



## **INTERACTIVE BROKERS AUSTRALIA PTY LTD**

ABN 98 166 929 568  
AFSL number 453554

### **INTERMEDIARY AGREEMENT: OMNIBUS ACCOUNTS**

#### **1. INTRODUCTION**

- 1.1 This agreement governs the relationship between the Omnibus Account Holder and Interactive Brokers Australia Pty Limited ABN 98 166 929 568 ("**IBAU**") for the purposes of the provision of the Services and Administrative Functionality. 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 document ("**Agreement**") unless an IBAU representative has made a representation or warranty on which the Master Account Holder seeks to rely, and IBAU agreed in writing to supplement or modify these terms accordingly. Notwithstanding the above, if you request and IBAU agrees in writing, or IBA requires, this agreement may be supplemented or modified by other specific written agreement(s).
- 1.2 The provisions of this Agreement supplement the provisions of IBAU's General Terms and Conditions (available on its website). In the event of any inconsistency between this Agreement and IBAU's General Terms and Conditions, in a matter related to this Agreement, the provisions of this Agreement shall prevail.
- 1.3 **This Agreement constitutes a legally binding contract which the Omnibus Account Holder accepts for itself and on behalf of any principal, principals, persons or entities for which it acts.**
- 1.4 Where this relationship between the Master Account Holder and IBAU 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.

#### **2. BACKGROUND**

##### **2.1 IBAU**

- (a) Operates an electronic brokerage business providing services to retail, wholesale and professional customers to conduct purely self-directed trading for which it is licensed ("**Services**"); and
- (b) Does not provide any legal, tax, financial or accounting advice to the Omnibus Account Holder, or its clients, or anyone else.

##### **2.2 Omnibus Account Holder**

- (a) Provides Intermediary Services to its clients, and
- (b) Wishes IBAU to provide Services to itself.

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

**Account** means an account, or sub-account, held, solely or jointly, by or for the Omnibus Account Holder with IBAU in accordance with IBAU's General Terms and Conditions.

**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, regulations and subsidiary regulations, 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 License** or **AFS License** has the meaning as defined in section 911A of the Corporations Act.

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

**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 IBAU in accordance with IBAU's General Terms.

**Confirmation** has the meaning in clause 8.1.

**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).

**Default** has the meaning in clause 19.

**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.

**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 international broker or market participant, which may be an Affiliate of IBAU's, with whom IBAU enters into an execution and/or clearing arrangements.

**General Terms and Conditions** means IBAU's customer terms and conditions as amended from time to time.

**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).

**IB System** means any on-line or electronic trading or information service provided by IBAU or made available by IBAU (including, without limitation, all software and communication links) under which you may:

- (a) place your Orders or transmit other instructions to IBAU or other persons;
- (b) receive information as to the pricing or value of one or more Financial Products;
- (c) receive market data and other information in relation to one or more Financial Products; or
- (d) receive Confirmations, Account or sub-account balances or other information in connection with your Account, sub-accounts or Transactions.

In these Terms we refer to such a service as the **IB System**.

**IBAU** means, as applicable, Interactive Brokers Australia Pty Ltd ACN 166 929 568 and any of its related entities, affiliates, successors or assignees, or nominees.

**Intermediary Services** means the services, in whatever form whether financial planning, financial advice, dealing, or investment advice or otherwise, that the Omnibus Account Holder provides to its clients.

**Licensee** means the Australian financial services entity which is the holder of an Australian Financial Services License and includes any director, officer, agent, employee or representative thereof.

**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 Account of the Omnibus Account Holder.

**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.

**Security** includes any physical commodities or any certificates or documents of or evidencing title to any of the same including, without limitation, in Australia, all "securities" within the meaning of the Corporations Act, in each case acceptable to IBAU.

**Service** means the provision of wholly customer directed brokerage and custody services to its customers.

**Target Market Determination** means a document published on the IBAU website which describes who a product is appropriate for (target market), and any conditions around how the product can be distributed to customers.

**Transaction** means a transaction for one or more Financial 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.

#### 4. **THE AGREEMENT**

4.1 IBAU agrees to provide Services to you in accordance with its General Terms and Conditions and the terms of this Agreement; and

4.2 IBAU agrees that you provide the Intermediary Services to your clients.

#### 5. **OMNIBUS ACCOUNT HOLDER'S REPRESENTATIONS AND WARRANTIES**

5.1 The Omnibus Account Holder represents and warrants that:

(a) It holds an irrevocable authorisation from its clients authorising the Omnibus Account Holder to submit Orders (including disposing and acquiring financial products) and enter into Transactions on behalf of its clients (whether such Transaction cause financial obligations to be incurred to IBAU or not), without prior notice to its clients;

(b) Each time the Omnibus Account Holder submits an Order to IBAU or enters Transactions on behalf of its clients, it is acting as agent of its clients and in reliance on the power of attorney given to it by its clients;

(c) Either that it maintains a current AFS License with all required authorisations to provide the Intermediary Services lawfully, or that it is acting as an Authorised Representative of a Licensee and, in which case, that it is acting within the scope of its authorisation from the Licensee in its provision of Intermediary Services to its clients, on each occasion that it submits an Order to IBAU or enters Transactions on behalf of its clients; and

5.2 If the Omnibus Account Holder is acting as an Authorised Representative of an AFS Licensee, you further represent and warrant the following each time that you provide the Intermediary Services to your clients:

(a) You are formally authorised by the Licensee to provide the 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 your clients; and

(c) You are subject to the supervision of the Licensee and the Licensee is wholly responsible for your conduct at all times.

5.3 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 executed and

are taken to have been repeated each time the Omnibus Account Holder places an Order with IBAU or enters a Transaction on behalf of itself or its clients.

## 6. **OMNIBUS ACCOUNT HOLDER CAPACITY**

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

6.2 If the Omnibus Account Holder 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.

## 7. **ACKNOWLEDGEMENTS**

The Omnibus Account Holder acknowledges that all dealings in Financial Products and the performance by IBAU of its obligations under IBAU's Terms and Conditions are subject to the Corporations Act, the operating rules of relevant financial markets and clearing and settlement facilities and other Applicable Laws. The Omnibus Account Holder 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.

## 8. **ALLOCATION OF RESPONSIBILITIES**

### 8.1 **Confirmations**

The Account shall be held in the name of the Omnibus Account Holder only and IBAU shall effect all Transactions to be executed and cleared by IBAU through the Omnibus Account only. The Omnibus Account Holder shall be solely responsible for the acceptance and handling of all Orders for its clients, which are submitted through the Account on an omnibus basis, and all regulatory responsibilities related thereto, including, without limitation, the provision of Confirmations, tax information and account statements to its clients where required.

### 8.2 **Required Disclosures**

The Omnibus Account Holder shall be solely responsible for the provision of all required disclosures, including, without limitation, its financial services guide and all relevant product disclosure statements, proxy materials, relevant policies and agreements and all other records and communications to its clients prior to any Order being submitted or any Transaction entered into on behalf of the client. For the avoidance of doubt, Product Disclosure Statements provided by the Omnibus Account Holder must at least disclose all risks and benefits disclosed in IBAU's product disclosure statements and, if applicable, any additional risks and benefits arising from the client dealing with the Omnibus Account Holder.

### 8.3 **Client Money Rules**

IBAU will treat all money in the Omnibus Account as client money belonging to the Omnibus Account Holder pursuant to the Corporations Act and Applicable Laws. The Omnibus Account Holder will be solely responsible for satisfying its obligations under the Corporations Act and Applicable Laws with respect to the client money of its clients.

#### 8.4 **Maintenance of Books and Records**

The Omnibus Account Holder shall be solely responsible for maintaining required books and records in respect of its clients. IBAU will maintain books and records in respect of the Omnibus Account Holder as required by the Corporations Act and Applicable Laws.

#### 8.5 **Customer Support**

The Omnibus Account Holder shall be solely responsible for providing customer support to its clients.

### 9. **REGULATORY COMPLIANCE**

9.1 You agree and acknowledge that you are solely responsible for compliance (including ensuring that its directors, employees, representatives and agents comply) with the Applicable Laws in the provision of Intermediary Services to your clients.

9.2 You represent and warrant that the Omnibus Account Holder, and its directors, officers, employees, representatives and agents, comply and will comply with the Applicable Laws and the conditions on its Australian Financial Services License (or on the AFS License under which it is authorised to act), including with limitation, that:

- (a) It will comply with the applicable education and training requirements, including requirements articulated in ASIC Regulatory Guide 146 (as amended) and the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*;
- (b) It will comply with all relevant obligations under the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* ;
- (c) It will comply with the applicable requirements relating to disclosure of fees, prohibition against charging 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; and
- (d) It will conduct all its activities lawfully and in accordance with the Corporations Act and the terms of any agreement between it and its clients.

9.3 You must provide immediate written notice to IBAU if the Omnibus Account Holder or any of its directors, officers or employees becomes subject to any regulatory action by any regulatory body which exercises supervisory authority or primary regulatory oversight in respect of the Omnibus Account Holder.

9.4 You will not cause, whether by act or omission, IBAU to breach of any of the Applicable Laws or conditions of IBAU's AFS License.

### 10. **DESIGN AND DISTRIBUTION OBLIGATIONS**

10.1 You must ensure that financial products are only distributed to retail clients within the target market in accordance with IBAU's Target Market Determination(s) available on IBAU's website, where applicable.

10.2 You must provide written notice to IBAU of any complaint by a retail client or any dealing outside of the target market, in respect of a financial product for which IBAU has published a Target Market Determination, within 10 business days of your receipt of the complaint or the occurrence of the dealing outside of the target market.

10.3 Respecting any financial products for which IBAU has published a Target Market Determination, the Omnibus Account Holder shall comply with any reasonable request from

IBAU for data or information relating to the target market, including but not limited to, the profitability of its retail client's trading, the number and nature of complaints received by its retail clients and whether any compensation had been paid by it to its retail clients **and client/industry or regulatory feedback in respect of the product and its performance.**

11. **AML**

11.1 **Compliance with AML Rules**

The Omnibus Account Holder hereby agrees and acknowledges that it is responsible for the detection and prevention of money laundering, terrorist financing and other criminal activity by Omnibus Account Holder's clients. Omnibus Account Holder represents and warrants that it does and will continue to comply with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), the Anti-Money Laundering and Counter-Terrorism Financing (Prescribed Foreign Countries) Regulation 2016, the Anti-Money Laundering and Counter Terrorism Financing Rules and all other applicable AML laws and regulations and any future obligations that may be imposed on the Omnibus Account Holder by Applicable Laws (including, but not limited to, its obligations to know its clients, their source and use of funds and to monitor for and identify suspicious activity) ("**Relevant AML Regulations**"). Omnibus Account Holder further represents and warrants that it has established, maintains and enforces a program of written AML internal policies, procedures and controls in accordance with the Relevant AML Regulations, that include: (a) procedures for obtaining identification information and for verifying the identity of Omnibus Account Holder's clients and (b) written procedures and a means for monitoring account activity and for identifying and reporting money laundering, terrorist financing and other criminal or suspicious activity. Omnibus Account Holder shall provide IBAU with a then-current copy of its AML procedures upon request.

11.2 **Client Identification**

- (a) Prior to depositing the funds of any its clients into the Consolidated Account (or any sub-account thereof) or submitting the orders on behalf of its clients, Omnibus Account Holder shall:
  - (i) Obtain sufficient information as required by the Relevant AML Regulations from the Omnibus Account Holder client to reasonably identify and verify the identity of the client including, without limitation: (a) the client's name; (b) the client's date of birth; (c) if the client is an individual, the client's residential address; (d) if the client is an organization, the client's principal place of business or local office; (e) and obtain a certified copy of the client's driver's license, passport or other government issued identification number and the country that issued the client's identification number ("**Identification Information**");
  - (ii) Effectively verify all the client's Identification Information through documentary and/or non-documentary means including, without limitation, by obtaining copies, and where required certified copies, of documentation that contains the client's name, address, date of birth; and
  - (iii) Obtaining a written certification that the client is trading solely on his or her or its own behalf and not on behalf of another person whether as a nominee, trustee, fiduciary or otherwise (unless authorised by law and so identified to Omnibus Account Holder).
- (b) Omnibus Account Holder shall not submit, and shall not permit the submission of, any funds of any its clients or any order on behalf of a its clients, to IBAU if:

- (i) Omnibus Account Holder is not able to verify the identity of its clients in accordance with the Relevant AML Regulations;
  - (ii) the client resides in, is domiciled in, was formed or organized in, or is a citizen of: Central African Republic, Democratic Republic of the Congo, Guinea-Bissau, Libya, Iran, Iraq, Lebanon, Mali, Myanmar, North Korea, Russia, Ukraine, Somalia, South Sudan, Sudan, Syria, Yemen or Zimbabwe;
  - (iii) The client utilizes a post office box or "in care of" address as the client's residential address or principal place of business;
  - (iv) The client is a senior political figure of a non-Australian government (unless IBAU's AML Compliance Officer has approved the account in writing); or
  - (v) The Omnibus Account Holder is aware of any activities on the part of the client that led or should lead the Omnibus Account Holder to suspect that the client is, or has been involved in money laundering, terrorist activity or any other illegal conduct.
- (c) Omnibus Account Holder shall make and maintain accurate records of all information and documentation related to the verification of the identities of its clients in accordance with the Relevant AML Regulations, including but not limited to: (1) all Identification Information and documentation provided by the client, its beneficial owners, or its authorised traders or related to the identification of such persons; (2) the methods and results of any measures undertaken to verify the identity of its clients; (3) the resolution of any discrepancy in the Identification Information or documentation; (4) the person who verified the identity of its clients; and (5) the date of verification. Omnibus Account Holder, upon request, shall identify to IBAU any of its clients or any of such its client's beneficial owners or authorised traders. Omnibus Account Holder, upon request, shall provide copies if the information and documentation referenced herein or related to a its clients or transactions to IBAU, its affiliates, any exchange and any other governmental, regulatory or self-regulatory authority.
- (d) Source and Use of Funds. Omnibus Account Holder shall undertake reasonable efforts to ascertain that its clients are not engaged in unlawful activities, the assets being invested have been legitimately obtained and any disbursements to a client or to a third party are for legitimate purposes.

### 11.3 Sanctioned Individuals

Omnibus Account Holder shall not submit, and shall not permit the submission of, any funds of any Omnibus Account Holder client or any of its clients' order to IBAU until it has determined that the client's name does not appear on sanction list issued by a Financial Action Task Force member, including but not limited to the SDN List issued by the US Department of Treasury's Office of Foreign Assets Control and the Consolidated Sanction List issued by the United Nations Securities Council.

### 11.4 Surveillance and Suspicious Activity Reporting

- (a) Omnibus Account Holder shall conduct surveillance of its clients' activities including, without limitation, reviewing trading, deposits, withdrawals, transfers of funds and other account activity for the purpose of detecting suspicious transactions or other activity that may involve money laundering, terrorist activity or other illegal conduct.
- (b) Omnibus Account Holder shall notify IBAU's AML Compliance Officer regarding any activity Omnibus Account Holder knows or has reason to suspect: involves funds related to money laundering, terrorist activity or any other illegal conduct; is intended or conducted in order to hide or disguise funds or assets derived from illegal



activity; is designed to evade laws or regulations; involves the use of IBAU or the Omnibus Account Holder to facilitate criminal activity; is not legitimate, has no business or apparent purpose or is not the sort of transactions in which the particular client would normally be expected to engage (and there is no reasonable explanation therefor); is otherwise suspicious; or could support the filing of a suspicious matter report ("**SMR**"). Such notice shall be provided by the Omnibus Account Holder as soon as practical after identifying the activity and, in any event, prior to filing an SMR. Omnibus Account Holder shall provide IBAU with copies of all SMRs and other communications it files with respect to its clients, unless prohibited by law. Omnibus Account Holder shall provide IBAU with any other information or documentation regarding the above-referenced account activity, the responsible client or related persons that IBAU, in its sole discretion, believes is necessary or appropriate to fulfill its obligations and shall take any action that IBAU may request in connection with such activity, whether the activity was detected by Omnibus Account Holder or IBAU.

**11.5 Knowledge of IBAU's AML policies and procedures**

Omnibus Account Holder agrees to become familiar with any of IBAU's AML policies and procedures related to Omnibus Account Holder and to abide by them.

**12. NOTICE**

You must provide immediate written notice to IBAU if:

- (a) You cease to maintain a current AFS License;
- (b) You cease to be authorised on your AFS License for any of the Intermediary Services; or
- (c) You become aware of regulatory enforcement action or litigation, or litigation whether brought by its clients, your other clients, your employees or agents or any regulatory body in Australia or overseas, being brought against you or your Representatives.

**13. RELATIONSHIP BETWEEN OMNIBUS ACCOUNT HOLDER, ITS CLIENTS AND IBAU**

**13.1** You acknowledge that IBAU does not enter into any Agreement with your clients. This agreement and IBAU's General Terms and Conditions, which are entered into between IBAU, and the Omnibus Account Holder does not confer any rights on your clients, nor does such agreement give rise to any obligation or liability of any kind for IBAU to your clients.

**13.2 No Authority**

IBAU does not grant (whether expressly or impliedly) any authority to the Omnibus Account Holder, to:

- (a) bind, or enter into any agreement, understanding or commitment giving rise to any liability or obligation, on behalf of IBAU, or
- (b) make any representation about any relationship between IBAU and the Omnibus Account Holder.

**13.3 No Agency**

Nothing in this Agreement shall be construed as to give rise to any agency relationship between the Omnibus Account Holder and IBAU unless otherwise specifically provided for.

13.4 **No Assumption of Liability**

IBAU assumes no responsibility and has no liability for the Omnibus Account Holder in respect of the Intermediary Services provided by the Omnibus Account Holder to its clients.

13.5 **No Supervision**

IBAU assumes no responsibility for the performance of any supervisory function in relation to the Omnibus Account Holder's provision of Intermediary Services.

13.6 **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 IBAU, its directors, officers, employees or agents and the Omnibus Account Holder.

13.7 **No Representations**

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

14. **MATERIAL CHANGES TO YOUR INFORMATION**

14.1 The Omnibus Account Holder must provide immediate written notice to IBAU if it becomes bankrupt or subject to a personal insolvency agreement under Part X of the Bankruptcy Act (1966).

14.2 The Omnibus Account Holder must provide immediate written notice to IBAU of any material change in the nature of the Intermediary Services provided by the Omnibus Account Holder to its clients.

15. **LIMITATION OF LIABILITY**

15.1 IBAU is not liable to you in contract or tort (including negligence) or otherwise for any loss, harm or damage suffered by you, including for prospective profits, in relation to IBAU's provision of Services and / or Administrative Functionality, in the case of any error or delay connected to the IB System.

15.2 To the fullest extent permitted by law, IBAU excludes all liability in contract or tort (including negligence) or otherwise relating to or resulting from your provision of the Intermediary Services to its clients. Omnibus Account Holder hereby indemnifies and agrees to hold IBAU and its affiliates, and its and their successors and assigns, and its and their directors, officers and employees ("**IBAU 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 IBAU by its clients, any prospective clients, civil or regulatory authorities or any other third parties, which relate to Omnibus Account Holder's provision of Intermediary Services (including specific conduct, advice, trades or recommendations of Omnibus Account Holder) or Omnibus Account Holder's activities under this Agreement.

16. **INDEMNITY**

16.1 To the fullest extent permitted by law, the Omnibus Account Holder will indemnify, keep indemnified and hold harmless, release or discharge IBAU and each of its directors, officers, employees agents, or representatives from and against all Loss and costs (including legal costs on a full indemnity basis) whatsoever and howsoever incurred, paid, suffered, or

arising for or by IBAU or any of its directors, officers, employees, agents, or representatives whether directly or indirectly, out of or in connection with,

- (a) Any wrongful act, error, misstatement, malfeasance, misrepresentation, fraud, misappropriation, criminal act or omission, breach of any Applicable Law, breach of contract, negligence, by the Omnibus Account Holder;
- (b) Any warranty or representation given by the Omnibus Account Holder in this Agreement being inaccurate, incorrect or untrue, or at any time becoming any of the former;
- (c) Any instruction, request or direction given by the Omnibus Account Holder;
- (d) Any advice, direction, decision, dealing provided by or purported to be provided by the Omnibus Account Holder on its own behalf or on behalf of its clients upon which IBAU has acted or declined to act in good faith;
- (e) any failure of any of the Omnibus Account Holder's computer or electronic systems or networks to perform, be available or successfully transmit data to IBAU, or any error or inadequacy in the data or information input into such systems or networks by the Omnibus Account Holder;
- (f) any delays in processing any Order including, for example, as a result of systems or market delays, or due to verification procedures or unauthorised processes or due to call waiting time or adherence to internal policies and procedures;
- (g) anything lawfully done by IBAU in accordance with, pursuant or incidental to this Agreement; or
- (h) IBAU 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 IBAU.

**17. ADVISORY FEE**

17.1 You represent and warrant that any and all advisory fees charged by the Omnibus Account Holder to any of its clients:

- (a) have been fully disclosed to the such the clients;
- (b) are consistent with any agreement between the Omnibus Account Holder and the clients; and
- (c) comply with all Applicable Laws (including without limitation the Corporations Act) to which the Omnibus Account Holder is subject.

17.2 IBAU has no liability to pay funds to the Omnibus Account Holder under this Agreement, and any advisory fees that your clients may owe to you will not be processed by IBAU.

**18. GST**

**18.1 Responsibility for GST**

The Omnibus Account Holder is responsible for complying with the GST Law, including withholding or paying any amounts, in respect of advisory fees paid by its clients to the Omnibus Account Holder.

**19. PRIVACY AND INFORMATION**

- 19.1 The terms of this clause 18 apply only to Omnibus Account Holders that are acting as Authorised Representatives of an AFS Licensee.
- 19.2 The Omnibus Account Holder warrants that any documentation provided by it to IBAU regarding the Licensee is furnished to IBAU with the express written authority of the Licensee.
- 19.3 The Omnibus Account Holder, acting for itself and on the authority of the Licensee, hereby authorise IBAU to use any information IBAU collects from, or such other relevant documents, to:
- (a) assess the Omnibus Account Holder's request for IBAU to provide Services;
  - (b) provide Services in accordance with this Agreement;
  - (c) to allow IBAU to communicate with third parties in connection with the matters contemplated by this Agreement; and
  - (e) to ensure that legal and regulatory requirements under Applicable Laws are met.
- 19.4 The Omnibus Account Holder must notify IBAU in writing when any of the information about the Licensee or itself changes.
- 19.5 The Omnibus Account Holder, acting for itself and on the authority of the Licensee, hereby authorise IBAU to disclose personal information to:
- (a) any Foreign Financial Market Participant, IBAU's Affiliates, whether in Australia or overseas;
  - (b) any settlement or Clearing Participant responsible for the clearing or settlement of the Transactions;
  - (c) IBAU's service providers (including marketing companies, data consultants and IT contractors);
  - (d) IBAU's agents, contractors, and external advisers;
  - (e) government and other regulatory bodies and authorities whether in Australia or elsewhere;
  - (f) payment system operators;
  - (g) other financial institutions and credit providers;
  - (h) on a confidential basis, a prospective purchaser of, or investor in, IBAU or an Affiliate or all or part of the business of IBAU or an Affiliate;
  - (i) any other relevant person to the extent required by Applicable Laws; and
  - (j) either of the Licensee and Omnibus Account Holder (as the case may be).
- 19.6 The Licensee and the Omnibus Account Holder each have a right to access any personal information that IBAU holds about either. Sometimes there may be a reason why access will not be possible. If that is the case, then either the Licensee or the Omnibus Account Holder will be told why. To find out what kinds of personal information IBAU may hold, or to request access to any personal information, please contact IBAU.
- 19.7 The Licensee and the Omnibus Account Holder each agree that their personal information can be used or disclosed by IBAU as contemplated in this Agreement. The Licensee and Omnibus Account Holder each agree to take all reasonable steps to deliver information or

documentation to IBAU, or cause information or documentation to be delivered to IBAU concerning Transactions which are requested by a person having a right to request such information or documentation. The Licensee and Omnibus Account Holder each understand that if either the Licensee or the Omnibus Account Holder do not provide any information requested by IBAU or do not agree to IBAU using the personal information as set out in this clause, IBAU may not be able to provide provides Services to its clients and / or the Administrative Functionalities to the Omnibus Account Holder.

19.8 Both the Licensee and the Omnibus Account Holder each authorise IBAU to record any or all incoming and/or outgoing phone calls with IBAU without making a disclosure each and every time either of the Licensee and the Omnibus Account Holder speak with a representative of IBAU. These calls may be recorded with or without an audible tone. The Licensee and the Omnibus Account Holder each agree that IBAU 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 Licensee and the Omnibus Account Holder have the right to listen to any recording of those conversations. Nothing in this Agreement obliges IBAU to keep a recording longer than the minimum periods required by the Applicable Laws.

19.9 IBAU agrees 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 this Agreement.

## 20. **DEFAULT**

All matters constituting an event of Default under IBAU's General Terms and Conditions is also an event of Default under these terms.

## 21. **TERMINATION**

21.1 IBAU may terminate this Agreement at any time by giving notice to the Omnibus Account Holder.

21.2 The Omnibus Account Holder may terminate this Agreement at any time by giving IBAU 5 Business Days' notice.

21.3 The termination of this Agreement does not affect outstanding rights or obligations under this Agreement which remain undischarged at the time of termination.

## 22. **AMENDMENT**

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

22.2 The Omnibus Account Holder acknowledges that IBAU may amend this Agreement by providing reasonable notice of the amended Agreement in writing or electronically via email or through the IB System, or by posting the amended Agreement on IBAU's website. Omnibus Account Holder's use of the IB System after such notice constitutes acceptance of the amended Agreement.

22.3 Each time the Omnibus Account Holder places an Order with IBAU or utilizes the IB System, whether on behalf of itself or its clients, Omnibus Account Holder affirms its acceptance of, and agreement to, the terms of this Agreement.

## 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 Omnibus Account Holder and IBAU 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 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 Omnibus Account Holder consents to any assignment or novation by IBAU 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 Omnibus Account Holder's consent and without notice to the Omnibus Account Holder.

27.2 The Omnibus Account Holder may not assign or novate any of its rights or obligations under this Agreement without IBAU's express prior written consent.

28. **NO EXCLUSIVITY**

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