

PART H

# D2MX terms and conditions

AFS Licence No. 297950

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D2MX Pty Ltd (ABN 98 113 959 596)

Level 37, Rialto South Tower,  
525 Collins Street,  
MELBOURNE VIC 3000

A Participant of ASX Group

# D2MX terms and conditions

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## Terms of your agreement with D2MX Pty Ltd ABN 98 113 959 596 AFSL 297950

This document contains important information regarding the terms and conditions which apply to your brokerage account with D2MX . These terms and conditions apply to all dealings between you and us. By placing an Order with D2MX (either directly or through the holder of an Australian Financial Services License (**Licensee**) who has an arrangement with D2MX to transact on your behalf), you accept the terms and conditions contained in this document.

### **PLEASE READ THIS DOCUMENT CAREFULLY AND RETAIN IT FOR YOUR FUTURE REFERENCE.**

## 1. Your agreement with D2MX

D2MX is admitted as a Trading Participant of ASX with Trading Permission in respect of Traded Products.

D2MX has entered into an arrangement with the Licensee under which you may place orders with D2MX through the Licensee to buy or sell or otherwise deal in Traded Products.

If you wish to buy or sell or otherwise deal in Traded Products on ASX, the Licensee will (as your agent) communicate your Order to D2MX. If and only if the Licensee grants you access to the online broking/direct market access system (**DMA Service**), you may also place Orders directly with D2MX through the DMA Service.

Whenever you affect a Market Transaction in this way, Penson carries the obligations to complete the relevant transaction. Information concerning Penson and the terms and conditions of your agreement with Penson are contained in the separate Disclosure Statement given to you by D2MX and the Licensee.

## 2. Your relationship with D2MX

Your primary relationship will be with the Licensee. Your relationship with D2MX will be limited to the execution of Orders. You acknowledge that D2MX will not provide financial product advice, or legal, tax, financial or accounting advice or make any financial product recommendations to you or give a Statement of Advice to you as part of the service to be provided to you by D2MX.

## 3. Trading in ASX derivatives products, warrants and partly paid securities

### 3.1 Derivative Products

If you wish to trade in Derivatives Products, the terms in Schedule 2 will apply to you. However, before you may place an Order to trade in Derivatives Products, you will need to sign and return the Client Application to D2MX or otherwise confirm in writing to D2MX that you agree to be bound by the terms of this agreement (including schedule 2).

### 3.2 Warrants

If you wish to trade in ASX Warrants, the terms in Schedule 3 will apply to you. However, before you may place an Order to trade in Warrants (other than an Order to sell a Warrant already

held by you), you will need to sign and return the Client Application to D2MX or otherwise confirm in writing to D2MX that you agree to be bound by the terms of this agreement (including schedule 3).

### **3.3 Partly Paid Securities**

If you wish to place an Order to buy Partly Paid Securities, the terms in schedule 4 will apply to you. However, before you may place an Order to buy Partly Paid Securities, you will need to sign and return the Client Application (including Schedule 4) to D2MX or otherwise confirm in writing to D2MX that you agree to be bound by the terms of this agreement (including schedule 4).

## **4. Sponsorship**

Unless agreed otherwise with D2MX, if you wish to buy, sell or otherwise deal in Traded Products under these arrangements, you must have a current Sponsorship Agreement with Penson to enable easy transfer of your Traded Products under CHESSE.

## **5. General conditions of trade**

You acknowledge and agree:

- (a) to comply with these terms and conditions and all applicable legislation and the ASIC Market Integrity Rules, ASX Operating Rules, ASX Clear Operating Rules and ASX Settlement Operating Rules and the directions, decisions and requirements of ASX and the customs and usages of the Market. Copies of the ASIC Market Integrity Rules, ASX Clear Operating Rules and ASX Settlement Operating Rules can be inspected at the Licensee's offices on request; and
- (b) all Market Transactions are subject to the terms and conditions contained in this agreement, and on the Confirmation issued by or on behalf of D2MX and the Licensee (if any), and to the ASIC Market Integrity Rules, ASX Clear Operating Rules, the directions, decisions and requirements of ASX and the customs and usages of the Market, the correction of errors and omissions and, if the sale or purchase is in relation to CS Approved Products, the ASX Settlement Operating Rules.

## **6. Account opening**

You may apply to open a new Client Account with D2MX by completing an Application. D2MX may refuse to open a new Client Account for any reason in its absolute discretion.

You warrant and represent that:

- (a) the nominated account is an account in your name;
- (b) if you are more than one person or entity, then each such person or entity shall be jointly and severally liable under these Terms and Conditions;
- (c) if you are acting as trustee, you have the authority to be bound by these Terms and Conditions;
- (d) if you are a corporation, you hold a valid ACN or ABN under the Corporations Act and your principal place of business is in Australia;
- (e) if you are acting as an intermediary on another person's behalf, you are specifically authorised to deal in the relevant Traded Products, and you have the appropriate AFS Licence;

- (f) if you are a natural person, you are 18 years of age or over; and
- (g) each Order you place and each Market Transaction executed for you is lawful and you will at all times be in a position to meet all commitments on your part arising from Market Transactions under this agreement.

## 7. Orders and instructions

You agree that, if you wish to place any Order, you must do so with the Licensee, and you authorise the Licensee, as your agent (and not as the agent of D2MX), to communicate your Order and other instructions or information to D2MX. You may only terminate the Licensee's authority to act on your behalf by terminating this agreement or advising D2MX in writing of a change of Licensee who has a wholesale relationship with D2MX.

If (and only if) the Licensee grants you access to the DMA Service, you may also place Orders directly with D2MX through the DMA Service and you agree to be bound by the terms set out in Schedule 1.

D2MX will not act on any Orders or other instructions or information communicated directly to it by you and not through the Licensee (other than an Order placed by you directly with D2MX through the DMA Service if the Licensee grants you access to the DMA Service).

D2MX may at any time, in its absolute discretion, refuse to accept any (or may place a limit on any) Order from, or execute Orders (including without limitation Orders relating to Derivatives Market Transactions) for, you (whether the Order is placed directly by you through the DMA Service or by the Licensee on your behalf). D2MX may also direct the Licensee to refuse to accept any (or to place a limit on any) Orders from you.

D2MX will not confirm to you the receipt of, nor will it be responsible for verifying the authenticity of any instructions given to it by or on behalf of you.

Subject to any instructions from you, D2MX will generally execute Orders in the sequence in which they are received. However, you acknowledge and agree that:

- (a) your Order may be automatically crossed against other orders before reaching the Market;
- (b) you will be charged the normal rate of commission by the Licensee for Orders which are crossed with D2MX's principal orders; and
- (c) D2MX may not be aware of principal orders that are being (or may be) executed, and that direct market access arrangements and program trading may make it impossible to prevent principal orders from being executed at the same time as (or before) your Order. Accordingly, you agree that D2MX may execute principal orders where you're Order on the same terms is outstanding and that this document constitutes disclosure as required by ASIC Market Integrity Rule 5.1.8.

## 8. Licensee's use of DMA Service

D2MX may provide a DMA Service to the Licensee under which the Licensee may place your Orders directly into the Trading Platform through an electronic automated client order process. You acknowledge that if D2MX provides a DMA Service to the Licensee:

- (a) there may be delays in the processing, execution, amendment or cancellation of an Order entered through the DMA Service and:
  - (i) an Order may be wholly or partly filled before an instruction for its amendment or cancellation is processed; and

- (ii) you remain liable to settle the original Order, until any relevant amendment or cancellation is effected;
- (b) the execution of an Order placed through the DMA Service may be delayed by filters or other electronic features of the electronic system;
- (c) D2MX is not responsible for the processing, execution or cancellation of any Orders submitted through the DMA Service, regardless of who enters such Orders and regardless of whether or not there is an error in the Order entry or for any delays in relation to the same;
- (d) except as required by law, D2MX makes no representations or warranties express or implied with respect to the DMA Service;
- (e) there are significant risks in trading through a DMA Service because it is serviced by means of computer and telecommunications systems, even where generally accepted industry standards and practices are followed, including that your data may not be protected, and there are risks that other users of the DMA Service, institutions or brokers may be able to see your Orders and other communications relating to trading and execution without your (or D2MX's) consent and that third parties (including persons on private networks) will have the ability to attach to your network; and
- (f) D2MX may terminate the Licensee's participation in the DMA Service at any time without notice to you. If D2MX terminates the Licensee's participation in the DMA Service, any access that the Licensee may have given you to the DMA Service will terminate at the same time.

## 9. Orders relating to sales

You agree that whenever you place a sale Order with the Licensee, you must notify the Licensee whether or not your sale Order is a covered short sale – i.e. a sale where you have, at the time you place the sale Order with the Licensee, a legally binding commitment from a securities lender to lend the securities to you under a Securities Lending Arrangement.

Where your sale relates to a covered short sale, you must also inform the Licensee at the time of placing the sale Order:

- a. the number of ASX Products to be sold that are to be delivered under the Securities Lending Arrangement;
- b. a description of the ASX Products (e.g. fully paid ordinary shares); and
- c. the name of the entity that issued the ASX Products (e.g. BHP Billiton Limited).

You acknowledge that D2MX will not be permitted to execute a sale Order for you unless you have informed the Licensee whether or not the sale Order relates to a covered short sale. You agree that, each time you place a sale Order with the Licensee and notify the Licensee that the sale Order relates to a covered short sale, you will be taken to have warranted and represented to D2MX and the Licensee that the sale will meet the requirements and conditions of the Corporations Act, Corporations Regulations and ASIC Class Orders (if any) (as amended from time to time) relating to covered short sales, (including without limitation that you have obtained a legally binding commitment from a securities lender to lend the relevant securities to you under a Securities Lending Arrangement).

## 10. Settlements

### 10.1 Settlement date and time

The Settlement Date and Time for sales or purchases is the date and time specified on the relevant Confirmation, or if no date and time are specified, it is 9.00am (Sydney time) on the third Business Day after the execution of the Market Transaction or, in the case of a Derivatives Market Transaction, on the first Business Day after execution of the Derivatives Market Transaction.

You represent and warrant that before placing any Order with us, you will be in the position to pay for any Traded Products purchased and have a presently exercisable and unconditional right to vest any Traded Products sold to enable settlement at Settlement Date and Time and, in the case of a Derivatives Market Transaction, have the means to meet the obligations and margin requirements in respect of the Derivatives Market Transaction.

### 10.2 Purchases

You agree to and must ensure that all funds required to settle the relevant Market Transaction, and all brokerage, taxes costs, duties and charges in respect of that Transaction, are made available in your Cash Account before you place the Order in respect of that Market Transaction for withdrawal by Penson. Payment in cash is not acceptable.

On the execution of a Market Transaction, which will, on settlement, require you to pay an amount of money to the Licensee, D2MX or Penson, you acknowledge that the amount will be “locked” in your Cash Account. From that time, you will not be entitled to withdraw those “locked” funds from the Cash Account. Only Penson will be entitled to use those funds for the purposes of settling the relevant transaction or otherwise as permitted under this agreement.

You authorise Penson to:

- (a) appropriate any credits, payments receipts or amounts to which you are entitled (including amounts standing to the credit of any trading or cash management trust account); and
- (b) set off those credits, payment, receipts or amounts against any amount due or owing by you to D2MX.

Neither Penson nor D2MX is required to transfer you any securities or other financial products acquired or purchased on your behalf, until D2MX has been paid in full for the relevant acquisition.

### 10.3 Sales

All documents and Security Holder Information (including the holder identification number and if applicable, holder reference number) must be received in a deliverable form two Business Days prior to the Settlement Date and Time.

Credits in respect of sales are not available until the latest of:

- (a) the Settlement Date and Time;
- (b) when all documents and Security Holder Information have been received in a deliverable form; or
- (c) all amounts due and payable by you to D2MX have been paid.

Sale proceeds will be paid directly to you unless D2MX has agreed alternative arrangements with you.

## 10.4 Confirmations

You will be given Confirmations as required by the Corporations Act and the ASIC Market Integrity Rules. You acknowledge that these may be in the form of a confirmation given jointly by the Licensee and D2MX.

You authorise the Licensee and D2MX to dispatch confirmations to you electronically to the email address notified to D2MX by the Licensee on your behalf from time to time for this purpose.

You must promptly check the accuracy of every confirmation sent to you and notify the Licensee immediately of any error that you consider may have occurred. If the Licensee does not receive any such notification from you within 24 hours, you will be taken to have accepted the accuracy of the Confirmation.

A Confirmation may at any time be re-issued to you in order to correct any errors or omissions and the terms and conditions of the original Confirmation will apply in relation to the reissued Confirmation.

If you are a Wholesale Client for the purposes of the ASIC Market Integrity Rules, D2MX and the Licensee may elect not to give any Confirmations to you in relation to Market Transactions executed for you. If D2MX and the Licensee so elect, this document is taken to be the notification required to be given by D2MX to you under the ASIC Market Integrity Rules.

Where D2MX enters into multiple Market Transactions in order to complete your Order, you authorise D2MX and the Licensee to accumulate those Market Transactions on a single Confirmation and to specify the volume weighted average price for those Market Transactions on that Confirmation. If requested by you, D2MX will, if required under the ASIC Market Integrity Rules, give you a statement of all the individual prices of the relevant transactions which are accumulated and averaged in a Confirmation.

## 10.5 Failure to settle

If you fail to settle by failing to make payment, or deliver any documents or Security Holder Information to Penson in accordance with the relevant Confirmation, the Penson Disclosure Statement or this agreement and Penson exercises its right to assign the relevant debt to us, D2MX may do one or more of the following:

- (a) pass on to you all costs incurred as a result of that failure;
- (b) charge an administration fee calculated by reference to the additional cost which may be incurred by D2MX or the Licensee as a result of your failure to settle;
- (c) levy a default charge on the amount from time to time outstanding at a rate which D2MX would be required to pay on an overdraft facility with its then current bankers;
- (d) charge interest on any debit balances resulting from the failure to settle;
- (e) sell out (or procure the sale of) any securities or other financial products purchased on your behalf (and you are fully responsible for any loss in connection with such sale) and apply the proceeds in reduction of your liability to D2MX;
- (f) sell out (or procure the sale of) any securities or other financial products otherwise held by Penson, D2MX or the Licensee on your behalf (and you are fully responsible for any loss in connection with such sale) and apply the proceeds in reduction of your liability to D2MX;
- (g) buy-in (or procure the purchase of) any securities or other financial products sold (with you being fully responsible for any loss in connection with such purchase) and recover the costs in so acting (and you acknowledge and agree that D2MX may be obliged to do so

under the ASX Settlement Operating Rules if you have failed to settle the sale or ensure that the sale is settled by the fifth Business Day after the relevant sale order was executed);

- (h) apply any cash held by D2MX or the Licensee on your account to which D2MX or the Licensee has access, or payments received for or from you, to reduce your liability to D2MX; and
- (i) cancel or instruct the Licensee to cancel any of your unexecuted orders,

and you authorise D2MX and each of its directors and employees as your attorney to give instructions on your behalf in respect of your Traded Product holdings sponsored by Penson, D2MX or the Licensee in CHESS, or held by any of their related bodies corporate in nominee holdings, and in respect of call deposit facilities or cash management trust accounts on which they are authorised to give instructions, to enable D2MX to realise those Traded Products or funds and apply the proceeds in reduction of your liability to D2MX and to recover D2MX's costs in so acting.

If you fail to settle, D2MX may make arrangements on your behalf to ensure that your settlement obligations are performed.

You are responsible for and indemnify D2MX against all costs (including legal costs on a full indemnity basis), expenses, damages and losses arising in connection with any settlement failure referred to above including, without limitation, any consequential loss, brokerage, stamp duty, taxes, penalties, interest and legal costs.

You must pay or reimburse D2MX any such administration fees and default charges and any amounts covered by the indemnity as above (together with any GST payable on those amounts) immediately upon demand. D2MX may deduct any of those amounts (and any GST) from any sale proceeds or other amounts otherwise payable to you.

## 11. Cancellations

You authorise D2MX to, and agree that D2MX may, without your consent, cancel or amend (or request or agree to the cancellation or amendment of) any Market Transactions or Crossing relating to the sale or purchase (as the case may be) of Traded Products:

- (a) if ASX exercises its power under the ASIC Market Integrity Rules to cancel or amend (or require the cancellation or amendment of) the market Transaction or Crossing; or
- (b) in the event of an error or otherwise in the circumstances contemplated in the ASIC Market Integrity Rules, your obligations in relation to the settlement of a Market Transaction cease to apply in respect of a cancelled transaction from the time it is cancelled.

## 12. Disclosure of interest

You acknowledge that D2MX may execute Orders for you in circumstances where D2MX or any of its associates:

- (a) holds a principal position or deals in the Traded Products;
- (b) provides similar services to other persons in relation to the Traded products;
- (c) takes the opposite position in a Market Transaction (including a crossing either acting for another client entitling it to charge commission on both sides of the transaction or on its own account);

- (d) sponsors or underwrites a new issue involving the Traded Products;
- (e) has material price sensitive information relating to Traded Products where the individuals processing your Order are prevented from knowing or taking into account such information by reason of Chinese Walls; or
- (f) has a potential conflict of interest of which you are not aware and which it is unable to disclose to you.

### 13. Fees and charges

You agree to pay D2MX (or Penson as D2MX's agent) on demand all Market Transaction fees and charges, including our commission, software fees and other duties and taxes payable at the rates determined by D2MX from time to time and notified to you in writing.

You agree to pay D2MX on demand interest on any amounts owing to D2MX, at the rate at which D2MX would be required to pay on an overdraft facility with its current bankers at the relevant time.

### 14. GST

If D2MX is liable to pay GST on any supply made to you under or in connection with these terms, you must in addition to and at the same time as you are required to pay the GST exclusive amount in respect of the relevant supply, pay to D2MX an amount equal to the amount of GST for which D2MX is liable in connection with the relevant supply.

### 15. Interest on Penson's trust account

You acknowledge that the D2MX Clearing Participant, Penson, will retain the interest (if any) earned on monies held in its trust account from time to time.

### 16. Indemnity

In addition to the above, if as a result of failure by you to settle, or other breach by you of this agreement or other agreement with D2MX, D2MX or any of its employees, agents and representatives (each an Indemnified Person) suffers any claim, liability, direct or consequential loss or incurs any cost, charge or expense of any nature, you must on demand fully indemnify each Indemnified Person and keep each of them fully indemnified in respect of such claim, liability, loss, cost, charge or expense.

### 17. Amounts owing

If you have not paid any debt to D2MX, D2MX may assign that debt to the Licensee and the assigned debt will become an obligation of yours to the Licensee.

### 18. Information

You warrant that all information provided by you to D2MX, Licensee or Penson (including in your Application) is, or will be when given, accurate, true and correct and further agree to immediately notify D2MX in writing upon becoming aware that such information is no longer accurate, true and correct including any change in address, telephone number or email address.

You agree that D2MX, the Licensee and Penson may share such information, as well as your account details and information regarding your transactions in Traded Products with each other and with D2MX's related bodies corporate on a confidential basis as D2MX considers

appropriate. You also consent to D2MX, the Licensee and Person disclosing such information and your account details to any regulatory authority, and consent to each of them using such information and your account details for the purposes of monitoring compliance by you, or any of them with their respective regulatory and contractual obligations, and resolving disputes.

## 19. Acknowledgements

You acknowledge that:

- (a) you have received a copy of the D2MX Financial Services Guide (FSG). D2MX reserves the right to change the FSG at any time without notice, subject to its obligations under the Corporations Act. A copy of the current FSG can be obtained on the website or on request;
- (b) if you have been referred to D2MX by or on behalf of a broker or other third party, that broker or third party may receive benefits in the form of a commission or rebate from us;
- (c) you have read and understood all documentation provided to you by D2MX including this agreement, any product disclosure statement, ASX Explanatory Booklet for Understanding Options Trading and Understanding Trading and Investment Warrants (if applicable); and
- (d) where you receive Confirmations by electronic means only, you accept that the conditions set out in the ASIC Market Integrity Rules apply.

## 20. No advice

You acknowledge that D2MX does not provide financial product advice, and does not accept responsibility for any financial product advice given to you by the Licensee. To the maximum extent permissible by law, you agree that you must not represent to any person that D2MX has given any financial product advice to you. D2MX has no liability (including in negligence) for any investment decisions made by you or any Market Transactions executed on your behalf, including any diminution in value, in or for your account,

If you are placing any Order on the basis of advice given to you by the Licensee, you must provide the Licensee with:

- (a) all information (and documentation) regarding your financial situation, investment objectives and particular needs sufficient and necessary for the Licensee to give informed financial product advice;
- (b) any relevant new information (and documentation) as soon as it becomes available; and
- (c) details of or any change in your financial situation, investment objectives and particular needs as soon as such change occurs.

## 21. Credit references

You agree that D2MX may make such enquiries as it thinks fit of any person, including your employer, your bank or a credit agency relating to your creditworthiness.

## 22. Anti-Terrorism/Money Laundering

You acknowledge that we are subject to various anti-money laundering and counter-terrorism financing laws (**AML/CTF Laws**) which may prohibit us from offering services or entering into or conducting transactions. You agree that we are not required to take any action or perform any

obligation under or in connection with this document if we are not satisfied as to your identity or where we suspect on reasonable grounds that by doing so we may breach the AML/CTF Laws.

You acknowledge that the AML/CTF Laws include prohibitions against any person dealing with the proceeds of or assets used in criminal activity (wherever committed) and from dealing with any funds or assets of, or the provision of finance to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act

You agree that we may delay, block or refuse to make any payment or to provide any service if we believe on reasonable grounds that to do so may breach any law in Australia or any other country, and we will incur no liability to you if we do so.

You agree to provide all information and documents to us which we reasonably require to comply with any law in Australia or any other country, including any AML/CTF Laws. You agree that we may disclose information which you provide to us, or about transactions you are or seek to conduct with us, where we are required to do so by any law in Australia or any other country.

You represent and warrant to us that the payment of monies by us in accordance with this document, or any instructions given by you, will not breach any law in Australia or any other country.

## 23. Variation and termination

D2MX may amend this agreement from time to time. D2MX will give you 10 days notice of any amendment, after which time, the amendment will become effective.

D2MX may terminate this agreement immediately if you engage in any market manipulation, fraudulent conduct or conduct in breach of the Corporations Act. D2MX may terminate this agreement at any time and without any reason by giving you five Business Days notice. Termination does not affect outstanding obligations under this agreement which are undischarged at the time of termination. Each indemnity in this agreement survives the termination of this agreement.

## 24. Notices

Notices given by D2MX must be in writing and may be sent to the address, fax number or email address specified in your Application or later notified by you, or by posting the notice on its website. Any notice or Confirmation given by D2MX is taken to have been received on the business day following the transmission or posting of the notice, demand or Confirmation.

Where a Client Account is opened in the joint names of more than one Client, each of you agrees that D2MX may discharge any obligation it has to give a notice or a document to you under this agreement or the Corporations Act by giving notice to any one of you.

## 25. Authorised Agents

You may at any time, by notice to D2MX, revoke the appointment of an Authorised Agent and substitute another person as Authorised Agent. Where another person is appointed Authorised Agent, the notice must include the full name, telephone number, fax number, and email address of that person and be verified by you and, in the case of a corporate client, by a Director of the client.

You are and will remain solely liable and responsible for all acts and omissions of your Authorised Agent notwithstanding that an act or omission of the Authorised Agent was outside their actual or ostensible authority or in error, fraudulent, negligent, in breach of its fiduciary duties or criminal.

You agree not to make, and release D2MX from any right that you may have to make, any Claim against D2MX for any Loss incurred or suffered by you which may arise in connection with any act or omission by the Authorised Agent.

## 26. Complaints

Complaints should be referred to D2MX in accordance with the procedure in the Financial Services Guide provided to you.

## 27. National Guarantee Fund

As D2MX is a Trading Participant of ASX, you may make a claim on the National Guarantee Fund (NGF) in the circumstances specified under part 7.5 of the Corporations Act and the Corporations Regulations. (For more information on the circumstances in which you may make a claim on the NGF or for information on the NGF generally, contact the Securities Exchange Guarantee Corporation Pty Limited ABN 19 008 626 793.)

## 28. Governing law

This agreement is governed by the law in force in New South Wales and you and D2MX submit to the non-exclusive jurisdiction of the court of New South Wales and courts which may hear appeals from those courts.

## 29. Definitions

**ASX Clear Operating Rules** means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX Clear, as amended from time to time.

**ASX Clear** means the ASX Clear Pty Limited (ABN 48 001 314 503). ASX Clear is a wholly owned subsidiary of ASX.

**AFS Licence** means an Australian financial services licence issued under the Corporations Act.

**this agreement** means the agreement constituted by your acceptance of the terms and conditions contained in this document (including the Schedules to this document).

**Application** means an application to open a Client Account with D2MX.

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

**ASX Operating Rules** means the operating rules, procedures, directions, decisions requirements, customs, usages and practices of ASX, as amended from time to time

**ASX Settlement** means ASX Settlement Pty Limited (ABN 49 008 504 532) or another clearing facility approved to clear securities and other financial product transactions effected on ASX.

**ASX Settlement Operating Rules** means the operating rules, procedures, directions, decisions requirements, customs, usages and practices of ASX Settlement, as amended from time to time.

**ASIC Market Integrity Rules** means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX, as amended from time to time.

**ASX** means ASX Limited (ABN 95 008 624 691).

**Authorised Agent** means the person (if any) described as the authorised agent of you in the Application or another person notified by you to D2MX in writing.

**Business Day** has the meaning given to it in the ASIC Market Integrity Rules.

**Cash Account** means an account with a bank, other deposit taking institution or a cash management trust, approved by Penson for the purposes of this agreement from time to time.

**Client Account** means a trading account with D2MX.

**Confirmation** means any confirmation issued by D2MX or on its behalf on execution of an order and includes an electronically transmitted confirmation.

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

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

**D2MX** means D2MX Pty Ltd ABN 98 113 959 596 AFSL 297950

**Derivatives Market Transaction** has the meaning given to it in the ASIC Market Integrity Rules.

**Derivatives Products** has the meaning given to it in Schedule 2.

**DMA Service** means service under which a person enter orders to be registered in D2MX's system and, if accepted for submission into a Trading Platform of ASX by D2MX, submitted as corresponding Trading Messages without being re-keyed by a Designated Trading Representative of D2MX.

**Loss or claim** includes without limitation any expense, costs, liability, claims, damages, fees, taxes, duties, penalties, interest, legal costs (on a full indemnity basis), judgement, consequential, special or indirect loss or loss of prospective profits.

**Market Transaction** has the meaning given to it in the ASIC Market Integrity Rules and means a transaction in Traded Products executed through ASX.

**Order** means any order placed by you with D2MX to purchase or sell or otherwise deal in Traded Products.

**Partly Paid Security** has the meaning given to it in the ASIC Market Integrity Rules.

**Penson** means Penson Financial Services Australia Pty Ltd (ABN 60 136 184 962) (AFS Licence No. 338264).

**Settlement Date and Time** means the date and time specified on the relevant Confirmation, or if no date and time are specified, it is 9.00am (Sydney time) on the third Business Day after the execution of the Market Transaction

**Traded Product** means a financial product which may be traded through ASX and includes Derivatives Products.

**Warrant** has the meaning given to it in the ASIC Market Integrity Rules.

**We, us, our** means D2MX.

**You** means the person or persons in whose name the Client Account is opened with the Licensee or named on the account opening or application form as the client. If that is more than one person, "you" means each of them separately and every two or more of them jointly. "You" includes your successors and assigns.

Words expressed in the singular include the plural and vice versa.

Unless the context otherwise requires, a reference to a document or agreement includes any variation or replacement of it and a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision.

Words used in this document have the meanings given to them in the ASIC Market Integrity Rules, ASX Operating Rules, ASX Clear Operating Rules or the ASX Settlement Operating Rules. If you require a copy of these definitions please contact the Licensee.

If you are a joint holder, these terms and conditions bind each person jointly and severally, and each person is authorised to issue instructions to the Licensee, D2MX and Penson and give receipts to them in relation to any purchase or sale of Traded Products or other matters to which these terms and conditions relate.

You agree that in the event of any inconsistency between this document and any applicable laws, the ASIC Market Integrity Rules, ASX Clear Operating Rules or ASX Settlement Operating Rules, the latter will prevail to the extent of the inconsistency.

You acknowledge that this document is not exhaustive and agree to be bound by other policies and procedures which concern the operations of your account with D2MX as notified to you from time to time.

# Schedule 1 – DMA Service terms

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The following terms and conditions apply if the Client is given access by the Licensee to the DMA Service.

## 1. Access to the trading system

No person other than an Authorised Person may at any time submit an Order for the Client (whether as principal or as agent for the Client) through the DMA Service using the Security Information provided by D2MX to the Licensee or by the Licensee to the Client (as the case may be).

D2MX may in its discretion at any time limit the number of Authorised Persons who are permitted to submit Orders for the Client (whether as principal or as agent for the Client) through the DMA Service.

The Licensee and the Client must not authorise, allow nor permit any person other than an Authorised Person to access or use the DMA Service using the Security Information.

The Licensee and the Client acknowledge and agree that D2MX may, in its absolute discretion:

- (a) refuse to approve as an Authorised Person any person nominated by the Licensee or the Client for that purpose;
- (b) revoke its approval of an Authorised Person at any time; and
- (c) from time to time test whether an Authorised Person has adequate knowledge of the DMA Service and the Dealing Rules (as defined in the ASIC Market Integrity Rules), directions, decisions and requirements of ASX relevant to the type of order submission facilities given to the Authorised Person by D2MX.

The Client must notify the Licensee, and the Licensee must notify D2MX, immediately once any Authorised Person ceases to be authorised by the Client or the Licensee (as the case may be) to access the DMA Service on the Client's behalf.

## 2. Use of the system

The Licensee and the Client acknowledge that:

- (a) the DMA Service is accessible through the DMA System;
- (b) neither D2MX nor any related body corporate of D2MX makes any representation or warranty, express or implied, to the Licensee or the Client or to any other person regarding the DMA System, nor provides any guarantee with respect to the DMA System, including without limitation, with respect to the operation, functionality, effectiveness, accuracy, reliability, merchantability, quality or fitness for purpose;
- (c) neither D2MX nor any related body corporate of D2MX is in any way responsible or liable to the Licensee or the Client or any person claiming through the Licensee or the Client, for any loss that results from the Licensee's or the Client's use of the DMA System, or from any failure, error or defect of or in the DMA System;
- (d) the Licensee and the Client are solely responsible for assessing the adequacy of the DMA System and for deciding whether or not to access it; and

- (e) it is the Licensee's and the Client's responsibility to obtain, at their own expense, all hardware and software to be used by the Licensee and the Client (as the case may be) in connection with use of the DMA Service.

### 3. Security information

Each of the Licensee and the Client acknowledges that the Security Information is confidential and agrees that the Licensee and the Client are responsible for maintaining its confidentiality.

Each of the Licensee and the Client agrees that it must:

- (a) only use the Security Information in accordance with these terms;
- (b) not disclose the Security Information (or any part of it) to any person or persons (including its employees, contractors, agents and consultants) other than to an Authorised Person;
- (c) ensure that at all times, each Authorised Person maintains the confidentiality of the Security Information;
- (d) notify D2MX immediately upon becoming aware that any Security Information has been or may be used or disclosed in a manner that is not consistent with these terms; and
- (e) regularly review and, if necessary, upgrade the security of its network through which the Client accesses the DMA Service to ensure that only Authorised Persons are able to access or use the DMA Service.

## 4. Submitting orders through the DMA Service

### 4.1 Permission to submit Orders using Security Information

Each of the Licensee and the Client acknowledges and agrees that it (and/or any Authorised Person) is permitted to submit Orders through the DMA Service only if it or they do so using the Security Information.

### 4.2 Responsibility for submitting Orders

Each of the Licensee and the Client:

- (a) determines the time at which Orders are submitted through the DMA Service;
- (b) is responsible for all Orders submitted through the DMA Service (whether as principal or as agent for the Client) using the Security Information, regardless of who enters such Orders and regardless of whether or not there is an error in the Order entry;
- (c) is bound by any agreement entered into on its behalf in reliance on such Orders;
- (d) is liable for any reasonable expense incurred by D2MX in reliance on such Orders; and
- (e) accepts the sole risk and responsibility for Orders submitted by it through the DMA Service, including any Order submitted in error.

### 4.3 Order priority

Each of the Licensee and the Client acknowledges that:

- (a) all Orders submitted by it (whether as principal or as agent for the Client) through the DMA Service are, subject to any Filters, entered on an ASX Trading Platform in the sequence in which they are received, and otherwise as expeditiously as practicable; and
- (b) this may result in D2MX's principal orders being satisfied ahead of an Order.

#### **4.4 Acknowledgment about resubmitting purged Orders**

The Licensee and the Client acknowledge that Orders purged from an ASX Trading Platform by ASX will not be resubmitted to that ASX Trading Platform by D2MX.

#### **4.5 No pre-arranged Orders**

Each of the Licensee and the Client undertakes to ensure that any Orders placed through the DMA Service which match opposite orders placed by D2MX in a ASX Trading Platform, either as agent or principal, will be of an accidental nature, meaning that no pre-arrangement of the matched orders will have taken place with D2MX, and will not detract in any way from your Orders transacting in a ASX Trading Platform under strict rules of time and price priority.

### **5. Orders relating to derivatives products**

#### **5.1 Derivatives Client terms**

The Client must not, and the Licensee must not on behalf of the Client, submit an Order through the DMA Service in relation to a Derivatives Product unless the Client has signed and returned a copy of this agreement (including schedule 2) to D2MX or otherwise confirmed in writing to D2MX that the Client agrees to be bound by the terms of this agreement (including schedule 2).

#### **5.2 Closing out derivatives contracts**

If, as a result of Orders submitted by the Licensee or the Client through the DMA Service, a Derivatives Contract registered in the Client's account with Penson as Buyer and a Derivatives Contract in the same Series or Delivery Month is registered in the Client's account with Penson as Seller, D2MX will use its best endeavours to ensure that the corresponding Derivatives Contracts registered with ASX Clear are closed out by ASX Clear in accordance with ASX Clear Operating Rule 13.2.

However, each of the Licensee and the Client acknowledges and agrees that the Client's obligations in relation to those Derivatives Contracts continue in force until ASX Clear has closed out the corresponding Derivatives Contracts registered with it in accordance with ASX Clear Clearing Rule 13.2.

#### **5.3 Exercise of a Derivatives Contract**

Each of the Licensee and the Client acknowledges that, if the Client wishes to exercise a Derivatives Contract registered in the Client's account with Penson:

- (a) neither the Licensee nor the Client is able to do so through the DMA Service (whether or not that Derivatives Contract was bought through the DMA Service); and
- (b) the Licensee must contact D2MX directly in order to communicate the Client's instruction to exercise that Derivatives Contract.

### **6. Orders to purchase warrants**

The Client must not, and the Licensee must not on behalf of the Client, submit an Order through the DMA Service to purchase Warrants unless the Client has signed and returned a copy of this agreement (including schedule 3) to D2MX or otherwise confirmed in writing to D2MX that the Client agrees to be bound by the terms of this agreement (including schedule 3).

### **7. Orders to purchase partly paid securities**

The Client must not, and the Licensee must not on behalf of the Client, submit an Order through the DMA Service to purchase Partly Paid Securities unless the Client has signed and returned a

copy of this agreement (including Schedule 4) to D2MX or otherwise confirmed in writing to D2MX that the Client agrees to be bound by the terms of this agreement (including schedule 4).

## 8. Trading rules

### 8.1 DMA Trading Limits

D2MX may at any time through the DMA Service impose, and from time to time vary, DMA Trading Limits. Without limitation, D2MX may impose DMA Trading Limits on any or all of the following:

- (a) the value or number of any buy Orders or trades;
- (b) the value or number of any sell Orders or trades;
- (c) the available cleared funds;
- (d) the available sponsored stock;
- (e) the net value of any buy Orders or trades less sell Orders or trades;
- (f) the gross value of any buy Orders or trades and any sell Orders or trades;
- (g) the value of any Order or trade; and
- (h) the value of any Order submitted by one or more Authorised Person, or trade undertaken by such a person.

Each of the Licensee and the Client must comply, and ensure that each Authorised Person complies, with all applicable DMA Trading Limits.

### 8.2 Prohibited orders

Each of the Licensee and the Client must ensure that:

- (a) each Authorised Person accesses the DMA Service in a way that ensures fairness, efficiency and ongoing protection of market integrity;
- (b) it does not place an Order through the DMA such that the beneficial ownership of the financial products which are the subject of the Order would not change if the Order was executed;
- (c) it does not take any action, fail to take any action or place any Order through the DMA Service where that Order (or the resulting transaction) would violate or cause or result in the Licensee, the Client or D2MX violating any Applicable Regulation, including without limitation, any Applicable Regulation in relation to:
  - (i) market manipulation, false trading, market rigging, fictitious transactions, wash trading or matching of orders;
  - (ii) insider trading;
  - (iii) front running;
  - (iv) fraud;
  - (v) creation of a disorderly market or otherwise prejudicing the integrity or efficiency of the market; or
  - (vi) misleading or deceptive conduct; and
- (d) each Order is submitted in accordance with these terms or any policy or operational guideline published by D2MX from time to time in relation to the DMA Service.

### **8.3 Filters**

D2MX may impose Filters to restrict the placement of any Orders or the execution of any trades through the DMA Service, including (without limitation) Filters whose object is to:

- (a) prevent a breach of the provisions set out in this clause 8;
- (b) prevent Orders being registered with an ASX Trading Platform where the price at which the Order is submitted through the DMA Service is too far from the prevailing market price for the relevant security or financial product;
- (c) ensure that ACOP does not interfere with the efficiency and integrity of the market conducted by ASX;
- (d) ensure that ACOP does not interfere with the proper functioning of any ASX Trading Platform; or
- (e) facilitate compliance with, and prevent breaches of, the Applicable Regulations.

D2MX has, and accepts, no responsibility or liability to the Client, a client or any person claiming through the Client for failing to submit such Orders to an ASX Trading Platform.

### **8.4 Delays**

Each of the Licensee and the Client acknowledges that there may be delays in the processing or execution of an Order placed through the DMA Service, and:

- (a) an Order may be wholly or partly filled before an instruction for its amendment or cancellation is processed;
- (b) the Licensee and the Client remain liable to D2MX to settle the original Order, until any relevant amendment or cancellation is effected; and
- (c) D2MX will not be liable for any loss or damage to the Licensee or the Client by reason of any delay in processing any Order submitted through the DMA Service.

### **8.5 D2MX takes no responsibility**

Each of the Licensee and the Client acknowledges that D2MX takes no responsibility for the processing, execution or cancellation of any Orders placed through the DMA Service or for any delays in relation to the same.

## **9. Reconciliation**

If:

- (a) the Client entered the Order into the DMA Service, the Client; is responsible; or
- (b) the Licensee entered the Order into the DMA Service, the Licensee is responsible,

for reconciling end-of-day confirmations against its records on any given trading day, and must communicate to D2MX, any discrepancies found in this reconciliation before the market opens on the next trading day. Each of the Client and the Licensee acknowledges that D2MX is not responsible in any circumstances for the losses of any kind of the Licensee or the Client that occur through errors that go undetected as a result of the failure of the Client or the Licensee (as the case may be) to perform this reconciliation.

## **10. Principal trading by D2MX**

Each of the Licensee and the Client acknowledges that D2MX and/or any of D2MX's related bodies corporate may:

- (a) enter a transaction in securities, derivatives, warrants and other financial products on ASX as principal and, where permitted by law, may take the opposite position in any such transaction, acting either for a client or on D2MX's own account (and the Licensee and the Client consent to D2MX and/or D2MX's related bodies corporate entering such transactions and taking such positions); and
- (b) place principal orders on the same terms as any Order, and that D2MX's order may be filled before an Order due to it being entered into the relevant ASX Trading Platform prior to the Order.

## **11. D2MX's warranties and liabilities**

### **11.1 No representations or warranties about the DMA Service**

Subject to those provisions of the Trade Practices Act 1975 (Cth) and any other rights implied by law, which cannot be excluded by agreement between the parties, D2MX makes no representations or warranties express or implied, including without limitation, any implied warranties as to merchantability, quality or fitness for a particular purpose or otherwise (including as to accuracy, currency, availability, completeness or quality) with respect to the DMA Service.

### **11.2 Exclusion of liability**

Each of the Licensee and the Client acknowledges that the DMA Service is provided at its risk and that to the extent permitted by law, D2MX excludes all liability in contract, tort (including negligence) or otherwise relating to or resulting from use of the DMA Service, including without limitation, liability for any loss or damage (including incidental, indirect and consequential loss and damage, loss of prospective profits, or expenses) incurred or suffered by the Licensee or the Client directly or indirectly, as a result of:

- (a) any defect, delay, failure, inaccuracy in, use of or inability to use the DMA Service; or
- (b) any government restriction, exchange or market rulings, suspension of trading computer or telephone failure, unlawful access to the DMA Service, theft, sabotage, war, earthquakes, strikes force majeure and without limitation, any other conditions beyond D2MX's control.

### **11.3 Limitation of liability in any event**

D2MX's liability shall in any event be limited to:

- (a) in the case of goods, replacement or repair of the goods; and
- (b) in the case of services, re-supply of the services.

### **11.4 System and trading risks**

Each of the Licensee and the Client acknowledges that there is significant risk in trading through a system, including the DMA Service, which is serviced by means of computer and telecommunications systems, even where generally accepted industry standards and practices are followed, including that:

- (a) the access to and use of the DMA Service cannot be operated in all circumstances without error including, without limitation, errors in computer programs and telecommunications systems. These errors may result in, among other things:
  - (i) a delay in telecommunications services;
  - (ii) interrupted service and faults, such that the DMA Service may not remain accessible at all times during the trading day and there may be problems affecting

- the stability of the DMA Service that could cause the Licensee or the Client to be unable to enter Orders via the DMA Service during normal trading hours;
- (iii) Orders and other communications relating to trading and execution not reaching D2MX or being lost, rejected or partially received or sent, such that they are not accurately received or sent by the Licensee, the Client or D2MX and are not representative of the original content of the Orders and other communications relating to trading and execution;
  - (iv) inaccuracies in the provision of the DMA Service and generally;
- (b) the Licensee's and the Client's data may not be protected, and there are risks that other users of the DMA Service, institutions or holders or an Australian Financial Services Licence will be able to see Orders submitted by the Licensee or the Client and other communications relating to trading and execution without the Licensee's or the Client's (or D2MX's) consent and that third parties (including persons on private networks) will have the ability to attach to the Licensee's or the Client's network;
  - (c) Orders and other communications relating to trading and execution and other data submitted to the DMA Service will not remain confidential;
  - (d) the Licensee's or the Client's system may not be compatible with the DMA Service or an ASX Trading Platform, and that this incompatibility may lead to an unstable environment; and
  - (e) Orders may be placed through the DMA Service without the Licensee's or the Client's authority by a person using the Security Information given to the Licensee or the Client and accordingly, that trades which have not been authorised by the Licensee or the Client may be executed.

## 12. Termination

D2MX may terminate the Licensee's or the Client's participation in the DMA Service at any time by notice in writing.

The Licensee or the Client may terminate its participation in the DMA Service by request in writing to D2MX. The Client acknowledges that if the Licensee's participation in the DMA Service is terminated, the Client's participation will also be terminated.

Termination of the Licensee's or the Client's participation does not affect its outstanding obligations under this agreement or any other agreement you have with D2MX.

## 13. Definitions

**Authorised Person** means a person who is nominated and permitted by D2MX to submit Orders through the DMA Service using the Security Information provided by D2MX or, in the case of the Client, provided by the Licensee.

**ACOP** has the meaning given to Automated Client Order Processing in the ASIC Market Integrity Rules.

**ASX Trading Platform** means a Trading Platform (as defined in the ASIC Market Integrity Rules) which is made available by ASX in relation to Cash Market Products (as defined in the ASIC Market Integrity Rules).

**Client** means the person or persons described as the client in the Application Form in respect of which the Licensee has granted access to the DMA Service.

**Derivatives Contract** has the meaning given to Options Market Contract or Derivatives CCP Contract, each as defined in the ASX Clear Operating Rules or the corresponding contract between D2MX or Penson and you, as the context requires.

**DMA Trading Limits** means the limits that D2MX may place on the Orders that may be submitted and/or the trades that may be undertaken through the DMA Service.

**Filters** mean the restrictions D2MX imposes, whether by automated or manual means, to limit the Licensee's or the Client's ability to place Orders through the DMA Service.

**Order** means an order for the purchase or sale of (or other dealing in) securities and/or financial products made through the DMA Service using the Security Information provided to you and, as the context requires, includes (without limitation):

- (a) an order or instruction to amend or cancel an existing order submitted through the DMA Service, and
- (b) an order or instruction to open or close out a position in Derivatives Contracts.

**Security Information** means the user code, user name and password given to the Licensee or the Client by D2MX in connection with use of the DMA Service.

# Schedule 2 – Derivatives client agreement between D2MX and client

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The following terms and conditions apply if the Client is to trade in Derivatives Products.

## 1. Instructions [ASIC Minimum Term 3.1.7(1)(a)]

The Client may from time to time, through the Licensee or, if the Licensee gives the Client access to the DMA Service, by placing an Order through the DMA Service, instruct D2MX to deal in the following kinds of derivatives which are traded on ASX:

- (a) Options (sometimes referred to as Exchange Traded Options);
- (b) Share Ratio Contracts; and
- (c) other kinds of derivatives traded on ASX, not including Futures (hereafter “**Derivative Products**”).

If the Client gives instructions to D2MX to deal in a Derivative Product in which D2MX is not authorised to deal under this clause, D2MX will notify the Client immediately and the instruction will be deemed as NOT authorised.

## 2. Explanatory Booklet (retail investors only) [ASIC Minimum Term 3.1.7(1)(b)]

The Client has received and read a copy of the current explanatory booklet published by ASX in respect of each Derivative Product.

## 3. Margins

The Client agrees not to breach, either alone or in concert with others, the position or exercise limits referred to in the Explanatory Booklet described in clause 2 above. The Client agrees to maintain a deposit or bank guarantee for such sum as will from time to time be required by ASX. The Client acknowledges D2MX's rights to close out any contract where the Client fails to deposit the required margin or make the required payments as advised by D2MX in accordance with ASX Clear Operating Rules or additional D2MX requirements.

## 4. Authorisation for lodgement and withdrawal of CHESS Securities with ASX Clear

The Client agrees to authorise Penson Financial Services Australia Pty Ltd ABN 60 136 184 962 (Penson). (D2MX's Third Party Clearer) to lodge or withdraw ASX Clear approved CHESS Securities held by the Client or the Client's designated accounts with D2MX for the purpose of covering ASX Clear margin requirements.

If the Client wishes to write an Option and this Option is to be covered by CHESS Securities as collateral, the Client agrees to instruct D2MX to lodge the relevant CHESS Securities (including details of NC number, security code, quantity which is to be lodged).

Note: where practical D2MX will lodge CHESS Securities to offset margins as the need arises. Instructions can be emailed to [dtr@d2mx.com.au](mailto:dtr@d2mx.com.au) or call us on 1300 130 545 (where CHESS

Securities are to be sold or withdrawn from ASX Clear, or where CHESS Securities have not been lodged with ASX Clear and should be.

## 5. Clearing arrangements between D2MX and Penson

D2MX is a party to a Clearing Agreement with Penson, an admitted General Participant of ASX Clear.

Prior to placing an order with D2MX to deal in Derivative Products, the Client must have signed a Client Agreement with Penson.

## 6. Nature of D2MX's obligations [ASIC Minimum Term 3.1.7(1)(d)(i)]

Notwithstanding that D2MX 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 (as defined in the ASIC Market Integrity Rules), is entered into by D2MX as principal.

## 7. Obligations of Client owed to Penson

The Client acknowledges that, subject to clause 21.3 below, immediately upon execution of a transaction in Derivative Products by D2MX on behalf of the Client, Penson (and not D2MX) is obliged as principal and has the Clearing Obligations (as defined in the ASIC Market Integrity Rules) for that transaction (including upon registration, obligations to ASX Clear as principal) even though the transaction has been entered into by D2MX on the Client's behalf.

Where the Client owes an obligation to deliver funds, security or information to Penson that obligation will not be satisfied by delivery to D2MX.

## 8. Application of ASIC Market Integrity Rules and ASX Operating Rules [ASX Minimum Term 1 and ASIC Minimum Term 3.1.7(1)(d)(vii)]

The Client and D2MX are bound by the ASIC Market Integrity Rules, 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 Derivative Products traded on ASX for the Client.

The Client acknowledges that each Derivative Product registered with ASX Clear is subject to the ASX Clear Operating Rules and the practices, directions, decisions and requirements of ASX Clear.

## 9. Authority [ASIC Minimum Term 3.1.7(1)(c)]

The Client acknowledges that the Client is either:

- (a) acting as principal; or
- (b) acting as an intermediary on another's behalf and is specifically authorised to transact the ASX Derivative Products, by the terms of:
  - (i) an Australian financial services licence under the Corporations Act held by the Client;
  - (ii) a trust deed (if the Client is a trustee); or
  - (iii) an agency contract.

## 10. Tape recording of conversations [ASIC Minimum Term 3.1.7(1)(d)(iv)]

The Client acknowledges that D2MX may record telephone conversations between the Client and D2MX. If there is a dispute between the Client and D2MX, the Client has the right to listen to any recording of those conversations.

## 11. Commissions and fees [ASX Minimum Term 2, ASIC Minimum Term 3.1.7(1)(d)(iii) ]

The Client must pay to Penson (as agent for D2MX) commissions, fees, taxes and charges, charged by D2MX in connection with dealings for the Client in Derivative Products at the rates determined by D2MX from time to time and notified to the Client in writing.

Commission charged by D2MX to the Client is collected by Penson on behalf of D2MX. Penson will account to D2MX for such commission after deducting fees which Penson charges to D2MX.

Commission is also payable to Penson, where Penson has been requested (in accordance with the Clearing Agreement), to act on behalf of D2MX on a contract for the transfer of Underlying Financial Products following the exercise of a Derivatives Contract. Penson will pass on part of that commission to D2MX.

## 12. Right to refuse to deal [ASIC Minimum Term 3.1.7(1)(d)(v)]

The Client acknowledges that D2MX may at any time refuse to deal in, or may limit dealings in, the Derivative Products for the Client. D2MX is not required to act in accordance with the Client's instructions, where to do so would constitute a breach of the ASIC Market Integrity Rules, ASX Operating Rules or the Corporations Act. D2MX will notify the Client of any refusal or limitation as soon as practicable.

## 13. Termination of Agreement [ASIC Minimum Term 3.1.7(2)]

Either the Client or D2MX may terminate this Agreement by giving notice in writing to the other. Termination will be effective upon receipt of the notice by the other party.

## 14. Effect of termination [ASX Minimum Term 5 and ASIC Minimum Term 3.1.7(2)]

Termination does not affect the existing rights and obligations of the Client or D2MX at termination.

Upon termination of this Agreement, Penson will close out all Derivatives Contracts entered into by Penson and 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.

## 15. Amendment

This Agreement may be amended by D2MX from time to time. D2MX will give the Client 10 days notice of any amendment, after which time, the amendment will become effective.

## 16. Revised Terms prescribed by ASX [ASX Minimum Term6]

If ASX prescribes amended minimum terms for a Client Agreement for the Derivative Products for the purposes of the ASIC Market Integrity Rules (New Terms), to the extent of any

inconsistency between these terms and the New Terms, the New Terms will override the terms of the Client Agreement and apply as if the Client and D2MX had entered into an agreement containing the New Terms.

## 17. D2MX to provide Client with copy of changes [ASX Minimum Term 7]

D2MX will provide a copy of the New Terms to the Client as soon as practicable after ASX prescribes the New Terms.

## 18. Dealing as Principal [[ASIC Minimum Term 3.1.7(1)(d)(ii)]

The Client acknowledges that D2MX may, in certain circumstances permitted under the ASX Operating Rules, Corporations Act and the ASIC Market Integrity Rules, take the opposite position in a transaction in the Derivative Products, either acting for another client or on its own account.

## 19. Investment in ASX Derivative Products

The Client has formed the view that investment in Derivative Products is appropriate to the Client's financial situation, investment objectives and particular needs.

## 20. Client to Provide Information [ASX Minimum Term 3]

The Client will take all reasonable steps to deliver information or documentation to D2MX, or cause information or documentation to be delivered to D2MX concerning transactions in Derivative Products (including Option Transactions) which are requested by a person having a right to request such information or documentation. D2MX is authorised to produce the information or documentation to the person making the request.

The Client agrees that D2MX may disclose such information (or documentation), any of the Client's account details and information (or documentation) regarding transactions in financial products (including transactions relating to Derivative Products or to the exercise of Derivative Products) of the Client to Penson for use for the purposes of this agreement, and for the purposes of monitoring compliance by the Client, D2MX or Penson with their regulatory and contractual obligations, and resolving disputes.

## 21. Allocation (give up)

### 21.1 Client acknowledgement

The Client acknowledges that Penson is obliged as principal and has the Clearing Obligations in respect of all transactions in relation to Derivative Products which are executed by D2MX on behalf of the Client, unless, in relation to a specified transaction or transactions:

- (a) the Client has consented to the allocation of the Derivatives Contract to another Clearing Participant;
- (b) Penson has consented to the allocation of the Derivatives Contract to that other Clearing Participant;
- (c) Penson has provided that consent prior to the Derivatives Contract being registered with ASX Clear;
- (d) that other Clearing Participant has accepted the allocation of those trades in accordance with the ASX Clear Operating Rules; and

- (e) that other Clearing Participant has entered into a Client Agreement with the Client which complies with the ASX Clear Operating Rules.

## **21.2 Authorisations with respect to derivatives contracts**

For the purposes of clause 21.1(a), the Client authorises D2MX in respect of any Derivatives Contract arising out of a transaction in a Derivative Product executed by D2MX to:

- (a) instruct Penson on behalf of the Client from time to time in its discretion, to allocate a Derivatives Contract to another Clearing Participant (Second Clearing Participant); and
- (b) consent on behalf of the Client to the allocation of that relevant Derivatives Contract to a Second Clearing Participant,

provided that, at the time the instruction and consent are given to Penson by D2MX, an agreement exists between the Client and the Second Clearing Participant which complies with the ASX Clear Operating Rules (and any other applicable rules or law) and sets out the terms of their relationship in relation to the clearing of transactions in Derivative Products.

## **21.3 Credit references**

The Client agrees that D2MX may make such enquiries as it thinks fit of any person, including the Client's employer, bank or credit agency, relating to the creditworthiness of the Client and disclose the result of those enquiries to Penson for the purposes of Penson's risk assessment.

## **21.4 Confirmations**

The Client acknowledges that any confirmation (contract note/daily statement) dispatched electronically to the Client by or on behalf of D2MX is subject to:

- (a) the terms and conditions of this agreement;
- (b) the ASIC Market Integrity Rules, directions, decisions and requirements of ASX and where relevant the ASX Settlement Operating Rules;
- (c) the customs and usages of the Market (as defined in the ASIC Market Integrity Rules); and
- (d) the correction of errors and omissions.

If the Client is a Wholesale Client for the purposes of the ASIC Market Integrity Rules, D2MX may elect not to give any Confirmations to it in relation to Derivatives Transactions executed for it. If D2MX so elects, this agreement is taken to be the notification required to be given by D2MX to the Client under the ASIC Market Integrity Rules.

## **22. Cancellation of Trades**

### **22.1 Broker authorisation with respect to cancelled transaction**

The Client authorises D2MX, and agrees that D2MX may, without the Client's consent, cancel or amend (or request or agree to the cancellation or amendment of) any transaction in Derivative Products or any Derivative Contract to which a confirmation relates:

- (a) if ASX exercises its power under the ASIC Market Integrity Rules to cancel or amend (or require the cancellation or amendment of) that transaction or Derivatives Contract; or
- (b) in the event of an Error (as defined in the ASIC Market Integrity Rules) or otherwise in circumstances contemplated in the ASIC Market Integrity Rules.

### **22.2 Obligations cease with respect to cancelled transaction**

The obligations of D2MX and the Client relating to settlement and clearing of a transaction cease to apply in respect of a cancelled transaction from the time it is cancelled.

## 23. Governing law

This Agreement is governed by the law in force in New South Wales and the Client and D2MX submit to the non-exclusive jurisdiction of the courts of New South Wales and courts which may hear appeals from those courts.

## 24. Joint and Several Liability

If the Client constitutes more than one person then each of those persons is jointly and severally bound by this Agreement and D2MX is entitled to act on the instructions of any one of those persons.

## 25. Privacy

We may collect your personal information from you when we provide services to you under these Terms. We may use any information we collect from you, or such other relevant documents, to

- a) assess your request for us to provide our services to you;
- b) provide our services to you in accordance with these Terms; and
- c) comply with legislative and regulatory requirements including the *Privacy Act 1988* (Cth).

You must notify us when any of the information provided by you changes.

We may disclose personal information to:

- a) our related bodies corporate, whether in Australia or overseas;
- b) the Clearing Participant;
- c) our service providers (including marketing companies, data consultants and IT contractors);
- d) our agents, contractors, and external advisers;
- e) government and other regulatory bodies and authorities whether in Australia or overseas;
- f) payment system operators; and
- g) other financial institutions and credit providers.

You have a right to access any personal information that we hold about you. Sometimes there may be a reason why access will not be possible. If that is the case, you will be told why. To find out what kinds of personal information we may hold about you, or to request access to any personal information, please contact us.

You agree that your personal information can be used or disclosed by us as contemplated in these Terms. You understand that if you do not provide any information requested by us or do not agree to us using your information as set out in this clause 25, we may not be able to provide our services to you.

You agree that we may make such enquiries as we think fit of any person, including your employer, bank or credit agency, relating to your creditworthiness and disclose the result of those enquires to the Clearing Participant for the purposes of the Clearing Participant's risk assessment.

We may record any or all incoming and/or outgoing phone calls with you without making a disclosure to you of this nature each and every time you speak with a representative of D2MX. These calls may be recorded without an audible tone. If there is a dispute between us, you have

the right to listen to any recording of your conversations. Nothing in these Terms obliges us to keep a recording longer than 90 days.

## 26. Interpretation

Unless the contrary intention appears:

**ASX Clear** means ASX Clear Pty Limited ABN 48 001 314 503.

**ASX Clear Operating Rules** means the operating rules of ASX Clear as amended from time to time.

**ASX Operating Rules** means the operating rules of ASX Operations Pty Ltd (ABN 42 004 523 782) as amended from time to time

**ASX Settlement** means ASX Settlement Pty Limited (ABN 49 008 504 532).

**ASX Settlement Operating Rules** means the operating rules of ASX Settlement as amended from time to time.

**ASX** means ASX Limited ABN 98 008 624 691.

**ASIC Market Integrity Rules** means the ASIC Market Integrity Rules (ASX Market) 2010 as amended from time to time.

**Client** means the person or persons described as the client in the Application Form.

**Derivatives Contract** means a Derivatives Market Contract (as defined in the ASIC Market Integrity Rules) or a Derivatives CCP Contract (as defined in the ASX Clear Operating Rules) or the corresponding contract between D2MX and the Client or D2MX and Penson, as the context requires.

**Derivative Product** has the meaning given to it in clause 1.

**Derivatives Transaction** has the meaning given to Derivatives Market Transaction in the ASIC Market Integrity Rules and where the context requires includes the sale or purchase of Underlying Financial Products following the exercise of a Derivatives Contract.

Other words and phrases defined in the ASIC Market Integrity Rules, the ASX Clear Operating Rules and the ASX Settlement Operating Rules have the meaning given to them in the applicable Rules. A copy of these Rules is available on request.

Words expressed in the singular include the plural and vice versa.

A reference to a document or agreement includes any variation or replacement of it.

# Schedule 3 – Warrant client agreement between D2MX and Client

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The following terms and conditions apply if the Client is to purchase Warrants. The Client agrees and acknowledges that:

- (a) it has received and read a copy of the Explanatory Booklet issued by ASX in respect of Warrants ("Understanding Trading and Investment Warrants", available electronically at the following link:  
<http://www.asx.com.au/documents/resources/understandingwarrants.pdf> or in paper form on request by contacting D2MX);
- (b) a Warrant has a limited life and cannot be traded after its expiry date;
- (c) Warrants do not have standardised Terms of Issue and it is the responsibility of the Client to become aware of any adjustments which may have been made to any Warrant in which the Client chooses to invest;
- (d) Warrants may be subject to adjustments after their initial issue. The Client acknowledges that it is the Client's responsibility to become aware of any adjustments which may have been made to any Warrant in which the Client chooses to invest;
- (e) admission to Trading Status of a Warrant does not imply that ASX or the Securities Exchanges Guarantee Corporation Limited gives any guarantee or warranty as to the viability of the Warrant-Issuer or Guarantor; and
- (f) failure of the Warrant-Issuer or the Guarantor (if applicable) to fulfil their obligations does not give rise to a claim against ASX, D2MX or the Securities Exchanges Guarantee Corporation Limited.

Words used in this Schedule 3 have the meanings given to them in the ASIC Market Integrity Rules, ASX Operating Rules, ASX Clear Operating Rules or the ASX Settlement Operating Rules. If you require a copy of these definitions please contact the Licensee.

***If the Client wishes to purchase Derivative Products and/or Warrants, the Client must either sign and return a copy of this agreement (including Schedule 2 and/or Schedule 3 as the case may be) to D2MX or otherwise confirmed in writing to D2MX that the Client agrees to be bound by the terms of this agreement (including Schedule 2 and/or Schedule 3 as the case may be).***

# Schedule 4 – Partly paid security client agreement between D2MX and Client

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The following terms and conditions apply if the Client is to buy Partly Paid Securities. The Client agrees and acknowledges that it is aware that:

- (a) a Partly Paid Security is a security which may require the Client to make a further payment or payments at some time in the future;
- (b) it is the Client's responsibility to obtain and read a copy of the prospectus, product disclosure statement or information memorandum issued by an Issuer which sets out the particular features of, and rights and obligations attaching to, a Partly Paid Security before placing an order to buy a Partly Paid Security;
- (c) the Client may be required to make further payments on a Partly Paid Security and that a failure to make a further payment by the specified date(s) may result in an Issuer of a Partly Paid Security or their associates or agents taking action, including legal action, against the Client to recover the outstanding payments and/or may result in the forfeiture of the Client's entitlement to the Partly Paid Security;
- (d) in certain circumstances the Client may be liable to make a further payment on a Partly Paid Security despite the fact that the Client may have disposed of a Partly Paid Security prior to the date that a further payment falls due;
- (e) the Client should monitor announcements made by the Issuer of a Partly Paid Security and that it is the Client's responsibility to inform itself of the date/s or circumstances that a further payment falls due and the last day that it can dispose of the Partly Paid Security before it is required to make a further payment;
- (f) the amount of a further payment may be unrelated to the financial performance of a Partly Paid Security and that the amount of the further payment may exceed the intrinsic value of a Partly Paid Security at the time a further payment falls due; and
- (g) an obligation on the Client in relation to a Partly Paid Security, including an obligation to make a further payment, does not give rise to a claim against D2MX, the Licensee, Penson, ASX, or the Securities Exchanges Guarantee Corporation Limited.

Words used in this Schedule 4 have the meanings given to them in the ASIC Market Integrity Rules, ASX Operating Rules, ASX Clear Operating Rules of the ASX Settlement Operating Rules. If you require a copy of these definitions please contact the Licensee.

***If the Client wishes to purchase a Party Paid Security, the Client must either sign and return a copy of this agreement (including Schedule 4) to D2MX or otherwise confirm in writing to D2MX that the Client agrees to be bound by the terms of this agreement (including Schedule 4).***