

Instinet Australia Terms of Business

IMPORTANT NOTICE

Instinet Australia Pty Limited ('Instinet') is permitted to provide certain financial services in Australia to wholesale clients in accordance with its Australian Financial Services Licence (AFSL No. 327834) under the *Corporations Act 2001 (Cth)* in respect of the financial services provided under these Terms of Business

1. DEFINITIONS AND INTERPRETATION

1.1 In this Australian Terms of Business capitalised terms have the following meaning:

"Allocation Policy" means the policy provided in Schedule 1 as amended from time to time.

"ASIC" means the Australian Securities and Investments Commission

"Automated Client Order Processing" means the Automated Order Processing of an order submitted by a Client into a Market.

"Automated Order Processing" means the process by which orders are registered in Instinet's system and, if accepted for submission into a Market by Instinet, submitted as corresponding trading messages without being keyed or rekeyed by Instinet.

"Authorised Person" means an agent of the Client and who is authorised by Instinet to submit orders into Instinet's system.

"Best Execution Policy" means the policy provided in Schedule 2 as amended from time to time.

"Cash Market Products" has the meaning given in the Trading Rules.

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

"Covered Short Sale" means a Short Sale where the Client has borrowed the relevant Products and the Client has, at the time the Client places the Order, a presently exercisable and unconditional right to vest those Products in the buyer.

"GST" refers to, any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

"Instinet" means Instinet Australia Pty Limited or its successors.

"Instinet Trading Platform" includes any Automated Order Processing and Automated Client Order Processing and any similar facility which enables the direct processing of orders on any equities market

"Market" means that Market operated by a Market Operator.

"Market Integrity Rules" means the rules made by ASIC under sec.798G of the Corporations Act for trading on Australian licensed markets.

"Market Operator" means the holder of an Australian Market Licence issued pursuant to Part 7.2 of the Corporations Act.

"Market Transactions" means a transaction entered into on a Market or reported to a Market under the applicable Trading Rules.

"Officer" has the meaning given in section 9 of the Corporations Act.

"Operating Rules" mean the operating rules of the applicable Market as amended from time to time and any procedures under those Rules from time to time

"Order" means an instruction given by or for the Client to Instinet to deal in Cash Market Products in accordance this Australian Terms of Business on the Client's behalf.

"Securities" has the meaning given in section 761A of the Corporations Act and, as appropriate, a managed investment product.

"Services" means Instinet's securities dealing services that Instinet provides to the Client and includes, where applicable, the Instinet Trading Platform.

"Short Sale" means a sale of a financial product which is a "Section 1020B product" within the meaning of section 1020B of the Corporations Act where, at the time of sale the seller does not have a presently exercisable and unconditional right to vest the financial product in the buyer other than by reason solely of the sale constituting a conditional sale under the applicable Trading Rules and cognate expressions have a corresponding meaning.

"Trading Rules" means the rules set out by a Market Operator for the trade on that Market.

"Wholesale Client" has the meaning set out in section 761G of the Corporations Act.

- 1.2 Any other word or expression which is not capitalised in these Terms of Business and which is defined in the Corporations Act has the meaning given in the Corporations Act.

2. COMMENCEMENT

- 2.1 These Terms of Business shall become effective and legally binding on the Client and Instinet upon the Client's acceptance of the offer letter or the Client's commencement of dealing with Instinet (whichever is earlier), and shall remain valid and in full force until terminated by either party. These Terms of Business replace all previous agreements and correspondence between the Client and Instinet in relation to the service provided by Instinet to the Client, except to the extent specifically stated and agreed in writing by both parties in such agreements and correspondence.

3. REPRESENTATIONS AND WARRANTIES: ACKNOWLEDGEMENTS

- 3.1 Before using any Services to which these Terms of Business apply, the Client makes each of the following representations and warranties to Instinet, and those representations and warranties are repeated each time the Client uses a Service to which these Terms of Business apply:
- (a) The Client is duly incorporated in its place of incorporation and has the full power and authority to carry on its business now being conducted.
 - (b) The Client has complied with any requirements or restrictions imposed upon it by the Corporations Act and any other law relating to dealing in financial products.
 - (c) If it is a trustee, it is duly authorised to use the Services in its capacity both personally and as trustee;
 - (d) It is a Wholesale Client;
 - (e) When issuing orders and instructions to Instinet, the Client solely relies upon its own judgment and decisions, not upon any advice or recommendations given by Instinet or the directors, officers, employees or agents of Instinet.
 - (f) All orders and instructions given to Instinet and its use of the Services provided by Instinet are in compliance with all applicable rules, regulations and laws and with the policies and practices of relevant markets and clearing houses.
- 3.2 By using any Service to which these Terms of Business apply, the Client acknowledges and agree that all dealings in financial products, Instinet's Services are subject to the Corporations Act, the Market Integrity Rules, Trading Rules, any directions or requirements of Market Operators and the customs and usage of any Market including without limitation the correction of errors or omissions.

4. SECURITIES DEALING SERVICES

- 4.1 Pursuant to the terms and conditions stated herein, Instinet shall provide certain securities dealing services, including but not limited to brokerage services in securities and certain electronic trading services and/or products (such as market information) to the Client.
- 4.2 Neither that relationship nor the services provided by Instinet shall give rise to any fiduciary or equitable duties on the part of Instinet or any of its affiliate or associated companies which would prevent or hinder any such parties from acting in a capacity or manner which might be inconsistent with the interest of the Client. The Client agrees that Instinet may, in its absolute discretion and without prior disclosure to the Client, effect or arrange for the effecting of transactions with or for the Client in which, by virtue of the business of Instinet or that of any of its affiliates or associated companies, Instinet may have a material interest. Instinet shall not be under any obligations to disclose to the Client the nature or extent of any interest, holding or position it may have in any transactions.

5. TRANSACTIONS

- 5.1 **Securities Regulation.** All orders and instructions given by the Client and the services provided by Instinet to Client are subject to the rules and regulations of the Markets, ASIC, and the laws of Australia including but not limited to the Corporations Act, the Market Integrity Rules and all other applicable rules, regulations and laws as may be in force from time to time. Any such rules, regulations and laws shall prevail in the event of conflicts with these Terms of Business.
- 5.2 **Best Execution.** Instinet shall take reasonable care to ensure that the Client's orders and any matching of such orders are effected at the best terms available in the market for transactions of similar size and nature at the time of execution, having regard to such matters as Instinet considers relevant. Instinet shall use reasonable endeavours to execute Client's orders but shall be under no liability for any loss or expense incurred by the Client as a result of any changes in market conditions between the time of receipt and the time of execution of such orders by Instinet. Instinet's current Best Execution Policy is attached to this document as Schedule 2 and on the Instinet web site at:
http://www.instinet.com/docs/legal/IAPL_pol14_Best%20Execution.pdf
- 5.3 **Aggregation of Orders.** The Client agrees that Instinet has the right to combine the Client's orders with its own orders, orders of its associated companies, persons connected with Instinet or orders of other clients. The Client accepts that combining the Client's orders with orders of other party may operate to the Client's advantage on some occasions and to the Client's disadvantage on other occasions.

5.4 **Alternative Crossing Systems.** Instinet operates an Australian crossing system called *BLX Australia* to facilitate trading on behalf of its clients. Information on the operation of this system is contained in the *BLX Australia Rulebook* which is available for reference on the Instinet web site at the link below. Instinet will route Client orders to BLX when the prospect of a better execution for the client is apparent. Instinet can also provide clients with access to the crossing systems of some other operators. The current list of available crossing systems is set out in Instinet's Crossing System Information document which is referenced on the ASIC web site and available on the Instinet web site at the link below. The Client will instruct Instinet if it does not want its orders routed through alternative liquidity venues.
http://instinet.com/docs/legal/BLX_Australia_Rulebook.pdf .
http://instinet.com/docs/legal/Crossing_System_Information.pdf

5.5 **Cancellation of Client Orders.** The Client agrees that Instinet has no obligation to accept, execute or cancel all or any part of the orders or transactions of the Client. Instinet shall have no obligation to act in accordance with the Client's orders or instructions if it believes that such orders or instructions may result in Instinet or the Client breaching the relevant rules, regulations or laws. If Instinet in its absolute discretion declines to accept instructions from the Client, Instinet shall notify the Client accordingly. The Client acknowledges that Instinet shall not be held liable in any way for any loss, loss of profit or gain, damage, liability, cost or expense suffered or incurred by the Client arising out of or in connection with Instinet declining to act on such orders or instructions from the Client or omitting to notify the Customer of any such decision or action taken by Instinet.

5.6 **Client's own decision.** The Client agrees that it shall make its own investment and trading decisions independently without relying on any advice or recommendation by Instinet, when giving orders or instructions to Instinet. The Client agrees that it shall be solely responsible for any investment or trading decisions it makes and Instinet shall not be responsible for determining whether any transactions the Client enters into is suitable or appropriate for the Client.

5.7 Except as otherwise disclosed to the Client, Instinet shall be acting as agent of the Client when effecting transactions in securities dealing on behalf of the Client.

6. ORDERS AND INSTRUCTIONS

6.1 Instinet shall be entitled to rely on the orders, instructions, directions, notices or other communications which Instinet reasonably believes in good faith to be issued by the Client or a person authorized by the Client to act on its behalf.

6.2 The Client may give instructions by telephone, in writing or other means as may be agreed by Instinet. Such instructions shall be effective only upon actual receipt by Instinet. Without limiting the foregoing, Instinet shall have no responsibility for transmissions that are inaccurate or not received by Instinet and may execute any transaction on the terms actually received by Instinet.

- 6.3 Instinet shall not be held responsible for delays in the transmission of orders to the place of execution or the transmission of reports of executed orders to the Client due to any failure of communications facilities, or any other delays beyond the control of Instinet.

7. SETTLEMENT OF TRADES

- 7.1 Unless otherwise agreed, Instinet does not hold securities, funds or money on behalf of the Client. The Client shall establish and maintain accounts for clearing transactions entered into by the Client with Instinet. The Client shall clear and settle all such transactions in a timely and customary manner.
- 7.2 The Client acknowledges that orders placed by the Client may be passed to an affiliate or associated company of Instinet or another broker for execution. In such circumstances, the Client may be required to settle the relevant transactions directly with such party as instructed by Instinet for execution purpose.

8. RESEARCH (IF APPLICABLE)

- 8.1 Upon the Client's request, Instinet may arrange for certain researches or publications, prepared independently by a third party, to be supplied to Client ("Research"). The Client acknowledges that no such information or general advice based on such Research ("Information") shall be treated by the Client as personal advice or an inducement, solicitation or encouragement by Instinet or the suppliers of such Research to conduct any investment or trading activity. The Client agrees that neither Instinet nor such Research suppliers shall be held liable for the direct, indirect or consequential loss arising from the Client's use of or reliance on the Research and/or Information which Instinet may arrange for the Client to receive as aforesaid.

9. ELECTRONIC INSTRUCTIONS (IF APPLICABLE)

- 9.1 Instinet Trading Platform. At the Client's request, Instinet installs or arranges for the installation of certain computer softwares or programmes, which are created and owned by Instinet, at the Client's registered office or such other places as may be requested by the Client, to enable the Client to obtain access to the services provided by Instinet as stated in these Terms of Business by means of interface connected to an electronic data communication network (the "Instinet Trading Platform").
- 9.2 Intellectual Property Rights. Instinet hereby grants to the Client, a personal, limited, non-exclusive, revocable, non-transferable and non-sublicenseable license to use the Instinet Trading Platform. The Client acknowledges that all proprietary rights in the Instinet Trading Platform are solely owned by Instinet and are protected by intellectual property laws. The Client acknowledges that any programme, software, hardware or equipment (as the case may be) provided to the Client by Instinet shall remain the sole and exclusive property of Instinet and the Client shall exercise reasonable care when using them. If the Client becomes

aware of any violation of Instinet's proprietary rights in the Instinet Trading Platform, the Client shall notify the Instinet forthwith. This clause 9.2 shall survive any termination, cancellation, replacement, expiration, modification, rejection or cessation of effectiveness of these Terms of Business.

9.3 Using the Instinet Trading Platform. When using the Instinet Trading Platform, the Client shall comply with the following instructions:

- (a) The Client shall only access the Instinet Trading Platform by the User Identity ("User ID") and Password assigned to the Client by Instinet and the Client shall ensure that the User ID and Password are only disclosed to and used by persons authorized by the Client.
- (b) The Client agrees that all transmissions generated by the use of the Client's User ID and Password shall be deemed to be authorized by the Client.
- (c) The Client shall restrict access to the Instinet Trading Platform to persons authorized by the Client to act on its behalf.
- (d) The Client shall only use the Instinet Trading Platform in the normal course of its business.
- (e) The Client shall not use the Instinet Trading Platform for any illegal purpose.
- (f) The Client shall comply with the legends, disclaimers, instructions, terms of use and restrictions displayed on or linked to the Instinet Trading Platform.
- (g) The Client shall be responsible for all acts or omissions of any person accessing or using Instinet Trading Platform with the User ID and Password assigned to the Client by Instinet and be bound by all such transactions executed and orders placed through the Instinet Trading Platform.
- (h) The Client shall not make any alteration, connection or interface with or to the Instinet Trading Platform nor permit or authorise another party to do so.
- (i) If the Client's User ID and/or Password have been lost, stolen or disclosed to a party not authorized by the Client, the Client shall forthwith notify Instinet. The Client understands that upon receipt of such notice by Instinet, the relevant User ID and/or Password shall become invalid. The Client agrees that it shall be responsible for all transactions placed to the Instinet Trading Platform before the actual receipt of such notification by Instinet.

10. ACKNOWLEDGEMENTS AND REQUIREMENTS

- 10.1 The Client acknowledges and agrees that Instinet may in its absolute discretion use Automated Order Processing to process the Client's orders, provided those orders satisfy the requirements of the applicable Markets in relation to Automated Order Processing.
- 10.2 The Client acknowledges and agrees that, if an Authorised Person is permitted to use Automated Client Order Processing:
- (a) the Authorised Person who is permitted to use the Automated Client Order Processing is:
 - (i) an Officer or representative who is permitted to use the Automated Client Order Processing on the Client's behalf; or
 - (ii) the Client's agent who has been appointed (in writing) to use the Automated Client Order Processing on the Client's behalf;
 - (b) each Authorised Person must satisfy any requirements (including without limitation requirements as to knowledge, training, testing, procedures and controls) notified by Instinet to the Client from time to time and any other requirements (if any) imposed directly by the Operating Rules on the Authorised Person;
 - (c) the Client is solely responsible for ensuring that an Authorised Person satisfies the requirements referred to in 10.2(b) above;
 - (d) the Client is solely responsible for any actions or omissions by an Authorised Person and the Client agrees to solely accept the risk of such actions or omissions;
 - (e) the Client's Orders may match opposite orders of another person who is a client of Instinet, and this may entitle Instinet to receive commission from both sides of the transaction; and
 - (f) if Instinet deals as principal, then the Client's Orders may match opposite orders in the Market entered on Instinet's behalf as principal.
- 10.3 The Client acknowledges and agrees that, if Instinet permits the Client to use Automated Client Order Processing, the Client may appoint any of its directors or employees or other persons to act as its agent for the purpose of entering Orders using the Automated Client Order Processing. By this document the Client authorises each person who is an Authorised Person from time to time to enter Orders using the Automated Client Order Processing in accordance with this document as the Client's agent and the authority of each such person terminates when such person ceases to be an Authorised Person.

10.4 At Instinet's request, the Client will provide Instinet a list of the Client's Authorised Persons (containing their names and contact details) and updates of such list.

11. DEALING AS PRINCIPAL AND INSTINET'S FEES

11.1 Instinet may enter into any Market Transaction on the Client's behalf where Instinet is also acting as principal on the other side of the transaction. The Client consents to Instinet doing so and authorises Instinet to charge the Client brokerage in the amount disclosed to the Client from time to time in respect of such transactions.

12. ALLOCATION OF ORDERS

12.1 Instinet will deal with all Orders in accordance with the Allocation Policy in Schedule 1. Instinet reserves the right to amend the Allocation Policy at any time. Instinet will inform the Client of any updates to the Allocation Policy by making them available to the Client.

12.2 The Client acknowledges and agrees that:

- (a) Instinet has provided the Client with the Allocation Policy;
- (b) the Client has read and understood the Allocation Policy;
- (c) the Allocation Policy is subject to amendment from time to time; and
- (d) the Client consents to the Allocation Policy as amended from time to time

12.3 At the Client's request, Instinet will provide the Client with Instinet's current Allocation Policy.

13. CONFIRMATION OF TRANSACTIONS

13.1 Instinet notifies the Client that all Market Transactions effected for the Client are subject to:

- (a) the Operating Rules and the directions, decisions and requirements of the Market Operator;
- (b) the customs and usages of the Markets; and
- (c) the correction of errors and omissions.

13.2 The Client consents and authorises Instinet to:

- (a) accumulate Market Transactions on any confirmation and specify a single volume weighted average price for those Market Transactions; and

- (b) provide the Client with any confirmations by means of an electronic communication including without limitation by email or by accessing a standing confirmation facility to obtain or view confirmations (if the Client does not wish to use a standing confirmation facility or if the Client wishes to receive confirmations in paper form the Client must advise Instinet in writing).

14. CANCELLATIONS

14.1 The Client acknowledges and agrees that Instinet may, without the Client's consent, cancel or amend (or request or agree to the cancellation or amendment of) an Order or Market Transaction:

- (a) if the Market Operator exercises its power under its Rules to cancel or amend (or require the cancellation or amendment of) the Order or Market Transaction; or
- (b) in the event of an error or otherwise in the circumstances contemplated in the Trading Rules.

14.2 The Client's obligations and Instinet's obligations in relation to the Order or Market Transaction cease to apply in respect of a cancelled order or Market Transaction from the time it is cancelled or, if the order or Transaction is amended, continue to apply only as amended.

15. CLIENT SEGREGATED MONEY

15.1 If, for any reason, Instinet is required to hold funds on trust on the Client's behalf in an account, in accordance with section 981B of the Corporations Act (the "Client Segregated Account") then the Client agrees that Instinet may retain any interest or other earnings on the investment for Instinet's sole and absolute use.

16. SHORT SELLING

16.1 The Client must only place an order to effect a short sale if it is a Covered Short Sale.

16.2 In accordance with Trading Rules the Client must notify Instinet whenever the Client places an order to effect a sale which would, if executed, constitute a Short Sale or a Covered Short Sale.

16.3 The Client must provide Instinet with the notification required in clause 16.2 by indicating to Instinet that the sell Order is a Short Sale order or contacting Instinet to inform Instinet that the sell Order is a Short Sale prior to placing the sell order.

16.4 The Client must give Instinet the information in relation to short selling which Instinet requests from time to time and within the time required by Instinet in such notification.

17. GOODS & SERVICES TAX

- 17.1 Unless expressly stated otherwise, any reference in these Terms of Business to cost, expense, price, value, sales, revenue or a similar amount is a reference to that amount exclusive of GST. If GST is payable on any of the Services Instinet provides by reference to or in connection with these Terms of Business, the Client must also pay an additional amount on account of GST.
- 17.2 Any calculation of a cost, expense or other liability must exclude the amount of any input tax credit entitlement of a party in relation to the relevant cost, expense or liability. The Client will be assumed to have an entitlement to a full input tax credit unless the Client demonstrates otherwise prior to the date on which any payment is due.

18. USE OF MARKET DATA (IF APPLICABLE)

- 18.1 Certain data and information regarding the securities listed and/or traded on markets to which the Client has been given access (“Market Data”) shall be made available by Instinet in its provision of service to the Client. The Market Data is provided to Instinet by various data providers pursuant to the relevant agreements in place and the use of Market Data is subject to the terms and conditions of such agreements. For the purpose of enabling Instinet to comply with the relevant terms and conditions relating to the use of Market Data, the Client hereby undertakes the following:
- (a) not to use or permit the use of the Market Data or any part thereof other than in the ordinary course of the Client’s business.
 - (b) not to use or permit the use of the Market Data or any part thereof for any illegal purpose.
 - (c) not to disseminate or redistribute the Market Data or any part thereof to any other party.
 - (d) not to use or permit the use of the Market Data or any part thereof to establish, maintain or provide or to assist in establishing, maintaining or providing a market which is not authorized by the laws in the relevant jurisdiction or the rules of the relevant exchange.
 - (e) only to use the Market Data in compliance with the applicable laws, rules and regulations.
- 18.2 Additionally, in relation to the Market Data of securities traded and/or listed in a Market, the Client hereby acknowledges that the Market Operator may need to access the Client’s information and records in situations where the Client is in breach of the above-mentioned provisions or where the Client is suspected by Instinet or the Market Operator of breaching such provisions. The Client’s

commencement of trading with Instinet constitutes consent for Instinet to release the Client's information and records to the Market Operator for inspection and/or investigation purposes.

19. COMMISSIONS AND CHARGES

- 19.1 **Commissions and Charges.** In consideration of the services provided by Instinet, the Client shall pay to Instinet commissions, charges or other remunerations as may be agreed with Instinet and reimburse Instinet on a full indemnity basis for any other charges arising from the execution of orders on behalf of the Client, including but not limited to, statutory fees, stamp duties and taxes, exchange fees, transaction levies or other levies as may be imposed by ASIC, the Australian Taxation Office, or other State or Federal Government agency from time to time. In certain circumstances, transactions with the Client may be effected on a "net" and not a commission basis.
- 19.2 **Defaults.** If the Client defaults in making payments to Instinet when they fall due or fails to deliver securities according to Instinet's instructions, interest shall be payable by the Client to Instinet at not less than Citibank, N.A.'s base lending rate in the relevant currency as may be in effect from time to time.

20. LIABILITY OF INSTINET

- 20.1 Instinet and its directors, officers, employees and agents (each an "Instinet Related Party") shall not have liability, contingent or otherwise, to the Client, for the correctness, quality, accuracy, security, completeness, reliability, performance, timeliness, pricing or continued availability, the delays or omissions of the services provided by Instinet, or for the failure of any connection or communication to provide or maintain the Client's access to various markets or exchanges or any erroneous communications between Instinet and the Client.
- 20.2 Instinet and Instinet's Related Parties shall not be held liable for any special, indirect, incidental or consequential damages or loss of profit, loss of use, loss of savings, loss of advantageous tax position, loss of dividends, loss of opportunity or chance or loss of interest which the Client may incur as a result of the Client placing orders or instructions with Instinet or using the services provided by Instinet.
- 20.3 The Client shall indemnify and keep Instinet and its directors, officers, employees and agents harmless from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, costs (including legal costs) resulting from or arising out of the Client's use of the services provided by Instinet.
- 20.4 The Client understands and accepts that orders that the Client effects through Instinet may be routed through a third party system, market or exchange for execution. The Client agrees that Instinet shall not be held responsible for any losses, damages or costs that may result from errors made by any such third party system, market or exchange in receiving, reading, processing, transmitting

or executing such orders or if the third party system, market or exchange otherwise fails to properly execute such orders from the Client.

- 20.5 The terms and conditions of this clause 20 shall survive the termination, cancellation, replacement, expiration, modification, rejection or cessation of effectiveness of these Terms of Business.

21. INFORMATION FROM THE CLIENT

- 21.1 **Information to be provided by Client.** For the purpose of enabling Instinet to review the credibility of the Client (“Credit Reviews”), to comply with the relevant regulatory requirements (including but not limited to the duty to “Know-Your-Client” under the Australian Anti-Money Laundering/Anti-Terrorism Financing laws) or other purposes as may be deemed necessary by Instinet, the Client shall promptly furnish to Instinet such relevant information or documents as may be reasonably requested by Instinet from time to time or annually. The Client agrees that Instinet is entitled to decline to provide, suspend or terminate its services to the Client until and unless the Client has provided the relevant information or documents to the satisfaction of Instinet. The Client further agrees that Instinet may conduct the necessary enquiry, search or investigation in relation to the business of the Client for the above-mentioned purposes.

- 21.2 The Client shall notify Instinet forthwith in the event of a (i) change of name; (ii) change in control; (iii) change of ownership; or (iv) a material change in business structure.

- 21.3 The Client shall forthwith provide written notice to Instinet if (i) the Client becomes insolvent by reason of its inability to pay its debts as they fall due; (ii) the Client enters into reorganization, re-adjustment of debts, dissolution or liquidation whether voluntarily or compulsorily; (iii) the Client appoints a receiver for all or any part of its assets; or (iv) the Client suffers the filing of a petition for its winding-up or similar action;.

22. ASSIGNMENT/SUB-CONTRACTING

- 22.1 The Client agrees that any of Instinet’s rights and obligations may be assigned transferred or sub-contracted to any of Instinet’s Affiliates for execution purpose.

- 22.2 Notwithstanding the generality of the foregoing, Instinet may assign its rights and obligations to any entity (i) controlling, controlled by or under common control with Instinet; (ii) which succeeds to all or substantially all of Instinet’s assets and business; or (iii) to any of Instinet’s affiliates established or prepared to provide the same service.

- 22.3 Save and except for the above-mentioned situations, neither party may assign any of its rights or obligations without the prior written consent of the other.

23. DISCLOSURE OF CLIENT INFORMATION

- 23.1 Disclosure to group companies. The Client agrees that Instinet may, without notice to the Client, disclose to its group companies, or to any assignee or agent of any of Instinet's rights or obligations, information relating to the Client.
- 23.2 Disclosure to Regulators. The Client acknowledges that transactions executed by Instinet on behalf of the Client shall be subject to the constitution, rules, regulations, practices and customs of the relevant regulators, Markets, clearing and settlements organisations, the applicable laws and regulations of government agencies and statutory bodies of competent jurisdiction in the country where the transactions are executed. Information relating to the Client may be requested by the above-mentioned authorities from time to time for regulatory or other legitimate purpose. The Client hereby irrevocably authorises Instinet to disclose to the relevant authorities all information and to provide such authorities with all documents relating to the Client (or copies thereof) in Instinet's possession as may be requested by such authorities.
- 23.3 Save and except for the situations mentioned in clauses 23.1 and 23.2 of these Terms of Business, Instinet shall keep confidential all information and documentation relating to the Client, subject to applicable laws or regulations.

24. TRADING IN HONG KONG SECURITIES

- 24.1 To the extent that Client deals in Hong Kong securities, Client agrees to comply with the Securities and Futures Commission of Hong Kong ("SFC") regulatory measures aimed at identifying those who invest in the Hong Kong stock market (the "Client Identity Rule"). The SFC's Client Identity Rule (see: www.sfc.hk under Rules & Standards: Codes & Guidelines – Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, paragraph 5.4) applies to all intermediaries licensed by the SFC who deal in Hong Kong Securities. Under the Client Identity Rule, licensed intermediaries must ascertain and record the identity of the ultimate beneficiaries and originators of transactions involving Hong Kong Securities (the "Identity Information") before such transactions are effected. Of particular relevance to Instinet, the Client Identity Rule requires all licensed intermediaries to provide the Identity Information of their clients to the SFC and/or relevant exchange in Hong Kong (the Regulators") within two business days of receiving such requests from a Regulator. By commencing trading and continuing to trade with Instinet, Client agrees to comply with the Client Identity Rule. Such compliance shall continue after termination of these Terms of Business.
- 24.2 To the extent that Client uses Instinet's electronic systems, the SFC requires us to impose certain minimum client requirements and assess our clients against those requirements before allowing clients to access the systems. Please see the Code at paragraphs 18.8, 18.9 and Schedule 7 at paragraphs 2.2 and 3.1.2 to 3.1.5. By trading electronically with us in the Hong Kong market you agree that you will put in place and maintain appropriate arrangements to comply with our minimum client requirements and that you will continue to comply with those

requirements. You agree to provide us such information from time to time in connection with our assessment.

- 24.3 **Alternative Liquidity Pools (ALP).** Instinet has several alternative liquidity pools available in various markets in which it or its affiliates are able to facilitate trading on behalf of Client. In some markets, Instinet is able to access ALPs run by other brokers. Instinet may route Client orders to ALPs at its discretion, taking into account factors such as price, liquidity access and market impact. Client acknowledges that an order may be routed to ALP for reasons other than pricing. Client will instruct Instinet if it does not want its orders routed through any particular or any alternative liquidity pools (“opt-out”). Details of the operation of the alternative liquidity venues are available on www.instinet.com.
- 24.4 **User Restrictions in Hong Kong ALP.** Instinet offers CBX™ Hong Kong as its ALP as defined by the Code of Conduct. In accordance with Paragraph 19.4 and Section 7 of Schedule 8 to the Code of Conduct, Clients that have not opted-out of CBX Hong Kong, represent and warrant to Instinet that Client (and, if applicable, Client’s principal(s)) are and will remain qualified investors as defined in the Code of Conduct. Client will notify Instinet immediately should such representation and warranty cease to be true and correct.
- 24.5 Instinet publishes Guidelines for CBX Hong Kong as applicable from time to time at www.instinet.com/legal.php.

25. TRADING IN US SECURITIES

To the extent that Client deals in US securities, Client agrees to the following representations in connection with the USA PATRIOT Act:

(a) Client will immediately inform Instinet if Client maintains or anticipate holding an account for a non-US shell bank, as that term is defined in section 313 of the USA PATRIOT Act, or that is beneficially owned by a non-US shell bank;

(b) if Client is a bank, or Client maintains or anticipates holding an account or sub-account for a non-US bank, Client will provide Instinet with a valid US Treasury Certification Form (in accordance with section 319(b) of the USA PATRIOT Act). In addition, Client agrees to provide an updated US Treasury Recertification Form within every three years thereafter; and

(c) by continuing to submit Orders to Instinet or its affiliates for US securities without providing Instinet with a US Treasury Certification Form, Client certifies that any accounts or sub-accounts benefiting from the transactions are not non-US shell banks or non-US banks.

26. SET-OFF AND LIEN

- 26.1 **General Lien.** The Client's assets held by Instinet shall be subject to a general Lien in favour of Instinet in respect of any outstanding amounts due to Instinet from the Client. Instinet shall have the right, at any time without notice to the Client, to combine and/or consolidate all or any of the Client's accounts maintained by Instinet and to take such other action and in such manner as Instinet in its absolute discretion may decide in order to discharge the Client's liabilities to Instinet.
- 26.2 **Set-Off.** Instinet reserves the right to retain or make deductions from any amounts which Instinet owes to the Client or assets which is being held by Instinet for the Client in respect of the non-settlement by Client of any debt or money due to Instinet. In addition, Instinet reserves the right to sell or realize assets which Instinet is holding or entitled to receive on the Client's behalf in order to meet any liabilities which the Client may have incurred with Instinet. The Client agrees to indemnify Instinet for any losses suffered by Instinet as a result of Instinet appropriating or selling any such assets.
- 26.3 The General Lien and Set-off rights in this clause 26 apply to separate accounts where the Client has advised it is acting as agent for different parties or as responsible entity for different managed investment schemes to the extent only of the Client's respective rights against each of those accounts.

27. FORCE MAJEURE

- 27.1 Neither the Client nor Instinet shall be liable for any delay or failure to perform its obligations hereunder so long as that delay or failure is the result of an event beyond its reasonable control, provided that such party uses commercially reasonable efforts to fulfill its obligations under these Terms of Business.
- 27.2 Notwithstanding the foregoing, the Client agrees and acknowledges that its settlement obligations shall not be waived under this, or any other, provisions and that the Client's obligations to settle its trades shall remain in full force and effect.

28. TERMINATION

- 28.1 These Terms of Business can be terminated by either party by giving one month's written notice to the other party.
- 28.2 The Client agrees that Instinet may suspend and/or terminate its provision of services to the Client and these Terms of Business forthwith without notice and liability to the Client in the following circumstances:
- (a) the Client is in breach of or otherwise fails to comply with or adhere to its representations or warranties or material obligations in these Terms of Business;

- (b) the Client is in breach of any applicable laws, rules or regulations of the relevant exchange;
 - (c) the Client has made or furnished materially false or misleading information, documents, representations or certifications to Instinet in relation to the services provided by Instinet;
 - (d) the Client is engaged in an act of winding up, insolvency or similar proceeding, on a voluntary or involuntary basis, an order or resolution is passed for the Client's winding up, a receiver or administrator is appointed in respect of any of the Client's assets, or the Client is otherwise unable to pay its debts as they become due;
 - (e) the Client is not using the services of Instinet in a manner consistent with their intended purpose;
 - (f) the Client is delinquent on its payment to Instinet for more than 30 days; or
 - (g) the Client, in Instinet's opinion, poses a risk (including but not limited to credit risk, reputational risk) to Instinet.
- 28.3 Any such suspension or termination shall be without prejudice to the accrued rights and obligations of the parties hereto which shall remain in full force and effect and shall be enforceable notwithstanding such suspension or termination.

29. GENERAL

- 29.1 **Recording of Communications.** Instinet may record telephone conversations and other forms of communication between the Client and the directors, officers, employees and agents of Instinet. The Client accepts that such recordings shall be the sole property of Instinet and shall be retained and used by Instinet for such periods and purposes as it deems appropriate.
- 29.2 **Service of Documents.** All notices and documents shall be delivered personally or sent by registered mail or by fax to an address or fax number as may be advised by Instinet and the Client from time to time. Notices shall be deemed to be received three business days after being sent or on proof of delivery, whichever ever is earlier.
- 29.3 **Severability.** Each of the provisions in these Terms of Business is severable and distinct from the others and if any part of these Terms of Business is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of these Terms of Business shall not be in any way affected or impaired.
- 29.4 **Amendments.** No amendment, modification or waiver of these Terms of Business shall be effective unless agreed by Instinet and the Client in writing.

- 29.5 **No Waiver.** A failure or delay in exercising the rights, powers or privileges hereof shall not be presumed to operate as a waiver and a single or partial exercise of any right, power or privilege shall not be presumed to preclude any subsequent or further exercise of that right, power or privilege.
- 29.6 **No Promotion.** Without the prior consent in writing from the other party, neither Instinet nor the Client shall (i) use the name, the trade name, trademark, trade device, service mark, symbol or abbreviation, contraction or simulation of the other party in advertising, publicity, or otherwise; or (ii) represent (directly or indirectly) that any product or service provided by one party has been approved or endorsed by the other.
- 29.7 **Headings.** The headings in these Terms of Business are intended for ease of reference only and shall not affect interpretation thereof.
- 29.8 A reference to a statute or statutory provision includes a reference to it as amended, extended or re-enacted from time to time.
- 29.9 Words denoting the singular number only include the plural and vice versa.
- 29.10 **Successors and Assigns.** These Terms of Business shall ensure for the benefit of Instinet, its successors and assigns and shall be binding upon the Client.

30. GOVERNING LAW AND JURISDICTION

- 30.1 The validity, construction, interpretation and enforcement of these Terms of Business shall be governed by the Laws of the State of New South Wales and the parties hereto consent to the non-exclusive jurisdiction of the courts of New South Wales in connection with any suit, action or proceeding arising out of or in connection with these Terms of Business, and the Client explicitly waives any right to claim that those courts are an inconvenient forum.

SCHEDULE 1 – ALLOCATION POLICY

1. Unless otherwise defined in the Australian Terms of Business, terms used in this Schedule 1 are defined as follows:

"At Market Order" means an order in which the Client has requested that the Market Transaction is effected at the prevailing market price quoted at any one time in respect of a particular Cash Market Product.

"Discretionary Order" means an order in which the Client has requested that Instinet exercises discretion as to certain conditions of the order (i.e. price and volume).

"Limit Order" means an order in which the purchase or sale of Cash Market Products is to be effected only if specific conditions (i.e. price and volume), as specified by the Client, are satisfied. Instinet will prioritise Limit Orders in the sequence in which it considers that Market Transactions (satisfying the conditions specified by the Client) in respect of the Cash Market Product, are likely to be effected having regard to the prevailing market price quoted in respect of the Cash Market Product.

"order" means any instruction to purchase or sell Cash Market Products provided to Instinet or through the use of the Instinet Trading Platform.

"Own Account" means that the Cash Market Products are, or will be on the completion of the transaction beneficially owned by Instinet or a Related Party..

2. Instinet will deal fairly and in due turn with all client orders and orders placed on Instinet's Own Account having regard to Australian regulatory requirements and market practices.
3. To the extent that it is reasonably practicable to do so, Instinet will allocate all Market Transactions (including Market Transactions effected pursuant to orders placed on Instinet's Own Account) in the sequence in which Instinet receives those orders, subject to any delay or technical faults connected with or arising through the use of the Instinet Trading Platform or any other delay that is outside the control of Instinet.
4. If Instinet receives several orders (including orders placed on Instinet's Own Account) on the same terms and in respect of the same Cash Market Product, Instinet will generally allocate the Market Transactions to those orders having regard to the time at which the orders were received and generally in accordance with the following priority of allocation:
 - (a) first priority will be given to an "At Market Order";
 - (b) second priority will be given to a "Limit Order"; and
 - (c) third priority will be given to a "Discretionary Order".
5. The priority of allocation specified in clause 4 above is generally applied and may be subject to variation. For example, in the case of a Discretionary Order, if, when Instinet exercises its discretion in respect of the order, the price of the Discretionary Order is more likely to match the prevailing market quoted price of the Cash Market Product than a Limit Order, in these circumstances the allocation of the Discretionary Order may take priority over a Limit Order.

SCHEDULE 2 – BEST EXECUTION POLICY

(Note that this policy, as updated from time to time, is available on the Instinet web site at <http://www.instinet.com/legal.php>)

1. Introduction

1.1. Instinet Australia Pty Limited (**IAPL** or **Instinet**) recognises that it has a duty to take all reasonable steps to obtain the best outcome for the handling and execution of client orders. This means that Instinet has in place a policy and procedures that are designed to obtain the best outcome for clients when executing orders on their behalf, subject to, and taking into account, any specific instructions from the client, the nature of the particular orders and the nature of the markets concerned.

1.2. The Australian Securities & Investments Commission (**ASIC**) has published the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (MI Rules)*. Chapter 3 of the MI Rules sets out the requirements for *Best Execution* including requirements for documented policies and procedures (Part 3.2) and client disclosure (Part 3.3).

1.3. This document sets out Instinet's Best Execution Policy (the **Policy**) in accordance with Part 3.2 of the MI Rules

2. Instinet

2.1. Instinet operates in Australia as an institutional agency stock broker providing trading, clearing and settlement services to its clients. All of its clients are *wholesale clients* in terms of the *Australian Corporations Act 2001*.

2.2. Instinet is an Australian Securities Exchange (**ASX**) participant for trading, clearing and settlements and is a trading participant of Chi-X Australia (**CXA**). Instinet holds Australian Financial Services Licence number 327834.

3. Scope

Instinet owes a duty of best execution when it handles and executes orders on clients' behalf. For the purposes of this Policy Instinet is in receipt of an order and acting on a client's behalf when an execution instruction is given which gives rise to contractual or agency obligations owed by Instinet to a client. Instinet believes this to be the case where it exercises its discretion in relation to the execution of a client order.

4. Interpretation

4.1. Terms defined or described in the MI Rules have the same meaning in this Policy as they have in the MI Rules. To the extent that there is any inconsistency between the terms of this Policy and Chapter 3 of the MI Rules the MI rules prevail.

4.2. The term “**standing instruction**” means an order execution instruction addressed to Instinet by a client which is intended to remain in force for a particular period of time or until specifically changed or withdrawn by the client.

4.3. The term “**venue**” refers to any or all of the order books and systems referred to in paragraph 6.1 below.

5. Specific Instructions

5.1. Where a client provides Instinet with a specific instruction in relation to -

- an order,
- a class of orders,
- a particular aspect of an order or orders, or
- its orders generally,

Instinet will take reasonable steps to execute the orders in accordance with such instructions.

5.2. Instinet will deem the receipt of an order via its Direct Market Access offering where the client has selected the venue as a “specific instruction”.

5.3. However, specific client instructions may prevent Instinet from fully following this Best Execution Policy which is designed to obtain the best outcome on a consistent basis for the execution of client orders. In following client instructions Instinet will be deemed to have taken all reasonable steps to provide the best outcome.

5.4. Therefore, if a client requires its order to be executed in a particular manner and not in accordance with Instinet’s Best Execution Policy the client should clearly state its desired method of execution when the order is placed and such instruction must be clear and unambiguous.

5.5. Standing instructions must be confirmed by the client in writing at least once every twelve months.

6. Execution Venues

6.1. In meeting its obligations to take all reasonable steps to consistently obtain the best outcome, Instinet may use one or more of the following order books and systems when executing the order on the client’s behalf.

- The CXA Order Book,
- The ASX TradeMatch Order Book,
- The ASX PureMatch Order Book
- The Instinet Australian BLX Crossing Network,
- Any other alternative trading system (including broker pools and crossing engines) - subject to client’s consent, and
- Instinet’s global client base when it can cross a client order – subject to client’s consent.

6.2. Instinet will periodically assess each of the execution venues and order books it access when executing Australian stocks to determine if alternative sources of execution provide a material opportunity to achieve best execution.

7. Execution Factors

7.1. Instinet uses smart order routing technology to undertake its best execution obligations.

7.2. In the absence of specific instructions from the client, Instinet may consider any, or any combination, of the following factors to determine the manner in which a client order will be executed.

- Price
- Speed
- Likelihood of execution or settlement
- Size of order
- Nature of order
- Costs
- Total consideration
- Any other factor relevant to the execution of the order.

7.3. Instinet will take all reasonable steps to obtain the best outcome when executing orders on behalf of a client and will ordinarily place a higher importance on price. However, Instinet will, in certain circumstances, determine that other execution factors are more important than price; and in such cases it will take into account the characteristics of:

- The client,
- The client order,
- The security subject to the order, and
- The execution venue.

7.4. Instinet's Smart Order Router will not route any orders to the CXA order book until the ASX primary market is open. It will not send orders to CXA during the ASX pre-open auction.

8. Prior Express Consents

8.1. In order to provide clients with best execution, Instinet may, on occasion, trade outside the execution venues set out in cl.6 above. In order for Instinet to be able to do this it is required to obtain the client's prior express consent. Instinet is also required to obtain prior express consent should the client not wish Instinet to make public any limit order that the client places with it.

8.2. To ensure that Instinet is able to handle client orders as efficiently and effectively as possible Instinet may request that a client executes and returns a prior express consent

form. Giving prior express consent will not preclude the client from requesting different execution arrangements at the time of placing the order.

9. Instinet's Conflicts & Responsibilities

9.1. Instinet is an execution-only institutional broker. It does not engage in proprietary trading, does not pick and choose when its smart order router is turned on and every routing decision is based only on best execution and not any other matter. Instinet does not preference one venue because it has cheaper exchange fees, because it has a connection to the venue or because there is any other advantage to it in sending orders to a particular venue.

9.2. Instinet and CXA are part of the same corporate group. However the two companies are separately managed and operate at arms length. We do not share any resources with CXA and do not consult on client execution or business matters other than in accordance with normal business practice, the CXA operating rules, the ASIC Market Integrity Rules and other public regulations. Instinet's CXA participation application was vetted by ASIC in accordance with the requirements of the Corporations Act 2002.

9.3. Instinet's commitment to provide "best execution" does not mean that it owes any of its clients any fiduciary responsibilities over and above any specific regulatory obligations placed upon it or as may be otherwise contracted between Instinet and any individual client. Each client remains responsible for its own investment decisions and Instinet will not be responsible for any market or trading loss that a client might suffer as a result of those decisions.

10. Monitoring & Review

10.1. Instinet will monitor the effectiveness of its order execution arrangements (including the performance of its order router) and Best Execution Policy in order to identify and, where appropriate, incorporate any amendments to procedures.

10.2. All client standing instructions will be reviewed at least once every twelve months to ensure that it remains possible for Instinet to satisfactorily perform the instructions.

10.3. Instinet will assess on a regular basis, whether the execution venues included in this Policy provide the best outcome for its clients or whether it needs to make changes to its execution arrangements. Instinet will review its order execution arrangements and this Policy at least annually or whenever a material change occurs that affects its ability to continue to obtain the best outcome for the execution of client orders on a consistent basis using the venues included in this Policy. Instinet will notify clients of any material changes to its order execution arrangements or Best Execution Policy as described above by posting the information on its website or by email.