

DSG Marketplace Terms and Conditions

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These Terms and Conditions (including the Privacy Policy, Risk Disclosure, Fee Schedule, and collectively, the “**Terms**”) are a legally binding agreement between DSG Services NZ Limited, a company incorporated in New Zealand with company number 9000202 and registered address 9a Garelja Rd, Henderson, Auckland, 0612, New Zealand (“we”, “us”, “DSG” or ...) and “**you**” (an individual, or an entity acting through an authorized individual). DSG is registered on the New Zealand register of financial service providers (FSP number FSP1007264) in respect to the provision of the DSG Services in New Zealand. DSG is not licensed by a New Zealand regulator to provide the DSG Services. DSG’s registration on the New Zealand register of financial service providers does not mean that DSG is subject to active regulation or oversight by a New Zealand regulator.

Please read these Terms carefully, as they are binding and govern your use of our services, websites, and platforms through which you access our DSG Services (“**Platform**”).

Operative provisions

1. Definitions and interpretation

1.1 Definitions

The following words have these meanings in this agreement unless the contrary intention appears –

Aggregate Net Value means the net value of the relevant assets calculated as the greater of:

- (a) the net tangible asset value or, for leased assets, the value of the right of use (in each case, from the most recently published financial statements of the relevant Issuer, if applicable); or
- (b) market value

Applicant means a prospective issuer of financial products which has submitted its application to DSG to become an Issuer

Asset means a financial product that is Listed on the DSG Market and is able to be traded by Users

Associated Party a person (A) is associated with, or an Associated Person of, another person (B) if:

- (a) A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa);
- (b) B is a body corporate and A has the power, directly or indirectly, to exercise, or control the exercise of, more than 50% of the Votes attaching to the Financial Products of B (or vice versa);
- (c) A and B are Relatives or related bodies corporate which has the meaning ascribed to it in section 12(2) of the FMCA;
- (d) A and B are partners to whom the Partnership Law Act 2019 applies;
- (e) A is a director or Senior Manager of B (or vice versa); or
- (f) A and B are acting jointly or in concert;
except that:
- (g) A is not an Associated Person of B merely because:

- (i) A acts as a professional or business adviser to B, without a personal financial interest in the outcome of that advice;
 - (ii) A's ordinary business includes dealing in financial products on behalf of others and A is acting in accordance with the specific instructions of B;
 - (iii) A acts as a proxy or representative of B for the purposes of a meeting of holders of financial products; or
 - (iv) there is another person with which A and B are both associated
- (h) persons will not be Associated Persons if DSG determines at its sole discretion that they are not Associated Persons

Average Market Capitalisation means, in relation to an Issuer and on any given day, the total number of Listed Equity Securities multiplied by the lesser of the volume weighted average price of an Issuer's Listed Equity Securities calculated from trades through DSG Market over the following two periods:

- (a) the previous 20 Business Days;
- (b) the previous 5 Business Days

If there are no trades in either period, the value used shall be the last traded price.

Board means the board of Directors of an Issuer

Bond means the deposit which secures the payment of all amounts payable to DSG by the Issuer under these Terms. If any portion of a deposit or bond is applied in payment of monies payable to DSG by the Issuer, the Issuer must promptly arrange for the deposit or bond to be reinstated to its previous amount

Claim means any dispute, claim, difference, or controversy between you and DSG arising out of, in connection with, or relating in any way to:

- (a) these Terms;
- (b) your relationship with DSG as a User (whether based in contract, tort, statute, fraud, misrepresentation and whether the claims arise during or after the termination of these Terms); or
- (c) any non-contractual obligations arising out of or relating to these Terms or your relationship with DSG

Content has the meaning ascribed to it in clause 9.1

Debt Security has the meaning given in sections 8(1) and 8(5) of the FMCA, subject to DSG's sole discretion to declare a Financial Product to be, or not to be, a Debt Security.

Director means:

- (a) in relation to a company incorporated in New Zealand, a director within the meaning of section 126(1)(a) of the Companies Act 1993;
- (b) in relation to any other entity where paragraph (a) does not apply, any person occupying a position in that entity, or in the Manager of such entity, that is comparable with that of a director of a company

Dispute Outcome has the meaning ascribed to it in clause 16.3(b)

DSG Announcement Platform means the market announcement platform nominated by DSG from time to time to electronically process, release and store announcements about Issuers and Listed financial products

DSG Custodian means DSG Custodial Limited, a company incorporated in New Zealand (company number 8914170)

DSG Market means the financial product market operated by DSG

DSG or “us”, “we”, “our” means DSG Services NZ Limited.

DSG Services Agreement means the agreement entered into between DSG and an Issuer for the Listing of the Issuer’s financial products

DSG Services means access to the Platform, this website, the Listing Services and/or the Investor Services

Equity Security has the meaning given in sections 8(2) and 8(5) of the FMCA notwithstanding that DSG may at its sole discretion to declare a financial product to be, or not to be, an Equity Security

Fee Schedule means the fee schedule as set forth at www.dsg.exchange/fees

FMCA means the Financial Markets Conduct Act 2013

Force Majeure means:

- (a) any fire, strike, riot, civil unrest, terrorist act, war or industrial action;
- (b) any natural disaster such as floods, tornadoes, earthquakes and hurricanes;
- (c) any epidemic, pandemic or public health emergency of national or international concern;
- (d) any act or regulation made by a government, supra national body or authority that we believe stops us from providing DSG Services;
- (e) technical failures in transmission, communication or computer facilities including power failures and electronic or equipment failures;
- (f) the failure of any supplier, vendor, technology service provider, custodian, or regulatory organisation to perform its obligations to us;

Governing Document means:

- (a) in the case of an Issuer of Equity Securities, its constitution, articles of association or other constituent documents; or
- (b) in the case of an Issuer of Debt Securities, a trust deed or the one or more deeds, agreements, or instruments that constitute those Debt Securities

Indemnified Parties has the meaning ascribed to it in clause 13

Independent Director means a Director who is not an employee of the Issuer and who has no direct or indirect interest, position, association or relationship that could reasonably influence, or could reasonably be perceived to influence, in a material way, the Director’s capacity to:

- (a) bring an independent view to decisions in relation to the Issuer;
- (b) act in the best interests of the Issuer; and
- (c) represent the interests of the Issuer’s financial product holders generally

Investor Account means an account on the Platform which are opened by DSG to record your use of the DSG Services

Investor Services has the meaning ascribed to it in clause 2.3

Issuer means:

(a) any person which is Listed; and

(b) includes, as the context permits, all members (other than another Listed entity or that Listed entity's subsidiary) of any group of companies or other entities of which such Issuer is the holding company or has a controlling interest, to the extent this is necessary to prevent the objective of these Terms being frustrated or avoided by the use of a separate legal personality; and

(c) for the purpose of the disclosure of information, the group (as defined in (b)) includes any Associated Persons of the Issuer over which the Issuer has control in law or in fact (other than another Listed entity or that Listed entity's Subsidiary).

Limitation Period means, with respect to a Claim, the period of one (1) year after the date that the User asserting the Claim first found out or reasonably should have found out about an alleged act, omission, or default giving rise to the Claim

List and **Listing** means the listing of an Issuer's financial products on the DSG Market under the DSG Services Agreement

Listing Services has the meaning ascribed to it in clause 2.2

Managed Investment Scheme has the meaning given in section 9 of the FMCA (including a scheme declared to be such a scheme under Part 9 of that Act) subject to DSG's sole discretion to declare a scheme or arrangement to be, or not to be, a Managed Investment Scheme

Material Information has the meaning given in section 231(1) of the FMCA (read together with additional terms defined in section 232 of that Act)

Material Transaction means a transaction, or a related series of transactions, whereby an Issuer:

- (a) purchases, acquires, gains, leases (as lessor or lessee), sells or otherwise disposes of assets having an Aggregate Net Value above 20% of the relevant financial product's Average Market Capitalisation;
- (b) issues financial products or acquires its own Equity Securities of a value greater than 20% of the Issuer's Average Market Capitalisation (except for an issue of Debt Securities, in which case only the market value of Financial Products being issued to any Related Party or to any employee of the Issuer are to be taken into account);
- (c) borrows, lends, pays or receives money, or incurs an obligation, of an amount above 20% of the Issuer's Average Market Capitalisation (except for an issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any employee of the Issuer are to be taken into account); or
- (d) enters into any guarantee, indemnity, underwriting or similar obligation, or gives any security, which could expose the Issuer to liability above 20% of its Average Market Capitalisation.

Non-Affiliated Holder means any person other than:

- (a) a person who holds, or is one of a group of Associated Persons who together hold, 10% or more of an Equity Security or Debt Security being Listed, or
- (b) a person who has, or is one of a group of Associated Persons who together have, the power (whether contingent or not) to appoint one or more Directors of the Issuer, or

- (c) any other person or group of persons whom DSG at its sole discretion declares not to be a Non-Affiliated Holder

NZDRC means the New Zealand Dispute Resolution Centre

Offer means, with respect to a DSG Market transaction, a Seller's publishing of an offer to sell Assets at a particular price

Ordinary Resolution means a resolution passed by a simple majority of Votes of financial product holders entitled to Vote and voting

Platform means this website, interface and any DSG application used to access the DSG Market

Privacy Policy means the DSG Privacy Policy: <https://dsg.exchange/privacy-policy>

Prohibited Country means in accordance with AML rules of the offerings jurisdiction. For example for a NZ based offering: <https://www.mfat.govt.nz/en/peace-rights-and-security/un-sanctions>

Purchaser means, with respect to a DSG Market transaction, a User who accepts an Offer

Related Party means a person who, at the time of a Material Transaction, or at any time within the previous six months, was:

- (a) a Director or Senior Manager of the Issuer or any of its subsidiaries;
- (b) the holder or beneficial owner of a 10% or more ownership of the total Class of Equity Securities of an Issuer carrying Votes;
- (c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), except where the person becomes an Associated Person as a consequence of the Material Transaction; or
- (d) a person in respect of whom there are arrangements which are intended to result in that person becoming, or expected to become, a person described in (a), (b), or (c) other than as a consequence of the Material Transaction;

however, a person is not a Related Party of an Issuer if:

- (e) the only reason why that person would otherwise be a Related Party of the Issuer is that a Director or Senior Manager of the Issuer is also a Director of that person, so long as:
 - (i) the proportion of Directors of the Issuer who are also Directors of that person is one third or less; and
 - (ii) no Director or Senior Manager of the Issuer has a material direct or indirect economic interest in that person, other than receiving reasonable Director's fees or executive remuneration; or
- (f) that person is a subsidiary or incorporated joint venture of, or unincorporated joint venture participant with, the Issuer and:
 - (i) no Related Party of the Issuer has or intends to obtain, other than through the Issuer itself, a material direct or indirect economic interest in that subsidiary or joint venture other than receiving reasonable Director's fees or executive remuneration, and
 - (ii) the Issuer has at least 50% of the Votes in or is entitled to at least 50% of the dividends declared or paid by the subsidiary or incorporated joint venture or

is entitled to at least one half of the income or profits, and the assets, of the unincorporated joint venture (if and when distributed)

Restricted Person means a person or legal entity who:

- (a) is included in any trade embargoes or economic sanctions, terrorist or corrupt foreign officials list (such as the United Nations Security Council Sanctions List, issued by a government agency including the list of specially designated nationals maintained by the office of foreign assets control of the U.S. Department of the Treasury (OFAC), or the denied persons or entity list of the U.S. Department of Commerce), or by the United Kingdom, European Union, Canada, Australia, New Zealand); or
- (b) resides, or is established, or has operations in, in any Prohibited Country

Results means the Issuer's audited financial statements (or, in the case where the financial statements have not yet been audited, the unaudited financial statements) and commentary on the results for the relevant period by the Directors of the Issuer

Risk Disclosures means the DSG Risk Disclosures as found at www.dsg.exchange/risk-disclosures

Seller means, with respect to a DSG Market transaction, a User who publishes an Offer in accordance with clause 4.5

Senior Manager has the meaning given in section 6 of the FMCA

Terms means these terms and conditions which apply to the DSG Services

User or **you** or **your** means any user of the DSG Services

Vote means a right to vote at a meeting of financial product holders, other than:

- (g) a right to vote solely upon matters immaterial or inconsequential to the control of the Issuer or any material part of the Issuer's business;
- (h) a right to vote only when payments in respect of the financial product in question is in arrears or some other default exists, or on a proposal to change the rights attaching to that financial product, or in other circumstances of a special or remote nature; or
- (i) a right to vote attaching to financial products, other than Equity Securities, which is exercisable only at meetings of holders of those financial products

Wholesale Investor has the meaning ascribed to it in clause 3 of Schedule 1 of the FMCA

1.2 Interpretation

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) **(New Zealand dollar)** a dollar is a reference to the New Zealand Dollar, the lawful currency of New Zealand;
- (d) **(meaning not limited)** the words include, including, for example or such as, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (e) **(reference to any thing)** any thing (including any amount) is a reference to the whole and each part of it.

2. Our Services

2.1 DSG Services

DSG Services encompasses the services offered by DSG to you through the Platform. The DSG Services include the Listing Services and the Investor Services.

2.2 DSG Listing Services

DSG offer the following Listing Services to its Issuers:

- (a) Listing of an Equity Security;
- (b) Listing of a Debt Security;
- (c) Primary market offer preparation services;
- (d) Corporate action services;
- (e) Customer due diligence services;
- (f) Market announcement services;
- (g) Registry services; and
- (h) Custody solution services.

2.3 DSG Investor Services

DSG offer the following Investor Services to Investors:

- (a) Participating in Listings of financial products on the Platform;
- (b) Participating in the sale or purchase of an Asset.

3. DSG Listing Services

3.1 Issuer

You must be an Issuer before you are able to gain access to any DSG Issuing Services. To become an Issuer, you must make an application to DSG. Decisions to approve or reject an application under this clause 3.5 to be made at our sole discretion. We reserve the right to refuse any application without reason or to limit the services that we offer to you.

3.2 Listing Equity Securities

For an Issuer to List an equity security on the DSG Market:

- (a) The Issuer must have a Governing Document consistent with clause 3.4 and applicable laws, and
- (b) The application to be Listed on the DSG Market will not generally be considered for initial Listing unless
 - (i) the anticipated market capitalisation of the Issuer's Equity Securities to be Listed is at least one (1) million dollars NZD;
 - (ii) the anticipated market capitalisation of the Issuer's Equity Securities to be Listed is below one hundred (100) million dollars NZD; and

- (iii) DSG is satisfied upon Listing, that at least 20% of the Equity Securities being listed will be held by at least 20 Non-Affiliated Holders.

3.3 Listing Debt Securities

For an Issuer to be Listed on the DSG Market and its Debt Securities Listed:

- (a) the Issuer must have a Governing Document consistent with clause 3.4 and applicable laws, and
- (b) the Issuer must provide DSG with a copy of the principal disclosure document or terms sheet for the relevant Debt Security, and
- (c) a notice describing the number and details of each Debt Security
- (d) the Debt Securities will not generally be considered for Listing unless the nominal amount of the Issuer's Debt Securities to be Listed is at least one (1) million dollars NZD; and
- (e) the anticipated market capitalisation of the Issuer's Debt Securities to be Listed is below one hundred (100) million dollars NZD.

3.4 Governance requirements

- (a) All Issuers must:
 - (i) have a Governing Document that complies with the applicable provisions of these Terms;
 - (ii) comply with the terms of its Governing Document,
 - (iii) provide a solicitor's opinion to DSG which must be:
 - (A) provided by a barrister sole, solicitor or firm of solicitor or firm of solicitors approved by DSG,
 - (B) be addressed to DSG and acknowledge the barrister sole, solicitor or firm of solicitors accepts responsibility to DSG in respect of the opinion,
 - (C) disclose any conflicting duties or interests the barrister sole, solicitor or firm of solicitors has and confirm that this disclosure is complete in all respects, and
 - (D) state whether, in the opinion of the barrister sole, solicitor or firm of solicitors the document in question complies with this clause 3 of these Terms.
- (b) In addition to clause 3.4(a) above, prior to Listing any financial products on the DSG Market, Issuers must comply with the following governance requirements:
 - (i) The composition of the Board of an Issuer of Listed Equity Securities must satisfy the following requirements at all times (excluding alternate Directors):
 - (A) there must be at least two Directors,
 - (B) at least one Director must be ordinarily resident in New Zealand, and
 - (C) at least one Director must be an Independent Directors.
 - (ii) A Director of the Issuer may be appointed by:

- (A) appointment by the Board, if permitted by the Governing Document of the Issuer,
 - (B) nomination and appointment at an Issuer's annual or special meeting of Equity Security holders in accordance with its Governing Documents,
 - (C) appointment as an alternate Director, whereby a Director appoints an alternate Director to act for him or her, provided that such an appointment has the consent of a majority of the rest of the Board. An appointment under this arrangement may be revoked by the appointing Director or a majority of the Board. A Director may not act as alternate for another Director.
- (iii) All Directors must be subject to removal from office by Ordinary Resolution, unless the Governing Documents guarantee an Equity Security holder a right to appoint one or more Directors to the Board.
 - (iv) Provide that, so long as the Issuer is Listed, it must comply with this clause 3 of these Terms.
 - (v) No remuneration may be paid by an Issuer or its affiliates to a Director in his or her capacity as a Director without prior authorisation by an Ordinary Resolution. Such resolution must express Directors' remuneration as either a monetary sum per annum payable to all Directors of the Issuer in aggregate, or to any person who from time to time holds office as a Director of the Issuer.
 - (A) If remuneration is expressed in accordance with clause (v) above and there is an increase in the number of Directors from the number of Directors in office at the conclusion of a meeting of financial product holders at which the remuneration was approved by an Ordinary Resolution, the Board may, without an Ordinary Resolution, increase the remuneration payable to all Directors of the Issuer in aggregate. The amount of the increase per additional Director may not exceed the amount necessary to enable the additional Director or Directors to be paid the average amount then being paid to each Director of the Issuer.

3.5 Application for Listing of Equity Security

An Issuer may apply to DSG to list on the DSG Market if eligible to do so. The following information and material must be provided with any application to List:

- (i) an executed DSG Services Agreement, in a form specified by DSG, to the effect that the Issuer will at all times comply with the DSG Listing Rules,
- (ii) a copy of the Applicant's Governing Document,
- (iii) confirmation that any fees prescribed by DSG while Listed will be paid,
- (iv) a copy of the applicant's certificate of incorporation or similar document,
- (v) a confirmation that the Bond had been paid to DSG in accordance with the Fee Schedule,
- (vi) the number and details of each class of financial product on issue at the time of the application and to the extent the number and details are known at the time at which the application is made, of any issue or allotment intended prior to the Listing,
- (vii) contact details of the applicant,

- (viii) copies of the applicant's annual reports for the last five years, if available,
- (ix) details of the Equity Security being Listed, including the number of such Equity Securities (to the extent known at the time at which the application is made),
- (x) a draft disclosure document or profile for the Equity Security,
- (xi) any other documents that DSG may request at its sole discretion.

3.6 Application for Listing of Debt Security

An Issuer may apply to DSG to list Debt Securities on the DSG Market if eligible to do so. The following information and material must be provided with any application to List:

- (i) details of the Debt Security being Listed, including the number of such Debt Securities (to the extent known at the time at which the application is made),
- (ii) a draft disclosure document or profile for the Debt Security,
- (iii) any other documents that DSG may request at its sole discretion.

3.7 Disclosure requirements

This clause sets out the various disclosure requirements of Issuers on the DSG Market.

- (a) Continuous disclosure requirements
 - (i) an Issuer, upon becoming aware of any Material Information that is relevant to the Issuer and its financial products, must:
 - (A) immediately notify DSG of such Material Information so that DSG may take the necessary action (including halting trading of the Issuer's Listed financial products at DSG's sole discretion);
 - (B) release the Material Information on the DSG Announcement Platform within 10 Business Days; and
 - (C) not release any Material Information to any person without first releasing that Material Information through the DSG Announcement Platform.
 - (ii) notwithstanding the foregoing, an announcement does not need to be made through the DSG Announcement Platform if:
 - (A) one of the following conditions is satisfied:
 - (1) release of the information would be a breach of law;
 - (2) the information concerns an incomplete proposal or negotiation;
 - (3) the information contains matters of supposition or is insufficiently definite to warrant a disclosure;
 - (4) the information is generated for internal purposes; or
 - (5) the information is a trade secret.
 - (B) the information is confidential, and its confidentiality is ongoing; and
 - (C) a reasonable person would not expect the information to be disclosed.

- (b) An Issuer must immediately release any Material Information to prevent the development of a market for its financial products that has been materially influenced by misleading information from the Issuer or any of its Associated Parties or any other person who, in their specific circumstances may be seen as having credibility by a reasonable person.
- (c) **Related Party Transactions**
Issuers must immediately release any information to the DSG Announcement Platform when it enters into any Material Transaction with a Related Party.
- (d) **Periodic disclosure**
Issuers must release its Results on the DSG Announcement Platform no later than 30 days after the end of each financial year. Where unaudited financial statements are provided, Issuers must release its audited financial statements to the DSG Announcement Platform no later than 90 days after the end of each financial year.
- (e) **Annual Report**
 - (i) Each Issuer of Listed Equity Securities or Debt Securities must within three months after the end of each financial year:
 - (A) prepare an annual report, which must contain all information required by all applicable laws and these Terms, and
 - (B) release the annual report on the DSG Announcement Platform before or at the same time as it is made available to financial product holders.
 - (ii) The annual report of an Issuer of Listed Equity Securities or Debt Securities must contain:
 - (A) the information required to be published by subpart 5 of Part 5 of the FMCA and, in the case of a company registered under the Companies Act 1993, the information required by section 211 of that Act;
 - (B) details of the financial products, including any instrument that may convert to financial products, in which each Director has an interest in at the balance date of the financial year in respect of which the annual report is prepared;
 - (C) details of the spread of financial product holders as at a date not earlier than two months before the publication of the annual report;
 - (D) the current credit rating status (if any) of the Issuer;
 - (iii) Notwithstanding the foregoing, an Issuer may amend its annual report of financial reporting information if:
 - (A) such amended information would only involve the provision of more, more frequent, or better financial information; or
 - (B) where an amendment does not fall under 3.7(e)(iii)(A):
 - (1) DSG is given written notice of the new financial information, and secondary trading of the Listed financial products of the Issuer has been halted; and
 - (2) clear notice of the amended financial information is provided on the DSG Announcement Platform.

- (f) Issuers must immediately release on the DSG Announcement Platform any decision to sub-divide or consolidate any of its financial products, or issue any Equity Securities, financial products or any other instrument that may convert to Equity Securities.
- (g) Issuers must, if requested to do so by DSG, disclose the names and holdings of the registered holders having the 10 largest holdings of Listed financial product at a date not earlier than two months before the date of such a request from DSG;
- (h) Issuers must, in respect of a meeting of a Listed financial product holder promptly and without delay release on the DSG Announcement Platform:
 - (i) the contents of any prepared announcement or presentation that will be delivered at such meeting;
 - (ii) the outcome of each resolution put to a meeting; and
 - (iii) notice of any adjournment of a meeting to another time or place, and the outcome in respect of each resolution dealt with before the adjournment.
- (i) Issuers must immediately release on the DSG Announcement Platform information on any decision made to change:
 - (i) a Director or Senior Manager of the Issuer;
 - (ii) any key personnel of the Issuer; or
 - (iii) the auditor of the Issuer.
- (j) Issuers must immediately release on the DSG Announcement Platform the following information:
 - (i) any change in the Issuer's contact details;
 - (ii) any decision to change the name or trading name of the Issuer;
 - (iii) any decision to extend its annual balance date to a later date and, in any event, this change must be announced not less than one month before the end of the existing half-year reporting period or not less than one month before the existing annual balance date;
 - (iv) related to any purchase and sale of an Equity Security of the Issuer completed by any Director or Senior Manager of the Issuer;
 - (v) any new credit rating, or change to a current rating in relation to the Issuer, the Listed Debt Security of the Issuer, or the Issuer's guaranteeing entity; or
 - (vi) any other information as DSG may prescribe at its sole discretion from time to time.
- (k) Every Issuer with Listed financial products must, upon request of DSG, exercise its powers under subpart 5 of Part 5 of the FMCA in respect of such holders of financial products or other persons, as DSG may specify. Any information obtained by an Issuer through the use of its powers under subpart 5 of Part 5 of the FMCA must be released through the DSG Announcement Platform if requested to do so DSG.

3.8 Changes to capital

An Issuer must only issue Equity Securities with approval by Ordinary Resolution. The Ordinary Resolution must be made in accordance with this clause 3.8.

- (a) Pro rata issuance

- (i) additional Equity Securities may be offered for acquisition to the existing shareholders in proportion to their existing interests (subject to fractional entitlements).
 - (ii) the Issuer need not offer additional Equity Securities to a shareholder outside New Zealand where the Issuer is satisfied (acting reasonably) that any offer or issue of Equity Securities to that shareholder would be unduly onerous to make in the relevant jurisdiction.
 - (iii) The terms of the offer may provide that, if any existing shareholders do not take up their full entitlement of Equity Securities, those Equity Securities may be sold on any basis the board of Directors of the Issuer considers to be fair and reasonable.
 - (iv) The board of Directors of the Issuer must resolve that, in its opinion, the consideration for and terms of the issue of the additional Equity Securities are fair and reasonable to the Issuer and to all existing shareholders.
- (b) Placement or other pre-disclosed procedure
- (i) the additional Equity Securities may be offered for sale by private placement or any other procedure if such procedure has been described in the information released on the DSG Announcement Platform.
 - (ii) the pre-disclosed procedure for issue of the additional Equity Securities must have either remained materially the same and disclosed on the DSG Announcement Platform at the time of placement, or any change (for example a change to the maximum percentage of Equity Securities that can be issued in a private placement) must have been approved by an ordinary resolution of each class of affected shareholders.
 - (iii) the description of the pre-disclosed procedure for issue of the additional Equity Securities need not describe the precise terms and conditions of an issue of additional Equity Securities provided it describes the maximum dilutionary impact.
- (c) Relevant shareholder approval
- Additional Equity Securities may be issued using any other procedure where the terms of the issue are approved by an ordinary resolution of each class of affected shareholders.

4. DSG Investor Services

4.1 Conditions for Investor Account

- (a) A User may only be eligible for an Investor Account if the User provides DSG with all necessary documents or information to confirm the User's status as a Wholesale Investor.
- (b) If the Investor ceases to qualify as a Wholesale Investor, they must immediately notify the Company. If that occurs, the Company reserves the right to terminate the User's Investor Account.

4.2 Warning Statement

You are being offered financial products on the DSG Market.

This part of the warning statement applies to investors who make an investment in reliance of certain wholesale investor exclusions under Schedule One of the Financial Markets Conduct Act 2013.

Wholesale Investor Warning Statement: The law normally requires people who offer financial products to give information to investors before they invest. This information is designed to help investors make an informed decision.

If you are a Wholesale Investor, the usual rules do not apply to offers of financial products made to you. As a result, you may not receive a complete and balance set of information. You will also have fewer other legal protections for those investments. Make sure you understand these consequences.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.

It is an offence to give certificate knowing that it is false or misleading in a material. The offence has a penalty of a fine not exceeding \$50,000.00.

4.3 Investor Account

Once your Investor Account is approved, you may participate in Listings of Issuers, or purchase or sell Assets on the DSG Market.

4.4 Participating in a Listing

- (a) You may subscribe to a Listing that you are eligible for in the Platform.
- (b) You must read all of the information relevant to the Listing carefully and obtain separate professional advice as you deem necessary.
- (c) The Listing shall specify the price of the Listing, minimum subscription amounts, and any additional terms and conditions specific to that Listing.
- (d) After you confirm your participation in a Listing, you will be sent payment instructions to provide funds to complete your subscription to the Listing.
- (e) Once receipt of your funds is confirmed, the relevant Assets will be transferred to your Investor Account in accordance with the Listing terms. These Assets can then be traded on the DSG Market, if secondary trading of the Assets is available.

4.5 Participating in the DSG Market

- (a) The Platform is a platform that allows Investors to directly purchase or sell Assets with other Investors. Investors may participate in these transactions as a Purchaser or a Seller.
 - (i) As a Seller, you may publish an Offer on the Platform to sell Assets. An Offer includes the amount of Assets that you would like to sell, the price that you would like to sell the Asset for, the payment method that you would like to use, and any other applicable terms and conditions for your Offer.
 - (ii) As a Purchaser, you may accept Offers on the Platform to purchase the Assets. An acceptance to an Offer on the Platform forms a binding legal obligation to purchase the relevant Assets.
- (b) DSG may at its sole discretion require certain eligibility conditions to any transaction.
- (c) Upon acceptance of an Offer:
 - (i) the Assets in the Seller's Investor Account shall be locked;
 - (ii) the Purchaser shall make payment according to the payment method selected by the Purchaser; and

- (iii) upon the Seller's confirmation of the payment being received, Assets shall be transferred from the Seller's Investor Account to the Purchaser's Investor Account.
- (d) DSG is not a party to any transaction that you may enter into on the Platform as you will be directly trading with other Investors. DSG only facilitates the transactions entered into on the Platform by way of transferring the Assets from the Seller Investor Account to the Purchaser's Investor Account.

4.6 Custody of Assets

- (a) Once your Investor Account is approved, a custodial account will be created on your behalf by the DSG Custodian. Assets you purchase (either by participating in a listing as set out in clause 4.4, or participating in the DSG Market as set out in clause 4.5) will be custodied by the DSG Custodian.
- (b) The DSG Custodian is DSG Custodial Limited, registered on the New Zealand register of financial service providers (FSP number FSP1007264) in respect of its custody services to DSG in New Zealand.

5. Account

5.1 Eligibility

To use any of the DSG Services, you must create an account on the Platform. To create an account, you must (in addition to meeting the specific requirements of the type of account you are creating) meet the following conditions:

- (a) if you are an individual, be old enough to legally form a binding contract in your jurisdiction;
- (b) if you are an entity, be duly organized and validly existing under the applicable laws of your jurisdiction;
- (c) have a current and valid email address, mobile phone, and street address;
- (d) have the full power and authority to enter into these Terms without violating any other agreements you have made;
- (e) not have been restricted from using any of our services;
- (f) if you are an individual, not be located in, under the control of, or resident in-or, if you are an entity, not be directly or indirectly owned or controlled by any person located in, under the control of, or have business operations in:
 - (i) a jurisdiction where it would be illegal under applicable law for you to access or use the DSG Services, or cause us or any third party to contravene any applicable law; or
 - (ii) in a country that is a Prohibited Country.

6. Notices

6.1 Electronic Communications

DSG may provide you with notices, including notices relating to these Terms by way of electronic communications, including by email or other electronic communication through the Platform. You are solely responsible for ensuring your contact details in your account are always up to date.

7. Account Security

7.1 Your responsibility

While we take all reasonable steps to ensure that your accounts are secure, you are responsible for the security and system integrity of your account, device connected to DSG and your associated connection to the internet.

7.2 Security measures

You must exercise every possible care to ensure the safety of your account and device by taking all reasonable care to prevent loss, theft, unauthorized, criminal or fraudulent use. That includes:

- (a) not allowing anyone else to use your device;
- (b) keeping your login details secret and unique;
- (c) locking your device when it is not in use; and
- (d) ensuring You have set up password access to your device and it is active.

If you become aware or suspect that your login credentials to our Services have been compromised in any way, you must immediately notify us and also cease using our Services.

7.3 Monitoring your account

It is important that you monitor your account to ensure any unauthorised or suspicious activity on your DSG account is identified and notified to us as soon as possible. You acknowledge that any breach may result in unauthorised access to your DSG account by third parties and the loss or theft of any Assets and/or funds held in your DSG Investor Account and any associated accounts.

7.4 Security breach

If you suspect a security breach, you must ensure that:

- (a) we are notified immediately and continue to be provided with accurate and up to date information throughout the duration of the breach; and
- (b) your DSG account is immediately disabled on the Platform or via any other method as may be prescribed by us from time to time; and
- (c) you take any other steps that we may reasonably require to reduce, manage or report any security breach.

We reserve the right to request, and you agree to provide, any and all information and documents we deem relevant or necessary in connection with an actual or suspected security breach and may provide such information to any third party that we deem necessary in order to resolve any security breach.

8. Tokens

8.1 Tokenised financial products

You acknowledge and agree that all financial products offered on the Platform are issued and traded exclusively in the form of cryptographic tokens on the ERC-3643 standard. You further acknowledge that trading these tokens entails risks inherent to blockchain technology.

9. End user licensing agreement

9.1 Limited license

The User is granted a limited, non-transferable license, subject to these Terms, to use the Platform and related content, materials and information (collectively, the “Content”) solely for approved purposes as permitted by DSG from time to time. Any other use of the Platform, Services or Content is expressly prohibited and all other right, title and interest in the Platform or Services is exclusively the property of DSG. The User agrees that it will not copy, transmit, distribute, sell license, reverse engineer, modify, publish, or participate in the transfer or sale of, create derivative works from, or in any other way exploit any of the Content, in whole or in part. “DSG”, “DSG.com” and all logos, trade name, work marks, or design related to the Services or displayed on the Platform are either trade marks or registered marks of DSG or its affiliate(s). The User shall not copy, imitate or use such logos or marks without the prior written consent of DSG.

10. Privacy Notice

10.1 Privacy Policy

By using the DSG Services and creating an account, you acknowledge that you will be bound by, and agree that you will comply with our Privacy Policy, which sets out the terms on which we process any personal data we collect about you, or that you provide to us. By using any of the DSG Services, you understand and agree to such processing, and you represent that all data provided by you is accurate and up to date.

10.2 Information sharing

- (a) Subject to DSG’s Privacy Policy, the User hereby expressly and irrevocably permits and authorises DSG, its employees and/or any other persons authorised by DSG to disclose all information provided by the User to DSG under these Terms for any purposes as deemed fit by DSG under these Conditions, save for any information which the User expressly instructs in writing to be treated as confidential and has been clearly marked by the User as “confidential”.
- (b) The confidentiality obligation in the preceding paragraph shall not apply to:
 - (i) any information which becomes generally known to the public, other than by reason of any wilful or negligent act or omission of the DSG or any of their respective representatives;
 - (ii) any information which is required to be disclosed pursuant to any applicable laws or any requirement of any competent governmental or statutory authority or pursuant to rules or regulations of any relevant regulatory, administrative or supervisory body (including without limitation, any relevant stock exchange or securities council);
 - (iii) any information which is required to be disclosed pursuant to any legal process issued by any court or tribunal; and
 - (iv) any information disclosed by DSG to their respective bankers, financial advisers, consultants, and legal advisors.

11. Termination

11.1 Termination of an Investor Account

- (a) You may terminate your Investor Account by following the account termination procedures as prescribed by us from time to time. You will not be charged for terminating your Investor Account, although you will be required to pay any outstanding amounts owed to us. You authorise us to cancel or suspend any pending transactions at the time of cancellation, and to deduct any outstanding amounts that you owe us from your Investor Account.

In certain cases, you may not be able to close your Investor Account, including where:

- (i) you are trying to evade an investigation by relevant authorities;
 - (ii) you have a pending transaction or an open Claim;
 - (iii) your Investor Account has any outstanding amounts owed to us; or
 - (iv) your Investor Account is subject to a freeze, hold, limitation or reserve.
- (b) If your Investor Account is closed, you will be required to withdraw all Assets held in your Investor Account. In the event that you fail to withdraw your Assets, or if you have not accessed your Investor Account for a continuous period of 365 days, we may send you notice of our intention to treat your account as dormant.
- (c) If you do not respond to the notice in clause 11.1(b) within 30 days, we may:
- (i) mark your Investor Account as a dormant account;
 - (ii) transfer such dormant account and/or any Assets held in that account to any third party (including any third-party custodian) if we consider it is reasonably necessary to do so. If this happens, you have the right to retrieve your Assets, subject to satisfying our (or the relevant third party's) reasonable verification requirements and any other applicable terms and conditions;
 - (iii) adjust your dormant account such that you will receive a contractual claim on the quantity and type of Assets, which were held on your Investor Account before being converted into a dormant account;
 - (iv) charge a dormant account fee which may be to cover the cost of maintaining the Assets with any DSG Affiliate or any third party, with such fee to be withdrawn directly from the dormant account on a monthly basis; and
 - (v) close a dormant account at any time.

12. Warranties and Undertakings

12.1 Issuer warranties and undertakings

By listing any financial products on the DSG Market under these Terms, you hereby represent and warrant to us, at all times, the following:

- (a) you will at all times comply with clause 3 of these Terms;
- (b) all documents and information you provide or have provided to us are true, accurate, complete, and up to date in all respects, and that DSG may rely on this information in its provision of Listing Services to you; and

- (c) you warrant that the securities Listed are able to be freely traded and that transfers to effect the trades may be effected without delay or restrictions (including that there are no pre-emptive rights attaching to the securities which would prevent such free trade and that any constitutional or other restrictions on ownership will be exercised or controlled by disenfranchisement and/or sale provisions post any transfer by sale through DSG and not by restrictions on transfer).

12.2 Investor warranties and undertakings

By using any services under these Terms, engaging with the Platform, entering into any transactions, or by continuing to use the Investor Account, you hereby represent and warrant to us, at all times, the following:

- (a) all documents and information you provide or have provided to us are true, accurate, complete, and up to date in all respects, and that DSG may rely on this information in determining whether you are eligible to access the Platform or any service;
- (b) further to the above, you warrant and represent to DSG that you are a Wholesale Investor and that any information that you have supplied to DSG declaring that you are a Wholesale Investor is still true and correct;
- (c) in the event any information you have represented to DSG under the KYC processes changes or is undergoing changes, you will immediately notify DSG;
- (d) all decisions made in connection with these Terms were solely and exclusively based on your own judgement and after your own independent appraisal of your financial resources, ability and willingness to take relevant risks and financial objectives;
- (e) you have full power, authority, and capacity to (1) access and use the Platform and/or the DSG Services; and (2) enter into and deliver, and perform your obligations under these Terms and any agreement entered into pursuant to, or in connection with, these Terms;
- (f) if you are a corporation, partner in a partnership, or trustee of a trust:
 - (i) the corporation, partnership or trust has and will be operated in a way that is compliant with the applicable law, and any partnership or trust deeds (or other like documents);
 - (ii) you will notify us immediately if there is any change, by way of resignation, removal, appointment or death, of any of the directors, partners, trustees, settlor(s) or ultimate beneficial owners or any person authorised to operate your DSG account; and
 - (iii) you will inform DSG immediately if the corporation, partnership, or trust is dissolved either on a voluntary or involuntary basis;
- (g) these Terms and any agreement entered into pursuant to, or in connection with, these Terms constitute valid and legally binding obligations, enforceable against you in accordance with their respective terms;
- (h) that you are not a Restricted Person;
- (i) if you are a legal entity, you are duly incorporated, duly organised, and validly existing under the laws of your jurisdiction and have full power to conduct your business. If you are an individual, you are not less than 18 years old; and
- (j) your access and use of the Platform and/or the DSG Services, your execution and delivery of, and the performance of your obligations under these Terms and any agreement entered into pursuant to, or in connection with, these Terms, will not:

- (i) if you are a legal entity, partner in a partnership or trustee of a trust result in a breach of or conflict with any provision of your constitution, articles of association, partnership agreement, trust deed or equivalent constitutive documents;
- (ii) result in a breach of, or constitute a default under, any instrument, agreement, document or undertaking to which you are a party or by which you or any of your property is bound or subject; or
- (iii) result in you, or cause us or any third party to, breach any applicable law, decree or judgement of any court, or any award of any arbitrator or those of any governmental or regulatory authority in any jurisdiction.

13. LIMITATION OF LIABILITY AND INDEMNIFICATION

13.1 INDEMNIFICATION

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE TO FULLY INDEMNIFY AND HOLD HARMLESS EACH OF US, OUR SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATE COMPANIES (INCLUDING WITHOUT LIMITATION, DSG GROUP LIMITED, DSG CUSTODIAL LIMITED, DSG DIGITAL ASSETS LIMITED, AND THEIR RESPECTIVE SUCCESSORS, HEIRS, AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, ACTIONS, PROCEEDINGS, DAMAGES, LIABILITIES, EXPENSES, REASONABLE ATTORNEY FEES AND DISBURSEMENTS, AND/OR CHARGES THAT ARISE OUT OF OR IN CONNECTION WITH:

- (a) YOUR ACCESS TO OR USE OF YOUR ACCOUNT AND/OR ANY DSG SERVICE THAT WE PROVIDE UNDER THESE TERMS;
- (b) OUR FACILITATION OF ANY TRANSACTIONS ON THIS PLATFORM;
- (c) YOUR BREACH OF ANY OF THESE TERMS;
- (d) ANY BREACH OF SECURITY OF YOUR ACCOUNT OR YOUR DEVICE;
- (e) YOUR BREACH OF ANY APPLICABLE LAW; AND
- (f) YOUR VIOLATION OF THE RIGHTS OF ANY THIRD PARTY.

13.2 LIMITATION ON LIABILITY

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO CIRCUMSTANCES WILL ANY OF THE INDEMNIFIED PARTIES BE LIABLE FOR ANY DIRECT, INDIRECT, OR CONSEQUENTIAL LOSS OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, INCOME, BUSINESS OR PROFITS, LOSS OF CONTRACT OR DEPLETION OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF USE OR DATA, OR DAMAGES FOR BUSINESS INTERRUPTION OR ANY LIKE LOSS) ARISING OUT OF OR IN ANY WAY RELATED TO:

- (a) THE ISSUE, STORAGE, TRANSFER OR USE OF ANY ASSETS;
- (b) ANY TRANSACTIONS MADE ON THIS PLATFORM;
- (c) ANY RISK IDENTIFIED IN OUR [RISK DISCLOSURES](#);
- (d) ANY ACTION, OR INACTION IN ACCORDANCE WITH THESE TERMS OR ANY DSG SERVICE;
- (e) ANY SUSPENSION, TERMINATION, HOLD OR RESTRICTION OF YOUR ACCOUNT;

- (f) THE CLOSING OF A DORMANT ACCOUNT IN ACCORDANCE WITH CLAUSE 11.1;
- (g) THE FAILURE OF ANY TRANSACTION OR THE LENGTH OF TIME FOR ANY TRANSACTION;
- (h) OUR RELIANCE ON ANY INSTRUCTION SENT FROM YOUR DSG ACCOUNT;
- (i) THE CORRECTNESS, QUALITY, ACCURACY, SECURITY, COMPLETENESS, RELIABILITY, PERFORMANCE, TIMELINESS, PRICING OR CONTINUED AVAILABILITY OF THE DSG SERVICES OR FOR DELAYS OR OMISSIONS OF THE DSG SERVICES, OR FOR THE FAILURE OF ANY CONNECTION OR COMMUNICATION SERVICE TO PROVIDE OR MAINTAIN YOUR ACCESS TO THE DSG SERVICES, OR FOR ANY INTERRUPTION IN OR DISRUPTION OF YOUR ACCESS OR ANY ERRONEOUS COMMUNICATIONS BETWEEN US, REGARDLESS OF CAUSE; AND
- (j) ANY LOSSES FORMING PART OF A CLAIM THAT HAS NOT BEEN COMMENCED BY WAY OF FORMAL LEGAL ACTION WITHIN ONE CALENDAR YEAR OF THE MATTERS GIVING RISE TO THE CLAIM. YOU AGREE AND ACKNOWLEDGE THAT THIS CLAUSE VARIES ANY LIMITATION PERIOD OTHERWISE APPLICABLE BY LAW, AND THAT IF APPLICABLE LAW PROHIBITS THIS, THIS CLAUSE WILL BE READ AS A LIMITATION PERIOD OF THE MINIMUM ENFORCEABLE LENGTH ALLOWED BY THE LAW.

13.3 THIRD PARTY INDEMNIFICATION

YOU ACKNOWLEDGE AND AGREE THAT TRANSACTIONS ON THE DSG MARKET ARE CONDUCTED BETWEEN YOURSELF AND OTHER INVESTORS AND THAT DSG ARE NOT A PARTY TO SUCH TRANSACTIONS. YOU AGREE TO FULLY INDEMNIFY ALL INDEMNIFIED PARTIES FROM AND AGAINST ALL LOSSES, CLAIMS, ACTIONS, PROCEEDINGS, DAMAGES, LIABILITIES, EXPENSES, REASONABLE ATTORNEY FEES AND DISBURSEMENTS, AND/OR CHARGES THAT ARISE OUT OF OR IN CONNECTION WITH ANY BREACH OF THESE TERMS, VIOLATION OF ANY APPLICABLE LAWS, MISUSE OR PROHIBITED USE, INFRINGEMENT OF INTELLECTUAL PROPERTY OR OTHER RIGHTS OF ANY THIRD PARTY, OR ANY TRANSACTIONS CONDUCTED BY YOU, OR ANY CLAIM OR DISPUTE BETWEEN YOU AND ANY OTHER INVESTOR OR THIRD PARTIES.

13.4 LIMITATION OF LIABILITY

THE AGGREGATE LIABILITY OF THE COMPANY AND THE INDEMNIFIED PARTIES TO YOU OR ANY THIRD PARTIES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE BASIS, ARISING OUT OF OR RELATING TO ANY TRANSACTION ON OUR PLATFORM OR ANY OF THE DSG SERVICES IS LIMITED TO THE LESSER OF THE ACTUAL AMOUNT OF LOSS OR DAMAGE WHICH IS CAUSED DIRECTLY BY OUR BREACH OF THESE TERMS, OR THE AGGREGATE INVESTMENT AMOUNT CONTRIBUTED BY YOU TO DSG IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH LOSSES.

13.5 CONSUMER GUARANTEES ACT DOES NOT APPLY

THE PARTIES ACKNOWLEDGE AND AGREE THAT TO THE EXTENT PERMITTED BY LAW, THE PROVISIONS OF THE CONSUMER GUARANTEES ACT 1993 (NEW ZEALAND) SHALL NOT APPLY TO ANY SERVICES PROVIDED BY DSG UNDER THESE TERMS. THE PARTIES EXPRESSLY AGREE THAT THE TRANSACTIONS THAT ARE CONDUCTED ON THIS PLATFORM ARE NOT INTENDED TO BE COVERED BY THE CONSUMER GUARANTEES ACT AND THAT THE EXCLUSION OF THE CONSUMER GUARANTEES ACT IS FAIR AND REASONABLE GIVEN THE WHOLESALE NATURE OF THE SERVICES AND SOPHISTICATION OF THE PARTIES.

TO THE EXTENT THAT ANY STATUTORY PROVISIONS OR CONSUMER PROTECTION LAWS CANNOT BE EXCLUDED, WAIVED, OR LIMITED UNDER THE LAWS OF NEW ZEALAND, SUCH PROVISIONS SHALL APPLY TO THESE TERMS TO THE MINIMUM EXTENT REQUIRED BY LAW.

14. Amendments

14.1 Changes to the Terms

- (a) DSG may make changes to these Terms or the Fee Schedule at any time and your acceptance and continued use of these Terms constitute your express consent.
- (b) We will inform you of any changes by email or via our website in advance of most changes and will give you at least 20 business days' notice before such changes.
- (c) However, we may occasionally need to make changes without telling you in advance. This may include where:
 - (i) we are making the change as a result of legal and/or regulatory changes;
 - (ii) the changes are made for clarity purposes and do not alter the meaning of the Terms.

Where we are unable to give you advance notice, we will let you know of the changes as soon as possible after they are made.

- (d) With respect to any amendment or changes to the Terms, if you continue to use the DSG Services after the change, you will be deemed to have accepted the changes. If you don't accept any changes, you must stop using the DSG Services immediately and notify DSG immediately of your intent to close your accounts.

15. Prohibited Uses

By using any of the DSG Services, or opening any account on the Platform, you agree that you will not:

- (a) breach these Terms or any agreement entered into pursuant to, or in connection with, these Terms;
- (b) use the DSG Services in a manner that violates public interests, public morals, or the legitimate interests of others, including any actions that would interfere with, disrupt, negatively affect, or prevent other users from using DSG Services;
- (c) use DSG Services for resale or commercial purposes, including transactions on behalf of other persons or entities;
- (d) use the DSG Services for anything which, at DSG's sole discretion, is conduct designed to control or artificially affect the price of any Asset (market manipulation) including, without limitation, pump and dump schemes, self-trading, front running, spoofing or layering, regardless of whether prohibited by the applicable law;
- (e) use the DSG Services to trade on the platform with material non-public information, also known as insider trading. Engaging in insider trading will result in immediate termination of your account and may lead to legal action
- (f) engage in fraudulent activities, or cause us to suspect that you have engaged in fraudulent activities and/or transactions;

- (g) use the DSG Services in a manner that results in, or may result in, complaints, disputes, claims, reversals, chargebacks, fees, fines, penalties, or other liability to us, other users, third parties, or yourself;
- (h) provide false, inaccurate or misleading information in connection with your use of the DSG Services, in communications with us, or otherwise connected with these Terms;
- (i) use any deep linking, web crawlers, bots, spiders or other automatic devices, programs, scripts, algorithms or methods, or any similar or equivalent manual processes to access, obtain, copy or monitor any part of the Platform;
- (j) modify or adapt the whole or any part of the Platform or combine or incorporate the Platform into another programme or application;
- (k) disassemble, decompile, reverse-engineer or otherwise attempt to derive the source code, object code underlying concepts, ideas and algorithms of the Platform or any components thereof;
- (l) violate, or attempt to violate:
 - (i) any applicable law; or
 - (ii) ours or any third party's copyright, patent, trademark, trade secret, or other intellectual property rights, or rights of publicity or privacy; and/or
- (m) access, use, or attempted to access or use DSG Services directly or indirectly with:
 - (i) the Prohibited Countries; or
 - (ii) persons DSG has deemed high risk, including but not limited to, individuals or entities named as a Restricted Person.

16. Governing Law and Dispute Resolution

16.1 Governing law

These Terms shall be governed by, and construed in accordance with, the laws of New Zealand.

16.2 Dispute resolution process

- (a) If you have any Claims, questions, concerns, disagreements, complaints, disputes, or differences arising out of or in connection with these Terms, including any question regarding its validity or termination, please contact us in the first instance and we will endeavour to facilitate a resolution of the relevant question, concern, disagreement, complaint, dispute, or difference.
- (b) Before you may take any other action to resolve the disagreement, complaint, dispute, or difference, you must attempt to resolve the Claim or dispute in accordance with the process detailed in this clause 16.
- (c) You acknowledge that we are not obliged to investigate or follow up a complaint made by you against another User.

16.3 Notice of claim and dispute resolution period

- (a) You shall notify DSG of any Claim, dispute, difference, disagreement, or any question arising out of or in connection with these Terms. Following the receipt of notice notifying DSG of your disagreement, complaint, dispute, or difference DSG will attempt to resolve this dispute with you in good faith within 30 calendar days of receiving the notification from you.

- (b) DSG will notify you of the outcome of the Claim, disagreement, complaint, dispute, or difference as soon as an outcome is determined by DSG (the “**Dispute Outcome**”). If you do not agree with the Dispute Outcome as determined by DSG, you must formally notify DSG of your disagreement with the Dispute Outcome within fifteen (15) calendar days of the date of notification. You must then proceed to resolve the dispute through arbitration in accordance with clause 16.4 below.

16.4 Agreement to arbitrate

- (a) To the fullest extent permissible by law, you and us agree that any dispute or Claim arising out of or in connection with these Terms, including any question regarding its validity, existence or termination, shall be referred to and finally resolved by arbitration administered by the New Zealand Dispute Resolution Centre (“NZDRC”) in accordance with the Arbitration Rules of the New Zealand Dispute Resolution Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause.
- (b) For the avoidance of doubt, anything within clauses 16.1 to 16.8 (including the above arbitration agreement) does not prevent us from seeking injunctive or other urgent relief from a court to prevent the breach of these Terms.
- (c) If you are located in a jurisdiction in which an arbitration agreement is not enforceable then the parties agree to the exclusive jurisdiction of the New Zealand courts to resolve any dispute arising from or in relation to these Terms.

16.5 Individual arbitration

To the fullest extent permissible by law, these Terms provide for the exclusive resolution of disputes through individual arbitration on your own behalf instead of through any class or representative action and you agree that any dispute against us whatsoever shall be brought by you individually and not as a member of any class or as part of a class or representative action, and you expressly agree to waive any law entitling you to participate in a class or representative action.

16.6 Limitation period for a dispute

- (a) Any arbitration against DSG must be commenced by filing and serving a Notice of Arbitration in accordance with the Arbitration Rules of the New Zealand Dispute Resolution Centre within one (1) year after the date that the user asserting the Claim first found out or reasonably should have found out the alleged act, omission or default giving rise to the Claim (“Limitation Period”).
- (b) For the avoidance of doubt, the Limitation Period shall include the Dispute Resolution Period set out at clause 16.3. There shall be no right to any remedy or relief for any Claim by the user if the Notice of Arbitration in respect of that Claim is not filed and served on DSG within that Limitation Period. If the Limitation Period is contrary to applicable law, the user shall be required to bring any Claim against DSG within the shortest time period permitted by the applicable law. A Notice of Arbitration may be served on DSG in accordance with the applicable laws and rules of service.

16.7 Confidentiality

- (a) The parties agree that the dispute resolution process and arbitration shall be kept confidential. The existence of the arbitration, the existence or content of the Claim, all documents and information provided or exchanged in connection with the arbitration, and any submissions, orders or awards made in the arbitration shall be kept confidential and no party shall disclose any of the foregoing to any third party except the tribunal, the NZDRC, the parties, their counsels, experts, witnesses, accountants and auditors, insurers and reinsurers, and any other persons necessary to the conduct of the arbitration.

- (b) This term of confidentiality in this clause shall survive termination of these Terms and conclusion or stay of any arbitration brought pursuant to these Terms.

16.8 Disputes between Users

- (a) In the event that trading disputes arise between Users, the Users concerned shall record the particulars of the dispute and report such dispute to DSG in a timely manner. DSG may request that the Users concerned provide further information and supporting evidence in relation to the dispute and the Users shall comply at all times with such requests by DSG.
- (b) When disputes arise between the Users, DSG may provide necessary trading data or other information to the competent administrative or judicial authority pursuant to the applicable laws.

17. General

17.1 Nonexclusive services

Our provision of the DSG Services to you is non-exclusive. Nothing in these Terms prevents us from providing the DSG Services to any other person.

17.2 Provision of services

Subject to the rest of these Terms, we will use commercially reasonable efforts to ensure that the Platform is available on a 24/7 basis. However, it is possible that on occasion, the Platform may be unavailable to permit maintenance or other development activity to take place, or due to Force Majeure.

17.3 Entire agreement

These Terms constitute the entire and exclusive understanding and agreement between DSG and you in respect to any matter raised in relation to and arising from the Terms, and these Terms supersede and replace any and all prior oral or written understandings or agreements between DSG and you regarding any matter raised in these Terms.

17.4 Non-assignment

- (a) You may not assign or transfer any of your rights under these Terms without our prior written permission. Any attempt by you to assign or transfer these Terms of Use, without such permission will be voided.
- (b) DSG may freely assign or transfer these Terms, including any right or obligation set out in these Terms, without restriction, and the transferor or assignor shall not remain jointly and severally liable. Any reference to DSG in these Terms includes DSG's successors and permitted assigns.
- (c) Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

17.5 Non-waiver

If DSG do not exercise or enforce any rights available to DSG under these Terms, that does not constitute a waiver of those rights. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of DSG. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

17.6 No partnership

Nothing in these Terms shall be deemed or is intended to be deemed, nor shall it cause either you or DSG to be treated as partners, joint ventures or as the agent of the other.

17.7 Severability

If any part of these Terms is, or becomes, legally invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of these Terms will remain in full force and effect.

17.8 Force majeure

Neither us, nor any user of our DSG Services, nor any other party involved in creating, producing, or delivering our DSG Services shall be liable for any failure to perform its obligations under these Terms of Use to the extent caused by Force Majeure provided that the affected party:

- (a) notifies the other party as soon as practicable;
- (b) uses best efforts to overcome the Force Majeure; and
- (c) continues to perform its obligations to the extent practicable.