

Contract Reference:

## GENERAL TERMS AND CONDITIONS:

The parties agree in consideration of, among other things, the mutual promises contained in this Agreement:

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement the following terms mean:

**'Access & Entitlement System'** means auditable security systems and controls that permit access to, record and report all usage of Information by reference to the Units of Count under this Agreement and:

- (a) meet Our requirements published in the Guide; and
- (b) are approved by Us;

**'Agency Customer'** means any person to whom you provide agency services to under an Agency Licence in accordance with this Agreement, including but not limited to those persons which are trading participants, institutional investors, asset managers, retail investors or trustees;

**'Agency Information'** means a limited extract of the Information or data derived in any way from the reformatting, manipulation or processing of the Information that is directly linked to the securities or other financial instruments administered, or cleared and settled by You on behalf of Your Agency Customers;

**'Agency Licence'** means the ReferencePoint licence as described in the definition of "Your Service";

**'Agreement'** means these General Terms and Conditions, the Guide, the Fee Schedule, the applicable Order Form and any other documents incorporated by reference;

**'ASX'** means the Australian Securities Exchange, a market operated by ASX Limited ABN 98 008 624 691;

**'ASX Group'** means Us and Our Related Bodies Corporate;

**'ASX Online'** means the ASX Online website, located at [www.asxonline.com](http://www.asxonline.com);

**'Business Day'** means a day other than:

- (a) a Saturday, Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day;
- (b) any other day that We or any of Our Related Bodies Corporate advise is not a Business Day; and
- (c) any other day that We or any of Our Related Bodies Corporate are not open for business;

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

**'Commencement Date'** means the date the Order Form is signed by both parties, or the date otherwise expressed as the 'Commencement Date' in the Order Form;

**'Confidential Information'** means the terms of this Agreement, and information disclosed in connection with this Agreement which by its nature is confidential, is designated as confidential, or which the recipient knows or reasonably ought to know is confidential, but does not include information that is in the public domain without a breach of confidence or breach of this Agreement, is obtained from a third party without an obligation of confidence, is independently developed without breach of this Agreement, and includes in the case of ASX:

- (a) the Information;
- (b) any information relating to any business conducted by Us and the ASX Group and the customers, personnel, policies or business strategies of Ours and that of the members of the ASX Group;
- (c) information comprised in or relating to the Software, the Information or the Documentation;
- (d) that part of all notes and other records prepared by the Subscriber Firm, or Customer based on or incorporating the information referred to in paragraph (c); and
- (e) all copies of the information and those parts of the notes and other records referred to in any of paragraphs (a), (b), (c) and (d);

**'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 an Agency Customer and / or a Print Media Customer, including their employees and contractors (as applicable);

**'Customer Agreement'** means a legally valid agreement between You and Your Customers governing access to and use of the Information by Your Customers in accordance with this Agreement;

**'Datafeed'** means any system or electronic data transmission where the Information goes into an environment of a third party where You do not control the Access & Entitlement System;

**'Derived Information'** means any part of the Information or any data derived in any way from the reformatting, manipulation or processing of the Information or any part of the Information excluding, for the avoidance of doubt, any New Original Works;

**'Device'** means a computer terminal, software application, data receiver, display unit or other technical device or service that can access the Information;

**'Documentation'** means all documentation referenced in the Guide and includes any documentation relating to the Software;

**'Fees'** means the fees set out in the Fee Schedule from time to time;

**'Fee Schedule'** means the schedule of fees applicable to the Agreement published under that title by Us on ASX Online, or as otherwise notified by Us to You, as varied from time to time in accordance with this Agreement;

**'Financial Product'** has the meaning given to that term in the Corporations Act;

**'Force Majeure Event'** means any cause beyond the party's reasonable control including without limitation, acts of terrorism, epidemic, war, fire, flood or other accident, strike, lock outs, delays in transport, material shortages, restrictions or prohibitions of any government or semi-government authority;

**'Format'** means the format for the Products as specified in the Order Form and the Guide;

**'General Terms and Conditions'** means these general terms and conditions;

**'Guide'** means the document titled 'ASX Market Information Products & Services Guide' published by Us, a copy of which may be accessed via ASX Online;

**'Information'** means the information and data contained in the relevant Product, and includes, any Derived Information;

**'Insolvency Event'** means the occurrence of any one or more of the following events:

- (a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (other than for the purposes of solvent reconstruction or amalgamation) of that party and the order or resolution remains in effect for a continuous period of 5 Business Days;
- (b) a controller, receiver, receiver and manager, official manager, administrator, provisional liquidator, liquidator, or like official is appointed over the whole or substantial part of the undertaking and property of that party and the appointment remains in effect for a continuous period of 5 Business Days;
- (c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of that party;
- (d) that party is unable to pay its debts as they fall due;
- (e) that party becomes insolvent or is deemed to become insolvent under any applicable law; or
- (f) that party ceases to carry on business or threatens to do so;

**'Intellectual Property Rights'** means all present and future intellectual property and industrial rights whether conferred by statute, at common law or in equity and wherever existing, including:

- (a) patents, designs, copyright, rights in circuit layouts, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of these rights;

**'Internal Usage Licence'** means the ReferencePoint licence as described in the definition of "Your Service";

**'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 You or We (as the context requires) were advised in advance of the possibility of such loss, including for the avoidance of doubt, Consequential Loss;

**'Means of Supply'** means the nominated means of supply specified in the Order Form;

**'New Original Work'** means a work determined by Us (in accordance with clause 6.8) to be a new original work, being created by You using the Information, where

the Information 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 Information, nor can the new original work be used as a substitute for the Information;

**'Nominated Third Party or NTP'** means a third party nominated by You specified in the Order Form to receive the Products from Us on Your behalf who will take responsibility for distributing the Products to You;

**'Order Form'** means the order form which sets out the Products to be supplied by Us to You, as amended from time to time;

**'Our Suppliers'** means any third party who makes its information available to Us (under a licence or otherwise) as part of the Information and any supplier of goods or services (including any hardware, Software and Documentation) which are used directly or indirectly by Us to supply the Products;

**'Personnel'** means officers, employees, agents and contractors of either party;

**'Print Media Customer'** means any person to whom you provide Your Services to under a Print Media Licence in accordance with this Agreement;

**'Print Media Licence'** means the ReferencePoint licence as described in the definition of "Your Service";

**'Products'** means the Information and other related products and services (known as "ReferencePoint") including any related Software and Documentation specified in the Order Form;

**'Registered User'** means any person to whom you provide Your Services to under a Vendor Display Licence in accordance with this Agreement;

**'Regulatory Authority'** means any relevant government agency or regulatory body with decision making powers;

**'Related Body Corporate'** has the meaning given to that term in the Corporations Act;

**'Software'** means any software owned by or licensed to Us and used to store, process, display or distribute the Information;

**'Start Date'** means, in respect of each Product, the date specified as the start date in the Order Form;

**'Subscriber Agreement'** means a legally valid agreement between You and Subscriber Firms governing access to and use of the Information by Subscriber Firms in accordance with this Agreement;

**'Subscriber Firm'** means any person, company or organisation, other than You or Your Personnel, who can access the Information directly or indirectly via Your Service;

**'Sub-vendor'** means any person, company or organisation that receives access to Information, other than Agency Information, directly or indirectly from Your Service for the purposes of redistribution and:

- (a) meets the criteria specified in the Guide; and
- (b) complies with any other terms specified in these General Terms and Conditions and the Guide concerning redistribution of that Information;

**'Technical Support'** has the meaning given to that term in the Guide;

**'Term'** means the term of this Agreement, as determined pursuant to clause 3;

**'URL'** means the address of a resource or file available on the public internet, containing the resource protocol (e.g. http:// ), the domain name for the resource, and the hierarchical name for the file (address);

**'Vendor Display Licence'** means the ReferencePoint licence as described in the definition of "Your Service";

**'Website'** means an internet site which may be:

- (a) a home page and/or pages linked to the home page, forming all or part of a single distinct website;
- (b) a URL;
- (c) any pages linked to the home page of a single distinct website that incorporates the Information;

**'Website Licence'** means the ReferencePoint licence as described in the definition of "Your Service";

**'We, Us or Our'** means ASX Operations Pty Limited;

**'You' or Your'** means the customer entity that appears on the Order Form;

**'Your Service'** means any service operated by You or a Related Body Corporate of Yours that includes the Information in any form, details of which are specified in the Order Form, and specifically in the case of:

- (a) 'Agency Licence', means the service provided by You or Your Related Body Corporate as an Outsourced Back-Office Service Provider, a Third Party Clearer, an Asset Administrator, a Prime Broker, or Margin Lender (as defined in the Guide) to an Agency Customer which involves amongst other things, the distribution of Agency Information provided that the Agency Information is only transmitted to the relevant Agency Customer by You;

- (b) 'Vendor Display Licence' means the any service owned and operated by You or a Related Body Corporate for the distribution of Information on a Device to Registered Users;
- (c) 'Internal Usage Licence', means any service owned and operated by You or a Related Body Corporate for the usage of Information details of which are specified in the Order Form;
- (d) 'Print Media Licence', means any service owned and operated by You or Your Related Body Corporate that provides Information for paper based media republication by Your Print Media Customers;
- (e) 'Website Licence', means any Website service owned and operated by You or a Related Body Corporate that provides the ability to electronically view Information on a Website, details of which are specified in the Order Form;

**'Your System'** means the computer systems (including all hardware, software and any associated technology) and internal communications networks installed at or used by You and / or Your Related Bodies Corporate, to interface with the Products, and to store and process the Information.

## 2 INTERPRETATION

2.1 In this Agreement, unless the contrary intention appears:

- (a) references to 'person' include individuals, firms, bodies corporate, associations, governments and governmental, semi-governmental and local authorities and agencies;
- (b) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (c) the singular includes the plural and vice versa and words importing a gender include other genders;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement as amended from time to time and a reference to this Agreement includes any schedules and annexures as so amended;
- (f) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (g) a reference to a manual, guide, specification, information pack, fee schedule or other document published by the ASX Group means the manual, guide, specification, fee schedule or document as amended, varied, renamed, substituted or replaced from time to time;
- (h) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (i) a reference to a Statute, ordinance or by-law includes regulations and other instructions under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (j) a reference to a website or URL includes a reference to such other website or URL notified by Us to You as replacing or superseding a website or URL for all or particular purposes;
- (k) a document drafted or published by a member of the ASX Group (including this Agreement) may not be construed adversely to Us or other members of the ASX Group just because a member of the ASX Group prepared it.

## 3 TERM

3.1 This Agreement commences on the Commencement Date and will continue until:

- (a) We cease supplying or making available to You any Products under this Agreement, in which case the Agreement will automatically expire on the date that We cease supplying or making them available to You; or
- (b) it is otherwise validly terminated in accordance with its terms.

## 4 SUPPLY OF PRODUCTS

4.1 We will supply or make available the Products to You as set out in the Order Form in accordance with this Agreement.

4.2 You may, from time to time, request Us to add or remove Products under this Agreement. If agreed by Us, We will update the Order Form and re-issue it to You for You to re-sign and return to Us.

4.3 Subject to clause 4.5, We may amend this Agreement, including discontinuing Products, by giving You 90 days prior written notice of such change. You 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 You, and if You choose to terminate, it will be effective from the date that such changes take effect. This clause does not affect either party's right to terminate for convenience at any time under clause 23.3.

- 4.4 Subject to clause 4.5, We may change or discontinue any of the Means of Supply on giving You 90 days notice, or such other period set out in the Guide. You may terminate this Agreement by notice to Us within 30 days of receiving notice of such change or discontinuation without liability, if the change or discontinuation is likely to be detrimental to You, and if You choose to terminate, it will be effective from the date that such changes take effect. This clause does not affect either party's right to terminate for convenience at any time under clause 22.3.
- 4.5 From time to time We may need to make urgent changes to this Agreement or the Means of Supply due to certain events, including:
- changes to applicable law;
  - a direction by a Regulatory Authority;
  - security or technical issues where necessary to protect the integrity or performance of the ReferencePoint system or Our trading system.
  - In such cases We will endeavour to provide You with reasonable notice of the change having regard to the nature of the event. You may immediately terminate this Agreement by notice to Us if the change or discontinuation is likely to be detrimental to You. This clause does not affect either party's right to terminate for convenience at any time under clause 22.3.

## 5 TECHNICAL SUPPORT

- 5.1 We agree to provide Technical Support as set out in the Guide.
- 5.2 You acknowledge and agree that:
- subject to clause 4.3, We may, from time to time, change the provision of Technical Support under this Agreement by updating the Guide;
  - the Fees for the Products include an allowance for reasonable usage of Technical Support; and
  - We may monitor usage and You agree to not make unreasonable or excessive use of the Technical Support.
- 5.3 You may request and We may agree to resupply the Products from time to time under this Agreement, provided that:
- resupply must in each instance be requested in writing by either You or, if applicable, the NTP, no later than the next Business Day after the original supply by Us; and
  - for each resupply requested, You must pay the then current fee applicable for resupply (if applicable).

## 6 TERMS OF LICENCE

- 6.1 Subject to this Agreement, on and from the Start Date(s) set out in the Order Form for the Products, We grant to You a non-transferable, non-exclusive licence to store and process the Information in Your System and use it internally in order to provide Your Service(s), and incorporate the Information into Your Service(s), and in the case of:
- Internal Usage Licence:
    - electronically transmit Information to Your Personnel and use within Your organisation;
  - Agency Licence:
    - electronically transmit Agency Information to Agency Customers as part of Your Service;
  - Vendor Display Licence:
    - electronically transmit Information to a Registered User by displaying it on a Device as part of Your Service;
  - Print Media Licence:
    - electronically transmit the Information to Print Media Customers as part of Your Service; and
    - sublicence the Print Media Customers to publish the Information in paper based media;
  - Website Licence:
    - electronically transmit the Information for display on Your Websites specified in the Order Form,

**PROVIDED** You comply at all times with the terms of this Agreement, including payment of applicable Fees and any requirements We publish in the Guide from time to time AND Your use, display and/or distribution of the Information does not affect the accuracy of the Information You receive from

Us. For the avoidance of doubt, not all licences are available for all Products under ReferencePoint.

- 6.2 Subject to Our prior written agreement, You may provide the Information to Sub-vendors provided You have received prior written authorisation from Us that the prospective Sub-vendor has entered into the appropriate ReferencePoint agreement with Us. Subject to You and Us complying with applicable laws, You agree to provide any information that may be required by Us in order to confirm that provision of the Information by You to the prospective Sub-vendor is authorised by Us. If You release any Information to any Sub-vendor prior to obtaining written authorisation from Us, You will be liable to Us for any Fees that otherwise would have been payable by the Sub-vendor.
- 6.3 Any use of the Information not covered by the licence granted in clause 6.1 is only permitted with Our express prior written consent.
- 6.4 The licence granted in clause 6.1, without limitation, does not permit, in the case of:
- Internal Usage Licence:
    - You to include the Information in any Datafeed or to provide it to Subscriber Firms or Customers;
    - You to make the Information accessible via a Website or to publish the Information in any paper based publication;
  - Agency Licence:
    - You to provide the Product or Information to Agency Customers in the form, or substantially similar form, that We have provided the Product or Information to You, such that the licence is expressly limited to Agency Information only being transmitted to the relevant Agency Customers;
    - dissemination of the Information or Agency Information to an Agency Customer or any other person for the purposes of wholesale supply or redistribution;
    - You to include the Information in any Datafeed or to provide it to Agency Customers or any other Subscriber Firm in a way that would enable the Information to be distributed outside Your Service, to be accessed or used by any software application or other technical device that is not supplied and controlled by You;
    - You to make the Information accessible via a public website or to publish the Information in any paper based publication;
    - You to use the Information or Agency Information for any purpose other than in providing Your Service (for example, and without limitation, using the Products or Information for asset management services, portfolio management, stockbroking services, margin lending, research or other data processing services are expressly excluded). If You wish to use or distribute the Information or Agency Information in a way not contemplated by this Agreement, You must notify Us to discuss an appropriate commercial arrangement concerning that form of distribution;
  - Vendor Display Licence:
    - You to include the Information in any Datafeed or to provide it to Subscriber Firms in a way that would enable the Information to be distributed outside Your Service, to be accessed or used by any software application or other technical device that is not supplied and controlled by You;
    - You to provide the Information to Subscriber Firms in any way that would enable them to:
      - database or otherwise store the Information;
      - use the Information for purposes other than the type of display contemplated by clause 6.1(c) (for example, a Subscriber Firm using the Information or extracting it from Your Service to facilitate back office transaction processing is expressly excluded);
      - disseminate the Information to a Subscriber Firm or any other person for the purposes of wholesale supply, redistribution to third parties or any other type of service that does not involve a Registered User accessing the Information by or through a Device provided by You;
    - You to make the Information accessible via a Website or to publish the Information in any paper based publication;
  - Print Media Licence:
    - You to include the Information in any Datafeed or to provide it to Subscriber Firms in a way that would enable the Information to be electronically distributed or displayed, or to be accessed or used by any software application or other technical device;
    - You to provide the Information to Subscriber Firms in any way that would enable them to use the Information for the purposes other than the type of paper based publication contemplated by clause 6.1(d);
    - Electronically disseminate the Information to Subscriber Firms or any other person for the purposes of wholesale supply, redistribution to third parties or any other type of service; or
    - Make the Information accessible via a Website;
  - Website Licence:

- (i) You to provide the information to Subscriber Firms in a way that would enable the Information to be distributed outside Your Service, to be accessed or used by any software application or other technical device;
  - (ii) You to provide the Information to Subscriber Firms in any way that would enable them to use the Information for purposes other than the type of display contemplated by clause 6.1(e) (for example, a Customer using the Information or extracting it from Your Service to facilitate back office transaction processing is expressly excluded);
  - (iii) You to disseminate the Information to Subscriber Firms or any other person for the purposes of wholesale supply, redistribution to third parties or any other type of service that does not involve display of the Information on Your Website.
- 6.5 Subject to clause 4.3, We may, from time to time, change the range of licences applicable to use, display and/or distribution of the Information under this Agreement by updating the Guide and/or Fee Schedule.
- 6.6 You may, from time to time, request to increase the number or range of Your Services that incorporate the Information under this Agreement. We will consider any such request and, if accepted by Us, We will update and re-issue the Order Form to You for You to re-sign and return to Us.
- 6.7 If You provide a Datafeed to Your Customers that includes the Information, You must ensure that You provide a copy of the Guide, as updated from time to time.
- 6.8 The licence granted in clause 6.1 does not include a right to the use of the Information (whether by You, Your Customer or Subscriber Firms) to establish, maintain or provide, or assist in establishing, maintaining or providing:
- (a) the ability to trade in Financial Products; or
  - (b) a financial market for trading in Financial Products, unless (a) and (b) are specifically authorised by law.
- For the avoidance of doubt, this clause 6.8 does not affect Our rights under clause 6.4 to change the range of licences, from time to time, under this Agreement.
- 6.9 Subject to the foregoing provisions You may, only with Our prior written consent (which may be withheld in Our absolute discretion) use the Information 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. If We determine that a work is a New Original Work, We acknowledge that You own the Intellectual Property Rights in that New Original Work. If We consent to use of the Information for the purpose of Creating a New Original Work, We will update and re-issue the Order Form in accordance with clause 6.6.
- 6.10 You may permit Subscriber Firms to publish, on an ad-hoc basis in written or oral communications with clients, insubstantial amounts or limited extracts of static Information to their clients in connection with the Subscriber Firms ordinary business as a provider of financial services or financial advice, provided:
- (a) it does not constitute regular or systematic distribution, display or processing of the Information; and
  - (b) it is attributed to Us.
- We reserve all rights to determine, acting reasonably, whether communications including Information constitute limited extracts for this purpose and to limit or withdraw rights to provide limited extracts of the Information.
- 6.11 You must not use the Information, or permit Your Customers or Subscriber Firms to access, receive or use the Information, other than as permitted by the terms of this Agreement.
- 6.12 You agree to discontinue the supply of Information to any third party, Your Customers or Subscriber Firm if We provide notice to You that We reasonably believe that the third party, Customer, or Subscriber Firm has breached the licence conditions under this Agreement or Your Subscriber Agreement or Customer Agreement with any such third party.
- 6.13 You must promptly notify Us of any unauthorised, improper or unlawful use of the Products or infringement of the Intellectual Property Rights in the Products that comes to Your notice and You must require Subscriber Firms or Customer (as applicable) to inform You of any such use or infringement.
- 6.14 Unless expressly permitted under clause 6.1, You are not permitted to provide the Product or Information to a Subscriber Firm or Customer in the form, or substantially similar form, that We have provided the Product or Information to You.
- 6.15 Unless otherwise agreed by Us in writing, the licence granted by Us to use the Information under this clause 6 will cease immediately when We cease supplying or making available the relevant Products to You under this Agreement.

## 7 CUSTOMER OR SUBSCRIBER FIRM USE OF THE INFORMATION

- 7.1 Before providing Information to any Subscriber Firm You must enter into a Subscriber Agreement with the Subscriber Firm concerning supply and use of the Information by the Subscriber Firm containing (where appropriate) terms materially consistent with Your obligations under this Agreement.
- 7.2 Before providing Information to any Customer, You must enter into a Customer Agreement with the Customer concerning supply and use of the Information by the Customer containing (where appropriate) terms materially consistent with Your obligations under this Agreement.
- 7.3 If You fail to enter into a valid and enforceable Subscriber Agreement or Customer Agreement as required under this clause 7, You will be liable to Us for any unlicensed use or distribution of the Information by any Customer or Subscriber Firm arising from Your Service or any other Information supplied by You.
- 7.4 Any Subscriber Agreement or Customer Agreement under which You provide Information or Your Service must provide (as applicable) that the relevant Customer or Subscriber Firm (as the case may be) must, unless expressly permitted under clause 6:
- (a) only use the Information solely for their own internal business purposes;
  - (b) not transfer or publish to third parties all or part of the Information except where allowed to do so under this Agreement or with Our prior written consent;
  - (c) recognise the Intellectual Property Rights and Our rights to legal remedies, and those of Our Suppliers' in respect of the Information;
  - (d) not allow any unauthorised person to access the Information;
  - (e) not use the Information for an illegal purpose or a purpose not permitted under this Agreement;
  - (f) maintain all records and, subject to applicable laws, provide all information required to meet Your record keeping, reporting and payment obligations to Us including;
  - (g) allow Us, or Our authorised representative, to remotely audit and / or enter upon the Customer's or Subscriber Firm's premises and audit Your Customer's or Subscriber Firm's systems, records and usage of the Information (as applicable);
  - (h) subject to applicable laws, obtain and provide any consents necessary for Us or Our authorised representative, to review and receive personal information, for the purpose of verifying compliance with Your obligations to Us;
  - (i) keep confidential any and all ASX Confidential Information and not disclose it to any third party without Our prior written consent; and
  - (j) not:
    - (i) download, use or distribute the Information outside Your Service to its Personnel (other than authorised Subscriber Firms of Your Service); or
    - (ii) redistribute the Information to any third party or allow any other person to use or access the Information.
- 7.5 Subject to clause 4.3, We reserve the right to enter into a direct agreement with any of Your Subscriber Firms. We may elect to do this in two ways:
- (a) in respect of specific Subscriber Firms, in which case We will provide You with notice detailing the relevant Subscriber Firms; or
  - (b) by identifying a category or segment of Subscriber Firms, in which case We will publish Our requirements in the Guide.

## 8 CONTENT AND FORMAT OF THE PRODUCTS

- 8.1 For direct connections to Us, the Products are available on the terms and in the Formats specified in the Guide.
- 8.2 Subject to clause 8.3, We may add to, alter or delete any part of the Information or the Format of a Product ("Format Change") in Our sole discretion provided We give either You or (as applicable) the NTP reasonable notice, as set out in the Guide.
- 8.3 You may immediately terminate this Agreement by notice to Us if the Format Change is likely to be detrimental to You. This clause does not affect either party's right to terminate for convenience at any time under clause 22.3.

## 9 DOCUMENTATION & MANUALS

- 9.1 We will provide You with access to any necessary documentation, via ASX Online, relevant to the Products You have selected in the Order Form (Manuals). We may amend the Manuals with reasonable notice from time to time and will make the updated versions available on ASX Online.

## 10 RECORDS AND REPORTS

- 10.1 You must retain up to date books and records as may be necessary to enable the Fees and other sums payable to Us under this Agreement to be ascertained, including records, if any, specified in the Guide from time to time. These books and records must be retained for the period specified in the Guide.
- 10.2 You must submit to Us the reports specified in the Guide, from time to time, in accordance with the timeframes specified in the Guide, from time to time.

## 11 AUDIT AND INSPECTION

- 11.1 You must establish and maintain appropriate procedures and systems designed to ensure that You are adhering to Your obligations under this Agreement and You, Your Customers, and Your Subscriber Firms are adhering to any applicable Customer Agreements and Subscriber Agreements (as applicable). You must also require Your Customers and Subscriber Firms (as applicable) to retain all necessary records concerning the access to and use of the Information for the minimum period specified in the Guide from time to time.
- 11.2 We may, on giving You at least 30 days notice (or less where agreed by both parties), remotely and / or in-person send Our nominated Personnel to attend Your premises to verify compliance with this Agreement, including observing the use made of the Products or the Information and to examine and inspect Your Services, Your Access & Entitlement System, any devices, systems, applications, attachments or apparatuses, as well as any books and records (incl. electronic records) required to be maintained by You in connection with this Agreement ("Inspection"). We reserve the right to give You a shorter period of notice concerning an Inspection if We have reasonable grounds for suspicion that there has been a compliance failing under this Agreement that is likely to impact on the Fees paid to Us.
- 11.3 Any Inspection will be conducted during normal business hours and subject to Your reasonable security and confidentiality requirements. You must grant, and You must also procure from Your Customers and Your Subscriber Firms (as applicable), all necessary licences to enable Our Personnel to enter all relevant premises of Yours, or a nominated Customer or Subscriber Firm (as applicable) and inspect any business records or systems at any of those premises of the type identified in this clause that will assist in validating compliance with this Agreement.
- 11.4 We will endeavour to conduct audits (whether at Your premises or at that of a nominated Customer or Subscriber Firm (as applicable)) in accordance with the information industry best practices, and the Guide. Both parties should co-operate to ensure that the purpose of the audit is achieved with minimum disruption to the business operations of any persons involved, including Your Customers or Subscriber Firms (as applicable).
- 11.5 If any Inspection under this clause 11 discloses any underpayment of Fees to Us or a failure to retain the requisite records for the relevant audit period, You will:
- be liable for Our reasonable costs for the Inspection where such underpayment is greater than 5% of the Fees payable to Us during the relevant audit period;
  - pay Us within 30 days of Us notifying You, any underpayment of Fees disclosed by the Inspection for the relevant audit period (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 Products or the Information; and
  - pay to Us within 30 days of Us notifying You, Our reasonable estimate of any discrepancy discovered pursuant to any such Inspection in the event that You, or Your Subscriber Firms or Your Customers, fail to retain the requisite records for the relevant audit period.
- 11.6 If any Inspection under this clause discloses that You have overpaid Fees to Us for the relevant audit period, We will refund You the amounts that have been overpaid in the preceding 60 days prior to the Inspection.
- 11.7 You must promptly advise Us of any case where You have evidence or reasonable cause to believe that a Subscriber Firm or Customer is in breach of any one or more of the minimum terms required to be included in Your Subscriber Agreement or Customer Agreement (as applicable).

## 12 FEES AND PAYMENT

- 12.1 The Fees are calculated and payable in accordance with the Fee Schedule.

- 12.2 If requested by a Subscriber Firm, We may bill the Subscriber Firm directly for the Fees. In this circumstance, You will not be responsible for paying the relevant Fees to Us in relation to that Subscriber Firm.
- 12.3 Subject to clause 4.3, We may vary the Fees by publishing the variation to the Fee Schedule on ASX Online, or by otherwise notifying You, ninety (90) days prior to the effective date of the variation. This clause does not affect either party's right to terminate for convenience at any time under clause 22.3.
- 12.4 You must pay in full the Fees in Australian dollars only (unless otherwise agreed in writing by Us) no later than the dates specified in Your invoice.

## 13 LATE PAYMENTS & REPORTS

- 13.1 If You do not lodge a monthly remittance report or make a payment under this Agreement on time, the following provisions apply:
- You must pay to Us (in addition to any applicable administration charge set out in the Fee Schedule) interest on the amount not paid on its due date at the rate of two percent (2%) above the overdraft rate charged by Our principal bankers, computed from and including the due date for payment until but excluding the date on which full payment of that amount is made;
  - Interest at this rate is payable before and after any judgment;
  - Interest accrues daily and is payable on demand by Us and, if not paid, that interest bears interest in accordance with this clause.
- 13.2 If You are late with Your monthly remittance report or payments under this Agreement for two consecutive months, or for three months out of any six month period, We may immediately undertake an audit. You will bear Our reasonable costs of this audit even if the audit does not disclose any breaches of this Agreement.

## 14 TAXES

- 14.1 You must pay all existing taxes and duties (including, but not limited to, any lease duty or other stamp duty), any new taxes and duties (including a goods and services tax or any other value-added taxes), any increases in taxes and duties and any associated penalties payable on or in respect of this Agreement, the Fees, any other payments due to Us or any other transaction or matter contemplated by this Agreement. If We are liable to pay such tax, duty or penalty then You must indemnify and release Us to the full extent of that liability.
- 14.2 In the event that payment of any amount of the Fees becomes subject to withholding tax, levy or similar payment obligation on sums due to Us under this Agreement such withholding tax amounts shall be borne and paid for by You in addition to the sums due to Us. You will provide Us free of charge with the appropriate certificate(s) from the relevant authorities confirming the amount of the withholding taxes, levies or similar payments borne and paid for by You.
- 14.3 Any amounts payable to Us under or in connection with this Agreement have been determined exclusive of GST. If any supply made by Us to You under or in connection with this Agreement is a taxable supply:
- You must pay an amount to Us equal to the GST payable by Us on that supply, in addition to any amounts payable or other consideration to be provided for that supply;
  - the additional amount must be paid at the same time as the first part of any consideration is provided for that supply; and
  - We will provide You with a tax invoice for that supply in accordance with the GST law, unless We and You have entered into an arrangement whereby You will provide a recipient created tax invoice for supplies, including that taxable supply.
- 14.4 For the purposes of this clause, words and phrases that are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the meaning provided by that Act. However, where the GST law treats a part of a supply as a separate supply for the purpose of working out the GST payable on that supply or determining the time at which GST will be payable on that supply, that part of the supply will be treated as a separate supply for the purposes of this clause.

## 15 LIABILITY

- 15.1 Subject to clause 15.4, neither We nor any member of the ASX Group will be liable to You, Your Customers or Subscriber Firms or to any third party, whether in contract, tort, under statute or otherwise arising under or in connection with this Agreement for:
- any Losses arising under this Agreement in connection with:

- (i) use or supply by You of the Products or the Information to any third party in a manner not permitted by or otherwise in breach of this Agreement;
- (ii) a breach by You, a Customer or Subscriber Firm any Subscriber Agreement or Customer Agreement to which You are a party; or
- (iii) any decisions by You or any third party based on the Products or the Information;
- (b) any Losses arising under this Agreement in connection with:
  - (i) the Products or the Information being inaccurate or incomplete; or
  - (c) delays or interruptions in transmission of the Products or the Information, except to the extent that that such Losses arise directly from Our wilful misconduct or fraud, or Our negligent act or omission.

15.2 Subject to clause 15.4, and to the extent permitted by applicable law, Our aggregate liability for all Losses sustained by You in connection with this Agreement for any one incident or series of incidents, including under or in connection with any Subscriber Agreement or Customer Agreement to which You are a party, will not exceed an amount equal to the Fees paid or payable by You during the 12 months preceding the events giving rise to such liability.

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

15.4 The limitations and exclusions in clause 15.1 and 15.2 do not apply to:

- (a) personal injury or death that We have caused or contributed to;
- (b) loss of or damage to tangible property that We have caused or contributed to;
- (c) breach of Our confidentiality obligations under this Agreement;
- (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:
  - (i) in the case of goods:
    - (A) the replacement of the goods or the supply of equivalent goods; or
    - (B) the repair of the goods; and
  - (ii) in the case of services:
    - (A) the supply of the services again; or
    - (B) the payment of the cost of having the services supplied again.

## 16 REPRESENTATIONS

16.1 This Agreement constitutes the entire agreement between the parties as to its subject matter, and supersedes all prior agreements and understandings whether verbal or in writing.

16.2 We do not represent or warrant that the Information will be complete, accurate or error-free. We will, however:

- (a) notify You of any material errors or omissions in the Information 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.

16.3 We do not represent or warrant that the supply of the Products or related services will be free of interruption. If We have not supplied a product by the time specified in the relevant Manual due to an interruption, We will:

- (a) notify You 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.

## 17 INDEMNITY

17.1 You must at all times indemnify and hold harmless and release (and keep indemnified, released and held harmless) Us, Our Related Bodies Corporate and Our and their Personnel ('those indemnified') from and against any Losses incurred or suffered by any of those indemnified arising from any Claim, which any person other than You may bring against any of those indemnified where such Claim arose out of or in connection with:

- (a) a breach by You of Your obligations under this Agreement;

- (b) use or supply by You of the Products or the Information in a manner not permitted under or otherwise in breach of this Agreement;
- (c) a breach by You, a Customer or a Subscriber Firm of any Subscriber Agreement or Customer Agreement to which You are a party;
- (d) any wilful, fraudulent, unlawful or negligent act or omission by You, except to the extent that We have caused or contributed to the Losses.

## 18 INTELLECTUAL PROPERTY RIGHTS

18.1 We, members of the ASX Group, Our Suppliers or their respective licensors, retain all Intellectual Property Rights in or to the Software, Documentation and the Information to the extent that those Intellectual Property Rights exist under the law from time to time.

18.2 Nothing in this Agreement is to be understood as an abandonment, revocation, assignment or denial by either Us, the members of the ASX Group or Our Suppliers of their Intellectual Property Rights or those of their licensors.

18.3 You must notify Us immediately if You become aware of any unauthorised copying or use of the Software, Documentation, or the Information.

18.4 If Your use of the Software, Documentation or the Information, in accordance with this Agreement infringes the Intellectual Property Rights of any person, We will indemnify and release You 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 You, but only:

- (a) to the extent the claim relates to the Software, Documentation or the Information provided by Us under this Agreement provided such Software, Documentation or Information has not in any way been altered or tampered with by You; and
- (b) if You:
  - (i) promptly notify Us of the claim;
  - (ii) allow Us to defend or settle the claim and to control any proceedings; and
  - (iii) supply reasonable assistance to Us in defending and settling a claim at Our expense.

18.5 As part of a defence or settlement of a Dispute under clause 20, We may in Our absolute discretion:

- (a) obtain for You the right to continue using the Software, Documentation or Information as is relevant;
- (b) modify or replace the infringing part of the Software, Documentation or Information as is relevant to avoid the claim; or
- (c) accept the return of the infringing part from You and refund to You any Fees paid in respect of that infringing part.

## 19 CONFIDENTIAL INFORMATION

19.1 Unless otherwise agreed in writing, a party may use Confidential Information of the disclosing party solely for the purposes of performing its obligations and exercising its rights under this Agreement.

19.2 Subject to clause 19.3, each party agrees to keep confidential and not to use or disclose to any other person the Confidential Information of the other party. Each party is liable for all acts or omissions of such persons as if they were acts or omissions of that party.

19.3 Each party may disclose Confidential Information of the other party only on a "need-to-know" and confidential basis:

- (a) with the prior written consent of the other party;
- (b) to the extent required by law;
- (c) in the case of ASX, to its service providers, professional advisors, ASX Group members, Regulatory Authorities.

19.4 We expressly acknowledge that all reports received from You under clause 11 are confidential to You and agree to keep confidential and not to disclose to any other person (except those of its Personnel who have a need to know and only to the extent that each has a need to know) the contents of such reports except to the extent that such disclosure is required by law.

## 20 RESOLUTION OF DISPUTES

20.1 A party will not start court proceedings (except proceedings seeking urgent interlocutory relief) in respect of a dispute arising out of this Agreement (a 'Dispute') unless it has first complied with this clause.

20.2 A party claiming that a Dispute has arisen will notify each other party to the Dispute giving full details of the Dispute.

- 20.3 After a notice is given under clause 20.2, the Dispute will be referred to an ASX Group executive with decision making power (or any person fulfilling that role in the absence of that person) and an executive of corresponding seniority nominated by You, who will endeavour to negotiate a resolution of the Dispute for a period of seven days.
- 20.4 If, following the seven day period referred to in clause 20.4 the parties have been unable to resolve the Dispute, a party that has complied with clauses 20.2 and 20.3 may terminate the dispute resolution process by giving notice to the other party.
- 20.5 Any information or documents disclosed by a representative under this clause:
- will be kept confidential; and
  - may not be used except to attempt to settle the Dispute.
- 20.6 Each party will bear its own costs of resolving a Dispute under this clause.
- 20.7 If a party to a Dispute does not comply with any provision of clauses 20.1 to 20.3 the other parties to the Dispute will not be bound by those clauses.

## 21 SUSPENSION

- 21.1 We may immediately suspend Your access to the Products without liability to You if at any time during the Term:
- You fail to pay any amounts due under this Agreement and You fail to remedy that failure within seven days after receiving notice requiring You to do so;
  - We reasonably consider that Your connection or Your System is causing detrimental technical or operational issues for Our systems, including but not limited to the performance of the ReferencePoint system, or Our trading system, which requires an immediate suspension of Your connection;
  - in Our reasonable opinion, there are unjustified or unreasonable delays, interruptions or distortions within Your control in the transmission by You of Information to Customers or Subscriber Firms;
  - in Our reasonable opinion, any act or omission by You is considered likely to bring into disrepute Our name or reputation or the integrity of the markets conducted by the ASX Group at any time; or
  - We are required to do so to comply with applicable law or a direction by a Regulatory Authority.
- 21.2 If We suspend Your connection with the ReferencePoint system pursuant to clause 21.1, We must promptly notify You accordingly.
- 21.3 If in the case of any suspension pursuant to clause 21.1(a), (b), (c) or (d) We are satisfied with the remedial action You have taken We will lift the suspension implemented pursuant to clause 21.1 and notify You accordingly.
- 21.4 If Your connection to ReferencePoint is suspended, We reserve the right, in the case of direct connections, to conduct further qualification tests and connectivity tests before You are reconnected to ReferencePoint after that suspension is lifted.
- 21.5 This clause does not affect either party's right to terminate for convenience at any time under clause 22.3.

## 22 TERMINATION

- 22.1 You may terminate this Agreement if We breach a material term of this Agreement and fail to remedy that breach within 30 days after receiving notice requiring Us to do so.
- 22.2 We may terminate this Agreement or terminate Your access to Products without liability immediately by notice in writing if:
- You are in material breach of this Agreement and fail to remedy that breach within 30 days after receiving notice requiring You to do so;
  - You are the subject of an Insolvency Event;
  - any suspension implemented under clause 21.1 has not been lifted after a period of more than 90 days;
  - You are in breach of clause 6.7; or
  - there is any change in the direct or indirect beneficial ownership or control of You.
- 22.3 Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time on giving not less than 90 days prior written notice.

## 23 EFFECTS OF TERMINATION

- 23.1 On termination of this Agreement by either party:

- You must promptly pay to Us all amounts owed by You in connection with this Agreement;
  - We will be regarded as discharged from any further obligations under the Agreement after the date of termination;
  - unless otherwise agreed, Your licences and right to use and / or distribute the Products, Software and the Information will immediately cease; and
  - You will within 30 days, destroy all ASX Confidential Information, including all Information, Software and Documentation in the possession or control of You and Your Personnel, subject to You having the right to retain one backup copy for archival or record keeping purposes, and You will, upon request by Us, provide written notice to Us, signed by a duly authorised officer, confirming that the Information, Software and Documentation (as applicable) has been so destroyed.
- 23.2 Those rights and obligations required or purporting to have effect after termination of this Agreement including without limitation those arising under clauses 6 (Terms of Licence), 14 (Taxes), 15 (Liability), 17 (Indemnity), 18 (Intellectual Property Rights), 19 (Confidential Information) and 20 (Resolution of Disputes) will survive termination.

## 24 FORCE MAJEURE

- 24.1 If a party is wholly or partially unable to perform its obligations because of a Force Majeure Event then:
- as soon as reasonably practicable after the Force Majeure Event arises, that party must notify the other party of the extent to which the notifying party is unable to perform its obligations; and
  - that party's obligation to perform those obligations will be suspended for the duration of the delay arising directly out of the Force Majeure Event.
- 24.2 If the delay arising directly out of a Force Majeure Event continues or is likely to continue for more than 60 days, the party not subject to the Force Majeure Event may, by notice to the other party, terminate this Agreement.
- 24.3 If the Force Majeure Event is triggered by Us and We suspend supply any Products to You, You will be relieved from Your obligation to pay Fees for those Products that are suspended until the Force Majeure Event is resolved or this Agreement is otherwise validly terminated.
- 24.4 This clause does not affect either party's right to terminate for convenience at any time under clause 22.3.

## 25 PUBLIC STATEMENTS

- 25.1 Neither party may advertise or make any public statement about the contents of this Agreement unless it has first obtained written consent from the other party.

## 26 NOTICES

- 26.1 Subject to clause 26.4, communication (including each notice, consent, approval, request and demand) 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 address as may be given in accordance with this clause; and
  - left at or sent by prepaid post or via email to that address.
- 26.2 A notice given in accordance with clause 26.4 is received:
- if left at the recipient's address, on the date of delivery;
  - if sent by prepaid post, 5 days after the date of posting;
  - if sent by email, when the sender's email receives a message confirming successful transmission.
- 26.3 Each party must notify the other of an address for notices which may, at any time, be changed by notice to the other party.
- 26.4 Any notice to be given by Us under this Agreement may be given by way of publication on ASX Online.

## 27 RELATIONSHIP

- 27.1 Nothing in this Agreement or any circumstances associated with it or its performance give rise to any relationship of partnership, principal and agent (except as expressly provided in this Agreement), or employer and employee between Us and You or between Us and any of Your Personnel and You have no right to assume or create any obligations of any kind, express or implied, in the name of or on behalf of Us.

## 28 RIGHTS CUMULATIVE – NO EXCLUSION OF LAW OR EQUITY

28.1 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. This Agreement must not be construed in any way to exclude the operation of any principle of law or equity.

## 29 SEVERABILITY

29.1 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.

## 30 WAIVER

30.1 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.

## 31 THIRD PARTY BENEFICIARIES

31.1 Any provision of this Agreement (including any indemnity or provision excluding or limiting liability) which is expressed to benefit a member of the ASX Group or its Personnel is to be interpreted as benefiting (in addition to benefiting Us) each of those persons and to be enforceable by each of those persons.

31.2 To that extent, We have entered into this Agreement and hold the benefit of those provisions for itself and on behalf of and as trustee for the members of the ASX Group and those Personnel.

## 32 SUBCONTRACTS

32.1 We may subcontract the performance of Our obligations under this Agreement or any part of this Agreement without Your consent, provided that We remain liable at all times for the performance of Our obligations under this Agreement.

## 33 ASSIGNMENT

33.1 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.

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

## 34 PRIORITY OF DOCUMENTS

34.1 If there is any inconsistency between any of the terms in this Agreement, the order of precedence shall be as follows:

- (a) the Order Form, including any Special Conditions within the Order Form;
- (b) the Guide;
- (c) any applicable schedule or addendum; and
- (d) these General Terms and Conditions.

## 35 GOVERNING LAW AND JURISDICTION

35.1 This Agreement is governed by the laws in force in the State of New South Wales and each party submits to the exclusive jurisdiction of the courts of New South Wales and the courts of the Commonwealth of Australia.

## 36 TRANSITIONAL PROVISIONS

36.1 Notwithstanding any other provision of this Agreement, the parties acknowledge and agree that these General Terms and Conditions come into effect for existing customers on 1 July 2023 (**Transition Date**), such that:

- (a) Your existing Order Form(s) will continue to apply as at the Transition Date without requiring the parties to re-execute a new Order Form;

- (b) unless You and We agree otherwise, any Special Conditions within Your existing Order Form(s) or other variations to the terms in effect prior to the Transition Date, will be superseded by this Agreement as at the Transition Date;
- (c) unless You and We agree otherwise, Your licence to use the Products as set out in Your existing Order Form(s) shall remain in full force and effect, subject to any new or varied terms coming into effect under this Agreement as at the Transition Date;
- (d) each party remains liable to the other for any rights or obligations that were due for performance and remain outstanding, or that arose and have not been exercised or discharged, as at the Transition Date, subject to the terms in effect prior to the Transition Date; and
- (e) any Claim by either party arising from events prior to the Transition Date shall be subject to the terms in effect prior to the Transition Date.