the Client authorises the Bank to disclose the Relevant Information including its identity, the identity of the beneficial owner of the NTIP. Any such reversal of provisional entries and such other action taken by the Bank shall be binding on the Client. The Bank shall not be liable or responsible for any Losses or Claims incurred by the Client as a result of or in connection therewith. Electronic mail units and/or the source of funds invested in the NTIP to the Issuer (or a third party) on request, without first consulting the Client, insofar as this is the only way that the Bank can fulfill its contractual obligations with respect to the Issuer.

- b. If the Client instructs the Bank to transfer the NTIP units to its name, such instructions shall comprise explicit authorisation to the Bank to disclose the identity of the Client to the Issuer (or a third party). Further, the Client declares that it consents that, in the cases where the Bank is required to transfer NTIP units to the Client, its identity may also be disclosed to the Issuer (or a third party). In such cases, the Client's identity may also be disclosed without the Client first being consulted.

## 10. Within the Bank

The Client hereby instructs and authorises the Bank, via communication channels of any kind, in particular via electronic data communication, at any time and without limitation within the Bank worldwide, to disclose Data about the business relationship between the Client or the third party beneficiary on the one hand and the Bank on the other, in order to reconcile the list of NTIP investments of the Client or the third party beneficiary with the records held internally by the nominee entities of the Bank as their depositaries.

## 11. Executing the Client's orders

The Bank may refuse at its sole discretion to execute the Client's orders with respect to certain NTIP (especially those that entail a legal, tax, market and/or operational risk to the Bank) or make execution

contingent upon additional conditions. The Bank is entitled, but not obligated, to enter into negotiations at its own discretion with the NTIP or with a corresponding third party regarding the conditions associated with an investment. If execution of the instruction is subject to further criteria being met by the Client, and if such criteria are not met by the Client promptly before the next possible execution date, the Client's order shall lapse. In this case, the Bank shall not be liable for any potential losses (especially any foregone profit) or for any damage to the Client. The Client also notes that in principle, the Bank accepts neither subscriptions nor redemptions in kind (see Addendum 3, item 7).

If the Product Documentation of the NTIP stipulates a redemption fee for early redemptions of the NTIP units (early redemption fee – see Addendum 3, item 2(d)) within a specific period, and the Client instructs a redemption within this period, the Client agrees to the Bank charging a commission in the corresponding amount.

The Client accepts that the NTIP units might not be considered book-entry-securities or other assets that can be held in custody and as a result, the Bank is not able to take the NTIP into safekeeping. The Client notes and accepts that the Bank is unable to take account of any client-specific concerns/instructions due to the collective safe-keeping of NTIP units via the nominee structure.

## 12. Transfer of rights/units

The Client confirms that he refrains from assigning rights, receivables or other claims on the units/revenues of NTIP to third parties either in return for a fee or without charge, without the Bank's prior written consent.

## 13. Corporate actions and additional product information

The Bank shall administer the Client's investment in accordance with the Client's instructions (or

the instructions of a third party with written authorisation to issue such instructions) and the Bank's Terms and Conditions. If the Client instructs the Bank to retain all correspondence, the Bank shall not accept liability for any resultant damage and/or loss to the Client (especially any foregone profits) resulting from such instructions. The Client acknowledges that, in respect of corporate actions or other changes of the Product Documentation relating to NTIP, the Bank has to rely on the Issuer providing the necessary data and documents in full and on time. Without further enquiry and/or being requested and accepted to do so, the Bank shall have no obligation to actively obtain information on the NTIP (including information on any changes in the conditions or Product Documentation relating to the NTIP). If the Client has not issued or arranged to issue the Bank with any other instructions, the Bank shall always choose payment in cash rather than in units (where such a choice is available). The Bank shall not have any obligation to exercise voting rights without the explicit instructions of the Client or an authorised third party.

Clients note that, owing to the structure via which the NTIP units are held (in the name of the Bank, but on behalf of and on the account of the Client), they are not permitted to attend general, creditor or similar meetings (Clients are not granted power of attorney). In such cases, Clients can instruct the Bank to have the NTIP units transferred to themselves or to a designated third party. The Bank accepts no responsibility for timely execution or for any refusal by the Issuer to permit the transfer of units to the Client or to a designated third party. In such cases, the Bank will also neither grant power of attorney nor appoint its own representative.

The Bank exercises the voting rights in accordance with the Client's instruction, only insofar written form and only insofar as this is possible in a form consolidated for the complete portfolios of all Clients.

In the case of a switch offered or executed by an NTIP, the Bank has no obligation to make such a switch if:

- a. the new units/securities do not satisfy the Bank's requirements, or
- b. the Issuer, in case an election right exists, fails to allow sufficient time to examine the Product Documentation of the new NTIP units and provide the Client with advance information (a total of at least 15 bank working days).

## 14. Terms and special agreements inconsistent with the Product Documentation

The Bank shall have no obligation to conduct negotiations with the Issuer and/or third parties on the basic conditions for subscription, delivery, safekeeping and redemption. The Bank shall regard the conditions set out in the Product Documentation as binding. It shall have no obligation to observe agreements between the Client and the Issuer and/or third parties which deviate from these prescribed conditions. The Client shall be fully and solely responsible for ensuring observance of such conditions. The Bank reserves the right – where necessary – to modify product forms that have to be submitted to the Issuer or third parties at its discretion (especially clauses that are not compatible with Applicable Law, rules or regulations or the Bank's standard practice). On request, the Client or an authorised third party may view such changes before placing the order. The option to view changes made by the Bank does not, in particular, obligate the Bank to take up or hold negotiations with the Issuer or third parties, prior to instructions being issued, regarding the changes made. Placement of the order entails authorisation by the Client of all amendments made by the Bank for and on its behalf.

The Client irrevocably appoints the Bank and its nominees and any of its directors, secretaries and officers whose title includes the word "director" from time to time jointly and severally as attorney of the Client to make (either in the name of the Client or the attorney) all amendments necessary to any Product Documentation submitted to the Issuer or a third party which, in the opinion of the Bank, is necessary or desirable in connection with the Client's orders relating to NTIP or the protection of the Bank's interests or the exercise of the rights, powers and remedies of the Bank.

## 15. Conflicts of interest

The Client notes that the Bank and its group companies (and their employees) are involved in activities which could be connected, either directly or indirectly, with NTIP. For example, they can buy or sell NTIP for their own account

and for the account of other Clients at the same time, or execute Transactions that stand contrary to those of the Client (reverse transactions). The Client is aware that NTIP can be set up, issued, recommended, developed or controlled by the Bank or its companies, and that the employees may take up certain positions in these companies. Accordingly, the interests of the Bank might, under certain circumstances, conflict with those of the Client.

Clients receive further information about these potential conflicts of interest from their banking client advisors.

The Client agrees that the Bank is not obliged to notify the Client about specific conflicts of interest going beyond the information provided in this contract.

## 16. Indemnification

The Client hereby undertakes to indemnify the Bank (on a full indemnity basis) and to keep it harmless against all losses, liability or compensation, claims, costs and expenses (including legal costs and expenses relating to the defence or settlement of all claims, disputes and litigation) to which it is exposed in the course of its duties under the Bank's Terms and Conditions and this Agreement, except in the event of deliberate or gross negligence, wilful default or fraud by the Bank. Similarly, the Client undertakes to indemnify the Bank against all damage and loss incurred by it as a result of the Client's failure to comply with the declarations and undertakings made in this Agreement.

**The Client shall be bound by the terms and obligations herein even if the Client authorises a third party to represent the Client's interests as regards the management of assets deposited with the Bank or if the Client has delegated some or all of the Client's obligations arising from this Agreement to a third party.**

The Bank does not engage in litigation relating to disputes about NTIP. In such cases, the Client may instruct the Bank to transfer the units to the Client or to a third party designated by the Client. The Bank does not assume any responsibility for refusal by the Issuer to transfer the units to the Client or a third party. Even if the Issuer refuses to transfer the NTIP at the Client's request, the Bank shall not engage in litigation and/or any proceedings/actions against Issuers or third parties.



## 17. Due diligence and liability

The Bank shall not be responsible nor liable to the Client for any loss, damage, costs and/or expenses which may be suffered by the Client in relation to or in connection with this Agreement except for direct and substantiated loss caused through the fraud, wilful default or gross negligence of the Bank and its employees. The Bank shall not at any time be responsible or liable to the Client for any consequential loss or damage which may be suffered by the Client in relation to or in connection with this Agreement.

## 18. Fees

The Client shall be responsible for timely payment of all the Bank's fees, commissions and/or other charges (which may be revised from time to time) in respect of the services provided by the Bank under and pursuant to this Agreement at the Bank's prevailing rates. The Client shall also be responsible for the timely payment of all taxes (including Goods and Services Taxes) on such fees, commissions and/or other charges, as notified by the Bank from time to time.

The Client shall also fully reimburse the Bank for all expenses incurred for and on behalf of the Client.

## 19. Termination of this Agreement

This Agreement may be terminated at any time by the Client or the Bank. However, all rights and obligations arising from this Agreement shall only be extinguished when the NTIP has been sold or transferred to the Client's name or to a third party designated by the Client and the Client has fulfilled all financial obligations to the Bank arising from this Agreement. Following termination of this Agreement, the Client must notify the

Bank in good time to whom the units should be transferred. Otherwise, the Bank reserves the right to transfer the units to the Client's name or to have them transferred to the Client's name.

The provisions under Clause 8 must be observed, irrespective of a termination on the part of the Client.

## 20. Concluding provisions

Changes and additions to this agreement must be in writing to attain legal effect. This agreement supersedes all previous agreements between the contracting parties.

If one or more provisions of this agreement is/are ineffective, they shall be replaced by a legally effective provision which comes closest from economic and legal perspectives to the originally chosen, but ineffective provision(s).

## 21. Place of performance and applicable law

This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia. The Client irrevocably agrees that the courts of the State of New South Wales, Australia are to have non-exclusive jurisdiction to settle any disputes which may arise out of, or in connection with, this Agreement and the documents to be entered into pursuant hereto (except to the extent otherwise provided therein). The Client irrevocably agrees that any proceedings brought by the Client arising out of or in connection with this Agreement and such documents (except to the extent otherwise provided therein) shall be brought in such courts. The Client irrevocably submits to the jurisdiction of such courts and waives any objection to proceedings in any such court on the ground of venue or on the ground that proceedings have been brought in an inconvenient forum. **The Bank is also entitled to take legal action against the Client before any other competent court in the relevant jurisdiction(s) at its discretion.**

# Addendum 1

## Definition of Restricted Person pursuant to FINRA Rule 5130 and 5131

### 1. Explanations regarding Restricted Person

#### A. Members of other broker-dealers

#### B. Broker-Dealer Personnel

- i. Any officer, director, general partner, associated person or employee of a member or any other broker dealer (other than a limited business broker-dealer).
  - ii. Any agent of a member or any other broker-dealer (other than a limited business broker-dealer) that is engaged in the investment banking or securities business; or
  - iii. An immediate family member of a person specified in subparagraph (B)(i) or (ii) if the person specified in subparagraph (B)(i) or (ii);
- a. Materially supports, or receives material support from, the immediate family member;
  - b. Is employed by or associated with the member, or an affiliate of the member, selling the new issue to the immediate family member; or
  - c. Has an ability to control the allocation of the new issue.

#### C. Finders and Fiduciaries

- i. With respect to the security being offered: a finder or any person acting in a fiduciary capacity to the managing underwriter, including, but not limited to, attorneys, accountants and financial consultants; and
- ii. An immediate family member of a person specified in subparagraph (C)(i) if the person specified in subparagraph (C)(i) materially supports, or receives material support from, the immediate family member.

#### D. Portfolio Managers

- i. Any person who has authority to buy or sell securities for a bank, savings and loan institution, insurance company, investment company, investment advisor or collective investment account.
- ii. An immediate family member of a person specified in subparagraph (D)(i) that materially supports, or receives material support from, such a person.

#### E. Persons Owning a Broker-Dealer

- i. Any person listed, or required to be listed, in Schedule A of a Form BD (other than with respect to a limited business broker-dealer), except persons identified by an ownership code of less than 10%.
- ii. Any person listed, or required to be listed, in Schedule B of a Form BD (other than with respect to a limited business broker-dealer), except persons whose listing on Schedule B relates to an ownership interest in a person listed on Schedule A identified by an ownership code of less than 10%.
- iii. Any person listed, or required to be listed, in Schedule C of a Form BD that meets the criteria of subparagraphs (E)(i) and (E)(ii) above.
- iv. Any person that directly or indirectly owns 10% or more of a public company listed, or required to be listed, in Schedule A of a Form BD (other than a reporting company that is listed on a national securities exchange or other than with respect to a limited business broker-dealer).
- v. Any person that directly or indirectly owns 25% or more of a public reporting company listed, or required to be listed, in Schedule B of a Form BD (other than a reporting company that is listed on a national securities exchange or other than with respect to a limited business broker-dealer).
- vi. An immediate family member of a person specified in subparagraphs (E)(i) through (v) unless the person owning the broker-dealer:

- a. Does not materially support, or receive material support from, the immediate family member;
- b. Is not an owner of the member, or an affiliate of the member, selling the new issue to the immediate family member; and
- c. Has no ability to control the allocation of the new issue.

**Collective Investment Account** means any hedge fund, investment partnership, investment corporation or any other collective investment vehicle that is engaged primarily in the purchase and/or sale of securities. A collective investment account does not include a family investment vehicle or an investment club.

**Family Investment Vehicle** means a legal entity that is beneficially owned solely by immediate family members.

**Investment Club** means a group of friends, neighbours, business associates or others that pool their money to invest in stock or other securities and are collectively responsible for making investment decisions.

**Immediate family member** means a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law or daughter-in-law, and children, and any other individual to whom the person provides material support.

**Limited Business Broker-Dealer** means any securities dealer whose authorisation to engage in the securities business is limited solely of the purchase and sale of investment company/ variable contracts securities and direct participation program securities.

**Material support** means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Members of the immediate family living in the same household are deemed to be providing each other with material support.

**New issue** means any initial public offering of an equity security as defined in Section 3 (a) (11) of the Exchange Act, made pursuant to a registration statement or offering circular. New issues shall not include:

- a. Offerings made pursuant to an exemption under Section 4 (1), 4 (2) or 4 (6) of the Securities Act, or Securities Act Rule 504 if the securities are restricted securities under Securities Act Rule 144 (a) (3), or Rule 144A or Rule 505 or Rule 506 adopted thereunder.
- b. Offerings of exempted securities as defined in Section 3 (a) (12) of the Exchange Act, and rules promulgated thereunder.
- c. Offerings of securities of a commodity pool operated by a commodity pool operator as defined under Section 1a (5) of the Commodity Exchange Act.
- d. Rights offerings, exchange offers, or offerings made pursuant to a merger or acquisition.
- e. Offerings of investment grade asset-backed securities.
- f. Offerings of convertible securities.
- g. Offerings of preferred securities.
- h. Offerings of an investment company registered under the Investment Company Act.
- i. Offerings of securities (in ordinary share form or ADRs registered on Form F-6) that have a pre-existing market outside of the United States.
- j. Offerings of a Business Development Company pursuant to Section 2(a)(48) of the Investment Company Act, of a Direct Participation Program pursuant to Rule 2310 (a) or of a Real Estate Investment Trust pursuant to Section 856 of the Internal Revenue Code.

# Addendum 2

## Definition of Benefit Plan Investor

### **Explanations regarding Benefit Plan Investor**

In accordance with this agreement, the expression Benefit Plan Investor means:

- i. An employee benefit plan subject to part 4 of Title I of ERISA;
- ii. Any plan subject to section 4975 of the Internal Revenue Code of 1986;
- iii. Any entity whose benefit plan investors (as defined under (i) and (ii)) hold 25 percent or more of any class of the entity's equity interests; or
- iv. An insurance company general account investing assets attributable to benefit plan investors (plan assets within the meaning of 401(c) of ERISA).

# Addendum 3

## Explanation of normal terms of operation for transactions in NTIP

**The normal terms of operation for transactions in NTIP are outlined below. This list warrants no claim to completeness and the conditions described here do not necessarily apply to every NTIP. More accurate details of the applicable conditions for a specific NTIP are contained in the relevant Product Documentation, including the issue and subscription documents.**

### 1. Primary/Secondary Market

NTIP can generally only be purchased and sold in the primary market via the Issuer. In most cases, there is no liquid secondary market. Listing on an exchange (for example, many funds list on the Irish Stock Exchange) is not necessarily a guarantee of liquid trading. The Bank's mandate in connection with NTIP is limited exclusively to primary market transactions. However, Clients are at liberty to agree transactions in the secondary market directly with a counterparty independently, without exposing the Bank to an obligation. In this context, the Bank will process only official documents produced by the NTIP.

### 2. Relevant Subscription, Payment, Redemption and Settlement Dates

- a. Subscription to and redemption of most NTIP is only possible on one specific day in the month, quarter or year (hereinafter referred to as the Trade Date). Trade Dates for subscription and redemption may differ. Generally, there are more subscription than redemption Trade Dates in each year.
- b. In the case of subscriptions and transfers, the relevant forms and the amount to be subscribed must be received by the Issuer a few days or weeks before the Trade Date. The effective allocation of NTIP units is normally only confirmed 3-4 weeks after the Trade Date.
- c. Redemption applications generally have to be submitted 1–3 months before the Trade Date.

The Issuer normally disburses the redemption amount in 2 tranches, with payment of about 90% 4–6 weeks after the Trade Date and the balance some months after the Trade Date.

- d. Some issuers specify mandatory lock-up periods of several months or years from the date of purchase of the NTIP. During these periods, the units cannot be redeemed.
- e. Instead of a lock-up period, many issuers impose an early redemption fee if investments are redeemed within the first months or years after the date of purchase.

### 3. Instructions to the Issuers

- a. Since pre-payment of the subscription amount is mandatory, subscriptions to NTIP can generally only be made for nominal (monetary) amounts, not for numbers of units. The number of units can only be determined by the Issuer when the purchase price per unit has been set.
- b. In most cases, subscription, redemption and transfer applications can only be submitted to the Information Recipient on the valid form provided by the Issuer. These documents, which are normally very extensive and complex, often require extensive details of the ultimate investor (beneficial owner).
- c. If the Issuer offers various unit classes, currencies, etc., each application to the Issuer must state clearly to which NTIP units it refers.

### 4. Investor Suitability

- a. The normal preconditions for investment in NTIP are assets of at least USD 1 million, knowledge and experience of complex financial instruments, and the necessary risk awareness and risk tolerance.
- b. The minimum investment per investor is normally between USD 100,000 and USD 1 million.
- c. US persons (US citizens, persons resident in the US or its territories, resident aliens and/or US taxpayers) are normally excluded from investment in NTIP. The Bank reserves the right to impose further restrictions than those contained in the NTIP documentation.

- d. If assets of the NTIP are invested in initial public offerings (IPOs) of US securities (New Issues), the NTIP requires each investor to declare whether the investor is a Restricted Person (see definition of "Restricted Persons" in Appendix 1). Restricted Persons are either not allowed to invest in the NTIP at all, or the Issuer ensures that such persons do not share in the profits/losses arising from investments made by the NTIP in such New Issue investments of the NTIP (e.g. by issuing a separate unit class for such Restricted Persons). For the avoidance of doubt, the Bank expressly relies upon Client's representation, warranty and undertaking in accordance with Clause 7 of this Agreement (see above) that the Client is not to be defined and/or construed as a "Restricted Person".
- e. Most issuers reserve the right to obtain further information and documents from the investor before accepting an investment application and/or at any time during the entire investment period. If such requirements are not met immediately, the Issuer can reject the application, initiate mandatory redemption of any units already allocated, or "freeze" existing units until the investor meets the Issuer's request.

#### **5. Acceptance of Investment Applications by the Issuer**

- a. Most issuers reserve the right to reject subscription, redemption and transfer applications with or without reason. Similarly, the Issuer may allocate units for only part of the amount tendered or execute the application at a later date than requested. Many NTIP are closed to further subscription once a certain investment capital has been reached and restrict redemption to a certain percentage (generally between 10% and 25%) of total assets on each Trade Date. If the redemption application is below the minimum redemption amount set for the NTIP or if the

investment in the NTIP drops below the minimum level as a result of redemption of some of the units, the Issuer may reject the application or regard it as an application for redemption of the entire investment and redeem it accordingly.

- b. Typical reasons for complete cancellation of Trade Dates include major disruption of the financial markets or communication media and short-term liquidity or valuation difficulties relating to the NTIP.

#### **6. Deduction of the "Performance Fee" (only the most common methods are described here)**

Many issuers charge investors a performance fee. To ensure that each investor pays only the fee relating to the actual performance of his/her investment, the Issuer can withhold some of the invested capital and distribute it to investors in the form of units in the NTIP after the end of the performance period (generally quarterly or annually) or the Issuers may instigate mandatory redemption of an investor's units at the end of the performance period and retain the amount redeemed, or may issue a new series of units at each Trade Date (independent securities with their own security number). These can be converted into units at a given conversion ratio to the original units at the end of the performance period.

#### **7. Repayment in Kind, Mandatory Redemption of Units, FIFO Principle**

Most Issuers reserve the right to make repayment in kind – i.e. in securities or other assets of the NTIP rather than in cash – under certain circumstances. Issuers generally reserve the right to redeem an investor's units directly at any time and on their own initiative, with or without giving a reason. Most issuers use the first-in/first-out principle, i.e. the oldest units held by an investor are redeemed first unless otherwise instructed.

# Addendum 4

## Definition of Non-U.S. Investor

### Definition of U.S. Person

For purposes of the Subscription Agreement, the term U.S. Person means:

1. A resident or citizen of the United States;
2. A partnership or corporation organised under the laws of the United States;
3. Any entity not organised under the laws of the United States:
  - a. that is organised principally for passive investment (such as an investment company, a commodity pool or other similar vehicle); and
    - i. in which the amount of units of participation held by U.S. Persons (other than qualified eligible persons as defined in Rule 4.7 under the U.S. Commodity Exchange Act) represents in the aggregate 10% or more of the beneficial interest in the entity;
    - ii. That was formed for the purpose of facilitating investment by U.S. Persons in the Fund, or in any other commodity pool with respect to which the operator is exempt from certain requirements of Part 4 of the regulations promulgated by the U.S. Commodity Futures Trading Commission by virtue of its participants being non-U.S. Persons; or
    - iii. That was formed by U.S. Persons principally for the purpose of investing in securities not registered under the U.S. Securities Act of 1933, as amended (the Securities Act), unless it is formed and owned by accredited investors (as defined in Rule 501(a) under the Securities Act) who are not individuals, estates or trusts;
  4. An estate or trust;
    - i. Of which an executor, administrator or trustee is a U.S. Person, unless;
      - ii. an executor, administrator or trustee who is not a U.S. Person has sole or shared investment discretion with respect to the assets of the estate or trust; and
        - A. in the case of an estate, it is governed by non-U.S. law; or
        - B. in the case of a trust, no beneficiary (and so settlor if the trust is revocable) is a U.S. Person; or
    - ii. The income of which is subject to U.S. income tax regardless of source;
  5. Any agency or branch of a foreign entity located in the United States;
  6. Any non-discretionary account or similar account (other than an estate or trust) held for the benefit or account of one or more U.S. Persons; and
  7. Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organised, incorporated, or (if an individual) resident in the United States, unless it is held by a dealer or other professional fiduciary exclusively for the benefit or account of one or more non-U.S. Persons.

For purposes of the foregoing, the term U.S. means the United States of America, its territories and possessions, any state of the United States of America, and the District of Columbia.

# Addendum 5

## Risk Disclosure – Special Risks regarding Non-traditional Funds (Hedge Funds and Offshore Funds)

### 1. Characteristics of Non-traditional Funds

“Non-traditional Funds” are investment companies which differ from traditional equity and bond investments on account of their investment style. The most common form of a Non-traditional Fund is hedge fund, which, despite its name, does not necessarily have anything to do with hedging. Many hedge funds aim to make a profit and sometimes take on very high levels of risk. Hedge funds include all types of investment funds, investment companies and partnerships which use derivatives for investment rather than hedging purposes, which can carry out short sales or which can attain significant leverage from the investment of borrowed capital. Additional features of hedge funds are their free choice of investment categories, markets (including emerging markets) and trading methods. Hedge funds generally demand high minimum investments. They offer no more than limited subscription and redemption rights with lengthy notice periods. Portfolio managers of hedge funds receive performance-linked bonuses and often have a personal stake in the fund.

Due to leverage, a small movement in the market can lead to a major gain, but any losses will also be magnified sharply. The Client acknowledges and accepts that for such investments the entire amount of the Client’s investment can, under certain circumstances, be lost.

It is not uncommon for there to be little information available concerning a non-traditional investment. Moreover, many investment strategies are highly complex and very difficult to understand. Investors should be aware that changes in strategy which can lead to a substantial increase in the level of risk are often overlooked, accorded too little attention or noticed too late.

The liquidity and tradability of non-traditional investments can vary a great deal. Hedge fund issues and redemptions are often only monthly, quarterly or annually. Fixed holding periods lasting many years are not unusual. Provisions regarding trading frequency and holding periods may change frequently and rapidly. Liquidations can stretch over many years. Investments in emerging markets are speculative and considerably more volatile than investments in established markets.

### 2. Responsibility of investors

Non-traditional investments can take countless different forms and investment strategies are often high-risk. Investors are advised to consider their own financial circumstances and obtain full and independent advice in order to determine the suitability of the scheme as part of their investment portfolio. The risk disclosure herein does not detail the risks involved in any particular case. Before making any such investments, investors should seek independent advice about the particular risks involved and carefully study the Product Documentation, including any Information/ Explanatory Memorandum and Subscription Agreement and other information on the relevant investments. Investors should fully understand and agree to assume the risks involved and the exposure to potential loss (which could involve the complete loss of the investments). Investments in Non-traditional Funds involve a high degree of risk and are suitable for sophisticated investors only who fully understand and are willing to assume the risks involved and the exposure to potential loss which could involve the complete loss of their investment.

### 3. Offshore funds

Many Non-traditional Funds in this category have an offshore domicile which earns them the name offshore funds. They may be subject to less stringent legislation and supervision, which in turn offers poorer investor protection.

Problems or delays may also arise in the settlement of buy and sell orders for units in such offshore Non-traditional Funds. There is no guarantee that an investor’s legal rights will be enforceable, and even where an investor can enforce its rights, it may be very costly to do so.



# Part I: Terms and Conditions for Indirect clearing in EU markets

## 1. Application

1.1 The provisions contained in this Part J shall, in conjunction with other parts of these Terms and Conditions, apply to all transactions in derivatives that are able to be cleared through a central counterparty authorised in the European Union entered into or outstanding between the Bank and the Client (each a **"Relevant Transaction"**).

1.2 For the avoidance of doubt, a Relevant Transaction for the purpose of this Part J is a "Transaction" under the Terms and Conditions.

1.3 In addition to the terms set out in this Part J, the conditions set out in the Annex relating to the specific product shall apply. The Annex to these conditions shall form an integral part of these conditions.

1.4 In the event of any inconsistency between this Part J and other parts of these Terms and Conditions, this Part J shall prevail only insofar as the inconsistency relates to indirect clearing of the Relevant Transactions.

## 2. Clearing services for relevant transaction

2.1 In respect of every Relevant Transaction between the Client and the Bank, the Bank will clear such Relevant Transaction by entering into a matching transaction on the relevant market (the **"Matching Transaction"**).

2.2 The Bank may provide such clearing services through a relationship with a central counterparty (**"CCP"**) as clearing member (**"CM"**), through a relationship with a third party CM as a direct client (**"DC"**) or through a relationship with a

third party DC (the CM or DC through which the Bank acts, as applicable, the **"Intermediate Clearing Broker"**) as an indirect client (**"IC"**).

2.3 The Bank may provide clearing services to the Client in respect of Relevant Transactions cleared through a CCP subject to the laws of the European Union (**"EU law"**).

2.4 Where the Bank provides clearing services as DC through a CM, or as IC through a DC, these Terms and Conditions shall document the indirect clearing arrangement and the Bank shall honour all obligations of the Client towards the CM or the DC, as applicable, with regard to such Relevant Transactions subject to indirect clearing.

2.5 In any event, the Client shall only have recourse to the positions, margin assets and other claims held by the Bank for the Client under Matching Transactions or available to the Bank in its relationship with the CCP or the relevant Intermediate Clearing Broker in respect of Matching Transactions, as applicable.

## 3. Relationship with intermediate clearing brokers

3.1 The Client acknowledges that upon the occurrence of a default of the Bank, the Intermediate Clearing Broker may communicate with the Client directly.

3.2 Notwithstanding anything in these Terms and Conditions or any prior agreement between the Bank and the Client, in relation to Relevant Transactions which the Bank clears through an Intermediate Clearing Broker with a CCP subject to EU law (such Relevant Transactions between the Bank and the Client the **"EU Indirect Clearing Transactions"** and the Matching Transactions

between the Bank and the Intermediate Clearing Broker the **"ICB/Bank IC Transactions"**), the Client acknowledges and agrees as follows:

- a. that the Intermediate Clearing Broker is not a party to these Terms and Conditions;
- b. as regards ICB/Bank IC Transactions held through a **basic omnibus indirect client account**, that – in the event of a default of the Bank – the Intermediate Clearing Broker may (without reference to the Client) take steps to close-out and/or otherwise liquidate transactions related to EU Indirect Clearing Transactions, which the Intermediate Clearing Broker has entered into with the Bank alongside other transactions of other clients in the same basic omnibus indirect client account, and liquidate and apply margin associated with the account to the extent it has been provided to it. In such circumstances the Intermediate Clearing Broker will be obliged to return the balance owed to the Bank (if any) for the account of the Bank's clients.
- c. that the Intermediate Clearing Broker is liable to the Bank only and that the Intermediate Clearing Broker shall have no liability whatsoever to the Client or any other person including, without limitation, for carrying out the procedures referred to in sub-paragraph (b) above.

## 4. Choice of account

4.1 As regards EU Indirect Clearing Transactions, the Client acknowledges that it has read the costs disclosure document available at <https://www.credit-suisse.com/media/assets/legal/au/au-mifir-disclosure-document.pdf>, which sets out information on the pricing fees associated with the clearing of exchange traded derivative transactions under MiFID II/MiFIR (the **"Fee Document"**) and the disclosure document available at <https://www.credit-suisse.com/media/assets/legal/au/au-direct-client-disclosure-document.pdf> outlining terms applicable to a basic omnibus indirect client account and a gross omnibus indirect client account, the details of the different levels of segregation and the risk associated with each type of account (the **"Direct Client Disclosure Document"**), and understands the terms of such Direct Client Disclosure Document and the Fee Document.

4.2 To the extent that the Client does not inform the Bank that the Client chooses a gross omnibus indirect client account and agrees to the respective contractual arrangements, the Client will by default be deemed to have elected a basic omnibus indirect client account.

## 5. Information

5.1 The Client acknowledges that:

- a. the Bank is obliged, following the occurrence of an event of default in respect of the Bank, to provide the Intermediate Clearing Broker immediately upon request with such information as the Intermediate Clearing Broker requires in connection with the Bank's provision of indirect clearing services to the Client (including, as a minimum, any information it requires to comply with EU law or other applicable regulations). This may include information about, or relating to, the Client; and
- b. the Bank is obliged to provide a copy of these conditions to the Intermediate Clearing Broker which may be redacted to omit commercial terms and the identity of the Client and to show only aspects relevant to the indirect clearing service.

5.2 Notwithstanding any other term of these Terms and Conditions, the Client consents to the disclosure of any information and data referred to in this Clause 5 by the Bank or its affiliates to their agents and service providers, including the relevant Intermediate Clearing Broker or CCP.

## 6. Change of account

6.1 The Client may request in writing a change in the type of client account in the Bank's books and records and with the Intermediate Clearing Broker or the CCP used to clear Transactions. The Bank is only obliged to make that change subject to the Client agreeing to any further contractual arrangements that may be required and meeting any other requirements of the Bank that may apply in order for the Bank to facilitate any change in that client account election.

## 7. Termination of matching transactions

7.1 In the event a Matching Transaction is terminated (which may be the result of the occurrence of a default of the Bank, an Intermediate Clearing Broker or CCP) pursuant to the applicable agreements governing such Matching Transactions, the Relevant Transaction between the Client and the Bank to which the Matching Transaction relates shall be deemed to be automatically terminated.

# Additional Conditions for Traded Options (Options Annex)

## 1. General

This Options Annex applies to traded options other than options on futures.

## 2. Risk disclosure

2.1 The Client's attention is drawn to the fact that the seller (writer) of an option assumes the risk of theoretically unlimited losses, while the buyer risks losing all of the capital invested (option price).

2.2 In addition, upon exercise or assignment, the Client assumes the obligation to pay the full contract value (long call or short put option) or to deliver the underlying assets (long put or short call option). If the applicable contract specifications provide for physical delivery, the Client assumes all risks associated with the underlying asset, which in the worst case can be a total loss. The exercise of a long put, which may occur automatically as set out in Section 5.3 of this Options Annex, or the assignment of a short call option can lead to a short position in the underlying asset. Unless agreed otherwise, such short position must be covered immediately and the Client is aware that this may entail additional risks and/or costs to be borne by the Client.

2.3 Closing out a transaction may be impossible due the market conditions or only at a price that does not reflect a fair market value.

## 3. Purchase of options

In order to buy options (long call and long put options; hereinafter **Long Positions**), the Client must have sufficient cash or other availabilities to pay the corresponding premium (option price).

## 4. Sale of options

4.1 As the writer of an option (short put or short call options; hereinafter **Short Positions**) the Client undertakes to provide sufficient Collateral to cover the Margin as determined by the Bank. Such Collateral must be provided in accordance with this Clause 4.

4.2 The Bank reserves the right to execute orders to sell call options only if the Client, at the time of such order, has provided the corresponding amount of underlying assets as Collateral to the Bank. By issuing the order, the Client instructs the Bank to deliver or transfer these underlying assets to its contracting party if the option is assigned. Notwithstanding any valid right of lien (by way of a separate deed of pledge), the Client acknowledges that the Bank may block these underlying assets for the duration of the respective options contract.

## 5. Exercise and closing out of options

5.1 The Client can instruct the Bank to exercise, not exercise or close out options (**Instructions**) in accordance with the Market Rules (as defined in the Direct Client Disclosure Document). Except as otherwise agreed, Instructions can only be provided during the Bank's working hours.

5.2 Short Positions or Long Positions may be closed out by the Client until the close of trading on the last trading day of a specific option, unless assigned earlier in accordance with the Market Rules.

5.3 If the Bank has not received any Instructions by the close of trading on the last trading day of a specific option, any Long Positions will generally be exercised automatically if in-the-money (except where the Exchange is Eurex) at that time or expire worthless, as specified by the Market Rules.

5.4 Notwithstanding the foregoing, the Bank is entitled to close out, exercise or not exercise all or part of the positions in its sole discretion and without prior notice, e.g. in the case of (i) limits (e.g. credit or position limits) being exceeded, (ii) exposures not approved by the Bank, (iii) contraventions or violations of any Market Rules or internal policy of the Bank.

## 6. Assignments

6.1 Short Positions may be assigned in accordance with the Market Rules.

6.2 The Bank will use a random selection procedure to allocate assigned contracts to the option writers and notify them as soon as possible. The Client acknowledges that such notices may be delayed due to operational or technical reasons. Allocations are irrevocable and the Bank shall not be liable for any delays.

6.3 If an assignment results in a short position in the underlying asset and/or the Client does not immediately deliver the assets needed for allocation when requested to do so, the Bank is entitled to procure the necessary assets for the Client. Any cost in this respect have to be borne by the Client.

## 7. No voting rights

7.1 The client acknowledges and agrees that no voting rights will be able to be exercised on the options.

# Electronic mail ("e-mail") authorisation

1. The Client instructs UBS AG Australia Branch (the "Bank") to act on all instructions on trades, deposits, rollovers and remittances relating to the Account and to process all information sent by the Client, by e-mail addresses nominated by the Client in writing at the time of opening their account with the Bank and authorises the Bank to send information (specifically with regard to the Client's banking relationship and Account information) to such e-mail address.

If the e-mail address is provided to the Bank by post, the obligations of the Bank under this Agreement are subject to prior confirmation from the Bank that it has received the e-mail address. This confirmation may be given in any form, including via e-mail to the Client.

2. The Bank will notify the Client of one or more e-mail addresses, which until further notice from the Bank, shall serve as the exclusive e-mail address(es) for information to be transmitted by the Client to the Bank via e-mail. Notification from the Bank, may be given in any form, including e-mail.

3. The Bank considers any person who identifies themselves by using the Client's e-mail address as being entitled to:

- a. send information to and/or request information from the Bank in relation to the Account via e-mail; and/or
- b. give binding instructions to the Bank in relation to the Account via e-mail, (including, but not limited to trades, deposits, rollovers and remittances to and from the Account) from the person identifying as the Client by e-mail.

4. In consideration of the Bank granting the Client the right to communicate and instruct via e-mail, the Client irrevocably and unconditionally agrees with and acknowledges to the Bank that:

- a. all trades and transactions initiated via the Client's e-mail and booked to the Account are valid and binding, and unless indicated otherwise herein, subject to the terms and provisions of the UBS AG Account Opening Conditions (the "Conditions");

- b. all information received by the Bank via the Client's e-mail may be relied upon and acted on by the Bank without further verification as having been received from and authorised by the Client;

- c. the Bank may at any time without explanation, prior to acting on instructions or relying on information received, require that the Client provides alternative proof of identity acceptable to the Bank;

- d. the Bank may at its absolute discretion at any time without explanation or prior notice, refuse to act on any instructions or not to rely on any information received via the Client's e-mail, if it at its absolute discretion deems such action to be appropriate. Notification from the Bank may be given in any form, including e-mail;

- e. the Bank reserves the right at all times, should it in its absolute judgment identify security risks to, suspend the use by the Client of e-mail for correspondence and instructions until it has reason to believe that such risk has been controlled, dealt with or eliminated as the case may be; and

- f. the Bank accepts no liability whatsoever for any damage howsoever incurred (including but not limited to non-performance of contractual obligations), or for indirect and consequential damages such as loss of earnings and third party claims as a result of the Bank's action, reliance, inaction, delay or refusal to act, as the case may be, on any of the Client's e-mails.

5. The Client understands and accepts the possible risks and potential misuse of e-mails, which include, but are not limited to:

- a. a stranger falsely assuming the Client's identity via e-mail; and
- b. an intruder interfering, intercepting or diverting the Client's e-mails and/or e-mail address so as to receive the Client's information or send out fraudulent information or instructions to the Bank in relation to the Account.

6. The Client agrees and acknowledges that:
- a. it has a duty to immediately inform the Bank of its suspicions if there are reasons to suspect unauthorised third party interference, interception or diversion of its e-mail, and the Client undertakes to immediately apply to have its e-mail account blocked. Normal business hours must be observed and only the responsible Bank office shall be contacted, and the e-mail account block must immediately be confirmed to the Bank in writing;
  - b. the Bank does not provide technical access to e-mail services, and that it is its responsibility alone to ensure that its e-mail account meets required technical standards and has security and protection sufficient for its needs. The Bank does not accept any liability for damages howsoever sustained by it as a result of any transmission errors, technical defects, interruptions, faults, unlawful access, network overload, malicious blockage of electronic access by third parties or other shortcomings on the part of network operators;
  - c. processing and execution of trades, deposits, rollovers and remittances to and from the Account can take place by conventional means of communication (i.e. post and/or telephone), whereby normal business hours and normal business procedures are still observed;
  - d. information is carried on a publicly accessible network (the Internet) and that, under certain circumstances, third parties may discover the Client's banking relationship with the Bank. Furthermore, information is transmitted in an

unencrypted form, such that some of the contents of the e-mails between the Client and the Bank may be accessed by anyone. There is also the risk that information is transmitted regularly and without control across borders. This applies even to information transfers where both sender and the recipient are located in Australia; and

- e. in certain circumstances, the transmission by e-mail from outside Australia may breach local laws. The Client is responsible for ascertaining its local domicile's laws and regulations on such transmissions, and to act accordingly. The Bank accepts no responsibility or liability in this regard.

7. The Bank reserves the right to revise, amend or supplement the terms of this Agreement at any time. The Client agrees that it may be notified of any such changes by means the Bank deems appropriate, including via e-mail. Such changes are deemed to take effect upon the dispatch or transmission of such notification unless otherwise stated by the Bank.

8. This Agreement may be terminated by written notice from either party at any time, if via e-mail, to the last known e-mail address of the Client or if to the Bank, a written notice should be received by the Bank office stated in Clause 2 or such other address as notified to the Client.

This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia, and the Client hereby irrevocably submits to the jurisdiction of the courts of the laws of the State of New South Wales, Australia, save that nothing in the Agreement shall prohibit the Bank from launching any suit, action or proceeding in any other jurisdiction.

# Annex

|            | <b>Secured Assets</b>   | <b>Lending Ratio</b>  | <b>Close Out ratio</b>  |
|------------|---|---|---|
| <b>(A)</b> | <p><b>Cash deposits</b></p> <p>Where any of the Total Outstanding's and/or the cash deposits must be denominated in currencies acceptable to the Bank other than as stated above.</p> | Such ratio as may be stipulated by the Bank from time to time | Such ratio as may be stipulated by the Bank from time to time |
| <b>(B)</b> | <p><b>Securities</b></p> <p>Such Securities as may be acceptable to the Bank, from time to time, to constitute part of the Security.</p>  | Such ratio as may be stipulated by the Bank from time to time | Such ratio as may be stipulated by the Bank from time to time |
| <b>(C)</b> | <p><b>Surety Instruments</b></p> <p>Guarantees, SBLCs or similar instruments issued by banks or other financial institutions acceptable to the Bank.</p>                              | Such ratio as may be stipulated by the Bank from time to time | Such ratio as may be stipulated by the Bank from time to time |
| <b>(D)</b> | <p><b>Other assets</b></p> <p>Any other assets as may be acceptable to the Bank, from time to time, to constitute part of the Security.</p>   | Such ratio as may be stipulated by the Bank from time to time | Such ratio as may be stipulated by the Bank from time to time |

# Financial Services Guide

Dated June 2024

UBS AG, AUSTRALIA BRANCH

ABN 47 088 129 613 / AFSL 231087

This Financial Services Guide ("**FSG**") is an important document that should be read carefully. It has been provided to you on the basis that you are, or are likely to be, provided a financial service in relation to one or both of the following:

- i. where you are not a client of the Bank, general financial product advice; or
- ii. superannuation product ("**SP Services**").

Where you are, or are likely to be provided SP Services you confirm you are neither a person who is:

- the trustee of a superannuation fund, an approved deposit fund, a pooled superannuation trust or a public sector superannuation scheme (within the meaning of the Superannuation Industry (Supervision) Act 1993 (Cth)) that has net assets of at least \$10 million; or
- an RSA provider (within the meaning of the Retirement Savings Accounts Act 1997 (Cth)).

UBS AG, acting through its Australia Branch (the "Bank"), has prepared this FSG to provide you with information on the financial services that the Bank provides, and to assist you in deciding whether to use any of the financial services the Bank offers.

This FSG is dated 1 June 2024, being the date its preparation was completed. Information in this document will be regularly updated, and we will disseminate supplementary information regarding any material changes from time to time.

This FSG contains, amongst other things, the following information:

- who UBS is and how to contact us;

- the financial services we are authorised to provide;
- the associations or relationships we may have with product issuers;
- the costs, remuneration and other benefits paid to us, our associates and staff in relation to the services offered;
- information about any Statements of Advice ("**SoA**") you may receive;
- compensation arrangements;
- what to do if you have a complaint about the services we provide; and
- the protection of your privacy.

We suggest that you retain this document for your reference and future dealings with us.

In addition to the FSG, you may also receive other important documents including an SoA. You will receive an SoA in relation to advice on a superannuation product if you are a retail client and we provide you with financial advice that is relevant to your personal circumstances.

An SoA will explain, amongst other things:

- the advice, including the basis for our advice;
- remuneration, fees and/or commissions received by us;
- where you are advised to replace a product, the costs associated with that product replacement; and
- the key risks associated with our advice.



# 1. Our business

UBS is headquartered in Zurich, Switzerland. As the world's leading only truly global wealth manager, UBS provides its clients with an unparalleled investment offering, insightful thought leadership, and unmatched access to opportunities and some of the best talent in the industry. Helping wealthy individuals and families pursue what matters most to them has been UBS' purpose for over 160 years.

UBS AG, acting through its Australia Branch (the "Bank", "We", "Us"), is the local branch of UBS AG, a banking entity within the UBS group, and a subsidiary of UBS Group AG. UBS Group AG is listed in Switzerland (SIX) and New York (NYSE).

UBS AG is a participant of Australian Securities Exchange Limited (which operates the market known as ASX 24), ASX Clear (Futures) Pty Limited and Austraclear Limited.

The Bank holds a Financial Services Licence ("AFSL"), number 231087. Under the terms of its AFSL, the Bank may provide a range of financial services.

The Bank is responsible for the provision of the financial services described in this FSG.

From time to time, the Bank and its related entities may issue some of the financial products recommended to you. Unless expressly advised otherwise, none of the products recommended to you are guaranteed for performance or repayment of principal. Further, unless expressly advised otherwise, such investments do not constitute a deposit with, and should not be construed as a liability of, the Bank.

Further information about the UBS Group can be found at [www.ubs.com](http://www.ubs.com).

## 2. Our financial products and services

Our Australian Financial Services Licence authorises us to deal in and provide financial product advice on the following products to both wholesale and retail clients:

- deposit and payment products including basic deposit products, deposit products (other than basic deposit products) and non-cash payment products;

- derivatives;
- foreign exchange contracts;
- debentures, stocks or bonds issued or proposed to be issued by a government;
- managed investment schemes including investor directed portfolio services;
- securities (domestic and international);
- standard margin lending facilities; and
- superannuation.

We are also authorised to provide the following services:

- underwriting interests in managed investment schemes and an issue of securities;
- making markets for financial products other than derivatives, foreign exchange contracts and debentures, stocks or bonds (irrespective of issuer); and
- custodial and depository services (other than investor directed portfolio services).

Note: The Wealth Management division of UBS AG, Australia Branch primarily provides financial advice and services to clients who can be classified as a wholesale client or professional investor as defined in the Corporations Act 2001 (Cth).

UBS AG, Australia Branch is a foreign Authorised Deposit-taking Institution ("foreign ADI") under the Banking Act 1959 (Cth), and is supervised by the Australian Prudential Regulation Authority. However, it is important for you to note that should you make a deposit with UBS AG, Australia Branch in connection with the services UBS AG, Australia Branch provides you – provisions of the Banking Act 1959 (Cth) for the protection of depositors generally do not apply to foreign ADIs, including UBS AG, Australia Branch. For example, depositors with foreign ADIs do not receive the benefit of the following protections:

- Deposits are not covered by the financial claims scheme and are not guaranteed by the Australian Government;
- Deposits do not receive priority ahead of amounts owed to other creditors. This means that if a foreign ADI were unable to meet its obligations or otherwise is in financial difficulties and ceases to make payments, its depositors in Australia would not receive priority for repayment of their deposits from the foreign ADI's assets in Australia;

- A foreign ADI is not required to hold assets in Australia to cover its deposit liabilities in Australia. This means that if the foreign ADI were unable to meet its obligations or otherwise is in financial difficulties and ceases to make payments, it is uncertain whether depositors would be able to access the full amount of their deposit.

### 3. UBS offers products of other issuers

Not all products offered by UBS are issued by UBS. UBS often acts on behalf of other issuers, for example, we are a distributor of third-party managed funds or structured products.

### 4. Do we provide custodial or depository services?

The Bank provides custodial and depository services (including periodic reporting).

The Bank appoints sub-custodians in the Jurisdiction and globally to provide custody services on its behalf.

### 5. How do you pay us for our services?

Our services comprise of:

- Safekeeping and Transaction Service: a custodial safe-keeping and reporting service, with transactional execution facilities.
- UBS Investment and Advisory Services: includes investment advice and portfolio management services (i.e. asset allocation, fund and stock selection on a discretionary or nondiscretionary basis).

You pay for the service through the fees and charges paid to UBS, where for example UBS provides you

with advice or you acquire a UBS product. You will also pay for the cost of acquiring a product issued by a third-party financial product issuer (the issuer).

UBS is where permissible, remunerated through the fees charged directly to you and in connection with executing transactions on your behalf. Some rates may be subject to negotiation prior to transacting any business.

For example for UBS Investment Services a flat percentage fee based on assets under management will be charged. This flat fee is inclusive of investment advice and portfolio management services (i.e. asset allocation, fund and stock selection, administration and security services (including brokerage and safe custody)).

We will give you our Schedule of Charges and Sales Disclosure at the time of account opening or before you open an account with us.

### 6. How are fees calculated?

Transaction fees are usually calculated and charged upon execution of trades.

If you receive personal financial advice from us in relation to a superannuation product, we will provide you with details of any fees, commissions and any other benefits, where possible in actual dollar amounts, in the written advice. We will provide worked dollar examples (where applicable) if actual dollar amounts cannot be provided.

Otherwise, fees for our advisory, dealing, custodial and depository services are calculated and paid on a quarterly basis.

The amount of the fee will vary according to the nature and scope of the financial service provided to you, the assets you hold with us, the amount you invest or the market in which a particular investment or trade is executed:

The fees that we charge do not include any amounts charged by fund managers whose products we may recommend.

All fees and expenses are fully disclosed in a Schedule of Charges provided by the Bank.

## 7. Further information about the remuneration and fees that we may receive

You may request from us particulars about our fees, remuneration or other benefits that are mentioned in this FSG. If you wish to make a request of this nature, you must do so before we provide you with any financial services and within a reasonable time after you are given this FSG.

## 8. Relationship with other providers

We have established relationships with a number of financial product and service providers so that we are able to provide you with a range of products and services. These relationships may involve the provision of a range of financial services such as investment banking, asset management, leveraged finance, underwriting and full service futures broking and stockbroking services to such issuers or sellers.

These relationships allow us to offer their products and services to you. At the same time we, or any of our related entities, may also obtain a commercial benefit from these financial products we recommend to you.

Certain related entities of ours are also product issuers themselves.

The Bank and our other related entities may also provide services to product issuers and sellers, such as those described above, for which we may receive remuneration or other benefits.

## 9. Remuneration or other benefits received by the Bank and associates for other financial services

The Bank and its related entities may receive remuneration or other benefits for a range of financial services provided to issuers or as issuers of financial products themselves. For instance, we may

receive fees for underwriting or acting as a financial adviser or lead manager in relation to new issues of shares. These fees vary but are usually a percentage of the value of capital raised and are generally paid upon settlement of the offering. The relevant disclosure document will contain information on the amount of these fees as required by law. Up to 100% of the fees received may be passed on to others (including UBS companies) for services rendered.

The receipt of remuneration by the Portfolio Manager or our related entities may benefit other companies in the UBS group of companies, their employees or other associates.

In addition, to the extent permitted by law, the wealth management division of the Bank may receive (i) revenue generated from financial products provided its clients by other divisions of UBS AG such as the Investment Bank; and (ii) fees for referrals made to other related body corporates of the Bank.

## 10. What commissions, fees or other benefits does your representative receive?

In addition to being paid an annual salary, your UBS representative may receive, where permissible, an incentive payment (known within UBS as an annual discretionary bonus) that is paid from a general global pool of funds. The incentive payment is based on achieving agreed objectives including business outcomes and a positive risk and compliance scorecard. A UBS representative may also be eligible to receive, where permissible, non-monetary benefits in the form of UBS shares.

All other benefits given or received are subject to UBS policies and procedures for Gifts & Entertainment.

## 11. Remuneration or other benefits received by us

We will not charge you brokerage, fees or other remuneration unless such amounts are disclosed to you in the relevant product documents; services documentation or as otherwise disclosed to you. Fees may be paid to us or our related companies.

Details of fees and charges that any UBS group member receives for the products we

issue will be contained in the Bank's Schedule of Charges and Sales Disclosure and/or applicable product offering documentation.

You may request particulars of any remuneration, commission or benefits payable to us in respect of a particular product or service.

Our employees do not receive specific payments or commission for the services provided to you. However, our employees and directors receive salaries, bonuses and other benefits from us.

We and our associates, officers or employees may have interests in our financial products and may also play a variety of roles in connection with these financial products or the financial services we provide, including managing any associated hedging activity, acting as underwriter, futures trader, stock broker, investment manager, adviser or lender. We and our associates may receive fees, brokerage, commission or other benefits for acting in those capacities.

## 12. Compensation Arrangements

We are a foreign authorised deposit taking institution regulated by the Australian Prudential Regulation Authority (APRA) and have professional indemnity insurance arrangements in place to help provide cover for claims that relate to the financial services we provide. As an APRA regulated entity, we are exempt from the compensation requirements in the Corporations Act 2001.

## 13. Complaints handling and dispute resolution

We are committed to resolving any complaints you may have and dealing with them as quickly as possible. If you have a complaint about the service provided to you, please contact your UBS representative in the first instance and they will try to resolve this. If your concern has not been resolved to your satisfaction please contact the Bank's designated Responsible Officer at: (612) 8205 4400 or [SH-AUWM\\_Complaint\\_Management@ubs.com](mailto:SH-AUWM_Complaint_Management@ubs.com).

We will seek to resolve any complaint quickly and fairly and will acknowledge your complaint within 1 business day of receiving it and communicate our decision to you within 30 calendar days

for standard complaints. Different timeframes apply for default notice and credit disputes.

If you have been through our internal complaint process without a satisfactory resolution, you may depending on the dispute, be able to take the matter to the Australian Financial Complaints Authority. This service offers an independent dispute resolution process to customers.

Online: [afca.org.au](http://afca.org.au)  
Email: [info@afca.org.au](mailto:info@afca.org.au)

Post: Australian Financial Complaints Authority GPO Box 3, Melbourne VIC 3001  
Phone: 1800 931 678 (free call)

Before you contact AFCA, we ask that you please first try to resolve your concern with us.

## 14. How to instruct and contact us

You can usually give us instructions by telephone, e-mail or mail. Please contact your UBS representative and alert them to your e-mail or mail if you are working within tight timeframes. There may be special instruction arrangements for some products, which are explained in the relevant PDS (or other offer document). Phone calls to and from UBS may be recorded for quality and assurance purposes.

## 15. Privacy

We are committed to ensuring the privacy and security of your personal information.

We collect, use and disclose your personal information: to assess your application and future applications; to provide and manage your products, accounts and services and to manage your relationship and arrangements with us; so we can comply with applicable laws both in the Jurisdiction and overseas (for more details please refer to our Privacy Policy). If you do not provide us with the information we ask for or the information provided is incorrect or incomplete, we may not be able to provide or manage the products or services you are seeking.

Some of the recipients to whom we disclose your personal information may be based overseas.

By using UBS products and services you consent to disclosures to overseas recipients.

All personal information (as defined in the Privacy Act 1988 (Cth)) collected from you will be used and stored by us in accordance with the UBS Privacy Policy, a copy of which can be made available to you on request and is available at <https://www.ubs.com/global/en/legal/privacy.html>

## 16. For more information please contact us

UBS AG, Australia Branch  
Level 31, Gateway  
1 Macquarie Place  
Sydney NSW 2000  
Phone: 02 8205 4400

UBS AG, Australia Branch  
Level 31, No. 1  
Macquarie Place  
Sydney NSW 2000 Australia

Level 16, 8 Collins Street  
Melbourne VIC 3000 Australia

Registered office:  
Chifley Tower, Level 16,  
2 Chifley Square,  
Sydney NSW 2000, Australia  
[UBS.com](https://www.ubs.com)  
2024, UBS