

ASX BENCHMARK DATA

VENDOR 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 VENDOR subject to the terms of this Agreement.

2.2. Use

(a) Subject to payment of the applicable Fees and the provisions of this Agreement, the following use rights are permitted for the ASX Benchmark Data licence products as described in the Fee Schedule and where VENDOR has subscribed to the relevant ASX Benchmark Data licence product in an applicable Order Form approved by Us:

- i. **internal use** – where internal use or use for own internal purposes for the subscribed ASX Benchmark Data licence product is permitted as indicated in the Fee Schedule, VENDOR is granted a non-exclusive, non-transferable licence to store and use the ASX Benchmark Data for its internal business purposes only during the Term.
- ii. **redistribution rights** (live/real time data products) - where redistribution rights for the subscribed real time ASX Benchmark Data licence product are permitted as indicated in the Fee Schedule, VENDOR is during the Term, granted a non-exclusive, non-transferable licence to distribute the ASX Benchmark Data to Approved Users (to the extent permitted and specified in the Fee Schedule) for the Approved Users' own internal use. This licence does not permit VENDOR to use ASX Benchmark Data for providing trading, clearing or investment administration services.

iii. **redistribution rights** (delayed data products) – where redistribution rights for the subscribed delayed data ASX Benchmark Data licence product are permitted as indicated in the Fee Schedule, VENDOR is granted a non-exclusive, non-transferable licence to distribute the relevant delayed ASX Benchmark Data to end users of an Open User Group and/or VENDOR Customers of a Closed User Group (to the extent permitted and specified in the Fee Schedule) for their own internal use during the Term.

iv. **Clearing house and agency use licence** – where We determine VENDOR is or will be using the ASX Benchmark Data in relation to providing custody or agency services (for example as an outsourced back office service provider, clearing house, asset administrator, market venue, prime broker or margin lender), VENDOR must subscribe for ASX Benchmark Data licence products for clearing house and agency use which grants VENDOR a non-exclusive, non-transferable licence to incorporate Agency Information into VENDOR's Agency Service and to electronically transmit Agency Information to VENDOR Customers as part of VENDOR's Agency Service during the Term. This licence does not permit VENDOR to redistribute ASX Benchmark Data other than Agency Information to any end users.

(b) Where redistribution rights are permitted:

- i. VENDOR may receive and convert the ASX Benchmark Data into a format suitable for distributing the ASX Benchmark Data in accordance with clause 2.1, provided that it first obtains Our approval for the modified format; and
- ii. a separate redistribution licence product subscription is required for each nominated channel used by VENDOR and its Related Bodies Corporate to distribute the ASX Benchmark Data. For the purposes of licensing under this Agreement, "**channel**" means a dedicated display platform or service used to distribute or display ASX Benchmark



Data to the end user (for example, each of the following are considered to be an individual separate distribution channel: website domain name, display terminal, user application, TV broadcast, public billboard/ticker displays).

- (c) VENDOR acknowledges that the Fee Schedule provides further information on the applicable licensing metric, specific use permissions and restrictions for each category of ASX Benchmark Data licence product.

2.3. Use on demonstration terminals

VENDOR may use the ASX Benchmark Data on demonstration terminals for the purposes of marketing its products to potential customers, provided that VENDOR at all times complies with clause 3.

2.4. Cost of equipment

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

2.5. 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 7 days' written notice to VENDOR; 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 VENDOR.
- (b) The VENDOR may immediately terminate this Agreement by notice to Us without liability if the modification is likely to be detrimental to the VENDOR.

2.6. VENDOR assistance

At Our request, VENDOR 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) 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, VENDOR does not breach any applicable law.

2.7. Suspension

- (a) We may suspend supplying the ASX Benchmark Data to VENDOR at any time during the Term if:
- i. VENDOR continues supplying the ASX Benchmark Data other than as permitted under this Agreement after being requested to cease doing so;
 - ii. VENDOR 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, there are unjustified or unreasonable delays, interruptions or distortions within VENDOR's control of ASX Benchmark Data to Approved Users;
 - v. in Our reasonable opinion, any act or omission by VENDOR 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
 - vi. 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 VENDOR 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 VENDOR's act or omission.

2.8. 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.

2.9. VENDOR to control its business

Without limiting VENDOR's obligations under this Agreement, and subject to clause 4.1, the parties acknowledge and agree that the business of offering and supplying the VENDOR Services is not controlled by Us, and that VENDOR:

- (a) has sole control over the manner in which the VENDOR Services are offered and supplied, including the price, design, implementation and method of delivery for the VENDOR Services;
- (b) is responsible for all aspects of the provision of the VENDOR Services, including administrative services such as customer support, complaint handling and invoicing; and
- (c) may make changes to the manner in which the VENDOR 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.

2.10. New Original Works

VENDOR may, only with Our prior written consent (which may be withheld in Our absolute discretion) use the ASX Benchmark Data for the purpose of creating a New Original Work. We reserve all rights to determine, acting reasonably, whether or not any processed information constitutes a New Original Work. We may, in our absolute discretion, introduce licence fees for the right to use the ASX Benchmark Data to create New Original Works. If We determine that a work is a New Original Work, We acknowledge that VENDOR owns the Intellectual Property Rights in that New Original Work.

2.11. Changes to the Agreement

- (a) Subject to (b), We may amend this Agreement by giving the VENDOR no less than 90 days prior written notice via ASX Online. VENDOR 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 VENDOR, and if the VENDOR 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.

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

3. CONDITIONS ON USE AND DISTRIBUTION OF ASX BENCHMARK DATA

3.1. Attribution

VENDOR must attribute Us as the source and provider of the ASX Benchmark Data whenever it distributes ASX Benchmark Data.

3.2. Content and format conditions

VENDOR must:

- (a) ensure that the VENDOR Services accurately reproduce the ASX Benchmark Data and do not commingle the ASX Benchmark Data with any other data (except for permitted use in Agency Information under clause 2.2(a)(iv) or in a manner expressly authorised by Us to VENDOR in writing);
- (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 VENDOR 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 VENDOR Service.

3.3. Vendor acknowledgment

VENDOR acknowledges that the ASX Benchmark Data is proprietary to Us and that the ASX Benchmark Data is made available to VENDOR for the sole purpose of enabling VENDOR to distribute the ASX Benchmark Data to Approved Users in accordance with this Agreement. VENDOR 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.

4. APPROVED USERS

4.1. Basis of supply to Approved Users

VENDOR distributes ASX Benchmark Data to Approved Users under this Agreement as Our authorised distributor and the basis on which each Approved User receives the ASX Benchmark Data is described in the subscriber Agreement between Us and the Approved User.

4.2. List of Approved Users

We will, following the Commencement Date, provide VENDOR with a list of Approved Users to whom VENDOR may distribute the ASX Benchmark Data. We may add new entities to the Approved User list at any time, and will provide VENDOR with a revised list from time upon VENDOR's request.

4.3. Removal of Approved Users

If We notify VENDOR that an Approved User's Agreement with Us has ended, VENDOR must deactivate the Approved User's access to the ASX Benchmark Data.

4.4. Access enquiries

Subject to clause 6, VENDOR must direct to Us all enquiries relating to the obtaining of access to the ASX Benchmark Data.

4.5. Approved User acknowledgement

VENDOR must ensure that each Approved User acknowledges and agrees that the ASX Benchmark Data is supplied on the basis that the Approved User:

- (a) must not use, access, store or process the ASX Benchmark Data except for its own internal business purposes;
- (b) must not otherwise copy, republish, redistribute, on-disseminate, publish, communicate including to third parties, the ASX Benchmark Data in any form or by any method;
- (c) may only use the ASX Benchmark Data in accordance with all applicable laws, regulations and codes of practice;
- (d) may not rely on the accuracy or timely supply of ASX Benchmark Data; and
- (e) will no longer be entitled to receive the ASX Benchmark Data if the supply of the ASX Benchmark Data to the Approved User would, in Our reasonable opinion, cause Us to breach any applicable law.

4.6. Inconsistent representations

VENDOR 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 4.5.

4.7. Unauthorised use

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

5. AGENCY/CUSTODIAN LICENCE

Where VENDOR has subscribed for an agency or custodian licence under clause 2.2(a)iv:

- (a) VENDOR must:
 - i. enter into a VENDOR Customer Agreement directly with the VENDOR Customer concerning the supply and use of any Agency Information by the VENDOR Customer before permitting use of or access to the Agency Information by a VENDOR Customer or end user; and



- ii. comply, and ensure that the VENDOR Customer complies with any applicable use requirements or restrictions in this Agreement or as indicated in the Fee Schedule.
- (b) VENDOR must not use the ASX Benchmark Data, or permit VENDOR Customers and their end users to access, receive or use the Agency Information, other than as permitted by the terms of this Agreement.
- (c) VENDOR must ensure that:
- i. VENDOR Customers and their end users do not do any act or thing that VENDOR has agreed not to do under any provision of this Agreement;
 - ii. VENDOR Customers and their end users do not supply or make available, or permit to be supplied or made available, Agency Information to any other third person unless the VENDOR Customer or end user first enters into a separate written Agreement with Us; and
 - iii. VENDOR discontinues the supply of Agency Information to any VENDOR Customer or end user if We, in our sole discretion, advise VENDOR that the VENDOR Customer or end user has failed to meet the requirements of this Agreement.
- (d) Each VENDOR Customer Agreement must contain provisions substantially in accordance, and not inconsistent with the provisions of this Agreement and also provide that the VENDOR Customer and its end users must not:
- i. do anything that VENDOR is prohibited from doing under this Agreement;
 - a. download, use or distribute the Agency Information outside the VENDOR's Agency Service to its personnel (other than authorised end users of the VENDOR's Agency Service); or
 - b. redistribute the Agency Information (in whole or part) to any third party or allow any other person to use or access the Agency Information.

6. CUSTOMER SERVICE & TECHNICAL SUPPORT

6.1. First level support

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

6.2. Referral to Us

If VENDOR is unable to deal with an Approved User enquiry under clause 6.1, VENDOR may refer the enquiry to Us and VENDOR must provide all assistance reasonably required by Us to enable Us to deal with the Approved User's enquiry.

6.3. 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.

7. MARKETING

7.1. VENDOR Marketing

VENDOR:

- (a) will use reasonable commercial efforts to promote to existing and prospective clients the availability of ASX Benchmark Data through the VENDOR Services. Prior to using or distributing any promotional material that refers to the ASX Trade Marks, VENDOR must provide a copy of the material for Our approval in accordance clause 8.2(b); and
- (b) must attribute Us as the source and provider of ASX Benchmark Data in all promotional material pursuant to clause 7.1(a).

7.2. Marketing

We may promote availability of the VENDOR Services as we see fit including, but not limited to, via publishing relevant information on Our web site, and VENDOR grants Us the right to use VENDOR's name and the names of the VENDOR Services for purposes of these promotional activities.

8. INTELLECTUAL PROPERTY RIGHTS



8.1. Rights in the ASX Benchmark Data

We reserves all rights in the ASX Benchmark Data. VENDOR 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.

8.2. 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 VENDOR must not knowingly or recklessly take any action that is inconsistent with the ASX Group's rights in the ASX Trade Marks.
- (b) VENDOR may use the ASX Trade Marks to the extent necessary to comply with clauses 3 and 7.1, provided that such use is in the manner and form approved by Us from time to time. VENDOR must comply with such use standards as are communicated by Us to VENDOR from time to time.
- (c) The rights granted to VENDOR pursuant to clause 8.2(b) are non-exclusive, royalty-free worldwide, non-transferable, and personal to VENDOR and may not be sub-licensed. VENDOR 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 8.2(b) is the sole source of VENDOR'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) Any goodwill or other rights or interest which arise as a result of VENDOR's use of the ASX Trade Marks is owned by the ASX Group and VENDOR must transfer all rights and interests to the relevant members of the ASX Group to give effect to this clause.

8.3. Use of VENDOR Trade Marks

Except as permitted under clause 7.2, We may only use a name or trade mark of VENDOR with VENDOR's prior permission.

8.4. Infringement Claims

If the VENDOR'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 VENDOR 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 VENDOR, 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 VENDOR; and
- (b) if VENDOR:
 - i. promptly notifies Us of the claim;
 - ii. allows Us to defend or settle the claim and to control any proceedings; and
 - iii. provides reasonable assistance to Us in defending and settling a claim at Our expense.

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

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

9. WARRANTIES

9.1. VENDOR warranty

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

9.2. 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 VENDOR 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 VENDOR 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.

10. INDEMNITIES

10.1. Indemnity by VENDOR

VENDOR 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 VENDOR may bring against the ASX indemnified parties where the Claim arises from or in connection with:

- (a) any breach by VENDOR of its obligations under this Agreement;
- (b) use or supply by VENDOR of the ASX Benchmark Data in a manner not permitted under or otherwise in breach of this Agreement;
- (c) any wilful or negligent act or omission of VENDOR;

- (d) any breach by VENDOR or a VENDOR Customer under a VENDOR Customer Agreement, except to the extent that We have caused or contributed to the Losses.

11. FEES

11.1. Fees

In consideration for the right to receive and distribute the ASX Benchmark Data in accordance with this Agreement, VENDOR 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.

11.2. Fees for VENDOR Services

We acknowledge and agree that VENDOR may collect fees from Approved Users in relation to the delivery and support of the VENDOR Services and that this revenue is to be retained by VENDOR. However, VENDOR must not charge Approved Users any incremental fees which are attributable to access to the ASX Benchmark Data and the amount of the fees payable to VENDOR by a VENDOR subscriber must not vary as a result of whether or not the subscriber has access to the ASX Benchmark Data.

11.3. Variation of Fees

We may vary the Fees by publishing the variation on asxonline.com or by otherwise giving VENDOR 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.

11.4. Late Payments

Without affecting Our rights under clauses **Error! Reference source not found.** and 13.2, late payments of invoices will incur interest at 2% above the overdraft rate charged by Our principal bankers. Interest accrues from the due date to the date paid, calculated on a daily basis.

12. TAXES

12.1. 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 VENDOR at the time the Fees are payable.

12.2. 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.

12.3. Other taxes

Other than GST, which is dealt with in clauses 12.1 and 12.2, the Fees are exclusive of all taxes. VENDOR 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.

13. TERM AND TERMINATION

13.1. 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.

13.2. Termination by Us

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

- (a) VENDOR suffers an Insolvency Event and the Corporations Act does not prevent such termination;
- (b) any money which VENDOR must pay Us under this Agreement remains outstanding for more than 30 days after the date on which it became payable;
- (c) VENDOR 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 VENDOR;
- (e) We exercise our termination right under clause 18; 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.

13.3. Termination by VENDOR

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

- (a) We suffer an Insolvency Event and the Corporations Act does not prevent such termination;
- (b) We are in breach of a material term of this Agreement and have not rectified that breach within 30 days of VENDOR giving Us written notice to do so;
- (c) VENDOR exercises its termination right under clause 18.

13.4. 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.

13.5. Consequences of Termination

Upon termination of this Agreement:



- (a) VENDOR 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) VENDOR must immediately cease using ASX Benchmark Data and the ASX Trade Marks, and must remove any reference to ASX Group from its services as they related to the ASX Benchmark Data.
- (d) We will be regarded as discharged from any further obligations under this Agreement.
- (e) VENDOR, subject to clause 13.6, 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.

13.6. Retention of ASX Benchmark Data for compliance purposes

Despite clause 13.5, VENDOR may retain a single copy of the ASX Benchmark Data distributed to Approved Users during the Term for the purposes of confirming the contents of said distribution to Approved Users and their auditors.

13.7. Fee refunds

Notwithstanding any other provision of this Agreement, where this Agreement is terminated by VENDOR under clause 13.3(b) or by Us under clause 13.2(e) or clause 13.4, We will refund any portion of the Fees that have been paid in advance by VENDOR that relate to the period after the effective date of termination of this Agreement.

14. Liability

- 14.1. Subject to clause 14.4, neither We nor any member of the ASX Group will be liable to VENDOR 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 VENDOR 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 VENDOR 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.

- 14.2. Subject to clause 14.4, and to the extent permitted by applicable law, Our aggregate liability for all Losses sustained by VENDOR 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 VENDOR during the 12 months preceding the events giving rise to such liability.
- 14.3. To the extent permitted by applicable law, We exclude all liability to VENDOR for Consequential Loss suffered or incurred by VENDOR arising under or in connection with this Agreement.
- 14.4. The limitations and exclusions in clause 14.1 and 14.2 do not apply to:
 - (a) Our obligation to indemnify VENDOR under clause 8.4;
 - (b) A breach of Our confidentiality obligations under clause 15.1;
 - (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.

15. CONFIDENTIALITY

15.1. 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.

15.2. Exclusion

A Recipient will not breach clause 15.1 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.

15.3. 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.

16. AUDIT AND REPORTS

16.1. Conduct of Audit

- (a) Upon 30 days' prior notice to VENDOR, VENDOR must allow Our Personnel to enter VENDOR's premises and inspect VENDOR's premises, books and records for the sole purpose of ascertaining VENDOR's compliance with this Agreement. VENDOR must cooperate with Our Personnel and comply with any reasonable directions made by Our Personnel for the purposes of an audit under this subclause (a).
- (b) Any audit conducted by Our Personnel under subclause (a) must not unreasonably disrupt or interfere with VENDOR's business.
- (c) If an audit conducted under subclause (a) reveals that VENDOR is not compliant with this Agreement then, in addition to any other right or remedy that may be available to Us, VENDOR must:
 - i. reimburse Our reasonable audit costs;
 - ii. pay Us within 30 days of Our written notice, any underpayment of Fees disclosed by the audit (including interest at the rate of 2% above the overdraft rate charged by Our principal bankers) to compensate for any failure to properly account for the use of the ASX Benchmark Data; and
 - iii. pay to Us within 30 days' notice of Our written notice, Our reasonable estimate of any discrepancy discovered pursuant to such audit in the event that VENDOR, or VENDOR Customers, fail to retain the requisite records.

16.2. Records and Reports

VENDOR will maintain and keep up to date, all records as may be necessary to enable the Fees and other sums payable to Us under this Agreement to be ascertained. VENDOR must either supply Us with monthly user access reports, or provide Us with appropriate access to VENDOR systems in order to allow Us to compile such reports. As a minimum, the reports must show the number and identity of the Approved Users that access the ASX Benchmark Data via the VENDOR Services, the type of ASX Benchmark Data accessed by each Approved User, and the number of terminals used by each Approved User.



VENDOR is responsible for obtaining all consents necessary for the disclosure to, and use by, Us of these reports.

17. DISPUTE RESOLUTION

17.1. Injunctive or interim relief

Nothing in this clause 17 prevents a party seeking urgent injunctive or similar relief from a court.

17.2. 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**").

17.3. 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.

17.4. Commencement of proceedings

If the authorised representatives are unable to resolve the Dispute within 14 Business Days after meeting in accordance with the clause 17.3, 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.

18. 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.

19. GENERAL

19.1. 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.

19.2. 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.

19.3. Assignment

- (a) VENDOR 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.

19.4. Survival

Clause 8.2(a), **Error! Reference source not found.** and (d), 9.2 and **Error! Reference source not found.**, 13.5, 13.6, **Error! Reference source not found.**, 15, 17, 19



and Appendix A survive the termination or expiry of this Agreement.

19.5. Counterparts

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

19.6. 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.

19.7. 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.

19.8. Further assurances

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

19.9. Publicity

VENDOR 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.

19.10. 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.

19.11. 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.

19.12. 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 VENDOR Supply Terms and Conditions.

APPENDIX A- DICTIONARY

PART 1 - DEFINED TERMS

In this Agreement:

Access & Entitlement System means auditable security systems and controls that permission access to, record and report all usage of ASX Benchmark Data by VENDOR's Customers and their permitted end users.

Agency Information means a limited extract of the ASX Benchmark Data or data derived in any way from the reformatting, manipulation or processing the ASX Benchmark Data that is directly linked to the securities or other financial instruments administered, or cleared and settled by VENDOR on behalf of a VENDOR Customer. We will publish from time to time examples of what constitutes "limited extracts of the ASX Benchmark Data" and notify VENDOR of these definitions.



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

Approved User mean an entity which We have identified as an entity authorised to receive the ASX Benchmark Data from VENDOR.

ASX Benchmark Data means the ASX benchmark financial data which VENDOR 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.

Closed User Group means any system, technical environment or electronic data transmission where access to or use of the ASX Benchmark Data is controlled by an Access & Entitlement System.

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) Approved 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,

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 VENDOR from time to time):

"This information is proprietary to the ASX Group. All rights are reserved. You may only use this information in accordance with the ASX Benchmark Data VENDOR Agreement. 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.

New Original Work means a work determined by Us (in accordance with clause 2.10) to be a new original work,

being created by VENDOR using the ASX Benchmark Data (including use as an input for creation of an index, investment or tradeable derivative product), 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 new original work be used as a substitute for the ASX Benchmark Data.

Order Form means the Order Form agreed between the parties for the provision of the ASX Benchmark Data and referencing these ASX Benchmark Data Vendor Supply Terms and Conditions.

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

Open User Group means any system, technical environment or electronic data transmission where access to or use of the ASX Benchmark Data is not controlled by an Access & Entitlement System.

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 13.1 and any extension of that Initial Term.

VENDOR means the vendor entity identified in the Order Form.

VENDOR's Agency Service means the service provided by VENDOR as a third party clearinghouse, market venue, outsourced service provider, agent or custodian asset administrator (or any other agency services determined by Us or described in the Fee Schedule) to a VENDOR Customer which involves the distribution of Agency Information provided that the Agency Information is only transmitted to the relevant VENDOR Customer by VENDOR.

VENDOR Customer means a customer of VENDOR.

VENDOR Customer Agreement means a binding Agreement between VENDOR and VENDOR's Customer in respect of the supply of VENDOR's Agency Service to VENDOR Customers that incorporates the Agency Information in accordance with this Agreement and containing the minimum terms required by clause 5(d).



VENDOR Services means the services offered by VENDOR which contains the ASX Benchmark Data.

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

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
- (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.

