



BROKERMATE PTY LTD

ACN: 612 582 420

TERMS OF SERVICE

BROKERMATE™

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Updated January 18, 2019

1. Introduction

- A. Welcome to Brokermate. Through our www.brokermate.com website and our Brokermate progressive web app (together, “Site”) we provide subscription access to a hosted software platform, as described in further detail below (“Software”) to start or streamline your brokerage business (collectively, the “Services”). The Site is owned and operated by Brokermate Pty Ltd (collectively, “Brokermate”, “we”, “us” or “our”).
- B. Your use of our Site and our Services is governed by these Terms of Service and our privacy policy (which may be found at www.brokermate.com, and which is incorporated by reference herein (“Privacy Policy”), both of which as currently exist and as amended from time to time (collectively, these “Terms” or the “Agreement”). References to “User”, “you” or “your” mean you as an account holder for and user of the Services.
- C. **IMPORTANT – PLEASE READ CAREFULLY.** By clicking the “I Accept & Agree” box on your screen, or by using the Site or the Services, you indicate that these Terms (including the Privacy Policy) form and are a binding agreement between us and you regarding your use of the Software and the Services. IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY NOT USE THE SITE OR THE SERVICES. **IMPORTANT: THESE TERMS CONTAIN AN ARBITRATION PROVISION REQUIRING ALL CLAIMS TO BE RESOLVED BY WAY OF BINDING ARBITRATION, AND ALSO CONTAINS A CLASS ACTION WAIVER.** Please carefully review Sections 24 and 26 of these Terms for more information.

2. Changes to the Terms

- A. We regularly update and improve the Services, and may at times remove features in order to improve your ability to use the Services. Because we are constantly trying to improve our Services, these Terms may also need to

change. We reserve the right to change the Terms at any time, but if we do, we will bring it to your attention by placing a notice on the Site, by sending you an email, or by some other means.

- B. If you don't agree with the new Terms, you are free to reject them; unfortunately, that means you will no longer be able to use the Services. If you use the Services in any way after a change to the Terms is effective, that means you agree to all of the changes.
- C. Except for changes by us as described here, no other amendment or modification of these Terms will be effective unless in writing and signed or otherwise consented to by both you and us.
- D. When we modify these Terms, we will post them on the home page of our Site and will be effective immediately upon posting. We will also have a notice on the login page and the welcome page (which appears after you log in). We will also send an email to you notifying you that the Terms have been modified. You can review the most current version of the Terms at any time by clicking on the "Terms of Service" link located on webpages throughout the Site. You agree to review the Terms from time to time to ensure you are updated as to any modifications. With respect to such modified Terms, we may, at its sole discretion, require you to execute a "click accept" agreement incorporated into or as a condition of accessing and/or downloading the Software or using the Services after initial delivery. Even without such "click accept" agreement, your continued use of the Software or the Services after such modifications will constitute your acknowledgement and agreement of the modified Terms. By continuing to use the Site or Services following any such modification, you accept and agree to be bound by such modifications. IF ANY MODIFICATION IS NOT ACCEPTABLE TO YOU, YOUR SOLE AND EXCLUSIVE REMEDY AND RECOURSE IS TO DISCONTINUE USE OF THE SITE AND THE SERVICES.

3. **Privacy**

- A. We will maintain and use your "Personal Information" as defined in and according to our Privacy Policy.

- B. **Use By Minors.** Please note that we do not knowingly collect or solicit Personal Information from children under 13. If you under 13, please do not attempt to register for the Services or send any Personal Information about yourself to us. If we learn we have collected Personal Information from a child under 13, we will delete that information as quickly as possible. If you believe that a child under 13 may have provided us Personal Information, please contact us.

4. **Registration; Account Ownership**

- A. The Services are intended for access and use by individuals over 18 years of age, and by agreeing to the Terms you represent (i) that you are at least 18 years old and reside in a state, region, or country in which our Services may legally be provided, (ii) you are the person whose name and other information have been provided for the account that you have or are creating, (iii) that you have not previously been suspended or removed from the Service, and (iv) that your registration and your use of the Service is in compliance with any and all applicable laws and regulations. If you are using the Service on behalf of an entity, organization, or company, you represent and warrant that you have the authority to bind such organization to these Terms and you agree to be bound by these Terms on behalf of such organization.
- B. All of the information that you supply to us in creating your User account must be accurate. You are responsible for maintaining the confidentiality of your account and password. We may reject any user name that violates these Terms, including any user name that uses another person's identity or that violates our community and content guidelines.
- C. We may use the email you provide to us in your account profile to provide you with service messages and updates. By becoming a User you are consenting to the receipt of these communications.
- D. You are responsible for authorizing, deauthorizing and administering account access.
- E. You are responsible for maintaining confidentiality of all passwords.

5. **The Services**

A. The Software comprises a web-based hosted software application platform maintained by us and currently having the following components and features (and any additional, revised, or changed list of components we make available):

i. For Brokermate Lite subscription:

- (1) Margin Engine;
- (2) Pricing Engine;
- (3) Execution Engine;
- (4) Reporting and Analytics Engine;
- (5) CRM and web-based back office system;
- (6) Marketing and web-based campaign management system;
- (7) Support and web-based ticket management system;
- (8) Compliance and web-based client verification system;
- (9) Client Portal;
- (10) Trading Platform; and,
- (11) Generated User Agreements and Disclosure Documents;

ii. For Brokermate Pro subscription:

- (1) All of the components/features of Brokermate Lite, plus
- (2) Risk Management Engine, and,
- (3) Custodial Management Engine

We have the right to discontinue any features, components, or other aspects of the Software or the Service at any time, with or without notice to you.

B. Risk of Use.

i. You agree that you have sole discretion and bear the sole responsibility in whether and/or how to use the Risk Management Engine and the Custodial Management Engine.

ii. Generated User Agreements and Disclosure Documents are provided for you to use with your End Users. The generation of these Agreements and Disclosure Documents does not constitute legal

advice and may not be appropriate in every jurisdiction. You should consult an independent and licensed legal practitioner before utilizing these.

- iii. You understand and agree that the use of the Risk Management Engine, Custodial Management Engine, and Generated User Agreements and Disclosure Documents will be at your own risk and agrees that you will indemnify and hold us harmless from any and all loss, expense, or detriment which may be caused by the Custodial Management Engine to you or any of your End Users, including as a result of your negligence.
- C. Your clients who receive financial services from you or who access the Software via your account ("**End Users**") will enter into transactions, via the Software, with you acting as the direct principal to such transactions. We will in no circumstances be deemed a principal to any transactions with End Users. Therefore, we will not be responsible and/or liable for any financial services you provide to End Users. You are solely responsible to ensure full compliance with any laws and regulations applicable to you in offering financial services to the End Users.
- D. The Services to be provided by us to you under these Terms shall not be considered as financial services provided by us to you or the End User.
- E. Under a Brokermate Pro subscription, the parties acknowledge and agree that for any transactions entered by the End Users with you via the Software, you have the sole discretion in deciding whether to: (i) match by equivalent back-to-back offsetting transactions with the liquidity provider; or (ii) for subscription to Brokermate Pro utilize the Risk Management Engine to act as the counterparty to all End User transactions.
- F. Under a Brokermate Lite subscription, the parties acknowledge and agree that for any transactions entered by the End Users with you via the Software, you shall enter transactions with the liquidity provider.
- G. Customized Software Interface. As part of the Services we provide, you will be provided with a software interface containing your name and brand. We

will also provide a click-through screen and we will upload your End User agreement to which your End Users must agree prior to using the Software or the Services available to them through the Software interface.

6. **Third-Party Services**

- A. We have relationships with various third-party services providers to provide the following services in connection with the Services, including: liquidity and market data; background checks as required under applicable law for End Users (such as, but not limited to, the Australian AML/CTF Laws (The Anti-Money Laundering and Counter-Terrorism Financing Act of 2006 (Cth) and all regulations, rules and instruments made under it); client qualification test; margin engine services; derivative trade reporting; and, merchant facilities. We have the sole discretion in changing and/or choosing which third-party service providers the Services uses. You agree to be bound by the terms and conditions of these third-party service providers for the provision of the services and pay for any associated third-party service fees.

7. **Right to Access**

- A. We grant you a personal, limited, non-transferable, non-exclusive right to access and use the Services which you have purchased (either Brokermate Lite or Brokermate Pro) and as set forth in these Terms, provided that (i) your use of the Service as permitted hereunder is solely for your use and that of your End Users; (ii) you will use the Site and the Services only for purposes that are permitted by these Terms; (iii) you will not alter, adapt or otherwise modify any part of the Service other than as may be reasonably necessary to use that part of the Service for its intended purpose; (iv) you will use the Site and the Services in accordance with all applicable laws and regulations; (v) you will otherwise comply in full with these Terms; and, (vi) you will not distribute or transfer any portion of the Site on any media without our prior written approval. The right granted herein is subject to your compliance with all applicable laws and regulations, including, but not limited to, guidelines of clearing organizations on or through which orders for End Users may be executed and of any self-regulating organization to which you or we may be subject.

8. **Availability of the Services**

- A. Availability. We shall use commercially reasonable efforts to provide continuous access to the Services. We do not guarantee that the Services will be accessible at all times. The Services may be unavailable during maintenance periods or during an emergency. In addition to normal maintenance, there may be events that will make the Service inaccessible for a limited amount of time due to unforeseen circumstances. We reserve the right to change your password if we believe it is unsecure. We have the right to refuse to provide access to the Services. We have right to cease offering the Services at any time and in our sole discretion.
- B. Force Majeure Events. We shall not be liable to you or any other person, firm or entity for any unavailability of the Services if such failure is due to any cause beyond our reasonable control, including, but not limited to strikes, walkouts, labor shortages, lockouts, or work stoppages or other labor difficulties; riots, vandalism, war, insurrections, acts of terrorism, fires, floods, storms, explosions inclement weather, or other acts of God or nature, third-party provider outages, cable cuts, power crisis shortages, internet failures, computer equipment failures, telecommunication equipment failures, other equipment or network failures, electrical power failures, loss of or fluctuations in heat, light, or air conditioning, or other similar occurrences; any law, order, regulation, direction, action or request of a government or governmental agency (including foreign, federal, state and local governmental agency, department, commission, court, bureau, corporation or other instrumentality of any one or more of the foregoing) or of any civil or military authority; or, national emergencies, failures, shortages, breaches or delays. Any of the foregoing events may lead to delays in the execution certain transactions as well as incorrect quotes and pricing.
- C. We can subcontract services, such as, but not limited to, outside hosting and storage, to third parties.

9. **Restrictions on Use**

- A. You must use the Services in a way that does not violate these Terms, the terms and conditions of the respective service partners, or any applicable

local, state or federal laws and regulations. The Services may only be used for the intended purpose for which such Services are being made available. You acknowledge and agree that we may, at our sole discretion, terminate your access to the Services for any reason or for no reason at all, without prior notice, or any notice.

- B. You agree that you will not, and will not attempt to:
- i. modify, translate, adapt or otherwise create derivative works or improvements, of the Software or any content or source code;
 - ii. reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
 - iii. rent, lease, lend, sell, resell, sublicense, assign, distribute, publish, publicly perform or display, transfer or otherwise make available the Software or any features or functionality of the Software, to any third party for any reason, including by making the Software available on a network where it is capable of being accessed by more than one device at any time;
 - iv. use the Software or the Service in any way that is in violation of applicable law or regulation;
 - v. use the Software or the Service in any way that (a) harasses, abuses, threatens, defames or otherwise infringes or violates the rights of others; uses technology or other means to access our proprietary information that is not authorized by us; computer network or user accounts; (b) encourages conduct that would constitute a criminal offense, or would give rise to civil liability; (c) "stalks" or otherwise harasses any person; (d) asks users or uses users to conceal the identity, source, or destination of any illegally gained money or products; (d) collect usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email or unauthorized framing of or linking to the Software; or, (f) forges headers or otherwise manipulates identifiers in order to

disguise the origin of any information transmitted to or through the Software (either directly or indirectly through use of third party software);

- vi. remove, disable, circumvent or otherwise create or implement any workaround to any copy protection, rights management or security features in or protecting the Software;
- vii. upload or introduce any virus or malware to the Software;
- viii. interfere with the operation or availability of the Software, or the hardware, software and network(s) used to operate the Software;
- ix. sublicense or transfer any of your rights under these Terms or otherwise use the Service for the benefit of a third party, to operate a service bureau or for resale of the Service;
- x. create or access user accounts using any automated means or under false pretenses;
- xi. frame or mirror the Software or reformat it in any way or use deep links;
- xii. use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Software or its contents;
- xiii. uses meta tags or code or other devices containing any reference to us or the Software (or any of our trademarks, trade names, service marks, logos, or slogans) to direct any person to any other website for any purpose;
- xiv. introduce any keystroke logging or any other monitoring code into the Software; or,
- xv. otherwise use the Service or the Software in any manner that exceeds the scope of the access right described above.

- C. You agree to not perform any security test activities related to the Software or the Services or associated infrastructure without our prior written

consent, including, but not limited to: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing.

- D. Geographic Restrictions. Use of the Services may be prohibited or restricted in certain countries. You acknowledge that you may not be able to access all or some of the Services depending on which country you are based in or in which you are using the Services, and that access thereto may not be legal by certain persons or in certain countries. You are responsible for compliance with local laws.

10. **Data and Personal Information**

- A. Our policies and practices regarding the collection, use, storage, transfer and retention of any personal information you or your End Users submit are set out in our Privacy Policy. For any information you and your End Users upload or enter into the Software or by using Services, you consent to our using such information for our internal business purposes, and publishing or distributing reports for any purpose containing your information that has been de-identified and/or aggregated. We do not sell, rent, or lease your or your End User's identifiable (i.e., not de-identified or non-aggregated) Personal Information. We have the right to disclose your information and that of your End Users to third parties who provide services to us in support or related to the Software or Services, including, but not limited to, compliance verification of your End Users, due diligence, and verification of proof of your licensed brokerage

11. **Data Retention, Backup and Deletion**

- A. Data and content uploaded to the Services is backed up periodically, but we are not responsible for storing or retaining data or content and we shall not be liable for any loss, deletion or alteration of any posted content or user data. Users should have a backup copy of their data and content before uploading.

- B. We reserve the right to deactivate any User accounts which have not been active for at least six (6) months. We reserve the right to delete data in deactivated, closed, or terminated accounts.
- C. Notwithstanding the foregoing in this section, we will retain data, at a minimum, for as long as is required under applicable law.

12. **Fees**

- A. You agree to pay the subscription fee for the applicable Service (Brokermate Lite or Brokermate Pro) purchased as set forth on our Site, and any additional fees resulting from add-ons, services, and additional features you choose to purchase (collectively, the "**Fees**").
- B. We may revise the Fees at any time by sending an email to the email address in your account profile at least thirty (30) days' in advance, by posting the revised Fees on our Site, and/or by posting a notice on the "My Service Plan" area on your account profile page to show the new pricing.

13. **Trial Offer.**

- A. To provide you with an opportunity to try our Services, we may offer a limited time trial (the "**Trial**"). The terms of the Trial are as follows:
 - i. The Trial is for the period as advertised, starting from the date on which the Trial is offered.
 - ii. You are only allowed to have ONE Trial per account.
 - iii. At the end of the Trial, we will notify you and, unless you log in and provide your billing information and make a payment sufficient to cover the first month's fees ("**Subscribe**"), we have the right to disable your account and access.
 - iv. If you do not Subscribe within following the end of the Trial, we will terminate your access.

14. **Billing; Payment**

All amounts charged and all payments shall be made in Australian dollars. When you subscribe to the Services, you acknowledge, agree, and accept that:

- A. You are responsible for paying the monthly or annual fee(s) associated with your account on the payment due date, for as long as your account is open, regardless of whether or not you are logging into your account or using the Services.
- B. Recurring Payments.
 - i. Where you have given us credit card pre-authorization for recurring charges, we will automatically charge the credit/debit card on file for your account (the "payment method") for any and all monies owing on your account, for as long as your account is open, regardless of whether or not you are logging into your account or using the Services.
- C. If we are unable to collect payment from the payment method, for whatever reason, we reserve the right to continue to attempt to collect payment from the payment method until such time as payment collection is successful or the related account is deleted.
- D. In no event shall we be held responsible or otherwise liable for any fees assessed to you, or any other person or party, by any bank or financial institution as a result of any billing action related to your account and/or the Services.
- E. Any chargebacks we receive with respect to any payments collected from the payment method on your account will result in the immediate interruption and/or termination of your account and all associated Services.
- F. You are solely responsible for updating the payment method as necessary.
- G. We reserve the right to change the price of any of the Services, at any time, with or without notice. In any case where notice is given, such notice will be sent to the email address on file for your account. The new fees will apply starting on the next month you are charged.
- H. Monthly billing statements are posted to the "My Service Plan" area of your account on the day any charge(s) occur. Monthly billing statements are also emailed to the email address on file for your account on the day any charge(s) occur.

- I. In the event of termination, there is no refund.

15. **Suspension of Service**

- A. Suspension. We may suspend your account and access to the Service, with or without notice, if you violate any provision of these Terms. Upon any suspension of your account, all Service associated with your account will be suspended or otherwise made inaccessible until and unless all issues are addressed and resolved by you, to our satisfaction, and within the time frame we specify. During any suspension of your account or any individual Service, you will not be permitted to: (i) add, upgrade, downgrade or modify any of the Service; (ii) request an emergency restoration; (iii) transfer any Service; or, (iv) access any of the areas or content associated with the suspended Service or account. You agree to hold us harmless from and against any and all claims, losses or damages arising from any suspension of your account or the individual Service.

16. **Term; Termination**

- A. Term. The terms of these Terms shall commence upon your use of the Site and shall continue until terminated.
- B. Termination.
 - i. We reserve the right to stop providing the Service to you or access to the Site at any time for any reason and without prior notice.
 - ii. You may terminate or close your account at any time by cancelling your subscription in the "My Service Plan" area of your account page. We will continue to provide access until the end of your billing cycle, at which time access will be terminated.
 - iii. We reserve the right, in our sole discretion, to close your account, without prior notice, for any one or all of the following: (a) if you or any of your authorized users breach any section of these Terms, any supplemental rules and guidelines, any of the terms and conditions of the respective service providers, or any of our rights, whether intentionally or unintentionally; (b) if we receive notice that you or your company will be or is subject to bankruptcy or insolvency

proceedings; (c) upon our receipt of any third party chargeback associated with any payment method tendered as payment on your account; (d) if, in our judgment, your use of the Service has the potential to pose any harm to us, any of our affiliates, partners, service providers or customers; (e) if your account becomes past due; (f) if an unusual spike in resource usage is detected by our systems resulting in an account far outstripping the allotted resources; (g) if you fail to cure any suspension of your account or any individual Service, to our satisfaction, and within the time frame we specify; or, (h) if, in our judgment, we have received too many complaints about your content. In the event of any such closure of your account, you will not be eligible for a refund of any fees and you may be prohibited from reopening your account, opening a new account or accessing any existing account. You agree that we shall not be liable, in any way, for any closure pursuant to this section of the Terms.

- iv. Upon any closure of your account: (a) the Terms and all rights granted under the Terms shall cease immediately (except those expressly surviving or which by their nature would survive); (b) all access to the Service and your account will cease immediately; (c) you will be billed for, and we may automatically collect from your payment method, any outstanding amount owed; and, (d) all of your data and Content will (at our option) be deleted from our servers and backup systems and we may not have or keep backup of the data and Content. We recommend that you run very regular backups. As well, we also recommend that you ensure you have retrieved all data and Content and made all necessary backups before submitting any request to close your account or any of the Service. You agree to hold us harmless from and against any and all claims, losses or damages arising from any closure of your account. Any and all sections in the Terms which impose obligations continuing in their nature shall survive closure or otherwise continue to remain in full force and effect even after account closure. You are not permitted to access

your account or any of the Service formerly associated with your account following any closure.

- v. If your account is current and if you have not violated these Terms, then upon your written request within thirty (30) days of closure of your account we will provide you with an electronic file with your data.

17. **Intellectual Property**

- A. You agree that use of the Service does not constitute any basis for ownership of the Service and that we, our affiliates or our licensors own all legal right, title, and interest in and to the Service and all information, materials, images, software, photographs, articles, functions, text and other content solely provided by or on our behalf on the Service (specifically excluding any User Content is, as between you and us, our the sole property. The Service and Software, and the selection and arrangement thereof, are protected under the copyright laws and other intellectual property laws of Australia and other countries. We reserve all rights not expressly granted herein in and to the Service and Software. Unless otherwise noted, our name and all other trademarks, service marks, trade names, logos or other designations of source displayed on the Service are our property, or that of our affiliates or licensors. All third party trademarks, service marks, trade names, logos or other designations of source are the property of their respective owners. Nothing on the Service shall be construed as granting any license or right not expressly set forth herein. Any unauthorized use of the Service will terminate the permission or license granted herein and may violate applicable law.
- B. Any improvements or modifications you suggest we shall own, and you agree to and do hereby assign to us all your right, title and interest in and to any modifications and improvements automatically upon creation and without the need for further action, consideration, or notice to affect such assignment.

18. **Disclaimers**

- A. THIS SITE AND THE MATERIALS, INFORMATION, SERVICES, AND PRODUCTS IN THIS SITE, INCLUDING, WITHOUT LIMITATION, TEXT, GRAPHICS, AND LINKS, ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED OTHER THAN AS EXPRESSLY STATED HEREIN. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, FREEDOM FROM COMPUTER VIRUS, AND WARRANTIES ARISING FROM COURSE OF DEALING, OR COURSE OF PERFORMANCE OR USAGE OF TRADE. WE DO NOT REPRESENT OR WARRANT THAT THE FUNCTIONS CONTAINED IN THE SITE, SOFTWARE, OR RELATED TO THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE, SOFTWARE, OR RELATED TO THE SERVICES OR THE SERVER THAT ENABLES THE SERVICES TO BE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE DO NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING THE USE OF THE MATERIALS IN THIS SITE IN TERMS OF THEIR COMPLETENESS, CORRECTNESS, ACCURACY, ADEQUACY, USEFULNESS, TIMELINESS, RELIABILITY OR OTHERWISE. THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. WE ARE NOT RESPONSIBLE FOR THE ACTIONS OR INFORMATION OF THIRD PARTIES, AND YOU RELEASE US FROM ANY CLAIMS AND DAMAGES, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY CLAIM YOU HAVE AGAINST ANY SUCH THIRD PARTIES.

19. **Limitation of Liability**

- A. THE SITE, SOFTWARE, AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE SHALL NOT BE LIABLE FOR ANY DAMAGES YOU OR ANY OTHER PERSON MAY SUFFER. NOTWITHSTANDING THE FOREGOING, YOU AGREE THAT IN NO EVENT WILL WE BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND DAMAGES RELATED TO CORRUPTION OR DELETION OF THE SERVICES) ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR YOUR

USE OR INABILITY TO USE THE SERVICE (INCLUDING, BUT NOT LIMITED TO, INOPERABILITY OF OUR OR OUR CONTRACTORS' SERVERS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS INCLUDES, BUT IS NOT LIMITED TO, ANY LOSS THAT MAY OCCUR DUE TO ANY LOSS OF THE SERVICE, THE USE OF THE SERVICE, ACCESS DELAYS OR ACCESS INTERRUPTIONS TO THE SERVICES, THE NON-DELIVERY OR MIS-DELIVERY OF DATA BETWEEN YOU AND US, EVENTS BEYOND OUR REASONABLE CONTROL, THE NON-RECOGNITION OF OUR HOSTING SERVERS, THE FAILURE OF YOU OR YOUR AGENT TO PAY ANY FEES HEREUNDER, THE PROTECTION OR PRIVACY OF ELECTRONIC MAIL OR OTHER INFORMATION TRANSFERRED THROUGH THE INTERNET OR ANY OTHER NETWORK PROVIDER OR SERVICE ITS CUSTOMERS MAY UTILIZE, OR THE APPLICATION OF ANY POLICY SET FORTH HEREIN.

- B. YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH US, OUR OWNERS, SUBSIDIARIES, DIRECTORS, EMPLOYEES, ATTORNEYS, AFFILIATES, AGENTS, REPRESENTATIVES, AND LICENSORS ARISING OUT OF OR RELATING TO THE SERVICE OR ANY USER CONTENT IS TO STOP USING THE SERVICES, AND TO CANCEL YOUR ACCOUNT. YOU ACKNOWLEDGE AND AGREE THAT WE, OUR OWNERS, SUBSIDIARIES, DIRECTORS, EMPLOYEES, ATTORNEYS, AFFILIATES, AGENTS, REPRESENTATIVES, AND LICENSORS ARE NOT LIABLE FOR ANY ACT OR FAILURE TO ACT BY THEM OR ANY OTHER PERSON REGARDING CONDUCT, COMMUNICATION OR CONTENT ON THE SERVICES. IN NO CASE SHALL THE LIABILITY OF US, ITS OWNERS, SUBSIDIARIES, DIRECTORS, EMPLOYEES, ATTORNEYS, AFFILIATES, AGENTS, REPRESENTATIVES, AND LICENSORS TO YOU EXCEED THE GREATER OF THE AMOUNT THAT YOU PAID TO US FOR THE SERVICE OR ONE HUNDRED AUSTRALIAN DOLLARS (AU\$100).
- C. Exceptions on Non-Allowance of Exclusion.
- i. BECAUSE SOME STATES, COUNTRIES, OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE OR

INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, OUR LIABILITY, OUR OWNERS, SUBSIDIARIES, DIRECTORS, EMPLOYEES, ATTORNEYS, AFFILIATES, AGENTS, REPRESENTATIVES, AND LICENSORS SHALL BE LIMITED TO THE FULL EXTENT PERMITTED BY LAW.

20. **Indemnification**

- A. By utilizing the Site, the Software, or the Services you agree to indemnify, defend and hold us and our officers, directors, employees, agents, representatives, and affiliates harmless from and against any and all liability, losses, costs, and expenses (including attorneys' fees) incurred by us or any third party through (i) your use of the Site, the Software, or the Services; (ii) your posting or transmission of data or Content in violation of these Terms (including, but not limited to, negligent or wrongful conduct, infringement of any third party's intellectual property, confidentiality, privacy or publicity rights); (iii) claims against us asserted by any End Users or third parties in connection you're your provision of financial services via the Services, including any actions, omissions and negligence by you; (iv) any regulatory actions, enquiries, investigations by any governmental bodies (against us and/or you) in relation to your provision of financial services via the Software or the Services; (v) any errors, unavailability, disruptions, dysfunction and any other technical issues to the Software or the Services, which may or may not result in a financial loss and/or loss of opportunity to you and/or any End Users; and, (vi) any matters and/or claims arising out of your provision of financial services and/or holding of the End Users' client money. You also agree to take sole responsibility for any royalties, fees or other monies owed to any person or entity by reason of any content you post or transmit through the Service we provide. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim. This Section shall survive any expiration or termination of the Terms.

21. **Cooperation with Law Enforcement and Government Agencies; Required Disclosures**

- A. You acknowledge that we have the right to investigate and prosecute violations of these Terms, including intellectual property, publicity and privacy rights infringement and Site security issues, to the fullest extent of the law. We may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms. You acknowledge that we have no obligation to monitor your access to or use of the Services, but we have the right to do so for the purpose of providing the Services, to ensure your compliance with these Terms or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental or regulatory body.
- B. You understand and agree that we may disclose your Personal Information if required to do so by law, court order, legal process, or subpoena, including to respond to any government or regulatory request, or if we believe that such action is necessary to (a) conform to the law, comply with legal process served on us or our affiliates or partners, or investigate, prevent, or take action regarding suspected or actual illegal activities; (b) to enforce these Terms (including for billing and collection purposes), take precautions against liability, to investigate and defend ourselves against any third-party claims or allegations, to assist government enforcement agencies, or to protect the security or integrity of our Site; or, (c) to exercise or protect the rights, property, or the safety of us, our users or others.

22. **Taxes.** If any country, federal, provincial, regional, state or local governmental entity with taxing authority over the Service imposes a tax, duty or fee directly on the Service provided to you by us under the Terms (excluding any income, business and occupation, capital gain, death or inheritance, or other indirect taxes), then we may pass the direct amount of such tax on to you, and you shall promptly pay that tax.

23. **Disputes; Resolution**

- A. Time Limitation. Any claim or action against us must be brought within twelve (12) months of the cause arising, otherwise such claim or action is permanently barred.

B. Arbitration

- i. In the event of any dispute, claim, question or disagreement arising from or relating to the Terms or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the parties do not reach such solution within a period of thirty (30) days, then, upon notice by either party to the other, such dispute, claim, question or disagreement shall be resolved by binding arbitration in New South Wales, Australia in accordance with the Australian arbitration association (the "AAA"), subject to the limitations of this Section. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction. Notice of a demand for arbitration shall be filed in writing with the other party hereto and with the AAA. The demand for arbitration shall be made within a reasonable time after the dispute has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations. The parties agree that one (1) arbitrator shall arbitrate the dispute. The arbitrator shall be selected by the joint agreement of the parties, but if they do not so agree within twenty (20) days after the date of the notice of a demand for arbitration referred to above, the selection shall be made pursuant to the Commercial Arbitration Rules of the AAA from the panels of business arbitrators maintained by the AAA. The decision of the arbitrator shall be made in writing and shall be final. Judgment may be entered upon it in any court having jurisdiction thereof, and the decision shall not be subject to vacation, modification or appeal, except to the extent permitted by applicable section of the applicable arbitration act, the terms of which Sections the parties agree shall apply. The expenses of arbitration, including

and the fees and expenses of the arbitrator and the AAA, shall be shared equally by the parties.

- ii. The arbitrator will have no authority to award attorneys' fees, punitive damages, or any other monetary relief not measured by the prevailing party's actual damages and each party irrevocably waives any claim thereto. The award may include equitable relief. The arbitrator will not make any ruling, finding, or award that does not otherwise conform to the Terms. The arbitrator may render a summary disposition relative to all or some of the issues, provided that the responding party has had an adequate opportunity to respond to any such application for such disposition.
- iii. The parties agree to treat all aspects of the arbitration as confidential, as provided in the AAA Rules. Before making any disclosure permitted by the Rules, a party shall give written notice to the other party and afford such party a reasonable opportunity to protect its interests. Further, judgment on the arbitrators' award may be entered in any court having jurisdiction.

24. **Governing Law; Jurisdiction, Venue**

- A. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Australia and the State of New South Wales and any claim made by one party against the other in any way arising out of this Agreement will be heard in New South Wales and the parties submit to the exclusive jurisdiction of the courts and tribunals in that State. We and you agree to submit to the exclusive jurisdiction of the courts located within New South Wales for entering any arbitrator's decision or award. Notwithstanding this, we and you will still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

25. The Terms shall not be governed by the United Nations Convention on the International Sale of Goods.

26. **CLASS ACTION WAIVER. Any proceedings to resolve or litigate any dispute in any forum will be conducted solely on an individual basis. Neither you nor we**

will seek to have any dispute heard as a class action or in any other proceeding in which either party acts or proposes to act in a representative capacity, and each party hereby waives any right to assert consolidated claims with respect to any disputes subject to arbitration under these Terms or any disputes between the parties. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.

27. **WAIVER OF JURY TRIAL.** Each party irrevocably and unconditionally waives any right it may have to a trial by jury for any legal action arising out of or relating to these terms or the transactions contemplated hereby.
28. **Location of Operation.** Our Site is operated in Australia, and we make no representation that content provided is applicable or appropriate for use in other locations. We make no claims that the Site or any of its content is accessible or appropriate outside of Australia. Access to the Site may not be legal by certain persons or in certain countries. If you access the Site from outside Australia, you do so on your own initiative and are responsible for compliance with local laws. Your use of the Site does not subject us to judicial process in or to the jurisdiction of courts or other tribunals in your jurisdiction or location.
29. **General**
- A. Agreement. These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference herein, constitute the entire and exclusive understanding and agreement between you and us regarding your use of and access to the Site, and except as expressly permitted above may only be amended by a written agreement signed by authorized representatives of the parties. You may not assign, convey or transfer the Terms or your rights hereunder, in whole or in part, by contract, operation of law or otherwise, without our prior written consent. We may assign, transfer or convey all or part of the Terms at any time without notice, and you consent to such assignment, transfer or conveyance. In the event that any part of the Terms is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent possible and the remaining parts will remain in full force and effect. Upon termination of the Terms, any

provision which, by its nature or express terms should survive, will survive such termination or expiration. Our failure to exercise or enforce any right or provision of these Terms, including any failure to act with respect to a breach, will not constitute our waiver of such right or our right to act with respect to subsequent or similar breaches.

- B. Headings. The headings of sections and paragraphs in these Terms are for convenience only and shall not affect its interpretation.
- C. Independent Contractor Relationship. The parties intend that an independent contractor relationship will be created by these Terms, and that no additional partnership, joint venture, employee, employer or other relationship is intended. You agree not to hold yourself out as in any way sponsored by, affiliated with, endorsed by, in partnership or venture with, nor as an employee or employer of us, any of our affiliates or respective service providers.
- D. Notice. You agree that we may provide you with notices, including those regarding changes to these Terms, by email to the address you provided at the time of registration or such changed address as you provide to us by updating your account profile.
- E. Our Contact Information. You may contact us at support@brokermate.com.