

Australian Clearing House Pty Limited
ASX Settlement and Transfer Corporation Pty Limited

Legal terms for the provision of
a trade acceptance service
to
Australian financial market licensees in respect of
CHESS-eligible ASX-quoted securities

June 2010

The object of these Legal Terms

- 1 Australian Clearing House Pty Limited (**ACH**) and ASX Settlement and Transfer Corporation Pty Limited (**ASTC**) operate licensed clearing and settlement facilities (**CS facility**).
- 2 Under section 795B of the Corporations Act, the relevant Minister may grant an applicant an Australian market licence if the Minister is satisfied of a number of things, including that the applicant has adequate clearing and settlement arrangements for transactions effected through the trade facility to be operated by it.
- 3 Under the operating rules of ACH and ASTC an Australian market licence holder can apply to become an Approved Market Operator (**AMO**).
- 4 ACH and ASTC provide clearing and settlement arrangements which include services to AMOs and to parties to transactions in relation to CHESSE-eligible ASX-quoted securities.
- 5 There are two categories of service relating to clearing and settlement of securities transactions:
 - (a) a service to be provided by a CS facility licence holder to AMOs, being the acceptance of transactions effected through that AMO for clearing and settlement in the CS facility (**trade acceptance service**).
 - (b) a service provided to participants of the CS facility, being post-trade processing of transactions effected in accordance with the rules of an AMO (**clearing and settlement service**).
- 6 These Legal Terms govern the provision of a trade acceptance service to AMOs. They do not govern the provision of a clearing and settlement service to the parties to a securities transaction effected through an AMO. The provision of a clearing and settlement service in respect of a securities transaction accepted by ACH and ASTC under the trade acceptance service is subject to the operating rules of ACH and ASTC. These Legal Terms do not govern the provision of a facility for the acceptance of settlement instructions from an Approved Clearing Facility (as defined in the operating rules of ASTC).
- 7 The object of these Legal Terms is to provide for the provision by ACH and ASTC of a trade acceptance service to an AMO to enable that AMO to meet its clearing and settlement obligations under its Australian market licence.

Binding nature of Legal Terms

- 8 Each of ACH and ASTC agree to be jointly bound by the obligations in these Legal Terms and to supply a trade acceptance service in accordance with these Legal Terms.
- 9 ACH and ASTC have no obligation to supply the trade acceptance service unless the AMO agrees to be bound by these Legal Terms.
- 10 Each AMO that acquires a trade acceptance service agrees with both ACH and ASTC to be bound by the obligations in these Legal Terms.

The trade acceptance service

- 11 A trade acceptance service comprises the items set out in Schedule 1 to these Legal Terms as amended from time to time.
- 12 ACH and ASTC will publish on the ASX website a draft updated schedule of items comprising the trade acceptance service at least four weeks prior to any change being implemented to those items. This obligation does not apply if any regulatory authority directs that ACH and ASTC must change the schedule of items, or if ACH and ASTC consider, in their absolute discretion, that a change is required to comply with ACH's or ASTC's licence obligations.
- 13 An AMO may request that ACH and ASTC provide a trade acceptance service by lodging an application for that service with ACH and ASTC. The application must be in the form set out in Schedule 2 or such other form as ACH and ASTC may from time to time prescribe.
- 14 The trade acceptance service will be provided to the AMO for the period specified in the application form (**contract period**). The period so specified may not exceed the termination date of these Legal Terms as determined under clause 51.

Pricing

- 15 As a condition of obtaining and continuing to receive a trade acceptance service, an AMO acquiring a trade acceptance service must pay the following amounts to, or as directed by, ACH and ASTC.
 - (a) an application fee of \$10,000 (excluding GST) to be paid on lodgement of the application to receive a trade acceptance service;

- (b) a service fee for a 12 month period of \$450,000 (excluding GST) on the date the AMO first receives the trade acceptance service (Launch Date) and on each anniversary of the Launch Date.
- 16 If ACH and ASTC are providing a trade acceptance service to three or more AMOs, ACH and ASTC will adjust the service fee paid or payable by each AMO on an equitable basis by reference to the costs incurred by ACH and ASTC in providing the trade acceptance service. The manner in which the fees are adjusted will be determined by ACH and ASTC in their absolute discretion.

No unreasonable discrimination

- 17 When acting under these Legal Terms, ACH and ASTC will not unreasonably discriminate as between ASX Limited and any AMO.
- 18 ACH and ASTC will provide to AMOs acquiring a trade acceptance service a service of a comparable quality to that provided to ASX Limited.
- 19 In determining whether or not there is:
 - (a) any unreasonable discrimination; or
 - (b) a comparable quality of service

ACH and ASTC may have regard to any differences between ASX Limited and any AMO acquiring the trade acceptance service, other than the fact that ASX Limited is a related body corporate of each of them.

Clearing and settlement service

- 20 ACH and ASTC will provide clearing and settlement services to participants of ACH and ASTC for transactions effected through, or reported to, an AMO acquiring the trade acceptance service in accordance with applicable laws, operating rules and procedures.
- 21 ACH and ASTC will not discriminate, when providing clearing and settlement services to clearing and settlement participants, on the basis of whether a trade has been effected through ASX or through an AMO.
- 22 ACH and ASTC will require participants of ACH and ASTC to certify that they have the necessary systems, procedures and controls to manage the clearing and settlement of trades effected through ASX and an AMO. The imposition of this requirement does not result in any discrimination within the meaning of clause 21.

No changes without consent

- 23 Subject to clauses 11, 13 and 29, ACH and ASTC will not, during each contract period, change the terms and conditions on which they supply a trade acceptance service, except by consent.

Service Levels

- 24 ACH and ASTC will comply with the service levels set out in Schedule 3 (Service Levels).

Expansion or enhancement of the service

- 25 ACH and ASTC will consider in good faith any requests by any AMO for an expansion or enhancement of the trade acceptance service the subject matter of these Legal Terms. ACH and ASTC are not obliged for any reason to expand or enhance the trade acceptance service.
- 26 Should ACH and ASTC agree to expand or enhance the trade acceptance service, the AMO requesting such expansion or enhancement must make a monetary contribution towards the capital cost of such expansion or enhancement to ACH or ASTC (as specified by ACH and ASTC), in an amount to be agreed between that AMO and ACH and ASTC.
- 27 If no agreement as to the amount of the monetary contribution to ACH or ASTC can be reached, ACH and ASTC are not obliged to provide that expansion or enhancement.

Safeguards

- 28 If ACH or ASTC acquire actual knowledge of competitively sensitive information in the course of providing the trade acceptance service under these Legal Terms, they will implement, in accordance with the standards promulgated under these Legal Terms, appropriate safeguards (to be determined in their absolute discretion) to protect that information from disclosure to ASX Limited.

Standards

- 29 ACH and ASTC may, from time to time, promulgate:
- (a) technical standards; or
 - (b) operational standards
- (standards).**
- 30 ACH and ASTC will publish on the ASX website any applicable standards at the time of these Legal Terms coming into effect.
- 31 ACH and ASTC will publish on the ASX website draft updated standards at least four weeks prior to any change being implemented to the standards. This obligation does not apply if any regulatory authority directs that ACH and ASTC must change the standards, or if ACH and ASTC consider, in their absolute discretion, that a change is required to comply with ACH's or ASTC's licence obligations.
- 32 As a condition of obtaining and continuing to receive the trade acceptance service, AMOs must comply with the standards as they are published from time to time.

Reporting obligations

- 33 AMOs acquiring the trade acceptance service must:
- (a) immediately report to ACH and ASTC any material non-compliance with any of the standards; and
 - (b) if ACH and ASTC have reasonable grounds to believe that the AMO may not have complied or may not be complying with the standards, provide promptly such information as ACH and ASTC may request for the purpose of ascertaining whether the AMO has complied or is complying with the standards.
- 34 AMOs acquiring the trade acceptance service must during the contract period, on the first business day of January, April, July and October, provide a certificate to ACH and ASTC, signed by two directors of the AMO, stating:
- (a) whether or not they have complied with each of the standards during the previous quarter;
 - (b) if not, the substance of how they have not complied with each of those standards, the date or dates on which they have been in non-compliance, and what remedial action (if any) has been undertaken.

Remedies for failure to comply

- 35 If an AMO that has acquired the trade acceptance service fails to comply with any provision of these Legal Terms, and ACH and ASTC consider that failure to be material, ACH and ASTC may, in their absolute discretion, either:
- (a) suspend the provision of the trade acceptance service until such time as they are satisfied that the AMO will comply with all of the provisions of these Legal Terms; or
 - (b) terminate the right of the AMO to obtain the trade acceptance service.
- 36 In considering whether a failure to comply is material, ACH and ASTC may in their absolute discretion, have regard to their respective licence obligations and the objectives set out in s760A of the Corporations Act.
- 37 Without limiting the previous clause of these Legal Terms, should an AMO that has acquired a trade acceptance service:
- (a) fail to provide a certificate in relation to its compliance with the standards within 15 business days from the date on which that certificate was to be provided; or
 - (b) state in the certificate that it has failed to comply with the standards in any respect and has not stated that the failure has been remedied or how the failure will be remedied within 15 business days;
- or, if ACH and ASTC reasonably believe that the AMO is failing to comply with a standard or any provision of these Legal Terms, and ACH and ASTC consider that failure to be material, ACH and ASTC may in their absolute discretion:
- (c) suspend the provision of the trade acceptance service until such time as they are satisfied that the AMO will comply with all of the standards and provisions of these Legal Terms; or
 - (d) terminate the right of the AMO to obtain the trade acceptance service.
- 38 Without limiting any previous clause of these Legal Terms, a material breach occurs if:
- (a) ACH and ASTC direct an AMO to remedy any failure to comply with these Legal Terms; and
 - (b) that AMO does not demonstrate to the satisfaction of ACH and ASTC, in their absolute discretion, that the failure has been remedied within 20 business days.

Dispute resolution

- 39 If a dispute arises between ACH or ASTC and an AMO that has acquired a trade acceptance service concerning any aspect of these Legal Terms or their operation, other than one that is the subject of an absolute discretion of ACH or ASTC, the parties must negotiate in good faith to resolve the dispute.
- 40 If commercial negotiation fails to resolve such a dispute, either party may refer the dispute to a person nominated by ACH and ASTC for binding arbitration.
- 41 Except where they are inconsistent with the provisions of these Legal Terms, the rules published in 2007 by the Institute of Arbitrators & Mediators Australia entitled *the IAMA Arbitration Rules* will govern the conduct of any arbitration conducted under these Legal Terms.
- 42 The arbitrator must have regard to and take into account as fundamental elements the following matters in resolving the dispute:
- (a) the object of these Legal Terms;
 - (b) the legitimate business interests of ACH and ASTC, including the protection of any investment by them in the CS facility;
 - (c) the statutory and licence obligations of ACH and ASTC under the Corporations Act; and
 - (d) the interests of all other persons who have contractual rights to obtain a trade acceptance service.
- 43 An arbitration will be private and the result of the arbitration will not be published.
- 44 The parties must bear their own costs of the arbitration, including the costs of any representatives.
- 45 The cost of the arbitrator and the costs of any facilities used for the arbitration shall be borne equally by both parties.

Exclusions of liability

- 46 Subject to clause 48, neither ACH nor ASTC are liable for any direct or indirect loss however caused (including, but not limited to, by the negligence of ACH or ASTC), suffered or incurred by an AMO that has acquired a trade acceptance service or arising out of or in connection with the relationship established by these Legal Terms.
- 47 As a condition of obtaining and continuing to receive the trade acceptance service, an AMO that has acquired a trade acceptance

service may make no claim against ACH or ASTC with respect to any liability arising out of the provision by ACH or ASTC of a clearing and settlement service to a party to a transaction effected through a trade facility operated by that AMO.

- 48 If an AMO demonstrates to the reasonable satisfaction of ACH and ASTC that ACH and ASTC have failed to comply with the Service Levels, ACH and ASTC will, subject to the following sentence, pay to that AMO a sum of \$2000 in respect of each day the Service Levels have not been complied with as that AMO's sole and exclusive remedy in respect of such failure. The aggregate liability of ACH and ASTC to an AMO under this clause 48 in any year is limited to the amount of the service fee for a 12 month period paid by that AMO in that year, net of the adjustment made under clause 16 (if any).

Indemnities

- 49 An AMO that has acquired a trade acceptance service must indemnify ACH and ASTC against any loss or damage, whether direct or indirect, suffered or incurred by ACH or ASTC in connection with any act or omission by that AMO, including any:
- (a) breach of contract, including these Legal Terms;
 - (b) tort, including negligence or breach of statutory duty; or
 - (c) breach of equitable duty.
- 50 An AMO that has acquired a trade acceptance service must indemnify ACH and ASTC against any loss or damage, whether direct or indirect, suffered or incurred by ACH or ASTC (including legal and other costs) in connection with any claim (including any demand, action or proceeding of any nature, whether actual or threatened) against ACH or ASTC arising in connection with a trade acceptance service provided to the AMO or the relationship established by these Legal Terms.

Term of Legal Terms

- 51 Unless terminated earlier under the review provisions in these Legal Terms, these Legal Terms will operate for the period of 3 years commencing on [date].

Review

- 52 Six months prior to the expiry of these Legal Terms a review of the Legal Terms will be carried out and published by ACH and ASTC within a reasonable period of time thereafter.
- 53 A review will be carried out and published by ACH and ASTC if:
- (a) ASIC or the RBA take any regulatory action or there is a change of law which affects the provision of the trade acceptance service;
 - (b) ASIC or the RBA consent to a review being undertaken; or
 - (c) there is any material change to the risk profile of ACH or ASTC in the provision of a trade acceptance service.
- 54 The result of the review undertaken by ACH and ASTC may be, in their absolute discretion:
- (a) to maintain the current Legal Terms substantially in their current form;
 - (b) to change the current Legal Terms;
 - (c) to terminate the Legal Terms prior to the end of the term specified in clause 46; or
 - (d) to allow the Legal Terms to expire on their own terms without replacement.

Governing law

- 55 These Legal Terms are governed by the laws of New South Wales, Australia.
- 56 ACH, ASTC and any AMO that acquires a trade acceptance service irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

Schedule 1

Description of the items of the service (clause 11)

A trade acceptance service comprises the following items:

- 1. Trade Acceptance:** Trades submitted by an AMO that have been accepted by the CS facilities will be confirmed back to the AMO through CHESSE via a response message.
- 2. Trade Rejection:** Trades submitted by an AMO that have been rejected by the CS facilities will be notified back to the AMO through CHESSE via a response message.
- 3. Trade Cancellation:** Trades submitted by an AMO that have been cancelled by the AMO (by the submission of a new trade message to CHESSE) and have been accepted by the CS facilities will be notified back to the AMO through CHESSE via a response message.
- 4. Trade Removal:** Trades submitted by an AMO that have been initially accepted and then subsequently removed by the CS facilities will be notified back to the AMO through CHESSE via a notification message.
- 5. Helpdesk and Customer Support:** Technical and operational support and business relationship management services.

Schedule 2

Application form (clause 13)

Approved Market Operator and trade acceptance service for CHESSE-eligible ASX-quoted securities

Application Form

Approved Market Operator

This form should be used by a market licensee ("Applicant") seeking to be:

- (1) approved as an Approved Market Operator under the operating rules of Australian Clearing House Pty Ltd ("ACH") and ASX Settlement and Transfer Corporation Pty Ltd ("ASTC"); and
- (2) provided with a trade acceptance service for CHESSE eligible ASX quoted securities by ACH and ASTC (jointly).

The ACH Clearing Rules and ASTC Settlement Rules provide that ACH and ASTC may approve a person with an Australian market licence as an Approved Market Operator ("AMO").

The trade acceptance service involves acceptance of transactions effected through (the market of) an AMO for clearing and settlement in the CS facilities operated by ACH and ASTC. Details of the trade acceptance service are set out in the Legal Terms for the provision of a trade acceptance service and the standards which apply under those Legal Terms. The Legal Terms and the standards which apply under them are available at www.asx.com.au.

How to apply

The form is in two parts:

Part 1 Deed Poll

Part 2 Details of Applicant

Any annexures to this Application Form will form part of the application for the trade acceptance service.

Applicants must complete all questions in this application.

Completed applications should be returned to ACH and ASTC marked to the attention of the General Manager, Clearing and Settlement Services at:

Australian Clearing House Pty Ltd
and ASX Settlement and Transfer
Corporation Pty Ltd
Exchange Centre
20 Bridge Street
Sydney NSW 2000
Australia

Part 2 – Details of Applicant

Part 2.1 Applicant Details

(a) Name and ARBN or ABN of Applicant.

(b) Place and date of incorporation/registration.

(c) Registered office address.

(d) Term of service

The Applicant requests that the trade acceptance service be provided on and from [*insert date*] (**Commencement Date**) for a period of [*insert time period*].

Part 2.2 Licensing Information

(a) Does the Applicant hold an Australian market licence issued under the Corporations Act 2001? If yes, please attach copy of the licence. Yes No
(ANNEXURE A)

If No, the trade acceptance service cannot be provided until the Applicant has been issued a market licence and provided a copy of that market licence to ACH and ASTC.

(b) Does the Applicant's licence enable the Applicant to use the Trade Acceptance Service? Yes No

If No, please ensure you obtain a licence variation to allow for this prior to submitting this application

Schedule 3

Service levels (clause 24)

1. Operating Hours

The trade acceptance service will be provided during the hours of 9.00am to 5.30pm (Sydney time) on each Business Day (as that term is defined in ASTC Settlement Rule 2.13.1) or such other hours of operation as ACH and ASTC may from time to time notify all AMOs (**Operating Hours**).

ACH and ASTC will ensure that the trade acceptance service will be available for not less than 99.8% of Operating Hours.

2. Trades submitted within Capacity Threshold

ACH and ASTC will provide during Operating Hours:

- (a) items 1 – 4 of the trade acceptance service (as per Schedule 1);
- (b) to the standards described under the heading “Performance Criteria” in the table in paragraph 3 below (**Performance Criteria**);

in respect of trades submitted by an AMO to ACH and ASTC on a given day up to the number of trades (**Capacity Threshold**) specified below:

- For the first year that these Legal Terms are in effect, the Capacity Threshold is 400,000 trades per day.
- For the second year that these Legal Terms are in effect, the Capacity Threshold is 500,000 trades per day.
- For the third year that these Legal Terms are in effect, the Capacity Threshold is 625,000 trades per day.

3. Performance Criteria

Item	Service	Performance Criteria
1	Trade Acceptance	To be determined
2	Trade Rejection	To be determined
3	Trade Cancellation	To be determined
4	Trade Removal	To be determined

4. Trades submitted in excess of Capacity Threshold

If, on a given day, an AMO submits trades in excess of the Capacity Threshold, ACH and ASTC will, subject to any system constraints and subject to ACH's and ASTC's licence obligations, use reasonable efforts to provide the trade acceptance service in respect of such trades, however ACH and ASTC are not obliged to comply with the Performance Criteria in respect of such trades.

6. Help Desk and Customer Support

[Currently under development].