

# Appendix 3803

Wholesale Client Agreement– Options Market Contract Only

Under Rule [3803] a Wholesale Client may sign and lodge this form with ASX Clear. This document is also recognised under Rule 7.1.3 of the ASX Clear Operating Rules.

- Please tick this box if you are a US “Eligible Broker-Dealer” or “Eligible Institution” as defined in ASX Operating Rule 7100.

**AGREEMENT** between ..... (ABN .....) (the “Client”), a Market Participant (which accepts an order from the Client), that Market Participant’s Clearing Participant (if applicable), or a Clearing Participant (which, under the ASX Clear Operating Rules, accepts an allocation or receives a transfer of Open Contracts for the relevant Client Account).

By virtue of ASX Rule [3803] and ASX Clear Operating Rule 7.1.3 the Client, a Market Participant (which accepts an order from the Client), that Market Participant’s Clearing Participant (if applicable), a Clearing Participant (which accepts an allocation or receives a transfer of Open Contracts) are each taken to have entered into an agreement with the Client in accordance with the terms of this Agreement.

The Client and each of the other parties (as applicable) agree and acknowledge as follows:

## 1. Application of Rules

The parties are bound by the Rules of ASX Limited (“ASX”), the Corporations Act and the Procedures, customs, usages and practices of ASX and its related entities, as amended from time to time, in so far as they apply to Options and other derivative instruments traded on ASX for the Client

The Clearing Participant and the Client are also bound by the ASX Clear Operating Rules. All parties acknowledge that each Option registered with ASX Clear Pty Limited (“ASX Clear”) is subject to the ASX Clear Operating Rules and the practices, directions, decisions and requirements of ASX Clear. Similarly, the Client acknowledges that each Option registered with an Alternative Clearing Facility under ASX Operating Rule 1.1050 is subject to the operating rules and the practices, directions, decisions and requirements of that facility.

## 2. Authority

The Client acknowledges that they are either:

- a. acting as principal; or
- b. acting as an intermediary on another’s behalf and are specifically authorised to transact the Derivative Market Contract, by the terms of:
  - i. a licence held by the Client;
  - ii. a trust deed (if the Client is a trustee); or
  - iii. an agency contract.

## 3. Nature of Market Participant’s obligations

Notwithstanding that the Market Participant may act in accordance with the instructions of, or for the benefit of, the Client, the Client acknowledges that any contract arising from any order submitted to the Market, is entered into by the Market Participant as principal.

#### 4. Nature of Clearing Participant's obligations

Upon registration of a contract with ASX Clear in the name of a Clearing Participant, the Client acknowledges that the Clearing Participant incurs obligations to ASX Clear as principal, even though the contract may have been entered on the Client's instructions.

#### 5. Rights of Client

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

#### 6. Dealing as principal

The Client acknowledges that the Market Participant or Clearing Participant may, in certain circumstances permitted under the Corporations Act, the ASX Operating Rules or the ASX Clear Operating Rules, take the opposite position in a transaction in the Derivative Market Contract, either acting for another client or on its own account.

#### 7. Client funds property

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

The Client acknowledges that the Client's monies and the monies of other clients of the Clearing Participant may be combined and deposited by the Clearing Participant in a trust account or clients' segregated account. The Client acknowledges that all monies credited to the clients' segregated account maintained by the Clearing Participant may be used by the Clearing Participant to meet the default of any client of the Clearing Participant.

#### 8. Clearing Participants may call for funds or security

The Participant may call for payment of money or the provision of other security which the Clearing Participant Clearing considers, in its absolute discretion, appropriate in connection with the obligations incurred by the clearing Participant in respect of contracts registered in the Client's Account. The time by which the Client must pay any amount called or provide security is of the essence and the Client must pay the amounts, or provide the relevant security, within 24 hours of the call for payment.

#### 9. Default

If:

- a. the Client fails to pay, or provide security for, amounts payable to the Clearing Participant;
- b. the Client fails to complete a contract for the transfer of Underlying Financial Products following the exercise of an Option; or
- c. a guarantee or other security provided by the Client pursuant to the Rules is withdrawn or becomes ineffective,

the Clearing Participant may, in addition to any other rights which they may have against the Client, without giving prior notice to the Client, take any action, or refrain from taking action, which it considers reasonable in the circumstances in connection with Open Contracts registered in the Client's Account and, without limitation, the Clearing Participant may:

- a. enter into one or more transactions to effect the close out of one or more Open Contracts in accordance with the ASX Clear Operating Rules; or
- b. exercise one or more Options in accordance with the ASX Clear Operating Rules

and the Client must account to the Clearing Participant as if those actions were taken on the instructions of the Client and, without limitation, is liable for any deficiency and is entitled to any surplus which may result.

Note: Clause 9 does not give the Clearing Participant power to deal with any of the Client's securities or other property held by the Clearing Participant if the Client defaults to the Clearing Participant and apply the proceeds against the default. If this power is required, an appropriate provision must be included in a separate agreement between the Clearing Participant and the Client.

#### **10. Commissions and fees**

The Client must pay to the Market Participant and/or the Clearing Participant commissions, fees, taxes and charges in connection with dealings for the Client in ASX Derivative Market Contracts at the rates determined by the Market Participant and/or the Clearing Participant from time to time and notified to the Client in writing.

#### **11. Tape recording of conversations**

The Client acknowledges that the Market Participant and/or the Clearing Participant may record telephone conversations between the Client and the Market Participant or Clearing Participant. If there is a dispute between the Client and the Market Participant or the Client and the Clearing Participant, the Client has the right to listen to any recording of those conversations.

#### **12. Client to provide information**

The Client will take all reasonable steps to deliver information or documentation to the Market Participant and/or the Clearing Participant, or cause information or documentation to be delivered to the Market Participant and/or the Clearing Participant concerning Options which are requested by a person having a right to request such information or documentation. The Market Participant and/or the Clearing Participant is authorised to produce the information or documentation to the person making the request.

#### **13. Appointment as agent**

The Client irrevocably appoints severally ASX Clear, and every director, manager and assistant manager for the time being of ASX Clear, at the option of ASX Clear to do all acts and execute all documents on the Client's behalf for the purpose of exercising the powers conferred on ASX Clear under the ASX Clear Operating Rules including, without limitation, the power to transfer or close out Open Contracts if the Clearing Participant commits an event of default.

Note: ASX Clear has broad powers under the ASX Clear Operating Rules to deal with positions held by the Clearing Participant if the Clearing Participant commits an event of default under the ASX Clear Operating Rules. The powers are set out in the ASX Clear Operating Rules.

#### **14. Right to refuse deal**

The Client acknowledges that the Market Participant and/or the Clearing Participant may at any time refuse to deal in, or may limit dealings in, the ASX Derivative Market Contracts for the Client. Neither the Market Participant nor the Clearing Participant is required to act in accordance with the Client's instructions, where to do so would constitute a breach of the ASX Operating Rules, the ASX Clear Operating Rules or the Corporations Act. The Market Participant and/or the Clearing Participant will notify the Client of any refusal or limitation as soon as practicable.

#### **15. Termination of agreement**

Either the Client, the Market Participant or the Clearing Participant may terminate this Agreement by giving notice in writing to the other parties. Termination will be effective upon receipt of the notice by the other parties.

Note: If the parties wish to provide for a minimum period of notice to terminate or limit their rights to terminate in some way, an appropriate provision must be included in a separate agreement with the Client. The parties might also consider documenting the terms by which notice may be given and received.

## 16. Effect of termination

Termination does not affect the existing rights and obligations of the Client, Market Participant or the Clearing Participant at termination. Upon termination of this Agreement, the ASX Clear Participant will close out all Open Contracts registered in the Client's Account, unless, in accordance with a direction from the Client, the registration of those contracts is transferred to another Clearing Participant in accordance with the ASX Clear Operating Rules.

## 17. Withdrawal of Agreement lodged with ASX Clear

If the Client intends to withdraw the lodgement of the signed version of this Agreement lodged, or taken to have been lodged, with ASX Clear the Client must give notice in writing to ASX Clear. The lodgement will be taken to have been withdrawn at the close of trading on the day following the receipt of the notice by ASX Clear. Such withdrawal does not terminate this Agreement, which can only be effected in accordance with clause 16.

## 18. Revised terms prescribed by ASX

If ASX prescribes amended minimum terms for a Wholesale Client Agreement for the purposes of the ASX Operating Rules (the "New Terms"), to the extent of any inconsistency between these minimum terms and the New Terms, the New Terms will override the terms of this Wholesale Client Agreement and apply as if the Client, Market Participant and the Clearing Participant had entered into an agreement comprising the New Terms.

## 19. Participant to provide Client with copy of changes

The Market Participant and the Clearing Participant will provide a copy of the New Terms to the Client as soon as practicable after ASX prescribes the New Terms.

## 20. Interpretation

Any term used in this Agreement which is defined in the ASX Operating Rules has the meaning given in the ASX Operating Rules. References to the "Clearing Participant" refer to the Market Participant (if it also a Clearing Participant), the Market Participant's Clearing Participant (if the Market Participant has clearing arrangements with a Clearing Participant) or the Clearing Participant which accepts an allocation or the transfer of an Open Contract (as applicable).



Executed by the Client on ...../...../.....

**Individual**

\_\_\_\_\_

Signature

\_\_\_\_\_

Name (Printed)

**OR**

**Corporation**

The Common Seal of \_\_\_\_\_ was duly affixed by authority of the directors in the presence of:

\_\_\_\_\_

Signature of Secretary / Director

\_\_\_\_\_

Signature of Director

\_\_\_\_\_

Name (Printed)

\_\_\_\_\_

Name (Printed)

**OR**



Where Corporation is executing Agreement without using a common seal under S127(1) of the Corporations Act.

Executed by \_\_\_\_\_ in accordance with section 127(1) of the Corporations Act by authority of its directors in the presence of

\_\_\_\_\_  
Signature of Authorised Person

\_\_\_\_\_  
Name of Witness (Printed)

\_\_\_\_\_  
Name (printed) and office held

\_\_\_\_\_  
Signature of Authorised Person

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name (printed) and office held

Amended 04/04/11