

ASX BENCHMARK DATA

SUBSCRIBER TERMS AND CONDITIONS

THE PARTIES AGREE in consideration of, among other things, the mutual promises contained in this Agreement:

1. Subscription Service

We will provide the Subscriber with the Service subject to the terms of this Agreement.

2. Commencement and Term

This Agreement commences on the date the Order Form is executed by the parties and runs through to 31 December of the then current year (Initial Term). Thereafter, this Agreement will automatically renew each calendar year for successive 12 month periods (each a Further Term) until (a) either party gives no less than 30 days written notice prior to the end of the Initial Term or Further Term (as the case may be) of its intention not to renew, or (b) the Agreement is otherwise validly terminated in accordance with its terms.

3. Access and Use

Subscription to the Service means that the Subscriber and Subscriber Entities (if applicable) may receive the ASX Benchmark Data through a Nominated Third Party authorised by Us or other electronic means nominated in the Order Form. Subject to payment of the Subscription Fees, the Subscriber and Subscriber Entities (if applicable) are granted a non-exclusive, non-transferable licence to use and retrieve the ASX Benchmark Data via the Service at its site address and in the subscribed countries (as per address and country details supplied to Us) for their internal business purposes only during the term of this Agreement.

It is a condition of this licence that the Subscriber must not redistribute, recirculate, republish or communicate the ASX Benchmark Data outside the Subscriber or the Subscriber Entities (if applicable) or on any website without Our prior written authorisation.

4. Subscription Fees

4.1. Subscription Fees are calculated and billed in accordance with the Fee Schedule and are due and payable within thirty (30) days of the date of Our invoice.

4.2. We may vary the Subscription Fees by publishing the variation to the Fee Schedule on ASX Online, or by otherwise notifying Subscriber not less than ninety (90) days prior to the effective date of the variation, provided that the Subscription Fees shall not be varied during the Initial Term.

5. Taxes

5.1. The Subscriber must pay all existing taxes and duties (including, but not limited to, any lease duty or other stamp duty), any new taxes and duties (including a goods and services tax or any other value-added taxes), any increases in taxes and duties and any associated penalties payable on or in respect of this Agreement, the Subscription Fees, any other payments due to Us or any other transaction or matter contemplated by this Agreement. If We are liable to pay such tax, duty or penalty then Subscriber must indemnify and release Us to the full extent of that liability.

5.2. In the event that payment of any amount of the Subscription Fees becomes subject to withholding tax, levy or similar payment obligation on sums due to Us under this Agreement such withholding tax amounts shall be borne and paid for by Subscriber in addition to the sums due to Us.

5.3. Any amounts payable to Us under or in connection with this Agreement have been determined exclusive of GST. If any supply made by Us to the Subscriber under or in connection with this Agreement is a taxable supply:

- (a) The Subscriber must pay an amount to Us equal to the GST payable by Us on that supply, in addition to any amounts payable or other consideration to be provided for that supply;
- (b) the additional amount must be paid at the same time as the first part of any consideration provided for that supply; and
- (c) We will provide the Subscriber with a tax invoice for that supply in accordance with the GST law, unless the parties have entered into an arrangement whereby the Subscriber



will provide a recipient created tax invoice for supplies, including that taxable supply.

For the purposes of this clause, words and phrases that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning provided by that Act. However, where the GST law treats a part of a supply as a separate supply for the purpose of working out the GST payable on that supply or determining the time at which GST will be payable on that supply, that part of the supply will be treated as a separate supply for the purposes of this clause.

6. Changes in the Service

We reserve the right to change the Service including the format, content and/or delivery method of the ASX Benchmark Data from time to time by public notification via ASX Online. The Subscriber may immediately terminate this Agreement by notice to Us without liability if the change or discontinuation is likely to be detrimental to the Subscriber.

- 6.1. Subject to clause 6.2, We may amend this Agreement by giving the Subscriber no less than 90 days prior written notice via ASX Online. The Subscriber may terminate this Agreement by notice to Us within 30 days of receiving notice of such change without liability, if the proposed amendments are likely to be detrimental to the Subscriber, and if the Subscriber chooses to terminate, it will be effective on the date that such changes take effect.
- 6.2. From time to time We may need to make urgent changes to this Agreement due to certain events, including but not limited to:
- (a) changes to applicable law;
 - (b) a direction by a Regulatory Authority;
 - (c) security or technical issues where necessary to protect the integrity or performance of Our systems.

In such cases We will endeavour to provide the Subscriber with reasonable notice of the change having regard to the nature of the event. The Subscriber may immediately terminate this Agreement by notice to Us without liability if the change or discontinuation is likely to be detrimental to the Subscriber.

7. Suspension

- 7.1. We may suspend access to the Service to the Subscriber at any time during the term of the Agreement if:
- (a) We are required to do so in order to comply with applicable law or an order, instruction or request of a Regulatory Authority;
 - (b) in Our reasonable opinion, any act or omission by the Subscriber in relation to its use of the ASX Benchmark Data is considered likely to bring into disrepute the ASX Group or the reputation or the integrity of the benchmark(s) managed by the ASX Group at any time;
 - (c) We are required to undertake repair or maintenance of any part of the systems that We use to collect, compile and distribute the ASX Benchmark Data, provided that We must recommence the supply of the ASX Benchmark Data once the repair or maintenance has been completed;
 - (d) Subscriber fails to pay any amounts due under this Agreement and fails to remedy that failure within seven days after receiving notice requiring it to do so;
 - (e) We reasonably consider that Subscriber's use of the Service is causing detrimental technical or operational issues for Our systems, including but not limited to supply of the ASX Benchmark Data, which requires an immediate suspension of Subscriber's connection, provided that We must recommence the supply of the ASX Benchmark Data once the issue has been resolved.
- 7.2. We will promptly reinstate the Services after the reason for suspension or restriction has been resolved. If the reasons aren't resolved within 30 days, either party may immediately terminate by written notice to the other party.
- 7.3. The Subscriber will not be liable to Us for any Subscription Fees during the suspension period except to the extent We have suspended or restricted the Service due to the Subscriber's act or omission.

8. Intellectual Property Rights



8.1. All intellectual property rights in the ASX Benchmark Data and related information material provided by Us under this Agreement is, and remains, proprietary to Us. The Subscriber has no rights to the ASX Benchmark Data except as expressly stated in this Agreement.

8.2. If the Subscriber's use of the ASX Benchmark Data, in accordance with this Agreement infringes the intellectual property rights of any person, We will indemnify and release Subscriber against any loss, damage, liability or reasonable costs determined by a court of law as a result of a claim by a third party against Subscriber, but only:

- (a) to the extent the claim relates to the ASX Benchmark Data provided by Us under this Agreement, provided such data has not in any way been altered or tampered with by Subscriber;
- (b) if Subscriber:
 - a. promptly notifies Us of the claim;
 - b. allows Us to defend or settle the claim and to control any proceedings; and
 - c. supply reasonable assistance to Us in defending and settling a claim at Our expense.

8.3. As part of a defence or settlement of a claim, We may in our absolute discretion:

- (a) obtain for Subscriber the right to continue using the ASX Benchmark Data as is relevant;
- (a) modify or replace the infringing part of the ASX Benchmark Data as is relevant to avoid the claim; or
- (b) accept the return of the infringing part from Subscriber and refund any fees paid in respect of that infringing part.

9. Termination

9.1. Either party may terminate this Agreement if the other party is in breach of a material term of this Agreement and fails to remedy that breach within 30 days written notice to remedy.

9.2. We may terminate this Agreement immediately by written notice if:

- (a) Subscriber is adjudicated bankrupt, enters into liquidation or any arrangement or composition with its creditors or if a receiver is appointed to any part of Subscriber's assets and not discharged within 14 days or if any judgement against Subscriber remains unsatisfied for more than seven days and the Corporations Act does not prevent such termination;
- (b) there is a change of direct or indirect beneficial ownership or control of Subscriber;
- (c) Subscriber fails to pay any amounts due under this Agreement and fails to remedy that failure within seven days after receiving notice requiring it do so.

9.3. Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time and without liability following the end of the Initial Term on giving not less than 90 days prior written notice.

10. Effects of Termination

On termination of this Agreement by either party:

- (a) the Subscriber must pay Us all amounts owed by the Subscriber in connection with this Agreement;
- (b) those rights and obligations required or purporting to have effect after termination or expiry of this Agreement will survive including without limitation clauses 5, 8, 10, 11, 12, 13, 16, 17 and 18;
- (c) We will be regarded as discharged from any further obligations under the Agreement; and
- (d) the Subscriber's right to access the Service and to use the ASX Benchmark Data will immediately cease and Subscriber will as We direct, return or destroy all copies of the ASX Benchmark Data in its possession or control, subject to Subscriber having the right to retain one backup copy for archival or record keeping purposes.

11. Disclaimer



11.1. We do not represent or warrant that the ASX Benchmark Data will be complete, accurate or error-free. We will, however:

- (a) notify Subscriber of any material errors or omissions in the ASX Benchmark Data as soon as reasonably practicable after We become aware of them; and
- (b) take the necessary steps to have any such material errors or omissions corrected as soon as reasonably practicable after We become aware of them.

11.2. We do not represent or warrant that the supply of the ASX Benchmark Data will be free of interruption. If there is an interruption to the supply, We will:

- (a) notify Subscriber of any such interruption as soon as reasonably practicable after We become aware of it;
- (b) where reasonably practicable, give an estimate of how long it will take to remedy the cause of the interruption; and
- (c) in any case, and subject to the cooperation of relevant telecommunication carriers (e.g. in re-establishing a connection following disconnection), promptly remedy such interruption as soon as reasonably practicable after We become aware of the interruption.

12. Liability

12.1. Subject to clause 12.4, neither We nor any member of the ASX Group will be liable to Subscriber or to any third party, whether in contract, tort, under statute or otherwise arising under or in connection with this Agreement for:

- (a) any Losses arising under this Agreement in connection with:
 - a. use or supply by Subscriber of the ASX Benchmark Data to any third party in a manner not permitted by or otherwise in breach of this Agreement;
 - b. any decisions by Subscriber or any third party based on the ASX Benchmark Data;

(b) any Losses arising under this Agreement in connection with:

- a. the ASX Benchmark Data being inaccurate or incomplete; or
- b. delays or interruptions in transmission of the ASX Benchmark Data,

except to the extent that that such Losses arise directly from Our wilful misconduct or fraud, or Our negligent act or omission.

12.2. Subject to clause 12.4, and to the extent permitted by applicable law, Our aggregate liability for all Losses sustained by Subscriber in connection with this Agreement for any one incident or series of incidents will not exceed an amount equal to the Fees paid or payable by Subscriber during the 12 months preceding the events giving rise to such liability.

12.3. To the extent permitted by applicable law, We exclude all liability to Subscriber for Consequential Loss suffered or incurred by Subscriber arising under or in connection with this Agreement.

12.4. The limitations and exclusions in clause 12 .1 and 12.2 do not apply to:

- (a) Our obligation to indemnify Subscriber under clause 8.2;
- (b) personal injury or death that We have caused or contributed to;
- (c) loss of or damage to tangible property that We have caused or contributed to;
- (d) Our wilful misconduct or fraud;
- (e) a breach of the Consumer Guarantees under the Australian Consumer Law, in which case Our liability for any breach of a Consumer Guarantee is hereby limited, at Our option, to:
 - a. in the case of goods:
 - i. the replacement of the goods or the supply of equivalent goods; or
 - ii. the repair of the goods; and
 - b. in the case of services:



- i. the supply of the services again; or
- ii. the payment of the cost of having the services supplied again.

13. Indemnification

Subscriber must at all times indemnify and hold harmless and release (and keep indemnified, released and held harmless) the ASX Group ('those indemnified') from and against any loss or liability incurred or suffered by any of those indemnified arising from any claim, which any person other than Subscriber may bring against any of those indemnified where such claim arose out of or in connection with:

- (a) a breach by Subscriber of its obligations under this Agreement;
- (b) use or supply by Subscriber of the ASX Benchmark Data in a manner not permitted under or otherwise in breach of this Agreement;
- (c) any wilful, unlawful or negligent act or omission by Subscriber,
- (d) except to the extent that We have caused or contributed to the Losses.

14. Records, Audit and Inspection

Subscriber must maintain appropriate records and procedures which ensure that only its authorised employees can access or view the ASX Benchmark Data at any given time. Subscriber agrees that We may nominate an employee or agent to inspect relevant records and procedures on giving 14 days' notice in writing to the Subscriber (**Inspection**). In the event of an Inspection, Subscriber will provide Us with access to the premises, records, procedures and staff of the Subscriber for the purposes of assessing the Subscriber's compliance with the terms of this Agreement.

15. Assignment

- 15.1. This Agreement (and all of Our rights and obligations hereunder) may be assigned by Us at any time to any person within the ASX Group without notice, or to any other person capable of fulfilling Our obligations under this Agreement with prior written notice.

- 15.2. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by Subscriber without Our prior written consent, which consent shall not be withheld unreasonably.

16. Governing Law and Jurisdiction

The laws of New South Wales, Australia, govern this Agreement. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

17. General

- 17.1. If there is any inconsistency between any of the terms in this Agreement, the order of precedence shall be as follows:
 - (a) the Order Form, including any Special Conditions within the Order Form;
 - (b) the Guide;
 - (c) any applicable schedule or addendum; and
 - (d) these Subscriber Terms and Conditions.
- 17.2. We shall in no event be held liable for failure to perform Our obligations under this Agreement if the failure results from act of God, act of any government or any authority or statutory body, fire, explosion, accident, power failure, industrial dispute, inability to obtain materials or anything beyond Our reasonable control. If such failure continues or is likely to continue for more than 60 days, then Subscriber may immediately terminate this Agreement without liability and will be entitled to a pro-rata refund of any Subscription Fees paid in advance from the date of termination.
- 17.3. The rights and remedies provided under this Agreement are cumulative and not exclusive of any rights provided by law or any other such right or remedy.
- 17.4. If part or all of any clause of this Agreement is illegal or unenforceable, it will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.
- 17.5. Any notice or communication under or in connection with this Agreement must be in writing addressed to the address of the other party specified in the Order Form (or such other updated



address notified under this clause) and left at or sent by prepaid post or email to that address. A notice is deemed received:

- (a) if left at the recipient's address, on the date of delivery;
- (b) if sent by prepaid post, 5 days after the date of posting; and
- (c) if sent by email, when the sender's email receives a message confirming successful transmission.

Each party must notify the other of an address for notices which may, at any time, be changed by notice to the other party.

- 17.6. The failure of a party at any time to insist on performance by the other party of any obligation under this Agreement is not a waiver of its right:
- (a) to insist on providing of, or to claim damages for breach of, that obligation, unless that party acknowledges in writing that the failure is a waiver; and
 - (b) at any other time insist on performance of that or any other obligation of the other party under this Agreement.
- 17.7. This Agreement supersedes all prior representations, agreements, statements and understandings whether verbal or in writing.
- 17.8. This Agreement may be signed in any number of counterparts. All those counterparts together make one instrument.
- 17.9. Nothing in this Agreement or any circumstances associated with it or its performance give rise to any relationship of partnership, principal and agent, or employer and employee and the Subscriber has no right to assume or create any obligations of any kind, express or implied, in the name of or on behalf of Us.

18. Definitions

In this Agreement the following definitions apply:

Agreement means these ASX Benchmark Data Subscriber Terms and Conditions, the Guide, the Fee Schedule, the applicable Order Form and any other documents incorporated by reference.

ASX Group means Us and our Related Bodies Corporate.

ASX Benchmark Data means the ASX benchmark financial data which the Subscriber has subscribed to in the Order Form and further described in the Fee Schedule.

ASX Online means the ASX Online website located at www.asxonline.com.

Consequential Loss means loss of revenue, loss of profits, loss of goodwill, loss of anticipated savings or business, pure economic loss, loss or corruption of data, loss of value of equipment, trading losses, wasted expenditure, loss of opportunity or expectation loss and any other form of consequential, indirect or special loss.

Corporations Act means the Corporations Act 2001 (Cth).

Fee Schedule means the schedule of fees published by Us applicable to licensing of ASX Benchmark Data supplied under this Agreement.

Guide means the BBSW product guide published on ASX Online.

Loss means all liabilities, costs, losses, damages, expenses (including legal expenses on a solicitor/client basis), or other outgoings of whatsoever kind and howsoever arising (including negligence) or liability incurred or suffered arising from any Claim, in each case whether such loss is direct, indirect, special or consequential and whether or not either party was advised in advance of the possibility of such loss, including for the avoidance of doubt, Consequential Loss.

Order Form means the Order Form agreed between the Subscriber and Us for the provision of the ASX Benchmark Data and referencing these ASX Benchmark Data Subscriber Terms and Conditions.

Regulatory Authority means any government agency, industry body relevant to financial markets, and including APRA and ASIC.

Related Body Corporate has the meaning given in the Corporations Act.

Service means subscription access to ASX Benchmark Data via the means nominated on the Order Form.



Subscriber means the entity identified in the Order Form.

Subscriber Entity means the Subscriber's Related Bodies Corporate as detailed in the Order Form.

Subscription Fees means the applicable subscription fees payable by Subscriber for the subscribed Service as published in the Fee Schedule.

We/Us/Our means ASX Benchmarks Pty Limited ACN 616 075 417 being a wholly owned subsidiary of ASX Limited ACN 008 624 691.

