

Midwinter Client Manager – End User Licence Agreement (Terms and Conditions)

1 Midwinter Financial Service Pty Ltd
ABN 46 103 551 533
of Level 6, 1 99 Elizabeth Street , Sydney , NSW
(Midwinter)

2 Client – Signed as per application form

Background

- A. Midwinter is the licensee of Intellectual Property Rights from the Licensor in a specialised technology and related data including:
- (a) a client relationship management system designed for financial planning practices;
 - (b) a dealership management system; and
 - (c) an interactive public website.
- B. Midwinter is the owner of Intellectual Property Rights to a set modelling tools.
- C. Midwinter has the right to grant licences to use both the technology and data, and modelling tools.
- D. The Licensee wishes to use the technology and data.
- E. Midwinter grants the Licensee a licence to use the technology and data and agrees to provide support services in respect of the technology on the terms set out in this Agreement.

The parties agree

1 Definitions

Unless the subject matter or context requires otherwise, in this Agreement the following words and expressions have the meanings assigned to them below:

Acceptable Use Policy means the acceptable use policy attached as Schedule D as varied from time to time by Midwinter and posted at <http://www.Platformplus.com.au/acceptableuse.htm>;

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or bank holiday in the place where an act is to be performed or a payment is to be made during the hours of 9.00am to 5.00pm Eastern Standard Time;

Business Hours means the hours of 9.00am to 5.00pm Eastern Standard Time on Business Days;

Client means a client of the Licensee whose investment details are stored on the Hosting Facility using the Software and who is authorised to use the Custom Site;

Confidential Information means the terms of this Agreement and any material or information of a confidential nature including details of suppliers, customers, business practices and plans and in the case of Midwinter, the Intellectual Property Rights provided by or emanating from a party (**the disclosing party**) to the other party (**the receiving party**) in relation to or in accordance with this Agreement but excludes material or information which:

- (a) is at the time of disclosure, or subsequently becomes, material or information in the public domain otherwise than by a breach by the receiving party of this Agreement; or
- (b) becomes known by a party independently of the other party, otherwise than by any breach of a confidentiality obligation owed by a third party to the disclosing party.
- (c) is developed independently by you without any reliance on information emanating from, or otherwise provided by, us or the Licensor;

Consequential Loss means indirect or consequential loss or damage, including without limitation, loss of profit or anticipated profit, loss of data, loss of use, damage to goodwill and loss due to delay;

Content means material uploaded to the Hosting Facility or otherwise distributed by the Licensee, a User or Client using the Software;

Custom Site means a website interface to the Software on the Hosting Facility, with the branding of the Licensee or its nominee, through which Clients are able to use the Software;

Customisations means any customisations made by Midwinter to the Software on terms agreed by the parties in an implementation or customisation agreement;

Documentation means operating manuals or user manuals prepared by Midwinter which are designed to assist the understanding or application of the Software;

Employee means an officer, agent, employee or sub-contractor;

Hosting Facility means the Internet hosting facility described in Schedule B;

Intellectual Property Rights means all intellectual property rights including copyright, trade mark, design, patent, semiconductor and circuit layout rights;

Licence means the licences granted to the Licensee under clauses 2.1 and 2.2, as applicable;

Licensor means Platformplus Pty Ltd ACN 103 551 533 of 35 Primary School Court, Maroochydore Queensland,;

Licensee Site means the premises owned or occupied by the Licensee from which the Software is used as set out in the Purchase Order and other sites as agreed by both parties in writing from time to time;

Material Defect means a failure of the Software to substantially conform to any warranty granted under this Agreement or to the Documentation or the Software specifications, which failure materially impacts operational or functional performance of the Software;

Modelling tools means Midwinter Reasonable Basis Software Suite.

Our Software means those modules of the software created by Midwinter and known as “Midwinter” which are selected in the Purchase Order and includes any Releases, Upgrades or Customisations installed from time to time;

Parties means the Licensee and Midwinter or either of them as the context requires;

Purchase Order means the purchase order executed by the Licensee which attaches and comprises part of, this Agreement;

Software means technology, data, modelling tools and other Third Party Contributions;

Support Services means those services in respect of the Software specified in the Purchase Order and as described in Schedule A;

Service Level Agreement means the terms set out in Schedule E;

Taxes means all taxes, charges, duties and similar imposed by a government or statutory body relating to the supply and use of goods and services or otherwise arising out of this Agreement including without limitation sales tax, value added tax, fringe benefits tax, undistributed profits tax, withholding tax, financial institutions duty, stamp duties and any interest or penalty imposed in connection with any of the preceding items but does not include any Tax payable on the income or capital gains of Midwinter;

Third Party Contributions means the software and data services which interoperate with the Software as specified in the Purchase Order, as modified by Midwinter by notice from time to time, and includes any Releases or Upgrades installed from time to time;

Third Party Terms means the software and content licences and other terms applicable to the Third Party Contributions as amended from time to time and referred to in clause 2.2;

Upgrade has the meaning given by clause 7.1;

User means each employee or agent of the Licensee who uses the Software; and

Warranty Period means 90 days from the date of this Agreement.

2 Use of the Software and Hosting Facility

- 2.1 Subject to this Agreement, Midwinter grants to the Licensee a personal, non-transferable, non-exclusive licence to use the Software on the Hosting Facility, together with the Documentation. The Licence begins on the date of notification by Midwinter under clause 2.4 and continues, subject to payment of applicable Licence and Support Services fees, until terminated in accordance with the terms of this Agreement.
- 2.2 Midwinter supplies the Licensee with the use of the Third Party Contributions through the Hosting Facility on the Third Party Terms applicable to those Third Party Contributions. The Third Party Terms are available at <http://www.Midwinter.com.au/thirdpartyterms.htm> and are deemed to be incorporated into this Agreement. The Third Party Terms prevail over this Agreement in respect of the corresponding Third Party Contributions to the extent of any inconsistency whether as to licence terms, warranty, liability or otherwise except to the extent that this Agreement is more favourable to Midwinter.
- 2.3 The Licensee agrees to comply strictly with applicable Third Party Terms and indemnifies Midwinter from and against all costs, claims, damages and losses Midwinter incurs or suffers arising out of the Licensee's failure to do so. The Licence for the specified Third Party Contributions begins on the date of notification by Midwinter under clause 2.4 and continues, subject to payment of applicable fees, until terminated in accordance with the Third Party Terms or this Agreement.
- 2.4 Within 30 days of the later of execution of this Agreement and the Licensee providing Midwinter with the information necessary to comply with its obligations under this clause, Midwinter will:
- (a) use reasonable endeavours to register, at the Licensee's cost, any domain names requested by the Licensee which are available for registration;
 - (b) configure the Software on the Hosting Facility ready for use by the Licensee, together with a username and password for each User entitled to access the Software;
 - (c) establish the number of Custom Sites set out in the Purchase Order together with a facility whereby the Licensee can allow Clients to use the Software through those Custom Sites;
 - (d) delegate any domain names registered on behalf of the Licensee to point to the relevant Custom Site; and
 - (e) notify the Licensee of the website address of each Custom Site.
- 2.5 The Licensee must
- (a) independently obtain and pay for the necessary communications links, communications and computer hardware and software necessary to access the Hosting Facility;
 - (b) not allow more people to use any component of the Software than the number of Users and Clients for which the Licensee has paid Midwinter the applicable licence and support fees with respect to that Software component;

- (c) comply with all laws (including the Privacy Act as if the Act applies to it even if it does not) in connection with its use of the Software, Documentation and Hosting Facility;
 - (d) comply with, and ensure each User and Client complies with, the Acceptable Use Policy;
 - (e) ensure that each User and Client maintains the secrecy of their usernames and passwords for accessing the Software;
 - (f) take all reasonable security precautions to prevent unauthorised access to or copying, use or disclosure of the Hosting Facility, the Software or the Documentation or any parts of them;
 - (g) use the Software and the Documentation only to process its own internal data and must not use the Software or Documentation to provide outsourcing services or bureau processing services;
 - (h) not, subject to clause 2.8, grant or allow any sublicense of or other rights to use or access all or any part of the Software or Documentation to any person or entity or otherwise assign or transfer any of the rights granted to it under the Licence;
 - (i) not, and must ensure the Users and Clients do not, modify, decompile, reverse engineer or disassemble the Software (except as permitted by non-excludable law, if applicable) and must not copy, reproduce or disseminate the Software or the Documentation;
 - (j) indemnify Midwinter, its agents, officers and employees, and keep them indemnified, from and against all losses, damages, claims, actions, expenses (including legal expenses on a full indemnity basis) and other liability arising from your use of the Software, the Documentation and the Hosting Facility, breach of this Agreement, violation of any law, infringement of another's rights or otherwise arising out of information made available through your use of the Software, the Documentation or the Hosting Facility; and
 - (k) ensure that before issuing a Client with a username and password to access the Software, the Licensee has paid Midwinter the then current Licence and Support Services fees applicable for that Client's access.
- 2.6 Midwinter may monitor the total number of Clients with access to the Software during the course of each month and suspend one or more Client's access to the Software if the Licensee has failed to pay the applicable licence or support fees for that number of Clients.
- 2.7 The Licensee agrees that the Software and the Documentation is licensed to it under this Agreement and all other rights in the Software and the Documentation remain the property of Midwinter and its licensors.
- 2.8 Subject to the prior payment of any additional Licence fees to Midwinter, the Licensee may sublicense Users and Clients to use the Software in the manner authorised by Midwinter provided each User agrees to be bound by an agreement with the Licensee and Midwinter which includes the terms set out in Schedule C. The Licensee is liable to Midwinter for any breach of that agreement by a User or Client.

- 2.9 The Licensee acknowledges that the Software may include software or a device for controlling licensing of the Software. The Licensee must ensure that neither it nor any other person tampers with, circumvents or attempts to circumvent that software or device or attempts to do so.
- 2.10 The parties agree to comply with the Service Level Agreement in relation to Our Software and the Hosting Facility.

3 Support Services

- 3.1 Subject to this clause, clause 4.1 and Schedule B, Midwinter will provide the Support Services to the Licensee, while the Licence continues.
- 3.2 The Licensee must at all times provide an employee with appropriate skills, knowledge and experience (together with one backup contact) as Midwinter' sole contact for provision of Support Services to the Licensee.
- 3.3 The Licensee agrees that it is the Licensee's sole responsibility:
- (a) to establish proper operating methods consistent with the instructions contained in the Documentation; and
 - (b) to comply with any requirements of telecommunications authorities or Midwinter' telecommunications supplier.

4 Charges for Licence and Support Services

- 4.1 The Licensee must pay Midwinter the charges for the Licence and the Support Services in the amount and at the times specified in the Purchase Order.
- 4.2 Midwinter may make an additional charge at its then current rates for the time and travelling, accommodation (if applicable) and living expenses of its Employees for travel to and from the Licensee Site.
- 4.3 If the Licensee disputes the whole or any portion of any invoice submitted by Midwinter, the Licensee must pay the portion of the amount stated in the invoice which is not in dispute and must notify Midwinter in writing (within 7 days of receipt of invoice) of its reasons for disputing the remainder of the invoice. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was first invoiced, then the Licensee must pay the amount finally resolved together with interest on that amount at the rate set out in clause 5.4 in accordance with the terms of payment set out in this Agreement.
- 4.4 Midwinter may change its fees for the Licence and Support Services with effect from the start of the next period for which a Licence or Support Services fee is payable or at any other time on 30 days notice to the Licensee.

5 Taxes and payments

- 5.1 Charges and other expenses payable by the Licensee under this Agreement are exclusive of any applicable Taxes. The Licensee must pay directly (if applicable) or reimburse Midwinter for any Taxes. The following additional provisions apply:
- (a) where required, Midwinter will give the Licensee a Tax invoice in accordance with the relevant legislation; and

- (b) Midwinter may invoice the Licensee for Taxes when Midwinter invoices the Licensee for payments due under this Agreement or when Midwinter is required to remit the Tax, at Midwinter' option.
- 5.2 Unless otherwise specified, all charges payable under this Agreement must be paid within 7 days of the date of Midwinter' invoice.
- 5.3 The Licensee will nominate one (1) person whom Midwinter will deal with in relation to all invoices and payment matters.
- 5.4 The Licensee must pay Midwinter interest on any amount due and not paid by the Licensee within the time required by this Agreement at the rate which is 2% per annum above the Reserve Bank of Australia overnight cash rate as quoted on the date on which payment was due (or if that date is not a Business Day, the next Business Day when the rate is quoted).
- 5.5 Licence and Support Services fees and other charges under this Agreement are non-refundable.
- 5.6 In addition to its other remedies, Midwinter may suspend performance of its obligations under this Agreement for any period during which any money owing to Midwinter by the Licensee is overdue.

6 Customisations

If the Licensee wishes Midwinter to improve or change the Software so that there is an alteration to its original functional or other characteristics the following provisions apply:

- (a) the Licensee must give Midwinter a description of the Customisation required using Midwinter' customisation request communication process;
- (b) Midwinter will prepare a written report describing the problem or feature which it understands the Licensee wishes to address, and an estimate of the cost of designing and implementing the Customisation and any variation to the Support Services fees which would result from the Customisation. The Licensee must pay Midwinter at its standard time and materials rates for the preparation by Midwinter of the report;
- (c) if the Licensee wishes to proceed with the Customisation, the parties must use their reasonable endeavours to negotiate and execute a contract dealing with all aspects of the proposed Customisation; and
- (d) Midwinter will own all Customisations made under this Agreement.

7 Upgrades and releases

- 7.1 During the term of this Agreement Midwinter may develop improvements to the Software that enhance its performance or correct errors but which do not alter its functional characteristics ("Upgrade") or improvements which do alter the Software's functional characteristics ("Release").
- 7.2 If Midwinter develops an Upgrade or Release while the Licence remains in force it may implement the Upgrade or Release on the Hosting Facility:
 - (a) immediately, in the case of Upgrades; and

(b) on 7 days prior notice to the Licensee in the case of Releases.

7.3 Without limiting clause 4.4, Midwinter may change its fees for the Licence and Support Services by notice to the Licensee with effect from the date of installation of a Release.

8 Warranties

8.1 Subject to clause 8.2, Midwinter warrants that:

- (a) it has authority to grant the Licence with consent from the licensor, and that the grant of the Licence will not infringe the industrial or intellectual property rights of any third parties;
- (b) subject to clause 8.4, the Software will provide the functions specified in the Documentation in all material respects;
- (c) subject to clause 8.4, the Software will be free of Material Defects; and
- (d) all work performed in connection with the Support Services will be rendered in a workmanlike and safe manner.

8.2 Midwinter does not warrant:

- (a) the performance, accuracy or reliability of the Software or the Hosting Facility or any associated software or equipment;
- (b) that Software or access to the Software or the Hosting Facility will be secure, error free or uninterrupted; or
- (c) that the Software or Hosting Facility will be suitable for the Licensee's (or its Users or Clients) purpose.

8.3 To the extent permitted by law, all warranties will be void if the Software is damaged or rendered unserviceable by:

- (a) the acts or omissions of non-Midwinter Employees;
- (b) the Licensee's failure to comply with the Documentation or any guidelines issued by Midwinter from time to time;
- (c) any fault, defect or error in any equipment;
- (d) misuse, theft, vandalism, fire, water or other peril;
- (e) alterations or additions not authorised by Midwinter;
- (f) unreasonable misinterpretation by non-Midwinter Employees of Documentation;
- (g) negligence of non-Midwinter Employees, to be judged as if the Employee was suitably qualified and has appropriate experience to undertake the actions causing the damage; or
- (h) any other software used by the Licensee (other than the Software).

- 8.4 The warranties given pursuant to clauses 8.1(b) and (c) commence on the date of execution of this Agreement and continue for the Warranty Period. If the Licensee identifies any breach of the warranties during the Warranty Period the Licensee must promptly notify Midwinter and give particulars of the alleged breach. To the maximum extent permitted by law, Midwinter' sole obligation and liability in respect of any breach of the warranties will be to modify the Software and/or perform the Support Services again (at its expense) to make the Software and/or Support Services compliant with the warranties.
- 8.5 Except as provided in this clause 8 and subject only to any implied warranties which cannot legally be excluded, Midwinter makes no other warranties, either express or implied, as to any matter whatsoever, including the merchantability or the fitness for any particular use of the Software. Clause 12.1 applies to non-excludable warranties, to the extent applicable.
- 8.6 Each party warrants that it has not relied on any representation made by the other which has not been expressly stated in this Agreement.
- 8.7 Regardless of anything else in this Agreement except clause 2.2, as its sole liability in respect of the Third Party Contributions, Midwinter will use all reasonable efforts to give to the Licensee the benefit of any warranties contained in the Third Party Terms.

9 Termination and Suspension

- 9.1 Midwinter may suspend the Licensee's and its permitted sub-licensees' access to the Software without notice:
- (a) where required for urgent maintenance;
 - (b) if the Licensee breaches this Agreement;
 - (c) to prevent damage to the Software or Hosting Facility; or
 - (d) where Midwinter reasonably suspects that the Hosting Facility is being used, accessed or attacked in an unauthorised or otherwise illegal manner.
- 9.2 Midwinter may terminate this Agreement immediately by written notice to the Licensee if at any time:
- (a) any amount payable by the Licensee under this Agreement remains outstanding for 14 days after request by Midwinter for payment of that amount; or
 - (b) the Licensee commits a breach of or fails to perform any or all of its obligations under this Agreement and does not remedy that breach or non-performance (if capable of remedy) or make reasonable compensation in money (if not capable of remedy) within 30 days after receipt of notice requiring it to do so.
- 9.3 The Licensee may terminate this Agreement with immediate effect by written notice to Midwinter if Midwinter commits a breach of or fails to perform any or all of its material obligations under this Agreement and does not remedy that breach or non-performance (if capable of remedy) or make reasonable compensation in money (if not capable of remedy) within 60 days after receipt of notice requiring it to do so.

- 9.4 Without limiting the generality of clauses 9.2 and 9.3, a party ("the first party") may terminate this Agreement with immediate effect by written notice to the other party ("the second party") if:
- (a) the second party has a receiver, receiver and manager, administrator or other form of insolvency or bankruptcy administrator appointed to or over the whole or any part of its undertaking, property or assets or any step is validly taken for the appointment of such a person;
 - (b) the second party convenes a meeting of its creditors or proposes or enters into a scheme of arrangement or composition for the benefit of any of its creditors; or
 - (c) an order is made by a Court or a resolution is passed for the winding up or bankruptcy of the second party or notice of intention to propose such a resolution is given.
- 9.5 After 12 months from the date of this Agreement, either party may terminate this Agreement on 60 days prior written notice to the other without cause;
- 9.6 Termination of this Agreement in accordance with clauses 9.2 - 9.5 in no way limits or prejudices any right or remedy which either party may have in consequence of any breach by a party of this Agreement.
- 9.7 Upon termination of this Agreement:
- (a) subject to subclause (b), each party must promptly return to the other party all Confidential Information, software, data, materials and other property of the other party held by it; and
 - (b) Midwinter will deliver to the Licensee all data which has been placed on the Hosting Facility by the Licensee, the Users or Clients in electronic form provided that the Licensee pays Midwinter' reasonable costs of extracting and transferring such data at Midwinter' then current time and materials charges.
- 9.8 Termination of this Agreement for any reason does not affect the rights and obligations of either party arising prior to termination. Clauses 5 (Taxes and Payments), 8 (Warranties), 11 (Confidentiality), 12 (Limitation of Liability), 14 (Dispute Resolution) and 17 (General Provisions) survive termination of this Agreement.

10 Intellectual Property

- 10.1 Subject to clauses 10.3 and 10.4, Midwinter indemnifies and agrees to hold harmless the Licensee from and against all or any direct loss, damage, suit, claim, action, demand, expense, proceeding or any other liability (but excluding in all cases all Consequential Loss), whether joint or several, arising from or in connection with a final judgment ruling that Our Software infringes any third party's Intellectual Property Rights, except to the extent the claim is due to the Licensee's, or of any of its employees or contractors, negligence or wilful default.
- 10.2 If an infringement of any Intellectual Property Rights of any third party is determined which is caused by Our Software, Midwinter may, at its own expense:
- (a) modify or replace Our Software or, as applicable, the relevant component of Our Software so that the infringement is removed; or

- (b) procure for the Licensee the right to continue enjoying the full benefit of this Agreement including the unfettered right to use Our Software as contemplated by this Agreement.
- 10.3 Midwinter will not indemnify the Licensee pursuant to clause 10.1 unless the Licensee:
- (a) notifies Midwinter in writing as soon as is reasonably possible of any infringement, suspected infringement or alleged infringement;
 - (b) gives Midwinter the option to conduct the defence of such claim, including to the extent reasonably possible negotiations for settlement or compromise prior to the institution of legal proceedings; and
 - (c) provides Midwinter with reasonable assistance in conducting the defence of such a claim.
- 10.4 Midwinter will not indemnify the Licensee pursuant to clause 10.1 if such infringement, suspected infringement or alleged infringement arises from:
- (a) use of the alleged infringing item in combination by any means and in any form with software or equipment not specifically approved or recommended by Midwinter;
 - (b) the Licensee's failure to implement modifications provided by Midwinter to avoid infringement;
 - (c) Midwinter's compliance with specifications provided by the Licensee;
 - (d) use of the alleged infringing item in a manner or for a purpose not reasonably contemplated or not authorised by Midwinter; or
 - (e) modification or alteration to the alleged infringing item without the prior consent in writing of Midwinter.
- 10.5 Midwinter's indemnification obligations under this clause constitute the sole and exclusive remedy for any claim of infringement of intellectual property rights, to the extent permitted by law.
- 10.6 Regardless of anything else in this Agreement except clause 2.2, as the Licensee's sole remedy, the Third Party Terms govern Midwinter's liability for intellectual property infringement in respect of the Third Party Contributions.
- 10.7 The Licensee warrants that any domain name which it requests Midwinter to register will not infringe the intellectual property rights of any third party and assumes all responsibility for the renewal of any domain name registered by Midwinter on the Licensees behalf.
- 10.8 The Licensee warrants that:
- (a) it owns all the Intellectual Property Rights in the Content or hold licences for that Content which entitle the Licensee to use it in connection with the Software; and
 - (b) Midwinter's dealings with the Content in accordance with this Agreement will not infringe the Intellectual Property Rights of a third party.

11 Confidentiality

- 11.1 The Licensee acknowledges that Our Software, the Documentation and any technical information or data relating to the Software is the Confidential Information of Midwinter and constitutes proprietary information and trade secrets of Midwinter or its licensors.
- 11.2 The receiving party must:
- (a) treat Confidential Information as secret and confidential and as the property solely of the disclosing party;
 - (b) not use Confidential Information for any purpose other than the performance of this Agreement;
 - (c) restrict the disclosure of Confidential Information to those of its Employees and other professional consultants who require Confidential Information to enable the receiving party to perform its obligations pursuant to this Agreement or otherwise exercise its rights under this Agreement; and
 - (d) ensure that each person to whom Confidential Information has been disclosed complies with the obligations of the receiving party under this Agreement and, if reasonably required by the disclosing party, executes a confidentiality agreement in the form reasonably required by the disclosing party.
- 11.3 Clause 11.2 does not apply to Confidential Information which either party is required to disclose by any applicable law or legally binding order of any Court, or by a lawful requirement of any government or regulatory department, body, instrumentality, Minister, agency, recognised stock exchange or other authority which has jurisdiction over either party. Before such disclosure the receiving party must:
- (a) use its best endeavours to give the disclosing party details of the information to be disclosed and the law or order requiring disclosure; and
 - (b) notify the entity requiring the information that it is the Confidential Information of the disclosing party and request the entity to whom the disclosure is to be made to treat the information as confidential.
- 11.4 Without limiting this clause 11, the Licensee must not disclose to any other person any details of Midwinter' fees or charges.

12 Limitation of liability

- 12.1 If any Act implies in this Agreement any term, condition or warranty and that Act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of, or liability under, that term, condition or warranty, that term, condition or warranty is deemed to be included in this Agreement. However, Midwinter' liability for a breach of the applicable term, condition or warranty (other than a warranty implied by Section 69 of the Trade Practices Act 1974 or any corresponding provision of any State Act) is limited to any one or more of the following, at Midwinter' option:

- (a) if the breach relates to goods:
 - (1) the replacement of the goods or the supply of equivalent goods;
 - (2) the repair of the goods;
 - (3) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (4) the payment of the cost of having the goods repaired; and
 - (b) if the breach relates to services:
 - (1) the supplying of the services again; or
 - (2) the payment of the cost of having the services supplied again.
- 12.2 Subject to clause 12.1 and to the maximum extent permitted by law, Midwinter has no liability to the Licensee for any Consequential Loss, however caused (including by breach of contract, negligence or breach of statute), which is suffered or incurred in connection with or relating to this Agreement, the Software, the Hosting Facility or the Support Services or otherwise arising out of the relationship between the parties.
- 12.3 To the maximum extent permitted by law, Midwinter' liability to the Licensee for any claim or loss, however caused (including by breach of contract, negligence or breach of statute), which is suffered or incurred by the Licensee in connection with or relating to this Agreement, the Software, the Hosting Facility or the Support Services or otherwise arising out of the relationship between the parties, is limited to the fees (less any Tax) paid to Midwinter by the Licensee under this Agreement in the 12 months prior to the loss occurring (less any other claims paid by Midwinter in that period).
- 12.4 The Licensee accesses material through the Software and Hosting Facility at its own risk. Midwinter is not liable for any claim, loss or damage of any kind resulting from or associated with the use or download of any material, to the maximum extent permitted by law.
- 12.5 If Midwinter breaches the Service Level Agreement, Midwinter' sole liability for that breach is, to the maximum extent permitted by law, allowing the Licensee the applicable rebate set out in the Service Level Agreement.

13 Force Majeure

- 13.1 Each obligation of a party, other than the obligation to pay money, will be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by Force Majeure.
- 13.2 For the purpose of this clause, "Force Majeure" means a circumstance beyond the reasonable control of a party which occurs without the fault or negligence of the party affected, and includes inevitable accident, storm, flood, fire, earthquake, peril of navigation, strike, lock-out, boycott or other industrial dispute, hostility, war (declared or undeclared), insurrection, executive or administrative order or act of either general or particular application of a government, whether de jure or de facto, or of any official purporting to act under the authority of such a government, prohibition or restriction by domestic or foreign laws, regulations or policies and quarantine or customs restrictions.

- 13.3 A party affected by Force Majeure must:
- (a) as soon as reasonably possible after being affected give to the other party full particulars of the Force Majeure (including why it is a circumstance beyond its reasonable control), the manner in which its performance is prevented or delayed and its calculation of the estimated period of prevention or delay due to Force Majeure; and
 - (b) promptly and diligently take appropriate reasonable action to enable it to perform the obligations compliance with which is prevented or delayed by Force Majeure except that the party is not obliged to settle a strike, lockout, boycott or other industrial dispute.
- 13.4 If a party is prevented from or delayed in complying with an obligation under this Agreement by Force Majeure for a period of at least 60 days then either party may by notice to the other party terminate this Agreement.
- 13.5 The Licensor provides services to Midwinter so that it is able to deliver specialised technology and related data including the licensee under the terms of this Agreement. The licensee agrees it not make any claim against the Licensor whether for breach of contract, negligence or otherwise. Midwinter agrees to indemnify the Licensor to the extent of any claims you or any person claiming through you makes against the Licensor. This clause applies only to the extent legally permitted.
- 13.6 Aspects of this clause are included for the benefit of the Licensor who may rely on it as if the Licensor was a party to this contract.

14 Dispute resolution

- 14.1 If any dispute arises out of or in relation to this Agreement ("a Dispute") a party must not commence any court or arbitration proceedings unless it has complied with the following paragraphs of this clause, except where the party seeks urgent interlocutory relief. Despite the existence of a Dispute, each party must continue to perform the Agreement.
- 14.2 If a party claims that a Dispute exists, it must give written notice to the other party specifying the nature of the Dispute ("a Notice of Dispute"). The Notice of Dispute must designate a representative with authority to settle the Dispute by negotiation.
- 14.3 Within 7 days of receiving a Notice of Dispute, the other party must designate in writing to the first party a representative with authority to settle the Dispute by negotiation as specified in the Notice of Dispute. That representative must within a further 7 days arrange and attend a meeting with the first party's designated representative and any other representatives or advisers of each party ("the Negotiation Meeting"). At the Negotiation Meeting, the designated representatives must endeavour to resolve the Dispute by negotiation.
- 14.4 If the parties are unable to resolve the Dispute at the Negotiation meeting, they must endeavour to resolve the Dispute by other dispute resolution methods such as mediation or expert determination.
- 14.5 If the parties do not agree within 7 days from the Negotiation Meeting (or such further period as agreed in writing by them) as to:
- (a) the dispute resolution method or procedures to be adopted;

- (b) the timetable for all steps in those procedures; and
- (c) the selection and remuneration of an independent person to be responsible for conducting the dispute resolution method,

the parties must refer the Dispute to mediation under the mediation rules of the Australian Commercial Disputes Centre with the mediator to be specified by the President of the Queensland Law Society.

- 14.6 The parties agree to keep confidential all confidential information or documents obtained during a negotiation or other dispute resolution process and not to use that information or those documents for any purpose other than to attempt to resolve the Dispute.

15 Waiver

- 15.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 15.2 The exercise of a power or right does not preclude:
- (a) its future exercise; or
 - (b) the exercise of any other power or right.
- 15.3 A waiver of a power or right will be ineffective unless in writing and executed by the waiving party.
- 15.4 The waiver of a power or right will be effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

16 Notices

- 16.1 A notice or other communication required or permitted to be given by a party to another must be in writing and:
- (a) delivered;
 - (b) sent by airmail, postage pre-paid; or
 - (c) sent by facsimile;
- to the address or facsimile number described in clause 16.4.
- 16.2 A notice or other communication is sufficiently given if:
- (a) delivered, upon delivery;
 - (b) mailed by airmail, on the 4th Business Day after the date of posting; or
 - (c) sent by facsimile, on the next Business Day after being sent if following transmission the sender receives acknowledgment of a successful transmission from the sender's facsimile machine unless within 24 hours of the transmission the recipient notifies the sender of imperfect receipt of the facsimile.

- 16.3 A party may change its address or facsimile number for service by giving notice of that change to the other party.
- 16.4 Each party's address and facsimile number for the purpose of clause 16.1 is as set out in the Purchase Order.

17 General

- 17.1 The parties acknowledge and agree that they are contractors independent of each other, that nothing in this Agreement constitutes the relationship of partnership or employer and employee between the parties and that neither has the authority to bind the other to any person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties.
- 17.2 The law of this Agreement is the law of Queensland and the Commonwealth of Australia. The parties submit themselves to the jurisdiction of the Courts of Queensland and the Commonwealth of Australia for all proceedings arising in connection with this Agreement which proceedings must be issued in Queensland.
- 17.3 This Agreement contains the entire understanding of the parties relating to the subject matter of this Agreement.
- 17.4 There is no other written or oral understanding, agreement, warranty or representation whether express or implied in any way extending, defining, varying or limiting this Agreement or otherwise relating to the subject matter of this Agreement.
- 17.5 If a Court determines that a word, phrase, sentence, paragraph or clause is unenforceable, illegal or void then it will be severed and the other provisions of this Agreement will remain operative.
- 17.6 The Licensee must not assign any or all of its rights and obligations under this Agreement without the prior written approval of Midwinter, and on terms including any transfer and other fees which Midwinter considers appropriate. Midwinter may assign its rights and obligations under this Agreement without the Licensee's consent.
- 17.7 Variation of a provision of this Agreement will be ineffective unless in writing and executed by the parties.
- 17.8 During the term of this Agreement, and for 1 year after the date it terminates, neither party may solicit to hire any Employee of the other party without the prior written consent of the other party.
- 17.9 Each party is liable for their own legal costs incurred in the preparation and execution of this document. Any stamp duty payable in connection with this Agreement will be borne by the Licensee.

18 Interpretation

- 18.1 The singular includes the plural and the plural includes the singular.
- 18.2 A reference to writing includes a reference to printing, typing and each other method of producing words in a visible form.

- 18.3 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings.
- 18.4 Headings are for ease of reference and do not affect the construction of this Agreement.
- 18.5 If a day appointed by this Agreement for the payment of money or the performance of an act falls on a day which is not a Business Day the day for payment of that money or the performance of that act will instead be the Business Day immediately following the day appointed.
- 18.6 The words "includes", "including" and "such as" and similar words are not intended to be words of or imply any limitation.
- 18.7 If there is any inconsistency between any provision of this Agreement and a provision contained in a Schedule, the provision of this Agreement prevails to the extent of the inconsistency.
- 18.8 This Agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.
- 18.9 All dollar amounts are in Australian dollars.

SCHEDULE A

Support Services

This Schedule A describes the Support Services to be provided by Midwinter to the Licensee. The Support Services consist of the Introductory Services, the User Support Service, the Update Service and the Backup Service.

1. Introductory Services

- 1.1 If the Licensee's data can be obtained from the Licensee's current software database and imported electronically directly into Midwinter within 8 hours, Midwinter will assist the Licensee in the migration of its existing data onto the Hosting Facility. The Licensee is responsible for any data cleansing or manual data input.
- 1.2 Without limiting any other provision of this Agreement, Midwinter assumes no liability for any data errors resulting from data which is malformed or fails to comply with the specifications provided to Midwinter by the Licensee.
- 1.3 Within 30 days of the availability of the first Custom Site being notified to the Licensee, or such longer period agreed by the parties, Midwinter will provide 8 hours of "train the trainer" training to an employee of the Licensee at the Licensee's Site. Travel and other out of pocket costs are payable by the Licensee.

2. User Support Service

- 2.1 Subject to paragraph 2.2, Midwinter will provide online, telephone and email support to the Licensee's representative (as notified to Midwinter from time to time) for both technical and user questions during Business Hours.
- 2.2 The amount of telephone/email support provided to the Licensee will be limited to 8 hours per calendar quarter (including time spent investigating a query). Unused time expires at the end of the quarter.
- 2.3 Midwinter may, but is under no obligation to, provide telephone/email support in excess of the hours set out in paragraph 2.2 or during hours other than Business Hours, at Midwinter's then standard time and materials rates for such services.

3. Update Service

Midwinter will use reasonable efforts to provide, on request by the Licensee, reasonable quarterly updates to the information contained on the publicly accessible portion of the Custom Site with new information provided to Midwinter by the Licensee on or before the end of each quarter based on the date of this agreement. Midwinter may determine whether a requested update is reasonable at its sole discretion and, where it determines that it is unreasonable to provide an update at no additional charge, will provide the Licensee with an estimated cost for performing the update at Midwinter's then current time and materials rates. The Licensee accepts all liability and indemnifies Midwinter against any claims made against Midwinter in connection with updates requested by the Licensee.

4. Backup Service

- 4.1 In order for the Licensee to independently maintain its own backup files, Midwinter will provide the Licensee with a facility to download all data which has been placed on the Hosting Facility by the Licensee, the Users or Clients.

- 4.2 Midwinter will also use reasonable endeavours to create a daily backup of all data which has been placed on the Hosting Facility by the Licensee, the Users or Clients (**Midwinter Backup**) and store it at a separate location from the Hosting Facility.
- 4.3 On written request by the Licensee, Midwinter will deliver to the Licensee a copy of the latest Midwinter Backup in electronic form provided that the Licensee pays Midwinter' reasonable costs of extracting and transferring such data at Midwinter' then current time and materials charges.

5. Additional Charges

Support Services do not include repair of damage or investigation of problems:

- (a) arising from additions or modifications to the Software by a person other than Midwinter (and such additions or modifications are prohibited);
- (b) arising from misuse of the Software;
- (c) caused by the failure of the Licensee to provide suitably qualified and adequately trained operating and programming staff for the operation of the Software;
- (d) which Midwinter is unable to replicate within 2 hours after beginning its investigations;
- (e) caused by the failure of electricity, air-conditioning, humidity control or any environmental factor;
- (f) caused by an act of God, by flood or by fire;
- (g) caused by operation of the Software other than in accordance with the Documentation;
- (h) arising directly or indirectly out of the Licensee's failure to comply with this Agreement;
- (i) caused by network failure or error, software failure, hardware failure, hardware operating system failure or incorrect operation of the hardware or network beyond Midwinter' reasonable control.

Excessive consultation which in Midwinter' reasonable opinion is due to lack of training of the Licensee's staff is also not included in the Support Services.

At its option, Midwinter may provide Support Services in respect of any of these items or additional support services at its normal time and materials rates.

Schedule B

Hosting Facility

The Hosting Facility provides web servers and a database server to allow access to the Software.

The servers are stationed in an air-conditioned environment. The servers are connected to an uninterruptible power supply.

At the date of execution of this Agreement, the servers and telecommunications links which are used to provide the Hosting Facility have the characteristics set out below. Midwinter reserves the right to modify or upgrade the servers and telecommunications links as reasonably required and may charge the Licensee for all or part of any hardware, software or telecommunications link upgrade which Midwinter reasonably determines to be required due to the Licensee's, its Users' or Clients' use of the Hosting facility.

Platformplus Web Server – IBM x335 – Features

- 2.4Ghz Intel Xeon processor
- 1.5G memory
- Hot swap 300G SCSI Hard Disk (mirrored)
- Gigabit Network Adapter
- Windows Server 2003
- ASP.NET Framework

*Provides access to: Midwinter User access
Financial Modelling Tools*

Licensee Web Site Server – IBM x335 – Features

- 2.4Ghz Intel Xeon processor
- 512M memory
- Hot swap 40G SCSI Hard Disk (mirrored)
 - Gigabit Network Adapter
- Windows Server 2003
- ASP.NET Framework

Provides a web presence for the Licensee with both public and Client only access.

Platformplus Database Server - IBM x335- Features

- 2 x 2.4Ghz Intel Xeon processors
- 4G memory
- Hot swap 76G SCSI Hard Disk (mirrored)
- Gigabit Network Adapter
- Windows Server 2003
- SQL Server 2008

Provides SQL Database for Midwinter

Telecommunications Links

4M/4M Clear Channel Fibre DSL
Backup 512k/512k SDSL line

Schedule C

Any sub-contract between the Licensee and a third party User or Client must include the following terms and conditions:

1 Definitions

Unless the subject matter or context requires otherwise, in this Agreement the following words and expressions have the meanings assigned to them below:

Acceptable Use Policy means the acceptable use policy at <http://www.Platformplus.com.au/acceptableusepolicy.htm> as varied from time to time by the Licensor;

Confidential Information means the terms of this Agreement and any material or information provided by or emanating from a party (**the disclosing party**) to the other party (**the receiving party**) in relation to or in accordance with this Agreement but excludes material or information which:

- (d) is at the time of disclosure, or subsequently becomes, material or information in the public domain otherwise than by a breach by the receiving party of this Agreement; or
- (e) becomes known by a party independently of the other party, otherwise than by any breach of a confidentiality obligation owed by a third party to the disclosing party;

Licensor means Midwinter Pty Ltd ACN 103 551 533 of 35 Primary School Court, Maroochydore Queensland;

Service means the service provided to you using software and a hardware platform made available to us by the Licensor;

us means [**name of Licensee**]; and

you means you, the user of the Service;

2 Confidentiality

2.1 You acknowledge that the Service and any technical information or data relating to the Service is the Confidential Information of the Licensor and constitutes proprietary information and trade secrets of the Licensor.

2.2 The receiving party must:

- (a) treat Confidential Information as secret and confidential and as the property solely of the disclosing party;
- (b) not use Confidential Information for any purpose other than the performance of this Agreement;
- (c) restrict the disclosure of Confidential Information to those of its employees and other professional consultants who require Confidential Information to

enable the receiving party to perform its obligations pursuant to this Agreement or otherwise exercise its rights under this Agreement; and

- (d) ensure that each person to whom Confidential Information has been disclosed complies with the obligations of the receiving party under this Agreement and, if reasonably required by the disclosing party, executes a confidentiality agreement in the form reasonably required by the disclosing party.

2.3 Clause 2.2 does not apply to Confidential Information which any party is required to disclose by any applicable law or legally binding order of any Court, or by a lawful requirement of any government or regulatory department, body, instrumentality, Minister, agency, recognised stock exchange or other authority which has jurisdiction over that party. Before such disclosure the receiving party must:

- (a) use its best endeavours to give the disclosing party details of the information to be disclosed and the law or order requiring disclosure; and
- (b) notify the entity requiring the information that it is the Confidential Information of the disclosing party and request the entity to whom the disclosure is to be made to treat the information as confidential.

3 Acceptable Use Policy

You must comply with the terms of the Acceptable Use Policy. The obligations you have under the Acceptable Use Policy are owed both to Midwinter and the Licensor.

4 Liability

- 4.1 The Service is provided by the Licensor. You must not make any claim against the Licensor whether for breach of contract, negligence or otherwise. You agree to indemnify the Licensor to the extent of any claims you or any person claiming through you makes against the Licensor. This clause applies only to the extent legally permitted.
- 4.2 The Trade Practices Act and other legislation may give you rights which cannot be legally excluded and this clause is not intended to exclude those rights. To the extent that the Licensor cannot exclude liability to you or claims by you, it limits its liability to the provision of the Service or Software again or payment of the cost of the provision of the Service or Software again, at its option.
- 4.3 This clause is included for the benefit of the Licensor who may rely on it as if the Licensor was a party to this contract.

Schedule D

Acceptable Use Policy

- 1 You must only use the Software and Hosting Facility (**Service**):
 - (a) for its intended purpose; and
 - (b) as directed by PlatformPlus from time to time.
- 2 You must not use the Service to:
 - (a) post, upload or otherwise make material available that is illegal or obscene, defamatory, harassing, abusive, tortious, hateful, invasive of a person's privacy, or racially or otherwise objectionable, discriminatory or offensive;
 - (b) fraudulently or otherwise misrepresent yourself to be another person or a representative of another entity including, but not limited to, a Midwinter representative, or fraudulently or otherwise misrepresent that you have an affiliation with a person, entity or group;
 - (c) disguise the origin of any material transmitted through the Service (whether by forging message/packet headers or otherwise manipulating normal identification information);
 - (d) create pages that cannot be accessed due to password protection or any other access restriction system without Midwinter' consent or use the Service in any way to break or access, or attempt to break or access, any password of any other user of the Service or any third party;
 - (e) post, upload or otherwise make material available which infringes any intellectual or industrial property right of Midwinter or any third party (such as material that infringes copyright, trade marks, patents, or trade secrets, or other proprietary rights of any party);
 - (f) post, upload or otherwise make material available containing or associated with spam, junk mail, advertising for pyramid schemes, chain letters, virus warnings (without first confirming the authenticity of the warning), or any other form of unauthorised advertising or promotional material or collect information, including web pages, image views, e-mail messages or news posts from unsolicited mail;
 - (g) send multiple copies of the same or substantially similar messages, large messages or files, to a recipient with the intent of disrupting a server, account, or service or to post a large number of messages or amounts of text in newsgroups or chatrooms with the intent of disrupting discussion or the service of other users;
 - (h) post, upload or otherwise make material available containing viruses, trojans or any other material designed to impair, destroy or interrupt the performance of any hardware or software;
 - (i) obtain unauthorised access to or interfere with the performance of the servers which provide the Service or any servers on any associated networks or otherwise fail to comply with any policies and procedures relating to the use of those servers;

- (j) collect, whether aggregated or otherwise, data about other users of the Service;
 - (k) violate any applicable laws, whether intentionally or otherwise, or post, upload or otherwise make material available which you are not entitled to make available by law (whether by legislation or under a contractual, or fiduciary obligation or otherwise);
 - (l) harass or stalk another person or harm, purport to harm or seek to harm another person (including minors) or encourage those or other illegal activities;
 - (m) provide advice on illegal activities (for example, the creation of bombs, the infringement of intellectual property rights and gaining unauthorised access to computer systems);
 - (n) use your web page directory for file storage/backup purposes; or
 - (o) do anything else which may impact operation or performance of the Service or its use by others.
- 3 You must not post, upload or otherwise make information available which relates to financial matters such as investments, securities, stock prices, company performance, or commodity prices without holding all relevant licences (whether required in your jurisdiction or elsewhere). The phrase "make information available" includes allowing other people to post, upload or otherwise make information available through the Service.
- 4 If you will be using the Service for a commercial purpose or otherwise on-selling any part of the Service to another party you have legal responsibilities in relation to the provision of content under Federal, State and Territory laws concerning content that is intended to be provided to the public from within Australia. You must comply with all applicable laws;
- 5 You acknowledge that while Midwinter does not review material uploaded to the Service prior to it being made available through the Service, Midwinter or its agent may remove any information available through the Service, including, but not limited to information that Midwinter considers (in its sole opinion) violates this Acceptable Use Policy, applicable laws, or is otherwise objectionable. You are responsible for maintaining your own backup of information you upload to the Service.
- 6 You acknowledge that the Internet is not a secure or private medium and that Internet communications may be subject to delay, interception, caching or loss, or may contain viruses or other destructive or nuisance programs. You accept complete responsibility for the protection of your data in relation to which the Service is used and acknowledge that Midwinter has no liability for any loss or damage you may suffer as a result from or arising out of any failure by you to do so.
- 7 Midwinter reserves the right to assess the traffic and bandwidth generated in connection use of the Service by you, your Users and Clients. Where an excess of incoming or outgoing bandwidth is used due to, but not limited to, large increases in visitation and/or the placement of high-bandwidth content (such as audio or video) on the site, Midwinter may charge you for the extra bandwidth utilised by you, your Users and Clients, at Midwinter' excess bandwidth rate as varied from time to time.

- 8 Platformplus may monitor the content of any traffic over the Service for any reason permitted or required by law, including for the purpose of ensuring compliance with this policy. Platformplus will attempt to contact you before taking any corrective action if we believe you are in breach of this policy. Notwithstanding this, any breach by you of this policy may result in the suspension or termination of the Service.
- 9 Platformplus may amend this Acceptable Use Policy from time to time without notice by posting the amended version on the legal section of our web site at <http://www.PLatformplus.com.au/acceptableuse.htm>. We suggest that you visit our web site regularly to keep up to date with any changes.

Schedule E

Service Level Agreement

1 Reporting of Material Defects

1.1 If the Licensee detects a Material Defect, the Licensee must immediately notify the Midwinter Helpdesk by providing a detailed explanation and supporting data to enable the Material Defect to be reproduced, either by e-mail to info@Midwinter.com.au or by telephone on (07) 5479 3574 (**Initial Error Report**).

1.2 Midwinter will use reasonable endeavours to respond to an Initial Error Report within **[4]** Business Hours of receipt of the report.

1.3 If Midwinter:

(a) fails to respond to an Initial Error Report within **[4]** Business Hours of the Licensee giving the report; or

(b) provide a satisfactory resolution or work-around for the Material Defect described in the Initial Error Report within **[8]** Business Hours of the Licensee giving the report,

the Licensee may contact Midwinter' Operations Manager on (07) 5443 4311 to request the Operations Manager review the steps being taken to resolve the Material Defect (**Management Review**).

1.4 Midwinter will use reasonable endeavours to conduct a Management Review and notify the Licensee of the results within **[8]** Business Hours of the Licensee's request in accordance with paragraph 1.3.

1.5 If Midwinter:

(a) fails to respond to a request for a Management Review within **[8]** Business Hours of the Licensee making the request; or

(b) provide a satisfactory resolution or work-around for the Material Defect described in the Initial Error Report within **[8]** Business Hours of the Licensee's request for a Management Review,

the Licensee may contact Midwinter' Managing Director on (07) 5443 4311 to request the Managing Director review the steps being taken to resolve the Material Defect by the Managing Director (**Executive Review**).

1.6 Midwinter will use reasonable endeavours to conduct an Executive Review and notify the Licensee of the results within **[8]** Business Hours of the Licensee's request in accordance with paragraph 1.5.

2 Availability of Our Software

2.1 Midwinter will use its best endeavours to ensure that Our Software is accessible to the Licensee on the Hosting Facility 90% of Business Hours each calendar month.

- 2.2 Subject to paragraph 2.4, if Our Software is accessible to the Licensee on the Hosting Facility:
- (a) less than 90% but more than 75% of Business Hours in a calendar month, Midwinter will provide the Licensee a rebate of 50% of the licence fee payable for the use of Our Software during that month; or
 - (b) less than 75% of Business Hours in a calendar month, Midwinter will provide the Licensee a rebate of the total licence fee payable for the use of Our Software during that month.
- 2.3 Any rebate Midwinter is required to give under paragraph 2.2 will be provided as a credit on the Midwinter invoice for the following calendar month's licence fee.
- 2.4 A rebate will not be provided by Midwinter where Our Software is not accessible to the Licensee on the Hosting Facility:
- (a) due to an act or omission of the Licensee (including a failure by the Licensee to notify Midwinter of a Material Defect in accordance with paragraph 1.1);
 - (b) due to an act or omission of a supplier of Midwinter or the Licensee including Internet service providers and Third Party Contribution providers;
 - (c) where Midwinter is entitled to suspend or terminate the Licensee's access to Our Software in accordance with the terms of this Agreement; or
 - (d) otherwise due to an event beyond the reasonable control of Midwinter (including Force Majeure).
- 2.5 The rebates referred to in paragraph 2.2 are the Licensee's sole remedy for a breach of this Schedule by Midwinter.