



## **PRIMARYMARKETS LIMITED ACN 136 368 244 - BUYER MEMBER AGREEMENT**

### **Standard Terms and Conditions**

These Standard Terms and Conditions form the terms and conditions of an agreement by the person who, or by a duly authorised director or other representative of that person, has ticked or otherwise marked the box on the PrimaryMarkets webpage styled "*Become a Member*" in the manner therein prescribed and thereby evidenced that person's agreement to become a Buyer Member.

Pursuant to such agreement, the Buyer has, inter alia, irrevocably instructed PrimaryMarkets to carry out Introductions of Buyer Members to Seller Members who have listed an Asset(s) through publications and advertisements on the Website as contemplated under this Agreement in consideration for the payment by the Seller Member of the Introduction Fee, expenses and any other monies as set out below and otherwise in accordance with PrimaryMarkets' Terms and Conditions of Use, Declaration and Privacy Policy.

### **Definitions**

The following terms are intended to have the following meanings for the purpose of this Agreement, including these Standard Terms and Conditions:

- (a) **Act** means **Corporations Act 2001** (Cth);
- (b) **Agreement** means this Buyer Member Agreement including these Standard Terms and Conditions, as varied from time to time;
- (c) **Asset** means any asset, including, without limitation, investments and securities whether issued, or investments and securities to be issued, by the Seller Member, being listed by the Seller Member on **the** Website or otherwise promoted for sale or dealing with and for the sake of clarity includes an Unlisted Asset;
- (d) **associate** has the **meaning** ascribed to it in the Act;
- (e) **Buyer** means a person who has completed an agreement or agreements with PrimaryMarkets that in doing so, qualified that person as a Buyer Member of PrimaryMarkets, and includes any Related Body Corporate, any Related Person any Related Entity or associate of any of the foregoing persons;
- (f) **Class Order** means ASIC Class Order 02/0273 and any variation or extension thereof;
- (g) **Corporations Regulations** means the Corporations Regulations, 2001 (Cth);
- (h) **Declaration** means a declaration in relation to, and as referred to in, the Class Order as published on **the** Website;
- (i) **Director means** a director of a Buyer at any time and from time to time;
- (j) **Excluded Party** means a Buyer who is a Wholesale Client;
- (k) **Financial Product Advice** has the meaning given to that term in subsection 766B(2) of the Act;

- (l) **GST** means **the** Goods and Services Tax that is more fully described in clause 47;
- (m) **Indemnified Party** means any one of PrimaryMarkets and each of its Related Bodies Corporate and Related Persons and **Indemnified Parties** means all of the foregoing;
- (n) **Intermediary means** a person who has completed an agreement or agreements with PrimaryMarkets that in doing so, qualified that person as an Intermediary Member of PrimaryMarkets, and includes any Related Body Corporate, any Related Person any Related Entity or associate of any of the foregoing persons;
- (o) **Introduction** means any introduction of a Seller Member of an Asset to a Buyer Member of that Asset effected by PrimaryMarkets that facilitates, enables, causes or results in, whether directly or indirectly, the sale of or other dealing in that Asset, including for the sake of clarity, the sale in or other dealing with an Unlisted Asset between the Seller Member and the Buyer Member;
- (p) **Introduction Fee** has the **meaning** given to that term in the Seller Member Agreement;
- (q) **Member** means an individual or joint Buyer, Seller or Intermediary who or that has completed an agreement or agreements with PrimaryMarkets and by doing so, qualified or entitled that person to access to and use of the Website and other introduction services provided by PrimaryMarkets from time to time, and who or that may be referred to in this Agreement as a Buyer Member, Seller Member or Intermediary Member, respectively, and the term **Membership** will have a corresponding meaning;
- (r) **Meeting** has **the** meaning given to that term in the Class Order;
- (s) **Party** means any party to this Agreement and any of their successors or permitted assigns;
- (t) **person** means and includes an individual, body corporate or any other entity that is legally capable to sue or be sued;
- (u) **Personal Advice** has the meaning given to that term in subsection 766B(3) of the Act;
- (v) **PrimaryMarkets** means PrimaryMarkets Limited ABN 24 136 368 244 and any Related Body **Corporate** or Related Person of that company;
- (w) **Publication** has **the** meaning given to that term in the Class Order;
- (x) **Recommendation** has the meaning given to that term in subsection 766B(6) of the Act;
- (y) **Related Body Corporate** has the meaning ascribed to it in the Act;
- (z) **Related Entity** has **the** meaning ascribed to it in the Act;
- (aa) **Related Person means** any one of a relevant party's directors, officers, employees, servants, agents, consultants or advisors;
- (bb) **Seller** means a person who has completed an agreement or agreements with PrimaryMarkets that in doing so, qualified that person as a Seller Member of PrimaryMarkets, and **includes** any Related Body Corporate, any Related Person, or any Related Entity or associate of any of the foregoing persons, who is an owner (sole or joint), a trustee, a beneficiary, an administrator or an executor (as applicable) of an Asset as listed by any of the foregoing on the Website;
- (cc) **Seller Member Agreement** means the agreement entered into between PrimaryMarkets and the **Seller** that in doing so, qualified that person as a Seller Member of PrimaryMarkets;
- (dd) **Unlisted Asset means** an Asset that is not listed on the Website;

- (ee) **US Person** has the meaning given to that term in the United States Securities Act of 1933, as amended;
- (ff) **Website** means the website of PrimaryMarkets as amended from time to time;
- (gg) **Wholesale Client** means a person or entity who or that is any one of:
  - (i) a wholesale client as defined within section 761G of the Act;
  - (ii) a person to whom an offer of securities is being made and which offer satisfies the requirements of subsection 708(10) of the Act, to the satisfaction of PrimaryMarkets;
  - (iii) a holder of an Australian Financial Services Licence (including a Retail Broker);
  - (iv) an investor who satisfies the requirements of subsections 708(8) or 708(11) of the Act; or
  - (v) a person to whom a disclosure document is not otherwise required to be given under Chapter 6D of the Act.

## **Representations and Warranties**

1. The obligation of PrimaryMarkets to perform all or any of the obligations or discharge any or all of its liabilities that would otherwise result from its entry into, or performance of any act pursuant to the terms and conditions of, this Agreement, is and will remain conditional upon the Buyer:
  - (a) warranting, representing and undertaking to PrimaryMarkets that the Buyer, to the extent relevant and applicable:
    - (i) has complete and sufficient authority and power to enter into, execute, deliver and perform its obligations under the Agreement;
    - (ii) by performing any of the acts or proposed acts of the Buyer required to be performed pursuant to the provisions of this Agreement, or any other acts that are performed, will not breach or infringe any law or regulation including without limitation, of the Act or of any Corporations Regulations or the Class Order, in relation to the conduct of the business activities of the Buyer or PrimaryMarkets;
    - (iii) will not contravene or be required to contravene any agreements to which it is a party or any law or regulation including without limitation, of the Act or of any Corporations Regulations, in relation to the conduct of the business activities of the Buyer or PrimaryMarkets;
    - (iv) will, in a timely and professional manner, attend and otherwise participate in any presentations to Buyer Members, Intermediaries and/or Excluded Parties, as and when made available by a Seller;
    - (v) will fully comply with all relevant legislation in relation to the conduct of the affairs of the Buyer and PrimaryMarkets in the course of performing any and each of its obligations and liabilities under the terms and conditions of this Agreement including, but not limited to, the Act, any Corporations Regulations and the Class Order;
    - (vi) has and will have established procedures in order to ensure the continued compliance with the requirements of all applicable Australian and overseas laws and will maintain and operate those procedures in accordance with their requirements;

- (vii) is not in breach of any material provision of the Act or any other relevant law or regulation in respect of any Assets;
- (viii) has not and will not engage in conduct that is misleading or deceptive or is likely to mislead or deceive in relation to any Assets or otherwise;
- (ix) will keep PrimaryMarkets fully informed at all times and in a timely and complete manner, as to the progress and/or completion of the purchase of any Asset and/or any and all current and future dealings with any Seller Member concerning any Asset, for a period of at least 2 years from the date of the first introduction by PrimaryMarkets of any Seller Member or Intermediary and their Related Bodies Corporate and Related Persons to the Buyer;
- (x) unconditionally agrees and acknowledges that PrimaryMarkets and the Seller will be and remain entitled to make any decisions and take any actions of under or in respect of an Asset including, but not limited to, any amendment of the price or otherwise any terms of sale;
- (xi) unconditionally agrees and acknowledges that these Standard Terms and Conditions constitute the entire agreement between the Buyer and PrimaryMarkets to the exclusion of all prior warranties, representations, understandings and agreements between the Buyer and PrimaryMarkets;
- (xii) agrees to be legally bound by this Agreement, Terms and Conditions of Use and Privacy Policy that govern the Buyer's access to and use of the Website and the relationship as between the Buyer and PrimaryMarkets;
- (xiii) will, in performing its obligations and duties under this Agreement comply with, and ensure that all of its respective personnel also comply with, and must not do or omit to do (and must ensure that all of its personnel do not do or omit to do) anything which could cause PrimaryMarkets to breach the Privacy Act 1988 (Cth) (**Privacy Act**) and the Australian Privacy Principles under the Privacy Act in respect of all personal information (as defined in the Privacy Act) (**Personal Information**) that the Member or PrimaryMarkets collects, uses discloses and otherwise handles in the course of or in connection with this Agreement or the promotion for sale, actual sale or purchase, of any Asset;
- (xiv) in relation to an Asset which is a security or other interest which is or may be subject to any of the provisions of Part 6D.2 or Chapter 7 of the Act, then the Buyer:
  - (A) unconditionally agrees and acknowledges that PrimaryMarkets is an introduction service (through means that include Publications and advertisements on the Website) in accordance with the Class Order and a Corporate Authorised Representative under an Australian Financial Services Licence (particulars of which are provided on the Website);
  - (B) shall do all acts in its own right and as may be requested by PrimaryMarkets to ensure that neither the Buyer nor PrimaryMarkets breaches the provisions of the Act, including without limitation, Part 6D.2 and Chapter 7 of the Act, the requirements and conditions of any Corporations Regulations or the Class Order and the requirements and disclosures required or disallowed for a Meeting (within the meaning of that term in the Class Order);

- (C) unconditionally agrees and acknowledges that, in relation to any listing of an Asset on the Website that requires a Buyer to be accredited as a Wholesale Client, if a Buyer introduced by PrimaryMarkets to a Seller is not yet accredited as a Wholesale Client then the Buyer undertakes that it will not complete any sale or other dealing in the Asset with such Seller, including without limitation the entry into of any formal documentation in relation to a transaction of the Asset until that Buyer is accredited as a Wholesale Client;
  - (D) undertakes that the Buyer will sign all documents, do all acts and provide all necessary documentation to PrimaryMarkets and/or the Seller to ensure that the Buyer becomes accredited as a Wholesale Client either (or both) prior to the Buyer dealing in the Asset and/or immediately upon receiving a direction of or request from PrimaryMarkets to do so; and
  - (E) undertakes that it will have read and understood the content of any Declaration, prior to the completion of any sale or other dealing in the Asset, including without limitation the entry into of any formal documentation in relation to a transaction of an Asset; and
  - (F) unconditionally agrees and acknowledges that its consideration of Assets offered by a Seller and the entry into any subsequent negotiations and transactions with a Seller has been undertaken in accordance with and reflects the Declaration; and
  - (xv) unconditionally agrees and acknowledges that PrimaryMarkets has entered into this Agreement in reliance on the representations, warranties, acknowledgements and undertakings given by the Buyer in these Standard Terms and Conditions.
- (b) Undertaking to and in favour of PrimaryMarkets that it will when required to do so by PrimaryMarkets:
- (i) keep PrimaryMarkets informed, in a timely and complete manner, of any and all material changes to the Buyer's position as a Wholesale Client; and
  - (ii) not refer to PrimaryMarkets in any publication, advertisement or document (whether in written, verbal, electronic or any other form) to be distributed to third parties without PrimaryMarkets' prior written consent.
2. In relation to any Asset listed or that is proposed to be displayed on the Website or any Unlisted Asset the Buyer agrees and acknowledges that:
- (a) subject to the provisions of clause 2(b), the description, proposed sale price (if any) and proposed terms and conditions (if any) of any proposed sale of that Asset have been determined by the Seller and may be varied and/or amended from time to time without notice and in the Seller's total discretion;
  - (b) without derogating from the responsibilities and obligations of the Seller under clause 2(a), PrimaryMarkets at all times has the right to amend and/or adjust, at PrimaryMarkets' absolute discretion, any and all disclosures and descriptions in relation to the Asset for and on behalf of the Seller in order to ensure or seek to ensure PrimaryMarkets', the Seller's and/or any other person's compliance with any law, including the Act and the Corporations Regulations, regulation or direction of a regulatory body, and further including without limitation the right to remove names,

logos and/or trademarks, to filter, amend, redact, and/or summarise any details or descriptions provided by the Seller under clause 2(a) above;

- (c) the Buyer must immediately inform PrimaryMarkets if the sale price for an Asset is likely to be greater than A\$5,000,000 (whether prior to executing transaction documentation or upon so doing with a Seller);
  - (d) the sale price and other terms and conditions of the sale of an Asset will be finalised between the Seller and the Buyer in due course; and
  - (e) the Buyer agrees and acknowledges that the offer and/or sale of the Asset will not be made pursuant to a prospectus or disclosure document that is or is required to be compliant with the provisions of Part 6D.2 of the Act.
3. By entering into this Agreement and becoming a Buyer Member the Buyer irrevocably warrants to, acknowledges and agrees with PrimaryMarkets that:
- (a) all information disclosed to the Buyer on the Website or otherwise by PrimaryMarkets, including without limitation the identity of potential Sellers, and/or by a Seller in connection with any Introduction (and subsequent buying and selling) of an Asset is strictly confidential and must be kept confidential by the Buyer;
  - (b) PrimaryMarkets has not provided, will not and is not required to provide, the Buyer with any Financial Product Advice, Personal Advice or any Recommendation;
  - (c) the Buyer acknowledges that PrimaryMarkets does not make a market and will not operate a market (as defined and described in section 766D of the Act) in relation to any Asset;
  - (d) the Buyer agrees to be bound by the Declaration, any Publication and all of the terms and conditions of the Website; and
  - (e) the Buyer will be taken to have represented and warranted for the benefit of PrimaryMarkets each of the various representations and warranties set out in this Agreement.
4. Notwithstanding anything contained herein to the contrary and without limiting any other remedies available to PrimaryMarkets and without the need for any prior notice to the Buyer (written or otherwise), PrimaryMarkets may at any time and for any reason (in its absolute discretion):
- (a) limit, suspend or terminate any one or more or all of:
    - (i) access to the Website and the Buyer's Membership account(s);
    - (ii) the services of PrimaryMarkets;
    - (iii) the Membership of a Buyer;
    - (iv) the listing of an Asset on the Website; and
    - (v) any service of seeking and providing Introductions for an Unlisted Asset;
  - (b) prohibit access to or use of any PrimaryMarkets services;
  - (c) delay or remove hosted content from the Website;
  - (d) take all technical, practical and legal steps to exclude the Buyer and/or any Asset from access to or the use of the Website;

- (e) in appropriate circumstances and at its absolute discretion, suspend or terminate Membership account(s) of any Member including but not limited to Members who may be repeat infringers of intellectual property rights of PrimaryMarkets or any third party; and
- (f) cancel any Membership for any reason including but not limited to being inactive for a prescribed period of time or to modify or discontinue any PrimaryMarkets services.
- (g) Notwithstanding anything contained herein to the contrary the Buyer:
  - (i) acknowledges and accepts that;
    - (a) the Buyer will complete the purchase of the Asset upon becoming committed on terms agreed to with an applicable Seller in the chronological order in which the Buyer becomes committed in respect of multiple purchase of Assets from various Sellers as and when agreed to by an applicable Seller;
    - (b) when the purchase of an Asset involves Escrow Services including those offered by PrimaryMarkets the Buyer will pay the total amount of the Purchase Consideration in immediately available cleared funds by depositing in accordance with the invitation that will be sent to the Buyer by PrimaryMarkets or the escrow holder;
    - (c) the Buyer authorises and irrevocably directs the escrow holder of the proceeds of sale to make payment of funds out of its escrow account in relation to the Buyer's purchase of the Asset and to release and pay to:
      - i. PrimaryMarkets all monies properly due to PrimaryMarkets upon the sale of the Asset; and
      - ii. pay into the Seller's bank account the balance of the proceeds of sale held in the escrow account.
  - (ii) irrevocably confirms that:
    - (a) PrimaryMarkets is not a party to the sale/purchase of the Asset (nor does PrimaryMarkets make any recommendation or representation) in relation thereto;
    - (b) where the Buyer uses a lawyer or other advisor in relation to this transaction the Buyer will immediately let PrimaryMarkets know the relevant details; and
    - (c) PrimaryMarkets offers administrative services to facilitate the transaction rather than as a representative or advisor for either of the Buyer and Seller.
  - (iii) accepts that the Buyer will not have any basis or cause for claim or complaint if, for any reason whatsoever, completion of the acquisition of all or any Asset by the Buyer does not occur prior to the expiry of the Sale Period (as specified by the Seller);
  - (iv) authorise and irrevocably agree to pay to the Seller, or as the Seller may direct, all of the Purchase Consideration otherwise payable to the Seller in respect of the Asset being sold being securities (**Sale Shares**) in a Company or Fund (**Entity**), upon the delivery to the Buyer or a nominee of the Buyer, of:

- (a) the Standard Transfer form in respect of all of the Sale Shares that are being sold by the Seller, duly executed by the Seller, and
- (b) either:
  - (i) Written confirmation of Seller's ownership/shareholding by Entity's Secretary; and/or
  - (ii) the original title certificate(s) in respect of all of the Sale Shares being sold by the Seller; or
  - (iii) if any of those title certificates are lost or destroyed or the Seller claims that to be the case, a statutory declaration, undertaking or indemnity, given by the Vendor for the benefit of the Buyer and otherwise to that effect.
- (iv) acknowledges and directs the Seller that if:
  - (a) completion of the sale of any or all the Sale Shares (**Unsold Sale Shares**) has not occurred on or before the agreed date of completion and if not specified then expiry of thirty (30) days after the Buyer's confirmation of terms of purchase being agreed (**Sale Period**);
  - (b) the Buyer has not notified the Seller in writing that it has agreed to an extension of the duration of the Sale Period and the material details of that agreement; and
  - (c) the Seller will if directed to return to the Buyer, all monies deposited by the Buyer in the Escrow Account as consideration for the Unsold Sale Share without interest.
- (v) further authorises and directs the Seller, unless expressly directed otherwise and in writing by or on behalf of the Buyer prior to the receipt by the Seller of:
  - (a) the Purchase Consideration from the Buyer; and
  - (b) the documents specified to transfer title to the Sale Shares (**Transfer Documents**).
- (i) shall deliver, after receipt by the Seller of the Purchase Consideration and all Transfer Documents, to the Entity secretary or such other person or organisation who or that controls and maintains the members' register for the entity, all Transfer Documents for the purpose of seeking that company secretary, person or organisation to:
  - (a) register the transfer of the ownership and title of all Sale Shares from the Seller and into the name of the Buyer; and
  - (b) issue new and/or varied certificates to the Buyer and the Seller as is required, as a consequence of affecting that registration.

## Information

5. Any information about the Assets provided by a Seller to the Buyer must not be reproduced or transmitted to or discussed with any other person (other than the Buyer's Related Persons on a need to know basis) at any time whatsoever without the prior written consent of the Seller. This clause does not apply to any information which:
  - (a) is generally available to the public (other than as a result of wrongful disclosure); or



- (b) is required to be disclosed by any law, ASX Listing Rules or any regulatory authority (but only to the extent so required).
6. PrimaryMarkets makes no representations or warranties in this Agreement in relation to any Asset, its suitability or otherwise to the Buyer and does not assume any obligations or incur any liabilities under this Agreement in respect of any Asset.

### **Excluded Party**

7. The Buyer unconditionally agrees and acknowledges and irrevocably represents, warrants and undertakes or acknowledge to, PrimaryMarkets and in each case for the benefit of PrimaryMarkets that:
- (a) the Website and PrimaryMarkets' Introduction services are made available to the Buyer on the basis and in reliance upon the representations by the Buyer, that the Buyer is a Wholesale Client;
  - (b) the Buyer is a Wholesale Client and has provided or will provide all documentation that PrimaryMarkets requires in order to establish to its satisfaction that the Buyer fully qualifies as a Wholesale Client;
  - (c) without limitation to the provisions of paragraph (b) Immediately above, the Buyer will provide to PrimaryMarkets the duly completed Buyer's Excluded Party Declaration and all other documentation and evidence reasonably requested by PrimaryMarkets to satisfy any obligation of the Buyer or PrimaryMarkets in any manner, in relation to any of the Know-Your-Client, Anti-Money Laundering and Counter Terrorism and Financing Australian legislative regimes;
  - (d) the Buyer has complied and will continue to comply with the requirements of the Act in relation to the Website and any transaction involving an Asset;
  - (e) the Buyer has the power and authority to enter into and perform all its obligations and duties as set out in this Agreement and that the performance by the Buyer of its obligations will not breach any applicable law;
  - (f) the Website is made available to the Buyer personally and the Buyer may only pass on details of an Asset to another person (other than Related Bodies Corporate and/or Related Persons of the Buyer) with PrimaryMarkets' prior written consent;
  - (g) the Buyer has made or will make its own enquiries and assessment of an Asset and does not rely on any statement or publication made by PrimaryMarkets in relation to an Asset or otherwise;
  - (h) neither a Seller nor, PrimaryMarkets makes any recommendation to the Buyer as to whether the Buyer should participate in any transaction in respect of an Asset, nor do either make any representation or warranty to the Buyer concerning the merits of an Asset generally, including but not limited to the value of any Asset or the risks of participating in a transaction with a Seller;
  - (i) the Buyer has not relied nor will rely upon:
    - (i) any recommendation from a Seller or PrimaryMarkets in deciding whether or not to purchase or otherwise deal in an Asset ; and
    - (ii) any information provided to the Buyer by or on behalf of a Seller or PrimaryMarkets;
  - (j) before acquiring an Asset the Buyer will consider, with the assistance of independent financial, legal and other advisers, whether the potential acquisition is

appropriate for the Buyer in light of the particular investment needs, objectives and financial circumstances of the Buyer;

- (k) if the Buyer is outside Australia, the Buyer is a person to whom an invitation or offer to acquire the Asset is permitted by the laws of the jurisdiction in which the Buyer is ordinarily resident or from where the Buyer accessed the Website and the Buyer is a person to whom the Asset can lawfully be offered and purchased by or otherwise dealt with under all applicable laws of that jurisdiction, without the need for any registration or lodgement;
- (l) the Buyer is not ordinarily resident in the United States nor is a U.S. person (as defined in Regulation S under the U.S. Securities Act (defined below)), or acting for the account or benefit of a U.S. person;
- (m) except for any liability which cannot by law be excluded, neither a Seller nor PrimaryMarkets accepts any responsibility in relation to the Website and the Asset;
- (n) if the Buyer proceeds to acquire an Asset the Buyer is making an investment decision based solely on its own investigations of the Asset and the Seller (including in relation to title to and/or ownership of the Asset) and in doing so, makes no reliance in any manner on PrimaryMarkets;
- (o) except in circumstances where PrimaryMarkets relies upon the Class Order, PrimaryMarkets does not and will not:
  - (i) sell an Asset;
  - (ii) have an interest in any Seller of any Asset; or
  - (iii) have an interest in any Intermediary Member that may buy or have as a Client any person that buys any Asset,

and in any of the abovementioned circumstances, PrimaryMarkets will be entitled to earn and be paid an Introduction Fee or any other fee or expense, as agreed between PrimaryMarkets and the Seller or other person selling an Asset, arising from the sale of any Asset.

## Information

8. PrimaryMarkets will be:
- (a) entitled to rely on and assume that all information provided to it by or on behalf of the Buyer or that is produced by or on behalf of the Buyer, is correct, complete and current;
  - (b) under no obligation to verify independently any information or data referred to in paragraph 8 (a) immediately above, as provided to or otherwise obtained by PrimaryMarkets; and
  - (c) under no obligation to determine whether there has been, or to investigate, any change in any such information occurring after the date that it was provided to or obtained by PrimaryMarkets.
9. The Buyer must immediately notify PrimaryMarkets if and when the Buyer becomes aware:
- (a) that any financial or other information provided to the Buyer by the Seller, or by the Buyer to PrimaryMarkets, or that was provided on behalf of the Buyer (whether written or verbal), is not complete or accurate; and
  - (b) of any and all material changes to any information provided to the Buyer by or on behalf of the Seller.

## Fees

10. Fees:
- (a) There are no fees payable by the Buyer to PrimaryMarkets in respect of any Introductions effected by PrimaryMarkets and any subsequent sale or purchase of any Asset. However, the Buyer hereby acknowledges and accepts that PrimaryMarkets is entitled to earn an Introduction Fee as payable by the Seller or any other expense or fee, as agreed between PrimaryMarkets and the Seller or any other person selling an Asset.
  - (b) Notwithstanding anything contained herein to the contrary, in the event that the asset being listed and/or transacted on the PrimaryMarkets website ([www.primarymarkets.com](http://www.primarymarkets.com)) is an asset that forms part of a Secondary Trading Hub or Ecosystem operated by PrimaryMarkets (**Ecosystem**) then the provisions of the relevant Trading Rules of such an Ecosystem as described and contained on the PrimaryMarkets website ([www.primarymarkets.com](http://www.primarymarkets.com)) (**Trading Rules**) shall supersede the provisions of this Buyer Member Agreement and in the event of any inconsistency then the provisions of these Trading Rules shall prevail.
11. The Buyer unconditionally agrees and acknowledges with PrimaryMarkets that:
- (a) PrimaryMarkets shall be paid by the Seller an Introduction Fee in respect of the sale of, or other dealing in, an Asset, and the dollar amount of that fee will have been determined and will be payable to PrimaryMarkets in accordance with the provisions of the Seller Member Agreement;
  - (b) the Introduction Fee will become due and payable to PrimaryMarkets immediately upon the Seller, any shareholder or shareholders of the Seller, any entity controlled by a shareholder of the Seller which owns and/or operates the Asset, or by any person who or that is associated with or controls the Seller, completing any transaction(s) with a Buyer in relation to an Asset irrespective of whether or not:
    - (i) the terms and conditions of any such transaction and/or the parties to any such transaction include, without limitation:

- (A) multiple tranches for payment of the Asset transaction value in connection with the sale of an Asset and any or all of which tranches are paid over a period or periods of time;
  - (B) any and all forms of transaction including any agreement, understanding, arrangement, sale/purchase, lease, hire purchase, option and the like, whether in written, verbal or electronic form, or any combination of any of the foregoing; and
  - (C) any party(ies) introduced to the Seller by PrimaryMarkets such as a Buyer or Intermediary;
- (ii) any act or omission of a Seller, Buyer or Intermediary taken or arising in connection with any such entering into or executing any transaction(s) in relation to an Asset is valid, enforceable, duly authorised or with legal effect; and
  - (iii) the Buyer performs all or any of its obligations and liabilities under the terms and conditions of that transaction or any documentation arising in connection with that transaction;
- (c) PrimaryMarkets:
- (i) may pay to an Intermediary Member any part of the Introduction Fee received by PrimaryMarkets in respect of the sale of an Asset; but
  - (ii) no part of that Introduction Fee will be paid to a Buyer who was also an Intermediary Member in respect of the sale of that Asset.
- (d) if during the term of the Agreement and prior to the second anniversary of the last date of the listing of an Asset on the Website (or the last date of Introductions being sought in relation to an Unlisted Asset), the Seller or any shareholder or shareholders of the Seller or an entity controlled by the shareholders of the Seller which owns and/or operates that Asset (collectively the **Seller Group**), enters into or executes a transaction with any party(ies) that has been introduced to any member of the Seller Group by PrimaryMarkets or any Related Person of PrimaryMarkets (**Introduced Party**), then the Seller will immediately thereupon pay or procure the payment to PrimaryMarkets, of the Introduction Fee and expenses, determined in accordance with the provisions of the Seller Member Agreement.

12. The Buyer irrevocably warrants and agrees with PrimaryMarkets that it will:

- (a) do all acts and sign all documents requested by PrimaryMarkets to ensure, assist and protect PrimaryMarkets to receive payment in full of the Introduction Fee and any and all other expenses and fees to which PrimaryMarkets is entitled, including but not limited to promptly and fully:
  - (i) informing PrimaryMarkets of all terms and conditions relating to the sale of an Asset;
  - (ii) providing PrimaryMarkets with complete and accurate copies of all transaction documentation immediately upon entering into such sale and/or executing any such documentation relating to the Asset; and
  - (iii) informing PrimaryMarkets of the occurrence of any closing, completion and/or settlement of that sale;
- (b) irrevocably direct and authorise, on terms and conditions satisfactory to PrimaryMarkets, any party that receives or holds the proceeds of sale of any Asset

for or on behalf of the Buyer to pay to PrimaryMarkets the Introduction Fee and any and all other expenses and fees to which PrimaryMarkets is entitled, in full and in immediately available funds, in priority to any other payment or disbursement of such proceeds of sale; and

- (c) not do any act or permit or concur with any action or omission that in any circumstances may be deemed by PrimaryMarkets to be an attempt to circumvent or that does actually circumvent PrimaryMarkets receiving payment in full of the Introduction Fee and any and all other expenses and fees to which PrimaryMarkets is entitled,, in a timely manner.
13. In the event of default by the Buyer under clause 12 the Buyer shall immediately pay to PrimaryMarkets the relevant Introduction Fee(s) (plus the applicable Goods and Services Tax) and any and all other expenses and fees to which PrimaryMarkets is entitled, unpaid to PrimaryMarkets without the necessity of PrimaryMarkets seeking recourse from the relevant Seller or Intermediary.

### **Prerequisites**

14. Without limitation to any other of these Standard Terms and Conditions of this Agreement, the Buyer hereby undertakes to PrimaryMarkets that it will:
- (a) fully participate in the Introductions (contemplated under this Agreement);
  - (b) use its best endeavours to ensure that the Buyer is fully informed in relation to the Asset; and
  - (c) undertake its own due diligence inquiries regarding title, ownership, legal, accounting, regulatory, taxation and any other general, specialist or technical matters on any and all transactions regarding an Asset with the assistance of the Seller's advisers, Directors and senior management. to participate in and assist with full due diligence inquiries.

### **Using Website and services of PrimaryMarkets**

15. Whilst using the Website and services of PrimaryMarkets, the Buyer irrevocably agrees it will not:
- (a) post false, inaccurate, misleading, defamatory or offensive content (including personal information) on the Website or content that infringes the rights of third parties, including content that infringes on intellectual property rights such as copyright or trademark;
  - (b) breach or infringe any laws, third party rights and/or any policies of PrimaryMarkets;
  - (c) vary or amend in any manner any listing or promotion of Assets whether on the Website or otherwise, without prior consultation with and consent of PrimaryMarkets;
  - (d) circumvent or manipulate any aspect of the determination or payment of the Introduction Fee or any other fees or expenses payable to PrimaryMarkets under the provisions of this Agreement or as otherwise agreed;
  - (e) transfer the Buyer's Member account and user identification details to another party without the prior written consent of PrimaryMarkets;
  - (f) distribute or post spam, unsolicited or bulk electronic communications, chain letters or pyramid schemes of any nature on the Website;

- (g) distribute viruses or any other technologies that may harm the Website or the interests or property of PrimaryMarkets, its Members and users;
- (h) copy, modify or distribute rights or content of PrimaryMarkets' copyrights and trademarks; or
- (i) otherwise collect information about PrimaryMarkets, Members and/or users including email addresses without their prior written consent.

### **Content on the Website**

16. When the Buyer provides PrimaryMarkets with any content in relation to an Asset or the sale of an Asset, the Buyer will thereby unconditionally:
  - (a) grant PrimaryMarkets, and thereby represent to PrimaryMarkets that it has the right to grant to PrimaryMarkets, a non-exclusive, worldwide, perpetual, irrevocable, royalty-free right to exercise any and all copyright, trademark, publicity, design, database rights and intellectual property rights that the Buyer may have in the content in any medium known now or in the future; and
  - (b) waive all moral rights that it has or may acquire in that content to the fullest extent permitted by law.
17. For the convenience of all Members, PrimaryMarkets may offer catalogues of stock images, descriptions and product specifications that are provided by third parties (including by any Member). At all times and in all circumstances the Buyer is fully and solely responsible for all content provided by or on behalf of the Buyer (if any) and for ensuring that it is accurate, does not include misleading information and complies with this Agreement and all other PrimaryMarkets policies.
18. The Buyer unconditionally agrees and acknowledges to, and undertakes for the benefit of PrimaryMarkets that:
  - (a) no Asset will be listed on the Website nor Introduction sought in respect of the Seller of an Asset without the prior written consent of PrimaryMarkets, such consent to be given or withheld at the absolute discretion of PrimaryMarkets;
  - (b) PrimaryMarkets has not:
    - (i) represented, warranted or otherwise stated that there has been or will be any or sufficient interest of a Buyer in selling or otherwise dealing in any Asset;
    - (ii) advised or suggested what are or should be acceptable terms or conditions for the sale or other dealing in an Asset;
    - (iii) advised or represented that the Website may not also have other assets listed for sale or dealing that are the same as or similar to the Asset to which an Introduction to a Seller has been made to the Buyer; and
    - (iv) offered, and does not offer, any of its Introduction services to the Buyer under any actual or implied exclusivity or non-competition arrangement or understanding; and
  - (c) PrimaryMarkets may distribute communications and notifications to the Buyer (electronically or otherwise) and the Buyer undertakes not to re-distribute or promote such communications and notifications without the prior written consent of PrimaryMarkets.

## The Website

19. The Buyer hereby agrees and acknowledges that:
- (a) there are and always will remain, risks when using the Website;
  - (b) PrimaryMarkets is not responsible for any other Member's or users' content, actions or omissions;
  - (c) PrimaryMarkets is not an auctioneer nor the maker of a marketplace and the Website is merely a venue (which may change from time to time) for providing Introduction services including to allow Seller Members to list Assets on the Website and Buyer Members to view Assets at any time on the Website, and from any location;
  - (d) PrimaryMarkets is not a party to or otherwise involved in any actual transaction between a Buyer and a Seller;
  - (e) PrimaryMarkets has no control over and does not guarantee or provide any representation or warranty in regard to:
    - (i) the existence, financial performance, suitability, quality, safety or legality of any Asset listed on the Website;
    - (ii) the truth or accuracy of content relating to any Asset displayed on the Website;
    - (iii) the ability of any Buyer to enter into or pay for any proposed transaction; or
    - (iv) whether or not a Buyer or Seller will actually complete a transaction;
  - (f) all information available through the Website in relation to an Asset is provided by or on behalf of the Seller of the Asset and PrimaryMarkets has not undertaken an independent review or verification of any of that information. The information available through the Website is not intended to be the only information on which a Buyer may make its investment decision. Detailed additional information may be needed by the Buyer in its absolute discretion.
  - (g) when the Buyer enters into any formal documentation for a transaction, it thereby creates a legally binding contract between itself and the applicable Seller, and the Buyer must ensure that it complies with its obligations to that Seller under the terms and conditions of that documentation;
  - (h) if any Member breaches any obligation to the Buyer, then the Buyer and not PrimaryMarkets, is and will be responsible for enforcing any rights that the Buyer may have against that Member as a result of that breach.
  - (i) the Buyer alone, and not PrimaryMarkets, is responsible for ensuring that its purchases or any other activities that it conducts including on the Website are lawful;
  - (j) the Buyer must ensure that it complies with all applicable laws in Australia and other countries;
  - (k) the Buyer must ensure that it strictly complies with all the provisions of this Agreement and the policies which form part of this Agreement;

- (l) PrimaryMarkets does not and will not take ownership of any Asset at any time and does not deal with or transfer legal or beneficial ownership of any Asset or funds from a Seller to a Buyer or vice versa;
- (m) PrimaryMarkets does not guarantee continuous or secure access to the PrimaryMarkets services or the Website which may be interfered with or prohibited by numerous factors, including those outside the control of PrimaryMarkets.

## Breach

20. Without limiting other remedies available to PrimaryMarkets at law, in equity or under this Agreement, PrimaryMarkets may, without notice to the Buyer and at the sole and absolute discretion of PrimaryMarkets, issue a Buyer with a warning, restrict a Buyer's activities through the Website (including but not limited to listing and viewing any Asset), temporarily or indefinitely suspend or terminate the Buyer's Membership with PrimaryMarkets and/or refuse to provide any or all of the services of PrimaryMarkets to the Buyer, if PrimaryMarkets:
- (a) believes in its absolute, unfettered discretion that either:
    - (i) the Buyer has breached or failed to perform any of its obligations or duties under the provisions of this Agreement or any PrimaryMarkets' policies; or
    - (ii) it is reasonably likely that any such breach or failure will occur;
  - (b) is unable to verify or authenticate any information that the Buyer provides to PrimaryMarkets; or
  - (c) believes in its absolute, unfettered discretion that any action or proposed action by or on behalf of a Seller has caused or may cause loss or damage to or otherwise unlawfully harm PrimaryMarkets, the Buyer, any Member or user of the Website or any Related Body Corporate or Related Person of any of the foregoing.
21. For security, confidentiality and privacy reasons, PrimaryMarkets is not obliged to provide the Buyer or any other Member with the details, outcome or consequences of any investigation that PrimaryMarkets may conduct or conducts or any action which PrimaryMarkets has taken or may take, in relation to the Buyer.

## Termination

22. Subject to the provisions of clause 24, the term of this Agreement:
- (a) is for a minimum period that:
    - (i) commences on and includes the date upon which the Buyer first enters into this Agreement; and
    - (ii) ends on and includes the first anniversary of the date on which the Buyer first enters into this Agreement; and
  - (b) will continue in full force and effect until the date on which this Agreement is terminated in accordance with these terms and conditions (**Termination Date**).

On any date after the Termination Date, this Agreement may be terminated by either Party, in accordance with the terms and conditions of this Agreement notifying the other of the termination of this Agreement (**Termination**).

23. At any time during the term of this Agreement:



- (a) the Buyer will be entitled to terminate this Agreement by giving written notice to that effect to PrimaryMarkets, upon the occurrence of a material default by PrimaryMarkets under this Agreement. However, if such default is capable of remedy, the Buyer will not be entitled or permitted to terminate the Agreement until PrimaryMarkets:
    - (i) has received written notice from the Buyer of all material particulars of such default; and
    - (ii) has failed to remedy that default within the period of thirty (30) days after the date of receipt of such written notice; and
  - (b) PrimaryMarkets will be entitled to terminate this Agreement by giving written notice to that effect to the Seller.
24. Any Termination effected by a Party will only take effect upon receipt by the other Party of written notice to that effect. The Parties agree that the provisions of this Agreement relating to the obligations to determine and pay the Introduction Fee, and to reimburse legal, out-of-pocket and all other expenses (if any), indemnification of PrimaryMarkets and all other Indemnified Parties, increases in amounts payable on account of GST and any payments under this Agreement will remain operative notwithstanding the occurrence of any termination or purported or attempted termination.

### Intellectual Property Rights

25. PrimaryMarkets retains all copyright and all other intellectual property rights in everything it develops or proposes (or is involved in developing or proposing) including, without limitation, its methodologies, systems and know-how. PrimaryMarkets retains all copyright and other intellectual property rights in all information and other deliverables provided to the Buyer. However, the Buyer will have full right to use all materials provided by PrimaryMarkets within its own organisation on a 'need to know' basis. If the Buyer wishes to use the materials outside its own organisation, it must first obtain PrimaryMarkets' written consent. The Buyer consents to PrimaryMarkets disclosing the Buyer's logos and other similar intellectual property where and when PrimaryMarkets elects for the purposes of assisting in the sale of an Asset or otherwise in accordance with any act or omission of PrimaryMarkets permitted to be taken under the provisions of this Agreement. PrimaryMarkets acknowledges that such use of the Buyer's intellectual property will not amount to any assignment or transfer of ownership to PrimaryMarkets of any such logos and other similar intellectual property.

### Indemnity

26. The Buyer hereby represents and warrants to PrimaryMarkets that it has and will retain full responsibility and accepts full liability for any use of any matter or thing in relation to an Asset, presentations, documents and/or related marketing materials in the course of or in connection with the introductions (and subsequent transactions) contemplated under this Agreement (each a **Marketing Document**) or any information or document that accompanies a Marketing Document.
27. The Buyer irrevocably indemnifies each Indemnified Party and must keep each Indemnified Party wholly indemnified against any and all liability, damages, claims and losses directly or indirectly arising from, and all costs, charges and expenses arising in connection with:
- (a) an Asset or any matter or activity referred to or contemplated by this Agreement;
  - (b) the issue and use of a Marketing Document or a Publication (or any information or document accompanying the Marketing Document or a Publication);
  - (c) the making of and use of any statement in a Marketing Document or a Publication (or any information or document accompanying the Marketing Document or a

- Publication) that is or becomes misleading or deceptive or any omission from a Marketing Document or a Publication;
- (d) any conduct by a person (other than PrimaryMarkets) in connection with the issue and use of a Marketing Document or Publication (or any information or document accompanying the Marketing Document or a Publication) that is misleading or deceptive or likely to mislead or deceive;
  - (e) any conduct by the Buyer in relation to an Asset that is in contravention of any law, regulation or rule including without limitation the Act, and Corporations Regulations or the requirements and/or restrictions in the Class Order;
  - (f) any breach or failure by the Buyer to observe any of the terms and conditions of this Agreement, the Privacy Policy or Website Terms and Conditions of Use, including, but not limited to, the representations and warranties provided therein;
  - (g) any liability of PrimaryMarkets, or any claim that PrimaryMarkets has incurred or will incur, any liability under the Act, any Corporations Regulations, the Class Order or any other law (including, but not limited to, the *Competition and Consumer Act 2010 (Cth)*) in relation to an Asset or the disclosure or promotion of the sale an Asset; or
  - (h) any review or investigation undertaken by the Australian Securities & Investments Commission or any other regulatory authority as a result of an alleged or actual failure to comply with the conditions and requirements the Act, any Corporations Regulations, the Class Order or any other law (including, but not limited to, the *Competition and Consumer Act 2010 (Cth)*) in relation to an Asset or the disclosure or promotion of the sale of an Asset.
28. Any approval or consent given by PrimaryMarkets does not waive or prejudice the right of an Indemnified Party to the indemnity as stated in these Standard Terms and Conditions and such rights survive the expiry or Termination of this Agreement. The Buyer agrees that PrimaryMarkets holds the benefit of this indemnity on trust for itself and all other Indemnified Parties.
29. PrimaryMarkets disclaims any and all responsibility, whether to the Buyer or any third party, for any and all claims arising out of information disclosed, disseminated or published by PrimaryMarkets that is based upon, either in whole or in part, any information provided to PrimaryMarkets by or on behalf of the Seller which is or becomes misleading, inaccurate or incomplete.
30. If for any reason any or all of the above indemnities are unavailable at law or are otherwise unavailable or insufficient to hold PrimaryMarkets or any other Indemnified Party harmless against any losses which PrimaryMarkets or that other Indemnified Party is stated to be indemnified for, the respective proportional contribution of the Buyer and the Indemnified Party in relation to the relevant loss will be as agreed between them, or failing agreement within ten (10) days after the date of the first attempt to achieve that agreement, as determined by a court of competent jurisdiction having regard to the respective extent and nature of participation or involvement of the Buyer and the Indemnified Party in connection with the act complained of. Notwithstanding the foregoing, the Buyer acknowledges and agrees that in no event will the Indemnified Party be required to contribute to any losses which in aggregate exceed the Introduction Fee actually paid to and received by PrimaryMarkets in immediately available funds from the Seller under the relevant Seller Member Agreement in respect of the relevant Asset in connection with which the relevant indemnity obligation has arisen.

### **Conduct of Proceedings**

31. Where any legal or other proceedings arise and the Buyer confirms in writing that an Indemnified Party is indemnified pursuant to these Standard Terms and Conditions, then the Buyer is and will remain entitled to defend or institute legal or other proceedings at the Buyer's cost, in the name of that Indemnified Party and those proceedings will be conducted under

the management and control of the Buyer (with reasonable consultation with PrimaryMarkets and any other relevant Indemnified Party), provided that:

- (a) neither the Buyer nor PrimaryMarkets has the power to settle, compromise, consent to early judgment in or otherwise seek to terminate any action, suit, proceeding, investigation or claim in respect of which indemnification has or may be sought under these Standard Terms and Conditions without the prior written consent of the other; and
- (b) such settlement, compromise, consent or termination shall include a release of each applicable Indemnified Party from any liabilities arising out of such action, suit, proceeding, investigation or claim.

### **Limitation of Liability**

- 32. PrimaryMarkets may assist the Buyer in the manner set out in this Agreement. However, PrimaryMarkets accepts no liability or responsibility in the event that a transaction (subsequent to an Introduction) involving an Asset does not proceed or the Asset is not received.
- 33. The Buyer acknowledges that Introduction services and any other form of assistance as may be provided to it by PrimaryMarkets as detailed in this Agreement will be provided by PrimaryMarkets Limited alone and any recourse of the Buyer or any third party is to PrimaryMarkets rather than to any Related Body Corporate or Related Person of PrimaryMarkets Limited. PrimaryMarkets will not be liable for any failure or delay in performing or providing any assistance detailed in this Agreement if that failure or delay arises from anything beyond its control including without limitation the untimely performance by a Seller, a Buyer or an Intermediary of any of their respective obligations or duties.
- 34. If a Buyer has a dispute with one or more of the Members, that Seller hereby irrevocably and unconditionally releases and discharges PrimaryMarkets from and against any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with any such dispute.
- 35. Subject to clauses 32 to 40 (inclusive), PrimaryMarkets is not liable to the Buyer or to any other person for any direct, indirect, incidental, special or consequential loss or damage, loss of money, loss of profits or anticipated profits, loss of goodwill, economic loss, loss of business opportunity, loss of revenue, loss of data or loss of reputation (whether based in contract, tort (including negligence), statute or otherwise) including any damage that results or arises, directly or indirectly, from any wrongful or negligent act or omission of PrimaryMarkets or out of a Buyer's use of or inability to use the Website or any services of PrimaryMarkets.
- 36. Any representation, warranty, condition, term, guarantee, indemnity or undertaking contained in this Agreement that would be implied in or affected by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage is excluded to the maximum extent permitted by law.
- 37. Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Buyer by the Australian Consumer Law, Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* if applicable that cannot be excluded, restricted or modified by agreement.
- 38. To the fullest extent permitted by law, the liability of PrimaryMarkets for a breach of a non-excludable guarantee referred to in clause 39 is limited to:
  - (a) the supplying of the services again; or
  - (b) the payment of the cost of having those services supplied again.

39. Subject to clauses 32 to 38 (inclusive) and any rights of the Buyer under the Australian Consumer Law, Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*, the maximum aggregate liability of PrimaryMarkets and an Indemnified Party for all proven losses, damages and claims arising out of or in connection with this Agreement or the provision of a supply under this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of A\$100.
40. Despite any other provision of this Agreement, clauses 32 to 39 (inclusive) survive the expiry or Termination of this Agreement.

### **Shares and Securities**

41. Notwithstanding anything contained herein to the contrary above, if the Buyer is not ordinarily resident in an Australian jurisdiction, that Buyer hereby acknowledges, represents, warrants and agrees (as relevant) for the benefit of PrimaryMarkets that, in respect of any Assets which are shares or any other form of security (**Shares**):

#### United States of America

- (a) The Shares have not been and will not be registered under the United States Securities Act of 1933, as amended (**U.S. Securities Act**) or the securities laws of any of the states of the United States and the Seller has not been and will not be registered under the United States Investment Seller Act of 1940, as amended.
- (b) Direct or indirect acquisition or ownership of such Shares by any US Person without compliance with applicable United States securities laws or in contravention of the relevant provisions of the constituent documents of the Seller is prohibited.
- (c) The Buyer is not physically residing or otherwise located in the United States, nor a US Person, nor acting for the account of benefit of any person in the United States or a US Person, and understands that the offer and sale to the Buyer of the Shares has not been and will not be registered under the U.S. Securities Act, or the securities laws of any state or other jurisdiction in the United States. Therefore, the Buyer agrees that it will not offer, sell, pledge, transfer or otherwise dispose of any Shares in the United States or to, or for the account or benefit of, any US Person.
- (d) The Buyer understands that any offer and sale to the Buyer of Shares has not been and will not be registered under the U.S. Securities Act, or the securities laws of any state or other jurisdiction in the United States.
- (e) Neither the Buyer nor any of the affiliates of the Buyer nor any person acting on the Buyer's or their behalf has engaged or will engage in any "directed selling efforts" within the meaning of Rule 902 under the U.S. Securities Act or any general solicitation or general advertising in the United States within the meaning of Rule 502(c) under the U.S. Securities Act, in each case with respect to the Shares.
- (f) The Buyer is not engaged in the business of distributing securities or, if it is so engaged, the Buyer agrees that it will not offer or sell in the United States or to U.S. Persons:
- (i) any Shares that the Buyer acquires at any time; or
  - (ii) any ordinary shares that the Buyer acquires from or in the Seller until 40 days after the date on which the transaction settles, except in both cases in a transaction registered under the U.S. Securities Act or that is exempt from the registration requirements of the U.S. Securities Act.

#### United Kingdom

- (a) Any offer of Shares is made by the Seller only to potential investors who are qualified investors in the United Kingdom for the purposes of the Financial Services and Markets Act 2000 (**FSMA**) and the FSA Prospectus Rules. In addition, any offer of Shares by the Seller in the United Kingdom is made only to persons in circumstances where it will not constitute the communication of an invitation or inducement to engage in investment activity for the purposes of section 21 of the FSMA as a result of the exemptions contained in the FSMA (Financial Promotion) Order 2005 (**UK Exempted Person**).
- (b) The Buyer is a person who is any one or more of:
  - (i) a person who has professional experience relating to investments who fall within Article 19(1) of the FSMA (Financial Promotion) Order 2005 (**Order**);
  - (ii) a high net worth entity and other person by whom any Shares may otherwise lawfully be acquired or otherwise lawfully be distributed or issued to, and who falls within Articles 48 and 49 of the Order; or
  - (iii) a sophisticated investor who falls within Articles 50 or 50A of the Order.

#### Hong Kong

- (a) The Buyer acknowledges, represents, warrants and/or agrees (as relevant):
  - (i) that it is a person deemed to be a "professional investor" as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made under that ordinance; or
  - (ii) in circumstances where the Buyer does not meet the criteria in paragraph (a)(i) immediately above, then the Buyer will not participate in any transaction involving an Asset requiring a "prospectus" as defined in the Companies Ordinance (Cap. 32) of Hong Kong or constituting an offer to the public within the meaning of that Ordinance.
- (b) The contents of the Website and any Publication have not been reviewed by any regulatory authority in Hong Kong.

#### Singapore

- (a) The Website and any Publication has not been registered as a memorandum (as defined in the Securities and Futures Act ("**SFA**")) with the Monetary Authority of Singapore.
- (b) The Buyer acknowledges that an Asset may be offered, or be made the subject of an invitation for subscription or purchase or be contained in any other offering material and that the Buyer is any one or more of:
  - (i) an institutional investor (as defined in the SFA);
  - (ii) an accredited investor (as defined in the SFA); or
  - (iii) a person pursuant to an offer that is made on terms that the Shares are acquired at a consideration of not less than S\$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets or that an offer is otherwise made to you pursuant to, and in accordance with the conditions of, any other applicable exemption of the SFA.

## **AFS Licence**

42. The Buyer acknowledges and accepts that PrimaryMarket Limited is a duly appointed Corporate Authorised Representative of Helmsec Global Capital Pty Limited ABN 77 129 825 798, the provider of financial services under Australian Financial Services Licence No 334838.

## **Confidentiality**

43. Any information about the Assets, the Seller or the Buyer provided by a Seller or a Buyer to the Intermediary must not be reproduced or transmitted to or discussed with any other person (other than the Intermediary's Related Persons on a 'need to know' basis) at any time whatsoever without the prior written consent of the Seller or PrimaryMarkets. This clause does not apply to any information which:
- (a) is generally available to the public (other than as a result of wrongful disclosure); or
  - (b) is required to be disclosed by any law, ASX Listing Rules or any regulatory authority (but only to the extent so required).
44. Without limitation to the provisions of clause 44, the Buyer hereby consents and acknowledges that PrimaryMarkets may share non confidential information or matters relating to the Buyer with any of the Related Persons and Related Bodies Corporate of PrimaryMarkets as well as with other Members and their respective Related Persons and Related Bodies Corporate or any of their respective professional advisers, all of whom may, in turn, likewise share that non-confidential information relating to the Buyer with PrimaryMarkets.

## **Amendments to this Agreement**

45. Subject to clause 46, each Member is and will remain responsible to check the Website from time to time to inform itself about any modifications or amendments of clauses to this Agreement.
46. Where any modification or amendment to this Agreement is considered by PrimaryMarkets (in its absolute discretion) to be necessary or prudent and sufficiently material, PrimaryMarkets will, as soon as practicable, notify the Member who is a party to this Agreement, and any other Member that PrimaryMarkets believes should be so notified, of such modification or amendment by giving to each such person no less than 5 days written notice (**Notice Period**) during which Notice Period the current version of this Agreement will remain in full force and effect. If the Member who is a party to this Agreement does not deliver in writing to PrimaryMarkets an objection to the relevant modification or amendment within the Notice Period then it will be deemed to have:
- (a) irrevocably accepted, and be bound by, the relevant modification or amendment as notified by PrimaryMarkets; and
  - (b) confirmed that all other terms and conditions of this Agreement remain in full force and effect.

## **Authorised Representatives of the Member**

47. A Member being a body corporate may appoint only one of its Directors or full-time employees as an authorised representative of the Member (**Authorised Representative**) to exercise and fulfil the Member's rights and obligations under this Agreement.
48. To appoint an Authorised Representative, a Member must complete the Authorisation Form as published on the Website, and as amended from time to time, and submit same once duly signed and otherwise completed, to PrimaryMarkets for its approval (which can be withheld or be given subject to conditions).

49. It is the Member's sole responsibility to ensure any Authorised Representative complies with all obligations and duties of the Buyer under the terms and conditions of this Agreement and all relevant laws. The Member irrevocably indemnifies PrimaryMarkets in this regard.

### **Severance and Other Provisions**

50. Any provision of the Agreement is only ineffective if and to the extent that it is void or unenforceable and will not invalidate any remaining provision of this Agreement and this Agreement will remain in full force and effect other than only to the extent that the offending provisions(s) will be deemed to be deleted.
51. In the event of any inconsistency with the provisions of this Agreement, the Terms and Conditions or Use and the Privacy Policy then the provisions of this Agreement shall prevail.
52. Each indemnity in this Agreement survives the termination of any Buyer's Membership or expiry or Termination of this Agreement.
53. A term or condition of, or act done in connection with, this Agreement does not operate as a merger or termination of any of the undertakings, warranties and indemnities in this Agreement or the rights or remedies of the parties under this Agreement which continue unchanged.
54. Nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary or a fiduciary relationship.
55. Without limitation to clause 54, the Buyer by entering into this Agreement agrees and acknowledges that:
- (a) PrimaryMarkets has been appointed by the Seller under the Seller Member Agreement, as the agent of the Seller in connection with any Introduction and transaction that the Seller may enter into with a Buyer; and
  - (b) the sole terms and conditions of the abovementioned appointment of PrimaryMarkets as its agent will be as set out in these terms and conditions.

### **Jurisdiction**

56. This Agreement and any disputes arising from it will be covered by the laws applying in the State of New South Wales. The Parties agree to the exclusive jurisdiction of the courts of the State of New South Wales.

**Last Updated: 23 October 2018**