



MACQUARIE

# Macquarie Online Trading

## Information, Trading & Settlement Services Agreement

Macquarie Online Trading is a service provided by Third Party Platform Pty Ltd ("TPP") ABN 74 121 227 905 AFSL No. 314341, at the request of Macquarie Bank Limited ABN 46 008 583 542 AFSL 237502 ("MBL"). TPP is a Participant of the ASX Group. Neither TPP nor MBL are representatives of each other. Some of the fees paid to TPP for the provision of its services will be remitted to MBL. TPP and MBL do not provide personal financial advice in relation to Macquarie Online Trading.

**7 MARCH 2016**





# Third party agreement

This agreement is made on:  /  /  ("Commencement Date")

## BETWEEN

THIRD PARTY PLATFORM PTY LTD (ACN 121 227 905) of Level 29, 101 Collins Street Melbourne VIC 3000 ("TPP")

And for the purpose of Section 19 of this agreement, the other Party ("the Licensee")

Licensee name

AFSL No.

## Address

Street name and number

Suburb

State  Postcode  Country (if not Australia)

Email Address

Contact name  Telephone

## Company bank details

This section is only applicable if you hold an AFSL or are eligible to receive payments or are to be charged for services.

TPP will make any applicable payments or debits to the account listed here in relation to Section 10 and Section 1 of this agreement.

Is the Company registering to receive payments or be charged for services?  Yes  No

Account Name

BSB number  -  Account number

MANDATORY:  Please return ALL pages in this agreement including Schedules 1-4.

Please provide a copy of your Professional Indemnity Insurance Certificate of Currency.

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# RECITALS

- A.** Macquarie Online Trading is a service provided by Third Party Platform Pty Ltd (“TPP”) ABN 74 121 227 905 AFSL No. 314341, at the request of Macquarie Bank Limited ABN 46 008 583 542 AFSL 237502 (“Macquarie”). Neither TPP nor Macquarie are representatives of each other. Some of the fees paid to TPP for the provision of its services may be remitted to Macquarie. TPP and Macquarie do not provide personal financial advice in relation to Macquarie Online Trading.
- B.** TPP is a Participant of the ASX and via its platform (“**Macquarie Online Trading Platform**”) provides (by all usual channels including but not limited to telephone and the internet), information, trading and settlement services with respect to trading conducted on the ASX Market.
- C.** The Licensee provides financial advisory services to its clients and wishes to have access to the Macquarie Online Trading Platform so that it can arrange for its clients to receive and it can receive itself information, trading and settlement services from TPP. The Licensee holds an Australian Financial Services Licence or is an Authorised Representative of an Australian Financial Services Licensee.
- D.** This agreement sets out the basis upon which TPP will allow the Licensee and its Representatives to have access to the Macquarie Online Trading Platform and the basis upon which TPP will provide information, trading and settlement services to the Licensee and to its clients via the Macquarie Online Trading Platform.

## THE PARTIES AGREE AS FOLLOWS

### 1. DEFINITIONS

1.1 In this agreement:

**Account Opening Form** means the form completed by the Client or on the Client’s behalf and signed by the client agreeing to become a client of TPP.

**Account Opening Process** means the process, as notified to the Licensee from time to time, by which Macquarie Online Trading opens an account on behalf of a Client and thereby creates a Broker/Client relationship between TPP and the Client.

**AML Procedures** means the procedures that relate to compliance by TPP with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 conducted by or on behalf of TPP in conjunction with the Account Opening Process.

**Ancillary services** the services specified in Schedule 1 to this agreement.

**ASIC** means the Australian Securities & Investments Commission.

**ASIC Market Integrity Rules** means the ASIC/ASX Market Integrity Rules applying to trading on the ASX and all procedures, directions, decisions, requirements of ASIC, as amended from time to time.

**ASX** means ASX Limited ABN 98 008 624 691 or the stock market conducted by ASX Limited, as the context requires.

**ASX Operating Rules** means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of the ASX as amended from time to time.

**ASX Settlement** means ASX Settlement Pty Limited ABN 49 008 504 532 or another settlement facility approved to settle securities and other financial product transactions on markets operated by the ASX.

**ASX Settlement Rules** means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX Settlement as amended from time to time.

**AUSTRAC** means the Australian Transaction Reports and Analysis Centre

**Authorised Representative** has the meaning set out in section 761A of the *Corporations Act*.

**Broker/Client Relationship** means the regulated relationship between the Client and Macquarie Online Trading pursuant to which Macquarie Online Trading will provide information, trading, settlement services and the Ancillary Services to the Client.

**Business day** means a day other than a Saturday, Sunday, New Year’s Day, Good Friday, Easter Monday, Christmas Day, Boxing Day; and any other day which ASX notifies Market Participants is not a Business Day.

**Buy Order** means an order placed via the Macquarie Online Trading Platform on behalf of a Client to purchase a Financial Product.

**Claim** means a claim, demand or action for loss, expenses, damages or other remedy.

**Client** means a person who the Licensee arranges to receive information, trading and settlement services and/or the Ancillary Services and/or the Portfolio Services provided by TPP and who completes an Account Opening Form. For the avoidance of doubt the Licensee will also be a Client for the purposes of this agreement where it places an Order or gives TPP instructions on its own behalf.

**Client Claim** means a claim, demand or action for loss, expenses, damages or other remedy against a party to this agreement made by a Client.

**Client Complaint** means any expression of dissatisfaction made by a Client or made on a Client’s behalf and whether made in written or oral form that concerns any aspect of the operation of the Macquarie Online Trading Platform or the Services provided by TPP to the Client.

**Client Data** means all information received by TPP relating to a Client or a potential Client including personal information, trading activities, accounts and other transactions and affairs and including any data derived from such data.

**Commencement Date** means the date this agreement is made on.

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

**Financial Product** means a financial product as that concept is defined in the Corporations Act that is traded on the ASX or through the Managed Fund Settlement Service and in which TPP deals.

**GST** means the goods and services tax payable pursuant to the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999.

**Insolvency Event** in relation to a party means the happening of any of these events:

- (a) an application is made to a court for an order or an order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days) that the party be wound up; or
- (b) an application is made to a court for an order appointing a receiver, receiver and manager, liquidator or provisional liquidator in respect of the party, or one of them is appointed, whether or not under an order (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days); or
- (c) except to reconstruct or amalgamate while solvent on terms approved by each of the other parties, the party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (d) the party resolves to wind itself up, or otherwise dissolves itself, or gives notice of intention to do so, except to reconstruct or amalgamate on terms approved by each of the other parties or is otherwise wound up or dissolved; or
- (e) the party is or states that it is unable to pay its debts when they fall due; or
- (f) as a result of the operation of section 459F(1) of the Corporations Act, the party is taken to have failed to comply with a statutory demand; or
- (g) the party is or makes a statement from which it may be reasonably deduced by any of the other parties that the first-mentioned party is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.

**Macquarie** means Macquarie Bank Limited ABN 46 008 583 542 AFSL Number 237 502.

**Macquarie Group Member** means Macquarie and each of its related bodies corporate (within the meaning of section 50 of the Corporations Act).

**Macquarie IP** means:

- (a) trade marks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark;
- (b) copyright (including copyright in software, websites, databases and advertising and other promotional materials);
- (c) all rights to have information (including trade secrets, know-how, operating procedures and technical information) kept confidential; and
- (d) all other rights or protections having similar effect anywhere in the world, owned by or licensed to a Macquarie Group Member or in which a Macquarie Group Member otherwise has an interest in.

**Managed Fund Settlement Service** means the settlement service called mFund provided by ASX Settlement in respect of mFund Products.

**mFund Products** means units in unlisted managed funds that are approved financial products, bought and sold through the Managed Fund Settlement Service from the relevant product issuer. These units are not traded on an open market or an exchange and cannot be sold between investors.

**Order** means an instruction given by the Licensee or its Representative to TPP to execute a transaction in a Financial Product on behalf of a Client on the ASX Market.

**Regulatory Requirements** means all relevant regulatory requirements including but not limited to the ASX Operating Rules, ASX Settlement Rules, the Corporations Act, the ASIC Market Integrity Rules and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

**Rebate** means the amount calculated in accordance with clause 10.2.

**Representative** means any person who is a representative of the Licensee as that concept is defined by s910A of the Corporations Act.

**Rights** means the rights set out in clause 4.2.

**Sell Order** means an order placed via the Macquarie Online Trading Platform on behalf of a Client to sell a Financial Product.

**Services** means information, trading and settlement services provided by TPP to the Client with respect to Orders placed via the Macquarie Online Trading Platform and includes the Ancillary Services specified in Schedule 1.

**Terms and Conditions** means TPP's trading terms and conditions and includes any CHESS Sponsorship Agreement and any terms and conditions that may apply to the provision of the Macquarie Online Trading Platform and the Services.

**Trading Day** means any day upon which the ASX Market is open for trading.

- 1.2 Unless the context requires otherwise, a reference to a "trade" or "transaction" (or a derivation of either of these) is taken to include trading a financial product on the ASX or the settlement of units in mFund Products through the Managed Fund Settlement Service.

## 2. COMMENCEMENT AND TERM

This agreement shall have effect from the Commencement Date and shall continue in force indefinitely until it is terminated pursuant to clause 19.

## 3. RELATIONSHIP OF THE PARTIES AND THEIR STAFF

### 3.1 TPP and the Licensee

Subject to Clause 7.4, both parties agree that each is an independent Licensee and not a joint venture, partner, employee or authorised representative of the other Licensee.

### 3.2 TPP's staff

TPP's staff will be and will at all times during the term of this agreement remain employees, agents or subcontractors of TPP and there will be no employment or other contractual relationship between TPP's staff and the Licensee.

## 4. CLIENT RELATIONSHIP

- 4.1 Each party acknowledges and agrees that each Client is a client of both the Licensee and of TPP. TPP may contact the Client so as to take instructions directly from the Client pursuant to any aspect of the Broker/Client Relationship or where required by law or regulation.

- 4.2 Where TPP proposes to exercise rights ("**Rights**") against the Client that are given to TPP pursuant to the Terms and Conditions and at law, TPP will use its best endeavours to contact the Licensee so as to seek its views as to the proposed course of action but if TPP determines that it is reasonably necessary to do so, TPP may exercise its Rights without having contacted the Licensee. By way of example and without limitation, Rights include the right to sell Financial Products purchased on behalf of a Client where the Client fails to settle a Buy Trade and the right to buy back Financial Products where the Client fails to settle with respect to a Sell Trade.

- 4.3 Where TPP obtains the Licensee's views it must give reasonable consideration to those views prior to exercising its Rights, but TPP may act as it sees fit (but subject to this Agreement) and is not required to act in accordance with the Licensee's views.

- 4.4 TPP will not solicit or market to the Clients of the licensee, contact will only be as outlined in 4.1.

## 5. TPP'S OBLIGATIONS

- 5.1 TPP agrees to:

- (a) Provide User Names and Passwords to the Macquarie Online Trading Platform for access by the Licensee and its Representatives.
- (b) Provide access to documents required to create the Broker/Client Relationship between TPP and the Client.
- (c) Subject to the Terms and Conditions provide execution, clearing and settlement of all lawful Orders placed on the Client's behalf by the Licensee or its Representatives.
- (d) Subject to the Terms and Conditions provide the Ancillary Services specified in Schedule 1.
- (e) Provide access to online training or other training materials so as to enable the Licensee and its Representatives to use the functionality provided by the Macquarie Online Trading Platform to a satisfactory standard.

- 5.2 TPP agrees to exercise a reasonable level of competence and diligence in the performance of the Services and in the performance of its other obligations under this agreement.

## 6. REPORTING

On or before the 14th of each month during the term of this agreement, TPP will provide the reports to the Licensee that are specified in Schedule 2.

## 7. THE LICENSEE'S OBLIGATIONS

### 7.1 Liability for Representatives' Acts and Omissions

The Licensee agrees to be responsible both under this agreement and generally for all acts and omissions of its Representatives or other employees with respect to the use by the Licensee or its Representatives of the Macquarie Online Trading Platform or with respect to any related activity such as, without limitation, undertaking the Account Opening Process. This applies whether or not the act or omission is within or outside their authority.

### Assistance with creation of Broker/Client relationship – Account Opening Process

- 7.2 The Licensee agrees to assist with the creation of the broker/client relationship between the Client and TPP by ensuring that each Client undergoes the Account Opening Process.
- 7.3 The Licensee agrees to ensure that the information provided by the Client as part of the Account Opening Process is correct.

### AML Procedures

- 7.4 The Licensee agrees to ensure that the information provided by the Client as part of the AML Procedures is correct.

### Use of Macquarie Online Trading Platform

- 7.5 In relation to the use of the Macquarie Online Trading Platform the Licensee agrees to:
- (a) Comply with all applicable Regulatory Requirements and ensure that its Representatives comply with all applicable Regulatory Requirements.
  - (b) Exercise a reasonable level of competence and diligence in using the Macquarie Online Trading Platform and ensure that its Representatives exercise a reasonable level of competence and diligence in using the Macquarie Online Trading Platform.
  - (c) Ensure that each Representative has received adequate training and is competent to use the Macquarie Online Trading Platform.
  - (d) Ensure that only Representatives place Orders. For the avoidance of doubt, persons other than Representatives may have access to the Macquarie Online Trading Platform for purposes other than the placement of Orders such as general Client related administrative activities.
  - (e) Not place an Order on behalf of a Client until that Client has completed the Account Opening Process and the AML Procedures.
  - (f) Cause each Client to authorise the Licensee in writing to obtain the Services on the Client's behalf from TPP.
  - (g) Ensure that, at all times, the Licensee and its Representatives act within the scope of the authority given by the Client to the Licensee.

- (h) Maintain the confidentiality of any security identification passwords and personal identification numbers issued by TPP to the Licensee with respect to a Client or otherwise with respect to the use of the Macquarie Online Trading Platform.
- (i) Immediately pay to TPP any funds received by the Licensee with respect any Services that have or are to be provided by TPP to a Client.
- (j) Arrange for relevant Financial Products held by the Client to be delivered to TPP for the purposes of settlement.
- (k) Comply with all policies and procedures implemented by TPP and all directions given by TPP with respect to the use of the TPP Platform and ensure that each of its Representatives comply with these policies, procedures and directions.
- (l) Not place an Order the execution of which would or may cause TPP to breach a Regulatory Requirement including, without limitation, the ASX Operating Rules.
- (m) Not, except in connection with arranging for the Services to be provided to a Client, make reference to, use or display the TPP name, brand or logo in any document, correspondence, marketing initiative, interview or media release without the prior written consent of TPP.

### Obligation to notify TPP

- 7.6 The Licensee must notify TPP in writing at the time specified below as to the following information:
- (a) Immediately as to the nature of any Client Complaints received by the Licensee where they involve TPP or would directly or indirectly impact TPP.
  - (b) At the same time that it is made, notification of any matters that are reported by the Licensee to ASIC pursuant to s912D of the Corporations Act which involve or may involve Clients or TPP.
  - (c) Immediately as to any investigation that is commenced by the Australian Securities and Investments Commission with respect to the conduct of the Licensee or with respect to the conduct of any of its current or former Representatives where they involve or would directly or indirectly impact TPP.
  - (d) Immediately, subject to any applicable laws, any material change to the information provided by the Client pursuant to the Account Opening Process or the AML Procedures and, without limitation, to immediately notify TPP if the address given by the Client as part of the Account Opening Process changes.

- (e) Subject to applicable laws, immediately if the Licensee becomes aware of any information about a Client that is relevant to compliance by TPP with the AML Legislation regarding the Services provided by TPP to the Client.
- (f) Immediately as to the occurrence of any event that may result in the Licensee breaching this agreement.
- (g) Immediately as to any information which would be relevant to TPP forming a view as to whether the Licensee or its Representatives are or remain suitable to have access to the Macquarie Online Trading Platform for example, without limitation, that a Representative is reasonably suspected of having committed a criminal offence.

#### Settlement – Buy Orders

- 7.7 With respect to each Buy Order placed via the Macquarie Online Trading Platform, the Licensee must ensure that the Client provides sufficient funds (“Sufficient Funds”) to enable TPP to settle the Client’s purchase of Financial Products (including all brokerage, GST and other applicable costs) on or before the date that is 2 Business Days after the execution of the transaction (that is, T+2).
- 7.8 If Sufficient Funds are not available on T+2, TPP will inform the Licensee, who must use its best endeavours to contact the Client to discuss in good faith any credit support alternatives proposed by the Client, but TPP shall be under no obligation to accept such alternatives. In the event that an alternative solution is not agreed, the Licensee must immediately, upon demand made by TPP, pay Sufficient Funds to TPP.
- 7.9 TPP may alternatively or in addition to the powers given to it by clause 7.8 exercise its Rights against the Client.

#### Settlement – Sell Orders

- 7.10 With respect to each Sell Order placed via the Macquarie Online Trading Platform, the Licensee must ensure that the Client holds sufficient financial products (“Sufficient Financial Products”) to settle their Sell Order on or before T+2.
- 7.11 If Sufficient Financial Products are not delivered by T+2, TPP may exercise its Rights against the Client which includes the right of sale of the Financial Products.
- 7.12 Where TPP is not the client’s sponsoring broker in relation to the Financial Products for a Sell Order, the Licensee agrees to indemnify TPP for any loss, expense, claim or demand that TPP suffers as a consequence of the Client failing to provide Sufficient Financial Products and/or TPP exercising its Rights against the Client.

#### Payment of fees with respect to Ancillary Services and Portfolio Services

- 7.13 With respect to the Ancillary Services and the Portfolio Services, the Licensee must ensure that the Client provides Sufficient Funds to TPP to pay any fees associated with the provision of the Ancillary Service and/or the Portfolio Services at the time that the service is provided. If Sufficient Funds are not made available at the time that the service is provided, the Licensee must immediately, upon demand made by TPP, pay the Sufficient Funds to TPP.

### 8. ACKNOWLEDGEMENTS BY THE LICENSEE

The Licensee acknowledges that:

- (a) The Licensee acts as agent for the Client.
- (b) The execution of Orders on behalf of the Client by TPP and any other services provided or acts undertaken by TPP on behalf of the Client are subject to the Terms and Conditions as amended from time to time.
- (c) At the Licensee’s request TPP will provide (subject to the Terms and Conditions as amended from time to time) the Ancillary Services set out in Schedule 1. TPP will charge the Client the relevant fee specified in Schedule 1 with respect to the Ancillary Services, and no rebate or other payment will be payable to the Licensee with respect to the provision of the Ancillary Services and/or the Portfolio Services.
- (d) TPP is not obliged to act in accordance with the Licensee’s instructions and/or the Client’s instructions where to do so would or may cause it to breach any applicable Regulatory requirement including, without limitation, the ASX Operating Rules and the Corporations Act.
- (e) Each Client will be required to sign a Direct Debit/Credit Authority so as to facilitate TPP having access to the Client’s cash management account with a Macquarie Group Member that is linked to the Macquarie Online Trading Platform.
- (f) Pursuant to the Terms and Conditions, TPP may in its absolute discretion decline to accept and/or to execute any Order.
- (g) Confirmations must be sent directly to the Client but a copy of each Confirmation can be sent to the Licensee.
- (h) It will obtain all necessary authorities from the Client to allow the fee to be charged to the Client used to calculate the CDP referred to in clause 10.

- (i) It has an Australian financial services licence (“**AFSL**”) which is currently in force and which contains the authorisations required for the Licensee’s use of the Macquarie Online Trading Platform to provide financial services to its clients.
- (j) It has in place insurance appropriate to the type and scale of business it carries, including professional indemnity insurance, and will provide reasonable evidence of its insurance on request.
- (k) It will immediately notify TPP of any breaches of its AFSL, including any cancellation, suspension, alteration of any condition or any action taken by ASIC.
- (l) It must not apply for mFund Products on behalf of a Client until it has given the Client a copy of the mFund Investor Fact Sheet and the current version of the product disclosure statement (identified by date) for the relevant mFund Products.

## 9. AMENDMENT – BROKER/CLIENT ARRANGEMENT

- 9.1 TPP may from time to time amend the Terms and Conditions (including the CHESSE Sponsorship Agreement), the Account Opening Procedures, the AML Procedures and the Financial Services Guide issued by TPP in respect of Macquarie Online Trading, as amended from time to time. (“Arrangement or Arrangements as the context requires”).
- 9.2 The Licensee will be given by TPP not less than 7 Business Days notice of the date upon which TPP proposes to make an amendment to an Arrangement.
- 9.3 The Licensee agrees to implement the amendment of the Arrangement as required by TPP.

## 10. PAYMENT OF REBATE AND INVOICING

- 10.1 In consideration of the Licensee arranging for Orders to be placed on the Clients’ behalf via the Macquarie Online Trading Platform, TPP agrees to pay the Client Directed Payment (“CDP”) to the Licensee.
- 10.2 The CDP will be calculated according to the following formula:  
**CDP** = the difference between the fee agreed between the Licensee and the Client as being payable by the Client at the time an Order is placed on the Client’s behalf into the Macquarie Online Trading Platform and the fee that TPP is entitled to charge the Licensee with respect to the execution of the Order (“**the Order Execution Fee**”).
- 10.3 The fee agreed between the Licensee and the Client used to calculate the CDP, is specified at the Client account creation and may be amended by agreement

between the Client and Licensee and notified to TPP from time to time.

- 10.4 The Licensee agrees to retain all records of the authority provided by the Client, and provide these records when requested by TPP.
- 10.5 The Order Execution Fee will be the applicable fee as specified in Schedule 3.
- 10.6 For the avoidance of doubt, the Order Execution Fee is a brokerage fee (inclusive of GST) and does not include fail fees or fees associated with Ancillary Services or Portfolio Services. The Client Directed Payment (as calculated in accordance with clause 10.2) includes any amount that is payable by way of GST from TPP to the Licensee.
- 10.7 TPP will issue the Licensee with a tax invoice within 10 Business Days of the end of each calendar month for the total CDP payable to the Licensee for that calendar month (based on trades that have settled in that calendar month). The invoice will be accompanied by a statement setting out how the CDP for that month was calculated. TPP will pay the total applicable CDP to the Licensee as shown on the tax invoice within 10 Business Days.
- 10.8 Upon receipt of the statement (“**Statement**”), the Licensee must review the information set out in the Statement and must notify TPP of any discrepancies within 5 business days of the receipt of the Statement. Where the Licensee, does not notify TPP of a discrepancy with respect to the information set out in the Statement, the information set out in the Statement will be binding upon the Licensee as to the Licensee’s right to receive CDP during the period referred to in the Statement.

### GST – Recovery

- 10.9 If GST is imposed on any supply made under this agreement by one party (“**supplying party**”) to another party (“**receiving party**”) and the consideration payable or to be provided for the supply under any other clause in this agreement is not expressed to be inclusive of GST, the receiving party must pay, in addition to and at the same time as any GST exclusive consideration is payable or to be provided for the supply, an amount calculated by multiplying the value of that GST exclusive consideration (without deduction or set-off) by the prevailing GST rate.

### Tax Invoices

- 10.10 Subject to clause 10.9, the receiving party is not required to pay any amount of GST to the supplying party unless the supplying party has provided a valid Tax Invoice to the receiving party.

## Recipient Created Tax Invoices

- 10.11 For the purpose of satisfying the requirements of the GST Act and any additional requirements as determined by the Commissioner of Taxation from time to time, the parties agree that:
- (a) TPP will issue a Recipient Created Tax Invoice to the Licensee in respect of any Taxable Supply made by the Licensee to TPP under this agreement in return for payment of the CDP;
  - (b) the Licensee must not issue a Tax Invoice in respect of any Taxable Supply made by Licensee to TPP under this Agreement in return for payment of the CDP;
  - (c) TPP warrants that it is registered for GST purposes. TPP must immediately notify the Licensee if TPP ceases to be registered for GST purposes, or ceases to satisfy the requirements for issuing Recipient Created Tax Invoices as set out in the GST Act or as determined by the Commissioner of Taxation from time to time;
  - (d) the Licensee represents that it is registered for GST purposes. The Licensee must immediately notify TPP if the Licensee ceases to be registered for GST purposes; and
  - (e) the Recipient will issue the original of any Recipient Created Tax Invoice to the Licensee pursuant to this clause and will retain a copy.

## Indemnity and reimbursement payments

- 10.12 If one party is required to indemnify or reimburse another party (“payee”) for any cost, loss or expense incurred by the payee, the required payment does not include any part of such cost, loss or expense that the payee (or an entity grouped with the payee for GST purposes) is entitled to claim as an Input Tax Adjustment, but will be increased under clause 10.10 if the payment is consideration for a Taxable Supply.

## Set off

- 10.13 Unless a provision of this agreement expressly states otherwise:
- (a) TPP may set off any amount due for payment by TPP to the Licensee against any amount due for payment by the Licensee to TPP under this agreement; and
  - (b) the Licensee may set off any amount due for payment by the Licensee to TPP against any amount due for payment by TPP to the Licensee under this agreement.

## 11. ALTERATION OF ORDER EXECUTION FEE AND OTHER FEES

- 11.1 TPP may, at any time, amend fees charged by it including, without limitation, the Order Execution Fee specified in Schedule 3.
- 11.2 The Licensee will be given by TPP not less than 7 Business Days notice of the date upon which TPP proposes to amend a fee.

## 12. ALTERATIONS AND ENHANCEMENTS TO THE MACQUARIE ONLINE TRADING PLATFORM

- 12.1 TPP may alter any aspect of the functionality of the Macquarie Online Trading Platform at any time.
- 12.2 Where TPP intends to alter the functionality of the Macquarie Online Trading Platform, TPP will use its best endeavours to provide the Licensee with advance notice of the nature of alteration and its implications, if any, for the Licensee’s use of the Macquarie Online Trading Platform.
- 12.3 At the request of the Licensee, TPP may alter the functionality of the Macquarie Online Trading Platform and/or provide new functionality subject to the parties negotiating in good faith as to:
- (a) the functionality that will be provided and/or altered; and
  - (b) the manner in which TPP will be remunerated for work that it will be required to undertake.
- 12.4 TPP may, in its absolute discretion, decline a request made by the Licensee to alter or add to the functionality of the Macquarie Online Trading Platform.

## 13. COMPUTER SYSTEMS AND CLIENT DATA

- 13.1 Equipment and software required at premises
- The Licensee will be responsible to provide at its expense all equipment and software at its premises which it needs to carry out its obligations under this agreement and to receive Client Data from and generally communicate with TPP so as to enable TPP to perform its obligations under this agreement.

- 13.2 System to interface with nominated computer system
- TPP will take all reasonable steps to ensure that the Macquarie Online Trading Platform will operate with each computer system that is specified in Schedule 4. For the avoidance of doubt, TPP may in its absolute discretion decline a request made by the Licensee to specify a computer system as being suitable for inclusion in Schedule 4.

#### Client Data

- 13.3 All Client Data is the property of TPP and Macquarie. TPP will provide an up-to-date copy of the Client Data to the Licensee in accordance with this agreement or as otherwise agreed between the parties. TPP may only use the Client Data to:
- (a) comply with its obligations under this agreement;
  - (b) comply with its regulatory obligations including regulatory requirements required by ASX, the Australian Securities and Investments Commission, AUSTRAC and other bodies that may have jurisdiction over the activities TPP undertakes pursuant to this agreement;
  - (c) keep records as required by law, regulations, industry practice and company policies approved by TPP acting reasonably; and
  - (d) as otherwise agreed or consented to the Client in the Terms and Conditions.
- 13.4 TPP must ensure that it informs each Client that TPP will be giving the Client Data to the Licensee.
- 13.5 The Licensee must ensure that it obtains relevant consents from each Client in connection with the Licensee's use of the Client Data.
- 13.6 TPP and the Licensee will each use their best endeavours to ensure the security and integrity of Client Data received, transmitted, generated, stored or processed by the Macquarie Online Trading Platform.

## 14. PRIVACY LAWS

Each party must comply with the Privacy Act with respect to Client Data.

## 15. FORCE MAJEURE

### Obligations suspended

- 15.1 Where TPP or the Licensee is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any of its obligations under this agreement and:
- (a) where it is TPP, it gives to the Licensee, or where it is the Licensee it gives to TPP, prompt notice of that Force Majeure Event with reasonably full particulars and, insofar as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
  - (b) it uses all reasonable endeavours to remove that Force Majeure Event as quickly as possible,
- that obligation is suspended so far as that obligation is affected by the continuance of that Force Majeure Event. The affected party will not, by reason only of having failed to perform that obligation on time, be liable for breach of that obligation. Without limiting the affected party's obligation to seek to mitigate the effect of the Force Majeure Event, any time period relevant to that obligation will be extended by a period equal to the period the obligation is suspended.

### Termination

- 15.2 If a Force Majeure Event continues for more than 60 days, TPP or the Licensee may give written notice of termination of this agreement with immediate effect binding on the other party
- 15.3 Definition of Force Majeure Event
- For the purposes of this agreement, "Force Majeure Event" means:
- (a) an act of God;
  - (b) a strike, lock out or other labour dispute which does not involve solely a party's own workforce;
  - (c) war declared or undeclared, a terrorist act, blockade or disturbance;
  - (d) governmental or quasi-governmental restraint, expropriation, prohibition, intervention, direction or embargo (whether by law or otherwise); and
  - (e) for reasons not reasonably within the control of the party affected

but excludes consequences of a party failing to make payment when due to any person, whether or not a party to this agreement.

## 16. CLIENT CLAIM

- 16.1 Each party (“**indemnifying party**”) indemnifies the other party (“**indemnified party**”) against any loss, expense, damage or liability suffered or incurred by the indemnified party as a result of a Client Claim arising out of or in connection with an act or omission of the indemnifying party in performing its obligations under this agreement, (including the provision of the Services).
- 16.2 If a Client Claim is made against a party and that party considers the other party is wholly or partially responsible for circumstances which gave rise to the Client Claim, then to gain indemnification, the party which received the Client Claim must deliver a Client Claim Notice to the other party. The Client Claim Notice must be given as soon as practicable after the receipt or notification of the Client Claim by the party seeking indemnification.
- 16.3 After a Client Claim Notice has been given under this clause, the parties will meet in good faith to determine:
- (a) whether the Client Claim should be transferred from the party that received the claim to the other party, in which case the parties will work together to transfer the Client Claim; and
  - (b) whether the Client Claim should be resolved by the parties acting jointly. If the parties decide to act jointly to resolve the Client Claim then they will jointly take decisions and divide the costs and expenses in the proportion that each party is ultimately responsible to the Client.
- 16.4 Where the Customer Claim is not transferred to the indemnifying party:
- (a) the indemnified party will have control of any litigation arising from the Client Claim and all negotiations in connection with the Client Claim;
  - (b) the indemnified party must consult with indemnifying party on all significant developments regarding the Client Claim as soon as practicable;
  - (c) the indemnified party may not settle the Client Claim without the approval of the indemnifying party (such approval not be unreasonably withheld or delayed); and
  - (d) each party must use reasonable efforts to minimise the amount the indemnifying party will pay under this clause 16.

## 17. REDUCTION OF LIABILITY

Each party’s liability in contract, tort, negligence or otherwise is reduced by the extent, if any, to which the other party contributed to the relevant loss or liability.

## 18. TERMINATION

### Termination for convenience

- 18.1 Each party may terminate this agreement by giving the other party not less than 30 days written notice of the date on which termination is to take effect.

### Termination for cause – TPP

- 18.2 TPP may give written notice of termination of this agreement in whole or in part to the Licensee with immediate effect, if any of the following occur:
- (a) the Licensee fails to perform or comply with any provision of this agreement or with any obligation to be performed under this agreement and the effect of the failure has or is likely to have a material adverse effect on the operations or activities of TPP and TPP gives written notice specifying that failure or non-compliance, and the Licensee does not:
    - (i) notify TPP promptly of the steps proposed to remedy the failure or non-compliance and keep TPP informed of progress in remedying the failure or non-compliance; and
    - (ii) rectify that failure or non-compliance to the reasonable satisfaction of TPP:
      - (A) within 7 days of TPP giving such notice if the effect of the failure or non-compliance will or does have or is likely to have a material adverse effect on the business, operations or activities of TPP; or
      - (B) within 30 days of giving such notice if the effect of the failure or non-compliance will or does have or is likely to have a lesser but nonetheless adverse effect on the business, operations or activities of TPP;
  - (b) the Licensee fails to effect payment to TPP in respect of any amounts owing in aggregation greater than \$10,000 under this agreement which are due, TPP gives written notice specifying that failure and the Licensee does not affect the payment within 30 days of TPP giving such notice;
  - (c) an Insolvency Event occurs in respect of the Licensee;
  - (d) the Licensee or any of its Representatives become the subject of regulatory action by the Australian Securities and Investments Commission or any other regulatory authority; or

- (e) TPP reasonably forms the view that because of something done or not done by the Licensee or its Representatives, TPP's business reputation will be harmed as a result of continuing to accept Orders for execution pursuant to this agreement.

#### Termination for cause – the Licensee

- 18.3 The Licensee may give written notice of termination of this agreement in whole or in part to TPP with immediate effect, if any of the following occur:
- (a) TPP fails to perform or comply with any provision of this agreement or with any obligation to be performed under this agreement and the effect of the failure has or is likely to have a material adverse effect on the operations or activities of the Licensee and the Licensee gives written notice specifying that failure or non-compliance, and TPP does not:
    - (i) notify the Licensee promptly of the steps proposed to remedy the failure or non-compliance and keep the Licensee informed of progress in remedying the failure or non-compliance; and
    - (ii) rectify that failure or non-compliance to the reasonable satisfaction of the Licensee:
      - (A) within 7 days Licensee giving such notice if the effect of the failure or non-compliance will or does have or is likely to have a material adverse effect on the business, operations or activities of the Licensee; or
      - (B) within 30 days of giving such notice if the effect of the failure or non-compliance will or does have or is likely to have a lesser but nonetheless adverse effect on the business, operations or activities of the Licensee;
  - (b) TPP fails to effect payment to the Licensee in respect of any amounts owing greater than \$10,000 under this agreement which are due, the Licensee gives written notice specifying that failure and TPP not affect the payment within 60 days of the Licensee giving such notice; or
  - (c) an Insolvency Event occurs in respect of TPP.

#### Termination – TPP will cease to provide the Services

- 18.4 Upon the termination of this agreement, TPP will cease providing the Services to the Clients and each Client will be invited to close their account with TPP that has been opened pursuant to this agreement. TPP will arrange for the Financial Products held within their account and any funds held by TPP to be transferred as the Client directs.

#### Effect of termination

- 18.5 This clause 18.5 and the rights and obligations of the parties under the following provisions survive termination of this agreement: 7.1, 7.5, 7.6(g), 7.8, 7.10, 7.13, 7.14, 7.15, 10.12, 10.13, 13.3, 13.6, 14, 16, 17, 21, 23.6 and 24.

### 19. NOTICES

- 19.1 A notice, approval, consent or other communication in connection with this agreement:
- (a) must be in writing;
  - (b) must be marked for the attention of **the Chief Executive Officer or Chief Operating Officer**
  - (c) must be left at the address of the addressee, or sent by prepaid ordinary post to the address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in this clause or if the addressee notifies another address or facsimile number then to that address or facsimile number; and
  - (d) a notice, approval or consent under this agreement may be sent by email.

To constitute a notice under this agreement, the email must identify both parties, be sent to the correct email address of the addressee and set out in detail the facts and circumstances required for such a notice.

- 19.2 The address, email and telephone number and contact of each party is:

TPP  
GPO Box 1630, Sydney NSW 2001  
Telephone 1800 180 182  
Email address: support@trading.macquarie.com

Licensee details are specified in the section entitled Third party agreement at the beginning of this agreement.

- 19.3 **Timing**

A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in the notice, approval, consent or other communication.

#### 19.4 Time of receipt

A letter, facsimile or email is taken to be received:

- (a) in the case of a posted letter, on the third day after posting; and
- (b) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was successfully sent in its entirety to the facsimile number of the recipient; and
- (c) in the case of an email, the time shown in a delivery confirmation report generated by the sender's email system.

## 20. ASSIGNMENT

A party may not assign its rights under this agreement without the prior written consent of the other party.

## 21. PUBLICITY AND MARKETING

A party may not make press or other announcements or releases relating to this agreement and the transactions the subject of this agreement, without the approval of the other party to the form and manner of the announcement or release unless that announcement or release is required to be made by law or by a stock exchange.

## 22. MACQUARIE GROUP RIGHTS

The Licensee acknowledges and agrees that:

- (a) TPP holds the benefit of this clause 22 for each Macquarie Group Member;
- (b) any Macquarie Group Member may sue the Licensee for any loss, damage or liability suffered or incurred by that Macquarie Group Member for breach of this clause (and may rely on this clause in limiting its liability to the Licensee) despite that Macquarie Group Member not being a party to this agreement;
- (c) no Macquarie Group Member is liable to Licensee for (and Licensee will not bring any Claim against any Macquarie Group Member in relation to):
  - (i) any act or omission of TPP or any of its employees, agents or subcontractors in connection with this agreement (including but not limited to, negligence, or misleading or deceptive conduct or breach of contract); or
  - (ii) any error, defect or malfunction of the Macquarie Online Trading Platform; and
- (d) no provision in this agreement conveys any right, title or interest in any Macquarie IP to the Licensee.

## 23. MISCELLANEOUS

### Exercise of rights

- 23.1 A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

### Waiver

- 23.2 A provision of or a right created under this agreement may not be waived except in writing signed by the parties granting the waiver.

### Variation

- 23.3 Except as expressly provided otherwise in this agreement, a provision of or a right created under this agreement may not be varied except in writing signed by the parties.

### Approvals and consent

- 23.4 A party may give any approval or consent, conditionally or unconditionally, or withhold its approval or consent in its absolute discretion unless this agreement expressly provides otherwise.

### Remedies cumulative

- 23.5 The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

### Survival of indemnities

- 23.6 Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this agreement.

### Enforcement of indemnities

- 23.7 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

#### Further assurances

- 23.8 Each party agrees, at its own expense, on the request of the other parties, to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it (including the execution of documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

#### Entire agreement

- 23.9 This agreement constitutes the entire agreement of the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

#### Counterparts

- 23.10 This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, all of which together constitute one agreement.

## 24. GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS

#### Governing law – New South Wales

- 24.1 This agreement and the transactions contemplated by this agreement are governed by the law in force in New South Wales.

#### Parties to submit to jurisdiction

- 24.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and the Courts of the Commonwealth of Australia (and courts of appeal from them) for determining any dispute concerning this agreement or the transactions contemplated by this agreement. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.

#### Delivery of court document

- 24.3 Without preventing any other mode of service, any document in an action (including, but not limited to, any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under clause 20.



MACQUARIE

### Executed as an agreement

#### Signed for TPP by an authorised officer:

Signature of officer

Name of officer (print)

#### in the presence of:

Signature of witness

Name of witness

Date

#### Signed for the Licensee by a Company director:

Signature of director

Name of director (print)

#### in the presence of:

Signature of witness

Name of witness

Date

MANDATORY:  Please return ALL pages in this agreement including Schedules 1-4.

Please provide a copy of your Professional Indemnity Insurance Certificate of Currency.

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## SCHEDULE 1 – ANCILLARY SERVICES

All fees will show as a charge against the adviser's rebate in the month for which they are incurred. All fees shown below are inclusive of GST. A current and complete schedule of fees is available from the Macquarie Online Trading website.

OTHER SERVICES	
<b>Confirmation Delivery</b>	
Email	Free
Post	\$3.30
<b>Email Alerts</b>	
Trade, price and company announcement alerts	Free
<b>Other fees and charges<sup>1</sup></b>	
Off Market Transfer	\$55 per stock
SRN query	\$16.50
CHESS Statement reprint	\$16.50
Fail Fees <sup>2</sup>	\$110 or 0.16% per day
<b>Information Services</b>	
Silver (20 minute delayed data)	Free
Gold (static live data)	Free <sup>3</sup>
Platinum (streaming live data)	\$22 per month <sup>4</sup>
webIRESS (includes complimentary Gold Service)	\$79 per month

<sup>1</sup> For these fees and charges, the client account will be charged unless directed by the adviser.

<sup>2</sup> A buy fail is calculated as the rejecting of a funds request from a bank account. The date taken as the rejected day is the date the contract note was due to settle.

<sup>3</sup> \$10 per month for Clients.

<sup>4</sup> Full amount paid in advance. Accrued at 6.6 cents per minute with non-used portion refunded

## SCHEDULE 2 – CLIENT DIRECTED PAYMENT & REPORTING

Within 10 business days of the conclusion of the calendar month, TPP will send a report to the Licensee's nominated email address. The report will detail all Client Directed Payments earned during the calendar month as well as any fees incurred.

The report will be accompanied by a Recipient Created Tax Invoice, which will detail the net amount that TPP will credit to or debit from the licensee's nominated bank account.

In addition to the above mentioned reports, TPP will also make available various common report types via the Macquarie Online Trading website.

## SCHEDULE 3 – ORDER EXECUTION FEE

### Order Execution Fees (including GST)

<b>STANDARD BROKERAGE RATES</b>	
Internet / mobile device equity & warrant trades	\$19.95 or 0.12%*
Phone equity & warrant trades	\$49.95 or 0.30%*
Equity & warrant conditional orders	Free
<b>EXCHANGE TRADED OPTIONS (ETO)</b>	
Internet / mobile device ETO trades	\$29.95 or 0.30%*
Phone ETO trades	\$59.95 or 0.40%*
ASX Clear transaction fee – equity options	\$0.143 per contract
ASX Clear transaction fee – index options	\$0.495 per contract
Equity trade ETO exercise or assignment	\$49.95 or 0.30%*
ASX Clear exercise/assignment fee – equity options	\$0.055 per contract
ASX Clear exercise/assignment fee – index options	\$0.385 per contract
<b>MFUNDS</b>	
Per online application or redemption	\$30 or 0.1%*
Per over the phone application or redemption	\$60 or 0.2%*

\* Whichever is greater.

## SCHEDULE 4 – COMPUTER SYSTEM

- TPP support the latest version of Microsoft Internet Explorer, Mozilla Firefox, Google Chrome and Safari. Whilst TPP endeavour to support most popular browser types and versions, TPP are unable to guarantee complete compatibility with all facets of the service.
- TPP recommend a minimum 512k broadband connection or faster.
- To access PDF documents the Licensee requires the latest version of Adobe Acrobat Reader ([www.adobe.com](http://www.adobe.com))



For more information about Macquarie Online Trading,  
call us on 1800 180 182, visit [macquarie.com.au/adviser](http://macquarie.com.au/adviser)  
or email [adviser@macquarie.com](mailto:adviser@macquarie.com)

Tel 1800 180 182  
Fax 1800 550 140