

Interactive Brokers Australia Client Supplemental Custody Agreement

1. Effect of the Supplemental Custody Agreement

1.1 This Supplemental Custody Agreement applies if and only if the Client is: a) an Australian resident client of Interactive Brokers LLC (ARBN 091191141; AFSL 245574) ("IB"); and b) a "Retail Client" under section 761G of the Corporations Act. This Supplemental Custody Agreement does not apply to any other clients of IB.

1.2 This Supplemental Custody Agreement is in addition to the Client Agreement and forms part of the contract between IB and the Client. To the extent of any inconsistency between any term of the Client Agreement and the terms set out in this Supplemental Custody Agreement, this Supplemental Custody Agreement prevails to the extent of such inconsistency only.

2. Interpretation

ASIC means the Australian Securities and Investments Commission and any authority which replaces it.

Corporations Act means the Corporations Act 2001.

Client Agreement means the agreement between IB and the Client pursuant to which IB provides brokerage and other services.

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 International Financial Market.

Financial Product has the meaning given to that term in section 761A of the Corporations Act.

International Financial Market means any financial market operated outside of Australia to which orders may be transmitted for execution, and any facility that provides clearing or settlement services in respect of transactions on such a market.

International Financial Market Participant means an international broker or market participant, or clearing or settlement participant, which may be an affiliate of IB, with whom IB enters into an arrangement for execution, clearing and/or settlement services in connection with transactions on or

through an International Financial Market.

Retail Client has the meaning given to that term in section 761G of the Corporations Act.

Securities System means any authorised domestic or foreign depository or clearing or settlement system, including a transnational book-based system or other common system or registry for holding securities such as marketable and other securities, units, managed investments, deposits, bonds, notes, debentures, commercial paper and other equity, fixed interest or discount securities or derivatives of them (e.g., ASX Clear, the U.S. Depository Trust Company, etc.).

Sub-custodian means any person appointed by IB to hold Financial Products as sub-custodian for IB, which may be an affiliate of IB, an International Financial Market Participant or any sub-sub-custodian appointed by any of them but does not include any International Financial Market or Securities System.

3. Custody

3.1 The Client appoints IB as custodian in respect of any Financial Products held by IB for the Client (excluding where the holding of any Financial Product does not constitute the provision of a custodial and depository service under section 766E of the Corporations Act).

3.2 The Client acknowledges and agrees that IB as custodian is authorised to hold Financial Products with any person appointed by IB as Sub-custodian, who may in turn appoint a sub-sub-custodian. IB will provide the Client with written notice of and the contact information for any other person to be engaged by IB to hold the Client's Financial Products as soon as reasonably practicable and in any event, before the Financial Products are held. IB will provide and the Client agrees to receive such notice via IB's website. There may be emergency circumstances where prior notice will not be provided, for example, in the event that a Sub-custodian is or may become insolvent and a new Sub-custodian is utilised. ¹

3.3 The Client acknowledges, instructs and agrees:

(a) That Financial Products deposited or held with a Securities System are subject to the rules and terms of business of such Securities System.

(b) That subject to the applicable laws of a relevant jurisdiction, a Sub-custodian may exercise a lien, right of retention or sale, in relation to Financial Products held or deposited with it in accordance with its terms of business.

3.4 The Client acknowledges that they have received, read and understood IB LLC's financial services guide. IB LLC's financial services guide contains important information about the services IB provides. IB's financial services guide may change from time to time. A copy of the current financial services guide can be obtained on IB LLC's website or on request.

3.5 Where IB acts as custodian for the Client, it:

(a) Will act on legally valid instructions in relation to the Financial Products held for the Client received by it in accordance with the Clause 4 and the Client Agreement. ²

(b) Will provide reports as detailed at Clause 6.

(c) Will exercise reasonable care in engaging and monitoring the performance of any Sub-custodian it appoints.

(d) Will exercise the care, skill and diligence in the provision of the above services as custodian that a reasonable person would exercise in the performance of similar duties, having regard to the relevant Financial Product, Financial Market, jurisdiction and the applicable laws.

(e) Will use reasonable endeavours to deal with all rights in respect of Financial Products (including, for example, voting rights) in accordance with the Client's instructions provided that such instructions are received in such manner and at or before such times as IB notifies to the Client. IB will not exercise any voting rights attached to Financial Products except in respect of instructions received from the Client. In the absence of receiving instructions from the Client, IB may take or forbear from taking any other action in relation to Financial Products which IB considers appropriate.

(f) Is authorised to undertake such transactions in respect of the Financial Products held for the Client that it is authorised to take in accordance with the Client Agreement.

(g) Accepts liability under this Supplemental Custody Agreement for loss suffered by the Client resulting from a failure by IB or any Sub-custodian to comply with any duties it has under this Supplemental Custody Agreement relating to the holding of Financial Products or to observe reasonable standards of care generally applicable to providers of custodial or depository services in the relevant jurisdiction. However, IB is not liable to the Client for any,

- i. Loss arising from the acts or omissions of any Securities System³; or
- ii. Loss arising from or attributable to the insolvency of any Sub-custodian where IB has not failed to take reasonable care in engaging and monitoring compliance by that Sub-custodian.

Notwithstanding any other provision of the Agreement between IB and the Client, in the absence of a failure by IB to take reasonable care in engaging and monitoring compliance by a Sub-custodian, IB will only be obliged to return Financial Products held for the Client with a Sub-custodian who is insolvent if and to the extent that those Financial Products are recovered from that Sub-custodian.

(h) Is instructed and authorised by the Client to grant a charge, or re-charge, pledge, re-pledge, hypothecate or re-hypothecate Financial Products held for the Client to, without limitation, any Sub-custodian with which such Financial Product is held (or will be held) as a result of a dealing on a Financial Market undertaken or arranged by IB as broker or otherwise on the Client's instruction, but will not generally do so unless required in the terms of business of the relevant Sub-Custodian.

3.6 The Client acknowledges that:

(a) IB will, unless otherwise specifically required by the applicable Laws, generally maintain an

omnibus account for holding of Financial Products for its clients (including the Client), including with any Sub-custodian appointed by IB.

(b) When IB appoints a Sub-custodian, that Sub-custodian holds Financial Products for IB.

(c) Where IB acts as the Client's custodian, IB will hold such Financial Products for the Client as bare trustee in accordance with the Client Agreement as amended by this Supplemental Custody Agreement. However, IB will not hold a Financial Product on trust for the Client where the Client has instructed IB to deal or arrange for a dealing in the Financial Product as broker in a place outside of Australia where either (i) trusts are not known or (ii) it is not reasonable for the Financial Product to be held on trust in accordance with the law of that place and IB has determined that the Financial Product is held in a manner which, having regard to the laws in place in that jurisdiction, provides reasonably effective protection for such Financial Product in the case of the insolvency of the relevant Sub-custodian or International Financial Market Participant. In these situations the Financial Product will be held in accordance with the law of that jurisdiction.

3.7 The Client must pay on demand any call, subscription amount or other amount payable in respect of any Financial Products held by IB as custodian for the Client. If the Client fails to make such a payment, IB may (but is not obliged to) make the payment itself and the Client must on demand indemnify IB against such payment and acknowledges that IB may deduct such amount from any money held for the Client.

3.8 IB has and will maintain a business continuity plan which in its opinion is adequate to address any contingency for which it should reasonably plan having regard to the services it provides. ⁴

4. Instructions

4.1 Client warrants to IB that any instructions given by it pursuant to this Supplemental Custody Agreement or the Client Agreement or the effects of such instructions, will not breach any applicable law.

4.2 Client authorises and directs IB to act on any instructions received from the Client or any person authorised by the Client (or reasonably believed by IB to have been given by Client or a person authorised by the Client), provided always that Client has authorised such persons in a manner acceptable and agreed by IB, subject to any limitations specified in this Agreement.

4.3 Client agrees that IB is only required to act on instructions from Client (or persons authorised by Client) and is not required to take any action in relation to any Financial Product held for the Client in the absence thereof.

4.4 IB will use reasonable endeavours to act on instructions, subject to terms of this Supplemental Custody Agreement, the Client Agreement, upon receipt or as contemplated by the instruction.

4.5 Client will implement appropriate procedures so as to ensure that only appropriately authorised instructions are given by Client, or Client's agents or persons authorised by Client. Client agrees that IB is entitled to rely on any instructions given via any of the following forms:

- (a) Through the software or internet interfaces IB makes available to Client; or,
- (b) By telephonic communication, email, facsimile purporting to be from the Client or any person authorised by the Client; or,
- (c) Instructions given to IB as pursuant to the Client Agreement; or,
- (d) In such other manner as agreed in advance by the Client and IB from time to time.

4.6 For the avoidance of doubt, IB is entitled to rely on all instructions transmitted to IB using the Client's username, password, and/or other required security information.

Client agrees that IB is not required to act on any instruction, which it reasonably considers is:

- (a) incomplete, ambiguous, or unclear; or,
- (b) contrary to the terms of this Agreement or the Relevant Jurisdiction's local market practice; or,
- (c) may expose IB to loss or liability; or,
- (d) contrary to any applicable law, notwithstanding that IB is not obliged to verify whether such instruction is contrary to any applicable law.
- (e) Where it is not obliged to do so under the Client Agreement.

4.7 Client agrees that instructions given (or purported to be given) by it, and its authorised persons or agents, and the consequences of IB acting thereon in accordance with this Supplemental Custody Agreement or the Client Agreement are binding on the Client. Nonetheless, in the circumstances where IB receives an instruction from Client (or a person authorised by Client) cancelling, superseding or amending a prior instruction received by IB ("contrary instruction"), IB will on a reasonable efforts basis attempt to comply with such contrary instruction provided it is received by IB in a manner that provides IB with a reasonable opportunity to act on such contrary instruction. Client acknowledges that IB is not liable for any failure or inability to act on a contrary instruction.

5. **Security Interest**

IB acknowledges that it is prohibited from taking or granting a charge, mortgage, lien or other encumbrance over, or in relation to, the Financial Products which it holds on the Client's behalf, unless it is for:

- (a) expenses and outlays made in accordance with this Supplemental Custody Agreement and the Client Agreement (other than IB's unpaid fees); or

(b) in accordance with the Client's written instructions, as set out in the Client Agreement or otherwise (for example, the Client Agreement grants to IB a lien over assets acquired on margin or assets securing borrowing from IB by Client or securing Client's performance on a derivative contract).⁶

6. Reports

6.1 Records and Reports:

(a) IB keeps records of the Financial Products held by it in a way that enables it to readily identify the Financial Products which are held for the Client. The records include information about the transactions undertaken with Financial Products and how, by whom and when they were authorised.⁷ Upon request, IB will make these records available to the Client. IB will apply reasonable verification procedures for the appropriately frequent reconciliation and checking of the Financial Products held by IB as custodian⁸. IB will make available to the Client reports on the activity of the Client's account(s) on a periodic basis, detailing the profit and loss across all transactions, positions and underlying instrument and asset class and which show the change in position value for the statement period ("**Reports**").⁹

(b) IB will provide such other information as may be reasonably requested in writing by the Client in relation to any Financial Products IB holds for the Client as custodian, including to acknowledge the manner in which IB holds Financial Products for the Client.¹⁰

(c) The Client consents to receiving any Reports that IB may make available by electronic means in accordance with clause 31 of the Client Agreement.

(d) The Client acknowledges and agrees that the Reports made available by IB may not be sufficient for the Client to discharge any obligations that the Client has under law, whether in relation to taxation or statutory obligation or otherwise, and that the Client should seek independent verification of the sufficiency of the Reports for any purpose.

7. Privacy And Information

7.1 The Client authorises IB to disclose personal information to:

(a) any International Financial Market Participant and any affiliate of IB, whether in Australia or overseas;

(b) any clearing or settlement participant responsible for the clearing or settlement of any of Client's transactions;

- (c) IB's service providers (including marketing companies, data consultants and IT contractors);
- (d) IB'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, IB or an affiliate or all or part of the business of IB or an affiliate; and
- (i) any other relevant person to the extent required by applicable laws; and
- (j) any other person, as IB deems necessary in order for IB to provide services to the Client or to comply with instructions given by Client.

7.2 IB must not disclose any confidential information relating to the Financial Products held for the Client apart from: ¹¹

- (a) disclosure of confidential information as set out in 7.1; and
- (b) any disclosure to ASIC or as required or permitted by law or by the Client, or a person authorised by the Client, in writing.

8. Termination

- (a) This Supplemental Custody Agreement will terminate,
 - (i) according to the applicable laws; or
 - (ii) if there is a Default (as such term is defined in the Client Agreement); or,
 - (iii) if the Client Agreement is terminated.
- (b) The termination of this Supplemental Custody Agreement does not affect any outstanding obligations under this Supplemental Custody Agreement or the Client Agreement which remain undischarged at the time of termination, including the obligation on the Client to pay any outstanding fees of IB. ¹²
- (c) IB will, if applicable, within a reasonable time and subject to any lien IB may exercise, transfer or cause to be transferred those Financial Products for which it is custodian according to the Client's

instructions, provided that IB is in good faith able to arrange and is legally allowed to make such transfer.¹³

1. Section 912AAE(h)
2. Section 912AAE(b)
3. Section 912AAE(c)
4. Section 912AAE(j)
5. Section 912AAE(b)
6. Section 912AAE(d)
7. Section 912AAE(e)
8. Section 912AAE(f)
9. Section 912AAE(g)
10. Section 912AAE(a)
11. Section 912AAE(k)
12. ASIC RG 133.113
13. Section 912AAE(i)