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## **Terms of Business**

Jefferies (Australia) Securities Pty Ltd

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July 2020

**Jefferies**

## 1. PURPOSE AND BASIS OF THESE TERMS

- 1.1. These Terms of Business, together with any Schedules (in each case as amended from time to time in accordance with these terms), and the welcome letter (together referred to as the "**Terms**") apply to all Services (as defined in clause 4) we may carry on with or for you from time to time.
- 1.2. If there are any other agreements or documents between us and you pertaining to specific subject matter, products or Services (as defined below at clause 4.1), such other agreements or documents will be supplemental to and constitute part of these Terms. If and to the extent that these Terms are inconsistent or conflict with any other agreement or document between us and you, or to the extent that these Terms and any other agreements address the same matters, the terms of that other agreement or document shall prevail in respect of the specific subject matter, products or Services to which that other agreement or document relates.
- 1.3. In these Terms, "**we**", "**us**", "**our**" and "**Jefferies**" means Jefferies (Australia) Securities Pty Limited (Australian financial services licence ("**AFSL**") no. 487263) and its respective branches, officers, employees and directors, and "**you**" and "**your**" means you and/or (as relevant) your Principal(s). "**Affiliates**" mean any related bodies corporate (as defined by the *Corporations Act 2001* (Cth) ("**Corporations Act**")) of Jefferies. "**Principal**" means any person or entity on behalf of which you are to enter as agent into transactions with us, and where a person or entity does not constitute a single legal person, means the trustees, individuals or other persons who are the primary representatives of the organisation, trust or fund on whose behalf they are dealing.
- 1.4. These Terms are legally binding and shall take effect upon you beginning or continuing to undertake business with us.
- 1.5. These Terms supersede any previous agreement between us relating to the subject matter of these Terms and any previous version(s) of these Terms.

## 2. DEFINITION AND CONSTRUCTION

- 2.1. Unless otherwise stated, definitions are set out in these Terms.
- 2.2. References to clauses are to the clauses of these Terms. Headings are included for convenience only and shall not affect the interpretation of these Terms.
- 2.3. Any reference in any documentation between you and us to an earlier version of these Terms shall, from the date these Terms take effect, be read as a reference to these Terms or the relevant or corresponding part thereof.
- 2.4. References in these Terms to statutes and any other laws, rules or regulations shall be to such statutes, laws, rules or regulations as modified, amended, restated or replaced from time to time.

## 3. CAPACITY

- 3.1. Jefferies is an AFSL holder authorised to provide certain financial services to wholesale clients.
- 3.2. You acknowledge that you are a wholesale client (as defined in the Corporations Act) in relation to the Services (as defined below at clause 4.1) that we may provide to you under these Terms. In the event that you cease to remain a wholesale client, we may cease to provide the Services to you.
- 3.3. You will notify us immediately in the event you believe that you are not or have ceased to be a wholesale client.
- 3.4. You agree that in providing the Services to you, we may in our discretion execute any transactions as agent on your behalf, or deal with you either as principal or as agent for others (including, without limitation, for an Affiliate of ours, or as a principal while carrying out our duty to you as your agent).
- 3.5. Neither the relationship between you and us nor the Services to be provided by us will give rise to any fiduciary or equitable duty which would oblige either us or our Affiliates to accept responsibilities more extensive than those set out in these Terms or which would prevent either us or our Affiliates from:
  - 3.5.1. acting as principal or as agent for any Affiliate in respect of dealings in financial products; or
  - 3.5.2. advising on, managing, underwriting, arranging or otherwise participating in any issue or proposed issue of financial products or other corporate finance matter for any person or entity; or
  - 3.5.3. advising on, arranging or managing investments and/or dealings in financial products for any person or entity.

#### 4. DESCRIPTION OF SERVICES

- 4.1. We may provide advice and dealing services to you in respect of financial products and ancillary services, including executing orders on your behalf, receiving and transmitting orders, arranging for transactions in financial products and providing investment research and such other services as we may, in our discretion, agree from time to time (the “**Services**”).
- 4.2. The provision by us of the Services will be subject to these Terms and Applicable Law. “**Applicable Law**” means any law, rule, regulation, order, ruling, judicial interpretation or directive (whether or not having the force of law) referred to in these Terms and/or which is applicable to you, us or an Affiliate or any of our agent service providers, any of our or their activities, any transaction, and/or any of the Services provided hereunder, whether in Australia or elsewhere, from time to time, including without limitation any rule, regulation, requirement, code, notice, guideline, regulatory guide, practice note, circular, policy, recommendation or request (whether or not mandatory) made by any regulator and including (without limitation) the Corporations Act and the *ASIC Market Integrity Rules (Securities Markets) 2017* (“**MIRs**”); (ii) the rules, requirements, customs, conventions and practices of any stock exchange, futures exchange, market, multilateral trading facility, organised trading facility, over the counter market, relevant financial market association, clearing house, registration system or depository; and (iii) any statutes, executive orders, directives, or regulations relating to US, Australian, UK and EU economic sanctions, as modified, amended, restated or replaced from time to time.
- 4.3. We may give you general advice orally or in writing. We need not tell you the basis for the advice. Where we do provide market information, general advice or recommendations, we give no representation, warranty or guarantee as to its accuracy or completeness, as to any tax or accounting consequences or as to its suitability for you or persons in your financial position or with your financial goals. In giving this general advice we do not need to make any inquiry of you. By undertaking business with us, you confirm that you have the necessary experience and knowledge to understand the risks involved in any transaction which we will carry out for or with you. We give no warranty as to the performance or profitability of any transaction or investment that you may effect with or through us. Further, you acknowledge that the information or general advice provided to other clients may be different from information or general advice given to you due to individual analysis of fundamental and technical factors by different personnel and that such information may not be consistent with any proprietary investments of Jefferies or of our Affiliates or our or their associates, directors, employees or agents.
- 4.4. We, or our Affiliates, are not responsible for the provision of any tax, legal, accounting or other advice in relation to the Services or any financial product or instrument.
- 4.5. We are authorised by you to do anything which we consider necessary or appropriate either to provide the Services (including but not limited to acting as your agent and delegating our authority as your agent to another), to mitigate any loss incurred in the provision of the Services or to comply with any Applicable Law in relation thereto.

#### 5. ACTING AS INTERMEDIARY

- 5.1. Where you are an agent or otherwise acting on behalf of or for the benefit of a Principal, then even if you disclose that fact and/or the identity of that Principal to us, we will (save to the extent provided in this clause below) treat you alone as our client for all purposes relating to these Terms.
- 5.2. You, as agent for your Principal and on your own behalf, retain full responsibility for making all investment decisions with respect to any Principal.
- 5.3. You undertake and warrant where you enter into and execute a transaction pursuant to these Terms in your capacity as agent for, or on behalf of, a Principal, that:
  - 5.3.1. you are expressly authorised by, or otherwise acting within the scope of the authority you have received from the Principal to enter into that transaction for, or on behalf of, the Principal;
  - 5.3.2. the Principal has full power, authority and legal capacity to (i) enter into the transaction (ii) perform all obligations contemplated by these Terms and (iii) make the representations and warranties set out in clause 14;
  - 5.3.3. when performing the transactions and activities contemplated by these Terms, you will procure that the Principal complies with all Applicable Law;
  - 5.3.4. any information you provide or have provided to us in respect of your or the Principal’s financial position, domicile or other matter is accurate and not misleading;
  - 5.3.5. in entering into any transaction for, or on behalf of, a Principal, you have no reason to believe that the Principal will not be able to perform any settlement obligations thereunder;

- 5.3.6. you will procure the performance by the Principal of all obligations and liabilities arising under or by virtue of these Terms; and
- 5.3.7. you are now and will be at all times in the future in compliance with Applicable Laws concerning the detection of financial crime, counter-terrorism financing and anti-money laundering and, without limitation, you have carried out customer due diligence on the Principal in accordance with Applicable Law.
- 5.4. Where you have notified us of the identity of the Principal to which an instruction relates, the contractual rights and obligations arising under these Terms (other than under this clause 5) in relation to any transaction entered into pursuant to such an instruction shall be rights and obligations between us and the Principal alone. If you do not provide us with actual notice of the Principal account to which an instruction relates, we reserve the right to hold you liable to us as Principal in relation to any transaction entered into pursuant to such instruction.
- 5.5. You undertake, as agent for each Principal and on your own behalf, to notify us immediately if any two or more Principal accounts relate to the same Principal, in which case we shall administer such accounts as belonging to the same Principal. We shall, subject to these Terms, administer Principal accounts which we reasonably believe relate to two different Principal's separately.
- 5.6. We shall in respect of each Principal be entitled to set off any amount at any time owing from the relevant Principal account on any account referable to that Principal against any amount owing by us to that Principal. Where we exercise any right of set-off, security or lien against a Principal of yours, we will only do so in respect of liabilities due to us by that Principal. We will not use the assets of your Principal in any way whatsoever to meet the liabilities due to us from a different Principal of yours.
- 5.7. If in relation to any Principal of yours an event of default occurs under clause 15, you undertake to:
  - 5.7.1. promptly disclose the address and identity of such Principal; and
  - 5.7.2. take all reasonable steps to assist us in rectifying such failure including instituting legal proceedings against any underlying Principal of yours.

## 6. INSTRUCTIONS

- 6.1. You authorise us to rely and act upon, and treat as fully authorised and binding upon you, any instruction which purports to have been given by you and which is accepted by us in good faith as having been given by you or on your behalf, without further enquiry on our part as to the genuineness, authority or identity of the person giving or purporting to give such instruction and notwithstanding any communication or notice you may have made or may make to us purporting to limit the persons from whom we may accept instructions. Notwithstanding the foregoing, we may require, and you shall provide, evidence of any such authority provided to any person acting, or purporting to act, for you or on your behalf. You will be responsible for and bound by all contracts, obligations, costs and expenses entered into or incurred by us on your behalf in consequence of or in connection with such instructions.
- 6.2. Any instruction shall be transmitted in such manner as may be specified by us and shall be at your risk. We shall not be responsible or liable in any way for any direct or indirect losses, damages, costs or expenses suffered by you on account of any instruction not being received by us (whether transmitted through an electronic system or not) or not being acted upon. For the avoidance of doubt, you shall not assume that an instruction has been acted upon until you receive confirmation from us. Irrespective of the means of communication used by you for delivery of orders or instructions, we shall not be responsible for and you hereby discharge us from any and all liability whether in contract, tort or otherwise for (i) any errors, ambiguity, inaccuracies, incomplete orders or instructions or any omissions in any instructions given by you; (ii) any delays in transmission or any systems or service unavailability; (iii) any risks associated with unauthorised interventions, or improper or fraudulent use of such means of communication; and (iv) any other causes beyond our control.
- 6.3. Neither we nor our directors, officers or employees shall be liable for any direct or indirect losses suffered on account of any instruction not being received by us (whether transmitted through an electronic system or not) or not being acted upon. For the avoidance of doubt, transmission of an order to us is not evidence of our receipt or that we have accepted such order and while we may electronically acknowledge an instruction transmitted to us by you through an electronic system, we are under no obligation to execute the order which is the subject of the instruction.
- 6.4. Any transaction effected for you and any instruction you give shall be subject to and in accordance with all Applicable Laws and disclosure requirements of any relevant jurisdiction, Exchange or regulatory authority which apply in respect of us, you or your investments from time to time. In that respect, you agree to deliver any instructions, money, documents or property deliverable by you under a transaction in accordance with that transaction as modified by any instructions given by us for the purpose of effecting the relevant transaction. "**Exchange**" means any stock exchange or financial market, including ASX Limited ("**ASX**") and Chi-X Australia Pty Limited ("**Chi-X**").

- 6.5. We may at our absolute discretion refuse to accept or act in accordance with any instruction without being under any obligation to give any reason. If we decline an instruction we will (to the extent permitted by Applicable Law) take reasonable steps to notify you promptly of declining such instruction.
- 6.6. We may at any time request an instruction to be confirmed in writing by you and for the original of such confirmation to be provided to us.
- 6.7. In order to comply with Applicable Law and internal compliance policies we may (subject to Applicable Law) in our absolute discretion record, monitor and retain all communications (including email, electronic messaging and facsimile), telephone conversations and other electronic communications with you and will normally record telephone, mobile phone or other mobile handheld electronic communications device based conversations between you and our employees who act in a trading or sales capacity. You agree to such record keeping and recordings. All instructions received by telephone shall be binding as if received in writing. We will retain such records for whatever period may be required by our internal policies and/or Applicable Law. Where required under Applicable Law, the records will be available to you upon request during that period. Where you request such records, we may charge you an administration fee and such fee will be disclosed to you in advance of any related costs being incurred. Such recordings will be our sole property, will in the absence of manifest error be conclusive evidence of the communications recorded and may be used as evidence in the event of a dispute.
- 6.8. Where we agree to allow you to place orders using electronic messaging or routing systems to access your account electronically then the terms of Schedule 1 (Electronic Access Terms) will apply.

## 7. DEALING

- 7.1. Where we owe you a best execution obligation under Applicable Law, we are generally required to take reasonable steps to obtain the best outcome for you, taking into account various execution factors ("**best execution**"). This will generally involve following your instructions. There are circumstances where our best execution obligation does not apply. Where best execution applies, we meet this obligation by executing orders in accordance with our best execution arrangements under our Order Execution Policy. Refer to our Order Execution Policy for further information on the circumstances when it applies and how we handle client orders under it. A copy of our Order Execution Policy is or will be provided to you with these Terms or separately and is also available on our website - [www.jefferies.com](http://www.jefferies.com). Certain events (including corporate actions such as share splits or bonus issues) may cause an Exchange to cancel unexecuted orders in their order books at the time that such events take effect. Where any such cancelled orders were being worked by us on your behalf, we will consider your related order(s) to also be cancelled and we may refer to you for express renewal of specific instructions concerning the financial products of the relevant issuer.
- 7.2. We may delegate the performance of any of the Services to any of our Affiliates or any third person(s) as we may see fit. We may also employ such agents, including an Affiliate, as we select on such terms as we consider appropriate. We may, where we consider it appropriate, enter into clearing arrangements with clearing brokers or clearing members of an Exchange. We may arrange for an Affiliate to carry out any activity in connection with the Services, from any of our or our Affiliates' offices, whether located in Australia or elsewhere.
- 7.3. Transactions relating to financial products quoted on, or which may be effected through, an Exchange ("**Market Transactions**") are subject to:
  - 7.3.1. the operating rules, directions, decisions and requirements of an Exchange, the MIRs, an agreement with a clearing and/or settlement provider, and where relevant, the Clearing Rules and the Settlement Rules;
  - 7.3.2. the customs and usages of an Exchange; and
  - 7.3.3. the correction of errors and omissions, and

we may do whatever we consider necessary to comply with, and shall not be required to do anything or refrain from doing anything if this would, in our opinion, infringe, any item referred to in paragraphs 7.3.1 - 7.3.3 above. Unless defined elsewhere in these Terms, capitalised terms in this clause have the same meaning as under the operating rules of an Exchange and the MIRs.
- 7.4. Unless we have agreed with you otherwise, by placing orders with us you are agreeing not to receive the following notifications ("**Notifications**"):
  - 7.4.1. a notification that we have entered into your Market Transaction as principal; and
  - 7.4.2. if your Market Transaction was executed as a crossing, the execution code of the execution venue for the crossing, and

you agree and warrant to Jefferies that you are aware of the consequences of agreeing not to receive these Notifications.

- 7.5. You will not take any action or fail to take any action in circumstances where taking such action or failing to take such action would amount to market abuse, and not knowingly take any step or omit to take any step that would cause us to commit market abuse or fail to observe such proper standards.
- 7.6. To enable us to comply with our reporting obligations under Applicable Law, you agree to promptly deliver to us any information that we may from time to time request to enable us to comply with Applicable Law, including providing regulatory data to the Exchange.
- 7.7. We will generally accumulate your orders with our own orders or orders from other clients and orders of our Affiliates or their clients and undertake price averaging where you have given your consent, including by your acceptance or deemed acceptance of these Terms in accordance with clause 1.4, and/or where the order is received:
  - 7.7.1. overnight or prior to market open; or
  - 7.7.2. during normal hours at around the same time as other orders, or where we consider that it is in the client's best interest or its clients generally to accumulate and average the orders.
- 7.8. Subject to clause 7.7, we will allocate such orders in accordance with our Allocation Policy (a copy of which will be provided to you upon request) and the MIRs.
- 7.9. We may undertake a programme trade or trades comprising a single transaction or series of transactions on your behalf. In doing so we may act as principal or agent.
- 7.10. In certain circumstances Jefferies may send 'indications of interest' ("**IOIs**") to other wholesale clients. IOIs are non-binding expressions of trading interest that, in addition to other information, contain one or more elements of: security name or other identifier, side, size, capacity or price, and are sent by Jefferies to inform other wholesale clients that it seeks to, or represents a trading interest that seeks to, interact with order flow in a particular security. You consent to the disclosure of IOIs relating to your orders unless we have agreed with you otherwise.

## 8. CLEARING AND SETTLEMENT

- 8.1. We have appointed Citigroup Securities Clearing Australia Limited ("**CSCAL**") as the clearing participant and settlement agent for all Market Transactions in Australia undertaken by us, including Market Transactions in Australia undertaken on your behalf. CSCAL's contact details are:
 

Address: Level 16, 120 Collins Street  
Melbourne VIC 3000

Tel: +61 3 8643 9200
- 8.2. CSCAL carries the clearing and settlement obligations for all Market Transactions in Australia effected by us (including Market Transactions effected by us on your behalf) and must settle the Market Transactions as principal with the clearing facility or the relevant counterparty. Where we have undertaken a Market Transaction in Australia on your behalf, you acknowledge that you owe obligations to CSCAL in relation to the clearing and settlement of that Market Transaction.
- 8.3. You acknowledge that both CSCAL and JASPL have rights against you in the event that you fail to pay any amount due in respect of a Market Transaction effected by us on your behalf in Australia, or if you fail to fulfil your settlement obligations in respect of a Market Transaction effected by us on your behalf in Australia.
- 8.4. Unless we agree otherwise, you are responsible for the due performance of every transaction which we enter into with or for you and you shall be responsible for any losses we incur as a result of your failure to deliver appropriate settlement instructions to us.
- 8.5. If you have not delivered the appropriate funds or financial products to us on the due date for settlement, we reserve the right, as appropriate, to exercise a sell-out of the relevant financial products or acquire alternative financial products by whatever means we determine in our absolute discretion. Where we do so, our obligation to deliver the financial products to you, or pay the purchase price due will cease. You shall be responsible for any losses we incur arising out of your non-performance or any actions we take as a result thereof. Where permitted to do so by Applicable Law, we may effect a net settlement with or for you or on your behalf.
- 8.6. Our obligation to settle any transaction, whether we are acting as principal or agent for you, is conditional upon the receipt by us or our agents on or before the due date for settlement of all necessary documents, financial products or money due to be delivered by you or on your behalf including, for the avoidance of doubt, settlement instructions. If, in any transaction we deliver financial products to you or to your order at that time or subsequently and, for whatever reason, your obligations are not performed simultaneously with or prior to our obligations, you shall hold on trust for us any such financial products or money received from us until your own obligations are fully performed.

## 9. SHORT SELLING

- 9.1. You agree that each time you place an order with Jefferies in respect of the sale of financial products quoted on an Exchange ("**sell order**"), you will notify Jefferies whether or not the sell order is a short sale and, if so, you are selling in reliance on an existing financial products lending arrangement (such that you have a "presently exercisable and unconditional right to vest" the financial products in the buyer at the time of sale) or under an Australian Securities and Investments Commission ("**ASIC**") approved exemption. You will also provide to Jefferies the following information ("**Information**"): (i) the number of financial products that you (or your Principal) will vest in the buyer; (ii) a description of the financial products sold (i.e. fully paid ordinary shares); and (iii) the name of the listed entity that issued the financial products sold.
- 9.2. You acknowledge and agree that Jefferies will not be permitted to execute a sell order unless Jefferies has been notified whether or not your sell order is a short sale and, if it is, you have provided Jefferies with the Information.
- 9.3. Each time you place a sell order with Jefferies which is a short sale, you will be taken to have represented and warranted to Jefferies that (i) the Information is true and correct; (ii) you have complied and/or (where relevant) your client has complied with the requirements and conditions of Applicable Law and regulatory guidance issued by ASIC from time to time relating to short sales; and (iii) you will comply with your reporting obligations under the requirements.

## 10. CONFIRMATIONS AND STATEMENTS

- 10.1. We are not required to send you trade confirmations. Should you wish to receive confirmations, please contact us to discuss this. Where you receive confirmations, you undertake to review any confirmation or account statement which we give you in writing and any such confirmation or statement will be deemed correct, conclusive and binding on you unless we receive notice of error, discrepancy or omission from you in writing within one Business Day prior to the settlement day for the transaction(s). In the absence of any objection by you within this time period, we shall not be liable for any loss or damage with regard to any errors or omissions.
- 10.2. Where you submit an order in an ID Market, you agree to open one or more accounts with a local broker where required by Applicable Law to effect the transaction(s) and, accordingly, we shall not be liable to you for the execution, settlement and/or the clearing of the transaction(s). The relevant local broker shall execute, settle and clear the transaction directly with you and they will be solely responsible for providing you with a formal trade confirmation unless otherwise agreed. An "**ID Market**" is a market in which a foreign institutional investor is required to have pre-registered and been issued with a local investor identification number to access and effect transactions in the local market either directly or via the relevant local broker.

## 11. CONFLICTS OF INTEREST AND DISCLOSURES

- 11.1. In accordance with Jefferies' obligations under the Corporations Act, our obligations under Applicable Law and our own conflicts of interest policies, we have in place arrangements (such as information barriers) to identify and prevent or manage conflicts of interest that arise between ourselves or our employees and our clients, and between our different business areas and between our different clients. Such conflicts will not necessarily be separately disclosed to you prior to or at the time of any recommendation or transaction or at any other time. Except as provided in clause 11.1, neither we nor any Affiliate will have any obligation to disclose to you, or any other client, the nature or extent of any interest we or any Affiliate has in any financial product or financial service, unless obliged to do so by any Applicable Law.
- 11.2. In relation to any transaction we execute or arrange with or for you, we and/or our Affiliates may have an interest, relationship, arrangement, or duty which is material or which gives or may give rise to a conflict of interest with your interest(s) in relation to the investment or transaction concerned or financial products or assets underlying, derived from or otherwise directly or indirectly related to such investments or transactions (a "**material interest**"). We will take all necessary steps to ensure fair treatment for you in relation to any such transactions and will identify and prevent or manage any conflict of interest in accordance with our conflicts of interest policies.
- 11.3. Your attention is drawn to the fact and you acknowledge that we (and our Affiliates) are involved in a full range of services including investment management, corporate finance and financial products issuing, trading and investment research. As such we (or our Affiliates) may have a material interest or a conflict of interest in the services or transactions we carry out with or for you. We and our Affiliates have in place internal policies and procedures pursuant to our conflicts of interest policies to ensure that our various business areas and companies operate independently of each other and restrict access by the particular employee(s) responsible for handling your affairs to certain areas of information. Such policies and procedures include physical segregation and organisational arrangements designed to ensure that certain information produced or acquired by employees in one part of Jefferies' business is not shared with employees in another part of Jefferies.
- 11.4. Accordingly:
  - 11.4.1. we will provide Services to you under these Terms on the basis of information actually known to the particular employees responsible for handling your affairs; and

- 11.4.2. as a result of our relationship with other clients we may in some circumstances be unable to provide Services to you and we shall not be obliged to disclose the reason why or any further information relating thereto.
- 11.5. You agree that we are entitled to provide Services to, or effect transactions with or for you, notwithstanding that we (or our Affiliates), our or our Affiliates officers, employees or clients may have a material interest in, or a potential conflict of interest in relation to, the transaction or investment concerned and you consent to our acting in any manner that we would consider appropriate in such cases. A material interest may include but is not limited to circumstances where we (or our Affiliates) may:
- 11.5.1. be dealing as principal for our own account by selling the financial product concerned to you or buying it from you, or being a market-maker or otherwise having a holding or dealing position in the financial product concerned or an associated investment;
  - 11.5.2. be providing services to another person in relation to a financial product in relation to which you are entering into transactions;
  - 11.5.3. be matching your transaction with that of another person by acting on that person's behalf as well as yours where we are acting or seeking to act as agent for (and to receive and retain commission or other charges from) both parties;
  - 11.5.4. have other business relationships, including, but not limited to, investment banking relationships, with the company, or an Affiliate, in relation to whose financial products you are entering into transactions;
  - 11.5.5. be involved as financial adviser, broker, nominated adviser, sponsor, underwriter or otherwise in a new issue, underwriting, rights issue, takeover or similar transaction concerning the financial product, or the issuer of the financial product or a related investment;
  - 11.5.6. trade (or may have traded) for our own account (or for or on behalf of other clients), have either a long or short position in the financial product concerned, or other related investments or otherwise pursue our legitimate business as a market maker or dealer (including entering into an agreement for the underwriting of an issue of financial products or instruments) in connection with the investment concerned or related or other investments;
  - 11.5.7. execute hedging transactions prior to or following receipt of an order or information concerning a contemplated order or transaction from you or from someone acting on your behalf in order to manage our risk in relation to transactions you are entering into or contemplating, or execute transactions in order to facilitate the dutiful execution of your order or manage our own market maker or dealing activities, all of which may impact on the price you pay or receive in relation to such transactions and any profits generated by such hedging or other transaction may be retained by us without reference to you;
  - 11.5.8. enter into transactions as agent or principal, including for pre-hedging purposes, with a view to executing or facilitating the execution of the proposed transaction(s), based upon information you provide to us and any information held by us regarding your previous trading, when you provide us with the bid information, including when you ask us to provide a quotation for a portfolio trade involving the commitment of our capital or otherwise. Such transactions may impact upon the prices you subsequently obtain when we trade with you or when you trade with other firms;
  - 11.5.9. be (or be an adviser to) the trustee, operator or manager of an investment fund, units in which we are buying from or selling to you or buying or selling on your behalf; or
  - 11.5.10. provide investment research or recommendation notwithstanding that we may be acquiring, disposing of or otherwise dealing with or holding a financial product which is the subject of the research or recommendation.
- 11.6. We or any Affiliate shall be entitled to enter into a transaction with or for you or retain your investments or act as your agent or provide any other service notwithstanding any material interest including, but not limited to, those set out in clause 11.5. We may retain, and shall not be under a duty to disclose to you, any profit, commission or remuneration arising therefrom without further reference to you to the extent that doing so is permissible under Applicable Law.
- 11.7. Subject to our Order Execution Policy, we may effect transactions for you with or through any person despite an arrangement where we undertake to place business (including business on behalf of our clients), but not pay the person, in exchange for procuring services or other benefits for us from time to time that are of a nature designed to result in an improvement of our performance in providing services for our clients.
- 11.8. When providing advice to you we are not required to consider any research which has been prepared for the benefit of our clients or otherwise with a view to assisting our trading activities.
- 11.9. We are not required to ensure any research, recommendation or information we give you, or any information on which it is based, will be given before or at the same time as such is made available by us to our clients or an Affiliate to its clients. Any research, recommendation or information which we do provide to you, and any information on which it is based, may have been acted upon and used in advance



by us or any Affiliate for any purpose. The following terms apply in relation to all investment research:

- 11.9.1. We shall be under no obligation to you to ensure that any advice or information provided to you takes account of any investment research save to the extent otherwise required by Applicable Law.
  - 11.9.2. No investment research shall constitute an offer or an invitation by or on behalf of us to any person to buy or sell any financial products or instruments.
  - 11.9.3. In all cases, you should conduct your own investigation and analysis of any information contained in investment research before taking or omitting to take any action either in relation to financial products or markets.
  - 11.9.4. We may from time to time have a long or short position in any of the financial products mentioned in any investment research and may buy or sell those financial products.
  - 11.9.5. We may from time to time provide corporate finance, investment management, or other services for or solicit or seek to obtain corporate finance, investment management or other business from any entity referred to in any investment research.
  - 11.9.6. All investment research is provided subject to the terms, notices, disclosures, disclaimers and notices contained therein.
- 11.10. You should read and consider carefully any disclosures or disclaimers made in such investment research, and by engaging us to provide research to you, you acknowledge that you have done so.

## 12. FEES, CHARGES AND TAXES

- 12.1. Where applicable, our fees, costs and charges will be calculated on a commission basis, or when effecting transactions with you as a principal on a commission or mark-up or mark-down, and collected from you on each relevant transaction or on such other basis as agreed between us or as notified by us to you from time to time.
- 12.2. Unless otherwise agreed, you shall pay any commissions, brokerage fees, transfer fees, registration fees, any applicable duties and taxes, and all other liabilities, charges, costs and expenses payable in connection with transactions effected or Services provided by us on your behalf.
- 12.3. You shall be responsible for payment of all transaction, transfer and stamp taxes and duties arising out of or in relation to any transactions or in connection with any Service provided under these Terms and where under Applicable Law such taxes and duties are due to be paid or collected by us then you shall on demand pay us an amount equal to such taxes or duties and indemnify us for the same.
- 12.4. Except as otherwise required or determined by Applicable Law or market custom you shall be solely responsible for all filings, tax returns and reports which must be made by you to any relevant authority, whether governmental or otherwise, and for the payment of all taxes (including without limitation any transfer, withholding or value added taxes), imports, levies or duties due from you on any dividends, principal or interest, or any other liability or payment arising out of or in relation to any transactions or in connection with any Service provided under these Terms. Accordingly, you shall at all times remain directly accountable to and liable to the relevant tax authorities for any relevant tax liabilities arising out of any transactions under these Terms or any Services provided by us to you.

## 13. PAYMENTS AND INTEREST

- 13.1. You agree to pay any amounts due to us by you, in such currencies as we may determine, as they become due regardless of any rights of equity, counterclaim or set-off which you may have against us and free and clear of, and without withholding or deduction for, any taxes of whatsoever nature, unless the same is required by Applicable Law binding on you. You will pay such additional amounts so that the net amounts received by us (after taking account of such withholding or deduction) are equal to such amounts as would have been received by us had no such taxes been required to be withheld or deducted by you.
- 13.2. Where we to the best of our knowledge and belief consider that we are required by Applicable Law to withhold or deduct any amount for or on account of tax, including under sections 1471 to 1474 of the United States Internal Revenue Code of 1986 as amended ("**FATCA**") and under intergovernmental agreements entered into with the United States relating to FATCA, and also with respect to gross amounts which are netted against other payments between us, then we shall be entitled to withhold or deduct and pay to the relevant tax or revenue authority such amount, we shall not be required to indemnify you or gross up such payments and, in the event that we are not able to or do not withhold or deduct any such amount from the relevant payment to you, you shall pay us on demand an amount equal to such tax.
- 13.3. Unless otherwise agreed, we will not pay you interest on any money (including, if any, money that constitutes client money (as defined under the Corporations Act) held in our trust account) held for you. We will retain interest earned (if any) on any money we hold for you including any client money held in the trust account.
- 13.4. If on any date amounts are payable in the same currency both by us to you and by you to us, we may

aggregate the amounts so payable on such date and only the difference between the aggregate amounts will be paid by the party owing the larger amount.

- 13.5. You authorise us to debit any of your accounts, whether held by us or a third party, or deduct from any amounts payable to us or an Affiliate or payable in respect of any action or transaction required or permitted under these Terms or otherwise, to pay any amounts due to us pursuant to these Terms.
- 13.6. If you fail to pay any amount when due and payable to us, we reserve the right to charge you interest on any such amount until the date payment is received by us at the effective cost to us of borrowing the due amount in the relevant money markets as determined in our absolute discretion. Interest will accrue on a daily basis and will be due and payable as a separate debt.
- 13.7. If we receive or recover any amount in respect of an obligation of yours in a currency other than that in which such amount was payable, whether pursuant to a judgment of any court or otherwise, you shall indemnify us and hold us harmless from and against any cost (including costs of conversion) and loss suffered by us as a result of receiving such amount in a currency other than the currency in which it was due.
- 13.8. The introduction of and/or substitution of a new currency as the lawful currency of a country shall not have the effect of altering, or discharging, or excusing performance under any provision of these Terms or any transaction hereunder, nor give a party the right unilaterally to alter or terminate these Terms or any transaction hereunder.
- 13.9. All fees, expenses and other amounts payable under the provisions of these Terms are exclusive of any applicable goods and services or other value added, sales, turnover, consumption or similar tax and will be subject to such taxes in addition.

#### 14. CLIENT'S WARRANTIES

You hereby represent and warrant (which representations and warranties shall be deemed to be repeated by you on a daily basis) on your own behalf and on behalf of any Principal that:

- 14.1. you have full power and authority to enter into these Terms, each transaction and any other documentation relating thereto, and to perform your obligations thereunder;
- 14.2. you will be liable to us in respect of all obligations and liabilities arising from transactions effected on your instructions;
- 14.3. entering into these Terms or any transaction hereunder will not violate or conflict with any Applicable Law, any provision of any constitutional documents or any charge, trust deed, contract or other instrument or any contractual restrictions applicable to, binding on or affecting you or any of your assets or oblige you to create any lien, security interest or encumbrance;
- 14.4. all governmental, regulatory and other consents that are required to have been obtained by you in relation to your entering into these Terms or any transaction hereunder have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
- 14.5. you will comply with all Applicable Laws and disclosure requirements of any relevant jurisdiction, Exchange or regulatory authority which apply in respect of us, our Affiliates, you or your investments from time to time;
- 14.6. you will comply with all Applicable Laws and disclosure requirements relating to taxation in all relevant jurisdictions and you will not engage in or facilitate or undertake any transaction that may involve us or our Affiliates facilitating tax evasion or may place us or our Affiliates in violation of any such Applicable Laws or disclosure requirements;
- 14.7. you will comply with all Applicable Laws and disclosure requirements relating to anti-bribery and corruption, anti-money laundering and financial crime in all relevant jurisdictions and you will not engage in or facilitate or undertake any transaction that may involve us or our Affiliates facilitating bribery, corruption, money laundering or financial crime or may place us or our Affiliates in violation of any such Applicable Laws or disclosure requirements;
- 14.8. you are in compliance with all statutes, executive orders, directives or regulations relating to US, UK, Australian and EU economic sanctions and you will not knowingly undertake any transaction that places us or our Affiliates in violation of such statutes, executive orders, directives or regulations;
- 14.9. the information you have provided to us is complete, accurate and not misleading in any respect and that in the event of any change to such information, you will promptly notify us of the same;
- 14.10. you will promptly give (or procure to be given) to us such information and assistance as we may reasonably require to enable us to assist or achieve compliance with any of the obligations mentioned in clauses 14.3, 14.4, 14.5, 14.6, 14.7 and 14.9 of these Terms;
- 14.11. all investments and financial products to which these Terms apply are, and will be, so long as these Terms are in force, free from any impediment and are beneficially owned by you or the person or ultimate beneficiary on whose behalf you are acting directly or indirectly;
- 14.12. you, or any individual placing orders with us on your behalf, are not in possession of any price sensitive

or inside information which would or may affect your ability to lawfully abide by these Terms or enter into any transaction with us;

- 14.13. you have not relied on any statement made by us in making any decisions as regards transactions in financial products under these Terms; and
- 14.14. if you are using the "DMA" Services provided by us to access the Hong Kong market and transmit orders for Securities and Futures Contracts as defined under Securities and Futures Ordinance, Chapter 571 of the laws of Hong Kong (as amended from time to time) through the DMA Service (i) any individuals placing orders on your behalf are proficient in using the DMA Service; (ii) that they understand and have the ability to comply with Hong Kong regulatory requirements; and (iii) you have in place adequate arrangements to monitor orders entered through the DMA Services.

## 15. EVENTS OF DEFAULT

15.1. An "Event of Default" shall occur where:

- 15.1.1. (i) you fail to make any payment due to us or to deliver any financial products due to us (or agents used by us); or (ii) you fail to perform any other obligation owed to us; or (iii) any representation or warranty you make to us is false or misleading either under these Terms or under any other agreement between you and us; or (iv) we for any reason whatsoever reasonably deem it necessary or desirable for our protection;
- 15.1.2. you become unable to pay your debts as they fall due or become insolvent or bankrupt, are presumed to be insolvent under Applicable Laws (including under the Corporations Act sections 459C(2) or 585), or become the subject of any insolvency, bankruptcy or administration proceedings under any Applicable Law; or
- 15.1.3. a winding-up resolution is passed or a winding-up or administration order is made in respect of you or a similar petition is filed by or against you or if notice is given of a general meeting of your creditors or any similar event or a receiver, liquidator (or provisional liquidator), administrator, Controller (as defined in the Corporations Act), or similar official is appointed in respect of you or any of your property under any applicable rules.

15.2. On the occurrence of an Event of Default we and/or our Affiliates shall be entitled, without prior notice to you, to take any or all of the following actions:

- 15.2.1. terminate our agreement to provide the Services and treat any or all outstanding transactions between you and us or our Affiliates as having been cancelled or terminated;
- 15.2.2. sell or charge in any way any or all of the financial products or other assets or property which we are holding or control or are entitled to receive on your behalf and to apply the proceeds in or towards satisfaction of any obligation or liability you may have to us (including any contingent or prospective liability);
- 15.2.3. buy any financial product, asset or other property and deliver such financial product, asset or other property to any company or entity, or otherwise take any action we see fit in order to close-out any positions or transactions you may hold with us, in whole or in part, or in order to close-out any commitments made or terminate transactions on your behalf;
- 15.2.4. set off any obligation we owe to you, and/or to apply any cash we hold for your account, against any obligation or liability you may have to us (including any contingent or prospective liability); or
- 15.2.5. close out, replace or reverse any transaction or position and convert any currency at such rates and times as conclusively determined by us and as is appropriate in order to meet obligations incurred on your behalf or on behalf of your account(s) with us, enter into any other transaction or take, or refrain from taking, such other action at such time or times and in such manner as, at our sole discretion, we consider necessary or appropriate, acting at all times in good faith, to cover, reduce or eliminate our or our Affiliates' loss or liability under or in respect of any contracts, positions or commitments.

15.3. On the occurrence of any of the Events of Default you agree to notify us of the same in which the provisions of clause 15.2 shall apply at the time that such notification is received by us.

15.4. Without prejudice and in addition to any general lien, right of set-off or power of sale or other similar right which we may be entitled to exercise whether by law or otherwise over any of your financial products, monies or other property, your financial products, monies and other property shall be subject to a general lien in our (or our Affiliates') favour, insofar as there remain any outstanding amounts due or liabilities (whether actual or contingent) outstanding from you to us or our Affiliates.

## 16. LIABILITY AND INDEMNITY

16.1. We (or our Affiliates) shall not be liable for any default of any counterparty, bank, custodian, sub-custodian or other entity which holds money, financial products or other documents of title on your behalf or with or

through whom transactions on your behalf are conducted.

- 16.2. We (or our Affiliates) will not be liable for any losses, including, but not limited to, market or trading losses, liabilities, damages, charges, actions, claims or disbursements of any kind or nature whatsoever (including any reasonable legal or other reasonable costs) or any expenses relating to investigating or defending any such demands, charges or claims (together "**Losses**") suffered by you in connection with the Services, including in relation to advice, as a result of you giving orders or instructions or us acting or refusing to act on your orders or instructions, or your use of the Software or the System (each as defined in Schedule 1) unless such Losses directly arise from our (or our Affiliates') gross negligence, wilful default or fraud.
- 16.3. You shall on demand indemnify and keep us (or our Affiliates) and each of our (or their) directors, officers, partners, employees and agents, and each of their respective heirs, successors and assigns (our "**Officers**") harmless against any cost, tax, expense, damage, loss or liability whatsoever which may be suffered or incurred by us (or our Affiliates) or any of our (or their) Officers as a result of any transaction, action or step taken by us (or our Affiliates) under these Terms (including the costs of enforcing the same) unless, and then only to the extent that, such cost, expense, damage, loss or liability is finally judicially determined to be fraudulent, in wilful default or grossly negligent on our (or our Affiliates') part or on the part of any of our (or their) Officers.
- 16.4. Neither we, our Affiliates, nor any of our or their Officers shall be liable for any loss arising from any act or omission of any agent or third party who performs Services pursuant to these Terms unless, and then only to the extent that, such loss is finally judicially determined to be fraudulent, in wilful default or grossly negligent on our or our Affiliates' part or on the part of any of our or their Officers.
- 16.5. In no event shall we, our Affiliates, or any of our, or their, Officers be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for indirect, consequential or special damages, howsoever arising, whether or not advice of the possibility of such loss or damages was provided.
- 16.6. Nothing in these Terms will exclude or restrict our liability for any liability which by law we cannot exclude or restrict, and any obligation which we have to you under Applicable Law in respect of a breach of any such obligation.

## 17. TERMINATION

- 17.1. Without prejudice to anything contained in clause 15, you may terminate these Terms at any time by sending us written notice which shall take effect from the date acknowledged by us. We may terminate these Terms by sending you written notice which shall specify the date on which such termination shall take effect.
- 17.2. Termination of these Terms pursuant to clause 17.1 shall be:
  - 17.2.1. without prejudice to the completion of any transaction or transactions already initiated and any transaction or all transactions outstanding at the time of termination will be settled and delivery made;
  - 17.2.2. without prejudice to and shall not affect any accrued rights, existing commitments or any contractual provision intended to survive termination; and
  - 17.2.3. without penalty or other additional payment save that you will pay: (i) our outstanding fees and charges; (ii) any expenses incurred by us in the provision of the Services or under these Terms payable by you; (iii) any additional expenses incurred by us as a consequence of termination; and (iv) any losses necessarily realised in settling or concluding outstanding obligations.

## 18. CONFIDENTIALITY

- 18.1. We and you will at all times keep confidential and shall not disclose to a third party (other than our Affiliates) any information of a confidential nature or otherwise acquired in connection with these Terms or the Services, except for information which either of us (or our Affiliates) is bound to disclose under compulsion of Applicable Law or by request of regulatory agencies or to our respective professional advisers or, in our case, where disclosure to a third party such as an intermediary or clearing house is necessary in order to facilitate the proper performance of the Services to you.
- 18.2. We shall be under no duty to (i) disclose to you any information in making any decision (ii) take any action in connection with the provision of the Services, or (iii) take into account any information or other matters which come to our notice or the notice of any of our Officers where this would, or we reasonably believe that in doing so would, be a breach of any duty of confidence to any other person.
- 18.3. You warrant that the information you provide to us from time to time is complete, true and correct, and we are entitled to rely on such information until we receive written notice from you of any changes therein.

## 19. DATA PROTECTION AND PRIVACY

- 19.1. We may use, store or otherwise process ("**Process**") any personal information ("**Personal Information**") about you or your shareholders, Permitted Users (as defined in Schedule 1), officers, employees, agents or representatives ("**Associated Persons**") provided by you or your Associated Persons to us under, or otherwise acquired by us in connection with, these Terms or any other agreement we have with you. We and our Affiliates, professional advisers or service providers (whether Affiliates or not) in any jurisdiction, may Process such Personal Information for the purposes of providing the Services and/or System (as defined in Schedule 1), administering these Terms or any other agreement we have with you, client onboarding, anti-money laundering, credit checking, providing services to us and/or you, complying with our legal and regulatory obligations, and other purposes including the purposes set out in our Privacy Policy (the "**Purposes**"). Further details of our privacy policy are available on request from us or on our website – [www.jefferies.com](http://www.jefferies.com) ("**Privacy Policy**"). We may retain such Personal Information, in accordance with Jefferies' data retention policies, after our agreement with you under these Terms or any other agreement we have with you terminates.
- 19.2. For the Purposes only, we may transfer or disclose ("**Disclosure**") Personal Information in the circumstances identified in clause 18.1 (which apply to disclosures of Personal Information as well as confidential information) and otherwise in accordance with the *Privacy Act 1998* (Cth) ("**Privacy Act**") and our Privacy Policy, wherever located throughout the world. You and your Associated Persons consent to the Disclosure of Personal Information to overseas recipients (including in countries without strong data privacy laws). Notwithstanding the foregoing, we will always protect your Personal Information in accordance with these Terms).
- 19.3. By agreeing to these Terms, you freely consent to the Processing and Disclosure of your Personal Information as discussed in clauses 19.1 and 19.2 and in accordance with our Privacy Policy and warrant that you have obtained, or will at the relevant time have obtained, the consent of your Associated Persons to such Processing and Disclosure of their Personal Information and provided them with the other information set out in this clauses 19.3 and 19.4. You acknowledge that we may not be able to provide the Services to you if you do not provide all or part of the Personal Information to us. You also agree that the Purposes may be amended to include other uses or disclosures of Personal Information (compatible with the original Purposes for which the Personal Information was collected) following notification to you (which you will pass on to any affected Associated Persons) and you warrant that you have obtained, or will at the relevant time have obtained, the corresponding consent of your affected Associated Persons).
- 19.4. You may request at any time that we do not use Personal Information about you for direct marketing purposes. You and your Associated Persons may also have rights of access to, and correction of, the Personal Information that we hold about you or them, and, in some circumstances, to make complaints regarding our processing of this Personal Information under the Privacy Act. Our Privacy Policy contains information regarding the exercise of any of these rights. You may also contact your regular Jefferies contact person.

## 20. ASSIGNMENT AND AMENDMENT

- 20.1. The obligations under these Terms bind and the rights will be enforceable by, the parties to these Terms and their respective successors, permitted assigns and personal representatives.
- 20.2. Subject to clause 20.3 below, neither you nor us may novate or assign any of your or our respective rights and/or obligations under these Terms, any corresponding transaction, open position or any contract without the prior written consent of the other.
- 20.3. You agree that in the event that we consolidate, amalgamate, reorganise or transfer our business to another entity (including to an Affiliate), we may assign any of the rights and obligations under these Terms to such entity and we may transfer client monies held for you (if any) to such entity. We shall give you notice which will specify a date upon which the assignment and/or transfer will become effective. This date will be at least ten (10) Business Days after the date of the notice. Such assignment will have the effect of creating a novated agreement between you and the entity to which such rights or obligations are assigned.
- 20.4. To the extent required by, or consequential to, any such assignment you agree to enter into further documentation and/or particular terms as we or any assignee may reasonably require solely in order to make or facilitate the action envisaged in clause 20.3 above and to enter into such new arrangement with you concerning the Services under these Terms.
- 20.5. We may make changes to our Terms, policies and other documentation referred to in these Terms from time to time. We will notify you of any changes to our Terms or Order Execution Policy and execution arrangements by posting updated versions of the applicable documents on [www.jefferies.com](http://www.jefferies.com) and, where there is a material change, by giving you written notice. Any such change will become effective when the updated document is posted on our website or, in respect of material changes, on a date to be specified in the notice which will be at least ten (10) Business Days after the notice is sent to you unless (i) it is impractical to do so; or (ii) otherwise required by Applicable Law.

## 21. COMPLAINTS AND ADDRESS FOR NOTICES

If you have a complaint about us, you should raise it in the first instance with your usual contact at Jefferies. If you are not satisfied with the response of your usual Jefferies contact (or if you prefer not to raise the matter with such person) please provide details of your complaint in writing to the attention of Compliance Officer by email to [ComplianceAU@jefferies.com](mailto:ComplianceAU@jefferies.com) or by post to Level 22, 60 Martin Place, Sydney NSW 2000.

## 22. NOTICES, INSTRUCTIONS AND OTHER COMMUNICATIONS

- 22.1. All correspondence, notices, certificates and statements of account ("**Notices**") may be provided to you by whatever means unless otherwise required by Applicable Law. Any Notices from us to you shall be sent to the last mailing address, facsimile number or email address held for you on our records (as applicable). You confirm that you have regular access to the internet and consent to information including, without limitation, information about amendments to our Terms and other documents referred to in these Terms, and other information concerning the Services provided to you which we will post on our website at [www.jefferies.com](http://www.jefferies.com) or such other website as we may from time to time notify to you.
- 22.2. Save for the provisions of clause 20.5, all Notices will, in the absence of manifest error, be deemed correct, conclusive and binding on you if not objected to in writing by you within three Business Days of receipt. "**Business Day**" means a day which is not a Saturday or a Sunday and upon which banks are open for business in Sydney.
- 22.3. Any Notice to be made by you to us shall, if sent by letter, be sent to: Compliance Officer, Jefferies (Australia) Pty Limited, Level 22, 60 Martin Place, Sydney NSW 2000 or to such other address as shall from time to time have been notified to you, or if sent by facsimile or e-mail transmission to the number or e-mail address provided by us to you for such purposes.
- 22.4. A written Notice shall be deemed to have been received by you:
- 22.4.1. if delivered by hand on a Business Day, on the day of delivery and, if delivered by hand on a day other than a Business Day, on the first Business Day after the day of delivery;
  - 22.4.2. if sent by first class post or airmail, on the second Business Day after the day of posting if the address is in the same country as that of the sender and if to a different country on the fourth Business Day;
  - 22.4.3. if sent by facsimile or e-mail transmission before 1700 hours (Sydney time) on a Business Day, on the day of transmission; and
  - 22.4.4. if sent by facsimile or e-mail transmission on a day other than a Business Day or after 1700 hours (Sydney time) on a Business Day, on the first Business Day after transmission.
- 22.5. A Notice or communication made or delivered to us will be effective only when actually received by the appropriate department or officer responsible for the relevant subject matter.

## 23. FORCE MAJEURE

Whilst we will endeavour to comply with our obligations in a timely manner, we (or our Affiliates) will incur no liability whatsoever for any partial or non-performance of our (or their) obligations by reason of any cause beyond our reasonable control including but not limited to any communications, systems or computer failure (including, without prejudice to the generality of the foregoing, the failure of any system provided pursuant to the terms of Schedule 1), market default, suspension, failure or closure, or the imposition or change (including a change of interpretation) of any law or governmental or regulatory requirement and we (or our Affiliates) shall not be held liable for any direct or indirect loss you may incur as a result thereof and notwithstanding that you may have notified us (or our Affiliates) of the same.

## 24. MISCELLANEOUS

- 24.1. You acknowledge and agree that in conducting business with us pursuant to these Terms, you do not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person other than as expressly set out in these Terms.
- 24.2. Nothing in these Terms (or any of the arrangements contemplated by them) shall be deemed to create a partnership, joint venture or equivalent between you and us.
- 24.3. No failure to exercise or delay in exercising any right or remedy under these Terms shall constitute a waiver thereof and no single or partial exercise of any right or remedy under these Terms shall preclude or restrict any further exercise of such right or remedy. The rights and remedies contained in these Terms are cumulative and not exclusive of any rights and remedies provided by Applicable Law.

24.4. If any provision in these Terms shall in whole or in part be held by any court of competent jurisdiction to any extent to be illegal or unenforceable under any enactment or rule of law that provision or part shall to that extent be deemed not to form part of these Terms and the enforceability of the remainder of these Terms shall not be affected thereby.

**25. GOVERNING LAW AND RIGHTS OF THIRD PARTIES**

25.1. You and we agree that these Terms (and any non-contractual obligations, disputes or claims arising out of or in connection with them) shall be governed by and construed in accordance with the laws of New South Wales.

25.2. You irrevocably waive, with respect to yourself and your revenues and assets, all immunity on the grounds of sovereignty or similar grounds in respect of your obligations under these Terms.

25.3. Where you do not have a permanent place of business in Australia, you agree to appoint and keep appointed an agent for the service of process and to notify us of the identity of such agent.

25.4. Any Affiliate of ours can rely on and enforce the provisions of these Terms and rely on any exclusion or limitation of liability contained herein as if references to "we" or "us" were references to such Affiliate. Save for our Affiliates, no person who is not a party to these Terms may enforce any of their provisions or rely on any exclusion or limitation of liability contained herein.

25.5. The rights of the parties to vary these Terms are not subject to the consent of any other person.

## Schedule 1

### ELECTRONIC ACCESS TERMS

1. Subject to this Schedule, you are permitted to transmit and receive information, positions, indications of interest and orders for the purchase and sale of financial products or related information to Jefferies through FIX transmission, a web based interface, through electronic order transmission software, or through other methods established and made available by Jefferies including, but not limited to, algorithmic trading, algorithmic re-route and programme trading from time to time (the "**System**").
2. You agree to restrict access to the System to your employees and agents, to refrain from disclosing the passwords or access codes to any third party, to take all necessary precautions to ensure that the details of any authorised trader's user name and password do not become known to, or accessible by, any other person or entity, and to refrain from allowing anyone other than your authorised employees or agents access to the System ("**Permitted Users**"), without our prior consent.
3. You confirm that to the extent the System permits the entry of orders, all trades entered by persons using passwords or access codes issued to you shall be your sole responsibility and you agree to settle any such transactions in the ordinary course of business.
4. You agree that orders are only permitted to be entered by Permitted Users you authorise and you will properly supervise all Permitted Users.
5. You agree, represent and warrant that you and the Permitted Users:
  - 5.1. are aware of, and fully understand:
    - 5.1.1. the Applicable Laws relevant to use of the System, your trading arrangements and any transactions that result; and such policies and procedures as Jefferies may notify you of from time to time (collectively the "**Electronic Trading Rules**"); and
    - 5.1.2. the order entry functionality of the System;
  - 5.2. will observe the Electronic Trading Rules, including the restrictions on market manipulation, false trading and insider trading prohibitions which are not the only prohibited conduct contained in the Electronic Trading Rules; and
  - 5.3. will not use the System in a manner causing Jefferies to breach any of the Electronic Trading Rules or bring Jefferies' reputation into disrepute. This includes, but is not limited to, conduct which is perceived to be interfering with the efficiency and integrity of the market or the proper functioning of any trading system operated by a Relevant Exchange.
6. You must ensure each Permitted User is provided with, and reads, a copy of this Schedule prior to their use of the System and by using the System such persons give Jefferies the representations and warranties in clause 5 above and agrees to the restrictions in clause 3 of this this Schedule.
7. You represent, warrant and undertake to Jefferies that:
  - 7.1. you will be in a position to identify to Jefferies the relevant Permitted User who placed an order using the System if requested by Jefferies; and
  - 7.2. you have adequate financial resources to meet your obligations to Jefferies incurred as a result of using the System.
8. You agree that:
  - 8.1. subject to our Order Execution Policy, an order that you enter into the System may be routed either directly to the order books of an Exchange or indirectly to the order books of an Exchange via any automated service provided by Jefferies to clients which matches orders with orders of (i) Jefferies; or (ii) other clients of Jefferies, otherwise than on an order book (as permitted under a pre-trade transparency exception);
  - 8.2. a market crossing effected by Jefferies may occur in relation to any order you place using the System, with Jefferies acting in its capacity as either agent or principal, provided that there is no pre-arrangement with respect to the trade between Jefferies and you;
  - 8.3. Jefferies may receive commission on both sides of a market crossing; and
  - 8.4. the reference to these matters in this Schedule constitutes a disclosure, as required by the Applicable Rules.
9. Jefferies may in its absolute discretion and without prior notice or liability to you, suspend or terminate the System or make any adjustments to any order as Jefferies deems necessary if you:
  - 9.1. breach any clause of these Terms or this Schedule; or
  - 9.2. have Permitted Users who Jefferies' (in its discretion) considers may lack sufficient supervision or knowledge of the Electronic Trading Rules.
10. You acknowledge that trades effected on your behalf on a Relevant Exchange will be executed in the name of Jefferies.
11. You acknowledge that in connection with your use of the System, Permitted Users may be required to download certain software, or may receive physical media or an electronic transmission containing such software (the "**Software**"). We hereby grant you a non-exclusive, non-transferable, limited term license to use the Software during the term of these Terms solely for the purposes described in these Terms. You acknowledge by entering into these Terms, that you do not obtain any ownership interest in the System or the Software, and that your ability to use the System and Software may be terminated at any time as described herein.
12. You shall not and shall not permit any third party to copy, modify, alter, print, list, de-compile, disassemble or otherwise seek to reverse engineer the Software whether in whole or in part or to attach, integrate with, or repackage access to the System or otherwise connect the Software to any hardware or software without our prior written consent, which may be given or withheld in



its sole discretion. You understand and agree that the license granted herein does not include a right to reverse-engineer, disassemble, dissect, duplicate or modify the Software or System, or the right to integrate the Software with or into any other software or system.

13. Order Execution. Jefferies' obligations with respect to the execution, confirmation and settlement of electronically transmitted orders actually received by Jefferies shall be the same as would otherwise be applicable if the orders had been transmitted via telephone. Claims based on orders actually received by Jefferies under this paragraph shall not be subject to the limitations of liability and disclaimers set forth in this Schedule but shall be governed by the Terms entered into between the parties. In addition to the rights conferred by the Terms and this Schedule, Jefferies may in its absolute discretion and without prior notice or liability to you, alter any existing trading restrictions, impose new trading restrictions, or suspend, terminate or modify the System. Furthermore, Jefferies may at any time reject, cancel, or (to the extent permitted by Applicable Law) make any adjustment which it deems necessary to any trading order transmitted by you via the System, when:
  - 13.1. Jefferies considers, at its sole discretion, that such order may breach or may have breached the provision of Applicable Law; or
  - 13.2. Jefferies deems, at its absolute discretion, that your order may interfere with the efficiency and integrity of an Exchange or the proper functioning of a trading system operated by an Exchange; or
  - 13.3. Jefferies considers it reasonably necessary in order to protect its legitimate interests.
14. Limitation of Liability. Other than in cases based on the negligence or willful misconduct of Jefferies, Jefferies shall have no liability to you for any inability of Jefferies to receive your orders or to transmit information to you, whether about order execution or any related messages for any reason whatsoever, including, without limitation:
  - 14.1. A failure, malfunction, delay, or interruption of service in any hardware or software;
  - 14.2. A failure, malfunction, delay, or interruption of telecommunications service;
  - 14.3. An error by you in inputting the order;
  - 14.4. An error on receiving the order by Jefferies;
  - 14.5. Rejection of any order for any reason whatsoever;
  - 14.6. The acts or omissions of third parties; or
  - 14.7. Any other cause.
15. Disclaimer of Warranties. In no event shall Jefferies (or its Affiliate) have any liability to you or any third party for damages of any kind incident to your or Jefferies' use of (or inability to use), for any reason whatsoever, the System, whether direct, indirect, incidental, special or consequential (including, without limitation, loss of data, loss of use, loss of profits or revenues or other economic loss by you or any third party), whether in tort (including actions for infringement, negligence or strict liability), contract or otherwise, whether or not Jefferies (or its Affiliate) has been informed of, or otherwise might have anticipated, the possibility of such damages, except for actions based upon the negligence or willful misconduct of Jefferies. Without limiting the provisions of this paragraph, in the event of Jefferies' inability to receive or transmit a message through the System for any reason whatsoever, neither Jefferies nor any Jefferies Affiliate or third party shall have any liability to you or any third party for lost profits or other losses incurred by you or such third party as a result of changes in price from that which would have been available if such transmission or retransmission had proceeded. NEITHER JEFFERIES, ANY AFFILIATE NOR ANY THIRD PARTY FURNISHING INFORMATION TO JEFFERIES GUARANTEES OR MAKES ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER (I) WITH RESPECT TO THE SEQUENCE, ACCURACY, CURRENCY OR COMPLETENESS OF ANY QUOTATIONS OR DERIVED DATA, MARKET INFORMATION OR ANY OTHER INFORMATION FURNISHED HEREUNDER, OR (II) THAT ANY DATA DISSEMINATED MAY BE RELIED ON FOR TRADING PURPOSES, AND YOU AGREE TO INDEPENDENTLY DETERMINE MARKET PRICES THROUGH CUSTOMARY TRADING CHANNELS.
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17. Indemnity. You agree to indemnify, defend, and hold Jefferies and its Affiliates harmless of and from any demands, claims or suits by any third party (other than claims that use of the Software infringes upon the proprietary rights of a third party) arising out of or related to your use of the Software, the System, or any portion thereof.
18. In relation to any form of electronic access, the provisions of this Schedule will apply in addition to and without prejudice to the Terms provided however that in the case of contradiction between the Terms and this Schedule, the terms of this Schedule shall prevail in relation to the specific matters described herein.