

## APPENDIX A

### Client Terms & Conditions

By opening an account with Minc Financial Services Pty Ltd ("the Execution Participant") through Australian Stockbroking & Advisory Services Limited (ASASL) ("the Licensee") or placing orders to buy or sell Financial Products the client agrees to the following terms and conditions.

#### Account Opening

- 1 The client warrants that if the client is:
  - (a) more than one person or entity, each such person or entity shall be jointly and severally liable under the Terms;
  - (b) acting as a trustee, the client has authority to be bound by the Terms both personally and as trustee.
  - (c) a corporation, the client holds a valid A.C.N. or A.B.N under the Corporations Act and the principal place of business of the client is in Australia; or
  - (d) a natural person and 18 years of age or over.
- 2 The client undertakes to notify the Licensee immediately of any change to its identity, address or personal particulars and the client authorises the Licensee to convey such information to the Execution Participant and the CHESS Sponsor [and the Clearing Participant].
- 3 The client shall provide such information as is requested by the Licensee to open an account with the Execution Participant and shall provide such identification information as the Licensee in its sole discretion considers necessary.
- 4 The client warrants and represents that:
  - (a) the information the client supplies is accurate, complete and truthful;
  - (b) the client is constituted by no more than three persons;
  - (c) the client will be at all times in a position to meet all commitments on the part of the client arising from transactions under these Terms;
  - (d) the client is not a person with whom the Licensee or the Execution Participant is not lawfully entitled to deal pursuant to any statute, law, rule or regulation in or outside Australia; and
  - (e) the Nominated Account is an account in the client's name.

#### Dealing

##### **5 Licensee acts as Agent**

- 5.1 The client acknowledges that the Licensee acts as its agent and that the client acts as principal and not as agent for any other party.
- 5.2 The client acknowledges that it has the primary obligations with respect to all dealings on the Account.

##### **6 Customs Usages and Practices of ASX.**

- 6.1 The client acknowledges and agrees that all dealings in Financial Products and the performance of the Licensee and the Execution Participant [and the Clearing Participant] of their obligations under the Terms are subject to the customs, usages and practices of the ASX, the ASTC Rules, ASX Rules and the Corporations Act or any other financial market where any dealing in financial product takes place together with the terms and conditions set out in each confirmation issued in respect to each transaction, and the correction of errors and omissions.

##### **7 Non Advisory Accounts.**

- 7.1 A non advisory account is an account which the Licensee designates to be non advisory, and is intended to operate on an execution only (non advice) basis.
- 7.2 Clients who operate a non advisory T+0 account acknowledge that buy orders will only be accepted where sufficient Cleared Funds are available in the Account or Bank Account or Loan Account referred to in Clause 14 and that sell orders will only be accepted where adequate stock is registered on CHESS under the Sponsorship Agreement or with the Margin Lender.
- 7.3 Clients who operate a non advisory account acknowledge and agree that they rely on their own skill and judgment when placing an order through the Licensee with the Execution Participant, that they may not have completed an investor profile and that the Licensee and Execution Participant do not intend to or may be unable to identify their investment objectives, situation and needs and does not intend any advice to be provided or to be relied upon or warrant that such advice if provided is suitable for the client.

##### **8 Advisory Accounts**

- 8.1 Advisory accounts may be general or personal and advice provided in respect to each account shall be treated differently.
- 8.2 Personal advisory accounts shall only be opened by clients who have completed a client profile and submitted it to the Licensee, which shall be relied upon to identify the client's investment objectives, financial situation and particular needs.
- 8.3 Any advisory account which is opened without receipt of a completed client profile shall be a general advisory account and the parties agree that any advice provided in respect to that account by the Licensee shall be treated as general advice and it is acknowledged and agreed that such advice may not be suitable for the client's investment objectives, financial situation and particular needs.
- 8.4 The client acknowledges that the Licensee cannot identify their investment objectives, financial circumstances and particular needs in the absence of a completed client profile and agrees that it is the client's obligation to complete such profile and advise the Licensee if any of its contents change.
- 8.5 The client acknowledges and agrees that it is their responsibility to ensure that they complete and that the Licensee receives a current financial profile of their financial position in the event that they wish to receive personal advice.
- 8.6 The client acknowledges that the Execution Participant treats all Accounts as Non Advisory Accounts, and will rely on their own skill and judgment when placing an order through the Licensee with the Execution Participant, in accordance with clause 7.3 of the Terms.

## **9 Trading Generally**

- 9.1 The client may, or may instruct the Licensee to deal on behalf of the Account provided there are sufficient Cleared Funds or Cleared Financial Products in the Account (or, if a Loan Account, provided the Margin Lender authorises the sale or purchase of an amount of Margin Financial Products) and such amounts comply with the requirements set out in the Execution Participant's Website. The client also agrees that a Margin Lender may give the Licensee or the Execution Participant instructions to sell any Margin Financial Products and that any such instruction will be taken to have been given by the client for all purposes. The client may not amend or withdraw any such instruction by the Margin Lender.
- 9.2 All Financial Products trading transactions between the client and the Execution Participant are subject to the Corporations Act, the ASX Rules, the ASTC Rules, the customs and usages of the ASX and the ASTC and the terms and conditions set out in the confirmation issued by the Execution Participant and defined in ASX Market Rules 7.9.1(b)(i), (ii) and (iii), in relation to each transaction. The client also acknowledges that any confirmation is issued subject to the matters set out in those rules.
- 9.3 Each order instruction provided to, or through the Licensee to the Execution Participant, is given with the intention that it will be transmitted to the market for execution.
- 9.4 The client acknowledges that the Execution Participant and the Licensee do not accept short sale orders and the client will not give instructions which amount to short sales of financial products traded on ASX.
- 9.5 The client warrants that all orders placed and any trade conducted by it is lawful.
- 9.6 The Licensee and the Execution Participant reserve the right not to accept and/or to remove without notice any order that in its sole discretion considers may detract from an orderly market or which it believes is manipulative.
- 9.7 The client acknowledges that any order placed will remain open until cancelled by the client or by the Execution Participant in accordance with these Terms or purged by ASX.
- 9.8 The client acknowledges that the Licensee and the Execution Participant do not accept responsibility for reinstating lapsed orders or for contacting the client to seek new instructions.
- 9.9 The client acknowledges that any order received after the close of market will be treated as an order received on the next ASX Business Day.
- 9.10 The Client warrants that all trading transactions using the Clients' SRN between the Client, the Licensee and the Execution Agent are subject to these Terms, the Corporations Act, the ASX Rules, the customs and usages of the ASX and the ASTC and the terms and conditions set out in the confirmation issued by the Execution Agent, its agent or the Clearing Participant in relation to each transaction.
- 9.11 The Client may instruct the Licensee to deal on their behalf, provided that there are sufficient Issuer Sponsored Holdings registered against the Client's SRN and this is verified by the Licensee prior to the placement of an order.
- 9.12 The Client acknowledges, with respect to any order placed using the Client's SRN, that the client has not placed another order to sell the Issuer Sponsored Financial Products which are proposed to be sold by the Licensee and that the Client or the Licensee on the Client's behalf will not attempt to dispose of those Financial Products, or transfer them to a Broker Sponsored holding after the sell order has been placed using the Execution Participant.
- 9.13 The Client acknowledges that the Execution Participant does not guarantee that any order utilising financial products registered on the Client's SRN will be accepted and that any "Order Request Confirmation" given when you place the order does not constitute order acceptance. The Licensee will only place an order once confirmation has been received from the registry that the Client's details match the Registry's details and that the Client has sufficient Financial Products available to sell under the SRN provided.
- 9.14 The Client acknowledges that the Execution Participant accepts no responsibility for any delays that may occur in the Registry responding to enquiries related to orders involving financial products of the client registered on an SRN.
- 9.15 The Client acknowledges the Execution Participant does not guarantee the full execution of any order placed utilising the System.
- 9.16 Where the client is more than one person or entity, the client acknowledges that the Licensee and Execution Participant may act on the instructions of any one of the persons and may discharge any of their respective obligations to give a notice or document to the clients, by giving such notice or document to any of those clients.
- 9.17 The client acknowledges that the Execution Participant or Licensee may record any or all incoming and or outgoing calls without making a disclosure to you each time you speak to the Licensee or Execution Participant. These calls may be recorded without an audible tone.

## **10. Trading In Warrants**

- 10.1 This clause contains important acknowledgments that we are required to obtain from the Client before they submit any Order to deal in Warrants.
- 10.2 The Client acknowledges that
  - (a) :they have read and understood the relevant ASX Explanatory Booklets on Warrants (this can be obtained by accessing <http://www.asx.com.au/markets/pdf/Warrants.pdf>);
  - (b) a Warrant has a limited life and cannot be traded after its expiry date;
  - (c) Warrants do not have standardised terms of issue and that it is the Client's responsibility to become aware of the terms of issue of any Warrant in which the Client chooses to invest;
  - (d) Warrants may be subject to adjustments after their initial issue and that it is the Client's responsibility to become aware of any adjustments which may have been made to any Warrant in which they choose to invest;
  - (e) the admission by ASX of a Warrant to trading status does not imply that ASX or SEGC gives any guarantee or warranty as to the viability of the Warrant issuer or guarantor; and
  - (f) failure of the Warrant issuer or the guarantor (if applicable) to fulfill their obligations does not give rise to a claim against ASX, handling ASX market participants or SEGC.

## **11. Exchange Traded Options And Other ASX Derivatives**

- 11.1 This clause 11 contains provisions which, in addition to the other Terms, govern dealing in Exchange Traded Options and other ASX Derivatives. To the extent of any inconsistency between this clause 11 and the other Terms, in relation to dealings and instructions concerning Exchange Traded Options and other ASX Derivatives, this clause 11 prevails.

- 11.2 The Client acknowledges that they have read and understood the relevant ASX Explanatory Booklet on Options (this can be obtained by accessing the following site <http://www.asx.com.au/investor/options/booklets.htm>).
- 11.3 The Client acknowledges that they have read and understood the Execution Participant's Product Disclosure Statement in respect of Exchange Traded Options (this can be obtained by accessing the following site ([www.thinkminc.com.au](http://www.thinkminc.com.au)) and other applicable ASX Derivatives.
- 11.4 The Client agrees not to breach, either alone or in concert with others, the position or exercise limits referred to in an Explanatory Booklet or of which the Execution Participant or Licensee otherwise notifies the Client. The Client agrees to maintain cleared funds in their Bank Account for such sums as shall from time to time be required to settle their obligations. The Client acknowledges the Executing Participant's, the Licensee's, and the Clearing Participant's rights to close out any contract if the Client fails to pay the required margin or make the required payments as advised by the Executing Participant, the Licensee or the Clearing Participant.
- 11.5 The Client may from time to time instruct the Licensee to deal in ASX Derivatives. If the Client gives instructions to the Licensee to deal in ASX Derivatives in which the Licensee or Execution Participant is not authorised to deal under this clause, those instructions are taken to vary these Terms to authorise the Execution Participant or Licensee to deal in those ASX Derivatives under this clause.
- 11.6 Prior to placing an Order with the Licensee to deal in ASX Derivatives, the Client must have signed a client agreement with the Execution Participant's Clearing Participant.
- 11.7 The Client acknowledges that, subject to clause 11.8, immediately upon execution of a Transaction in ASX Derivatives by the Execution Participant on the Client's behalf, the Execution Participant's Clearing Participant (and not the Licensee) is obliged as principal and has the Clearing Obligations (as defined in section 12 of the ASX Market Rules) for that Transaction (including upon registration, obligations to ACH as principal even though the Transaction has been entered into by the Execution Participant on the Client's behalf.
- 11.8 The Client acknowledges that the Clearing Participant is obliged as principal and has the Clearing Obligations in respect of all transactions in relation to ASX Derivatives which are executed by the Execution Participant on the Client's behalf, unless, in relation to a specified Transaction or Transactions:
- (a) The Client has consented to the allocation of the Market Contract to another Clearing Participant;
  - (b) the Clearing Participant has consented to the allocation of the Market Contract to the other Clearing Participant;
  - (c) the Clearing Participant has provided that consent prior to the Market Contract being registered with ACH;
  - (d) the other Clearing Participant has accepted the allocation of those trades in accordance with the ACH Clearing Rules; and
  - (e) the other Clearing Participant has entered into a client agreement with the Client which complies with the ACH Clearing Rules.
- 11.9 For the purposes of clause 11.8(a), the Client authorises the Licensee to:
- (a) instruct the Execution Participant on the Client's behalf from time to time at its discretion, to allocate an ASX Derivatives contract to another Clearing Participant (**Second Clearing Participant**); and
  - (b) consents on the Client's behalf to the allocation of that relevant ASX Derivatives contract to a Second Clearing Participant, provided that, at the time the instruction and consent are given to the Clearing Participant by the Execution Participant, an agreement exists between the Client and the Second Clearing Participant which complies with the ACH Clearing Rules (and any other applicable rules or law) and sets out the terms of their relationship in relation to the clearing of transactions in ASX Derivatives.
- 11.10 The Client acknowledges that on execution of a Transaction in an ASX Derivative by the Execution Participant on the Client's behalf, the Client owes obligations to the Clearing Participant in relation to that ASX Derivative. Where the Client owes an obligation to deliver funds, security or information to the Clearing Participant that obligation will not be satisfied by delivery to the Licensee or the Execution Participant unless such information is provided to the Licensee or Execution Participant in sufficient time for them to convey such information to the Clearing Participant to satisfy the obligation.
- 11.11 The Client agrees that the Licensee may use, and disclose to the Execution Participant and the Clearing Participant, such information, any of the Client's Client Account details and information regarding Transactions (including transactions relating to ASX Derivatives or to the exercise of ASX Derivatives) for the purposes of these Terms, and for the purposes of the Clearing Participant monitoring compliance by the Client, the Licensee, the Execution Participant or the Clearing Participant with their regulatory and contractual obligations, and resolving disputes.
- 11.12 The Client will take all reasonable steps to deliver information or documentation to the Licensee, or cause information or documentation to be delivered to the Licensee, concerning Transactions which are requested by a person having a right to request such information or documentation. The Licensee and the Execution Participant are authorised to produce the information or documentation to the person making the request.
- 11.13 Upon termination of these Terms, the Clearing Participant will close out all ASX Derivatives contracts registered in the Client's Client Account with the Clearing Participant, unless, in accordance with a direction from the Licensee or the Execution Participant, the registration of those contracts is transferred to another Clearing Participant in accordance with the ACH Clearing Rules.
- 11.14 [see clause 28.1]The Client acknowledges that an order for a short options call will only be accepted once the Execution Participant's trading system has checked to ensure that sufficient stock is held in the account for lodgement to ACH.

## **12 Cancellation of trades**

12.1 The Client acknowledges that:

- a) Section 15 of the ASX Market Rules provides ASX with a range of powers including the power to cancel or amend an ASX Transaction. The Client agrees not to make, and releases the Licensee and the Execution Participant from any right the Client may have to make any Claim against the Licensee or the Execution Participant for any Loss incurred or suffered by the Client which may arise in connection with the exercise of any power by ASX pursuant to Section 15 of the ASX Rules (whether or not you have received a confirmation in respect of any affected ASX transaction).
- b) The Market Rules of ASX give ASX the power to cancel, amend or require the cancellation of amendment of Transactions. This

- power can be exercised without the clients' permission or agreement.
- c) Where a Transaction is cancelled in the circumstances described in this clause 12, there might be capital gains tax consequences for the client. In that regard you are advised that you should seek appropriate independent advice.
- 12.2 The Licensee and the Execution Participant reserve the right to cancel orders or ASX transactions pursuant to or as contemplated by ASX Rules, practices and procedures of the ASX and the relevant clearing house without the client's consent.
- 12.3 Without limiting Clause 12.1, the Licensee and the Execution Participant reserve the right to cancel orders or ASX transactions without the client's consent, in circumstances where:
- The order may detract from a fair and orderly market;
  - A cancellation request or direction is received from ASX, ACH or ASTC;
  - The financial product the subject of the ASX transaction has been the subject of a trading halt, and the client has not reconfirmed instructions;
  - It appears there is no change in beneficial ownership;
  - It appears that the order may manipulate the market for a particular financial product.
- 12.4 The obligations of all parties to the Terms in relation to the settlement of a transaction which is cancelled in accordance with this clause 12 cease to apply in respect of that transaction from the time it is cancelled (whether or not you have received a confirmation in relation to that transaction).
- 12.5 The client agrees to abide by these Terms and the ASX Rules (particularly section 15 of the ASX Market Rules) which enable ASX to deal with transaction errors, amendments and cancellations without the prior consent of the client. The client acknowledges that where the client does not agree to the cancellation of a transaction completed in error and the matter is referred to the ASX Dispute Governor's Committee, fees and charges may be payable and may be passed on to the client.

### **Execution, Clearing & Settlement**

## **13 Acknowledgements**

- 13.1 The client acknowledges that:
- It appoints the Licensee to arrange dealings on behalf of the client utilising the execution services of the Execution Participant.
  - The Licensee will be the Authorised Operator of the client.
  - It wishes to utilise the execution services of the Execution Participant and that the Execution Participant will arrange clearing and settlement via the CHES Sponsor or the Clearing Participant.
  - The Execution Participant utilises the third party clearing and settlement services of the Clearing Participant, in accordance with the attached "Disclosure Statement".
  - Notwithstanding that the Licensee and Execution Participant may be arranging dealings or clearing and settlement arrangements in relation to those dealings on behalf of the client, any confirmation arising from any order executed in the market, is entered into by the Execution Participant as principal.
  - The client will execute a Sponsorship Agreement with the CHES Sponsor, unless it has a Loan Account with a Margin Lender in relation to the Account.
  - Neither the Execution Participant or the Clearing Participant will provide the client with any legal, tax, financial or accounting advice or advice regarding the suitability or profitability of any Financial Product or investment and, to the extent permitted by law, will have no liability (including for any negligence) with respect to the transactions (including any diminution in value) in or for the client, the Account and the client's investment decisions;
  - The client has received a copy of the Licensee's (and any relevant authorised representatives), the Execution Participant's and the Clearing Participant's financial services guide and that these financial services guides may change without prior notice to the client. Upon any change to any party's financial services guide applicable to the client, a notification will be sent to the client of the changes made, a copy of which can be obtained from the Licensee website or Execution Participant's website, or upon request;
  - The client has read and understood the Licensee's, Execution Participant's and Clearing Participant's Privacy Policies available on their respective websites.
  - The Execution Participant and the Licensee do not operate discretionary accounts;
  - Where the client has elected to receive confirmation details by electronic means only, the client accepts that the conditions set out in ASX Market Rules 7.9.1(b)(i), (ii) and (iii) apply; and
  - Where the client provides the Licensee, the CHES Sponsor or the Execution Participant with Tax File Numbers, these numbers may be passed on to the provider of the Bank Account, the Execution Participant, the Clearing Participant and share registries with whom the client holds Financial Products;
  - The Execution Participant and the Licensee will make all reasonable attempts to effect any instructions of the client to amend or cancel a transaction however if a client order is filled or partially filled prior to the amendment or cancellation instructions are effected, the client is obliged to accept the transaction on the original terms. The client can only effect a cancellation on any part of the order which has not traded;
  - The Execution Participant or the Licensee may at its sole and absolute discretion close the Account or refuse instructions to purchase or sell Financial Products on behalf of the client or to amend or cancel any order or trade or generally prohibit or restrict the Licensee's ability to trade Financial Products in or from the Account without providing any reason for doing so. The Execution Participant will notify the Licensee and the client of any such refusal or Account closure as soon as is practicable;
  - Without limiting clause 13.1 n) the Licensee or the Execution Participant may refuse to accept instructions from the client to buy or sell Financial Products, even where the client has met the Account opening requirements set out in the Terms and on the Execution Participant's Website, and if the client has a Loan Account, the client has met the Margin Lender's requirements in relation to the margin loan facility; and
  - The client will be responsible and liable for any duplicate or second instruction placed.
- 13.2 The client acknowledges that certain orders at the Execution Participant's sole discretion may be subject to manual review and entry (and if the client has a Loan Account, approval by the Margin Lender) which may cause delays in the processing of the client orders. The client acknowledges that the order will be executed at the price available on the ASX (subject to any limit imposed by the client), which may be different from the price at which the Financial Product is trading when the client order was entered on to the Service. The client acknowledges that the Licensee may also review such orders prior to processing the orders using the Service and that such orders may be subject to the delays and price available at the time of order placement outlined herein.
- 13.3 The client acknowledges that the Execution Participant and the Licensee uses Automated Client Order Processing, which may involve the

matching of the client's order with an opposite order from another of its clients or with the Execution Participant or Licensee when it deals as principal. The client agrees that where a client order is matched with an opposite order from another of its clients, the Execution Participant or Licensee is entitled to charge brokerage to both parties to the transaction.

- 13.4 The client acknowledges and agrees to the Execution Participant accumulating and price averaging two or more orders executed by the Execution Participant into a single confirmation.

#### **14 Bank Account**

- 14.1 The client may complete an Application, to request the Execution Participant to open a Bank Account. The Execution Participant reserves the right to refuse or decline any Application in its absolute discretion.
- 14.2 The client acknowledges that the Execution Participant will open a Bank Account in the name of the client subject to these Terms and the client agrees that the Licensee, the Execution Participant and the Clearing Participant is entitled to be indemnified from the Bank Account in respect of any Claim or Loss suffered by the Licensee, the Execution Participant or the Clearing Participant as a result of any breach by the client of these Terms and the Licensee and the Execution Participant shall not be liable for any Loss suffered by the client as a result of the default of any financial institution or service provider in relation to or in connection with any transactions in respect of the Bank Account.
- 14.3 Unless transactions on the Account are to be settled by a Margin Lender, the client acknowledges that the Execution Participant will open a Bank Account, utilising the application instructions of the client subject to any discretion it wishes to exercise in accordance with Clause 14.1
- 14.4 The Execution Participant and the Clearing Participant will utilise the Bank Account for settlement of the client obligations on the Account. Payments in cash to the Execution Participant or Licensee are not permissible.
- 14.5 The client acknowledges that once funds in the Bank Account or Loan Account are allocated for use in connection with settlement obligations of the Account, the client is not entitled to withdraw those funds. Those funds are only able to be utilised by the Licensee, the Execution Participant and the Clearing and Settlement Participant as permitted by the Terms.
- 14.6 The client acknowledges that any dealings in ASX traded derivative products on the Account are subject to the terms contained in the Derivatives Client Agreement executed between the client and the Clearing Participant.

#### **15 Electronic Communications**

- 15.1 The client will be responsible for the confidentiality and use of any user ID, Log-on password, trading password and telephone password provided to them, and agrees that they will not disclose these to any other person.
- 15.2 The client agrees not to contest the validity or enforceability of Electronic Communications between the client and the Licensee or the Execution Participant in any legal proceedings between the parties and also irrevocably waives any right to raise any defence or waiver of liability based upon the absence of a memorandum in writing or of a failure of execution.
- 15.3 The Licensee may maintain a transaction log consisting of a copy of all instructions received from the client by Electronic Communications. In the event of a dispute, the log will be conclusive evidence of the details of the communications contained in it except in the case of a manifest error. To the extent permitted by law (including for any negligence) the Execution Participant and the Licensee are not liable for any Loss incurred by the client as a result, directly or indirectly, of any inaccuracies or lack of timeliness in the information appearing on the log.
- 15.4 The client must re-transmit any instruction to place an order contained in an Electronic Communication if the functional acknowledgment received indicates a malfunction or the Licensee or Execution Participant notifies the client that the message was received in an incomplete or garbled form.
- 15.5 The client is responsible for establishing their own agreements with third party networks (including without limitation Internet service providers) involved in the transmission of Electronic Communications initiated by the Client to the Licensee or the Execution Participant including any connect time or other charges of those third parties.
- 15.6 Neither party is liable to the other for any Loss suffered by the other party due to a force majeure event.

#### **16 Payments**

- 16.1 The client agrees to pay to the Clearing Participant brokerage, commission, taxes and duties and other fees notified to the client from time to time and as they apply to all matters relating to the Application, the Account, the Bank Account and transactions on behalf of the client and services provided to the client. The client acknowledges that the Execution Participant is entitled to require the payment of different amounts of charges and expenses from its clients for the same services and may provide only some services to a select group or class of its clients from time to time in its sole and absolute discretion.
- 16.2 The client irrevocably authorises the Clearing Participant to deduct all amounts in respect of purchase orders, brokerage, commission, fees, taxes and duties from Cleared Funds in the Account or in the Bank Account (or, if the client has a Loan Account, to direct the Margin Lender to draw on the client's loan facility with the Margin Lender and remit such amounts to the Clearing Participant) as required for settlements or otherwise required by the ASX and ASTC including brokerage (if any) payable to the Licensee and agree to reimburse to the Clearing Participant upon request all amounts in respect of purchase orders, brokerage, commission, fees, taxes and duties or any other charges levied or imposed in relation to each transaction which remain unpaid.
- 16.3 The client acknowledges that, if it fails to pay any amount which it is required to pay to the Clearing Participant, the Clearing Participant may require the Execution Participant to reimburse the Clearing Participant for that amount. The client authorises the Licensee in its own right and as agent of the client (by way of instructing the Execution Participant) to appropriate, transfer, credit, apply or pay monies that may be received or held by the client or on the client's behalf in payment of amounts that may be outstanding by the client to the Licensee (including, without limitation, where the Licensee has paid an amount to the Execution Participant on behalf of the client) or to the Execution Participant.
- 16.4 The Clearing Participant, Execution Participant and the Licensee may appropriate any payments, credits or other sums of money received by the client or on behalf of the client in reduction of any amounts owing by the client to the Clearing or Execution Participant or by the client to the Licensee or otherwise (including for buy orders placed by the client), whether on the Account or any other account, and may apply monies held in the Bank Account to discharge any liability arising under the Terms, and may instruct the Banker to transfer monies from the Bank Account (or if the client has a Loan Account, may instruct the Margin Lender to transfer monies from the Loan Account) to the Clearing Participant for that purpose.
- 16.5 The Clearing Participant, Execution Participant or the Licensee may charge interest on any debit balances in the Account and any other amounts outstanding by the client to the Clearing Participant or the Licensee as disclosed to the client from time to time.
- 16.6 The client may not close any Account without the Clearing Participant first receiving all Financial Products which the Account is liable to deliver for sale and all funds to pay in full for all Financial Products which have been purchased on the Account, including all amounts payable to the Clearing Participant, Execution Participant or the Licensee.

- 16.7 All client property other than Financial Products in which the client has an interest or which at any time are in the possession or control of the Licensee, the CHES Sponsor or the Execution Participant, shall, subject to the ASX and ASTC Rules, be subject to a lien for the discharge of any and all indebtedness or any other obligation that the client may have to the Execution Participant, the CHES Sponsor or the Licensee. The client must pay the Clearing Participant, Execution Participant or the Licensee the costs and expenses of collection of any such indebtedness or debit balance, including but not limited to, legal costs and disbursements.
- 16.8 Subject to the ASTC Rules, the client authorises the Execution Participant or the Licensee to sell Cleared Financial Products, as necessary to meet any unpaid debt the client owes the Clearing Participant, Execution Participant or the Licensee.
- 16.9 All amounts owing to the client will be paid directly to the client Bank Account or Loan Account as detailed on the Application Form, and not to any third party.

#### **17 Settlement**

- 17.1 Where the client instructs the Licensee to buy Financial Products, the client agrees to pay and authorise payment for those Financial Products to be deducted from the Available Funds prior to settlement. The Clearing and Settlement Participant is not obliged to transfer Financial Products to the client where payment for those Financial Products has not been received and, until payment of all amounts outstanding from the client to the Clearing Participant, (including amounts referred to in clause 16.3 which the Licensee has paid on behalf of the client) or the Execution Participant is made in full.
- 17.2 Where a contract for the purchase of Financial Products remains unpaid, after the Licensee or the Execution Participant has requested the client to pay for the Financial Products, the Licensee or the Execution Participant may sell those Financial Products that are the subject of that contract at the risk and expense of the client and that expense shall include all Loss suffered by the Licensee or the Execution Participant including brokerage, and any relevant fees and duties.
- 17.3 If the Execution Participant makes a sale of any Financial Products at the direction of the client, and the client has failed to deliver those Financial Products, then the Execution Participant or the Licensee are authorised:
- to borrow or otherwise obtain the Financial Products necessary to enable the Execution Participant to make delivery, and the client agrees to be responsible for any Loss the Execution Participant or the Licensee may incur, including the cost of borrowing and/or obtaining the Financial Products and/or other property. The client agrees that the Execution Participant and the Licensee are the client's agents to complete all such transactions and is authorised to make advances and expend monies as required
  - to automatically close-out any delivery shortfall of the client by purchasing or borrowing the financial products the subject of the shortfall no later than on the fifth ASX settlement date after the execution of the transaction. .

#### **18 Late & Corrected Reports**

- 18.1 The client understands that the Execution Participant from time to time receives late reports reporting the status of transactions. Accordingly, the client will be subject to late reports relating to orders that were previously unreported to the client or reported to the client as being expired, cancelled, or executed. In addition, any reporting or posting errors, including in execution prices, will be corrected to reflect what actually occurred in the marketplace.

#### **19 Confirmations, Account Statements, Notices & Other Communications**

- 19.1 It is the responsibility of the client to review upon first receipt, whether delivered to the client by mail, Electronic Communication or otherwise all confirmations of transactions and all statements in relation to the Account. Transactions and all such information received by the client shall be binding upon the client, if the client does not object, either in writing or by Electronic Communication, within 48 hours after the confirmation or information is first served. In all cases, the Execution Participant reserves the right to determine the validity of client objections to the transaction or to the information contained in such statements.
- 19.2 If no objections are received from the client within 48 hours of service of a confirmation(s) and in the absence of manifest error, :
- the contents of the confirmation will be deemed to be prima facie evidence of the truth of its contents;
  - the transactions will be deemed to have been executed in accordance with the clients' instructions; and
  - the client will be deemed to have accepted and ratified the contents.
- 19.3 Any notice, request, demand or other communication may be made personally, by Electronic Communication or by prepaid letter to the client at the client's last notified address or number, as the case may be, and the notice, request, demand or other communication shall be deemed to have been received by the client if made personally when made, if made by Electronic Communication when there is confirmation of receipt by whatever means, or if made by prepaid letter on the Business Day following transmittal or posting as the case may be.

#### **General**

##### **20 Anti-Terrorism / Money Laundering**

- 20.1 The client acknowledges that the Licensee, the Execution Participant and the Clearing Participant are subject to various anti-money laundering and counter-terrorism financing laws (AML/CTF Laws) which may prohibit each of them from offering services or entering into or conducting transactions. The client agrees that the Licensee and the Execution Participant are not required to take any action or perform any obligation under or in connection with this document if they are not satisfied as to the identity of the client or where they suspect on reasonable grounds that by doing so they may breach the AML/CTF Laws.
- 20.2 The client acknowledges that the AML/CTF Laws include prohibitions against any person dealing with the proceeds of or assets used in criminal activity (wherever committed) and from dealing with any funds or assets of, or the provision of finance to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act.
- 20.3 The client agrees that the Execution Participant, the Licensee or the Clearing Participant or any of their agents may delay, block or refuse to make any payment or to provide any service if they believe on reasonable grounds that to do so may breach any law in Australia or any other country, and will incur no liability to the client as a consequence.
- 20.4 The client agree to provide all information and documents which are reasonably required to comply with any law in Australia or any other country, including any AML/CTF Laws. The client agrees that the Licensee, the Execution Broker or the Clearing Participant may disclose such information and documents or information about transactions the client conducts or seeks to conduct with them, if required to do so by any law in Australia or any other country.
- 20.5 The client represents and warrants to the Execution Participant and the Licensee that the payment of monies to the client in accordance with this document, or any instructions given by the client, will not breach any law in Australia or any other country.
- 20.6 The client acknowledges that for the purposes of the AML/CTF Laws the Licensee and the Execution Participant, together with Techinvest Pty Limited, form a "designated business group" as that term is used in the AML/CTF laws. As a result these companies may exchange information about the Client with each other for the purposes of the AML/CTF Laws.

##### **21 Commission Disclosure**

- 21.1 The client agrees that each of the Licensee, the CHES Sponsor, the Clearing Participant and the Execution Participant may receive

commissions from suppliers of information services, banking services and clearing services in respect to the services provided under this agreement to the client from time to time and that each or either of them is entitled to retain such commissions for its own benefit.

## **22 Information**

- 22.1 The client expressly authorises the Licensee, the Execution Participant or the Clearing Participant or any of their agents to obtain reports concerning the client's credit standing and business conduct from credit reference agencies or other sources and authorise the reporting of the client's credit standing and business conduct to those agencies. The client authorises the use and disclosure of information provided by the client to the Licensee and/or the Execution Participant, the Clearing Participant and CHES Sponsor to the extent required by law or any regulatory authority, to comply with these Terms and in any case where the client gives consent.
- 22.2 The client may not download or reproduce any material on the Execution Participant's or Licensee's websites or any material accessed through the Execution Participant's or Licensee's websites other than material which is intended to be downloaded by clients for personal use without the express written consent of the Execution Participant or Licensee as appropriate.
- 22.3 Without limiting Clause 22.2, the client may not use any of the information in the Company Profile service for the purpose of on-selling and may not replicate any of the data or information for any other person or company without the express written permission of the Service Provider. Such permission will not be unreasonably withheld however a fee will be payable for such purpose.

## **23 Fees & Charges**

- 23.1 The client agrees to pay to the Licensee and the Execution Participant on demand all fees, charges and amounts which may have been incurred in consequence of the client's instructions or by reason of the client's default under these Terms, the ASX Rules, the ASTC Rules or the Corporations Act including but not limited to interest on amounts outstanding as determined by the Licensee in its sole discretion or brokerage at the overdraft rate applicable to the facilities which the Execution Participant has with its bankers in the event of any late settlements or payment.

## **24 General Lien**

- 24.1 Subject to the ASX Rules and ASTC Rules the client agrees and acknowledges the Execution Participant's and the Licensee's right to exercise a lien over all property within its possession or control or in the possession and control of its settlement and clearing agent in the event of non or late payment by the client.

## **25 Indemnity & Disclaimer**

- 25.1 The client agrees to indemnify the Licensee and the Execution Participant, their employees, contractors and agents to the maximum extent possible at law in respect of all Loss arising in any way whether directly or indirectly from the client's conduct, instructions, orders, default or acquiescence (including any amount payable by the Execution Participant to the Licensee as described in clause 16.3) and acknowledges that, to the maximum extent permitted by law, the Licensee and the Execution Participant accept no liability for any Loss of any kind for any act it lawfully completes or for any loss resulting from delay disadvantage or misinterpretation of instructions or which may arise from the malfunction or disruption of any system or service upon which it relies.

## **26 Liability And Indemnity**

- 26.1 Subject to those provisions of the Trade Practices Act, the Corporations Act, the Australian Securities & Investments Commission Act, and any other rights implied by law, which cannot be excluded by agreement between the parties:
- (a) The Licensee and the Execution Participant make no warranties, either express or implied, as to merchantability, fitness for a particular purpose or otherwise (including as to accuracy, currency, availability, completeness of quality) with respect to the goods and services supplied under these Terms, including the Service and the services provided to the client by the Service Providers;
- (b) The Licensee and the Execution Participant exclude all liability in contract, tort (including negligence) or otherwise relating to or resulting from use of the Service and for any Loss incurred by the client 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 the client under the Terms including the Service and the service provided to the client by the Service Providers;
- (ii) any delays or failures or inaccuracies in the transmission of the Service to the client or service provided to the client by Service Providers, transmission of client orders or instructions or any other communications;
- (iii) any misinterpretation of client orders or instructions which are unclear, ambiguous, incomplete or not specific;
- (iv) any delay, fault, failure in or loss of access to the Service or service provided to the client by the Service Providers or the Licensee;
- (v) government restriction, exchange or market rulings, suspension of trading, computer or telephone failure, unlawful access to the Service or the service provided to the client by the Service Providers, theft, sabotage, war, earthquakes, strikes, force majeure and without limitation, any other conditions beyond the Licensee's and the Execution Participant's control;
- (vi) any errors or omissions received in a CHES or issuer holding report from the Chess Sponsor or a registry or an approved Margin Lending facility.
- (c) in no event shall the Licensee or the Execution Participant be liable in contract, tort (including negligence) or otherwise for any loss of prospective profits, or expenses or special, indirect or consequential damages resulting from use of the goods or services supplied under these Terms, including the Service;
- (d) The Licensee and the Execution Participant's liability shall in any event be 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.
- 26.2 The client acknowledges that the ASX, other participating exchanges and Service Providers may assert proprietary interests in the information provided to the client from use of the Service and that neither the ASX, other participating exchanges nor the Service Providers guarantee the timeliness, sequence, accuracy or completeness of the information provided to the client from use of the Service.
- 26.3 The client agrees to indemnify and keep indemnified the Licensee, the Execution Participant and all of their officers, employees, agents, related parties and associates against any Loss incurred by them as a result of client use of the Service, the Licensee or Execution Participant relying upon and acting in accordance with any notice, demand or instruction contained in an Electronic Communication or otherwise received by the Execution Participant on behalf of the client by the Licensee or any failure by the client to strictly comply with these Terms.
- 26.4 The client acknowledges that:
- a) As the Licensee [is this correct?] and the Execution Participant are both Market Participants of ASX, the client may make a claim on the National Guarantee Fund in the circumstances specified under Part 7.5 Division 4 of the Corporations Act (for more

information on the circumstances or for information on the NGF generally, contact the Securities Exchange Guarantee Corporation Pty Ltd ("SEGC"); and

- b) The Bank Account into which funds are placed to enable trading using the Service does not constitute a trust account of the Licensee or the Execution Participant and that any deficiency or shortfall of moneys in the Bank Account is unlikely to be the subject of a claim upon the National Guarantee Fund pursuant to Part 7.5 Division 4 of the Corporations Act.

## **27 Severability**

- 27.1 If any provision of these Terms is held to be invalid, void or unenforceable by reason of any law, rule, administrative order or judicial decision, that determination shall not effect the validity of the remaining provisions of these Terms.

## **28 Variation And Termination**

- 28.1 If ASX prescribes amended minimum terms for a client agreement for the purposes of the ASX Rules (the "New Terms"), to the extent of any inconsistency between these minimum terms and the New Terms, the New Terms will prevail and apply as if the client as the Terms. The Licensee will provide a copy of the New Terms to the Client as soon as practicable after the ASX prescribes the New Terms.
- 28.2 The Execution Participant or the Licensee reserves the right to vary the Terms at any time and may vary the Terms or the terms of the Service by giving the client not less than 5 Business Days notice of the variation, in writing or by Electronic Communication.
- 28.3 The Execution Participant or the Licensee may make a variation without prior notice where such variation is necessary to restore or maintain the security of its systems or any accounts or to comply with any regulatory requirement.
- 28.4 This agreement may be terminated by giving the client not less than 5 Business Days notice of the termination, in writing or by Electronic Communication. Termination does not affect outstanding obligations under these Terms which are undischarged at the time of termination.
- 28.5 Each indemnity in these Terms survives termination of this agreement.

## **29 Privacy**

- 29.1 The Licensee and the Execution Participant advise that they collect information about the client in order to act on the client's behalf, each as the holder of an Australian Financial Services Licence. Without this information they, each as a holder of an Australian Financial Services Licence, may not be able to act on behalf of the client and process and complete any transactions that they effect for the client. The Licensee and the Execution Participant advise they may:
- (a) use and disclose client information in relation to their internal administration and operations;
  - (b) disclose client information to debt collectors, credit reporting agencies, contractors, service providers, parties authorised and/or required by law to collect client information, and each other as disclosed by the Application or otherwise as disclosed by the client in writing.
  - (c) use client information to maintain their relationship with the client (and each other as disclosed by the Application or otherwise as disclosed by the client in writing); and/or
  - (d) use client information for compliance with relevant legislation and regulations; in particular the AML/CTF Law – refer to clause 20.
- 29.2 The client may request access to information about the client that the Execution Participant or the Licensee has collected and retained. Access will be granted in accordance with the Privacy Act 1988 (Cth) and they may charge a reasonable fee for such access. If any client information is inaccurate, the client may request that it be corrected.
- 29.3 If the client is a company, and the client has provided personal information of an officer or employee of the client to us in respect of the Account, the client must show this disclosure statement to its officer or employee.

## **30 Complaints**

- 30.1 The client has the right to have any complaints in relation to their dealings with the Licensee, the Execution Participant or Clearing Participant (including the CHESSE Sponsor), considered in a timely manner. If the client has any complaint about the service provided, the client should take the following steps:
- (a) Contact the Licensee in the first instance on (02) 8116 9600 and tell the Licensee about the complaint.
  - (b) If the complaint is not satisfactorily resolved, please forward the complaint in writing to the Compliance Officer at the Licensee, in accordance with the instructions of the Financial Services Guide of the Licensee or the Execution Participant.
  - (c) In the unlikely event that the complaint remains unresolved, these complaints may be forwarded to the Financial Ombudsman Service or another dispute resolution scheme subscribed by the Execution Participant and Licensee from time to time.

## **31 Parties to the agreement**

The client, the Licensee and the Execution Participant are each parties to the agreement constituted by these Terms and each may enforce any rights it has under these Terms against any other party.

## **32 Definitions And Interpretation**

- 32.1 In these terms and conditions:
- Account means the client's trading account with the Execution Participant.
  - **ACH** means the Australian Clearing House Limited (ABN 48 001 314 503).
  - ACH Clearing Rules means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ACH, as amended from time to time.
  - Application means an offer by the client to open an Account and access the Service on the Terms.
  - Application Form means the document that you must sign if you would like a client account to be opened for you.
  - Authorised Operator means the Licensee or any other person (if any) described as the authorised agent of the client in the Application Form or another person notified by the Client to the Execution Participant in writing.
  - ASX means the Australian Securities Exchange or ASX Limited, ACN 008 624 691 as the context requires.
  - ASX Derivative means a derivative product made available for trading by ASX and includes Exchange Traded Options, share rations, contracts for difference, low exercise price options, or any other derivative product able to be traded on ASX.
  - ASX Rules means the ASX Market Rules, the Australian Clearing House Pty Ltd ACN 003 435 014 ("ACH") Clearing Rules and the ASX Settlement and Transfer Corporation Pty Ltd ACN 008 504 532 ("ASTC") Settlement Rules as amended from time to time.
  - ASTC Rules means the Settlement Rules of the Securities Clearing House operated by ATSC or ACH as amended from time to time.
  - Automated Client Order Processing has the meaning given to that term in the ASX Rules from time to time.

- Available Funds means, in connection with a Loan Account, funds which the Margin Lender has agreed to make available to settle the purchase of Financial Products, and in connection with a Bank Account, Cleared Funds.
- Bank Account means the bank account opened by the client as account holder and beneficiary as part of the Application and administered by the Execution Participant.
- Business Day means any day which is not a weekend or gazetted public holiday in New South Wales.
- Banker means the financial institution with which the Execution Participant facilitates the opening of a Bank Account on behalf of the account holder.
- CHES Sponsor means Berndale Securities Ltd (ABN 63 006 687 467, Australian Financial Services Licence No 235149), who has entered into a Sponsorship Agreement with the client unless the client has a Loan Account with a Margin Lender.
- Cleared Funds means funds available in the Account for the purposes of trading (which always must comply with the requirements set out in the Execution Participant's website and include brokerage, fees, taxes (including goods and services tax), and all other expenses payable) being the sum of funds in the Bank Account plus funds receivable from unsettled sales minus funds needed to pay for unsettled purchases and minus calculated amounts required to meet open purchase orders and minus funds needed to pay for any withdrawals and any uncleared deposits.
- Cleared Financial Products means the client's Holding of Financial Products in the Account in respect of which the Execution Participant is the Participant under the Sponsorship Agreement or Financial Products in respect of which the Execution Participant in its absolute and sole discretion recognises the client as the holder and in respect of which it will become the Participant under the Sponsorship Agreement. It does not include any Margin Financial Products unless the Licensee or the Execution Participant determines otherwise.
- Clearing Participant means Berndale Securities Ltd (ABN 63 006 687 467, Australian Financial Services Licence No 235149)
- Clearing and Settlement Participant means the CHES Sponsor
- Client means the person or persons described as the client in the Application Form.
- Electronic Communication means any notice, instruction, demand or other communication by telephone, facsimile transmission, electronic mail or electronic data interchange (including over the World Wide Web).
- Exchange Traded Option means an exchange traded option that is able to be traded on ASX.
- Execution Participant means Minc Financial Services Pty Ltd (ABN 24 126 999 433, Australian Financial Services Licence No. 317201).
- Execution Participant's Website means website located at [www.thinkminc.com.au](http://www.thinkminc.com.au) or such other location as the Execution Participant nominates from time to time.
- Financial Products means financial products (as defined in the Corporations Act 2001 (Cth)) traded on ASX and any other exchange notified to you by the Execution Participant from time to time, and interests in an unlisted managed investment scheme, contracts for difference and other derivatives which are not traded on the ASX or any other exchange; or any other financial product (as defined in the Corporations Act 2001 (Cth)) notified to you by the Execution Participant or Licensee from time to time.
- Licensee means Australian Stockbroking & Advisory Services Limited (ABN 86 094 106 751, Australian Financial Services Licence No. 294097).
- Licensee's Website means website located at [www.asandas.com.au](http://www.asandas.com.au) or such other location as the Licensee nominates from time to time.
- Loan Account means the account the Margin Lender establishes in the client's name, recording all drawings and payments under its margin lending facility with the client. The Loan Account is not a Linked Account or the Account or the Bank Account.
- Loan Portfolio means the Financial Products that are mortgaged, charged or otherwise secured in relation to the margin loan facility with the Margin Lender.
- Loss or Claim includes without limitation any expense, costs, liability, claims, damages, fees, taxes, duties, penalties, interest, legal costs (on a full indemnity basis), judgment, consequential, special or indirect loss or loss of prospective profits.
- Margin Lender means a provider of loan funds to enable approved Execution Participant's clients to purchase or sell Financial Products under a margin lending agreement which is acceptable to the Execution Participant.
- Margin Financial Products means Financial Products which are or are intended to be part of the client's loan portfolio with the Margin Lender
- Nominated Account means an account at a bank or financial institution nominated by the client which has been established in a name which includes the client's name.
- Order means any order placed by the client with the Execution Participant to purchase or sell or otherwise deal with Financial Products.
- SEGC means Securities Exchanges Guarantee Corporation Limited ABN 19 008 626 793
- Service means the client trading and information service provided by the Execution Participant which includes the Execution Participant's Internet online and telephone services.
- Service Providers means suppliers of information related to the Service, by persons not controlled by the Execution Participant
- Sponsorship Agreement means the CHES sponsorship agreement entered into between the client and the CHES Sponsor.
- SRN means Security Reference Number issued by a financial product issuer to a shareholder of the issuer.
- Terms means the terms and conditions of the Licensee and set out herein as amended from time to time together with the Terms of Berndale Securities Ltd, as referred to in the Application Form.
- Warrant means a warrant which is able to be traded on the ASX

32.2 Headings are for reference only and do not in any way affect the meaning of the Terms. Words expressed in one gender include all genders. The singular includes the plural and vice versa. Unless the context requires otherwise, words defined in the Corporations Act and the ASX Rules have the same meaning in these Terms.