

# Intermediary Agreement Terms and Conditions

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13 March 2023

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# 1. Definitions and interpretations

## 1.1 Definitions

Unless otherwise defined, a term in this Agreement has the same meaning as defined in the Client Custody Agreement.

**Adverse Change of Control** means a Change of Control that results in (a) a competitor of a party to this Agreement (“the First Party”) controlling more than 50% of the voting rights of the other party to this Agreement (“the Other Party”) (b) a competitor of the First Party controlling the composition of the board of directors of Other Party; or (c) a substantial change to the business undertakings of either party to this Agreement; or (d) in the reasonable opinion of the First Party, results or is reasonably likely to result in a material impairment of the capacity of Other Party to deliver the Services or continue to act pursuant to this Agreement.

**Agreement** means the agreement between FIIG and the Intermediary incorporating these Intermediary Agreement Terms and Conditions, FIIG’s Client Account Application Form and the terms and conditions of dealing with FIIG set out in FIIG’s Financial Services Guide.

**AML/CTF Act** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

**AML/CTF Laws** means any law relating to anti-money laundering or counter-terrorism financing or economic and trade sanctions made by a State, Territory, Commonwealth or foreign parliament or other legislative body (including the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), the *Charter of the United Nations Act 1945* (Cth) and *Banking (Foreign Exchange) Regulations 1959* (Cth)) and rules, regulations and other instruments for the purposes of those laws (including, without limitation, those made by a government agency or regulator).

**AML Program** means FIIG’s anti-money laundering and counter-terrorism financing program.

**Authorised Representative** is defined in section 761A of the *Corporations Act 2001* (Cth).

**Business Day** means any day that is an ordinary working day in the state of Queensland.

**Change of Control** means a change in (a) control of more than half the voting rights attaching to shares in a corporation; (b) control of more than half of a corporation’s issued share capital (excluding any part which carries no right to participate beyond a specified amount in the distribution of either profit or capital); or (c) control of the composition of a corporation’s board of directors.

**Client** means individuals or entities that are the Intermediary’s clients or each person identified

as a “Client” in a Client Custody Agreement on whose behalf the Intermediary has entered into as authorised agent for the Client or any party that enters into the Client Custody Agreement; and/or the name of the person in whose name the account for an investment in cash, term deposits or short term money market investments is held.

**Client Account Application Form** means the Client Account Application Form in Schedule 3.

**Client Agreement** means any contract for the purchase or sale of Financial Products as evidenced by a contract note, the Client Custody Agreement and any other agreement between FIIG and the Client that the parties agree is a “Client Agreement” for the purposes of this agreement.

**Client Custody Agreement** means the Client Custody Agreement between FIIG and the Client.

**Client’s Assets** means Financial Products acquired by the Client from or using FIIG.

**FIIG** means FIIG Securities Limited  
ABN 68 085 661 632.

**Financial Product** means fixed income investments, fixed income securities, securities or any other financial products the parties agree are “Financial Products” for the purposes of this Agreement.

**Financial Services Guide** means the Financial Services Guide set out in Schedule 1 as amended by FIIG from time to time.

**Force Majeure Event** means an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent, provided that event or circumstance is limited to the following:

- a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority; and
- b) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity.

**Insolvency Event** means an event where a party to this Agreement presents a petition or has a petition presented by a creditor for its winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into or be subject to any form of insolvency administration (other than for the purposes of a bona fide reconstruction or amalgamation), or shall enter in to any arrangement with its creditors, or shall be deemed by the relevant statutory provisions under the applicable law to be unable to pay its debts as and when they fall due, or if any substantially similar event shall take place under the laws of another jurisdiction.

**Intermediary** means any intermediary who holds an Australian Financial Services licence or is an Authorised Representative for which FIIG provides the Services.

**KYC Information** has the meaning given in Part 1.2 of the Anti-Money Laundering and Counter-Terrorism Financing Rules 2007 (Cth).

**Services** mean the services provided by FIIG to a Client as described in clause 3.

## 1.2 Interpretation

In this Agreement:

- a) a singular word includes the plural and vice versa;
- b) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this Agreement and references to this Agreement include and schedules or annexures;
- c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- d) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.

## 2. Application and scope of terms and conditions

The terms and conditions in this Agreement shall be effective from the date an Intermediary receives them or the date on which FIIG commences business with an Intermediary, whichever is the earlier. The terms and conditions in this Agreement are legally binding and (subject to amendments which FIIG will notify Intermediaries of) will apply on the basis set out below to any activities which FIIG may carry on with an Intermediary or Client.

## 3. Agreement

- a) FIIG is appointed to:
    - i) act on instructions from the Intermediary for and on behalf of the Intermediary's Client;
    - ii) facilitate cash, term deposit and short term money market investments by the Intermediary's Client;
    - iii) provide general financial advice in relation to Financial Products to the Intermediary for and on behalf of the Client;
    - iv) sell Financial Products to, and buy Financial Products from, the Intermediary's Client;
  - v) provide the Custodian Services to the Intermediary's Client on the terms set out in the Client Custody Agreement (refer Schedule 2);
  - vi) provide research and education services to the Intermediary as agreed between FIIG and the Intermediary from time to time; and
  - vii) provide such services as agreed between FIIG and the Intermediary for and on behalf of, or as agent of, the Client including those referred to, and under the terms and conditions, in FIIG's Financial Services Guide (refer Schedule 1) and FIIG's Client Account Application Form (refer Schedule 3).
- b) If pursuant to the instructions of the Intermediary the Client agrees to buy and FIIG agrees to sell Financial Products, the parties will be legally bound by the terms of sale from the moment they agree to those terms including the terms and conditions set out in FIIG's Financial Services Guide, the terms and conditions provided with the contract note and the terms and conditions in the Client Account Application Form. FIIG will send the Intermediary a contract note setting out the details of the sale within 2 Business Days of the terms being agreed and a transaction entered into between the parties.
  - c) If pursuant to the instructions of the Intermediary the Client agrees to sell and FIIG agrees to buy Financial Products, the parties will be legally bound by the terms of sale from the moment they agree to those terms including the terms and conditions set out in FIIG's Financial Services Guide, the terms and conditions provided with the contract note and the terms and conditions in the Client Account Application Form. FIIG will send the Intermediary a contract note setting out the details of the sale within 2 Business Days of the terms being agreed and a transaction entered into between the parties.
  - d) As part of the Custodian Services provided by FIIG to the Client, FIIG will:
    - i) at the direction of the Intermediary, for and on behalf of the Client:
      - 1) establish a separate Sub-account for the Client's Assets in a manner which allows the Intermediary and the Client to identify the Sub-account in accordance with the Client's requirements;
      - 2) record the Client's Assets as being held in the Sub-account; and
      - 3) make payments (including coupons, proceeds of sale and maturities) in connection with the Client's Assets to an account directed by the Intermediary for and on behalf of the Client.

- 4) ensure that the beneficial interest in the Client's Assets held under the Client Custody Agreement shall, at all times, vest in the Client. Nothing in this Agreement shall affect the beneficial ownership of the Client's Assets.
- e) The Intermediary will provide the Client with access to FIIG's Financial Services Guide within 5 business days of receiving notification of a change from FIIG.
- f) For the avoidance of doubt, the parties agree that all Services are provided by FIIG to the Client as Principal and to the Intermediary for and on behalf of, or as agent of, the Client.

#### 4. Verifying the identity of clients

- a) FIIG may collect and verify the KYC Information for the Client in accordance with the AML/CTF Laws in its absolute discretion. Such identification and verification shall be in accordance and comply with all AML/CTF Laws and FIIG's AML Program as amended from time to time.
- b) The Intermediary must notify FIIG as soon as reasonably practicable if the Intermediary is not able to verify the KYC Information for a Client in accordance with the Intermediary's identification and verification procedures and in accordance with the AML/CTF Laws or unable to comply with the ongoing customer due diligence obligations of the Intermediary under the AML/CTF Act at anytime during the term of this Agreement.
- c) The Intermediary will provide to FIIG such assistance and documentation as FIIG may determine necessary in order to allow FIIG to meet its AML/CTF Act obligations in opening an account with FIIG for a Client or providing a service to a Client.
- d) During the term of this Agreement and for a period of 2 years following the termination of this Agreement:
  - i) the Intermediary must retain a record of collecting and verifying the KYC Information for the Client as required under applicable legislation; and
  - ii) within 5 Business Days of a request from FIIG, the Intermediary must provide FIIG with a copy of the record or document created or obtained under the AML/CTF Act or any related legislation of as requested by FIIG pursuant to this clause.

#### 5. FIIG to act on instruction

- a) FIIG may without any liability on its part:
  - i) accept instructions reasonably believed by it to have emanated from the Intermediary's Authorised Representative or Intermediary's

employee in which case, if it acts in good faith on such instructions, such instructions shall be binding on the Client and FIIG shall not be liable for doing so, whether or not the instructions were in fact given by the Authorised Representative or Intermediary's employee and FIIG shall not be under any duty to verify the identity of the person giving those instructions;

- ii) in its discretion decline to act on instructions, or seek further instructions before acting on instructions, where such instructions are incomplete, unclear, ambiguous and/or in conflict with other instructions received by FIIG, or are believed by FIIG on reasonable grounds to have been inaccurately transmitted or not to be genuine; or
- iii) provided that in any case where FIIG declines to act on instructions, FIIG will notify the Intermediary or Client of such decision promptly.

Unless FIIG has received conflicting instructions, FIIG may, without reference to the Intermediary or Client, perform all such other ancillary acts which FIIG may reasonably consider to be necessary or desirable to carry out any instructions.

#### 6. No obligation to act

- a) No obligation to act
  - i) FIIG may refuse to take any action (including refusing to follow any instructions) if, in its sole discretion:
    - 1) such action is, or would be, in breach of any applicable law or regulation or directive;
    - 2) it is not reasonably practicable to take the action; or
    - 3) there are other reasonable grounds in FIIG's absolute discretion to refuse to implement an Intermediary instruction.
  - ii) The Intermediary agrees that FIIG may take any action (or refrain from taking any action) which, in its sole discretion, it considers appropriate so as to comply with any law or regulation or directive for the purpose of preventing fraud, money laundering, terrorism or other criminal activities or the provision of financial and other services to any persons or entities which may be subject to sanctions (including the interception and investigation of transactions in relation to the client (particularly those involving the international transfer of funds) including the source of or intended recipient of funds paid in or out in relation to the client and any other information or communications sent to or by the client or on the client's

behalf). Such action may delay or prevent the processing of instructions, the settlement of transactions in respect of FIIG's performance of its obligations under this Agreement.

- iii) FIIG will not be liable for loss whatsoever (whether direct or consequential and including, without limitation, loss of profit) or damage suffered by the Client or any other person arising out of or caused in whole or in part by any actions which are taken, not taken or otherwise delayed or prevented by FIIG under this clause 6.

## 7. Representations and warranties

a) The Intermediary represents and warrants that:

- i) it has power and authority to enter into and perform its and the Client's obligations under the Client Agreements, for and on behalf of, or as agent for the Client;
- ii) it has the power and authority to enter into and perform its obligations under this Agreement;
- iii) it is not and will not represent to the Client, either expressly or by implication, that it is an authorised representative or any other kind of representative or agent of FIIG;
- iv) it will accurately inform the Client of, and will not mislead or deceive (by act or omission) the Client as to:
  - 1) the nature of the relationship between FIIG and the Intermediary;
  - 2) their rights in relation to the Financial Products or the Client's Assets; or
  - 3) their rights under a Client Agreement or a transaction evidenced by a contract note issued under clause 3b or 3c,
- v) where the Intermediary is a corporation, it is properly incorporated under the *Corporations Act 2001* (Cth);
- vi) the entry into and performance of this Agreement and the Client Agreements by the Intermediary does not constitute:
  - 1) a breach of any obligations (including but not limited to any statutory, contractual or fiduciary obligations);
  - 2) default under any agreement or undertaking, by which the Intermediary is bound; or
  - 3) a breach of any obligation as a corporate authorised representative of an Australian Financial Service Licensee or the holder of an Australian Financial Services Licence,
- vii) it holds such licences and authorities as are

necessary to lawfully:

- 1) perform its obligations under this Agreement and any Client Agreement; and
  - 2) provide any services it provides to the Client;
- viii) it has complied with all applicable legal obligations and regulatory requirements concerning money laundering, criminal or terrorist activities for the Client's investments in the Client's Assets (as relevant) including but not limited to the AML/CTF Laws;
  - ix) it will immediately inform FIIG if any of the representations and warranties in this clause 7a cease to be true and correct as of any date after the date of this document.
- b) FIIG represents and warrants that:
- i) it has the power and authority to enter into and perform its obligations under this Agreement;
  - ii) it is not and will not represent to the Client, either expressly or by implication, that it is an authorised representative or any other kind of representative or agent of the Intermediary;
  - iii) it will accurately inform the Client of, and will not mislead or deceive (by act or omission) the Client as to:
    - 1) the nature of the relationship between FIIG and the Intermediary;
    - 2) their rights in relation to the Financial Products or the Client's Assets; or
    - 3) their rights under a Client Agreement or a transaction evidenced by a contract note issued under clause 3b or 3c,
  - iv) FIIG is properly incorporated under the *Corporations Act 2001* (Cth);
  - v) the entry into and performance of this Agreement and the Client Agreements by FIIG does not constitute:
    - 1) a breach by FIIG of any obligations (including but not limited to any statutory, contractual or fiduciary obligations); or
    - 2) default by FIIG under any agreement or undertaking, by which FIIG is bound;
  - vi) it holds such licences and authorities as are necessary to lawfully:
    - 1) perform its obligations under this Agreement and any Client Agreement; and
    - 2) provide any services it provides to the Client,
  - vii) FIIG will immediately inform the Intermediary

if any of the representations and warranties in this clause 7b cease to be true and correct as of any date after the date of this document.

## 8. Exclusion of liability

- a) Notwithstanding any other term of this document:
- i) FIIG will have no liability to the Intermediary or any other person, whether for negligence, breach of duty, breach of regulation, misrepresentation or otherwise in respect of the provision of the Services or otherwise for any:
    - 1) loss of profit, loss of goodwill, loss of opportunity or any other economic loss; or
    - 2) indirect, special, punitive or consequential losses (whether or not in the contemplation of the parties at the date of this Agreement); or
    - 3) any damage, loss, cost or expense resulting from or caused by:
      - A) events or circumstances beyond FIIG's control including currency restrictions, disruption of the normal procedures and practices of any securities market, power or communications services failure, acts of war or terrorism, riots, revolution;
      - B) the occurrence of a Force Majeure Event;
      - C) the general risks of investing including but not limited to any risk associated with an investment made pursuant to this Agreement including but not limited to market or economic conditions at any particular time, the financial circumstances of any issuer of financial products and any changes to those financial circumstances from time to time, any prevailing domestic or international economics or change in political environment from time to time or the liquidity of the relevant markets or investment from time to time;
      - D) acting in good faith on proper instructions from or purporting to be from the Intermediary for and on behalf of the Client; or
      - E) in acting upon any certificate, consent, instruction, instrument, notice or request reasonably believed by it to be genuine and to be signed or otherwise given by the Intermediary or its officers, agents or employees.

- b) FIIG shall have no liability to the Intermediary or any other person for any damage, loss, cost or expense to the extent that:
  - i) such damage, loss, cost or expense is caused by or contributed to by a breach of trust by the Intermediary in connection with the Client's Assets;
  - ii) such damage, loss, cost or expense is caused or contributed to by the non-compliance or breach of any applicable regulatory obligation of the Intermediary or any of its officers, agents or employees;
  - iii) the Intermediary could have reduced or avoided such damage, loss, cost or expense by exercising reasonable care and diligence in seeking to mitigate such damage, loss, cost or expense; and/or
  - iv) such damage, loss, cost or expense is caused by the wilful misconduct, gross negligence or fraud of, or the breach of the terms of this Agreement by the Intermediary or any of its officers, agents or employees.

## 9. Indemnity

- a) To the extent that a claim does not arise from any fraud, gross negligence or wilful misconduct of FIIG or breach of the terms of this Agreement by FIIG, the Intermediary indemnifies FIIG against any claim which FIIG pays, suffers, incurs or is liable for in connection with:
- i) the performance (or non-performance as the case may be) by the Intermediary of its obligations under this Agreement;
  - ii) a Claim arising from the Intermediary's gross negligence, wilful misconduct or fraud;
  - iii) a breach of the Intermediary's representations and warranties under this Agreement.
- This indemnity is a continuing obligation, independent of the Intermediary's other obligations under this Agreement or a Client Agreement and continues after this Agreement ends. It is not necessary for FIIG to incur expense or make payment before enforcing this right of indemnity.
- c) To the extent that a claim does not arise from any fraud, gross negligence or wilful misconduct of the Intermediary, or a breach of the terms of this Agreement by the Intermediary, FIIG indemnifies the Intermediary against any claim which the Intermediary suffers, incurs or is liable for in connection with:
- i) the performance (or non-performance as the case may be) by FIIG of its obligations under this Agreement;
  - ii) any claim arising from FIIG's gross negligence, wilful misconduct or fraud;

- iii) a breach of FIIG's representations and warranties under this Agreement.

This indemnity is a continuing obligation, independent of FIIG's other obligations under this Agreement and continues after this Agreement ends. It is not necessary for the Intermediary to incur expense or make payment before enforcing this right of indemnity.

## 10. Term

Subject to clauses 11 and 12 below, the term of this Agreement commences on the date the Intermediary receives a copy of this Agreement or the date on which FIIG commences business with the Intermediary, whichever is the earlier and continues until this Agreement is terminated by either FIIG or the Intermediary by written agreement to the other party.

## 11. Termination on notice

FIIG or the Intermediary may terminate this Agreement at any time by providing one month's notice in writing to the other party.

## 12. Termination for breach

- a) If a party to this Agreement:
  - i) commits a material breach of a fundamental term of this Agreement that has a material and adverse affect on the other party to this Agreement or the Client and fails to remedy that breach within 7 days of receiving written notice from the other party requiring the remedy of the breach; or
  - ii) an Insolvency Event occurs in relation to the other party to this Agreement; or
  - iii) ceases, or threatens to cease business; or
  - iv) undergoes an Adverse Change of Control; or
  - v) transfers all or a substantial part of its assets to a third party who is not a related body corporate of that party,

then the other party to this Agreement may terminate this Agreement by written notice to the party in which case this Agreement will terminate on the date specified in that written notice or, if not date is specified, immediately.

## 13. Notices

- a) Notices must be:
  - i) left at or sent by prepaid ordinary post (airmail if appropriate) to the registered office or principal place of business for each party or to such other address as provided by each party;
  - ii) sent by email to the email address of each party;

- iii) sent by fax to the fax number known for either party; or
- iv) given in any other way permitted by law and agreed to in writing between the Client or Intermediary and FIIG.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

- b) Notices take effect from the time they are received (as set out in clauses 13c to 13g) unless a later time is specified.
- c) If sent by post, Notices are taken to be received 3 days after posting (or 7 days after posting if sent to or from a place outside Australia).
- d) If sent by email, Notices are taken to be received when the recipient's email system logs the email message as having been received. If an email receipt is not requested or provided, delivery is deemed to occur the following Business Day provided no failed delivery notification has been received by the sender.
- e) If the Client or Intermediary requests FIIG to accept a notice, request or instruction transmitted by email (an "email instruction"):
  - i) the Client or Intermediary must comply with the security procedure or measure agreed between the Client or Intermediary and FIIG (if any);
  - ii) FIIG may accept or reject an email instruction at its discretion;
  - iii) if FIIG accepts an email instruction that purports to have been transmitted or authorised by the Client or Intermediary and appears to be in compliance with the security procedure or measure as agreed between the Client or Intermediary and FIIG (if any):
    - 1) FIIG may rely on that email instruction without making any enquiries;
    - 2) the email instruction will be deemed effective as the Client's or Intermediary's notice, request or instruction; and
    - 3) the Client or Intermediary releases FIIG and each of its related entities from, and indemnifies each of them against, all losses and liabilities arising from any payment or action FIIG or any related entity of FIIG makes based on any instruction (even if not genuine) that FIIG or the related entity receives by email which appears to be from an Authorised Person of the Client or Intermediary.
- iv) Notwithstanding the above, in the event that an email instruction is provided, the Client or



Intermediary sending the email instruction must have an Authorised Person available to discuss such instructions following the delivery of the email instruction. If the Authorised Person is not available to discuss and confirm the email instruction after reasonable attempts by FIIG, FIIG may, in its absolute and complete discretion, treat the email instruction as invalid.

- f) If sent by fax, Notices are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.
- g) If the Client or Intermediary requests FIIG to accept a notice, request or instruction transmitted by facsimile (a “facsimile instruction”):
  - i) the Client or Intermediary must comply with the security procedure or measure agreed between the Client or Intermediary and FIIG (if any);
  - ii) FIIG may accept or reject a facsimile instruction at its discretion;
  - iii) if FIIG accepts a facsimile instruction that purports to have been transmitted or authorised by the Client or Intermediary and appears to be in compliance with the security procedure or measure as agreed between the Client or Intermediary and FIIG (if any):
    - 1) FIIG may rely on that facsimile instruction without making any enquiries;
    - 2) the facsimile instruction will be deemed effective as the Client’s or Intermediary’s notice, request or instruction; and
    - 3) the Client or Intermediary releases FIIG and each of its related entities from, and indemnifies each of them against, all losses and liabilities arising from any payment or action FIIG or any related entity of FIIG makes based on any instruction (even if not genuine) that FIIG or the related entity receives by facsimile bearing a signature apparently that of an Authorised Person of the Client or Intermediary.
  - iv) Notwithstanding the above, in the event that a facsimile instruction is provided, the Client or Intermediary sending the facsimile instruction must have an Authorised Person available to discuss such instructions following the delivery of the facsimile instruction. If the Authorised Person is not available to discuss and confirm the facsimile instruction after reasonable attempts by FIIG, FIIG may, in its absolute and complete discretion, treat the facsimile instruction as invalid.
- h) If sent by Electronic Transmission Service, Notices are taken to be received when despatched, but

only if, at the time of transmission, the correct answerback appears at the start and at the end of the sender’s copy of the Notice.

- i) Unless expressly stated otherwise in this Agreement despite clauses 13c to 13g, if Notices are received after 4.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

## 14. Entire Agreement

- a) This Agreement:
  - i) constitutes the complete and exclusive agreement of the parties with regard to its subject matter; and
  - ii) supersedes and terminates as of the date of this Agreement all prior agreements or understandings, oral or written, between the parties in relation to the subject matter of this Agreement.

## 15. Severance

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability, but will not invalidate the remaining provisions in that jurisdiction or any of the provisions in another jurisdiction.

## 16. Jurisdiction

This Agreement will be governed by the laws of Queensland and the Commonwealth of Australia. FIIG and the Intermediary agree to submit to the non-exclusive courts of those jurisdictions.

## 17. Documents

The following documents are annexed to this Agreement as schedules:

**Schedule 1** - Financial Services Guide

**Schedule 2** - Client Custody Agreement Terms and Conditions

**Schedule 3** - Opening a FIIG Client Account