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# TERMS AND CONDITIONS

## NEW ZEALAND

Superhero Markets Pty Ltd (NZBN: 9429051299729) (FSP No. 1002149) and Superhero Securities Limited (NZBN: 9429051299712) (FSP No. 1002150).

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## TERMS AND CONDITIONS

### 1. Introduction

#### 1.1. Terms and Conditions

- a. These Terms and Conditions are issued by Superhero Markets Pty Ltd (NZBN 9429051299729) (FSP No. 1002149 and Superhero Securities Limited, (NZBN 9429051299712) (FSP No. 1002150).
- b. These Terms and Conditions apply to all dealings between you, and us, including dealings related to Securities trading on the Superhero platform, which comprises our website at [www.superhero.co.nz](http://www.superhero.co.nz), our application, and any dealings via telephone between you and us (collectively, the **Superhero Platform**).
- c. You acknowledge that we will not provide legal, tax, financial or accounting advice to you as part of the services that we provide to you in accordance with these Terms and Conditions.
- d. These Terms and Conditions do not constitute any form of financial advice or a recommendation or opinion that a security or service is appropriate for you. Any information provided to you by us is factual in nature only and does not take into account your personal and financial circumstances, needs and objectives. You should seek the advice of a licensed financial advice provider if you require financial advice.
- e. We have discretions under these Terms and Conditions which can affect your dealings with us. You do not have any power to direct how we exercise our discretions. When exercising our discretions, we will comply with our legal obligations. We will have regard to our policies and to managing all risks (including financial, credit and legal risks) for ourselves and all of our customers, our obligations to our counterparties, market conditions and our reputation. We will act reasonably in exercising our discretion, but we are not obliged to act in your best interests (other than when Superhero Securities acts as your nominee) or to avoid or minimise a loss to your Superhero Account.
- f. A reference to “we”, “us” or “our” is a reference to Superhero Markets and/or Superhero Securities, as the context requires.
- g. A reference to “you” is a reference to the holder of each Superhero Account. If you have appointed an Authorised Person to act on your behalf in relation to your Superhero Account, “you” includes each of those persons, jointly and severally.
- h. Capitalised terms used throughout these Terms and Conditions are defined in clause 29.

- i. We strongly encourage you to regularly review our website at [www.superhero.co.nz](http://www.superhero.co.nz) for any updates or changes to these Terms and Conditions or any other documents referred to in these Terms and Conditions including, but not limited to, our Privacy Policy, Website Terms of Use and our Nominee Terms.

## 1.2. About us

- a. Superhero Markets operates the Superhero Platform and is a wholly owned subsidiary of Superhero Holdings Limited (ABN 48 633 253 942) (**Superhero Holdings**). Superhero Securities is also a wholly owned subsidiary of Superhero Holdings. Our corporate group includes Superhero Markets (NZBN 9429051299729), Superhero Securities (NZBN 9429051299712), Superhero Financial Services Pty Ltd (ABN 61 625 469 981), and each of their Related Bodies Corporate (**Group**).
- b. As operator of the Superhero Platform, Superhero Markets will provide notices and receive instructions in respect of Financial Products in accordance with these Terms and Conditions and the Nominee Terms.
- c. Superhero Securities is licensed in Australia and registered in New Zealand to provide custodial or depository services (other than investor directed portfolio services) to wholesale and retail clients. Superhero Securities will hold on bare trust all Securities acquired by you through the Superhero Platform and all cash deposited by you in your Superhero Account as well as any Securities transferred onto the Superhero Platform (eg. dividends) and any cash transferred or deposited to your Superhero Account, in accordance with these Terms and Conditions and the Nominee Terms.
- d. Please refer to clause 5 for more information about the nominee arrangements between you and Superhero Securities, and Superhero Securities and the Sub-Custodian.

## 2. General provisions

### 2.1. Your acceptance

- a. By clicking the 'Register' button on our website or by otherwise signing up to use the Superhero Platform, you acknowledge and agree that you have:
  - i. read, understood and agreed to be bound by these Terms and Conditions;
  - ii. read, understood and agreed to be bound by the Nominee Terms set out in **Schedule 1**;

- iii. read, understood and agreed to be bound by any Terms & Conditions set out by our Service Providers, including our Market Participant and US Execution and Clearing Provider:
    - i. the [Apex Customer Information Disclosure](#); and
    - ii. the Finclear [Terms of Trade](#), [Best Execution Policy](#), [Financial Services Guide](#) and [Privacy Policy](#);as at the date of these Terms and Conditions; and
  - iv. read, understood and agreed to be bound by our Website Terms of Use, which can be accessed at [www.superhero.co.nz](http://www.superhero.co.nz).
- b. These Terms and Conditions constitute a legally binding agreement between you, Superhero Markets and Superhero Securities (**Agreement**).
  - c. Where a Superhero Account is held by more than one person, you acknowledge that all account holders and beneficial owners have read, understood and agreed to be bound by these Terms and Conditions and the other documents listed in clause 2.1(a) above.
  - d. You acknowledge that we reserve the right to decline your application to open a Superhero Account or use the Superhero Platform, at our absolute discretion.

## 2.2. Your commitment

- a. You warrant that all information provided by you in your application to open a Superhero Account and use the Superhero Platform is complete and accurate and is not misleading, and you agree that we may rely on that information unless and until we receive notice of any changes provided to us via the Superhero Platform. We may, at our discretion, require further information in respect of any such change (for example, if you change your name, we may require you to send to us a certified 'change of name' certificate either electronically or by post). Any such varied information will be covered by the warranty in this clause 2.2(a).
- b. You agree to notify us via the Superhero Platform of any changes to your information that are relevant to your Superhero Account, or any dealing or proposed dealing via the Superhero Platform. You also agree to provide to us any further information we may require from time to time in order to verify any changes to your information or to meet our regulatory obligations. Relevant information which may be requested includes your:
  - i. name;
  - ii. postal address;



- iii. date of birth;
  - iv. contact phone number and email address;
  - v. bank account details;
  - vi. photo identification;
  - vii. occupation;
  - viii. source of funds;
  - ix. salary range;
  - x. reasons for opening an account;
  - xi. Authorised Persons and particulars of those Authorised Persons as set out in subclause (i) to (iv) above; and
  - xii. such other information as we may require from time to time, including where we require such information to identify you in accordance with Anti-Money Laundering Laws.
- c. If you are an individual, you warrant that you are over the age of 18 and have the legal power to execute contracts and other documents in relation to your Superhero Account.
  - d. You warrant that you have a current New Zealand residential address in order to utilise the Superhero platform. Where you advise that you no longer have a current New Zealand address you will no longer be able to utilise the Superhero platform and your account will be closed.
  - e. You warrant that you will not engage in any fraudulent conduct on the Superhero platform and will conduct your activities in accordance with New Zealand's Anti-Money Laundering Laws.
  - f. You warrant that you will ratify and confirm any proper actions we carry out based on your Instructions or the Instructions of an Authorised Person who you have authorised to give Instructions on your behalf.
  - g. You warrant that as soon as you become aware of an error or omission, you are responsible for taking any necessary action to mitigate any loss that you may suffer, arising from or in connection with that error or omission.
  - h. You warrant that we are entitled to recoup any monies due to us where we have notified you that an internal or external system issue has occurred.
  - i. You undertake:

- i. not to reveal the password to your Superhero Account or any other code we provide to you in respect of your Superhero Account to any unauthorised person (not even to family or friends);
  - ii. not to let any unauthorised person watch you enter the password to your Superhero Account or any other code we provide to you in respect of your Superhero Account;
  - iii. not to otherwise allow or cause any unauthorised person to access, or facilitate any unauthorised person to access, your Superhero Account;
  - iv. not to allow any unauthorised person to issue Instructions to us on your behalf; and
  - v. not to allow or cause a fingerprint or facial identification record to be used to permit an unauthorised person to access your Superhero Account or issue Instructions on your behalf.
- j. We are not liable to reimburse you if an unauthorised transaction occurs on your Superhero Account and you, or any Authorised Person you have authorised to give Instructions on your behalf, have not complied with the obligations in clause 2.2(i).
  - k. You are responsible for any fraudulent, illegal or unauthorised dealings on your Superhero Account which are attributable to your conduct. You release, discharge and indemnify us, our Related Bodies Corporate, and each of their directors, employees, agents, and representatives in relation to all liability in respect of such conduct.
  - l. We will reasonably endeavour to ensure that search tools or calculators available on the Superhero Platform are accurate and reliable. However, you acknowledge and agree that any such search tools or calculators are provided solely for informative or illustrative purposes and should not be relied upon for the purpose of making any investment decisions and do not in any way constitute us giving you financial advice.

### **2.3. Dealings with us**

All dealings between you and us are subject to, and you agree to comply with:

- a. all applicable laws, including; NZ Financial Markets Conduct Act, NZ Financial Markets Conduct Regulations, Australian Corporations Act and all applicable Anti-Money Laundering Laws (New Zealand and Australia);
- b. the NZX and ASX MIRs, the ASX Rules and any other relevant Exchange Rules;
- c. the customs and usages of any Exchange, and any applicable directions, decisions and requirements of any Exchange; and

- d. any rules, requirements, guidelines or policies of our Market Participant and any other relevant Service Providers.

### **3. Authorised Persons**

#### **3.1. General**

You may appoint an Authorised Person to deal with us on your behalf by completing the Superhero Authority to Operate a Share Trading Account form on our website. Once you have completed this form, we may act on the Instructions of that Authorised Person and may provide information about your Superhero Account to that Authorised Person. Your authorisation will be valid indefinitely or until you revoke it by advising us in writing.

#### **3.2. Your acknowledgements**

You acknowledge and agree that if any of your Authorised Person(s) breach these Terms and Conditions:

- a. the breach will be attributed to you as principal;
- b. we have the same rights and remedies as we would have if you had personally committed the breach; and
- c. where we can take action against an Authorised Person, we do not need to do so before exercising the rights granted under this clause 3 against you.

### **4. Superhero Accounts**

#### **4.1. General**

- a. When you sign up to use the Superhero Platform, Superhero Markets will establish a trading account in your name (**Superhero Account**).
- b. Your Superhero Account must be used by you to settle any trades you make on the Superhero Platform.

#### **4.2. Omnibus account**

In accordance with the Nominee Terms, you acknowledge and agree that Superhero will hold cash funds on trust using third party services.

- a. Superhero uses Airwallex to provide a non-cash payment facility through which funds can be held, sent and received electronically.
- b. NZD funds transferred by you will be received and held by Airwallex, on trust, on behalf of Superhero Securities. Superhero will instruct Airwallex to promptly transfer (using best endeavours to have the monies transferred within one business day) these funds to a designated client trust account in the name of Superhero Securities with the Bank of New Zealand.

- c. NZD cash balances in your Superhero Account can include funds held in the client trust account and funds held by Airwallex;
- d. we may hold any cash balances held in your Superhero Account with cash balances held in any other Superhero Accounts; and
- e. Superhero Securities will be entitled to, and will retain, any interest which Bank of New Zealand, or any other Service Provider, pays to Superhero Securities in respect of any cash balances in your Superhero Account.

## **5. Nominee Terms**

### **5.1. Your agreement**

By agreeing to these Terms and Conditions, you acknowledge and agree that all Securities acquired by you and all cash deposited by you in your Superhero Account through the Superhero Platform as well as any Securities transferred to the Superhero Platform and any cash transferred or deposited to your Superhero Account (eg. dividends), will be held by Superhero Securities as bare trustee, in accordance with these Terms and Conditions and the Nominee Terms.

### **5.2. Effect of the Nominee Terms**

The effect of you agreeing to the Nominee Terms means that you will be the beneficial owner of the Securities you acquire via the Superhero Platform and will receive any and all benefits, income and rights of those Securities. Those Securities will be held on your behalf in the name of Superhero Securities or the Sub-Custodian. Importantly, this means that:

- a. your name will not appear on an entity's holdings register (Superhero Securities, or the Sub-Custodian will appear on the register instead);
- b. your Securities will not be held by you separately but in an account with Securities owned by our other Superhero customers; and
- c. as your name does not appear on an entity's share registry, you will not receive information directly from that entity (for example, you will not receive a 'Notice of Annual General Meeting' from a company you hold shares in, however Superhero will make available to you any information you would typically receive if your name did appear on the entity's share registry).

## **6. Information**

### **6.1. Third Party Information**

Information or data on the Superhero Platform, such as market information or trading data (**Third Party Information**), may be provided by a third party service

provider (**Service Provider**). For example, market data is licensed from ASX for Australian listed Securities, and from NASDAQ for US listed Securities.

## **6.2. Your acknowledgements**

You acknowledge and agree that:

- a. Third Party Information is for informative purposes only and does not, in any way, constitute financial advice from us;
- b. we are not responsible for any Third Party Information available on the Superhero Platform;
- c. we are not responsible for any interruption, delay or disruption of communication of Third Party Information, unless such interruption, delay or disruption can be attributed solely to the Superhero Platform;
- d. we make no warranties (express or implied) as to any Third Party Information;
- e. any Third Party Information available on the Superhero Platform does not reflect our opinions or policies;
- f. we do not verify the accuracy or completeness of any Third Party Information, and such information is not guaranteed by us or by any Service Provider;
- g. Service Providers may assert proprietary interests in the Third Party Information; and
- h. we may in our absolute discretion terminate or suspend your access to Third Party Information at any time and without notice to you.

## **6.3. Unauthorised use of Third Party Information**

You must not make any Third Party Information available to any other person without our express written consent. This includes downloading, copying, reproducing, adapting, selling or distributing any Third Party Information. Additionally, you must not assist or procure another person to do an act prohibited by this clause 6.3.

# **7. Liability**

## **7.1. Our liability is subject to applicable law**

Our liability under these Terms and Conditions is subject to applicable laws, including but not limited to the NZ Financial Markets Conduct Act 2013, Australian Competition and Consumer Act 2010 (Cth) and the Australian Securities and Investments Commission Act 2001 (Cth).

## **7.2. Limitation of liability**

- a. To the maximum extent permitted by law, in no event shall we, any member of our Group, or any of our 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 Terms and Conditions and the documents and agreements which are referred to in these Terms and Conditions;
  - ii. our use of, or reliance on, any Third Party Information or Service Providers, including the Sub-Custodian, in accordance with these Terms and Conditions;
  - iii. us acting, refusing to act, or not reviewing, your Instructions;
  - iv. any error, omission or invalidity in your Instructions;
  - v. us being unable to receive or act on your Instructions due to circumstances that are beyond our reasonable control;
  - vi. any dealing or proposed dealing which is interrupted, unable to be completed or unable to take place due to the failure or delay of any telephone, computer or other electronic or technological service;
  - vii. any problems or failure in relation to any Exchange or market operator, including any error, omission, interruption, deletion, defect, delay in operation or transmission or any other factor;
  - viii. market movements and other risks associated with trading and dealing in Securities;
  - ix. our compliance with a direction, request or requirement of the NZ Financial Markets Conduct Act, NZ Financial Markets Conduct Regulations, NZX Rules, Australian Corporations Act, Australian Corporations Regulations, Australian ASIC MIRs, ASX Rules or of any other Rules or regulatory authority;
  - x. us acting in accordance with our Market Participant Arrangements (as that term is defined in 10.1(a)(ii));
  - xi. your use of Third Party Information;
  - xii. any insider trading, market manipulation, false or misleading trading, or market rigging;

- xiii. us withholding tax in an amount greater or less than that required by tax law or international treaties (whether New Zealand or in another jurisdiction), or any tax implications adverse to you based on our reliance on information or representations made by you; or
  - xiv. any Force Majeure event or other cause beyond our reasonable control, the effect of which is beyond our reasonable control to avoid.
- b. The limitations in this clause 7.2 apply irrespective of whether we have been informed of the likelihood of such damage, claim or loss, and apply to all causes of action in aggregate.
  - c. You acknowledge and agree that your use of the Superhero Platform or any Third Party Information is at your own risk.

## **8. Indemnities**

### **8.1. Your indemnities**

In addition to any other indemnities provided by you under these Terms and Conditions, you agree to indemnify and hold us, our Group and our directors, officers, agents, representatives and employees (**Indemnified Parties**) harmless against any losses, actions, costs, claims, damages, demands, expenses, proceedings, and liabilities paid, suffered or incurred by us directly or indirectly as a result of:

- a. any breach by you of these Terms and Conditions;
- b. any representation or warranty made or given by you under these Terms and Conditions proving to be misleading or incorrect; or
- c. your use of the Superhero Platform or any Third Party Information in violation of these Terms and Conditions;

### **8.2. Continuing obligations**

Each indemnity in these Terms and Conditions (including in this clause 8 and otherwise):

- a. is a continuing obligation, which is independent of and separate from your other obligations; and
- b. survives the termination of these Terms and Conditions.

## **9. Orders**

### **9.1. General**

- a. If you wish to place an order via the Superhero Platform, you authorise us to instruct our relevant Market Participants (for Australian and New Zealand Securities), or relevant US Execution and Clearing Provider (for US Securities), depending on the jurisdiction in which the order is being placed, to place the order on your behalf (where such order will be placed by Superhero Markets in accordance with these Terms and Conditions).
- b. All orders placed via our Superhero Platform are subject to, and must be made in accordance with, these Terms and Conditions.

### **9.2. Orders and Instructions**

- a. We may, at any time, in our absolute discretion, refuse to act on your Instructions or refuse to accept your order. For example, we may decline to act on your Instructions or accept your order:
  - i. if required by applicable laws to do so;
  - ii. where we believe the Instructions are unclear, ambiguous, or incomplete;
  - iii. where our Market Participants (for Australian and New Zealand Securities), or relevant US Execution and Clearing Provider (for US Securities) refuse to accept our Instructions in respect of your order (which they may do in their absolute discretion);
  - iv. where you have engaged in conduct in breach of these Terms and Conditions;
  - v. if we consider it to be in our reasonable and legitimate interests not to act on your Instructions; or
  - vi. If for any reason you cannot complete the required two factor security authentication checks on your account required before an order is placed on your account.
- b. We are entitled to assume that any Instruction received from your Superhero Account originates from you, or any Authorised Person you have authorised to give Instructions on your behalf, and that any such Instruction is a valid Instruction.
- c. Where your Superhero Account has more than one account holder, we are entitled to act upon Instructions of any one of those account holders.



- d. We reserve the right to take such steps as we consider necessary to check the bona fides of any order, Instruction or person giving us an Instruction, before acting on that order or Instruction.
- e. All orders, and settlements of those orders, occur via our Market Participants (for Australian and New Zealand Securities) or our US Execution and Clearing Provider (for US Securities) and in accordance with our arrangements with those entities. We will use our best endeavours to pass on your Instructions to our Market Participants (or US Execution and Clearing Provider) to execute your order in a timely manner. However, we are not liable for any loss, liability, damage, costs, expenses or claims for lost opportunity should there be any delays in processing your order.
- f. We will make all reasonable attempts to effect any Instructions to cancel orders as quickly as possible. However, should the Market Participants (or US Execution and Clearing Provider) fill your order prior to a cancellation Instruction being effected, you will be obligated to accept the order on the original terms. You acknowledge and accept that there may be delays in processing an Instruction to cancel an order.
- g. If, in our reasonable opinion, we believe there is a dispute in respect of an order or Instruction you have given us, we may take, without prior written notice to you, any action which in our reasonable opinion we consider necessary to close an open position that is the subject of that order or Instruction.
- h. You acknowledge and accept that for security reasons, Superhero may restrict access to enter or cancel orders on the Superhero Platform from some jurisdictions outside of New Zealand.

### 9.3. Order Confirmations

- a. When you instruct us to place an order, and once our Market Participants (or US Execution and Clearing Provider) have notified us that it has executed that order, we will provide an order confirmation to you via your Superhero Account to confirm that your order has been executed by the Market Participants (or US Execution and Clearing Provider) (**Order Confirmation**). Order Confirmations can be accessed via the 'Activity' section of the Superhero Platform.
- b. You agree that trade confirmations that are made available online in your Superhero Account are deemed as received.
- c. You must review the Order Confirmation immediately upon receipt to ensure its accuracy and report any discrepancies to us.
- d. You acknowledge that as soon as you become aware of an error or omission in an Order Confirmation, you are responsible for taking action to mitigate any

loss that you may suffer arising from or in connection with that error or omission.

- e. If there are any errors or omissions in an Order Confirmation, we may issue you a further Order Confirmation. This further Order Confirmation shall supersede the previous Order Confirmation in all respects.
- f. All dealings between you and us are subject to any Order Confirmations. The provisions of any such Order Confirmation will prevail to the extent of any inconsistency with these Terms and Conditions.

#### **9.4. Your commitments to us**

- a. You represent that at all times during your dealings with us that you will be in a position to meet all your commitments and obligations arising from those dealings.
- b. You represent that if you place an order to sell Securities, you must own the relevant Securities the subject of the sell order, either:
  - i. beneficially, that is, the relevant Securities are held by Superhero Securities on bare trust for you; or
  - ii. legally, provided that:
    - A. the relevant Securities are held by you personally in an issuer sponsored sub-register;
    - B. the relevant Securities are available for delivery on the relevant settlement date; and
    - C. at the time you place the sell order, we have incorporated onto the Superhero Platform the requisite functionality allowing customers to sell Securities they hold in an issuer sponsored sub-register.
- c. You represent that if you place an order to buy Securities, you have sufficient funds in your Superhero Account to pay for the Securities the subject of the buy order.
- d. You acknowledge that we are entitled to cancel or reverse an order without further reference to you where the Market Participants, or US Execution and Clearing Provider, or Exchange is entitled to, and does exercise its right, to cancel or reverse an order under any relevant Australian ASIC MIRs, Australian ASX Rules, NZX Rules or other Rules. Where we exercise our right under this clause 9.4(d), you agree to pay us any damages, losses, liabilities, costs or expenses that we incur in relation to any action taken by a Market Participants, US Execution and Clearing Provider or Exchange under this clause 9.4(d).

- e. You acknowledge that you will not instruct us to submit an order which would breach, or cause us to breach, the NZ Financial Markets Conduct Act, NZ Financial Markets Conduct Regulations, NZX Rules, Australian ASIC MIRs, Australian Corporations Act and Australian Corporations Regulations, or any other applicable Rules or laws (applicable in New Zealand, Australia or any other jurisdiction in connection with an order), including in relation to:
  - i. any insider trading, market manipulation, false or misleading trading, or market rigging;
  - ii. short selling; or
  - iii. creating a disorderly market or otherwise prejudicing the integrity or efficiency of the market.
- f. You acknowledge that we do not give financial advice. It is therefore your responsibility, before ordering the purchase or sale of any Securities through us, to assess and evaluate the proposed transaction in light of your financial situation, investment objectives and particular needs. If you require financial advice, you should obtain this from a licensed financial advice provider.

## 10. Trading rules

### 10.1. General

- a. For Australian trading, our Market Participant handles and executes orders in accordance with:
  - i. its Terms and Conditions and Best Execution Policy, which can be accessed at [www.finclear.com.au](http://www.finclear.com.au);
  - ii. the arrangements between it and us (**Market Participant Arrangements**); and
  - iii. the ASIC MIRs and operating rules of any Australian Exchange.
- b. For US trading, our US Execution and Clearing Provider handles and executes orders in accordance with its Terms and Conditions.
- c. You should be aware that system response, execution price, speed, liquidity, market data, and account access times are affected by many factors, including market volatility, size and type of order, market conditions, system performance, and other factors.

### 10.2. Limit orders - Australian Securities

- a. A limit order is an order to buy or sell a specified number of Securities at a specified price or better.

- b. Limit orders can be cancelled provided the order has not already been executed.
- c. All limit orders placed for Australian listed Securities are valid for 30 days after you place the order via the Superhero Platform.
- d. In certain circumstances, limit orders may be cancelled or purged by the relevant market participant and/or securities exchange.

### **10.3. Market orders - Australian Securities**

- a. A market order is an order to buy or sell Securities at the prevailing market price.
- b. Market orders are placed 'at market', meaning that:
  - i. If the market order is a buy order, the order will be placed at the price set by the lowest seller in the market at the time the order is placed. If for any reason your order does not trade immediately, the price of your order will be continually updated (increased) in increments until the order trades, in full.

In some circumstances your buy order may only partially trade or may not trade at all (eg. where there are no sellers in the market or where an order breaches, or may cause us to breach, the Corporations Act, Corporations Regulations, ASIC MIRs, ASX Rules, the Market Participant's Best Execution Policy, Superhero's trade Vetting Rules, or any other applicable Rules or laws in Australia or in any other jurisdiction applicable to the order); and

- ii. If the market order is a sell order, the order will be placed at the price set by the highest buyer in the market at the time the order is placed. If for any reason your order does not trade immediately, the price of your order will be continually updated (decreased) in increments until the order trades, in full.

In some circumstances your sell order may only partially trade or may not trade at all (eg. where there are no buyers in the market or where an order breaches, or may cause us to breach, the Corporations Act, Corporations Regulations, ASIC MIRs, ASX Rules, the Market Participant's Best Execution Policy, Superhero's trade Vetting Rules, or any other applicable Rules or laws in Australia or in any other jurisdiction applicable to the order);

- c. All market orders placed for Australian listed Securities are valid for 30 days after you place the order via the Superhero Platform.

- d. In certain circumstances, market orders may be cancelled or purged by the relevant market participant and/or securities exchange.

#### **10.4. Limit orders - US Securities**

- a. A limit order is an order to buy or sell a specified number, including a fractional number of Securities at a specified price or better.
- b. Limit orders can be cancelled provided the order has not already been executed.
- c. All limit orders placed for US listed Securities are valid for 30 days after you place the order via the Superhero Platform.

#### **10.5. Market Orders - US Securities**

- a. A market order is an order to buy or sell Securities at the prevailing market price.
- b. Market orders are based on the dollar amount you wish to invest. This may result in the volume of shares being a fractional amount (i.e. a volume of shares less than 1).
- c. Market orders are placed 'at market', meaning that:
  - i. if the market order is a buy order (whether during Market Hours or when the market is closed) to be executed at a later time, you agree to pay the prevailing market price at the time the market order is executed; and
  - ii. if the market order is a sell order (whether during Market Hours or when the market is closed) to be executed at a later time, you agree to receive the prevailing market price at the time the market order is executed.
- d. All Market orders will likely trade immediately, when the market is open. Where this is not the case these orders will expire 30 days after you place the order via the Superhero Platform.
- e. Market orders during Market Hours are subject to immediate execution, and as a general rule cannot be cancelled. Cancellation of market orders will only be accepted through the Superhero Platform outside of Market Hours.

#### **10.6. Buy and sell orders - Australian and US Securities**

- a. Buy and sell orders can be placed for all available Exchange listed Securities (including on ASX, Chi-X, NASDAQ, NYSE, ARC, AMEX and BZX) available on the Superhero Platform.

- b. Each buy order is subject to a maximum order limit of AUD\$250,000, plus any applicable Brokerage fees for Australian listed Securities, or a maximum order limit of USD\$250,000 for US listed Securities, plus any applicable Brokerage fees for US listed Securities.
- c. Each buy order for Australian listed Securities is subject to a minimum order limit of AUD\$100, including any applicable Brokerage or fees, or for US listed Securities a minimum of USD\$10, including any applicable Brokerage or fees.
- d. Short selling orders are not accepted via the Superhero Platform. You represent and warrant that any sell order placed on the Superhero Platform is not associated or connected with any short sale or borrow of Securities.

#### **10.7. Stop Loss orders - Australian Securities**

- a. A stop loss order is an instruction to commence selling a stock once the share price reaches a specified price, known as the 'trigger' price.
- b. When the 'trigger' price is reached, a stop loss order triggers a market to limit sell order. For market to limit sell orders, an order will be placed at the price set by the highest buyer in the market at the time the order is placed and remains at that price until the order trades, or expires. Orders that are placed as a result of a triggered Stop Loss order will expire 120 days after the order is placed on the Superhero Platform unless the security has a fixed expiry date set by the Exchange.
- c. All stop loss orders placed are valid for 120 days after you place the order via the Superhero Platform.
- d. In certain circumstances, stop loss orders may be cancelled or purged by the relevant market participant and/or securities exchange.
- e. Stop loss orders will remain pending until the 'trigger' price is reached, the order expires or the order is cancelled.
- f. You may edit or delete any outstanding orders at any time.
- g. Superhero cannot guarantee your execution price will match the 'trigger price' of your stop loss order. In some circumstances your sell order may only partially trade or may not trade at all (e.g. where there are no sellers in the market or where an order breaches, or may cause us to breach the Corporations Act, Corporations Regulations, ASIC MIRs, ASX Rules, the Market Participant's Best Execution Policy, Superhero's trade Vetting Rules, or any other applicable Rules or laws in Australia or in any other jurisdiction applicable to the order).
- h. Superhero may cancel a Stop Loss Order if orders for a security are purged from the market by the securities exchange, for example but not limited to:

- i. the security going ex-dividend; or
- ii. the security going ex-rights issue.

#### **10.8. Recurring orders - Australian and US Securities**

- a. A recurring order is a standing instruction to regularly repeat an order to buy a particular financial product.
- b. Each order is executed as a 'Market Order'. Please see section 10.3.b(i) for further information on how buy market orders are placed..
- c. Each order to be executed will require sufficient available funds in your Superhero Wallet.
- d. You may cancel a recurring order at any time, unless the recurring order is being processed at the time of your cancellation.
- e. Superhero reserves the right to restrict the terms and conditions of any recurring orders at any time in connection with fulfilling its regulatory and legal obligations.
- f. If a recurring order fails due to insufficient funds, Superhero will:
  - i. communicate the failure(s) of your recurring order by push notification or text message; and
  - ii. attempt to retry your order on each following day, until the order is placed.
- g. All US and AU recurring orders will expire 30 days after the order is placed in the market unless the security has a fixed expiry date set by the Exchange
- h. In certain circumstances, market orders may be cancelled or purged by the relevant market participant and/or securities exchange.
- i. Recurring order instructions will not be cancelled by Superhero unless notified by you via the Superhero platform.

#### **10.9. Fractional shares - US Securities**

- a. A fractional share is a portion of a Security that is less than one whole Security.
- b. Fractional shares can result from a Corporate Action, such as a stock split, which may result in an uneven number of shares.
- c. If you place a Market Order, your order will be based on the dollar amount you wish to invest. This may result in the volume of shares being a fractional amount (i.e. a volume of shares less than 1).

- d. Fractional shares are not transferable to other brokerage accounts. Not all US Securities through Superhero are eligible for fractional share orders.

## **11. Settlement**

### **11.1. Settlement of your trades**

When you place an order via the Superhero Platform, we will advise you in your Order Confirmation of the settlement amount (inclusive of any applicable Fees) (Settlement Amount) and settlement date (Settlement Date).

### **11.2. Superhero Account**

- a. When you place a buy order via the Superhero Platform, and your order is accepted by our Market Participants or US Execution and Clearing Provider, your Superhero Account balance will show as 'restricted' an amount equal to the value of your order (in the respective currency of the securities on your order). Once the order has transacted, the amount shown as 'restricted' will change to an amount equal to the Settlement Amount up until the time of settlement. When your order settles, we will debit the Settlement Amount from your Superhero Account and credit the number of Securities the subject of the order to your Superhero Account.
  - b. When you place a sell order via the Superhero Platform, and your order is accepted by our Market Participants or US Execution and Clearing Provider, your Superhero Account will show as 'restricted' the number of Securities subject to the order. Once the order has transacted, the value of the order will show in your Superhero Account as an 'unsettled amount' equal to the Settlement Amount up until the time of settlement. When your order settles, we will credit the Settlement Amount (in the respective currency of the securities on your order) to your Superhero Account and debit the number of Securities the subject of the order from your Superhero Account.
- a. **Failure to settle**
  - b. If an order does not settle in your Superhero Account, you authorise us, after a demand, to buy back or sell on your behalf any Securities that are the subject of the failed trade. You also agree to indemnify us against all costs, expenses and losses incurred resulting from the failure of the relevant trade to settle in your Superhero Account due to reasons that are not attributable to us.

## **12. Securities Transfers**

### **12.1. Australian Securities Transfers**

- a. Transfers to Superhero



If you already hold shares with another broker and would like to transfer all or some of your shares to Superhero, you will need to complete the [Superhero Broker to Broker Transfer Form](#). There is no fee to transfer your shares to Superhero.

If you hold issuer sponsored shares on a Shareholder Reference Number (SRN), you can transfer them to your Superhero account by completing the [Superhero Issuer Sponsored Transfer Form](#). There is no fee to transfer your shares to Superhero.

b. Transfers from Superhero

If you wish to transfer shares in your Superhero account to another broker, you will need to request a broker transfer form from your other broker.

Transferring securities out of your Superhero account may incur transfer fees. Please see the Superhero [Fee Schedule](#) for more information.

## 12.2. U.S. Securities Transfers

a. Transfers to Superhero

If you already hold shares with another broker or with a transfer agent and would like to transfer all or some of your shares to Superhero, you will need to complete a [US Share Transfer form](#) available on our website. We do not charge a fee for accepting shares transferred from another broker, but there may be other fees depending on the transfer type, including for shares transferred from the Direct Registration System (DRS) with a transfer agent.

b. Transfers from Superhero

If you wish to transfer shares in your Superhero account to another US broker, you will need to request a transfer form from your other broker.

Transferring shares out of your Superhero account will incur transfer fees, which are charged by Apex. Please see the Superhero [Fee Schedule](#) for further information.

Fractional shares are not transferable to other brokerage accounts.

## 12.3. Off-Market Transfers

If you hold shares and would like to transfer them to another Superhero account or another entity (person, company, trust, etc.) external to Superhero, you will need to complete the [Superhero Off-Market Transfer Form](#). Off-market transfers incur a fee, this fee is passed on to you. Please see the Superhero [Fee Schedule](#) for further information.

## Fees

## 12.4. Fees, charges and costs

You agree to pay our normal fees, charges and costs associated with your trades, including without limitation, Brokerage, FX Transfer fees, transfer fees, regulatory fees and administration fees, and to reimburse us for any extraneous costs such as

GST (**Fees**). Full details of our current Fees can be accessed on our website at [www.superhero.co.nz](http://www.superhero.co.nz) and in our [Fee Schedule](#).

**12.5. Set off**

You authorise us to appropriate any amounts, credits, payments or other receipts from your Superhero Account in such a manner and order as we think fit against any amounts due or owing by you to us.

**12.6. Payment for Order Flow**

While it is not a requirement to disclose any arrangement for receiving payment for directing order flow, Superhero currently has no such arrangement and does not receive compensation for Securities transactions executed through designated exchanges, market makers, dealers, or market centres.

Where permitted under applicable laws and rules, Superhero reserves the right to receive remuneration for directing orders in Securities. We will notify you in writing of any change to these arrangements.

**13. GST**

- a. Unless expressly stated otherwise, all Fees, charges and other consideration to be provided under these Terms and Conditions is expressed on a GST-inclusive basis. Where a fee is expressly stated to be exclusive of GST, you agree to pay us the GST amount.
- b. You agree to indemnify us and keep us indemnified against any applicable penalties and interest in relation to GST that is paid or payable by us in providing taxable services to you, except to the extent that the penalties or interest arise from or are caused by our fault.

**14. IRD number**

By law, you are not required to tell us your IRD Number. However, if you do not provide these details to us, we may be obligated by law to deduct and withhold amounts from payments otherwise owing to you at the highest marginal tax rate, and pay those amounts to the relevant government agency.

**15. Taxation**

- a. Taxation implications when investing in Securities can be complex and different depending on your individual circumstances, including but not limited to your citizenship and tax residency status. You should seek advice from a professional tax agent to determine whether Superhero is appropriate to your particular financial circumstances, and what tax you may be liable for.

- b. Your investments may attract withholding tax on income, interest and dividends. All withholding tax is deducted in the applicable Currency of the jurisdiction in which the tax applies.
- c. We will withhold tax at the rate applicable under local laws, depending on the investment jurisdiction and income type. The rate may be different from treaty rates agreed to between New Zealand (or other tax residencies) and the applicable foreign country.
- d. We will inform you of how much tax is withheld. However, we reserve the right not to make or support any application to reclaim the withheld tax on your investments. We recommend you consider how this may impact your particular financial circumstances.
- e. You agree and acknowledge that if we unintentionally under-withhold tax otherwise payable to a tax authority in connection with a payment of income to you, we may withhold an amount from:
  - a. future payments to you;
  - b. available cash in your Superhero account; or
  - c. in the event you instruct us to transfer Securities from your Superhero account to another financial institution, registry, broker or custodian, you agree that we may sell sufficient quantity of your Securities.

to satisfy the withholding tax liability.
- f. You may be liable for tax on New Zealand and foreign sourced income and may be required to include this information in your New Zealand tax return.
- g. For the purpose of US investments, we will help you, on a best endeavours basis to determine the appropriate withholding tax rate and will report either a W9 (US Person), W8BEN or similar report to the IRS on your behalf.
- h. We will not be held responsible for any adverse tax implications or consequences to you and you agree to hold harmless and indemnify us for any loss, liability, damage or claim in connection with withholding tax or tax residence reporting to tax authorities, to the extent that we rely on representations made by you.

## **16. US Investor Protection - SIPC**

- a. Our US Execution and Clearing Provider is a member of the Securities Investor Protection Corporation (SIPC), therefore funds are available to meet customer claims up to a ceiling of US\$500,000, including a maximum of US\$250,000 for cash claims.

- b. For additional information regarding SIPC coverage, including a brochure, please contact SIPC at (202) 371--8300 or visit [www.sipc.org](http://www.sipc.org).
- c. Further, our US Execution and Clearing Provider has purchased additional insurance through a group of London Underwriters to supplement SIPC protection. This additional insurance policy becomes available to customers in the event that SIPC limits are exhausted and provides protection for Securities and cash up to certain limits.
- d. Like SIPC protection, this additional insurance does not protect against a loss in the market value of Securities.

## **17. Privacy**

### **17.1. Data collection**

- a. We collect personal information about you because we are required or authorised by law to collect it. This includes personal information required to identify you in accordance with Anti-Money Laundering Laws, and to comply with taxation laws.
- b. We also collect your personal information so that we can provide our services to you and communicate with you about our services. We do so in accordance with our Privacy Policy which as at the date of these Terms and Conditions, can be accessed at [www.superhero.co.nz](http://www.superhero.co.nz).
- c. This clause should be read in conjunction with our Privacy Policy.

### **17.2. Exchange of information**

You explicitly consent that we may share your personal information with other parties in limited circumstances. For example, we may share your personal information:

- a. with members of our Group;
- b. with external Service Providers, including any Sub-Custodian, that perform services on our behalf.

For example, we will engage a third-party Service Provider, including any Sub-Custodian, through which we will access independent and reliable data sources to conduct identity verification and CDD procedures. In conducting electronic verification, Superhero will comply at all times with the AML/CFT Act. In particular:

- i. Disclosure

Disclosure of your personal information (including the information of beneficial owners) to the electronic verification service provider will be limited to your name, residential address and date of birth for verifying your identity by checking a credit body or providing a document number, such as the driver's licence number or the passport number for accessing the electronic data provided by the Department of Internal Affairs (DIA) or comparable international sources.

ii. Informed Consent

By reading these Terms and Conditions as part of the account opening application process, and before undertaking electronic verification of you, Superhero is informing you about:

- A. the reasons for making the request;
- B. the personal information about you that may be disclosed to a third-party electronic verification service provider;
- C. the fact that Superhero may request the electronic verification service provider to provide an assessment of whether the personal information matches (in whole or part) personal information held by the credit reporting body or government data sources;
- D. the fact that the electronic verification service provider may prepare and provide Superhero such an assessment; and
- E. the fact that the electronic verification service provider may use the personal information about you, and personal information held by Superhero, that is the names, residential addresses and dates of birth of other individuals, for the purpose of preparing such an assessment.

iii. You explicitly consent to us making the request and the disclosure of the personal information to an electronic verification service provider.

iv. If your identity verification cannot be completed by using an electronic verification search, we may provide you an alternative means of verifying your identity.

v. Where the electronic verification service provider is unable to verify your identity, we may provide a written notice to you:

- A. stating that the reporting entity is unable to verify your identity having regard to the assessment;

- B. specifying the name of the electronic verification service provider that provided the assessment; and
  - C. offering you an alternative means of verifying your identity.
- vi. Retention of verification information

Once we make a verification request in relation to you, it will make a record of the following:

- A. the name of the electronic verification service provider to which the request was made;
- B. the personal information about you that was provided to the electronic verification service provider;
- C. the assessment (if any) provided by the electronic verification service provider in relation you; and
- D. other information about the verification request as is specified in the AML/CFT Rules.

We must retain the record, or a copy of the record, for a period of at least 5 years after you cease to hold a Superhero Account. The record will be retained, as we are required and authorised to do, in accordance with the AML/CFT Act, or as otherwise required by law. We will delete the records at the end of the five year period.

- c. You acknowledge that we may be required to provide your personal information to Service Providers, including any Sub-Custodian, located overseas in connection with verification of your identity. By reading these Terms and Conditions prior to opening a Superhero account, you agree to and consent to us sharing your personal information with overseas Service Providers.
- d. Where possible, we will try to engage Service Providers, including any Sub-Custodian, in jurisdictions that are subject to privacy laws that, overall, provide comparable safeguards to those in the Privacy Act, or, where that is not possible, we will use our best endeavours to protect your information in a way that, overall, provides comparable safeguards to those in the Privacy Act through our agreement with the Service Provider.

### **17.3. Access to personal information**

- a. You may request access to the personal information we hold about you and ask us to update and/or correct it if you believe it is inaccurate, incomplete or out of date. For further information please read our Privacy Policy available at [www.superhero.co.nz](http://www.superhero.co.nz) and if you wish to access or correct your personal information, please contact us in accordance with our Privacy Policy.

## **18. Telephone recording**

- a. You authorise us to record any telephone conversation(s) between you and us for training and record keeping purposes, with or without an automatic tone warning device.
- b. You acknowledge that any recording is our property, and that we may keep a record of the recording for as long as we believe is reasonable. We will hold the recording in accordance with the Privacy Act.

## **19. Variation**

- a. We may, from time to time, amend or vary these Terms and Conditions by publishing the amended Terms and Conditions on our website or by giving written notice to you in accordance with clause 25.
- b. If we believe a change is materially unfavourable to you, we will give you at least 5 Business Days' notice, unless:
  - i. the variation of these Terms and Conditions is required to comply with any applicable laws or regulations or with a direction, request or requirement of a regulatory authority; or
  - ii. it is reasonable for us to give less notice to manage a material and immediate risk (for example, to restore or maintain the security of your Superhero Account).
- c. If we vary these Terms and Conditions, the changes shall apply to all dealings between you and us on and from the day on which the variation takes effect and your continued use of the Superhero Platform is acceptance of the variation.

## **20. Deposits & Withdrawals**

- a. You acknowledge you may only withdraw money into a bank account that contains the same name as your Superhero Account and not into a third party bank account.
- b. To protect your assets from fraud, Superhero has a daily withdrawal limit as published from time to time on the Superhero website [www.superhero.co.nz](http://www.superhero.co.nz). To request an increase to this withdrawal limit you will be required to provide further documentation and identification for verification purposes. Not all requests to increase a withdrawal limit will be approved.

## **21. Foreign Exchange (FX) Transfers**

- a. You acknowledge that Superhero is authorised to deal in FX contracts and you authorise Superhero to execute any FX Transfers relating to your Superhero Account on your behalf.
- b. You agree that you will bear the FX risks of an FX Transfer, including but not limited to the risks of foreign currency held, interest or other income payments received, expenses, tax or other liabilities incurred in currencies other than New Zealand dollars and of exchange controls or other laws that may prohibit or impose costs on FX Transfers and that Superhero will not be liable for any loss suffered by you as a result or the timing of an FX Transfer.
- c. When you submit an FX Transfer through your Superhero Wallet, you agree to accept the indicative quote for the FX Transfer. You agree to exchange currencies at a rate, which may be different from the estimated rate, depending on market movements, and which includes Superhero's fees, charges and margins for executing the FX Transfer.
- d. All indicative quotes may include a spread and other fees and charges levied to facilitate an FX Transfer. Superhero's fees and charges will be disclosed to you at the time of transfer.

## **22. Promotional Offers**

From time to time we may make promotional offers to our customers (eg. Free Trades for customers). In instances where a promotional offer is made to all, or to select customers, these Terms and Conditions will apply in full in addition to any specific terms and conditions associated with the promotional offer.

## **23. Termination**

### **23.1. General**

- a. Subject to our other rights under these Terms and Conditions and the material completion of any outstanding obligations, the arrangements between you and us may be terminated by either party giving not less than two Business Days written notice to the other party.
- b. The arrangements between you and us may be terminated immediately for any breach of these Terms and Conditions or other obligations set out in documents referred to at clause 2.1, or where you engage in abusive, bullying, or anti-religious behaviour via the Superhero Platform.
- c. The arrangements between you and us may be terminated immediately if it is established that you are residing in a high-risk country or region. Countries and



regions may be considered high-risk in one or more of the following circumstances, where the country or region is:

- deemed a non-cooperative jurisdiction by the Financial Action Task Force (FATF);
- a prescribed foreign country;
- subject to sanctions;
- a known tax haven; or
- known to provide support to terrorist organisations.

## **23.2. Closing your Superhero Account**

- a. On termination of these arrangements, we will close your Superhero Account and:
  - i. transfer any cash balance in your Superhero Account to either a bank account nominated by you or, where required, to a bank account nominated by Superhero or one of our Service Providers, less any outstanding Fees, subject to clause 21; and/or
  - ii. sell any Securities held on your behalf by Superhero Securities, and transfer any cash proceeds to either a bank account nominated by you or, where required, to a bank account nominated by Superhero or one of our Service Providers, less any outstanding Fees, subject to clause 21;

unless the cash balance or the value of your Securities at the time you make the request is less than NZD\$10 (and you agree to forfeit any such amount).

- b. If we do not receive Instructions from you in accordance with clause 23.2(a) within 10 days of termination of these arrangements we may at any time thereafter sell any Securities that Superhero Securities, or the Sub-Custodian, holds on your behalf. If you have not nominated a bank account in your Superhero Account and we are unable to transfer any cash proceeds from the sale to you, less any outstanding Fees, any monies held by us will be held in accordance with applicable laws.
- c. You acknowledge and agree that where Securities are sold on your behalf under this clause 23.2, you may suffer a shortfall between the amount you invested and the amount you get back after the sale. We are not responsible for any such shortfall, and such shortfall shall be borne by you in its entirety.
- d. A 'manual transfer fee' may apply where we transfer cash or sell Securities on your behalf in accordance with this clause.

### **23.3. Survival**

These arrangements continue to apply unless and until Superhero Securities no longer holds cash or Securities on your behalf, after which, clauses 6, 13, 18, 19, 24, 25, 26, 28 and 29 (and those provisions which go to the interpretation of those clauses) survive the termination of these arrangements.

## **24. Dispute resolution**

- a. If you have a dispute in relation to these Terms and Conditions, please contact us at [complaints@superhero.co.nz](mailto:complaints@superhero.co.nz). We will investigate the dispute and advise of the outcome.
- b. Please refer to our New Zealand Complaints Policy on our website [www.superhero.co.nz](http://www.superhero.co.nz) for more information about Superhero's dispute resolution services.

## **25. Notice**

- a. Any notice, request, demand or other communication (Notice) may be sent to your email address last notified to us or delivered to you via the Superhero Platform.
- b. Any Notice shall be taken to have been received by you:
  - i. if sent by email, one hour after we have sent it; or
  - ii. if delivered via the Superhero Platform, immediately.
- c. Any Notice that you send to us is taken to have been received by us when we receive it.

## **26. Severance**

If any part of these Terms and Conditions is found to be void or unenforceable (for example, if a court or other tribunal or authority declares it so), the remaining parts of these Terms and Conditions will continue to apply.

## **27. No waiver**

No waiver of any breach of these Terms and Conditions will be affected unless the waiver is in writing and signed by the party against whom the waiver is claimed.

## **28. Governing laws**

- a. These Terms and Conditions are governed by and interpreted in accordance with the laws of New South Wales, Australia. You submit to the non-exclusive

jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts.

- b. If you choose to access the Superhero Platform from a jurisdiction other than Australia, you are responsible for complying with all relevant local laws of that jurisdiction.

## 29. Definitions and interpretation

### 29.1. Definitions

In these Terms and Conditions, unless expressly provided otherwise:

“**ADI**” means an authorised deposit-taking institution.

“**AFSL No.**” means Australian Financial Services Licence Number.

“**AMEX**” means the NYSE American Exchange.

“**AML/CFT Act**” means the Anti-Money Laundering and Countering Financing Terrorism Act 2009.

“**Anti-Money Laundering Laws**” international and domestic anti-money laundering and countering financing of terrorism laws, including the AML/CFT Act and any related regulatory guidance. .

“**Apex**” means Apex Clearing Corporation, our US Execution and Clearing Provider, situated at 350 N. St. Paul, Suite 1300 Dallas, TX 75201, United States.

“**ASIC**” means the Australian Securities and Investments Commission.

“**ASIC MIRs**” means the ASIC Market Integrity Rules (Securities Markets) 2017.

“**ASX**” means ASX Limited ACN 008 624 691 or the Securities exchange which it operates, as the context requires.

“**ASX Rules**” means, as applicable:

- a. the operating rules of ASX Settlement Pty Ltd ACN 008 504 532;
- b. the operating rules of ASX Clear Pty Limited ACN 001 314 503; and/or
- c. any other rules regulating the market for products operated by ASX.

“**Authorised Person**” means a person authorised to represent the Superhero account holder in accordance with these Terms and Conditions.

“**Best Execution Policy**” means the best execution policy of our Market Participant as amended from time to time.

“**Brokerage**” means a fee or commission charged to execute an order placed by a customer.

**“Business Day”** means a day on which banks are open for general banking business in Auckland and Wellington in New Zealand, excluding Saturdays, Sundays and public holidays in those cities.

**“CDD”** means Customer Due Diligence carried out under the AML/CTF Act.

**“Corporations Act”** means the Australian Corporations Act 2001 (Cth).

**“Corporations Regulations”** means the Australian Corporations Regulations 2001 (Cth).

**“Currency”** means a form of money which is tradeable on the foreign exchange market.

**“Custodian”** means the custodian appointed by us or our Service Providers from time to time.

**“Exchange”** means an official Securities exchange based in New Zealand, Australia, the United States of America or elsewhere.

**“Fees”** means our current fees which can be accessed on our website at [www.superhero.co.nz](http://www.superhero.co.nz)

**“Financial Markets Conduct Act”** means the Financial Markets Conduct Act 2013.

**“Financial Markets Conduct Regulations”** means the Financial Markets Conduct Regulations 2014.

**“Finclear”** means FinClear Execution Ltd ABN 56 061 751 102 | AFSL 246842, our execution, clearing and settlement provider for Australian Securities. Finclear is a market, clearing and settlement participant of the ASX.

**“Force Majeure”** means any delay or interruption in fulfilling our obligations under these terms and conditions if the circumstances are beyond our reasonable control or the control of any Service Provider. This includes problems with our telecommunications services, internet service provider, computer hardware and/or software, or difficulties in sending or receiving emails.

**“Foreign Exchange (FX) Transfer”** means the sale or purchase of Currency in accordance with your Instructions.

**“FX”** means foreign exchange.

**“Group”** means Superhero Markets, Superhero Financial Services, Superhero Securities and each of their Related Bodies Corporate.

**“GST”** has the meaning given to that term in the Goods and Services Tax Act 1995.

**“Indemnified Party”** has the meaning given to that term in clause 8.1.

**“Instruction(s)”** means your Instruction(s) to us to place an order or arrange to execute Transactions on your behalf.

**“IRD”** means the New Zealand Inland Revenue Department.

**“IRS”** means the Internal Revenue Service in the United States of America.

**“Listed Entity”** means a company whose shares are traded on an Exchange.

**“Market Hours”** means the general hours during which the US Securities markets are open for trading, being 9:30am - 4:30pm US EST (Monday to Friday), or the general hours the Australian Securities markets are open for trading, being 10am - 4:10pm AEST (Monday to Friday) or the general hours the New Zealand Securities markets are open for normal trading, being 10am – 4.45pm NZDT (Monday to Friday).

**“Market Participant”** means for Australian Securities; FinClear Execution Ltd ABN 56 061 751 102 AFSL 246842, a registered Market Participant of the ASX for Australian Securities, or such other Market Participant engaged by us from time to time.

**“Mobile Application”** means Superhero’s mobile application available for download and use in iOS or Android or any other format that becomes available for mobile applications from time to time.

**“NASDAQ”** means the NASDAQ stock exchange or the National Association of Securities Dealers Automated Quotations.

**“Nominee Terms”** means the terms and conditions set out in Schedule 1 pursuant to which Superhero Securities, or the Sub-Custodian, holds Securities on your behalf as bare trustee as amended from time to time.

**“NYSE”** means the New York Stock Exchange.

**“Notice”** has the meaning given to that term in clause 25.

**“Order Confirmation”** means an order confirmation to confirm that your order has been placed or executed by the Market Participant or US Execution and Clearing Provider.

**“Privacy Policy”** means our Group privacy policy as amended from time to time.

**“Related Body Corporate”** has the meaning given to that term by section 12 of the Financial Markets Conduct Act.

**“Rules”** means the operating rules of any Exchange where Securities are listed and traded by Superhero on your behalf, including the NZX, ASX, Chi-X, AMEX, ARCA, NASDAQ and NYSE.

**“Security(ies)”** has the meaning given to that term by section 6 of the Financial Markets Conduct Act.

**“Service Provider”** means a third party service provider which provides services or information, including custody, bank account operation, payment collection, foreign exchange, execution and clearing services, to Superhero Markets, or any Group member.

**“Settlement Amount”** has the meaning given to that term in clause 11.1.

**“Settlement Date”** has the meaning given to that term in clause 11.1.

**“SIPC”** means Securities Investor Protection Corporation.

**“Sub-Custodian”** has the meaning given to that term in Schedule 1, clause 3.1.

**“Superhero Account”** means a trading account through which you can place orders and trade Securities on the Superhero Platform.

**“Superhero Holdings”** means Superhero Holdings Pty Ltd (ABN 48 633 253 942).

**“Superhero Markets”** means Superhero Markets Pty Ltd (NZBN 9429051299729) (FSP No. 1002149).

**“Superhero Platform”** means the Superhero platform, comprising our website at [www.superhero.co.nz](http://www.superhero.co.nz) and our Mobile Application, including but not limited to any dealings via live chat, telephone, email and social media.

**“Superhero Securities”** means Superhero Securities Limited (NZBN 9429051299712) (FSP No. 1002150).

**“Terms and Conditions”** means these terms and conditions and includes the Nominee Terms.

**“Third Party Information”** means information or data on the Superhero Platform supplied by a Service Provider.

**“Transactions”** means the sale or purchase of Securities, whether within New Zealand or overseas, by us on your behalf and in accordance with your Instructions.

**“US Execution and Clearing Provider”**, means Apex Clearing Corporation.

**“US Listed Securities”** means any Securities listed on a US Exchange.

**“Vetting Rules”** means the rules built into the Superhero Platform that aim to ensure a fair and orderly market by setting an acceptable price range for price movements for all Securities by rejecting orders that cause extreme price movements and/or orders that may result in any other misconduct.

“we”, “us” or “our” means Superhero Markets or Superhero Securities, as the context requires.

“Website Terms of Use” means the terms and conditions governing use of our website at [www.superhero.co.nz](http://www.superhero.co.nz) as amended from time to time.

“you” means the holder of a Superhero Account, or if you have appointed an Authorised Person to act on your behalf, “you” includes each of those persons.

## 29.2. Interpretation

In these Terms and Conditions, unless expressly provided otherwise:

- a. the singular includes the plural and vice versa;
- b. a reference to a gender includes all genders;
- c. where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- d. a reference to a clause, paragraph, schedule, exhibit, attachment, annexure or party is a reference to a clause or paragraph in, or a schedule, exhibit, attachment, annexure or party to, these Terms and Conditions;
- e. a reference to these Terms and Conditions includes any schedules, exhibits, attachments or annexures to it (as applicable);
- f. a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time in accordance with these Terms and Conditions;
- g. a reference to “NZ\$”, “NZD”, or “NZD\$” is a reference to New Zealand Currency, “AU\$”, “AUD”, or “AUD\$” is a reference to Australian Currency, and a reference to “US\$”, “USD\$” or “USD” is a reference to United States Currency;
- h. a reference to a particular person includes that person's executors, administrators, successors, permitted substitutes and permitted assigns who take under an assignment or novation pursuant to the terms of these Terms and Conditions;
- i. a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- j. the word “person” includes an individual as well as a body corporate, a partnership, an association, a firm, a joint venture, a trust, a government or governmental authority or governmental agency (whether or not incorporated or having a separate legal identity);

- k. a reference to any legislation or to any provision of any legislation includes all delegated or subordinate legislation, including statutory instruments and regulations, issued or made under that legislation or provision, and all modifications, re-enactments, consolidations or replacements of any of them, from time to time;
- l. the words “include”, “including”, “for example”, “such as” or other similar expressions (in any form) are not words of limitation and must be read as if they are followed by the words “without limitation”;
- m. a reference to a body or entity, whether statutory or not:
  - i. which ceases to exist; or
  - ii. whose powers or functions are transferred to another body,is a reference to the body which replaces it, or which substantially succeeds to its powers or functions;
- n. headings and subheadings (including those in brackets at the beginning of a clause) are used for convenience only and do not affect the interpretation of these Terms and Conditions; and
- o. a reference to a time of day is a reference to New Zealand time, unless explicitly stated otherwise.



## SCHEDULE 1: NOMINEE TERMS

### 1. Appointment

#### 1.1. Your agreement

You acknowledge that you have read and understand, and agree to be bound by these Nominee Terms.

#### 1.2. Appointment of Superhero Securities as custodian

On and from the Effective Date:

a. you appoint Superhero Securities as custodian of, subject to clause 3.1:

- i. any cash you hold in your Superhero Account; and
- ii. any Securities which you hold through the Superhero Platform;

(collectively, the **Financial Products**) Superhero Securities agrees to:

- i. take custody of your Financial Products and any documents evidencing title to your Financial Products as bare trustee for you and hold them on your behalf; and
- ii. hold your Financial Products as bare trustee and register your Financial Products in its name; and

b. Superhero Securities must, on your request, acknowledge the manner in which it holds any property or other assets on your behalf.

#### 1.3. Bare trustee relationship

Unless otherwise provided for in these Nominee Terms:

- a. Superhero Securities must not exercise any rights attached to the ownership of your Financial Products, including disposing of, or otherwise dealing in, your Financial Products, unless you instruct Superhero Securities to do so in accordance with the Terms and Conditions; and
- b. Superhero Securities has not, and will not, acquire a beneficial or proprietary interest whatsoever in your Financial Products, or the income and rights accruing or pertaining to the Financial Products.

#### 1.4. Omnibus Account

You consent to, and acknowledge and agree, that any Financial Products held on your behalf by Superhero Securities will be held in an omnibus account, meaning that your Financial Products will be held with other financial products held by Superhero Securities on behalf of other customers in the manner prescribed in, and

in accordance with, the NZ Financial Markets Conduct Act, Australian Corporations Act, Australian Corporations Regulations, and ASIC Regulatory Guide 133 (**Omnibus Account**).

## **2. Cash held on your behalf**

You consent to, and acknowledge and agree that, Superhero Securities:

- a. is under no obligation to pay interest on cash it holds on your behalf; and
- b. will be entitled to, and will retain, any interest which accrues on any cash balances held on your behalf in the Omnibus Account.

## **3. Sub-Custodians**

### **3.1. Superhero Securities may appoint Sub-Custodians**

- a. You acknowledge and agree that Superhero Securities 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 from time to time (**Sub-Custodian**).
- b. You acknowledge and agree that pursuant to clause 3.1(a), Superhero Securities has appointed FinClear Pty Ltd ACN 607 164 714 as a Sub-Custodian.
- c. You acknowledge and agree that:
  - i. the Sub-Custodian takes custody of your Financial Products and any documents evidencing title to your Financial Products as bare trustee for Superhero Securities; and
  - ii. the Sub-Custodian holds your Financial Products as bare trustee and in the name of the Sub-Custodian.
- d. The Sub-Custodian:
  - i. holds the Financial Products as bare trustee for Superhero Securities, and Superhero Securities holds the Financial Products as bare trustee for you;
  - ii. the Sub-Custodian must not exercise any rights attached to the ownership of your Financial Products, including disposing of, or otherwise dealing in, your Financial Products, unless you instruct Superhero Securities (which will instruct the Sub-Custodian) to do so in accordance with the Terms and Conditions; and
  - iii. has not, and will not, acquire a beneficial or proprietary interest whatsoever in your Financial Products, or the income and rights accruing or pertaining to the Financial Products.

### **3.2. Obligations when appointing Sub-Custodian**

- a. Superhero Securities agrees to take reasonable care in the selection, appointment and periodic review of any Sub-Custodian that it appoints and procures that any Sub-Custodian will comply with the provisions of these Nominee Terms in relation to your Financial Products.
- b. Subject to clause 10.1, provided Superhero Securities has complied with its obligations under clause 3.2(a), Superhero Securities has no liability for the bankruptcy or insolvency of a Sub-Custodian, or for the acts or omissions of a Sub-Custodian.

### **3.3. Notice of Sub-Custodian details**

- a. Superhero Securities will provide written notice to you of, and contact information for, any Sub-Custodian appointed or to be appointed by Superhero Securities to hold your Financial Products. Such notice must, unless clause 3.3(b) applies, be given to you before any property is held by the Sub-Custodian. For the avoidance of doubt, per clause 15.2 of these Nominee Terms, your continued use of the Superhero Platform 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.
- b. If Superhero Securities is compelled to appoint a replacement Sub-Custodian on an urgent basis following events beyond its reasonable control, Superhero Securities must provide notice of the appointment of such Sub-Custodian as soon as is reasonably practicable after such appointment.

## **4. Instructions**

Instructions in respect of your Financial Products can be given to Superhero Securities via the Superhero Platform, in accordance with these Terms and Conditions.

## **5. Record keeping**

- a. Superhero Securities will, and will procure that the Sub-Custodian will, maintain records in accordance with the Terms and Conditions and in any event 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. Superhero Securities will, and will procure that the Sub-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 Superhero Account will be kept and maintained by Superhero Securities and/or the Sub-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 Superhero Securities or the Sub-Custodian; and
  - ii. Superhero Securities' or the Sub-Custodian's reporting requirements.

## **6. Corporate Actions**

### **6.1. Information**

Superhero Securities will use its reasonable best endeavours to arrange for you to have access to electronic copies (via the Superhero Platform) of any annual accounts, notices of meeting, and other documents or information provided to Superhero Securities by an entity in which Superhero Securities or the Sub-Custodian holds Securities on your behalf.

### **6.2. Corporate Actions**

Superhero Securities will use its reasonable best endeavours to pass on any Corporate Actions to you. However, you acknowledge that Superhero Securities 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 Superhero to pass on any such Corporate Action.

### **6.3. Notice of Corporate Actions**

Superhero Securities will use its reasonable best endeavours to give you notice of any:

- a. Voluntary Corporate Actions;
- b. Mandatory Corporate Actions With Choice; and
- c. Mandatory Corporate Actions Without Choice,

which arise in respect of Securities Superhero Securities or the Sub-Custodian holds on your behalf. Such notice will specify a date by which you must return any valid election correspondence in respect of that Corporate Action (**Corporate Action Notice Date**). You acknowledge that the Corporate Action Notice Date may

not correspond with the deadline set by the relevant entity in respect of that Corporate Action.

Additional terms and conditions apply with individual Corporate Actions, Superhero will provide you with any supplementary terms and conditions upon notification of any Corporate Actions you may be entitled to participate in.

#### **6.4. Default Corporate Actions:**

When you acquire Securities via the Superhero Platform, you may be asked to make a default election in respect of certain:

- a. Voluntary Corporate Actions; and
- b. Mandatory Corporate Actions With Choice.

#### **6.5. Voluntary Corporate Actions**

If Superhero Securities or the Sub-Custodian holds Securities in an entity on your behalf and that entity proposes to undertake a Voluntary Corporate Action, then:

- a. if you have instructed Superhero Securities as to whether you wish to participate in that Voluntary Corporate Action, Superhero Securities will use its reasonable best endeavours to give effect to your Instructions; and
- b. if you have not instructed Superhero Securities as to whether you wish to participate in that Voluntary Corporate Action, Superhero Securities will take no further action in respect of that Voluntary Corporate Action.
- c. Superhero does not currently provide access to Dividend Reinvestment Plans and will instead pay any dividend amounts in cash to a customer's Superhero account.

#### **6.6. Mandatory Corporate Action With Choice**

If Superhero Securities or the Sub-Custodian holds Securities in an entity on your behalf and that entity proposes to undertake a Mandatory Corporate Action With Choice, then:

- a. if you have instructed Superhero Securities as to whether you wish to participate in that Mandatory Corporate Action With Choice, Superhero Securities will use its reasonable best endeavours to give effect to your Instruction; and
- b. if you have not instructed Superhero Securities as to whether you wish to participate in the Mandatory Corporate Action With Choice, Superhero Securities will use its reasonable best endeavours to act in accordance with the default terms put forward by the relevant entity in respect of that Corporate Action, except if Superhero Securities has otherwise specified an alternative

default option (for example, in the notice it will endeavour to give to you under clause 6.3 of these Nominee Terms and Conditions).

#### **6.7. Mandatory Corporate Action Without Choice**

If Superhero Securities or the Sub-Custodian holds Securities in an entity on your behalf and that entity proposes to undertake a Mandatory Corporate Action Without Choice, you will:

- a. be required to participate in that Corporate Action; and
- b. not be able to make an election in respect of that Corporate Action.

#### **6.8. General**

- a. If, as a result 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),

Superhero Securities 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 6.8(a), Superhero Securities or the Sub-Custodian holds surplus Securities, it may sell these Securities and distribute the proceeds of the sale proportionally to relevant customers (including you). Superhero Securities reserves the right to retain or sell fractional Securities and not distribute them at its discretion, for legitimate business, prudential or regulatory reasons. Superhero Securities will be entitled to, and will retain, any amounts collected under clause 6.8(a)(ii).

- b. If the terms of a Corporate Action require an election to be made on behalf of Superhero Securities' entire nominee holding in an entity, Superhero Securities reserves the right not to pass on that Corporate Action to you, where it is reasonable to do so. Superhero Securities will use its reasonable 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 as a result of a Corporate Action will be credited to your Superhero Account as soon as reasonably practicable after the date on which those cash proceeds are credited to Superhero Securities' Omnibus Account.
- d. Any Securities allocated to you arising as a result of a Corporate Action will be distributed to your Superhero Account as soon as reasonably practicable after the date on which the security allocation is received by Superhero Securities.

- e. Some Corporate Actions may have withholding tax applied, in which case:
  - i. withholding tax will be deducted from your Superhero Account; or
  - ii. Superhero Securities may sell down your Securities to recover the withholding tax amount.
- f. Upon notification of a security being removed from the official list on the respective Securities Exchange, Superhero Securities reserves the right to transfer the respective Securities out of your Superhero account into the name of the account holder with the respective share register prior to the date of delisting. Where possible, Superhero will make reasonable endeavours to notify you of the delisting and provide you with alternative options regarding your holdings.

## **7. Voting**

### **7.1. General**

Superhero Securities will only exercise the voting rights attached to the Securities it holds on your behalf if and as instructed by you in accordance with this clause 7.

### **7.2. Voting at securityholder meetings**

Superhero Securities will use its reasonable best endeavours to vote at a securityholder meeting in accordance with your Instructions, by lodging a proxy form on your behalf, or by otherwise voting at a securityholder meeting on your behalf. Your voting Instructions must be received before any deadline specified by Superhero Securities, and you acknowledge that any such deadline may not correspond with the deadline set by the relevant entity for voting or lodgement of proxy forms.

## **8. Substantial holder notices**

As bare trustees, neither Superhero Securities nor the Sub-Custodian are 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 NZ Financial Markets Conduct Act and Australian Corporations Act (or other relevant law in other jurisdictions).

## **9. Fees**

In accordance with the Terms and Conditions, you agree to pay the Group's normal Fees, charges and costs, and to reimburse the Group for any extraneous costs such as GST.

## **10. Liability and indemnity**

### **10.1. Liability of Superhero Securities**

Subject to clause 10.2 of these Nominee Terms, Superhero Securities is liable to you for any damage, claim or loss incurred by you in connection with or arising from a failure by Superhero Securities, or any Sub-Custodian engaged by Superhero Securities, to either:

- a. comply with its duties under these Nominee Terms; or
- b. to observe reasonable standards generally applied by providers of custodial services,

provided however, that Superhero Securities will not be liable to you:

- c. in any circumstances for any consequential loss or damage (including any loss of profits, revenue or opportunity); and
- d. for any loss where such losses arises in connection with, or as a result of, the insolvency of any person it has engaged (whether directly or indirectly) to hold such property, provided that Superhero Securities has taken reasonable care in engaging and monitoring compliance by that person with the terms of its appointment.

### **10.2. Limitation of liability**

To the maximum extent permitted by law, in no event shall Superhero Securities, any member of the Group, 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:

- a. any failure by you to comply with these Nominee Terms;
- b. any failure by Superhero Securities to pass on Corporate Actions or arrange for you to exercise voting rights attaching to Securities that Superhero Securities or the Sub-Custodian holds on your behalf in accordance with clause 6 or 7 of these Nominee Terms, respectively; or
- c. Superhero Securities' or the Sub-Custodian's holding of your Financial Products.

### **10.3. Indemnity**

In addition to any other indemnities provided by you under these Nominee Terms, you agree to indemnify and hold Superhero Securities, any member of the Group, 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 as a result of:

- a. 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;
- b. any breach by you of these Nominee Terms; or
- c. Superhero Securities' or the Sub-Custodian's holding of your Financial Products,

and you agree to pay any such costs or the amount of loss or damage to Superhero Securities or the Group on demand.

#### **10.4. Continuing obligation**

Each indemnity in these Nominee Terms (including in this clause 10 and otherwise):

- a. is a continuing obligation, which is independent of and separate from your other obligations; and
- b. survives the termination of these Nominee Terms.

### **11. No Financial Advice**

You acknowledge that Superhero Securities and the Group do not give financial advice or make personalised recommendations. It is therefore your responsibility, before ordering the purchase or sale of any Securities, to assess and evaluate the proposed transaction in light of your financial situation, investment objectives and particular needs. You should seek the advice of a licensed financial advice provider if you require financial advice.

### **12. Encumbrances**

Superhero Securities must not, and the Sub-Custodian is not permitted to, take or grant a charge, mortgage, lien or other encumbrance over, or in relation to, the Financial Products held under these Nominee Terms unless it is:

- a. for expenses and outlays made in accordance with the Terms and Conditions (other than any unpaid fees of Superhero Securities); or
- b. entered into in accordance with your prior written consent.

### **13. Breach reporting**

Superhero Securities will notify you in writing if:

- a. it is aware that it has breached these Nominee Terms in any material respect; or
- b. it no longer intends to be bound by these Nominee Terms.

## **14. Termination**

### **14.1. Termination**

Subject to Superhero Securities' other rights under these Nominee Terms and the completion of any outstanding obligations, these nominee arrangements will terminate on termination of the agreement between you, Superhero Securities and Superhero Markets, established pursuant to the Terms and Conditions.

### **14.2. Closing your Superhero Account**

On termination of these nominee arrangements, Superhero Markets will close your Superhero Account, and Superhero Securities will, subject to clause 18.2 of the Terms and Conditions, sell the Securities 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 you, in accordance with the Terms and Conditions and within a reasonable time.

### **14.3. Business continuity**

Superhero Securities will, and will procure that the Sub-Custodian will, establish, and at all times during these nominee arrangements, maintain business continuity arrangements that are reasonable for a business of the nature, scale and complexity of Superhero Securities' or the Sub-Custodian's business (as applicable).

## **15. Confidentiality**

Superhero Securities must not disclose any confidential information relating to you, apart from any disclosure

- a. to the Financial Markets Authority, ASIC or any other regulatory body as required by law;
- b. as required or permitted by law or by you in writing; or
- c. as permitted under the Terms and Conditions (as may be amended and/or supplemented from time to time).

## **16. Variation**

### **16.1. Variation**

Superhero Securities may from time to time amend or vary these Nominee Terms by publishing the amended Nominee Terms on the Group's website or by giving written notice to you in accordance with the Terms and Conditions.

## **16.2. Date variation takes effect**

If Superhero Securities varies these Nominee Terms, the changes shall apply to all dealings between you and Superhero Securities on and from the day on which the variation takes effect and your continued use of the Superhero Platform is acceptance of the variation.

## **17. Severance**

If any part of these Nominee Terms is found to be void or unenforceable (for example, if a court or other tribunal or authority declares it so), the remaining parts of these Nominee Terms will continue to apply.

## **18. No waiver**

No waiver of any breach of these Nominee Terms will be affected unless the waiver is in writing and signed by the party against whom the waiver is claimed.

## **19. Governing laws**

These Nominee Terms are governed by and interpreted in accordance with the laws of New South Wales, Australia. You submit to the non-exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts.

## **20. Definitions and interpretation**

### **20.1. Terms used in these Nominee Terms**

A term which has a defined meaning in the Terms and Conditions has the same meaning when used in these Nominee Terms unless it is expressly defined in these Nominee Terms, in which case the meaning in the Nominee Terms prevails.

### **20.2. Definitions**

In these Nominee Terms, unless expressly provided otherwise:

**“ASIC Regulatory Guide 133”** means Australian Securities and Investments Commission Regulatory Guide 133 ‘Funds Management and Custodial Services: Holding Assets’.

**“Corporate Action”** means an action taken by an entity in which Superhero Securities or the Sub-Custodian holds Securities 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 6.3 of these Nominee Terms.

**“Effective Date”** means the date on which you sign-up to use the Superhero Platform and agree to be bound by the Terms and Conditions.

**“Financial Products”** has the meaning given to that term in clause 1.2 of these Nominee Terms.

**“Indemnified Parties”** has the meaning given to that term in clause 10.3 of these Nominee Terms.

**“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 Securities.

**“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.

**“Omnibus Account”** has the meaning given to that term in clause 1.4 of these Nominee Terms.

**“Sub-Custodian”** has the meaning given to that term in clause 3.1 of these Nominee Terms, and is FinClear Pty Ltd ACN 607 164 714

**“Terms and Conditions”** means the terms and conditions issued by Superhero Markets and Superhero Securities which apply in respect of all dealings between you, Superhero Markets and Superhero Securities, as amended from time to time.

**“Voluntary Corporate Action”** means a Corporate Action which is discretionary, being a Corporate Action in which a securityholder may elect to participate. Examples of Voluntary Corporate Actions include takeover offers, share purchase plans, or dividend or distribution reinvestment plans.

### 20.3. Interpretation

Clause 24.2 (“Interpretation”) of the Terms and Conditions applies to the Nominee Terms.

*--- End of Terms and Conditions ---*