

FINCLEAR SERVICES

CHESS SPONSORSHIP AGREEMENT



FINCLEAR SERVICES CHESSE SPONSORSHIP AGREEMENT

EXPLANATION OF CHESSE SPONSORSHIP & AGREEMENT TERMS

Background

This document explains the effect of CHESSE (**Clearing House Electronic Subregister System**) and the terms of the sponsorship agreement (**Agreement**) if you enter into the Agreement with FinClear Services Pty Ltd (**FinClear Services** or **we/us**). It is important that you read this explanation and the Agreement and understand their content before signing the Client Application Form (which includes the Agreement). By signing the Client Application Form and indicating that you would like us to establish a new Holder Identification Number (**HIN**) sponsored by us, you acknowledge that you have understood the effect of the Agreement.

What is the purpose of the Sponsorship Agreement?

The Agreement appoints us as your "controlling participant" on CHESSE. CHESSE is a system of registering financial products on computer, so instead of holding certificates to show that you own shares or other financial products, under CHESSE you have financial products electronically registered in your name to show that you own them. CHESSE is operated by ASX Settlement Pty Ltd ABN 49 008 504 532 (**ASX Settlement**) under the ASX Settlement Rules. Only certain people may control financial products on CHESSE (we fall under one of these categories). By signing the Client Application Form and indicating that you would like us to establish a new HIN sponsored by us, you appoint us as your controlling participant to control your holding of financial products on CHESSE. In other words, we "sponsor" your holdings of financial products on CHESSE.

Explanation of Sponsorship Agreement Terms

This explanation is only a summary of the Agreement (see clause 6.4 of the Agreement). It is not a substitute for, or part of, the Agreement, nor is it another agreement in its own right. By signing (or agreeing to be bound by) the Agreement, you appoint us as your Sponsoring Participant for relevant financial products you acquire through us or the Broker (see below). We would be pleased to sponsor other holdings you may have which are Issuer Sponsored or sponsored by another ASX Group Participant (i.e. ASX Stockbroker).

FinClear Services is a party to a Clearing Agreement with the broker named in your Client Application Form (the **Broker**). FinClear Services is obliged to settle as principal and has the settlement obligations for all Market Transactions executed by the Broker.

As your Sponsoring Participant on CHESSE, only we and our duly authorised agent can give instructions to CHESSE in relation to administration or conversion of your holdings sponsored by us, or transfers to or from your sponsored holdings following settlement of your transactions or following your Withdrawal Instructions. Furthermore, we or our duly authorised agent only have authority to access your holdings following your express instructions to do so (e.g. sell my BHP Billiton shares).

On CHESSE, your holdings are identified by your HIN which is allocated to you if you accept the terms and conditions of our Agreement. CHESSE will provide you with details of your HIN and your sponsoring broker. It is important that you keep your HIN confidential because it is the key to your holdings.

The Sponsorship Agreement

The Agreement has 14 clauses. Its terms are very largely determined by the ASX Settlement Rules applying to CHESSE Sponsorship.

Clause 1 (Appointment of FinClear Services) provides that you appoint FinClear Services as your Controlling Participant for CHESSE to provide services in relation to the transfer and conversion of financial products to or from your Participant Sponsored Holding. Clause 1 also notes that FinClear Services is a party to a Clearing Agreement with the Broker, and that FinClear Services has the settlement obligations for all Market Transactions executed by the Broker on your behalf.

Clause 2 (FinClear Services' Rights) imposes certain duties on you and gives us certain rights and protections. Where you have authorised us (or the Broker) to buy financial products, you must pay for those financial products by the date specified on the confirmation given to you. Sufficient funds must be in your account to pay for any financial products purchased on your behalf, and associated transactional charges, before the purchased products will be transferred into your name. We have to pay for purchases you execute through us or the Broker whether you have paid for them or not. If you do not pay, after a demand for payment, those financial products may be sold at your risk and expense. You will be liable for any costs and loss. You can give us instructions at any time to withdraw your holdings from CHESSE account, and we must do so unless funds due from you are outstanding, in which case we may continue to "control" holdings to the value (i.e. market value of the financial products we continue to hold) of 120% of the amount owed to us.

Clause 3 (Your Rights) imposes certain duties on us and informs you of the regulatory regime to which we are subject, and also of your right of access to both our internal and external (i.e. AFCA) complaint handling mechanisms (if you are a retail client), and to lodge certain claims for compensation with the National Guarantee Fund. See also clause 7.1(b).

Clause 3 also sets out some acknowledgements by you in relation to the creation of Subpositions in respect of holdings in your CHESSE account and sets out some provisions which apply if any of your holdings are to be used as cover for any exchange traded options that you may write.

Clause 4 (Supply of Information) obliges you to supply the information we require and to ensure it is, and remains, accurate and up to date.

Clause 5 (Fees) notifies you that we may charge you fees for our services. It also notes that we may charge interest to you in respect of any outstanding amount that you may owe us.

Clause 6 (Notifications & Acknowledgements) notifies you of, or has you acknowledge various things, including that once a holding is transferred by us, you cannot claim against ASX Settlement (the operator of CHESSE) or the Issuer that it was not affected by us or that we were not authorised to make the transfer. You also cannot make a claim against the relevant market operator (such as ASX) or ASX Clear.

You may report to us to any relevant regulatory authority for a breach of any provision of the Agreement.

You have certain rights if we are suspended from accessing CHESSE. You will be given opportunity to instruct ASX Settlement to move your holding to the control of another Sponsoring Participant or ASX Settlement will make that choice for you.

Clauses 6.5 and 6.6 address what action we will take in the event of your death and/or bankruptcy.

Clause 7 (Joint Holdings) addresses bankruptcy and/or death of one or more parties to a joint holding. Sponsored holdings may have up to 3 joint holders. In the event of bankruptcy of one, the interests of the bankrupt holder are excised from the interests of the other holders. The other holders may continue to operate as normally under a new holding. In the case of the death of one holder, the interests of the deceased holder pass to the remaining joint holders, not the estate of the deceased person.

Clause 8 (Change of Controlling Participant) contains provisions setting out what is to happen if there is a significant change to the organisational structure of our group or the whole or relevant part of our business is to be transferred to another CHESSE participant. In that event, all our Sponsored Holdings on CHESSE may be transferred in full to another Controlling Participant in the interests of minimising disruption to your investment or trading activities and your Agreement with us will be taken to be novated to that other Controlling Participant.

Clause 9 (Claims for Compensation) sets out the avenues for you to seek compensation.

Clause 10 (Termination) sets out the circumstances in which the Agreement may be terminated. In certain circumstances, the Agreement is terminated automatically.

Clause 11 (ASX Settlement Rules and Variation) sets out that the Agreement is subject to the ASX Settlement Rules. You must not do anything which would prevent or hinder FinClear Services from complying with its obligations under those Rules. The clause also set out how the Agreement may be varied, and permits variation by notification to you where variation is required because the terms of the Agreement have become or are becoming inconsistent with the ASX Settlement Rules. In all other instances, a variation to the Agreement is only effective if agreed by us both in writing. But we may make a variation without notice to you where such variation is necessary, to restore or maintain the security of our systems or any account.

Clause 12 (Indemnity) describes the indemnity that you provide to us.

Clause 13 (Notices) contains some provisions relating to notices.

Clause 14 (Miscellaneous) provides that all duties or taxes (e.g. GST) applicable to the Agreement must be paid by you. It also provides that a provision of the Agreement or a right created under it may not be waived except in writing signed by the party or parties to be bound. It provides that we may set off any amount we owe to you against any amount you owe to us or to any of our related bodies corporate.

Clause 13 also provides that you are entitled to receive a copy of the Agreement executed by us. By returning one copy signed by you, you instruct us not to send to you a hard copy of the Agreement executed by us. However, if you ask us to, we will provide you at any time with a hard copy executed by both parties. Finally clause 13 provides that the Agreement is governed by the laws of NSW.

Clause 15 (Definitions and Interpretations)

Many of the terms used in the Agreement have the meaning given to them in the ASX Settlement Rules. The definition may change from time to time if the ASX Settlement Rules are changed. You may view the ASX Settlement Rules online. Please contact the Broker if you need any assistance in locating these rules online.

Some of those definitions are set out (and explained) in clause 14.

Clauses 14.2 to 14.6 contain other rules to assist in the interpretation of the Agreement.

CHESSE Sponsorship Agreement

1. Appointment of FinClear Services Pty Ltd (FinClear Services)

You appoint FinClear Services as your Controlling Participant for CHESSE to provide, and FinClear Services agrees to provide, services in relation to the holding of financial products in, and the transfer and conversion of financial products to or from, your Participant Sponsored Holding (with the Holding Identification Number (HIN) identified on your Application Form) as your agent on the terms and conditions of this Sponsorship Agreement (this Agreement).

1.2 FinClear Services is a party to a Clearing Agreement with the broker named in your Client Application Form (the **Broker**) and FinClear Services is obliged to settle as principal and has the settlement obligations for all Market Transactions executed by the Broker on your behalf.

2. FinClear Services' Rights

2.1 Where you authorise FinClear Services (or the Broker) to buy financial products, you must pay for those financial products by the date specified on the Confirmation (previously known as a "Contract Note").

2.2 Subject to clause 2.3, FinClear Services is not obliged to Transfer financial products into your Participant Sponsored Holding, where payment for those financial products has not been received, until payment is received.

2.3 Where a contract for the purchase of financial products remains unpaid after FinClear Services has made a demand on you to pay for the financial product, FinClear Services may sell those financial products that are the subject of that contract at your risk and expense and that expense will include brokerage and applicable duties and/or taxes and other applicable charges.

2.4 Where FinClear Services claims that an amount lawfully owed to it has not been paid by you (including without limitation under clause 5.3 or the indemnity in clause 12), FinClear Services has the right to refuse to comply with your Withdrawal Instructions, but only to the extent necessary to retain financial products of the minimum value held in your Participant Sponsored Holding (where the minimum value is equal to 120% of the current market value of the amount claimed).

2.5 Where you or your duly authorised agent places instructions with the Broker to buy or sell financial products on your behalf, FinClear Services has your express authority to Transfer those financial products from or to your Participant Sponsored Holding.

3. Your Rights

3.1 Subject to clauses 2.3 and 2.4, FinClear Services will initiate any Transfer, Conversion or other action necessary to give effect to Withdrawal Instructions within 2 Business Days of the date of the receipt of the written Withdrawal Instructions.

3.2 Subject to clause 6.3 and 8, FinClear Services will not initiate any Transfer or Conversion into or out of your Participant Sponsored Holding without your express authority (as provided to FinClear Services by the Broker acting as your agent).

3.3 Subject to clause 8, you have various rights upon receiving a Participant Change Notice.

3.4 The regulatory regime which applies to FinClear Services is the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (Cth) and related legislation applicable to financial services providers, the Market Integrity Rules, and ASX Settlement Rules. You can obtain information confirming FinClear Services' status as a settlement participant from ASX Settlement and as an Australian Financial Services Licence holder from ASIC.

3.5 A complaint regarding FinClear Services' services can be lodged with FinClear Services, ASIC, ASX Settlement, the Australian Financial Complaints Authority (**AFCA**) [the contact details for AFCA are included in our Financial Services Guide or are available from our Complaints Manager].

3.6 A claim for compensation can be lodged with FinClear Services or if the circumstances specified in Part 7.5, Division 4 of the Corporations Act apply, with the National Guarantee Fund. In relation to claims lodged with FinClear Services, FinClear Services has Professional Indemnity Insurance which it considers satisfies the requirements of Section 912B ("Compensation Arrangements for Retail Financial Services") of the Corporations Act. FinClear Services' arrangements are for the purpose of compensating retail clients for loss or damage suffered because of our breaches of our obligations under Chapter 7 ("Financial Services and Markets") of the Corporations Act, including losses caused by negligence, fraud, dishonesty or other misconduct that amounts to a breach of Chapter 7 and gives rise to a liability to a retail client. Our arrangements cover awards made by AFCA and claims relating to the conduct of staff who have since left our employment.

3.6 You acknowledge that where, in accordance with this Agreement and/or your instructions, FinClear Services initiates any action which has the effect of creating a Subposition over financial products in your Participant Sponsored Holding, your right to Transfer, Convert or otherwise deal with those financial products is restricted in accordance with the terms of the ASX Settlement Rules relating to sub-positions.

3.7 If you instruct FinClear Services that financial products are to be lodged with or reserved by ASX Clear or ASX Settlement (including as a subposition) as cover for written positions in the market for exchange traded options operated by ASX, you:

(a) warrant that you are legally entitled to or authorised to make those financial products available as cover and that those financial products are not subject to any security interest other than in favour of ASX Clear at any time that the financial products are held by ASX Clear;

(b) authorise FinClear Services to reserve the financial products in the ASX Clear subposition so that the financial products come under the control of ASX Clear and are subject to the security interest granted in favour of ASX Clear to secure the performance by FinClear Services of its obligations to ASX Clear under and in accordance with ASX Clear Operating Rule 14.6.7;

- (c) authorise any subsequent dealing (including without limitation, any transfer) of the reserved financial products in accordance with the ASX Settlement Rules and ASX Clear Operating Rules;
- (d) acknowledge that the financial products will remain subject to that security interest for so long as those financial products remain reserved in the ASX Clear subposition in accordance with ASX Clear Operating Rule 14.6.7; and
- (e) authorise FinClear Services to take whatever action is required by ASX Clear in accordance with the ASX Settlement Rules to give effect to that arrangement.

Those financial products will be subject to the requirements, restrictions and effects of the ASX Settlement Rules for financial products which are lodged with or reserved by ASX Clear or ASX Settlement (including in a subposition) under the ASX Settlement Rules, and you are taken to have authorised any action, consequence or dealing that takes place as contemplated by the ASX Settlement Rules.

- 3.8 If you instruct FinClear Services that a charge or other interest in financial products has been or is to be given to a person, then you authorise FinClear Services to take whatever action is reasonably required by that person in accordance with the ASX Settlement Rules to give effect to or record that interest.
- 3.9 FinClear Services may take steps to create or reserve a subposition over the Client's holding in the circumstances contemplated by clauses 3.7 or 3.8. FinClear Services may also create a subposition if you consent. If FinClear Services does this, your right and ability to transfer, convert or otherwise deal with the financial products will be restricted in accordance with the ASX Settlement Rules and in particular with those relating to subpositions.
- 3.10 Nothing in this Agreement operates to override any interest of ASX Clear in the financial products.

4. Supply of Information

- 4.1 You must supply all information and supporting documentation which is reasonably required to permit FinClear Services to comply with the registration requirements, as are in force from time to time, under the ASX Settlement Rules or to perform its obligations under this Agreement. You must give this information and supporting documentation to the Broker who is to pass it on to FinClear Services as your agent.
- 4.2 Notifications made by you (e.g. change of address) must be in writing.
- 4.3 You must, in respect of each Holder Record (which exists or is to be created) for you, ensure that FinClear Services is advised of the Registration Details (including any applicable Residency Indicator). You must ensure that this information is provided to FinClear Services as soon as possible after you place an order with respect to the relevant financial products but in any event no later than 2 days before the scheduled settlement date of the relevant Market Transaction, and if your Registration Details change, as soon as possible after the change occurs.
- 4.4 If you do not ensure that FinClear Services is advised of a Residency Indicator but FinClear Services has been provided with a street address for you, then FinClear Services will be taken to have been advised that, if the relevant street is located in Australia, a Residency Indicator of "D" (for domestic) applies with respect to that Record, but otherwise Residency Indicator of "F" (for foreign) applies to that Holder Record.

5. Fees

- 5.1 You must pay FinClear Services fees in connection with the services to be provided by FinClear Services under this Agreement as advised by FinClear Services to you from time to time. As at the date of this Agreement, FinClear Services does not charge fees for acting as your Controlling Participant.
- 5.2 Before imposing any fees and charges on you in respect of the control of your Participant Sponsored Holdings, FinClear Services will provide you with 20 Business Days' written notice of those fees.
- 5.3 If you do not pay FinClear Services an amount when it is due, FinClear Services may charge interest on the overdue amount using a method and interest rate determined by FinClear Services having regard to the loss suffered by FinClear Services resulting from your failure to pay the amount on the due date, and notified to you by FinClear Services from time to time.
- 5.4 FinClear Services may also charge fees to the Broker in respect of the services contemplated by this Agreement, and the Broker may pass those fees on to you. The Broker will disclose to you if it will charge you any such fees.

6. Notifications and Acknowledgements

- 6.1 You acknowledge that if a Transfer is taken to be effected by FinClear Services under Section 9 of the ASX Settlement Rules and the Source Holding for the Transfer is a Participant Sponsored Holding sponsored under this Agreement, then:
 - (a) you may not assert or claim against ASX Settlement or the relevant Issuer that the Transfer was not affected by FinClear Services or that FinClear Services was not authorised by you to effect the Transfer; and
 - (b) unless the Transfer is also taken to have been effected by a Market Participant of an Approved Market Operator or a Clearing Participant of ASX Clear, you have no claim arising out of the Transfer against the National Guarantee Fund under Part 7.5, Division 4 of *the Corporations Regulations 2001* (Cth); and
 - c) if the Sponsoring Participant is not a Market Participant of an Approved Market Operator, that neither the Approved Market Operator, nor a Related Party of the Approved Market Operator has any responsibility for regulating the relationship between the Participant Sponsored Holder and the Sponsoring Participant, other than in relation to the Rules relating to Sponsorship Agreements.
- 6.2 In the event FinClear Services breaches any of the provisions of this Agreement, you may refer that breach to any relevant regulatory authority, including ASX Settlement.
- 6.3 In the event that FinClear Services is suspended from CHESSE participation, subject to the assertion of an interest in Financial Products controlled by FinClear Services, or by FinClear Services' liquidator, receiver, administrator or trustee:
 - a) you have the right, within 20 Business Days of ASX Settlement giving Notice of suspension, to give notice to ASX Settlement requesting that any Participant Sponsored Holdings be removed either:
 - (i) from the CHESSE Subregister; or
 - (ii) from the control of FinClear Services to the control of another Sponsoring Participant with whom you have entered into a valid Sponsorship Agreement pursuant to ASX Settlement Rule 12.19.10; or
 - b) where you do not give notice under clause 6.3(a), ASX Settlement may effect a change of Controlling Participant under ASX Settlement Rule 12.19.11 and you will be deemed to have entered into a new Sponsorship Agreement with the substitute Sponsoring Participant on the same terms as the existing Sponsorship Agreement. Where you are deemed to have entered into a Sponsorship Agreement, the new Sponsoring Participant must enter into a Sponsorship Agreement with you within 10 Business Days of the change of Controlling Participant.
- 6.4 You acknowledge that before you executed this Agreement, FinClear Services provided you with an explanation of the effect of this Agreement and that you understood the effect of this Agreement.
- 6.5 You acknowledge that in the event of your death or bankruptcy, a Holder Record Lock will be applied to all Participant Sponsored Holdings in accordance with the ASX Settlement Rules, unless your legally appointed representative or trustee elects to remove your Participant Sponsored Holdings from the CHESSE Subregister.
- 6.6 You acknowledge that in the event of your death, this Agreement is deemed to remain in operation, in respect of the legally appointed representative authorised to administer your estate, subject to the consent of the legally appointed representative, for a period of up to 3 calendar months after the removal of a Holder Record Lock applied pursuant to clause 6.5.

7. Joint Holdings

- 7.1 You acknowledge that in the event of the death of one of the Holders, FinClear Services will transfer all Holdings under the joint Holder Record into new Holdings under a new Holder Record in the name of the surviving joint Participant Sponsored Holder(s), and that this Agreement will remain valid for the new Holdings under the new Holder Record.
- 7.2 You acknowledge that in the event of the bankruptcy of one of the Holders, FinClear Services will:
- (a) unless the legally appointed representative of the bankrupt Participant Sponsored Holder elects to remove the Participant Sponsored Holdings from the CHES Sub-register, establish a new Holder Record in the name of the bankrupt Participant Sponsored Holder, transfer the interest of the bankrupt Participant Sponsored Holder into new Holdings under the new Holder Record and request that ASX Settlement apply a Holder Record Lock to all Holdings under that Holder Record; and
- (b) establish a new Holder record in the name(s) of the remaining Participant Sponsored Holder(s) and Transfer the interest of the remaining Participant Sponsored Holder(s) into new Holdings under the new Holder Record.

8. Change of Controlling Participant

- 8.1 If you receive a Participant Change Notice from FinClear Services in relation to your Participant Sponsored Holdings 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 Controlling Participant, you are under no obligation to agree to the change of Controlling Participant, and may choose to do any of the things set out in clause 8.2 or 8.3.
- 8.2 You may choose to terminate this Agreement by giving Withdrawal Instructions under the ASX Rules to FinClear Services, including whether you wish to:
- a) transfer your Participant Sponsored Holding to another Controlling Participant; or
- b) transfer your Participant Sponsored Holding to one or more Issuer Sponsored Holdings.
- 8.3 If you do not take any action to terminate this Agreement in accordance with clause 8.2 above, and do not give any other instructions to FinClear Services which would indicate that you do not agree to the change of Controlling Participant then, on the Effective Date, this Agreement will have been taken to be novated to the New Controlling Participant and will be binding on all parties as if, on the Effective Date:
- (a) the New Controlling Participant is a party to this Agreement in substitution for FinClear Services;
- (b) any rights of FinClear Services are transferred to the New Controlling Participant; and
- (c) FinClear Services is released by you from any obligations arising on or after the Effective Date.
- 8.4 The novation in clause 8.3 will not take effect until you have received a notice from the New Controlling Participant confirming that the New Controlling Participant consents to acting as your Controlling Participant. The Effective Date may as a result be later than the date set out in the Participant Change Notice.
- 8.5 You will be taken to have consented to the events referred to in clause 8.4 by:
- (a) the doing of any act which is consistent with the novation of this Agreement to the New Controlling Participant (for example by giving an instruction to the New Controlling Participant), on or after the Effective Date, and such consent will be taken to be given as of the Effective Date; or
- (b) taking no action under clause 8.3.
- 8.6 This Agreement continues for the benefit of FinClear Services 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 in clause 8.3 not binding or effective on the Effective Date, then this Agreement will continue for the benefit of FinClear Services until such time as the novation is effective, and FinClear Services will hold the benefit of this Agreement on trust for the New Controlling Participant.
- 8.7 Nothing in this clause 8 will prevent the completion of CHES transactions by FinClear Services where the obligation to complete those transactions arises before the Effective Date and this Agreement will continue to apply to the completion of those transactions, notwithstanding the novation of this Agreement to the New Controlling Participant under this clause 8.

9. Claims for Compensation

- 9.1 The avenues available to you for making a claim for compensation are described in clauses 3.4 and 9.3.
- 9.2 If FinClear Services breaches a provision of this Agreement and you make a claim for compensation pursuant to that breach, the ability of FinClear Services to satisfy that claim will depend on FinClear Services' financial circumstances.
- 9.3 If a breach by FinClear Services of a provision of this Agreement falls within the circumstances specified in the compensation arrangements applicable to the Approved Market Operator or the Clearing Participant of ASX Clear under the Corporations Act or *the Corporations Regulations 2001* (Cth), you may make a claim under the relevant compensation arrangements. Those compensation arrangements may include the National Guarantee Fund. For more information on the circumstances in which you may make a claim on the National Guarantee Fund or for information on the National Guarantee Fund generally, contact the Securities Exchange Guarantee Corporation Limited.

10. Termination

- 10.1 Subject to the ASX Settlement Rules, this Agreement will be terminated upon the occurrence of any of the following events:
- (a) by notice in writing, from either you or FinClear Services to the other party, to terminate this Agreement;
- (b) upon FinClear Services becoming insolvent;
- (c) upon the termination or suspension of FinClear Services' access to CHES by ASX Settlement (i.e. FinClear Services' recognition as General Settlement Participant of ASX Settlement has been terminated or suspended, preventing FinClear Services from acting as a Sponsoring Participant); or
- (d) upon the giving of Withdrawal Instructions to FinClear Services by another Controlling Participant in accordance with ASX Settlement Rule 7.1.10(c).
- 10.2 Termination of this Agreement does not affect any rights or obligations that have accrued before termination.

11. ASX Settlement Rules and Variation

- 11.1 This Agreement is subject to the ASX Settlement Rules. You must not do anything which would prevent or hinder FinClear Services from complying with its obligations under those Rules.
- 11.2 If this Agreement is inconsistent with the ASX Settlement Rules, those Rules prevail to the extent of the inconsistency.
- 11.3 Should any of the provisions in this Agreement be inconsistent with the provisions in the ASX Settlement Rules, FinClear Services must, by giving you not less than 7 Business Days written Notice, vary this Agreement to the extent to which in FinClear Services' reasonable opinion is necessary to remove any inconsistency.
- 11.4 FinClear Services reserves the right to vary this Agreement at any time in a manner that is not inconsistent with the ASX Settlement Rules by giving you not less than 20 Business Days' notice of the variation, in writing or by electronic communication.

FinClear Services may make a variation without notice to you where such variation is necessary, to restore or maintain the security of its systems or any account.

12. Indemnity

- 12.1 To the maximum extent permitted by law, you indemnify FinClear Services against, and you must therefore pay FinClear Services on demand for, any liability, loss or costs FinClear Services suffers or incurs in connection with:
- (a) FinClear Services performing its obligations under this Agreement; or

- (b) FinClear Services acting as your Controlling Participant or agent for the purposes of CHES Sponsorship; or
 - (c) you doing something that you agreed not to do or not doing something that you agreed to do under this Agreement, including because you provide or are taken to have provided inaccurate Registration Details or your Registration Details change and you fail to advise FinClear Services of the change in a timely manner,
except to the extent that the liability, loss or costs has resulted directly from FinClear Services' fraud, negligence or misconduct.
- 12.2 This indemnity in this clause 12 is a continuing indemnity independent of your other obligations to FinClear Services. It continues even after this Agreement is terminated. It is not necessary for FinClear Services to incur an expenses or make payment before enforcing a right of indemnity conferred by this Agreement.
- 12.3 You must pay any amount to FinClear Services when asked by FinClear Services. FinClear Services may debit any amount that you owe to FinClear Services to any account that you have with FinClear Services even if FinClear Services does not expressly ask you to pay FinClear Services.

13. Notices and other communications

- 13.1 Any notice, request, demand or other communications, to be given by FinClear Services to you must be in writing and may be given (at FinClear Services' option):
- (a) to the Broker who will receive that Notice as your agent (and not as the agent of FinClear Services) and is responsible for passing on that Notice to you;
 - (b) by email sent to the email address which you have provided to the Broker;
 - (c) by being left at the address which you have provided to the Broker; or
 - (d) by pre-paid letter to you at the address you provided to the Broker.
- 13.2 A Notice is regard as given to and received by you:
- (a) if given to the Broker or sent to your email address, on the Business Day after it is so given;
 - (b) if left at your address, at the time at the time that it is so left; and
 - (c) if sent by prepaid mail to your address, on the second Business Day following posting, regardless of whether or not you receive the Notice.
- 13.3 You must ensure that you have at all times provided to the Broker an accurate and up to date postal address and email address for you, and you agree that if you fail to do so, FinClear Services takes no responsibility for the non-delivery or delay in the delivery to you of any Notice, other document or other information or communication.

14. Miscellaneous

- 14.1 All duties or taxes (e.g. GST) applicable to this Agreement or applicable to services provided in accordance with this Agreement must be paid by you.
- 14.2 A provision of this Agreement or a right created under it may not be waived except in writing signed by the party or parties to be bound.
- 14.3 FinClear Services may set off any amount FinClear Services owes to you against any amount you owe to it or to any of FinClear Services' related bodies corporate.
- 14.4 You may set off any amount that you owe to FinClear Services against any amount that FinClear Services owes to you.
- 14.5 You are entitled to receive a copy of this Agreement executed by FinClear Services. By returning one copy signed by you, you instruct FinClear Services not to send to you a hard copy of this Agreement executed by FinClear Services. However, if you ask FinClear Services to, FinClear Services will provide you at any time with a hard copy executed by both parties.
- 14.6 This Agreement is governed by the laws for the time being in force in the State of New South Wales (NSW) and the parties to this Agreement submit to the non-exclusive jurisdiction of the Courts of NSW and Courts which may hear appeals from those Courts.

15. Definitions and Interpretation

- 15.1 Unless the context otherwise requires:

ASIC means the Australian Securities and Investments Commission.

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

ASX Clear means ASX Clear Pty Ltd ABN 48 001 314 503.

ASX Settlement means ASX Settlement Pty Ltd ABN 49 008 504 532 and its agents appointed under the ASX Settlement Rules.

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

Broker means the broker named in the Client Application Form that you have entered into an arrangement with for the execution of Market Transactions on your behalf.

Business Day has the meaning given to it in the ASX Settlement Rules. Generally it means any day other than a Saturday or Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day and a day that ASX declares is not a business day.

CHES stands for Clearing House Electronic Subregister System and has the meaning given to it in the ASX Settlement Rules. It is a system of registering financial products on computer.

CHES Subregister has the meaning given to it in the ASX Settlement Rules. Generally it means that part of a register of financial products that is administered by ASX Settlement.

Controlling Participant has the meaning given to it in the ASX Settlement Rules. Generally it means a person who has the capacity in CHES to transfer financial products in and out of a sponsored holding.

Conversion has the meaning given to it in the ASX Settlement Rules. Generally it means the movement of financial products from one holding on a subregister to another holding on another subregister without a change or legal ownership.

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

financial products has the meaning given to it in the ASX Settlement Rules.

FinClear Services means FinClear Services Pty Ltd ABN 60 136 184 962 AFSL 338264.

FOR Financial Products has the meaning given to it in the ASX Settlement Rules. Generally it refers to financial products which, because of legislation or a governing instrument, must not be owned beyond a specified limit by foreign persons.

Holder Record has the meaning given to it in the ASX Settlement Rules. Generally it means the details recorded by ASX Settlement in CHES for the purposes of operating one or more holdings.

Holder Record Lock has the meaning given to it in the ASX Settlement Rules. Generally it means the facility in CHES for preventing financial products from being deducted from a holding.

Holding has the meaning given to it in the ASX Settlement Rules. Generally it means a holding of financial products by a person.

Issuer has the meaning given to it in the ASX Settlement Rules. Generally it means the issuer of financial products.

Market Integrity Rules means the *ASIC Market Integrity Rules (Securities Markets) 2017* as amended from time to time.

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

Participant Sponsored Holder has the meaning given to it in the ASX Settlement Rules. Generally it is a person, such as you, whose Participant Sponsored Holding is sponsored on the CHES Subregister by FinClear Services or another Sponsoring Participant.

Participant Sponsored Holding has the meaning given to it in the ASX Settlement Rules. Generally it means a holding in CHES sponsored by a CHES participant such as FinClear Services.

Registration Details has the meaning given to it in the ASX Settlement Rules. Generally it refers to the client's name, address and a Residency Indicator.

Residency Indicator has the meaning given to it in the ASX Settlement Rules. Generally it refers to a code (being “D” for domestic, “F” for foreign” and “M” for mixed) used to indicate the status for the purposes of relevant legislation or a governing instrument of the ultimate beneficial owner of FOR Financial Products in a Holding in CHES.

Subposition has the meaning given to it in the ASX Settlement Rules. Generally it means an arrangement under which activity relating to the financial products may be restricted and access to the financial products given to a person other than your usual sponsor.

Transfer has the meaning given to it in the ASX Settlement Rules. Generally it means a transfer of financial products to or from a holding on CHES.

Withdrawal Instructions has the meaning given to it in the ASX Settlement Rules. Generally it means the instructions by a person which is sponsored on CHES for the withdrawal of financial products from the sponsored holding.

15.2 Other words and phrases to which a meaning is given in the ASX Settlement Rules or the Corporations Act have that meaning unless the context otherwise requires.

15.3 Certain definitions refer to the ASX Settlement Rules. You should read those rules for the full terms of the definitions. The definition may change from time to time if the ASX Settlement Rules are changed. You may view the ASX Settlement Rules online. Please contact FinClear Services or the Broker if you need any assistance in locating these rules online.

15.4 The singular includes the plural and vice versa.

15.5 A reference to a document (including the ASX Settlement Rules) or agreement includes any variation or replacement of it.

15.6 A reference to a law means common law, principles or equity, and laws made by parliament (including regulations and other instruments made under them and consolidations, amendments, re-enactments or replacement of any of them (and any thing includes the whole and each part of it.