



## Retail Custody Nominee Terms

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### TERMS OF YOUR AGREEMENT WITH OPENMARKETS NOMINEES PTY LTD ACN 603 716 089 (CUSTODIAN)

You have directed that Custodian hold Financial Products on your behalf as bare trustee. Custodian is a related entity of Openmarkets Australia Ltd ABN 38 090 472 012 AFSL No 246705 (**Openmarkets**). You provide, and Custodian will hold, your Financial Products on your behalf in accordance the following terms and conditions (as well as in accordance with regulation 7.6.01(1)(v) of the *Corporations Regulation 2001* (Cth) where applicable):

#### 1. Appointment of Custodian as bare trustee

- a. You instruct Custodian to act as bare trustee in respect of Financial Products which you deal in through your Intermediary (via Transactions) from time to time.
- b. You instruct Custodian to act as your agent to register the Financial Products in its name.
- c. Custodian will register the Financial Products so as to be recorded as holder of the legal title to the Financial Products but You will retain all beneficial ownership and interest in the Financial Products.
- d. Subject to these Nominee Terms:
  - (i) Notwithstanding that Custodian holds legal title to the Financial Products it must not exercise any rights attached to the ownership of the Financial Products, dispose of or otherwise deal with the Financial Products unless otherwise directed to do so by You; and
  - (ii) You can at any time direct Custodian in writing (through your Intermediary) to transfer the legal ownership of all or some of your Financial Products to You or at your direction and Custodian must transfer those Financial Products within ten (10) business days of receipt of Your written instructions.
- e. You consent to the Financial Products being held on your behalf by Custodian being co-mingled in a common pool with other Financial Products held by Custodian on behalf of other clients in the manner prescribed in, and in accordance with, the Corporations Act.

#### 2. Your instructions

- a. Any instructions which You give to Custodian must be in writing, unless otherwise accepted by Custodian.

- b. Without in any way limiting any other form of acceptance by You of these terms and conditions, You will be deemed to have accepted the terms and conditions of these Nominee Terms by providing instructions to Custodian or Openmarkets to hold Financial Products on your behalf.
- c. Custodian and Openmarkets these Nominee Terms are not required to act on your instructions where any monies are owing by You to them.

#### 3. Joint accounts

- a. Where You are more than one person or entity, these terms and conditions bind each of you jointly and severally.
- b. Custodian may act on the written instructions of each of you without the necessity to refer to or notify any other person in connection with those instructions. Signatures of all joint account holders will be required to give directions relating to payments to third parties, unless otherwise permitted by Custodian or Openmarkets.

#### 4. Company accounts

If You are a company, unless otherwise specified in writing, Custodian or Openmarkets may act on the instructions of any one of the directors of the company as advised by You without the necessity to refer to or notify any other person in connection with these instructions.

#### 5. Authority to disclose details of ownership

- a. Custodian will disclose your name, address, the number and type of Financial Products it holds on your behalf, together with any other relevant information should it be required to do so by law or as requested by an issuer of a particular Financial Products.
- b. As a bare trustee Custodian will not and must not lodge substantial securityholder notices (where applicable), unless expressly directed to do so by way of written instruction from You and only after You have paid in advance any fees that Custodian estimates may be incurred by it in undertaking those instructions.

#### 6. Record keeping

- a. Custodian will maintain records of:
  - (i) the property to which these Nominee Terms relate which clearly identify that the property is held on your behalf; and
  - (ii) all dealings in relation to that property, including by whom, when and how those dealings were authorised.
- b. Custodian will apply verification procedures for the appropriately frequent reconciliation and checking of the Financial Products the subject of these Nominee Terms.



- c. All records in relation to your Trading Account will be kept and maintained by Custodian and made available to you upon request, including details of:
  - (i) the verification procedures in relation to the reconciliation and checking of the balances of customer assets held by Custodian; and
  - (ii) Custodian's reporting requirements.

## 7. Corporate Actions

- a. Your Intermediary will arrange for you to have access to electronic copies of any annual accounts, notices of meeting, and other documents or information provided to Custodian with respect to your Financial Products and you expressly disclaim any obligation for Custodian to provide such documentation or information.
- b. However, you acknowledge that the Intermediary reserves the right to take no action in relation to any Corporate Action for legitimate business, prudential or regulatory reasons, or if it would otherwise be impractical for the Intermediary to pass on any such Corporate Action and that Custodian is free from any liability in respect of such action (or inaction) by the Intermediary.
- c. Additional terms and conditions may apply to individual Corporate Actions and such terms and conditions will be provided to you by the Intermediary.
- d. When you acquire Financial Products via your Intermediary, you may be asked to make a default election in respect of certain:
  - (i) Voluntary Corporate Actions; and
  - (ii) Mandatory Corporate Actions With Choice.
- e. If Custodian holds Financial Products in an entity on your behalf and that entity proposes to undertake a Voluntary Corporate Action, then:
  - (i) if Custodian has received an instruction from the Intermediary as to whether you wish to participate in that Voluntary Corporate Action, Custodian will use its reasonable endeavours to give effect to that instruction; and
  - (ii) if the Intermediary has not instructed Custodian as to whether you wish to participate in that Voluntary Corporate Action, Custodian will take no further action in respect of that Voluntary Corporate Action.
- f. Certain Intermediaries may not provide access to dividend or distribution reinvestment plans. In those scenarios, the Custodian will direct for any dividend or distribution amounts to be paid in cash to the clearing account (and your Cash Account will be credited with the relevant amount).
- g. If Custodian holds Financial Products in an entity on your behalf and that entity proposes to undertake a Mandatory Corporate Action With Choice, then:
  - (i) if Custodian has received an instruction from the Intermediary as to whether you wish to participate in that Mandatory Corporate

Action With Choice, Custodian will use its reasonable endeavours to give effect to that instruction; and

- (ii) if Custodian has not received an instruction from the Intermediary as to whether you wish to participate in the Mandatory Corporate Action With Choice, Custodian will use its reasonable endeavours to act in accordance with the default terms put forward by the relevant entity in respect of that Corporate Action, except if Custodian has otherwise specified an alternative default option.

- h. If Custodian holds Financial Products in an entity on your behalf and that entity proposes to undertake a Mandatory Corporate Action Without Choice:
  - (i) Custodian will be required to participate in that Corporate Action on your behalf; and
  - (ii) you will not be able to make an election in respect of that Corporate Action.

## 8. General

- a. If, because of a Corporate Action, you are entitled to:
  - (i) a fraction of a security; or
  - (ii) a fraction of a cent (for example, following payment of a dividend, distribution or otherwise),
 Custodian will round that fraction down to the nearest whole number or the nearest whole cent, as applicable. If, as a result of the operation of this clause 8, Custodian holds surplus Financial Products, it may sell these Financial Products and distribute the proceeds of the sale proportionally to clients (including you). Custodian and/or the Intermediary reserves the right to retain or sell fractional Financial Products and not distribute them at its discretion, for legitimate business, prudential or regulatory reasons. Custodian and/or the Intermediary will be entitled to, and will retain, any amounts collected under clause 8a(ii).
- b. If the terms of a Corporate Action require an election to be made on behalf of Custodian's entire nominee holding in an entity, Custodian reserves the right not to pass on that Corporate Action to the Intermediary, where it is reasonable to do so. Custodian will use its best endeavours to give you an alternative option in respect of that Corporate Action, but it cannot guarantee that this will match the options offered by that entity.
- c. Any cash proceeds allocated to you because of a Corporate Action will be credited to your Cash Account as soon as reasonably practicable after the date on which those cash proceeds are credited to the Openmarkets clearing account.
- d. Any Financial Products allocated to you arising because of a Corporate Action will be distributed to your Portfolio as soon as reasonably practicable after the date on which the Financial Products allocation are received by Custodian.



- e. Some Corporate Actions may have withholding tax applied, in which case:
  - (i) withholding tax will be deducted from your Cash Account; or
  - (ii) Custodian may sell down your Financial Products to recover the withholding tax amount.
- f. Upon notification of a Financial Product being removed from the official list of a Securities Exchange, Custodian reserves the right to transfer the respective Financial Product out of your Portfolio into the name of the Intermediary with the respective share register prior to the date of delisting. Where possible, Custodian will make reasonable endeavours to notify the Intermediary of the delisting.

## 9. Voting

The Intermediary will not provide instructions to Custodian to exercise any voting rights attached to the Financial Products it holds on your behalf.

## 10. Substantial holder notices

As a bare trustee, Custodian is not required to lodge substantial holder notices on your behalf. You acknowledge and agree that it is your responsibility to lodge a substantial holder notice (or any other equivalent notice in other jurisdictions) in accordance with the Corporations Act (or other relevant law in other jurisdictions).

## 11. Charges

- a. You will, in accordance with Custodian's instructions:
  - (i) pay to Custodian any fees charged in relation to your dealings, including without limitation the nominee service fees which will be advised to You from time to time; and
  - (ii) reimburse Custodian for any miscellaneous costs it incurs in relation to any dealings on your behalf under these Nominee Terms.
- b. You authorise Custodian to deduct any amounts payable to Custodian from monies held by Custodian for You.
- c. You agree that any notice signed by a director or authorised employee of Custodian which sets out an amount due and payable by You to Custodian is prima facie evidence of the same.
- d. If You fail to pay any amount within 7 calendar days after a written demand for payment is sent to the address provided by You, then Custodian is authorised without further notice to sell the Financial Products on your behalf and apply the proceeds of any such sale, in payment or reduction of any outstanding amounts owed by You to Custodian or Openmarkets.

## 12. Sub-Custodians

- a. You acknowledge and agree that Custodian may, without your prior written consent, appoint and use the services of any other person or service provider as a sub-custodian in respect of your Financial Products (**Sub-Custodian**).
- b. Custodian has agreed to take reasonable care in the selection, appointment, and periodic review of any Sub-Custodian that it appoints and procure that any Sub-Custodian will comply with the provisions of these Nominee Terms in relation to your Financial Products.
- c. Subject to clause 15(a) of these Nominee Terms, provided Custodian has complied with its obligations under clause 7(b) of these Nominee Terms, Custodian has no liability for the bankruptcy or insolvency of a Sub-Custodian, or for the acts or omissions of a Sub-Custodian.
- d. Custodian will provide written notice to the Intermediary of, and contact information for, any Sub-Custodian appointed or to be appointed by Custodian to hold your Financial Products. Such notice must, unless clause 7(c) of these Nominee Terms applies, be given to the Intermediary before any property is held by the Sub-Custodian. For the avoidance of doubt, per clause 16(b) of these Nominee Terms, your continued trading through the Intermediary is acceptance of any variation in these Nominee Terms, including appointing or changing a Custodian or Sub-Custodian, and hence will represent the required written notice under this clause.
- e. If Custodian is compelled to appoint a replacement Sub-Custodian on an urgent basis following events beyond its reasonable control, Custodian will provide notice of the appointment of such Sub-Custodian as soon as is reasonably practicable after such appointment.

## 13. GST

- a. If the supply of any services or goods to You by Custodian under or pursuant to these Nominee Terms is a taxable supply, then unless advised otherwise, You must pay an amount equal to the amount of the GST to Custodian at the same time as the consideration for the supply is due.
- b. If GST is payable on anything supplied to You under these Nominee Terms Custodian will provide You with a Tax Invoice on request.
- c. Words defined in the A New Tax System (Goods & Services Tax) Act 1999 have the same meaning in this clause.

## 14. Instructions

Instructions in respect of your Financial Products must be given to the Intermediary, in accordance with their terms and conditions. The Intermediary will act as your agent to communicate your instructions to Custodian.



## 15. No personal advice

You acknowledge that Custodian does not give personal advice or make personalised recommendations. It is therefore your responsibility, before ordering the purchase or sale of any Financial Products via the Intermediary, to assess and evaluate the proposed Financial Products Transaction considering your financial situation, investment objectives and particular needs.

## 16. Encumbrances

Custodian will not take or grant a charge, mortgage, lien or other encumbrance over, or in relation to, your Financial Products unless it is:

- a. for expenses and outlays made in accordance with these Nominee Terms (other than any unpaid fees of Custodian); or
- b. entered in accordance with your prior written consent.

## 17. Confidentiality

Custodian must not disclose any confidential information relating to you, apart from any disclosure:

- a. to ASIC or any other regulatory body as required by law; or
- b. as required or permitted by law or by you in writing.

## 18. Privacy policy

Any of Your personal information held by Custodian will be handled in accordance with the [OM Privacy Policy](#). This policy details how Custodian complies with the requirements of the *Privacy Act 1988* (Cth) regarding the handling of Your personal information.

## 19. Termination

- a. Subject to Custodian's other rights under these Nominee Terms and the completion of any outstanding obligations, these nominee arrangements will terminate on the earliest of either:
  - (i) termination of your agreement with the Intermediary; and
  - (ii) termination of these Nominee Terms.
- b. On termination of these Nominee Terms, the Intermediary will close your account, and Custodian will sell the Financial Products it holds on your behalf and transfer the cash proceeds and any other cash balances it holds on your behalf to You, or as directed by the Intermediary as your agent, in accordance with these Nominee Terms and within a reasonable time.

## 20. Liability and indemnity

- a. To the maximum extent permitted by law, in no event shall Custodian, any of its related bodies corporate, or any of their officers, directors, agents, representatives or employees be liable for any

damage, claim or loss (including, without limitation, incidental loss, indirect or consequential loss, exemplary damages, loss of profits or loss of revenue) incurred by you in connection with or arising from:

- (i) any failure by You to comply with these Nominee Terms;
  - (ii) Custodian holding your Financial Products.
- b. In addition to any other indemnities provided by you under these Nominee Terms, you agree to indemnify and hold Custodian, any of its related bodies corporate, and any of their officers, directors, agents, representatives, or employees (Indemnified Parties) harmless against any losses, actions, costs, claims, damages, demands, expenses, proceedings, and liabilities paid, suffered or incurred by the Indemnified Parties directly or indirectly because of:
    - (i) any of the Indemnified Parties acting under, or in connection with, these Nominee Terms, except to the extent that any loss is caused by the negligence, fraud or dishonesty of any Indemnified Party;
    - (ii) any breach by you of these Nominee Terms; or
    - (iii) Custodian's holding of your Financial Products,and you agree to pay any such costs or the amount of loss or damage to the relevant Indemnified Party on demand.

- c. Each indemnity in these Nominee Terms (including in this clause 15 and otherwise):
  - (i) is a continuing obligation, which is independent of and separate from your other obligations; and
  - (ii) survives the termination of these Nominee Terms.
- d. Custodian is not obliged to supervise your investment in the Financial Products purchased or provided by You, or to advise on them.
- e. Custodian is not liable to You for any loss or damage suffered by you as a consequence of or related to Custodian's handling of your account and the Financial Products or the Financial Products Transactions except where the loss or damage was directly caused by Custodian's gross negligence, fraud or dishonesty.

## 21. Miscellaneous

- a. These Nominee Terms is governed by and construed in accordance with the laws of New South Wales and the parties submit to the exclusive jurisdiction of that State.
- b. Custodian may amend or modify these Nominee Terms by notification as disclosed on Openmarkets' website, the amendments or modifications of which will take effect within five (5) business days after posting of the notification.
- c. No waiver of any breach of these Nominee Terms will be effected unless the waiver is in writing and



signed by the party against whom the waiver is claimed.

- d. This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

## 22. Definitions

In this document, unless the contrary intention appears:

**Corporate Action** means an action taken by an entity in which Custodian holds Financial Products on your behalf which has a direct effect on the holdings of that entity's securityholders. A Corporate Action includes a Voluntary Corporate Action and a Mandatory Corporate Action.

**Corporate Action Notice Date** has the meaning given to that term in clause 42 of these Nominee Terms.

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

**Financial Products** means the financial assets (which may include shares, interests in managed investment schemes, options and convertible instruments) the Intermediary selects at their discretion, in which Orders may be placed.

**Mandatory Corporate Action** means a Corporate Action which is not discretionary and affects all securityholders. Examples of Mandatory Corporate Actions include cash dividends, capital repayments, share splits, bonus issues, capital reconstructions, and compulsory acquisitions of Financial Products.

**Mandatory Corporate Action With Choice** means a Mandatory Corporate Action which provides you with a choice of alternative options.

**Mandatory Corporate Action Without Choice** means a Mandatory Corporate Action which does not provide you with a choice of alternative options.

**Portfolio** means the Financial Product(s) which the Custodian holds on trust for you as bare trustee.

**Voluntary Corporate Action** means a Corporate Action which is discretionary, being a Corporate Action in which a securityholder may elect to participate.

