

# FINCLEAR SERVICES DERIVATIVES CLIENT AGREEMENT

between a client of the  
**WILSONS ADVISORY AND STOCKBROKING**  
ABN 68 010 529 665 AFSL No. 238374 (BROKER)  
and

**FINCLEAR SERVICES PTY LTD**  
ABN 60 136 184 962 AFSL No. 338264 (FinClear Services)

## 1. INSTRUCTIONS

### 1.1 ASX Derivative Products

The client named in the above Client Application Form (**Client**) may from time to time instruct the Broker to deal in the following kinds of derivatives which are traded on ASX:

- (a) Options Market Contracts (sometimes referred to as Exchange Traded Options); and
- (b) other kinds of derivatives traded on ASX, but not including Futures Market Contracts (**ASX Derivative Products**).

### 1.2 Authorisation of additional ASX Derivative Products

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

### 1.3 Right to refuse to deal

The Client acknowledges that:

- (a) FinClear Services may (and may instruct the Broker to) at any time refuse to deal in, or may limit dealings in, ASX Derivative Products for the Client. FinClear Services will notify the Client of any refusal or limitation as soon as practicable; and
- (b) [**ASX Clear Minimum Term 4**] FinClear Services is not required to act in accordance with the Client's instructions, where to do so would constitute a breach of the ASX Clear Rules, the ASX Operating Rules, ASIC Market Integrity Rules or the Corporations Act.

### 1.4 Authority to act on instructions

The Client authorises FinClear Services to accept and act without any inquiry upon instructions provided (including orders placed) by fax or e-mail which appear to FinClear Services to have been given by the Client, the Broker or by any other person on behalf of the Client, and indemnifies FinClear Services in respect of any losses or expenses that FinClear Services may suffer or incur as a result of so acting.

## 2. CLEARING ARRANGEMENTS AND RELATIONSHIP WITH ASX AND ASX Clear

### 2.1 Clearing Agreement between the Broker and FinClear Services

The Broker is a Market Participant of ASX and is a party to a Clearing Agreement with FinClear Services for the purposes of the ASX Operating Rules and the ASX Clear Rules. FinClear Services is a Clearing Participant of ASX and a General Participant of ASX Clear.

### 2.2 Nature of FinClear Services' obligations [**ASX Clear Minimum Term 4**]

The Client acknowledges that:

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

### 2.3 Obligations of Client owed to FinClear Services

On execution of a Derivatives Transaction in an ASX Derivative Product by the Broker on behalf of the Client, the Client owes obligations to FinClear Services in relation to that Derivative Transaction including the obligations set out in this agreement. Where the Client owes an obligation to deliver funds, security or information to FinClear Services that obligation will not be satisfied by delivery to the Broker.

### 2.4 Misdirected Transactions

The Client acknowledges that, if at any time Derivatives Transactions executed by the Broker are also to be cleared through a Clearing Participant (other than FinClear Services):

- (a) the Broker may, incorrectly or otherwise, direct a Derivatives Transaction which it has executed on the Client's behalf to a

Clearing Participant other than FinClear Services (**Misdirected Transaction**);

- (b) FinClear Services will not carry the settlement obligations in respect of any Misdirected Transaction; and
- (c) FinClear Services will not give the Client a confirmation in respect any Misdirected Transaction.

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

The Client acknowledges that any benefit or right obtained by FinClear Services upon registration of a Derivatives Contract with ASX Clear by novation of a contract under the ASX Clear Rules or any other legal result of registration is personal to FinClear Services and the benefit of that benefit, right or legal result does not pass to the Client. The Client has no rights, whether by way of subrogation or otherwise, against ASX or ASX Clear in relation to any transactions by FinClear Services (or the Broker or any other Market Participant or Clearing Participant) in any Derivatives Contract.

### 2.6 Appointment as agent [**ASX Clear Minimum Term 10**]

The Client irrevocably appoints severally ASX Clear, and every director, manager and assistant manager for the time being of ASX Clear, at the option of ASX Clear (as applicable) to do all acts and execute all documents on the Client's behalf for the purpose of exercising the powers conferred on ASX Clear under ASX Clear Rule 15 including, the power to transfer or close out Derivatives Contracts if FinClear Services commits an event of default.

### 2.7 Application of ASX Operating Rules and ASX Clear Rules [**ASX Clear Minimum Term 1**]

The Client and FinClear Services agree that the terms of their relationship in respect of Derivatives Contracts, and any dealings between them concerning Derivatives Contracts are subject to, and that they are bound by the Corporations Act, the ASX Operating Rules, the ASX Clear Rules and the procedures, customs, usages and practices of ASX, ASX Clear and their related entities, as amended from time to time, in so far as they apply to Derivatives Contracts.

## 3. MARGIN CALLS AND COVER

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

FinClear Services may call for payment of money or the provision of other security (**FinClear Services Cover**) which FinClear Services considers, in its absolute discretion, appropriate in connection with the obligations incurred by FinClear Services in respect of Derivative Contracts entered into for the account of the Client. The Client acknowledges that FinClear Services is entitled to call for FinClear Services Cover under this clause 3.1 of an amount or value which exceeds the amount of the Cover which FinClear Services is required to provide to ASX Clear in respect of the Derivative Contracts registered with ASX Clear in a Client Account in respect of the Client. The time by which the Client must pay any amount called or provide security is of the essence. The Client must pay the amounts, or provide the relevant security, within 24 hours of the call for payment.

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

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

### 3.3 Authority to provide Cover

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

- (a) warrants that the Client is legally entitled and authorised to do so, and that the FinClear Services Cover is free from all Encumbrances;
- (b) undertakes that the FinClear Services Cover will not become subject to any Encumbrance at any time other than in favour of ASX Clear; and
- (c) authorises FinClear Services to pay the money and/or make the financial products available to ASX Clear as Cover.

### 3.4 Interest on Cover

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

### 3.5 FinClear Services may use moneys as Cover

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

## 4. COMMISSIONS AND FEES [**ASX Clear Minimum Term 8**]

The Client must pay to FinClear Services commissions, fees, charges, duties and taxes in connection with dealings for the Client in ASX Derivative Products at the rates determined by FinClear Services from time to time and notified to the Client in writing. Commission is payable to FinClear Services on a contract executed by FinClear Services for the transfer of Underlying Financial

Products following the exercise of a Derivatives Contract. FinClear Services will pass on part of that commission to the Broker. Commission charged by the Broker to the Client is also collected by FinClear Services on behalf of the Broker. FinClear Services will account to the Broker for such commission after deducting fees which FinClear Services charges to the Broker.

## 5. MONEYS AND DEFAULT

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

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

### 5.2 Combination, deposit and use of funds [ASX Clear Minimum Term 15]

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

### 5.3 Set Off

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

### 5.4 Default [ASX Clear Minimum Term 7]

If:

- (a) the Client fails to pay, or provide security for, amounts payable to FinClear Services or fails to perform any obligation arising pursuant to the exercise or settlement of a Derivatives Contract;
- (b) the Client becomes bankrupt or enters into a composition or arrangement for the benefit of creditors or, being a company, a liquidator is appointed to the Client or an administrator, receiver, receiver and manager or official manager is appointed over all or a part of the Client's property or an encumbrancer or its agent takes possession of all or part of the Client's property or the Client enters into any scheme of arrangement with creditors under Part 5.1 of the Corporations Act;
- (c) the Client makes any representation that is incorrect or misleading in any material way with the result that loss or damage is, or is likely to be, suffered by FinClear Services;
- (d) in the absence of the Client making alternative arrangements, the Client is at any time not contactable by the Broker immediately in order for FinClear Services to obtain instructions or call for payment of money or the provision of other security;
- (e) the conduct of the Client is such that a reasonably prudent correspondent would be of the view that the Client would be unable to comply with all the Client's obligations under this agreement, including strict compliance with any time limits;
- (f) the Client fails to complete a contract for the transfer of Underlying Financial Products following the exercise of an Derivatives Contract;
- (g) a guarantee or other security provided by the Client to FinClear Services is withdrawn or becomes ineffective and other replacement security acceptable to FinClear Services is not provided;
- (h) the Client "fails to settle" for the purpose of the terms of the Client's agreement with FinClear Services set out in the Disclosure Statement (if any) provided to the Client by the Broker in respect of the clearing and settlement of transactions in financial products quoted on ASX or other Market Transactions; or
- (i) any other event occurs which FinClear Services and the Client have agreed in this agreement constitutes a default, (each a **default**), FinClear Services may, in addition to any other rights which it may have against the Client, without giving prior notice to the Client, take any action, or refrain from taking action, which it considers reasonable in the circumstances in connection with Derivatives Contracts registered in the Client Account or otherwise entered into for the account of the Client (including, Derivatives Contracts arising from those contracts) and, FinClear Services may:
- (j) enter into one or more transactions (whether on-market or by private contract, together or in lots for cash or credit and for a price or prices upon such terms and conditions in all respects as FinClear Services sees fit) to effect the close out of one or

more Derivatives Contracts in accordance with the ASX Clear Rules;

- (k) exercise one or more Derivatives Contracts in accordance with the ASX Clear Rules;
- (l) enter into or execute any Cash Market Transaction or Derivatives Transaction (including a Futures Market Contract) as FinClear Services sees fit, whether or not the Client is permitted under clause 1;
- (m) sell or cause to be sold:
  - (i) any or all of the Client's property, including any security lodged with FinClear Services (whether the property or security had been lodged with FinClear Services in connection with this agreement or for any other reason) or held by FinClear Services or its Related Bodies Corporate on behalf of the Client or in a Holding in respect of which FinClear Services, its nominee company or a Related Body Corporate of FinClear Services is the Controlling Participant; and
  - (ii) any financial products held by FinClear Services in an account for the Client or otherwise held (including any financial products in a Holding in respect of which FinClear Services, its nominee company or a Related Body Corporate of FinClear Services is the Controlling Participant);
- (n) exercise any other power, right or remedy which FinClear Services may have under this agreement or in law or equity;
- (o) exercise or cause to be exercised any other rights conferred by the ASX Operating Rules, the ASX Clear Rules or this agreement or perform any other obligations arising under the ASX Operating Rules, the ASX Clear Rules or this agreement in respect of any Derivatives Contracts or Derivatives Transactions;
- (p) charge an administration fee calculated by reference to the additional cost which may be incurred by FinClear Services as a result of the default;
- (q) levy a default charge on the amount of up to 15% per annum;
- (r) apply any cash held by FinClear Services or the Broker on the Client's account or to which they have access (including any amount held), or payments received from the Client or in reduction of the Client's liability to FinClear Services; or
- (s) instruct the Broker to cancel any of the Client's unexecuted orders,

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

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

The Client must pay or reimburse FinClear Services any such administration fees and default charges (together with any GST payable on those amounts) immediately upon demand or at FinClear Services' option it may deduct such administration fees and default charges (and any GST) from any proceeds of sale, or proceeds from the close out or exercise of rights in relation to a Derivatives Contract, or other amounts otherwise payable to the Client. FinClear Services will not be liable to the Client for any failure by FinClear Services to exercise (or any delay in the exercise by FinClear Services of) any power under this clause, or any loss incurred by the Client as a result of FinClear Services not exercising any of its powers under this clause 5 immediately, or at all, following an event of default by the Client.

The Client acknowledges that FinClear Services, in exercising any of its rights under this clause 5.4, is entitled to act to protect its own interests and is under no obligation to subordinate the protection of its own interests to those of the Client.

### 5.5 Effect of liquidation of contract following default

Upon close out of any Derivatives Contract in accordance with clause 5.4, the Client is liable to pay to FinClear Services any amount owing to FinClear Services in respect of that contract. If the Client fails to make that payment within the time specified by FinClear Services (which time is of the essence), FinClear Services

may deal with any of the Client's money or other property held by FinClear Services and apply the proceeds against that amount.

#### **5.6 Assignment to the Broker of amounts owing**

If the Client has not paid any amount due to FinClear Services under this agreement, in addition to its rights under clause 5.4, FinClear Services may assign that debt to the Broker and the assigned debt will become an obligation of the Client's to the Broker.

#### **5.7 Method of Payment**

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

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

#### **5.8 Release**

In consideration of FinClear Services entering into this agreement with the Client, the Client releases FinClear Services (and its related bodies corporate and their respective directors, officers, employees and agents) (the **Released Parties**) in respect of all present or future claims the Client may have against the Released Parties or any of them arising out of or in connection with the exercise by FinClear Services of any of its rights under this clause 5.

### **6. ACKNOWLEDGMENTS AND WARRANTIES**

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

If the Client receives a Participant Change Notice from FinClear Services and the Participant Change Notice was received at least 20 Business Days prior to the date proposed in the Participant Change Notice for the change of Participant, the Client is under no obligation to agree to the change of Participant, and may choose to do any of the things set out below.

The Client may choose to terminate this agreement in accordance with clause 10.1 or by giving instruction to FinClear Services, indicating that the Client wishes to transfer its Derivatives Contracts to another Participant.

If the Client does not take any action to terminate this agreement and does not give any other instructions to FinClear Services which would indicate that the Client does not agree to the change of Participant then, on the Effective Date, this agreement will have been taken to be novated to the new Participant and will be binding on all parties as if on the Effective Date:

- (a) the new Participant is a party to these this agreement in substitution for FinClear Services;
- (b) any rights of FinClear Services are transferred to the new Participant; and
- (c) FinClear Services is released by the Client from any obligations arising on or after the Effective Date, and the Client will also be taken to have consented to and authorised:
- (d) the transfer to the new Participant of all the Client's open Derivatives Contracts as at the Effective Date so that they will be registered with ASX Clear in the new Participant's name;
- (e) the payment or transfer to the new Participant (or a Controlling Participant or nominee nominated by the new Participant) on the Effective Date of all money and other security (including all FinClear Services Cover) provided to FinClear Services under this agreement before the Effective Date to be held by the new Participant (or by the nominee or in a Holding in respect of which the new Participant (or another Controlling Participant nominated by the new Participant) is the Controlling Participant as the case may be) under clause 3 of this agreement as novated,

and, if the Client has executed before the Effective Date a Registered Holder Collateral Cover Authorisation under which the Client authorised a Controlling Participant to reserve (or withdraw) financial products registered in the Client's name in the ASX Clear Subposition as Collateral Cover for obligations in respect of Derivatives Contracts registered with ASX Clear in FinClear Services' name in a Client Account in respect of the Client, the Client is also taken to have appointed the new Participant and each director, secretary and officer of the new Participant for the time being as the Client's attorney to complete and execute a Registered Holder Collateral Cover Authorisation under which the Client authorises that Controlling Participant to reserve (or withdraw) financial products registered in the Client's name in the ASX Clear Subposition as Collateral Cover for obligations in respect of Derivatives Contracts registered with ASX Clear in the new Participant's name in a Client Account in respect of the Client. The novation cannot take effect until the Client has received a notice from the new Participant confirming that the new Participant

consents to acting as the Participant for the Client. The Effective Date may as a result be later than the date set out in the Participant Change Notice.

The Client will be taken to have consented to the events referred to above by the doing of any act which is consistent with the novation of this agreement to the new Participant (for example by giving an instruction to the new Participant), on or after the Effective Date, and such consent will be taken to be given as of the Effective Date. This agreement continues for the benefit of FinClear Services in respect of any rights and obligations accruing before the Effective Date and, to the extent that any law or provision of any agreement makes the novation not binding or effective on the Effective Date, then this agreement will continue for the benefit of FinClear Services until such time as the novation is effective, and the existing Participant will hold the benefit of this agreement on trust for the new Participant.

Nothing in this clause 6.1 will prevent the completion of Derivatives Transactions or Derivatives Contracts by FinClear Services where the obligation to complete those transactions or contracts arises before the Effective Date and this agreement will continue to apply to the completion of those contracts, notwithstanding the novation of this agreement to the new Participant under this clause 6.1.

#### **6.2 Explanatory Booklet and other documents [ASX Clear Minimum Term 3]**

The Client has received and read a copy of the current explanatory booklet published by ASX in respect of each ASX Derivative Product. This does not apply in relation to a Client that is a Wholesale Client.

The Client acknowledges that it has read and understood the documents (if any) given to it under ASX Clear Rule 7.1.1(b).

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

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

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

#### **6.4 Dealing as Principal and FinClear Services taking opposite position [ASX Clear Minimum Terms 5 and 17]**

The Client acknowledges that FinClear Services may, in certain circumstances permitted under the Corporations Act and the ASIC Market Integrity Rules, or the ASX Clear Rules, take the opposite position in a Derivatives Contract, either acting for another client or on its own account. The Client acknowledges that it may only transact in Derivative Transactions if it is not a U.S. person as that term is defined in Rule 902(k) of Regulation S under the Securities Act 1933 (United States).

#### **6.5 Confirmations**

The Client acknowledges that any confirmation (contract note/daily statement) dispatched electronically to the Client by FinClear Services on its own behalf or on behalf of the Broker is subject to:

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

#### **6.6 Cancellation of trades**

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

- (a) if ASX exercises its power under the ASX Operating Rules to cancel or amend (or require the cancellation or amendment of) the Derivatives Transaction or Derivatives Contract; or
- (b) in the event of an Error (as defined in the ASX Operating Rules) or otherwise in the circumstances contemplated in the ASX Operating Rules.

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

### **7. INFORMATION**

#### **7.1 Provision of Information [ASX Clear Minimum Term 2]**

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

## **7.2 Tape recording of conversations [ASX Clear Minimum Term 9]**

The Client agrees that FinClear Services may record telephone conversations between the Client and FinClear Services. The Client also agrees that FinClear Services may use such recordings for the purposes of resolving disputes, and monitoring compliance by the Client, or the Broker with their regulatory and contractual obligations. If there is a dispute between the Client and FinClear Services, the Client has the right to listen to any recording of those conversations. Nothing in this agreement obliges FinClear Services to keep a recording longer than 90 days.

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

### **8.1 FinClear Services must consent to any give up**

The Client acknowledges that FinClear Services is obliged as principal and has the Clearing Obligations in respect of all transactions in relation to ASX Derivative Products which are executed by the Broker on behalf of the Client, unless, in relation to a specified Derivatives Contract (**Allocated Trade**):

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

### **8.2 FinClear Services ceases to have Clearing Obligations following give up**

Clauses 3.1 and 5.4 do not apply in relation to an Allocated Trade, where the Client directs that trades be allocated to a Participant (who is not FinClear Services) for registration in the relevant Client Account of that other Participant and the other Participant accepts the allocation of those trades for registration, and the trade is allocated by FinClear Services to the other Participant in accordance with the ASX Clear Rules.

## **9. INDEMNITY**

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

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

## **10. TERMINATION OF AGREEMENT**

### **10.1 Termination by notice [ASX Clear Minimum Term 11]**

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

### **10.2 Effect of termination [ASX Clear Minimum Term 12]**

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

## **11. AMENDMENT**

### **11.1 Revised Terms prescribed by ASX Clear [ASX Clear Minimum Term 13]**

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

### **11.2 FinClear Services to provide Client with copy of changes [ASX Clear Minimum Term 14]**

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

## **12. SET OFF**

Without limiting clause 5.3, FinClear Services may, without notice to the Client, combine any account that the Client holds at any branch or office (in Australia or elsewhere) of FinClear Services with, or set off any amount in any currency that is or may become owing in any currency by FinClear Services (or any Related Body Corporate or FinClear Services) to the Client against, any amount owing by the Client to FinClear Services (or any Related Body Corporate of FinClear Services). For this purpose FinClear Services may:

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

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

## **13. NOTICES**

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

- (a) if given by hand, at the time left at the relevant party's last known place of residence or business;
- (b) if given by mail, 2 Business Days after it is posted where the recipient party's last known address is in Australia, and ten Business Days after it is posted by airmail where the recipient party's last known address is outside Australia;
- (c) if given by telex, upon receipt of the recipient party's answer back;
- (d) if given by telegram, six hours after dispatch to the recipient party;
- (e) if given by facsimile transmission, at the time of transmission to the recipient party's last known facsimile number, or upon acknowledgment by the recipient party; or
- (f) if given electronically, upon receipt of a confirmation of delivery by the party giving the notice of the electronic mail message to the last known electronic mail address of the recipient party.

Unless otherwise specified in this agreement, notices served by FinClear Services on the Client need not be in writing. In particular, a call under clause 3.1 may be made by telephone to the Client by FinClear Services or by the Broker on FinClear Services' behalf. FinClear Services may arrange for any notice to be given by FinClear Services to the Client under this agreement or the ASX Clear Rules to be given to the Client by the Broker acting as FinClear Services or FinClear Services Nominee's agent. FinClear Services may also provide the Broker with a copy of any such communication or notice given to the Client by (or on behalf of) FinClear Services.

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

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

## **14. AUTHORITY**

The Client acknowledges that the Client is either:

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

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

The Client represents and warrants to FinClear Services that:

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

power and authority to execute this agreement on behalf of the Client;

- (c) where the Client is a natural person, the Client has legal capacity to execute this agreement; and

in any of the above cases, where the Client enters this agreement as trustee, the Client has full power and authority as such trustee to enter this agreement and to deal in ASX Derivative Products and has the right to be indemnified out of the assets of the relevant trust in respect of all and any of its obligations and liabilities under this agreement.

## **16. INSTRUCTIONS AND AUTHORISED REPRESENTATIVES**

### **16.1 Powers of Authorised Representatives**

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

- (a) give instructions to FinClear Services in relation to FinClear Services Cover of the Client or in relation to the Derivatives Transactions or Derivatives Contracts including to directing or consenting to dealing by FinClear Services in any FinClear Services Cover, Derivatives Transactions or Derivatives Contracts of the Client and any application of the proceeds of any such dealing;
- (b) request and accept drawings;
- (c) do all other acts and things (including completing, executing and delivering documents) as the Authorised Representative thinks necessary or desirable to give effect to the above powers or otherwise in connection with this agreement; and
- (d) appoint other persons (each a "Delegate") with power to exercise all or any of the powers of the Authorised Representative conferred by this clause 16.

### **16.2 Ratification of Decisions**

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

### **16.3 Revocation of Power**

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

### **16.4 Indemnity**

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

## **17. NO ADVICE**

### **17.1 FinClear Services does not provide financial product advice**

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

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

- (a) all information (and documentation) regarding the Client's financial situation, investment objectives and particular needs sufficient and necessary for the Broker to give informed financial product advice;
- (b) any relevant new information (and documentation) as soon as it becomes available; and

details of or any change in the Client's financial situation, investment objectives and particular needs as soon as such change occurs.

### **17.2 Manner in which FinClear Services exercises its rights is not to be taken to be advice**

FinClear Services has various rights under this agreement, including:

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

The manner in which FinClear Services may exercise or not exercise, or the timing of or any delay in any exercise by FinClear Services of, any right of FinClear Services under this agreement is not to be taken to be financial product advice by FinClear Services to the

Client, and the Client must not represent to any person that it is financial product advice by FinClear Services.

## **18. GENERAL**

### **18.1 Costs and Taxes**

The Client will pay FinClear Services on demand all stamp duty or any other tax or duty imposed by state or federal legislation and registration fees (if any) payable on or in connection with this agreement or any transaction contemplated by this agreement and any documents executed under or in connection with this agreement or any transaction contemplated by this agreement and all legal costs (on a solicitor and own client basis) and expenses of or in connection with the enforcement or attempted enforcement of this agreement and all costs and expenses including financial institutions duty and debits tax (whether payable directly by FinClear Services or payable by FinClear Services by way of reimbursement to the party liable to pay the same) in relation to all transactions (including payments, receipts and banking thereof) and all matters connected with or arising out of or contemplated by this agreement.

### **18.2 Entire agreement**

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

### **18.3 Statements by FinClear Services**

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

### **18.4 Exercise of rights**

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

### **18.5 Amendments**

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

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

### **18.6 Assignment**

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

### **18.7 Giving effect to agreement**

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

The Client appoints FinClear Services and each officer of FinClear Services for the time being (each an **Attorney**) jointly and each of them severally to be the attorney of the Client with power in the Client's name and on behalf of the Client to execute any document or sign any agreement on the Client's behalf necessary or to give full effect to this agreement or the transactions contemplated by this agreement.

### **18.8 Trust provisions**

Where the Client enters into this agreement as trustee of a trust this agreement will bind that person both in its personal capacity and in its capacity as trustee of that trust and the Client represents and warrants to FinClear Services that:

- (a) it can be indemnified out of the assets of the trust for all liabilities incurred under this agreement;
- (b) it will remain the owner of the FinClear Services Cover unless it disposes of them in accordance with this agreement;
- (c) FinClear Services can be subrogated to its right of indemnity;
- (d) the transactions contemplated by this agreement are for the benefit and in the best interests of the beneficiaries of the trust; and
- (e) it has properly exercised its trust powers and has full authority under the trust to enter into the document containing this agreement.

### **18.9 Joint and several liability**

If the Client constitutes more than one person then each of those persons is jointly and severally bound by this agreement and

FinClear Services are entitled to act on the instructions of any one of those persons.

#### 18.10 Supervening legislation

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

#### 18.11 No withholding

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

#### 18.12 Currency

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

#### 18.13 Recovery of GST

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

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

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

#### 18.14 Governing law

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

### 19. DEFINITIONS AND INTERPRETATION

#### 19.1 Definitions

In this agreement unless the contrary intention appears:

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

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

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

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

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

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

**ASX Derivative Product** has the meaning given to it in clause 1.

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

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

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

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

**Banking Day** means a day (other than a Saturday or Sunday) on which banks are open for business in Melbourne.

**Business Day** means a day that is both a Trading Day under the ASX Operating Rules and a Business Day under the ASX Clear Rules.

**Cash Market Transaction** has the meaning given to it in the ASX Operating Rules

**Clearing Participant** has the meaning given to it in the ASX Operating Rules.

**Client** means the client named in the Client Application Form.

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

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

**Derivatives Contract** means a Derivatives Market Contract or Derivatives CCP Contract (each as defined in the ASX Clear Rules) or the corresponding contract between the Broker and the Client or the Broker, as the context requires.

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

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

**Futures Market Contract** has the meaning given to it in the ASX Operating Rules.

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

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

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

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

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

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

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

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

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

**Underlying Financial Product** has the meaning given to it in the ASX Operating Rules.

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

#### 19.2 Interpretation

In this agreement unless the contrary intention appears:

- (a) each gender includes the other genders;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) a reference to this agreement or another agreement includes any variation or replacement of them;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (f) a reference to anything (including any amount and FinClear Services Cover) is a reference to the whole and each part of it and a reference to a group of persons (including the Client) is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (g) if an example is given of anything (including a right, obligation or concept), the example does not limit the scope of that thing. For example, a reference to "including" means "including without limitation"; and
- (h) the singular includes the plural and vice versa.

#### 19.3 Headings

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

#### 19.4 Banking Days

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

**19.5 Clients**

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

---