

MASON STEVENS LIMITED



# CLIENT TERMS

**1 October 2017**

## TERMS

This document sets out the Terms which are comprised in the agreement between the person named as the applicant in the Application Form (Client) and Mason Stevens Limited ABN 91 141 447 207 AFSL 351576 (us/we) which sets out the terms upon which we will provide the Services to Client.

### 1. Agreement

1.1 An agreement between Client and us is formed when we accept Client's application in an Application Form, as recorded in our records without express notice of that acceptance given to Client (and without requiring any signature or other execution by or on behalf of us or Client). Client accepts that the agreement is made in this manner and that we rely on Client's acceptance of this. The agreement consists of the Application Form and these Terms plus any other documents annexed to or incorporated by these Terms, all as amended from time to time (agreement).

1.2 For the purpose of resolving any inconsistency between the documents specified in clause 1.1, the order of precedence (with highest priority first) is: (a) any other documents annexed to or incorporated by these Terms other than the Deed for Custody Trusts; (b) the Terms; (c) the Application Form; and (d) the Deed for Custody Trusts.

1.3 Acceptance of Client's Application Form is in our sole discretion.

### 2. Services

2.1 By these Terms, Client appoints us to provide Client with the following services:

- a. an account service, which includes providing one or more accounts (however they are described or named from time to time) for holding in custody Financial Products (including by appointing sub-custodians from time to time) and reporting on them as agreed from time to time;
- b. . agency services for Client for the purposes of dealing (including arranging to deal) in Financial Products and all related settlement and clearing of them;
- c. custody of Client's Property in accordance with these Terms;
- d. advisory services in relation to Financial Products and financial services, as agreed from time to time;
- e. dealing, advisory and management services in relation to other products or services which are not Financial Products or financial services, as agreed from time to time;
- f. management of Client's Property, including with discretionary authority to manage Client's Property, as agreed from time to time; and
- g. all ancillary or related services in accordance with these Terms, as amended or varied from time to time, collectively referred to in the agreement as Services.

### 3. Our general obligations

3.1 The following general obligations are subject to any specific obligation expressly set out in the Terms and to any statutory obligation which may not be affected by the Terms. We will:

- a. act honestly in providing the Services;
- b. exercise the degree of care and diligence that a reasonable person would exercise if they were in our position in providing the Services to Client;
- c. act in Client's best interests in providing MDA Services and, if there is a conflict between Client's interests and our interests in providing the MDA Services, give priority to Client's interests;

- d. not use information which we have obtained by providing MDA Services for the purposes of gaining an improper advantage in our favour or to cause detriment to Client;
- e. comply with:
  - i. any mandate investment for a strategy nominated by Client for Client's Account (if applicable) unless otherwise agreed in writing by Client;
  - ii. the conditions of ASIC [CO 04/194]; and
  - iii. any representations we make in writing to Client or in a financial services guide given to Client about how we will provide the Services unless otherwise agreed in writing by Client;
- f. compensate Client for any loss due to any act or omission of any agent or other person engaged in connection with MDA Services, other than an external custodian or adviser or a person acting on their behalf, as if the acts or omissions were our acts or omissions;
- g. maintain at all times professional indemnity insurance as required by law;
- h. maintain adequate arrangements to enable us to provide the Services in any contingency for which we should reasonably plan.

### 3.2 We represent that:

- a. We have adequate arrangements to enable us to provide the Services in any contingency for which we should reasonably plan;
- b. We have the power and authority to enter into the agreement and to perform the obligations imposed on us by the agreement.

## 4. Client's general obligations

### 4.1 Client must ensure that:

- a. the information provided by Client in the Application Form is complete, true and correct as at the time it is supplied; and
- b. we are promptly notified in writing of any changes to the information in the Application Form;
- c. we are promptly notified in writing of any changes to Client's authorised representative because we will rely on Client's written notification until Client tells us otherwise despite any other information we might receive from other sources; and
- d. Client provides us with any information we require if we decide we need that information to perform our Services or to comply with law or our internal compliance policies and procedures even if we choose not to tell Client, or we are not allowed to tell Client, the reason for using the information.

4.2 If Client makes the agreement as a body corporate, Client acknowledges that we may at any time request a guarantee or an indemnity (or both) from any or all of Client's directors to secure Client's obligations under the agreement.

### 4.3 Client acknowledges and agrees that:

- a. if we act as agent in placing orders for Client, we do not generate the confirmation of the transaction and are not obliged by law to provide to Client the confirmation of the transaction;
- b. Client authorises us not to send confirmations of transactions (including copies of them) unless Client later requests us to send confirmations. If requested, we will either make them available by our website service or by sending the copy of the confirmations to Client's electronic address; and

- c. correspondence will be sent to Client's electronic address, if such an address is provided in the Application Form or as Client later notifies to us.

## 5. Account

5.1 A reference in these Terms to Account is a reference to the entire account relationship between Client and us and also, as the context requires, to each individual account which is separately identified in our records. Client may have more than one account provided by us from time to time. Each account is part of the entire Services provided by us and is not legally segregated from any other account even though we record and report on them separately.

5.2 Instructions may be given to us on the following terms:

- a. Client may give instructions to us either directly from Client or by an authorised representative of Client acceptable to us;
- b. An instruction properly given by Client to us is binding on Client;
- c. We are entitled to assume that Client by giving us instructions is complying with the agreement and with all of its legal obligations. We are not obliged to review the authorisation or propriety of the instructions of Client's compliance with law;
- d. Instructions properly given by Client remain effective until the earlier of (i) being cancelled or superseded by Client giving instructions to that effect to us (in time for us to act on them) and (ii) being declined by us;
- e. We may decline to act on any instructions, or delay acting on any instructions which we believe are incomplete, ambiguous or unclear, or if we believe to do so is necessary or prudent for compliance reasons, or would be contrary to law, or would conflict with rules, operating procedures or market practices, or for which we require further information or which might reasonably be expected to expose us to personal loss or liability;
- f. We give no assurance that any person with whom we place an order will execute the order, or will not delay it.

5.3 Client acknowledges and agrees that, in respect of any account provided to Client:

- a. We will not be responsible for any loss or liability incurred by Client in relation to taxation of any investment, payment, dealing or right associated with the account, including any fine, penalty or interest charge;
- b. We, another customer of ours or a director, secretary, officer, representative, employee or consultant of ours or of a related body corporate of us may be the counterparty to a transaction executed on Client's behalf by us in operating the Account, or to a transaction in similar Financial Products or their derivatives, at or near the time of the transaction for Client, and may take an opposite position or one which is contrary to or different from the transaction for Client. We may, on our own account or on behalf of other clients, take opposite positions in respect of Financial Products to those taken by us in operating Client's Account;
- c. We may charge Client fees and charges, and recover expenses and be indemnified for amounts, at rates different from those charged to other clients.

5.4 A reference in these Terms to a managed discretionary account or MDA is a reference to an account provided by us for which we have Client's authority to manage at our discretion, subject to any limits or requirements agreed by Client and us.

5.5 Client acknowledges and agrees that, in respect of any managed discretionary account and any MDA Services provided to Client:

- a. We do not assure, guarantee or represent to Client that any particular investment performance will be achieved, that the capital invested by Client will be maintained or that any particular investment or trading strategy will obtain assured outcomes or meet any performance criteria;
- b. The, discretionary trading of Financial Products is speculative and carries with it the risk of loss of some or the entire amount traded and that Client's liability is not necessarily limited to the balance of the account (or of the entire Account) but may include Client's full liability arising from trading in Financial Products on terms authorised by Client;
- c. We are authorised, in operating the account, to deal in Financial Products on Client's behalf, without any prior approval from, or consultation with, Client in respect of the purchase, sale and other management of Financial Products, including their exercise or roll-over (subject to any limits agreed with Client and subject to other provisions in the agreement);
- d. Past performance of any mandate, strategy or investment approach is not a guarantee, assurance or representation of future success, whether regarding accounts of any kind, any investment or trading strategy or mandate or any service or investment;
- e. Dealing in Financial Products involves the risk of substantial loss as well as the prospect of profit;
- f. Income (if any) earned for the account may be irregular and the timing of that income might not suit Client's requirements. Income earned outside of Australia may be subject to tax laws applying in those other jurisdictions, including obligations on the payer to make withholdings or to disclose information to tax or other authorities. Income earned in other currencies may fluctuate in unrealised value until converted into Australian currency, and any exchange in currencies may incur losses, charges (including by way of spreads) or fees, reducing the amount available to Client;
- g. We will not be responsible for any loss or liability incurred by Client if we act or refrain from acting within the discretionary terms authorised by Client, or if any dealing or proposed dealing is interrupted, unable to be completed or unable to take place due to the failure of any telephone, computer or other electronic service or any other third party act or omission;
- h. We are not obliged to exercise any right or other benefit attached to or granted to a holder of any Financial Products held for Client in the Account (including, but not limited to, voting rights, participation in rights issues, share purchase plans, buy backs, takeover offers or schemes of arrangement) and will not be liable for failure or delay in exercising any of those rights on Client's behalf;
- i. We have complete discretion to manage Client's Property (subject to any limits agreed with Client, to other provisions in the agreement and to our duties and other obligations which by law cannot be excluded by the agreement). In exercising this discretion, we might expose Client to a range of risks including risk associated with changes in economic cycles, interest rates, investor sentiment and political, social, technological and legal factors as well as changes in a company's management or its business environment as described. These risks may affect the value of Client's Property and the return which Client receives from that Property.

5.6 Client acknowledges and agrees that:

- a. all money deposited by Client with us, or received by us which is sent on behalf of Client (client moneys), will be first deposited into our client moneys trust account and then may be withdrawn and paid into a bank account, other term or other account or deposit facility or cash management trust facility, whether in our name or maintained by our nominee or sub-custodian, as a nonsegregated account held on trust for Client and for our other clients,

maintained in accordance with applicable legal and regulatory requirements, whether or not that other account constitutes a client moneys trust account (and this Term is sufficient direction by Client to authorise the withdrawal of those client moneys to be paid into that other account);

- b. dividends and other distributions to which Client is entitled will be deposited into a bank account or other deposit facility or cash management trust account which we maintain for our clients (not directly into the client moneys trust account) and will be credited to Client's Account;
- c. all Financial Products held by or for Client will be held on trust for Client, either by us or by our nominee or sub-custodian (including any delegate appointed by them); and
- d. in respect of Client's moneys in any trust account (including but not limited to a client moneys trust account) or in any other way held in custody for Client:
  - i. Client is not entitled to earn any interest on Client's moneys in any trust account unless we agree to that;
  - ii. we are entitled to all interest earned on Client's moneys in any trust account; and
  - iii. if we set an amount or rate of interest which we will pay or credit to Client in respect of Client's client moneys, we will pay or credit that and we are entitled to all other interest earned on those moneys above the amount or the rate which we owe Client.

5.7 If Client does not provide Client's tax file number or details of exemption, we may be obliged by law to deduct and withhold amounts from payments otherwise owing to Client at the highest marginal rate plus any applicable levy (including the Medicare levy) as required by law and pay that to the relevant government agency.

5.8 Client is and remains solely liable and responsible for all acts and omissions of its authorised representative even if the act or omissions of the authorised representative were outside their actual or ostensible authority or were in error, or were fraudulent, negligent, in breach of fiduciary duties or criminal.

5.9 Client agrees not to make, and waives any right Client may have to make, any claim against us for any loss incurred or suffered by Client which may arise in connection with any act or omission by Client's authorised representative of whatever kind. This clause may be pleaded as a bar to any claim made by Client in respect of asserted liability for us to pay or otherwise compensate Client or restore Client's account.

## 6. Custody Services

6.1 The following apply to any Services which are custody services which we provide to Client, whether it is a retail client, wholesale client or otherwise. The specific obligations set out below prevail over anything else in the Terms which are inconsistent:

- a. We will acknowledge to Client on request the manner in which we hold Client's Property);
- b. The manner in which instructions may be given to us are as set out in the Terms;
- c. We are liable to Client if there is a loss to Client due to a failure by us or by a person we directly or indirectly engage to hold Client's Property (being Property in which Client has a beneficial interest), to comply with the duties arising under the Terms or other agreement relating to holding Client's Property or to observe reasonable standards generally applied by providers of custodial or depository services for holding the Property held except that we are not liable to the extent resulting from failure of a person we have directly or indirectly engaged if that person is insolvent and we have not failed to take reasonable care in engaging and monitoring compliance by that person.

- d. We may not take or grant a charge, mortgage, lien or other encumbrance over, or in relation to, Client's Property under the custody arrangement unless it is:
  - i. for expenses and outlays made within the Terms other than any unpaid fees owing to us; or
  - ii. in accordance with Client's written instructions.
- e. We will keep and maintain electronic records of Client's Property and transactions made in relation to them of which we are aware (including, but not limited to, the time, source and method of giving instructions in relation to those transactions). The records of Client's Property and the nature of transactions in relation to them will be available in the ordinary course of the substantially continuously available electronic account reporting service and in summary form in the account reports sent to Client. The information will also be available to persons authorised by Client from time to time. Records of further details are not ordinarily continuously available but reasonable amounts of further detail will be provided free on request;
- f. We will apply verification procedures for the appropriately frequent reconciliation and checking of Client's Property;
- g. We will report to Client according to any written agreement with Client, our disclosures in any FSG given to Client, any requirement of law and as we represent to Client from time to time;
- h. If practicable before arranging for Client's Property to be held by another person and in any event before the assets are held by the other person, we will provide Client with written notice of the identity of, and contact details of, the other person, except we might not be able to give prior written notice if we decide that is in Client's best interests to arrange for custody of Client's Property with a person and prior notice is not predictable including, without limitation, because we have sufficient grounds to believe there are legal proceedings, or threatened legal proceedings, or insolvency restraints, adversely affecting, or likely to adversely affect, the then current asset holder
- i. On termination of our Services for custody of Client's Property (whether by termination of the entire agreement with Client, or termination of only the custody Service), subject to any lien in accordance with the Terms including in accordance with Client's written instructions, Client's Property will be transferred to Client or as Client lawfully directs within a reasonable time.
- j. The terms of the Deed for Custody Trusts are subject to the agreement. No provision of the Deed for Custody Trusts is intended to be inconsistent with, or may be construed as being inconsistent, with the agreement or with any duty imposed on us by law.

6.2 We will hold all of Client's Property on trust for Client on the terms set out in the Deed for Custody Trusts. A copy of the Deed for Custody Trusts is available free on request. Client acknowledges that:

- a. the Deed for Custody Trusts may be amended from time to time (in accordance with the terms of the Deed for Custody Trusts), without prior notice to or compensation to Client;
- b. we may appoint a sub-custodian or nominee to hold Client's Property;
- c. we, or our nominee or sub-custodian, may appoint a person to act custodian to hold Client's Property (which person -custodian may appoint another person as custodian or other delegate);
- d. Client's Property will be aggregated with property of our other clients in an omnibus account;

- e. any nominee or custodian (at any level) may make deductions from the Property from time to time for the purposes of satisfying any obligation entered into in accordance with the relevant nominee or custody agreement (but not to the extent prohibited by law);
- f. Client might not have the benefit of direct contractual rights against a person with whom the nominee or any custodian transacts on Client's behalf; and
- g. in respect of the custody arrangements referred to in this clause 6, some benefits accruing to holders of property (including Financial Products) might not be directly or indirectly available for Client's benefit and that will be without compensation or other adjustment, for example, voting rights, participation in rights issues, share entitlements, share purchase plans and bonus issues.

6.3 The agreement and all Services provided under it do not constitute a pooled investment or service or other common enterprise or, if they are construed as such, it is intended that no aspect of them are required to be registered as a managed investment scheme. Client's investments made under the agreement are for Client alone and, conversely, Client has no interest in any investments made by us for any other person under similar terms nor in any property held beneficially for any other person, even if their money or Financial Products are aggregated in the same bank, custody or other account.

## 7. Authorities

7.1 If Client has applied for a managed discretionary account, Client authorises us to operate and to manage at our discretion Client's account subject to any instructions issued by Client to us in writing, including in the Application Form. We do not assure or guarantee the performance of any particular investment, return profits or maintenance of Client's investment arising from any transactions or decisions made under this authority.

7.2 We may use, in our sole discretion, the services of one or more service providers as appropriate to allow us to perform the Services selected by Client. Without limitation, that includes banks, dealers, lenders, option writers, market makers, issuers, custodians, financiers, brokers, clearing agents, settlement agents, issue and offer managers and operators of managed investment schemes.

7.3 Client authorises us to negotiate, to enter into and to make use of agreements with the service providers referred to in clause

7.2 without prior consultation with Client, as if we were the absolute legal and beneficial owner of the Property (subject to this agreement). Client acknowledges that the agreements may include terms allowing or in relation to the following (without limiting other features or services):

- a. purchasing, selling, short-selling, subscribing for, applying for, transferring, lending, borrowing, redeeming or otherwise dealing with any Property on Client's behalf including to rebalance Client's portfolio of investments in an account;
- b. processing receipts (such as dividends and coupon payments) in relation to Client's Account;
- c. arranging for and agreeing to dealing in Financial Products as between Client and any other client of ours whose property is aggregated in the same bank, custody or other account, including on the basis of arranging for netting of transactions made for one portfolio of investments in an account with those made for another portfolio of investments in an account;
- d. signing and executing all forms, deeds, transfers and other instruments necessary to operate, to maintain and to administer Client's Account;



- e. attending (or authorising attendance at) any meeting convened and exercising any rights attached to any Financial Products including voting, accepting or rejecting any proposal for creditors, takeover bid, scheme or arrangement or other corporate action;
- f. participating in, refraining from participating or ceasing to participate in any bonus or distribution investment plan relating to any assets in Client's Account;
- g. exercising or not exercising any option held or granted;
- h. dealing in a range of Financial Products (including by arranging to place orders);
- i. dealing in foreign exchange (spot or forward) and other derivatives (including by arranging to place orders);
- j. clearing and settlement of all Financial Products;
- k. paying for transactions and for services, and fees, charges, expenses and other amounts owing in relation to that;
- l. nominee or custody holding of Financial Products, rights, interests or other assets or any other custody or depository of any of them;
- m. dealing and loan or other credit facilities; and
- n. creating or permitting to be created encumbrances over Client's Property to secure performance of obligations arising in respect of Client's Property or generally in relation to the service provided by the service providers, including on terms that permit access to and enforcement over Client's Property without having to establish any default by or on behalf of Client, and without any compensation to Client for that, including terms providing for enforcement and authorisation to take action on Client's behalf or in Client's name ordinarily arising and reasonable for the requirements of such facilities and security interests. (The above examples should be interpreted expansively and not so that they are independent of each other.) The agreements with such service providers may provide for transactions on one or more Facilities including outside of an exchange. The service provider may be us or an associate of ours.

7.4 Client will be bound by the terms of the agreement we make or have made under or in relation to clause 7.2. We are only liable in respect of those agreements as Client's agent and not in our personal capacity except to the extent required by law or as expressly stated in the agreement between us and the service provider or in this agreement between us and Client. The agreements may provide that the service providers report only to us and not to Client.

7.5 Client acknowledges that if an agreement is entered with a clearing participant of a Facility who is obliged as principal to comply with the settlement obligations for transactions made through the Facility, Client owes Client's settlement obligations to that clearing participant or we, as Client's agent, owe that obligation to that clearing participant.

7.6 Client agrees:

- a. in consideration of the Services which we agree to provide, Client irrevocably appoints, severally, each director, company secretary and principal executive officer and each employee (whose title of office includes the word "manager" or "head") of us, whoever they are from time to time, as Client's attorney at any time to execute and to deliver all documents and to do all things which the attorney considers necessary or desirable to give effect to the provisions of the agreement (including these Terms) and, in particular, without limitation, in connection with or incidental to, the exercise of any of our rights and powers or for us to provide any of the Services. Those powers may be exercised in our interests despite any conflict with the interests of Client. This appointment survives termination of the agreement;

- b. Client, for the benefit of us and for any attorney described in clause 7.6(a), will confirm and ratify whatever we and any other attorney does pursuant to the power granted under clause 7.6 (a) and Client will forever wholly indemnify and keep us and any attorney indemnified against all claims, demands, costs, damages, losses and expenses, however arising, arising from or in relation to the lawful exercise of all or any of their powers and authorities contained under clause 7.6 (a); and
- c. a grantee who is not a party to the agreement with Client may rely on this clause and enforce it against Client.

7.7 In the ordinary course of business, we do not record any telephone conversations with Client; however, Client authorises us to record any conversations (by telephone or otherwise) with us or our representatives, with or without an audible warning tone, for our records. You will be provided access to these records upon reasonable request. Client acknowledges that we may destroy these records at any time at our sole discretion (and without notice).

## 8. Fees, charges and expenses

8.1 Client owes and must pay the fees and charges, including our account fees and brokerage fees, in relation to the Services provided to Client. Our fees and charges applying at the commencement of the Agreement will be disclosed to Client prior to the commencement of the Services to Client.

8.2 Client owes and must pay the expenses and reimburse us for any costs, charges and expenses (including stamp duty and GST, less any input tax credits and/or reduced input tax credits, on transactions made on the Client's behalf) and any fees imposed by a Facility and charges, in all of those cases directly or indirectly arising in relation to transactions for Client or arising from Client's defaults including Client's failure to pay for or settle Client's transactions or in relation to services provided by other persons which are obtained for the benefit of Client. The amounts of expenses or reimbursements cannot be notified in advance but in any case will be as determined by us as being reasonably based having regard to the actual costs or, if that cannot be reasonably ascertained, as we reasonably determine should be allocated to Client. For clarity, this clause does not require Client to reimburse or otherwise pay us for taxes imposed on us for our taxable income.

8.3 We may change our fees and charges from time to time by written notice to Client. The notice may be given by email, letter, message posted to Client's Account or our website service, oral notice or any other effective means of giving notice and the notice will be effective whether or not Client actually read or accessed the notice. We will give not less than seven (7) days' notice of a change taking effect. Client's continued use of our Services after the change takes effect is confirmation of Client's acceptance of the change in fees or charges. If Client does not agree with the change, Client must give us written notice to close Client's Account.

8.4 Client authorises us to withdraw from Client's Account such amount as is necessary to pay Client's fees, charges, and reimbursement for expenses and other amounts owing by Client to us under this agreement:

- a. at such times as is agreed with Client including by way of notification to Client or by a provision in an investment mandate accepted by Client; and
- b. if not expressly agreed as provided for above, for transaction fees or charges, as they are incurred and otherwise monthly in arrears.

8.5 GST is payable on most fees, charges and payment for expenses and other amounts owing under the agreement. Unless otherwise specified, the fees and charges quoted or notified to Client are stated exclusive of GST. If GST is payable on any supply made by us under the agreement, Client

must pay an additional amount equivalent to the GST at the time that payment to us is due. These rates are inclusive of the estimated net effect of GST (i.e. inclusive of GST, less any input tax credits and/or reduced input tax credits).

## 9. Delay or Failure to Settle

9.1 If settlement is delayed or cancelled because:

- a. we have not received the relevant payment from Client, then we may enforce payment by Client, which may also involve Client paying us:
  - i. interest on the outstanding amount, calculated and accruing daily; and
  - ii. a late settlement fee to be determined by us, to cover our reasonable costs and expenses arising from Client's delay or failure to settle; or
- b. Client has not provided us with the relevant documents, information or instructions by the settlement date, then Client must pay us:
  - i. fees and charges levied by a Facility provider or other related service provider in respect of Client's transactions; and
  - ii. a late settlement fee to be determined by us, to cover our reasonable costs and expenses arising from Client's delay or failure to settle including any Financial Products borrowing costs (even if from another client of us) or compensation to the other party to Client's transaction.

9.2 If Client has not provided us with the relevant documents, information or instructions for settlement, or payment due after a demand by us or by the Facility provider or other related service provider to us or to Client, then Client by this agreement:

- a. authorises us to sell, at our sole discretion, any of Client's Property in our control or possession;
- b. indemnifies us for all claims, damages, costs and expenses arising out of Client's delay or failure to settle;
- c. authorises us to set-off any outstanding payment against a credit balance in Client's Account; and
- d. authorises us to transfer any Property held for Client to us, in any combination of the above, but only to the extent necessary to discharge some or all of Client's obligations.

9.3 For the good consideration which we provide to Client by way of agreeing to and making the agreement, in addition to all other authorities and powers Client grants us, Client expressly grants us and each of our directors, company secretaries and principal executive officers and each employee (which employee's title of office includes the word "Manager" or "Head") (each a "grantee") severally as Client's attorney at any time and from time to time an irrevocable power of attorney to take such actions and to sign such documents as the grantee decides is necessary or prudent to register the relevant Property in our name or as we direct if Client does not pay as required under this agreement. A grantee who is not a party to the agreement with Client may rely on this clause and enforce it against Client.

## 10. Client's warranties and undertakings

10.1 Client warrants and, as appropriate, undertakes that:

- a. Client has the power to enter into and to perform this agreement;
- b. Client is not under any legal impediment or other impairment which makes, or could make, the terms of this agreement void, voidable or unenforceable;
- c. Client is not insolvent, under any form of external administration nor has Client agreed to make a settlement with, assignment to, or compromise with its creditors;

- d. Client has disclosed all relevant information to us to allow us to perform to the best of our ability our duties to Client;
- e. all of the statements made by Client in the Application Form, or otherwise for the purposes of applying for this Agreement to be made or for establishing the Account, are true and correct and not misleading or deceptive;
- f. Client has had a reasonable opportunity to obtain all advisable or necessary independent advice for the purpose of deciding whether to enter into this agreement.

10.2 If Client enters into the agreement as a trustee, Client warrants in

Client's personal capacity:

- a. the trust has been duly constituted and is validly existing in compliance with all applicable laws and its trust deed has been duly executed and duly stamped, in each case in accordance with the laws of each State and Territory of Australia unless otherwise expressly notified to us;
- b. the trust deed and its constituent documents give the trustee power to carry on all of the business activities now conducted by it in any capacity and to enter into and to comply with its obligations under, and to carry on the transactions contemplated by, this agreement;
- c. all necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the trust deed, any other document or any law for the entry into, observance and performance by the trustee of its obligations under this agreement;
- d. each of Client's obligations under, and the transactions contemplated by, this agreement constitutes binding obligations and is completely and lawfully enforceable against the trustee and in respect of the trust's property in accordance with their terms;
- e. nothing done under this agreement or any instructions given by Client is or will be a breach of any trust;
- f. the assets of the relevant trust are, and at all relevant times will be, sufficient and available to the trustee in that capacity to discharge Client's obligations and liabilities under this agreement;
- g. Client is the only trustee of the trust unless all trustees are described in the Application Form and any later change is promptly notified to us;
- h. no property of the trust has been re-settled, set aside or transferred to any other trust or settlement;
- i. the trust has not been terminated, nor has the date or any event for the vesting of the trust's property in its beneficiaries occurred;
- j. no determination has been made to distribute the trust's property on a date which is earlier than the latest date under the trust deed by which the trust's property must be distributed;
- k. there is no conflict of interest on the trustee's part in entering into this agreement and performing its obligations under it;
- l. it has an unrestricted right to be fully indemnified, reimbursed or exonerated out of the trust's property in respect of any losses or liabilities incurred by it as trustee and the trust's property is sufficient to satisfy that right of indemnity, reimbursement or exoneration; and
- m. it has complied with its obligations in connection with the trust.

10.3 Each warranty by Client in this clause or elsewhere in this agreement is deemed to be repeated on each day that this agreement subsists.

## 11. Limitation of Liability

11.1 Preserved Liability means:

- a. any liability which by law may not be excluded, limited or qualified; and
- b. any liability, or duty for which we are liable, specified in the agreement which we have expressly agreed may not be excluded, limited or qualified.

11.2 Subject to a Preserved Liability and except if directly due to our breach of law, negligence, wilful default of the agreement or our dishonesty, to the extent permitted by law, we are not liable to Client for the following:

- a. our acts or omissions in reliance on Client's obligations under the agreement, Client's instructions or any other information we have relied upon provided by Client including by Client's authorised representative, agent or other representative;
- b. events or circumstances beyond our reasonable control, including (without limitation) acts of agents and other service providers used by us to perform the Services, currency restrictions, disruption of the normal services by others, liquidation or insolvency by persons who are not related bodies corporate, acts of war or terrorism, riots, revolution or other similar events or acts;
- c. an act or omission required by law or by a court of competent jurisdiction;
- d. any actual or asserted fiduciary duty which is not expressly stated in this agreement;
- e. any payment having been made to a fiscal authority, including but not limited to any taxes, stamp duty or government charges;
- f. any act or omission of an operator of a securities title, transfer or holding system; and
- g. economic, indirect or consequential loss, whether or not those losses overlap (including, in any case, but not limited to loss of anticipated profits or savings), whether or not reasonably foreseeable.

11.3 Subject to a Preserved Liability, we are not responsible for any loss or liability incurred by Client to the extent arising from us acting or refraining to act within the discretionary limits authorised by Client, or if any dealing or proposed dealing is interrupted, fails to complete or take place due to the failure of any telephone, computer or other electronic service or third party act or omission.

11.4 To the extent permitted by law, our aggregate liability to Client under the agreement is limited to the fees Client has paid us in the two years preceding the breach or to the supply of our Services again, as we choose. If it is determined by a court that by law we are not permitted to disclaim or to limit our liability to Client or we are not permitted to limit the amount of compensation we may be liable for, or any of those limitations are unenforceable, then those limits are severed from this agreement as though they were not in it from the beginning of this agreement.

## 12. Indemnities

12.1 Subject to a Preserved Liability, Client forever indemnifies us against all losses, claims, damages, costs and expenses (including all reasonable legal expenses actually incurred) or any other remedies arising directly or indirectly as a result of:

- a. taxes and other government levies or charges imposed on Client's Property or transactions made for Client;
- b. Client's breach of this agreement;
- c. Client's breach of any law or regulation;
- d. us acting in accordance with Client's instructions or relying on information given by Client or Client's behalf; and

- e. claims of any kind by any third parties in relation to the Services or Client's Account, except to the extent the claims, damages, costs and expenses were a result of our negligence, wilful misconduct or fraud or our breach of this agreement. This provision survives termination of the agreement.

### 13. Termination

13.1 We may at any time, at any time, terminate (i) the authority to manage the Client's Account; (ii) the Client's Account; (iii) this agreement; or any of them, with no prior notice or with such other notice as we decide. If no time is specified, the termination will be with immediate effect and Client will have immediate responsibility for management of Client's Property, including assuming the risk of all positions. Termination of the authority to manage does not by itself terminate this agreement. Termination of the authority to manage does not terminate obligations which accrue up to the time of termination, including any fees for management. Such obligations (including payment obligations) survive termination of this agreement.

13.2 Client may terminate the authority to us to manage Client's Account with prior notice or with immediate effect by notifying us of that in writing. If no time is specified, we may assume it is with immediate effect and Client will have immediate responsibility for management of Client's Property, including assuming the risk of all positions. Termination of the authority to manage does not by itself terminate this agreement. Termination of the authority to manage does not terminate obligations which accrue up to the time of termination, including any fees for management. Such obligations (including payment obligations) survive termination of this agreement.

13.3 Client may terminate the entire agreement with prior notice or with immediate effect by notifying us of that in writing. If no time is specified, we may assume it is with immediate effect and Client will have immediate responsibility for Client's Property, including assuming the risk of all positions. Termination of the agreement does not terminate obligations which accrue up to the time of termination, including any fees, charges and obligations to reimburse or to indemnify a person. Such obligations survive termination of this agreement.

13.4 Client acknowledges that if the agreement is terminated, Client is responsible for giving express instructions to us to unwind Client's positions to transfer them to the control of Client or another person nominated by Client. Client acknowledges that it may take some time to unwind Client's position depending on factors such as the relevant markets and liquidity and that will be at Client's cost and risk.

13.5 Upon termination:

- a. Client owes and must pay us all our accrued fees, charges and expenses and other costs for reimbursement or indemnification;
- b. we will use all reasonable endeavours to transfer to Client or Client's nominee all of Client's Property and rights in relation to Client's Account, subject to Client providing sufficient details and instructions for this to occur;
- c. unless otherwise specified, we will promptly deliver to Client all final accounts and reports in relation to Client's Account after we transfer to Client's control Client's Property except for tax reporting which will not occur until in the ordinary course following the end of the financial year in which termination occurs;
- d. we may deal with Property in Client's Account to settle or to set-off any existing obligations under the agreement;

- e. if Client does not provide appropriate instructions regarding the closure of Client's Account, we will close Client's Account (including closing at a time of our choosing Client's open positions and selling Client's other Financial Products at Client's cost and risk) and send (or attempt to send) Client payment for any surplus after deducting all fees, charges and expenses or indemnified amounts; and
- f. we are no longer responsible for performing the Services or any of our other obligations under the agreement, but termination will not affect any transaction properly commenced prior to termination, nor any other claim which either party may have against the other.

## 14. Laws and Regulations

14.1 All dealings between Client and us are subject to the following (without limiting other applicable laws):

- a. Corporations Act 2001 (Commonwealth) (including the relevant regulations, ASIC Class Orders and other instruments);
- b. Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Commonwealth); and
- c. rules, customs, usages, practices and regulations of any Facility which is relevant to Client's transactions.

14.2 To the extent any of the laws and regulations referred to in clause 14.1 or otherwise applying is inconsistent with the agreement, the laws and regulations prevail.

14.3 Client acknowledges that:

- a. we are subject to various anti-money laundering and counter-terrorism financing laws and anti-tax avoidance laws (AML/CTF Laws) which may prohibit us from offering services or entering into or conducting transactions or performing Services; and
- b. the AML/CTF Laws include prohibitions against any person dealing with the proceeds of or assets used in criminal activity (wherever committed) and from dealing with any funds or assets of, or the provision of finance to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act.

14.4 Client agrees that:

- a. we are not required to take any action or to perform any obligation under or in connection with these Terms if we are not satisfied as to Client's identity or if we suspect on reasonable grounds that by doing so we may breach the AML/CTF Laws;
- b. we may delay, block or refuse to make any payment or to provide any service if we believe on reasonable grounds that to do so may breach any law in Australia or any other country, and we incur no liability to Client if we do so; and
- c. we will not incur any liability to Client for any loss which Client suffers (including consequential loss) however caused by reason of any action taken or not taken by us as contemplated in paragraph (a) or (b) above.

14.5 Client agrees to provide to us and to allow us or our agents access to, all information and documents which we reasonably require to comply with any law in Australian or any other country, including any AML/CTF Laws. The information which we may access, store and disclose for these purposes includes the information which is the subject of Client's authorisations in Client's Application Form or by any other means which Client authorises us. Client agrees that we may disclose information about Client which we collect or which we have, or about transactions or Services which Client has with or by us or which Client seeks to conduct with us, if we are required to

do so by any applicable laws in Australia or in any other country or for the purpose of complying our AML/CTF program and compliance obligations.

## 15. Confidentiality and Privacy

15.1 We will keep confidential all of Client's personal information and all other of Client's confidential information so we will not disclose it except as permitted by law, including when compelled by a notice or order properly issued by a regulatory authority (including but not limited to ASIC) or as permitted by Client. Client permits disclosure by these Terms as set out in these Terms or as permitted by our privacy policy.

15.2 We will make reasonable efforts to keep any such information that we have about Client secure and to ensure that any of our employees or agents who have access to the information about Client do not make any unauthorised use, modification, reproduction or disclosure of that information.

15.3 We will comply with our privacy policy.

## 16. Complaint Handling

16.1 If Client has any complaint about our Services, we will follow our dispute resolution policy.

## 17. General

17.1 Time is of the essence of performance of a party's obligations under this agreement. If this agreement specifies when the party must perform an obligation or the last time to perform the obligation, the party must perform it by the time specified. Each party must perform all other obligations promptly.

17.2 Client must pay us any sum due under this agreement, including those described in clause 12, fully without deduction or set-off (and irrespective of any counterclaim) whatever.

17.3 A reference to interest in the agreement or to a charge or expense which could include interest will be interest at a rate determined by us as being a reasonable estimate of our direct and indirect costs which give rise to that interest and related or ancillary Services. Those costs need not be interest themselves. We do not need to give reasons or evidence supporting our determinations of the rate of interest.

17.4 A party to the agreement may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

17.5 If a party to the agreement does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

17.6 A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under this agreement.

17.7 By giving its approval or consent, a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

17.8 The rights and remedies provided in this agreement are in addition to other rights and remedies given by law independently of this agreement.

17.9 The indemnities and rights to be reimbursed in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this



agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity or reimbursement under this agreement.

17.10 All notices must be in English. Unless otherwise specified or agreed, all notices may be given by a person to the other in writing by hand delivery, email, other electronic communication service (including by our website service) or post.

17.11 Nothing in the agreement may be taken as giving rise to a relationship of employment, joint venture or partnership nor as to any agency except as specified in the agreement.

17.12 Failure or neglect by a party to this agreement to enforce any of the provisions of this agreement must not be construed as, nor may be deemed to be, a waiver of their rights under this agreement nor in any way affect the validity of the whole or any part of this agreement nor prejudice our rights to take subsequent action.

17.13 If Client is comprised of two or more persons, then the Account must be established in the names of all of the persons who comprise Client. This will operate as each person holding their interests as joint tenants (unless we expressly agree in writing). Each person constituting Client is jointly and severally liable for the obligations under these Terms. We may discharge our

duties to all of the persons who comprise Client by sending notices or payments to any one of the persons. We may act on the instructions of any one of those persons.

17.14 An agreement, representation or warranty by two or more persons binds them jointly and each of them individually.

17.15 Client may not assign this agreement, because it is personal to Client. We may assign this agreement (including the benefit and the burden of it) by giving not less than twenty (20) business days' notice of that to Client.

17.16 The agreement contains the entire agreed terms agreed by Client and us for the Services and all related and ancillary aspects between the parties and supersedes all prior communications, negotiations and documents in relation to the Services.

17.17 Except as specified otherwise, the agreement cannot be amended or varied except in writing and either:

- a. signed by the parties; or
- b. by us giving not less than ten (10) business days' prior notice to Client.

17.18 If any term or other provision of the agreement is held by a court to be illegal, invalid or unenforceable under the applicable law, then that term or provision is to be interpreted as being severed from the agreement and the remaining Terms will be unaffected by that.

17.19 The agreement is governed by and must be construed in accordance with the laws in force in New South Wales. The parties submit to the non-exclusive jurisdiction of the courts operating in New South Wales

## 18. Interpretation

18.1 In the agreement:

**Account** has the meaning given in clause 5.1.

**Agreement** has the meaning given in clause 1.1.

**Application Form** means the application form, completed by or on behalf of Client, which refers to these Terms or the agreement to be made on these Terms upon acceptance of the application in the form. The form may be in hardcopy or electronic form and need not be signed by or on behalf of Client in order for it to be effective and binding on Client.

**ASIC [CO 04/194]** means Class Order [04/194] issued by ASIC, as amended or superseded from time to time. A reference to this Class Order includes a reference to any later instrument made by ASIC which substantially replaces or supersedes the Class Order.

**Business day** means a week-day in Sydney, New South Wales, other than a public holiday in Sydney.

**Deed for Custody Services** means the deed poll of that title made by Mason Stevens Limited (ABN 91 141 447 207 AFSL 351576), as amended or replaced from time to time.

**Facility** means a facility for a market or exchange in Financial Products, or for clearing and settlement of transactions in Financial Products, or for making payments for those services.

**Financial Product** means any financial product as defined for the purposes of the Corporations Act 2001 (Commonwealth).

**GST** means the tax imposed by A New Tax System (Goods and Services Tax) Act 1999 and A New Tax System (Goods and Services Tax) Transition Act 1999 and related tax imposition Acts of the Commonwealth of Australia.

**MDA Services** means the components of any Services to Client which have the features of an “MDA service” as that expression is defined for the purposes of ASIC Class Order [CO 04/194] (including any successor to it).

**Preserved Liability** has the meaning given in clause 11.1.

**Property** means all Financial Products, cash or cash equivalent, choses in action and ancillary rights held on behalf of Client by us, or accruing to Client as a result of the agreement with us.

**Services** has the meaning given to it in clause 2.1.

**Terms** means the terms set out in this document, as amended from time to time.

18.2 Words in the agreement expressed in the singular include the plural and vice versa.

18.3 A reference in the agreement to a document or agreement includes any variation or replacement of it.

18.4 Headings in the Terms are for reference only and do not in any way affect the meaning of this agreement.

18.5 Unless the context requires, a reference in the Terms to any legislation includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under that legislation or legislative provision.

18.6 A provision of the agreement must not be interpreted against our interests merely because these are standard Terms provided by us.