

PENSON DERIVATIVES CLIENT AGREEMENT

between

clients of Minc Financial Services Pty Ltd ABN 24 126 999 433 AFSL No. [317201] (Correspondent) and
PENSON FINANCIAL SERVICES AUSTRALIA PTY LTD ABN 60 136 184 962 AFSL No. 338264 (PENSON)

1. INSTRUCTIONS

1.1 ASX Derivative Products

The client named in the Derivatives Client Agreement with the Correspondent (**Client**) may from time to time instruct the Correspondent to deal in the following kinds of derivatives which are traded on ASX:

- (a) Options Market Contracts (sometimes referred to as Exchange Traded Options); and
- (b) other kinds of derivatives traded on ASX.

but not including Futures Market Contracts (**ASX Derivative Products**).

1.2 Authorisation of additional ASX Derivative Products

If the Client gives instructions to the Correspondent to deal in an ASX Derivative Product in which the Correspondent is not authorised to deal under this clause, those instructions are taken to vary this agreement to authorise the Correspondent to deal in that ASX Derivative Product under this clause.

1.3 Right to refuse to deal

The Client acknowledges that:

- (a) Penson may (and may instruct the Correspondent to) at any time refuse to deal in, or may limit dealings in, ASX Derivative Products for the Client. Penson will notify the Client of any refusal or limitation as soon as practicable; and
- (b) [**ACH Minimum Term 4**] Penson is not required to act in accordance with the Client's instructions, where to do so would constitute a breach of the ACH Clearing Rules, the ASX Market Rules or the Corporations Act.

1.4 Authority to act on instructions

The Client authorises Penson to accept and act without any inquiry upon instructions provided (including orders placed) by fax or e-mail which appear to Penson to have been given by the Client, the Correspondent or by any other person on behalf of the Client, and indemnifies Penson in respect of any losses or expenses that Penson may suffer or incur as a result of so acting.

2. CLEARING ARRANGEMENTS AND RELATIONSHIP WITH ASX AND ACH

2.1 Clearing Agreement between the Correspondent and Penson

The Correspondent is a Market Participant of ASX and is a party to a Clearing Agreement with Penson for the purposes of the ASX Market Rules and the ACH Clearing Rules.

Penson is a Clearing Participant of ASX and a General Participant of ACH.

2.2 Nature of Penson's obligations [**ACH Minimum Term 4**]

The Client acknowledges that:

- (a) notwithstanding that Penson or the Correspondent may act in accordance with the instructions of, or for the benefit of, the Client, any Derivatives Contract arising from any order submitted to ASX is entered into by the Correspondent as principal; and
- (b) upon registration of a Derivatives Contract with ACH in the name of Penson, Penson incurs obligations to ACH as principal, even though the Derivatives Contract may have been entered into on the Client's instructions.

2.3 Obligations of Client owed to Penson

On execution of a Derivatives Transaction in an ASX Derivative Product by the Correspondent on behalf of the Client, the Client owes obligations to Penson in relation to that Derivative Transaction including the obligations set out in this agreement.

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

2.4 Misdirected Transactions

The Client acknowledges that, if at any time Derivatives Transactions executed by the Correspondent are also to be cleared through a Clearing Participant (other than Penson):

- (a) the Correspondent may, incorrectly or otherwise, direct a Derivatives Transaction which it has executed on the Client's behalf to a Clearing Participant other than Penson (**Misdirected Transaction**);
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- (b) Person will not carry the settlement obligations in respect of any Misdirected Transaction; and
- (c) Person will not give the Client a confirmation in respect any Misdirected Transaction.

2.5 Rights of Client [ACH Minimum Term 4]

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

2.6 Appointment as agent [ACH Minimum Term 10]

The Client irrevocably appoints severally ACH, and every director, manager and assistant manager for the time being of ACH, at the option of ACH (as applicable) to do all acts and execute all documents on the Client's behalf for the purpose of exercising the powers conferred on ACH under ACH Clearing Rule 15 including, the power to transfer or close out Derivatives Contracts if Person commits an event of default.

2.7 Application of ASX Market Rules and ACH Clearing Rules [ACH Minimum Term 1]

The Client and Person agree that the terms of their relationship in respect of Derivatives Contracts, and any dealings between them concerning Derivatives Contracts are subject to, and that they are bound by the Corporations Act, the ASX Market Rules, the ACH Clearing Rules and the procedures, customs, usages and practices of ASX, ACH and their related entities, as amended from time to time, in so far as they apply to Derivatives Contracts.

3. MARGIN CALLS AND COVER

3.1 Person may call for funds or security [ACH Minimum Term 6]

Person may call for payment of money or the provision of other security (**Person Cover**) which Person considers, in its absolute discretion, appropriate in connection with the obligations incurred by Person in respect of Derivative Contracts entered into for the account of the Client. The Client acknowledges that Person is entitled to call for Person Cover under this clause 3.1 of an amount or value which exceeds the amount of the Cover which Person is required to provide to ACH in respect of the Derivative Contracts registered with ACH in a Client Account in respect of the Client. The time by which the Client must pay any amount called or provide security is of the essence. The Client must pay the amounts, or provide the relevant security, within 24 hours of the call for payment.

3.2 Application of funds or financial products to satisfy calls

The Client authorises Person to withdraw or otherwise apply funds or financial products held on the Client's behalf to partially or fully satisfy such calls.

3.3 Authority to provide Cover

If the Client makes money or financial products available to Person as Person Cover (whether by delivery to Person or application by Person under this agreement), the Client:

- (a) warrants that the Client is legally entitled and authorised to do so, and that the Person Cover is free from all Encumbrances; and
- (b) authorises Person to pay the money and/or make the financial products available to ACH as Cover.

3.4 Interest on Cover

No interest is payable on moneys or other security provided by the Client to Person under this clause.

3.5 Person may use moneys as Cover

Person may itself provide money or other financial products to ACH as Cover for its Clearing Obligations and Person will retain any interest it receives on such moneys.

4. COMMISSIONS AND FEES [ACH Minimum Term 8]

The Client must pay to Person commissions, fees, charges and taxes in connection with dealings for the Client in ASX Derivative Products at the rates determined by Person from time to time and notified to the Client in writing.

Commission is payable to Person on a contract executed by Person for the transfer of Underlying Financial Products following the exercise of a Derivatives Contract. Person will pass on part of that commission to the Correspondent.

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

5. MONEYS AND DEFAULT

5.1 Client funds and property [ACH Minimum Term 15]

Penson must deal with any money and property paid or given to Penson in connection with the Penson/Client relationship in accordance with the Corporations Act and the ACH Clearing Rules.

5.2 Combination, deposit and use of funds [ACH Minimum Term 15]

- (a) The Client acknowledges that the Client's monies and the monies of other clients of Penson may under the ACH Clearing Rules be combined and deposited by Penson in a trust account or clients' segregated account. The Client acknowledges that all monies credited to the clients' segregated account maintained by Penson may be used by Penson to meet the default of any client of Penson.
- (b) Despite clause 5.2(a), Penson agrees that it will only pay the Client's monies into a trust account.

5.3 Set Off

Penson is entitled to set off any monies received from the sale of financial products on the Client's behalf against any monies due to Penson by the Client on any account.

5.4 Default [ACH Minimum Term 7]

If:

- (a) the Client fails to pay, or provide security for, amounts payable to Penson or fails to perform any obligation arising pursuant to the exercise or settlement of a Derivatives Contract;
- (b) the Client becomes bankrupt or enters into a composition or arrangement for the benefit of creditors or, being a company, a liquidator is appointed to the Client or an administrator, receiver, receiver and manager or official manager is appointed over all or a part of the Client's property or an encumbrancer or its agent takes possession of all or part of the Client's property or the Client enters into any scheme of arrangement with creditors under Part 5.1 of the Corporations Act;
- (c) the Client makes any representation that is incorrect or misleading in any material way with the result that loss or damage is, or is likely to be, suffered by Penson;
- (d) in the absence of the Client making alternative arrangements, the Client is at any time not contactable by the Correspondent immediately in order for Penson to obtain instructions or call for payment of money or the provision of other security;
- (e) the conduct of the Client is such that a reasonably prudent correspondent would be of the view that the Client would be unable to comply with all the Client's obligations under this agreement, including strict compliance with any time limits;
- (f) the Client fails to complete a contract for the transfer of Underlying Financial Products following the exercise of an Option CCP Contract;
- (g) a guarantee or other security provided by the Client to Penson is withdrawn or becomes ineffective and other replacement security acceptable to Penson is not provided;
- (h) the Client "fails to settle" for the purpose of the terms of the Client's agreement with Penson set out in the Disclosure Statement (if any) provided to the Client by the Correspondent in respect of the clearing and settlement of transactions in financial products quoted on ASX or other Market Transactions; or
- (i) any other event occurs which Penson and the Client have agreed in this agreement constitutes a default,

(each a **default**), Penson may, in addition to any other rights which it may have against the Client, without giving prior notice to the Client, take any action, or refrain from taking action, which it considers reasonable in the circumstances in connection with Derivatives Contracts registered in the Client Account or otherwise entered into for the account of the Client (including, Derivatives Contracts arising from those contracts) and, Penson may:

- (j) enter into one or more transactions (whether on-market or by private contract, together or in lots for cash or credit and for a price or prices upon such terms and conditions in all respects as Penson sees fit) to effect the close out of one or more Derivatives Contracts in accordance with the ACH Clearing Rules;
 - (k) exercise one or more Derivatives Contracts in accordance with the ACH Clearing Rules;
 - (l) enter into or execute any Cash Market Transaction or Derivatives Transaction (including a Futures Market Transaction) as Penson sees fit, whether or not the Client is permitted under clause 1;
 - (m) sell or cause to be sold:
 - (i) any or all of the Client's property, including any security lodged with Penson (whether the property or security had been lodged with Penson in connection with this agreement or for any other reason) or held by Penson or its Related Bodies Corporate on behalf of the Client or in a Holding in respect of
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which Penson, its nominee company or a Related Body Corporate of Penson is the Controlling Participant; and

- (ii) any financial products held by Penson in an account for the Client or otherwise held (including any financial products in a Holding in respect of which Penson, its nominee company or a Related Body Corporate of Penson is the Controlling Participant);
- (n) exercise any other power, right or remedy which Penson may have under this agreement or in law or equity;
- (o) exercise or cause to be exercised any other rights conferred by the ASX Market Rules, the ACH Clearing Rules or this agreement or perform any other obligations arising under the ASX Market Rules, the ACH Clearing Rules or this agreement in respect of any Derivatives Contracts or Derivatives Transactions;
- (p) charge an administration fee calculated by reference to the additional cost which may be incurred by Penson as a result of the default;
- (q) levy a default charge on the amount of up to 15% per annum;
- (r) apply any cash held by Penson or the Correspondent on the Client's account or to which they have access (including any amount held), or payments received from the Client or in reduction of the Client's liability to Penson; or
- (s) instruct the Correspondent to cancel any of the Client's unexecuted orders,

and the Client must account to Penson as if those actions were taken on the instructions of the Client and, is liable for any deficiency and is entitled to any surplus which may result.

In relation to any of the rights exercisable for the benefit of Penson in the event of a default, the Client authorises Penson and each of its directors and employees as the Client's attorney to give instructions on behalf of the Client in respect of the Client's holdings of financial products in a in respect of which Penson, its nominee company or a Related Body Corporate of Penson is the Controlling Participant, or held by Penson, its nominee company or by their Related Bodies Corporate in nominee holdings, and in respect of call deposit facilities or cash management trust accounts on which they are authorised to give instructions, to enable Penson to realise those financial products or funds and apply the proceeds in reduction of the Client's liability to Penson and to recover Penson's costs in so acting.

The Client must pay or reimburse Penson any such administration fees and default charges (together with any GST payable on those amounts) immediately upon demand or at Penson's option it may deduct such administration fees and default charges (and any GST) from any proceeds of sale, or proceeds from the close out or exercise of rights in relation to a Derivatives Contract, or other amounts otherwise payable to the Client.

Penson will not be liable to the Client for any failure by Penson to exercise (or any delay in the exercise by Penson of) any power under this clause, or any loss incurred by the Client as a result of Penson not exercising any of its powers under this clause 5 immediately, or at all, following an event of default by the Client.

The Client acknowledges that Penson, in exercising any of its rights under this clause 5.4, is entitled to act to protect its own interests and is under no obligation to subordinate the protection of its own interests to those of the Client.

5.5 Effect of liquidation of contract following default

Upon close out of any Derivatives Contract in accordance with clause 5.4, the Client is liable to pay to Penson any amount owing to Penson in respect of that contract. If the Client fails to make that payment within the time specified by Penson (which time is of the essence), Penson may deal with any of the Client's money or other property held by Penson and apply the proceeds against that amount.

5.6 Assignment to the Correspondent of amounts owing

If the Client has not paid any amount due to Penson under this agreement, in addition to its rights under clause 5.4, Penson may assign that debt to the Correspondent and the assigned debt will become an obligation of the Client's to the Correspondent.

5.7 Method of Payment

Where money is payable to Penson by the Client (for example where Penson has called for payment of money under clause 3.1 or has notified the Client of commissions and fees in accordance with clause 4), the Client:

- (a) is not permitted to make payment in cash; and
- (b) will be entitled to make payment from a cheque or savings account by BPAY, where the relevant document provided by the Correspondent (such as a confirmation or notice as the case may be) bears a Biller Code. Payment by this means will only be acceptable to Penson if the Client quotes the relevant Biller Code and its BPAY reference number.

5.8 Release

In consideration of Penson entering into this agreement with the Client, the Client releases Penson (and its related bodies corporate and their respective directors, officers, employees and agents) (the **Released Parties**) in respect of all present

or future claims the Client may have against the Released Parties or any of them arising out of or in connection with the exercise by Penson of any of its rights under this clause 5.

6. ACKNOWLEDGMENTS AND WARRANTIES

6.1 Change of Participant [ACH Minimum Term 16]

If the Client receives a Participant Change Notice from Penson and the Participant Change Notice was received at least 20 Business Days prior to the date proposed in the Participant Change Notice for the change of Participant, the Client is under no obligation to agree to the change of Participant, and may choose to do any of the things set out below.

The Client may choose to terminate this agreement in accordance with clause 10.1 or by giving instruction to Penson, indicating that the Client wishes to transfer its Derivatives Contracts to another Participant.

If the Client does not take any action to terminate this agreement and does not give any other instructions to Penson which would indicate that the Client does not agree to the change of Participant then, on the Effective Date, this agreement will have been taken to be novated to the new Participant and will be binding on all parties as if on the Effective Date:

- (a) the new Participant is a party to these this agreement in substitution for Penson;
- (b) any rights of Penson are transferred to the new Participant; and
- (c) Penson is released by the Client from any obligations arising on or after the Effective Date,

and the Client will also be taken to have consented to and authorised:

- (d) the transfer to the new Participant of all the Client's open Derivatives Contracts as at the Effective Date so that they will be registered with ACH in the new Participant's name;
- (e) the payment or transfer to the new Participant (or a Controlling Participant or nominee nominated by the new Participant) on the Effective Date of all money and other security (including all Penson Cover) provided to Penson under this agreement before the Effective Date to be held by the new Participant (or by the nominee or in a Holding in respect of which the new Participant (or another Controlling Participant nominated by the new Participant) is the Controlling Participant as the case may be) under clause 3 of this agreement as novated,

and, if the Client has executed before the Effective Date a Registered Holder Collateral Cover Authorisation under which the Client authorised a Controlling Participant to reserve (or withdraw) financial products registered in the Client's name in the ACH Subposition as Collateral Cover for obligations in respect of Derivatives Contracts registered with ACH in Penson's name in a Client Account in respect of the Client, the Client is also taken to have appointed the new Participant and each director, secretary and officer of the new Participant for the time being as the Client's attorney to complete and execute a Registered Holder Collateral Cover Authorisation under which the Client authorises that Controlling Participant to reserve (or withdraw) financial products registered in the Client's name in the ACH Subposition as Collateral Cover for obligations in respect of Derivatives Contracts registered with ACH in the new Participant's name in a Client Account in respect of the Client.

The novation can not take effect until the Client has received a notice from the new Participant confirming that the new Participant consents to acting as the Participant for the Client. The Effective Date may as a result be later than the date set out in the Participant Change Notice.

The Client will be taken to have consented to the events referred to above by the doing of any act which is consistent with the novation of this agreement to the new Participant (for example by giving an instruction to the new Participant), on or after the Effective Date, and such consent will be taken to be given as of the Effective Date.

This agreement continues for the benefit of Penson in respect of any rights and obligations accruing before the Effective Date and, to the extent that any law or provision of any agreement makes the novation not binding or effective on the Effective Date, then this agreement will continue for the benefit of Penson until such time as the novation is effective, and the existing Participant will hold the benefit of this agreement on trust for the new Participant.

Nothing in this clause 6.1 will prevent the completion of Derivatives Transactions or Derivatives Contracts by Penson where the obligation to complete those transactions or contracts arises before the Effective Date and this agreement will continue to apply to the completion of those contracts, notwithstanding the novation of this agreement to the new Participant under this clause 6.1.

6.2 Explanatory Booklet and other documents [ACH Minimum Term 3]

The Client has received and read a copy of the current explanatory booklet published by ASX in respect of each ASX Derivative Product. This does not apply in relation to a Client that is a Wholesale Client.

The Client acknowledges that it has read and understood the documents (if any) given to it under ACH Clearing Rule 7.1.1(b).

6.3 Risk and investment in ASX Derivative Products [ACH Minimum Term 3]

The Client acknowledges that trading in ASX Derivative Products incurs a risk of loss as well as a potential for profit.

The Client acknowledges that it has given consideration to its objectives, financial situation and needs and has formed the opinion that dealing in ASX Derivative Products is suitable for its purposes.

6.4 Dealing as Principal and Penson taking opposite position [ACH Minimum Term 5]

The Client acknowledges that Penson may, in certain circumstances permitted under the Corporations Act and the ASX Market Rules, or the ACH Clearing Rules, take the opposite position in a Derivatives Contract, either acting for another client or on its own account.

6.5 Confirmations

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

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

6.6 Cancellation of trades

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

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

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

7. INFORMATION

7.1 Provision of Information [ACH Minimum Term 2]

The Client will take all reasonable steps to deliver information or documentation to Penson, or cause information or documentation to be delivered to Penson concerning Derivatives Transactions which are requested by a person having a right to request such information or document. Penson is authorised to produce the information or documentation to the person making the request.

7.2 Tape recording of conversations [ACH Minimum Term 9]

The Client agrees that Penson may record telephone conversations between the Client and Penson. The Client also agrees that Penson may use such recordings for the purposes of resolving disputes, and monitoring compliance by the Client, or the Correspondent with their regulatory and contractual obligations. If there is a dispute between the Client and Penson, the Client has the right to listen to any recording of those conversations. Nothing in this agreement obliges Penson to keep a recording longer than 90 days.

8. ALLOCATION (GIVE UP)

8.1 Penson must consent to any give up

The Client acknowledges that Penson is obliged as principal and has the Clearing Obligations in respect of all transactions in relation to ASX Derivative Products which are executed by the Correspondent on behalf of the Client, unless, in relation to a specified Derivatives Contract (**Allocated Trade**):

- (a) the Client has consented to the allocation of the Derivatives Contract to another Participant;
- (b) Penson has consented to the allocation of the Derivatives Contract to that other Participant;
- (c) Penson has provided that consent prior to the Derivatives Contract being registered with ACH;
- (d) that other Participant has accepted the allocation of that Derivatives Contract in accordance with the ACH Clearing Rules; and
- (e) that other Participant has entered into a Client Agreement with the Client which complies with the ACH Clearing Rules.

8.2 Penson ceases to have Clearing Obligations following give up

Clauses 3.1 and 5.4 do not apply in relation to an Allocated Trade, where the Client directs that trades be allocated to a Participant (who is not Penson) for registration in the relevant Client Account of that other Participant and the other

Participant accepts the allocation of those trades for registration, and the trade is allocated by Penson to the other Participant in accordance with the ACH Clearing Rules.

9. INDEMNITY

The Client agrees to indemnify and keep indemnified Penson from all claims, losses, liabilities, damages and costs (including legal costs on a solicitor and client basis) whatever and however arising suffered or incurred by Penson directly or indirectly arising out of or in connection with:

- (a) Penson acting as Clearing Participant for the purposes of the ASX Market Rules and as General Participant for the purposes of the ACH Clearing Rules as contemplated by this agreement;
- (b) the performance by Penson of its obligations under this agreement;
- (c) any failure by the Client to strictly comply with, or to perform any of its obligations under, this agreement;
- (d) any representation or warranty given by the Client under this agreement proving to be untrue or incorrect; or
- (e) any Allocated Trade.

10. TERMINATION OF AGREEMENT

10.1 Termination by notice [ACH Minimum Term 11]

Either the Client or Penson may terminate this agreement at any time by giving notice in writing to the other. Termination will be effective upon receipt of the notice by the other party.

10.2 Effect of termination [ACH Minimum Term 12]

Termination does not affect the existing rights and obligations of the Client or Penson at or prior to termination. Upon termination of this agreement, Penson will close out all Derivatives Contracts held by Penson for the account of the Client, unless, in accordance with a direction from the Client, the registration of those contracts are transferred to another Participant in accordance with the ASX Market Rules or ACH Clearing Rules.

11. AMENDMENT

11.1 Revised Terms prescribed by ACH [ACH Minimum Term 13]

If ACH prescribes amended minimum terms for a Client Agreement for the purposes of the ACH Clearing Rules (**New Terms**), to the extent of any inconsistency between this agreement and the New Terms, the New Terms will override this agreement and apply as if the Client and Penson had entered into an agreement containing the New Terms.

11.2 Penson to provide Client with copy of changes [ACH Minimum Term 14]

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

12. SET OFF

Without limiting clause 5.3, Penson may, without notice to the Client, combine any account that the Client holds at any branch or office (in Australia or elsewhere) of Penson with, or set off any amount in any currency that is or may become owing in any currency by Penson (or any Related Body Corporate or Penson) to the Client against, any amount owing by the Client to Penson (or any Related Body Corporate of Penson). For this purpose Penson may:

- (a) change the terms (including the repayment date) of any account or other payment obligation between the parties;
- (b) convert amounts into different currencies in accordance with Penson 's usual practice; and
- (c) do anything (including execute any document) in the name of the Client that Penson considers necessary or desirable.

This clause 12 overrides any other document or agreement to the contrary.

13. NOTICES

Any confirmation, statement or other written notice (including legal process) served by Penson on the Client, or served by the Client on Penson pursuant to this agreement will be deemed to have been duly served and received:

- (a) if given by hand, at the time left at the relevant party's last known place of residence or business;
 - (b) if given by mail, 2 Business Days after it is posted where the recipient party's last known address is in Australia, and ten Business Days after it is posted by airmail where the recipient party's last known address is outside Australia;
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- (c) if given by telex, upon receipt of the recipient party's answer back;
- (d) if given by telegram, six hours after dispatch to the recipient party;
- (e) if given by facsimile transmission, at the time of transmission to the recipient party's last known facsimile number, or upon acknowledgment by the recipient party; or
- (f) if given electronically, upon receipt of a confirmation of delivery by the party giving the notice of the electronic mail message to the last known electronic mail address of the recipient party.

Unless otherwise specified in this agreement, notices served by Penson on the Client need not be in writing. In particular, a call under clause 3.1 may be made by telephone to the Client by Penson or by the Correspondent on Penson's behalf.

Penson may arrange for any notice to be given by Penson to the Client under this agreement or the ACH Clearing Rules to be given to the Client by the Correspondent acting as Penson or Penson Nominee's agent. Penson may also provide the Correspondent with a copy of any such communication or notice given to the Client by (or on behalf of) Penson.

The Client hereby indemnifies Penson against any liability, damage, cost or expense incurred by Penson arising out of Penson acting (or declining to act) upon a facsimile request or instruction received by Penson whether directly or through a request made of an officer or employee of any Related Body Corporate of Penson from the Client or any person purporting to be the Client or the Client's Authorised Representative or agent.

Penson may reserve the right to refuse any instruction transmitted by facsimile.

14. AUTHORITY

The Client acknowledges that the Client is either:

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

15. REPRESENTATIONS AND WARRANTIES AS TO CAPACITY

The Client represents and warrants to Penson that:

- (a) where the Client is a body corporate, the Client is (and will remain) duly incorporated under the laws of the place of its incorporation and has full power and authority to enter into this agreement and deal in ASX Derivative Products, and any person executing this agreement has full power and authority to execute this agreement on behalf of the Client;
- (b) where the Client is a partnership, the Client has full power and authority to enter this agreement and to deal in ASX Derivative Products, and the person executing this agreement has full power and authority to execute this agreement on behalf of the Client;
- (c) where the Client is a natural person, the Client has legal capacity to execute this agreement; and

in any of the above cases, where the Client enters this agreement as trustee, the Client has full power and authority as such trustee to enter this agreement and to deal in ASX Derivative Products and has the right to be indemnified out of the assets of the relevant trust in respect of all and any of its obligations and liabilities under this agreement.

16. INSTRUCTIONS AND AUTHORISED REPRESENTATIVES

16.1 Powers of Authorised Representatives

The Client agrees that each of the persons stated in the application form (or otherwise notified by the Client to Penson) to be an Authorised Representative of the Client has power for and on behalf of the Client and in the Client's name to:

- (a) give instructions to Penson in relation to Penson Cover of the Client or in relation to the Derivatives Transactions or Derivatives Contracts including to directing or consenting to dealing by Penson in any Penson Cover, Derivatives Transactions or Derivatives Contracts of the Client and any application of the proceeds of any such dealing;
 - (b) request and accept drawings;
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- (c) do all other acts and things (including completing, executing and delivering documents) as the Authorised Representative thinks necessary or desirable to give effect to the above powers or otherwise in connection with this agreement; and
- (d) appoint other persons (each a "Delegate") with power to exercise all or any of the powers of the Authorised Representative conferred by this clause 16.

16.2 Ratification of Decisions

The Client agrees to ratify and confirm anything done by the Authorised Representative or a Delegate in the exercise of the above powers.

16.3 Revocation of Power

The Client may revoke an Authorised Representative's powers by notice in writing to Penson. A declaration by an Authorised Representative to the effect that his or her powers have not been revoked is conclusive evidence of that fact and binding on the Client.

16.4 Indemnity

The Client hereby indemnifies each of Penson against any liability, damage, cost or expense incurred by Penson arising out of it acting upon an oral request received by it whether directly or through a request made of an officer or employee of any Related Body Corporate of Penson from the Client or any person purporting to be the Client or the Client's Authorised Representative or agent.

17. NO ADVICE

17.1 Penson does not provide financial product advice

The Client acknowledges that Penson does not provide financial product advice, and Penson does not accept responsibility for any financial product advice given to the Client by the Correspondent, and the Client must not represent to any person that Penson has given any financial product advice to the Client.

If the Client is to trade in ASX Derivative Products on the basis of advice given to the Client by the Correspondent, the Client must provide the Correspondent with:

- (a) all information (and documentation) regarding the Client's financial situation, investment objectives and particular needs sufficient and necessary for the Correspondent to give informed financial product advice;

- (b) any relevant new information (and documentation) as soon as it becomes available; and

details of or any change in the Client's financial situation, investment objectives and particular needs as soon as such change occurs.

17.2 Manner in which Penson exercises its rights is not to be taken to be advice

Penson has various rights under this agreement, including:

- (a) the right under clause 3 to require the Client to provide Penson Cover; and

- (b) various rights under clause 5 if a default occurs in relation to the Client.

The manner in which Penson may exercise or not exercise, or the timing of or any delay in any exercise by Penson of, any right of Penson under this agreement is not to be taken to be financial product advice by Penson to the Client, and the Client must not represent to any person that it is financial product advice by Penson.

18. GENERAL

18.1 Costs and Taxes

The Client will pay Penson on demand all stamp duty or any other duty imposed by state or federal legislation and registration fees (if any) payable on or in connection with this agreement and any documents executed under or in connection with this agreement and all legal costs (on a solicitor and own client basis) and expenses of or in connection with the enforcement or attempted enforcement of this agreement and all costs and expenses including financial institutions duty and debits tax (whether payable directly by Penson or payable by Penson by way of reimbursement to the party liable to pay the same) in relation to all transactions (including payments, receipts and banking thereof) and all matters connected with or arising out of or contemplated by this agreement.

18.2 Entire agreement

This agreement contain the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.

18.3 Statements by Penson

A statement by Penson on any matter relating to this agreement (including any amount owing by the Client) is conclusive unless clearly wrong on its face.

18.4 Exercise of rights

No failure or delay on the part of Penson in exercising any right, power or remedy under this agreement and no course of dealing between Penson and the Client shall operate as a waiver of any breach or default by the Client nor shall any single or partial exercise of any such right, power or remedy preclude any further or other exercise of that or any other right, power or remedy.

18.5 Amendments

Except as provided in this agreement (including in clause 11):

- (a) this agreement may only be amended in writing;
- (b) Penson may amend this agreement at any time by giving written notice to the Client; and
- (c) an amendment will take effect on and from the date specified by Penson in the notice being a date not less than 10 Business Days after the date of the notice.

18.6 Assignment

The rights and obligations of the Client under this agreement are not capable of assignment. Penson may assign or transfer its rights under this agreement or in relation to any Penson Cover without the consent of the Client and free from any rights of set-off or counterclaim. Subject to the ASTC Settlement Rules, Penson may assign or transfer its rights under this agreement without the consent of the Client and free from any rights of set-off or counterclaim.

18.7 Giving effect to agreement

Each party must do anything (including sign or give effect to any document) that Penson may reasonably require, to give full effect to this agreement or the transactions contemplated by this agreement (including the provisions of clause 5).

The Client appoints Penson and each officer of Penson for the time being (each an **Attorney**) jointly and each of them severally to be the attorney of the Client with power in the Client's name and on behalf of the Client to execute any document or sign any agreement on the Client's behalf necessary or to give full effect to this agreement or the transactions contemplated by this agreement.

18.8 Trust provisions

Where the Client enters into this agreement as trustee of a trust this agreement will bind that person both in its personal capacity and in its capacity as trustee of that trust and the Client represents and warrants to Penson that:

- (a) it can be indemnified out of the assets of the trust for all liabilities incurred under this agreement;
- (b) it will remain the owner of the Penson Cover unless it disposes of them in accordance with this agreement;
- (c) Penson can be subrogated to its right of indemnity;
- (d) the transactions contemplated by this agreement are for the benefit and in the best interests of the beneficiaries of the trust; and
- (e) it has properly exercised its trust powers and has full authority under the trust to enter into the document containing this agreement.

18.9 Joint and several liability

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

18.10 **Supervening legislation**

Any present or future legislation which operates to vary the obligations of the Client in connection with this agreement, Penson Cover with the result that Penson's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

18.11 **No withholding**

All payments to be made to Penson must be made without deduction or withholding. If the Client is obliged by law to deduct or withhold any amount from any payment to be made under this agreement the Client will concurrently pay to Penson such additional amount as will result in Penson receiving the full amount which would have been received if the deduction or withholding had not been made.

18.12 **Currency**

All payments under this agreement are to be made in Australian dollars, except as Penson otherwise agrees. If for any reason (including any judgment or order) any amount payable by the Client under this agreement is received or recovered by Penson in another currency which, upon conversion of the other currency into Australian dollars, is less than the amount which would have been received by Penson if paid in Australian dollars, then the Client must as an independent obligation indemnify Penson on demand against the deficiency.

18.13 **Recovery of GST**

If GST has application to any Supply made under or in connection with this agreement, Penson may in addition to any amount or consideration payable to it under this agreement, recover from the Client an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the Client to it at the prevailing GST rate.

Any additional amount on account of GST recoverable from the Client under this clause shall be calculated without any deduction or set-off of any other amount and is payable by the Client upon demand of Penson, whether such demand is by invoice or otherwise. To the extent that any party to the Terms ("the Supplier"), is or becomes liable to pay GST in connection with any Supply made under this agreement;

- (a) the Supplier may add an amount in respect of that GST to the agreed price of the supply;
- (b) any party paying consideration for the Supply will pay the agreed price plus the amount in respect of GST; and
- (c) where required by the GST Law, the Supplier will issue a tax invoice which enables the person receiving the invoice, if permitted by the GST Law, to claim an input tax credit or refund of GST.

18.14 **Governing law**

This agreement are governed by the law in force in New South Wales and the Client, Penson submit to the non-exclusive jurisdiction of the courts of New South Wales and courts which may hear appeals from those courts.

19. **DEFINITIONS AND INTERPRETATION**

19.1 **Definitions**

In this agreement unless the contrary intention appears:

ACH means the Australian Clearing House Pty Limited ABN 48 001 314 503.

ACH Clearing Rules means the operating rules of ACH as in force from time to time.

Allocated Trade has the meaning given to it in clause 8.1.

ASTC means the ASX Settlement and Transfer Corporation Pty Limited ABN 49 008 504 532 and its agents appointed under the ASTC Settlement Rules.

ASTC Settlement Rules means the operating rules of ASTC as in force from time to time.

ASX means ASX Limited ABN 98 008 624 691 or, where the context requires, the market operated by it.

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

ASX Market Rules means the operating rules of ASX.

Authorised Representative means each of the persons stated in the application form (or subsequently notified by the Client to Penson in a form acceptable to Penson) to be an Authorised Representative of the Client.

Banking Day means a day (other than a Saturday or Sunday) on which banks are open for business in Melbourne.

Business Day means a day that is both a Trading Day under the ASX Market Rules and a Business Day under the ACH Clearing Rules.

Cash Market Transaction has the meaning given to it in the ASX Market Rules

Clearing Participant has the meaning given to it in the ASX Market Rules.

Client means the client name on page [16] of this agreement.

Controlling Participant has the meaning ascribed to it by ASTC Settlement Rules and includes a person who upon a change of Controlling Participant would be a Controlling Participant.

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

Derivatives Contract means a Derivatives Market Contract or Derivatives CCP Contract (each as defined in the ACH Clearing Rules) or the corresponding contract between the Correspondent and the Client or the Correspondent, as the context requires.

Derivatives Transaction has the meaning given to Derivatives Market Transaction in the ASX Market Rules and where the context requires includes the sale or purchase of financial products following the exercise of a Derivatives Contract.

Encumbrance means any Security Interest, notice under sections 218 or 255 of the *Income Tax Assessment Act 1936* (Cth) or under any similar provision of a State, Territory or Commonwealth law, profit a prendre, equity, interest, garnishee order, writ of execution, right of set-off, assignment of income or monetary claim, and any agreement to create any of them or allow them to exist.

Futures Market Transaction has the meaning given to it in the ASX Market Rules.

GST means a goods and services tax or any similar tax imposed in Australia.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Holding has the meaning given to it in the ASTC Settlement Rules.

Order means an order or instruction in respect of a client or the Correspondent as principal (as the case may be) in relation to a Derivatives Transaction, and includes, without limitation, an order or instruction to:

- (a) open or close a position in relation to a Derivatives Contract;
- (b) submit an Exercise Notice to ACH in relation to a Derivatives Contract; and
- (c) buy or sell an Underlying Financial Product.

Penson Cover has the meaning given to it in clause 3.1.

Related Body Corporate has the meaning given to it in section 50 of the Corporations Act.

Security Interest means any bill of sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation.

Supply has the meaning given to it in the GST Law.

Other words and phrases defined in the ASX Market Rules, the ACH Clearing Rules or the ASTC Settlement Rules have the meaning given in the corresponding rules. The Client may inspect a copy of these rules at Penson's offices on request.

19.2 Interpretation

In this agreement unless the contrary intention appears:

- (a) each gender includes the other genders;
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (c) a reference to this agreement or another agreement includes any variation or replacement of them;
 - (d) the word person includes a firm, a body corporate, an unincorporated association or an authority;
 - (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
 - (f) a reference to any thing (including any amount and Penson Cover) is a reference to the whole and each part of it and a reference to a group of persons (including the Client) is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
 - (g) if an example is given of anything (including a right, obligation or concept), the example does not limit the scope of that thing. For example, a reference to "including" means "including without limitation"; and
-

(h) the singular includes the plural and vice versa.

19.3 Headings

Headings are for convenience only and do not affect the interpretation of this agreement.

19.4 Banking Days

If any payment falls due on a non-Banking Day it will be made on the succeeding Banking Day.

19.5 Clients

Where the Client comprises more than one person, the obligations of those persons under this agreement shall be joint and several, a notice or demand given to one such person shall be deemed to have been given to all such persons, and, unless expressly agreed with Penson to the contrary, each such person shall be deemed to be the agent of the others.

EXECUTED as an agreement

(insert name and ABN or ACN (if any) of the Client)

of _____
(insert address of the Client)

IF THE CLIENT IS A NATURAL PERSON

SIGNED by the Client named above in the presence of:

Signature of client

Signature of witness

Name

Name

Date signed:

Date signed:

OR IF THE CLIENT IS A COMPANY

EXECUTED by the Client named above:

Signature of director / **sole director and secretary
(Cross out whichever option is not applicable)

Signature of second director or secretary

Name

Name

Date signed:

Date signed:

***This option should only be selected if the company is an Australian proprietary company which has only one director and that person is also the only secretary.*

SIGNED for **PENSON FINANCIAL SERVICES AUSTRALIA ABN 60 136 184 962**, by its duly authorised officer, in the presence of:

Signature of officer

Signature of witness

Name

Name

Date signed:

Date signed:



REGISTERED HOLDER COLLATERAL COVER AUTHORISATION

Client Numbers covered by this Authorisation:			
Account No:		Account No:	

1. I/We

(insert name of Registered Holder/s) (**Registered Holder**)

with Holder Identification Number

authorise my Controlling Participant, to reserve (or withdraw) Financial Products (**Collateral**) registered in the name of the Registered Holder in the Australian Clearing House Pty Ltd, ABN 48 001 314 503 (**ACH**) Subposition as Collateral Cover for obligations in respect of Options Market Contracts registered in the Client Accounts nominated above with **Penson Financial Services Australia Pty Ltd** ABN 60 136 184 962 AFSL No. 338264

- The Registered Holder acknowledges that ACH may, in its absolute discretion, decline to accept in relation to all or any particular Client Account nominated above¹ for the purposes of accepting paperless lodgements.
- The Registered Holder acknowledges that on behalf of the Registered Holder, the Controlling Participant will reserve (or withdraw) Collateral in the ACH Subposition by sending the appropriate Collateral lodgement message so that the Collateral lodged comes under the control of ACH, or Collateral withdrawn leaves the control of ACH, in accordance with the ACH Clearing Rules and Procedures (as amended from time to time).
- In registering Collateral in the ACH Subposition, the Registered Holder acknowledges that the Collateral will be subject to a fixed charge (**Charge**) in favour of ACH from the time they are reserved to the ACH Subposition in the manner referred to above, and will remain subject to the Charge until ACH permits it to be withdrawn from the ACH Subposition.
- The Registered Holder acknowledges that the Charge secures all amounts and obligations owing by the ACH Participant to ACH in connection with the Client Accounts nominated above¹ opened by the ACH Participant in accordance with the ACH Clearing Rules and Procedures (as amended from time to time).
- The Registered Holder acknowledges that the Registered Holder has read and understood the ACH Clearing Rules and the ASTC Settlement Rules, insofar as those rules relate to the Collateral and the Charge, including:
 - ACH's power to deal with the Collateral on default by the ACH Controlling Participant in respect of the Client Accounts nominated above; and
 - in particular, ACH's power of sale in relation to the Collateral without any notice to the Registered Holder.
- The Registered Holder warrants that unless ACH otherwise agrees in writing, the Collateral is not and may not be subject to any other security interest, other than a security interest provided to a margin lender under a deed of priority, entered into between ACH and the margin lender, which provides that ACH's Charge has priority over the margin lender's security interest (**Deed of Priority**) or a security interest as permitted under the ACH Clearing Rules or the ASTC Settlement Rules.
- If the Registered Holder's Controlling Participant named in this Authorisation is a margin lender the Registered Holder warrants that they have signed an acknowledgement regarding the Deed of Priority as set out in Schedule 2 or Schedule 3, as applicable, to the Deed of Priority.
- If the ACH Participant is unable to insert the Account Numbers and/or HIN at the time the Register Holder signs this form the Registered Holder irrevocably authorises the ACH Participant to insert the Account Numbers and/or HIN on this agreement and agrees the ACH Participant will insert the Account Numbers and/or HIN on the Registered Holder's behalf, prior to lodging this Authorisation with ACH. The ACH Participant agrees that it will notify the Registered Holder of the Account Numbers and/or HIN in writing as soon as reasonably possible.
- Defined terms have the same meaning as defined in the ACH Clearing Rules or the ASTC Settlement Rules and Procedures (as amended from time to time).

Signed by Registered Holder (s):

Registered Holder 1:	<input type="text"/>	<input type="text"/>	<input type="text" value="/ /"/>
	Signature	Name	Date
Registered Holder 2:	<input type="text"/>	<input type="text"/>	<input type="text" value="/ /"/>
	Signature	Name	Date
Witness	<input type="text"/>	<input type="text"/>	<input type="text" value="/ /"/>
	Signature	Name	

If a corporation, must be signed in accordance with the Corporations Act, or if signed under power of attorney, a copy of the power of attorney must also be attached to this Authorisation.