

SOFTWARE LICENCE AGREEMENT

agentprofitplanner

KEY TERMS

The information contained in this (Key Terms) section is for the purpose of providing an intending Licensee with a simple summary of the key components of the Software License Agreement. Intending Licensees should read the complete list of terms and conditions provided herein.

The Essence of the Agreement

- A. The Licensor is the developer and owner of “agentprofitplanner[®]”, a web-based financial planning computer software solution (the **Software**) designed specifically for real estate agents.
- B. The Licensor provides the License and Administers internet and the “agentprofitplanner[®]” software (collectively, the **Software**)
- C. The Licensor has offered, subject to the payment of the license fee and acceptance of the terms of the Software Licence Agreement, to grant the Licensee a non-transferable and non-exclusive Licence to use the Software, subject to the terms and conditions set out below.

Confidentiality, Security & Privacy

The Licensee is referred to the Licensors Privacy policy available on the Subscription page.

The Licensor must take reasonable steps to ensure the privacy and confidentiality of the Licensees information including

- (a) Maintaining strict management and control protocols.
- (b) Maintaining an effective fire-wall system to ensure the prevention of unauthorized access to or from a private network.
- (c) Not to access or share the Licensees information.

The Licensee shall be solely responsible for the use, supervision, management and control of the Software and Documentation including ensuring that the Software is protected at all times from misuse, damage, destruction or any form of unauthorised use.

Licensees Use of the Software

The Software may only be used pursuant to this agreement:

- (a) by the Licensee, its employees and other personnel including the Licensee’s accountant and/or financial advisors; and only for the Specified Purpose (the financial analysis, budgeting and forecasting relating to the Licensees business only).
- (b) The Licensee shall not copy, alter, modify or reproduce the Software except to the extent otherwise authorised by this agreement.
- (c) The Licensee shall not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the Software.

SOFTWARE LICENCE AGREEMENT

RECITALS

- B. The Licensor is the developer and owner of “agentprofitplanner[®]”, a web-based financial planning computer software solution (the **Software**) designed specifically for real estate agents.
- B. The Licensor provides the License and Administers internet and the “agentprofitplanner[®]” software (collectively, the **Software**)
- C. The Licensor has offered, subject to the payment of the license fee and acceptance of the terms of the Software Licence Agreement, to grant the Licensee a non-transferable and non-exclusive Licence to use the Software, subject to the terms and conditions set out below.

THE PARTIES AGREE:

1. INTERPRETATION

1.2 Definitions

Meanings apply to capitalised terms used in this agreement as specified in this provision, unless the context otherwise requires:

Business means the business of the Licensee.

Confidential Information in relation to any person, means information which at any time is in the knowledge, possession or control of that person, or any Subsidiary or agent of that person, relating to the business, operations or affairs of that person, or any Subsidiary of that person, including information relating to:

- (a) corporate or business development and expansion strategy;
- (b) corporate or business structure;
- (c) financial, Tax and accounting matters;
- (d) any relationship or arrangement with any agent;
- (e) inventions, discoveries, trade secrets, knowhow, technology, techniques, processes, information, formulae, ideas or concepts, whether or not reduced to material form, drawings, designs, plans, models, and scientific, technical and product information;
- (f) source and object codes;
- (g) business and marketing plans and projections;
- (h) customer information, customer lists and information proprietary to customers;
- (i) agreements and arrangements with third parties, whether legally enforceable or otherwise; and
- (j) computer software;

Documentation means operating manuals and other printed materials including user manuals, software listings and other such documentation which are designed to assist or supplement the understanding or application of the Software;

Force Majeure in relation to any person, means any fact beyond the reasonable control of that person which prevents, hinders or delays that person from or in the performance of any liability of that person under any agreement, including:

- (a) any act of God, peril of the sea or unavoidable accident of navigation;
- (a) war or hostilities, whether declared or undeclared, terrorist action, sabotage, riot, insurrection, civil commotion, malicious damage, or national, federal, state, district or local emergency, whether factual or legal;
- (b) fire, flood, storm, cyclone, lightning strike, earthquake or landslide;
- (c) explosion, epidemic, quarantine, radiation or radioactive contamination;
- (d) failure, breakdown, termination, suspension, unavailability or shortage of any power, water, communications, internet, hosting, hardware, software, other computer or internet facilities or other supplies, facilities or services; and
- (e) any governmental requisition or illegality due to change of law,

but excluding any fact resulting from any action, or omission of default of that person, or any agent of that person;

Governmental Agency means any governmental, semi-governmental, administrative, fiscal, municipal, local, judicial or regulatory agency, department, instrumentality, body, utility, authority, commission, court or tribunal;

GST means any Tax under any GST Law;

GST Law has the meaning defined in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Term means the twelve (12) month term of the License Agreement

Intellectual Property means any intellectual, industrial or commercial property, including:

- (a) any patent, trade mark, service mark or design;
- (f) any copyright;
- (g) any utility model, eligible layout right or plant variety right;
- (h) any Confidential Information;
- (i) any other industrial, commercial, agricultural or extractive right derived from intellectual knowledge or activity of any industrial, scientific, literary or artistic nature or description, whether relating to any manufactured or natural product or otherwise;
- (j) any Legal Action relating to any previous item;
- (k) any licence or other right to use or grant the user, or to become the registered proprietor or user of, any previous item; and
- (l) any document of title, letters patent, deed of grant or other document or agreement relating to any previous item, whether registered or unregistered or recorded or unrecorded, stored or incorporated in any medium of any nature or description;

Licence Fee means the annual charge for use of the Software as advertised at the time of subscription on the agentprofitplanner website.

Software has the meaning given in recital A, together with any enhancement, modification, update or new release;

Specified Purpose means the use of the Software for its intended purpose of providing the Licensee with assistance in preparation of budgets and forecasting information relating only to the Business of the Licensee.

Tax includes any tax, duty, charge or rate imposed or assessed under any legislation or by any Governmental Agency, together with any associated interest, penalty, fine, fee or other charge; and

Term means the Initial Term.

1.3 Interpretation

Rules of interpretation apply to this agreement as specified in this provision, unless the context otherwise requires:

- (a) headings and subheadings are for convenience only and shall not affect interpretation;
- (b) words denoting the singular number include the plural, and the converse also applies;
- (c) words denoting any gender include all genders;
- (d) any word or expression which is cognate to or a grammatical or linguistic variation, conversion or opposite of a defined word or expression shall have a corresponding meaning;
- (e) any reference to a party to any agreement or document includes its successors and permitted assigns and substitutes by way of assignment or novation;
- (f) any reference to any agreement or document includes that agreement or document as amended at any time;
- (g) any reference to a clause or schedule is a reference to a clause of, or schedule to, this agreement;
- (h) any reference to a provision of or in this agreement, means a clause or schedule of or to this agreement, including each clause, subclause, paragraph and subparagraph of that clause or schedule;
- (i) any specific reference to or listing of agreements, documents, actions, facts, liabilities or any other items following the word **including** by way of illustration, example, particularity or specification of or in relation to any preceding words or provision of generality shall be without limitation and shall not exclude application to other items, whether or not in the same class, category or genus as any specified or listed items;
- (j) any reference to moneys, agreements, rights, undertaking, business, property, facts or liabilities includes all or any part or lesser number of any of the foregoing;
- (k) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time and any liability at all times during any specified period; and
- (l) unless otherwise specified, references to **dollar** and **\$** are references to the lawful currency of the Commonwealth of Australia.

2. TERM OF LICENCE

2.1 Term

The Licensor hereby grants to the Licensee on and from the date of

- (m) the Licensees acknowledgement of acceptance of these License Terms, and
- (n) the payment of the annual License Fee

a non-exclusive, non-transferable licence to use the Software over the internet for the Specified Purpose for a period of twelve (12) months.

3. DOCUMENTATION

3.1 Licence

The Licensor hereby grants to the Licensee on and from the date of payment of the Annual Subscription, a non-exclusive, non-transferable licence to use the Software over the internet for the Specified Purpose for twelve (12) months.

The Documentation is licensed to the Licensee for the Term.

3.2 Acknowledgement

The Licensee acknowledges that the Documentation contains sufficient information for the adequate use of the Software, except to the extent the Licensor has notified the Licensee of any omission or deficiency or of any variation which it considers necessary for the proper use of the Software.

3.3 No Copying

The Licensee shall not copy or reproduce the Documentation except to the extent otherwise authorised by this agreement.

4. LICENCE CONDITIONS

4.1 Normal Operating Procedures

The Licensee agrees to only use the Software in accordance with the normal operating procedures as notified by the Licensor.

4.2 Limits On Use

The Software may only be used pursuant to this agreement:

- (a) by the Licensee, its employees and other personnel including the Licensee's accountant and/or financial advisors; and
- (b) only for the Specified Purpose.

4.3 No Copying

The Licensee shall not copy, alter, modify or reproduce the Software except to the extent otherwise authorised by this agreement.

4.4 Remedies

In addition to any other remedies available to the Licensor under this agreement or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Software will entitle the Licensor to any available equitable remedy against the Licensee.

4.5 Support

Except for help desk services, the Licensor shall not be obliged to support the Software, whether by providing advice, training, error-correction, modifications, updates, new releases or enhancements or otherwise.

4.6 No Further Licence

The Licensee shall not do any act or suffer any omission in respect of the Software which requires a licence from the Licensor but which is not expressly authorised by this agreement.

4.7 Ownership

The Licensee acknowledges that there is no transfer of title or ownership to the Licensee of the Software or the Documentation or any modifications, updates or new releases of the Software.

4.8 Restrictions

The Licensee shall not under any circumstances use the Software:

- (a) interfere with or disrupt the integrity of the Software or the performance of the Software or the data contained within it; or
- (b) attempt to gain unauthorised access to the Software or its related systems or networks.

4.9 Responsibility

The Licensee is responsible for all activity occurring under the user account or accounts by which the Licensee accesses the Software and must:

- (a) keep all passwords and account details issued to it in respect of the Software secret at all times;
- (b) notify the Licensor immediately of any unauthorised use of any password or account or any other known or suspected breach of security in relation to the Software; and
- (c) report to the Licensor immediately and use reasonable efforts to stop any copying or distribution of the Software which is known or suspected by the Licensee or its nominated users.

5. MODIFICATIONS

5.1 No Modification

The Licensee shall not modify or alter the Software or merge all or any part of the Software with any other software without the Licensor's prior written permission.

5.2 Costs and Indemnity

If the Software is modified or altered by the Licensor, or by the Licensee with the permission of the Licensor pursuant to clause 5.1:

- (a) the costs associated with the modifications or alterations or the costs arising out of the investigation of the effects of proposed modifications or alterations will be borne solely by the Licensee; and
- (b) the Licensee will fully indemnify the Licensor against all liability which may be incurred by the Licensor if such modifications or alterations infringe any Intellectual Property Rights of a third person or otherwise cause the Licensor to suffer loss, damages or expense.

5.3 Property

The Software as modified or altered remains the property of the Licensor in all respects, whether modified by the Licensee, the Licensor or a third party and whether or not authorised pursuant to this agreement. Specifically, the Licensee shall if necessary assign all Intellectual Property Rights arising out of any modifications to the Software.

5.4 Application

This agreement shall apply to the Software as modified or altered.

5.5 Further Documentation

The Licensee shall execute such documents and perform such other acts as are necessary in order to give effect to clause 0.

6. REVERSE ENGINEERING

The Licensee shall not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the Software.

7. SECURITY

7.1 Licensor Responsible

The Licensor is responsible for ensuring the privacy and confidentiality of the Licensees information including

- (a) Maintaining strict management and control protocols for access to Licensees information.
- (o) Maintaining an effective fire-wall system to ensure to prevent unauthorized access to or from a private network

7.2 Licensee Responsible

The Licensee shall be solely responsible for the use, supervision, management and control of the Software and Documentation.

- (a) The Licensee shall ensure that the Software is protected at all times from misuse, damage, destruction or any form of unauthorised use.

- (b) The Licensee shall keep accurate records of use, copying, modification and disclosure of the Software. The Licensee shall permit the Licensor to inspect such records at any time during the Licensee's normal business hours. If the Licensor requests, the Licensee shall furnish the Licensor a copy of all or any part of such records.

8. COMPULSORY UPDATES AND NEW RELEASES

8.1 No Updates

The Licensor is under no obligation under this agreement to provide updates or new releases.

8.2 Redelivery

The Licensee shall comply with a direction from the Licensor to redeliver the Software to the Licensor in substitution for an update or new release which provides functions equal to or better than the Software.

8.3 Where Updated

Where an update or new release is provided pursuant to clause 8.2:

- (a) the Licensor will provide the new release over the internet at no additional charge to the Licensee;
- (b) the charge for use of the new release will be no higher in respect of the then current term than the aggregate of the then current Licence Fee and the cost of the new release;
- (c) this agreement will continue to apply in all respects to the update or new release which shall be deemed to be the Software for the purpose of this agreement; and
- (d) the Licensee shall return to the Licensor all copies of the original Software or otherwise deal with all copies of the original Software in accordance with the Licensor's directions.

8.4 Limitation on Liability

Without limiting the Licensee's obligations under this clause, and notwithstanding any other provision of this agreement, the Licensor shall be under no liability to the Licensee in the event of loss or damage suffered by the Licensor as a result of its failure to comply with this clause, and the Licensee shall indemnify the Licensor in respect of any loss or damage suffered by the Licensor as a result of the Licensee's failure to comply with this clause.

9. LICENCE FEE

9.1 Rate

The Licensee shall pay the Licence Fee yearly in advance.

9.2 Payment

The Licensee must pay any Licence Fee payment using the payment facility available on the Software website.

10. GST

10.1 GST Inclusive

The Licence Fee is inclusive of GST.

10.2 GST Taxable Supply

Each party agrees that the supply of the Software under this agreement has been agreed on the mutual assumption that the supply is GST taxable.

10.3 No Increase

The Licensee is not obliged to increase any amount payable under this agreement on account of GST.

10.4 Compliance

Each party must at any time comply with any GST Law in performing this agreement.

10.5 Tax Invoices

The Licensor must, upon request by the Licensee, issue to the Licensee tax invoices in proper form and in compliance with any GST Law connected with any supply by the Licensor under this agreement.

10.6 Assistance

The Licensor must at any time perform any action, including provision of any copy invoice and other documents, information and assistance in form and content sufficient to enable the Licensee to verify or calculate any input tax credit or other fact relating to any supply or acquisition of any right, property or services under or connected with this agreement.

11. CONFIDENTIALITY

11.1 No Disclosure

Each party agrees to not, without the prior written approval of the other party, disclose or make use of the other party's Confidential Information except to the extent necessary to perform, or exercise rights under, this agreement.

11.2 No Breach

A party will not be in breach of clause 11.1 in circumstances where it is legally compelled to disclose or make use of the other party's Confidential Information, the relevant information has become public knowledge, or is required by the rules of any stock exchange relevant to the first-named party.

11.3 Protection

Each party agrees to take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this agreement, do not make public or disclose the other party's Confidential Information.

11.4 Permitted Disclosure

Notwithstanding any other provision of this clause, the Licensee may disclose the terms of this agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers, bankers and accountants and advisers.

11.5 Survival

This clause survives termination of this agreement.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 Indemnity

Subject to the remainder of this clause, the Licensor indemnifies the Licensee against liability under any final judgment in proceedings brought by a third party against the Licensee which determine that the Licensee's use of the Software constitutes an infringement in Australia of any Intellectual Property Rights in the Software.

12.2 Process

The Licensor is not required to indemnify the Licensee as provided in clause 12.1 unless the Licensee:

- (a) notifies the Licensor in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
- (b) gives the Licensor the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
- (c) provides the Licensor with reasonable assistance in conducting the defence of such a claim; and
- (d) permits the Licensor to modify, alter or substitute the infringing part of the Software at its own expense in order to avoid continuing infringement, or authorises the Licensor to procure for the Licensee the authority to continue the use and possession of the infringing Software.

12.3 Limitations

The Licensor shall not indemnify the Licensee to the extent that an infringement, suspected infringement or alleged infringement arises from:

- (a) use of the Software in combination by any means and in any form with other goods not specifically approved by the Licensor;
- (b) use of the Software in a manner or for a purpose not reasonably contemplated or not authorised by the Licensor;
- (c) modification or alteration of the Software without the prior written consent of the Licensor; or
- (d) any transaction entered into by the Licensee relating to the Software without the Licensor's prior consent in writing.

12.4 Third Party Claims

If proceedings are brought or threatened by a third party against the Licensee alleging that the Licensee's use of the Software constitutes an infringement of the third party's Intellectual Property Rights, the Licensor may at its option and at its own expense conduct the defence of such proceedings. The Licensee agrees to provide all necessary co-operation, information and assistance to the Licensor in the conduct of the defence of such proceedings.

12.5 Licensee Indemnity

The Licensee indemnifies the Licensor against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party alleging such infringement if:

- (a) the claim arises from an event specified in clause 12.3; or
- (b) the ability of the Licensor to defend the claim has been prejudiced by the failure of the Licensee to comply with any requirements of clause 12.2 or clause 12.4.

13. REPRESENTATIONS BY LICENSEE

The Licensee represents that the following statements are true and accurate:

- (a) if the Licensee is a corporation, the Licensee is duly incorporated, licensed in the jurisdiction in which the Licensee's office is currently situated and in any other states in which the Licensee proposes to do business;
- (b) the acceptance of all License terms by the Licensee will not violate or constitute a breach of the terms of any other agreement Deed or commitment to which the Licensee is a party.
- (c) the individual or individuals executing this agreement on behalf of the Licensee are duly authorised to do so and, upon its execution, this agreement will constitute a valid and binding obligation of Licensee;
- (d) the Licensee acknowledges that to the extent that the Licensor has made any representation, which is not otherwise expressly stated in this agreement, the Licensee has been provided with an opportunity to independently verify the accuracy of that representation; and
- (e) the Licensee, each of the partners of the Licensee (if the Licensee is a partnership), and each of the officers, directors and significant shareholders of the Licensee (if the Licensee is a corporation) have read fully this agreement and fully understand its terms, and represent that each is capable of complying and will comply with this agreement.

14. DISCLAIMER

Whereas every effort has been made to ensure the accuracy and validity of

- (a) the output of the Software for its Intended Purpose, and
- (b) the information contained within information available for download or viewing within the website including documents and links to other websites

the Licensor does not guarantee and takes no responsibility for the validity or accuracy of the information and strongly recommends that the Licensee does not rely solely on the information to make employment or general business decisions, and that the Licensee should seek third party verification and advice before acting on the information.

15. IMPLIED TERMS

15.1 Exclusion – Implied Terms

Subject to clause 15.2, any condition or warranty which would otherwise be implied in this agreement is hereby excluded.

15.2 Mandatory Inclusions

Where legislation implies in this agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this agreement. However, the liability of the Licensor for any breach of such condition or warranty shall be limited, at the option of the Licensor, to one or more of the following:

- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of such goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

16. LIABILITY OF LICENSOR

16.1 Inherent Problems

The Software may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications. To the fullest extent permitted by law, the Licensor is not responsible for any delays, delivery failures or other damage resulting from such problems.

16.2 Licensor Liability

Except in relation to liability for personal injury (including sickness and death), and subject to the preceding clause and the following clause, the Licensor shall be under no liability to the Licensee in respect of any loss or damage (other than the loss or damage referred to in the following clause) which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to this agreement or in respect of a failure or omission on the part of the Licensor to comply with its obligations under this agreement. The exclusion in this clause covers all loss and damage, including consequential, special, indirect and punitive loss and damage and including loss and damage reflecting loss of profits, loss of revenue and loss of goodwill.

16.3 Cap on Liability

If the Licensor is in breach of this agreement, and the Licensee has complied with all of its obligations under this agreement, damages for which the Licensor shall be liable (and to which the Licensor's liability shall be limited) shall not exceed, in respect of all claims in aggregate,

the amount paid by the Licensee to the Licensor under the Licensor's first invoice for the Software.

16.4 No Reliance

Without limiting clause 16.5, the Licensee warrants that it has not relied on any representation made by the Licensor which has not been stated expressly in this agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by the Licensor.

16.5 Licensee Acknowledgement

The Licensee acknowledges that to the extent the Licensor has made any representation which is not otherwise expressly stated in this agreement, the Licensee has been provided with an opportunity to independently verify the accuracy of that representation.

16.6 Indemnity

The Licensee shall at all times indemnify and hold harmless the Licensor and its officers, employees and agents (**those indemnified**) from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (a) a breach by the Licensee of its obligations under this agreement; or
- (b) any wilful, unlawful or negligent act or omission of the Licensee.

16.7 Proportionate Liability

In respect of any claim by the Licensee against the Licensor, the Licensor's employees, contractors or agents, the Licensor's related bodies corporate or any of the Licensor's related bodies corporate's employees, contractors or agents, under or in connection with this agreement, the Parties agree that, to the maximum extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) and legislation having a similar effect in the Commonwealth and other States and Territories of Australia is excluded and has no application or effect on the rights of the Licensee or the obligations of the Licensor.

17. TERMINATION

17.1 Termination Rights

This agreement may not be terminated except as provided in this agreement. Termination of this agreement will not relieve the Licensee of any unfulfilled obligations created hereunder unless agreed to in writing by the Licensor.

17.2 Express Rights of Termination

In addition to and without limiting any other provisions in this agreement relating to termination, this agreement may be terminated as follows:

- (a) upon mutual written consent of the parties;
- (b) upon expiration of the Term;
- (c) at the option of the Licensor:

- (i) if the Licensee is in breach of any term of this agreement, including payment of any fees and such breach is not remedied within 10 days of notification by the Licensor;
- (ii) if the Licensee becomes insolvent; or
- (iii) if a receiver is appointed to take possession of the Licensee's Business or property or any part thereof; or
- (iv) if the Licensee enters into any arrangement or reconstruction pursuant to Part 5.1 of Chapter 5 of the *Corporations Act 2001* without the prior consent of the Licensor; or
- (v) if a judgment is obtained against the Licensee which remains unsatisfied for a period of more than 30 days after all rights of appeal have been exhausted; or
- (i) if application is made in any State or Federal court for the winding up of the Licensee or a provisional liquidator is appointed to the Licensee or an order is made in any State or Federal court winding up the Licensee.

17.3 Notice Period

In the event the Licensor elects to terminate this Deed pursuant to any provision of this Deed, the Licensor will give the Licensee 10 days notice, setting forth the reason or reasons for termination.

17.4 Post-Termination

Upon termination of this agreement for any reason, the Licensor shall terminate the Licensee's right to access and use the Software, including the Licensee's password and user account and the Licensee will do all of the following acts and things, each of which will survive the termination of this agreement and will remain an ongoing obligation of the Licensee:

- (a) promptly destroy, or surrender to the Licensor, any documents or materials, evidencing, referring to or otherwise relating to Software; and
- (b) promptly pay the Licensor any outstanding moneys owing under this agreement.

18. FORCE MAJEURE

18.1 Neither Party Liable

Neither party shall be liable for any delay or failure to perform its obligations pursuant to this agreement if such delay is due to Force Majeure.

18.2 Performance Suspended

If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended.

18.3 Termination

If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 60 days, the Licensor may immediately terminate the agreement on providing notice in writing to the Licensee.

19. SUB-CONTRACTS AND SUB-LICENCES

19.1 Licensor

The Licensor may sub-contract the performance of this agreement or any part of this agreement.

19.2 Licensee

The Licensee shall not:

- (a) sub-license the Software;
- (b) merge the Software with any other software by any means or in any form; or
- (c) create internet links to the Software or frame or mirror any part of the Software on any other server or wireless internet based device; or
- (d) sub-contract any of its obligations under this agreement,

without the Licensor's prior written consent.

20. ASSIGNMENT AND NOVATION

20.1 Licensor

The benefit of this agreement may be assigned, transferred or novated by the Licensor without the Licensee's prior written consent.

20.2 Licensee

The Licensor may consent to the assignment or novation of this agreement by the Licensee subject to such conditions as it chooses to impose.

21. WAIVER

21.1 In Writing

No right under this agreement shall be deemed to be waived except by notice in writing signed by each party.

21.2 No Prejudice

A waiver made by the Licensor pursuant by clause 21.1 does not prejudice its rights in respect of any subsequent breach of the agreement by the Licensee.

21.3 Forbearance, etc

Subject to clause 21.1, any failure by the Licensor to enforce any clause of this agreement, or any forbearance, delay or indulgence granted by the Licensor to the Licensee, shall not be construed as a waiver of the Licensor's rights under this agreement.

22. VARIATION

22.1 In Writing

The provisions of this agreement shall not be varied, except by agreement in writing signed by the parties.

22.2 Variation Proposals

If either party wishes to vary this agreement, the proposing party shall submit a copy of the proposed variations to the other party (the **Receiving Party**), specifying a reasonable period in which the Receiving Party is to provide written notice of acceptance or rejections of the proposal.

22.3 Acceptance

If the Receiving Party accepts the variations, this agreement shall be deemed to be so amended from the date of acceptance.

22.4 Rejection

If the Receiving Party rejects the proposed variations, each party shall perform the agreement in accordance with the unvaried terms.

23. LICENSOR'S RIGHTS

Any express statement of a right of the Licensor under this agreement is without prejudice to any other right of the Licensor expressly stated in this agreement or existing at law.

24. COSTS

Each party shall pay its own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any notice given or made; and
- (b) the performance of any action by that party in compliance with any liability arising, under this agreement, or any agreement or document executed or effected under this agreement, unless this agreement provides otherwise.

25. DUTIES

25.1 Payment

The Licensee shall promptly within the initial applicable period prescribed by law pay any duty payable in relation to the execution, performance and registration of this agreement, or any agreement or document executed or effected under this agreement.

25.2 Indemnity

The Licensee shall indemnify the Licensor against any loss incurred by the Licensor in relation to any duty specified in this provision, whether through default by the Licensee under this provision or otherwise.

26. SURVIVAL OF AGREEMENT

26.1 Successors, etc

Subject to any provision to the contrary, this agreement shall inure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but shall not inure to the benefit of any other persons.

26.2 Effect Following Expiry

The covenants, conditions and provisions of this agreement which are capable of having effect after the expiration of the agreement (including clauses 6, 7, 11, 12, 16 and 17.4) shall remain in full force and effect for 5 years following the expiration of the agreement

27. GOVERNING LAW AND JURISDICTION

27.1 Governing Law

This agreement shall be governed by and construed under the law of the State of South Australia.

27.2 Jurisdiction

Any legal action in relation to this agreement against a party or its property may be brought in any court of competent jurisdiction in the State of South Australia.

27.3 Submission

Each party by execution of this agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

28. NOTICES

28.1 Form

Any notice to or by a party under this agreement shall be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender or under the seal of or any power of attorney conferred by the sender.

28.2 Service Method

Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

28.3 Receipt

Any notice shall be effective for the purposes of this agreement upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report prior to 4.00 pm local time on a business day in the place in or to which the written notice is delivered or sent or otherwise at 9.00 am on the next business day following delivery or receipt.

28.4 Service Details

Details initially specified for service of notice comprise:

Licensor:	PROFIT PLANNER [ABN: 13 005 195 757]
Address:	27 Harrington Street PROSPECT SA 5082
Email:	admin@profitplanner1.com
Attention:	Wayne Johnson

29. GENERAL PROVISION

29.1 Third Parties

This agreement shall confer rights only upon a person expressed to be a party, and not upon any other person.

29.2 Pre-Contractual Negotiation

This agreement:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject-matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject-matter or any term of that agreement.

29.3 Further Assurance

Each party shall execute any document and perform any action necessary to give full effect to this agreement, whether prior or subsequent to performance of this agreement.

29.4 Continuing Performance

- (a) The provisions of this agreement shall not merge with any action performed or document executed by any party for the purposes of performance of this agreement.
- (b) Any representation in this agreement shall survive the execution of any document for the purposes of, and continue subsequent to, performance of this agreement.
- (c) Any indemnity agreed by any party under this agreement shall:
 - (i) constitute an obligation of that party separate and independent from any other liability of that party under this agreement or any other agreement; and
 - (ii) survive and continue subsequent to performance of this agreement

29.5 Remedies

The rights of a party under this agreement are cumulative and not exclusive of any rights provided by law.

29.6 Severability

Any provision of this agreement which is invalid in any jurisdiction shall be ineffective in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this agreement or the validity of that provision in any other jurisdiction.

29.7 Counterparts

This agreement may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same document.

- (a) any business, trade or commercial name or designation, brand name, internet website domain name, logo, symbol, source indication or origin appellation;

END