

# ASX BENCHMARK DATA

## SUBSCRIBER TERMS AND CONDITIONS

These terms and conditions govern any end user subscription access or use of ASX Benchmark Data.

### 1. Subscription Service

We will use reasonable endeavours to provide the Subscriber with the Service following the commencement of this agreement.

### 2. Commencement and Term

The agreement commences the date We acknowledge receipt of an executed Order Form and runs through to 31 December. Thereafter, this agreement will automatically renew each calendar year unless:

- (a) We receive written notice of termination from the Subscriber at least thirty (30) days prior to the renewal date (1 January of the following year); or
- (b) We decide in our absolute discretion to not renew the agreement.

### 3. Access and Use

Subscription to the Service means that the Subscriber and Subscriber Entities may receive the ASX Benchmark Data through an information vendor authorised by Us or other electronic means nominated on the Order Form. Subject to payment of the Subscription Fees, the Subscriber and Subscriber Entities are granted a non-exclusive, non-transferable licence to use and retrieve the ASX Benchmark Data via the Service at its site address and in the subscribed countries (as per address and country details supplied to Us) for their internal business purposes only during the term of this agreement.

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

### 4. Subscription charges

The Subscription Fees for the Subscriber's access to and use of ASX Benchmark Data via the Service is in accordance with Our current Fees Schedule. The normal billing cycle is the calendar year being 1 January to 31 December. For subscriptions not commencing 1 January, the initial fee will be calculated on a pro-rata basis.

Subscription Fees for the Service are due and payable within thirty (30) days of the date of Our invoice.

### 5. Taxes

The Subscriber must pay all existing taxes and duties (including, but not limited to, any hiring arrangement duty, rental business duty, 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 Subscription 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 Subscriber must indemnify and release Us to the full extent of that liability.

In the event that payment of any amount of the Subscription 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 Subscriber in addition to the sums due to Us.

### 6. Changes in the Service

We reserve the right to change the Service including the format, content and/or delivery method of the ASX Benchmark Data from time to time by public notification via [www.asxonline.com](http://www.asxonline.com).

### 7. Right to suspend or revoke access

We may suspend access to the Service or otherwise cease supplying the ASX Benchmark Data to the Subscriber without notice and at Our discretion if:

- (a) We are required to do so in order to comply with an order, instruction or request of a Regulatory Authority;
- (b) in Our reasonable opinion, any act or omission by Subscriber in relation to its use of the ASX Benchmark Data is considered likely to bring into disrepute the ASX Group or the reputation or the integrity of the benchmark(s) managed by the ASX Group at any time; or
- (c) We are required to undertake repair or maintenance of any part of the systems that We use to collect, compile and distribute the ASX Benchmark Data,



provided that We must recommence the supply of the ASX Benchmark Data once the repair or maintenance has been completed.

## 8. Intellectual Property Rights

- 8.1. All intellectual property rights in the ASX Benchmark Data and related information material provided by Us under this agreement is, and remains, proprietary to Us. The Subscriber has no rights to the ASX Benchmark Data except as expressly stated in the agreement.
- 8.2. If the Subscriber's use of the ASX Benchmark Data, in accordance with this agreement infringes the intellectual property rights of any person, We will indemnify and release Subscriber 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 Subscriber, but only:
  - (a) to the extent the claim relates to the ASX Benchmark Data provided by Us under this agreement provided such data has not in any way been altered or tampered with by Subscriber;
  - (b) if Subscriber:
    - i. promptly notifies Us of the claim;
    - ii. allows 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.
- 8.3. As part of a defence or settlement of a claim, We may in our absolute discretion:
  - (a) obtain for Subscriber the right to continue using the ASX Benchmark Data as is relevant;
  - (b) modify or replace the infringing part of the ASX Benchmark Data as is relevant to avoid the claim; or
  - (c) accept the return of the infringing part from Subscriber and refund any fees paid in respect of that infringing part.

## 9. Termination

- 9.1. Either party may terminate this agreement if the other party is in breach of a material term of this

agreement and fails to remedy that breach within 30 days written notice to remedy.

- 9.2. If Subscriber fails to pay on the due date any sum due to Us and has not remedied the failure after receiving 7 days' written notice from Us in relation to the failure, We may:
  - (a) withhold supply or access to the ASX Benchmark Data; and/or
  - (b) immediately terminate this agreement.
- 9.3. We may terminate this agreement immediately by written notice to Subscriber if Subscriber is adjudicated bankrupt, enters into liquidation or any arrangement or composition with its creditors or if a receiver is appointed to any part of Subscriber's assets and not discharged within 14 days or if any judgement against Subscriber remains unsatisfied for more than seven days.
- 9.4. We may terminate this agreement immediately if Subscriber is in breach of clause 3 of this agreement.

## 10. Effects of Termination

On termination of this agreement:

- (a) We may retain any monies paid;
- (b) the Subscriber must pay Us all amounts owed by the Subscriber in connection with this agreement, including under any indemnities;
- (c) those rights and obligations required or purporting to have effect after termination or expiry of this agreement will survive including without limitation clauses 5, 8, 10, 11, 12, 13, 16, 17 and 18;
- (d) We will be regarded as discharged from any further obligations under the agreement; and
- (e) the Subscriber's right to access the Service and to use the ASX Benchmark Data will immediately cease and Subscriber will as We direct, return or destroy all copies of the ASX Benchmark Data in its possession or control.

## 11. Disclaimer

Whilst reasonable care is taken when producing ASX Benchmark Data, no members of the ASX Group warrant the quality, accuracy, completeness or timeliness of the ASX Benchmark Data. To the fullest extent permitted by law, the ASX Benchmark Data is provided "as is", without



warranty or guarantee of any kind, express or implied as to:

- (a) the acceptable quality or fitness of the ASX Benchmark Data for a particular purpose;
- (b) the accuracy, completeness or quality of the ASX Benchmark Data; or
- (c) continuity of supply or use of ASX Benchmark Data free from interruption.

## 12. Limitation of Liability

12.1. Except as provided by clause 12.3, no member of the ASX Group will be liable to Subscriber or to any third party, (whether in contract, tort, under statute or otherwise (including in each case negligence) for any loss including but not limited to any of the following types of loss or damage (in each case whether direct, indirect, special or consequential) arising under or in relation to this agreement:

- (a) any loss of profits, business contracts, anticipated savings, goodwill, or revenue; and/or
- (b) any loss or corruption or destruction of data; and/or
- (c) any loss arising from the transmission of viruses, and/or
- (d) use of, or reliance on the ASX Benchmark Data, whether or not advised in advance of the possibility of such loss or damage.

12.2. To the extent permitted by law, We exclude all conditions and warranties implied by statute, general law or custom relating to Our obligations under this agreement.

12.3. Where any Act of Parliament implies a term, condition or warranty in this agreement and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty shall be deemed to be included in this agreement provided that Our liability is limited to, at Our discretion:

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

## 13. Indemnification

Subscriber must at all times indemnify and hold harmless and release (and keep indemnified, released and held harmless) the ASX Group ('those indemnified') from and against any loss or liability incurred or suffered by any of those indemnified arising from any claim, which any person other than Subscriber may bring against any of those indemnified where such claim arose out of or in connection with:

- (a) a breach by Subscriber of its obligations under this agreement;
- (b) any wilful, unlawful or negligent act or omission by Subscriber; or
- (c) use or reliance by any third party on the ASX Benchmark Data.

## 14. Records, Audit and Inspection

Subscriber will maintain appropriate records and procedures which ensure that only its authorised employees can access or view the ASX Benchmark Data at any given time. Subscriber agrees that We may nominate an employee or agent to inspect relevant records and procedures on giving 14 days' notice in writing to the Subscriber (**Inspection**). In the event of an Inspection, Subscriber will provide Us with access to the premises, records, procedures and staff of the Subscriber for the purposes of assessing the Subscriber's compliance with the terms of this agreement.

## 15. Assignment

This agreement (and all of Our rights and obligations under it) may be assigned by Us at any time to any person capable of fulfilling Our obligations under this agreement and such assignment shall be immediately effective between the parties upon written notice being given by Us to the Subscriber. The Subscriber agrees to execute all deeds and documents reasonably required by the assignee to achieve an effective assignment. The Subscriber may not assign any of its rights or obligations without Our prior written consent, which shall not be unreasonably withheld.



## 16. Governing Law and Jurisdiction

The laws of New South Wales, Australia, govern this agreement. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

## 17. General

- 17.1. We shall in no event be held liable for failure to perform Our obligations if the failure results from act of God, act of any government or any authority or statutory body, fire, explosion, accident, power failure, industrial dispute, inability to obtain materials or anything beyond Our reasonable control.
- 17.2. 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.
- 17.3. 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.
- 17.4. Any notice or communication under or in connection with this agreement must be in writing addressed to the address of the other party specified in the Order Form (or such other updated address notified under this clause) and left at or sent by prepaid post or by fax or via email to that address. A notice is deemed 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 fax, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice; and
  - if sent by email, when the sender's email receives a message confirming successful transmission.

Each party must notify the other of an address for notices which may, at any time, be changed by notice to the other party.

- 17.5. 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:
- 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
  - at any other time insist on performance of that or any other obligation of the other party under this agreement.
- 17.6. This agreement supersedes all prior representations, agreements, statements and understandings whether verbal or in writing.
- 17.7. This agreement may be signed in any number of counterparts. All those counterparts together make one instrument.
- 17.8. Nothing in this agreement or any circumstances associated with it or its performance give rise to any relationship of partnership, principal and agent, or employer and employee and the Subscriber has no right to assume or create any obligations of any kind, express or implied, in the name of or on behalf of Us.

## 18. Definitions

In this agreement the following definitions apply:

**ASX Group** means Us and our Related Bodies Corporate.

**ASX Benchmark Data** means the ASX benchmark financial data which the Subscriber has subscribed to in the Order Form and further described in the Fees Schedule.

**Fees Schedule** means the schedule of fees published by Us applicable to licensing of ASX Benchmark Data supplied under this agreement.

**Order Form** means the Order Form agreed between the Subscriber and Us for the provision of the ASX Benchmark Data and referencing these ASX Benchmark Data Subscriber Terms and Conditions.

**Regulatory Authority** means any government agency, industry body relevant to financial markets, and including APRA and ASIC.

**Related Body Corporate** has the meaning given in the Corporations Act 2001 (Cth).

**Service** means subscription access to ASX Benchmark Data via the means nominated on the Order Form.



**Subscriber** means the entity identified in the Order Form.

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

**Subscription Fees** means the applicable subscription fees payable by Subscriber for the subscribed Service as published in the Fees Schedule.

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

