



# Prime Treasury Facility Agreement

21 June 2022

Prime Treasury Services Pty. Ltd  
Trading as PTX Markets ('PTX Markets')  
ABN 24 160 411 825  
AFSL 529610

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## 1. Client Agreement

**1.1** The Prime Treasury Facility Agreement with you is on the terms in this document. A reference to “**Terms**” is a reference to the terms in this document (including the Schedules), as amended from time to time.

These Terms are the “Facility Terms” for the Prime Treasury Facility. The Prime Treasury Facility is a “Facility” for the purposes of the definition of “Facility” in the Master Prime Agreement and we are the Facility Provider for this Facility.

**1.2** The Prime Treasury Facility Agreement sets out the terms of the financial services offered by us for treasury functions (such as Payment Services) and the terms of Transactions made through them.

The entire relationship which you have with Prime Treasury Services Pty. Ltd trading as PTX Markets (‘PTX Markets’) governed by these Terms is referred to as an Account. This covers Transactions with you, our other financial services to you in relation to Transactions, our duties to you, your obligations to us, how we may exercise our powers, limits on our liability to you and the indemnities by us and by you in favour of us.

**1.3** The Prime Treasury Facility Agreement operates as a master agreement by you and us. Transactions, including Payments, will be reported separately. Amounts owing as between you and us (e.g., for fees, charges) will always set off so that only a single net sum will be owing as between you and us.

**1.4** In order to establish your Account, you must apply for the Account and agree to be bound by this Prime Treasury Facility Agreement, on these Terms.

You may only do this by your original Application Form for the Master Prime Agreement or a later Application Form.

The Application Form will be provided to you on-line, by email or in paper format). PTX

Markets may, in its absolute discretion, accept or decline your application.

**1.5** These Terms apply to you in respect of your Account from the earlier of:

- (a) the time PTX Markets accepts your application in the Application Form for the Master Prime Agreement;
- (b) the time PTX Markets accepts your application in an Application Form for the Prime Treasury Facility.

**1.6** You acknowledge and agree that you have read and understood all documentation provided to you by us (including by way of being directed to a website on which the disclosures are posted) including these Terms and any product disclosure statement (**Disclosure Statement**) in relation to any Financial Products or financial services which you request PTX Markets to make available to you in relation to your Account.

**1.7** You authorise PTX Markets to open an Account for you.

**1.8** You acknowledge that all dealings in Financial Products, our financial services and the performance by us of our obligations under these Terms are subject to the Applicable Laws.

**1.9** You acknowledge that we will not provide legal, tax, financial or accounting advice to you as part of the services that we provide to you in accordance with these Terms. By these Terms we do not act in a fiduciary capacity and PTX Markets does not owe any fiduciary obligations to you in respect of its services provided to you in connection with these Terms except as expressly stated in these Terms.

**1.10** These Terms do not constitute personal financial advice, nor a recommendation or opinion that a Financial Product or service is appropriate for you.

**1.11** PTX Markets acts as your agent to facilitate your Payments but does not act as agent, fiduciary, joint venturer or guarantor of any

other person. A liability of PTX Markets accrues solely to PTX Markets.

**1.12** PTX Markets has discretions under these Terms which can affect your Transactions. You do not have any power to direct how we exercise our discretions. When exercising our discretions, we will comply with our legal obligations. We will have regard to our policies and to managing all risks (including financial, credit and legal risks) for ourselves and all of our clients, our obligations to our counterparties, market conditions and our reputation. We will try to act reasonably in exercising our discretions but we are not obliged to act in your best interests or to avoid or minimise a loss in your Account.

## 2. Account

**2.1** PTX Markets will establish one or more Accounts in respect of the Financial Products or financial services it provides to you. Transactions entered into by you pursuant to these Terms will be recorded in the relevant Account established by PTX Markets. Unless you have specifically requested PTX Markets to open separate Accounts, you will be taken to have only one Account, with Transactions in respect of each Financial Product or financial service provided to you being recorded in that Account.

**2.2** The calculations, reporting and administration may be performed by PTX Markets separately for each Account, so that (without limitation):

- (a) calculations may be managed and enforcement action may be taken for each Account separately; and
- (b) PTX Markets may at any time aggregate one or more Accounts (for reporting or otherwise for the purposes of these Terms), even if you cannot immediately access reports for aggregated Accounts.

**2.3** Although the Prime Treasury Facility Agreement is a master agreement by which all amounts owing as between parties is

irrevocably automatically set-off and netted across all amounts then owing as between the parties to derive a single net amount owing by one party to the other, without affecting that PTX Markets may, without notice, from time to time and at any time (whether or not either party is in Default) demand or invoice you for an amount owing by you which is separately identified in that demand or notice.

**2.4** A Client may be comprised of two or more persons. If Client is comprised of more than one person then the Account will be deemed to be held by the persons as joint tenants despite any actual or constructive notice to PTX Markets of any partnership or other agreement between the persons. The joint holding will be only be deemed not to be held as joint tenants if there is a court determination that it is not held as joint tenants.

## 3. Appointment and Authorised Persons

**3.1** PTX Markets may accept your authorisation of another person (**Authorised Person**) to give Instructions and place Instructions on your behalf. You must notify PTX Markets in your Application Form or otherwise in writing in a way permitted by PTX Markets of any such authorisation, setting out the full name, telephone number, email address and signature of that person and any other information required by PTX Markets to identify the Authorised Person.

**3.2** Any change or revocation of such authority is only effective upon receipt by PTX Markets of a signed written notice of change or revocation from you. If another person is later appointed an Authorised Person, the notice must include the full name, telephone number, email address and specimen signature of that person and be verified by an Authorised Person and any other information required by PTX Markets to identify the Authorised Person and, if you are a body corporate, by a director.

**3.3** You may appoint an attorney (under a power

of attorney in the relevant jurisdiction) to give Instructions and place orders on your behalf or otherwise to do anything which you are entitled to do in connection with or under these Terms. You must notify PTX Markets in writing of any such appointment setting out the attorney's details. You must provide PTX Markets with a written power of attorney; PTX Markets may accept or reject this power of attorney.

**3.4** PTX Markets may allow a Client which is a corporation or other legal entity to authorise a person (who is by that authorisation an Authorised Person) or an attorney to do anything which Client is entitled to do under these Terms, including on conditions determined by PTX Markets.

**3.5** PTX Markets may allow any Client of a legal type not mentioned elsewhere in these Terms to authorise its Authorised Person or attorney to do anything which Client is entitled to do under these Terms, including on conditions determined by PTX Markets.

**3.6** For the purposes of these Terms, Instructions placed by, and other Instructions or directions given by, an Authorised Person (or which appear to us on the face of the Instructions or other Instructions or directions to be placed or given by an Authorised Person) are taken to be your Instructions, Instructions or directions.

**3.7** You are and remain solely liable and responsible for all acts and omissions of your Authorised Person notwithstanding the act or omission of the Authorised Person was:

- (a) outside their actual or ostensible authority; or
- (b) in error, fraudulent, negligent, in breach of their fiduciary duties or criminal.

**3.8** You agree not to make, and you release us from any liability to you under your right to make, any Claim against us for any Loss incurred or suffered by you which arise directly or indirectly due to us relying on Instructions from or other communications from or acts or omissions by your Authorised

Person (including your attorney).

## 4. Instructions

**4.1** You may from time to time place Instructions with us to enter into Transactions. We will as our agent execute your Instructions, subject to these Terms.

**4.2** We will not be responsible for delays or errors in the transmission or execution of your Instructions (except to the extent that responsibility cannot be excluded by law).

**4.3** We may refuse to accept an Instruction and we may place a limit on any Instruction or place other conditions on the receipt of Instructions or Instructions, in our absolute discretion and for any reason. We may at any time use, add and change filters within a system which prevents delivery of Instructions or execution of Instructions. We will notify you of any refusal or limitation as soon as reasonably practicable, unless we are prevented by law or a direction from a regulatory authority from notifying you.

**4.4** We may cancel or amend an Instruction (but are not obliged to do so) if any one or more (in our sole discretion) has occurred, is reasonably likely to have occurred or will occur:

- (a) if required by Applicable Laws to do so;
- (b) if we suspect there is an error;
- (c) you have engaged in conduct which is a material breach of these Terms;
- (d) you are using our Financial Products or financial service in the course of criminal activities or in breach of AML/CTF Laws; and
- (e) it is appropriate, having regard to our obligations or as a participant or user of a Payment System or other network and our other legal and regulatory obligations.

**4.5** We will make reasonable efforts to implement any Instructions to cancel or to amend Instructions as quickly as possible. If, however,

an Instruction is processed prior to a cancellation or amendment Instruction being implemented, you are obliged to accept the Transaction on the original terms prior to your amendment or cancellation Instruction, unless the Transaction is itself cancelled or amended.

**4.6** We may execute Instructions for you even in circumstances if we or our related bodies corporate and other associates:

- (a) provide similar services to other persons in relation to the relevant Financial Products; or
- (b) have an actual or a potential conflict of interest or duties including, for example, a conflict of interest of which you are not aware and which we are unable to disclose to you.

**4.7** Notwithstanding any rule of law or equity to the contrary, PTX Markets is not disqualified from contracting with any person and no contract, transaction or arrangement in which PTX Markets is in any way interested is avoided or rendered voidable by virtue of your agreement with us. PTX Markets is not liable to account to you for any profit realised by any such contract, transaction or arrangement in connection with these Terms. PTX Markets is not required to make any disclosure to you concerning any such contract, transaction or arrangement.

**4.8** We and our related bodies corporate may enter into Transactions with you as principal, such as Payments and for Financial Services. We or an associate may take the opposite position in a Transaction with you. Your Instructions may match opposite Instructions of another person who is our client, and this may entitle us to derive profits or receive fees or other benefits from both Transactions. Similarly, because we deal as principal, then your Instructions may wholly or partly match opposite orders entered by us as principal and you authorise us and consent to us charging you the Transaction Fees (if any) provided by these Terms.

**4.9** You are aware of and acknowledge the right of PTX Markets 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 you in Transactions, if permitted (or, if not expressly permitted, then if not prohibited) to do so by the Business Law, Applicable Laws and the Rules.

**4.10** You acknowledge that we do not operate any discretionary accounts and we will, unless otherwise expressly provided by these Terms, only act on your Instructions (including those given by your Authorised Person).

**4.11** Unless otherwise specified in these Terms, all Instructions will remain until processed, cancelled by you or purged within the network for processing your Payment (outside of our control). We do not accept responsibility for reinstating lapsed Instructions or for contacting you to for new Instructions.

**4.12** You must not instruct us to submit an Instruction to process a Transaction which would breach or cause us or any other person to breach the Business Law, the Rules or any other Applicable Laws including, without limitation, any law or the Rules in relation to:

- (a) AML/CTF Law; or
- (b) misleading or deceptive conduct.

**4.13** Your Instructions to PTX Markets to process a Transaction and the Transaction remains valid and enforceable against you, without affecting your other liability to PTX Markets even if you (or your Authorised Person) are not authorised by your own rules (such as a corporate or trust constitution or an investment management agreement).

**4.14** You agree not to make any Claim against PTX Markets for any Loss incurred or suffered by you which arises in connection with the exercise of any power by Business Regulator or pursuant to Rules which directly or indirectly affects your Transaction, including by way of PTX Markets directly or indirectly, fully or partly hedging your Transaction (whether or not PTX

Markets has given you a Confirmation in respect of any affected Transaction) except to the extent that the Loss incurred or suffered is caused by the negligence, fraud or breach of these Terms or breach of duties or statutory laws by PTX Markets or otherwise arising by law which cannot be contracted out of by PTX Markets pursuant to these Terms.

## 5. Online Services

**5.1** This clause contains provisions which, in addition to the other Terms, govern the use of any online or other electronic platform or any online service which we provide or make available to you (including, without limitation, all software and communication links) under which you may:

- (a) place your Instructions or transmit other Instructions to PTX Markets or other persons;
- (b) enquire as to the availability or pricing or value of one or more Financial Products;
- (c) receive market data and other information in relation to one or more Financial Products; or
- (d) receive Confirmations, Account balances or other information in connection with your Account or Transactions.
- (e) In these Terms, we refer to the entire service as an Online Service.

**5.2** An Online Service may be a proprietary service provided by PTX Markets (or its nominated agent), or a service provided to you by a third party pursuant to an arrangement with PTX Markets (for example, by an affiliate of PTX Markets). To the extent that the Online Service is provided to you by PTX Markets, we grant you a non-exclusive and non-transferable license to use the Online Service subject to these Terms.

**5.3** PTX Markets may refuse to accept or to process any Instruction in its absolute

discretion without having to provide a reason.

**5.4** PTX Markets will not be responsible for confirming the receipt of Instructions or verifying the authenticity of your Instructions.

**5.5** You agree that:

- (a) you must only use the Online Service (or permit or procure any other person including any Authorised Person to use the Online Service) with the Security Information has been provided by us;
- (b) the Security Information is confidential;
- (c) you are responsible for maintaining the confidentiality and use of that Security Information at all times and must procure that any Authorised Person maintains the confidentiality of the Security Information;
- (d) you will not permit, consent or allow any person (other than any Authorised Person in its capacity as your agent) to use the Security Information or to access or use the Online Service using that Security Information;
- (e) you will not provide, disclose or make available the Security Information to any person (other than an Authorised Person in its capacity as your agent); and
- (f) you must notify us immediately upon becoming aware of any unauthorised use of the Security Information or the Online Service.

**5.6** You acknowledge and agree that:

- (a) you are only permitted to access and to use the Online Service, using the Security Information;
- (b) we are entitled to rely on all Instructions given by, on behalf of, or apparently on your behalf, using the Security Information; despite any other provision of these Terms, we are not liable for any Loss caused by us acting on Instructions or other communications using the Security Information;

- (c) there may be delays in the processing, execution, amendment or cancellation of an Instruction entered through the Online Service and:
    - (i) an Instruction may be processed before an Instruction for its amendment or cancellation is processed;
    - (ii) you remain liable to settle the original Instruction until any relevant amendment or cancellation is implemented; and
    - (iii) without limiting clause 18, PTX Markets will not be liable for any Loss incurred by you arising from any delay in the processing of any Instruction or Instruction to amend or cancel an Instruction;
  - (d) the execution of an Instruction placed through the Online Service may be delayed by filters or other electronic features of the electronic system;
  - (e) we are not responsible for the decision to process any Instructions submitted through the Online Service, regardless of who enters such Instructions and regardless of whether or not there is an error in the Instruction entry or for any delays;
  - (f) any Online Service is provided on an “as is” basis and, except as required by law, we make no representations or warranties express or implied with respect to the Online Service;
  - (g) there are significant risks in using the Online Service because it is serviced by means of computer and telecommunications systems, even if generally accepted industry standards and practices are followed;
  - (h) the features, components or terms of use of an Online Service may be changed by us or the provider of the Online Service without requiring an amendment to these Terms;
  - (i) you are responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the Online Service and for any communication service fees and charges incurred by you in accessing and using the Online Service;
  - (j) you must notify us immediately if you become aware of any inaccurate information being transmitted through the Online Service including, for example, inaccurate content as to Instructions, Transactions or Account balances; and
  - (k) you must only use the Online Service for your own business purposes.
- 5.7** You agree to be bound by any terms and conditions of access and use which we or any third-party provider of an Online Service may specify and notify to you, from time to time, on reasonable prior notice to allow you to assess those terms and decide whether to continue with your Account.
- 5.8** You are responsible for reading, understanding and complying with the details of the operational aspects of the Online Service. It is important that you read and understand any user manuals and operational procedures or rules relating to the relevant Online Service and which are made available either by PTX Markets or the provider of the Online Service. Further information on how to use and understand the Online Service can be obtained on our website.
- 5.9** Either you or your Authorised Person may place Instructions with us using the Online Service. You authorise each person who is an Authorised Person from time to time to enter Instructions using the Online Service in accordance with this document as your agent. You must provide us on request with a list of your Authorised Persons (containing their names and contact details) and any changes



to the list.

- 5.10** You and each Authorised Person must satisfy any requirements (including without limitation requirements as to knowledge, training, testing, procedures and controls) notified by us to you from time to time and you are solely responsible for ensuring that an Authorised Person satisfies these requirements.
- 5.11** You are responsible for the consequences of any unauthorised disclosure or use of the Security Information, and for any actions or omissions by an Authorised Person.
- 5.12** We (or any third party providing the Online Service) may suspend, terminate or impose conditions on the use by you or any Authorised Person of the Online Service at any time without notice to you.
- 5.13** If you are uncertain as to whether your Instruction has been received, you must make all reasonable attempts to verify whether the Instruction has been received, approved and implemented prior to taking further action. You agree to issue specific cancellation or amendment Instructions with respect to an existing Instruction and not to attempt to make changes by placing a second or duplicate Instruction. You will be solely responsible and liable for any duplicate Instruction that you place.
- 5.14** You agree not to contest the validity or enforceability of any electronic communications or transactions between yourself (including your Authorised Person) and PTX Markets on the basis of the electronic nature of that communication or transaction.
- 5.15** If a failure, interruption or malfunction of electronic communication between the parties prevents an Instruction from being placed, cancelled or amended then, without limiting clause 18, neither party is liable to the other party for any Loss caused then by that failure, interruption or malfunction.

- 6.1** We will, if required by Applicable Laws, give you a confirmation (Confirmation) in respect of each Transaction which PTX Markets enters into with you. You consent to receiving Confirmations by electronic means through any Online Service. If our service provides Confirmations by accessing a substantially continuously available service, you consent to your Confirmations being available by those means instead of being sent to you.
- 6.2** You can agree with us, if permitted by Applicable Laws, not to give you a Confirmation or to provide Confirmations to an address or person nominated by you.
- 6.3** Each Confirmation given by us is subject to the Applicable Laws and the correction of errors and omissions. PTX Markets may, at any time, reissue a Confirmation in order to correct any errors or omissions.
- 6.4** You are responsible for promptly checking each Confirmation. You must immediately notify us if you become aware that there is an error in the Confirmation. We are entitled to assume that the Confirmation is correct unless you notify us of any error within 24 hours following us (or someone on our behalf) giving you the Confirmation or the Confirmation (or its equivalent) becoming available to you.

## 7. Client Acknowledgments

- 7.1** You, Client, acknowledge and confirm to PTX Markets for PTX Markets' benefit in relying on the following:
  - (a) you (or, if a corporate entity, your directors) have read and understood all documentation provided to you by us including these Terms and any product disclosure statement (Disclosure Statement) in relation to any Financial Products which you request PTX Markets to make available to you in relation to your Account (including provision of those documents by way of being sent a link to a webpage or portal providing those disclosures);

## 6. Confirmations

- (b) all dealings in Financial Products and the performance by us of our obligations under these Terms are subject to Applicable Laws;
- (c) PTX Markets relies on your representation that at all times you will be able to make payments and fulfil all commitments on your part arising under these Terms and under the conditions applicable to dealings between you and PTX Markets;
- (d) PTX Markets relies on your agreement by these terms to notify us within 24 hours of receiving a Confirmation (including by way of the Online Service) if you object to any part of the Confirmation;
- (e) we will not provide legal, tax, financial or accounting advice to you as part of the services that we provide to you;
- (f) by these Terms (including any Transaction made under it) we do not act in a fiduciary capacity in relation to you and PTX Markets does not owe any fiduciary obligations to you in respect of its services provided to you in connection with these Terms unless and only to the extent expressly stated in these Terms;
- (g) the respective duties, undertakings, obligations and rights of you and of PTX Markets are not identical or mutual due to the differences in the relationship by which PTX Markets provides you with an Account and Transactions on these Terms and accordingly the Defaults, rights of termination and indemnities, among other Terms, reasonably reflect the respective different roles, responsibilities and risks of you and PTX Markets;
- (h) Client must provide to PTX Markets on request such information regarding its financial and business affairs and identity, as PTX Markets reasonably requires from time to time;
- (i) that all Instructions placed by Client and all Transactions processed under these Terms must be lawful;
- (j) in executing and complying with these Terms, Client will not infringe any provisions of any other document or agreement to which Client is a party;
- (k) you, Client, will take all reasonable steps to obtain and to communicate to PTX Markets all information, and will deliver or cause to be delivered to PTX Markets all documents with respect to dealings in the Financial Products which are requested by any person having the right to request such documents and information and Client authorises PTX Markets to pass on or deliver all such information and documents to any such person;
- (l) PTX Markets is not required to act in accordance with your Instructions;
- (m) dealings in the Transactions may create an obligation to make a payment to PTX Markets in accordance with these Terms;
- (n) PTX Markets acts as principal in respect of the Financial Products issued by PTX Markets;
- (o) if you give PTX Markets standing Instructions to process a Transaction when a particular price level is reached, then the price at which the Transaction is entered into might not be that exact price;
- (p) if you give PTX Markets standing Instructions to process a Transaction on the basis of information or other reference criteria chosen by you, the Instruction might not arise or, if it does, the Transaction arising from execution of it may be modified in order to be possible within your Account, the

execution of the Instruction may be delayed and the price for it cannot be guaranteed;

- (q) subject to applicable legal or regulatory requirements, you consent to PTX Markets either knowingly or unknowingly taking the opposite side to Client in relation to any of the Financial Products, without notice to Client;
- (r) subject to applicable legal or regulatory requirements, Client agrees and acknowledges that PTX Markets' directors, employees and associates (and their directors, employees) may and can deal on their own account in Transactions which may be the same as or differ from your Transactions;
- (s) PTX Markets may, in its sole discretion and without explanation, refuse to deal with Client in relation to any Transaction or PTX Markets may limit the kind of Transactions or both;
- (t) if (in the sole discretion of PTX Markets) errors have occurred in the pricing of Transactions made by PTX Markets and Client, PTX Markets may choose not to be bound by such Transactions and cancel them as though they never existed (without further liability to Client);
- (u) there are risks associated with using an internet-based dealing platform system which include, but are not limited to, the failure of hardware, software, and internet connection and since PTX Markets does not control data flows, internet or power connections, routing via internet, configuration of your equipment or reliability of its connection, PTX Markets will not be responsible for communication failures, distortions or delays when dealing (including processing payments)) via the internet;
- (v) there are risks associated with using a

blockchain-based dealing platform system which include, but are not limited to, delays in blockchain transactions, the failure of hardware to access the blockchain, software, and internet connection to the systems for managing blockchain based platforms and since PTX Markets does not control blockchain mining, data flows, internet or power connections, routing via internet, configuration of your equipment or reliability of its connection, PTX Markets will not be responsible for communication failures, distortions or delays when dealing (including processing payments)) via any blockchain;

- (w) reports to Client on the execution of Confirmations by PTX Markets, and the content of such Confirmations being statements, unless otherwise objected to within 24 hours after communication to Client, will be deemed to be conclusive proof of the accuracy of such contents and their execution in accordance with these Terms except only in the case of manifest error; and
- (x) a notice issued by an authorised officer or agent of PTX Markets stating the amount of money due and payable by Client must be taken as conclusive evidence of notice except only in the case of manifest error.

## 7.2

All representations, warranties and acknowledgments given by you under these Terms are taken to have been made at the time you complete the Application Form and are taken to have been repeated by you:

- (a) each time you place an Instruction with us;
- (b) each time you process a Transaction with us; and
- (c) each time we do anything or refrain from doing something under these Terms or as contemplated by these Terms in

connection with your Account or any Transaction.

## 8. PTX Markets Undertakings

- 8.1** PTX Markets will act honestly and exercise due care and diligence at all times in its performance of these Terms.
- 8.2** PTX Markets will use reasonable endeavours to execute your Instructions, subject to these Terms.
- 8.3** Apart from any duties, undertakings, warranties or representations which are imposed or implied by law and which cannot be excluded, PTX Markets makes no undertaking, warranty or representation in relation to any service or information provided or made available to you in connection with these Terms. To the full extent permitted by law, PTX Markets excludes liability for all costs, expenses, damages and Losses (including consequential loss) arising in connection with such services or information, or these Terms (including, without limitation, liability for negligence).

## 9. Features and Risks of Transactions

- 9.1** You acknowledge and understand that there are significant features and risks involved in Transactions, including:
- (a) a disruption affecting PTX Markets' ability to offer Transactions can mean that you suffer a loss as a result, including disruption due to government or regulatory decisions or announcements, the failure of a computer based dealing or pricing system, fire or exchange emergency or a regulatory body could declare an undesirable situation has developed in a particular currency, security or contract and suspend dealing or adjust terms of prices or dealing;
  - (b) you may incur losses (including

incurring fees and charges) that are caused by matters outside our control for example, a regulatory authority exercising its powers during a market emergency or the provider of a Payment System exercising its discretion or experiencing malfunctions in the Payment System; and

- (c) we have powers, and discretion to exercise those powers, without notice to you or giving you reasons, for cancelling Transactions or adjusting their prices or timing and, though we would exercise our powers in accordance with these Terms and our statutory duties, you may incur losses (including incurring fees and charges) as a result of our exercise of our powers.

- 9.2** No advice or recommendation is provided by PTX Markets in relation to your Transactions.

## 10. Fees, Charges and Costs

- 10.1** You owe us, and must pay to us or as we direct (in accordance with these Terms):
- (a) any Transaction charges including all commission, charges, fees, premia, settlement and clearing fees and charges, interest, default charges and Taxes (including Applicable Tax but excluding PTX Markets' income tax or penalty tax and levies) and any other amounts due under these Terms on demand by PTX Markets in cleared funds or otherwise as required by these Terms;
  - (b) (if applicable) a Transaction Fee for each Financial Product or Transaction (as the case may be) being the fee from time to time specified by PTX Markets to be the amount payable by you to PTX Markets in respect of each such Transaction;
  - (c) any royalty or other fee which must be paid for the use of prices or information provided to you via access through

- (d) the Online Service or otherwise by any Exchange;
- (e) (if applicable) a monthly access charge for the use of the Online Service provided by PTX Markets, as specified by PTX Markets from time to time;
- (f) any fees, Taxes, stamp duty or other charges as may from time to time be levied on or in connection with any Transactions entered into with you; and
- (g) in respect of any unpaid amounts required to be paid under these Terms including, (without limitation) any amounts due as a result of your failure to pay interest on all such amounts denominated in Australian dollars at the Base Rate then generally applicable for debit amounts on Accounts plus a rate of interest per annum as reasonably determined by PTX Markets, such interest to accrue daily from and including the due date to and including the date of its payment in full.

*Guidance note: this is the rate of interest you pay if you default on making any payment to PTX Markets.*

You agree that any delay in, or partial exercise of any of the above rights is not a waiver or abandonment of those powers.

**10.2** Any amount or rate or formula which is to be specified by PTX Markets may be specified by a Disclosure Statement, a Supplementary Disclosure Statement or in any other permitted way of notifying you, such as on PTX Markets' website or the Online Service. The amount of any fees and charges or other amounts payable by you to PTX Markets in respect of any Transaction will be set out in the Confirmation of that Transaction or the Online Service to the extent known at the time.

PTX Markets may charge you for, and you must pay promptly on request, the following (plus any Applicable Tax), which must be reasonably based on the direct and indirect

costs to PTX Markets for those items and relate to you:

- (a) your payments which are declined, charged back or challenged by the paying institution;
- (b) paper copies of documents which we have not otherwise confirmed that we will provide for free;
- (c) telephone transcript copies.

You agree that any delay in, or partial exercise of, any of the above rights is not a waiver or abandonment of those powers.

**10.3** PTX Markets may receive commissions and other benefits from other parties in relation to Transactions which PTX Markets enters with you or in connection with other services provided to you. PTX Markets is entitled to retain such commissions and benefits.

**10.4** If you have been referred to us or on behalf of a referrer or other third party, that referrer or third party may receive benefits in the form of a commission, rebate or other payment or benefit from us.

**10.5** Unless otherwise agreed, the terms of any amounts payable by you under these Terms are stated exclusive of Applicable Tax. If Applicable Tax is payable on a taxable supply made by PTX Markets under, by reference to, or in connection with these Terms, you must also pay the amount of Applicable Tax payable in respect of that taxable supply. PTX Markets will when required by law and as far as practicable state in Confirmations (or Account statements, if applicable) the amounts as Applicable Tax-inclusive. PTX Markets will manage any credit granted to it for any Applicable Tax refund, input credit or similar tax credit in accordance with its policy from time to time.

**10.6** The amounts of or basis of calculating the fees, commissions, charges and credits referred to in this clause 10 will be as notified from time to time in writing by PTX Markets, either by way of a Disclosure Statement,

posting on the Online Service (including by way of Transaction prices), notification to your contact address, posting to PTX Markets' website or as otherwise agreed with you or permitted by these Terms.

**10.7** You must reimburse PTX Markets for all fees (both direct and indirect) and expenses charged in connection with any Transaction (other than Tax on the income of PTX Markets) and for all costs and expenses incurred by PTX Markets in implementing these Terms and in enforcing its rights under these Terms (including its legal costs of external or internal legal advisers on a full indemnity basis).

**10.8** PTX Markets will notify you of any change in its fees and charges or other amounts payable by these Terms in accordance with Applicable Laws except indicative rates may change at any time.

## 11. Payments

**11.1** PTX Markets must deal with any money and property which you pay or give to, or which is otherwise received by PTX Markets in connection with financial services provided by PTX Markets, in accordance with the Applicable Laws. If there is ever any inconsistency between these Terms and applicable laws, PTX Markets will always comply with Applicable Laws and not these Terms and will not be liable to Client for that.

**11.2** If PTX Markets pays your funds to another person at your request, PTX Markets is not liable to you for the performance by the other person who receives the benefit of the payment of your funds. Without limitation, PTX Markets is not obliged to enquire into, and will not for your benefit, enquire into:

- (a) the use of those funds by the third party;
- (b) any persons to whom the third party pays all or any of these funds;
- (c) the solvency of any of those persons;

(d) the compliance by any of those persons with the Business Law, Applicable Laws and Rules;

(e) whether any of those persons hold any part of these funds on any nominee, segregated account, trust or any other basis for your protection or security.

The moneys to which you are entitled under these Terms and which are under the control of PTX Markets will be paid directly to you and not to any third party, unless you have otherwise instructed us to do so and we agree.

You must provide relevant account details for payments in respect of payments to be made by PTX Markets to you. Although PTX Markets will take reasonable steps to comply with your Instructions, PTX Markets accepts no responsibility for any failure to comply with those Instructions and, if such failure occurs, the relevant moneys will continue to be held by PTX Markets in accordance with the Business Law and Applicable Laws.

**11.3** If PTX Markets determines that your Account has been inactive for a period determined by PTX Markets, you authorise PTX Markets to apply a charge to your Account (see the Online Service) and ultimately close your Account.

**11.4** All currency exchange risks regarding any Transaction by you is your responsibility. Any conversion from one currency to another required to be made for performing or executing any Instruction may be made by PTX Markets in the manner and at the time and at the exchange rates that PTX Markets, in its absolute discretion, decides.

## 12. Information and Advice

**12.1** PTX Markets may provide (but is under no obligation to provide) you with information or data concerning interest rates, foreign currency, other Financial Products or markets generally. If such information or data is provided, it is provided on the basis that PTX Markets believes the sources to be reliable but has not verified that information. You

acknowledge that PTX Markets is not responsible for the accuracy, completeness or currency of any information or data provided (including the sequence of trades) and that if you rely on that information or data you do so at your own risk. Unless otherwise agreed with PTX Markets, you acknowledge that no information or data provided by PTX Markets to you takes into account your objectives, your financial needs or situation or your special circumstances.

**12.2** When PTX Markets provides services to you (including agreeing to provide Financial Products or financial services, open an Account, issuing to you, or dealing with you, as principal) PTX Markets is not by these Terms or those acts providing, required to provide, or liable for, advice or recommendations in relation to the Financial Products, financial services, Instructions or Transactions, except to the extent required by Applicable Laws.

**12.3** You represent and warrant to PTX Markets on a continuing basis that under these Terms, to the extent permitted by law:

- (a) you are not relying on any communication (written or oral) from PTX Markets as financial services or other investment advice or as a recommendation to enter into, or vary or end, any Transaction; and
- (b) you will not consider or treat the information and explanations relating to the terms of a Transaction to be financial services or other advice on, or a recommendation to, enter into, any Transaction.

**12.4** You acknowledge that you are responsible for all Instructions you place, or choose not to place, with PTX Markets and it is your responsibility to obtain personal Financial Product advice (including legal, tax and financial advice) before making any decision in respect of Financial Products.

## 13. Privacy and Information

**13.1** You authorise each of us and each related body corporate to collect your personal information from you when we provide services to you under these Terms. You authorise each of us and each related body corporate to use any information collected from you or from others, or such other relevant documents:

- (a) to assess your request for us to provide our services to you;
- (b) to provide our services to you in accordance with these Terms;
- (c) for the purposes of complying with its obligations regarding your beneficial interests;
- (d) to allow PTX Markets to communicate with third parties in connection with the matters contemplated by these Terms, such as in connection with the Account; and
- (e) to ensure that legal and regulatory requirements under Applicable Laws are met.

**13.2** You must notify us in writing when any of the information provided by you changes.

**13.3** You agree to the Privacy Policy applying to you and to us. Without limiting or amending the Privacy Policy, you authorise us to disclose personal information to:

- (a) our related bodies corporate, whether in Business Location or elsewhere;
- (b) any clearing or settlement participant responsible for the clearing or settlement of your Transactions (if your Transactions are ever cleared by a third party, such as the provider of a Payment System);
- (c) our service providers (including marketing companies, data consultants and IT contractors);
- (d) our agents, contractors, and external

advisers;

- (e) government and other regulatory bodies and authorities whether in Business Location or elsewhere;
- (f) payment system operators;
- (g) other financial institutions and credit providers who provide services to you;
- (h) on a confidential basis, a prospective purchaser of, joint venture partner of, or investor in, PTX Markets or a related body corporate or all or part of the business of PTX Markets or a related body corporate; and
- (i) any other relevant person to the extent required by Applicable Laws.

**13.4** You authorise PTX Markets to use and disclose the Tax file number which you provide to PTX Markets for all Accounts conducted by you with PTX Markets for the purposes of Transactions in accordance with any legal requirements.

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

**13.6** You agree that your personal information can be used or disclosed by us as contemplated in these Terms. You agree to take all reasonable steps to deliver information or documentation to PTX Markets, or cause information or documentation to be delivered to PTX Markets concerning Transactions which are requested by a person having a right to request such information or documentation (including, without limitation, Business Regulator). You understand that if you do not provide any information requested by us or do not agree to us using your information as set out in this clause 13, we

may not be able to provide our services to you.

**13.7** You agree that we may make such enquiries as we think fit of any person, including your employer, bank or a credit agency, relating to your creditworthiness and disclose the result of those enquiries and as a result of your disclosures to us (including your tax file number) to any credit rating agency or to any clearing or settlement participant responsible for the clearing or settlement of your Transactions for the purposes of our or that participant's risk assessment.

**13.8** You must, promptly following the request of PTX Markets, take all reasonable steps to deliver to PTX Markets all information and documentation relevant to dealing in Financial Products.

## 14. Disputes

**14.1** You agree to examine each Confirmation immediately upon receipt and you agree that the contents of a Confirmation, in the absence of manifest error, will be conclusive evidence of the executed Transaction, unless within 24 hours of issue of a written Confirmation you notify PTX Markets of any disputed detail in the Confirmation received by you.

**14.2** Complaints (which do not include disputed details) must initially be referred to us in accordance with our policies and procedures from time to time for dispute resolution.

## 15. Recordings

**15.1** You authorise PTX Markets to record any or all incoming and outgoing voice communications (including phone calls) with you without making a disclosure to you of this nature each and every time you speak with a representative of PTX Markets. These calls may be recorded with or without an audible tone. You agree that PTX Markets may use such recordings for the purposes of monitoring and training its staff, monitoring compliance with you and PTX Markets' respective regulatory and contractual obligations and resolving disputes. If there is a



dispute between PTX Markets and you, you have the right to listen to any recording of those conversations (if still available). Nothing in these Terms obliges PTX Markets to keep a recording or to notify you that we have eliminated a recording.

**15.2** Recordings may be used to assess the performance of or to train PTX Markets' representatives, monitoring compliance with PTX Markets' respective regulatory and contractual obligations and resolving disputes.

**15.3** PTX Markets is not obliged unless Applicable Laws require for it to keep any transcripts or copies of any telephone recording or conversation nor to tell you when it disposes of the record.

**15.4** Subject to clause 15.3, PTX Markets may upon request, provide copies of any telephone recording or transcript relating to your dealings to you in if there is a dispute or anticipated dispute with respect to such dealings. You agree to pay any reasonable cost associated with providing any such transcript or copy.

## 16. Your Capacity, Representations and Warranties

**16.1** We provide services under these Terms on the basis that you undertake as primary obligor all obligations arising on the execution of Transactions which we enter into with you regardless of your legal capacity.

**16.2** You represent and warrant to us that you are:

- (a) acting as principal;
- (b) acting as an intermediary on another's behalf and you are specifically authorised to enter into Transactions on behalf of the other person and (if required) currently have all appropriate licensing and other kinds of registrations and authorisations to do so; or

- (c) acting in accordance with the terms of a trust deed (if you are a trustee of a trust).

**16.3** If you are constituted by more than one person (including, for example, if you are acting in a partnership or joint venture), then each person constituting you are jointly and severally liable for the obligations under these Terms, and we may act on the Instructions of any one of those persons.

**16.4** If you are a corporation, you represent and warrant that:

- (a) you have full corporate power to enter into, and perform your obligations under, these Terms; and
- (b) you have taken all necessary corporate action to authorise the performance of your obligations under these Terms, and these Terms constitute the legal, valid and binding obligations, enforceable against you.

**16.5** If you are acting as a trustee of a trust, a responsible manager of a managed investment scheme, a trustee of a superannuation fund or an agent under an investment management agreement, the additional representations, warranties and undertakings set out in Schedule 1 apply.

**16.6** You represent and warrant that:

- (a) you have read and understood all documentation provided by PTX Markets to you in relation to the services provided by PTX Markets including, without limitation, any product disclosure statement;
- (b) you are a person with whom PTX Markets is lawfully entitled to deal pursuant to any Applicable Laws and that all dealings by you with PTX Markets or requested to be done by PTX Markets are and will be lawful under all Applicable Laws;
- (c) all information supplied on the

Application Form or otherwise provided to PTX Markets is true, complete and accurate in all respects and you will notify PTX Markets immediately of any change in any information supplied (including but not limited to any change in your name, address, telephone number or email address);

- (d) you will rely upon your own knowledge and judgment and will seek such advice (financial or otherwise) as may be prudent before placing an Instruction with PTX Markets and you assume full responsibility for any Instruction placed with PTX Markets; and
- (e) at all times you will be able to make payments and fulfil all commitments on your part arising under these Terms and under the conditions applicable to dealings between yourself and PTX Markets.

**16.7** Apart from any warranties and representations which are implied by law and cannot be excluded, PTX Markets makes no warranties in relation to any service or information provided or made available to you in connection with these Terms. To the full extent permitted by law, PTX Markets excludes liability for all costs, expenses, damages and Losses (including consequential loss) arising in connection with such services or information, or these Terms (including, without limitation, liability for negligence).

**16.8** All representations, warranties and acknowledgments given under this clause 16, Schedule 1 or elsewhere in these Terms are taken to have been made at the time you complete the Application Form and are taken to have been repeated by you:

- (a) each time you place an Instruction with us;
- (b) each time you process a Transaction with us; and

- (c) each time we do anything or refrain from doing something under these Terms or as contemplated by these Terms in connection with your Account or any Transaction.

## 17. Anti-Money Laundering and Counter-Terrorism Financing

**17.1** You acknowledge that:

- (a) PTX Markets is subject to various anti-money laundering and counter-terrorism financing laws (AML/CTF Laws) which may prohibit us from offering services or entering into or conducting Transactions; and
- (b) the AML/CTF Laws include prohibitions against any person dealing with the proceeds of or assets used in criminal activity (wherever committed) and from dealing with any funds or assets of, or the provision of finance to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act.

**17.2** You agree that:

- (a) PTX Markets is not required to take any action or perform any obligation under or in connection with these Terms if we are not satisfied as to your identity or if we suspect on reasonable grounds that by doing so we may breach the AML/CTF Laws;
- (b) PTX Markets may delay, block or refuse to make any payment or to provide any service if we believe on reasonable grounds that to do so may breach any law in Business Location or any other country, and we will incur no liability to you if we do so; and
- (c) PTX Markets will not incur any liability to you for any loss you suffer (including consequential loss) however caused by reason of any action taken or not taken

by us as contemplated in paragraph (a) or (b) above.

**17.3** You agree to provide all information and documents to PTX Markets which we reasonably require to comply with any law in Business Location or any other country, including any AML/CTF Laws. You agree that PTX Markets may disclose information which you provide to us, or about Transactions you have with us or which you seek to conduct with us, if we are required to do so by any law or Rule in Business Location or in any other country.

**17.4** You represent and warrant to PTX Markets that the payment of moneys by us in accordance with this document, or any Instructions given by you, will not breach any law in Business Location or any other country.

## **18. Limitations of Liability, Indemnities and Payments**

**18.1** Subject to any legislation and any other rights, duties or other obligations imposed or implied by law which cannot be excluded by agreement between the parties, to the extent each of the following is not prohibited by those laws:

(a) we make no warranties either expressly or impliedly as to merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, currency, availability, completeness or quality), with respect to any services we provide under these Terms including, without limitation, the Online Service;

(b) PTX Markets excludes all liability in contract, tort or otherwise relating to or resulting from use of any services we provide under these Terms and for any Loss incurred by you directly or indirectly, including without limitation as a result of or arising out of:

(i) any inaccuracy, error or delay in or omission from any information

provided to you under these Terms including the Online Service;

(ii) any delays or failures or inaccuracies, or loss of access to, the provision of a service to you including, without limitation, any delay, failure or inaccuracy in, or the loss of access to, the Online Service or in respect of the transmission of Instructions or any other information;

(iii) any misinterpretation of your Instructions or Instructions which are unclear, ambiguous, or not specific;

(iv) any government restriction, Exchange or market rulings, suspension of dealing, computer or telephone failure, unlawful access to our Online Service, theft, sabotage, war, earthquakes, strike, force majeure and, without limitation, any other conditions beyond our control;

(c) PTX Markets is not liable in contract, tort (including negligence) or otherwise for any loss of prospective profits or expenses or special, indirect or consequential damages resulting from the supply of a service including, without limitation the Online Service;

(d) PTX Markets makes no representations or warranties either express or implied that:

(i) any Payment System (or any part of it) or any service or any services performed in respect of it will meet your requirements or the requirements of any user; or

(ii) the operation of, or services performed in respect of, any Payment System will be uninterrupted or error-free;

- (e) PTX Markets is not liable for any breach of a provision of any relevant legislation, negligence, injury, death, lost profits, loss of files data or use, economic loss, loss or reputation or Losses or damages incidental or consequential to the operation of any Payment System, except to the extent that it is caused by the negligence or dishonesty of PTX Markets or their employees, agents or representatives; and
  - (f) PTX Markets' liability to you is (unless the limitation in this paragraph (f) is prohibited or void due to Applicable Law) in any event limited to:
    - (i) in the case of goods, the replacement or repair of the goods; or
    - (ii) in the case of services, the re-supply of the services.
- 18.2** To the fullest extent permitted by law, you release, discharge and indemnify and agree to keep PTX Markets and its respective officers, employees, agents and representatives indemnified from and against all Claims arising out of:
- (a) any default by you, whether by your act or omission under these Terms or any Instruction or Transaction;
  - (b) any breach by you of any Applicable Laws;
  - (c) any representation or warranty made or given by you under these Terms proving to be untrue or incorrect;
  - (d) any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by you or by any of your clients, employees, agents or Authorised Persons, consultants or servants;
  - (e) any failure of any of your computer or electronic systems or networks to perform, be available or successfully transmit data to PTX Markets, or any error or inadequacy in the data or information input into such systems or networks by you;
  - (f) any delays in processing any Instruction including, for example (but not limited to), as a result of systems or market delays, or due to verification or filtering procedures or unauthorised processes, email delays or due to telephone call waiting time or adherence to internal policies and procedures;
  - (g) anything lawfully done by PTX Markets in accordance with, pursuant or incidental to these Terms;
  - (h) acting on any Instruction, request or direction given by you, including a standing Instruction or any Instruction;
  - (i) by reason of PTX Markets complying with any direction, request or requirement of Applicable Laws, any provider of market information or Payment System, any government body or any regulatory body having jurisdiction over;
  - (j) arising from and in connection with or in any way related to PTX Markets in good faith accepting and acting on Instructions received by any electronic transmission (including email) or by other means of any kind which are signed by or purported to be signed or otherwise made by you or any Authorised Person, except only to the extent attributable to the breach of these Terms by PTX Markets, by a breach by PTX Markets of its duties or to the gross negligence or fraud by PTX Markets or which would be liability which by law may not be imposed on you.
- 18.3** If Applicable Tax is payable on a taxable supply made by PTX Markets under, by reference to, or in connection with these

Terms, you must also pay the amount of Applicable Tax payable in respect of that taxable supply. This clause does not apply to the extent that consideration for a supply is expressly stated to you to be Applicable Tax inclusive.

**18.4** You acknowledge that you are responsible for your own legal costs associated with entering into these Terms and for all Taxes and expenses incurred by you in connection with these Terms, including any Transaction made under it.

**18.5** All payments by you under these Terms are:

- (a) to be made without any counter claim or condition made by you and without you making any deduction or withholding for any Tax or any other reason unless the deduction or withholding is required by applicable law or the set-off arises by express application of the Terms; and
- (b) payable in any currency that PTX Markets may require or determine.

**18.6** If:

- (a) you are required to make a deduction or withholding in respect of Tax from any payment to be made; or
- (b) PTX Markets is required to pay any Tax (other than income tax) in respect of any payment made in relation to these Terms at your request,

then you:

- (c) indemnify PTX Markets against the Tax; and
- (d) agree to pay to PTX Markets an additional amount to ensure PTX Markets receives a net amount (after payment of any Tax in respect of each additional amount) that is equal to the full amount PTX Markets would have received had a deduction or withholding or payment of Tax not been made.

## 19. Default

**19.1** Each of the following constitutes a Default:

- (a) you breach these Terms, whether by act or omission (including, without limitation, giving us an Instruction in breach of clause 4.12);
- (b) a Transaction is entered into by you in any circumstances in which PTX Markets reasonably believes that conduct is, or could be considered to be, in breach of the Business Law, the Rules or any other Applicable Laws (not restricted to those circumstances described in clause 4.12 in respect of Instructions), whether or not you are aware that the Transaction could breach those laws or rules;
- (c) you fail to pay, or to provide security for, amounts payable by you to PTX Markets;
- (d) you fail to pay the amounts due in respect of any Transaction entered into pursuant to these Terms;
- (e) you fail to perform any obligation arising pursuant to the settlement of a contract which arises pursuant to a Transaction;
- (f) you fail to fulfil any settlement obligations in respect of a Transaction entered into pursuant to these Terms;
- (g) you fail to comply with any limit or restriction imposed on you by PTX Markets in connection with your Account (for example, a restriction on the kind, volume or value of Transactions or outstanding liabilities);
- (h) a guarantee lodged by you, or lodged by a third party at your request (such as by a director of a Client) is withdrawn without the consent of PTX Markets or becomes ineffective and other replacement security acceptable to the beneficiary of the guarantee is not provided;

- (i) any security provided by you (to anyone) which is binding on your assets becomes enforceable and the holder of that security takes any step to enforce the security;
  - (j) any representation or warranty which you give under or pursuant to these Terms is or becomes incorrect or misleading in any material way;
  - (k) PTX Markets determines that you are unable, or you might not be able to meet your obligations to PTX Markets in respect of one or more Transactions, including, without limitation, strict compliance with any time limits for performance by you;
  - (l) you become insolvent or bankrupt;
  - (m) you enter into a composition or scheme of arrangement for the benefit of creditors;
  - (n) if you are a body corporate:
    - (i) you go into liquidation, voluntarily or otherwise (except for the purpose of reconstruction), or you or another person appoint a liquidator, receiver, administrator or official manager in respect of your assets;
    - (ii) a director has not given (a reasonable time after requested by PTX Markets) a valid deed of guarantee and indemnity in respect of your obligations under these Terms in favour of PTX Markets and in a form acceptable to PTX Markets; or
    - (iii) you have not notified PTX Markets of a change of any director within seven (7) days of the change taking effect;
  - (o) if you are acting on behalf of another person pursuant to authority provided by another person, the authority is varied in a way which (in PTX Markets' opinion) negatively impacts on your authority or legal or financial capacity to perform your obligations under these Terms;
  - (p) if you are a trustee, the relevant trust of which you are trustee is terminated, vests or a distribution of capital of the trust or fund is made, or your rights of indemnification from trust assets or reimbursement is terminated, restricted or challenged, which would result in there being, in PTX Markets' opinion, insufficient assets of the trust or fund to meet your liabilities under these Terms or any Transaction;
  - (q) if you are a natural person, you die or become of unsound mind or if you or your estate is liable to be dealt with in any way under any law relating to mental health;
  - (r) you challenge or deny the applicability of the express governing law of these Terms, the non-exclusive jurisdiction of courts as provided in these Terms;
  - (s) you impose a moratorium on payments to creditors or cease, or threaten to cease, carrying on business;
  - (t) in the absence of making alternative arrangements, you are not immediately contactable by PTX Markets in order for PTX Markets to obtain Instructions in relation to any of your Transactions; and
  - (u) the occurrence of any other event referred to in a Schedule applicable to your Account as constituting a Default or which PTX Markets and you have agreed constitutes a Default.
- 19.2** If a Default occurs, PTX Markets may, in addition to any other rights which PTX Markets has or may have against you (including rights arising in other parts of the Terms), without giving prior notice to you, act, or refrain from acting, which it considers reasonable in the circumstances in connection with Transactions entered into pursuant to these Terms and,

without limitation, PTX Markets may do any one or more of the following:

- (a) cancel any outstanding Instructions;
- (b) settle any Transaction which has not at the time of Default settled;
- (c) cancel a Transaction (whether or not it has settled) and make consequential adjustments to your Account;
- (d) immediately, or later, terminate these Terms, one or more Schedules, one or more Accounts, one or more Transactions or any combination of these;
- (e) realise or enforce any security or guarantee provided in respect of your obligations to PTX Markets;
- (f) convert any or all amounts owing by you to PTX Markets or by PTX Markets to you in a foreign currency into Australian currency;
- (g) calculate any or all amounts owing by you to PTX Markets and declare such amount immediately due and payable; or
- (h) exercise any other rights conferred by Applicable Laws or these Terms or perform any other obligations arising
- (i) under Applicable Laws or these Terms in respect of your Transactions.

In respect of any action which PTX Markets takes, or refrains from taking under this clause 19.2, you must account to PTX Markets as if PTX Markets took, or refrained from taking, the action on your Instructions and, without limitation, you are liable for any deficiency and are entitled to any surplus which may result.

**19.3** Nothing in these Terms limits your rights to claim a default by PTX Markets or for you to take any proper action which you determine is appropriate to claim or to recover for any Loss arising from your claim. For example,

we acknowledge that you may terminate these Terms if PTX Markets materially breaches these Terms. You agree that it is reasonable for you not to have specific rights following default and specific events of default by PTX Markets in order to avoid all Transactions of all of PTX Markets' clients prematurely terminating, which could cause irrevocable loss to some or all clients and those losses could be irrevocably increased by such an automatic termination.

## 20. Notices

**20.1** Notices given by us may be sent to any address (including email address) specified in your application for an Account or later notified by you, or by posting the notice on our website or through any Online Service we provide to you. Unless otherwise specified in these Terms any notice given by us is taken to have been received or becomes effective on the Business Day following the transmission or posting of the notice, demand or Confirmation.

**20.2** Notices given by you must be in writing and sent by post, or email to our postal address or email address specified by us in the Disclosure Statement or on our website or as otherwise notified by us. A notice given by you is taken to have been given at the time it is actually received by us during business hours or, if after business hours, on the next Business Day during business hours.

**20.3** If an Account is opened in the joint names of more than one person, each person agrees that we may discharge any obligation we have to give a notice or a document to those persons under these Terms or Applicable Laws by giving notice to any one of those persons.

**20.4** PTX Markets may give notice to you of any change in its Transaction Fees or any rates, fees charges or other amounts payable by these Terms (for any new Transaction) in any manner permitted by these Terms, including by posting to PTX Markets' website or to the Online Service. PTX Markets must give at least

the minimum period of notice required by the Business Law. If no minimum period is required or is not stated elsewhere in these Terms, notice of a change in Transaction Fees or any rates, fees charges or other amounts payable by these Terms (for any new Transaction) may be effective immediately PTX Markets first generally publishes the information of any variation on its website or through the Online Service.

## 21. Appointment as Attorney

**21.1** In consideration of PTX Markets entering into the agreement on these Terms, you irrevocably appoint PTX Markets and each director, secretary and principal executive officer and each employee (which employee's title of office includes the word "Manager" or "Head") of PTX Markets and any other authorised representative of PTX Markets (including an authorised representative of a related body corporate of PTX Markets) severally as your attorney at any time and from time to time following a Default, to execute and deliver all documents and to do all things which your attorney may consider necessary or desirable to give effect to the provisions of these Terms, and in particular, without limitation, in connection with, or incidental to, the exercise of any of the rights and powers of PTX Markets under these Terms. Those powers may be exercised in the interests of PTX Markets notwithstanding any conflict with the interests of PTX Markets. This appointment survives termination of these Terms.

## 22. Termination

**22.1** Without limiting clause 19.2, you and PTX Markets may each terminate the Prime Treasury Facility Agreement at any time by giving the other notice of that.

**22.2** The notice of termination and the termination of the Prime Treasury Facility Agreement does not affect outstanding obligations which arose under these Terms and which remain

undischarged at the time of termination, limitations of liability or recourse, indemnities provided for in these Terms or any other clause of these Terms which states or implies that they survive termination.

**22.3** Each indemnity provided within these Terms survives the termination of these Terms.

**22.4** Upon termination of the Prime Treasury Facility Agreement, and without limiting clause 19.2, this clause survives and PTX Markets may do one or more of the following:

- (a) cancel any outstanding Instructions;
- (b) terminate and settle at one or more times any of the Transactions which has not at the time of notice of termination or at termination of the Prime Treasury Facility Agreement been settled (and must adjust the settlement amount to reflect the early settlement as PTX Markets determines in its absolute discretion is reasonable, having regard to market conditions at the time but without needing to substantiate or evidence its determination);
- (c) exercise any other rights PTX Markets has under the Prime Treasury Facility Agreement;
- (d) do, or refrain from doing, anything else which PTX Markets considers reasonable in the context of these Terms (or any part of them) having been terminated; and
- (e) calculate the net amount owing as between Client and PTX Markets as a result of termination of the Transactions and other accrued amounts owing by a party under these Terms (such net amount may later be adjusted according to anything relevant to the net amounts owing as between the parties including but not limited to Transactions were later terminated, interest accrued and capitalised for this purpose, indemnified amounts and fees, charges and costs incurred after the previous calculation of



the net amount owing as between the parties).

## 23. General

**23.1** PTX Markets may from time to time delegate any or all of its obligations, powers and discretions to anyone or more or all of its employees or any other authorised representative of PTX Markets (or a related body corporate of PTX Markets). PTX Markets remains responsible for the acts or omissions of its employees and any authorised representative of PTX Markets (including an authorised representative of a related body corporate of PTX Markets). A delegation by PTX Markets under this clause need not be in writing.

**23.2** These Terms and any relevant Application Form completed by you contain the entire understanding between you and PTX Markets concerning the provision of the Financial Products or financial services and any other services referred to in or provided under the Prime Treasury Facility Agreement, as later amended only in accordance with the Prime Treasury Facility Agreement.

**23.3** The location of services provided by PTX Markets is only the Business Location. PTX Markets does not provide its services or conduct business in any other location (even if Client or payee is outside of the Business Location).

**23.4** These Terms are governed by and construed in accordance with the laws in force in the Governing Jurisdiction. The parties submit to the exclusive jurisdiction of the courts of the Governing Jurisdiction.

**23.5** We may vary these Terms by giving you notice of any variation by any combination of: document in writing, by updating our website to show the revised version of these Terms, by posting a message in the Online Service, by email or by other social media channel that you have agreed to use to receive communications from PTX Markets. The

notice of variation is effective even if you are unaware of the notice or, having received it, do not read it. The minimum period of notice will be the lesser of:

- (a) any minimum period of notice required by the Rules;
- (b) if no such minimum period is required by the Rules, then not less than two (2) Business Days' notice (unless paragraph (c) applies); and
- (c) subject to paragraph (a), if we believe a variation is necessary to maintain or restore the security of any Accounts or of our systems or to comply with any legal or regulatory requirement, we may make the variation without prior notice and will notify you of the change as soon as practicable after the change.

**23.6** Each part of these Terms is severable from the balance of these Terms and if any part of these Terms is illegal, void, invalid or unenforceable, then that will not affect the legality, effectiveness, validity or enforceability of the balance of these Terms.

**23.7** No failure by us to exercise, and no delay by us in exercising, any right, power or remedy in connection with these Terms will operate as a waiver of that right, power or remedy. No single or partial exercise of any right, power or remedy will preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy.

**23.8** These Terms are not to be interpreted against our interests merely because we proposed these Terms or some provision in it or because we rely on a provision of these Terms to protect our interests.

**23.9** You may not assign or otherwise transfer any of your rights under these Terms to another person without our prior written consent. PTX Markets may assign, novate or otherwise transfer any of its rights under these Terms to another person without your prior written consent including, without limitation, in connection with a sale or transfer of all or part

of our business to another person.

## 24. Interpretation

**24.1** Unless the context otherwise requires, any expressions or phrases not otherwise defined within these Terms have the meaning given to them in the Rules relevant to the Financial Product or financial service.

**24.2** In these Terms, unless otherwise indicated, the following words and expressions have the meaning set out below:

**Account** means an account held in your name or for your benefit with PTX Markets including all Transactions recorded in them, for the purposes of these Terms.

**Account Value** means the current value of your Account which is calculated by PTX Markets.

**Applicable Laws** means, in relation to a matter, all laws, legislation, regulation and subsidiary regulation, instruments and directions of a regulatory authority or a court, rules and procedures of a Payment System which apply to the relevant matter including for example, and without limitation, the Business Law and regulations made pursuant to the Business Law, Business Regulator Legislative Instruments and other instruments.

**Applicable Tax** means tax that is imposed as a goods and services tax, value added tax, sales tax or analogous tax under any Applicable Law.

**Application Form** means the application form by which a person applies to become a Client of PTX Markets and to open an Account. It can be in electronic form.

**AUD, Australian Dollars and \$A** means the lawful currency of the Commonwealth of Australia.

**Authorised Person** means the person (if any) described as your authorised agent in the Application Form or another person notified by you to us under clause 3.

**Business Day** means a weekday which is not a gazetted public holiday in Sydney.

**Business Law** means the statutory laws and regulations made under them, all as amended from time to time applicable to us under the Governing Jurisdiction.

**Business Regulator Legislative Instrument** means an instrument issued by Business Regulator from time to time which is designated a "Legislative Instrument".

**Business Location** means the Commonwealth of Australia.

**Business Regulator** means Australian Securities and Investments Commission.

**Claim** means any or all, actual or potential claim, action, complaint, suit, cause of action, arbitration, debt due, costs, claim, entitlement, allegation, demand in respect of damages and any other benefit verdict and judgment whether both at law or in equity or arising under the provisions of any statute, award or determination whether known at the date of these Terms or not.

**Client** means the person who is (or persons who are) recorded as having an Account.

**Confirmation** means any confirmation of a Transaction issued by us to you and includes an electronically transmitted confirmation or a substantially continuously available account statement which contains the information which would be in a confirmation.

**Deal** has the meaning given in the Business Law.

**Default** has the meaning in clause 19.1 and, if applicable, as supplemented by a term in a Schedule.

**Disclosure Statement** is defined in clause 1.6.

**Financial Product** means a financial product covered by a Facility (whether an individual Transaction or a series of more than one Transaction which is netted under the Terms of the Facility). It includes a Non-cash Payment Financial Product.

**Financial Service** means a financial service (which is not a Financial Product) which is covered by a Facility (whether an individual Transaction or a series of more than one Transaction which is netted under the Terms of the Facility).

**Governing Jurisdiction** means New South Wales, Australia.

**Instruction** means any instruction placed by you with us to process a Transaction.

**Loss** means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Master Prime Agreement** means the agreement of that name made by you and Prime Trading Services Pty Ltd (Company No. 40429)

**Non-cash Payment Financial Product** means a Financial Product which provides for arranging payment other than by dealing in cash.

**Online Service** is defined in clause 5.1.

**Payment Service** means the service of (a) facilitating payment from your financial institution or other account for value provider to the account of the beneficiary named by the you; (b) holding funds on your behalf; and (c) receiving funds on your behalf. It includes but is not limited to a Non-cash Payment Financial.

**Payment System** means a payment clearing system, payment settlement system or a system which does both.

**PTX Markets** means Prime Treasury Services Pty Ltd ABN 24 160 411 825; AFSL 529610.

**Privacy Policy** means the policy of that name from time to time which we publish as our privacy policy.

**Rules**, in relation to a Payment System, means the operating rules, procedures,

customs and usages of the of the Payment System.

**Security Information** means any of your email address, logon code, password or access password.

**Tax** means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government agency, other than any imposed on overall net income.

**Terms** is defined in clause 1.1 and see also clause 2.

**Transaction** means any:

- (a) payment using the Payment Service available through the Online Service; and
- (b) any other Financial Product or financial service specifically agreed by Prime Treasury from time to time.

**Transaction Fee** means the fee or commission from time to time specified by PTX Markets to be the amount payable by you to PTX Markets in respect of each Transaction.

**We, us or our** means Prime Treasury Services Pty Ltd trading as PTX Markets ABN 24 160 411 825 and its successors and assignees.

**You** means Client, being the person or persons in whose name we open an Account, following our acceptance of an application by that person or those persons.

**24.3** The following rules also apply in interpreting this document, except if the context makes it clear that a rule is not intended to apply.

- (a) Headings used in these Terms are used for convenience only, and do not affect interpretation.
- (b) A reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or

replaced, and includes any subordinate legislation issued under it.

- (c) A singular word includes the plural and vice versa.
- (d) A word which suggests one gender includes the other gender.
- (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (f) A reference to time is to local time in Sydney, New South Wales, unless otherwise specified.
- (g) Anything permitted to be done by PTX Markets in accordance with these Terms may be done in its absolute discretion, and any opinion or view required to be formed by PTX Markets may be formed in its absolute discretion.
- (h) For the avoidance of doubt, time will continue to run on days which are not Business Days.
- (i) The English version of these Terms prevails over any other translated version of these Terms.

**24.4** If a specific provision in a Schedule is inconsistent with another provision in these Terms, the specific provision prevails over the other provision to the extent of the inconsistency.



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