

**DISCLOSURE STATEMENT OF THE TERMS OF ABN AMRO CLEARING SYDNEY PTY LTD' S
THIRD PARTY CLEARING AGREEMENT
APPLYING TO:
EACH CLIENT OF JARDEN AUSTRALIA PTY LTD**

Each client of Jarden Australia Pty Ltd (the "Client") must carefully read the terms set out in this Disclosure Statement as by executing trades with Jarden Australia Pty Ltd that are cleared by ABN AMRO Clearing Sydney Pty Limited, the Client acknowledges that it has read and agrees to be bound by the terms and conditions of ABN AMRO Clearing Sydney Pty Ltd's Third Party Clearing Agreement set out in the next 15 pages ("*Agreement*").

1. Parties

1.1 The parties to this Agreement are:

(a) ABN AMRO Clearing Sydney Pty Ltd (ABN 36 081 279 889) ("**AACS**")

Address: Level 11, 580 George Street, Sydney, NSW 2000.

Attention: Mr Barry Parker, Managing Director

Phone Number: 8221 3000

(b) Jarden Australia Pty Ltd (ABN 33 608 611 687) ("**Broker**")

Address: Level 54, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW 2000.

Attention: Chief Compliance Officer and General Counsel

(c) The client who has received this Disclosure Statement from the Broker as described on the cover page of this document ("**Client**").

1.2 AACS is a Participant of ASX Group and holds Australian Financial Services Licence Number (AFSL) 225136.

1.3 The Broker is a Participant of ASX Group admitted as a Market Participant in accordance with the Operating Rules and a Market Participant of Cboe in accordance with the operating rules relating to the Cboe Market and holds an AFSL 485351. The Broker has appointed AACS to clear and settle Market Transactions executed by Broker on ASX and/or Cboe (where applicable).

2. Status of Agreement

2.1 This Agreement applies to any Market Transaction executed by the Broker where AACS acts as a Participant of ASX Group to settle and clear that Market Transaction. It also applies to any associated services provided by the Broker or AACS as set out in this Agreement, on the terms of this Agreement.

2.2 This Agreement does not apply to any transactions in Options unless:

(a) AACS has notified the Broker in writing that it will clear Options for the Client; and

(b) the Client has already executed and lodged a Wholesale Client Agreement with ASX Clear or delivered a signed Wholesale Client Agreement to AACS, and if this clause 2.2 applies:

(i) the Client irrevocably authorises AACS to lodge the Wholesale Client Agreement with ASX Clear; and

(ii) the Client agrees not to withdraw the Wholesale Client Agreement from ASX Clear unless it has first given AACS 10 Trading Days Notice in writing;

and the Client acknowledges that the terms of this Agreement apply in addition to the terms of the Wholesale Client Agreement, except to the extent of any inconsistency in which event the terms of this Agreement will prevail.

2.3 AACS as Participant of ASX Group provides clearing and settlement related services to the Broker under the agreement between the Broker and AACS ("**Standard Client Agreement**"). As between AACS and the Broker, in the event of any inconsistency between this Agreement

and the Standard Client Agreement in relation to the rights and obligations of AACS and the Broker, the Standard Client Agreement prevails to the extent of the inconsistency.

2.4 The Client acknowledges that:

- (a) the terms of this Agreement;
- (b) any other information about the Broker and AACS set out in this Agreement; and
- (c) any information given to the Client in relation to this Agreement or Market Transactions to which this Agreement applies

is also information or disclosure given to the Client by the Broker and/or AACS as applicable, for the purposes of any requirement to give information or disclosure under the Operating Rules or if applicable, the operating rules relating to the Cboe Market where applicable.

2.5 Each party represents and warrants to each other party, on the terms appropriate to that party as set out in the Schedule.

3. Period

This Agreement commences on the earlier of the date of receipt by the Client of this Agreement or the receipt by Broker of an order from the Client to execute a Market Transaction and continues until all rights and liabilities between the parties are finally discharged following termination in accordance with this Agreement.

4. AACS' and the Client's Clearing and Settlement Obligations

AACS carries the Clearing Obligations and any settlement obligations on ASX and Cboe for all Market Transactions of the Broker directed to AACS (including those of the Client) and AACS must settle, as principal, with ASX Clear or the relevant counter-party, even though the Market Transaction may have been entered into on the Client's behalf and, as a result:

- (a) unless otherwise agreed under paragraph (b), the Client agrees that the Clearing Obligations and any settlement obligations of the Client are therefore owed directly to AACS;
- (b) if AACS agrees in writing with the Broker, the Client may satisfy its settlement obligations by making payment or delivery to the Broker, and the Client acknowledges that the Client's monies and/or securities will be dealt with by the Broker in accordance with any agreement between the Client and the Broker; and
- (c) notwithstanding paragraph (b), if the Client
 - (i) fails to pay the amounts due in respect of a Market Transaction; or
 - (ii) fails to fulfil its settlement obligations in respect of a Market Transaction,

AACS has direct rights against the Client.

An agreement is deemed to have been entered into between AACS and the Client upon the terms set out in herein and comes into existence immediately upon the receipt by AACS of an order by the Client to enter into a Cash Market Transaction (as that term is defined in the ASX Clear Operating Rules).

5. Dealing as Principal

The Client acknowledges that AACS or the Broker may (under the *Corporations Act* and the Operating Rules), either acting for another client or on its own account, take the opposite position to the Client to a Market Transaction. The Client consents to the Broker charging fees (including brokerage or commission) on such Market Transactions.

6. Right to Refusal and Limitations on Dealings

The Client acknowledges that the Broker or AACS may at any time, in either party's reasonable discretion, refuse or limit dealings in Financial Products for the Client. The Broker or AACS must notify the Client of any refusal or limitation as soon as reasonably practicable.

7. Accounts

- (a) AACS must open and maintain a Current Account for the Client.
- (b) AACS must pay money into and out of the AACS Client Money Account in accordance with the *Corporations Act* and the Operating Rules.
- (c) Unless otherwise agreed, AACS does not operate a Custody Account for the Client.
- (d) The Client acknowledges that, in accordance with the Standard Client Agreement, AACS retains any interest earned on the funds in the AACS Client Money Account.

8. Cancellation of Trades

- 8.1 AACS may, without prior notice to the Client, take any action, or refrain from taking any action in connection with the Client's Market Transactions as permitted or required by the Operating Rules or the operating rules relating to the Cboe Market, including, without limitation:
 - (a) effect the close out of any Open Contract in accordance with ASX Clear Operating Rule 13.2;
 - (b) exercise any Options in accordance with ASX Clear Operating Rule 20.1;
 - (c) exercise any right of AACS in respect of Options and Open Contracts referred to in paragraphs (a) and (b); and
 - (d) cancel any erroneous Market Transactions without the Client's consent.
- 8.2 The Client must account to AACS as if those actions were taken on the instructions of the Client and, without limitation, the Client is liable for any deficiency and entitled to any surplus which may result.
- 8.3 AACS notifies the Client that ASX has the power under the Operating Rules to cancel or amend Market Transactions.

9. Confirmation

The Broker must supply to the Client a confirmation, electronically where permitted by law, in compliance with the *Corporations Act*, the ASIC Market Integrity Rules, the Operating Rules (and if applicable, the operating rules relating to the Cboe Market), and the terms of this Agreement, for all Market Transactions entered into by the Client.

10. Fees, Taxes and Expenses

- 10.1 The Client must reimburse AACS and/or Broker, for any fees, taxes and expenses levied by a market operator or a Government authority and incurred by AACS or the Broker in connection with dealings for the Client in Market Transactions from time to time and notified to the Client in writing. AACS and the Broker confirm that, as at the date of this Agreement, other than as notified in writing to the Client, there are no fees, taxes and expenses to which this clause applies. The Client irrevocably grants AACS authority to debit any fees, taxes and expenses to which this clause applies from any account of the Client with AACS or the Broker.
- 10.2 AACS is entitled to set-off any amount payable by it to the Client or the Broker against any amount due by the Client or the Broker to AACS.

11. Default

- 11.1 The Client must meet any Client Obligations on time to AACS or the Broker (as the case may be under clause 4), to enable AACS to settle and discharge all its obligations to the relevant Clearing House and any counterparty of the Client by the due settlement date.
- 11.2 If the Client breaches clause 11.1 or otherwise Defaults (as defined in paragraph 11.5, below) and AACS suffers a Loss, AACS, in addition to any right and remedy which may be granted to it under the Operating Rules (and the operating rules relating to the Cboe Market where applicable) or any applicable law, is also entitled to sell or otherwise dispose of any asset or Financial Product of the Client which AACS holds, whether on trust or otherwise, and to take any action whatsoever in relation to that asset or Financial Product and to retain any proceeds of realising that asset or Financial Product to pay for any Loss of AACS.
- 11.3 AACS' rights under this clause are independent of its rights in relation to termination.
- 11.4 The Client agrees that AACS has no liability in relation to any act or omission of AACS or its officers pursuant to this clause 11, except to the extent that any Loss is caused to the Client by the negligence, fraud, Default or breach of an obligation under the Operating Rules by AACS or its officers.
- 11.5 The following is a Default in relation to each party to this Agreement:
- (a) **(other obligations)** if a party does not perform any provision of this Agreement requiring performance by it (other than a failure referred to in clause 11.1 or elsewhere in this clause) and that failure is incapable of remedy or, if capable of remedy, continues for two Trading Days after the other party gives Notice to the first party requiring that the failure be remedied;
 - (b) **(licence)** if a party's Australian Financial Services Licence or any other material licence or authorisation required to operate the relevant business is revoked, suspended, or adversely modified;
 - (c) **(authority)** if a party's authority to enter into this Agreement (under an agency agreement, trust deed or otherwise) ceases or is withdrawn;
 - (d) **(misrepresentation)** if any representation, warranty or statement made or repeated in or in connection with this Agreement by that party is untrue or misleading (whether by omission or otherwise) in any material respect when so made or repeated;
 - (e) **(involuntary winding up)** if an application is made for winding up the party or any of its Related Bodies Corporate and the application is not dismissed or withdrawn within 15 Trading Days, or an order is made for winding up the party or any of its Related Bodies Corporate, except for the purpose of a reconstruction, amalgamation, merger or

consolidation on terms approved by the other party before that application or order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;

- (f) (**voluntary winding up**) if the party or any of its Related Bodies Corporate passes a resolution for its winding up, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the other party before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (g) (**controller**) if a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person is appointed to, or the holder of a Security Interest takes (or appoints an agent or controller to take) possession of, any property of the party or any of its Related Bodies Corporate;
- (h) (**administrator**) if the party or any other person appoints an administrator to it or any of its Related Bodies Corporate, or takes any step to do so;
- (i) (**insolvency**) if the party or any of its Related Bodies Corporate:
 - (i) suspends payment of its debts;
 - (ii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iii) is or states that it is unable to pay its debts; or
 - (iv) is taken to fail to comply with a statutory demand in accordance with section 459F of the *Corporations Act*;
- (j) (**compromise or arrangement**) if the party takes any step for the purpose of entering into a compromise or arrangement with any of its members, or creditors, generally or any class of them; and
- (k) (**distress or other execution**) if the process of any court or authority is invoked against the party or any of its property:
 - (i) to obtain an order to restrain any dealing with property; or
 - (ii) to enforce any judgment or order for the payment of money or the recovery of property;

and the party is unable, within one Trading Day, to satisfy the other party that there is no substantial basis for the judgment or order in respect of which the process was invoked.

12. Set Off and Indemnity

12.1 Set Off

- (a) AACS may deduct from monies otherwise due to the Client:
 - (i) any debt or other monies due from the Client to AACS or a Clearing House or market operator in relation to Market Transactions; and
 - (ii) any Claim to money which AACS may have against the Client whether for damages (including liquidated damages) or otherwise, under this Agreement.
- (b) AACS may effect currency exchanges appropriate to implement the deduction referred to in (a).

(c) The authority in paragraph (a) is a continuing authority.

12.2 Authority to Debit Amounts under Client Indemnity

The Client irrevocably grants AACS authority to debit the AACS Client Money Account any amount for which it has indemnified AACS under clause 12.3, provided that AACS has given the Client at least 1 Trading Day's Notice or, in the event of insolvency (within the meaning of clause 18(a)), immediately on demand.

12.3 The Client must indemnify AACS, immediately on demand, against any Claim or Loss to AACS arising directly from:

- (a) AACS carrying out or attempting to carry out the Client's instructions for any dealing with Financial Products;
- (b) any actual or intended settlement of any Market Transaction of the Client;
- (c) any Default or breach by the Client of the terms of this Agreement – the Client agrees that a breach by the Client of its contract with Broker is also a breach of the terms of this Agreement,

except to the extent that any Loss is caused by negligence, fraud, Default or breach of an obligation under the Operating Rules by AACS or its officers.

12.4 Time Limits for Claims

AACS is not liable to the Client to make any payment (whether by way of indemnity, damages or otherwise) for any breach of this Agreement or for negligence unless a claim is made in writing by the Client (setting forth in reasonable detail the nature of the claim and the amount sought to the extent the amount can reasonably be determined) within 3 months after the circumstances giving rise to the claim first became known by the Client or could, with reasonable diligence, have become known.

12.5 Exclusion of Indirect or Economic Loss

AACS is not liable to the Client to make any payment (whether by way of indemnity, damages or otherwise) for any breach of this Agreement or for negligence in respect of any indirect or economic loss. For the purpose of this clause it is agreed that the following losses are indirect or economic: loss of profit, loss of business opportunity and payment of liquidated sums or damages under any other agreement.

13. Termination

If a Default applies to any party each other party may terminate this Agreement immediately by Notice to the other parties. In all other circumstances, a party may terminate this Agreement on 5 Trading Days' Notice or as otherwise agreed in writing.

14. Effect of Termination

14.1 On termination AACS must transfer the whole or any part of the Client Financial Products to another Participant of ASX Group nominated by the Client, subject to AACS' rights under clauses 11 and 12.

14.2 AACS is entitled to withhold any assets or Financial Products of the Client held by AACS and to sell or otherwise dispose of any asset or Financial Product of the Client which AACS holds, whether on trust or otherwise, and to take any action whatsoever in relation to that asset or

Financial Product and to retain any proceeds of realising that asset or Financial Product to pay for any amount owed by the Client to AACS under the terms of this Agreement.

15. Agreement

- 15.1 The terms of this Agreement can be amended, or the rights arising under them varied only in writing by the parties.
- 15.2 If the ASX or, to the extent relevant and applicable, Cboe, prescribes amended minimum terms for a client agreement for the Financial Products (the “**New Terms**”), to the extent of any inconsistency the New Terms override the terms of this Agreement and apply as if the Client and AACS had entered into an agreement comprising the New Terms.
- 15.3 AACS must supply a copy of the New Terms to the Client as soon as practicable after the New Terms are prescribed where a requirement to do so exists.

16. General

- 16.1 The Client agrees that it has the same obligations to AACS under the terms of this Agreement as the Client has to the Broker in respect of any of the Client’s dealings on ASX or Cboe (where applicable) with Broker. AACS has the same rights against the Client under the terms of this Agreement as Broker has against the Client in respect of any of the Client’s dealings on ASX or Cboe with the Broker.
- 16.2 The Client acknowledges that the Broker and AACS may record telephone conversations between the Client and the Broker or AACS and each has the right to listen to and use any recording of those conversations.
- 16.3 A failure or omission by AACS or the Broker in respect to their obligations to the Client under this Agreement will not give rise to a Claim against AACS or the Broker if the failure or omission arises from a cause that is beyond the control of AACS or the Broker.
- 16.4 AACS, the Client and the Broker are bound by the Operating Rules, the *Corporations Act* and the operating rules relating to the Cboe Market (where applicable).
- 16.5 This Agreement is governed by the laws in force in New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.
- 16.6 This Agreement may be executed in any number of counterparts and all those counterparts taken together constitute the one and same instrument.

17. GST

If GST is payable on a taxable supply made by AACS under, by reference to, or in connection with this Agreement, the Client must also pay the amount of GST payable in respect of that taxable supply. This clause does not apply to the extent that consideration for a supply is expressly stated to be GST inclusive.

Terms which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 shall have that meaning in this clause.

18. Interpretation

In this Agreement:

- (a) a reference to insolvency or winding up includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in section 9 of the *Corporations Act*), the appointment of an administrator and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction, and to the procedures, circumstances and events which constitute any of those conditions or matters;
- (b) an expression defined in or given a meaning for the purposes of the *Corporations Act* (except where defined or given a meaning in the Operating Rules, this clause or elsewhere in this Agreement) has the same definition or meaning in this Agreement where it relates to the same matter as the matter for which it is defined or given a meaning in the *Corporations Act*, as the case may be;
- (c) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (d) the singular includes the plural and vice versa;
- (e) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (f) a reference to any gender includes all genders;
- (g) a reference to a clause, Schedule, annexure or exhibit is to a clause, Schedule, annexure or exhibit of or to this Agreement;
- (h) a Schedule, annexure or a description of the parties forms part of this Agreement;
- (i) a reference to any agreement or document (including, without limitation, the Operating Rules) is to that agreement or document (and, if applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (j) a reference to any party to this Agreement or any other document or arrangement includes that party's executors, administrators, permitted substitutes, permitted successors and permitted assigns;
- (k) if an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (l) a reference to dollars or \$ is a reference to Australian currency;

- (m) the headings contained in this Agreement are intended solely for the convenience of the parties to this Agreement only and shall not control or affect the meaning or construction of any of the provisions hereof.

19. Notices

19.1 Method of Giving Notices

Except where otherwise provided by this Agreement, a notice, consent, approval or other communication (each a **Notice**) under this Agreement must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered to that person's address;
- (b) sent by pre-paid mail to that person's address; or
- (c) transmitted by electronic communication to the recipient's usual computer or terminal.

19.2 Time of Receipt

A Notice given to a person in accordance with this clause is treated as having been given and received:

- (a) if delivered to a person's address, on the day of delivery if a Trading Day, otherwise on the next Trading Day;
- (b) if sent by pre-paid mail, on the third Trading Day after posting;
- (c) if transmitted electronically, on the day when an acknowledgement receipt has been transmitted back to the sender if prior to 5.00pm on a Trading Day, otherwise on the next Trading Day.

19.3 Addresses for Notices

For the purpose of this clause the address of a person is the address set out in this Agreement or otherwise varied by Notice to each other party.

20. Trading Day

If the day on which any act, matter or thing is to be done under this Agreement is not a Trading Day, that act, matter or thing:

- (a) if it involves a payment other than a payment which is due on demand, must be done on the preceding Trading Day; and
- (b) in all other cases, must be done on the next Trading Day.

21. Definitions

In this Agreement the terms have the following meanings, unless otherwise stated.

ASX means ASX Limited ABN 98 008 624 691.

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

ASX Clear Operating Rules means the rules, regulations and by-laws made by ASX Clear that deal with the activities of ASX Clear and its participants and conduct of other persons in relation to the clearing functions of ASX Clear.

ASX Operating Rules means the rules, regulations and by-laws made by ASX that deal with the activities of ASX and its participants and conduct of other persons in relation to each market run by ASX.

ASX Settlement means ASX Settlement Pty Limited ABN 49 008 504 532.

ASIC Market Integrity Rules means ASIC Market Integrity Rules (Securities Markets) 2017.

AACS Client Money Account means the trust account or accounts of AACS for the purpose of section 981B(1) of the *Corporations Act* and Regulations 7.8.01(5) and 7.8.01(8) of the Corporations Regulations (and in the case of the clients' segregated account, ASIC Market Integrity Rules (Futures Markets) 2017, 2.2.6(a)(i)).

Cboe means Cboe Australia Pty Ltd (ACN 129 584 667).

Cboe Market means the market operated by Cboe under Australian Market Licence (Chi-X Australia Pty Ltd) 2011.

Claim means any claim, demand, cause of action, proceeding or claim for compensation.

Clearing Account means an account with the Clearing House opened in AACS' name in respect of Market Transactions of the Client registered by AACS under this Agreement and in respect of the Open Contracts arising under the Operating Rules as a consequence of such registration.

Clearing House means ASX Clear, ASX Settlement or other relevant clearing and settlement facility as the context permits or requires.

Clearing Obligations has the meaning set out in the ASX Clear Operating Rules.

Client Credit means, in respect of a Trading Day, the amount payable by AACS to the Client in connection with a Market Transaction, as at the Settlement Calculation Time on that Trading Day.

Client Debit means, in respect of a Trading Day, any amount payable by the Client to AACS in connection with a Market Transaction, as at the Settlement Calculation Time on that Trading Day.

Client Obligation means, in respect of a Market Transaction, an obligation by the Client to:

- (a) deliver Financial Products;
- (b) pay an amount (including stamp duty) on settlement of that Market Transaction; or
- (c) any other completion obligation of the Client, necessary in relation to a Market Transaction.

Credit Amount means, in respect of a Business Day, the amount (if any) by which the AACS Payment Obligation exceeds the Client Payment Obligation on that Business Day.

Corporations Act means the *Corporations Act 2001 (Cth)*, as amended from time to time.

Current Account means the books and records of AACS which record the name of the Client, among other clients, in relation to the relevant Market Transactions, and Client Debits and Client

Credits in the Clearing Account, and reflects any and all amounts owed by the Client to ABN AMRO, or by ABN AMRO to the Client (in this or any other account with ABN AMRO). The Current Account is a ledger in the books and records of ABN AMRO.

Custody Account means an account opened by AACS, which is Segregated, and in which Financial Products are held in trust in accordance with this Agreement.

Default has the meaning set out in clause 11. and in the Schedule

Derivatives means derivatives as defined in section 761D of the *Corporations Act*, traded on ASX or Cboe.

Market Transactions means transactions in any Financial Product, quoted on ASX or Cboe or eligible for clearing and/or settlement through ASX or Cboe or a Clearing House including, without limitation:

- (a) Derivatives Market Transaction (as that term is defined in the ASX Clear Operating Rules);
- (b) Cash Market Transaction (as that term is defined in the ASX Clear Operating Rules); and
- (c) for the avoidance of doubt, includes the sale and purchase of Securities, Derivatives, warrants, options and futures,

entered into by the Client and dealt with on the terms of this Agreement. Market Transactions include Misdirected Transactions.

Financial Product has the meaning set out in the *Corporations Act*.

Loss means any damage or damages, loss, costs (including, without limitation, the costs of complying with any verdict, award or settlement of any dispute and legal costs on a solicitor and own Client costs basis) expense, charge, payment or liability, in any case, whether accrued or paid.

Misdirected Transactions means transactions which the Broker and AACS have not agreed under this Agreement should be directed to AACS, but which are incorrectly directed to AACS (whether by the Broker or otherwise).

Open Contracts has the meaning set out in the ASX Operating Rules.

Operating Rules means the operating rules and procedures of the ASX, ASX Clear or ASX Settlement, as amended from time to time (as the context permits or requires).

Options means options contracts regulated by an exchange in which ABN AMRO participates from time to time.

Owed Amount means, in respect of a Trading Day, the amount (if any) by which the sum of the Client Debits exceeds the sum of the Client Credits.

Participant of ASX Group means a Participant of ASX, General Participant of ASX Clear and General Participant of ASX Settlement.

Payment Obligation means a payment obligation as defined in the Operating Rules.

Related Body Corporate has the same meaning as in the *Corporations Act*.

Securities has the meaning set out in sub-section 92(1) of the *Corporations Act*.

Security Interest means:

- (a) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention arrangement, preferential right, trust arrangement or other arrangement (including, without limitation, any set-off or flawed-asset arrangement) having the same or equivalent commercial effect as a grant of security; or
- (b) an agreement to create or give any arrangement referred to in paragraph (a) of this definition.

Segregation or Segregated means, in relation to an account or an asset that:

- (a) the party holding the assets in the account:
 - (i) holds the asset separately from its own property;
 - (ii) holds the account separately from its own accounts and the accounts of any other person except the Clients (**Non-Client**);
 - (iii) does not record or deposit any assets of its own in the account.
- (b) records in relation to such an asset or account must:
 - (i) be kept separate from records in relation to any other account of the party or any Non-Client;
 - (ii) record separately the particulars associated with that asset and account;
 - (iii) record separately in respect of each Client particulars of the amount or property deposited in or withdrawn from the account;
 - (iv) ensure that assets in the account are separately classified;
 - (v) correctly record and explain dealings in relation to the assets in the account.

The account must be described as the trust account, the clients' segregated trust account or the Custody Account as the case may be.

Settlement Calculation Time means the time notified by AACS as the time at which the Owed Amount or the Credit Amount will be calculated, and, if no time is notified, 5.00pm on a day before the Settlement Date.

Settlement Date has the same meaning as in the ASX Settlement Operating Rules.

SIS means the *Superannuation Industry (Supervision) Act 1993*.

Trading Day has the meaning set out in the Operating Rules.

Wholesale Client Agreement has the same meaning as defined in the ASIC Market Integrity Rules.

SCHEDULE

1. Warranties by each party

Each party warrants and represents to the other party, as a continuing warranty and representation and as an inducement to the other party to enter into and not terminate this Agreement, and it is a condition of this Agreement that:

- (a) at the date of this Agreement, the entry into this Agreement has been properly authorised by all necessary corporate action;
- (b) it has full corporate power and lawful authority to enter into this Agreement and to perform or cause to be performed its obligations under this Agreement;
- (c) this Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy;
- (d) no Default has occurred and is continuing;
- (e) this Agreement does not conflict with or result in the breach of or default under any provision of its constituent documents or any material term or provision of any agreement or deed or any writ, order or injunction, judgement, law, rule or regulation to which it is a party or is subject or by which it is bound; and
- (f) there are no actions, claims, proceedings or investigations pending or threatened against it or by, against or before any person which may have a material adverse effect on its ability to perform its obligations under this Agreement or the subject matter of this Agreement.

2. Warranties by the Client

The Client warrants and represents to AACS, as a continuing warranty and representation and as an inducement to AACS to enter into and not terminate this Agreement, and it is a condition of this Agreement that:

- (a) it is a Wholesale Client as defined in the *Corporations Act*.
- (b) it is either:
 - (i) acting as principal; or
 - (ii) acting as an intermediary on another's behalf and are specifically authorised to transact Financial Products, by the terms of:
 - (A) an Australian Financial Services licence held by the Client;
 - (B) a trust deed (if the Client is a trustee); or
 - (C) an agency contract;
- (c) all information provided by the Client to AACS regarding any Market Transactions or any other matter relating to the subject matter of this Agreement is or will be, when given, accurate and not misleading in any respect;
- (d) no controller is currently appointed in relation to any of its property, or any property of its Related Bodies Corporate;

- (e) the Client has disclosed whether and to the extent any payment or transfer of Financial Products by or on behalf of the Client to AACS is subject to the requirements of SIS, and the Client will disclose to AACS if any payment or transfer of Financial Products by or on behalf of the Client to AACS under this Agreement at any time is or becomes subject to the requirements of SIS.
- (f) its payment obligations under this Agreement rank and will continue to rank at all times at least equally with all its other present and future unsecured and unsubordinated payment obligations (including, without limitation, contingent obligations), other than those which are mandatorily preferred by law; and
- (g) it has made its own determination as to the tax treatment of any dividends, remuneration or other funds received under this Agreement.

3. Trustee provisions

If the Client is a trustee under a Trust Deed, then:

- (a) the Client represents and warrants to AACS and Broker that:
 - (i) all necessary steps have been taken and it has the power to enter into this Agreement under its constitution and under the Trust Deed including, without limitation, the power to enter into all the provisions expressed or implied and which are to be observed and performed by the Client in this Agreement;
 - (ii) the Client is the sole trustee of the Trust and no new trustees have been appointed and there have been no amendments to the Trust Deed which have not been disclosed in writing to AACS;
 - (iii) the Trust vests no later than the eightieth anniversary of the date of execution of the Trust Deed unless terminated earlier;
 - (iv) there are no restrictions on the Client's right to be indemnified from the assets of the Trust, other than in the express written terms of the Trust Deed or at law, and nothing has occurred to affect that right and the Client is not in default under any provision of the Trust Deed; and
 - (v) entering into and performing the terms of this Agreement involves no breach of any duty by the Client in relation to the Trust Deed.
- (b) A Default under this Agreement also occurs if:
 - (i) any breach of trust or any relevant legislation applying to the operation of the Trust by the Client occurs, and in either case might, on a reasonable and objective view materially affect the Client's performance of the terms of this Agreement;
 - (ii) any application (by any person in any form) is made for the removal of the Client as trustee of the Trust or for control of any assets of the Trust to be taken from the Client;
 - (iii) any of the agreements, undertakings, representations, warranties or covenants are or become incorrect whether as a result of actions or omissions of the Client or otherwise;
 - (iv) anyone other than the Client purports to exercise any of the powers under the Trust Deed or the Client is removed as trustee of the Trust.

- (c) the Client enters into this Agreement in its personal capacity and in its capacity as trustee of the trust; and
- (d) the Client is personally liable for the discharge by performance of every term of this Agreement which imposes an obligation on the Client.