

ASX BENCHMARK DATA

CLEARINGHOUSE SUPPLY TERMS AND CONDITIONS

1. DICTIONARY

The Dictionary in Appendix A:

- (a) defines some of the terms used in this Agreement; and
- (b) sets out the rules of interpretation which apply to this Agreement.

2. SUPPLY AND USE OF ASX BENCHMARK DATA

2.1. Supply

During the Term of this Agreement, We will supply the ASX Benchmark Data to CLEARINGHOUSE (either directly and/or via a third party information vendor) at the frequency and in the form described in the Fee Schedule subject to the terms of this Agreement.

2.2. Use

Subject to the payment of the applicable Fees and the provisions of this Agreement, We grant to CLEARINGHOUSE and its Related Bodies Corporate a non-exclusive, non-transferrable licence to use the ASX Benchmark Data for the purpose of clearing Australian Dollar Interest Rate Swaps (AUD IRS) which shall include the following specific data uses below:

- (a) building CLEARINGHOUSE's Pricing Curves and valuation of User portfolios for AUD IRS;
- (b) fixing and settling User portfolios that trade and clear AUD IRS;
- (c) publishing the ASX Benchmark Data on the secure User website for reconciliation purposes and for User reporting;
- (d) trade reporting;
- (e) complying with regulatory obligations;
- (f) using the ASX Benchmark Data as an input in its margin calculator tool; and
- (g) distributing 24 hour delayed ASX Benchmark Data free of charge to Users on the secure User website.

2.3. Cost of equipment

CLEARINGHOUSE is responsible for acquiring and paying for all telecommunications services, software and equipment necessary to enable CLEARINGHOUSE to receive and distribute the ASX Benchmark Data or Agency Information (as the case may be) under this Agreement.

2.4. Modifications to the ASX Benchmark Data

- (a) We may at any time modify the ASX Benchmark Data:
 - i. in the case of modifications to the content of the ASX Benchmark Data, by 30 days' written notice to CLEARINGHOUSE; and
 - ii. in the case of modifications in the format and method by which the ASX Benchmark Data is delivered, by 30 days' written notice to CLEARINGHOUSE.
- (b) The CLEARINGHOUSE may immediately terminate this Agreement by notice to Us without liability if the modification is likely to be detrimental to the CLEARINGHOUSE.

2.5. CLEARINGHOUSE assistance

At Our request, CLEARINGHOUSE agrees to:

- (a) promptly comply with all reasonable directions made by Us to prevent any breaches of the restrictions set out in this Agreement; and
- (b) reasonably co-operate in action taken by Us against any person to protect and enforce Our rights in respect of the ASX Benchmark Data, including providing Us with information about that person's access to and use of the ASX Benchmark Data provided that in so doing, CLEARINGHOUSE does not breach any applicable law.

2.6. Suspension

- (a) We may suspend supplying the ASX Benchmark Data to CLEARINGHOUSE at any time during the Term if:



- i. CLEARINGHOUSE continues supplying the ASX Benchmark Data other than as permitted under this Agreement within a prescribed time period of no less than 14 Business Days after being requested to cease doing so;
- ii. CLEARINGHOUSE has failed to pay an amount due and payable to Us under this Agreement within 30 days of receiving notice requesting payment;
- iii. We are required to do so in order to comply with applicable law or an order, instruction or request of a Regulatory Authority;
- iv. in Our reasonable opinion, any act or omission by CLEARINGHOUSE is considered likely to bring into disrepute Our name or reputation or the integrity of the benchmarks managed by the ASX Group at any time; or
- v. 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.

- (b) 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.
- (c) The CLEARINGHOUSE 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 CLEARINGHOUSE's act or omission.

2.7. No exclusivity

Nothing in this Agreement prevents Us from entering into an arrangement to supply the ASX Benchmark Data, directly or indirectly, to any entity.

2.8. CLEARINGHOUSE to control its business

Without limiting CLEARINGHOUSE's obligations under this Agreement, the parties acknowledge and agree that the business of offering and supplying the CLEARINGHOUSE Services is not controlled by Us, and that CLEARINGHOUSE:

- (a) has sole control over the manner in which the CLEARINGHOUSE Services are offered and supplied, including the price, design, implementation and method of delivery for the CLEARINGHOUSE Services;
- (b) is responsible for all aspects of the provision of the CLEARINGHOUSE Services, including administrative services such as customer support, complaint handling and invoicing; and
- (c) may make changes to the manner in which the CLEARINGHOUSE Services are offered and supplied as it sees fit and as required by its users, provided that it does so consistently with its obligations under this Agreement.

2.9. Changes to the Agreement

- (a) Subject to (b), We may amend this Agreement by giving the CLEARINGHOUSE no less than 90 days prior written notice via ASX Online. CLEARINGHOUSE 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 CLEARINGHOUSE, and if the CLEARINGHOUSE chooses to terminate, it will be effective on the date that such changes take effect.
- (b) From time to time We may need to make urgent changes to this Agreement due to certain events, including but not limited to:
 - i. changes to applicable law;
 - ii. a direction by a Regulatory Authority;
 - iii. security or technical issues where necessary to protect the integrity or performance of Our systems.
- (c) In such cases We will endeavour to provide the CLEARINGHOUSE with reasonable notice of the change having regard to the nature of the event. The CLEARINGHOUSE may immediately terminate this Agreement by notice to Us without liability if the change or discontinuation is likely to be detrimental to the CLEARINGHOUSE.

3. CONDITIONS ON USE AND DISTRIBUTION OF ASX BENCHMARK DATA

3.1. Attribution



CLEARINGHOUSE must attribute Us as the source and provider of the ASX Benchmark Data to its Users.

3.2. Content and format conditions

CLEARINGHOUSE must:

- (a) ensure that the CLEARINGHOUSE Services accurately reproduce the ASX Benchmark Data and do not commingle the ASX Benchmark Data with any other live data;
- (b) not alter or remove from the ASX Benchmark Data any trade marks or any notices related to ownership, including any proprietary notices, legends, symbols or labels;
- (c) accompany the distributed ASX Benchmark Data with a link to the Disclaimer where this is reasonably practicable and commercially feasible (provided that CLEARINGHOUSE must inform Us if it decides not to provide such a link); and
- (d) notify Us of any errors in the transmission or display of the ASX Benchmark Data by a CLEARINGHOUSE Service of which CLEARINGHOUSE is aware,
- (e) provided that notwithstanding the above, CLEARINGHOUSE shall be entitled to use the ASX Benchmark Data in CLEARINGHOUSE Pricing Curves (in respect of which its shall not be subject to 3.2(a) to (d) above).

3.3. CLEARINGHOUSE acknowledgment

- (a) CLEARINGHOUSE acknowledges that the ASX Benchmark Data is proprietary to Us and that the ASX Benchmark Data is made available to CLEARINGHOUSE for the sole purpose of enabling CLEARINGHOUSE to distribute the ASX Benchmark Data to Users in accordance with this Agreement. For the avoidance of doubt, the CLEARINGHOUSE Pricing Curves shall not be considered ASX Benchmark Data, and remain proprietary to CLEARINGHOUSE.
- (b) Except as otherwise expressly provided in this Agreement, CLEARINGHOUSE must not use, reproduce, communicate or disclose the ASX Benchmark Data for any other purpose without Our prior written consent except as expressly permitted under this Agreement. Without limiting the previous sentence, CLEARINGHOUSE must not

publish the ASX Benchmark Data on a publicly accessible website.

4. USERS

4.1. Inconsistent representations

CLEARINGHOUSE must not make any representation which in any way varies, prejudices, derogates or diminishes the effect of the basis of supply set out in clause 4.3.

4.2. Unauthorised use

CLEARINGHOUSE must implement reasonable technical measures to prevent unauthorised access or use of ASX Benchmark Data provided to it under this Agreement. CLEARINGHOUSE must immediately inform Us if CLEARINGHOUSE suspects or has actual knowledge (CLEARINGHOUSE acting reasonably) that any entity (other than a User) has obtained access to or is using the ASX Benchmark Data via CLEARINGHOUSE's distribution channels, and must take such remedial steps as We may reasonably direct.

4.3. User agreement

- (a) CLEARINGHOUSE confirms that CLEARINGHOUSE's standard User agreement has provisions that extend to Us the benefit of disclaimer or exclusion of warranties substantially consistent with those set out in clauses 8.2 below.
- (b) CLEARINGHOUSE must ensure that CLEARINGHOUSE discontinues the supply of ASX Benchmark Data to any User if We, in our sole discretion, advise CLEARINGHOUSE that the User has failed to meet the requirements of this Agreement.
- (c) CLEARINGHOUSE must ensure that each User may only use, access, store or process the ASX Benchmark Data for its own internal risk management and valuation purposes in connection with the performance of its obligations under AUS IRS that are cleared directly or on its behalf or that it anticipates will be cleared with CLEARINGHOUSE.
- (d) CLEARINGHOUSE must ensure a User must not:
 - iv. do anything that CLEARINGHOUSE is prohibited from doing under this Agreement;



- v. download, use or distribute the ASX Benchmark Data outside the CLEARINGHOUSE Service;
- vi. redistribute the ASX Benchmark Data (in whole or part) to any third party or allow any other person to use or access the ASX Benchmark Data; or
- vii. rely on the accuracy or timely supply of ASX Benchmark Data.

5. CUSTOMER SERVICE & TECHNICAL SUPPORT

5.1. First level support

CLEARINGHOUSE must provide first-level customer support to Users in relation to that part of the CLEARINGHOUSE Services which concerns the ASX Benchmark Data through a telephone support service, appropriate website information and e-mail sales and support channels.

5.2. Referral to Us

If CLEARINGHOUSE is unable to deal with a User enquiry under clause 5.1, CLEARINGHOUSE may refer the enquiry to Us and CLEARINGHOUSE must provide all assistance reasonably required by Us to enable Us to deal with the User's enquiry.

5.3. Resolution of technical difficulties

In the event that either party suffers technical difficulties which are within their reasonable control which interfere with their ability to perform their obligations under this Agreement, that party must use reasonable endeavours to rectify the problem.

6. MARKETING

6.1. CLEARINGHOUSE Marketing

CLEARINGHOUSE:

- (a) may use reasonable commercial efforts to promote to existing and prospective clients the availability of ASX Benchmark Data through the CLEARINGHOUSE Services. Prior to using or distributing any promotional material that refers to the ASX Trade Marks, CLEARINGHOUSE must provide a copy of the material for Our approval in accordance clause 7.2(b); and
- (b) must attribute Us as the source and provider of ASX Benchmark Data in all promotional material pursuant to clause 6.1(a).

7. INTELLECTUAL PROPERTY RIGHTS

7.1. Rights in the ASX Benchmark Data

- (a) We reserves all rights in the ASX Benchmark Data. CLEARINGHOUSE has no rights to the ASX Benchmark Data except as expressly stated in this Agreement. Nothing in this Agreement is to be understood or construed as an abandonment, revocation, assignment or denial by Us, or any information source, of copyright, confidentiality or any other intellectual property rights which any of them may own in or with respect to the ASX Benchmark Data or any component of the ASX Benchmark Data.
- (b) For the avoidance of doubt the CLEARINGHOUSE Pricing Curves shall not be considered ASX Benchmark Data, and remain proprietary to CLEARINGHOUSE.

7.2. ASX Trade Marks

- (a) The ASX Trade Marks are the property of members of the ASX Group and all rights in the ASX Trade Marks are reserved. All use of the ASX Trade Marks under this Agreement is for the benefit of the ASX Group, and CLEARINGHOUSE must not knowingly or recklessly take any action that is inconsistent with the ASX Group's rights in the ASX Trade Marks.
- (b) CLEARINGHOUSE may use the ASX Trade Marks to the extent necessary to comply with clauses 3 and 6.1, provided that such use is in the manner and form approved by Us from time to time. CLEARINGHOUSE must comply with such use standards as are communicated by Us to CLEARINGHOUSE from time to time.
- (c) The rights granted to CLEARINGHOUSE pursuant to clause 7.2(b) are non-exclusive, royalty-free worldwide, non-transferable, and personal to CLEARINGHOUSE and may not be sub-licensed. CLEARINGHOUSE may not assign, transfer or authorise anyone else to use the rights, and must not do or cause to be done any act or thing impairing the ASX Group's right, title and interest in the ASX Trade Marks, or modify, dilute or otherwise misuse the ASX Trade Marks. The parties acknowledge that clause 7.2(b) is the sole source of CLEARINGHOUSE's rights to use the ASX Trade Marks and powers (if any) conferred by section 26 of the Trade Marks Act 1995 (Cth) are excluded.



- (d) The ASX Trade Marks are provided "as-is" without any warranty of any kind.
- (e) Any goodwill or other rights or interest which arise as a result of CLEARINGHOUSE's use of the ASX Trade Marks is owned by the ASX Group and CLEARINGHOUSE must transfer all rights and interests to the relevant members of the ASX Group to give effect to this clause.

7.3. Use of CLEARINGHOUSE Trade Marks

We may only use a name or trade mark of CLEARINGHOUSE with CLEARINGHOUSE's prior permission.

7.4. Infringement Claims

- (a) If the CLEARINGHOUSE'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 CLEARINGHOUSE 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 CLEARINGHOUSE, but only:
 - i. 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 in a manner not authorised under this Agreement by CLEARINGHOUSE; and
 - ii. if CLEARINGHOUSE:
 - a. promptly notifies Us of the claim;
 - b. allows Us to defend or settle the claim and to control any proceedings; and
 - c. provides reasonable assistance to Us in defending and settling a claim at Our expense.
- (b) As part of a defence or settlement of a claim, We may in our absolute discretion:
 - i. obtain for CLEARINGHOUSE the right to continue using the ASX Benchmark Data as is relevant;
 - ii. modify or replace the infringing part of the ASX Benchmark Data as is relevant to avoid the claim; or

- iii. accept the return of the infringing part from CLEARINGHOUSE and refund any fees paid in respect of that infringing part.

8. WARRANTIES

8.1. CLEARINGHOUSE warranty

CLEARINGHOUSE warrants it will use and disclose the ASX Benchmark Data only in accordance with the terms of this Agreement.

8.2. Quality, accuracy and completeness of the ASX Benchmark Data

- (a) We do not represent or warrant that the ASX Benchmark Data will be complete, accurate or error-free. We will, however:
 - i. notify CLEARINGHOUSE of any material errors or omissions in the ASX Benchmark Data as soon as reasonably practicable after We become aware of them; and
 - ii. take the necessary steps to have any such material errors or omissions corrected as soon as reasonably practicable after We become aware of them.
- (b) 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:
 - i. notify CLEARINGHOUSE of any such interruption as soon as reasonably practicable after We become aware of it;
 - ii. where reasonably practicable, give an estimate of how long it will take to remedy the cause of the interruption; and
 - iii. 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.

9. INDEMNITIES

9.1. Indemnity by CLEARINGHOUSE

CLEARINGHOUSE indemnifies ASX Group and ASX Group Personnel ("ASX indemnified parties") against all loss, expenses and liability suffered by ASX



indemnified parties arising from any Claim, which any person other than CLEARINGHOUSE may bring against the ASX indemnified parties where the Claim arises from or in connection with:

- (a) any breach by CLEARINGHOUSE of clause 4 or clause 8.1;
- (a) use or supply by CLEARINGHOUSE of the ASX Benchmark Data in a manner not permitted under or otherwise in breach of this Agreement;
- (b) any wilful, unlawful or negligent act or omission of CLEARINGHOUSE;
- (c) any breach by CLEARINGHOUSE or a User under a User agreement,

except to the extent that We have caused or contributed to the Losses.

10. FEES

10.1. Fees

In consideration for the right to receive and distribute the ASX Benchmark Data in accordance with this Agreement, CLEARINGHOUSE must pay Us the Fees within thirty (30) days of the invoice being sent via electronic email by Us. Fees are calculated and billed in accordance with the Fee Schedule.

10.2. Fees for CLEARINGHOUSE Services

We acknowledge and agree that CLEARINGHOUSE may collect fees from Users in relation to the delivery and support of the CLEARINGHOUSE Services and that this revenue is to be retained by CLEARINGHOUSE. However, CLEARINGHOUSE must not charge Users any incremental fees which are attributable to access to the ASX Benchmark Data and the amount of the fees payable to CLEARINGHOUSE by a CLEARINGHOUSE subscriber must not vary as a result of whether or not the subscriber has access to the ASX Benchmark Data. For the avoidance of doubt, nothing in this Agreement shall prevent CLEARINGHOUSE from charging incremental fees for its clearing services, including for its AUD IRS services.

10.3. Variation of Fees

We may vary the Fees by publishing the variation on asxonline.com or by otherwise giving CLEARINGHOUSE 90 days' notice of the variation prior to the effective

date of the variation, provided that the Fees shall not be varied during the Initial Term.

10.4. Late Payments

Without affecting Our rights under clauses **Error! Reference source not found.** and 12.2, late payments of invoices will incur interest at 2% above the Reserve Bank of Australia base rate. Interest accrues from the due date to the date paid, calculated on a daily basis.

11. TAXES

11.1. Payment of GST

- (a) The consideration for any supply made under or in connection with this Agreement, including the Fees, does not include GST.
- (b) To the extent that any supply made under or in connection with this Agreement is a taxable supply, the consideration for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of that supply.
- (c) Any GST that is payable on the supplies made under this Agreement will be added to the Fees payable by CLEARINGHOUSE at the time the Fees are payable.

11.2. Claims and Adjustments

- (a) Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to the amount of GST paid or payable pursuant to any supply made under or in connection with this Agreement.
- (b) If either party is entitled under this Agreement to be reimbursed or indemnified by the other party for a cost or expense incurred by the other party in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed.

11.3. Other taxes

Other than GST, which is dealt with in clauses 11.1 and 11.2, the Fees are exclusive of all taxes. CLEARINGHOUSE shall be liable for all taxes payable in relation to the Fees (other than taxes on Our net



income), and must ensure that We receive the full value of the Fees without any deduction.

12. TERM AND TERMINATION

12.1. Term

- (a) This Agreement commences on the Commencement Date and continues until the end of the calendar year (the "**Initial Term**") unless earlier terminated in accordance with the Agreement or otherwise.
- (b) This Agreement will automatically renew for further successive periods (each a "**Further Term**") of 12 months from the expiry of the Initial Term or any Further Term unless either party gives the other not less than 30 days written notice prior to the expiry of the Initial Term or any Further Term of its intention not to renew.

12.2. Termination by Us

We may terminate this Agreement immediately on notice to CLEARINGHOUSE if:

- (a) CLEARINGHOUSE suffers an Insolvency Event and the Corporations Act does not prevent such termination;
- (b) any money which CLEARINGHOUSE must pay Us under this Agreement remains outstanding for more than 30 days after the date on which it became payable and CLEARINGHOUSE is not able to rectify that breach within 30 days of ASX giving it written notice to do so, provided that the parties are not in dispute as to the amount payable;
- (c) CLEARINGHOUSE is in material breach of this Agreement and has not rectified that breach within 30 days of Our giving written notice to do so;
- (d) there is any change in the direct or indirect beneficial ownership or control of CLEARINGHOUSE;
- (e) We exercise our termination right under clause 17; or
- (f) We propose to cease to make available the ASX Benchmark Data generally to the market for any reason, subject to Us providing at least 90 days prior notice of its intention to cease to make

available the ASX Benchmark Data generally to the market.

12.3. Termination by CLEARINGHOUSE

CLEARINGHOUSE may terminate this Agreement immediately on notice to Us if:

- (a) We suffer an Insolvency Event;
- (b) We are in breach of a material term of this Agreement and have not rectified that breach within 30 days of CLEARINGHOUSE giving Us written notice to do so;
- (c) CLEARINGHOUSE exercises its termination right under clause 17;
- (d) We are unable to provide the ASX Benchmark Data for 5 consecutive Business Days;
- (e) We are unable to provide the ASX Benchmark Data to CLEARINGHOUSE due to technical difficulties which cannot be rectified within 10 Business Days.

12.4. Termination by either party

Either party may terminate this Agreement on giving no less than 90 days prior written notice to the other following the end of the Initial Term.

12.5. Consequences of Termination

Upon termination of this Agreement:

- (a) CLEARINGHOUSE must pay Us all amounts owed in connection with this Agreement.
- (b) all rights granted under this Agreement in relation to the ASX Benchmark Data and ASX Trade Marks automatically terminate.
- (c) CLEARINGHOUSE must immediately cease using ASX Benchmark Data and the ASX Trade Marks, and must remove any reference to ASX Group from its services.
- (d) CLEARINGHOUSE, subject to clause 12.6, remove and delete all copies of the ASX Benchmark Data within its possession or control, and must certify in writing to Us that it has complied with this sub-clause except where ASX Benchmark Data is retained as part of the CLEARINGHOUSE's established back-up and record keeping procedures and policies, or is required to be kept to ensure compliance with applicable regulations.



12.6. Retention of ASX Benchmark Data for compliance purposes

Despite clause 12.5, CLEARINGHOUSE may retain a single copy of the ASX Benchmark Data distributed to Users during the Term for the purposes of confirming the contents of said distribution to Users and their auditors. Additionally upon termination of this Agreement by either party CLEARINGHOUSE may retain the ASX Benchmark Data for the purposes of complying (and in accordance) with applicable regulations.

12.7. Fee refunds

Notwithstanding any other provision of this Agreement, where this Agreement is terminated by CLEARINGHOUSE under clause 12.3(b) or by Us under clause 12.2(f), We will refund any portion of the Fees that have been paid in advance by CLEARINGHOUSE that relate to the period after the effective date of termination of this Agreement. We will not otherwise refund any portion of the Fees.

13. Liability

13.1. Subject to clause 13.4, neither We nor any member of the ASX Group will be liable to CLEARINGHOUSE 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 CLEARINGHOUSE 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 CLEARINGHOUSE 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.

13.2. Subject to clause 13.4, and to the extent permitted by applicable law, Our aggregate liability for all Losses sustained by CLEARINGHOUSE 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 CLEARINGHOUSE during the 12 months preceding the events giving rise to such liability.

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

13.4. The limitations and exclusions in clause 13.1 and 13.2 do not apply to:

- (a) Our obligation to indemnify CLEARINGHOUSE under clause 7.4;
- (b) A breach of Our confidentiality obligations under clause 14.1;
- (c) personal injury or death that We have caused or contributed to;
- (d) loss of or damage to tangible property that We have caused or contributed to;
- (e) Our wilful misconduct or fraud;
- (f) 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.

14. CONFIDENTIALITY

14.1. Obligation of confidentiality

A Recipient must keep the Confidential Information of the Discloser confidential and must not, without the consent of the Discloser, disclose it to any other person (except officers and employees of the Recipient who need to know and then only to the extent that they need to know and agree to maintain the confidentiality of the information) nor use it for any purpose other than as permitted under or in the performance of this Agreement.

14.2. Exclusion

A Recipient will not breach clause 14.1 if the Recipient is required by law to disclose the Confidential Information or disclosure is required in connection with legal proceedings relation to this Agreement.

14.3. Injunctive relief in relation to the ASX Benchmark Data

Each party recognises that the other would suffer irreparable harm from an unauthorised use or disclosure of the other party's Confidential Information and that monetary damages may be inadequate to compensate for such breach. Each party agrees that the other shall be entitled to seek an injunction or other equitable relief in the event that there is any actual or threatened unauthorised use or disclosure, and that a party shall not object to such injunction or equitable relief on that basis that there exists an adequate remedy at law or that injunctive remedies should not otherwise be available to remedy a breach. An injunction or other equitable relief shall be in addition to any other remedies available under this Agreement.

15. AUDIT

Upon 60 days' prior notice to CLEARINGHOUSE, CLEARINGHOUSE must allow a third party auditor appointed by Us to enter CLEARINGHOUSE's premises and/or inspect CLEARINGHOUSE's premises, books and records for the sole purpose of ascertaining CLEARINGHOUSE's compliance with this Agreement (**Inspection**). To assist in the smooth conduct of an Inspection, We will set out (in the notice of Inspection) the types of records and processes that We propose to

inspect. While on the CLEARINGHOUSE's premises, We agree to comply with the CLEARINGHOUSE's applicable policies (including health and safety policies) procedures and security requirements that are notified to Us. We agree to keep confidential any personal information We may receive from the CLEARINGHOUSE in the course of an Inspection.

16. DISPUTE RESOLUTION

16.1. Injunctive or interim relief

Nothing in this clause 16 prevents a party seeking urgent injunctive or similar relief from a court.

16.2. Notification of dispute

Any party ("**Initiating Party**") claiming that a Dispute has arisen must give the other party ("**Recipient Party**") a notice setting out brief details of the Dispute ("**Dispute Notice**"). Within 5 Business Days of service of a Dispute Notice, the Recipient Party must give the Initiating Party a notice setting out brief details of the Recipient Party's position on the Dispute ("**Reply Notice**").

16.3. Negotiations

If Dispute and Reply Notices are given, the parties must make representatives with authority to settle the Dispute available for the purpose of meeting in an effort to resolve the Dispute. At least one meeting of the authorised representatives must take place within 14 Business Days of service of a Reply Notice.

16.4. Commencement of proceedings

If the authorised representatives are unable to resolve the Dispute within 14 Business Days after meeting in accordance with the clause 16.3, or if the Recipient Party does not give a Reply Notice or make its authorised representatives available for a meeting within the time periods contained in this clause, the Initiating Party will be entitled to commence proceedings regarding the Dispute.

17. FORCE MAJEURE

With the exception of any payment obligations under this Agreement, neither party will be in breach of this Agreement and will not be liable to the other party or any other person for delay or failure to perform an obligation due to a Force Majeure Event. Where affected by a Force Majeure Event, the affected party will be granted a reasonable extension of time to perform the obligation and must use reasonable



endeavours to resume performance of the obligation, unless the delay or failure exceeds 30 days in which case either party may immediately terminate this Agreement on notice to the other party.

18. GENERAL

18.1. Notices

- (a) A notice or other communication under this Agreement must be addressed to the addressee at the address or email address for the other party specified in the Order Form (or such other updated address notified under this clause).
- (b) Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice is deemed to be received:
 - i. by hand, when delivered to the addressee;
 - ii. if by prepaid post, 5 days after the date of posting; or
 - iii. 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.

18.2. Entire Agreement

This Agreement supersedes all previous Agreements about its subject matter and embodies the entire Agreement between the parties. This Agreement may be amended only by written Agreement of the parties.

18.3. Assignment

- (a) CLEARINGHOUSE may not assign, novate, subcontract, or attempt to assign, novate or subcontract its rights, obligations or remedies under this Agreement without Our prior written consent, which consent shall not be unreasonably withheld.
- (b) 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.

18.4. Survival

Clause 8.2(a), (d) and (e), 8.2 and **Error! Reference source not found.**, 12.5, 12.6, **Error! Reference source not found.**, 14, 16, 18 and Appendix A survive the termination or expiry of this Agreement.

18.5. Counterparts

This Agreement may be signed in any number of counterparts. All those counterparts together make one instrument.

18.6. Waiver

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.

18.7. Invalidity and severability

If a provision of this Agreement or a right or remedy of a party under this Agreement is invalid or unenforceable in a particular jurisdiction:

- (a) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.

18.8. Further assurances

Each party must, at its own expense, do everything reasonably necessary to give full effect to this Agreement.

18.9. Publicity

CLEARINGHOUSE must not make press or other announcements or releases about this Agreement and the transactions related to it without Our approval (which may be granted conditionally or in Our absolute discretion) unless the announcement or release is required to be made by law or the rules of a stock exchange.

18.10. Relationship between the Parties



Except to the extent expressly provided in this Agreement, nothing in this Agreement constitutes a relationship of employer, employee, principal and agent, partnership or joint venture between the parties or other form of association in which any party may be liable for the acts or omissions of the other party. A party does not have a right to bind the other party or hold itself out as a representative of the other party.

18.11. 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.

18.12. No Merger

The covenants, conditions, provision and warranties in this Agreement do not merge or terminate on completion.

18.13. Order of Precedence

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 CLEARINGHOUSE Supply Terms and Conditions.

APPENDIX A- DICTIONARY

PART 1 - DEFINED TERMS

In this Agreement:

ASX Benchmark Data means the ASX benchmark financial data which CLEARINGHOUSE has subscribed to in the applicable Order Form and with use rights further described in the Fee Schedule.

ASX Group means Us and Our Related Bodies Corporate.

ASX Trade Marks means the following trade marks: ASX and with effect from 30 December 2016, BBSW:

Business Day means a day on which trading banks are open for general business in Sydney, excluding Saturday, Sunday or public holiday.

Claim means any claim, demand, action or proceeding (whether based in contract, tort (including negligence), statute or otherwise).

CLEARINGHOUSE means the CLEARINGHOUSE entity identified in the Order Form.

CLEARINGHOUSE Pricing Curve means a work created by CLEARINGHOUSE using the ASX Benchmark Data where the ASX Benchmark Data has been processed or modified to such an extent that the result cannot be recognised as, traced back to or reverse engineered to display the ASX Benchmark Data, nor can the work be used as a substitute for the ASX Benchmark Data.

CLEARINGHOUSE Services means the services offered by CLEARINGHOUSE which makes use of the ASX Benchmark Data.

Commencement Date means the date of this Agreement.

Confidential Information means all information (regardless of form) disclosed or otherwise made available by the Discloser to the Recipient for or in connection with this Agreement and all information created by the Recipient (derived or produced partly or wholly from the Confidential Information) in connection with this Agreement which, includes:

- (a) any information or data contained in the ASX Benchmark Data;
- (b) the terms of this Agreement;
- (c) User details;
- (d) Technical processes and formula, source codes, object codes, product designs;
- (e) sales, cost and other unpublished financial information; and
- (f) product and business plans, projection and marketing data,
- (g) but excludes any information which is:
 - i. in or becomes part of the public domain other than through a breach of this Agreement; or



- ii. is rightfully known to or in possession or control of the Recipient and not subject to an obligation on confidentiality on the Recipient.

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).

Disclaimer means the following disclaimer (or such other disclaimer as notified by Us to CLEARINGHOUSE from time to time):

"This information is proprietary to the ASX Group. All rights are reserved. You may only use this information for your own internal risk management and valuation purposes. To the fullest extent permitted by law, this information is provided 'as is' and you may not rely on it as being accurate or comprehensive. You should independently verify the accuracy and comprehensiveness of this information."

Discloser means the party disclosing the Confidential Information.

Dispute includes any dispute, controversy, difference or claim arising out of or in connection with this Agreement or the subject matter of this Agreement, including any question concerning its formation, validity, interpretation, performance, breach and termination.

Dollar or \$ or AUD means Australian Dollars.

Fees means the applicable fees as set out in the Fee Schedule for the ASX Benchmark Data subscribed in an Order Form.

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

Force Majeure means an event or circumstance beyond the reasonable control of a party including acts of God, war, flood, explosion, civil disobedience, legislation not in force at the date of this Agreement, labour disputes or delays by third parties, including subcontractors.

Guide means the BBSW product guide published on ASX Online.

Insolvency Event means the happening of any of the following events in relation to a party:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Losses 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 parties for the provision of the ASX Benchmark Data and referencing these BBSW Data CLEARINGHOUSE Supply Terms and Conditions.

Personnel means employees, officers, agents and contractors of a party.



Recipient means the party who receives the Confidential Information.

Related Body Corporate has the meaning given in the Corporations Act 2001 (Cth).

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

Term means Initial Term referred to in clause 12.1 and any extension of that Initial Term.

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

User means a person whom CLEARINGHOUSE is authorised to supply ASX Benchmark Data in accordance with the terms of this Agreement including but not limited to its clearing members, potential clearing members, their customers and their potential customers.

(g) a term or expression defined in the Corporations Act, the *A New Tax System (Goods & Services Tax) Act 1999 (Cth)* or the *Copyright Act 1968 (Cth)* but not defined in this Agreement has the same meaning as provided in that legislation.

PART 2 - INTERPRETATION

In this Agreement:

In this Agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words which are gender neutral or gender specific include each gender;
- (c) a reference to a person or entity includes a company and any other form of business association whether incorporated or unincorporated and further includes the successors and permitted assigns of that person or entity;
- (d) the words "including", "for example" or "such as" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (e) headings are for convenience only and do not affect the interpretation of this Agreement;
- (f) no rule of interpretation or construction may operate to the detriment of any party only because that party was responsible for the preparation of this Agreement; and

