



**INTERACTIVE BROKERS AUSTRALIA PTY LTD**

ABN 98 166 929 568  
AFSL number 453554

**INTERMEDIARY AGREEMENT: FULLY DISCLOSED ACCOUNTS**

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**1. BACKGROUND**

1.1 IBA:

- (i) operates an electronic brokerage business providing Services to retail, wholesale and professional customers to conduct purely self-directed trading;
- (ii) provides the Administrative Functionality; and
- (iii) does not provide any legal, tax, financial or accounting advice to the Intermediary, its clients, or anyone else.

1.2 Intermediary:

- (i) provides Intermediary Services to its clients; and
- (ii) wishes IBA to provide the Services to its clients which are also, or will be, customers of IBA, and,
- (iii) wishes to utilise the Administrative Functionality provided by IBA in respect of the Master Account(s) and the Sub-Accounts.

**2. AGREEMENT**

- 2.1 This Agreement governs the relationship between the Intermediary and Interactive Brokers Australia Pty Limited ABN 98 166 929 568 ("**IBA**") for the purposes of the provision of the Master Account and Administrative Functionality in relation to the Master Account and the Sub-Accounts.
- 2.2 Any previous understanding, agreement, representation or warranty in relation to the subject matter of this document has no further effect and is replaced by this Agreement.
- 2.3 The provisions of IBA's General Terms and Conditions (available on its website) apply to the Intermediary's own proprietary accounts (excluding the Master Account).
- 2.4 The Intermediary acknowledge that all IBA's provision of IB System, the Administrative Functionality, the Master Account and any Sub-Account(s) are subject to the Corporations Act, the operating rules of relevant financial markets and clearing and settlement facilities and other Applicable Laws. The Intermediary agrees that in the event of any inconsistency between this Agreement and any Applicable Laws, the latter will prevail to the extent of the inconsistency.
- 2.5 This Agreement constitutes a legally binding contract which the Intermediary accepts for itself and on behalf of any principal, principals, persons or entities for which it acts.
- 2.6 This Agreement is in four parts:
- (i) Part A sets out the general terms of the Intermediary Agreement which are apply to all Intermediaries;
  - (ii) Part B sets out the additional terms for holders of Family Office Accounts and Family Management Accounts;

- (iii) Part C sets out the additional terms for Intermediaries which are (or are required to be) AFS Licensees and Authorised Representatives; and,
  - (iv) Part D sets out the additional terms for Intermediaries which are Authorised Representatives of AFS Licensees only.
- 2.7 Where this relationship between the Intermediary and IBA is captured by the Unfair Contract Terms Regime (“UCT”) within meaning in clause 3, this agreement shall be subject to the UCT and excludes all terms which are inherently oppressive and/or unfair to you.

## **PART A - GENERAL TERMS OF THE INTERMEDIARY AGREEMENT**

### **3. DEFINITIONS AND INTERPRETATION**

**Administrative Functionality** means the functionality outlined in clause 7.1.

**Affiliate** means, in respect of an entity or other person, an entity or other person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the entity or other person.

**Applicable Laws** means, in relation to a matter, all laws, legislation, regulation and subsidiary regulation, instruments and orders of a regulatory authority or a court, rules and procedures of a Financial Market or a CS Facility which apply to the relevant matter in the relevant jurisdiction, including for example, and without limitation, the Corporations Act and regulations made pursuant thereto, ASIC Class Orders, the Market Integrity Rules and other instruments.

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

**Australian Financial Services Licence** or **AFS Licence** has the meaning as defined in section 911A of the Corporations Act.

**Authorised Person** has the meaning given to that term in clause 8.1(i).

**Authorised Representative** has the meaning given to that term in section 9 of the Corporations Act.

**Business Day** means a day other than Saturday or Sunday and which is not a public holiday in Sydney, Australia.

**Change of Control** means any change in the direct or indirect ownership or control of more than 50% of the voting shares or beneficial ownership of the Intermediary, or any change in the persons who control the board of directors or management of the Intermediary.

**Clearing Participant** means, in relation to a Transaction, the participant of the relevant CS Facility which has the responsibility for clearing that Transaction.

**Client Account** means an account held, solely or jointly, in the name of a customer of IBA in accordance with IBA's General Terms.

**Confidential Information** means

- (a) the terms and conditions of this Agreement;
- (b) any information disclosed by one Party (the "Discloser") to the other Party (the "Recipient") in connection with this Agreement or the Services that:
  - (A) is provided in written or electronic form and marked or designated as "confidential" or "proprietary" by the Discloser at or before the time of disclosure;
  - (B) is disclosed orally and identified as confidential at the time of disclosure, provided that the Discloser confirms the confidential nature of such information in writing (including by email) within five (5) Business Days after disclosure; or
  - (C) by its nature or the circumstances of disclosure, would reasonably be understood to be confidential or proprietary, Security Information, IB System, trading strategies, account information, and business operations,but does not include information that the Recipient can demonstrate:
- (D) was already lawfully known to the Recipient without confidentiality obligations prior to disclosure by the Discloser;
- (E) is or becomes publicly available through no breach of this Agreement by the Recipient;
- (F) is rightfully obtained by the Recipient from a third party without breach of any confidentiality obligation known to the Recipient; or
- (G) is independently developed by the Recipient without access to or use of the Discloser's Confidential Information.

**Confirmation** means a confirmation that is required to be given pursuant to 1017F of the Corporations Act.

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

**CS Facility** means a clearing and settlement facility, within the meaning of the Corporations Act whether located in Australia or overseas, and includes ASX Clear and ASX Clear (Futures).

**DDO** means the design and distribution obligations under Part 7.8A of the Corporations Act.

**Dealing** has the meaning given in section 766C of the Corporations Act.

**Default** has the meaning in clause 20.1.

**Financial Market** means, as applicable:

- (a) the financial markets operated by ASX or Chi-X and any other financial market licensed under Parts 7.2 or 7.3 of the Corporations Act; and
- (b) any Foreign Financial Market.

**Financial Product** has the meaning given to that term in section 761A of the Corporations Act and includes Securities and Foreign Exchange Contracts.

**Financial Product Advice** means financial product advice as defined in section 766B of the Corporations Act.

**Foreign Exchange Contract** has the meaning given to that term in section 761A of the Corporations Act.

**Foreign Financial Market Participant** means a third-party broker or market participant, or CS Facility participant, which may be an Affiliate of IBA, with whom IBA or an Affiliate of IBA enters into an execution and/or clearing arrangement for the purposes of IBA providing Services.

**General Terms and Conditions** or **General Terms** means IBA's general terms and conditions as amended from time to time.

**Gross Negligence** means a standard of conduct which is significantly beyond ordinary negligence, whereby a Party acts with reckless disregard in respect of the other Party.

**GST** means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any tax applying to any transaction envisaged under this document in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under the GST Law or any other law for such a tax.

**GST Law** means the same as "GST law" means in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**IBA, we, us, or our** means, as applicable, Interactive Brokers Australia Pty Ltd ACN 166 929 568 and any of its successors or assignees.

**IBA DDO Product** means a Financial Product issued by IBA for which IBA has published a Target Market Determination.

**IBA Indemnitees** means IBA and each of its affiliates, successors, assigns, directors, officers, employees, agents, sub-custodians and representatives.

**IBA's Website** means <http://www.interactivebrokers.com.au> and includes the webpages which are accessible from links on this webpage provided that such pages are hosted by IBA or an Affiliate of IBA.

**IB System** has the meaning given to that term in Clause 9.2.

**Immediate Family Member** means, in relation to a person, the person's

- (a) spouse (as that term is defined in the Acts Interpretation Act 1901);
- (b) de facto partner (as that term is defined in the Acts Interpretation Act 1901);
- (c) child (or adoptive child);
- (d) another person who is wholly dependant on the person for financial support.

**Intermediary** means the holder of the Master Account.

**Intermediary Services** means

- (a) if Intermediary is, or is required to hold, an AFS License, or is, or is required to be,

an Authorised Representative for the purposes of the services it provides under Applicable Law, the Financial Product Advice (whether financial planning, financial advice, or investment advice or otherwise), Dealing, and associated administrative or professional services; or,

(b) if Intermediary does not and is not required to hold an AFS License, or is not and is not required to be an Authorised Representative for the purposes of the services it provides under Applicable Law, the dealing, arranging, and associated administrative services, that the Intermediary provides to the Sub-Accounts.

**Loss** means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Master Account** means the master account, in relation to the Sub-Accounts, held by the Intermediary within the arrangement with IBA.

**Market Integrity Rules** means the market integrity rules made by ASIC in accordance with Part 7.2A of the Corporations Act, as amended from time to time, that apply to a relevant Financial Market.

**Order** means the same as 'Order' in ASIC Market Integrity Rules (Securities Markets) 2017, schedule 1.4, and ASIC Market Integrity Rules (Futures Markets) 2017, Schedule 1.4, as applicable for the market that the Order would transact on, or otherwise as defined by the market operator of a Foreign Financial Market with respect to Orders that would transact on that Foreign Financial Market.

**Retail Product Distribution Conduct** has the meaning given to that term in section 994A(1) of the Corporations Act.

**Related Agreement** means any other agreement between the Parties relating to the Services, Administrative Functionality, the Master Account or the Sub-Account(s).

**Related Body Corporate** or **Related Bodies Corporate** has the meaning given to that term in Section 50 of the Corporations Act.

**Security Information** has the meaning given in clause 9.4(i).

**Services** means the (i) Brokerage Services and related services, (ii) Custodian Services and associated services, (iii) product issuance, (iv) and reporting.

**Service Disruption Event** means an event or matter, and the natural consequences of such, which is not within the control of IBA, including sabotage, war, earthquake, strike, acts of any third party, exchange, CS Facility, or market decisions, determinations, rulings, suspension of trading, computer or telephone failure, force majeure, acts of God, public health events (including pandemics), unlawful access to the IB System, lock outs or other obstruction of IBA's usual business operation, trade or business embargoes impacting IBA's business whether directly or indirectly, government or quasi-governmental restrictions, actions or inactions and, without limitation, any other conditions which is beyond IBA's control.

**Sub-Accounts** means, as the context requires, the (i) accounts of clients of IBA who are linked to the Master Account, whether they be clients of the Intermediary or accounts other than the Master Account held by the Intermediary and (ii) the persons



who hold such accounts.

**Sub-Custodian** means any sub-custodian appointed by IBA to hold Financial Products on behalf of the Intermediary or Sub-Accounts.

**Target Market Determination** means the document published by IBA on its IBA's website which describes who a Financial Product is designed for (target market), and any conditions regarding Retail Product Distribution Conduct in respect of the Financial Product.

**Third Party Trading Authority** means the written authority given to the Intermediary by the Sub-Account, a copy of which has been provided to IBA at the time that the Sub-Account was opened or linked to the Master Account.

**Transaction** means a transaction for one or more Financial Products or other products which arises on the execution of an Order or otherwise pursuant to this Agreement and includes, for example, a transaction for the sale and purchase of Financial Products and a transaction for the entry into or close out of a derivative.

**Unfair Contract Terms Regime** means subdivision BA of Division 2 of Part 2 of the Australian Securities and Investment Commission Act 2001 (Cth) and, if applicable, Part 2-3 of Chapter 2 of Schedule 2 "the Australian Consumer Law" to the Competition and Consumer Act 2010 (Cth) as amended from time to time.

**You or your** means the Intermediary or Master Account holder.

#### 4. INTERMEDIARY'S REPRESENTATIONS AND WARRANTIES

4.1 The Intermediary represents and warrants to IBA that,

- (a) It holds an authorisation from the Sub-Account to submit Orders (including to dispose of, acquire or enter into Financial Products) and enter into Transactions on behalf of the Sub-Account (whether such Transaction cause financial obligations to be incurred to IBA or any other person or not) for the Sub-Account (without prior notice to the Sub-Account) and to view the Sub-Account holder's information, including personal information;
- (b) If Intermediary has enrolled in a full-service program made available by IBA from time to time, it has full authority to provide all instructions in respect of the Sub-Account(s) and IBA is authorised to accept such instructions in respect of the Sub-Account(s), including but not limited to,
  - (i) to view, update or change: Sub-Account information, Sub-Account settings, products to be traded in a Sub-Account, to issue banking and transfer instructions in respect of a Sub-Account,
  - (ii) to initiate payments, wires and transfers from a Sub-Account including to third parties (i.e. parties other than the holder of the Sub-Account); and,
  - (iii) to vote shares and make elections regarding positions and to participate in special programs and investments offered by or through IBA.
- (c) Intermediary is solely responsible for ensuring that any instructions it provides to IBA are properly authorised by the Sub-Account holder and IBA is not required

to contact the Sub-Account holder to verify or confirm instructions submitted to IBA by the Intermediary before effectuating those instructions.

- (d) Each time the Intermediary submits an Order to IBA or enters Transactions on behalf of a Sub-Account, it is acting as agent of a Sub-Account and not IBA;
- (e) Intermediary is and will comply with any fiduciary obligations it, or its officers, directors or agents, has to its clients for activities undertaken through the Master Account in relation to the Sub-Accounts.
- (f) Intermediary will not cause, whether by act or omission,
  - (i) IBA to breach any of the Applicable Laws or the conditions of IBA's AFS License, or,
  - (ii) IBA to breach the laws and regulations of any jurisdiction other than Australia, and,
  - (iii) a requirement for IBA to itself become registered or licensed or to establish a presence in any jurisdiction other than Australia;

4.2 All representations, warranties and acknowledgments given under this clause or elsewhere in this Agreement are taken to have been made at the time the agreement is entered into and are taken to have been repeated each time the Intermediary, or its Authorised Persons, or agents, provides an instruction or places an Order with IBA on behalf of itself, in relation to the Master Account, or a Sub-Account.

## **5. INTERMEDIARY CAPACITY**

5.1 If the Intermediary is constituted by more than one person (including, for example, if a partnership or joint venture), each person constituting the Intermediary is jointly and severally liable for the obligations under this Agreement, and IBA may act on the instructions of any one of those persons, without the necessity to refer to, or notify, any other person.

5.2 If the Intermediary is a corporation, it represents and warrants that:

- (a) It has full corporate power to enter into, and perform the obligations under, this Agreement; and
- (b) It has taken all necessary corporate action to authorise the performance of its obligations under this Agreement, and this Agreement constitutes a legal, valid and binding obligation, enforceable against it.

## **6. THE MASTER ACCOUNTS AND SUB-ACCOUNTS**

6.1 IBA may, in its sole discretion and subject to any requirements it may impose, including but not limited to the execution of an authority granted to you by the Sub-Account Holder together with any other documentation or certifications IBA may require,

- (i) Establish the Master Account(s) for the purposes of the provision of the Administrative Functionality to Intermediary;
- (ii) Create (a) Sub-Account(s) using the information provided and as instructed by the Intermediary;
- (iii) designate (a) Sub-Accounts as linked to a Master Account held by the Intermediary to reflect the arrangement between the Intermediary and the Sub-Account(s) as instructed by the Intermediary; and
- (iv) provide the Intermediary the necessary access to the IB System in order to facilitate the provision of Intermediary Services to the Sub-Accounts.

6.2 Intermediary acknowledges and agrees that IBA has no obligation to monitor the activities of Intermediary.

6.3 Limitation on the number of Sub-Accounts: Intermediary acknowledges and agrees that IBA reserves the right, in its sole discretion, to set and enforce limits on the number of Sub-Accounts that the Intermediary (via (a) Master Account(s)) may link to in any jurisdiction, including in Australia, and may therefore restrict the Intermediary from linking to additional Sub-Accounts without prior notice to the Intermediary.

6.4 Limitation on the functionality of the Master Account: Intermediary acknowledges and agrees that IBA reserves the right, in its sole discretion, to restrict the Administrative Functionality, or any other account functionality it provides, in respect of the Master Account and any Sub-Account at any time in its sole discretion.

6.5 IBA will provide Services to Sub-Accounts in accordance with its General Terms and Conditions.

## **7. ADMINISTRATIVE FUNCTIONALITY AND IB SYSTEM**

7.1 Administrative Functionality and IB System:

IBA will provide to Intermediary a Master Account through or in relation to which it may, in IBA's sole discretion:

- (i) designate Contact Persons,
- (ii) create and manage users and user trading permissions for Authorised Persons (who may also undertake the activities provided in this clause 7.1);
- (iii) initiate movements of money between Master Account and Sub-Accounts and deposits and withdrawals from the Master Account;
- (iv) manage and apply markups on IBA's fees and commissions, or apply other fees and commissions to the Sub-Accounts;
- (v) provide the Intermediary, any Contact Persons or Authorised Persons the necessary access to the IB System in order to facilitate the provision of Intermediary Services to the Sub-Accounts.

## **8. DESIGNATION OF AUTHORISED PERSONS AND CONTACT PERSONS**

8.1. Designation of Authorised Persons and Contact Persons:

- (i) Intermediary must designate and notify IBA in writing of:

- (a) all officers, employees, agents, or other persons authorised to access and use the IB System on behalf of Intermediary to:
  - (A) use the Administrative Functionality;
  - (B) place Orders or provide instructions to IBA in respect of the Master Account or any Sub-Account;
  - (C) initiate deposits, withdrawals, or transfers of money or Client Assets;
  - (D) access account information or receive Reports, Confirmations, or other communications from IBA; or
  - (E) otherwise act on behalf of Intermediary in relation to this Agreement or the Services;(each an "Authorised Person")

and

- (b) at least one primary contact person and one alternate contact person who IBA may contact regarding the Master Account, including for operational matters, notices under this Agreement, compliance purposes, or concerns regarding the Master Account (each a "Designated Contact Person").
- (ii) Intermediary represents and warrants that:
    - (a) each Authorised Person has been duly and properly authorised by Intermediary in accordance with its internal governance procedures and any Applicable Laws;
    - (b) such authorisation includes full authority to bind Intermediary and any Sub-Account in respect of any actions, instructions, or communications made by the Authorised Person;
    - (c) Intermediary has implemented appropriate systems, controls, and procedures to ensure that only Authorised Persons may access the IB System or provide instructions to IBA; and
    - (d) each Designated Contact Person has appropriate authority and knowledge to respond to inquiries and provide instructions regarding the Master Account.
- (iii) The notification required under clause 8.1(i) must be provided:
    - (a) in a form acceptable to IBA (which may be in writing, electronically via the IB System, or by such other method as IBA may specify);
    - (b) prior to any Authorised Person accessing the IB System or providing any instructions to IBA; and
    - (c) must include such information and documentation regarding each Authorised Person and Designated Contact Person as IBA may reasonably require, including information required for compliance with Applicable law, name, title, contact details, scope of authority, and evidence of authorisation.

## 8.2. Ongoing Obligation to Maintain Current Information

Intermediary must:

- (i) maintain an accurate and current list of the signatory, security officer, and all Authorised Persons and Designated Contact Persons;
- (ii) immediately notify IBA in writing of any changes to:
  - (a) the identity of the signatory, security officer, and any Authorised Person or Designated Contact Person;
  - (b) the scope of authority of any Authorised Person;

- (c) the contact details of any Authorised Person or Designated Contact Person;  
or
- (d) the revocation or termination of any person's status as a signatory, an Authorised Person or Designated Contact Person;
- (iii) promptly provide to IBA, upon IBA's reasonable request, confirmation of the current list of Authorised Persons and Designated Contact Persons and evidence of their continuing authority;
- (iv) immediately notify IBA if Intermediary becomes aware or suspects that:
  - (a) any Authorised Person has acted beyond the scope of their authority;
  - (b) any unauthorised person has accessed the IB System or provided instructions using Intermediary's credentials or Security Information; or
  - (c) there has been any compromise of security relating to the Master Account.
- (v) Until IBA receives appropriate written notice from Intermediary of any change, revocation, or termination under clause 8.2(ii), IBA is entitled to continue to rely on the most recent information provided by Intermediary and to treat all persons previously designated as Authorised Persons as continuing to have full authority to act on behalf of Intermediary.
- (vi) Intermediary acknowledges and agrees that IBA may, in its sole discretion and acting reasonably:
  - (a) suspend or terminate access to the IB System, the Administrative Functionality, the Master Account, or any Sub-Account by any Authorised Person at any time;
  - (b) require additional verification, documentation, or information regarding any Authorised Person or Designated Contact Person before permitting access or accepting instructions in connection with the Services; or
  - (c) refuse to accept instructions from any person if IBA has reasonable grounds to believe that person is not properly authorised or that accepting such instructions may breach any Applicable Law or this Agreement.

### 8.3. IBA's Reliance on Authorised Persons and Designated Contact Persons.

Intermediary acknowledges and agrees that:

- (i) IBA is entitled to rely conclusively on any instructions, communications, or actions by any Authorised Person or person purporting to be an Authorised Person using valid Security Information, and to treat such instructions, communications, or actions as fully authorised by and binding upon Intermediary;
- (ii) IBA has no obligation to verify the actual authority of any Authorised Person or the appropriateness, accuracy, or validity of any instruction or action taken by any Authorised Person;
- (iii) Except as expressly provided in this Agreement, IBA has no obligation to monitor, supervise, or review:

- (a) any trading activity, Orders, or Transactions conducted through the Master Account or any Sub-Account;
  - (b) any deposits, withdrawals, or transfers of money or Client Assets;
  - (c) any instructions or actions taken by Authorised Persons;
  - (d) whether any trading or other activity is appropriate, suitable, or in compliance with Intermediary's internal policies or obligations to its clients;
  - (e) whether any Authorised Person is acting within the scope of their designated authority or in accordance with Intermediary's internal controls; or
  - (f) whether any activity through the Master Account complies with Intermediary's obligations under Applicable Laws (except to the extent IBA has express obligations under this Agreement or Applicable Laws);
- (iv) Intermediary is solely responsible for:
- (a) understanding the Administrative Functionality and IB Systems, and to ensure that its appointment of any Authorised Person, Designated Contact Person, or other agents of Intermediary and any rights or authority given to any of them in respect of the Administrative Functionality and IB System is consistent with the scope their actual authority;
  - (b) implementing and maintaining appropriate systems, controls, procedures, and oversight to ensure that Authorised Persons act within the scope of their authority and in accordance with Intermediary's policies and Applicable Laws;
  - (c) monitoring all activity in the Master Account and Sub-Accounts, including trading, Orders, deposits, withdrawals, and transfers;
  - (d) ensuring that all instructions given to IBA are appropriate, authorised, and compliant with Applicable Laws and Intermediary's obligations to its clients; and
  - (e) detecting and preventing any unauthorised, fraudulent, or inappropriate activity by Authorised Persons or any other person.
- (v) Intermediary agrees to indemnify and hold harmless IBA and each IBA Indemnitee from and against any and all Losses arising from or in connection with:
- (a) any instructions, actions, or omissions by any Authorised Person or person purporting to be an Authorised Person, or information provided by or actions of Designated Contact Persons whether or not such person was actually authorised or acting within the scope of their authority;
  - (b) any unauthorised, fraudulent, inappropriate, or unlawful activity by any Authorised Person or any other person in relation to the Master Account, including any Designated Contact Person;
  - (c) any failure by Intermediary to properly authorise, monitor, supervise, or

control Authorised Persons or Designated Contact Person;

- (d) any failure by Intermediary to maintain accurate records or provide timely notice to IBA regarding Authorised Persons or Designated Contact Persons;
- (e) IBA's reliance on instructions or communications from any Authorised Person or person using valid Security Information or any information provided by Designated Contact Person; or
- (f) any claim by Intermediary's clients or any third party arising from any of the foregoing,

except to the extent such Losses are directly caused by IBA's Gross Negligence, wilful misconduct, or fraud.

## 9. IB SYSTEM

9.1. This clause **9** contains provisions which govern the use of any on-line or electronic trading or information services IBA provides and make available to Intermediary (including, without limitation, all software and communication links) under which Intermediary may:

- (i) place Orders or transmit other instructions to IBA in relation the Services which IBA provides to Intermediary in respect of the Master Account or any Sub-Account;
- (ii) receive information as to the pricing or value of one or more Financial Products or other products;
- (iii) receive market data and other information in relation to one or more Financial Products or other products; or
- (iv) view Confirmations, statements, or other information or reports in connection with the Master Account, Sub-Accounts or Transactions and Financial Products; or
- (v) utilises the Administrative Functionality,

as may be made available from time to time in accordance with the terms of this Agreement.

9.2. In this Agreement, we refer to such the systems and services via which IBA permits Intermediary to undertake the actions as outlined in 9.1 as the "**IB System**".

9.3. IBA grants a non-exclusive, non-transferable licence to Intermediary to use the IB System solely as provided herein. Title to the IB System and updates shall remain the sole property of the owner of the IB System, including all patents, copyrights and trademarks. Intermediary must not sell, exchange, or transfer Intermediary's right to use the IB System to others. Intermediary must not copy, modify, translate, decompile, reverse engineer, disassemble or reduce to a human readable form, or adapt, the IB System or use it to create a derivative work, unless authorised in writing by IBA and the owner of the IB System.

9.4. Intermediary acknowledges and agrees that:

- (i) Intermediary and any Authorised Person is only permitted to access and use the IB System, using the designated email address, logon code, account ID,

password or trading password or other agreed verification method (“**Security Information**”);

- (ii) IBA is entitled to rely on all instructions given, or apparently given, by Intermediary or on Intermediary's behalf (including by any Authorised Persons), persons, agents, or systems using the Security Information and Intermediary is bound by any instruction, Transaction or any dealing or other action or omission in connection with the Master Account or any Financial Products held for Intermediary in reliance on such instructions. Despite any other provision of this Agreement, IBA will not be liable for any Loss caused by IBA acting on instructions or other communications using the Security Information.
- (iii) there may be delays in the processing, execution, amendment or cancellation of an Order entered through the IB System and:
  - (a) an Order may be wholly or partly filled before an instruction for its amendment or cancellation is processed;
  - (b) without limiting any other provision of this Agreement, IBA will not be liable for any Loss incurred by Intermediary arising from any delay in the dissemination of market information or the processing of any Order or instruction to amend or cancel an Order.
- (iv) the execution of an Order placed through the IB System may be prevented or delayed by filters or other electronic features of the IB System (including but not limited to credit check filters, regulatory compliance filters and filters to prevent trades that would breach the Applicable Laws) or systems operated by the relevant Financial Market;
- (v) IBA will not be responsible for the processing, execution or cancellation of any Orders submitted through the IB System, regardless of who enters such Orders and regardless of whether or not there is an error in the Order entry or for any delays;
- (vi) the IB System is provided on an "as is" basis and, except as required by law, IBA makes no representations or warranties express or implied with respect to the IB System;
- (vii) the speed of information provided through the IB System is subject to a number of factors including, but not limited to, the speed of the user's internet connection, the user's settings, the number of concurrent users accessing the IB System and the volume of information being received and sent by the IB System;
- (viii) there are risks in trading through the IB System because the service is provided by means of computer and shared telecommunications systems and facilities (even where generally accepted industry standards and practices are followed). These risks include that; the information Intermediary sends to, and receives from, the IB System may be accessible by third parties, that other users of the IB System, institutions or brokers may be able to see Intermediary Orders and other communications relating to trading and execution without Intermediary or IBA's consent; and that third parties may have access to Intermediary network without Intermediary or IBA's consent;



- (ix) IBA is not liable to Intermediary for any loss Intermediary may suffer due to any restrictions on the Master Account or interruptions, delays or failure of the IB System. In order to mitigate the risk of loss to Intermediary that may be caused by such an event, or due to any other disruption in Intermediary's ability to use the Master Account, Intermediary is responsible for ensuring it has in place alternative arrangements for the execution of Orders or other services available through the IB System of sufficient capacity and utility to allow Intermediary to open, close or change positions as necessary to mitigate risk of loss to Intermediary and Sub-Accounts, should the IB System or any aspect of it cease to be available or subject to failure (including, for example, arrangements for the use of telephone or facsimile and alternative brokerage accounts with other brokers). Intermediary assumes the risks for its own decision whether to retain alternative arrangements and releases IBA from any and all liability in relation thereto;
- (x) during periods of heavy trading and/or fast or volatile market conditions with wide price fluctuations ("**Fast Markets**"), there may be delays in IBA executing Intermediary Orders or providing trading activity reports to Intermediary. If Intermediary place a market order in a Fast Market, there may be significant difference in the quote Intermediary receives prior to or at the time Intermediary places the Order and the execution price Intermediary receives. By placing a market order under such conditions, Intermediary accepts this risk and waives any claim related to a difference between quoted and execution price. If IBA, in its sole discretion, believes any particular stock is or may be volatile, IBA may, but is not obligated to, decline to allow customers, including Intermediary, to place Orders for that stock through the IB System. In addition, IBA reserves the right, but is not obligated, to prevent any IPO stock from being traded through IBA's services. IBA is not liable to Intermediary for any losses, lost opportunities or increased commissions that may result from Intermediary being unable to place orders for these securities through IBA's services;
- (xi) Intermediary will notify IBA immediately if Intermediary become aware of any inaccurate information being transmitted through the IB System including, for example, inaccurate content as to Orders, Transactions or Master Account or Sub-Account balances; and
- (xii) Intermediary will use the IB System for Intermediary's provision of the Intermediary Services to Sub-Account(s). Intermediary is responsible for reading, understanding and keeping up to date with the details of the operational aspects of the IB System as set out on IBA's Website.

9.5. Authorised persons:

- (i) Intermediary must ensure that only Authorised Persons of Intermediary may have access to and place Orders with IBA or instruct IBA with respect to the Master Account and any Sub-Account using the IB System.
- (ii) Intermediary must ensure it has appropriate systems and controls in place to allocate the appropriate authority to its Authorised Persons who use IB System on its behalf.
- (iii) Intermediary represents and warrants that all instructions given using the

Security Information have been authorised by Intermediary and are provided by Authorised Persons designated in accordance with clause 8.1.

- (iv) Intermediary is responsible for the consequences of:
  - (a) any unauthorised disclosure or use of the Security Information; a failure (by it, or its agents, Authorised Persons, staff, agents, and contractors) to prudently keep such Security Information secure (including but not limited to changing such Security Information as necessary) which may or may not result in the forgoing; and
  - (b) for any actions or omissions of any Authorised Person in instructing IBA whether via IB System or otherwise.

9.6. IBA is not liable for Loss or damages caused by any third party using Intermediary credentials and Security Information. Unless IBA agrees in writing, Intermediary will not permit any third-party access to the Master Account using the Master Account credentials and Security Information.

9.7. IBA may suspend, terminate or impose conditions on the use by Intermediary or any Authorised Person of the IB System at any time if required to protect IBA's legitimate interest, interests of Sub-Account(s) or other clients of IBA, to comply with or avoid any breach of Applicable Laws or if otherwise required in its reasonable opinion acting as a reasonable and prudent broker. IBA may also decline to accept, to execute or to cancel any Order, or may otherwise restrict, in whole or in part, Intermediary's use of IBA's Services at any time, for any length of time, in IBA's sole discretion. Such restrictions on trading activity may include, but are not limited to:

- (i) prohibiting Intermediary from engaging in trading of (or entering Orders to open or increase the size of a position in) any individual instrument or category of instrument (whether stock, option, or another security, or a commodity, or other investment product);
- (ii) prohibiting certain types of trades or orders; or
- (iii) limiting Order size or value at risk.

For the avoidance of doubt, IBA agrees to not unreasonably exercise its rights under this clause. Where IBA exercises its rights under this clause, IBA will use reasonable endeavours to provide notice to Intermediary, where possible, but in any event IBA will not be liable for failure to provide such prior notice to Intermediary. Notwithstanding the above, Intermediary remains responsible for Intermediary Orders and transactions without regard to whether IBA restricts, or does not restrict, Intermediary trading activity.

9.8. If Intermediary is uncertain as to whether any Order has been received, Intermediary will make all reasonable attempts to verify whether the Order has been received, approved and effected prior to taking further action.

9.9. Intermediary agrees to issue, and is responsible for the issuance of, specific cancellation or amendment instructions with respect to an existing Order and will not attempt to effect

changes by placing a second or duplicate Order. Intermediary will be solely responsible and liable for any duplicate instruction that Intermediary places.

- 9.10. If a failure, interruption or malfunction of electronic communication between the parties prevents an Order from being placed, cancelled or amended, without limiting clause 16, neither party shall be liable to the other party for any Loss caused by that failure, interruption or malfunction.
- 9.11. Intermediary acknowledges that all market data and information in relation to trading, volumes and pricing for a Financial Market provided through any IB System may be proprietary information of the relevant Financial Market or another person and any display, dissemination or other use of that information may be subject to restrictions imposed by the Financial Market or other person. Intermediary is responsible for complying with any such restrictions.

## **10. INFORMATION AND ADVICE**

- 10.1. IBA may (but is under no obligation to) provide Intermediary with information or data concerning interest rates, securities, derivatives, foreign currency, property, other Financial Products or markets generally.

If such information or data is provided, it is provided on the basis that IBA believes the sources to be reliable but has not verified that information. Intermediary acknowledges that IBA is not responsible for the accuracy, completeness or currency of any information or data provided (including the sequence of trades) and that if Intermediary relies on that information or data Intermediary does so at Intermediary's own risk. Intermediary acknowledges that no information or data provided by IBA to Intermediary takes into account Intermediary's objectives, Intermediary's financial needs or situation or Intermediary's special circumstances.

- 10.2. When IBA provides Services to Intermediary IBA is not by this Agreement providing, required to provide, or liable for, advice or recommendations in relation to the Orders or Transactions, except to the extent required by Applicable Laws.
- 10.3. Intermediary represents and warrants to IBA on a continuing basis that under this Agreement to the extent permitted by Applicable Laws:
- (i) Intermediary is not relying on any communication (written or oral) from IBA as Financial Advice or other investment advice or as a recommendation to undertake an Order, or enter into any Transaction; and
  - (ii) Intermediary will not consider the information and explanations relating to the terms of a Transaction to be financial services or Financial Advice on, or a recommendation to undertake any Order, enter into, any Transaction; and
  - (iii) Intermediary will not take any communication (written or oral) received from IBA as an assurance or guarantee as to the expected results of any Transaction.

## **11. ORDER HANDLING**

- 11.1. IBA shall handle all Orders submitted by Intermediary on behalf of Sub-Accounts in accordance with its order allocation policy on IBA's Website as provided for in the General

Terms and Conditions applicable to the Sub-Accounts.

## **12. INTERMEDIARY'S OBLIGATION TO OBTAIN CONSENTS FROM AND AGREEMENTS WITH SUB-ACCOUNTS**

12.1. In addition to any other responsibilities allocated to Intermediary under this Agreement, Intermediary acknowledges and agrees that it is solely responsible for and is required to obtain all authorities, consents and acknowledgements from, and have in place appropriate legal agreement(s) with, its clients which hold Sub-Account(s) consistent with the terms of this Agreement before submitting any Orders to IBA, or requesting/applying for/or utilising any services or Financial Products made available by IBA;

## **13. SECURITY INTEREST AND PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) (PPS ACT)**

13.1 Intermediary hereby instructs and agrees that all assets or money of any kind held by or on behalf of IBA for Intermediary are hereby pledged to IBA and are subject to a perfected first priority lien and security interest in IBA's favour to secure performance of obligations and liabilities to IBA arising under this Agreement or any other document as between IBA and Intermediary.

13.2 If Intermediary fails to fulfil any payment obligations under this Agreement, IBA may combine or consolidate any of Intermediary's accounts (including any Master Account and any proprietary account of Intermediary) with IBA, convert to money a requisite portion of Intermediary's property sufficient to satisfy the outstanding obligations under this Agreement and apply the proceeds or any property over which IBA or an Affiliate (including without limitation, IBA Nominees) holds or controls in or towards payment of Intermediary's liabilities to IBA. These rights are in addition to any rights IBA may have at law or equity.

13.3 Intermediary acknowledges that this clause may create a security interest in IBA's favour under the PPS Act and accordingly:

- (i) without limiting the extent to which our security interest may be perfected by control or any other method under the PPS Act, IBA may, at Intermediary's cost, register one or more financing statements or financing change statements in relation to IBA's security interest (if any) under the PPS Act;
- (ii) to the extent permissible, Intermediary waives its right under section 157 of the PPS Act to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement;
- (iii) Intermediary agrees to provide IBA with all information that IBA requires to ensure that any registration of its security interest on the PPS Register (as established under the PPS Act) is, and remains, fully effective or perfected (or both), and that the security interest has the priority required by IBA; and
- (iv) to the extent the PPS Act allows them to be excluded, the enforcement provisions in Chapter 4 of the PPS Act do not apply to this Agreement.

## **14. RELATIONSHIP BETWEEN MASTER ACCOUNT HOLDER, IBA AND SUBSIDIARY ACCOUNTS**

14.1 Intermediary acknowledges that any agreement entered into between IBA and any holder of a Sub-Account is for IBA's benefit, and does not confer any rights on either of the Intermediary, nor does such agreement give rise to any obligation or liability of any kind for IBA to the Intermediary.

**14.2 No Authority or Agency:**

(i) IBA does not grant (whether expressly or impliedly) any authority to the Intermediary, to,

- (a) receive, decide or resolve any disputes as between IBA and the Sub-Accounts in respect of IBA's provision of the Services to the Sub-Accounts;
- (b) bind, or enter into any agreement, understanding or commitment giving rise to any liability or obligation, on behalf of IBA,
- (c) make any representation about any relationship between IBA and the Intermediary.

(ii) Nothing in this Agreement shall be construed so as to give rise to any general agency relationship between the Intermediary and IBA unless otherwise specifically provided for.

**14.3 No assumption of liability**

IBA assumes no responsibility and has no liability for the Intermediary in respect of the Intermediary Services provided by the Intermediary to the Sub-Account.

**14.4 No supervision**

IBA assumes no responsibility for the performance of any supervisory function in relation to the Intermediary's provision of Intermediary Services.

**14.5 No partnership**

This Agreement does not and shall not be deemed to constitute a partnership or joint venture, or any other cooperative undertaking between any of IBA, its directors, officers, employees or agents and the Intermediary.

**14.6 No representations**

The Intermediary undertakes and agrees that it will not represent or hold itself out as having any authority on behalf of IBA for any purpose or as having any relationship with IBA contrary to this clause and the Agreement, unless otherwise expressly agreed by IBA in writing.

**15. NOTIFICATIONS**

**15.1 Notifications to IBA:**

Intermediary must provide immediate written notice to IBA together with any audit or investigatory report (or a summary of the report if the full report contains confidential information about specific clients, provided that the summary includes all material findings and recommendations) in relation to the following matters:

- (i) it becomes aware of any breach of this Agreement by Intermediary, including by

an Authorised Person;

- (ii) Intermediary becomes aware of any regulatory enforcement action or litigation, or litigation whether brought by any of its clients, employees or agents or any regulatory body in Australia or overseas, against Intermediary, an Authorised Person or its representatives;
- (iii) if it becomes aware of,
  - (a) any cyber-attack or data breach affecting it, the information of Sub-Account(s), any clients of IBA, or the Master Account,
  - (b) unauthorized use or access to Security Information, or,
  - (c) or other security incident that affects or may affect the Master Account, any Sub-Account, the Security Information or any credentials or system used to access the Master Account or any Sub-Account;
- (iv) if the Intermediary ceases to be authorised to perform the Intermediary Services in respect of any Sub-Accounts,
- (v) Intermediary:
  - (a) becomes aware of any petition, application, or proceeding that has been threatened or filed, presented, or instituted by or against Intermediary in respect of:
    - (A) its bankruptcy, insolvency, or relief under any bankruptcy or insolvency law; or,
    - (B) its liquidation, winding up, dissolution, or administration; or,
    - (C) the appointment of a receiver, administrator, trustee, custodian, or similar officer over all or substantially all of its assets or business; or,
    - (D) any composition, compromise, assignment, or arrangement with creditors in respect of it; or
    - (E) any analogous or comparable event or proceeding to the above items occurs in any jurisdiction in respect of it;
- (vi) is, or is likely to become, unable to pay its debts as they fall due or is insolvent or bankrupt under Applicable Law; or
- (vii) has suspended or threatened to suspend payment of its debts generally;
- (viii) if a body corporate, there is a potential Change of Control of the Intermediary, in which case IBA shall be given notice at least 14 days prior to the Change of Control, and:
  - (a) if IBA, upon receiving the notice, reasonably determines that there has been an unacceptable Change of Control or change in the fundamental nature of Intermediary's business, IBA may terminate this Agreement immediately by giving notice to Intermediary;
  - (b) For the purposes of this section, an unacceptable Change of Control or change in the fundamental nature of Intermediary's business includes, but is not limited to, a sanctioned person having assumed control of

Intermediary as a result of the change, or the basis on which Intermediary operates and/or uses the Services contemplated in this Agreement no longer meets legal or statutory requirements.

## **16. LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES**

### **16.1 Limitation of liability:**

(i) To the full extent permitted by law IBA excludes all liability in contract, negligence, or otherwise relating to or resulting from Intermediary's use of any service IBA provides in any capacity under this Agreement and for any Loss incurred by Intermediary directly or indirectly, without limitation, as a result or arising out of any of the following:

(a) any inaccuracy, error, delay, failure, omission or loss of access in respect of any Service, Administrative Functionality, the IB System, or the provision or transmission of any information, Order or instruction, including as a result of a Service Disruption Event;

(b) any movements in market price between when an Order is placed compared to when it is transacted in the relevant Financial Market;

(c) any misinterpretation of Intermediary's Orders or instructions which are unclear, ambiguous, or not specific in IBA's sole discretion;

(d) any action or decision of any exchange, market, dealer, CS Facility, clearinghouse or regulator, or the direct or indirect consequences thereof; and

(e) the insolvency of any CS Facility, clearinghouse or Sub-Custodian.

### **16.2 Liability cap:**

(i) To the fullest extent permitted by Applicable Laws, IBA's total aggregate liability to Intermediary arising out of or in connection with this Agreement, whether in contract, tort (including negligence or Gross Negligence), breach of statutory duty, or otherwise, shall not exceed the highest aggregate total quarterly commissions, brokerage fees and other fees paid by the Sub-Accounts to IBA over the 12 months preceding the date of the incident, event, act or omission (or in the case of multiple incidents, events, acts, or omissions, the first of such) giving rise to the claim.

(ii) For the avoidance of doubt, this liability cap:

(a) applies regardless of the form of action and the nature of damages suffered by Intermediary;

(b) shall apply separately to each distinct cause of action or series of connected causes of action; and

(c) is subject to clause 16.1 (Limitation of Liability) and clause 16.3 (Exclusion of Consequential Losses).

(iii) Nothing in this clause 16.2 shall limit or exclude IBA's liability for fraud, wilful default, or for death or personal injury caused by IBA's Gross Negligence.

### **16.3 Exclusion of consequential losses:**

To the fullest extent permitted by law, neither Party is liable in contract, tort or otherwise

for any loss of prospective profits or expenses or special, indirect or consequential damages resulting from the supply or use of a Service including, without limitation, the IB System and the provision of the Administrative Functionality.

**16.4 Exclusion relating to Intermediary Services:**

To the fullest extent permitted by law, IBA excludes all liability in contract or tort (including negligence) or otherwise relating to or resulting from your provision of the Intermediary Services to the Sub-Accounts. Intermediary hereby indemnifies and agrees to hold IBA and its affiliates, and its and their successors and assigns, and its and their directors, officers and employees ("IBA Indemnitees") harmless against any and all penalties, damages, costs, judgments, legal fees or any other expenses incurred in connection with any and all claims of any kind against IBA by subsidiary Account Holders, any prospective clients, civil or regulatory authorities or any other third parties, which relate to Intermediary's provision of Intermediary Services (including specific conduct, advice, trades or recommendations of Intermediary) or Intermediary's activities under this Agreement.

**16.5 Disclaimer of warranties:**

Subject to Intermediary being a Consumer (as that term is defined in the Australian Consumer Law being Schedule 2 to the Competition and Consumer Act 2010 (Cth)), those warranties and guarantees implied by the Australian Securities and Investments Commission Act 2001 (Cth) and to the extent applicable the Competition and Consumer Act 2010 (Cth), and any other rights implied by law which cannot be excluded by agreement between the parties, IBA makes no warranties either expressly or impliedly, as to merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, currency, availability, completeness or quality), with respect to any Services or Administrative Functionality IBA provides under this Agreement including, without limitation, the IB System.

**17. INDEMNITY**

17.1 To the fullest extent permitted by law and except to the extent of any losses or claims that are proportionately attributable to IBA's (or its agents' or employees') fraud, Gross Negligence or wilful default, the Intermediary will indemnify, keep indemnified and hold harmless, release or discharge IBA and each of its affiliates, successors, assigns, directors, officers, employees agents, sub-custodians and representatives (collectively, "IBA Indemnitees") from and against all Losses, claims, liabilities, penalties, damages, costs, judgments, legal fees and expenses (including legal costs on a full indemnity basis) whatsoever and howsoever incurred, paid, suffered, or arising, whether directly or indirectly, out of or in connection with,

- (i) Any wrongful act, error, misstatement, malfeasance, misrepresentation, fraud, misappropriation, criminal act, negligence, breach of contract or breach of Applicable Law, , by the Intermediary or any of its clients, employees, agents, Authorised Persons, consultants or servants;
- (ii) Any warranty or representation given by the Intermediary in this Agreement being or becoming inaccurate, incorrect or untrue;



- (iii) IBA's reliance on the authority granted to the Intermediary by the Sub-Account(s) under the Third Party Trading Authority and IBA's execution of the Intermediary's or Authorised Person's instructions, for any breach of the terms of Third Party Trading Authority, or any breach of any agreement between IBA and the Sub-Account, or for any action taken by the Intermediary which falls or is determined to fall outside of the Intermediary's authority;
- (iv) Any instruction, request or direction given by the Intermediary or Authorised Person (including those received by facsimile, email or other means, signed or purported to be signed by Intermediary or any Authorised Person, which IBA accepts and acts upon in good faith);
- (v) Any advice, direction, decision, dealing, conduct, trade or recommendation provided by or purported to be provided by the Intermediary (whether on its own behalf or on behalf of Sub-Accounts) upon which IBA has acted or declined to act in good faith;
- (vi) Any failure of any of the Intermediary's computer or electronic systems or networks to perform, be available or successfully transmit data to IBA, or any error or inadequacy in data or information input into such systems or networks by the Intermediary or its employees, agents, Authorised Persons, consultants or servants;
- (vii) Any delays in processing any Order or instruction including as a result of systems or market delays, verification procedures, unauthorised processes, call waiting time or adherence to internal policies and procedures;
- (viii) Anything lawfully done by IBA in accordance with, pursuant or incidental to this Agreement; or
- (ix) IBA or any agent or sub-custodian appointed by IBA acting in accordance with any instruction, request or direction given by the Intermediary;
- (x) IBA or a Sub-Custodian holding any Financial Products in its name;
- (xi) IBA complying with any direction, request or requirement of Applicable Law, any financial market or CS Facility, any government body or any regulatory body having jurisdiction over IBA;
- (xii) the acquisition of any Financial Product or any calls or demands for payments (including unpaid capital) in respect of them; or
- (xiii) any claims of any kind by Sub-Account holders, prospective clients, civil or regulatory authorities or any other third parties relating to Intermediary's provision of Intermediary Services or activities under this Agreement.

17.2 Each indemnity given in favour of IBA in this Agreement constitutes a separate and independent obligation, which:

- (i) is to be satisfied without regard to any other indemnity given under this Agreement or any indemnity implied under Applicable Law;

- (ii) may not be subject to any set-off or reduction for counter-claim, agreement, defence, deferment or any other circumstance which but for this clause would operate to relieve the indemnifying Party from any obligation it has to the indemnified Party; and
- (iii) shall survive the termination of this Agreement and remains in full force and effect until such time as all liability, loss, or matter for which the indemnity was given, has been satisfied in full.

**17.3 Proportionate reduction:**

Any liability claimed against a Party under this Agreement will be reduced proportionally to the extent that any loss, damage, liability, claim or expense is caused, or contributed to, by the person making that claim.

**18. PRIVACY AND INFORMATION**

18.1 The Intermediary warrants that any documentation or information provided by it to IBA regarding its any Sub-Accounts, if applicable its clients, its employees, agents and directors, is furnished to IBA with the express written authority of such person in contemplation of how such information will be handled according to the terms of this Agreement and IBA's privacy policy on IBA's Website.

18.2 The Intermediary hereby authorises IBA to use any information IBA collects from, or such other relevant documents, to:

- (i) assess the Intermediary's request for IBA to provide Services;
- (ii) provide Services in accordance with this Agreement;
- (iii) to allow IBA to communicate with third parties in connection with the matters contemplated by this Agreement; and
- (iv) to ensure that legal and regulatory requirements under Applicable Laws are met.

18.3 The Intermediary hereby authorise IBA to disclose personal information to:

- (i) any Foreign Financial Market Participating, IBA's Affiliates, whether in Australia or overseas;
- (ii) any clearing or settlement Participating responsible for the clearing or settlement of the Transactions;
- (iii) IBA's service providers (including marketing companies, data consultants and IT contractors);
- (iv) IBA's agents, contractors, and external advisers;
- (v) government and other regulatory bodies and authorities whether in Australia or elsewhere;
- (vi) payment system operators;
- (vii) other financial institutions and credit providers;

- (viii) on a confidential basis, a prospective purchaser of, or investor in, IBA or an Affiliate or all or part of the business of IBA or an Affiliate; and
  - (ix) any other relevant person to the extent required by Applicable Laws;
  - (x) either of the Licensee and Intermediary (as the case may be).
- 18.4 The Intermediary each have a right to access any personal information that IBA holds it. Sometimes there may be a reason why access will not be possible, if that is the case, then the Intermediary will be told why. To find out what kinds of personal information IBA may hold about, or to request access to any personal information, please contact IBA.
- 18.5 The Intermediary agrees that any personal information received from them about any persons may be used or disclosed by IBA as contemplated in this Agreement or IBA's privacy policy.
- 18.6 The Intermediary agrees to take all reasonable steps to deliver information or documentation to IBA, or cause information or documentation to be delivered to IBA concerning Transactions which are requested by IBA.
- 18.7 The Intermediary understands that if it does not provide any information requested by IBA or does not agree to IBA using the personal information as set out in this clause, IBA may not be able to provide provides Services to the Sub-Accounts and / or the Administrative Functionalities to the Intermediary.
- 18.8 The Intermediary authorises IBA to record any or all incoming and/or outgoing phone calls with IBA without making a disclosure each and every time the Intermediary (including its agents, employees, or directors) speaks with a representative of IBA. These calls may be recorded with or without an audible tone. The Intermediary agrees that IBA may use such recordings for the purposes of monitoring compliance with any regulatory and contractual obligations, and resolving disputes. If there is a dispute, the Intermediary has the right to listen to any recording of those conversations. Nothing in this Agreement shall oblige IBA to keep a recording longer than the minimum periods required by the Applicable Laws.
- 18.9 Each of IBA and the Intermediary agree to comply with its obligations under the *Privacy Act 1988* (Cth) as amended from time to time, to the extent that they are relevant to these Agreement.

## **19. GST**

### **19.1 Responsibility for GST**

The Intermediary is responsible for complying with the GST Law, including withholding or paying any amounts, in respect of Intermediary Fees paid by the Sub-Accounts to the Intermediary.

## **20. DEFAULT**

### **20.1. Each of the following constitutes a "Default":**

- 
- (i) Intermediary fails to pay, or provide security for, amounts payable to IBA when due and which amounts are not of a minor or inconsequential nature;
  - (ii) Intermediary fail to comply with any limit or restriction imposed on Intermediary by IBA in connection with the Master Account (for example, a restriction on the kind, volume or value of Transactions or outstanding liabilities or satisfy margin requirements);
  - (iii) any security provided by Intermediary which is binding on Intermediary's assets becomes enforceable and the holder of that security takes any steps to enforce the security in a manner which adversely impacts Intermediary's ability to meet Intermediary's obligations to IBA;
  - (iv) any representation or warranty which Intermediary gives under or pursuant to this Agreement is or becomes incorrect or misleading in any material way and Intermediary fails to notify IBA and remedy the inaccuracy within a reasonable time;
  - (v) Intermediary enters into a composition or scheme of arrangement for the benefit of creditors;
  - (vi) if Intermediary is a body corporate:
    - (a) Intermediary goes into liquidation, voluntarily or otherwise, or Intermediary or another person appoints a liquidator, receiver, administrator or official manager in respect of Intermediary's assets; or
    - (b) a director has not, if requested by IBA, given a valid deed of guarantee and indemnity in respect of Intermediary obligations under this Agreement in favour of IBA and in a form acceptable to IBA;
  - (vii) if Intermediary is acting on behalf of another person pursuant to authority provided by such other person, the authority is varied in a way which negatively impacts on or restricts Intermediary's authority or capacity to perform Intermediary's obligations or be taken to give any representation and warranties under this Agreement;
  - (viii) if Intermediary is a trustee, the relevant fund or trust of which Intermediary is trustee is terminated, vests or a distribution of capital of the trust or fund is made which would result in there being insufficient assets of the trust or fund to meet Intermediary's liabilities under this Agreement or any Transaction;
  - (ix) if Intermediary is a natural person,
    - (a) Intermediary dies or becomes of unsound mind or if Intermediary or Intermediary's estate is liable to be dealt with in any way under any law relating to mental health;
  - (x) Intermediary imposes a moratorium on payments to creditors or cease, or threaten to cease, carrying on business;
  - (xi) the occurrence of any other event referred to in an applicable addendum or supplement to this Agreement as constituting a Default or which IBA and Intermediary have agreed constitutes a Default or which Intermediary have agreed with us in this document or any particular addendum which entitles us to take action under the Agreement;
  - (xii) Intermediary otherwise materially breaches this Agreement, whether by act or omission, and such breach is not remedied within a reasonable period of time upon notification to Intermediary of the said breach;
  - (xiii) in the absence of making alternative arrangements, Intermediary is not contactable by IBA, after making reasonable efforts, within 3 Business Days in order for IBA to obtain instructions in relation to Client Assets, or,
  - (xiv) Intermediary is in breach or is in default of the terms governing any other account it holds with IBA.

- 20.2. If a Default occurs, IBA may, in addition to any other rights which IBA may have against Intermediary (including rights in other parts of the Agreement), take any action, or refrain from taking action, which it considers reasonable in the circumstances in connection with the Master Account, any Sub-Account, any Orders, or any Transactions entered into pursuant to this Agreement and, without limitation, IBA may:
- (i) take any other action a reasonably prudent broker, intermediary or principal might take in the circumstances to protect IBA's personal obligation incurred when dealing on Intermediary's behalf;
  - (ii) cancel any outstanding Orders;
  - (iii) suspend Intermediary's access to IB System or suspend any Order received from Intermediary;
  - (iv) immediately, or at a later time, terminate this Agreement;
  - (v) realise or enforce any security or guarantee provided by Intermediary or in respect of any obligations Intermediary has to IBA;
  - (vi) convert any or all amounts owing by Intermediary to IBA or by IBA to Intermediary in a foreign currency into Australian currency or any other currency;
  - (vii) calculate any or all amounts owing by Intermediary to IBA and declare such amount immediately due and payable; or
  - (viii) apply any money that Intermediary has deposited with IBA or by any person for IBA in respect of the Intermediary by way of set-off against any amounts Intermediary owes IBA;
  - (ix) exercise any other rights conferred by Applicable Laws or this Agreement or perform any other obligations arising under Applicable Laws or this Agreement in respect of Intermediary Transactions.
- 20.3. In respect of any action which IBA takes, or refrains from taking under this clause 20, IBA will use commercially reasonable endeavours to provide notice to Intermediary. Where IBA takes, or refrains from taking an action under this clause, Intermediary must account to IBA as if IBA took, or refrained from taking, the action on Intermediary's instructions and, without limitation, Intermediary is liable for any deficiency and is entitled to any surplus which may result.

## 21. TERMINATION

- 21.1 Either Party may terminate this Agreement at any time by giving 10 days' notice to the other party save that IBA may terminate with less or no notice if required to comply with Applicable Law.
- 21.2 The termination of this Agreement does not affect outstanding obligations under this Agreement which remain undischarged at the time of termination.
- 21.3 This Agreement shall automatically terminate if:
- (i) IBA's AFS Licence or necessary licence is suspended, cancelled or amended in such a fashion that it no longer remains authorised to provide the Services; or
  - (ii) If applicable, Intermediary's AFS Licence, or the AFS License under which it is acting, is suspended, cancelled or amended in such a fashion that it no longer remains authorised to conduct its business.
- 21.4 Upon termination of this Agreement IBA may do one or more of the following:
- (i) Terminate Intermediary's access to the Master Account and any Sub-Account;

- (ii) exercise any other rights IBA has under this Agreement;
- (iii) do, or refrain from doing, anything else which IBA considers reasonable in the context of this Agreement (or part thereof) having been terminated; and
- (iv) will, subject to 20.2, if applicable, within a reasonable time and subject to any lien exercise, transfer or cause to be transferred any money which it holds or which is due to Intermediary.

## 21.5 Survival of Obligations

- (i) The following clauses remain in full force and effect after the termination of this Agreement:
  - (a) Any indemnity given in favour of IBA by Intermediary (including without limitation the indemnities in clauses 8.3(v), 16.4, and 17.1);
  - (b) Clause 3 (Definitions and Interpretation);
  - (c) Clause 13 (Security Interest and PPS Act);
  - (d) Clause 16 (Limitation of Liability, Disclaimer of Warranties);
  - (e) Clause 17 (Indemnity);
  - (f) Clause 18 (Privacy and Information);
  - (g) Clause 19 (GST);
  - (h) Clause 20 (Default);
  - (i) Clause 24 (Governing Law);
  - (j) Clause 26 (No Waiver);
  - (k) Clause 27 (Assignment);
  - (l) Clause 30.1 (Evidence);
  - (m) All Parts of this Agreement (including Parts A, B, C, and D) to the extent applicable to obligations or liabilities arising from transactions entered into or services provided prior to termination; and
  - (n) Any other provision of this Agreement to the extent necessary to give effect to any accrued right, obligation, or liability that arose prior to termination, including without limitation any obligation to:
    - (A) complete settlement of any Transaction;
    - (B) pay any fees, charges, or amounts due; or
    - (C) comply with any regulatory reporting obligation.

## 22. AMENDMENT

22.1 This Agreement may be amended by IBA from time to time.

22.2 The Intermediary acknowledges that IBA may amend this Agreement by providing notice of the amended Agreement in writing or electronically via email or through the IB System, or by posting the amended Agreement on IBA's website.

22.3 Amendments to this Agreement will be effective as follows:

(i) subject to clause 22.3(ii), amendments will be effective 10 days after notice of the amended Agreement is provided to Intermediary; or

(ii) amendments will be effective immediately (which such notice as IBA may specify) upon notice if:

(a) in IBA's reasonable opinion, the amendment is not disadvantageous to Intermediary; or

(b) the amendment is necessary to protect IBA from loss, damages, legal or regulatory action, or non-compliance with Applicable Law.

22.4 Acceptance of Amendments

Intermediary's continued use of the IB System or Services provided by IBA after notice of an amendment has been provided constitutes acceptance of the amended Agreement. Each time Intermediary places an Order with IBA or utilizes the IB System, Intermediary affirms its acceptance of, and agreement to, the terms of this Agreement as amended from time to time.

## **23. SEVERANCE**

If any of the provisions herein or part thereof are invalid and not enforceable in accordance with their terms, such terms or part thereof shall be read down to the extent necessary to be valid and enforceable, and all other terms or part thereof which are self-sustaining and capable of separate enforcement without regard to the invalid term are and continue to be valid and enforceable in accordance with their terms.

## **24. GOVERNING LAW**

This Agreement is governed by the law in force in New South Wales and the Intermediary and IBA submit to the non-exclusive jurisdiction of the courts of New South Wales and courts which may hear appeals from those courts.

## **25. TIME IS OF THE ESSENCE**

Time is of the essence under in this Agreement.

## **26. NO WAIVER**

The failure to enforce any provision or provisions of this Agreement at any time or for any period shall not constitute a waiver of any rights arising under such provisions.

## **27. ASSIGNMENT**

27.1 The Intermediary consents to any assignment or novation by IBA of any rights and obligations, wholly or individually, under this Agreement, and agrees that such assignment or novation may be effected at any time without the Intermediary's consent and without notice to the Intermediary.

27.2 The Intermediary may not assign or novate any of its rights or obligations under this

Agreement without IBA's express prior written consent.

## **28. NO EXCLUSIVITY**

28.1 This Agreement is non-exclusive, and nothing herein prevents either party hereto from dealing with other customers, brokers or advisors.

## **29. CONFLICTS AFFECTING IBA**

29.1 Intermediary acknowledges and agrees that:

- (i) IBA and its Affiliates may have conflicts of interest in connection with the Services, including but not limited to:
  - (a) acting as broker, custodian, or principal for multiple clients with potentially conflicting interests;
  - (b) trading for IBA's own account in the same Financial Products as clients;
  - (c) receiving payment for order flow or other benefits from exchanges or market makers;
  - (d) lending securities to short sellers; and
  - (e) having financial or other interests in Financial Products held in or traded through the Master Account;and,
- (ii) IBA manages its conflicts in accordance with its conflicts of interest policy and Applicable Laws;
- (iii) IBA's conflicts are disclosed in IBA's financial services guide and other disclosure documents; and
- (iv) Intermediary has read and understood IBA's disclosures regarding conflicts and accepts that IBA will manage its conflicts in accordance with its policies and Applicable Laws.
- (v) Intermediary accepts the above, and approves any remuneration IBA receives.

## **30. ADDITIONAL MISCELLANEOUS PROVISIONS**

30.1 Evidence

The books and records of IBA (whether in hardcopy on paper, in electronic or other mechanically reproducible form or otherwise) will, save in the case of manifest error, be final and binding and constitute sufficient evidence of any obligations, entitlements, or other matters for the purposes of this Agreement, any Related Agreement and of any facts and events relied upon by IBA.

## **31. PUBLIC ANNOUNCEMENTS**

31.1 Neither Party shall issue any press release, public announcement, marketing material, or other public communication concerning this Agreement, the Master Account, or the relationship between the Parties without the prior written consent of the other Party, except:

- (i) as required by Applicable Law, including stock exchange or securities regulations;
- (ii) disclosures to regulators or other governmental authorities as required or permitted



under this Agreement; or

- (iii) general references to the business relationship that do not disclose specific terms or Confidential Information.

31.2 Where a Party is required to make a public disclosure under applicable securities laws or stock exchange rules, it shall, where reasonably practicable, provide the other Party with advance notice and an opportunity to comment on the proposed disclosure.

## **PART B - ADDITIONAL TERMS FOR THE FAMILY OFFICE AND FAMILY MANAGEMENT MASTER ACCOUNT HOLDERS ONLY**

### **32. INTRODUCTION**

The additional terms in this Part B apply to Intermediaries that are operating the IBA Family Office or Family Management Account types only.

### **33. ADDITIONAL TERMS**

33.1 The Intermediary acknowledges and agrees that

- (i) the Family Office – High Net Worth or Family Management Account types are limited to ten (10) subsidiary accounts, unless additional accounts are permitted at the sole discretion of IBA;
- (ii) it may not charge, and IBA will not facilitate Intermediary to charge, commission and or fees (as applicable) in respect of Orders or Transactions to the Sub-Account(s);

33.2 The Intermediary acknowledges that IBA will not provide the Administrative Functionality to the Intermediary in respect of any Account, unless and until such time as:

- (i) The Intermediary has completed IBA's account application to IBA's satisfaction;
- (ii) Each Sub-Account has made a request to IBA to be a Sub-Account of the Master Account and completed IBA's account application to IBA's satisfaction;
- (iii) Where any Sub-Account is opened by a natural person that is not the same person as the Intermediary, IBA has received a duly completed Third Party Trading Authority to act on a Customer Account.

### **34. ADDITIONAL REPRESENTATIONS AND WARRANTIES**

34.1 Additional representations and warranties for Family Management and Family Officer Master Account Holders:

Further to clause 4, Intermediary represents and warrants that,

- (i) If Intermediary applies to open or opens an IBA Family Management Master Account,
  - (a) it is a natural person;
  - (b) it wishes to consolidate several accounts for which it is the legal owner, or acting on behalf of the legal owner, for administrative purposes only;
- (ii) If Intermediary applies to open or opens a Family Office Master Account,
  - (a) it is a body corporate;
  - (b) it is providing Services only to Related Bodies Corporate of it;
- (iii) It is not licensed or authorised to provide financial services and does not need to hold an AFS Licence or be authorised by AFS Licensee to provide financial services for the purposes of the arrangements contemplated in this Agreement; and it is acting solely in a personal capacity or as a legal representative with appropriate authority.
- (iv) The Sub-Accounts are either accounts for which the Intermediary is the legal owner of the Sub-Account or where legal owner of the Sub-Account is an Immediate Family Member of the Intermediary;
- (v) Where the Intermediary acts on behalf of the legal account holder, the Intermediary is,
  - (a) in the case where the Sub-Account is a natural person, authorised to do so by an irrevocable power of attorney from the Sub-Account authorising the Intermediary to submit Orders (including disposing and acquiring financial products) and enter into Transactions on behalf of the Sub-Account (whether such Transaction cause financial obligations to be incurred to IBA or not) for the Account of the Sub-Account (without prior notice to the Sub-Account);
  - (b) in the case where the Sub-Account is a corporation, authorised, as either sole director or otherwise authorised by the corporation to submit Orders (including disposing and acquiring financial products) and enter into Transactions on behalf of the Sub-Account (whether such Transaction cause financial obligations to be incurred to IBA or not) for the Sub-Account (without prior notice to the Sub-Account)
- (vi) Each time the Intermediary submits an Order to IBA or enters Transactions on behalf of a Sub-Account, it is acting as agent of the legal owner of Sub-Account unless it is legal owner of the Sub-Account in which case it transacts as principal for such Account.

**PART C - ADDITIONAL TERMS FOR AFS LICENSEES AND AUTHORISED REPRESENTATIVES****35. INTRODUCTION**

The additional terms in this Part C apply only to Intermediaries that are AFS Licensees.

**36. ACKNOWLEDGEMENTS**

The Intermediary acknowledges that it is required to maintain an AFS License or such other qualification, registration or license acceptable to IBA in a jurisdiction other than Australia, in order to legally provide the Intermediary Services to the Sub-Accounts.

**37. REGULATORY COMPLIANCE ALLOCATION OF RESPONSIBILITIES****37.1 Order Handling**

If Intermediary accepts Orders and submits Orders on behalf of Sub-Accounts, or allocates Transactions to Sub-Accounts, Intermediary shall be solely responsible for the acceptance and handling of all Orders from its clients, including any “best execution” obligations, fair and appropriate allocation of Transactions, and all regulatory responsibilities related thereto.

**37.2 Required Disclosures**

- (i) IBA will provide any disclosures required in relation to the Services it provides to the Sub-Account(s) holders, including its financial services guide, product disclosure statements for the product it issues (or is taken to issue), to the extent required under Applicable Law any financial services guides or statements for entities which it has engaged for clearing and custody, its privacy policy,
- (ii) Intermediary will,
  - (a) Take all reasonable steps to ensure and confirm that Sub-Account(s) have received IBA's Disclosures; and,
  - (b) be solely responsible for the provision of all disclosures it (or, if applicable any AFS Licensee on whose behalf it acts in the provision of the Intermediary Services) is required to give under Applicable Law, including, without limitation, Intermediary's financial services guide, any product disclosure statements, managed discretionary account agreements and disclosures, disclosures in relation to any fees and charges it applies to Sub-Account(s) (whether through the Administrative Functionality or otherwise).

**37.3 Confirmations**

- (i) IBA will issue Confirmations in respect of Transactions undertaken for or in respect of Sub-Accounts.
- (ii) Intermediary may not rely on Confirmations issued by IBA in respect of any obligation it may have to issue a Confirmations.

**37.4 Intermediary agrees that it must:**

- (i) regularly review the records and statements of account provided by IBA in respect of the Master Account and the Sub-Account(s);
- (ii) within two (2) Business Days, escalate to IBA any discrepancies it identifies in any

statements of account, reports or Confirmations provided by IBA to Sub-Account(s).

37.5 Intermediary agrees it will:

- (i) maintain an internal dispute handling process in compliance with Regulatory Guide (RG) 271 and Applicable Law; and
- (ii) be a member of an ASIC-approved external dispute resolution (EDR) scheme, such as the Australian Financial Complaints Authority (AFCA).
- (iii) If IBA receives a complaint directly from a client of Intermediary in relation to Intermediary Services, IBA may:
  - (a) refer the complaint to Intermediary for handling; and, or
  - (b) refer the complaint to ASIC.

37.6 General Regulatory compliance

- (i) Intermediary agrees and acknowledges that Intermediary is solely responsible for compliance (including ensuring that its directors, employees, representatives, agents, and Authorised Persons comply) with the Applicable Laws in the provision of Intermediary Services to Intermediary's clients.

37.7 **Design and distribution obligations:**

- (i) Intermediary is solely responsible for compliance with its own obligations under Part 7.8A of the Corporations Act, including producing any target market determination and reasonable steps obligations (as those terms are defined in Part 7.8A of the Corporations Act).
- (ii) Intermediary warrants that it has and will have in place appropriate compliance procedures for addressing its obligations, if any, under Part 7.8A of the Corporations Act.
- (iii) Target Market Compliance - IBA Products: Where IBA has published a Target Market Determination for any Financial Product (each, an "IBA DDO Product"), the Intermediary must:
  - (a) Take reasonable steps, consistent with section 994E of the Corporations Act, to ensure that each Sub-Account to whom it provides Retail Product Distribution Conduct in relation to an IBA DDO Products is within the target market described in the relevant Target Market Determination;
  - (b) Not engage in Retail Product Distribution Conduct in relation to IBA DDO Products that would be inconsistent with the Target Market Determination;
  - (c) Implement and maintain systems and procedures to:
    - (A) assess whether Sub-Accounts fall within the target market before distributing IBA DDO Products
    - (B) monitor on an ongoing basis that Sub-Accounts continue to fall within the target market;
    - (C) identify and remediate any Retail Product Distribution Conduct which is outside the target market.
  - (d) Quarterly Compliance Confirmation:
    - (A) Intermediary must provide to IBA, on a quarterly basis (or such other frequency as IBA may reasonably require), written confirmation that:

- (aa) it has taken reasonable steps to distribute IBA DDO Products
  - (bb) only to Sub-Accounts within the target market;
  - (cc) it has reviewed its distribution conduct during the relevant quarter;
  - (dd) it has identified any instances of distribution outside the target market (if applicable); and
  - (ee) it remains compliant with its obligations under Part 7.8A of the Corporations Act.
- (B) IBA will request such confirmation by automated communication sent to the Designated Contact Person for the Master Account.
  - (aa) If Intermediary does not provide the confirmation within 10 Business Days of IBA's request, IBA may, in its sole discretion:
    - (a) suspend Intermediary's ability to open new Sub-Accounts;
    - (b) suspend Intermediary's ability to Deal in IBA DDO Products for existing Sub-Accounts; or
    - (c) take any other action IBA reasonably considers necessary to comply with its own obligations under the Corporations Act.
- (C) Intermediary's failure to respond to two consecutive quarterly requests shall constitute a Default under clause 20.1.
- (e) Notification of Distribution Outside Target Market Intermediary must notify IBA in writing within 10 Business Days if:
  - (aa) Intermediary becomes aware that it has engaged in Retail Product Distribution Conduct in relation to an IBA DDO Product to a person who is not in the target market for that product;
  - (bb) The notification must include:
    - (a) of the distribution conduct (including the Sub-Account identifier, the IBA DDO Product, and the date of distribution);
    - (b) the circumstances that led to the distribution outside the target market;
    - (c) the steps Intermediary has taken or will take to remediate the situation; and
    - (d) the steps Intermediary has taken or will take to prevent recurrence.
- (f) Complaints Notification:
  - (A) Intermediary must notify IBA in writing within 10 Business Days of receipt of any complaint from a Sub-Account that relates to:
    - (aa) an IBA DDO Product; or
    - (bb) Intermediary's distribution of an IBA DDO Product; or
    - (cc) whether the Sub-Account was within the target market for an IBA DDO Product.
  - (B) The notification must include:
    - (aa) a description of the complaint (without disclosing personal information of the complainant unless consented to);
    - (bb) the IBA DDO Product to which the complaint relates;
    - (cc) the date the complaint was received;

- (dd) the status of the complaint; and
  - (ee) any other information reasonably requested by IBA.
- (g) Information and Data Provision
- (A) Intermediary must provide to IBA, upon IBA's reasonable request and within the timeframe specified by IBA (being not less than 10 Business Days unless otherwise agreed):
    - (aa) data or information relating to the target market for IBA DDO Products;
    - (bb) information about Intermediary's distribution conduct in relation to IBA DDO Products;
    - (cc) information about complaints received in relation to IBA DDO Products;
    - (dd) information about significant dealings in IBA DDO Products that are not consistent with the Target Market Determination;
    - (ee) any other information reasonably required by IBA to monitor compliance with Part 7.8A of the Corporations Act or to review and update Target Market Determinations.
  - (B) Intermediary acknowledges that IBA may use such information to:
    - (aa) monitor compliance with this Agreement;
    - (bb) comply with IBA's own obligations under Part 7.8A of the Corporations Act
    - (cc) review and update Target Market Determinations; and
    - (dd) report to ASIC or other regulatory authorities as required.
  - (C) Deemed Consent to Automated Outreach
    - (aa) Intermediary consents to IBA contacting the Designated Contact Person(s) by automated means (including email, SMS, or through the IB System) to for the purposes of communications under this 37.7.
    - (bb) If Intermediary does not respond to automated outreach within the specified timeframe, IBA may follow up using alternative contact methods and may exercise its rights under clause 37.7(iii)(g)(D)(cc).
  - (D) Acknowledgement of IBA's Obligation: Intermediary acknowledges and agrees that:
    - (aa) IBA has obligations under Part 7.8A of the Corporations Act as an issuer of certain Financial Products;
    - (bb) IBA is required to monitor distribution of IBA DDO Products and may be required to report to ASIC regarding distribution conduct;
    - (cc) IBA may suspend or cease distribution of IBA DDO Products if IBA reasonably believes that distribution is occurring outside the target market or that Intermediary is not complying with its obligations under this clause 37.7;
    - (dd) IBA's obligations under Part 7.8A of the Corporations Act take precedence over any other provisions of this Agreement, and IBA may take any action reasonably necessary to comply with such obligations, including suspending or terminating this Agreement.
  - (E) Records
    - (aa) Intermediary must maintain adequate records to demonstrate

compliance with its obligations under this clause 37.7 for a period of at least 7 years, and must provide such records to IBA upon reasonable request.

(iv) Best Interests Duty and related obligations

Where Intermediary provides Personal Advice (as that term is defined in section 766B of the Corporations Act) to Retail Clients, Intermediary must comply with the best interests duty and related obligations under the Corporations Act, including that it will not charge or accept “conflicted remuneration”.

37.8 Business continuity

- (i) Each Party has and will maintain business continuity arrangements that are reasonable having regard to the nature, scale and complexity of its business.
- (ii) Intermediary acknowledges that a summary of IBA’s business continuity arrangements is available on IBA’s Website.
- (iii) Intermediary will provide, on IBA’s written request, a copy of its business continuity arrangements relevant for the Intermediary Services it provides.

**38. INTERMEDIARY FEES AND OTHER FEES AND CHARGES**

**Intermediary Fees**

- 38.1 IBA may allow Intermediary to request that IBA deduct from Sub-Account with IBA fees and charges which the holder of Sub-Account owes to Intermediary (collectively “**Intermediary Fees**”). In such circumstances, the Intermediary will provide to IBA the method of calculating the Fees that the Sub-Account has agreed to pay the Intermediary.
- 38.2 Intermediary represents and warrants that all Intermediary Fees charged by IBA to any Sub-Account and paid by IBA to the Intermediary,
  - (i) have been fully disclosed to such Sub-Account,
  - (ii) are consistent with any agreement between the Intermediary and the Sub-Account, and
  - (iii) comply with all Applicable Laws (including without limitation the Corporations Act) to which the Intermediary is subject, and
  - (iv) will not cause IBA to breach any law, including without limitation any prohibition on the payment of “conflicted remuneration” as such term is defined in the Corporations Act.
- 38.3 IBA’s only obligation to pay any amounts to the Intermediary under this Agreement in relation to Intermediary Fees, is to pay Intermediary Fees that the Sub-Account may owe to the Intermediary and which IBA has actually deducted from the Sub-Accounts. For the sake of clarity, IBA is not liable to the Intermediary for the payment of Intermediary Fees on its own behalf or in circumstances where it is unable to deduct such Intermediary Fees, such circumstances include:
  - (i) If there is, or will be, insufficient funds in a Sub-Account;

- (ii) If the deduction of the Intermediary Fees would, as determined by IBA in its sole discretion, cause the Sub-Accounts' Account to have insufficient funds to cover any fees, margin or other requirements IBA imposes on a Sub-Account;
  - (iii) If there is any dispute between the Sub-Account and the Intermediary regarding the Intermediary Fees or any agreement between them;
  - (iv) If there is any dispute between the Sub-Account, the Intermediary, or IBA regarding IBA's provision of Services to the Sub-Account;
  - (v) If the Sub-Account has closed or IBA has terminated the Sub-Account;
  - (vi) If IBA has any doubt, whether reasonably formed or otherwise, as to whether a Sub-Account has authorised the deduction of Intermediary Fees from the Sub-Account;
  - (vii) If IBA determines, in its sole discretion, that the Intermediary has violated any provision of this Agreement, any agreement it may have with the Sub-Account, or any Applicable Laws.
- 38.4 If IBA deducts any Intermediary Fees from a Sub-Account and there is any dispute as to whether such fees were actually owed to the Intermediary, or if IBA has any other reason to believe (such belief formed reasonably or otherwise) that remitting such fees to the Intermediary would not be proper, then,
- (i) IBA may in its sole discretion decide not to remit such funds to the Intermediary and return such funds to the Sub-Account, whereupon the Intermediary becomes solely responsible for the collection of such fees from the Sub-Account;
  - (ii) if IBA has already erroneously or improperly remitted such funds to the Intermediary, then upon notice being given by IBA, the Intermediary agrees to return any funds erroneously or improperly remitted to IBA immediately and simultaneously grants an enduring lien (equal to the amount of funds that the Intermediary is required to return to IBA) to IBA against any other funds or assets of the Intermediary held by IB.
  - (iii) you must provide written notice to IBA, to the attention of IBA Compliance Department, in the event of any oral or written complaint made by any Sub-Account relating in any way to the Intermediary Fees, the Intermediary's arrangements with the Sub-Account, or IBA's provision of Services.
- 38.5 You must provide immediate written notice to IBA in the event of any change in the Intermediary Fees for any Sub-Account or in the event that the either the Sub-Account or Intermediary terminates the relationship with the other.

#### **Dealing Fees, Charges, and Interest Adjustment**

- 38.6 IBA may provide the Intermediary with functionality through which you may instruct IBA regarding the fees and charges, whether described as commission or other fees, (collectively "**Dealing Fees**") and credit or debit interest rates ("**Interest Rates**") to be



applied as against Sub-Accounts, subject to IBA's right to determine in its sole discretion the maximum or minimums or caps, for such Dealing Fees and Interest Rates and any eligibility criteria.

- 38.7 IBA will deduct Dealing Fees and apply Interest Rates in relation to Sub-Accounts based on your instructions, subject to its maximums and minimums and eligibility criteria, if applicable, for same.
- 38.8 IBA may pay Intermediary such amounts as agreed from time to time derived in relation to Sub-Accounts and (i) any transactional activity for Dealing Fees or (ii) positive cash balances or negative cash or stock balances (as applicable) in relation to Interest Rates.
- 38.9 You represent and warrant that all Dealing Fees and Interest Rates to be applied against any Sub-Account and any amounts to be paid to Intermediary pursuant to 38.8,
- (i) have been fully disclosed, and will on an ongoing basis continue to be disclosed if there is any change in relation thereto, to Sub-Account(s),
  - (ii) are consistent with any agreement between the Intermediary and the Sub-Account regarding such Dealing Fees and Interest Rates,
  - (iii) comply with all Applicable Laws (including without limitation the Corporations Act) to which the Intermediary is subject, and,
  - (iv) will not cause IBA to breach any law, including without limitation any prohibition on the payment of "conflicted remuneration" as such term is defined in the Corporations Act.
- 38.10 IBA has no obligation or liability to pay funds to the Intermediary under 38.8 unless and until,
- (i) in relation to amounts calculated with reference to Dealing Fees and Sub-Account transaction activity, IBA deducts Dealings Fees from Sub-Accounts,
  - (ii) in relation to Interest Rates, the referential credit or debit interest as applicable has become due and has been paid by Sub-Account (to IBA) or credited by IBA to Sub-Account, as the case may be.
- 38.11 IBA has no obligation to pay and is not liable to the Intermediary for any payments under 38.8 if:
- (i) there is, or will be, insufficient funds in a Sub-Account;
  - (ii) If there is any dispute between the Sub-Account and the Intermediary regarding any payments IBA may otherwise make, but for the dispute, to Maser Account Holder;
  - (iii) If there is any dispute between the Sub-Account, the Intermediary, or IBA regarding IBA's provision of Services to the Sub-Account;
  - (iv) If the Sub-Account has closed or IBA has terminated their Account;

- (v) If IBA has any doubt, whether reasonably formed or otherwise, as to whether a Sub-Account has authorised the payment of any amounts to Master Account in relation to the Sub-Accounts;
  - (vi) If IBA determines, in its sole discretion, that the Intermediary has violated any provision of this Agreement, any agreement it may have with the Sub-Account, or any Applicable Laws.
- 38.12 If there is any dispute as to whether any amounts to be paid pursuant to 38.8 were (or are) actually owed to the Intermediary, or if IBA has any other reason to believe (such belief formed reasonably or otherwise) that remitting such amounts to the Intermediary would not be proper, then,
- (a) IBA may in its sole discretion decide not to remit such funds to the Intermediary and keep such amounts for itself, whereupon the Intermediary becomes solely responsible for the collection of any amounts from the holder of Sub-Account;
  - (b) if IBA has already erroneously or improperly remitted such funds to the Intermediary, then upon notice being given by IBA, the Intermediary agrees to return any funds that were erroneously or improperly remitted, immediately to IBA and simultaneously grants an enduring lien and right to deduct and set-off amounts equal to the amount of funds that the Intermediary is required to return to IBA to IBA against any other funds or assets of the Intermediary held by IB.
- 38.13 You must provide written notice to IBA, to the attention of IBA Compliance Department, in the event of any oral or written complaint made by any Sub-Account relating to any payments of amounts made or proposed to be made pursuant to 38.8, the Intermediary's arrangements with the Sub-Account, or IBA's provision of Services.
- 38.14 You must provide immediate written notice to IBA in the event of any change in the agreed fee arrangements for any Sub-Account or if either the Sub-Account or Intermediary terminates the relationship with the other.

**39. ADDITIONAL REPRESENTATIONS AND WARRANTIES FOR AFS LICENSEES AND AUTHORISED REPRESENTATIVES:**

- 39.1 Further to clause 4, Intermediary represents and warrants that,
- (i) If Intermediary is,
    - (a) an AFS Licensee, it is acting within the scope of its Australian financial services licence; or,
    - (b) an Authorised Representative of an AFS Licensee, it is acting within the scope of its authorisation from the AFS Licensee,in and for the provision of Intermediary Services to the Sub-Accounts and its utilisation of the Administrative Functionality
  - (ii) it and its directors, officers, employees, representatives and agents, comply and will comply with the Applicable Laws and the conditions on its Australian

Financial Services Licence (or on the AFS Licence under which it is authorised to act);

- (iii) it will comply with the applicable education and training requirements, including those requirements articulated in ASIC Regulatory Guide 146 (as amended);
- (iv) It will comply with the applicable requirements relating to disclosure of fees, prohibition against charging or receiving conflicted remuneration, requirements relating to product disclosure, the provision of financial services guides, statements of advice or any other disclosures required by the Corporations Act;
- (v) It will conduct all of its activities lawfully and in accordance with the Corporations Act and the terms of any agreement between it and the Sub-Accounts; and,
- (vi) It will comply with all relevant obligations in Part 7.8A of the Corporations Act, including without limitation that it will only engage in Retail Product Distribution Conduct in relation to any Financial Product for which there is a Target Market Determination in a manner consistent with such determination.

#### **40. NOTICE**

- 40.1 You must provide immediate written notice to IBA if,
- (a) You cease to maintain a current AFS License, or
  - (b) You cease to be authorised on your AFS License for any of the Intermediary Services.

#### **41. ADDITIONAL EVENTS OF DEFAULT**

- 41.1 Failure to maintain the AFS License, and indeed all applicable authorisations on its AFS License, or such other qualification, registration or license acceptable to IBA in a jurisdiction other than Australia, as required to lawfully provide the Intermediary Services to the Sub-Accounts, is an event of Default under this Agreement.

**PART D - ADDITIONAL TERMS FOR AUTHORISED REPRESENTATIVES OF AFS  
LICENSEES ONLY**

**42. INTRODUCTION**

42.1 The additional terms in this Part D apply only to Intermediary's that are or are required to have been appointed as an Authorised Representative of an AFS Licensee under Division 5 of the Corporations Act, and includes any director, officer, agent, employee or representative thereof.

**43. ADDITIONAL EVENTS OF DEFAULT**

In addition to the events listed in clause 20.1, it shall constitute a Default if:

43.1 If the Intermediary fails to remain as an Authorised Representative of an AFS license authorised to provide such services on behalf of the AFS Licensee which enable it to provide the Intermediary Services at all material times;

43.2 The license of the AFS Licensee of which the Intermediary is an Authorised Representative is suspended, cancelled, or varied in a way that affects Intermediary's authorisation;

43.3 Intermediary fails to provide any information required under this clause 43 within the specified timeframes; or

43.4 IBA reasonably believes that the Licensee is not adequately supervising Intermediary or that Intermediary is not adequately complying with the Licensee's supervision requirements.

**44. ADDITIONAL TERMS**

44.1 Licensee Notification and Acknowledgement

- (i) Within 10 Business Days of executing this Agreement, Intermediary must provide IBA with:
  - (a) written confirmation from the Licensee that the Licensee:
    - (A) is aware that Intermediary has entered into this Agreement;
    - (B) consents to Intermediary providing Intermediary Services through the Master Account structure;
    - (C) acknowledges that Intermediary is subject to the obligations in this Agreement, including Part C; and
    - (D) confirms that providing Intermediary Services through IBA is within the scope of Intermediary's authorisation;
    - (E) current contact details for the Licensee's compliance officer or equivalent; and
    - (F) a copy of Intermediary's current authorisation document from the Licensee.
  - (b) If Intermediary does not provide the information required under clause 44.1(i)(a) within the specified timeframe, IBA may suspend Intermediary's access to the Master Account and Administrative Functionality until such information is provided.
- (ii) Ongoing Licensee Supervision.
  - (a) Intermediary must:
    - (A) provide IBA with updated contact details for the Licensee within five (5) Business Days of any change;

- (B) provide IBA with a copy of any amended authorisation document within 5 Business Days of receiving it;
  - (C) notify IBA immediately if the Licensee conducts any review, audit, of investigation of Intermediary's conduct that relates to the Intermediary Services or this Agreement, and provide IBA with a summary of findings upon completion (subject to any confidentiality restrictions).
- (iii) IBA's Right to Contact Licensee
  - (a) IBA may contact the Licensee directly at any time regarding:
    - (A) Intermediary's compliance with this Agreement;
    - (B) any Default or potential Default by Intermediary;
    - (C) any complaint received regarding Intermediary;
    - (D) any regulatory inquiry or investigation involving Intermediary;
    - (E) any matter relating to DDO obligations under clause 37.7; or
    - (F) any other matter IBA reasonably considers requires Licensee involvement.
  - (b) Intermediary consents to IBA disclosing to the Licensee any information about Intermediary's activities under this Agreement that IBA reasonably considers necessary or appropriate.
- (iv) Licensee Termination or Suspension
  - (a) If the AFS Licensee:
    - (A) terminates or suspends Intermediary's authorisation;
    - (B) restricts the scope of Intermediary's authorisation in a way that affects Intermediary's ability to provide Intermediary Services; or
    - (C) notifies IBA that Intermediary should not continue to provide Intermediary Services through IBA,then IBA may immediately suspend or terminate this Agreement without liability to Intermediary.

#### **45. ADDITIONAL REPRESENTATIONS AND WARRANTIES**

- 45.1 You represent and warrant the following each time that you provide the Intermediary Services to Sub-Accounts,
- (a) You are formally authorised by an AFS Licensee to provide Intermediary Services on its behalf and pursuant to the AFS License of the Licensee.
  - (b) You have the written consent of the Licensee to provide the Intermediary Services to the Sub-Accounts,
  - (c) You are subject to the supervision of the Licensee and the Licensee is wholly responsible for your conduct at all times.

#### **46. NOTICE**

- 46.1 The Intermediary must provide immediate written notice to IBA if, it or its directors, officers, employees, cease to be authorised by the Licensee to perform the Intermediary Services in respect of any Sub-Accounts.
- 46.2 The Intermediary must notify IBA in writing when any of the information about the AFS Licensee or itself changes.