

**CLIENT AGREEMENT  
TERMS AND CONDITIONS**

**AUSTRALIAN MUTUAL FUNDS EXCHANGE PTY LTD**

**ABN 14 145 724 509**

**Australian Financial Services Licence No. 379035**

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## CLIENT AGREEMENT

### 1. TERMS AND CONDITIONS

#### 1.1 INTRODUCTION

This Client Agreement is part of the Agreement between Australian Mutual Funds Exchange Pty Ltd (ABN 14 145 724 509) (**AMFEX, we, us, our or ourselves**) and you the client (**you or yourself**). It governs our dealings with you in providing Services.

By electronically submitting your Application Form on our Website or via email, you confirm that you accept the terms and conditions of the Agreements. When we open an Account for you, you will be bound by the Agreements in all your dealings with us.

You agree that we may amend, change, revise, add or modify the Agreement at any time. The most current documents will be posted to our Website. You understand that this Client Agreement cannot be modified by any verbal statements or written amendments without written acceptance or confirmation by us.

You must read this Client Agreement carefully in its entirety and we recommend that you seek independent professional advice. Without limitation, we particularly draw your attention to those terms and conditions which deal with:

- the risks of receiving our Services;
- other important documents that relate to your Account with us, including the Product Disclosure Statement of any Product Issuer;
- our rights if you owe any amounts to us; and
- those that relate to termination of this Client Agreement and closing of your Account.

If this Client Agreement is provided to you in any language other than English, then please note that it is for information only and that the governing language of this Client Agreement and of any dispute arising hereunder is English. Where a foreign language version contradicts the English version of this Client Agreement, the English version will prevail.

#### 1.2 INTERPRETATION

The terms and expressions in this Client Agreement have defined meanings, these meanings and the rules of interpretation, are set out in Schedule 1.

### 2. GENERAL INFORMATION

#### 2.1 FINANCIAL PRODUCT ADVICE

Any information or general financial product advice that we give you is generic in nature and does not take into account your financial situation, needs or personal objectives. You should, before acting on the advice, consider the appropriateness of the advice, having regard to your objectives, financial situation and needs. If our advice relates to the acquisition, or possible acquisition, of a particular Financial Product you should read any relevant Product Disclosure Statement and Agreements.

#### 2.2 RELIANCE ON YOUR OWN JUDGMENT

You must understand the risks of opening an Account with us and rely solely upon your own judgement in dealing with us. We are not under any responsibility and have no duty of care to monitor your Account or to prevent you from trading in Financial Products beyond your means or ability or otherwise to protect you.

#### 2.3 OUR DISCRETION

Various clauses of this Client Agreement confer discretions on us to act in circumstances that are set out in the relevant provision. In exercising such discretions, we will act in accordance with the following:

- (a) we will have due regard to our commercial objectives, which include:

- (i) responding to market forces;
  - (ii) managing all forms of risks, including, but not limited to operational risk and market risk; and
  - (iii) complying with our legal obligations as a holder of an AFSL;
- (b) we will act when necessary to protect our position in relation to the trade or event;
- (c) we will take into account the circumstances existing at the time and required by the relevant provision.

## **2.4 APPLICATION FORM**

By signing and submitting the Application Form you:

- (a) acknowledge to us that you have received or downloaded, and read and understood this Client Agreement and our current FSG; and
- (b) agree that we will provide our Services to you on the terms and conditions of the Agreements.

## **2.5 ANTI-MONEY LAUNDERING LEGISLATION**

You acknowledge that we may require information from you from time to time to comply with the AML/CTF Laws. By signing or submitting an Application Form and opening an account with us, you undertake to provide us with all information and assistance that we may require to comply with the AML/CTF Laws.

We may pass on information collected from you and relating to transactions as required by the AML/CTF Laws or other applicable laws and regulations and are under no obligation to inform you we have done so. We may undertake all such anti money laundering and other checks in relation to you (including restricted lists, blocked persons and countries lists) as deemed necessary or appropriate by us, and we reserve the right to take any action with regard thereto with no liability whatsoever therefore.

You also warrant that:

- (a) you are not aware and have no reason to suspect that:
  - (i) the moneys used to fund your transactions have been or will be derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under Applicable Laws, international law or convention or by agreement; or
  - (ii) the proceeds of your investment will be used to finance any illegal activities; and
- (b) neither you nor your directors, in the case of a company, are a politically exposed person as the term is used in the AML/CTF Laws.

## **3. OUR SERVICES**

Subject to you fulfilling your obligations under the Client Agreement, we will provide services to you.

We will provide you with general financial product advice and dealing services in relation to Financial Products, in particular securities.

We may refer you to and assist you with establishing appropriate accounts and sub-accounts with selected Product Issuers for the purposes of, and to enable you to deal in Financial Products. Any accounts or sub-accounts opened, managed or otherwise dealt with by us under this clause are considered as Accounts for the purpose of this Client Agreement, and you agree and authorise us to open, close, manage and otherwise deal on behalf of you regarding such Accounts.

### **3.1 YOUR CONSENT AND ACKNOWLEDGEMENT**

Pursuant to this clause 3, you consent and authorise us to open, close, manage and otherwise deal on your behalf in relation to your accounts with Product Issuers. You understand and agree that this Client Agreement and any other documents provided to you constitute your agreement with us.

The accounts with Product Issuers are non-discretionary accounts, which means that every trade or transaction conducted in it must be specifically authorised orally/in writing by you or, if applicable, any person(s) duly authorised by you pursuant to the Client Agreement.

You acknowledge that there will be separate agreements and/or arrangements between you and the Product Issuers that we refer you to. You irrevocably agree to the terms and conditions set out in such agreements. You confirm that a reasonable opportunity to understand the related risks set out therein has been offered to you, and that you understand and accept such risks.

We will receive referral fees and/or fees and/or rebates and/or commissions for the introduction of services set out in this clause 3 of this Client Agreement or otherwise from Product Issuers, third parties and/or from institutions, entities and/or persons that provide services to you. Further information on the fees received by us can be found in our FSG.

### **3.2 HOW WE PROVIDE OUR SERVICES**

The method by which you instruct us will vary depending on what type of service we are providing to you. We will agree on an appropriate means for you to provide instructions to us, which may be by email or telephone.

You agree that we shall be entitled to rely on and to act as we think fit in accordance with any instruction given or purportedly given by or on behalf of you which we believe in good faith to have been given by you or an Authorised Person(s) or authorised third party/ies. We shall not in any circumstances whatsoever be liable in any way for any loss, damages, liability, cost, expense or whatsoever suffered or incurred by you arising or in connection with the exercise of the above discretion by us.

You acknowledge and agree that some of the services that you instruct us to provide may be performed by other third parties.

### **3.3 ONLINE SERVICES**

You acknowledge that the internet or other electronic medium is an inherently unreliable medium of communication and that such unreliability is beyond our control or anticipation. You agree that we shall not be responsible for any loss, damage, costs, expenses, claims or liability of whatsoever nature, directly or indirectly, arising out of or in connection with such unreliability or the public nature of the internet or other electronic medium or any other cause beyond our control or anticipation.

## **4. YOUR ACCOUNT**

### **4.1 OPENING**

After we accept your Application Form, we will open an Account in your name. We reserve the right to refuse to open an Account for any reason whatsoever.

### **4.2 ACCOUNT INFORMATION**

You undertake and warrant to us that any information provided to us is correct and that you will immediately inform us of any material change to that information, including any changes to your contact details or financial status.

### **4.3 NAMING OF CLIENT**

Where two or more natural persons and no others are named as the client, the Account will be established in their names as joint tenants unless they specifically request otherwise. In all other cases, the Accounts will be established in the names as tenants in common.

### **4.4 TWO OR MORE PERSONS**

Where you are two or more persons in relation to one Account:

- (a) the liability of each person will be joint and several;
- (b) we may receive instructions from any one person who is, or appears to us to be, such a person, whether or not such person is an Authorised Person;
- (c) any notice or other communication given by us to one person will be deemed to be notice to all persons in relation to the account; and

(d) any Event of Default in respect of any one person will be an Event of Default in respect of you.

#### **4.5 ACCOUNT DETAILS**

Upon opening an account with a Product Issuer, it is likely you will be given (or otherwise create yourself) an Internet specific password, which must be entered, together with your account number, when you wish to access your account with the Product Issuer. You will also be given an account name, which must also be entered to access your account in certain circumstances.

#### **4.6 CHANGING AUTHORISED PERSONS**

You may by written notice change the Authorised Persons on your Account from those indicated on the Application Form. We are only bound by any such variation upon written notice being received by us.

We may act upon instructions of any Authorised Person, or any person who appears to us to be an Authorised Person, in the same manner as outlined in clause 3 despite the fact that the person may not be authorised. In particular, we are entitled to act on any instructions transmitted using your username, Account number, user ID or password.

You agree to indemnify us against all losses, costs or expenses which we may suffer or incur as a result of any error in any instruction given by an Authorised Person or as a result of our acting on any instruction of any Authorised Person or any person who appears to us to be an Authorised Person.

#### **4.7 ACCOUNT SECURITY INFORMATION**

You are required to keep all security information relating to the Account confidential, including any username, Account number, user ID and password. We do not have to establish the authority of anyone using these details. You are responsible for all instructions and for the accuracy of all information sent electronically using any such details. If you are aware or suspect that these details are no longer confidential, you should contact us as soon as possible so that they may be changed.

#### **5. FEES**

Our fees are based upon the provision of our qualified and professional expertise. Our FSG explains the various fees we will charge for the provision of our Services.

We will receive commissions from third parties relating to your transactions in Financial Products. Details of the remuneration received for the products on offer is set out in our FSG and the disclosure documents provided to you by the Product Issuer and will comply with the requirements of the Applicable Law. If you require any further details of fees paid, please contact us or the Product Issuers. Remuneration and commissions may be in the form of cash from product issuers.

We may vary our fees or costs without notice when changes are to your advantage or are due to external circumstances beyond our control. Such circumstances include:

- (a) changes in the relationship with our external service providers and relationships, which affect our cost structures;
- (b) market conditions, including competitive behaviour, mean it is prudent for us to change our fees and costs; or
- (c) for commercial reasons we wish to change our general cost and pricing structure.

#### **6. CONSENT TO RECORDING OF TELEPHONE CONVERSATIONS**

You consent to:

- (a) the electronic recording of your telephone discussions with us, with or without an automatic tone warning device; and
- (b) the recording and retention of all electronic communications with us, including but not limited to communications by email, with or without any further warning to this effect during the communication; and

- (c) the use of recordings, transcripts or electronic communications from such recordings for any purpose, including, but not limited to, their use as evidence by either party in any dispute between you and us.

## **7. EVENTS OF DEFAULT**

### **7.1 WHAT CONSTITUTES AN EVENT OF DEFAULT**

Any of the following events constitutes Events of Default, which upon their occurrence give us the right to take action in accordance with clause 7.2:

- (a) an Insolvency Event occurs in relation to you;
- (b) you are an individual and you die or become of unsound mind;
- (c) you are in breach of any obligation, warranty or representation made under this Client Agreement and/or any information provided to us in connection with this Client Agreement is or has become untrue or misleading;
- (d) any fee or other payments due to us are not paid in accordance with this Client Agreement;
- (e) whether or not any sums are currently due to us from you, where any cheque or other payment instrument has not been met on first expectation or is subsequently dishonored or you have consistently failed to pay any amount owed to us in time;
- (f) at any time or for any period deemed unreasonable by us you are not contactable, or you do not respond to any notice or correspondence from us;
- (g) we reasonably believe it is prudent for us to take any or all of the actions described in clause 7.2 in light of any relevant legal or regulatory requirement applicable either to you or to us;
- (h) we consider it necessary for the protection of our rights under this Client Agreement;
- (i) we consider that you may be in breach of or have failed to comply any Applicable Law;
- (j) we are so requested by ASIC or any other regulatory body or authority;
- (k) where we have not received, within ten days of a written request, all information which we have requested in connection with this Agreement;
- (l) where you are trustee of a trust, and without our consent, you cease to be sole trustee of the trust, or any step is taken to:
  - (i) remove you as trustee, or to appoint a substitute or additional trustee; or
  - (ii) bring any part of the trust assets under the control of any court;
- (m) any of the following were to occur where you are trustee of a trust:
  - (i) any application or order is made in any court for:
    - (A) accounts to be taken in respect of the trust; or
    - (B) any property of the trust is to be brought into court or administered by the court under its control;
  - (ii) the beneficiaries of the trust resolve to wind up the trust;
  - (iii) you are required to wind up the trust under the Trust Deed or applicable law;
  - (iv) the winding up of the trust commences for any other reason;
- (n) where you are trustee of a trust, the trust is held, or is conceded by you, not to have been properly constituted;
- (o) where you are trustee of a trust, you cease to be authorized under the Trust Deed or at law to own the trust assets in your name or to perform your obligations under this Client Agreement; or
- (p) where you are trustee of a trust, you breach any of your obligations as trustee of the trust.

### **7.2 WHAT ACTION MAY WE TAKE**

If an Event of Default occurs, we may take all or any of the following actions:



- (a) immediately require payment of any amount due to us;
- (b) terminate this Client Agreement;
- (c) suspend your Account;
- (d) call on any guarantee in respect of your obligations;
- (e) combine, close or consolidate any of the Accounts and offset any and/or amounts owed to, or by, us in such manner as we may in our absolute discretion determine; or
- (f) retain any amount owed by us to you against any contingent liability of yours to us or so long as the contingency subsists.

## **8. AMENDMENT AND TERMINATION**

### **8.1 CURRENT VERSION OF AGREEMENTS GOVERN OUR PRODUCTS**

You agree that the version of the Agreements published on our Website at the time of the provision of Services governs those services.

### **8.2 AMENDING AGREEMENT**

We may amend or replace this Client Agreement by giving written notice of the changes.

### **8.3 YOU MAY OBJECT**

If you object to any changes, you must notify us within seven (7) days of the date the notice is deemed to be received under clause 24. If you do not do so, you will be deemed to have accepted the changes. If you give us notice that you object, then the changes will not bind you; but we may require you to (and you must) close your Account as soon as reasonably practicable.

### **8.4 APPLICATION DATE**

Subject to clause 8.2, the amendments made under this clause 8 will apply from the effective date as stated by us of the changes specified in the notice.

### **8.5 OUR RIGHT TO TERMINATE**

We may, in our absolute discretion and without giving reasons, suspend or terminate your Account and cease to act on your behalf at any time by giving you thirty (30) days' written notice. This right is in addition to any other rights to terminate this Client Agreement or close your Account that we may have under this Client Agreement.

### **8.6 YOUR RIGHT TO TERMINATE**

You may also terminate this Client Agreement or close your Account at any time by giving us written notice. Your Account will be closed as soon as reasonably practicable after we have received notice and all of your obligations are discharged.

## **9. APPLICATION OF ACCOUNT FUNDS**

### **9.1 OUR RIGHTS TO APPLY ACCOUNT FUNDS**

In order to discharge your obligations (actual or contingent) under this Client Agreement we may at any time without prior notice to you:

- (a) apply all or part of any currency held by us in your Account and any currency held by us for the purpose of your dealings in such order or manner as we think fit, whether the liabilities are actual or contingent, primary or collateral, joint or several;
- (b) combine or consolidate all or any of your Accounts with us; and

- (c) convert at a commercial rate currency held by us in your Account into a currency or currencies in which payments are due from you to us and without us being responsible to you for any loss resulting from such conversion.

## **10. LEGAL AND REGULATORY REQUIREMENTS**

### **10.1 COMPLY WITH THE LAW**

Despite any provisions of this Client Agreement, in providing the services under this Client Agreement, we will be entitled to take any action as we consider necessary in our absolute discretion to ensure services provided under this Client Agreement are in compliance with all Applicable Laws.

You agree strictly to comply with all Applicable Laws. If we consider you have not so complied, we may terminate this Client Agreement immediately without notice.

## **11. LIMITATION OF LIABILITY**

### **11.1 OUR LIABILITY LIMITED**

Subject to any laws restricting us from limiting our liability, and to the maximum extent permitted by those laws, we are not liable for:

- (a) any error or inaccuracy in, or unsuitability of, or omission from the Agreements, or any other information provided by us, whether negligent or otherwise;
- (b) any action we may take under this Client Agreement, so long as we act within the terms of its provisions and in particular act reasonably where required to do so; and
- (c) any claim, loss, expense, cost or liability suffered or incurred by you (claims) except to the extent that such a loss, expense, cost or liability is suffered or incurred as a result of our gross negligence or willful default.

### **11.2 REASONABLY FORESEEABLE LOSSES**

Other than is described in clause 11.3 of this Client Agreement and subject to our limits on our liability in this clause 11, we are each only responsible for losses that are reasonably foreseeable consequences of breaches of this Client Agreement.

### **11.3 INDIRECT LOSSES**

We are not responsible for indirect or consequential losses.

### **11.4 LOSS OF PROFIT**

We are not liable to you for any loss of profit or opportunity.

### **11.5 APPLICATION OF LIMITATIONS**

Regardless of whether we, our employees or agents, knew of the possibility of the claim being incurred the limitations of liability in this clause 11 shall apply.

### **11.6 YOU AGREE TO INDEMNIFY US**

You irrevocably and unconditionally agree to continuously indemnify us and hold harmless us and our directors, officers, employees, agents and representatives, against any and all liability or loss (including consequential losses), taxes, expenses, damages, charges, receipts, demands and expenses of any nature and on any account and liabilities present, future, contingent or otherwise and including legal fees on a full indemnity basis which may be suffered or incurred or brought against us or in connection with or caused by:

- (a) your breach of this Client Agreement;
- (b) any failure to provide any such information in a timely manner or at all by you;

- (c) any action or inaction which we or any of our affiliates may take or omit to take in connection with the Accounts or pursuant to the Client Agreement (except for any willful misconduct on its part;
- (d) us taking any action under clause 7 of this Client Agreement;
- (e) any act or omission of you (whether or not constituting a breach of any provision contained in the entire Client Agreement); or
- (f) us acting in accordance with any direction, request or requirement of any regulatory authority or government body;
- (g) any representation or warranty given by you being incorrect, misleading or untrue, or any error in any order or instruction which is, or appears to be, from an authorized person,

unless and to the extent only such is suffered or incurred as a result of our gross negligence or wilful default.

You agree to pay amounts due under this indemnity on demand from us.

## 11.7 SURVIVAL OF INDEMNITY

The indemnity in clause 11.6 survives termination of this Client Agreement.

## 12. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

### 12.1 YOUR WARRANTIES

You undertake, warrant and represent to us, with the intention that the following undertakings, warranties and representations are repeated each time you provide instructions to us:

- (a) **acting as principal:** you are acting as principal in relation to this Client Agreement unless otherwise indicated in the Application Form;
- (b) **legal disability:** you are not under any legal disability and are not subject to any law which prevents you from entering this Client Agreement or any Products;
- (c) **corporate authorization:** if you are a company, you are empowered by, and have obtained, all necessary corporate or other authorities under your constitution and at law;
- (d) **consents:** you have obtained all necessary consents and have the authority to enter into this Client Agreement;
- (e) **compliance with laws and valid obligations:** you are complying with all laws to which you are subject, and the obligations expressed to be assumed by you under this Client Agreement and any Product are your legal, valid, binding and enforceable obligations;
- (f) **able to pay debts:** you are able to pay your debts as and when they fall due and are not otherwise insolvent or presumed to be insolvent under any law;
- (g) **no liquidator etc.:** no liquidator, provisional liquidator, receiver, receiver and manager, trustee, controller, official manager, administrator or similar officer has been appointed in relation to your affairs and no application has been made for the appointment of any of these persons;
- (h) **information accurate:** at all times the information provided by you to us, whether in the Application Form or otherwise will be complete, accurate and not misleading; and
- (i) **transactions:** you will not conduct any transactions, including trades, which contravene any laws or regulations, including in relation to insider trading, market manipulation or market abuse.

### 12.2 TRUSTEE OF A TRUST

Where you are the trustee of a trust, settlement or fund (including a superannuation fund) you further undertake, warrant and represent to us, with the intention that these undertakings, warranties and representations are repeated each time you provide instructions to us:

- (a) **capacities:** you acknowledge and agree that you enter into this Client Agreement in your personal capacity and in your capacity as trustee of the trust;
- (b) **sole trustee:** you are the sole trustee or trustees of the Trust and you have been validly appointed;

- (c) **trust validly created:** the trust was validly created and is in existence at the date of your application and has been duly stamped (if required);
- (d) **solely constituted:** the trust is solely constituted by the trust deed described in your Application Form and is as amended or substituted (Trust Deed);
- (e) **right of indemnity:** you have the right of indemnity against the assets of the trust under the Trust Deed and there has not, and will not be, any breach of trust or any other action that will prevent you from enforcing your rights under that indemnity;
- (f) **full authority:** you are empowered and have full authority under the Trust Deed to enter into this Client Agreement and to enter into the transactions contemplated by it;
- (g) **no actions:** there is no current or pending or threatened action or proceeding affecting the trust or any of the trust's assets before any court or body which draws or purports to draw into question or is likely to affect the legality, or validity, of your right of indemnity under the Trust Deed or of this Client Agreement or any Product or your ability to observe your obligations under it;
- (h) **ceasing to be trustee:** you will notify us immediately in writing if you cease for any reason to be the trustee of the trust or the trust is determined or ceases to exist;
- (i) **no distribution of capital or income:** you will not make any distribution of any income or capital or assets of the trust that results in there being insufficient assets of the trust to meet any of your liabilities under this Client Agreement or any Products.

### 12.3 SUPERANNUATION FUNDS

If you are the trustee of a superannuation fund you further undertake, warrant and represent to us, with the intention that this warranty is repeated each time you provide us with instructions, that you have sought advice as the trustee of a superannuation fund receiving our Services and are satisfied that in so doing you comply with all your fiduciary duties and obligations under the *Superannuation Industry (Supervision) Act 1993*, the regulations made under it and/or other relevant legislation or regulations, and that your dealings do not in any way breach that legislation or those regulations.

### 12.4 NOTIFICATION OF CHANGES

You undertake that throughout the term of this Client Agreement you will promptly notify us of any change to the details supplied by you in your Application Form and any material or anticipated change in your financial circumstances that may affect the basis upon which we do business with you.

### 12.5 STATUTORY WARRANTIES

Where any Applicable Law implies in this Client Agreement any term, condition or warranty, and makes void or prohibits excluding or modifying the application of or exercise of, or liability under such term, condition or warranty, such term, condition or warranty will be deemed to have been included in this Client Agreement. However, our liability for any breach of such term, condition or warranty will be limited, at our option, to any one or more of the following:

- (a) if the breach relates to goods:
  - (i). the replacement of the goods or the supply of equivalent or similar goods;
  - (ii). the repair of the goods;
  - (iii). the payment of the cost of repairing the goods or acquiring the relevant goods, or
  - (iv). payment of the cost of having the goods repaired; or
- (b) if the breach relates to services:
  - (i). the supplying of the services again; or
  - (ii). the payment of the cost of having the services supplied again.

## 13. FORCE MAJEURE

### 13.1 FORCE MAJEURE EVENT

For the purpose of this Client Agreement, a Force Majeure Event means any occurrence or non-occurrence as a direct or indirect result of which a party is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this Client Agreement and that is beyond the reasonable control of that party, including forces of nature, industrial action and action or inaction by a Government Agency.

### **13.2 NOTICE AND SUSPENSION OF OBLIGATIONS**

If a party to this Client Agreement is affected, or likely to be affected, by a Force Majeure Event:

- (a) That party must immediately give the other party prompt notice of that fact including:
  - (i). full particulars of the Force Majeure Event;
  - (ii). an estimate of its likely duration;
  - (iii). the obligations affected by it and the extent of its effect on those obligations; and
  - (iv). the steps taken to rectify it.
- (b) The obligations under this Client Agreement of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

### **13.3 ACTIONS WE MAY TAKE**

If we determine that a Force Majeure Event exists, then we may (without prejudice to any other rights under this Client Agreement and at our sole discretion) take any one or more of the following steps:

- (a) amend or vary this Client Agreement insofar as it is impractical or impossible for us to comply with our obligations to you;
- (b) cancel instructions as we deem to be appropriate in the circumstances; or
- (c) take or omit to take all such other actions as we deem to be appropriate in the circumstances.

### **13.4 NOTIFICATION OF FORCE MAJEURE EVENT**

To the extent practicable, we will take reasonable steps to notify you of any action that we propose to take under clause 13.3 before we take such action. If it is not practicable to give you prior notice, we will notify you at the time promptly after taking any such action.

### **13.5 LIABILITY**

If we determine that a Force Majeure Event exists, we will not be liable to you for any failure, hindrance or delay in performing our obligations under this Client Agreement or for taking or omitting to take any action in accordance with clauses 13.3 or 13.4 of this Client Agreement.

## **14. GST**

Consideration for a supply under or in connection with or contemplated by the Client Agreement is exclusive of GST unless expressly stated to be inclusive of GST.

If GST is payable by us on any supply under or in connection with or contemplated by the Client Agreement, in addition to providing any consideration for that supply (which is exclusive of GST), you must:

- (a) pay to us (as the case may be) an amount equal to the GST payable on the supply, without deduction or set-off of any other amount; and
- (b) make that payment as and when the consideration or part of it must be paid or provided, except that you need not pay unless you have received a tax invoice (or adjustment note) for that supply.

Words defined in A New Tax System (Good and Services Tax) Act 1999 (Cth) have the same meaning in this clause 14

## **15. DISPUTE RESOLUTION**

## **15.1 INFORMING US ABOUT DISPUTES**

You should inform us immediately in writing of any dispute or difference whatsoever in connection with this Client Agreement. We will investigate and endeavour to resolve any dispute or difference in accordance with our internal complaints handling system.

## **15.2 HOW DISPUTES ARE DEALT WITH**

Any dispute or difference in connection with this Client Agreement must be dealt with by you in Australia. Where the event the dispute or difference is unable to be resolved by us to your satisfaction in accordance with our internal complaints handling system:

- (a) you may refer the dispute or difference to the Australian Financial Complaints Authority Limited (**AFCA**) for determination in accordance with their rules; or
- (b) if the dispute or difference does not fall within AFCA' rules, the dispute or difference may be submitted by us to arbitration in accordance with and subject to the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules the Arbitrator will be a person recommended by the New South Wales Chapter of the Institute of Arbitrators and Mediators of Australia; or
- (c) if the dispute or difference does not fall within the rules of AFCA, you may request us to refer the dispute to arbitration in accordance with clause 15.2(b) above, and:
  - (i). we may decide in our absolute discretion whether to agree to any such request;
  - (ii). without agreement by us in accordance with this paragraph, you will not be able to refer the dispute or difference to arbitration but will have to submit for the benefit of us only the dispute or difference to the exclusive jurisdiction of the Courts of New South Wales.

You and we agree to accept any determination of the arbitrator under paragraphs 15.2(b) or 15.2(c) above as final and binding and submit for the benefit of us only, to the exclusive jurisdiction of the Courts in New South Wales for the enforcement of any such determination. For the avoidance of doubt, this clause 14 will not prevent us from commencing proceedings in any other jurisdictions for the enforcement of any such determination.

## **15.3 WHERE WE MAY COMMENCE LEGAL PROCEEDINGS**

Clause 15.2 of this Client Agreement is for the benefit of us only, and it does not prevent us from commencing proceedings against you in any relevant jurisdiction, in addition to submitting any dispute or difference whatsoever with you in connection with this Client Agreement to arbitration in accordance with clause 15.2(b) of this Client Agreement.

## **15.4 INTERNAL COMPLAINTS HANDLING POLICY**

You should contact us for information about our internal complaints process.

## **16. PRIVACY**

### **16.1 PERSONAL INFORMATION**

In the course of opening your Account and providing services to you under this Client Agreement, it will be necessary for us to obtain and hold personal information that we will obtain from you in accordance with data protection and anti-money laundering legislation. You agree that we can rely on, hold and process personal information for the purpose of performing our services and obligations under this Client Agreement and for the purpose of improving those services.

If you do not provide the information requested by us or agree to our information handling practices detailed in this Client Agreement, we may not be able to provide our services to you.

### **16.2 DISCLOSING INFORMATION**

You agree to us disclosing any information we collect from you:

- (a) in accordance with this clause 16;

- (b) where we are required by law or regulatory authorities;
- (c) to regulatory authorities and to such third parties as we originally consider necessary in order to prevent crime;
- (d) where reasonably necessary, to any third party which provides a service to us in connection with this Client Agreement but restricted to the purposes of providing that service.

### **16.3 CREDIT AND IDENTITY CHECKS**

You consent to us, or our agents acting on our behalf, carrying our credit and identity checks, including money laundering, compliance regulatory reporting and fraud prevention checks, as we consider necessary or desirable, including references on your bank or any credit reference agency. You agree that any third party that we use for this purpose may share any information concerning you with us and other organisations.

### **16.4 NEW PRODUCTS OR SERVICES**

You authorise us to contact you by email, telephone or post to give you information about our new products or services and you consent to us using your details for this purpose for the period that you have an account with us and after you have closed the account. If you do not wish to receive such information, you should inform us of this.

### **16.5 PASS PERSONAL DATA**

You authorise us to pass your personal information to our selected Related Entities or third parties for the purpose of contacting you by email, telephone or post to give you information about products offered by that Related Party for the period you have an Account with us and after you have closed it. You should advise us if you no longer wish to receive this information.

### **16.6 OTHER COUNTRIES**

You acknowledge that it may be necessary for your information to be transferred to someone who provides a service to us in other countries, and you consent to such transfer.

### **16.7 ACCESS TO INFORMATION**

You may contact us at the address listed in the FSG if you wish to request access to any personal information that we hold about you.

### **16.8 RECORDING**

We retain copies (whether in material, electronic or other form) of the following documents for at least the period specified:

- (a) each FSG given by us, or by an authorized representative of us while acting in that capacity – for a period commencing on the date of the FSG and continuing for at least seven (7) years from when the document was first provided to you; and
- (b) any client agreement, transaction records, written or electronic communications between you and us, and any other client documents including copies of your identification documents, for the life of the client relationship and additional seven (7) years from the date we cease to provide financial services to you.

### **16.9 PRIVACY ACT 1988**

We collect, use, hold, handle and/or disseminate your information in a way that is at all times compliant with the Privacy Act 1988 and its provisions.

## **17. DISCLOSURE OF ANY RELEVANT CONFLICTS OF INTEREST**

We, our Associates and/or other persons connected with us may have an interest, relationship or arrangement that is material in relation to the Services provided by us. We may provide services to

third parties whose interests may be in conflict or competition with your interests. We will not act in a way that would deliberately favour the position of another party over you or vice versa.

## **18. ILLEGALITY**

If at any time any provision of this Client Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Client Agreement under the law of that jurisdiction nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction will be in any way affected.

## **19. ASSIGNMENT AND DELEGATION**

The following provisions apply in relation to assignment and delegation:

- (a) You may not assign or deal with any of your rights or delegate any of your obligations under this Client Agreement to any person without our prior written consent.
- (b) You may not charge or create any security interest over any or all of their rights under this Client Agreement, including any rights to deposits held by us.
- (c) Without prejudice to clause 19(a) of this Client Agreement, we may assign or deal with our rights or delegate any of our obligations under this Client Agreement to any person on giving not less than seven (7) Business Days' notice to you, subject to obtaining regulatory approval where, and to the extent that such approval is required by law.
- (d) If you are in default of any of your obligations under this Client Agreement, we will be entitled (without prejudice to any other rights it may have) at any time thereafter to assign to any person with immediate effect all or any of our rights in respect of moneys owing to us under this Client Agreement, as well as any security or other remedies available to us in respect of such moneys. If any such assignment is made, you will, if so required by us and the assignee, acknowledge in writing that assignment or dealing in relation to the relevant moneys owing by you.
- (e) Despite anything to the contrary contained in this Client Agreement, we may disclose to any actual or potential delegate, assignee or other party as referred to in clause 19(c) of this Client Agreement, such information relating to you and your relationship with us, as we see as appropriate.

## **20. RIGHTS AND REMEDIES**

The rights and remedies contained in this Client Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## **21. RIGHTS OF THIRD PARTIES**

Nothing in this Client Agreement is intended to confer on any person other than us or you any right to enforce any term of this Client Agreement.

## **22. DELAY, OMISSION AND WAIVER**

The following provisions apply to any delay, omission and waiver:

- (a) No delay or omission on our part in exercising any right, power or remedy provided by law or under this Client Agreement, or partial or defective exercise thereof, will:
  - (i). impair or prevent further or other exercise of such right, power or remedy; or
  - (ii). operate as a waiver of such right, power or remedy.
- (b) No waiver of any breach of any term of this Client Agreement will (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorizing a continuation of the particular breach.

## **23. GOVERNING LAW AND JURISDICTION**

### **23.1 JURISDICTION**



This Client Agreement will be governed by and construed in accordance with the law of New South Wales, Australia.

You and we submit, for the benefit of us only, to the exclusive jurisdiction of the law of New South Wales, Australia. For the avoidance of doubt, this clause 23 will not prevent us from commencing proceedings in any other relevant jurisdiction.

## **24. NOTICES**

### **24.1 NOTICES MUST BE IN WRITING**

Subject to clause 24.2, any notice or other communication given or made under or in connection with the matters contemplated by this Client Agreement will, except where oral communication is expressly provided for, be in writing and will be sent to the address below:

(a) **Australian Mutual Funds Exchange Pty Ltd**

Address: Suite 1710, 9 Castlereagh Street  
Sydney NSW 2000

Phone No: +61 2 8005 1970

Email Address: [au@amfex.com](mailto:au@amfex.com)

(b) **You:** The address, facsimile number and electronic mail address provided by you for this purpose in the Application Form.

### **24.2 PROVISION OF NOTICE**

A notice in writing can be provided personally or by hand, or by letter, fax, or email.

We may send notices to you at your last known home or email address, place of work, fax, telephone, pager number or other contact details.

### **24.3 WHEN NOTICES ARE RECEIVED**

Any such notice will be deemed to have been received:

- (a) if delivered personally or by hand, at the time of delivery;
- (b) if posted, within three (3) Business Days of posting;
- (c) if oral, whether by telephone or face to face, when actually given;
- (d) if by leaving a message on a telephone answering machine or voice mail, when the message was left;
- (e) if sent by facsimile, on completion of its transmission; and
- (f) if posted on or provided through the Website or if sent by electronic mail, on posting, providing or sending.

### **24.4 CHANGE OF NOTICE DETAILS**

You may alter the address (including electronic mail address) to which statements and other communications are issued to you, by written notice to us and we may notify you of a change to any of our details as stated above, provided in either case that such alteration will only be effective on the later of the date specified in the notice and the time of deemed service under clause 24.3 of this Client Agreement.

### **24.5 DEEMED NOTICE**

You agree and acknowledge that any statements and any other written notices will be deemed to have been properly given or made available if sent to the address (including electronic mail address) last notified to us by you or if posted on or provided through the Website.

**24.6 YOUR RESPONSIBILITY TO UPDATE CONTACT DETAILS**

You agree and acknowledge that you are solely responsible for ensuring that we have your current address, telephone number, facsimile number and electronic mail address.

**25.0 SIGN-OFF: CLIENT AGREEMENT**

**SIGNED** For and on behalf of

**NAME**

**POSITION**

**SIGNATURE**

**DATE**

## **SCHEDULE 1**

### **INTERPRETATION**

1. The defined terms used in this Client Agreement are capitalized and set out in this Schedule.
2. If there is any conflict between the terms of this Client Agreement and any Applicable Law, the Applicable Law (to the extent it cannot be excluded or modified by this Client Agreement) will prevail.
3. In this Client Agreement any reference to a person includes bodies corporate, unincorporated associations, partnerships and individuals.
4. In this Client Agreement, all references to times of the day are to the time in Sydney, New South Wales, Australia, unless otherwise specified.
5. Headings and examples in this Client Agreement are for reference only and do not affect the construction of the Agreement.
6. In this Client Agreement any reference to any enactment includes references to any statutory modification or re-enactment of such enactment or to any regulation or order made under such enactment (or under such a modification or re-enactment).

### **DEFINITIONS**

In this Client Agreement the following terms and expressions have, unless the context otherwise requires, the following meanings:

<b>ACCOUNT</b>	means an account you have with us;
<b>AFSL</b>	means the Australian Financial Services Licence held by Emirates Mutual Funds Exchange Pty Ltd (AFSL No: 379035);
<b>AGREEMENTS</b>	means this Client Agreement, the Application Form, the Financial Services Guide, any additional terms and conditions issued by us and notified to you and accepted by you, in connection with our dealings with you; and any information on our Website, as amended, varied, or replaced from time to time, which together govern our relationship with you;
<b>AML/CTF LAWS</b>	means the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> and all regulations, rules and instruments made under that Act;
<b>APPLICABLE LAWS</b>	means all: <ol style="list-style-type: none"><li>a) applicable provisions of laws and regulations, including all relevant rules of government agencies, exchanges, trade and clearing associations and self-regulatory organizations, that apply to the parties and the Agreements;</li><li>b) applicable Australian law.</li></ol>
<b>APPLICATION FORM</b>	means the application form and account opening documentation, including documentation required to be returned for the purposes of complying with the AML/CTF Laws, completed by you and submitted to us;
<b>ASIC</b>	means the Australian Securities and Investments Commission;
<b>ASSOCIATE</b>	means: <ol style="list-style-type: none"><li>(a) a person who is an officer, employee, agent, representative or associate of a party;</li><li>(b) a Related Body Corporate of a party; and</li></ol>

- (c) a person who is an officer, employee, agent, representative or, associate of a Related Body Corporate of a party;

**AUTHORISED PERSON**

means you and/or any person authorised by you to give instructions to us under this Client Agreement;

**BUSINESS DAY**

means any day other than a Saturday, Sunday or public holiday on which banks are open for business in Sydney, New South Wales, Australia.

**CORPORATIONS ACT**

means the *Corporations Act 2001* (Cth);

**EVENT OF DEFAULT**

means an event described in clause 7.1 of this Client Agreement;

**FINANCIAL PRODUCT**

means financial products provided within the scope of our business as an AFSL holder as defined in section 9 and chapter 7 of the Corporations Act and also in our capacity as an agent for various Product Issuers in relation to Financial Products;

**FORCE MAJEURE EVENT**

has the meaning given to it in clause 13 of this Client Agreement;

**FSG**

means our relevant financial services guide, including any supplementary and replacement financial services guide;

**INSOLVENCY EVENT**

means any of the following:

- (a) an order is made that a corporate client be wound up;
- (b) an application is made to a court for an order:
  - (i) that a corporate client be wound up;
  - (ii) appointing a liquidator or provisional liquidator for a corporate client;
- (c) a liquidator, provisional liquidator or controller is appointed to a corporate client;
- (d) a resolution is passed to appoint an administrator to a corporate client;
- (e) you enter into a deed of company arrangement or propose a reorganisation, moratorium or other administration involving all or any of your creditors;
- (f) a corporate client is dissolved or wound up in any other way;
- (g) you are or state that you are unable to pay your debts as and when they fall due;
- (h) you are or state that you are insolvent;
- (i) you seek or obtain protection from any of your creditors under any legislation;
- (j) you become insolvent or commit an act of bankruptcy or your estate comes within the law dealing with bankrupts;
- (k) a bankruptcy petition is presented in respect of you or, if a partnership, in respect of one or more of the partners, or if a company, a receiver, trustee, administrative receiver or similar officer is appointed;
- (l) if execution is levied against your business or your property and is not removed, released, lifted, discharged or discontinued within 28 days;
- (m) you seek a moratorium or propose any arrangement or compromise with your creditors;

- (n) any other event having substantially the same legal effect as the events specified in paragraphs ((a) to (n) above;
- (o) any security created by any mortgagee or chargee becomes enforceable against you and the mortgagee or chargee takes steps to enforce the security or charge;
- (p) any indebtedness of you or any of your Related Bodies Corporate becomes immediately due and payable, or capable of being declared so due and payable, prior to its stated maturity by reason of your default or the default of any of your subsidiaries, or you or any of your subsidiaries fail to discharge any indebtedness on its due date;
- (q) any of the representations or warranties given by you are, or become, untrue;
- (r) we consider it necessary for our own protection or the protection of our Associates;

**PRODUCT ISSUER**

means the person who issues or provides the Financial Product;

**RELATED BODY CORPORATE**

has the meaning given in the Corporations Act, with any necessary modifications for companies incorporated outside Australia;

**SERVICES**

means the provision of services as defined by clause 3;

**WE/ US/ OUR**

means Australian Mutual Funds Exchange Pty Ltd (ABN 14 145 724 509);

**WEBSITE**

means the internet address. <https://amfex.com>