

# 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. **[insert]** ACN **[insert]** of **[insert]** (**Subscriber**)  
\_\_\_\_\_ ACN \_\_\_\_\_ of \_\_\_\_\_

## Background

1. ASXO operates various software and web interface Technical Environments. The purpose of the Technical Environments is to assist ASXO with the development and testing of software and web interfaces which may subsequently interface with ASXO's Business 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 ABN 42 004 523 782**:

Signature:

Signature:

\_\_\_\_\_

\_\_\_\_\_

Print name:

Print name:

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Position: \_\_\_\_\_

Position: \_\_\_\_\_

# Subscriber Technical Access Agreement Terms and Conditions



## 1. Definitions and interpretation

### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

**Access Fee** means the fixed monthly fee which is applicable to a selected Technical Environment as specified in the Order Form;

**Access Deliverables** means the Software, Web Interface, Hardware and Documentation specified in the relevant Order Form relating to the relevant Technical Environment;

**ASX** means ASX Limited ABN 98 008 624 691;

**ASX Group** means ASX, ASXO and the Related Bodies Corporate from time to time of ASXO or ASX 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;

**Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Australian Consumer Law (NSW)* as applicable;

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

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

**Business Environment** means the Market specified in the Order Form;

**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);

**Confidential Information** means all information belonging or relating to a party to this Agreement, 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;
- (b) the Software, Web Interface and the Documentation and any other specifications or technical information accompanying or relating to the Software or Web Interface; 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;

**Documentation** means the documentation selected in the relevant Order Form relating to the relevant Technical Environment;

**End User** means a member of the Subscriber's organisation who is authorised to use the relevant Technical Environments;

**Fair or Reasonable** means 'fair or reasonable' for the purposes of section 64A of the Australian Consumer Law;

**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 the total of:

- (a) the Access Fees; and
- (b) the variable monthly charges which are applicable to the Facilities in respect of a selected Technical Environment,

as specified in the Order Form or as subsequently varied by ASXO in accordance with this Agreement

**Fee Schedule** means the schedules of fees and charges published by ASXO from time to time and which also specifies the Facilities applicable to each Technical 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 and any other equipment which may be supplied by ASXO to 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;

**iVPN** means an Internet VPN;

**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;

**Market** has the same meaning as in the ASX Market Rules;

**Order Form** means the order form executed by ASXO and the Subscriber which specifies the Technical Environments and the Access Deliverables which ASXO will provide 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, agents and contractors of a party;

**Prescribed Rate** means, for any day the 90 days Bank Bill Swap Reference Rate last published in The Australian Financial Review newspaper plus 2%;

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

**Software** means the software applications selected in the relevant Order Form;

**Subscriber** means any Participant, Developer, BookBuild Issuer or third party advisor to a BookBuild Issuer who is granted access to the Technical Environments and/or Access Deliverables under this Agreement;

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

**Technical Environment** means the technical environments as selected in the relevant Order Form, each of which is a computer system located at the Sydney offices of ASXO which is designated by ASXO from time to time to be the system to be used for the testing or development of software or web interfaces which are to interact with a specified ASXO system;

**Technical Environment Access** means the service described in clause 3;

**Title Guarantee** means a guarantee under any of sections 51, 52 or 53 of the Australian Consumer Law;

**VPN (or Virtual Private Network)** means the technical implementation that allows a subset of users connected to a physical network to communicate electronically with each other such that from a performance and security perspective they are the only users of the shared network;

**VPN Connection** means a connection to a VPN; and

**Web Interface** means the web interface applications selected in the relevant Order Form.

## 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;
- (g) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (h) the word "month" means calendar month and the word "year" means 12 months;
- (i) 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;
- (j) a reference to a thing or a right includes a part of that thing or right;
- (k) 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;
- (l) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (m) money amounts are stated in Australian currency unless otherwise specified; and
- (n) 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 22 or 23.

### 2.2 Termination of previous agreements

Any and all existing access agreements relating to any of the Technical Environments are hereby terminated and replaced by this Agreement with effect on and from 1 October 2009.

## 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 Access Deliverables required by the Subscriber; and
  - (iii) the applicable Fees.
- (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

Subject to the other provisions of this Agreement, 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,
- (d) on the terms and conditions of the Order Form and this Agreement.

### 3.3 Access after completion of Order Form

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. ASXO will

not be liable in any way if the Technical Environment Access is provided late.

### 3.4 Term of Order Form

Unless otherwise specified in the applicable Order Form, the minimum term for any Technical Environment Access will be 3 months from the date on which Technical Environment Access commences. This clause 3.4 does not limit the ability of ASXO to terminate any Technical Environment Access within the period of such minimum term under clause 21.2 or 22.

### 3.5 Communication links

Unless other means are specified in an applicable Order Form:

- (a) Technical Environment Access will be made available to the Subscriber remotely by means of an iVPN or carrier-based VPN Connection from a telecommunications carrier approved by ASXO from time to time in writing; and
- (b) the Subscriber is responsible for procuring and paying the costs of the relevant telecommunications network connections and services associated with the iVPN or VPN Connection, 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.
- (b) The Subscriber agrees to seek any recovery for such problems, disconnections, failures or delays from the relevant third party supplier.

### 3.7 Changes

- (a) ASXO may make changes to any part of the Technical Environment, the Facilities, and the Access Deliverables and will use reasonable efforts to give the Subscriber maximum practicable 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, the nature of the Access Deliverables and the terms of use of the Access Deliverables at any time, and will use reasonable efforts to give the Subscriber the maximum practicable notice of those changes before they take effect.
- (c) If any change 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 changes take effect.

## 4. Use of the Technical Environment

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) in a manner which does, or is reasonably likely to, degrade the performance of the Technical Environments or cause them to malfunction or operate in any improper way;

- (c) directly or indirectly for any unlawful purpose, including using it to infringe the Intellectual Property Rights of any person;
- (d) in a manner which alters or damages the Technical Environments, or jeopardises its integrity, safety or security; or
- (e) outside any times or days which ASXO specifies for the relevant Technical Environments from time to time.

## 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.
- (c) The Subscriber must enter into an agreement with the End Users containing (where appropriate) substantially identical terms and conditions as contained in this Agreement and must provide that:
  - (i) the End Users must comply with the Subscriber's obligations relating to the access and use of the Access Deliverables and the Technical Environments; and
  - (ii) the End Users will not make any Claims or seek to recover any Losses against ASXO, any member of the ASX Group or any author, licensor, manufacturer or proprietor of any of the Access Deliverables.

## 6. Hardware

### 6.1 Installation of Hardware

- (a) In most cases, ASXO will arrange for the Hardware to be delivered to and installed at the Location. However, ASXO may, in its absolute discretion refuse to deliver the Hardware to the Location or to install the Hardware at the Location (or both).
- (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 maintain 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

ASXO will provide as much notice as reasonably practicable of the unavailability of a Technical Environment due to reasons within ASXO's control. However, ASXO may at any time (including without notice) immediately suspend part of or all Technical Environment Access, including where:

- (a) ASXO is required to undertake the repair, maintenance or service of any part of a Technical Environment (or an interconnected supplier is required to undertake such work on its network);
- (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 any network of another supplier;
- (f) the Subscriber fails to pay any Fees due to ASXO under this Agreement by the date required; or
- (g) the Subscriber is otherwise in breach of this Agreement.

## 8. Supply of Software, Web Interface and Documentation

- (a) Where applicable, ASXO will make the Software, Web Interface and the supporting Documentation available to the Subscriber as soon as practicable after the execution of the Order Form.
- (b) ASXO will endeavour to make available to the Subscriber a copy of any revised versions of the Software, Web Interface or the Documentation when they become available to ASXO.
- (c) Additional or replacement Documentation may be made available by ASXO during the term of this Agreement. ASXO may vary or withdraw any Documentation at any time.
- (d) The Subscriber must ensure that any Software or Web 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 Software, Web Interface and Documentation

### 9.1 Licence for Permitted Purpose

Subject to this Agreement and the payment of the applicable Fees by the Subscriber to ASXO, ASXO grants to the Subscriber a non-exclusive, non-transferable, revocable licence to use the Software, Web Interface and the Documentation 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 interoperability between that other software and the Software when it is used by third parties who have entered into an appropriate agreement with ASX or ASXO to obtain access to the relevant ASXO systems;
  - (ii) incorporating the Software into 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 having entered into an appropriate agreement with ASXO to obtain access to the relevant ASXO systems;
  - (iii) assisting in the evaluation of other software which could be used by the Subscriber in connection with obtaining such access to the relevant ASXO systems;
  - (iv) conducting tests of the Software and Web Interface in connection with the Subscriber's own business; and
  - (v) assisting in understanding the operation of the Web Interface and its 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 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 Web Interfaces.

## 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 Software, Web Interface or Documentation or disclose or otherwise make the Software, Web Interface or Documentation available to any third party;
- (b) alter or remove any trade marks applied to or used in the Software, Web Interface or Documentation;
- (c) supply, show or make available or permit to be supplied, the Software, Web Interface or Documentation or any part thereof to any third party or procure the doing of any such acts;
- (d) copy all or any part of the Software, Web Interface or Documentation 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 Web Interface;
- (f) attempt to enhance, improve, modify or otherwise alter the Software or Web Interface;
- (g) delete, remove, obliterate or otherwise deface any form of marking appearing on or contained in the Software, Web Interface or Documentation which indicates the name of the proprietor of the Software, Web Interface or that Documentation.

## 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 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 worldwide 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.

### 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 worldwide 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 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.

### 10.4 ASX Trade

- (a) The ASX Trade Technical Environments are comprised of the ASX Trade PTE and ASX Trade FTE Technical Environments.
- (b) For the purposes of the ASX Trade 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 ASX Trade 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 reasonable assistance and Support to the Subscriber. The Subscriber acknowledges that:
  - (i) neither ASXO nor any member of its staff is an expert in relation to any of the Technical Environments;
  - (ii) ASXO will not be in a position to provide detailed technical comment or advice in respect of any of the Technical Environments;

- (iii) by providing 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; and

- (iv) the provision by ASXO of such reasonable assistance and Support to the Subscriber does not and will not be deemed to give rise to any duty of care by ASXO to the Subscriber or any End Users.

- (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) Support hours differ for each Technical Environment. ASXO will provide details of the Support hours at the time the Order Form is executed. ASXO may from time to time vary the hours in which Support is provided by ASXO by giving the Subscriber 30 days prior written notice.

- (d) Subject to this clause 11, ASXO will endeavour to respond in writing within a reasonable time to written inquiries made by the Subscriber with respect to the operation of the Software or Web Interface. Any inquiries are to be forwarded to ASXO by ordinary mail, electronic mail or facsimile addressed as specified in the Order Form.

- (e) 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.

## 12. Fees

### 12.1 Payment on invoice

The Subscriber will pay ASXO the Fees 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 the Fees by varying and publishing its Fee Schedule and giving the Subscriber at least 30 days written notice of the variation. The variation will have effect from the date of the first invoice after the expiry of the 30 day notice period.
- (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 the Prescribed Rate which applied on the date that the amount fell due.

### 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 12.4, 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. If ASXO is primarily liable to pay such tax, duty or penalty then the Subscriber must indemnify ASXO to the full extent of that liability.

### 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 any of the Access Deliverables. The Subscriber acknowledges that all Intellectual Property Rights are and will remain vested in the relevant proprietor of 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 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 Access Deliverables or infringement of any of the Intellectual Property Rights in any of the Access Deliverables which comes to the Subscriber's notice.

### 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 and advisers

- (a) The Subscriber 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) If requested by ASXO, the Subscriber must procure the execution of a separate confidentiality agreement by each of its advisers or Personnel that are designated by it as having had access to the Software, Web Interface or the Documentation.

#### 14.4 Security

The Subscriber must apply suitable security measures and a degree of care in relation to the Software, Web Interface, the Documentation 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 Indemnity

The Subscriber will indemnify ASXO and the members of the ASX Group against any loss which either or both ASXO and the members of the ASX Group may sustain or incur as a result of the Subscriber failing to comply with its obligations under this clause 14.

#### 14.6 Survival

This clause 14 survives termination of this Agreement.

### 15. Records and Reports

- (a) The Subscriber will keep at the Location full and up to date records of the date of installation or de-installation of copies of the Software or Web Interface on any device and, if requested by ASXO at any time, 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 of this Agreement.
- (c) ASXO is entitled to require its external auditors to inspect the premises, records and equipment of the Subscriber to ensure its compliance with this Agreement. ASXO's external auditors may conduct the inspection at any time reasonably selected by ASXO or its external auditors. The Subscriber will make available its records to and otherwise co-operate with ASXO's external auditors and the Subscriber grants ASXO's external auditors an irrevocable continuing licence to enter its own premises during normal business hours for such purpose.

### 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.
- (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 parts of the Technical Environment (including any data, Software or Web Interface) or Access Deliverables will remain the same during the currency of any relevant Order Form;
- (d) the Technical Environment has any particular performance or characteristic and the Subscriber acknowledges that it is given Technical Environment Access on an "as-is/where-is" basis;
- (e) 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;
- (f) the Technical Environment or Access Deliverables will meet the requirements of the Subscriber or the Subscriber's users;
- (g) the Software or Web Interface will be interoperable or compatible with any other system, hardware or software;
- (h) 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;
- (i) the Documentation is up-to-date, complete or accurate, or will enable the Subscriber to accurately or reliably test or develop any software or data; or
- (j) the Documentation comprehensively describes all aspects which may be relevant to the products which the Subscriber wishes to develop, evaluate, test or maintain.

## 17. Subscriber's warranties

The Subscriber warrants and covenants that:

- (a) it will use the Technical Environments and Access Deliverables solely for the Permitted Purpose and in accordance with the terms and conditions of this Agreement;
- (b) it will not use the Technical Environments and Access Deliverables to infringe any Intellectual Property Rights or any other rights of third parties;
- (c) 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. **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:
  - (i) permitting access to or use of the Technical Environments or Access Deliverables by a third person other than as authorised by ASXO; or
  - (ii) 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.

## 18. Reservations

### 18.1 Reservations by ASXO

ASXO does not warrant or represent that:

### 18.2 Extension to members of ASX Group

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.

## 19. Indemnity

The Subscriber indemnifies and releases and agrees to keep indemnified and released ASXO and each member of the ASX Group from and against all Claims and Losses which may be suffered or incurred by ASXO or members of the ASX Group in connection with:

- (a) any use or reliance by the Subscriber, its Personnel or End Users or any other person on any goods or services obtained by the Subscriber pursuant to this Agreement;
- (b) any damage to the physical property of ASXO or a member of the ASX Group caused by the Subscriber or the Subscriber's Personnel; and
- (c) any injury or death caused by the Subscriber or its Personnel.

Subject to clause 20.3, 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.

## 20. Liability

### 20.1 Exclusion of Liability

Subject to clause 20.2, ASXO, the members of the ASX Group, and their respective Personnel will have no obligation or liability to the Subscriber or any third party whether in contract, tort (including negligence), under statute or otherwise for any Claims or Losses in connection with this Agreement or the relationship created by this Agreement including:

- (a) any Claims or Losses in connection with the provision of Technical Environment Access, Access Deliverables, Support, any assistance provided or for any errors or omissions or for the accuracy of any of the foregoing or the non-availability, non-operability or malfunctioning of the Technical Environment; and
- (b) liability to the Subscriber for any special, incidental, indirect or consequential loss or damages, loss of profits, loss of data, loss of business opportunity, wasted management time and liabilities in respect of third parties which may be suffered or incurred or which may arise directly or indirectly in connection with any goods or services supplied by ASXO under this Agreement or in connection with any act or omission (negligent or otherwise) on the part of ASXO or otherwise out of the relationship created by this Agreement.

### 20.2 Non-excludable terms

Nothing in this clause 20 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 (except for in relation to a Title Guarantee or if it is not Fair and Reasonable for ASXO to rely on them) arising out of the performance of this Agreement is limited to either of the following at ASXO's option:

- (a) in the case of goods:
  - (i) the replacement of goods or the supply of equivalent goods or the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (ii) the repair of the goods or the payment of the cost of having the goods repaired;
- (b) in the case of services:
  - (i) the supply of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

### 20.3 Liability cap

To the extent that ASXO's liability cannot be or is not otherwise limited under this clause 20, 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 lesser of \$50,000 or 12 months of Fees actually paid to ASXO by the Subscriber for the relevant Technical Environment under this Agreement.

### 20.4 ASXO 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, may be recovered by ASXO from the Subscriber as though that loss or damage had been suffered by ASXO.

## 21. Termination of Technical Environment Access

### 21.1 Termination by Subscriber

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 Subscriber will immediately comply with its obligations under clause 24(a).

### 21.2 Termination 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;
- (b) continued Technical Environment Access is reasonably suspected of giving rise to an infringement of Intellectual Property Rights or may be otherwise 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 advisor to a BookBuild Issuer or if it reasonably appears to ASXO that the Subscriber is or has become ineligible to have access to the relevant Technical Environment;
- (f) in the case of the ASX BookBuild TLM Web Interface, it ceases to be made available in the PTE.

In addition to its termination rights under clause 21.2(a)– 21.2(e) and clause 22, 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 that notice period, the Subscriber will immediately comply with its obligations under clause 24(a).

### 21.3 Termination only affects Order Forms

Termination of Technical Environment Access under this clause 21 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 22.

## 22. 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 breach of this Agreement and such breach 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.
- (b) If the Subscriber terminates this Agreement under clause 22(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 22(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.

### 23. 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 absolute discretion elect to suspend the Subscriber's Technical Environment Access until any relevant issues are resolved to ASXO's 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.

### 24. Post termination obligations

- (a) On termination of this Agreement, the Subscriber will:
- (i) immediately cease using the Technical Environment;
  - (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; and
  - (iv) promptly return to ASXO or erase all Confidential Information and Access Deliverables (other than the Hardware), including for the avoidance of doubt all copies of the Software, Web Interface and Documentation, in the custody, possession or control of the Subscriber.
- (b) Despite any other provision of this Agreement, this clause 24 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 (Indemnity), 20 (Liability), 25 (Dispute resolution) and 27 (General) survive the expiry or termination of this Agreement.
- (c) In addition to the specific clauses referred to in clause 24(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.

### 25. 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 LEADR, ACN 008 651 232, level 1, 13-15 Bridge Street, Sydney; phone: 02 9251 3366, fax: 02 9251 3733, e-mail: infoaus@leadriama.org, or the Chair's designated representative.
- (c) The LEADR 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.

### 26. Force majeure

- (a) 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:
- (i) the Affected Party must as soon as practicable give the other party written notice of that fact;
  - (ii) the Affected Party is not liable for that failure or delay;
  - (iii) 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
  - (iv) if the Force Majeure Event continues for more than 90 consecutive days and while it continues, any party other than the Affected Party may, at its sole discretion, terminate this Agreement by giving written notice to the Affected Party and all other parties (if any).
- (b) **Force Majeure Event** means any act, event or cause, other than a lack of funds:
- (i) as a direct or indirect result of which, the party relying on it is prevented from or delayed in performing any of its obligations under this Agreement; and
  - (ii) that is beyond the reasonable control of that party.

### 27. General

#### 27.1 Assignment

The Subscriber must not assign, subcontract or novate all or any part of its rights or liabilities under this Agreement without the prior written consent of ASXO. ASXO may at any time assign its benefits under this Agreement to another member of the ASX Group.

#### 27.2 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.

### 27.3 No adverse construction

This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

### 27.4 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.

### 27.5 No variation

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

### 27.6 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.

### 27.7 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.

### 27.8 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 27.8.
- (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 27.8(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.

### 27.9 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.

### 27.10 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.

### 27.11 Conflicting provisions

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

### 27.12 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.