

ASX BENCHMARK DATA - HISTORICAL

INTERNAL USE CUSTOMER TERMS AND CONDITIONS

These terms and conditions govern the Customer or Customer Entities' personnel or contractors' access and use of historical ASX Benchmark Data and the Customer agrees to be bound by and subject to the provisions contained in these terms and conditions for all incidences in which We supply historical ASX Benchmark Data to the Customer.

1. Commencement and Term

The Agreement commences the date We acknowledge receipt of an executed Order Form and shall continue until we cease supplying the ASX Benchmark Data to Customer for any reason or the Agreement is otherwise validly terminated in accordance with its terms.

2. Access and Use

2.1. Subject to payment of the Fee, the Customer and Customer Entities are granted a non-exclusive, non-transferable and revocable licence to use and store the historical ASX Benchmark Data made available on the terms of the Order Form for their internal business purposes only during the term of this Agreement.

2.2. It is a condition of this licence that the Customer must not redistribute, recirculate, republish or communicate the ASX Benchmark Data outside the Customer or the Customer Entities or on any website without our prior written authorisation.

3. Fee

In consideration for the grant of the licence by Us, the Customer shall pay the Fee. The Fee is due and payable upon execution of the Order Form.

4. Taxes

4.1. The consideration for any supply made under or in connection with this Agreement, including the Fee, does not include GST.

4.2. 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.

4.3. Any GST that is payable on the supplies made under this Agreement will be added to the Fee payable by Customer at the time the Fee is payable.

4.4. 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.

4.5. 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.

4.6. Other than GST, the Fee is exclusive of all taxes. Customer shall be liable for all taxes payable in relation to the Fee (other than taxes on Our net income), and must ensure that We receive the

5. Intellectual Property Rights

5.1. 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 Customer has no rights to the ASX Benchmark Data except as expressly stated in this Agreement.

5.2. If the Customer'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 Customer 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 Customer, 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 Customer;

(b) if Customer:

- 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.

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

- (a) obtain for Customer 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 Customer and refund any fees paid in respect of that infringing part.

6. Termination

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

6.2. We may terminate this Agreement immediately by written notice to Customer if Customer is adjudicated bankrupt, enters into liquidation or any arrangement or composition with its creditors or if a receiver is appointed to any part of Customer's assets and not discharged within 14 days or if any judgement against Customer remains unsatisfied for more than seven days and the Corporations Act does not prevent such termination.

7. Effects of Termination

On expiry or termination of this Agreement by either party:

- (a) the Customer must pay Us all amounts owed by the Customer 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, 7, 8, 9, 10, 13, 14 and 15;

(c) We will be regarded as discharged from any further obligations under the Agreement; and

(d) the Customer's right to use the ASX Benchmark Data will immediately cease and Customer will as We direct, return or destroy all copies of the ASX Benchmark Data in its possession or control, subject to Customer having the right to retain one backup copy for archival or record keeping purposes.

8. Disclaimer

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

(a) notify Customer 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.

8.2. 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 Customer 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.

9. Liability



9.1. Subject to clause 9.4, neither We nor any member of the ASX Group will be liable to Customer 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 Customer 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 Customer 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.

9.2. Subject to clause 9.4, and to the extent permitted by applicable law, Our aggregate liability for all Losses sustained by Customer 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 Customer during the 12 months preceding the events giving rise to such liability.

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

9.4. The limitations and exclusions in clause 9.1 and 9.2 do not apply to:

- (a) Our obligation to indemnify Customer under clause 5.2;
- (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.

10. Indemnification

Customer 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 Customer may bring against any of those indemnified where such claim arose out of or in connection with:

- (a) a breach by Customer of its obligations under this Agreement;
- (b) use or supply by Customer 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 Customer,

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

11. Records, Audit and Inspection

Customer 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. Customer agrees that We may nominate an employee or agent to inspect relevant records and procedures on giving 14 days' notice in writing to the Customer (**Inspection**). In the event of an Inspection, Customer will provide Us with access to the premises, records, procedures and staff of the Customer for the purposes of assessing the Customer's compliance with the terms of this Agreement.

12. Assignment

12.1. 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.

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

13. 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.

14. General

14.1. 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) these Historical ASX Benchmark Data Terms and Conditions
- (c) any other documents incorporated by reference.

14.2. 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 Customer may immediately terminate this Agreement without liability and will be entitled to a pro-rata refund of any Fees paid in advance from the date of termination.

- 14.3. 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.
- 14.4. 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.
- 14.5. 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.

- 14.6. 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.
- 14.7. This Agreement supersedes all prior representations, Agreements, statements and understandings whether verbal or in writing.



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

14.9. 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 Customer has no right to assume or create any obligations of any kind, express or implied, in the name of or on behalf of Us.

15. Definitions

In this Agreement the following definitions apply:

Agreement means these Historical ASX Benchmark Data Customer Terms and Conditions, 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 Customer 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).

Customer means the entity identified in the Order Form.

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

Fee means the applicable fee payable by Customer for the ASX Benchmark Data as set out on the Order Form.

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 Customer and Us for the provision of the ASX Benchmark Data and referencing these ASX Benchmark Data Customer 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 2001* (Cth).

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

