

# Pershing Nominee Services Agreement

## FOR CLIENTS OF

**WILSONS ADVISORY AND STOCKBROKING LIMITED**  
(‘Wilson’s’),

**ABN 68 010 529 665 AFSL 238375 (CORRESPONDENT)**

## TERMS OF YOUR AGREEMENT WITH

**PERSHING SECURITIES AUSTRALIA PTY LTD**

**ABN 60 136 184 962 AFSL No 338264 (PERSHING)**

### 1. Introduction

1.1 This agreement contains the terms on which Pershing agrees to arrange for the provision to the Client of nominee services in respect of various securities and other financial products owned and nominated by the Client from time to time (Financial Products) and the holding on the Client's behalf all certificates and other documents or evidence of title relating to the Financial Products.

1.2 Subject to completion by or on behalf of the Client of the relevant application form, Pershing will arrange for Pershing Australia Nominees Pty Ltd, ACN 137 911 730 (**Pershing Nominees**) to hold the Financial Products as bare trustee and nominee for the Client in accordance with the following terms and conditions.

1.3 Pershing may arrange another nominee appointed under clause 3.2 to hold certain Financial Products as bare trustee and nominee for the Client, in which case a reference in this agreement to Pershing Nominees is also a reference to the nominee appointed under that clause unless the context otherwise requires.

### 2. Provision of Pershing Nominees Services

2.1 The Client acknowledges that, in the case of Financial Products which may be held in a CHESS holding sponsored by a controlling participant under the ASX Settlement Rules, the Financial Products may be held in the same CHESS holding under which Pershing Nominees holds securities for other persons.

2.2 Where Pershing Nominees acts as nominee for any of the Client's Financial Products:

- a) Pershing Nominees will be registered as the holder of the Financial Products;
- b) all certificates and other documents or evidence of title relating to the Financial Products held in custody will be retained by Pershing Nominees;
- c) Pershing Nominees will, on the Client's behalf, collect or otherwise receive all principal, dividends, interests, other amounts and entitlements relating to the Financial Products held in custody and will account to the Client for the same;
- d) Unless Pershing is instructed otherwise by the Client, Pershing Nominees will deposit into Pershing's trust account to be held for the Client any moneys received by Pershing Nominees on the Client's behalf; and
- e) Pershing will, acknowledge to the Client on request the manner in which Pershing holds the Financial Products as nominee.

2.3 Pershing may in its absolute discretion:

- a) decline a request from the Client that Pershing Nominees hold any particular Financial Products on the Client's behalf; and
- b) at any time procure that Pershing Nominees discontinue to hold any particular Financial Products on the Client's behalf and procure that Pershing Nominees transfer those Financial Products to the Client (or at the Client's direction).

2.4 Pershing will not arrange for Pershing Nominees to hold any Partly Paid Security on the Client's behalf unless the Client has made arrangements (to Pershing's satisfaction) to pay to Pershing Nominees, a sufficient amount to cover any liability arising from all possible future calls in respect of the Partly Paid Securities.

2.5 Pershing may in its absolute discretion:

- a) appoint a sub-nominee or sub-custodian to hold Financial Products and otherwise perform the functions and duties of Pershing under this terms of this agreement; and
- b) appoint a third party to provide administration services to Pershing in respect of the services Pershing provides hereunder including, without limitation, those services set in clause 2.2.

Pershing will provide to the Client written notice of the identity and the contact details of any person appointed under this clause 2.5 where practicable prior to making the arrangement and in any event before any of the Financial Products are held by that person.

2.6 Pershing will maintain in its computer and electronic systems records of the Financial Products and any transactions made in relation to the Financial Products including of the instructions received by Pershing in relation to the Financial Products. Such records will be available to the Client on receipt by Pershing of an instruction under clause 4.1.

2.7 Pershing will make available to the Client reports showing the Financial Products held by Pershing as nominee and any transactions undertaken in relation to the Financial Products. The Client agrees these reports will be accessed by the Intermediary as agent for the Client.

2.8 Pershing will apply procedures to frequently reconcile the Client's holding of Financial Products in its records.

2.9 Pershing has and must maintain adequate arrangements to enable it to provide the services under this agreement in any contingency for which it should reasonable plan.

2.10 You warrant that all information provided by you to the Correspondent or Pershing is, or will be when given, accurate, true and correct and further agree to immediately notify Pershing in writing upon becoming aware that such information is no longer accurate, true and correct. You agree that Pershing and the Correspondent may share such information, as well as your account details and information regarding your transactions with each other and with Pershing's related bodies corporate on a confidential basis as Pershing considers appropriate. You also consent to Pershing and/or the Correspondent disclosing this information and your account details to any regulatory authority, and consent to Pershing and/or the Correspondent using such information and your account details for the purposes of monitoring compliance by you, the Correspondent and/or Pershing with their respective regulatory and contractual obligations, and resolving disputes.

### 3. Non-Relevant Exchange Quoted Financial Products

3.1 Without limiting clause 2.3, this agreement is not intended to provide for Pershing Nominees to hold Financial Products that

are not listed for quotation on a Relevant Exchange including foreign listed securities (Non-Relevant Exchange Quoted Financial Products) and Pershing may decline a request from the Client for Pershing Nominees to hold any particular Non-Relevant Exchange Quoted Financial Products or procure that Pershing Nominees discontinues to hold particular Non-Relevant Exchange Quoted Financial Products on the Client's behalf. The Client acknowledges that, before Pershing procures Pershing Nominees to hold any particular Non-Relevant Exchange Quoted Financial Products, Pershing may require the Client to agree to additional terms in relation to those Non-Relevant Exchange Quoted Financial Products.

**3.2** Pershing may appoint another nominee to hold Non-Relevant Exchange Quoted Financial Products as bare trustee and nominee for the Client in accordance with the terms of this agreement, as modified in accordance with clause 3.1.

#### **4. Instructions in relation to Financial Products**

**4.1** The Client agrees that it must give all instructions to act in relation to the Financial Products held in custody under this agreement to the Correspondent and the Client authorises the Correspondent as the Client's agent (and not as the agent of Pershing) to communicate the Client's instructions or information in relation to the Financial Products held in custody under this agreement to Pershing (such communication to be given in the form and manner agreed with the Correspondent from time to time). Neither Pershing nor Pershing Nominees will act on any instructions or information communicated directly to it by the Client (and not through the Correspondent). The Client may only terminate the Correspondent's authority to act on the Client's behalf by terminating this agreement.

**4.2** The Client authorises Pershing to accept and act without any inquiry on any instruction or other communication given to Pershing (whether by email, fax, telephone or otherwise) which appears to have been given by the Correspondent.

**4.3** If the Client owes Pershing settlement obligations in respect of the sale of Financial Products of the kind held in custody under this agreement, Pershing is authorised to apply such Financial Products held in custody under this agreement to satisfy those settlement obligations of the Client.

**4.4** Pershing is not obliged to take any step or other action in relation to the Financial Products held in custody (including, without limitation, the payment of any calls or other amounts owing or payable in respect of any Financial Product held in custody) if:

- a) Pershing requests from the Correspondent instructions (to be given on behalf of the Client) within a stipulated time and no instructions are received by it within that time; or
- b) Pershing requests from the Correspondent moneys within a stipulated time in order to carry out the Correspondent's instructions (given on behalf of the Client) and those monies are not received by Pershing in full within that time.

**4.5** The Client acknowledges and agrees that a failure by the Correspondent (as the Client's agent) to instruct Pershing to pay calls on any Financial Products held in custody or the failure to provide Pershing with any moneys so requested for payment of any such calls may result in the relevant Financial Products being forfeited.

#### **5. Notices of Entitlements**

**5.1** Except as provided by clause 4.4, Pershing agrees to make reasonable endeavours to inform the Correspondent (as agent for the Client) of all written communications received on behalf of the Client in respect of the Financial Products, offers or invitations made to the Client in respect of the Financial Products (including, without limitation, takeover offers, rights or entitlement offers, dividend reinvestment plans, top-up/additional securities acquisition offers and other similar

rights) (collectively Investor Entitlements), all calls and other amounts payable by the Client in respect of the Financial Products held in custody and the date of exercise of any options held in custody.

**5.2** The Client acknowledges and agrees that Pershing may not offer or provide participation in, or inform the Correspondent (as agent for the Client) of any written communications received by Pershing in respect of the Financial Products or offers or invitations in respect of the Financial Products, which relate to share purchase plans or security purchase plans or any similar or equivalent plans. In addition, unless the Client's Investor Entitlements would be affected, Pershing will not communicate to the Correspondent (as agent for the Client) that it has received, or forward to the Correspondent (as agent for the Client), any notices of meetings or annual reports, half yearly reports or any other reports or notices, or advise the Correspondent (as agent for the Client) of any offers, invitations or other communications in respect of shareholder discount cards or similar Investor Entitlements.

**5.3** The Client also acknowledges and agrees that, because the Financial Products are registered in the name of Pershing Nominees (or another nominee appointed under clause 3.2) the Client may not obtain the same Investor Entitlements in respect of the Financial Products that the Client would have received had the Financial Products been registered in the Client's name.

#### **6. Voting**

**6.1** Neither Pershing nor Pershing Nominees is obliged to attend meetings of corporations or other entities in which Financial Products are held or vote in respect of any of those Financial Products.

**6.2** If instructed by the Correspondent (as agent for the Client) and where practicable, Pershing will use its reasonable endeavours to cause Pershing Nominees to exercise the voting rights of the Financial Products held in its custody in accordance with the Client's instructions.

#### **7. No Mortgage**

The Client must not mortgage or otherwise encumber the Financial Products held in custody without the prior written consent of Pershing.

#### **8. Fees and Expenses**

**8.1** Pershing shall be entitled to charge fees notified by Pershing to the Client from time to time Pershing may vary the fees payable by the Client by giving the Client at least 14 days written notice.

**8.2** All taxes, stamp duties, other duties, imposts, costs and other out of pocket expenses payable or incurred by Pershing or Pershing Nominees arising out of or relating to this arrangement (including, without limitation, any transaction undertaken on your behalf in respect of the Financial Products held in custody or the transfer of such Financial Products, whether on termination of this arrangement or otherwise) must be paid by the Client to Pershing upon request.

**8.3** Pershing may debit any account maintained on the Client's behalf by Pershing or any of its related bodies corporate with:

- a) all fees and other moneys payable to Pershing by the Client under these terms and conditions; and
- b) any call or other moneys owing or paid in respect of any Security held in custody.

**8.4** Pershing must not take or grant a charge, mortgage lien or other encumbrance (**Encumbrance**) over or in relation to the Financial Products unless such Encumbrance is for expenses and outlays made within the terms of this agreement (other

than unpaid fees owed by the Client to Pershing) or such Encumbrance is otherwise in accordance with the Client's written instructions. The Client hereby agrees and instructs Pershing that if any amount owing or payable by the Client to Pershing on any account is not paid by the due date for payment Pershing may (without prejudice to any other rights of Pershing under these terms and conditions or at law) sell any Financial Products held by it or Pershing Nominees in custody for the Client. Pershing shall not be liable or be responsible for any loss or damage so caused. Pershing may apply the proceeds in reduction of the Client's liability to Pershing.

## 9. Liability

- a) Subject to clause 9(b), Pershing is liable to the Client if the Client suffers a loss due to the failure by Pershing, or a person Pershing appoints under clause 2.5, to comply with its duties under this agreement or to meet reasonable standards as a custodian for the holding of the Financial Products
- b) Except to the extent to which it is not permissible by law to exclude, restrict or modify liability and except for any liability arising primarily from Pershing's or Pershing Nominees' wilful misconduct or gross negligence, neither Pershing nor Pershing Nominees is liable or responsible for any loss, expense or damage incurred or suffered by the Client as a result of any act or omission of Pershing, Pershing Nominees or the Correspondent or any other person resulting from or arising out of or in connection with this agreement, including if that other person is appointed by Pershing to hold the Financial Products and is or becomes insolvent, provided Pershing has taken reasonable steps in engaging and monitoring that other person..

## 10. Indemnity

Except for any liability arising primarily from Pershing's or Pershing Nominees' wilful misconduct or gross negligence, the Client agrees to indemnify, keep indemnified and save harmless each of Pershing and Pershing Nominees and their respective officers, employees and agents from and against all actions, claims, costs, demands, liabilities and proceedings resulting from or arising out of or in connection with this arrangement, including without limitation resulting from Pershing acting on any information, instructions or other communication provided to Pershing as contemplated in clause 4.1.

## 11. Tax File Number

Collection of Tax File Numbers (TFN) is authorised by law and Australian taxation laws and the Privacy Act strictly regulate their use and disclosure. It is not an offence if the Client chooses not to supply its TFN. For more information about the use of TFNs, please contact the Australian Taxation Office.

Once provided to the Correspondent and Pershing, until the Client tells them otherwise, the Client's TFN will automatically be applied to any future investments that are held by Pershing Nominees for the Client.

Where the Client has contracted the Correspondent's and Pershing's services in the course of an enterprise carried on by the Client, the Client's Australian Business Number (ABN) if applicable, may be supplied in addition to or instead of the Client's TFN.

Where no TFN or ABN has been supplied nor exemption claimed, tax may be taken out of the Client's income distributions at the highest marginal tax rate plus Medicare and any other applicable Government taxes or levies. For joint accounts, each individual must supply a TFN, otherwise the account will be taxed as if no TFN has been supplied.

If the Client is a non-resident of Australia, or a party to a joint account with a resident, the account will be taxed at the applicable rate for overseas residents as long as the other party has quoted their TFN.

## 12. Compliance with laws

The Client:

- a) agrees to comply with (including the giving of any substantial holding notices); and
- b) authorises Pershing and Pershing Nominees to disclose any information in relation to the Client and the Financial Products held in custody as may be required by,

the ASX Listing Rules, Market Integrity Rules, ASX Clear Rules, ASX Settlement Rules, the *Corporations Act 2001* (Cth), Competition Market Integrity Rules or any other relevant law.

## 13. Warranty

The Client warrants and represents that it is authorised to enter into this agreement and to do any action contemplated by this agreement and that all necessary corporate or other action has been taken to make this agreement valid and binding.

## 14. Client unable to be contacted

The Client acknowledges and agrees that:

- a) it will ensure that Pershing and the Correspondent are notified promptly of any change in the Client's usual residential address or postal address;
- b) if Pershing is unable to contact the Client for 12 months, Pershing is entitled to sell (or arrange for the sale of) any Financial Products held in custody for the Client and to hold the net proceeds of sale on trust for the Client;
- c) if Pershing continues to be unable to contact the Client after the sale of any Financial Products as contemplated in clause b), Pershing may (or may be obliged to) deal with the money in accordance with the requirements of any applicable legislation relating to unclaimed monies; and
- d) Pershing will be taken to be unable to contact the Client for 12 months if Pershing sends to the Client's last known postal address (and, if different, also to the Client's last known usual residential address) a letter by registered post before and after the end of that period which requires a response from the Client and either the Client fails to respond to the letter or the letter is returned to Pershing as undeliverable or addressee unknown.

## 15. Termination

**15.1** This agreement may be terminated in whole by the Client or Pershing giving to the other at least 14 days written notice of termination.

**15.2** The Client must pay all fees to the date of termination.

**15.3** On termination Pershing will, within a reasonable time, arrange for the transfer (subject to being paid all amounts due to it) of all Financial Products held in custody in accordance with the directions of the Correspondent (as agent for the Client), or failing any such directions to the Client. The Client is responsible to arrange for the registration of any transfer (unless Pershing agrees to do so) and to pay all stamp and other duties in respect of the transfer.

## 16. Amendment

This agreement may be amended by Pershing from time to time. Pershing will give the Client 10 days notice of any

amendment, after which time, the amendment will become effective.

unpaid, but does not include a Financial Product issued by a no liability company.

**Relevant Exchange** means ASX or Chi-X, NSX or APX and, without limitation, any other exchange on which Pershing transacts Orders, or the financial markets operated by them (as the context requires).

## 17. Power of Attorney

17.1 The Client irrevocably appoints Pershing and each director and secretary of Pershing and Pershing Nominees severally as the Client's attorney to sign, seal, deliver, execute and do on the Client's behalf and in the Client's name or otherwise as the attorney thinks fit all instruments, writings, matters, acts and things which the attorney may think necessary or desirable to assign or transfer all Financial Products held in custody to the Client or otherwise to give effect to the Client's obligations under these terms and conditions.

Words expressed in the singular include the plural and vice versa. Unless the context otherwise requires, a reference to a document or agreement includes any variation or replacement of it and a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision.

17.2 The Client ratifies and confirms and agrees to ratify and confirm whatever any attorney does or purports to do by virtue of that power of attorney.

Words used in this document have the meanings given to them in the ASIC Market Integrity Rules or the ASX Settlement Operating Rules. If the Client requires a copy of these definitions please contact the Correspondent. The Client agrees that, in the event of any inconsistency between this document and any applicable laws or the ASX Settlement Operating Rules, the latter will prevail to the extent of the inconsistency. If the Client consists of more than one person, this agreement binds each person jointly and severally, and each person is authorised to issue instructions to the Correspondent in relation to any matter to which this agreement relates.

## 18. Governing Law

This agreement is governed and must be construed in accordance with the laws of New South Wales and Pershing, Pershing Nominees and the Client submit to the exclusive jurisdiction of the courts or tribunals of New South Wales and any courts which may hear appeals from those courts in respect of any proceedings in connection with this agreement.

The Client acknowledges that this document is not exhaustive and agrees to be bound by other policies and procedures which concern the operations of the Client's account with the Correspondent and/or Pershing as notified to the Client from time to time.

## 19. Interpretation

**APX** means Asia Pacific Exchange Limited ACN 080 399 220.

**ASX** means ASX Limited ABN 98 008 624 691.

**ASX Clear Rules** means the operating rules of ASX Clear Pty Limited ABN 48 001 314 503 as amended from time to time.

**ASX Market Integrity Rules** means the *ASIC Market Integrity Rules (ASX Market) 2010* as amended from time to time.

**ASX Operating Rules** means those operating rules published by ASX as the ASX Operating Rules

**ASX Settlement Rules** means the operating rules of ASX Settlement Pty Limited ABN 49 008 504 532 as amended from time to time.

**Chi-X** means Chi-X Australia Pty Ltd ABN 47 129 584 667

**Chi-X Market Integrity Rules** means the *ASIC Market Integrity Rules (Chi-X Australia Market) 2011* as amended from time to time.

**Competition Market Integrity Rules** means the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011*, as amended from time to time.

**Client** means the person or persons in whose name the account is opened with the Correspondent or named on the account opening or application form as the client. If that is more than one person, "Client" means each of them separately and every two or more of them jointly. "Client" includes the Client's successors and assigns.

**Market Integrity Rules** means any market integrity rules made by ASIC in accordance with Part 7.2A of the Corporations Act, as amended from time to time, that apply to a Relevant Exchange, including, without limitation, the ASX Market Integrity Rules, the Chi-X Market Integrity Rules and the Competition Market Integrity Rules.

**NSX** means National Stock Exchange of Australia Limited ABN 11 000 902 063.

**Partly Paid Security** means a financial product for which the holder may be liable to pay a call or instalment in accordance with the terms of issue and for which an amount remains