

INTRODUCTION

- (A) Cboe Australia Pty Ltd (ABN: 47 129 584 667) (**Cboe**) holds an Australian Market Licence to operate a financial market for trading financial products under section 795B (Australian Market Licence) of the *Corporations Act 2001* (Cth) (the **Act**).
- (B) Cboe has obligations arising under Part 7 of the Act and is subject to the Market Integrity Rules (Competition in Exchange Markets) and Market Integrity Rules (Chi-X Market) made by ASIC.
- (C) Under the Market Integrity Rules (Competition in Exchange Markets), Cboe has obligations to make available its market information on reasonable commercial terms and on a non-discriminatory basis.

NOTE: Customers should carefully read each of the documents described in clause 1 below as the terms set out in those documents have important legal consequences for the Customer.

1. ABOUT THIS AGREEMENT

- (a) Throughout the Term, the Customer agrees to comply with the following documents which make up the agreement under which Cboe makes the Products available to the Customer (the **Agreement**):
 - (i) the Order Form;
 - (ii) these General Terms and Conditions;
 - (iii) the Product Manual; and
 - (iv) the Payment Schedule.
- (b) Where any conflict or inconsistency occurs between the provisions contained in two or more of the documents forming this Agreement, the document or documents lower in the list in clause 1(a) will be read down to resolve the inconsistency or conflict.
- (c) The Customer acknowledges that Cboe is a licensed market operator and acknowledges and agrees that this Agreement and the availability and use of the Products, is subject to Cboe's operation of the Cboe Market in a fair, orderly and transparent manner, the Operating Rules, applicable laws or any requirements, directions or notices imposed by a competent judicial, governmental, supervisory or regulatory body.

2. AMENDMENT

- (a) Amendments to these General Terms and Conditions shall be effective only when agreed in writing between the Parties.
- (b) Subject to clause 2(c) and 2(d), Cboe may make amendments to the Product Manual or Payment Schedule by providing the Customer with an Amendment Notice at least ninety (90) days prior to the implementation of the proposed amendment.
- (c) The Customer agrees that Cboe may amend the Product Manual without providing ninety (90) days prior notice, where:
 - (i) Cboe considers it is necessary to ensure the fair, orderly and transparent operation of the Cboe Market or pursuant to the Operating Rules, applicable laws and requirements, directions or notices imposed by a competent judicial, governmental, supervisory or regulatory body; or
 - (ii) the amendment is to introduce a new Product.
- (d) The Customer agrees that Cboe may amend the Payment Schedule without providing ninety (90) days prior notice, where:
 - (i) the amendment is to reduce Fees; or
 - (ii) the amendment is to introduce a new Product.
- (e) Where Cboe amends the Product Manual or Payment Schedule pursuant to clause 2(c) and 2(d) respectively,

- Cboe will publish an Amendment Notice as soon as is reasonably practicable in the circumstances.
- (f) The Customer may cancel its subscription for the Product that is subject to the amendment described in an Amendment Notice, effective from the date on which the amendment is to be implemented, by providing written notice to Cboe within:
 - (i) thirty (30) days of Cboe publishing the Amendment Notice where at least 30 days notice has been given by Cboe;
 - (ii) five (5) days of Cboe publishing the Amendment Notice where less than thirty (30) days notice has been given by Cboe.

3. ORDERING CBOE PRODUCTS

- (a) To request that Cboe make a Product available to the Customer, or amend a previous request, the Customer must submit an Order Form.
- (b) Each Order Form once executed by Cboe shall form part of this Agreement between Cboe and the Customer and will replace and supersede any earlier executed Order Form.
- (c) Following the execution of an Order Form, Cboe will use best endeavours to make the Product(s) requested by the Customer on the Order Form available from the Product Commencement Date throughout the Product Term for the Customer's use in accordance with this Agreement.

4. TERM

- (a) The term of this Agreement (the **Term**) commences on the Commencement Date and continues until the earlier of:
 - (i) termination in accordance with clause 11.1; and
 - (ii) the date upon which all Product Terms for Products made available by Cboe to the Customer have expired or have otherwise been cancelled in accordance with this Agreement.
- (b) Each Product Term commences on the Product Commencement Date, and will continue until the earlier of:
 - (i) the cancellation of the relevant Product subscription in accordance with this Agreement; or
 - (ii) the date this Agreement is terminated.

5. PAYMENT

The Customer agrees to pay the Fees for the Products in accordance with the Payment Schedule.

6. REPRESENTATIONS AND WARRANTIES

- (a) Each of Cboe and the Customer represents and warrants that it has all rights, authority and licenses necessary for it to: (i) enter into this Agreement; (ii) to grant the rights herein; and (iii) that during the Term it will comply with all applicable laws and regulations relevant to the performance of this Agreement. In addition, Cboe represents and warrants the Cboe Proprietary Materials and the Customer's use of the Cboe Proprietary Materials as permitted under this Agreement do not infringe or violate the Intellectual Property Rights of a third party.
- (b) To the fullest extent permitted by law Cboe makes the Products available on an "AS IS" and "AS AVAILABLE" basis and without any guarantee, representation, condition, term or warranty of any kind by Cboe, the Cboe Group or any Third Party Provider whether express or implied by statute, general law or custom, in relation to the Products, including but not limited to any terms relating to satisfactory quality, fitness for a particular purpose, compatibility, security, completeness, accuracy, absence of error, continuity and standards of performance. The Customer acknowledges that from time to time Cboe may procure products and services from Third Party Providers and is not the originator of those products or services and that although Cboe will endeavour

- to provide Products which conform to a certain standard of performance, it provides no guarantee of those standards.
- (c) Notwithstanding any other provision in this Agreement, Cboe accepts no liability or responsibility for the compatibility or performance of any product or service procured by the Customer from a third party when used in conjunction with the Products, including without limitation any telecommunications services or third party software used by the Customer.
 - (d) If Cboe is notified of or otherwise becomes aware of an error or interruption relating to a Product, Cboe will use best endeavours to:
 - (i) provide notice to the Customer of the error or interruption; and
 - (ii) rectify those issues which are within Cboe's control, as soon as is reasonably practicable in the circumstances.

7. INTELLECTUAL PROPERTY

7.1 Existing Intellectual Property

Nothing in this Agreement will affect the ownership of the Intellectual Property Rights of either party which were in existence prior to the Commencement Date.

7.2 Cboe Intellectual Property

- (a) The Customer acknowledges that, as between the parties, all Intellectual Property Rights and other rights which are proprietary in nature contained within the Documentation, the Products, the materials making up the Products and other materials specified under this Agreement (**Cboe Proprietary Materials**) are owned by Cboe. Cboe reserves all rights, title and interest in and to the Products and Cboe Proprietary Materials.
- (b) The Customer must only use the Cboe Proprietary Materials in accordance with this Agreement.
- (c) The Customer must inform Cboe as soon as reasonably practicable if the Customer becomes aware of unauthorized use (including copying) of Cboe Proprietary Materials.
- (d) Cboe may modify, replace, suspend or obtain the right for the Customer to continue using the Cboe Proprietary Materials or any part thereof at its sole discretion at any time if Cboe reasonably believes or receives notice that the Cboe Proprietary Materials infringe any third party Intellectual Property Rights. If Cboe suspends access to a Product for a period in excess of thirty (30) consecutive days under this clause 7.2(d) without replacement of the relevant Product then Cboe will refund the Fees paid by the Customer, or part thereof, for the infringing Product during the period of suspension.
- (e) To the extent permitted by law and notwithstanding clause 9 Cboe will indemnify and release the Customer against any losses, damages, costs and expenses (including reasonable legal fees) awarded against the Customer by a court of law or pursuant to an out of court settlement to the extent they result from a claim by a third party that the Customer's use of the Cboe Proprietary Materials in accordance with this Agreement infringes or violates the Intellectual Property Rights of a third party (**IPR Claim**), provided that:
 - (i) the Customer notifies Cboe of the IPR Claim as soon as reasonably practicable upon becoming aware of its existence;
 - (ii) the Customer grants sole control over the defence and any out of court settlement of the IPR Claim to Cboe, provided that Cboe may not agree to any settlement or compromise that imposes a continuing or non-monetary obligation on the Customer without the Customer's consent which must not to be unreasonably withheld or delayed;
 - (iii) the Customer mitigates its losses in so far as is reasonable; and

- (iv) the Customer reasonably co-operates with Cboe in its defence and any out of court settlement of the IPR Claim at Cboe's expense, and does not prejudice Cboe's conduct of the claim in any way.
- (f) Cboe will not be liable under the indemnity set out in clause 7.2(e) to the extent that the amount of an IPR Claim is increased by (i) the Customer's unreasonable delay in providing notification under clause 7.2(e)(i); or (ii) the Customer's fraud, wilful misconduct or gross negligence.
- (g) To the extent permitted by law, clause 7.2(e) extends to the Personnel of the Customer as if a reference to the Customer includes a reference to each of them. The benefit of the indemnity under clause 7.2(e) in favour of the Personnel of the Customer is held by the Customer for the benefit of those individuals and the Customer may enforce that benefit on their behalf.

8. CONFIDENTIALITY

- (a) The Customer acknowledges that Cboe's Confidential Information is secret, confidential and valuable to Cboe and that the Customer must use reasonable care to maintain and procure the maintenance of the confidentiality of all of Cboe's Confidential Information at all times and to keep and procure the keeping of all of Cboe's Confidential Information secure and protected against theft, damage, loss or unauthorised access.
- (b) The Customer shall not use or disclose Cboe's Confidential Information except:
 - (i) to the extent necessary for the performance of its rights and obligations under this Agreement;
 - (ii) to the Customer's Personnel, Related Bodies Corporate, and the Personnel of the Customer's Related Bodies Corporate to the extent necessary under this Agreement. The Customer must procure that its Personnel, Related Bodies Corporate, and the Personnel of the Customer's Related Bodies Corporate to whom Confidential Information is to be disclosed are made aware of and observe the confidentiality obligations in this clause 8;
 - (iii) to a professional advisor as reasonably required provided always that any such professional adviser to whom Confidential Information is disclosed is subject to obligations of confidentiality of at least as high a standard as those imposed on the Customer under this clause 8;
 - (iv) as may be requested or required by applicable laws, by any competent judicial, governmental, supervisory or regulatory body to be disclosed by the Customer. The Customer shall (to the extent permitted by law and where reasonably practicable) provide not less than two (2) Business Days prior notice of a disclosure of Cboe's Confidential Information under this clause 8(b)(iv) to Cboe who may be entitled to seek an appropriate protective order and take steps to protect the confidentiality of its Confidential Information; and
 - (v) the Customer may use or disclose Confidential Information in accordance with written authorisation received from Cboe, which includes any express authorisation granted under this Agreement.
- (c) The Customer must inform Cboe as soon as reasonably practicable if the Customer becomes aware of unauthorized disclosure or use of Cboe's Confidential Information.
- (d) Upon termination of this Agreement, the Customer shall on the written request of Cboe return, destroy or permanently erase all copies of Confidential Information in documentary or other tangible form provided to the Customer in connection with this Agreement within twenty (20) Business Days of such request and shall certify in writing that it has done the same, provided that the Customer may retain written copies of Confidential Information solely to the extent required by applicable laws, by any competent judicial,

governmental, supervisory or regulatory body, by its internal document retention policies, or where copies have been created pursuant to the Customer's automatic archiving or back up procedures. Confidential Information so retained, written copies of Confidential Information not requested or returned and all orally communicated Confidential Information must be kept by the Customer subject to this clause 8 which shall survive termination of this Agreement.

9. LIABILITY

- (a) Subject to the cap on Cboe's liability set out in clause 9(e), nothing in this Agreement limits Cboe's liability resulting from its fraud, wilful misconduct or gross negligence.
- (b) To the maximum extent permitted by law, Cboe will not be liable to the Customer, the Customer's clients or in respect of any third party, for any Losses howsoever arising in any way in relation to:
 - (i) the Products made available by Cboe to the Customer under this Agreement, including in relation to any delay or failure to make the Products available to the Customer in accordance with this Agreement;
 - (ii) any act or omission of Cboe or a Third Party Provider, including without limitation any loss of data, any malfunction or failure of any Product or other product, good or service provided by Cboe to the Customer, any programming error, error introduced during data entry or any other error arising through the use of a computer or otherwise;
 - (iii) any guarantees, conditions and warranties implied by or required under statute, common law or custom;
 - (iv) the operation, enforcement or implementation of the Operating Rules, including without limitation any act or omission to ensure the Cboe Market is fair, orderly and transparent; and
 - (v) the exercise of any decision making power by Cboe under the Operating Rules or by any designated central counterparty, alternative central counterparty or relevant settlement facility under their respective rules or arrangements.
- (c) The liability of Cboe under any condition or warranty in clause 6 may be limited at the discretion of Cboe to:
 - (i) in the case of services, making the relevant services available to the Customer again or payment of the cost of having the relevant services made available again; or
 - (ii) in the case of goods, the repair or replacement of those goods or the payment of the cost of having the goods repaired or replaced.
- (d) To the extent permitted by law, each exclusion and limitation in this clause 9 extends to every member of the Cboe Group, Cboe Personnel and the Personnel of Cboe's Related Bodies Corporate as if a reference to Cboe included a reference to each of them. The benefit of any limitation or exclusion under this clause 9 in favour of any person other than Cboe under this clause 9 is held by Cboe for the benefit of those other persons and Cboe may enforce that benefit on their behalf.
- (e) Subject to clauses 9(b) and 9(c), Cboe's total liability for Losses of the Customer or any third party howsoever arising in respect of any one Claim or series of connected Claims, is limited (regardless of whether the Claim or series of connected Claims are brought during or after the Term) to the Fees payable in relation to the Product which gave rise to the Claim or series of connected Claims, for a twelve (12) month period immediately preceding the month in which the event that gave rise to the Claim or series of connected Claims occurred.

10. INDEMNITY

- (a) The Customer indemnifies, releases and holds Cboe and its Personnel harmless from and against any and all Losses of whatever nature, howsoever occurring which may accrue against or be suffered by Cboe in respect of any Third Party Claim in relation to:
 - (i) any negligent or unlawful act or omission of the Customer or the Customer's Personnel;
 - (ii) any breach of this Agreement by the Customer or the Customer's Personnel; and
 - (iii) third party access to the Products, or any part thereof, via the Customer or arising from the Customer's access to Products.
- (b) The Customer will not be liable under this indemnity to the extent the Losses arise due to Cboe's fraud, wilful misconduct or gross negligence.
- (c) Cboe will notify the Customer as soon as reasonably practicable if it becomes aware of a Third Party Claim under clause 10(a).
- (d) To the extent permitted by law, this clause 10 extends to the Personnel of Cboe as if a reference to Cboe includes a reference to each of them. The benefit of the indemnity under this clause 10 in favour of the Personnel of Cboe is held by Cboe for the benefit of those individuals and Cboe may enforce that benefit on their behalf.

11. TERMINATION AND SUSPENSION

11.1 Termination

- (a) A party may terminate this Agreement with immediate effect by written notice to the other party if at any time:
 - (i) the other party commits a material breach (which includes persistent breaches which cumulatively constitute a material breach) of this Agreement and fails to remedy the breach within thirty (30) days of receiving written notice from the party notifying the breach and requiring the breach to be remedied; or
 - (ii) the other party is the subject of an Insolvency Event.
- (b) Either party may cancel a Product subscription under this Agreement by providing prior written notice to the other Party in accordance with the Minimum Term and Notice Period for that Product.
- (c) Either party may cancel a Product subscription under this Agreement with immediate effect and without liability (except for any unpaid fees due to Cboe) by written notice to the other party where at any time:
 - (i) the Customer's access to the Product has been suspended by Cboe for a period in excess of ninety (90) consecutive days; or
 - (ii) the existence of a Force Majeure Event has prevented a party from performing its obligations in relation to that Product for a period of time in excess of sixty (60) consecutive days.
- (d) Cboe may terminate a particular Product and migrate the Customer to a suitable alternative Product by providing the Customer with not less than ninety (90) days prior written notice. If a Customer does not wish to receive the alternative Product, the Customer must provide written notice to Cboe within thirty (30) days of Cboe providing notice pursuant to this clause and Cboe will have no obligation to continue to make the existing product available to the Customer or migrate the Customer to the alternative Product.

11.2 Suspension

- (a) Cboe may from time to time suspend the Customer's access to the Products (whether in whole or in part), or otherwise modify the Products where and for so long as:
 - (i) a term of this Agreement provides Cboe with a right to do so;
 - (ii) Cboe considers it is necessary to ensure the fair, orderly and transparent operation of the Cboe Market or

pursuant to the Operating Rules, applicable laws or any requirements, directions or notices imposed by a competent judicial, governmental, supervisory or regulatory body;

- (iii) any agreement between Cboe and a Third Party Provider is suspended or terminated or such Third Party Provider suspends or modifies a product provided to Cboe which forms part of or is otherwise required for Cboe to make the Product available to the Customer; or
- (iv) in Cboe's reasonable opinion the Customer is in breach of this Agreement or the Customer is posing an operational or technical risk to Cboe, other Customers, Participants or a Third Party Provider.
- (b) In each case under this clause 11.2, Cboe will use reasonable endeavours to provide prior notice to the Customer. Where prior notice is not possible, Cboe will endeavour to provide notice as soon as reasonably practicable in the circumstances.

12. GENERAL

12.1 Notices

- (a) Subject to clause 12.1(b), any notice which either party is required or authorised by this Agreement to give or make to the other must be in writing and delivered by hand delivery, courier, post, or email to the address details for notice as specified by the parties in writing to each other. If address details for notice change the parties must notify each other in writing of the revised address.
- (b) Notice by:
 - (i) hand delivery or courier shall be deemed to have been given on the date and time of delivery;
 - (ii) by post shall be deemed received on the second Business Day after posting; and
 - (iii) by email sent on a Business Day before 4.30pm, shall be deemed received on that day. In any other case, it shall be deemed received on the next Business Day after the day on which it was sent.
- (c) Any notice which Cboe is required or authorised by this Agreement to give or make to the Customer including Amendment Notices and other notices in connection with the Product Manual, Payment Schedule, other documents referenced in this Agreement or Product suspension, modification, error or interruption may be given by publishing the relevant details on a website, the details of which are set out in the Product Manual, and will be provided by email to the Customer contacts nominated to Cboe by the Customer. If the Customer's contact details change the Customer must submit the revised contact details to Cboe.

12.2 Publicity

The Customer may during the Term state that the Customer is a customer of Cboe but must not:

- (a) indicate or imply that Cboe endorses the Customer; or
- (b) make any public announcement concerning this Agreement, without Cboe's prior written consent, which will not be unreasonably withheld or delayed.

12.3 Injunctive Relief

The Customer acknowledges that a breach of any of the terms of this Agreement may result in irreparable and continuing damage to Cboe for which there is no adequate remedy at law unless immediate injunctive relief, an order for specific performance or other additional relief as may be appropriate in the circumstances were granted.

12.4 Force Majeure

A party delayed or prevented from performing its obligations under this Agreement due to a Force Majeure Event:

- (a) must give the other party notice as soon as reasonably practicable in the circumstances detailing the Force Majeure Event, the date from which the Force Majeure Event has delayed or prevented or will delay or prevent that party's

performance of its obligations, the obligations so affected and an estimated date upon which it anticipates being able to comply with its obligations;

- (b) without limiting any other rights under this Agreement, will not be liable to the other party for the failure to perform those affected obligations for the duration of the Force Majeure Event; and
- (c) must use reasonable endeavours to mitigate the impact of the Force Majeure Event on it carrying out the affected obligations.

12.5 Subcontracting

The Customer agrees that Cboe may subcontract all or any of its obligations under this Agreement without the Customer's consent.

12.6 Assignment

- (a) The Customer may assign or otherwise transfer or deal in any other way with all or any of its rights under this Agreement only to:
 - (i) a Related Body Corporate; or
 - (ii) to any entity which succeeds to all or substantially all of the Customer's assets and business, and must provide notice to Cboe as soon as reasonably practicable of the same (**Assignment Notice**). If in Cboe's reasonable opinion it does not wish to continue the Agreement with the Customer's Related Body Corporate or successor (as applicable) Cboe may terminate this Agreement by giving the Customer written notice within thirty (30) days of receipt of the Assignment Notice.
- (b) Cboe may assign or otherwise transfer or deal in any other way with all or any of its rights under this Agreement.

12.7 Entire Agreement

- (a) This Agreement constitutes the complete and entire agreement between the parties regarding the subject matter described in this Agreement and supersedes any prior or contemporaneous negotiations, proposals, agreements, understandings or arrangements between the parties, whether oral or in writing.
- (b) No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement, and each party acknowledges it has not relied on any representation, undertaking or inducement which is not contained in this Agreement.

12.8 Dispute Resolution

- (a) If a dispute or difference (**Dispute**) arises between the parties out of or in relation to this Agreement, its validity or termination, the parties expressly agree to follow the process described in this clause 12.8 prior to commencing any arbitration or court proceedings.
- (b) Where a party claims that a Dispute has arisen, that party must provide a written notice to the other party setting out the nature and details of the Dispute and within seven (7) days of the receipt of such notice, the parties agree that senior representatives of each party must meet to negotiate a resolution of the Dispute.
- (c) If within seven (7) days after commencing negotiations concerning the Dispute, the Dispute has not been resolved, the Dispute will be referred immediately to a director of Cboe and a Customer representative of comparative authority as that director of Cboe. If within seven (7) days of the Dispute being referred, negotiations have not resulted in a commercially agreed resolution between the parties, either party may terminate the dispute resolution process described in this clause 12.8 by giving notice to the other party.
- (d) This clause 12.8 does not restrict or limit the right of either party to:
 - (i) take immediate steps to seek urgent interlocutory relief;

- (ii) to immediately terminate this Agreement where this Agreement provides such a right.
- (e) A party will not be bound to comply with the dispute resolution process where the other party does not comply with this clause 12.8.

12.9 Counterparts

The Order Form may be executed in one or more counterparts, each of which shall be deemed an original and each of which together shall constitute one and the same instrument.

12.10 Survival

- (a) Following the termination of this Agreement pursuant to clause 11, the parties are released from the covenants, conditions and provisions of this Agreement excluding:
 - (i) those covenants, conditions and provisions expressly stated in this Agreement to survive;
 - (ii) clauses 1, 5, 6, 7, 8, 9, 10 and 12; and
 - (iii) any other obligations that are intended to or are otherwise capable of having effect after the expiration or termination of this Agreement.
- (b) Each party retains the rights and claims it has against any other party for any past breach of this Agreement.

12.11 Remedies

Except where otherwise expressly stated in this Agreement, and subject to the limitations set out in clauses 6, 7, 9 and 10 the rights and remedies provided for herein are cumulative and not exclusive of any rights or remedies that a party would otherwise have.

12.12 Further Assurances

Where reasonably required by a party, the other party must conduct, or procure, all necessary acts and execute, or procure the execution, of all documents as reasonably required to give full effect to this Agreement.

12.13 Relationship

Nothing in this Agreement shall constitute or be deemed to constitute a relationship of partnership, employment or agency between the parties or an appointment of a party as the trustee, beneficiary, agent or principal of the other party or in any other fiduciary capacity for any purpose.

12.14 Waiver

Where a party fails to enforce or to exercise at any time or for any period of time any term of or any right pursuant to the terms of this Agreement such failure shall not constitute or be construed as, a waiver of such term or right and shall in no way affect the party's rights to enforce or exercise the term or right in the future.

12.15 Severability

If any term of this Agreement is found to be wholly or partly void, illegal, invalid or unenforceable under any applicable law, the term shall be severed from this Agreement to the extent that it is void, illegal, invalid or unenforceable and will not affect the remainder of the Agreement.

12.16 Governing law and jurisdiction

- (a) The parties agree that this Agreement will be interpreted in accordance with, and governed by the laws of the state of New South Wales, Australia, and the laws of the Commonwealth of Australia (as applicable).
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the state of New South Wales, Australia and irrevocably and unconditionally waives any immunity from, or any objection to, any action in the courts exercising any jurisdiction in the state of New South Wales, Australia.

13. INTERPRETATION

13.1 Definitions

In this agreement:

Act has the meaning described in Part (A) of the introduction to these General Terms and Conditions.

Agreement has the meaning as described in clause 1.

Amendment Notice means a notice made available by Cboe to the Customer setting out the details of a proposed amendment to the Product Manual or Payment Schedule pursuant to clause 2.

Assignment Notice has the meaning as described in clause 12.6.

Business Day means a day on which the Cboe Market is open and any other day notified by Cboe to the Customer.

Cboe Group means Cboe and any Related Body Corporate.

Cboe Market means a market for specified classes of financial products operated by Cboe.

Cboe Proprietary Materials has the meaning as described in clause 7.2(a).

Claim means any claim, demand, action or proceeding whether based in contract, tort (including negligence), breach of statutory duty or otherwise.

Commencement Date means the date notified by Cboe to the Customer for the Commencement of this Agreement.

Confidential Information means:

- (a) the terms, conditions and subject matter of this Agreement;
- (b) any information comprised in or making up the Products and any Documentation provided by Cboe to the Customer; and
- (c) any information relating to Cboe's business or the business of the Cboe Group, including any information relating to customers, Personnel, policies, business strategies or other information of a commercial nature, regardless of whether such information is specifically designated as confidential and regardless of whether such information is in written, oral, electronic or other form, including: technical; business and financial information; plans; dealings; trade secrets; inventions; products; research and development; production; business processes; price information; marketing and sales information; designs; product lines and any information which the Customer has been informed is confidential or which it might reasonably expect Cboe would regard as confidential,
- (d) but excluding information:
 - (i) that is or later becomes part of the public domain without violation of this Agreement;
 - (ii) that the Customer is able to prove was lawfully known to or in the possession of the Customer prior to disclosure in relation to this Agreement, other than information obtained in confidence under prior engagements;
 - (iii) that is or was lawfully obtained by the Customer from any third party having no obligations to hold such Confidential Information in confidence; and
 - (iv) that is or was independently developed by the Customer without any reliance on Confidential Information.

Customer means the customer identified on the Order Form.

Dispute has the meaning set out in clause 12.8(a).

Documentation means all documentation, including technical documentation, referred to under this Agreement or provided by Cboe to the Customer for the purposes of the Customer's use of the Products.

Fees means the fees payable in relation to each Product, as set out in the Payment Schedule.

Force Majeure Event means in relation to a party any event or circumstance:

- (a) which is not reasonably foreseeable;
- (b) beyond that party's reasonable control; and
- (c) delays or prevents the ability of that party to meet its obligation under this Agreement.

Such an event may include, acts of God (including fire, flood, earthquake, storm, or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), terrorist activities, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or telephone service.

General Terms and Conditions means the terms and conditions set out in this document.

Insolvency Event means where a person ceases or threatens to cease to carry on business, becomes insolvent (meaning that it is unable to pay its debts when they become due), has an administrator, receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of any scheme for amalgamation or reconstruction) or undergoes any similar or equivalent process in any jurisdiction, and a person shall be "solvent" where it has not undergone (or having undergone, is discharged from all effects of) an Insolvency Event.

Intellectual Property Rights means

- (a) copyright, patents, database rights and rights in trade marks, designs, and know-how (whether registered or unregistered);
- (b) applications for registration, and rights to apply for registration, of any of the foregoing rights; and
- (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world.

IPR Claim has the meaning set out in clause 7.2(e).

Losses means any direct, indirect, special or consequential liabilities, losses, damages, expenses (including legal costs) howsoever arising, whether foreseeable or in the contemplation of the parties, and whether in relation to breach of contract, tort (including negligence), breach of statutory duty, and including all of the following: trading losses, loss of opportunities; loss of income; loss of actual or anticipated profits; loss of business; loss of contracts; loss of goodwill or reputation; loss of anticipated savings; loss of, damage to or corruption of data.

Minimum Term for a Product means the minimum term set out in the Payment Schedule.

Notice Period for a Product means the notice period set out in the Payment Schedule.

Operating Rules means the operating rules for the Cboe Market.

Order Form means the Cboe order form(s) executed between the parties.

Payment Schedule means the document of that name published by Cboe as amended from time to time in accordance with clause 2.

Personnel means in relation to a person a director, employee, officer, agent, representative, consultant or adviser of the person, or an independent contractor who acts for or by arrangement with the person.

Products means those products, goods and services as described in the Product Manual.

Product Commencement Date means the date notified by Cboe to the Customer for commencement of a Product.

Product Manual means the document of that name published by Cboe as amended from time to time in accordance with clause 2.

Product Term means in relation to each Product the term as described in clause 4(b).

Related Body Corporate has the meaning as described in the Act.

Term has the meaning as described in clause 4(a).

Third Party Claim means any third party claim, demand, indemnity (other than an indemnity payable by Cboe under clause 7.2(e)), action or other proceeding (including alternative dispute resolution proceedings or any out-of-court settlement) whether based in contract, tort (including negligence), breach of statutory duty, or otherwise.

Third Party Provider means any third party provider of goods, services or products to Cboe, including, without limitation telecommunications, data, co-location, or data centre services, relating to any Product provided under this Agreement.

13.2 Interpretation

In this Agreement unless the contrary intention appears:

- (a) Headings are for convenience only, and do not affect interpretation.
- (b) A reference to:

- (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (ii) a document or agreement (including this Agreement), or a provision of a document or agreement (including this Agreement), is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (iii) a party to this Agreement or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (v) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes the other genders.
- (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) A reference to time is to the time in Sydney, Australia.
- (h) A document or agreement (including this Agreement) drafted by Cboe is not to be interpreted against the interests of Cboe merely because Cboe prepared it or because Cboe relies on a provision of this Agreement to protect itself.
- (i) All amounts referred to in this Agreement will be regarded as stated exclusive of withholding taxes, GST and any other taxes.
- (j) Any reference to 'dollars', 'Australian dollars', 'AUD\$' or '\$' is a reference to the lawful currency of Australia.