

## JBWere Pty Ltd Terms and Conditions – Intermediaries Effective November 2011

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AFSL 341162

JBWere is a registered trademark of JBWere Pty Ltd

*This document sets out the terms and conditions upon which JBWere Pty Ltd (**JBWere**) agrees to provide financial services to the holder of an Australian Financial Services Licence (referred to in this document as an **Intermediary**). The services to be provided by JBWere include passing on the Intermediary's instructions to buy or sell financial products listed on ASX (or other products as agreed with JBWere from time to time) (a **Financial Product Transaction**) to Goldman Sachs Australia Pty Ltd (**Goldman Sachs**) for execution. Goldman Sachs is a participating organisation of ASX Limited (**ASX**) and Chi-X Australia Pty Ltd.*

*By proceeding to deal with JBWere, Intermediary is taken to have agreed to be bound by these terms and conditions (**Terms & Conditions**).*

It is agreed as follows:

### Services to be provided by JBWere

1. JBWere agrees to provide to Intermediary, and to any of Intermediary's representatives nominated by Intermediary and approved by JBWere (**Advisors**), such of the following services as are approved by JBWere:
  - (a) passing on Intermediary's instructions to execute a Financial Product Transaction;
  - (b) personal financial product advice in respect of specific clients of Intermediary;
  - (c) general financial product advice, including giving:
    - i) electronic access via the JBWere website to certain live market data (**Market Information**); and
    - ii) electronic access via the JBWere website to research reports (**Company Research**).

JBWere will provide the services on the terms and conditions set out in these Terms & Conditions and, where applicable, the terms and conditions of access to the JBWere website. To the extent of any inconsistency, these Terms & Conditions will prevail.

### Financial Services Guide ('FSG')

2. Intermediary acknowledges that:
  - (a) JBWere will send to any client of Intermediary, in respect of whom Intermediary requests that JBWere provides financial services, a copy of JBWere's FSG (unless the client has already received an up to date copy of the FSG). Intermediary agrees to provide relevant details of these clients to JBWere to enable JBWere to send the FSG;
  - (b) where Intermediary requests that JBWere pass on instructions to execute a Financial Product Transaction on behalf of any client of Intermediary, Goldman Sachs will send that client a copy of Goldman Sachs' FSG (unless the client has already received an up to date copy of the FSG) and a copy of Goldman Sachs' Intermediary Clients - Terms and Conditions of Trading. Intermediary agrees that JBWere may pass on relevant details of these clients to Goldman Sachs to enable Goldman Sachs to send the FSG; and
  - (c) any Financial Product Transaction is subject to these Intermediary Clients - Terms and Conditions of Trading.

### Passing on Instructions to Execute a Financial Product Transaction

3. JBWere agrees to pass on instructions by Intermediary to execute a Financial Product Transaction provided that Intermediary has first arranged for delivery to JBWere of:

- (i) a completed order form in a form satisfactory to JBWere; and
  - (ii) either:
    - (A) evidence satisfactory to JBWere that Intermediary has obtained the necessary identification information required for a client of the relevant client type, and has verified that information, in accordance with the requirements of the Anti-Money Laundering/Counter-Terrorist Financing Act 2006 or other applicable law (**AML/CTF law**); or
    - (B) a completed Client Identification Form in a form acceptable to JBWere together with certified copies of relevant supporting identification documents; and
  - (iii) any other information about the client that may be reasonably requested by JBWere.
4. Intermediary acknowledges and agrees that where JBWere agrees to accept evidence of identification under clause 3(ii)(A) above:
    - (a) both JBWere and Goldman Sachs are entitled to rely on that record for the purposes of carrying out their own obligations to identify that client under AML/CTF law;
    - (b) Intermediary will keep a record of the client identification process performed by it in respect of each Client in the form (if any) and for the period of time specified by the AML/CTF law; and
    - (c) Intermediary will promptly provide that record to JBWere or Goldman Sachs on request.
  5. Intermediary acknowledges that JBWere will only pass on its instructions to execute a Financial Product Transaction to Goldman Sachs once it is satisfied that its own internal client identification procedures have been completed.
  6. Where under Terms & Conditions Intermediary requests JBWere to pass on its instruction to execute a Financial Product Transaction, Intermediary represents and warrants that:
    - (a) it has written authorisation from the client to enter into the Financial Product Transaction on the client's behalf and that it will immediately provide a copy of that authorisation if reasonably requested by JBWere; and
    - (b) in the case of sell orders, Intermediary has in its possession (where the client is issuer sponsored) the client's SRN, or (where the client is sponsored by another CHES participant) a letter of release addressed to that other CHES participant (unless it has already arranged delivery to either JBWere or Goldman Sachs).
  7. Intermediary acknowledges that JBWere is not in a position to make any independent enquiries in relation to the creditworthiness of any particular client of Intermediary on whose behalf JBWere passes on an instruction to execute a Financial Product Transaction under these Terms & Conditions and Intermediary agrees that if such a client defaults in paying any monies due in connection with the Financial Product Transaction, Intermediary will pay those monies including any fail fees and other fees incurred by either JBWere or Goldman Sachs as a result of the client's default on demand to JBWere. Intermediary acknowledges that Goldman Sachs may assign its rights to all amounts owing by a client in connection with a Financial Product Transaction to JBWere.

8. Where Intermediary instructs JBWere to pass on its instruction to Goldman Sachs to execute a Financial Product Transaction on behalf of its clients, Intermediary agrees:
  - (a) to explain the arrangements it has with JBWere and Goldman Sachs to its clients including arrangements in relation to rebates of brokerage and to obtain the client's express consent to those arrangements; and
  - (b) that, in accordance with applicable laws, all contract notes in connection with transactions executed by Goldman Sachs will be sent direct to Intermediary's client, and a copy will be sent to Intermediary.

#### Provision of Personal and General Financial Product Advice

9. Intermediary agrees that where it asks JBWere to provide personal financial product advice for a client of Intermediary, JBWere will provide that advice only on the following basis:
  - (a) Intermediary will provide to JBWere in relation to that client:
    - i) a duly completed Personal Investment Profile in JBWere's prescribed format (or in such other similar format as JBWere may agree from time to time) signed and dated by the client and by the Intermediary as a complete and accurate record of the client's relevant personal circumstances; and
    - ii) payment for the advice of the amount agreed with JBWere from time to time; and
  - (b) JBWere will send to the Intermediary, for on forwarding to the relevant client, a recommended portfolio of equity investments for the client, having regard to the information contained in the Personal Investment Profile, including a Statement of Advice where required by the Corporations Act.
10. Intermediary acknowledges that where JBWere provides general financial product advice (for instance, Company Research, model portfolios and any other form of information or service that may constitute financial product advice) under these Terms & Conditions, that advice will, unless Intermediary specifically requests otherwise and the advice given acknowledges this, be general financial product advice which is not intended for any particular client of Intermediary, and Intermediary acknowledges that:
  - (a) the advice is provided solely to assist Intermediary to formulate its own advice to its clients, and it is therefore the responsibility of Intermediary to determine whether the general financial product advice is appropriate for Intermediary's clients; and
  - (b) Intermediary will not pass on to its clients any general advice provided directly to it by JBWere other than Company Research.

#### Access to Market Information and Research

11. If JBWere approves access by Intermediary to either Market Information or Company Research, Intermediary and each of its Advisors must register on the JBWere website. On their registration, JBWere will provide all identification and log-in information required to obtain access to the Market Information and the Company Research.  
Intermediary agrees that the Market Information and the Company Research is provided only for use in connection with Intermediary's business of providing financial product advice. Intermediary will not:
  - (a) alter, add to or manipulate the Company Research in any way; and
  - (b) sell, lease, furnish or otherwise permit or provide access to the Market Information or the Company Research to any person other than in hard copy format to clients of Intermediary for their personal use and will not reproduce, retransmit, redistribute, disseminate, sell, publish, broadcast or circulate any of the Market Information or the Company Research to any other person.

12. Intermediary agrees to pay JBWere for access to the Market Information and the Company Research at the rates agreed between the parties from time to time.
13. To the maximum extent permitted by law, the Market Information is provided 'as is' without any express or implied warranty of any kind including warranties as to merchantability, non-infringement of intellectual property or fitness for a particular purpose.

#### Other Obligations of Intermediary

14. Intermediary agrees:
  - (a) at all times to comply with the conditions of its AFSL and all other relevant legal obligations including those imposed on it by the Anti-Money Laundering/Counter-Terrorist Financing Act and the Corporations Act including without limitation the obligation to train, monitor and supervise its representatives; and
  - (b) to notify JBWere immediately upon the suspension, cessation, limitation or termination of its AFSL, or of any Advisor's authorisation to provide financial services under Intermediary's AFSL.

15. Intermediary acknowledges and agrees that it is responsible for the conduct of Advisors and other representatives in their dealings with JBWere under Terms & Conditions and agrees to procure that each of those persons is made aware of and complies with all relevant obligations imposed on Intermediary under these Terms & Conditions as if all relevant references to Intermediary were references to those persons.

#### No Agency Relationship

16. Each of JBWere and Intermediary agrees that it is not and will not represent to any of its clients, either expressly or by implication, that it is an authorised representative or any other kind of representative or agent of the other party.

#### Brokerage

17. Intermediary agrees that Goldman Sachs may charge to clients of Intermediary brokerage in connection with a Financial Product Transaction executed by Goldman Sachs under these Terms & Conditions at such rates as are agreed by JBWere with Intermediary from time to time, subject to the any minimum rate agreed between JBWere and Intermediary from time to time.

In consideration of the referral, JBWere will rebate to Intermediary all or part of any brokerage charged in excess of the minimum brokerage as agreed from time to time. JBWere will arrange for Goldman Sachs to forward recipient created tax invoices ('RCTI's) on JBWere's behalf for this purpose.

#### Indemnity

18. Intermediary agrees to fully indemnify and hold harmless JBWere and its related entities and each of their respective directors, officers, employees and agents ('JBWere Group') from and against any loss, costs, expenses and liabilities (including legal costs on a full indemnity basis), whether direct or indirect, incurred or suffered by any member of the JBWere Group and from and against all actions, proceedings, claims or demands made against any member of the JBWere Group arising out of or in connection with these Terms & Conditions except to the extent that such liability, loss, damage, cost or expense is attributable to the gross negligence, fraud or wilful misconduct of the indemnified party.

#### Recipient Created Tax Invoices

19. JBWere acknowledges and agrees that it:
  - (a) can issue tax invoices in respect of any referral services supplied by the Intermediary to JBWere; and
  - (b) is registered for GST and that it will notify Intermediary if it ceases to be registered or if it ceases to satisfy any of the requirements of the relevant Tax Ruling governing the issuance of an RCTI.
20. Intermediary acknowledges and agrees that:
  - (a) it will not issue tax invoices in respect of the referral services supplied by it to JBWere;
  - (b) it is registered for GST and that it will notify JBWere if it ceases to be registered;
  - (c) the ABN specified above is true and correct; and
  - (d) it will be bound by these terms and conditions, as modified in accordance with current GST law and Tax Rulings as required for the issuance of an RCTI, from time to time.

#### Exclusion of Liability

21. No member of the JBWere Group will be liable in any way to Intermediary or any director, employee or agent or to any of its related bodies corporate (as defined in the Corporations Act) for any damage, loss or injury suffered or incurred (whether direct or indirect) for or in connection with the performance by JBWere of its duties under these Terms & Conditions except:
  - (a) to the extent to which it is not possible by law to exclude, restrict or modify such liability; or
  - (b) where the liability is attributable to the gross negligence, fraud or wilful misconduct of any of the JBWere Group.

This clause survives termination of these Terms & Conditions.

#### Non-Excludable Rights

22. The parties acknowledge that under applicable law there may be implied in these Terms & Conditions certain conditions and warranties which cannot be excluded, restricted or modified by agreement ('Non-Excludable Rights'). Where permitted, the liability of JBWere for a breach of a Non-Excludable Right is limited to resupplying the portfolio advice or research or paying the cost of having the advice or research supplied again.

#### Authorised Representatives

23. All notices given on behalf of Intermediary under these Terms & Conditions (including nominations under clause 1) may be given by any one of the authorised representatives of Intermediary notified to JBWere by Intermediary in writing from time to time (as amended by notice in writing to JBWere from Intermediary from time to time).

**Acknowledgement**

24. Intermediary acknowledges that JBWere holds the provisions of these Terms & Conditions not only in its own right, but where applicable, also for the benefit of Goldman Sachs.

**Amendment**

25. JBWere may amend these Terms & Conditions at any time by giving seven (7) days notice to Intermediary.

**Termination**

26. Either party may terminate the arrangements under these Terms & Conditions at any time by giving seven (7) days notice in writing to the other.

**Governing Law**

27. These Terms & Conditions will be governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria in respect of any proceedings in connection with this Agreement.

