

## ASX Energy Data Centre Terms & Conditions

These terms and conditions govern any end user subscription access or use of ASX Energy Data. Your permission to use the ASX Energy Data and Service is conditional upon you, the "Subscriber", agreeing to the terms and conditions set out below (**agreement**).

By clicking "I Accept", you confirm that you have read, accepted and agree to be bound by the agreement. The person executing this agreement on behalf of the Subscriber declares that they have authority to bind the Subscriber to the agreement.

### 1. Commencement and Term

The minimum subscription period is 12 months. The agreement will commence on the date We provide the Subscriber with the ASX Energy Data and will continue for 12 months. Thereafter and subject to payment of the Subscription Fees in accordance with this agreement, the agreement will automatically renew for further terms of 12 months unless:

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

### 2. Use of the ASX Energy Data

2.1. We grant to the Subscriber a non-exclusive, non-transferable licence to use the ASX Energy Data on the following basis:

- (a) the Subscriber uses the ASX Energy Data for its own internal information purposes only;
- (b) the Subscriber may sub-licence the right to use the ASX Energy Data to its Related Parties provided that:
  - i. the sub-licence shall terminate upon the sub- licensee ceasing to be a Related Party of the Subscriber;
  - ii. the sub-licence shall impose on the Related Party all the restrictions and obligations imposed on the Subscriber by this agreement relating to the use of the ASX Energy Data; and
  - iii. the Subscriber shall be fully liable and responsible for any breach by the Related Party and any breach by the Related Party shall be treated as a breach of the agreement by the Subscriber.
- (c) the Subscriber only prints hard copies, and electronically stores copies, of the ASX Energy Data to the extent necessary for its own internal information purposes and provided all notices including any copyright notice, trademark or other proprietary notice and any relevant disclaimers are retained in any copies of the ASX Energy Data.

2.2. The Subscriber may also publish insubstantial amounts or limited extracts of the ASX Energy Data, to third parties in connection with the Subscriber's ordinary business without prior written authorisation from Us, provided:

- (a) it is on an ad-hoc basis only;
- (b) it is accompanied by:
  - i. attribution to Us (such as "Source: ASX"); and
  - ii. all notices contained within the ASX Energy Data, in an unaltered state, including any copyright notice, trademark or other proprietary notice and any relevant disclaimers
- (c) the Subscriber does not do so for a commercial purpose; and
- (d) the ASX Energy Data which is republished is:
  - i. in an aggregated form; or
  - ii. presented in a graph, chart or table.

We reserve all rights to determine whether communications including ASX Energy Data constitute insubstantial amounts or limited extracts for this purpose and to limit or withdraw rights to provide insubstantial amounts or limited extracts of the ASX Energy Data.

2.3. Except as expressly permitted in this agreement, the Subscriber may not sell, sub-licence, assign, make available, distribute, display, transmit the ASX Energy Data to any person or otherwise allow another person the right to use the ASX Energy Data without Our prior written consent.

2.4. We may increase the range of licenses applicable to the use or distribution of the ASX Energy Data under this agreement, which may, in our absolute discretion, require payment of additional licence fees. If We do this We will provide notice by public notification via [www.asxenergy.com.au](http://www.asxenergy.com.au).

2.5. The Subscriber is responsible for maintaining the confidentiality of usernames and passwords. The Subscriber is responsible for all activities that occur under its usernames, passwords or accounts, including payment of Subscription Fees.

2.6. We shall have the right to request from the Subscriber no more than once a calendar year a written statement to verify that the access to and the use of the ASX Energy Data is in accordance with this agreement.

### 3. Subscription charges

The Subscription Fees for the Subscriber's access to and use of ASX Energy Data via the Service is in accordance with Our current Fees Schedule.

The Subscriber will pay the relevant Subscription Fee in advance. Subscription Fees are due and payable within 30 days of the date of Our invoice.

### 4. 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.

## **5. Changes in the Service**

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

If any change materially impacts the Subscriber's ability to use the ASX Energy Data or Service, the Subscriber may terminate this Agreement by giving notice in writing with effect from the date the change(s) are to take effect.

## **6. Intellectual Property Rights**

All Intellectual Property in the ASX Energy Data and related information material provided under this agreement is and remains owned by Us, Our Related Parties or third party licensors (as applicable) and except as expressly permitted under this agreement, the Subscriber has no rights to the ASX Energy Data, or any related information material.

## **7. Termination**

7.1. 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.

7.2. 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 Energy Data; and/or
- (b) immediately terminate this agreement.

7.3. 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 7 days.

7.4. We may terminate this agreement immediately if Subscriber is in breach of clause 2 of this agreement.

7.5. We may terminate this agreement immediately if We cease to have rights to provide the ASX Energy Data to the Subscriber for any reason.

7.6. 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 Energy Data; and/or
- (b) immediately terminate this agreement.

7.7. 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.

7.8. We may terminate this agreement immediately if Subscriber is in breach of clause 2 of this agreement.

## **8. Effects of Termination**

8.1. On any termination of this agreement for any reason, the Subscriber shall:

- (a) immediately pay any outstanding amounts owed to Us under this agreement;
- (b) immediately cease using the ASX Energy Data and ensure that there is no further use of the ASX Energy Data in any of the Subscriber's internal reports, presentations, applications or services and if so requested by Us, will provide a written statement to that effect to Us.

8.2. On termination of this agreement for any reason other than for material breach by the Subscriber, We shall refund any prepaid Subscription Fees. The Subscriber shall not be entitled to any refund where the ground for termination is a material breach by the Subscriber under clause 7.1.

8.3. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect including without limitation clauses 4, 6, 8, 9, 10, 11, and 12.2.

8.4. Termination of this agreement for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

## **9. Disclaimer**

Whilst reasonable care is taken when producing ASX Energy Data, no members of the ASX Group warrant the quality, accuracy, completeness or timeliness of the ASX Energy Data. To the fullest extent permitted by law, the ASX Energy 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 Energy Data for a particular purpose;
- (b) the accuracy, completeness or quality of the ASX Energy Data; or
- (c) continuity of supply or use of ASX Energy Data free from interruption.

## **10. Limitation of Liability**

10.1. 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.

10.2. Except as provided by clause 10.4, 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:

- (a) any loss of profits, business contracts, revenue or turnover; and/or
  - (b) loss or damage to reputation or goodwill; and/or
  - (c) any loss or corruption or destruction of data; and/or
  - (d) loss of anticipated savings or wasted expenditure (including management time);
  - (e) any loss or liability under or in relation to any other contract; and/or
  - (f) loss in connection with the Subscriber's use of, inability to use, or reliance on, the ASX Energy Data,
- in each case whether such loss is direct, indirect or consequential.

10.3. Subject to clause 10.4, Our total aggregate liability (whether in contract, tort (including negligence), statute or otherwise) arising in connection with the performance or contemplated performance of this agreement or any collateral contract in all circumstances is limited to 100% of the Subscription Fees paid by the Subscriber during the 12 month period immediately before the date on which the cause of action first arose.

10.4. 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.

#### **11. Indemnification**

The Subscriber indemnifies Us and Our Related Parties against any damages, losses or expenses incurred by or awarded against Us or Our Related Parties arising out of or in connection with:

- (a) access to or use, distribution or redistribution of ASX Energy Data by the Subscriber otherwise than in accordance with this Agreement; or
- (b) use or reliance by any third party on the ASX Energy Data.

#### **12. Records and Audit**

12.1. The Subscriber will maintain appropriate records and procedures which ensure that the access to and the use of the ASX Energy Data is in accordance with this agreement.

12.2. The Subscriber agrees that, no more than once per year, We may nominate an employee or agent to inspect relevant records and procedures during on giving 30 days' notice in writing to the Subscriber. Subscriber will provide Us with access during regular working hours 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. While on the Subscriber's premises, We agree to comply with the Subscriber's applicable policies (including workplace health and safety policies), procedures, and reasonable security/confidentiality requirements notified to Us. We agree to keep confidential any information gathered by Us as confidential.

#### **13. General**

13.1. We may amend the terms of this agreement from time to time by giving not less than 30 days' notice by public notification via [www.asxenergy.com.au](http://www.asxenergy.com.au). If any amendment causes the Subscriber substantive disadvantage, the Subscriber may provide written notice of its objection. If We do not agree to withdraw or modify the amendment to the Subscriber's satisfaction, the Subscriber may terminate this Agreement by giving notice in writing to Us with effect from the date the amendments are to take effect.

13.2. This agreement records the entire agreement between the parties relating to the ASX Energy Data and Service and supersedes all previous arrangements, understandings, representations and agreements, whether written or oral, relating to the ASX Energy Data and Service.

13.3. This agreement is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in respect of all matters relating to this agreement.

13.4. The Subscriber may not assign any of its rights or obligations under this agreement without Our prior written approval. We may assign its rights and obligations under this agreement to a Related Party of Us without the Subscriber's consent.

13.5. If any provision of this agreement is or becomes invalid or unenforceable, that provision will be severed from this agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this agreement, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the severance of the invalid or unenforceable provision.

13.6. 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.

13.7. 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.

13.8. The failure of a party at any time to insist on performance by the other party of any obligation under this agreement is not a waiver of its right:

- (a) to insist on providing of, or to claim damages for breach of, that obligation, unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time insist on performance of that or any other obligation of the other party under this agreement.

#### **14. Definitions**

In this agreement the following definitions apply:

**ASX Group** means Us and our Related Parties.

**ASX Energy Data** means the energy data supplied by Us by means of Our website, FTP or any other method agree between the parties and further described in the Fees Schedule.

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

**Intellectual Property** means all intellectual property rights including without limitation copyright, all rights in relation to inventions, patents, registered and unregistered trademarks, registered and unregistered designs, domain names, rights in computer software and databases, rights in semi-conductor or circuit layouts, the right to have confidential information kept confidential, and any application or right to apply for registration of any of the rights referred to herein, whether such rights exist in Australia or anywhere else in the world.

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

**Related Party** means all employees, officers, contractors and agents of the relevant party, and the employees, officers, contractors and agents of any Related Body Corporate of the relevant party.

**Service** means subscription access to ASX Energy Data.

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

**We/Us/Our** means ASX Operations Pty Ltd.