



## **Online Account Terms**

JUNE 2013

<http://www.bby.com.au>

## BBY ONLINE ACCOUNT TERMS

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This booklet contains the terms of the Client's BBY Online Trading Facilities with BBY.

### BBY ONLINE TRADING TERMS

#### 1. ACCOUNTS

- 1.1 When BBY accepts the Client's application for a Facility, you have an agreement with BBY on these terms.
- 1.2 This agreement is between you, being the person described in the Application Form as the "applicant" (Client) and us, BBY Limited (**BBY**).
- 1.3 BBY and the Client enter into this agreement to record the terms upon which BBY may, from time to time, enter into Transactions with, or on behalf of, the Client.
- 1.4 By this agreement, the Client has a BBY Online Trading Account with BBY.
- 1.5 Within the BBY Online Trading Account, the Client may have one or more Trading Accounts.
- 1.6 Each Trading Account may facilitate trading through an Electronic Trading Platform for one or more Financial Products or it may be directly dealing with BBY for one or more Financial Products.
- 1.7 Since the method of dealing may differ significantly with little or no timely interaction among those Trading Accounts, the calculations, reporting and administration may be performed by BBY separately for each Trading Account, so that (among other things, without limitation):
  - (i) Margin calculations are managed and enforcement action is taken for each Trading Account separately, at least initially;
  - (ii) BBY may also at any time aggregate one or more Trading Accounts (for reporting or managing Margins or otherwise for the purposes of this agreement), even if the Client cannot immediately access reports for aggregated Trading Accounts.

#### 2. TRANSACTIONS

- 2.1 The Client agrees to Transactions either:
  - (a) with BBY as principal; or
  - (b) with BBY as agent on behalf of the Client for entering into Market Agreements and Transactions with agents who in turn transact with Market Participants upon the terms of this agreement, such appointment as agent being accepted by BBY.
- 2.2 The Client acknowledges and agrees that:
  - (a) BBY may be entering into Transactions at the request of, and as the agent of, the Client or as principal in the Transactions, depending on the Client's choice of Transaction or method of dealing;
  - (b) the Price for a Transaction will be the actual price for the Transaction agreed with BBY as principal or as effected by the Market Participant regardless of other quoted or screen-based prices or rates;
  - (c) the Client has a direct and personal strict liability to perform the obligations, whether with BBY as principal or under each Market Agreement and Transaction entered into on behalf of the Client with the Market Participant, whether or not those obligations are guaranteed to BBY by another person;
  - (d) as between the Client and BBY, the Client is responsible for discharging, and must discharge, all obligations and liabilities in connection with the Transactions, including making all Margin payments, whether required by BBY or required under any

Market Agreement and paying all losses on the Closing Out of Open Transactions;

- (e) BBY may be entering into Market Agreements as agent of, and on behalf of, the Client (including pro forma agreements) and the Client will be bound by the terms of those agreements, whether or not the Client has prior notice of their terms and (to the extent permitted by law) BBY will have no liability of any kind whatever to the Client for any default by the Market Participant under the Market Agreement or any other person's default or failure of any kind (such as failure of an Exchange or Clearing House;
  - (f) BBY will be the principal when entering into CFDs, or (unless the Client is told otherwise) Transactions which are foreign exchange Transactions or commodities Transactions;
  - (g) BBY will enter into the Client's Transactions which are not described in paragraph (f) (including Futures Contracts) as the Client's agent for placing orders (unless the Client is told otherwise); and
  - (h) whether the quoted Price includes or excludes the Transaction Fee or other charges depends on the kind of Transaction, the Trading Account or Electronic Trading Platform and regulatory requirements, which information may be obtained from a product or service disclosure document, the rules and policies for an Electronic Trading Platform or by contacting BBY.
- 2.3 Without limiting any other clause including clause 8, the Client authorises BBY to do all things and to execute all documents reasonably required on behalf of the Client for the purposes of this agreement including:
    - (a) entering into and performing obligations under Market Agreements in connection with anyone or more Transactions;
    - (b) making Margin payments;
    - (c) entering into Transactions and placing orders with Market Participants and Closing Out of Open Transactions.
  - 2.4 All Transactions are at the Client's risk. The Client ratifies and confirms any and all Market Agreements and all executions dealings and trades entered into or effected for the Client by BBY.
  - 2.5 The Client acknowledges and agrees that:
    - (a) if BBY acts as an agent for the Client, BBY will operate omnibus accounts with Market Participants which will include the Client's Transactions and Margin as well as other transactions entered into by BBY as principal or as agent for, and Margin in respect of, other clients and customers;
    - (b) BBY will be providing to its other customers services similar to those provided to the Client under this agreement and accordingly Market Agreements may be entered into, or operate in respect of, the Client, BBY (as principal) and other customers of BBY and those may be on different terms or prices at any time; and

- (c) not to take action against BBY for any default by another person under the terms of any Market Agreement or for any other loss to the Client arising under or in relation to a Transaction made under such any Market Agreement for the benefit of the Client (except to the extent of liability which by law cannot be excluded or which BBY expressly accepts under these terms).
- 2.6 The Client agrees:
- (a) not to object to, or dispute, the terms of any Market Agreement; and
- (b) not to allege that BBY is in breach of this agreement or any duty of care or other duty or obligation to the Client by agreeing to the terms of any Market Agreement.
- 2.7 The Client acknowledges that BBY has an absolute discretion in respect of agreeing to the terms of such Market Agreement and the Client has the right to inspect the terms of all Market Agreements available to BBY and to cease to trade Transactions if it is not satisfied with the terms of any Market Agreement.
- 2.8 The Client undertakes to BBY that it will at all times obtain and comply with the terms of, and do all that is necessary to maintain in full force and effect, all authorisations, approvals, licences and consents required to enable the Client lawfully to perform its obligations under this agreement.
- 2.9 The Client will take all reasonable steps to obtain and communicate to BBY all information, and deliver or cause to be delivered to BBY all documents with respect to Exchange Transactions, which are requested by a person having a right to request such information or documents. The Client authorises BBY to pass on all information, and deliver or cause to be delivered all documents to the Exchange or person who has the right to request such information or documents.
- 2.10 When the Client makes a Transaction, the order placed by the Client with BBY will determine whether the Transaction is one of the following:
- (a) for one party to buy or to sell to the other party the Underlying Security;
- (b) for one party to agree to buy or to sell in the future the Underlying Security;
- (c) for one party to have an option to agree to buy or to sell in the future the Underlying Security;
- (d) for one party to agree to make a cash payment in the future based on changes in the price or value of the Underlying Security;
- (e) as agreed by the Client and BBY by the Client's acceptance of a Transaction or continued use of dealing facilities made available by BBY.
- 2.11 BBY is not required to enter, or to attempt to enter, into any Transaction on behalf of, or with the Client, even if BBY has quoted a price for a Transaction or the Client has offered to enter into the Transaction at that price. The Client acknowledges that, even if BBY attempts to enter into Transactions on the Client's behalf, BBY's ability to do so will be determined by the ability and willingness of Market Participants with whom BBY is dealing to enter into such Transactions.
- 2.12 A Market Participant may be prepared to take orders for entry and exit position in respect of a Transaction and fill them on the basis that the Market Participant is to effect a Transaction if, in the Market Participant's opinion, the market trades at or passes the stop price. If such an order is placed by BBY on behalf of the Client then the Market Participant can accept the next available bid or offer (as the case may be depending on whether the stop order is to buy or sell) subject to market conditions and the Client is deemed to authorise the Transaction and to have accepted the price then applying (without the requirement for the Client to expressly agree to that price).
- 2.13 BBY as principal is not obliged to accept a stop loss order. The placing of a stop order with a Market Participant by BBY on behalf of the Client is not a representation or guarantee by BBY or any other party that the stop order will limit the Client's losses. The Client acknowledges and agrees that the execution of a stop order is wholly dependent upon market conditions.
- 2.14 Each of the persons specified as an Authorised Person of the Client is authorised to provide any and all instructions to BBY on behalf of the Client for the purposes of this agreement, the Trading Account and any Market Agreement. The Client is bound by all such instructions. This authority includes giving instructions to enter into Transactions and Close Out Open Transactions. BBY is not bound to accept, but may accept and if it does so is not liable for accepting instructions from any other person on behalf of the Client. The Client may make changes to the persons who are Authorised Persons for the Client by giving BBY notice in writing of that. This term operates in respect of those changes to the persons who are Authorised Persons.
- 2.15 The Client must give BBY reasonable prior notice of the absence or unavailability of any Authorised Person. The Client must ensure that there are sufficient Authorised Persons at all times (including 24 hours a day and 365 days a year including week days and weekends, vacation periods and despite illness). The Client acknowledges that BBY must be able to contact the Client's Authorised Persons at all times.
- 2.16 BBY may, in its absolute discretion, limit the value of Open Transactions that the Client may have outstanding and may vary this limit at any time by notice to the Client:
- (a) beyond which if the Client wishes to enter into any further Transaction, the Client must seek and obtain credit approval from BBY; or
- (b) beyond which the Client may not enter into any further Transactions whatever.
- 2.17 All orders placed with BBY as agent are effective only for that day are on a "good till cancelled" basis unless requested otherwise by the Client and allowed by BBY.
- 2.18 The Client's account may be denominated in Australian dollars or any other currencies permitted by BBY from time to time. If you instruct BBY to effect a Transaction denominated in a currency different from the denomination of the Client's Trading Account currencies, BBY will not convert the currency value of the Transaction into the selected currency which may be the Client's local currency but will remain in the currency of the Transaction provided an account designated in the similar currency has been set up. A specific instruction from the Client for this is required and the calculation will generally only occur on a monthly basis at month's end if the Client's Trading Account is traded over the desk.

- 2.19 Margins for Foreign Exchange Transactions are required in the Term Currency. For example, if a client has a position in \$A/USD, the Margin will be applied in USD. If a Client has no USD in the Client's Trading Account or a negative account balance in USD but has sufficient funds in another currency (at the current market rate), it can be used to offset the Margin.
- 2.20 Margin must be maintained by the Client to the Value in that currency, even if BBY (or the provider of an Electronic Trading Platform) converts that Margin into Australian dollars for the purposes of managing reports about the Client's account, such as for determining the Unrealised P&L, the Overall Balance, the Liquidation Value and Withdrawable Funds (at the rate determined by BBY (including by the provider of the platform)
- 2.21 In a Foreign Exchange Transactions, one party agrees to pay a specified amount of currency known as Commodity Currency to purchase an amount of another currency, known as the Term Currency.
- 2.22 The Overall Balance of a Trading Account will be determined by BBY on the basis of:
- Transactions, including rolled Transactions;
  - Transaction Fees;
  - Margin payments received and credited;
  - Unrealised P & Loss;
  - Finance Charges (including interest on account balance, forward and rollover fees components); and
  - any other fees and costs.
- 2.23 BBY may from time to time calculate and report the Liquidated Value. The Liquidated Value is an indicative Value of a Trading Account calculated by BBY for Trading Accounts and the BBY Online Trading Account. It takes into account (among other things, without limitation): (a) Finance Charges (whether or not accrued and payable); (b) the cost of closing Transactions by termination or close out; and (c) return of Margin. The Liquidated Value may also be reported as the "Cost to close" a Transaction, according to the method of dealing.
- 2.24 BBY may from time to time calculate and report the Withdrawable Funds for a Trading Account. Withdrawable Funds is the amount calculated by BBY as the amount of cash which would be paid to the Client from the Trading Account if requested. It is an amount subject to final adjustment by BBY at any time including immediately after payment of cash to the Client for any reason whatever, including changes in value or level of Underlying Securities; interest rates, currency rates, and unposted (or unreported) but accrued Finance Charges or Transaction Charges. Withdrawable Funds may also be reported as the "Cost to close" a Transaction, according to the method of dealing.
- 2.25 BBY may from time to time calculate and report the Unrealised P & Loss for a Trading Account. Unrealised P & Loss is the indicative amount of net profit or loss of a Trading Account calculated by BBY (including by Electronic Trading Platforms) by reference to prevailing market prices and so: (a) may be adjusted by BBY at any time; and (b) is not definitive and so does not assure the Client that the Transactions will have that value if actually terminated or sold at that particular time.
- 2.26 Terms and expressions used in this agreement for reporting and calculating amounts may differ from time to time from terms or expressions used in Electronic Trading Platforms
- usage or desk usage or market practice. The Client should have regard to the statements, confirmations, guides and dealing practices used from time to time.
- 2.27 If the composition or calculation of Underlying Security is adjusted by its issuer, regulator or sponsor, BBY will make such adjustment to the Transaction at the time determined by BBY which reasonably preserves the intended economic effect of the Transaction, but without being obliged to consider the particular circumstances of the Client or any adjustments made by any other market participant. BBY need not give notice of the adjustment. If the Underlying Security becomes subject to a take-over bid, a take-over offer, scheme of arrangement or other mechanism for change in control, then BBY may elect to Close Out the Transaction on a new Closing Date determined by BBY.
- 2.28 For CFD Transactions, ordinarily the Long Party will be credited with an amount equal to the gross unfranked amount of any dividend payable to the holder of the Underlying Security (as determined by BBY) and the Short Party will be debited with an amount equal to the gross unfranked amount of any dividend payable to the holder of the Underlying Security (as determined by BBY).

### 3. DEALING SERVICES

- 3.1 BBY is only providing dealing services to the Client (including issuance as principal) and is not by this agreement providing, required to, or liable for, advice or recommendations in relation to Transactions in any financial product dealt with under this agreement, except to the extent required by law.
- 3.2 The Client must meet its obligations arising under the Operating Rules when entering Exchange Transactions.
- 3.3 BBY may from time to time and in its absolute discretion place Trading Restrictions on the Client and the manner in which the Client deals with Exchange Transactions, either generally or in relation to particular Exchange Transactions. The Client must not enter an Exchange Transaction or otherwise act in contravention of any Trading Restriction.
- 3.4 BBY may, but is under no obligation, to provide the Client with information or data concerning interest rates, securities, derivatives, foreign currency or other financial products or other markets. Such information or data is provided on the basis that BBY believes the sources to be reliable but has not verified it. The Client acknowledges that BBY is not responsible for the accuracy, completeness or currency of any information or data provided (including the sequence of trades) and that if the Client relies on that information or data it does so at its own risk. The Client acknowledges that no information or data provided by BBY to the Client takes into account the Client's objectives, financial needs or situation or special circumstances which may apply to the Client.
- 3.5 BBY may collect and retain personal or general data about the Client for a number of purposes, including for management of BBY's credit risk to the Client. Such collection and retention of data does not cause BBY to owe any duty to advise the Client on dealings with BBY, including any obligation to advise the Client not to deal with or through BBY.
- 3.6 The Client represents and warrants to BBY on a continuing basis during the term of this agreement that, to the extent permitted by law:

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- (a) it is not relying on any communication (written or oral) of BBY as financial services or other investment advice or as a recommendation to enter into any Transaction;
- (b) it will not consider the information and explanations relating to the terms and conditions of a Transaction to be financial services or other investment advice on, or a recommendation to enter into, any Transaction; and
- (c) no communication (written or oral) received from BBY will be deemed to be an assurance or guarantee as to the expected results of any Transaction.
- 3.7 To the extent that BBY would be obliged (but for this clause) to give the Client a statement recording any advice to the Client, then to the extent permitted by law:
- (a) the Client consents to receiving any such written statement of advice after having been given the advice;
- (b) the Client consents to receiving any such written statement of advice after making the Transaction but within the period permitted by law; and
- (c) BBY does not need to give the Client a statement of advice when permitted by law from time to time.
- 4. MANAGING THE TRADING ACCOUNTS**
- 4.1 For all Transactions and services under this agreement, BBY will open one or more Trading Accounts for the Client. All Trading Accounts are part of the same BBY Online Trading Account made under this agreement.
- 4.2 Subject to clause 4.3, all money and the cleared proceeds of cheques or other payments that are paid by the Client or on behalf of the Client or for the account of the Client to BBY from time to time including initial and later deposits for Margin or which the Client directs BBY to credit will be:
- (a) first credited to the BBY Online Trading Account and not any specific Trading Account;
- (b) then will only be credited to a Trading Account on the written instructions of the Client (whether for specific payments or as standing instructions) or as a result of BBY exercising its rights following a Default Event.
- If any Margin is paid to Market Participants on behalf of the Client, that will be debited from the relevant Trading Account.
- 4.3 The Client acknowledges that all funds received by BBY as described in clause 4.2 (whether or not credited to the Trading Account) will, subject to clause 4.3, be initially held by BBY entirely for its own account, except only to the extent required by law or Operating Rules (such as when the moneys must first be deposited into a trust account) or when BBY receives payment as agent, in which case the Margin may be held in an omnibus account which will include Margin deposited with BBY by other clients of BBY.
- 4.4 To the extent funds received by BBY as described in clause 4.2 (whether or not credited to the Trading Account) are, or are required to be, deposited into any trust account of BBY or other kind of account required by law, the Client acknowledges, authorises and directs that, to the extent permitted by law:
- (a) the funds are not held in trust by BBY for the benefit of the client; and
- (b) BBY is entitled to keep, and will keep, any interest earned on the account (even if the funds are held on trust for the Client);
- (c) the funds are funds to which BBY is entitled to be paid (other than funds paid as Margin to be paid to Market Participants on behalf of the Client) or, to the extent that is not applicable for whatever reason, are funds which BBY may immediately withdraw and pay to a Market Participant or to BBY (as the case may be) the funds to pay Margin or any other costs, fees or payments in respect of Transaction to which Market Participants or BBY, as the case may be, is entitled under this agreement or at law.
- 4.5 Unless otherwise agreed in writing:
- (a) BBY is solely entitled to all interest on the trust account described in clause 4.3, a Trading Account or any Margin held on trust and any funds deposited as Margin with any Market Participant and may withdraw that amount at any time without notice to the Client; and
- (b) proceeds of Transactions to which the Client is entitled will not be paid from a Trading Account or the BBY Online Trading Account to or for the benefit of the Client unless the Client gives instructions acceptable to BBY or the account is closed.
- 4.6 BBY is entitled, and the Client irrevocably authorises BBY without notice to, or any further authority from, the Client, from time to time:
- (a) to enter into opposite Transactions contemporaneously if BBY receives an instruction from the Client which is an opposite instruction to that received by BBY from another of its clients; and
- (b) to retain for its own account and not account to the Client for any benefits obtained by BBY as a result of Transactions effected under paragraph (a), including any reductions in the amount of fees or other payments which BBY may be required to make in respect of those Transactions.
- 4.7 BBY is entitled, and the Client irrevocably authorises BBY without notice to, or any further authority from, the Client, from time to time:
- (a) to combine all payments that are required to be made between the Client and BBY in the same day in the same currency so that only a single payment in the amount of the net difference is payable by the relevant person to the other;
- (b) to pay to itself or deduct from and retain out of the Trading Account, any funds deposited as Margin with any Market Participant or any currency held by BBY and appropriate for BBY's use, the Transaction Fee, any Finance Charges and all other payments required to be made to BBY under the Facility; and



- (c) to apply amounts held in BBY's trust account for the Client or in the Trading Account or held as Margin by any Market Participant in or towards satisfaction of any Margin Payment, deposit, Transaction Fee, Finance Charge, settlement payment, fee, other payment, charges, damages, expenses, loss or other moneys payable including those incurred under this agreement or any other agreement with BBY or arising from any Transaction, Market Agreement or any other obligations (whether actual or contingent) of the Client or BBY as principal or as the Client's agent including any or all amounts owing to a Market Participant.
- 4.8 A certificate given at any time under the hand of a director, secretary or other officer of BBY authorised by BBY for that purpose as to the amount of the Trading Account, the amount of any Margin Payment, any payment in respect of the Closing Out or other settlement of an Open Transaction, any determination or calculation by BBY (including any Price), or the exercise by BBY of any of its rights under this agreement, in the absence of fraud or manifest error, will be conclusive as to the contents of the certificate and binding on both parties.
- 4.9 The Client acknowledges and agrees that:
- (a) if BBY is not acting as principal, BBY has only consented to act as the Client's agent under this agreement and not as the agent of any assignee or purported assignee of the Client;
  - (b) the rights of the Client in respect of the BBY Online Trading Account and each Transaction are personal to the Client and must not:
    - (i) be assigned;
    - (ii) or be or become subject to any Encumbrance (and the Client must ensure this), without the prior written consent of BBY;
  - (c) any purported assignment or Encumbrance in relation to a Trading Account or any Transaction without the prior written consent of BBY will be of no force or effect and will not vest any right, title or interest in any purported assignee or person claiming any rights in respect of an Encumbrance (as the case may be);
  - (d) the rights of BBY under this agreement are in addition and without prejudice to legal and equitable rights of set-off; and
  - (e) nothing in this agreement or in the conduct of the BBY Online Trading Account will affect any right of BBY to combine the BBY Online Trading Account (including any specific Trading Account) with any other account or liability of the Client with or to BBY or to enforce any lien or other right to which BBY may be entitled at any time and whether arising under this agreement, or under any agreement (express or implied), or by operation of law or custom.
- 4.10 The Client must whenever required by BBY and at the Client's expense, take or defend all legal proceedings as BBY may think advisable for the protection of the BBY Online Trading Account (or any part of it) or money paid as Margin to a Market Participant.
- 4.11 If the Client comprises only natural persons but more than one such natural person, the Trading Accounts and the BBY Online Trading Account must be established in their names as joint tenants. In all other cases, if the Client comprises more than one person, the Trading Account must be established in the names of those persons comprising the Client as tenants in common in equal shares.
- 4.12 BBY may split a Trading Account into different sub-accounts denominated in different currencies and references in this agreement to the Trading Account include references to all sub-accounts.
- 5. REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS**
- 5.1 The Client represents and warrants to BBY as of the date of this agreement and as of the date of each Transaction, that:
- (a) it has authority to enter into this agreement and each Transaction;
  - (b) the person executing this agreement and instructing BBY to enter into each Transaction has been duly authorised to do so (including all Authorised Persons);
  - (c) this agreement and the obligations created under this agreement are binding upon it and enforceable against it in accordance with their terms (subject to applicable principles of equity and limitations on creditors' rights generally) and do not and will not violate the terms of any agreement to which it is bound;
  - (d) except where the Client is an agent of the Investor it acts as principal in entering into this agreement and each Transaction;
  - (e) it does not enter into any Transaction by way of gaming or wager;
  - (f) it enters into any Transaction wholly and exclusively for business or investment purposes and not for any private or domestic purpose;
  - (g) it is acting for its own account, and it has made its own independent decision to enter into each Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors (including legal and financial) as it considers necessary including a consideration of its financial position and objective;
  - (h) it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of each Transaction;
  - (i) it is also capable of assuming, and assumes the risks of all Transactions;
  - (j) BBY is not acting as a fiduciary for, or an advisor to, it in respect of any Transaction;
  - (k) if the Client is a body corporate, no resolution has been passed and no petition has been presented or order made for the Client's winding up or liquidation and no action has been taken to appoint a liquidator, administrator or a receiver or manager in respect of the Client;

- (l) if the Client is a body corporate, all of its directors have validly executed a deed of guarantee and indemnity (in respect of the Client's obligations under this agreement) in favour of BBY in the form required by BBY;
  - (m) if the Client is a natural person, he or she is of full age and sound mind and legally competent and no bankruptcy notice has been issued against the Client;
  - (n) the Client and BBY may be bound by the business rules, customs, usages and practices of the markets where any dealing takes place;
  - (o) dealing in foreign exchange or other derivatives may create an obligation to give or take delivery or make a cash adjustment in accordance with the terms of this agreement and a Transaction (which, for example may be before the relevant settlement date for the Transaction);
  - (p) the Client is aware of and acknowledges the right of BBY and its related bodies corporate, directors and employees, either on their own account or on behalf of other clients or persons, to deal in any Transaction or take the opposite position to, the Client in Transactions;
  - (q) BBY reserves the right to refuse to deal with or on behalf of the Client in relation to any Transaction or limit the number of open positions held against or on behalf of the Client or both;
  - (r) BBY has no actual, implied or ostensible authority to hold itself out as being authorised to speak or act in a manner on behalf of, or as agent for, a Market Participant;
  - (s) the Client acknowledges that when BBY acts as an agent for the Client, BBY will incur a personal obligation when entering into any Transaction on behalf of the Client and agrees to discharge all such obligations; and
  - (t) no Default Event, or event which with the giving of notice, lapse of time or fulfilment of any conditions would be likely to become a Default Event, has occurred or continues unremedied.
- 5.2 The Client represents and warrants to BBY as of the date of this agreement and as of the date of each Transaction, that:
- (a) all the information given by the Client to BBY to establish this agreement is true and correct;
  - (b) if the Client is trustee of the trust (named as the "Trust" in the Client Details), the Client makes the additional representations and warranties contained in Schedule 1;
  - (c) if the Client is the responsible entity of a fund (named as the "Fund" in the Client Details), the Client makes the additional representations and warranties contained in Schedule 2;
  - (d) if the Client is a trustee of a superannuation fund (named as the "Superannuation Fund" in the Client Details), the Client makes the additional representations and warranties contained in Schedule 3;
  - (e) if the Client is the agent for the Investor, the Client makes the additional representations and warranties contained in Schedule 4;
- (f) (as appropriate) each of the Manager and the Investment Manager is authorised to act on behalf of the Client and to instruct BBY in relation to any dealing and in relation to all other matters arising under this agreement;
  - (g) the Client will be bound by any instructions given to BBY by or any actions of the Manager or the Investment Manager (as the case may be) as if the actions of the Investment Manager were the actions of the Client for the purpose of this agreement; and
  - (h) the Client authorises each of the Manager and the Investment Manager to accept any notices or documents on its behalf and If BBY has an obligation to serve any document or notice on the Client pursuant to this agreement, or any law, service upon either the Manager or the Investment Manager (as the case may be) will constitute effective service on the Client.
- 5.3 All representations and warranties made by the Client under this agreement are taken to be made on the date of:
- (a) this agreement;
  - (b) for Transactions made as agent, each Market Agreement; and
  - (c) the date of each Transaction.
- 5.4 The Client:
- (a) acknowledges and represents that the Client has been provided with and has read and understood the product disclosure statement or other disclosure document for any Transaction made by it under this agreement:
    - (i) which explains the nature of the kind of Transactions;
    - (ii) which explains the nature of the obligations assumed by the Client when the Client deals with BBY or instructs BBY to enter into Transactions on behalf of the Client;
  - (b) accepts the risks referred to in the disclosure documents for the Transactions as well as all other risks associated with Transactions; and
  - (c) acknowledges that those documents do not disclose, or purport to disclose, all of the risks associated with Transactions; and
  - (d) acknowledges and agrees that BBY enters into:
    - (i) this agreement;
    - (ii) a Market Agreement; and
    - (iii) a Transaction to which it becomes, at its discretion, a party, in reliance upon each of the representations and warranties in this agreement, and that each representation and warranty survives the entering into of this agreement and any Transaction and the Closing Out or settlement of each Transaction.
- 5.5 The Client acknowledges and agrees that:
- (a) when BBY acts as agent for the Client, a Transaction will only be effected or entered into when agreed to by the relevant Market Participant;

- (b) the placement of an order or agreement to the proposed various terms of a Transaction is not sufficient to create a Transaction;
- (c) the Client will not assume that, or take any action on the assumption that, a Transaction has been effected unless and until it has been confirmed in writing to the Client;
- (d) the placement of a stop loss order or other orders is not a representation, guarantee or undertaking that such an order can be placed or a Transaction effected or entered into at the stop price or at all;
- (e) whether an order can be placed or a Transaction effected or entered into may be dependent on market conditions and the willingness of the Market Participants with which BBY is dealing to accept the order or agree to the Transaction; and
- (f) if the Client gives BBY standing instructions to enter into a Transaction when a particular value or level is reached for an Underlying Security, the price or level at which the Transaction is entered into might not be that exact price because BBY may elect not to enter into the other Transaction until BBY has hedged its exposure.

### 6. CONFIRMATIONS

- 6.1 The Client must examine the terms of each Transaction confirmation immediately upon receipt and unless the Client notifies BBY in writing within 24 hours of receipt, disputing the Transaction, the Client agrees that the contents of the confirmation, in the absence of manifest error, will be conclusive evidence of the executed Transaction. The failure by BBY to issue a confirmation of a Transaction will not prejudice or invalidate the terms of that Transaction.
- 6.2 The Client will, notwithstanding any dispute, continue to satisfy the Client's obligation to make Margin payments made by BBY in respect of a Transaction as if the details contained in the confirmation are correct and not the subject of dispute.

### 7. MARGIN CALLS

- 7.1 The Client agrees and acknowledges that:
  - (a) the Client is responsible for maintaining Margin cover and making all Margin payments required by BBY or by a Market Participant, including those imposed by the requirements of Electronic Trading Platforms made available by BBY to Client, whether or not BBY gives any notice to Client to make those payments;
  - (b) in addition, BBY may call for payment to BBY (to be initially deposited in the Trading Account or a trust account and dealt with in accordance with this agreement) or to the relevant Market Participant of Margin such money or property as required by the Market Participant or as BBY, in its absolute discretion, deems is necessary to protect BBY as principal or as agent from the personal obligation incurred by dealing in Transactions on behalf of the Client;
  - (c) if the Client fails to provide sufficient Margin cover or make any payment or to meet any call for payment then BBY may (without prejudice to any other rights or powers BBY has under this agreement or otherwise) in its absolute discretion without notice, Close Out all or some of the Client's Transactions, whether or not those Transactions caused the need

for more Margin cover.

#### 7.2 The Client acknowledges and agrees that:

- (a) the time for payment of Margins is of the essence;
- (b) Margin requirements may be stipulated by BBY from time to time including by way of publishing or making available (including by posting to a website or in an Electronic Trading Platform) operating rules of Electronic Trading Platforms;
- (c) it is the strict responsibility of the Client to monitor and to meet all Margin requirements, whether or not a Margin call is made to the Client;
- (d) a Margin requirement is not satisfied unless and until payment for it is received as required, including when received and credited by a Market Participant (in which case receipt by BBY of those funds or other collateral is insufficient to satisfy the Margin requirement);
- (e) Margin cover requirements can change at different times, especially over the weekend or other nontrading days;
- (f) it can take up to 48 hours (or longer, over non-banking days) for the Client's funds to be credited to a Trading Account;
- (g) if a Margin call is made and no time is stipulated by BBY or the Market Participant prior to requiring or calling a Margin then the Client is required to comply within 24 hours although the Client acknowledges that Margin calls may be payable immediately if required (by notice or generally applicable rules) by BBY or the relevant Market Participant;
- (h) liability to pay Margin accrues at the time the Transaction is entered into or the obligation to pay the relevant Market Participant comes into existence regardless of if or when a call is made;
- (i) the Client is responsible to pay in cash any deficit owing to BBY or the relevant Market Participant after Close Out of a Transaction and that if the Client defaults in payment of such deficit, BBY may pay the deficit out of the Trading Account or realise any securities held by BBY and apply the proceeds against that deficit and the Client is responsible for the full and prompt discharge of the deficit (which may exceed the Trading Account); and
- (j) the Client's liability in respect of Margin requirements is not limited to the amount, if any, deposited in the Trading Account or paid to Market Participants.

7.3 BBY and the Market Participants may make Margin calls more frequently than daily and the Client must fully and punctually comply with such calls.

7.4 BBY may, but will not be obliged to, without notice to the Client, Close Out, or attempt to Close Out some or all Open Transactions, at that time or any later time as BBY determines (whether in its discretion or by automatic trading platform management) if:

- (a) on any day on which the Client has an Open Transaction, the Trading Account and any other Margin paid by the Client under this agreement does not exceed the required Margin; or
- (b) the Client fails to make a Margin payments by the due date and time, which may be immediately; or



- (c) at any time, and from time to time, BBY determines that the value of all Open Transactions represents a substantial net unrealised loss to the Client such that in BBY's belief, the continued trading, or failure to Close Out, will or is likely to materially prejudice the Client's BBY Online Trading Account balance.

### 8. SETTLEMENT OF OPEN TRANSACTIONS

8.1 If the Client wishes to Close Out an Open Transaction earlier than by other agreement with BBY, the Client must instruct BBY accordingly with at least two Business Days' notice prior to the intended settlement date for Close Out of any that Open Transaction, subject to prevailing market conditions or as otherwise agreed with BBY.

8.2 In respect of each Open Transaction, subject to:

- (a) prior Close Out of that Open Transaction; or
- (b) the express agreement pursuant to clause 8.5 to settle that Open Transaction, BBY is instructed:
- (i) to vary the Open Transaction (in which case it will be deemed to be a new Transaction) so that its settlement date is deferred to a Business Day to be agreed between BBY and the Client (and failing agreement by 5:00 p.m. on the Business Day immediately prior to the then applicable settlement date as agreed previously, and
- (ii) to Close Out the Open Transaction and enter into a new Transaction for the same Underlying Security and being the same bought or sold position except that the settlement date is to be one Business Day later and adjusted for any interest differential.

8.3 Subject to prior Close Out, no Transaction will be physically settled unless, in unusual circumstances, BBY in its sole discretion gives express prior permission to the Client to settle the Transaction by physical settlement of the Underlying Security (but in any case physical settlement of a Futures Transaction or a commodities Transaction will not be permitted). If BBY agrees to settle on that basis, then the Client must fully and punctually discharge its obligations, including (if applicable) the obligations of BBY (as its agent) in respect of the Transaction. In respect of Futures Transactions or commodities Transactions, the Client agrees and understands that BBY may in its sole discretion Close Out any open Futures Transactions or commodities Transactions at the earlier of the first notice date or last trading day, which may be 48 hours prior to the settlement date and time.

### 9. POWER OF ATTORNEY

9.1 Without limiting any other power of BBY under this agreement, for valuable consideration the Client irrevocably appoints severally BBY, and every director, manager and assistant manager for the time being of BBY, at the option of BBY (each an Attorney), as its agent and attorney:

- (a) to do all acts and execute all documents that, in the opinion of the Attorney may be necessary or incidental to any transaction or dealing contemplated by this agreement on the Client's behalf for the purpose of exercising the powers conferred on BBY under this agreement and the Operating Rules and complying with the Corporations Act and the Operating Rules including, without limitation, the power to transfer or close out Open Contracts; and
- (b) if the Client commits a Default, or if the Client

has one or more persons authorised to give Proper Instructions and all of those persons are, in the reasonable opinion of BBY, unable to be contacted or unable to effectively give instructions in relation to this agreement for a period of more than 1 Business Day:

- (i) to do all acts and execute all documents for the purpose of exercising the powers conferred on BBY under this agreement;
- (ii) to transfer any of the Client's property which is subject to this agreement to BBY or to a purchaser or otherwise convey the Client's property where the Client is required or permitted to do so under this agreement;
- (iii) if the Client is a corporation or a corporate trustee, to complete sign and date any form required to be lodged with the Australian Securities and Investments Commission in order to register a charge or mortgage over the Client's property pursuant to the Corporations Act;
- (iv) to do all acts and execute all documents which the Attorney thinks fit in any way relating to a sale or dealing in property contemplated by this power of attorney;
- (v) to do all acts and execute all documents which the Client can do as the owner of property subject to this agreement and give directions to the issuer or registry of any Financial Products; and
- (vi) to execute any other document which the Client instructs the Attorney in writing to execute from time to time (whether or not in connection with or contemplated by this agreement).
- (c) and in relation to the powers conferred by this clause 9.1:
- (i) an Attorney may delegate his or her powers (including this power) and revoke such a delegation;
- (ii) an Attorney may exercise the powers and authorities conferred by this power of attorney even if the act involves a conflict of interest or conflict of duty or the Attorney (or a person they know) has a personal interest in doing so;
- (iii) if BBY requests, the Client must formally approve anything that the Attorney may validly do under this power of attorney;
- (iv) the Client indemnifies the Attorney against all Claims and Losses incurred or suffered by or brought or made or recovered against the Attorney in connection with the exercise of any of the powers and authorities conferred by this power of attorney;
- (v) the exercise by the Attorney of the powers and authorities conferred by this power of attorney does not involve any assumption by the Attorney, or any body in which he or she is a partner or employed, of personal liability in connection with the exercise of the powers and authorities or the consequences of so doing; and
- (vi) this power of attorney is intended by the parties to take effect as a deed.

### 10. DEFAULT EVENTS

10.1 It is a Default Event, whether or not it is within the Client's control, if:

- (a) any moneys owing by the Client to BBY under this agreement are not fully and punctually paid to BBY or satisfied as and when they become due (including in respect of any Margin requirement) or the Client fails to provide security for payment obligations and liabilities in the manner required by Operating Rules or BBY;
- (b) the Client fails to discharge fully and punctually all of the obligations it owes to BBY under a Transaction or which were incurred by BBY on behalf of the Client in respect of a Transaction;
- (c) the value of the Client's Open Transactions exceeds the limit imposed by BBY from time to time;
- (d) any guarantee or other security lodged by the Client pursuant to the Operating Rules is withdrawn or becomes ineffective (and other replacement security acceptable to BBY is not provided);
- (e) the Client fails to transfer the underlying Financial Products following the exercise of an Open Contract, or otherwise fails to complete a contract for the transfer of Financial Products;
- (f) the Client acts in contravention of a Trading Restriction;
- (g) the Client fails to duly and punctually perform and observe any other obligation under this agreement (including under the terms of any facility) or any other agreement with BBY;
- (h) any representation made by the Client or on the Client's behalf is incorrect or misleading in any material particular;
- (i) the Client stops payment of the Client's debts or ceases or threatens to cease carrying on business;
- (j) the Client enters or proposes to enter into any scheme of arrangement or compromise with the Client's creditors or calls a meeting to discuss a contemplated scheme of arrangement or compromise;
- (k) a receiver or receiver and manager or administrator is appointed to the Client or any of the Client's assets;
- (l) if the Client is a body corporate, a resolution is passed or a petition is presented or an order is made for the Client's winding-up or liquidation or an administrator is appointed;
- (m) if the Client is a body corporate, a director has not given a valid deed of guarantee and indemnity (in respect of the Client's obligations under this agreement) in favour of BBY in the form required by BBY.
- (n) if the Client is a body corporate, the Client has not given notice to BBY of a change in the directors of the Client within seven (7) days of that change taking effect (regardless of if or when notice of that change has been given to any regulatory authority);
- (o) if the Client is a natural person, the Client dies or becomes of unsound mind or a bankruptcy notice is issued against the Client;
- (p) any security created by any mortgage or charge binding upon the Client or the Client's assets becomes enforceable and the mortgagee or the

charge takes steps to enforce the security;

- (q) the Client's indebtedness becomes immediately due and payable, or capable of being declared due and payable, prior to its stated maturity, by reason of the Client's or any other persons default;
- (r) in the absence of the Client making alternative arrangements, the Client or its Authorised Person is not contactable by telephone, by BBY within 12 hours, in order for BBY to obtain instructions with respect to an Open Transaction;
- (s) the Client is presumed to be insolvent under the Corporations Act or equivalent legislation for a natural person or other legal entity to the extent its insolvency is regulated other than under the Corporations Act;
- (t) the Investment Management Agreement is amended (without the prior consent of BBY) so as to negatively impact on the capacity of the Client to perform its obligations under this agreement; or
- (u) if the Investor is a trustee, the Trust is terminated or vests or a distribution of capital of the Trust is made which would result in there being insufficient assets of the Trust to meet the Client's liabilities under any Transaction or this agreement.

### 11. ACTION FOLLOWING A DEFAULT EVENT

11.1 Upon or at any time after a Default Event occurs, BBY, without prejudice to any other rights it may have, has the right and power (but not the obligation), in its absolute discretion and without notice to the Client, to do anyone or more of the following:

- (a) immediately terminate the BBY Online Trading Account or this agreement or both;
- (b) Close Out or attempt to Close Out all or any Open Transactions (even though the settlement date has not arrived);
- (c) adjust the value date of a Closed Out forward Transaction by bringing such date back to a current date or such other date determined by BBY in its discretion;
- (d) enter into other agreements, including foreign exchange transactions, options, forward agreements, swaps or other arrangements to obtain equivalent or similar rights to those Closed Out or terminated;
- (e) take action as BBY considers reasonably appropriate to mitigate or limit its potential loss arising from the Client's default, including by entering into transactions for itself or as agent for the Client and without any obligation to reinstate a Client's Transactions or equivalent positions;
- (f) sell any of the Client's property held by BBY (including selling any Derivative whether or not linked in any way to any other Transaction) or apply a Trading Account (after deduction of costs associated with any sale) to satisfy any amounts due to BBY;
- (g) combine, consolidate, merge or apply all or any part of any credit balance standing to any account of the Client with BBY or any amount available to BBY by way of set-off, lien or counterclaim in or towards satisfaction of any money due and payable by the Client to BBY or by BBY to the Client under this agreement;

- (h) realise any guarantees or securities lodged by the Client or on its behalf;
  - (i) calculate the aggregate amount owed by the Client to BBY (after allowing any aggregate amount owed by BBY to the Client) and any such amount is immediately due and payable; and
  - (j) exercise any other power or right which BBY has under this agreement, at law or in equity.
- 11.2 BBY will not lose any of its rights under this clause by reason of any delay in the exercise of the right and if BBY does exercise any right under this clause it may do so at any time and in any manner. It is expressly acknowledged by the Client that any delay or forbearance by BBY in Closing Out a Transaction or terminating a Trading Account is not a waiver of its rights unless expressly stated to be so by written notice signed by a director of BBY.
- 11.3 If BBY exercises its rights under this clause to Close Out an Open Transaction, the Closing Out will be effected on the Client's authority (which the Client hereby authorises) and at the Client's risk and expense and in the Client's name as if the Client had given notice on the date that BBY exercises its right (and without limitation, BBY may waive any notice period otherwise required).
- 11.4 BBY may elect:
- (a) to convert the Client's account into Australian currency as at times chosen by it; and
  - (b) if the Client defaults under this agreement to convert any amount owed by the Client to it into Australian currency at the date of the Client's default, and BBY is entitled to retain any benefit in respect of the conversion rate provided that it is determined by BBY at exchange rates reasonably determined by BBY in accordance with published exchange rates available from financial institutions. The Client is bound by any such conversion and must pay the amount so converted in Australian currency.
- 11.5 The rights of BBY and obligations and liabilities of the Client in respect of the obligation of the Client to discharge fully and punctually obligations in connection with Transactions and the rights to indemnification and limitation of liability of BBY, survive termination of this agreement.
- 12. INDEMNITIES FROM CLIENT**
- 12.1 The Client indemnifies BBY its officers, agents and employees (Indemnified Persons), and agrees to keep the Indemnified Persons indemnified, against all losses, damages, costs, charges, taxes and expenses (including administrative and legal costs on a full indemnity basis) which BBY or any other Indemnified Person may sustain or incur in respect of or consequent upon:
- (a) any breach by the Client of any obligation under this agreement;
  - (b) BBY entering into a Transaction or Market Agreement on behalf of the Client;
  - (c) the Close Out of any Transaction;
  - (d) any Transaction becoming due for settlement;
  - (e) any representation or warranty given or deemed to be given by the Client being or becoming untrue;
  - (f) any attorney of the Client appointed pursuant to this agreement taking any action (including Closing Out any Open Transaction) as attorney of the Client;
- (g) any Transaction, or any obligation of the Client to BBY under this agreement, being or becoming illegal or otherwise void or voidable;
  - (h) the occurrence of any Default Event or BBY exercising any of its rights or powers upon such occurrence; and
  - (i) any amount payable by the Client under this agreement.
- 12.2 BBY is not responsible for any loss or damage arising or incurred directly or indirectly from any statement, opinion, representation or advice given by BBY or any of its officers, employees or agents to a Client in connection with any Transaction, any foreign exchange rate of exchange or price or market (whether relating to historical, present or future circumstances).
- 12.3 The Client acknowledges and agrees that there are significant risks in trading through computer and telecommunications systems and the Client agrees that BBY is in no way responsible for and the Client indemnifies BBY against all losses, damages, costs, charges, taxes and expenses which either party may sustain or incur as a result of:
- (a) a delay in malfunction of, interruption to, fault in or inaccuracy of computer or telecommunication services;
  - (b) inaccuracies in the information conveyed through computer; or
  - (c) a variation to the way in which orders placed with a computer related system is managed.
- 13. LIMITATION OF LIABILITY**
- 13.1 The Client acknowledges and agrees that it:
- (a) has read, understands and accepts all of the terms of this agreement; and
  - (b) in entering into each Transaction the Client will rely only upon the Client's judgment and BBY, its related bodies corporate, employees or agents will have no responsibility or liability of any kind in respect of any information or advice given or views expressed to the Client, whether or not the advice is given or views are expressed at their volition or upon the Client's request, nor will they be liable in respect of any loss incurred by the Client in connection with any Transaction.
- 13.2 BBY will be under no liability arising in respect of any private dealing, contract, transaction or relationship between the Client and any of BBY's related bodies corporate, employees or agents.
- 13.3 BBY has no responsibility or liability of any kind for any loss whatever incurred by the Client as a result of:
- (a) any failure, default, action or omission by any Market Participant or their agents or counterparts;
  - (b) any delay in transmitting or failure to transmit funds caused by reasons beyond BBY's control; or

- (c) BBY's failure to timely execute orders placed with it or to transact business or otherwise administer this agreement in the manner contemplated by this agreement for reasons beyond its control (including exchange control or other government restrictions, exchange or market rulings, suspension of trading, power failure, telecommunication or computer failure, strikes or war).
- 13.4 BBY is not liable in any manner to the Client for any loss arising from or in connection with any Transaction as the result of any moratorium, change in exchange rates or currency restrictions.
- 13.5 Nothing in this agreement applies to the extent of any law prohibiting any exclusion or limitation of liability. If by law liability may not be excluded, then to the extent permitted by law BBY's liability arising out of any action or omission by it will be limited to an amount equal to the amount of fees paid to BBY by the Client in respect of the act or omission giving rise to the liability, or to the re-supply of the service, at BBY's discretion.
- 13A. LIMITED RECOURSE**
- 13A.1 The Client agrees that, subject to clause 13A.7, with respect to any orders relating to a Transaction transmitted by, or on behalf of, the Client through an Electronic Trading Platform, to the maximum extent permitted by law:
- (a) the liability of BBY to the Client however arising in respect of that Transaction is limited to pay an amount to the Client equal to the Recovery Amount; and
- (b) the Client's recourse against BBY is limited to the Recovery Amount. This limitation of BBY's liability and the Client's recourse apply despite any other provision of this agreement and extends to all liabilities and obligations of BBY in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.
- 13A.2 The Recovery Amount is:
- (a) the amount that BBY actually receives from, on behalf of or in respect of the Electronic Trading Platform provider under the terms of or in respect of (i) that order or (ii) any order made by BBY with that Electronic Trading Platform provider which, in BBY's opinion, corresponds with the Client's Transaction with BBY; and
- (b) if BBY receives only a proportion of the amount due to BBY (whether for itself or as agent) from, on behalf of or otherwise in respect of the Electronic Trading Platform provider in respect of several clients or several orders, the Recovery Amount is limited to that Client's pro rata portion of the amount actually received by BBY, as determined by BBY.
- 13A.3 If:
- (a) BBY's liability to the Client and the Client's recourse against BBY is limited as provided by clause 13A.1;
- (b) the Client has made a claim against BBY which has been finally determined (whether by a court, by any dispute resolution scheme, by agreement or otherwise) but the claim is unsatisfied (in whole or part, by reason of the limited liability and recourse referred to above): and
- (c) BBY has made a corresponding final but unsatisfied claim against the Electronic Trading Platform provider, then:
- (d) Subject to clause 13A.4, BBY holds that claim against the Electronic Trading Platform provider for the benefit of the Client.
- 13A.4 Nothing in this clause 13A obliges BBY to make a demand or other claim of any kind on the Electronic Trading Platform provider or any other person.
- (a) BBY has no liability for failing to take or taking any action in relation to such demand or other claim. BBY is not obliged to accept any direction from the Client with regard to how BBY must conduct the demand or other claim or negotiate any settlement. BBY may require a binding agreement to be fully indemnified, with or without security for that obligation, in a form satisfactory to it in respect of all loss, cost or expense that BBY may incur by reason of accepting any such direction.
- (b) BBY may conduct one or more claims under one or several proceedings, as determined by BBY.
- (c) BBY may incur costs of preparing for and conducting the claims and defending crossclaims, including costs of legal services, experts and other agents and advisers, which costs may be apportioned by BBY across several claims.
- (d) BBY may make or accept any offer for settlement which it considers reasonable, including for any amount less than the amount claimed by BBY.
- (e) BBY may withhold from settlement proceeds amounts to pay for, or to provide for payment for, its costs of the claims, including its estimate of costs of enforcing the judgments for the claims.
- (f) BBY may apply the net proceeds of settlement proportionally to the balance of the unsatisfied amounts of all claims against it.
- (g) BBY may make a determination not to prosecute the claim if it believes there are insufficient prospects of success and having regard to the estimated costs of prosecuting the claim.
- 13A.5 Nothing in this clause 13A limits the right of the Client to make a claim against BBY for the full amount of liability which would have arisen but for this clause 13A; however, the liability of BBY to the Client and the Client's recourse to BBY is limited by this clause 13A.
- 13A.6 Nothing in this clause 13A limits any party in:
- (a) obtaining an injunction or other order to restrain any breach of this agreement by any party; or
- (b) obtaining declaratory relief.
- 13A.7 If any of the other parts of this clause 13A would be void, invalid or unenforceable but for this clause 13A.7, the limitation of liability of BBY and the Client's right of recourse under clause 13A.1 do not apply; however, the liability of BBY to the Client is limited to:
- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again.

- 13A.8 The meaning and effect of this clause 13A are to be construed for the purposes of limiting the liability of BBY to the Client and limiting the Client's recourse against BBY, to the maximum extent permitted by law, so that BBY is only liability to the Client if and only to the extent BBY actually recovers against the counterparties to BBY (whether acting for itself or as agent) and BBY is not otherwise liable to the Client.
- 13A.9 The Client agrees that this limitation of liability under this clause 13A is a reasonable term having regard to the nature of the services and financial products offered by BBY, the nature and purposes of the Electronic Trading Platforms and the risks and benefits arising from Transactions using Electronic Trading Platforms.
- 14. COSTS AND PAYMENTS**
- 14.1 The Client must pay to BBY the Transaction Fee for each Transaction in which BBY is agent in accordance with the terms of any agreement with BBY regarding the Transaction Fee and authorises BBY to deduct the Transaction Fee from the Trading Account or amount of Margin paid to a Market Participant.
- 14.2 In consideration of acting as the Client's agent, BBY is entitled to receive and appropriate for its own use all fees, commissions and other benefits payable by the Client under this agreement (including all Transaction Fees and all adjustments payable under these terms).
- 14.3 The rolling of a Transaction to a forward date (regardless of whether the existing or new position is a spot or forward position) is a new Transaction. A Transaction Fee which is a commission is payable in respect of each Transaction unless BBY acts as principal.
- 14.4 In respect of each Transaction in which BBY acts as principal, BBY may charge a Transaction Fee, a spread on a rate, a Finance Charge or any or all of them.
- 14.5 A Finance Charge may be imposed by BBY on the Client by being charged or applied to the Trading Account at a time chosen by BBY from time to time, such as (without limitation):
- (a) either immediately at the time of entering into the Transaction;
  - (b) or at day's end, or month's end;
  - (c) at a rollover of the Transaction;
  - (d) or at end of Transaction; or
  - (e) at any other time after entering into the Transaction.
- 14.6 The Client remains liable to pay the Finance Charge even though:
- (a) the charge may be called other things from time to time, even across different Trading Accounts at the same time;
  - (b) the charge is not stated on a statement for an account or interim confirmation for a Transaction;
  - (c) the charges differ according to whether the Transaction was made offline or online;
  - (d) the charges differ according to the amount of the Trading Account, regardless of the whole BBY Online Trading Account;
  - (e) different rates apply at the same time to other client's accounts;
  - (f) the charge is applied at rollover but is not levied or enforced until termination of the Transaction;
- (g) the Transaction is denominated in a currency other than Australian or the Term Currency; and
  - (h) the rates will be as determined by BBY in its absolute discretion.
- 14.7 The Finance Charge may be applied as an amount owing by the Client to BBY or, if applicable, by BBY to the Client, in respect of Transaction and may be applied from day to day or at other times applied by BBY. The rate payable by BBY to the Client on a Finance charge may be less than the rate for a Finance Charge payable by a Client to BBY. The net Finance Charges payable by a Client to BBY will take into account the accumulated Finance Charges for a Transaction and the aggregate Finance Charges for a Trading Account.
- 14.8 If Foreign Exchange Transactions are "rolled over" or "swapped", the Client will be charged or will be entitled to receive a Finance Charge at the daily rollover rate determined by BBY. The rollover rate is the interest rate differential between the two applicable currencies. The Finance Charge ordinarily is calculated and applied by way of being added to the Transaction amount ("forward points") which will therefore vary depending on a number of factors including (but not limited to):
- (a) the currency pair the Client is trading;
  - (b) the applicable interest rates in the interbank markets according to the period of the rollover that is the interest rates offered for each currency pair (paid or earned);
  - (c) the size of the Transaction;
  - (d) the standard BBY fees that may apply; and
  - (e) other factors, all as determined by BBY.
- 14.9 The forward points can either be accumulated as an offset to the Client's Trading Account balance and will directly debited or credited to the Client's Trading Account balance on settlement date or it will be reflected in the Price at which the open position is rolled forward, that is, it is included in the Price (or rate at which the contract is rolled) and debited or credited to the Client's Trading Account balance on its settlement date.
- 14.10 The Client acknowledges that the Client is responsible for the Client's own legal costs associated with entering into this agreement and for all taxes and expenses incurred by the Client in connection with this agreement including any Transaction made under it.
- 14.11 The Client agrees to reimburse BBY for all fees (both direct and indirect) and expenses charged in connection with any Transaction (other than tax on the income of BBY) and for all costs and expenses incurred by BBY in implementing the terms of this agreement and in enforcing its rights under this agreement (including its legal costs on a full indemnity basis).



- 14.12 The Client acknowledges and agrees that if the Client instructs BBY to effect a Transaction, the Client must pay to BBY the transaction charges as imposed by BBY and pay all transaction commission, charges, fees, Margins, premiums, settlement and clearing fees and charges, charges imposed by any Exchange, interest, default charges and taxes (including GST but excluding BBY's income tax or penalty tax and levies) and any other amounts due under this agreement on demand by BBY in cleared funds or otherwise as required by the terms of this agreement.
- 14.13 If the Client is given access through the Electronic Trading Platform or otherwise to prices or information provided by any exchange to which a royalty or other fee must be paid for the use of such prices or information BBY may effect the payment of any such royalty or other fee by debiting the Client's account on a monthly basis.
- 14.14 If the Client uses an Electronic Trading Platform provided by BBY, the Client must pay to BBY a monthly access charge for the use of this facility, as specified by BBY from time to time. The Client authorises BBY to debit its account for the use of this service.
- 14.15 The Client confirms and acknowledges that BBY is permitted to deduct from a Trading Account and pay itself, without further reference to the Client, all administration fees, including but not limited to fees associated with returned cheques, payment processing, Short Message Service (SMS), debt collection and telephone transcript copies from the Client's Account with BBY during the full term of this agreement while the Client uses such services.
- 14.16 All payments by the Client under this agreement are to be made without any set-off by the Client, counter claim or condition and without any deduction or withholding for any tax or any other reason unless the deduction or withholding is required by applicable law.
- 14.17 If:
- the Client is required to make a deduction or withholding in respect of tax from any payment to be made; or
  - if BBY is required to pay any tax in respect of any payment made in relation to this agreement at the Client's request, then the Client:
    - indemnifies BBY against the tax; and
    - agrees to pay to BBY an additional amount to ensure BBY receives a net amount (after payment of any tax in respect of each additional amount) that is equal to the full amount BBY would have received had a deduction or withholding or payment of tax not been made.
- 14.18 All amounts due to BBY or payable to BBY by the Client under this agreement are payable in any currency that BBY may require or determine.
- 14.19 BBY may give notice to the Client of any change in its Transaction Fees or any rates, fees charges or other amounts payable by this agreement in any manner permitted by this agreement, including posting to BBY's website or to an Electronic Trading Platform or Platform Administration Service, or as required by Operating rules. BBY must give the minimum period of notice required by Operating Rules. If no minimum period is required or is not stated elsewhere in this agreement, notice may be effective immediately BBY first generally publishes the information of any variation on its website or through an Electronic Trading Platform or Platform Administration Service.
- 14.20 The Client authorises the use in accordance with legal requirements of the tax file number provided in the Client Details for all accounts conducted by the Client with BBY for the purposes of Transactions.
- 14.21 If GST is payable on a taxable supply made by BBY under, by reference to, or in connection with this agreement, the Client must also pay the amount of GST payable in respect of that taxable supply. This clause does not apply to the extent that consideration for a supply is expressly stated to be GST inclusive. Terms which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 has that meaning in this clause.
- 14.22 The Client agrees to BBY paying its representatives, authorised representatives and licensee partners (as the case may be) a set portion of the Transaction Fees or any rates, fees charges or other amounts payable by this agreement (not exceeding 55%) that the Client pays to BBY as either their remuneration or as a referral fee. BBY confirms that neither BBY nor its representatives, authorised representatives nor licensee partners have discretion over the portion of fees to be paid in each instance. The Client agrees that the Client gives their clear and express consent to BBY making such payments and to BBY's representatives, authorised representatives and licensee partners (as the case may be) receiving such payments.
- ### 15. TELEPHONE RECORDINGS
- 15.1 The Client agrees that BBY may electronically record all telephone conversations among BBY, the Client and Authorised Persons and that any of the electronic recordings may be submitted in evidence in any proceedings relating to this agreement or any Transaction. If there is any dispute as to the terms of a Transaction:
- the parties have a right to listen to any recording of those conversations and to use those recordings in any court, mediation or dispute resolution proceedings, and each party must make available to the other party, at the other party's request and cost, a copy of any recording of those conversations; and
  - any electronic recordings between the persons who entered into that Transaction will be taken to be the preferred evidence of the terms of that Transaction, notwithstanding the existence of any writing to the contrary.
- ### 16. CONFLICTS OF INTERESTS
- 16.1 BBY is not disqualified from entering into any other contracts with, or deriving income or other benefits from, any Client or any other person by virtue of its entering into this agreement or in connection with its appointment as the Client's agent. Notwithstanding any rule of law or equity to the contrary BBY is not disqualified from contracting with any person and no contract, transaction or arrangement in which BBY is in any way interested is avoided or rendered voidable by virtue of BBY entering into this agreement, a Transaction or any Market Agreement.
- 16.2 BBY is not liable to account to the Client for any profit realised by any such contract, transaction or arrangement in connection with this agreement, a Transaction or a Market Agreement.
- 16.3 BBY is not required to make any disclosure to the Client concerning any contract, transaction or arrangement referred to in clause 16.1.

### 17. DELEGATION

- 17.1 BBY may from time to time delegate any or all of its obligations, powers and discretions to anyone or more or all of its employees. BBY remains responsible for the acts or omissions of its employees. A delegation by BBY under this clause need not be in writing.

### 18. ELECTRONIC TRADING PLATFORM

- 18.1 BBY may from time to time grant the Client access to one or more electronic terminals, including terminal access through the Client's Internet browser, for the electronic transmission of orders to the Client's account with BBY.
- 18.2 BBY may permit the Client to monitor electronically the activity and positions in its account by providing an Electronic Trading Platform. The Electronic Trading Platform may be a proprietary service offered by BBY or a third party system offered by another broker, vendor or exchange.
- 18.3 The Electronic Trading Platform includes all software and communication links. In accordance with this agreement, BBY agrees to supply the Client with software for use with the Electronic Trading Platform, and to agree to grant the Client a non-exclusive and non-transferable licence to use the Electronic Trading Platform subject to the terms of this agreement.
- 18.4 The Client agrees to use the Electronic Trading Platform software solely for its internal business or investment purposes.
- 18.5 The Client acknowledges that BBY must satisfy its Exchange obligations in relation to filtering of electronically routed orders. The Client's ability to trade through the electronic order routing system will be subject to limitations imposed by BBY.
- 18.6 The Client acknowledges that intellectual property rights attach to the systems that route orders and to systems that provide market information. The Client further acknowledges that the market information is confidential information. BBY will not provide the Client, or arrange the provision of such systems to the Client, unless appropriate agreements are executed to protect the intellectual property rights of the systems. The Client further acknowledges that the market information is confidential information. The Client is prohibited from publicly displaying, redistributing or retransmitting the market information in any way without having executed an appropriate agreement with the Exchange.
- 18.7 If the Electronic Trading Platform is provided by a third party, the Client agrees and acknowledges that BBY may receive benefits in accordance with the terms of any agreements between the third party service provider and the Client as if BBY were a party to the agreement, without further disclosure to the Client.
- 18.8 The Electronic Trading Platform provided by BBY may be used to transmit, receive and confirm the execution of orders, subject to market conditions and applicable exchange rules and regulations.
- 18.9 BBY consents to the Client's access and use in reliance upon the Client having adopted procedures to prevent unauthorised access to and use of the service. The Client is responsible for any financial liability for trades executed through the service.
- 18.10 The Client may send and receive, electronic messages, email, engage in chat, download and upload files and otherwise use the Electronic Trading Platform as permitted in accordance in this agreement, BBY's policies, any

applicable laws and, if a third party provides the service, the terms of use and access agreement. Any activity in conferences and chats are subject to review, modification and deletion without notice to the Client.

- 18.11 BBY may create or change any policies at any time relating to the use of the Electronic Trading Platform. The trading platform may be subject to limitations on usage, reproduction or dissemination, and the Client remains responsible for complying with any such limitations. If the Client is granted access to the Electronic Trading Platform and uses it, the Client acknowledges and warrants that:
- it has received a password granting it access to the Electronic Trading Platform;
  - the Client is the sole owner of the password provided;
  - the Client accepts full responsibility for any transaction that may occur on the Client's account, accessed through the use of the password provided to the Client by BBY; and
  - the Client is responsible for being aware of and complying with all rules and policies relating to the use of the Electronic Trading Platform, including whenever they are changed (whether or not the Client is actually aware of those rules and policies) and whether they are general or apply specifically to the Client or to types of Transactions.
- 18.12 The Client warrants and agrees that any person who is in possession of any password is authorised by the Client, and the Client acknowledges that it will be responsible for any actions on its account associated with the use of its password. The password is deemed to be an electronic signature and has the effect of such in its use in forming an agreement between BBY and the Client. BBY's electronically stored record of the date on which the Client accepts such an agreement is evidence as to the effective date of the agreement. If BBY reasonably determines or suspects that there is tampering or loss of data, the Client may not contest the enforceability of BBY's copy of any such agreement.
- 18.13 The Client agrees to accept full responsibility for the use of the Electronic Trading Platform and for any orders transmitted through the Electronic Trading Platform.
- 18.14 The Client agrees to notify BBY immediately if the Client becomes aware of the following:
- any unauthorised use, loss or theft of the Client's, username, password or account numbers; or
  - inaccurate information with respect to the content of statements including, cash balances, open positions or transaction history.
- 18.15 The Electronic Trading Platform is provided on an "as-is" basis. BBY makes no express or implied representations or warranties to the Client regarding its operation or usability.
- 18.16 BBY makes no representations or warranties regarding and services provided by any third party.
- 18.17 BBY does not warrant that access to or use of the Electronic Trading Platform will be uninterrupted or error-free, or that the service will meet any particular criteria with respect to its performance and quality. BBY expressly disclaims all implied warranties, including without limitation warranties of merchantability, title, fitness for a particular purpose, non-infringement, compatibility, security or accuracy.

- 18.18 Under no circumstances, including negligence, fraud, breach of contractual or statutory or fiduciary duty or otherwise, will BBY, its employees and service providers be liable for any direct, indirect incidental, special or consequential damages including, without limitation, business interruption or loss of profits, that may result from the use of or inability to use the Electronic Trading Platform.
- 18.19 The Client agrees that the use of the Electronic Trading Platform is at the Client's risk and the Client assumes full responsibility for any losses resulting from the use of or materials obtained via the Electronic Trading Platform.
- 18.20 BBY, its directors, officers, employees, agents, contractors, affiliates, third party vendors, information providers, and other suppliers providing information or data services do not warrant that the Electronic Trading Platform will be uninterrupted or error free nor do they make any warranty as to the timeliness, sequence, accuracy, completeness, reliability or content of any information, service or transaction provided through the use of the Electronic Trading Platform or the results obtained from its use.
- 18.21 BBY and its service providers will not accept any form of liability including any loss or damage to the Client or to any other person for:
- (a) transmission, delivery, inaccuracies, errors or delays in, or omission of any data, information or messages;
  - (b) non-performance;
  - (c) interruptions in data, information or message transmission, due to any negligent act or omission, including any "force majeure" event or any other cause, whether or not within BBY's control.
- Force majeure events include among other things, floods, extraordinary weather conditions, earthquakes, acts of God, fire, war, riot, labour disputes, accidents, actions of any government, communications or power failure, equipment or software malfunction.
- 18.22 BBY will not be deemed to have electronically transmitted any order or communication to the Client until BBY has actual knowledge of any such order or communication. The terms of any order or communication electronically transmitted to the Client may be subject to change or correction.
- 18.23 The use and storage of any information provided to the Client through the use of the Electronic Trading Platform is for the use of the Client and is the Client's sole risk and responsibility.
- 18.24 The Client is responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the Electronic Trading Platform, and for all communications service fees and charges incurred by the Client in accessing the Electronic Trading Platform.
- 18.25 The Client acknowledges that from time to time, and for any reason, the Electronic Trading Platform may not be operational or otherwise available for the Client's use due to servicing, hardware malfunction, software defect, service or transmission interruption or other cause.
- 18.26 The Client agrees not to hold BBY and any of its service providers (for whom it acts as agent in this regard) liable for any form of damage arising as a result of the unavailability of Electronic Trading Platform.
- 18.27 The Client acknowledges that the Client has alternative arrangements in place at all times for the transmission and execution of orders, if for any reason, circumstances prevent the transmission and execution of all, or any portion of, the Client's orders through the Electronic Trading Platform. Such arrangements may be in the form of telephone, facsimile transmission, or otherwise.
- 18.28 If the Electronic Trading Platform is not operational, the Client agrees to contact BBY to make alternative order entry arrangements.
- 18.29 The Client is responsible for all communications sent via the Electronic Trading Platform.
- 18.30 The Client may not under any circumstance use the Electronic Trading Platform to do any of the following:
- (a) publish, post, distribute or disseminate defamatory, infringing, obscene or other unlawful or offensive material or information;
  - (b) threaten, harass, stalk abuse or violate the legal rights of others;
  - (c) intercept or attempt to intercept any email correspondence;
  - (d) upload files that contain software or any other material that may be protected by intellectual property laws unless all necessary consents have been received;
  - (e) upload files that contain any form of computer virus or corrupt data;
  - (f) falsify the origin of any material or software uploaded to any bulletin board, whether it be contained in a file or otherwise;
  - (g) use the platform in any manner that may adversely affect its availability or its resources to other users;
  - (h) send correspondence electronically or otherwise to other users for any purpose other than personal communication;
  - (i) act, or fail to act in a manner which may result in the violation of any laws or regulations.
- 18.31 The Client's failure to observe any of the undertakings or representations may result in civil or criminal liability, as well as termination of the use of the Electronic Trading Platform.
- 18.32 The Client agrees that it is aware of and will abide by any rules or procedures adopted by BBY or any of its service providers in connection with use of the Electronic Trading Platform.
- 18.33 The Client agrees that it will not permit any third party to copy, use, modify, disassemble, translate or convert any software provided to the Client in connection with use of the Electronic Trading Platform or distribute the platform to any third party.
- 18.34 BBY may at any time at its sole discretion terminate or restrict the Client's access to the Electronic Trading Platform at any time. If BBY terminates this agreement or access to the trading platform, any Electronic Trading Platform licence agreement automatically terminates and any hardware, software, manuals or other items provided by BBY must be returned. The Client will be liable for all fees charges and obligations incurred under this agreement prior to termination.

- 18.35 The Client agrees to indemnify BBY its directors, officers and employees and all of its services providers and their principals, affiliates, agents and employees (for whom it acts as agent in this regard) from all claims, demands, proceedings, suits, actions, losses, liabilities, costs and expenses, incurred or suffered by BBY or any of its services providers or BBY or its the Clients dealings and use of the Electronic Trading Platform. This indemnity provision remains in force after the termination of this agreement.
- 19. ADDITION OR DELETION OF NOMINATED INVESTORS**
- 19.1 The parties may agree from time to time to amend the Client Details to add further Investors or remove Investors.
- 19.2 The Client's authority to act as agent for an Investor will continue until BBY receives notice from the Client or the Investor that the Client's authority has been terminated and the Client Details have been amended accordingly.
- 19.3 This agreement will apply as if it were a separate agreement with each Investor and will be binding on each Investor severally.
- 19.4 Each Transaction entered into under this agreement is binding on each Investor severally in the proportion that the Client allocates the Transaction to each Investor.
- 19.5 The Client must advise BBY of each Investor's allocation of the Transactions as soon as practicable after the Transactions have been conducted.
- 20. GUARANTEE AND INDEMNITY**
- 20.1 The terms of this clause 20 are the terms which are incorporated into the Deed of Guarantee and Indemnity made by the person who executes as "guarantor" Guarantor that part of an application form which expressly refers to and incorporates by reference these terms into that deed.
- 20.2 The Guarantor guarantees to BBY the performance by Client of its obligations under the Facility and agrees to indemnify and to keep indemnified BBY and its employees, agents and representatives against any and all liability or loss (including any consequential loss or damage suffered by BBY) arising from, and any reasonable costs (including any reasonable legal costs and expenses on a solicitor and own client basis), damages, charges and expenses incurred by BBY arising out of any default, whether by act or omission, of the Client:
- (a) to pay BBY any moneys which are due and payable by the Client pursuant to the Facility; or
- (b) to fulfil its obligations to BBY under the Facility.
- 20.3 This guarantee and indemnity are principal and continuing several obligations of each person who signs this document as Guarantor notwithstanding termination of all or any part of the Facility, or the Terms of dealing and will not be affected in any way by:
- (a) any indulgence, delay or period of grace allowed by BBY to the Client or a Guarantor;
- (b) any modification or variation of the Facility or the Terms of dealing between Client and BBY;
- (c) whether any other person has signed this document as a "Guarantor" or given any other credit support to BBY regarding the Client's obligations to BBY;
- (d) any other thing that would otherwise affect the obligations of a Guarantor; or
- (e) any change in the constitution of BBY, the Client or the Guarantor.
- 20.4 To the extent permitted by law, this guarantee and indemnity are in addition to and will not merge with, or be affected by, any other security held by BBY in respect of the obligations of the Client or the Guarantor, now or in the future, notwithstanding any rule of law or equity, or any statutory provision to the contrary.
- 20.5 The Guarantor acknowledges that:
- (a) BBY may in its sole discretion choose to enforce this document against any one or more persons who have signed this or another document as "Guarantor" or other provider of credit support to BBY regarding the Client's obligations to BBY;
- (b) this guarantee and indemnity applies to the Facility from the time of commencement of the Facility even if before the date of this document;
- (c) it will do everything to discharge its obligations under this guarantee and indemnity;
- (d) whoever executes this document on behalf of the Guarantor has the power and authority to do so;
- (e) it has read the terms of the Facility; and
- (f) it will pay on demand of BBY a sum equal to all moneys due and payable by the Client to BBY under the Facility and the amount of BBY's loss suffered or liability incurred in relation to that without set-off or counter claim.
- 20.6 This guarantee and indemnity are governed by the laws in force in New South Wales and the Guarantor submits to the non-exclusive jurisdiction of the Courts of that State.
- 21. MISCELLANEOUS**
- 21.1 All communications, including demands for payment of Margin or other payments called for by BBY in relation to Transactions, may be made:
- (a) by hand delivery, post, telephone or facsimile to BBY or the Client at the address, telephone or facsimile number or electronic address or notified (formally or informally) to BBY or at any other address that one party notifies the other in writing from time to time as its changed address for service under this agreement or;
- (b) by any other electronic means agreed between BBY and the Client, including by email, by express agreement or by the conduct of the Client or its Authorised Persons ordinarily sending and receiving emails in communications with BBY; or
- (c) through an Electronic Trading Platform.
- 21.2 A communication will be taken to be received by the Client or BBY:
- (a) if delivered in person, when spoken to the addressee or delivered to the addressee at its address for service under this agreement;
- (b) if made by mail, three (3) Business Days from and including the date of prepaid postage to its address for service under this agreement;



- (c) if by facsimile, when a transmission report is produced by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient then current as its facsimile number for service under this agreement;
  - (d) if by telephone, when spoken;
  - (e) if by the Electronic Trading Platform, when information is first made available through the platform, regardless of if or when accessed and seen by the Client; and
  - (f) if by other electronic means agreed between BBY and the Client, when transmitted and proof of complete transmission is held by the party sending the transmission, or the recipient otherwise acknowledges receipt expressly or by implication from the person's conduct.
- 21.3 Each of the Client and an Authorised Person who provides BBY with an email address from time to time consents to BBY sending that person notices under this agreement or other notices or information, solicited or not, in relation to other financial products and services of BBY and its related bodies corporate until that person notifies BBY that it does not wish to receive emails at that address in relation to some information of a particular kind or any information.
- 21.4 If the Client is a body corporate, the Client must give notice to BBY of a change in the directors of the Client within seven (7) days of that change taking effect (regardless of if or when notice of that change has been given to any regulatory authority).
- 21.5 Each party acknowledges that during this agreement it may become aware of confidential information of the other party. Each party:
- (a) may use confidential information of the other party solely for the purposes of this agreement;
  - (b) except as permitted under this clause or by law must keep confidential all confidential information of the other party; and
  - (c) may disclose confidential information of the other party only to persons who:
    - (d) are aware and agree that the confidential information of the other party must be kept confidential; and
    - (e) have a need to know for the purposes of this agreement and only to the extent that each has a need to know), or have been specifically approved by the other party; or
  - (f) as required by or under any statute, the Operating Rules or court of competent jurisdiction.
- A party is not in breach of its obligations under this clause because it keeps records it is required by law to keep incorporating confidential information of the other party.
- 21.6 If any one or more of the provisions contained in the agreement is held invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions under the law of that jurisdiction, and the validity, legality and enforceability of those provisions and any other provisions under the law of any other jurisdiction, will not in any way be affected or impaired.
- 21.7 No indulgence or concession granted by BBY and no omission or delay on the part of BBY in exercising any right, power or privilege under this agreement will operate as a waiver of that right, power or privilege. Any single or partial exercise of any right, power or privilege under this agreement will not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.
- 21.8 The rights and remedies provided in this agreement are cumulative with and do not exclude any rights or remedies provided by law.
- 21.9 Time is of the essence in this agreement.
- 21.10 BBY may, at its discretion, from time to time amend or vary this agreement (including any Transaction Fees or other fees or charges of any kind) by written notice to the Client of the proposed variation or amendment and the variation or amendment will be effective seven (7) Business Days after the Client receives the written notice (unless the Client terminates this agreement in accordance with its terms). By continuing to deal with BBY or to access or use the Electronic Trading Platform, the Client agrees to any such variations or amendments.
- 21.11 This agreement is governed by the laws in force in the State of New South Wales. The Client submits to the non-exclusive jurisdiction of the courts of that State.
- 21.12 This agreement is a continuing agreement and will operate with continuing force and effect notwithstanding any settlement of account, intervening payment, or matter or thing until all moneys have been applied or paid in full in accordance with this agreement.
- 21.13 The Client must at all times provide to BBY a telephone number or numbers at or through which the Client or Authorised Persons can be contacted throughout each day on a 24 hour basis, 365 days a year.
- 21.14 If any event occurs (including the introduction, implementation, operation or taking effect of, any law, regulation, treaty, order, official directive or ruling, or any change in any such law, regulation, treaty, order, official directive or ruling or in their interpretation or application by any governmental authority or agent) which makes or declares it unlawful or impracticable for BBY to make the Facility available to the Client under this agreement then:
  - (a) BBY may terminate this agreement with immediate effect by notice to the Client, and close out all Open Transactions in accordance with clause 12 as if the illegality or impracticality were a Default Event for the purpose of that clause; and
  - (b) any termination under paragraph (a) will not relieve the Client of any obligations under this agreement prior to the termination.
- 21.15 After BBY receives written notice as to a disputed Transaction, BBY will in good faith try to resolve the dispute, in accordance with its dispute resolution policy.
- 21.16 BBY may without notice use any associate of it as its agent in the performance of BBY's services under this document.



21.17 BBY may without prior notice to the Client assign its rights and obligations arising under this agreement, including Transactions, to a related body corporate of BBY provided the assignee is a financial services licensee and assumes all liabilities of BBY arising under this agreement. BBY must give notice of any such assignment within a reasonable time after it takes effect.

### 22. TERMINATION

22.1 Either party may terminate this agreement by giving the other party 3 Business Days' written notice.

22.2 Upon termination under clause 22.1, BBY will immediately take steps to Close Out any Open Transactions at the then prevailing Prices.

22.3 Termination will not release either party from liability for any breach (antecedent or subsequent) of any of the terms of this agreement or any obligation under this agreement which remains unfulfilled or executory at the time of termination and the terms of this agreement will not merge at any time.

### 23. DIRECTIONS REGARDING JOINT, CORPORATE OR TRUST ACCOUNTS

23.1 Each of the persons specified as "Authorised Person" in the Client Details, as amended by notification to BBY from time to time, can instruct BBY with regards to the withdrawal of funds from the account, and all such instructions will only be acted upon by BBY if in writing.

23.2 Each of the persons specified as Authorised Persons in the Client Details, as amended by notification to BBY from time to time, can instruct BBY with regards to trading on this account. (For joint accounts at least one of the joint account holders must be an Authorised Person.)

### 24. DEFINITIONS AND INTERPRETATION

In this agreement, (unless otherwise defined in this agreement or unless the context of this agreement otherwise requires), terms defined below or given a meaning by the Operating Rules have the same meaning in this agreement. In this agreement, if a term is defined in the Operating Rules of more than one Exchange, then the relevant definition is that which applies on the Exchange on which the relevant Exchange Transaction occurs.

**Agreement** means this agreement as it may from time to time be varied or amended by written agreement between BBY and the Client or by notice by BBY to the Client pursuant to this agreement.

**Application Form** means the form by that name given to and accepted by BBY for the Facility.

**ASX** means ASX Limited ACN 008 624 691.

**ASX24** means Australian Securities Exchange Limited ABN 83 000 943 377.

**ASX Clear (Futures)** means ASX Clear (Futures) Pty Ltd. (Formerly known as SFE Clearing Corporation Pty Ltd.) ABN 91 050 615 864.

**ASX Clear** means ASX Clear Pty Ltd. (Formerly known as Australian Clearing Pty Ltd. or ACH) ABN 48 001 314 503.

**ASX Settlements** means ASX Settlement Pty Ltd (formerly known as ASX Settlement and Transfer Corporation Pty Ltd or ASTC ABN 79 008 504 532).

**Australian Bank** means a body carrying on "banking business" within the meaning of section 5 of the Banking

Act 1959.

**Australian Dollars or A\$** means the lawful currency of the Commonwealth of Australia.

**Authorised Person** means a person authorised, or held out as being authorised, to give instructions to BBY on behalf of the Client.

**Business Close** means the normal time of close of trading of the relevant CFD Security on the market of the exchange on which BBY or the Market Participant normally hedges its exposure.

**Business Day** means a day on which banks are open in Sydney for Transactions.

**Business Rules** means the rules of any Exchange, clearing or settlement facility through which BBY transacts for or with the Client.

**CFD** means a contract for the parties to pay in cash the difference in prices of Underlying Securities (including by reference to an index).

**Client Details** means the information given in the Application Form about the Client, as later updated by the Client and accepted by BBY.

**Close Out, Closed Out and Closing Out** in relation to a Transaction mean discharging or satisfying the obligations of the Client and BBY under the Transaction and this includes:

- (a) by delivering the amount or value of the Underlying Security (including a dollar multiple of an index) required in accordance with the terms of the Transaction; or
- (b) as a result of the matching up of the Transaction with a Transaction of the same kind under which the Client has assumed an offsetting opposite position;
- (c) making adjustments for fees and charges.

**Closing Date** means the date on which the Transaction is agreed to be Closed Out, or earlier, if deemed to be Closed Out in accordance with this agreement.

**Default Event** means each of the events referred to in clause 10.

**Derivatives** means derivatives as defined in section 761D of the Corporations Act, traded on an Exchange.

**Encumbrance** means any mortgage, pledge, lien, charge, assignment, hypothecation, security interest, preferential right, trust arrangement or any other security or other agreement or arrangement in favour of any person.

**Exchange** means the ASX, ASX24 or the Clearing House or any other market in which BBY participates from time to time, as the context permits or requires.

**Exchange Transactions** means a transaction in any Financial Product, quoted on an Exchange including, without limitation:

- (a) Traded Products (as that term is defined in the ASX Operating Rules);
- (b) Contracts (as that term is defined in the ASX24 Operating Rules); and

- (c) for the avoidance of doubt, includes the sale and purchase of Securities, Derivatives, Warrants, Options and Futures, entered into by the Client and dealt with on the terms of this agreement.

**Facility** means the facility the Client has with BBY for the dealing in financial products and the maintenance of the account on the terms set out in this agreement as well as all related aspects, including payment facilities.

**Finance Charge** has the meaning given by clause 14.

**Financial Product** has the meaning set out in the Corporations Act.

**Foreign Exchange** means currency including Australian Dollars and foreign currency.

**Forward purchase** and similar expressions mean the purchase of a currency (or other agreed security or commodity) at a Price agreed at the time of the purchase, which purchase is to be settled at a future time.

**Fund** means the fund (if any) referred to in the Client Details.

**Futures Contract** means a Futures Transaction which is regulated by an Exchange. Specifications for Futures Contracts traded on ASX24 and on ASX can be found at [www.asx.com.au](http://www.asx.com.au).

**Futures** has the same meaning as given in the ASX Operating Rules.

**Futures Transaction** means any Transaction, whether exchange traded or an OTC Transaction, to buy or sell a specific quantity of a described commodity at an agreed date in the future, whether or not it is physically settled or capable of being physically or cash settled.

**GST** means tax that is imposed as a goods and services tax under any of:

- (a) A New Tax System (Goods and Services Tax) Act 1999; or
- (b) any regulation made pursuant to the A New Tax System (Goods and Services Tax) Act 1999.

**Including** means including without limitation.

**Investment Management Agreement** means the agreement referred to as such in the Client Details between the Client and the relevant Investor relating to the holding and investment of assets.

**Investor** means each of the relevant trustees, persons or corporations in respect of which the Client has entered into an Investment Management Agreement.

**Liquidated Value** has the meaning given in clause (f).

**Long Party** means the party to a Transaction (including a CFD) who is treated as having notionally bought the Underlying Security.

**Manager** means the party (if any) named as the manager of the Trust as at the date of this agreement or any party appointed either in addition to or in substitution for that party, as manager of the Trust.

**Margin** means an initial deposit or a Margin payment, by whatever terms they are described, and any like payments.

**Market Agreement** means an agreement entered into by BBY with a Market Participant (whether or not in writing) pursuant to which BBY enters into or arranges Transactions on behalf of the Client.

**Market Participant** means a person who either:

- (a) has been issued with an authority from the Reserve Bank of Australia to engage in Transactions as dealer or agent when such authority is required for those Transactions; or
- (b) is authorised or licensed to deal in Transactions (including to arrange transactions, whether by Electronic Trading Platforms or otherwise), or a duly authorised agent of such a person.

**Open Contract** has the meaning given to Open Contract under ASX Operating Rules or other applicable Business Rules.

**Open Transaction** means, at any time, a Transaction which has not been Closed Out or settled prior to the time agreed for settlement.

**Operating Rules** means the Operating Rules and procedures of ASX, ASX Clear, ASX Settlement, ASX24 or ASX Clear (Futures) as amended from time to time (as the context permits or requires).

**Options** means options contracts regulated by an Exchange.

**OTC Transaction** means a Transaction which is an over-the-counter contract (in contrast with an exchange-traded contract).

**Overall Balance** has the meaning given in clause 2.22.

**Price** means, in relation to a Transaction, the price or rate quoted by BBY or by a Market Participant (as adjusted for any Transaction Fee or other fees and charges) and agreed to by the Client to express the value of the Underlying Securities the subject of that Transaction.

**Short Party** means the party to a Transaction (including a CFD) who is treated as having notionally sold the Underlying Security.

**Superannuation Fund** means the Fund (if any) referred to as such in the Client details.

**Trading Account** means an account opened by BBY and conducted in accordance with this agreement.

**Transaction Fee** means the fee or commission from time to time notified by BBY to the Client to be the amount payable by the Client to BBY in respect of each Transaction, which may include a point spread in respect of the buy and sell prices quoted by the Market Participants or a transaction fee payable to BBY as principal.

**Transaction** means any contract:

- (a) between either:
  - (i) the Client and BBY as principal; or
  - (ii) the Client and a Market Participant (made by BBY as the Client's agent), including under a Market Agreement,

- (b) to purchase, or agree to purchase (including a forward purchase) or to pay an amount calculated in respect of, Underlying Security in one currency against the settlement in another currency (or other agreed Underlying Security) and in respect of which transaction (other than in respect of Closing Out and Open Transaction as permitted under this agreement) the Client has, or is taken to have, agreed (whether orally, electronically or in writing) to the Underlying Securities involved, the amount of the currency (or other agreed Underlying Security) to be purchased or sold by the Client, the Price and the settlement date.

**Trust Deed** means the trust deed (if any) referred to as such in the Client Details.

**Trust** means the trust (if any) referred to as such in the Client Details.

**Underlying Security** means security, financial product, foreign exchange, commodity (or other relevant thing) the subject of a Transaction, including a value determined by reference to an index or an index multiplied by an amount of currency, in any jurisdiction, whether or not through an exchange or other market facility.

**Unrealised P & Loss** has the meaning given in clause 2.23.

**USD or US\$** means the lawful currency of the United States of America.

**Warrant** has the meaning given by the Business Rules.

**Withdrawable Funds** has the meaning given in clause 2.23.

- 24.2 In this agreement unless the context otherwise requires:
- (a) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
  - (b) a reference to this agreement includes any variation or replacement of it;
  - (c) the word person or any word denoting an individual includes a firm, corporation, body corporate, unincorporated association or any governmental authority;
  - (d) headings are for convenience only and do not affect interpretation;
  - (e) a reference to a clause is a reference to a clause of this agreement;
  - (f) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
  - (g) references to time are to Sydney time;
  - (h) schedules and annexures to this agreement from part of this agreement; and
  - (i) a reference to a statute or rule includes all amendments or consolidations to and replacements of, that statute or rule.
- 24.3 If there is more than one party identified in this agreement as the "Client", that expression will be construed to refer to, and the obligations of the Client under this agreement will bind, each of them severally and jointly.
- 24.4 In addition, if the Client is an agent of an Investor or Investors, this agreement will apply as if it were a separate agreement with each Investor and will bind each Investor separately and severally, in accordance with this

agreement.

- 24.5 In consideration of BBY establishing an account in the Client's name, the Client is instructing us to perform services for you and our accepting those instructions, you will be taken to have agreed to deal with us on the terms set out in or incorporated by this document.
- 24.6 These terms supersede all previous agreements between you and BBY concerning the matters dealt with in these terms.
- 24.7 A Transaction which was agreed to before this agreement comes into effect will become bound by this agreement except to the extent of any conflicting term of the Transaction, which will prevail.

### SCHEDULE 1

If the Client is the trustee of a Trust, the Client represents and warrants to BBY that:

1. the Trust has been duly constituted and is validly existing in compliance with all applicable laws and the Trust Deed has been duly executed and duly stamped, in each case in accordance with the laws of each State and Territory of Australia;
2. the Trust Deed and its constituent documents give it power:
  - (a) to carry on all of the business activities now conducted by it in any capacity; and to enter into and comply with its obligations under, and to carry on the transactions contemplated by, this agreement;
3. all necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the Trust Deed, any other document or any law for the entry into, observance and performance by it of its obligations under this agreement;
4. each of its obligations under, and the transactions contemplated by, this agreement constitutes binding obligations and is completely and lawfully enforceable against it and the Trust's property in accordance with their terms;
5. it is the only trustee of the Trust;
6. no property of the Trust has been re-settled, set aside or transferred to any other trust or settlement;
7. the Trust has not been terminated, nor has the date or any event for the vesting of the Trust's property occurred;
8. no determination has been made to distribute the Trust's property on a date which is earlier than the latest date under the Trust Deed by which the Trust's property must be distributed;
9. there is no conflict of interest on the Client's part in enter into this agreement and performing its obligations under it or the Transactions contemplated by it;
10. it has an unrestricted right to be fully indemnified or exonerated out of the Trust's property in respect of any losses or liabilities incurred by it and the Trust's property is sufficient to satisfy that right of indemnity or exoneration; and
11. it has complied with its obligations in connection with the Trust.

### SCHEDULE 2

If the Client is the responsible entity of the Fund:

1. The Client undertakes that the Client must not retire as responsible entity of the Fund unless notice to BBY of its intention to retire and upon satisfaction of the following conditions:
  - (a) the successor responsible entity must be acceptable to BBY; and
  - (b) the successor responsible entity must execute whatever documents BBY reasonably requires to ensure that this agreement is binding on it.
2. The Client agrees with BBY that it will (or will procure that the following will be done) in relation to the Fund, ensure that other than with BBY's prior consent:
  - (a) the constitution of the fund (Fund Constitution) is not amended in any way which could have a material adverse affect on the ability of the Client to comply with its obligations under this agreement or could otherwise be prejudicial to BBY;
  - (b) the Fund Constitution is not revoked;
  - (c) where it determines that the Fund Constitution, the compliance plan for the Fund, or any custodian or other agency agreement entered into by it in connection with the Fund is required by law to be changed or replaced, promptly give to BBY full details of the requirement and copies of the documentation it proposes to enter into to comply with that requirement;
  - (d) there is no re-settlement, setting aside or transfer of any asset of the Fund other than a transfer which complies with the Fund Constitution and this agreement;
  - (e) the Client's obligations under the Fund Constitution and at law are fully complied with;
  - (f) except in accordance with this Schedule 2 no other person is appointed responsible entity of the Fund;
  - (g) subject to section 601 FM of the Corporations Act and except where and to the extent that the Client has retired as responsible entity of the Fund in accordance with this Schedule 2 nothing is done which would cause or enable the removal of the Client as responsible entity of the Fund, nor retire as responsible entity;
  - (h) appoint a custodian or other agent to carry out any of its functions as responsible entity of the Fund; or
  - (i) terminate the appointment of any custodian or other agent appointed in accordance with paragraph 2(h) of this Schedule 2;
  - (j) the vesting date under the Fund Constitution is not changed or fixed;
  - (k) subject to the Corporations Act ensure that nothing occurs which could limit, exclude or otherwise derogate from in any material way the Client's right under the Fund Constitution and the general law to be indemnified out of the assets of the Fund; and
  - (l) subject to the terms of the Fund Constitution and the general law, the Client's lien over the property of the Fund will have priority over the rights of the members of the Fund.

The Client represents and warrants in relation to the Fund as follows:

- (a) the Fund has been duly constituted and is validly existing in compliance with all applicable laws and the Fund Constitution has been duly executed and duly stamped, in each case in accordance with the laws of each State and Territory of Australia;
- (b) the Fund Constitution and its constituent documents give it power:
  - (i) to carry on all of the business activities now conducted by it in any capacity;
  - (ii) to enter into and comply with its obligations under, and to carry on the transactions contemplated by, this agreement;
- (c) all necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the Fund Constitution, any other document or any law for the entry into, observance and performance by it of its obligations under this agreement;
- (d) each of its obligations under, and the transactions contemplated by, this agreement constitutes binding obligations and is completely and lawfully enforceable against it and the Fund's property in accordance with their terms;
- (e) it is the only responsible entity of the Fund;
- (f) no property of the Fund has been re-settled, set aside or transferred to any other trust or settlement;
- (g) the Fund has not been terminated, nor has the date or any event for the vesting of the Fund's property occurred;
- (h) no determination has been made to distribute the Fund's property on a date which is earlier than the latest date under the Fund Constitution by which the Fund's property must be distributed; (i) there is no conflict of interest on the Client's part in entering into this agreement and performing its obligations under it or the transactions contemplated by it;
- (j) except as required by the Corporations Act and except to the extent expressly stated in the Fund Constitution, the Client's rights under the Fund Constitution and the general law to be indemnified out of, and have a lien over, the assets of the Fund have not been limited in any way; and without limitation the Client has no liability which may be set-off against that right of indemnity; and
- (k) it has complied with its obligations in connection with the fund.

### SCHEDULE 3

If Client is trustee of the Superannuation Fund, the Client represents and warrants to BBY as follows:

The transactions contemplated by this agreement insofar as they concern the Superannuation Fund:

- (a) comply with all requirements of the Superannuation Industry (Supervision) Act 1993 (SIS Act);
- (b) have been or are to be implemented in accordance with an investment strategy undertaken in accordance with the SIS Act;
- (c) comply with all the requirements of the constitution of the Fund, (Fund Constitution) and rules applicable to the Superannuation Fund, in force at the date of this agreement; and

- (d) have been or are undertaken on an arm's length basis, for value and on commercial terms.

The Superannuation Fund has been duly constituted and its validly existing Constitution has been duly executed and duly stamped, in each case in accordance with the laws of each State and Territory of Australia.

The Fund Constitution and its constituent documents give it power:

- (a) to carry on all of the business activities now conducted by it in any capacity;
  - (b) to enter into and comply with its obligations under, and to carry on the Transactions contemplated by, this agreement;
4. All necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the Fund Constitution, any other document or any law for the entry into, observance and performance by it of its obligations under this agreement.
  5. Each of its obligations under, and the Transactions contemplated by, this agreement constitute binding obligations and are completely and lawfully enforceable against it and the property in accordance with their terms.
  6. It is the only trustee of the Superannuation Fund.
  7. No property of the Superannuation Fund has been resettled, set aside or transferred to any other trust or settlement.
  8. The Superannuation Fund has not been terminated, nor has the date or any event for the vesting of the property occurred.
  9. No determination has been made to distribute the Superannuation Fund's property on a date which is earlier than the latest date under the Fund Constitution by which the Superannuation Fund's property must be distributed.
  10. There is no conflict of interest on the Client's part in entering into this agreement and performing its obligations under it or the transactions contemplated by it.
  11. It has an unrestricted right to be fully indemnified or exonerated out of the Superannuation Fund's property in respect of any losses or liabilities incurred by it and the Superannuation Fund's property is sufficient to satisfy that right of indemnity or exoneration.
  12. It has complied with its obligations in connection with the Superannuation Fund.

### SCHEDULE 4

If the Client is the agent of the Investor:

1. The Client agrees with BBY that it will ensure that, without BBY's prior consent:
  - (a) the Investment Management Agreement is not determined or amended in any way which could have a material adverse affect on the ability of the Client to comply with its obligations under this agreement or could otherwise be prejudicial to BBY; and
  - (b) the Client's obligations under the Investment Management Agreement and at law are fully complied with.
2. The Client represents and warrants to BBY that:
  - (a) it has received written acknowledgment from each

Investor to the effect set out in the remainder of this paragraph 2(a) and paragraph 2(b) of this Schedule 4 and the Client is not aware of anything that causes it to suspect that anything in those paragraphs is not correct;

- (b) the Investment Management Agreement is valid and binding on the Client and the Investor, respectively;
  - (c) it has the power, as agent for the Investor under the Investment Management Agreement, to enter into and observe all the provisions and to carry on the transactions contemplated by, this agreement as agent for the Investor;
  - (d) the Investor will be bound by instructions provided by the Client to BBY as if the Investor were named in this agreement as the Client and will be bound by any Transaction entered into by BBY on instructions from the Client.
3. If an Investor is a trustee, the Investor has warranted to the Client and the Client believes that the Investor is empowered by the relevant trust deed and law:
    - (a) to enter into and comply with its obligations under, and to carry on the transactions contemplated by, the Investment Management Agreement and each Transaction entered into by the Client on its behalf in connection with this agreement; and each of its obligations under, and the transactions contemplated by, the Investment Management Agreement constitute binding obligations and are completely and lawfully enforceable against it and the relevant trust's property in accordance with their terms to enter into and perform the Investment Management Agreement and each Transaction entered into by the Client on its behalf in connection with this agreement and to carry on the transactions contemplated by this agreement; and
    - (b) to carry on the trust's business as now conducted or contemplated and to own the trust's assets, in its capacity as trustee of the relevant trust; and there are no restrictions or conditions on this; and
      - (i) all other procedures have been completed as required by the relevant trust deed for it to enter into and perform the Investment Management Agreement and Transaction entered into by the Client on its behalf in connection with this agreement. This includes all necessary resolutions and all consents and approvals.
  4. The Client enters into this agreement as agent of each of the Investors and in its personal capacity.



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