

Clearing and Settlement Platform - Subscriber Technical Access Agreement



Date

Parties

1. **ASX Operations Pty Limited** ACN 004 523 782 of Exchange Centre, 20 Bridge Street, Sydney NSW 2000 (**ASXO**)

2. _____ ACN _____ of _____

(Subscriber)

Background

1. ASXO operates various software and browser interface Technical Environments.
2. The Subscriber wishes to be granted access to the Technical Environments. The Subscriber acknowledges that the Technical Environments will be made available to the Subscriber on an "as-is, where-is" basis and are subject to updates and other changes from time to time.
3. ASXO will grant the Subscriber access to the relevant Technical Environments, and the Subscriber will access the Technical Environments, on the terms and conditions of this Agreement.

Agreed terms

ASXO grants the Subscriber access to the relevant Technical Environments, and the Subscriber will access the Technical Environments, in accordance with the attached Terms and Conditions.

Executed as an agreement

Signed for and on behalf of the **Subscriber**:

Signed for and on behalf of **ASX
Operations Pty Limited ACN 004 523
782:**

Signature:

Signature:

Print name:

Print name:

Date:

Date:

Position:

Position:

Terms and Conditions

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Access Deliverables means the Software, the Browser Interface, if applicable, and the Documentation;

Agreement means these Terms and Conditions, an applicable Order Form and any agreed attachments, addenda and other documents;

ASX Group means ASXO and their Related Bodies Corporate and a **member of the ASX Group** means any of those companies;

ASX Market Rules means the rules published by ASX as amended or replaced from time to time.

BookBuild Issuer has the meaning given in the ASX Market Rules.

Browser Interface means any browser interface application selected in the relevant Order Form or incorporated into the Software;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney;

Channel means a method of connecting to the Technical Environments, if applicable, as specified in the relevant Order Form that a Subscriber is eligible to access and use;

Claim means any claim, demand, action, proceeding, judgment, penalty incurred or suffered by, brought, made or recovered however arising (whether or not presently ascertained, immediate, future or contingent);

Clearing and Settlement Platform means the electronic clearing and settlement system that will replace the existing Clearing House Electronic Subregister System (CHES);

Communication Link means the method of communicating with the Technical Environments as specified in the relevant Order Form or the applicable Documentation that a Subscriber is eligible to access and use;

Confidential Information means all information belonging or relating to a person, whether oral, graphic, electronic, written or in any other form, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or that is in fact, or should reasonably be regarded as, confidential to the party to whom it belongs or relates to, whether or not in material form. For the avoidance of doubt, in the case of ASXO the Confidential Information includes:

- (a) the data within the Technical Environment (other than data provided by the Subscriber);
- (b) the Software, the Browser Interface and the Documentation and any other specifications or technical information accompanying or relating to the Software; and
- (c) all copies of the information and those parts of the notes and other records referred to in any of paragraphs (a) or (b);

Developer means a software developer engaged for the purpose of developing software applications to be connected to or interface with the relevant Technical Environments.

Disabling Code means "back door", "time bomb", "logic bomb", "trojan horse", "worm", "drop dead device", "virus" or any other computer software routine having the effect of:

- (a) permitting access to or use of the Technical Environments or Access Deliverables by a third person other than as authorised by ASXO; or

- (b) disabling, damaging, corrupting or erasing, or disrupting or impairing the normal operation of the Technical Environments or Access Deliverables or any other computer systems or data of ASXO or allowing any third person to do so;

Documentation means the documentation made available by ASXO to a Subscriber relating to a Technical Environment, including any documentation selected in the relevant Order Form or published on the ASX Group website;

End User means (a) a member of the Subscriber's Personnel, or (b) a member of the Personnel of any Related Body Corporate of the Subscriber, in either case who accesses or uses the relevant Technical Environments;

Facilities means the facilities set out in each current Fee Schedule in respect of each Technical Environment and which are included as part of the Technical Environment Access.

Fees means:

- (a) any applicable fees and charges; and/or
- (b) any expenses incurred by a member of the ASX Group that a Subscriber must reimburse ASXO for,

as set out in the Fee Schedule;

Fee Schedule means the schedule of fees and charges, which also specifies the Facilities applicable to each Technical Environment, published by ASXO from time to time in accordance with clause 12.2;

Force Majeure Event means any act, event or cause, other than a lack of funds that is beyond the reasonable control of that party;

FTE means the functional test environment.

GST has the meaning given to that expression in the GST Act;

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Hardware means the hardware selected in the Order Form which is provided by ASXO and located at the premises of the Subscriber from time to time for a purpose connected with this Agreement;

Head Licence Agreements means any agreement between ASXO and a relevant licensor of ASXO which relates to any part of a Technical Environment and any amendments to or replacements of those agreements;

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

- (a) patents, designs, copyright, rights in circuit layouts, plant breeder's rights, 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;

Location means the location specified for installation of the Hardware in the relevant Order Form.

Losses means all liabilities, costs, losses, damages, expenses (including legal expenses on a solicitor and own 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 a party was advised in advance of the possibility of such loss;

Order Form means the order form executed by ASXO and the

Subscriber which specifies the Technical Environments which ASXO will make available to the Subscriber under the terms of this Agreement;

Participant means a Market Participant, as defined in the ASX Market Rules.

Permitted Purpose is defined in clause 9.2;

Personnel means the employees, officers, directors, agents and contractors of a party;

PTE means the platform test environment.

Related Body Corporate has the meaning given to it under the Corporations Act 2001 (Cth);

Software means the software application(s) a Subscriber is eligible to access and use that are made available by ASXO to the Subscriber, including the Browser Interface where available;

Subscriber means any person who is eligible to be granted access to the Technical Environments and Access Deliverables under this Agreement;

Support means the technical support and assistance relating to a relevant Technical Environment that will be provided to the Subscriber;

Technical Environment means the technical environments selected in the relevant Order Form, each of which is a computer system made available by (or on behalf of ASXO) through a Channel, if applicable, which is designated by ASXO from time to time to be the system to be used for the testing or development of software or browser interfaces which are to interact with the Clearing and Settlement Platform or another ASX system, as applicable;

Technical Environment Access means the service described in clause 3.2; and

Third Party Software means any third party software which a Subscriber may require to access, use or interface with the Technical Environments (including a Channel, where applicable);

1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of this Agreement;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (a) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (b) the word "month" means calendar month and the word "year" means 12 months;
- (c) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (d) a reference to a thing or a right includes a part of that thing or right;
- (e) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;

- (f) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (g) money amounts are stated in Australian currency unless otherwise specified; and
- (h) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body that performs most closely the functions of the defunct body.

2. Commencement and duration

2.1 Commencement and term

This Agreement commences on the date it is executed by the parties and will continue indefinitely until terminated in accordance with clauses 20 or 21.

2.2 Existing Subscriber Technical Access Agreements

For the avoidance of doubt, this Agreement does not replace or amend any other documents between ASXO and the Subscriber relating to ASX technical environments other than the Technical Environments.

3. Access to Technical Environment

3.1 Order Form to be executed

- (a) The Subscriber may request access to a Technical Environment by submitting a completed Order Form to ASXO, which specifies:
 - (i) the Technical Environments to which the Subscriber wishes to obtain access;
 - (ii) the Channel through which the Subscriber proposes to connect to the Technical Environments, if applicable,;
 - (iii) the Access Deliverables required by the Subscriber; and
 - (iv) the applicable Fees (if any).
- (b) Each Order Form incorporates and is subject to the terms of this Agreement.
- (c) Order Forms are not binding on the parties until executed by both parties.

3.2 Access provided by ASXO

ASXO will provide to the Subscriber:

- (a) access to the Technical Environment selected by the Subscriber in an Order Form;
- (b) the Facilities applicable to that Technical Environment; and
- (c) the Access Deliverables applicable to that Technical Environment,

(together, **Technical Environment Access**), on the terms and conditions of the Order Form and this Agreement.

3.3 Access after completion of Order Form

Subject to clause 3.8, ASXO will use reasonable efforts to provide Technical Environment Access and the Facilities to the Subscriber within a reasonable time of the Order Form being executed.

3.4 [Not used]

3.5 Communication Links

Unless other means are specified in an Order Form:

- (a) Technical Environment Access will be made available to the Subscriber remotely by means of a Communication Link.
- (b) The Subscriber is responsible for procuring and paying the costs of the relevant telecommunications network connections and services associated with any Communication Link, including any charges in respect of data transmission.

3.6 Problems with connections

- (a) Despite any other provisions of this Agreement, ASXO will not be responsible or otherwise liable for any communications, performance, security or data corruption problems, disconnection of transmission services or failures or delays in access to the Technical Environments connected with electricity or telecommunications services and lines and other means of transmission provided by third parties (other than ASXO's subcontractors).

3.7 Changes

- (a) ASXO may make changes or upgrades to any part of the Technical Environment, the Facilities or the Access Deliverables (including the Channels which the Subscriber may use to connect to the Technical Environments), and will give the Subscriber reasonable notice of those changes before they take effect.
- (b) Without limiting (a), if any amendments are made to the terms of the Head Licence Agreements, ASXO may make corresponding changes to the scope of Technical Environment Access or the Access Deliverables (including the Channels which the Subscriber may use to connect to the Technical Environments), and will use reasonable efforts to give the Subscriber appropriate notice of those changes before they take effect.
- (c) If any change is not acceptable to the Subscriber, the Subscriber may (subject to clause 24), terminate this Agreement (in respect of the relevant Order Form) by giving notice in writing to ASXO with effect from the date the changes take effect.

3.8 Channels

- (a) The Subscriber is responsible, at its own cost, for procuring the right to access and use a Channel to connect to the Technical Environments, including procuring any required Third Party Software.
- (b) ASXO will not be responsible or otherwise liable for any performance, security or data corruption problems, failures or delays in accessing a Channel or the Technical Environments that is caused by, or in connection with, a Channel or any Third Party Software.

4. Use of the Technical Environment

4.1 Permitted use

The Subscriber must not access or use the Technical Environments:

- (a) in a manner which will harm or adversely affect another person or the data, computer systems or other property of another person (including the ability of another person to use the Technical Environments);
- (b) any applicable usage restrictions specified in the Order Form or Documentation (Usage Restrictions);
- (c) in a manner which degrades, or is reasonably likely to degrade, the performance of the Technical Environments or causes them to malfunction or operate in any improper way;
- (d) directly or indirectly for any unlawful purpose, including using it to infringe the rights (including Intellectual Property Rights) of any person;
- (e) in a manner which alters or damages the Technical

Environments, or jeopardises its integrity, safety or security; or

- (f) outside any times or days which ASXO specifies for the availability of the relevant Technical Environments from time to time, provided ASXO has given the Subscriber 7 days prior notice of any unavailability.

4.2 Test data quality

The Subscriber must not provide or use any information or data in connection with the Technical Environments that contains:

- (a) production sensitive information;
- (b) "personal information", as that term is defined in the *Privacy Act 1988* (Cth);
- (c) the Subscriber's only record of that data or information; or
- (d) Confidential Information.

5. End Users

- (a) The Subscriber will ensure that its End Users comply with the terms and conditions of this Agreement when using the Access Deliverables and accessing the Technical Environments.
- (b) The acts and omissions of the Subscriber's End Users are deemed to be the acts and omissions of the Subscriber.

6. Hardware

6.1 Installation of Hardware

- (a) ASXO may arrange for the Hardware to be delivered to and installed at the Location.
- (b) Prior to the installation of the Hardware by ASXO, the Subscriber must at its own cost:
 - (i) prepare the Location for the Hardware and provide proper environmental and operational conditions for the continued efficient working and maintenance of the Hardware; and
 - (ii) provide ASXO promptly with any documentation or information which ASXO may reasonably require to satisfy itself that the Subscriber has complied with its obligations under clause 6.1(b)(i) above.
- (c) In relation to the installation of the Hardware, the Subscriber must at its own cost:
 - (i) grant such access to the Location to ASXO's Personnel as is reasonably required by ASXO;
 - (ii) provide adequate free working space and facilities at the Location as ASXO may reasonably require including (if applicable) the Subscriber's computer time, systems software, appropriate connections, network access and consumables; and
 - (iii) make available such suitably qualified and informed Personnel of the Subscriber to liaise with ASXO's Personnel as ASXO may reasonably require.

6.2 Ownership of Hardware

- (a) The Subscriber acknowledges that the Hardware is and remains the property of ASXO.
- (b) The Subscriber will keep and retain the Hardware as bailee for and on behalf of ASXO.
- (c) Risk of loss or damage of any kind to the Hardware will pass to the Subscriber upon delivery of the Hardware to the Location.

6.3 Hardware obligations

The Subscriber must:

- (a) effect and maintain insurance in relation to the Hardware against any loss or damage with an insurer of good repute and on the request of ASXO provide ASXO with evidence of the currency and adequacy of such insurance cover;
- (b) ensure that the Hardware is readily identifiable as the property of ASXO;
- (c) irrevocably authorise ASXO's Personnel, upon giving reasonable notice, to enter upon the Location at an agreed time where the Hardware is or is thought by ASXO to be located for the purpose of inspecting the operation of the Hardware or re-possessing that equipment on termination of this Agreement;
- (d) keep and retain the Hardware free from any charge, lien or other encumbrance;
- (e) pay ASXO at its rates current from time to time for all materials and labour (including travelling time) expended in connection with the installation, commissioning, maintenance and removal of the Hardware undertaken by or on behalf of ASXO;
- (f) take all necessary precautions to ensure the health and safety of ASXO's Personnel while on the Subscriber's premises;
- (g) not move the Hardware without the prior written consent of ASXO;
- (h) provide at its own cost electricity to operate the Hardware;
- (i) not itself, or permit any other person other than ASXO's Personnel to, adjust, alter, modify, repair or attempt to tamper with the Hardware;
- (j) not itself, or permit any other person other than ASXO's Personnel to, load any part of any software on the Hardware onto any other hardware;
- (k) not copy all or any part of any software on the Hardware nor procure the doing of any such acts;
- (l) not recreate, reverse engineer, disassemble, reverse compile, translate nor in any other way derive the source code or object code of any software on the Hardware;
- (m) not enhance, improve, modify or otherwise alter any software on the Hardware nor incorporate such software whether in its original or modified form within any other software;
- (n) not delete, remove, obliterate or otherwise deface any form of marking appearing on or contained in the Hardware which indicates that ASXO or any other third party is the proprietor of that equipment;
- (o) not attach or connect to the Hardware any hardware or software or other equipment or device without the prior written consent of ASXO;
- (p) keep and safeguard the Hardware in a proper and careful manner in accordance with ASXO's specifications, as varied from time to time;
- (q) promptly report to ASXO any defect in, or malfunction of, the Hardware; and
 - (r) co-operate with all of ASXO's Personnel in the diagnosis or repair of any defect in, or malfunction of, the Hardware.

7. Availability of Technical Environment

7.1 Availability

ASXO will:

- (a) make the Technical Environments available to the Subscriber during the time period specified by ASXO from time to time; and
- (b) subject to clause 7.2(a), provide as much notice as reasonably practicable of the unavailability of a Technical Environment due to reasons within ASXO's control.

7.2 Suspensions

ASXO may at any time (including without notice) immediately suspend part of or all Technical Environment Access if ASXO reasonably believes it is necessary because:

- (a) ASXO is required to undertake emergency repairs, maintenance or service of any part of a Technical Environment or Communication Link (or an interconnected supplier is required to undertake such work);
- (b) suspension of a Technical Environment is required to reduce or prevent fraud or interference with a Technical Environment;
- (c) the Subscriber's use of a Technical Environment causes serious degradation of the operation of a Technical Environment or adversely affects the ability of others to access or use a Technical Environment;
- (d) ASXO is required to comply with an order, instruction or request of any governmental, emergency services or other competent authority;
- (e) ASXO experiences problems interconnecting the Technical Environment with a Communication Link or any network of another supplier and all redundancies have been exhausted;
- (f) the Subscriber fails to pay any Fees due to ASXO under this Agreement by the date required and do not remedy that failure within 30 days' of ASXO giving the Subscriber notice to do so; or
- (g) the Subscriber is otherwise in material breach of this Agreement.

8. Supply of Access Deliverables

- (a) Where applicable, ASXO will make the Access Deliverables available to the Subscriber within a reasonable time of the Order Form being executed.
- (b) ASXO will endeavour to make available to the Subscriber a copy of any revised versions of the Access Deliverables when they become available to ASXO.
- (c) The Subscriber acknowledges that where ASXO makes a revised version of the Software or Browser Interface available, prior versions of such Software or Browser Interface (including all data) will cease being made available to the Subscriber from the date the new version is implemented.
- (d) The Subscriber must ensure that any Software or Browser Interface is used on computer systems which comply with any applicable minimum hardware and software requirements published by ASXO from time to time.

9. Permitted use of Access Deliverables

9.1 Licence for Permitted Purpose

ASXO grants to the Subscriber a non-exclusive, non-transferable, revocable licence to use the Access Deliverables only for the Permitted Purpose and only during the currency of the relevant Order Form.

9.2 Scope of Permitted Purpose

- (a) Unless otherwise specified in the Order Form and subject to clause 10 of this Agreement, **Permitted Purpose** means:
 - (i) developing, modifying, enhancing and maintaining other software in such a way as to permit functional interoperability between that other software and the Software when it is used by the Subscriber or third parties who may be eligible to access the Clearing and Settlement Platform;
 - (ii) incorporating the Software into, or connecting the Software to, a software product of the type referred to in

clause 9.2(a)(i) above and distributing that software product to third parties whom the Subscriber has established through ASXO as being eligible to access to the Clearing and Settlement Platform;

- (iii) assisting in the evaluation of other software which could be used by the Subscriber in connection with obtaining such access to the Clearing and Settlement Platform;
 - (iv) conducting tests of the Software in connection with the Subscriber's own business; and
 - (v) assisting in understanding the operation of the Browser Interface with ASXO's Technical Environments.
- (b) For the purposes of marketing a software product referred to in clause 9.2(a)(ii), the Subscriber is licensed to install a software product incorporating, or connecting to, the Software on a computer system at the premises of a prospective client of the Subscriber for the sole purpose of the demonstration to or the evaluation by that prospective client of that software product provided that such installation is of a temporary nature only.
- (c) For the avoidance of doubt, the Permitted Purposes set out in clauses 9.2(a)(i), 9.2(a)(ii) and 9.2(a)(iii) do not apply to a licence to use the Browser Interface.

9.3 Licence restrictions

Other than to the extent permitted by non-excludable laws or expressly permitted in clauses 9.1, 9.2 or 10 the Subscriber, whether alone or in conjunction with any other person, must not:

- (a) sublicense or otherwise transfer or assign its sublicense to use the Access Deliverables or disclose or otherwise make the Access Deliverables available to any third party;
- (b) alter or remove any trade marks applied to or used in the Access Deliverables;
- (c) supply, show or make available or permit to be supplied, the Access Deliverables or any part thereof to any third party or procure the doing of any such acts;
- (d) copy all or any part of the Access Deliverables or procure the doing of such an act other than where the sole purpose of the copying is a Permitted Purpose;
- (e) recreate, reverse engineer, disassemble, reverse compile, translate nor in any other way derive the source code or object code of the Software or Browser Interface;
- (f) attempt to enhance, improve, modify or otherwise alter the Software or Browser Interface; or
- (g) delete, remove, obliterate or otherwise deface any form of marking appearing on or contained in the Access Deliverables which indicates the name of the proprietor of the Access Deliverables.

10. Special conditions for some Technical Environments

10.1 General

- (a) Access to some Technical Environments is subject to special conditions and restrictions which are additional to the conditions and restrictions under other provisions in this Agreement.
- (b) From time to time ASXO may make additional Technical Environments available to the Subscriber. Those additional Technical Environments may be subject to special conditions and restrictions as specified by ASXO in writing. If the Subscriber is given access to the relevant Technical Environments, the Subscriber will comply with the applicable special conditions and restrictions notified to the Subscriber as though they form part of this clause 10.
- (c) If any special condition or restriction in this clause 10 is inconsistent with any other provision of this Agreement, the

special condition or restriction will prevail to the extent of the inconsistency.

- (d) The conditions and restrictions in this clause 10 are subject to the limitations imposed by non-excludable laws and do not apply to the extent that the conditions and restrictions are inconsistent with those non-excludable laws.

10.2 SFETA (Austraclear) (EXIGO)

- (a) In respect of the EXIGO Technical Environment, the Subscriber must be a Participant. A Subscriber who is a Developer and not a Participant is not eligible to receive access to the EXIGO Technical Environment and must not seek or attempt to access the EXIGO Technical Environment.
- (b) For the purposes of the EXIGO Technical Environment only, clause 9.2 does not apply and Permitted Purpose will mean:
 - (i) use of the Software for any purpose in the ordinary course of business, directly related to the Subscriber's activities as a Participant; and
 - (ii) making copies of the Software for backup purposes only and only within the ordinary course of its backup procedures.
- (c) In respect of the Software associated with the EXIGO Technical Environment, the Subscriber must not:
 - (i) modify, adapt, alter, decompile, reverse assemble or reverse engineer the Software; or
 - (ii) derive works from the Software.
- (d) Ownership of any Intellectual Property Rights in the Software and any works derived from the Software will vest or remain vested in OMX Technology AB. The Subscriber hereby assigns those Intellectual Property Rights to OMX Technology AB.
- (e) "OMX", "OMX CLICK Exchange System", "OMX CLICK Trade application", "OMX SECUR Clearing System", "EXIGO CSD Solution", "OMX PowerCLICK Exchange System", "OMXlink Trader" and "OMnet" are trade marks of OMX Technology AB or any third party holder of rights represented by OMX Technology AB. Such trade marks or service marks applied to copies of the Software, screen layouts or the like, by OMX Technology AB must not be removed by the Subscriber.
- (f) For the purposes of this clause 10.2 only:
 - (i) ASXO Clearing Houses means the clearing and settlement facilities in Australia for Participants world-wide operated by members of the ASX Group where clearing and settlement of financial products takes place;
 - (ii) ASXO Production System means the hardware used by ASXO:
 - (A) as the primary configuration for day to day commercial operation of the ASXO Clearing Houses; and
 - (B) as the redundant configuration for backup and recovery purposes but only when and to the extent that the primary configuration has failed and during such time as the redundant configuration is being used for day to day commercial operation of the ASXO Clearing

Houses;

- (iii) Participant means users of the ASXO Clearing House authorised by ASXO to access the central portions of the Software primarily for the purposes of clearing transactions; and
- (iv) Software means Common Graphical User Interface (GUI), which is the software installed at the Participant's sites which enables interaction with the ASXO Production System.

has been acquired by ASXO and upon which the Software Product is operating;

- (v) **Software** means the OMnet API software, which is a set of OMX supplied software libraries that are required to be compiled with any application that needs to communicate electronically with SECUR;

- (vi) **Software Product** means:

- (A) either the EXIGO or SECUR Technical Environments or software that is used for the clearing and settlement of the financial products;
- (B) corrective releases, new releases, adaptations and enhancements of the EXIGO or SECUR software issued to the Subscriber during the term of this Agreement; and
- (C) documentation related to the EXIGO and SECUR software or issued to the Subscriber during the term of this Agreement.

10.3 SECUR

- (a) For the purposes of the SECUR Technical Environment, the Subscriber must be a Developer. A Subscriber who is a Participant and not a Developer is not eligible to receive access to the SECUR Technical Environment and must not seek or attempt to access the SECUR Technical Environment.
- (b) For the purposes of the SECUR Technical Environment only, clause 9.2 does not apply and Permitted Purpose will mean:
 - (i) use of the Software for any purpose in the ordinary course of business, directly related to the Subscriber's activities of developing software on behalf of ASXO or a Participant for use on the ASXO Clearing House; and
 - (ii) making copies of the Software for backup purposes only and only within the ordinary course of its backup procedures.
- (c) In respect of the Software associated with the SECUR Technical Environment, the Subscriber must not:
 - (i) modify, adapt, alter, decompile, reverse assemble or reverse engineer the Software;
 - (ii) derive works from the Software; or
 - (iii) connect any External Systems under development to the Hardware Configuration.
- (d) Ownership of any Intellectual Property Rights in the Software and any works derived from the Software will vest or remain vested in OMX Technology AB. The Subscriber hereby assigns those Intellectual Property Rights to OMX Technology AB.
- (e) "OMX", "OMX CLICK Exchange System", "OMX CLICK Trade application", "OMX SECUR Clearing System", "EXIGO CSD Solution", "OMX PowerCLICK Exchange System", "OMXlink Trader" and "OMnet" are trade marks of OMX Technology AB or any third party holder of rights represented by OMX Technology AB. Such trade marks or service marks applied to copies of the Software, screen layouts or the like, by OMX Technology AB must not be removed by the Subscriber.
- (f) For the purposes of this clause 10.3 only:
 - (i) **ASXO Clearing Houses** means the clearing and settlement facilities in Australia for Participants world-wide operated by members of the ASX Group where clearing and settlement of financial products takes place;
 - (ii) **Developer** means a software developer engaged for the purpose of developing applications which interface with the Software;
 - (iii) **External Systems** means the systems which will interface with the Software Product;
 - (iv) **Hardware Configuration** means the hardware configuration and the third party software which

10.4 ITS

- (a) The ITS Technical Environments are comprised of the ITS PTE and ITS FTE Technical Environments.
- (b) For the purposes of the ITS Technical Environments only, in addition to each Permitted Purpose in clause 9.2 the Subscriber must ensure that it uses the Software and the Documentation:
 - (i) only in conjunction with ASXO providing an infrastructure for a market to be operated by ASX;
 - (ii) only in Australia; and
 - (iii) only for Licensed Financial Products.
- (c) For the purposes of the ITS Technical Environments only, all copies of the Software and Documentation must be marked to identify OM Gruppen AB as the proprietor of Intellectual Property Rights.
- (d) "OM", "OM CLICK", "OM CLICK Exchange System", "CLICK" and "OMnet" are trade marks of OM Gruppen AB and may not be used for any purposes without express written permission from OM Gruppen AB. Such trade marks or service marks applied to copies of the Software, screen layouts or the like, by OM Gruppen AB must not be removed by the Subscriber.
- (e) For the purposes of this clause 10.4 only:

Licensed Financial Product means:

- (i) any interest in the equity of an entity, including without limitation, shares, stock, stock units, units, depository receipts, convertible notes and other instruments which convert into equity and rights to or options to subscribe for any of these (Equities);
- (ii) any financial instrument which derives its value from:
 - (A) Equities; or
 - (B) indices related to Equities (Equities Indices), including without limitation, options over Equities and Equities Indices and futures over Equities and Equities Indices; or
 - (iii) any financial instrument which derives its value from an instrument referred to in (ii).

The following products are examples of Licensed Financial Products according to the definition above:

- (iv) Options on Equity (including Warrants),

- (v) Options on Equity Index,
- (vi) Options on Equity Futures,
- (vii) Futures on Equity,
- (viii) Futures on Equity Index,
- (ix) Ratios specified as Equity Index Futures.

Without limiting the generality of the above, specifically excluded are any instruments which derive their value solely by reference to:

- (x) the market value of any commodity including but not limited to any goods which are the result of primary production, forestry operations, energy, mining or mineral extraction operations;
- (xi) the value of the currency of any state when compared to the currency of another state or combination of states (including the value of the ECU) and includes currency swaps; or
- (xii) an interest rate charged by some third party for the provision of funds from time to time, including but not limited to fixed interest products, Commonwealth Bonds and zero rate coupon products.

Software means the OM CLICK Trade application and the OMnet API software.

10.5 SYCOM

For the purposes of the SYCOM Technical Environment, no Software will be provided to the Subscriber. The Subscriber will receive Technical Environment Access and Documentation only.

11. ASXO Support

- (a) Subject to this clause 11, ASXO will provide, or procure the provision of, reasonable assistance and Support to the Subscriber. The Subscriber acknowledges that by providing or procuring the provision of Support, ASXO does not warrant that the Support will give rise to any particular results, achieve any particular standard, correct any defects or resolve any issues.
- (b) Unless otherwise specified in the Order Form, Support provided by ASXO will be limited to providing assistance to Subscribers relating to questions or issues regarding testing or development in respect of the relevant Technical Environment.
- (c) If ASXO is unable to resolve a question or issue raised by a Subscriber in connection with the Technical Environment or Software, ASXO may determine that it is necessary for a third party to provide Support to the Subscriber.
- (d) Support hours differ for each Technical Environment. ASXO will provide details of the Support hours in the Documentation. ASXO may from time to time vary the hours in which Support is provided by ASXO by giving the Subscriber reasonable prior notice. If any such variation is not acceptable to a Subscriber, a Subscriber may terminate this Agreement by giving notice in writing to ASXO with effect from the date the variation take effect.
- (e) Subject to this clause 11, ASXO will endeavour to procure a response in writing within a reasonable time to written inquiries made by the Subscriber with respect to the operation of the Technical Environment. Any inquiries are to be forwarded to ASXO by electronic mail addressed as specified in the Documentation.
- (f) ASXO reserves the right to disclose to other people the nature of any inquiry made by the Subscriber and ASXO's response to such an inquiry, provided that any disclosure is anonymised or aggregated so that no personal information

(as defined in the *Privacy Act 1988* (Cth)) or information relating specifically to the Subscriber is reasonably identifiable, unless your personal information is required to be disclosed by law.

12. Fees

12.1 Payment on invoice

The Subscriber will pay ASXO the Fees (if any) in respect of each calendar month within 30 days of the date of an invoice from ASXO.

12.2 Changes to Fees

- (a) ASXO may vary any part of the Schedule of Fees (including the Fees) by publishing the variation on www.asxonline.com, or by otherwise notifying the Subscriber at least 30 days prior to the effective date of the variation, provided that:
 - (i) ASXO may only vary the Fees once every 12 months; and
 - (ii) the Subscriber may request ASXO to demonstrate that such increase is appropriate having regard to any increase in the costs incurred by ASXO to provide the relevant Technical Environment.
- (b) If any variation to the Fees is not acceptable to the Subscriber, the Subscriber may terminate this Agreement (in respect of the relevant Order Form) by giving notice in writing to ASXO with effect from the date the variations are to take effect.

12.3 Interest

The Subscriber must pay interest on any amount that is not paid by it when due. The interest:

- (a) must be paid on written demand given to the Subscriber by ASXO;
- (b) is calculated from and including the day on which it falls due to but excluding the day on which it is paid in full, at the rate referred to in clause 12.3(c); and
- (c) accrues each day at 1.5%.

12.4 Taxes

- (a) All amounts in this Agreement are expressed and payable in Australian dollars and are exclusive of any taxes or other governmental charges. Payments will be made in full without deduction of any taxes, charges or other charges whether or not these have been paid or are payable by the Subscriber.
- (b) Despite clause 12.2, ASXO may by giving prior written notice vary the Fees at any time to reflect the introduction of or change to a tax or other governmental charge.
- (c) The Subscriber must pay all existing taxes and duties (including any hiring arrangement duty, rental business duty, lease duty or other stamp duty), any new taxes and duties (including 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 ASXO or any other transaction or matter contemplated by this Agreement, provided that the Subscriber will not be liable to pay any taxes on ASXO's net income.

13. Intellectual Property Rights

- (a) Nothing in this Agreement will be understood as an abandonment, revocation, assignment or denial of any Intellectual Property Rights in the Technical Environment or any of the Access Deliverables. The Subscriber acknowledges that all Intellectual Property Rights are and will remain vested in the relevant proprietor of the Technical Environment and each Access Deliverable. For the avoidance of doubt, the Subscriber acknowledges that this Agreement does not assign to the Subscriber any Intellectual Property

Rights in respect of the Access Deliverables or Technical Environments.

- (b) The Subscriber acknowledges and agrees that any right of action that could be taken to protect any Intellectual Property Rights (including the obtaining of injunctive relief) in respect of the Technical Environment or Access Deliverables may be exercised by ASXO as trustee for the relevant third party proprietor of the Intellectual Property Rights or the relevant third party proprietor of the Intellectual Property Rights as if it had the benefit of being named as a party to this Agreement.
- (c) The Subscriber will promptly notify ASXO of any unauthorised, improper or unlawful use of any of the Technical Environment or Access Deliverables or infringement of any of the Intellectual Property Rights in any of the Technical Environment or Access Deliverables which comes to the Subscriber's notice.
- (d) Subject to clause 19.3, ASXO indemnifies and releases and agrees to keep indemnified and released Subscriber from and against Claims directly attributable to the Subscriber's use of the Technical Environment in accordance with the terms of this Agreement being held by a court of law to infringe the Intellectual Property Rights of a third party.

14. Confidentiality

14.1 Keep confidential

Each party (**Receiving Party**) receiving, possessing or otherwise acquiring Confidential Information of any other party (**Disclosing Party**) acknowledges that the Disclosing Party's Confidential Information is the property of and confidential to or a trade secret of the Disclosing Party. Subject to clause 14.2, the Receiving Party must:

- (a) keep the Disclosing Party's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to secure and keep secure all of the Disclosing Party's Confidential Information coming into its possession or control; and
- (c) not memorise, use, modify, reverse engineer or make copies, notes or records of the Disclosing Party's Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement.

14.2 Exclusions

The obligations of confidentiality under clause 14.1 do not apply to any information that:

- (a) is generally available to the public (other than by reason of a breach of this Agreement); or
- (b) is required to be disclosed by any applicable law.

14.3 Extension to Personnel

- (a) The Receiving Party must, at its own expense, ensure at all times that each of its Personnel to whom Confidential Information is to be disclosed is made aware of the obligations of confidentiality and will keep the Confidential Information secret.
- (b) Without limitation of clause 5(b), the acts and omissions of the Receiving Party's Personnel in respect of Confidential Information received under or in connection with this Agreement are deemed to be the acts and omissions of the Subscriber.

14.4 Security

The Subscriber must apply suitable security measures and a degree of care in relation to the Access Deliverables and any access codes, passwords and PINs provided by ASXO as to provide for their adequate protection from unauthorised disclosure, copying or use.

14.5 Survival

This clause 14 survives termination of this Agreement.

15. Records and Reports

- (a) The Subscriber will maintain full and up to date records of the date of installation or de-installation of any copies of the Software or Browser Interface on any device and, if reasonably requested by ASXO, the Subscriber will provide ASXO with a copy of these records.
- (b) The Subscriber will retain the records referred to in clause 15(a) for at least 3 years after the termination or expiry of this Agreement.
- (c) The Subscriber must maintain a copy of all data used by the Subscriber in the Technical Environments for as long as required by the Subscriber. ASXO will not produce or return copies of data submitted to the Technical Environments to the Subscriber.

16. GST

- (a) In this clause:
 - (i) the expressions **Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act; and
 - (ii) **Supplier** means any party treated by the GST Act as making a Supply under this Agreement.
- (b) Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.
- (c) If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (d) Payment of the additional amount must be made at the same time as payment for the Taxable Supply is required to be made in accordance with this Agreement.
- (e) If this Agreement requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:
 - (i) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and
 - (ii) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

17. Subscriber's warranties

The Subscriber warrants and covenants to ASXO that:

- (a) the Subscriber is eligible to access and use the Channel (including any Third Party Software) specified in the applicable Order Form;
- (b) it will use industry standard, up-to-date anti-virus software and use its best efforts to ensure that no Disabling Code is introduced or permitted to be introduced to the Technical Environments or Access Deliverables.

18. Reservations

18.1 Reservations by ASXO

ASXO does not warrant or represent that:

- (a) the Technical Environment will operate in a consistent, continuous, uninterrupted or error-free manner;
- (b) any Support services supplied by or on behalf of ASXO in respect of the Technical Environment will ensure the proper operation of the Technical Environment or the proper conduct of tests;
- (c) the Technical Environment is an accurate model or representation of features, specifications or performance of any other technical environment, computer system or software or interface;
- (d) the Technical Environment or Access Deliverables will meet the requirements of the Subscriber or the Subscriber's users;
- (e) the Software or Browser Interface will be interoperable or compatible with any other system, hardware or software;
- (f) the Documentation covers all aspects of the operation of the Technical Environments or provides complete technical specifications for all or any part of the Technical Environment;
- (g) the Documentation comprehensively describes all aspects which may be relevant to the products which the Subscriber wishes to develop, evaluate, test or maintain.

19. Liability

19.1 Exclusion of Liability

- (a) Subject to clause 19.2, ASXO excludes all liability in respect of any third party hardware or software it provides to you in connection with the Agreement.
- (b) The limitations on either party's liability do not apply:
 - (i) for personal injury or death caused or contributed to by that party or its officers, employees, agents or contractors;
 - (ii) under an indemnity; or
 - (iii) your obligation to pay the Fees.
- (c) To the maximum extent permitted by law but subject to clause 19.1(b), neither party is liable for any Consequential Loss arising out of or in connection with the Agreement.
- (d) Each party's liability to the other under or in relation to the Agreement (including under an indemnity) is reduced to the extent that:
 - (i) the other party's acts or omissions contribute to or cause any such liability; or
 - (ii) the Losses incurred could have been avoided by the party incurring the Losses taking reasonable steps to mitigate such Losses.

19.2 Non-excludable terms

Nothing in this clause 19 affects the operation of any non-excludable laws or excludes, restricts or modifies any term or

condition implied in this Agreement by non-excludable laws. To the extent permitted by law, the liability of either or both ASXO and any member of the ASX Group for any claim arising directly or indirectly from a breach of any non-excludable term or condition implied by statute arising out of the performance of this Agreement is limited to either of the following at ASXO's option to the:

- (a) supply of the services again; or
- (b) payment of the cost of having the services supplied again.

19.3 Liability cap

Subject to clauses 19.1 and 19.2 and to the extent that ASXO's liability cannot be or is not otherwise limited under this Agreement, ASXO's total aggregate liability in connection with this Agreement or the relationship created by it or otherwise, and whether based upon warranty, contract, statute, tort (including negligence) or otherwise, will not exceed in the aggregate an amount equal to the greater of \$50,000 or 12 months of Fees actually paid to ASXO by the Subscriber for the relevant Technical Environment under this Agreement.

19.4 ASX Group

Any loss or damage suffered or incurred by the members of the ASX Group in connection with or arising from any breach of this Agreement by the Subscriber, a negligent act or omission of the Subscriber or other cause of action against the Subscriber, may be recovered by ASXO from the Subscriber as though that loss or damage had been suffered by ASXO.

Every exemption from liability, defence or immunity applicable to ASXO or to which ASXO is entitled to will also be available and extend to protect all members of the ASX Group and their respective Personnel.

20. Termination of Technical Environment Access

20.1 Termination by Subscriber for convenience

The Subscriber may advise ASXO that Technical Environment Access will no longer be required by giving at least 30 days' notice in writing to ASXO. At the expiration of that notice period, the relevant Order Form will terminate and the Subscriber will immediately comply with its obligations under clause 23(a) and 23(d) in respect of that Order Form.

20.2 Termination of Technical Environment Access by ASXO

ASXO may terminate any specified Technical Environment Access immediately by giving notice in writing if:

- (a) any of the relevant Head Licence Agreements are terminated or amended;
- (b) continued Technical Environment Access is reasonably suspected of giving rise to an infringement of Intellectual Property Rights or of otherwise being in breach of any third party rights or laws;
- (c) the Technical Environment Access is adversely affected by technical issues which ASXO is not able to resolve within a reasonable time using reasonable commercial efforts;
- (d) any act or omission by the Subscriber interferes with other subscribers of the Technical Environment or jeopardises the security or integrity of the Technical Environment or other subscribers;
- (e) the Subscriber is not a Developer, a Participant, a BookBuild Issuer or a third party adviser to a BookBuild Issuer or if reasonably appears to ASXO that the Subscriber is or has become ineligible to have access to the relevant Technical Environment in accordance with this Agreement; or
- (f) in the case of ASX BookBuild TLM Web Interface, it ceases to be made available in the PTE.

In addition to its termination rights under clause 20.2 and clause 21, ASXO may advise the Subscriber that Technical Environment Access will no longer be provided by giving at least 30 days'

notice in writing to the Subscriber. At the expiration of the notice period set out in that notice, the relevant Order Form will terminate and the Subscriber will immediately comply with its obligations under clause 23(a) and 23(d) in respect of that Order Form.

20.3 Termination only affects Order Forms

Termination of Technical Environment Access under this clause 20 is limited to the termination of the relevant Order Form under which the Subscriber obtains the relevant Technical Environment Access. This Agreement will remain in force unless terminated by the agreement of the parties or under clause 21.

21. Termination of Agreement

- (a) This Agreement may be terminated immediately by either party giving notice in writing to the other party if any of the following events occur:
 - (i) the other party is in material breach of this Agreement and such breach (if capable of remedy) has not been remedied within 14 days of receipt of a notice from the first party specifying the breach and requiring it to be remedied;
 - (ii) the other party becomes or resolves to become subject to any form of insolvency administration, is or begins to be wound up (other than for the purposes of reconstruction or amalgamation), enters into any arrangement between itself and its creditors, or is unable to pay its debts as and when they fall due;
 - (iii) a party disposes of the whole or any part of its assets, operations or business other than in the normal course of business; or
 - (iv) there is any change in the direct or indirect beneficial ownership or control of the Subscriber and in ASXO's reasonable opinion such termination is required to protect ASXO from the risk of having to continue to supply Technical Environment Access when the Subscriber will not be able to pay the Fees or satisfy its other obligations or liabilities under this Agreement.
- (b) If the Subscriber terminates this Agreement under clause 21(a), this Agreement and each and every Order Form under this Agreement will terminate immediately.
- (c) If ASXO has the right to terminate this Agreement under clause 21(a), ASXO may in its absolute discretion elect to have this Agreement remain in force and may terminate Technical Environment Access under one or more Order Forms with immediate effect.
- (d) Subject to clause (c), where there are no current Order Forms on foot, either party may immediately terminate the Agreement for convenience and without liability by written notice to the other party.

22. Suspension

- (a) In any case in which ASXO has the right to terminate this Agreement or to terminate the Subscriber's Technical Environment Access, ASXO may alternatively in its reasonable discretion elect to suspend the Subscriber's Technical Environment Access until any relevant issues are resolved to ASXO's reasonable satisfaction.
- (b) At any time during a period of suspension (whether any relevant issues are resolved or not) ASXO may give written notice to the Subscriber that the period of suspension will end and either:
 - (i) the Technical Environment Access under one or more Order Forms will be restored to the Subscriber; or
 - (ii) this Agreement or the Technical Environment Access under one or more Order Forms will be terminated; or
 - (iii) a combination of (i) and (ii) will apply.

- (c) Except where the Subscriber is in material breach of this Agreement and such breach has not been remedied, ASXO will promptly reinstate Technical Environment Access after the reason for suspension or restriction has been resolved.

23. Post termination obligations

- (a) On termination of this Agreement, the Subscriber will:
 - (i) immediately cease using the Technical Environment; and
 - (ii) immediately cease communicating with or otherwise using the Hardware;
 - (iii) at ASXO's option, return the Hardware to ASXO or give ASXO's Personnel prompt access to the Location to enable ASXO to remove the Hardware;
 - (iv) promptly return to ASXO or erase all of ASXO's Confidential Information and Access Deliverables (other than Hardware), including for the avoidance of doubt all copies of the Software, Access Deliverables, Browser Interfaces and Documentation in the custody, possession or control of the Subscriber.
- (b) Despite any other provision of this Agreement, this clause 23 and clauses 1.1 (Definitions), 1.2 (Interpretation), 10 (Special conditions for some Technical Environments), 13 (Intellectual Property Rights), 14 (Confidentiality), 15 (Records and Reports), 17 (Subscriber's warranties), 18 (Reservations), 19 (Liability), 24 (Dispute resolution) and 26 (General) survive the expiry or termination of this Agreement.
- (c) In addition to the specific clauses referred to in clause 23(b), the obligations under this Agreement which are expressed to or, by their nature, survive expiry or termination of this Agreement, will survive expiry or termination of this Agreement and are enforceable at any time at law or in equity.
- (d) On termination of this Agreement, the Subscriber must pay to ASXO all outstanding Fees accrued up to the date of termination.

24. Dispute resolution

- (a) The parties agree that (except proceedings seeking interlocutory relief) if any dispute which arises out of or in relation to this Agreement is not resolved through good faith discussions by the parties within 14 days from the date on which written notice of the dispute is given by one party to the other (**Notice Date**), the parties will endeavour to resolve the dispute through mediation.
- (b) The mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of receiving any party's notice of dispute, by a person appointed by the Chair of Resolution Institute, ACN 008 651 232, Suite 602, Level 6 Tower B, Zenith Centre, 821-843 Pacific Hwy, Chatswood NSW 2067; phone: 02 9251 3366, e-mail: infoaus@resolution.institute, or the Chair's designated representative.
- (c) The Resolution Institute Mediation Rules will apply to the mediation except to the extent that the parties agree otherwise.
- (d) This clause will not affect either party's rights to terminate this Agreement in accordance with its provisions.

25. Force Majeure Events

Where any failure or delay by a party (Affected Party) in the performance of its obligations under this Agreement is caused, directly or indirectly, by a Force Majeure Event:

- (a) the Affected Party must as soon as practicable give the other party written notice of that fact;
- (b) the Affected Party is not liable for that failure or delay to the

extent that it is caused by the Force Majeure Event;

- (c) the Affected Party's obligations under this Agreement are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event; and
- (d) if the Force Majeure Event continues for more than 90 consecutive days, the other party may terminate this Agreement by giving written notice to the Affected Party.

26. General

26.1 Assignment

- (a) Neither party may assign, subcontract or novate all or any part of its rights or liabilities under this Agreement without the prior written consent of the other party, such consent which must not be unreasonably withheld or delayed.

26.2 Entire understanding

- (a) This Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes all prior agreements, arrangements or understandings between the parties the subject of this Agreement whether or not reduced to writing.
- (b) Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of this Agreement.
- (c) Nothing in the Agreement limits any liability either party may have in connection with any representations or other communications (either oral or written) made prior to or during the term of the Agreement where such liability cannot be excluded (including under section 18 of the Australian Consumer Law).

26.3 Further assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

26.4 Variation

This Agreement cannot be amended or varied except in writing signed by the parties.

26.5 Waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

26.6 Severability

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Agreement in any other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

26.7 Notices

- (a) All notices given under this Agreement will be in writing addressed to the address of the relevant party as specified in the Order Form or such other address as may be designated by that party by notice given in accordance with this clause 26.7.
- (b) Notices may be delivered by hand or ordinary post, or facsimile or email and will be deemed to have been received, if by hand upon delivery to the address designated in accordance with clause 26.7(a), if by ordinary post 5 Business Days after the date of posting, if by facsimile upon successful completion of transmission, if by email, when the sender's email receives a message confirming successful transmission, but if the delivery or receipt is on a day that is not a Business Day or is after 5:00pm (recipient's time) it is regarded as received at 9:00am on the following Business Day.

26.8 Third Party Beneficiaries

- (a) 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 or any other third party is to be interpreted as benefiting (in addition to benefiting ASXO) each of those persons and to be enforceable by each of those persons.
- (b) To that extent, ASXO has entered into this Agreement and holds the benefit of those provisions for itself and on behalf of and as trustee for the members of the ASX Group and those Personnel or any other third party.

26.9 Counterparts

If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

26.10 Conflicting provisions

If there is any conflict between the main body of this Agreement and any Order Form, Fee Schedule, price list or other document, then the provisions of the main body of this Agreement prevail.

26.11 Governing Law

- (a) This Agreement is governed by and must be construed in accordance with the laws in force in New South Wales.
- (b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.