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## USER TERMS

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# ADM USER TERMS

Welcome to Asset Data Manager, an asset, equipment data and contract management software and services platform. The Asset Data Manager platform is made available by ADN Group Management ATF ADN Solutions Trust trading as Asset Data Manager (**ADM, us, we or our**). The Asset Data Manager platform has been developed to provide clients access to a database of their contacts and plant and equipment assets via a secure web portal (**SaaS**). Asset Data Manager streamlines the procurement, disposal and valuation process through data collection, image collection, email marketing and the automated generation of reports. These User Terms as amended from time to time and available at [www.assetdatamanager.com](http://www.assetdatamanager.com) (**User Terms**) explain our obligations as a service provider and your obligations as a customer. Please read them carefully.

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## I Overview of User Agreement

### 1.1 Forming our User Agreement with you

- (a) These User Terms apply to our Hosted Services and our Professional Services, each as specified in a Subscription Order Form and to your use of each of them.
- (b) Your User Agreement includes these User Terms and any document referred to in them, including a Subscription Order Form, Documentation, our Refund Policy, Our Support Policy and our Privacy Policy.
- (c) If there is any inconsistency between (a) a Subscription Order Form; (b) the User Terms; and (c) the documents referred to in the User Terms and the Subscription Order Form, the first listed of those will prevail to the extent of any such inconsistency.
- (d) These User Terms are binding on any use of the Services we supply and apply to you from the earlier of (a) the time you confirm acceptance of these User Terms by submitting a Subscription Order Form, and (b) the time that ADM provides you with access to the relevant Services.

### 1.2 Changes to our Services and these User Terms

ADM's Services are continuously evolving, with regular updates made available. ADM reserves the right to change these User Terms at any time, effective upon the posting of modified terms on our website at [www.assetdatamanager.com](http://www.assetdatamanager.com). If a revision meaningfully and materially reduces your rights:

- (a) we will notify you of the change by sending an email to the address we have on record for you and via a notice on the Hosted Service itself; and
- (b) the modified version of these User Terms, to the extent they meaningfully and materially reduce your rights, will become effective at the end of the then current subscription Term, after which your continued use of the Service will be taken to mean you have accepted that change to the User Terms.

### 1.3 Application to you

By registering to use or using any of the Services you acknowledge that you have read and understood these User Terms and have the authority to act on behalf of any person for whom you are using the Service. If you are agreeing to these User Terms via a Subscription Order Form or because you are using the Services as an individual, "you" refers to you individually. If you are agreeing to these terms on the Subscription Order Form or are using the Services as a representative of an entity listed on a Subscription Order Form, you represent that you have the authority to bind that entity and "you" refers to that entity. If you do not agree with all of these User Terms, do not access or otherwise use the Services.

### 1.4 Currency

These User Terms were last updated on [insert date].

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## 2 Term

### 2.1 Initial Term

The term for which you are permitted to use or during which we will provide the Hosted Services or Professional Services will be as specified in the Subscription Order Form for the applicable Services and the term will include a minimum initial term starting on the Commencement Date and continuing for the initial term specified in the Subscription Order Form (the **Initial Term**).

### 2.2 Renewal Term

At the expiry of the Initial Term, this User Agreement will automatically renew for successive renewal periods as specified in the Subscription Order Form on the same User Terms (save for the Fees, which will be on ADM's then-current price list), unless:

- (a) either party notifies the other party not less than 14 days before the end of the then-current Term; or
  - (b) this User Agreement or individual Services are otherwise terminated in accordance with these User Terms,
- (the **Renewal Term**).

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## 3 Services

### 3.1 Services generally

- (a) In consideration of the payment by you of the Fees, ADM will provide the Services to you.
- (b) You acknowledge that you have independently determined that the Services to be supplied by ADM will meet your requirements.
- (c) For additional details about the services you have subscribed to please refer to the Subscription Order Form.

### 3.2 Hosted Services

Subject to the provisions of this User Agreement, ADM grants to you a non-exclusive, non-transferable, revocable right to access the features and functions of the Hosted Services set out in the Subscription Order Form during the Term of this User Agreement (and for Authorised Users to do the same).

### **3.3 Availability**

ADM will use commercially reasonable endeavours to make the Hosted Services available 24 hours a day, seven days a week, except for planned maintenance carried out during ADM's maintenance window, unscheduled maintenance that ADM determines is required urgently or for circumstances beyond ADM's reasonable control.

### **3.4 Changes to the Hosted Services**

You acknowledge and agree that ADM may make changes to the Hosted Services from time to time, such as changing, adding and removing functions and such changes may be temporary or permanent, subject to our performance warranty and your rights as described under clause 11.3.

### **3.5 Professional Services**

- (a) Subject to the provisions of this User Agreement, ADM will use third party service providers to assist in the provision of Professional Services to you as set out in the Subscription Order Form. You acknowledge and agree that ADM is only responsible for:
  - (i) facilitating the introduction between you and the applicable third party service provider; and/or
  - (ii) providing you, or the applicable third party service provider, with additional information where reasonably practicable to assist in the provision of the Professional Services.
- (b) Although ADM uses reasonable commercial efforts to ensure such third party service providers are appropriately qualified, ADM makes no representations or warranties in relation to any services provided by those third party service providers. You are also responsible for complying with any applicable third party terms and conditions in addition to complying with your obligations under these User Terms.
- (c) Where ADM engages a third party to assist in the provision of Professional Services:
  - (i) ADM will charge you an additional fee as set out in section 5 of the the Subscription Order Form. Such fee will be invoiced separately to you by ADM; and/or
  - (ii) the third party service provider will charge you an additional fee:
    - (A) as set out in section 5 of the Subscription Order Form; and/or
    - (B) by way of a separate invoice provided by the third party service provider.

### **3.6 Support Policy**

We will provide support services in relation to the Hosted Services during the Term for the Hosted Services according to ADM's then current Support Policy. We may change our Support Policy from time to time and such revisions will be effective on the relevant date specified in the Support Policy. By continuing to use the Hosted Services you agree to any revised version of the Support Policy.

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## **4 Your obligations**

### **4.1 Sign up process**

- (a) When you sign up for the Services you must provide ADM certain details including your company details, name and email address as well as details of any Authorised Users that require access to the Services.
- (b) ADM will provide you with a "user name", "password" and "company code" that you will use to sign into your Account. If you provide ADM with details of any Authorised Users then ADM will also provide those Authorised Users with a "user name", "password" and "company code".
- (c) You are responsible for ensuring you, and must ensure each Authorised User, protects any "user name", "password" and "company code" details.
- (d) You are solely responsible for all activities relating to your Account and each Authorised User's Account. You must let ADM know as soon as you suspect your or an Authorised User's "user name", "password" or "company code" has been breached. You must also let ADM know as soon as you suspect there has been an unauthorised use of your Account or an Authorised User's Account.
- (e) ADM is entitled to rely on any instructions received from the person using your Account or your Authorised User's Account, including "user name", "password" or "company code" details.

### **4.2 Authorised Users**

- (a) All Authorised Users must be employees of your company or external consultants who use the Services exclusively on your behalf provided that such Authorised Users have been made aware of and agree to comply with the terms of this User Agreement.
- (b) For the avoidance of doubt, you are responsible for each Authorised User's compliance with this Agreement and will be liable for the acts and omissions of your Authorised Users as if such acts and omissions of your Authorised Users were acts and omissions of yourself.

### **4.3 Information about you**

- (a) You must make available to ADM all information, including information about Authorised Users, required by ADM to enable ADM to perform the Services and otherwise undertake its obligations under this Agreement.
- (b) ADM is entitled to rely on all information you or your Authorised Users provide to ADM in relation to the Services and you agree that ADM has no liability to you or any Authorised Users arising out of or in connection with:
  - (i) any failure by you or your Authorised Users to make information available to ADM; or
  - (ii) any information you or your Authorised Users provide which is inaccurate, misleading, false, incomplete or similar.

### **4.4 Restrictions on the use of the Services**

Unless expressly stated otherwise in these User Terms or the Subscription Order Form:

- (a) you may only use the Services for your internal business purposes, and the only people who are permitted to use the Services are your Authorised Users;
  - (b) you must not allow the Services to be used by any person through any outsourced service provision, timesharing, managed service or similar kind of arrangement without the prior written consent of ADM;
  - (c) you must not licence, sub-licence, reproduce, modify, create derivative works of, sell, exploit, rent, lease, transfer, assign, distribute or disclose the Services or any part of them;
  - (d) you must not modify, reverse compile or otherwise try to access or reproduce the functionality of, or source code of, the Hosted Services;
  - (e) you must not modify, attack, disrupt or circumvent any software, technology or other material used by ADM to provide or control access to the Services; and
  - (f) you must maintain and not alter or remove any copyright, trade mark or other protective notice in the software used to provide the Services or the Documentation or in any copy of or any component of either of them,
- and you must not directly or indirectly assist or permit any other person to do any of these things.

#### **4.5 Access to facilities**

You must acquire, maintain and properly use any Access Facility and are solely responsible for all costs of the same.

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## **5 Reports**

### **5.1 Access to Reports**

- (a) As part of the provision of the Services, ADM may make available to you Reports.
- (b) Your access to and use of the Reports is subject to this User Agreement and any additional terms, notices and disclaimers which appear with or in the Reports. If you do not agree with the terms, notice and disclaimers, you must not access and use the Reports.

### **5.2 Limited licence to Market Data Reports**

- (a) ADM grants you and your Authorised Users a non-exclusive royalty-free licence to use the Market Data Reports solely for your personal and business purposes.
- (b) ADM may revoke this licence at any time if you breach these User Terms by providing you with at least 7 days' notice, in which case you must cease all use of the Market Data Reports on expiry of the notice period.
- (c) All rights (including Intellectual Property Rights) in the Market Data Reports, their content (other than Your Data) and design are owned by or licensed to ADM.
- (d) You must not remove, alter or obscure any copyright notices or disclaimers that appear on the Market Data Reports.
- (e) Except where permitted by law, you may not commercialise any information, content or designs contained in any part of the Market Data Reports without the prior written consent of ADM.
- (f) Where you use or incorporate Market Data Reports (or part of it) into a publication you must, as a minimum, clearly attribute the source of the reports as ADM and include any disclaimers and copyright notices that appear on the Market Data Reports.

### **5.3 Licence to User Reports**

- (a) ADM grants you and your Authorised Users a non-exclusive royalty free licence to use User Reports solely for your personal and business purposes / and to commercialise any information, content or designs contained in any part of the User Reports for any purpose.
- (b) All rights (including Intellectual Property Rights) in the User Reports, their content (other than Your Data) and design are owned by or licensed to ADM.
- (c) You must not remove, alter or obscure any copyright notices or disclaimers that appear on the User Reports.

### **5.4 Disclaimer and liability for Reports**

- (a) You acknowledge and agree that Reports may be based on information and data from a variety of third party sources including information:
  - (i) you provide to ADM;
  - (ii) your Authorised Users provide to ADM; and
  - (iii) third parties, including other users provide to ADM.
- (b) While every effort has been made to ensure the accuracy of Reports, you acknowledge and agree that:
  - (i) Market Data Reports rely on data that:
    - (A) you provide to ADM;
    - (B) your Authorised Users provide to ADM; and/or
    - (C) third parties, including other users provide to ADM; and
  - (ii) User Reports rely on data that:
    - (A) you provide to ADM; or
    - (B) your Authorised Users provide to ADM.
- (c) You acknowledge that ADM has not verified all third party information. You further acknowledge that any valuations, forecasts and projections or estimates are imprecise and subject to a degree of uncertainty. As such, ADM disclaim all liability for any loss or damage which may be suffered by any person or organisation as a direct or indirect consequence of reliance on Reports. Where

possible, care is taken to ensure the accuracy of information contained in Reports. However you acknowledge that the Reports are provided on an 'as is' basis and ADM makes no representations and, to the extent of permitted by law, expressly excludes all warranties and guarantees regarding the accuracy, completeness or currency of the information, recommendations or opinions contained in the Reports.

- (d) The information, conclusions, recommendations and opinions contained in the Reports do not take into account and may not be appropriate for your individual circumstances. You agree that you will use commercially reasonable endeavours and should make your own enquiries, use your own expertise and seek professional advice to ensure the Reports are fit for your intended purposes before making decisions concerning your interests or otherwise relying on the Reports in any way. Any reliance will be at your own risk and ADM accepts no liability for any loss, damage, cost or expense arising from your use or misuse of the Reports.

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## **6 Confidentiality and data use and protection**

### **6.1 Confidentiality**

- (a) Except to the extent permitted or required by this User Agreement, each party must not use or disclose any of the other party's Confidential Information.
- (b) ADM may use your Confidential Information for the purpose of performing its obligations to you under, or as otherwise permitted by, this User Agreement.
- (c) Each party may also disclose Confidential Information when required to do so by law or any regulatory authority, and to its representatives whose duties reasonably require such disclosure, provided the disclosure is made on a confidential basis to the extent possible.

### **6.2 Rights to Your Data**

- (a) Your Data remains your property.
- (b) You grant ADM a non-exclusive, worldwide, royalty-free and irrevocable licence and right to collect, use, copy, store, transmit, modify and create derivative works of Your Data for the purpose of:
  - (i) providing the Services to you,
  - (ii) as required for benchmarking, analysis and the enhancement of the Service;
  - (iii) making aspects of Your Data available to other Hosted Services users as part of the Hosted Services where you are a Base Subscriber; and
  - (iv) as otherwise permitted by this User Agreement.
- (c) You agree that if you are a Base Subscriber, it is a condition of use of the Hosted Services that ADM may make certain aspects of Your Data (being: sale type, YOM, frame hours, engine hours, make, model, load rating, carrying capacity, engine power, currency, asking price, sale price and country, but excluding buyer and seller details such as serial number and/or registration numbers) available to other Hosted Services users. If you allow us to make Your Data available to other users of the Hosted Services in this manner, it will not be your Confidential Information for the purposes of this User Agreement and our right to use Your Data for this purpose continues after the Term.
- (d) You must use reasonable commercial efforts to ensure that Your Data which will be made available to other users is accurate and not false or misleading. Whilst we are under no obligation to review Your Data made available on the Hosted Services, if we do notify you that there appears to be an error in Your Data you must promptly review Your Data and amend the error as soon as practicable.

### **6.3 Data transmission, storage and security**

- (a) Although ADM uses protective security measures in relation to the Services, ADM makes no representations or warranty that these measures will be effective at all times.
- (b) Further, you agree that your use of the Services involves use of systems, networks and facilities that are not owned, controlled, managed or operated by ADM, and that ADM is not responsible if any of Your Data is lost, corrupted, intercepted, stored or accessed across these systems, networks and facilities.
- (c) You are responsible for keeping and maintaining backups of any material that you upload and ADM strongly recommends that you do this regularly.
- (d) You acknowledge and agree that you can export Your Data at any time during the Term and that ADM has no obligation to retain Your Data following the end of Term and that Your Data may be irretrievably deleted by ADM any time after thirty (30) days following the expiry or termination of this User Agreement or your use of the Hosted Services (whichever is the earliest to occur).

### **6.4 Anti-virus, malicious code and cyber security measures**

- (a) You are responsible for taking steps to ensure that the means by which you access and use the Services do not expose your computer and other devices to viruses, worms and other malicious code.
- (b) ADM recommends that you install and use up-to-date anti-virus, anti-spyware and firewall software on your computer.

### **6.5 Data indemnity**

- (a) You indemnify ADM, its related bodies corporate (as that term is defined in the *Corporations Act 2001 (Cth)*) and their employees, officers, agents and contractors (Those Indemnified) from and against all losses, damages, liability, costs and expenses (including legal expenses) of any nature or kind which Those Indemnified suffer or incur in connection with Your Data, including any claim brought by a third party that alleges that:
  - (i) Your Data;
  - (ii) authorised use of Your Data by us or other Hosted Services users of Your Data in accordance with this User Agreement; or
  - (iii) your or your Authorised Users' use of the Hosted Services,infringes any Intellectual Property Rights or other rights of a third party or contravenes any law.

- (b) The indemnity in paragraph (a) is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion or expiration of your use of the Services. Those Indemnified do not need to incur expense or make any payment before enforcing this right or indemnity.

#### **6.6 Feedback and other data**

- (a) ADM may use, exploit, reproduce and disclose Your Feedback (including Intellectual Property Rights or other proprietary rights which may exist in Your Feedback) in any way whatsoever, without any restriction or any obligation to you, and without any obligation to pay you any royalty, fee or other amount.
- (b) If you chose to give ADM Your Feedback, it will not be Your Data or your Confidential Information for the purposes of this User Agreement.
- (c) ADM may compile statistical, usage and performance information related to the provision of the Services including general characteristics of the material uploaded by you in the course of your use of the Services.
- (d) ADM may use that information and material to improve its products and services, as reasonably required for benchmarking and analysis, to create new products and services, and for marketing purposes.
- (e) ADM will only use anonymised information and material that does not identify you for this purpose.

#### **6.7 Privacy Policy**

You acknowledge and agree that ADM's Privacy Policy forms part of this User Agreement. We will comply with the terms of ADM's Privacy Policy in providing the Services to you. Please review ADM's Privacy Policy for full details of how ADM uses your personal information.

#### **6.8 Compliance with laws**

- (a) You agree that you must comply with all applicable laws, including Privacy Laws and Spam Laws, in connection with your use of the Services.
- (b) You agree that you are solely responsible for considering and complying with your obligations to third parties and your obligations under all applicable laws, including notifying and obtaining the consent of third parties (where applicable), in relation to the use of the Services, and the use, transfer and disclosure of Your Data as contemplated by this User Agreement.
- (c) By uploading Your Data, you represent and warrant to ADM that Your Data and its transmission and use by ADM, other Hosted Services users and its service providers as contemplated by this User Agreement will not contravene any laws and that you have the necessary rights, consents and licences to make Your Data available to ADM to deal with as contemplated by this User Agreement.
- (d) Nothing in this User Agreement restricts ADM from disclosing Your Data if ADM is legally required or compelled to do so by a court, a government authority or some other body with the legal authority to compel disclosure.

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## **7 Fees**

### **7.1 Payment Terms**

- (a) The Subscription Order Form will set out Fees payable by you for use and provision of the Services.
- (b) If you elect to pay the applicable Fees via invoices, ADM will issue you monthly invoices for the applicable Fees. You must pay the applicable Fee monthly in advance by the date set out on the applicable invoice.
- (c) If you elect to pay the applicable Fee via "eWay" payment gateway (or such other method as ADM determines in its sole discretion from time to time), you must pay the applicable Fees monthly in advance. You must also abide by any applicable third party terms that apply to the use of that system.
- (d) You acknowledge that your right to use any of the Services is conditional upon ADM having received payment of the Fees on the Commencement Date (for first time customers) or in advance of any Renewal Term (for existing customers).
- (e) Without prejudice to ADM's other rights and remedies under this User Agreement, if any sum payable is not paid on or before the due date, ADM reserves the right, in its sole discretion, to:
  - (i) suspend the provision of the Services to you (whether in whole or part);
  - (ii) terminate the Services (whether in whole or part) where such amounts remain unpaid for a period of 14 days; and/or
  - (iii) charge you interest at the maximum amount allowed by law for overdue fees.
- (f) Our Refund Policy sets out the circumstances in which you may be provided with a refund. Except as expressly provided in the Refund Policy or as otherwise required by applicable law, Subscription Order Form or these User Terms, all Fees and other amounts paid or payable by you under this User Agreement are non-refundable, non-cancellable and not subject to any credits.
- (g) In the event that:
  - (i) ADM is required to perform the Services in circumstances other than those expressly or reasonably anticipated; or
  - (ii) there is a change in the timing or complexity of the Services and such circumstances are not the result of a breach of this User Agreement by ADM,then ADM will notify you of any additional fees payable by you as a result of such changes.
- (h) If you fail to make payment as required under this User Agreement, you will become liable for the cost of collection. This will include interest on any overdue amount, calculated at the daily rate of 0.05% or the maximum amount allowed by law.

### **7.2 No set off**

- (a) All amounts payable under this User Agreement must be paid in full without set-off, deduction or other withholding of any amount.
- (b) Should you be required by any law or regulation to make any deduction on account of tax or otherwise on any sum payable under this User Agreement, the sum payable will be increased by the amount of such tax to ensure that ADM receives a sum equal to amount to be paid under this User Agreement.

### 7.3 Third party costs

You are solely responsible for all third party fees and access charges incurred by you while using the Services.

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## 8 GST

- (a) In this clause 8, the expressions consideration, GST, input tax credit, recipient, supplier, supply, and tax invoice have the same meaning given by the GST Law.
- (b) Unless expressly stated otherwise, all amounts set out in this User Agreement are exclusive of GST.
- (c) If GST is payable on any supply made under this User Agreement by a party to another party the recipient must, subject to the next paragraph, pay to the supplier, in addition to and at the same time as the consideration is payable or to be provided for the supply, an additional amount calculated by multiplying the value of that consideration by the prevailing GST rate.
- (d) The supplier must issue a valid tax invoice to the recipient before any payment for a supply made by the supplier under the agreement is due.
- (e) Any reference to a cost or expense in this User Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party is entitled to an input tax credit.

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## 9 Intellectual Property Rights

### 9.1 Pre-existing Intellectual Property Rights

- (a) Each party will retain its Pre-existing Intellectual Property Rights and nothing in this User Agreement assigns or transfers the Pre-existing Intellectual Property Rights of one party to the other.
- (b) You grant to ADM a worldwide, royalty-free, sublicensable, perpetual, transferable and non-exclusive licence to use all your and any third parties' Pre-Existing Intellectual Property Rights incorporated in any Documentation, Reports and/or Service Material to the extent necessary to enable ADM to use, copy and develop that Documentation, Reports and/or Service Material during and following expiry of the Term.

### 9.2 Exclusive property of ADM

You agree that any and all Intellectual Property Rights and other proprietary rights that subsist in or arise in connection with the Services and the Documentation, including updates and modifications to any of them, anywhere in the world, are the exclusive property of ADM. You have no right in or to the above apart from the rights expressly granted to you under this User Agreement.

### 9.3 Service Materials

- (a) ADM retains all rights, title and interest in and to any Service Materials.
- (b) ADM grants you a limited, revocable, non-transferable licence to access and use the Service Materials during the Term solely for your internal business purposes and only to the extent necessary to enable you to use the Hosted Services, and subject to provisions of this User Agreement.
- (c) You agree not to sell, re-sell, reproduce, duplicate, copy, modify, or otherwise exploit any portion or derivative of the Services, site or its contents, nor to use any data mining, robots or similar data gathering and extraction tools.

### 9.4 IP warranty

ADM warrants to you that, to the best of its knowledge and belief, it has the rights and permissions required to grant to you the rights and licences under this User Agreement.

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## 10 Suspension, Cancellation and Termination

- (a) ADM may suspend in whole or in part whether for a specified period or indefinitely your access to the Services if ADM reasonably believes that such suspension is required:
  - (i) to preserve data and integrity;
  - (ii) if there is a security breach; or
  - (iii) if there is a malfunction in the Services.
- (b) ADM may:
  - (i) suspend in whole or in part whether for a specified period or indefinitely your access to the Services; or
  - (ii) terminate the Services to you indefinitely,if ADM reasonably believes that:
  - (iii) the Services are used, or appear to ADM to be intended to be used, by you in a manner deemed inappropriate or excessive use by ADM; or
  - (iv) the provision of the Services is likely to expose us to any liability as a result of a breach of any law or any third party rights.

### 10.2 Termination for material breach

- (a) Without limiting any other rights which a party may have at law, a party may immediately terminate this User Agreement by written notice to the other party if the other party:
  - (i) materially breaches this User Agreement and fails to remedy such breach within 30 days after receipt of notice from the first party specifying the breach and requiring it to be remedied;
  - (ii) materially breaches a term of this User Agreement and/or Subscription Order Form (including clause 4, 6, 7 and 9) and the breach is incapable of remedy; or
  - (iii) is subject to an Insolvency Event.

- (b) ADM may also immediately terminate this User Agreement by written notice to you if you infringe ADM's Intellectual Property Rights.

### **10.3 Cease use**

- (a) Upon termination or expiration of the Term for any reason, you must cease all use of the Services and the Documentation.
- (b) Within 30 days after termination or expiration of the Term, you must, at ADM's request and election, either destroy or return to ADM all copies of the Documentation, and ADM's Confidential Information then in your possession, custody and control.
- (c) To the maximum extent permitted by law, any suspension pursuant to this clause 10 will not entitle you to any refund, credit or other termination unless otherwise required by law.

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## **11 Warranties and Liability**

### **11.1 Mutual warranties**

Each party represents and warrants that it has the legal power to enter into this User Agreement.

### **11.2 Your warranties**

You warrant and represent that:

- (a) you own all interest in and to Your Data and to Your Data and have the right to grant us the licence under this User Agreement to use Your Data;
- (b) you will use commercially reasonable endeavours to ensure Your Data and any other information you or your Authorised Users provides to ADM is accurate, complete and up-to-date;
- (c) you will and will ensure your Authorised Users comply with all applicable laws when using the Services, including Privacy Laws and Spam Laws;
- (d) you will not and will ensure your Authorised Users do not upload or distribute content that is false, inaccurate, misleading or deceptive, unlawful, defamatory, discriminatory, vilifying, or is otherwise inappropriate, indecent, inaccurate or objectionable;
- (e) you will not and will ensure your Authorised Users do not upload or distribute content that violates the contractual, personal, Intellectual Property Rights or other rights of any person (including ADM); and
- (f) you will not and will ensure your Authorised Users do not use the Services to distribute viruses, spyware, corrupted files, or any other similar software programs that may damage the operation of any computer hardware or software.

### **11.3 Performance warranty**

- (a) We warrant that:
  - (i) the Hosted Services will perform materially in accordance with the requirements and specifications agreed in these User Terms and the Subscription Order Form and
  - (ii) except as otherwise provided in these User Terms, the functionality of the Hosted Services will not be materially decreased during the then current subscription term.
- (b) For any breach of either such warranty, your exclusive remedy will be the re-supply of the Hosted Services or a refund of a reasonable amount of the Fees for the Hosted Services to compensate for the decreased functionality, at our option.

### **11.4 Disclaimer**

Except as expressly provided in these User Terms, ADM excludes and disclaims to the maximum extent permitted by law all guarantees, conditions, warranties or terms of any kind, whether express or implied or imposed by any applicable law, including with respect to the Services being of merchantable quality, fit for a particular purpose and non-infringing. In particular, and without limiting the foregoing:

- (a) ADM does not guarantee that your requirements will be met, that the Services are accurate or complete, that your use of the Services be uninterrupted, error free or that the Services are free from viruses or other harmful components, or that errors will be corrected;
- (b) ADM cannot be responsible for any loss, corruption or interception of data sent to or from the Services which occurs outside of the ADM systems (such as those which occur while data is being sent over the internet);
- (c) ADM cannot be responsible for any content provided by a user of the Hosted Services;
- (d) ADM does not take part in any transaction between users of the Hosted Services and cannot be responsible for any action or non-action of a user of the Hosted Service including in relation to any equipment, machinery or services purchased or obtained or offered to you through the Hosted Services; and
- (e) ADM cannot be responsible for any content found on a third party's website.

### **11.5 Liability cap**

To the maximum extent permitted by law, ADM' maximum aggregate liability to you in respect of all claims made by you under or in connection with this User Agreement will not exceed the amount paid by you to ADM in the 12 months immediately preceding the act, omission or occurrence giving rise to such liability.

### **11.6 Exclusions**

- (a) To the maximum extent permitted by law, ADM is not liable to you for:
  - (i) any special, incidental or consequential loss or punitive loss or damage; or
  - (ii) loss of profits, revenue, business, goodwill, bargain, anticipated savings or managed time, whether or not ADM was aware of or should have been aware of the possibility of such loss or damage.



- (b) If any guarantee, condition, warranty or term is implied or imposed by any applicable law and cannot be excluded (a **non-excludable provision**), and ADM is able to limit your remedy for a breach of the non-excludable provision, then ADM's liability for breach of the non-excludable provision is limited exclusively (so far as applicable laws do not prohibit) to one or more of the following at ADM's option:
- (i) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or acquiring equivalent goods, or the payment of the cost of having the goods repaired; and
  - (ii) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

### 11.7 General

- (a) ADM liability to you under or in relation to this User Agreement or its subject matter is reduced to the extent that your acts or omissions, or those of a third party (other than a ADM licensors or subcontractors), contribute to or cause any such liability.
- (b) The limitations and exclusions of the liability set out in this clause 10.3(b) apply regardless of the basis on which such liability arises, whether in contract, breach of statutory duty, tort (including negligence), in equity or under statute.

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## 12 General

- (a) **Disputes.** All disputes arising out of this User Agreement must be referred within fourteen (14) days of the dispute to a senior executive appointed by both parties, who must meet with a view to resolving the dispute. If the dispute is not resolved within seven (7) days of that meeting, the managing directors, chief executive officers or equivalent of both parties will meet to resolve the dispute. If the dispute is still not resolved then either party may commence court proceedings in relation to the dispute. Either party may commence court proceedings relating to any dispute arising from the agreement at any time where the party seeks urgent interlocutory relief.
- (b) **Force Majeure.** Neither party will be responsible for failure or delay of performance of any obligation if caused by (i) an act of war, terror, hostility or sabotage; (ii) an act of God, flood, fire or earthquake, (iii) electrical, internet, or telecommunication outage or any other problem that is not caused by the obligated party, (iv) government restrictions (including the denial or cancellation of any licence), or any other event outside the reasonable control of the party with that obligation (**Force Majeure Events**). Each party will use reasonable efforts to mitigate the effect of a Force Majeure Event. If such event continues for more than thirty (30) days, either party may terminate the affected Services or this User Agreement upon written notice. This clause does not excuse either party of its obligations to take reasonable steps to mitigate the effects of a Force Majeure Event.
- (c) **Notices.** Any notice or other communication that is required or permitted to be given under this User Agreement will be given in writing and may be delivered by hand or sent by mail to the applicable address specified in the Subscription Order Form or as otherwise advised from time to time.
- (d) **Entire agreement.** This User Agreement is the entire agreement between the parties regarding the Services and supersedes all prior agreements, arrangements, understandings, discussions, representations and other communications regarding the subject matter hereof.
- (e) **Severability.** If any provision of this User Agreement will deemed invalid, illegal, void or for any reason unenforceable, that provision will be deemed to be severable and will not affect the validity or enforceability of any other provision.
- (f) **Independent contractors.** The parties are independent contractors and this User Agreement does not create a relationship of employment, agency, joint venture or partnership between the parties.
- (g) **Subcontracting.** ADM may subcontract the performance of any part or the whole part of any Services provided under this User Agreement, but ADM will remain responsible to you for the delivery of those Services.
- (h) **No assignment.** You may not assign, novate, transfer or otherwise deal with this User Agreement or any rights under it without the prior written consent of ADM.
- (i) **Amendment must be in writing.** An amendment to this User Agreement is only effective if agreed in writing by the parties.
- (j) **No waiver.** No waiver of a right or remedy under this User Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted. A single or partial exercise of a right or remedy under this User Agreement does not prevent a further exercise of that or of any other right or remedy.
- (k) **Governing law.** This User Agreement is governed by the laws of Western Australia, Australia. The parties submit to the jurisdiction of the courts of Western Australia and the Commonwealth of Australia.
- (l) **Counterparts.** The agreement may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument.
- (m) **Miscellaneous interpretation:** In this User Agreement, unless the contrary intention appears: (**documents**) a document includes all amendments or supplements to, or replacements of, that document; (**laws**) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements; (**person**) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity; (**singular, plural and gender**) the singular includes the plural and vice versa, and a gender includes other genders; (**headings**) headings are for ease of reference only and do not affect interpretation; (**executors, administrators, successors**) a reference to a party is either you or ADM (or both), and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes; (**grammar**) another grammatical form of a defined word or expression has a corresponding meaning; (**meaning not limited**) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; (**thing**) unless the contract otherwise requires, a reference to a thing (including a chose in action or other right) includes a part of that thing; (**time**) a reference to time is a reference to time in Perth, Australia; (**day**) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later; (**currency**) unless stated otherwise, a reference to dollar or \$ is to Australian currency; and (**preparation of document**) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this User Agreement or any part of it.

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### 13 Definitions

**Account** means the account you use or an Authorised User uses to sign into the Hosted Services.

**Authorised User** means a user of the Services and/or any related Documentation authorised by you to use the Services and/or any related Documentation.

**Access Facility** means telecommunications, networks, systems and other facilities used, or required by, you or on your behalf for accessing and making use of the Services (as applicable).

**Base Subscriber** means where you have subscribed to access the Hosted Services as a Base Subscriber on the Subscription Order Form.

**Commencement Date** means the date specified as such in section 2 the Subscription Order Form.

**Confidential Information** means in relation to a party, information that is by its nature confidential, is designated by that party as confidential, or the other party knows or ought reasonably to know is confidential, and includes any information relating to the financial affairs, assets or liability of a party, or any information relating to the internal management of a party, its personnel, policies, plans, strategies, customers, suppliers, products or services. Confidential information does not include information or material which:

- (a) is or becomes generally known to the public other than through a breach of this User Agreement;
- (b) at the time it was first disclosed to a party, was already in that party's lawful possession;
- (c) is developed independently by a party; or
- (d) is disclosed to a party by a third party entitled to disclose it.

**Documentation** means user guides, manuals, technical notes, records, Reports or similar documentation relating to the Services and provided as part of the Hosted Services.

**Fees** means the subscription fees payable under section 5 of the Subscription Order Form or such other fees as advised to you in writing from time to time by ADM.

**Force Majeure Event** has the meaning given in clause 12(b).

**GST Law** has the same meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

**Hosted Services** means the services described as "Hosted Services" in the Subscription Order Form and as further detailed in the module descriptions available at [www.assetdatamanager.com](http://www.assetdatamanager.com).

**Initial Term** has the meaning given to that term in clause 2.1.

**Insolvency Event** means in relation to a party, where that party:

- (a) becomes subject to any form of insolvency administration;
- (b) ceases to carry on business;
- (c) ceases to be able to pay its debts as they become due;
- (d) any step is taken by a mortgagee or charge to take possession or dispose of the whole or part of that party's assets, operations or business;
- (e) any step is taken to enter into any arrangement between that party and its creditors; or
- (f) where any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, an administrator or other like person in respect of the whole or part of that party's operations and business.

**Intellectual Property Rights** means all industrial and intellectual property rights of any kind including but not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semiconductor or circuit layout rights, trade, business, domain or company names, rights in Confidential Information, know how or other proprietary rights (whether or not any of these are registered and including any application for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

**Subscription Order Form** means the document titled as such under which you order Services.

**Market Data Report** means any report made available or able to be generated in the Market Data Module (as that term is used in the Subscription Order Form) which is based on and incorporates ADM Confidential Information and/or data from other users of the Hosted Services, and which may incidentally incorporate Your Data to the extent it has been made available to users of the Market Data Module.

**Professional Services** means the services described as "Professional Services" in the Subscription Order Form, which may include consulting, implementation or other professional services.

**Pre-existing Intellectual Property Rights** means a person's Intellectual Property Rights existing prior to the commencement of the Services or otherwise brought into existence other than in the course of performing this User Agreement, and any improvements, enhancements, modifications or developments to those Intellectual Property Rights.

**Privacy Policy** means ADM's privacy policy, which can be found at [www.assetdatamanager.com](http://www.assetdatamanager.com), as updated and replaced from time to time.

**Privacy Law** means any legislation (to the extent ADM, you, or the Services are subject to it), whether Australian or otherwise, which affects privacy or any personal information (including the collection, storage, use or processing of such information) including the *Privacy Act 1988 (Cth)*, and any codes of conduct, recommendations, directives or orders made or issued under such legislation.

**Refund Policy** means ADM's refund policy which can be found at [www.assetdatamanager.com](http://www.assetdatamanager.com), as updated and replaced from time to time.

**Renewal Term** has the meaning given to that term in clause 2.2.

**Reports** means the Market Data Reports and User Reports.

**Services** means the Hosted Services and Professional Services.

**Service Materials** means all materials (including software, documentation, deliverables, modifications, enhancements and derivative works) that are created by, or on behalf of, ADM in connection with any Professional Services or other products or services that ADM provides to you.

**Spam Laws** means any legislation (to the extent ADM, you or the Services are subject to it), whether Australian or otherwise, which affects spam and/or marketing communications, including the *Spam Act 2003 (Cth)*, and any codes of conduct, recommendations, directives or orders made or issued under such legislation.

**Support Policy** means ADM's then current Help Centre/Support Policy set out at [www.assetdatamanager.com](http://www.assetdatamanager.com), as updated from time to time. **Term** means the Initial Term and any Renewal Term.

**User Report** means equipment reports made available or able to be generated by Base Subscribers and the valuation reports made available or able to be generated in the Valuation Module (as defined in the Subscription Order Form) which are based on and incorporate Your Data for your equipment.

**Your Data** means any material or information that is uploaded by you in the course of your use of the Hosted Services, and includes text, data, photos, video, audio and anything else that you or your employees, contractors and the like upload or transmit in connection with your use of the Services.

**Your Feedback** means any suggestions, questions, requests, comments, ideas or similar that you provide to ADM in relation to the Services.