

ASX ComNews Direct (Internal Use Only) Agreement

AGREEMENT

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement the following definitions shall apply (unless the context otherwise requires):

“**Additional Users**” means the directors or employees at the Location who can receive the Product from the Licensed Users, the number of which is specified in the Order Form; “**Agreement**” means this agreement and any Order Form or other documents incorporated by reference;

“**ASX Online**” means the ASX Online website, located at www.asxonline.com;

“**Fee Schedule**” means the schedule of fees applicable to this Agreement published under that title on ASX Online, or as otherwise notified by ASXO to the Subscriber, as varied from time to time;

“**Fees**” means the fees set out in the Fee Schedule, as varied from time to time;

“**Intellectual Property Rights**” means all intellectual property rights including without limitation copyright, trade marks and patents;

“**Licensed User**” means the employees of the Subscriber who are entitled to access the Product direct from ASX, the number of which is specified in the Order Form;

“**Location**” means the address specified on the Order Form under the heading ‘Location’;

“**Product**” means the Product nominated by the Subscriber in the Order Form.

2. TERM

2.1 This Agreement commences on the date that the parties sign the Agreement and will continue until:

- ASXO ceases supplying or making available Products under this Agreement; or
- it is otherwise validly terminated in accordance with its terms.

3. ACCESS TO PRODUCT

3.1 ASXO will make the Product available to the Subscriber as soon as reasonably practicable following the commencement of this Agreement.

3.2 ASXO may amend this Agreement at any time, including discontinuing any Products, by giving 90 days’ prior written notice, but reserves the right to make urgent changes with less notice where reasonably necessary having regard to the nature of the event. The Subscriber may immediately terminate this Agreement without liability if such change is likely to be detrimental to the Subscriber. The Subscriber shall be entitled to a pro-rata refund for Fees paid in advance from the date of termination.

3.3 To request a variation to the Product the Subscriber will complete and sign a new Order Form. ASXO will treat such a request by the Subscriber as an offer and may accept that offer subject to the payment of ASXO’s then current Fees for the Product.

3.4 If ASXO accepts the Subscriber’s offer under clause 3.3, ASXO will issue an invoice and the parties agree to be bound by those amendments on and from the date of invoice.

4. USE OF ASXO PRODUCT

4.1 Subject to the terms of this Agreement, ASXO grants the Subscriber a non-transferable, non-exclusive licence to make the Product available to the Licensed Users and Additional Users.

4.2 The licence granted under this clause 4 does not permit the Subscriber to:

- put the Product into a database or to screen scrape;
- distribute more than 30% of the Product in a calendar month to Additional Users; or
- resell, distribute, publish or otherwise deal in or make available the Product (in whole or in part) to any third party.

4.3 The Licensed Users must not disclose his or her individual log in details.

5. FEES

5.1 ASXO will invoice the Subscriber for the Fees in accordance with the Fee Schedule.

5.2 The Fees are payable in full within 30 days of the date of invoice. Overdue payments will accrue interest at a rate 2% above the overdraft rate charged by the principal bankers to ASXO from time to time.

5.3 ASXO may amend the Fees on giving not less than 90 days notice.

5.4 The Subscriber must pay all existing taxes and duties, any new taxes and duties (including value added taxes), any increases in taxes and duties, any associated penalties payable on or in respect of this Agreement, the Fees, any other payments due to ASXO or any other transaction or matter contemplated by this Agreement. If ASXO is primarily liable to pay such tax, duty or penalty then the Subscriber must indemnify ASXO to the full extent of that liability.

5.5 If GST is payable on any supply made under this Agreement, ASXO will provide a tax invoice and Subscriber must pay an amount equal to the GST payable on that supply in accordance with that tax invoice. That amount must be paid at the same time that the consideration is to be provided under this Agreement. 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.

6. RECORDS, AUDIT AND INSPECTION

6.1 The Subscriber will retain records (whether electronic or otherwise) which enable ASXO to verify the Subscriber’s compliance with this Agreement, including the number of Licensed Users and Additional Users that could access or view the Product in the immediately preceding year. The Subscriber will also maintain appropriate procedures which ensure that only the nominated number of Licensed Users and Additional Users can access or view the Product at any given time.

6.2 ASXO will be entitled to nominate an employee or agent to inspect the records and procedures referred to in clause 6.1 on giving 14 days notice in writing to the Subscriber (“**Inspection**”).

6.3 In the event of an Inspection, the Subscriber will provide access to the records and procedures referred to in clause 6.1 and otherwise co-operate with ASXO.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 ASXO retains the Intellectual Property Rights contained in the Product or has obtained a licence enabling the sub-licence of the information in the Product, as supplied to the Subscriber. Nothing in this agreement shall be construed as an abandonment, revocation, assignment or abrogation by ASXO of any Intellectual Property Rights in the Product.

8. LIABILITY

8.1 Subject to clause 8.5, ASXO agrees to supply the Products subject only to the terms and conditions in this Agreement and any non-excludable rights arising under the Australian Consumer Law. Any liability ASXO might otherwise have under this Agreement is expressly excluded, including for the avoidance of doubt, any liability arising in connection with the Product or the use thereof, or for any malfunction of ASXO’s equipment or software or transmission of the Product via the internet, the provision, storage or use of the Product or any part thereof, and without limiting the generality of the foregoing, for any delays, interruptions, data manipulations, errors or omissions however caused (including negligence on the part of ASXO and its employees, contractors and agents) in preparing, collecting, recording, processing and storing the Product.

8.2 Where ASXO is not permitted to exclude liability for any loss or damage in connection with a breach of a Consumer Guarantee under the Australian Consumer Law, but is permitted to limit its liability for such a breach, then, unless Subscriber is able to establish that it is not fair and reasonable for ASXO to do so, ASXO’s liability is limited to:

- the supply of the Product again; or
- the payment of the cost of having the Product supplied again.

8.3 Subject to clause 8.5, to the extent permitted by applicable law, ASXO’s total 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.

8.4 To the extent permitted by applicable law, ASXO excludes all liability to for any special, indirect or consequential loss suffered or incurred by Subscriber arising under or in connection with this Agreement.

8.5 The limitations and exclusions in clauses 8.1 to 8.3 do not apply to:

- personal injury or death that ASXO has caused or contributed to;
- loss of or damage to tangible property that ASXO has caused or contributed to; or
- ASXO’s wilful misconduct or fraud.

8.6 Subscriber must at all times indemnify and hold harmless and release (and keep indemnified, released and held harmless) ASXO and its Related Bodies Corporate and its officers (“those indemnified”) from and against any loss, cost 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:

- any breach by Subscriber of its obligations under this Agreement;
- any wilful, fraudulent, unlawful or negligent act or omission by Subscriber, except to the extent that ASXO has caused or contributed to such loss, cost or liability.

9. TERMINATION

9.1 Notwithstanding any other provision of this Agreement, either party may terminate this Agreement by providing 90 days written notice to the other party. If ASXO terminates under this clause, the Subscriber shall be entitled to a pro-rata refund for Fees paid in advance from the date of termination.

9.2 Either party may terminate this Agreement if the other party breaches a material term of the Agreement, other than an obligation to pay Fees, and fails to remedy that breach within 30 days after receiving notice requiring them to do so.

9.3 If the Subscriber fails to pay Fees on the due date any sum due to ASXO and has not remedied the failure after receiving 7 days written notice from ASXO in relation to the failure, ASXO may:

- withhold further access to the Product; and/or
- immediately terminate this Agreement.

9.4 ASXO may terminate this Agreement immediately by written notice to the Subscriber if the 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 the Subscriber’s assets and not discharged within 14 days or if any judgement against the Subscriber remains unsatisfied for more than seven days.

9.5 ASXO may terminate this Agreement immediately if the Subscriber is in breach of clause 4 of this Agreement.

9.6 Upon termination of this Agreement for any reason, the Subscriber’s licence to use the Product will immediately cease.

10. GENERAL

10.1 ASXO shall in no event be held liable for any delay or failure to perform its obligations if the delay or 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 its reasonable control.

10.2 The Subscriber may not assign any of its rights under this Agreement without the prior written consent of ASXO. This Agreement may be assigned by ASXO at any time to any person within the ASX group without notice, or to any other person capable of fulfilling ASXO’s obligations under this Agreement with prior written notice.

10.3 This Agreement shall be construed and governed in accordance with the laws of the State of New South Wales and the parties shall submit to the exclusive jurisdiction of the courts of New South Wales and the appellate courts of the Commonwealth of Australia.