

# ANNEXURE 13 WHOLESALE CLIENT AGREEMENT – OTC OPTIONS MARKET TRANSACTIONS

Introduced 23/11/16

***Under Rule 7.1.3 a Wholesale Client may sign and lodge this form with ASX Clear.***

**AGREEMENT** between ..... (ABN ..... ) (the “Client”) and a Participant (which, under the ASX Clear Operating Rules, notifies ASX Clear of an OTC Options Market Transaction that it wishes to register or that accepts an allocation or the transfer of an Options CCP Contract arising when an Options Market Contract entered into through an OTC Options Market Transaction is registered and novated to ASX Clear under Section 12 (‘OTC Options CCP Contract’)).

By virtue of Rule 7.1.3 the Client and a Participant that notifies ASX Clear of an OTC Options Market Transaction that it wishes to register or that accepts an allocation or the transfer of an OTC Options CCP Contract, are taken to have entered into an agreement in accordance with these terms.

The Client and Participant agree and acknowledge as follows:

## **1. Application of Rules**

The Client and Participant are bound by the Rules of ASX Clear Pty Limited (‘ASX Clear’), the Corporations Act and the Procedures, customs, usages and practices of ASX Clear and its related entities, as amended from time to time, in so far as they apply to OTC Options CCP Contracts.

The Client and the Participant acknowledge that each Options Market Contract entered into through an OTC Options Market Transaction (‘OTC Options Market Contract’) registered with ASX Clear is subject to the ASX Clear Operating Rules and the practices, directions, decisions and requirements of ASX Clear.

## **2. Client acknowledgements**

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 OTC Options 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.

The Client warrants that it is not a U.S. person as that term is defined in Rule 902(k) of Regulation S under the Securities Act 1933 (United States).

### **3. Nature of Participant's obligations**

Upon registration of an OTC Options Market Transaction in accordance with Rule 12.1.1A with ASX Clear in the name of a Participant, the Client acknowledges that the Participant incurs obligations to ASX Clear as principal, even though the OTC Options Market Contract may have been entered on the Client's instructions.

### **4. Rights of Client**

The Client acknowledges that any benefit or right obtained by a Participant upon registration of an OTC Options Market Transaction with ASX Clear by novation of an OTC Options Market Contract under the ASX Clear Operating Rules or any other legal result of registration is personal to the 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 Clear in relation to any transactions by the Participant (or any other Participant) in the OTC Options CCP Contract.

### **5. Dealing as principal**

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

### **6. Client funds property**

The Participant must deal with any money and property paid or given to the Participant in connection with the 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 Participant may be combined and deposited by the Participant in a trust account or clients' segregated account. The Client acknowledges that all monies credited to the clients' segregated account maintained by the Participant may be used by the Participant to meet the default of any client of the Participant.

### **7. Participants may call for funds or security**

The Participant may call for payment of money or the provision of other security which the Participant considers, in its absolute discretion, appropriate in connection with the obligations incurred by the 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.

### **8. Default**

If:

- (a) the Client fails to pay, or provide security for, amounts payable to the Participant;

- (b) the Client fails to complete a contract for the transfer of Underlying Financial Products following the exercise of an OTC Options CCP Contract; or
- (c) a guarantee or other security provided by the Client pursuant to the Rules is withdrawn or becomes ineffective,

the 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 OTC Options CCP Contracts registered in the Client's Account and, without limitation, the Participant may:

- (a) enter into one or more transactions to effect the close out of one or more OTC Options CCP Contracts in accordance with the ASX Clear Operating Rules; or
- (b) exercise one or more OTC Options CCP Contracts in accordance with the ASX Clear Operating Rules,

and the Client must account to the 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 8 does not give the Participant power to deal with any of the Client's securities or other property held by the Participant if the Client defaults to the 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 Participant and the Client.*

## **9. Commissions and fees**

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

## **10. Tape recording of conversations**

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

## **11. Client to provide information**

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

## **12. 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 OTC Options CCP Contracts if the 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 Participant if the Participant commits an event of default under the ASX Clear Operating Rules. The powers are set out in the ASX Clear Operating Rules.*

### **13. Right to refuse deal**

The Client acknowledges that the Participant may at any time refuse to deal in, or may limit dealings in, the OTC Options Market Contracts for the Client. The Participant is not required to act in accordance with the Client's instructions, where to do so would constitute a breach of the ASX Clear Operating Rules or the Corporations Act. The Participant will notify the Client of any refusal or limitation as soon as practicable.

### **14. Termination of agreement**

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

*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 an agreement with the Client. The parties might also consider documenting the terms by which notice may be given and received.*

### **15. Effect of termination**

Termination does not affect the existing rights and obligations of the Client or the Participant at termination. Upon termination of this Agreement, the Participant will close out all OTC Options CCP 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 Participant in accordance with the ASX Clear Operating Rules.

### **16. 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 14.

### **17. Revised terms prescribed by ASX**

If ASX Clear prescribes amended minimum terms for a Wholesale Client Agreement (OTC Options Market Transactions) for the purposes of the ASX Clear 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 Agreement and apply as if the Client and the Participant had entered into an agreement comprising the New Terms.

**18. Participant to provide Client with copy of changes**

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

**19. Interpretation**

Any term used in this Agreement which is defined in the ASX Clear Operating Rules has the meaning given in the ASX Clear Operating Rules. References to the "Participant" refer to the Participant that notifies ASX Clear of an OTC Options Market Transaction that it wishes to register or that accepts an allocation or the transfer of an OTC Options CCP Contract.

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 (printed) and office held

.....  
Signature of Witness

.....  
Signature of Authorised Person

.....  
Name of Witness (Printed)

.....  
Name (printed) and office held

**End of Document**